



General Merchant Terms and Conditions

INTRODUCTION

This merchant general terms of service (“**General Terms**”) apply to the provision of all services provided by BroPay (“**BroPay**”, “**we**”, or “**us**” as the context may require) to the receivers of online payments (“**Merchants**”, “**you**” or “**your**” as the context may require) from time to time (the “**Services**”).

Before you register to become a BroPay Merchant, you must read, agree with, and accept all of the terms and conditions contained in these General Terms, read with the individual service terms applicable to the Services you wish to register for (“**Service Terms**”), accessible at <https://www.bropay.co.za/> (“**Website**”).

These General Terms, the relevant Service Terms, Refunds and Disputes Policy our Privacy Notice and Website Terms and conditions and any provisions set out in the relevant application form (whether in hardcopy or electronic format) you are required to complete (“**Application Form**”) constitutes a legal contract (the “**Agreement**”) between you and BroPay. In the event that any terms in these General Terms conflict with a provision in the relevant Service Terms, the terms of the Service Terms will apply.

You must read these General Terms carefully. The General Terms apply to all of our Services and it is an important document which you must read and understand when choosing whether to register to use any of our Services. We strongly recommend that, as you read these General Terms, you also access and read the information that is contained in the other documents, policies or websites which are referred to in these General Terms and incorporated into these General Terms by reference or by hyperlinks, as they may contain further terms and conditions that apply to you as a Merchant.

You should pay special attention to the parts in bold as they have especially important consequences for you. For example, there might be circumstances where we limit or exclude our responsibility to you. We may only do this as far as the law allows us to.

The headings and subheadings in these General Terms are for reference only and do not limit the scope of each section. Underlined words in these General Terms as they appear on our Website are hyperlinks to connecting you to the relevant information.

You should print or save a copy of this General Terms, the Service Terms, and the Application Form for your future reference.

1. THE LEGAL RELATIONSHIP BETWEEN YOU AND BROPAY

- 1.1. **Who is BroPay?** We are a South African payments solution provider company OCS Payments (Pty) Ltd trading as BroPay, having our address at Unit 4, Flexisuites, Nedbank Building, 135 Rivonia Road, Sandton, Gauteng, 2196 with registration number 2025/701277/07.
- 1.2. **Purpose of these General Terms** These General Terms govern the relationship between BroPay and each registered Merchant, regardless of the individual Service the Merchant has subscribed for.



1.3. **Purpose of Service Terms** In addition to these General Terms, each Service we offer to Merchants is subject to its own set of Service Terms, which are specific to such Service. Your use of a Service will be governed by the Service Terms applicable to such Service. Any Service Terms which are relevant to the Services subscribed for are legally binding on you.

1.4. **Legally Binding Contract** The Agreement will become a legally binding contract between you and BroPay once we confirm that your application has been successfully completed and we accept your offer to enter into the Agreement with us for the supply of our Services. **By completing the application process, and submitting your completed Application Form, you are regarded as having read and agreed to all the terms of these General Terms, the relevant Service Terms, our Privacy Notice and our Website Terms, including the parts in bold.** If you do not agree to be bound by the terms and conditions of these General Terms, our Privacy Policy, Website Terms or relevant Service Terms, you should not subscribe for our Services.

2. APPLICATION AND ELIGIBILITY

2.1. In order to access any of the Services, you must apply for a BroPay merchant account ("Merchant Account") by completing our Application Form.

2.2. You are only eligible to open a Merchant Account:

2.2.1. if you are an individual resident in the Republic of South Africa, who is at least 18 years old and has the legal capacity to conclude legally binding contracts; or

2.2.2. if you are a juristic person (like a company or a corporation) ("Legal Entity"), the individual applying for the Merchant Account on the Legal Entity's behalf must (i) be at least 18 years old, (ii) a resident in the same country as the Legal Entity and have the legal capacity to conclude legally binding contracts, and (iii) be duly authorised to conclude contracts on the Legal Entity's behalf (for example, a director). The Legal Entity must be duly incorporated, validly existing and in good standing under the laws of the relevant country.

2.3. It is important that you understand that you are **not** automatically entitled to a Merchant Account or to use of our Services. Your application for a Merchant Account with us is an offer to us by you to enter in an agreement with us for the supply of our Services. This means that we are not obliged to accept your application and we reserve the right, acting reasonably, to (i) refuse to provide you with a Merchant Account or (ii) deny you access to certain Services available to Merchants. By way of example only, we may refuse to provide you with a Merchant Account if you have previously been suspended from one or more of our Services or if you pose an unacceptable level of risk for us.

