

# Master Agreement in respect of the Netcash Account Service Terms

between

## **Netcash (Pty) Ltd**

Registration Number: 2001/019308/07

(Hereinafter referred to as "Netcash")

and

## **{RecipientAccountRegisteredName}**

Registration Number: {RecipientAccountRegNo}

(Hereinafter referred to as the "Client")

## **Overview**

Netcash (Pty) Ltd provides a myriad of payment services to businesses. By leveraging its position as a processing facility which can assist with payments that are due, by way of with debit orders, salary and creditor payments, risk management and credit bureau data, e-Commerce, Netcash provides wide-ranging services to businesses who stand to benefit from the economies of scale that Netcash can leverage from third party providers. Put simply, Netcash can do it more cost effective because we have the volume to negotiate reduced rates. We also do it better.

These Account Service Terms (hereinafter referred to as the "**Master Agreement**"), are intended to cover all the above services. This Master Agreement contains the terms and conditions that are common to all the services. Of course, there are various terms and conditions that are unique to a particular service and when that occurs those terms and conditions will be more fully set out and contained in a separate document specific to that service (such document/s hereinafter referred to as the "**Annexure/s**"). As a result, any service needs to be understood by putting the Master Agreement and the relevant Annexure/s together.

What this system allows us to do is ensure that you read the least amount of text, while at the same time ensuring that both you and Netcash are both protected by a complete and legally compliant Master Agreement.

After signing this Master Agreement and the relevant Annexures, whenever the terms and conditions of a service are updated, you will be notified electronically and given the opportunity to cease using the service or continue using the service under the amended terms and conditions. This flexibility is essential to our business and ensures that there are no breaks in our service to you, even when new legislation is introduced.

Finally, unless expressly stated in this Master Agreement, please remember that where there is a conflict between the Annexures and the Master Agreement, the Annexures will prevail, so please read the Annexures carefully.

We wish you well in your business and trust that together, we can make your business grow.

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## **1. Interpretation and Definitions**

- 1.1. Where figures are referred to in numerals and words, then the latter shall prevail in the event of any dispute.
- 1.2. Any reference to an enactment shall be deemed to mean that enactment as at the date of signature hereof or as amended or re-enacted, from time to time.
- 1.3. When any number of days is prescribed in the Master Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.4. The headings used in this Master Agreement shall be deemed not to be part of the Master Agreement and will not be taken into consideration in the interpretation or construction of this Master Agreement.
- 1.5. This Master Agreement shall be binding on both Netcash and the Client and their successors in title. Any reference in this Master Agreement to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- 1.6. The Annexures attached to this Master Agreement form part hereof and words and expressions defined in this Master Agreement shall bear, unless stipulated otherwise therein, the same meanings in such Annexures or Schedules.

- 1.7. In the event of any conflict between this Master Agreement and any Annexure between the Parties, unless expressly stated in this Master Agreement, the conflict will be resolved in favour of the document with the highest priority as set out below:
- 1.7.1. Annexures to this Master Agreement (Highest Priority); and
- 1.7.2. This Master Agreement (Lowest Priority).
- 1.8. Where any term is defined within the context of any clause in this Master Agreement (including in the 'Overview' section of this Master Agreement), the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Master Agreement, notwithstanding that that term has not been defined in this interpretation clause or the definitions clause.
- 1.9. The expiration or termination of this Master Agreement shall not affect such of the provisions of this Master Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.10. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.11. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the application of the *eiusdem generis* rule (which means "of the same kind or nature"), is excluded.
- 1.12. If any provision of this Master Agreement is unenforceable or invalid under law, the remaining substance of such provision and remaining provisions of this Master Agreement shall continue to be binding and in full force and effect provided the essential economic benefits of this Master Agreement are retained.
- 1.13. In this Master Agreement the words and expressions contained below bear the meanings assigned to them:
- 1.13.1. "Access Codes" are the access details to the Netcash system / online platform which are unique to that User and Client. Each User has permissions allocated to him or her to determine and enable what actions can be performed on the Netcash system / online platform. The permissions for each User are determined by the Client when setting up Users.
- 1.13.2. "Authorities" means the institutions / organisations which have administrative power and control over industries, systems, and laws, which Netcash and / or the Client operates within.
- 1.13.3. "Available Balance" means, on any day, the aggregate of the amounts available in the Client's Netcash Account on that day, being:
- 1.13.3.1. the aggregate of all amounts paid into or debited to the Client's Netcash Account (including without limitation the aggregate of all collections made by Netcash on behalf of the Client and all and any other amounts paid into or debited to the Client's Netcash Account, including amounts paid by the Client into the Client's Netcash Account) on that day; plus
- 1.13.3.2. the aggregate amount of the Retentions which are released to, or become part of, the Available Balance (as contemplated in the definitions of Security Retention and Unpaid Retention respectively) on that day; less
- 1.13.3.3. the aggregate of all amounts paid by Netcash to third parties on behalf of the Client on that day; less
- 1.13.3.4. the aggregate amount of the Retentions as at that day; less
- 1.13.3.5. the aggregate of all fees which Netcash is entitled under this Master Agreement and/or any Annexure, to deduct from the Client's Netcash Account on that day; less
- 1.13.3.6. the aggregate of all amounts transferred by the Client from the Client's Netcash Account into the Client's Transaction Account on that day.
- 1.13.4. "Beneficiary Service Provider" means Netcash who accepts money or the proceeds of payment instructions, as a regular feature of its business, from multiple payers on behalf of a Beneficiary.

