

## VENDOR CASHLESS PAYMENT SERVICE TERMS

Between

**AFELETON PROPRIETARY LIMITED (TRADING AS HOWLER)**

Registration number 2009/016028/07, herein referred to as the (“**Service Provider**”, “**we**”, “**us**” or “**our**”);

**AND**

\_\_\_\_\_;

Registration number/Identification Number \_\_\_\_\_, herein referred to as the (“**Vendor**”, “**you**” or “**your**”, as the context may require.)

The headings and subheadings in this Agreement are for reference only and do not limit the scope of each section.

By using or subscribing to our Vendor Cashless Payment Service (“**the Service**”), you agree that you have read, understand and are bound by these ‘Vendor Cashless Payment Service Terms’ (“**Service Terms**”);

Your use of the Service indicates your acceptance without modification of these Service Terms and constitute a legal agreement (“**the Agreement**”) between you and us.

### 1. DEFINITIONS

- 1.1 “**Event**”: the event known as \_\_\_\_\_
- 1.2 “**Event Organiser**”: being \_\_\_\_\_
- 1.3 “**Event Date**”: being \_\_\_\_\_
- 1.4 “**Vendor**”: A vendor at the event receiving payments from Payers via the Payment System for services rendered or goods sold.
- 1.5 “**Vendor Revenue**”: The aggregate value of sales by the Vendor through the Point of Sales System.
- 1.6 “**Vendor Settlement Bank Account**”: being;
  - Vendor Bank Name: \_\_\_\_\_
  - Vendor Bank Account Holder Name: \_\_\_\_\_
  - Vendor Bank Account Number: \_\_\_\_\_
  - Vendor Bank Branch Code: \_\_\_\_\_
- 1.7 “**Payer**”: Is a payment maker for services and goods sold by the Vendor making use of the Payment System at the Event.
- 1.8 “**Payment System**”: The system licensed to the Event Organizer by the Service Provider as the exclusive platform allowing any vendor at the Event to receive payment for the sale of services or goods, making use of the Point of Sales Terminal and Payer presented RFID cards or RFID wristbands.
- 1.9 “**Point of Sale Terminal**”: the authorised device(s) that deduct the equivalent value to South African Rands amounts from Payer RFID cards or RFID wristbands.

## 2. DURATION

2.1 This Agreement shall commence with effect from the date of last signature of this Agreement and shall endure until either of us terminates it in accordance with this Agreement or final settlement of outstanding invoices.

## 3. THE SERVICES

3.1 The Service enables the Vendor to receive payments from Payers via the Payment System.

3.2 We warrant that we have all necessary capacity and qualifications to supply the Services.

## 4. SERVICE PROVIDER GUARANTEES

4.1 The Service provider will provide full transparency of all transactions processed through the Point of Sales Terminal for your transaction.

4.2 The Service Provider will within two working days after the Event provide the Vendor with a detailed transaction report of the transactions through the Point of Sales Terminal(s) for the Vendor.

4.3 The Service Provider will make available the following provisional reports during the Event:

4.3.1 **Vendor Revenue:** Total value of all transactions processed through the Point of Sales Terminal(s) used by the Vendor;

4.3.2 **Daily Sales Report:** the report provides a summary of Vendor Revenue by product by day;

4.3.3 **Transaction Report:** the report contains a full transaction history for each Point of Sale Terminal used by the vendor and includes: transaction date, time and value.

4.4 The Service Provider provides all necessary equipment to enable the Vendor to conduct cashless payments on site.

4.5 The Service Provider provides all necessary training to use the Point of Sales Terminals.

4.6 The Service Provider will make available detailed provisional sales reports during the Event. Note; the information in the provisional sales reports are indicative only and therefore subject to change. The final settlement report is sent within seven (7) working days.

4.7 If not all POS Terminals are returned before the Event closure or if POS Terminals are returned in a damaged state, it may result in delays to;

4.7.1 Process Payer refunds;

4.7.2 Process Client proceeds;

4.7.3 Release of final settlement and transaction report.

## 5. YOUR RELATIONSHIP WITH PAYERS AND OTHER VENDORS

5.1 We are not a party to the transaction between you and Payers and we do not have any control over the conduct of you and Payers.

