



## MERCHANT SERVICE TERMS – SMART EFT

### 1. INTRODUCTION

- 1.1 By using or subscribing to PayU's Smart EFT Service ("**the Service**"), you agree that you have read, understand and are bound by:
- 1.1.1 these 'Merchant Service Terms – Smart EFT' ("**Service Terms**");
  - 1.1.2 the 'Merchant Service Terms – General' ("**General Terms**"); and
  - 1.1.3 the provisions of the hardcopy or electronic application form relevant to the Service ("**Application Form**").
- 1.2 Your use of the Service indicates your acceptance of these Service Terms, as read with the General Terms and the Application Form which will together constitute a legal agreement ("**the Agreement**") between you and PayU.
- 1.3 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms. In this regard note that, because the Service enables you to receive payments made to you electronically, you are a 'Merchant' for purposes of this Agreement. To the extent that there is any inconsistency between any provision of the General Terms and these Service Terms, then these Service Terms shall override the General Terms to the extent of the inconsistency.
- 1.4 You may only subscribe for the Service if you are a South African resident, as contemplated by the Income Tax Act of 1962.

### 2. DURATION

- 2.1 This Agreement shall commence with effect from the date of activation of the Service by PayU which date shall not be earlier than the requested commencement date set out in your Application Form and shall endure until either of us terminates it in accordance with the General Terms.

### 3. THE SERVICE

- 3.1 **General:** The Service enables you as a Merchant to receive online payments from your third party customers via electronic funds transfer ('**EFT**') and to be instantly notified thereof, without having to wait for payment confirmation. Such EFT payments must however be made through one of the South African banks supporting the Service, currently being Standard Bank, ABSA Bank, Nedbank and First National Bank.
- 3.2 If you have selected the 'EFTPass' option in the Application Form, third party customers will be able to make an EFT payment while online as part of their order placement process with you (by virtue of being redirected from your website in order to do so and then redirected back to your website to complete the transaction). If you have selected the basic 'SmartEFT' option in the Application Form, a third party

customer will still be able to make an EFT payment to you, but only once that customer has left your website, without that customer being redirected back to your website. If you have selected both 'SmartEFT' and 'EFTPass', your customers will be able to select the manner in which they pay via EFT.

### 3.3 **Receipt of Funds by PayU:**

3.3.1 Payers will make their payments to you, but such funds will be paid into one of PayU's own South African bank accounts, where the funds will be held for you until paid out to you in accordance with clause 3.5 below. Consequently, by registering for the Service you appoint PayU to process payments and to accept the proceeds of payment instructions from your customers on your behalf in accordance with your instructions, subject to the terms and restrictions of this Agreement.

3.3.2 PayU will at all times hold the funds it receives on your behalf, separate from our own funds, and will not use your funds for our own expenses or voluntarily make same available to our creditors. **However (a) you acknowledge that the Service is a payment processing service, not a banking service and PayU is not acting as a bank, trustee, fiduciary or escrow in respect of your funds; and (b) please note that your account balance represents an unsecured debt owed by PayU to you, which is at risk in the event of PayU's insolvency and is not covered by any compensation scheme or any other public or private insurance scheme.**

3.4 **Instant notifications & reports:** Although funds may only be paid out to you later (as per 3.5 below), once our systems have identified an EFT payment as one being payable to you in respect of a specific transaction, you will receive an instant notification thereof. You can also view such EFT payments on the PayU Merchant Portal.

3.5 **Payment to you:** PayU will pay to you such amounts being held by us for you (i.e. the proceeds of EFT payments having been identified as being due to you), subject to the deduction of any applicable Service Fees, Taxes, and/or fines levied or claims made by the bank against us in relation to your customers' payments. Payment to you will be made weekly in arrears. It is recorded for clarity that, irrespective of the automated timing of payments, a payment will not be made if there are insufficient funds held on your behalf at such time.

3.6 **Unidentified EFT payments:** PayU will not pay out to you any portion of an EFT payment which our systems have not been identified as being due to you. In order to so identify any EFT payment, you shall upon request, obtain from your customer the relevant proof of payment in order to enable us to accurately allocate that EFT payment to you manually. Amounts we receive which remain unidentified and/or claimed by anyone for 3 years will accrue to us upon the expiry of those 3 years.