- 1.13.5. "Business Day" means any day other than a Saturday, Sunday, or South African Government officially declared public holiday.
- 1.13.6. "Client" means the party contracting with Netcash for its services, as set out on the first page of this Master Agreement. In addition, the Client is also referred to as the Beneficiary and/or the Payer, as applicable, and depending on the associated services entered with Netcash.
- 1.13.7. "Client's Netcash Account" means an account maintained for the Client on the Netcash developed software to keep all transactions and/or information pertaining to the Client separate from that of other Netcash clients. The account has its own unique number and is accessible only by the Client and its determined Users to (i) view details of transactions processed by Netcash on behalf of the Client and (ii) transfer amounts into and out of such account as the Client may, in its discretion, determine.
- 1.13.8. "Commencement Date" has the meaning given in clause three.
- 1.13.9. "Customer" means an individual / legal entity / business that purchases the Client's goods and/or services.
- 1.13.10. "eCommerce" means commercial transactions conducted electronically on the internet.
- 1.13.11. "ECT Act" means the Electronic Communications and Transactions Act No. 25 of 2002, as amended, from time to time.
- 1.13.12. "Electronic signature" means the legal and binding entering into this Master Agreement and any of the Annexures to this Master Agreement, by signing these document(s) electronically on the Netcash platform in terms of s11 of the ECT Act, which electronic acceptance by the Client on the platform is deemed to have been accepted and signed electronically in terms of the said Act.
- 1.13.13. "FAIS Act" means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended, from time to time.
- 1.13.14. "FICA" means the Financial Intelligence Centre Act No. 38 of 2001, read together with its Schedules and Regulations, as amended, from time to time.
- 1.13.15. "Instruction" means the capture and authorisation of a request by the Client (including any of the Users set up by the Client on the Client's Netcash account), within the Netcash System, to collect or pay funds into or out of the Client's Netcash Account.
- 1.13.16. "Intellectual Property" means any patents, copyright, registered design, trademark, trade names, domain names, rights in computer software, database rights, rights in confidential information, or other industrial or intellectual property right, whether registered or not.
- 1.13.17. "Netcash" means the party contracting with the Client for its services, as set out on the first page of this Master Agreement. In addition, Netcash is also referred to as the Beneficiary Service Provider in relation to its Debit Order, DebiCheck and Pay Now Services and it is referred to as the Payer Service Provider in relation to its Creditor and Salary Payment Services.
- 1.13.18. "Netcash Services" has the meaning given in clause 2.1.
- 1.13.19. "Netcash System" is the software and database that stores all transactions, and Client details and performs the actions required for the services provided by Netcash.
- 1.13.20. "Nominated Bank Account" means the Client's transactional business bank account that is used by the Client for payment of its creditors, and which account takes receipt of all receivables arising from payments by its customers to the Client, at the Client's business address and or Client sites as set out in clause 21 below.
- 1.13.21. "Onboarding risk assessment" means the various due diligence checks performed by Netcash to satisfy itself that its client profiles are within its approved risk appetite. These would include, amongst others, credit bureau, FICA, Nominated Bank Account(s), Companies, and Intellectual Property Commission ("CIPC"), and Regulatory Body verification, as applicable, on receipt of the required information and documentation from the Client.

- 1.13.22. "Parties" means both Netcash and the Client and "Party" means either Netcash or the Client.
- 1.13.23. "Payment to third persons" means, for the purposes of the South African Reserve Bank Directive 1 of 2007, the activities of a Beneficiary Service Provider and a Payer Service Provider, as defined.
- 1.13.24. "Payer Service Provider" means Netcash who accepts money or the proceeds of payment instructions, as a regular feature of its business, from a Payer to make payment on behalf of that Payer to multiple Beneficiaries.
- 1.13.25. "Prime rate" means the basic rate of interest levied by First National Bank (FNB), a division of FirstRand Bank Limited from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, NACM (Nominal Annual Compounded Annually), irrespective of whether the applicable year is a leap year, and proved, *prima facie*, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any director, manager or authorised signatory of that bank, whose appointment and authority need not be proved.
- 1.13.26. "Profile" is the details of the Client together with a unique account number and access details (Username; Password; PIN) allocated to each user within the Client's Netcash Account.
- 1.13.27. "Retentions" means the Security Retention and/or the Unpaid Retention and/or Fee Retention.
- 1.13.28. "Super User" is the User who has been enabled to sign agreements between the Client and Netcash. The Super User also has full permissions on the Client's Netcash Account. The Super User is the principal person for the Client.
- 1.13.29. "Security Retention" is the amount being retained to obtain Debit Order facilities at Netcash's bank. It is also used as additional cover for shortfalls on Unpaid Retentions. Whatever amount remains available of the Security Retention amount after 22 (twenty-two) business days will be released to the Available Balance on the Client's Netcash account. The default Security Retention is 10% (ten percent) of the value of a batch and will be retained on every batch processed. The Security Retention percentage may vary and/or fluctuate depending on the initial Client onboarding risk assessment and trend analysis performed on the Client's Netcash Account.
- 1.13.30. "Third Party" means a person (whether an individual or legal entity) other than the primary parties to this Master Agreement.
- 1.13.31. "Transaction" means any collection, receipt and/or payment services which will be facilitated by the Netcash System, including the refund, reversal, original credit, and purchase by the Client's customers of its goods and/or services.
- 1.13.32. "Unpaid Retention" is the amount being retained by Netcash from a Client batch value to cover returned transactions. The percentage is calculated on the average returns on batches for the prior 6 (six) months. If the value of the unpaid transactions in a batch is **lower** than the amount being retained, any remaining balance will become part of the Client's Available Balance after 22 (twenty-two) business days. However, if the total of the unpaid transactions is **higher** than this percentage then, the additional unpaid value will be refunded from the 10% (ten percent) Security Retention. Netcash will have no transaction history on the first batch of the Client, therefore the Unpaid Retention for the first batch will be applied at 10% (ten percent). Thereafter the retention will be based on the calculated unpaid history on the Client Account.
- 1.13.33. "User" means the Client nominated and duly authorised individual that is authorised on the Client's Netcash account to transact for and on behalf of the Client as a Client representative.