5.2 As a Vendor, you understand and agree that:

5.2.1 we do not provide any guarantees or representations regarding the manner in which Payers and other Vendors conduct themselves and we are not liable (legally responsible) in any way for the conduct of other Vendors or Payers;

5.2.2 we give no representation or warranties regarding the identity of any Payer;

5.2.3 any disputes which may arise between a Payer and you arise between the Payer and you and we are not obliged to intervene or attempt to resolve such dispute.

## 6. VENDOR OBLIGATIONS

- 6.1 No Other Payment Method:** The Vendor agree to only use the Payment System and Point of Sales Terminal(s) provided, to sell services and goods at the Event. **It is expressly agreed that the Vendor will accept no other form of payment (including but not limited to cash, debit- and credit card, cheque or barter) services or goods provided by the Vendor at the Event.**
- 6.2 No Cash Out:** – the Vendor is also prohibited from giving a cash out to any Payers at the Event.
- 6.3 Penalty:** Failure to adhere to clause 6.1 and 6.2 above by the Vendor will result in penalties and potential expulsion from the Event.
- 6.4 Product and Service Pricing:** the Vendor must provide all product and service descriptions and pricing of the services and goods to be sold at the Event at least (7) seven working days before the start date of the Event. To enable the Service Provider to configure the Payment System.
- 6.5 The Vendor must;**
- 6.5.1 allow the Service Provider employees, contractors and agents access to enter the Vendor premises/stall at the Event to the extent that is reasonably necessary to perform our obligations in relation to the Payment System;
  - 6.5.2 provide the Service Provider with all information and assistance we reasonably require to perform our obligations and to deal with any queries in relation to our provision of the Services;
  - 6.5.3 ensure that all information you provided are complete and accurate;
  - 6.5.4 co-operate with us in all matters relating to the Services;
  - 6.5.5 provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 6.5.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 6.5.7 keep and maintain all materials, equipment belonging to and provided by us (“**Company Materials**”) at the Service Address in safe custody at your own risk, maintain the Company Materials in good condition until returned to us, and not dispose of or use the Company Materials other than in accordance with our written instructions or authorisation.
  - 6.5.8 accept any valid and acceptable RFID chips presented by a Payer at the Event as the only form of payment for services and goods sold at your normal prices.
  - 6.5.9 not add any surcharge to a transaction with a Payer, unless expressly required by law in which case the surcharge must be included in the total price and not collected separately.
  - 6.5.10 accept all previously agreed transactions based on coupons and/or electronic permissions. The Vendor would use for its internal purposes, including but not limited to staff, contractor, and artist meals and drinks consumption.
- 6.6 You understand that any failure to comply with any Applicable Laws may result in criminal prosecution, penalties and/or fines.
- 6.7 You will not use the Service for any unlawful activity.
- 6.8 You shall conduct your business, and carry on all related or ancillary activities with the highest ethical standards.
- 6.9 You have not and will not, in connection with the activities contemplated by this Agreement, make any payment or transfer of value which has the purpose or effect of (a) public or commercial bribery; (b) acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining

business; or (c) otherwise obtaining an improper advantage for us or its affiliates. We reserve the right to immediately terminate this Agreement in the event that you fail or you are suspected to have failed to comply with the provisions of this clause 6.

- 6.10 If your performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (“Vendor Default”):
- 6.10.1 We will without limiting its other rights or remedies have the right to suspend performance of the affected Service until you remedy the Vendor Default, and to rely on the Vendor Default to relieve it from the performance of any of its obligations to the extent the Vendor Default prevents or delays our performance of any of its obligations;
- 6.10.2 We will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from your failure or delay to perform any of your obligations as set out in this clause 6; and
- 6.10.3 you will reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Vendor Default.