3.7 **Errors:** PayU will not be held responsible for (a) incorrect banking details being provided by you which may lead to funds held by PayU on your behalf being transferred to the incorrect party; or (b) your customers entering the incorrect banking details when making their EFT payments.

3.8 **Refunding your customers:** The Service does not include the processing of any refunds to your customers. You are solely responsible for processing any refund due to any of your customers.

- 3.9 All interest accruing on any amounts held by PayU for you from time to time shall accrue for the benefit of PayU, and you shall have no claim whatsoever in relation to such interest amounts.
- 3.10 You acknowledge that PayU does not hold a deposit-taking license (a banking license) and cannot hold funds on your behalf which are not the proceeds of payments due to from the sale of goods or services where the payment instructions were processed by PayU on your behalf. You acknowledge that if PayU holds funds on your behalf which are not the proceeds of payments due to you from the sale of goods or services processed by PayU, that PayU will endeavour to return such funds to the payment maker within a period of 48 hours after those funds were deposited into our bank account.
- 3.11 PayU may, from time to time, request certain documentation from you to prove the existence of a sale to your customer, the delivery of a product pursuant to a sale, the cancellation of a sale by your customer and/or a request for a refund by your customer. You are obliged to provide such documentation timeously to PayU.
- 3.12 **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.**

#### **4. IMPOSED TRANSACTION LIMITS & DELAYS**

- 4.1 PayU reserves the right to -
- 4.1.1 impose an upper limit on the amount of a single transaction which will be accepted through the Service;
- 4.1.2 impose certain limits with regards to the flow of funds in the system including, but not limited to, funds received and funds withdrawn. Details of these limits will be available on the Website from time to time; and
- 4.1.3 freeze or suspend your access to the Service for an indefinite period if there is suspicion of any illegal activity taking place or for any other reason whatsoever.

#### **5. PROHIBITED TRANSACTIONS**

- 5.1 You may not use the Service to –
- 5.1.1 accept payments for goods or services where payment is not yet due and for which no invoice exists which can be presented to PayU upon request;
- 5.1.2 accept payment for illegal products or services, including but not limited to materials that infringe the intellectual property rights of third parties;
- 5.1.3 sell securities, business opportunities, franchises, multi-level marketing, or for the pre-order of goods;
- 5.1.4 receive payments for any sexually oriented or obscene materials or services;
- 5.1.5 receive payments for wagers, gambling debts or gambling winnings, regardless of the location or type of gambling activity;

- 5.1.6 receive payments for any narcotics, controlled substances, steroids or prescription medications;
- 5.1.7 receive payments for jewellery, precious stones, gems, gold, platinum, silver or minerals;
- 5.1.8 receive payments for tobacco or liquor; and/or
- 5.1.9 in respect of or in association with money laundering or any activity that constitutes a crime or contravenes any law.
- 5.2 You agree that the damages that PayU may sustain as a result of the prohibited conduct outlined above may be substantial (especially since those payments are being made into PayU's own acquiring account), and may include (without limitation) fines and other related expenses from our payment processors and service providers and/or your bank. Consequently, in the event that you engage in such conduct, PayU may recover any losses suffered by PayU as a result of such prohibited conduct (including but not limited to associated legal and administrative costs), which you acknowledge could amount to at least R20 000 or, in the case of having been involved in prohibited gambling activities, R40 000. In addition, you agree that PayU is entitled to deduct any fines or penalties which PayU had to pay, together with such additional liquidated damages as PayU may suffer arising out of such prohibited conduct, directly from any funds held by PayU on your behalf or, if such funds are insufficient, to debit the bank accounts that you have registered with PayU in respect of any of the Services, in the amount of such penalties and/or liquidated damages.
- 5.3 **If you use the Service in a manner that violates the Agreement, including but not limited by an act described in the categories described above, your Merchant Account will be subject to limitation or immediate termination, as stated in clause 17.1 and 17.2 of the General Terms.**

## 6. SERVICE FEES

- 6.1 The Service Fees payable by you for the Service are based on when and how you use the Service, as follows:
  - 6.1.1 a fixed fee on each EFT payment successfully processed;
  - 6.1.2 a variable fee expressed as a percentage of the value of each EFT transaction successfully processed;
  - 6.1.3 a fixed fee per pay-out of funds to you; and
  - 6.1.4 a fixed fee for each manual payment allocation (as contemplated in clause 3.6).
- 6.2 Unless otherwise agreed with you in writing, the specific Service Fees applicable to you are as set out in your Application Form or otherwise as set out on the Website.
- 6.3 Service Fees are due upon the processing of each relevant transaction or pay-out, as the case may be and are deducted from any funds we hold for you under this Agreement. **In this regard it is recorded for clarity that you remain liable for the Service Fees levied on each EFT payment successfully processed irrespective of whether such payment is thereafter refunded to your customer.** In the event that the funds held by PayU on your behalf are insufficient for the deduction of any applicable Service Fees, you remain liable for such Service Fees.