## 2. Introduction and Recordal

2.1 Netcash conducts business providing a myriad of payment processing services which will be more fully set out in the relevant Annexure(s) (the "**Netcash Services**").

2.2 The Client wishes to enter into an agreement whereby it will be able to have access to some or all the Netcash Services subject to the terms and conditions of this Master Agreement and the applicable Annexure.

### 3. Commencement and Duration

3.1 This Agreement shall commence on the Signature Date and shall endure indefinitely or may be terminated prior in terms of clause 13 ('Breach and Termination'), 14 ('No-fault Termination') or 15 ('Termination of Netcash Services').

3.2 Notwithstanding clause 3.1, Netcash will only provide the applicable Netcash Services from the commencement date as set out in the applicable Annexure (the "**Commencement Date**").

### 4. Relationship of Parties

4.1 The Client hereby appoints Netcash as its agent whereby Netcash acts as either or both Beneficiary Service Provider and/or Payer Service Provider for the Client.

4.2 The Parties place on record that the nature of the agency appointment is limited to Netcash as Beneficiary Service Provider and/or Payer Service Provider, only, for the Client and that no other form of agency exists between the parties. Further that the Client shall not act as or portray itself to third parties as being an agent of Netcash.

4.3 It is further recorded that there is no relationship of joint venture or partnership between the parties.

4.4 The Parties hereby acknowledge that they are in a position where each would have access to confidential information of the other and be in a position to affect the others business negatively and as such, undertake to (i) act towards each other with the utmost good faith in strict confidence and in compliance with the Protection of Personal Information Act No. 4 of 2013 ("POPIA"), as may be amended, from time to time, (ii) act in accordance with the provisions of clause 6 ('Netcash Operator Agreement with Clients').

### 5. Undertakings by Netcash

5.1 Subject to clause 17 ('Warranties') and clause 18 ('Disclaimer and Limitation of Liability') Netcash will:

5.1.1 Ensure compliance with all applicable legislative, regulatory, and statutory requirements including those requirements of Authorities.

5.1.2 Comply with the reasonable standard of care expected of a Payments Association of South Africa ("PASA") member.

5.1.3 In conducting its business activities, in so far as it pertains to the subject matter contemplated in this Master Agreement and/or any Annexure, apply such standards of reasonable care in respect of its information management practices as can reasonably be expected from a person conducting the Netcash Services.

5.1.4 Use its best endeavours to notify the Client before any scheduled maintenance of any hardware, software or telecommunication systems relating to the Netcash Services.

5.1.5 Ensure its antivirus and firewall software are constantly updated and monitored.

5.1.6 Accept full liability for any direct loss suffered by the Client because of data which is lost or compromised due to any fault within the Netcash systems, over which it has control. This warranty does not extend to third party services which are beyond the control of Netcash; and

5.1.7 Accept responsibility for non-compliance with the terms and conditions as set out by the South African Bankers Services Company Limited ("BankservAfrica").

5.1.8 Retain records of Transactions implemented by Netcash on behalf of the Client pursuant to this Master Agreement and all Annexures for a period of 7 (seven) calendar years or such further time, as legislation requires.

5.1.9 Keep the records of the Client separate and distinct from other accounts.

5.1.10 Not offset any mutual obligations between the Client and other users of the Netcash Services.

5.1.11 Be adequately insured against any claims by the Client or its Customers.

5.1.12 Maintain an adequate audit trail of Transactions from the Commencement Date onwards.

5.1.13 Ensure that funds held by Netcash on behalf of its Clients and Customers are (i) virtually separated from each other, and (ii) separated from Netcash's own funds.

5.1.14 Not use the Security Retention, the Unpaid Retention, or any other Client funds, for any other purpose except that which is expressly stated and/or contemplated in this Master Agreement and/or the applicable Annexure.

## **6. Netcash Operator Agreement with Clients**

6.1.1 When Netcash functions as an operator for the Client (Responsible Party) in terms of the Protection of Personal Information Act No. 4 of 2013 ("POPIA"), it will only process the personal information of the Client and the Client's Customers for the purposes set out in the Netcash Privacy Notice and Promotion of Access to Information Act No. 2 of 2000 ("PAIA") Manual, unless otherwise required by law or in the proper performance of Netcash's duties.

6.1.2 Netcash will not use any sub-contractors (sub-operators) for the purpose of processing personal information of the Client's Customers, except for the sub-contractors named in the Netcash Privacy Notice, which may be updated, from time to time.

6.1.3 Netcash will use reasonable security measures and inform its Clients (Responsible Parties) of any actual or suspected security compromise as set out in clause 8 ('Security') below.

6.1.4 Netcash will maintain the confidentiality of the personal information as set out in clause 10 ('Confidentiality') below.

## **7. Undertakings by Client**

7.1. The Client represents and warrants to Netcash that:

7.1.1. all the information that has been provided to Netcash is true and correct in all respects and is not misleading or deceptive in any way.