## 7. VENDOR USE OF POINT OF SALES TERMINAL

- 7.1 The Vendor is responsible for the Point of Sale Terminal(s) supplied to the Vendor or authorised agent of the Vendor. In the event of any damage, theft or loss or non-return of Point of Sale Terminal, an excess of up to ZAR R5,000.00 per Point of Sale Terminal will be deducted from the settlement amount, depending on the damage or loss.
- 7.2 The Vendor will provide reasonable assistance to the Service Provider to facilitate the transmission of the information from the Point of Sale Terminal to the Payment System network by cooperating with the Service Provider support team.
- 7.3 The Vendor must use exclusively the Point of Sale Terminal provided by the Service Provider.
- 7.4 **In case of misuse, loss or damage of any Point of Sale Terminal, the Service Provider cannot guarantee data recovery of the transactions on the Point of Sale Terminal not yet transmitted to the Payment System backend. The Service Provider will make all reasonable efforts to attempt recover data from lost or damaged equipment. If the transaction data cannot be recovered from damaged or lost Point of Sale Terminal, the Service Provider will not include those transactions in the final report given to the Vendor, upon which the Event will base its payment to the Vendor.**
- 7.5 The Point of Sale Terminal is and shall remain the exclusive property of the Service Provider.
- 7.6 **Possession and Return of Point of Sale Terminal(s):** The Vendor shall be entitled to possession of the Point of Sale Terminal(s) for the duration of the Event and is required to immediately after the Vendor stops trading and before the Event closes, return the Point of Sale Terminal(s) to the Service Provider or Service Provider’s agent in good condition and working order, ordinary wear and tear excepted, as it was at the commencement of the Agreement.

## 8. EVENT DATA USAGE

- 8.1 Two types of data will be collected by the Payment System from the use of the Point of Sales Terminal(s):
- 8.1.1 **Vendor Data:** data recorded that can be directly associated with the Vendor (for example: total Vendor Revenue, Vendor transactional data), and
- 8.1.2 **Event Data:** data recorded that cannot be directly associated with any specific Vendor (for example: total spend at the Event, total number or transactions at the Event).
- 8.2 The Service Provider undertake to keep confidential all Vendor Data and to only disclose the Vendor Data to the Vendor.

8.3 Event Data will be disclosed to the Vendor on request, the Service Provider has the right to disclose, dispose or sell the Event Data to any 3<sup>rd</sup> party as the Service Provider sees fit.

## 9. SERVICE FEES

9.1 In consideration of the usage rights granted under this Agreement the Service Fees payable by you for the Service are based on when and how you use the Service, as follows:

9.1.1 **Variable Transaction Fee:** a variable fee expressed as a percentage of the value of each transaction processed the Payment System;

9.1.2 **Event Fixed Fee:** a fixed fee charged per stall set up by the Vendor.

9.2 **Service Fees and are deducted from any funds we hold for you under this Agreement (including any other Service). In the event that the funds held by us on your behalf are insufficient for the deduction of any applicable Service Fees, you remain liable for such Service Fees.**

9.3 You also authorise us to withhold from settlement and settle the Event Organiser the fees you contractually agreed with the Event Organizer with regards to the Event.

## 10. RECEIVING AND SETTLEMENT OF PROCEEDS

10.1 Payer loads will be received into our bank account we have with a South African bank. We will at all times hold such Proceeds separate from our own funds, and will not use your Proceeds for our own expenses or voluntarily make same available to our creditors.

### 10.2 Amounts due by you which will be deducted from Proceeds

10.2.1 **Service Fees:** You will be liable for Service Fees as set out in clause 9 above, which you agree will be deducted and withheld from the funds paid out to you from time to time.

### 10.3 Settlement of net Proceeds to you

10.3.1 Proceeds will be paid out to you net of any Service Fees, Tax, refunds, device repair and replacement costs as set out in clause 7 and contracted Event Organizer fees.

10.3.2 We will endeavour to settle your proceeds within 7 (seven) working days of the closing date of the Event via an EFT payment into your Vendor Settlement Bank Account. **We will not be held responsible for incorrect Vendor Settlement Bank Account details being provided by you which may lead to funds held by us on your behalf being transferred to the incorrect party. It is your responsibility to ensure the accuracy of the provided banking details.**

10.3.3 **Settlement delays may occur if not all devices are returned in a working order before the event closure.**

10.3.4 **To the extent that the funds held by us on your behalf at any specific time are insufficient to accommodate all fees, taxes, reversals and/or Service Fees related to your transactions and use of our equipment, you acknowledge that you remain liable to us for such amounts.**

10.4 **You acknowledge the nature of the Service and accordingly agree that the operation of the Service is known to you and you accept that it is suitable for the purpose it is intended to be used.**

## 11. DISCLAIMER & LIMITATION OF LIABILITY

11.1 The Service Provider will make every effort to ensure that the equipment provided operates as specified and that a consistently high level of service is delivered to the Vendor. The Service Provider or the Event Organisers are however not liable for any losses or inconvenience you suffer because any part of the Services or any equipment supplied is not capable of normal operation, fails to process information or inaccurately or slowly processes information.