- 6.4 You acknowledge and agree that should your account pose an increased risk of losses for PayU, PayU reserves the right in our sole discretion to increase the Service Fees payable by you, provided that you shall be entitled to terminate the Service on 30 (thirty) days written notice to us should you not be satisfied with the increased Service Fees.

## 7. DISCLAIMER & LIMITATION OF LIABILITY

- 7.1 **No Warranties:** Without derogating from the disclaimer provisions set out in the General Terms, but subject to your legal rights, the **Service is provided to you without any warranty (including that the service be error free, accurate and/or complete) and not subject to any condition, except as may be expressly provided otherwise in the Agreement.** More specifically, although we shall use reasonable care and diligence to ensure that the Service is available on a 24 hour per day basis, that requests for electronic debits and credits involving cards and bank accounts are processed in a timely manner, and that EFT payments are properly identified as being relevant to your transactions, we make no representations or warranties regarding the time it will take to complete processing a transaction or that payments will always be correctly matched and/or paid out to the correct merchant. This is because the Service is largely dependent upon many factors beyond our control, including (but not limited to) delays in the banking system. Thus, **in the event that an EFT payment is incorrectly matched or paid out, we reserve the right to correct that error, including by recovering the relevant amount from the merchant to whom it was incorrectly matched and paid (including by taking such amount from any funds we hold on such merchant's behalf), and paying it to the correct merchant.**
- 7.2 The Service, apart from being subject to these Service Terms as read with the General Terms, shall always be subject to the terms and regulations imposed by PayU's payment processors and service providers and your bank whose facilities are utilised in order to accept or effect payment by means of the Service. Therefore **all fines, penalties or other charges, of whatever nature, imposed by the payment processors and/or service providers and/or banks on PayU in respect of or arising from your use of the Service will be debited to your account** and you hereby authorise PayU to pay such fines, penalties or charges from any credit balance held by PayU on your behalf or, if there is no such credit balance, to recover the monies directly from you by debiting the bank accounts that you have registered in respect of the Services to the value of the fines, penalties or charges. **You further indemnify PayU against any claim that may be made by the payment processors, service providers, or your bank in respect of or arising from your use of the Service against PayU for any reason whatsoever.**
- 7.3 You acknowledge that: **(i) any transaction executed through use of the Service creates legal rights and obligations only between you and your own customers and PayU shall never be a party to such transaction; (ii) PayU assumes no responsibility whatsoever for the fulfilment and execution of your transactions; (iii) any online banking facilities available through use of the Service create legal rights and obligations only between you and such banks or between your customers and such banks; (iv) PayU shall not be responsible for the delivery of any products procured by any of your customers, including but not limited to late deliveries, damage to goods, or loss of goods; (v) PayU does not warrant that the reports on transactions, and/or log files shall be error free, accurate and/or complete. Without limiting the generality of the foregoing, PayU's disclaimer of liability includes its liability for any loss or damages incurred by**

**you, your own customer and any bank arising from any transaction executed, or online banking facilities used through use of the Service.**

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

- 8.1 To the extent that your access to the Service is **suspended** by PayU in accordance with the provisions of the 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.
- 8.2 Upon **termination** of the Service for any reason whatsoever, and without detracting from the provisions of the General Terms, all funds held by PayU on your behalf (nett of any and all Service Fees as well as fines, penalties, other liabilities and charges incurred pursuant to clause 5 or clause 7.2 above) will be automatically paid out to you forthwith; provided that, should PayU reasonably anticipate fraud or other illegal activity, PayU reserves the right to withhold any or all funds held on your behalf, for so long as is reasonably necessary for PayU to investigate and ascertain the extent of damages suffered due to your breach (if applicable), or whether any suspected illegal activity was indeed taking place via your Merchant Account and the extent of any harm caused thereby, at which point the amounts so withheld may be applied towards the damage/harm so suffered by PayU.