7.1.2. its principals and/or beneficial owners are not Domestic Prominent Influential Persons ("DPIPs") and/or Foreign Prominent Public Officials ("FPPOs") as defined in the FIC Act and that the Client will inform Netcash immediately should this change, or be true, in order that Netcash may perform the necessary enhanced due diligence, as required by law.

7.1.3. it nor any of its principals and/or beneficial owners are subject to any Targeted Financial Sanction ("TFS") lists of the United Nations, as published by the Financial Intelligence Centre, from time to time.

7.1.4. in the event of the Client being a juristic person, then the signatory to this Master Agreement and any of the Annexures to the Master Agreement has the legal capacity and has taken all necessary corporate governance required steps to enable, empower and authorise the Client to enter and execute this Agreement and all its Annexures on the terms and conditions set out herein.

7.1.5. it shall, from the Commencement Date onwards always comply with the applicable legislative, regulatory, and statutory requirements, including those requirements of Authorities, to the extent necessary for the conduct of its business.

7.1.6. it shall from the Commencement Date onwards promptly make any reasonably necessary changes, as required by Netcash from time to time, to comply with South African legislation and/or any Authority to the extent required for the conduct of its business and the performance by Netcash of the Netcash Services.

7.1.7. it acknowledges that once the correct Profile information has been entered and submitted to Netcash through the Profile, Netcash will accept all instructions, irrespective of whether the Profile information may have been entered fraudulently or otherwise without the Clients authority.

7.1.8. it will in all times act in good faith and will not conduct its business or represent Netcash in any way to tarnish the reputation of Netcash.

7.1.9. it will not pass off as Netcash by means of publishing details to such effect, nor will it make use of the Netcash or Third-Party Intellectual Property (including the Netcash name or logo) in any of its communications (including on its websites, marketing literature) or marketing strategies, without the prior written consent of Netcash, as the case may be.

- 7.1.10. it will retain records of the Transactions for a minimum period of 5 (five) calendar years from the date of the Transaction or such further time as the applicable legislation requires.
- 7.1.11. it will be responsible for the actions of its employees and ensure that it does not present any Transactions that it did know or should reasonably have known, were fraudulent.
- 7.1.12. it will be responsible for the loss and/or maintenance of any telecommunications infrastructure which it uses to access the Netcash Services (including direct data links).
- 7.1.13. it will maintain an adequate audit trail of Transactions from the Commencement Date onwards; and
- 7.1.14. it will immediately inform Netcash in writing when the Super User must be removed from the Netcash System, due to him/her no longer being authorised to represent the Client and confirm in writing who the Client's newly appointed and duly authorised Super User is, to be set-up and activated in the Netcash System.

## **8. Security**

8.1 As required by s19 of POPIA, Netcash will use reasonable security in a manner consistent with a Payments Association of South Africa ("PASA") member. This includes consistent assessment of security threats, identifying and implementing safeguards to protect against threats to security and confidentiality.

8.2 Netcash shall provide the Client with the relevant Access Codes to access the Netcash System and be able to use the Netcash Services. These Access Codes constitute an electronic signature in terms of the Electronic Transactions Act No. 25 of 2002.

8.3 The Client will ensure that the security of all Access Codes relating to Netcash are maintained according to the higher standard of care that is due when dealing with financial transactions and will promptly inform Netcash should it suspect that any Access Codes have or could have been compromised.

8.4 The Client shall be required to set up and maintain adequate security procedures and standards as required by the POPIA and as may be advised by Netcash from time to time, from the Commencement Date onwards. This includes necessary antivirus and firewall software programs, physical security and security of information including authentication and encryption.

8.5 The Parties shall immediately bring to the attention of the other Party any breach or attempted breach of security of which it becomes aware, as required by the POPIA. Either Party may fully investigate such breach or attempted breach, and the other Party shall give its full co-operation with such investigation. The Parties shall immediately upon detecting a breach or attempted breach, take such steps as are necessary to prevent a recurrence thereof and to mitigate the effects of such breach. Netcash will provide guidelines on the procedure for reporting security breaches which the Parties must comply with.

8.6 The Client is required to appoint a Super User who must sign this Master Agreement and must be duly authorized in writing to represent the Client. This Super User is empowered to access all the services for which the Client is authorized and has the power to add, delete and vary the details of other users who are granted access on the request of the Client. The Client undertakes to immediately notify Netcash if the Super User ceases to represent the Client. If any Super User no longer represents the Client, the Super User personally agrees to immediately notify Netcash in writing of this and furthermore agrees to cease using any electronic Access Codes that he / she has to the Netcash Services, on behalf of the Client.

8.7 Netcash may from time to time require that each User and the Super User confirm his / her details as a security precaution. Failure to comply with the necessary requirements as advised from time to time could result in Netcash disabling the Clients access to the Netcash System for all Users until such time that the security procedures are complied with.

8.8 In the event that Netcash learns – by any means that:

- 8.8.1 the Super User or a User no longer represents the Client it shall immediately suspend that Super User's or the User's access to the Client's Netcash Account; and
- 8.8.2 the Super User no longer represents the Client it can immediately suspend the Client's Netcash Account until such time as a new, authorized Super User is appointed.

8.9 Netcash will from time to time advise the Client of the minimum requirements which are required to use the Netcash Services. These minimum requirements include minimum specifications relating to computer hardware,

computer software and telecommunications services which the Client must have to be able to use the Netcash Services.