## **12. CONSEQUENCES OF SUSPENSION & TERMINATION**

12.1 To the extent that your access to the Service is **suspended** by us in accordance with the provisions of this Agreement, you acknowledge that you will forfeit your access to and/or use of the Service, including having funds paid out to you. Such suspension will not detract from any liability you have incurred prior to suspension.

## **13. ENCUMBRANCES, TAXES AND OTHER LAWS**

13.1 The Vendor shall keep the Point of Sale Terminal free and clear of any liens or other encumbrances, and shall not permit any act where the Service Provider's title or rights may be negatively affected. The Vendor shall be responsible for complying with and conforming to all laws and regulations relating to the possession, use or maintenance of the Point of Sale Terminal. Furthermore, the Vendor shall be liable for all taxes, fees, licenses and governmental charges, together with any penalties or interest thereon, relating to the possession, use of the Point of Sale Terminal and Payment System.

## **14. LESSORS REPRESENTATIONS**

14.1 the Service Provider represents and warrants that he/she has the right to lease the Point of Sales Terminal as provided in this Agreement and that the Vendor shall be entitled to quietly hold and possess the Point of Sale Terminal, and the Service Provider will not interfere with that right as long as the Vendor performs all obligations under this Agreement.

## **15. OWNERSHIP**

15.1 The Point of Sale Terminal is and shall remain the exclusive property of the Service Provider.

## **16. SEVERABILITY**

16.1 If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

## **17. ASSIGNMENT**

17.1 Neither this Agreement nor Vendor's rights hereunder are assignable except with Service Provider's prior, written consent.

## **18. BINDING EFFECT**

18.1 The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

## **19. GOVERNING LAW**

19.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.

## **20. NOTICE**

20.1 Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service to:

20.1.1 Service Provider: Fountain Grove Office Park Unit 4 Block 2, No5 2nd Road Hyde Park, Sandton  
2196

20.1.2 Vendor:

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20.2 Either party may change such addresses from time to time by providing notice as set forth above.

**21. ENTIRE AGREEMENT**

21.1 This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Lessor and Lessee.

**22. CUMULATIVE RIGHTS**

22.1 The Service Provider's and Vendor's rights under this Agreement are cumulative and shall not be construed as exclusive of each other unless otherwise required by law.

**23. WAIVER**

23.1 The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**24. INDEMNIFICATION**

24.1 Except for damages, claims or losses due to Service Provider's acts or negligence, the Vendor, to the extent permitted by law, will indemnify and hold the Service Provider and the Service Provider's property, free and harmless from any liability for losses, claims, injury to or death of any person, including the Vendor, or for damage to property arising from Vendor using and possessing the Point of Sale Terminal(s) or from the acts or omissions of any person or persons, including the Vendor, using or possessing the Point of Sale Terminal(s) with the Service Provider's express or implied consent.

**25. ACCEPTED BY VENDOR**

For and on behalf of the Vendor who warrants that he/she is duly authorised thereto.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Full Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**NOTE: Please complete this agreement and return to the Event Organiser. All vendors must return this completed agreement before start of trade. No payment terminals are issued for use at the event without a signed agreement.**

## APPENDIX 1: VENDOR CASHLESS PAYMENT SERVICE TERMS FEES SCHEDULE

**Quantity of Point of Sale Terminals:** \_\_\_\_\_

*(Devices are subject to be rotated and replaced. The quantity of devices will remain as issued)*

**Event Fixed Fee:** R \_\_\_\_\_

**Variable Transaction Fee:** \_\_\_\_\_%

### ACCEPTED BY VENDOR

For and on behalf of the Vendor who warrants that he/she is duly authorised thereto.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Full Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_