8.10 The Parties hereby agree that for the protection of both Parties, any personal information of the Client and its Customers will be regulated by (i) Netcash's Privacy Notice and (ii) PAIA Manual in accordance with POPIA and the Promotion of Access to Information Act No.2 of 2000, respectively.

## **9. Fees and Payment**

9.1 Each of the Netcash Services has its own fee structure (inclusive of banking fees), which fee structure can be found in the Netcash System under electronic notice of fees.

9.2 Netcash uses a tiered fee system that is based on volume or value and is negotiated with each individual Client.

9.3 From the Commencement Date onwards Netcash will invoice the Client for any Netcash Services which will be charged to the Client's Netcash Account statement free of any deductions unless such amount has already been deducted by Netcash in terms of this Master Agreement.

9.4 The Client shall be solely responsible for the invoicing and collection of fees/payments from the Client's Customers. In the event of no or slow payment on the part of a Client Customer, the Client shall assume all risk and responsibility in respect thereof. Non-payment or slow payment by the Client's Customer shall not in any way hinder or prevent the Client from fulfilling its obligations in terms of this Master Agreement.

9.5 In the event that Netcash requires security from the Client for a specific Transaction, Netcash shall inform the Client of this, and the Client shall be entitled to either provide Netcash with the necessary security or to cancel the Instruction.

9.6 In the event that the Client fails and/or refuses to pay any amount then due and payable to Netcash, that overdue amount shall accrue interest from the date it became due, at the Prime rate plus 2% (two per centum) which interest shall be calculated daily and compounded monthly.

9.7 While changes to the fees charged depends on the relevant Netcash Service, Netcash will endeavour to provide the Client with at least 30 (thirty) calendar days' notice of any change in fees. The aforesaid notice period may be impacted if a Netcash supplier increases its cost with immediate effect, in which instance Netcash will provide the client with no less than 10 (ten) calendar days' notice.

9.8 Any payment by the Client to Netcash will only be considered to have been received once confirmed by Netcash's bank that such amount reflects in Netcash's bank account.

9.9 Any Netcash fees paid or payable by the Client to Netcash shall be reflected in the Client's monthly account statement and it is the duty of the Client to raise any query relating to the accuracy of the account within 30 (thirty) calendar days from date of the Client's monthly statement, failing which the monthly statement will be irrevocably deemed to be correct.

9.10 For the purposes of this Master Agreement and obtaining default or summary judgement a certificate issued by a Director of Netcash certifying the amount owing to Netcash by the Client shall be a sufficient liquid document and be deemed to prove *prima facie* (at face value) the amount owed by the Client until proven otherwise.

9.11 Netcash do not afford credit terms to its clients. Should a Client's debit orders be disputed or fail for any reason, and should the Client fail to remedy this within 2 (two) business days of receipt of the various online system reports at the Client's disposal, Netcash shall be entitled to deduct amounts owing (settlement of overpayments and fees) in terms of this Master Agreement, from the Client's Nominated Bank Account.

9.12 Subject to clause 9.11, the Client hereby authorises Netcash to draw against the Client's account with the listed bank (or any other bank or branch to which the Client may transfer its account) any variable amount pertaining to this Master Agreement and/or Annexures, on any day of the month, this being the amount necessary for the settlement of overpayments and fees due to Netcash in respect of this Master Agreement and/or Annexures.

## **10. Confidentiality Undertaking**

10.1 Each Party agrees to hold the Confidential Information in confidence during and after the termination of this Master Agreement in a manner which is consistent with the POPIA. Each Party agrees that unless required by law (including a subpoena, discovery demand or similar compulsory process) it will neither make the Confidential Information available to any Third Party nor use the Confidential Information for any purpose other than the performance of this Master Agreement, provided that each Party shall be entitled to disclose the Confidential

Information to its professional and legal advisors and its employees (in the latter case to the extent that the transactions contemplated in this Master Agreement and/or the Annexures are within the relevant employees' scope of duties and/or to enable the transactions contemplated in this Master Agreement and the Annexures to be implemented). Each Party agrees to use all reasonable efforts to ensure that the Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Master Agreement.

10.2 The Parties shall take appropriate measures to ensure that all employees, agents and/or subcontractors employed and/or contracted by either Party, sign Confidentiality agreements containing, inter alia, the provisions set out above.

## **11. Intellectual Property**

11.1 All of the Intellectual Property rights owned by either Party at the Signature Date and any Intellectual Property rights acquired by either Party independently thereafter shall remain vested with that Party exclusively.

11.2 The Client warrants that it will not modify, translate, reverse engineer, decompile, disassemble or create derivative works of any computer software or programs owned or operated by Netcash or otherwise attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms including, without limitation, any such mechanism used to restrict or control the functionality of the software or programs or derive the source code or the underlying ideas, algorithms, structure or organisational form of the software.

## **12. Marketing and Announcements**

12.1 Neither Party shall issue any press release or release any marketing or advertising or other promotional literature or make any public statement in each case relating to or connected with or arising out of this Master Agreement, without obtaining the prior written approval of the other Party relating to the content thereof and the manner of its presentation and publication, which approval may be communicated electronically.

## **13. Breach and Termination**

13.1 Subject to clause 19 ('Acts beyond a Party's Control') and any provision of any Annexure, should:

13.1.1 Netcash breach clause 5 ('Undertakings by Netcash');

13.1.2 the Client breach clause 7 ('Undertakings by Client');

13.1.3 either Party commits an act of insolvency, commence business rescue proceedings, or be placed under a provisional or final winding-up or judicial management order.

13.1.4 either Party makes an assignment for the benefit of creditors;

13.1.5 either Party fails to satisfy or take steps to have set aside any judgment taken against it within 7 (seven) days after such judgment has come to its notice;

13.1.6 in the opinion of the aggrieved Party, acting in its sole and absolute discretion, the other Party have acted (or omitted to act) in a way which causes harm to the name, brand, reputation, or goodwill of the aggrieved Party.

13.1.7 either Party breaches any other provision of this Master Agreement and/or any Annexure which:

13.1.7.1 is incapable of being remedied; or

13.1.7.2 is capable of being remedied and is not remedied within 10 (ten) business days of receipt of written notice from the other Party to remedy such breach, the non-defaulting Party will be entitled, but not obliged, in addition to any other rights which it may have in law or remedies which may be available to it in law, to cancel this Master Agreement and the Annexures immediately, with or without claiming damages, on written notice to the defaulting Party.

13.1.8 Notwithstanding the cancellation, Netcash shall be entitled to continue submitting debit orders to the Nominated Bank Account of the Client should there be an amount owing to Netcash.

13.1.9 Notwithstanding the cancellation by Netcash of the Agreement, the Client shall indemnify and hold Netcash harmless from and against all liabilities, losses, costs, or expenses, including but not limited to legal costs, fees and interest, as calculated as contemplated by clause 9.6, that Netcash may suffer, incur or sustain arising out of the breach by the Client of the Agreement.

13.1.10 Netcash may select to claim damages in terms of the Master Agreement, any of the Annexure(s) to the Master Agreement, as well as any suretyship entered.

#### **14. No-fault Termination**

14.1 Notwithstanding any other clause in this Master Agreement or in any Annexure, either Party may terminate this Master Agreement and/or any Annexure, without penalty of any kind whatsoever, on 1 (one) month's written notice (or such shorter period as the Parties may agree in writing) together with the settlement of any outstanding balances and/or fees owing to Netcash.

#### **15. Termination of Netcash Services**

15.1 Notwithstanding anything in this Master Agreement and/or any Annexure, either Party shall be entitled to cancel any Netcash Service/s immediately if:

15.1.1 Netcash is prevented from providing the Netcash Service/s by any Authority; or

15.1.2 the Client is temporarily or permanently prevented by any Authority from conducting its business and/or operations, and neither Party shall have a claim against the other Party for damages of any nature that arise because of the cancellation of any Netcash Services in terms of this clause.

#### **16. Consequences of Termination**

16.1 Termination of this Master Agreement will terminate all Netcash Services.

16.2 The termination of any Annexure will only terminate the Netcash Services set out in that Annexure and the remaining Netcash Services for which the Client has signed the necessary Annexure/s to, and this Master Agreement, will be unaffected by the termination of the terminated Annexure.

16.3 The termination of this Master Agreement and/or any Annexure shall not affect any rights of either Party which accrued prior to the date of termination and the termination of any one or more Annexure shall not affect the validity of all other Annexure still in operation, which continue to remain of full force and effect.

16.4 Notwithstanding the cancellation of this Master Agreement and/or any Annexure for any reason whatsoever, the provisions of clauses 10 ('Confidentiality Undertaking'), 11 ('Intellectual Property') and any other provision that impliedly or by necessary implication endures after termination shall remain of full force and effect as between the Parties.

#### **17. Warranties**

17.1 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not. Any oral representations are required to be recorded in writing and included in this Master Agreement and/or any applicable Annexure.

#### **18. Disclaimer and Limitation of Liability**

18.1 Neither Party will be liable whether in contract, delict or otherwise for any loss of profits, contracts or goodwill, any incidental, indirect or consequential damages, losses or expenses incurred by the other Party pursuant to the performance by either Party of its obligations in terms of this Master Agreement, unless any such damage or loss was occasioned by the fraud, gross negligence, or wilful misconduct of the other Party.

18.2 Each Party hereby indemnifies the other Party against any liability arising from any loss or damage to each Party's physical property (including data) and any liability arising from the death or injury of each Party's employees

or the death or injury of any Third Parties, arising as a result of the performance by either Party of its obligations in terms of this Master Agreement.

18.3 Whether or not advised of their possibility, Netcash will not be liable whether in contract, delict or otherwise for –

18.3.1 any cost of procurement of substitute goods, technology, services, or rights.

18.3.2 interruption or loss of use, loss, or corruption of data; and/or

18.3.3 wasted management or staff time.

18.4 In all cases (and excluding any liability, which may not by law be excluded or limited), Netcash's total liability, whether in contract, negligence or otherwise, under or in connection with this Master Agreement will not exceed in aggregate 100% (one hundred per centum) of the total fees received by Netcash with respect to the Netcash Service in question, giving rise to the liability during the 12 (twelve) month period, prior to the cause of action.

18.5 The Client agrees that the allocation of risk contained in this Master Agreement is reflected in the fees and is also a recognition that, *inter alia*, it is not within Netcash's control, how and for what purpose the Netcash Services are used on their own, or in combination with the other services and deliverables provided by the Client or Third Parties, and the Client is able to rely on its own insurance arrangements and other resources, to bear or recover any loss for which Netcash, is not liable.

## **19. Acts beyond a Party's Control**

19.1 If there is an event which cause delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder which is beyond the control of that Party, or a Party is temporarily prevented by any Authority or statute from conducting its business and/or operations, this Master Agreement and/or Annexure, or as the case may be, the effected portion thereof, shall be suspended for the period during which the event prevails, but if the event affects any material part of the Master Agreement and/or Annexure only for a period of 15 (fifteen) business days' or more, then either Party shall, in addition to the right to suspension, be entitled on 5 (five) business days' written notice to the other Party to cancel an Annexure OR this Master Agreement together with all Annexures. In the event of suspension or cancellation of this Master Agreement or Annexure as contemplated in this clause, each Party shall bear their own losses and/or damages. For the purpose hereof, an event includes strikes, riots, lockouts, fire, floods, drought, state of emergency, state of disaster or any other cause beyond the control of the Parties, including what a layperson will consider to be an "act of god."

## **20. Assignment or Cession**

20.1. The Parties shall not assign or in any way make over, or purport to assign or make over, this Master Agreement and/or any Annexure to this Master Agreement or the Parties' rights and obligations thereunder or any part thereof, unless it has given the other Party 30 (thirty) calendar days' written notice of its intention to do so.

20.2. Following the notice referred to in clause 20.1 the Parties may elect to:

20.2.1. when the Client cedes its rights and obligations, to continue with this Master Agreement and/or any Annexure by having the Client sign a Deed of Novation as the "Old Party" whereby it transfer its rights, duties and obligations from the "Old Party" to the "New Party" who accepts the duties and obligations so transferred to it, after Netcash (the Continuing Party) performed the necessary New Party onboarding risk assessment and due diligence to satisfy itself that the New Party can take over the rights, duties and obligations of the Old Party; or

20.2.2. when Netcash cedes its rights and obligations, to continue with this Master Agreement and/or any Annexure as normal with the newly appointed title holder in Netcash's place and stead. The Client further hereby irrevocably and unconditionally consents to the cession, delegation, and assignment by Netcash of all or any of its rights or obligations in terms of this Agreement and any applicable Annexure and shall, if so, required by any cessionary perform all such obligations and make any payments direct to such cessionary;

20.2.3. terminate this Master Agreement and/or any Annexure on notice to the other Party without penalty of any kind whatsoever as set out in clause fourteen above.

## 21. Address for Legal Notices

21.1 The Parties choose as their address for legal documents for all purposes under this Master Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

21.1.1 Netcash: Netcash Square, Parklands Main Road, Parklands, 7441, [legal@netcash.co.za](mailto:legal@netcash.co.za).

21.1.2 the Client: {RecipientPhysAddress1}, {RecipientPhysAddress2}, {RecipientPhysSuburb}, {RecipientPhysCity}, {RecipientPhysPostalCode}, {RecipientEmailAddress} {RecipientWebsiteAddress}

21.2 Any notice or communication required or permitted to be given in terms of this Master Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by e-mail.

21.3 Any Party may by notice to any other Party change the physical address or e-mail address for the delivery of legal documents, provided that the change shall become effective on the 10th (tenth) business day after the receipt of the notice by the addressee and provided that the addressee may require that the Party changing the contact details prove that it is entitled to do so.

21.4 Any notice to a Party -

21.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its address for delivery of legal notices to which post is delivered shall be deemed to have been received on the 10th (tenth) business day after posting (unless the contrary is proved).

21.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address for delivery of legal notices shall be deemed to have been received on the day of delivery; or

21.4.3 sent by e-mail to its chosen e-mail address stipulated in clause 21.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

21.5 Notwithstanding anything to the contrary herein contained a written notice or communication received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address for delivery of legal notices.

21.6 The Parties hereby consent and submit to the jurisdiction of the Magistrate's Court district applicable to the Client's physical address, as set out in clause 21.1.2 for disputes up to R100,000 (one hundred thousand rands) and the relevant Provincial High Court applicable to the Client's physical address, as set out in clause 21.1.2 for disputes over R100,000 (one hundred thousand rands) of the Republic of South Africa in any dispute arising from or in connection with this Master Agreement.

## 22. Whole Agreement, Amendment Policy

22.1 This Master Agreement and the Annexures constitutes the whole agreement between the Parties relating to the subject matter hereof.

22.2 No amendment or consensual cancellation of this Master Agreement, the Annexures or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Master Agreement and/or the Annexures and no settlement of any disputes arising under this Master Agreement and/or the Annexures and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Master Agreement, the Annexures or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Master Agreement and/or the Annexures shall be binding unless recorded either electronically or in writing by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver, relaxation, or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

22.3 Notwithstanding clause 22.2 this Master Agreement (including the Annexures hereto) may be amended by Netcash by providing 1 (one) calendar months' written notice thereof to the Client (which notice may be provided electronically) with the provisions of the new Master Agreement. Should Netcash provide written notice as aforesaid, the act of requesting the Netcash Services by the Client, after the implementation date of the new Master Agreement (being the date of expiry of the aforementioned 1 (one) month period, will constitute acceptance of the new Master Agreement by the Client.

### **23. No Waiver**

No extension of time or waiver or relaxation of any of the provisions or terms of this Master Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Master Agreement, shall operate as an estoppel against any Party in respect of its rights under this Master Agreement, nor shall it operate to preclude such Party thereafter from exercising its rights strictly in accordance with this Master Agreement.

### **24. Legal Costs**

If this Master Agreement is breached by either Party, the Party who did not breach the Master Agreement shall be entitled to attorney-own client costs when enforcing any rights contained within this Master Agreement or when claiming any damages arising from the said breach.

### **25. Consent to Perform Confidential Credit Check**

25.1 Netcash will perform an onboarding risk assessment and enhanced FICA due diligence process on the Client and its principals, as applicable. The Client and its principals hereby consent to Netcash conducting a credit enquiry in respect of the Client as well as the principals in their personal capacity.

25.2 Any information gathered by Netcash both initially and during the currency of this Agreement and after the termination of this Agreement relating to the way the Client has performed (or not performed) in meeting its obligations, may be transmitted to credit bureaus for the purpose of making risk management decisions, and the Client hereby consents to this.

### **26. Applicability of the Consumer Protection Act**

26.1 This Master Agreement is a business-to-business contract and as such neither Netcash nor the Client are considered to be "consumers" as defined in the Consumer Protection Act No.68 of 2008 ("CPA"). The Client's Customers would be considered to be "consumers."

26.2 It is the intention of the Parties that this Master Agreement be excluded from the ambit of the CPA, due the Client being a juristic person whose annual turnover or asset value exceeds the threshold as prescribed by the Minister in terms of s5(2)(b) of the CPA. Within 7 (seven) business days of receipt of written request by Netcash, the Client undertakes to provide a certificate to Netcash certifying that its asset value and annual turnover as at the date of such certificate is above the threshold amount as indicated in s5(2)(b) of the CPA, failing which the Client will be deemed to be above the threshold amount as indicated in s5(2)(b) of the CPA, until proven otherwise.

26.3 Notwithstanding the above, if the CPA is deemed by a court of law to apply to this Master Agreement, those clauses which fundamentally conflict with the provisions of the CPA and any other clause found to be contrary to South African law, will be capable of being severed from this Master Agreement, provided that the financial basis underlying this Master Agreement is not lost.

### **27. Applicability of the Financial Advisory and Intermediary Services Act**

The Netcash services provided to the Client are not regulated under the FAIS Act, other than the collection of Long Term and Short-Term Insurance premiums and therefore the Client is not afforded the same protections in respect of its other services that may apply in respect of the provision of financial products or services in terms of the Act.

### **28. Consent to provide Value add Services**

The Client and its principals hereby consent to Netcash offering the Client value-add services, from time to time. The Client may decide whether to accept or decline any value-add services offers, made to the Client on the Netcash System. Should an offer be acceptable to the Client, an additional Agreement related to the specific offer will be entered, which is separate from this Master Agreement and Annexures.

### **29. Suretyship**

Netcash may require a suretyship to be signed by the principals of the Client, subject to the specific Netcash Services required and/or the Client's risk profile.

## Schedule A

### A. AUTHORITY/MANDATE: PAPER/ELECTRONIC

Given by (*name of Accountholder*): {RecipientAccountRegisteredName}

Address: {RecipientPhysAddress1}  
{RecipientPhysAddress2}  
{RecipientPhysSuburb}  
{RecipientPhysCity}  
{RecipientPhysPostalCode}

Bank Account Detail

Bank Name: {RecipientBankName}

Branch Number: {RecipientBankBranchCode}

Account Number: {RecipientBankAccountNo}

Type of Account: {RecipientBankAccountTypeDescription}

Date: {SignedOn}

Contact Number: {RecipientTelNumber}

To (Name of Beneficiary): NETCASH

Address: {CompanyPhysAddress1}  
{CompanyPhysAddress2}  
{CompanyPhysSuburb}  
{CompanyPhysPostalCode}

Abbreviated Short Name (ABSN) to be used: NETCASH

Refer to contract reference number {ContractReference} ("the Contract Reference Number")

I/We hereby authorise (**Netcash**) to issue and deliver payment instructions to your banker for collection against my/our abovementioned account at my/our above-mentioned bank on condition that the sum of such payment instructions will not differ from my/our obligations as agreed to in the Contract Reference Number.

The individual payment instructions so authorised must be issued and delivered on the date when the obligation in terms of the Agreement is due, and the amount of each individual payment instruction may not differ as agreed to in terms of the Agreement.

The payment instructions so authorised to be issued must carry the Contract Reference Number, included in the said payment instructions, and must be provided to identify the specific contract. The said Contract Reference Number should be added to this form in section E before the issuing of any payment instruction and communicated directly after having been completed.

I /we agree that the first payment instruction will be issued and delivered on 4<sup>th</sup> of the month following the month signed(date) and thereafter regularly on the 4<sup>th</sup> of each month.

If, however, the date of the payment instruction falls on a non-processing day (weekend or public holiday) I agree that the payment instruction may be debited against my account on the following business day; or

Subsequent payment instructions will continue to be delivered in terms of this authority until the obligations in terms of the Agreement have been paid or until this authority is cancelled by me/us by giving you notice in writing of not less than the interval (as indicated in the previous clause) and sent by prepaid registered post or delivered to your address indicated above.

### B. MANDATE

I/we acknowledge that all payment instructions issued by you will be treated by my/our abovementioned bank as if the instructions had been issued by me/ us personally.

**C. CANCELLATION**

I/we agree that although this authority and mandate may be cancelled by me/us, such cancellation will not cancel the Agreement. I/we also understand that I/we cannot reclaim amounts, which have been withdrawn from my/our account (paid) in terms of this authority and mandate if such amounts were legally owing to you.

**D. ASSIGNMENT:**

I/We acknowledge that this authority may be ceded or assigned to a third party if the Agreement is also ceded or assigned to that third party.

SIGNATURE AS USED FOR OPERATING ON THE ACCOUNT

{RecordalSignature}

ASSISTED BY

{CompanyAccManagerFullname}

CAPACITY

{CompanyAccManagerJobTitle}

**FOR OFFICE USE**

**E. AGREEMENT REFERENCE NUMBER**

THE AGREEMENT REFERENCE NUMBER IS {ContractReference}