2.4. You may only hold one Merchant Account, unless we agree otherwise in writing.

2.5. Beneficial ownership of your Merchant Account by a third party is not permitted. This means that you may not act as an agent for another person or open a Merchant Account for another person.



3. THE NATURE OF OUR BUSINESS

- 3.1. BroPay acts as a payment solution provider by facilitating the making and receiving of online payments by offering a variety of different Services to both Merchants and payment makers (“**Payers**”). You can find more detailed descriptions of the Services we offer on our Website.
- 3.2. Despite the variety of Services available to you, you understand and agree:
 - 3.2.1. we are not a bank and do not offer banking or financial services. Any online banking facilities available through use of our Services creates legal rights and obligations between you and such banks or, between your Payers and such banks;
 - 3.2.2. we are not a remittance business or a money transfer service (although we may offer such services through our partners or service providers);
 - 3.2.3. we act as the payment solutions provider and Peach Payments and Wirecard act as the payment processor in respect of any transaction between Merchants and Payers;
 - 3.2.4. we only process the transactions to your Acquirer, in accordance with your instructions and direction which, in turn, may require us to perform certain tasks on your behalf;
 - 3.2.5. our Services are subject to the rules imposed by BroPay’s card payment associations (such as Visa, MasterCard, American Express, Diner’s Club) and such rules are made publicly available to the public by each of the card payment associations on their websites (“**Card Payment Processing Rules**”); and
 - 3.2.6. our Services are subject to the terms and conditions imposed by the banks, payment processors and third party service providers.

4. YOUR RELATIONSHIP WITH PAYERS AND OTHER MERCHANTS

- 4.1. We are not a party to any transactions between Merchants and Payers and we do not have any control over the conduct of Merchants and Payers.
- 4.2. Unless otherwise stated in the applicable Service Terms, as a Merchant, you understand and agree that:
 - 4.2.1. you bear the risk of transacting with Payers (including where payments are made by Payers to unintended recipients or payments reflect the incorrect amounts due to the input of incorrect information by Payers);
 - 4.2.2. we do not provide any guarantees or representations regarding the manner in which Payers and other Merchant’s conduct themselves and we are not liable (legally responsible) in any way for the conduct of other Merchants or Payers;
 - 4.2.3. we give no representation or warranties regarding the identity of any Payers;
 - 4.2.4. any disputes which may arise between a Payer and a Merchant arise between the Payer and the Merchant and we are not obliged to intervene or attempt to resolve such dispute.

5. YOUR OBLIGATIONS



- 5.1. In addition to and without limiting any obligations contained elsewhere in this Agreement, you agree to use the Services solely for the purposes of receiving legitimate and lawful payments and to manage your Merchant Account in accordance with the terms and conditions of the Agreement and all applicable laws, regulations and ordinances (“**Applicable Laws**”).
- 5.2. You understand that any failure to comply with any Applicable Laws may result in criminal prosecution, penalties and/or fines.
- 5.3. You will not use any of the Services for any unlawful activity and it is your responsibility to ensure that you comply with the Card Payment Processing Rules where applicable to you.
- 5.4. If you select a Service which enables you to process transactions as real time recurring (“**Real Time Recurring**”), you are responsible for ensuring that your Payers have provided prior consent to the transaction being processed as a recurring transaction (in accordance with Card Payment Processing Rules) and you understand and agree that the transaction will not be passed through 3D Secure or require CVV, which in addition to the provisions contained in paragraph 11.1.4, may result in increased risk of chargebacks. You shall be responsible to ensure that any transactions are not processed as a recurring transaction in the event that the Payer cancels their consent, and you shall notify BroPay of such cancellation promptly.
- 5.5. If you select a Service whereby the transaction is processed as a ‘card not present’ transaction (“**MOTO**”), the transaction will not be passed through 3D Secure or require CVV, which, in addition to the provisions contained in paragraph 11.1.4, may result in increased risk of chargebacks.
- 5.6. You shall conduct your business, and carry on all related or ancillary activities with the highest ethical standards. You shall not do business with any person which involves bribes, payoffs, payments (or offers thereof) by way of inducement or reward (whether to do any act or to refrain from doing any act or to show favour or disfavour or otherwise) or any other similar improper or unethical practices.
- 5.7. 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 BroPay or its affiliates. BroPay reserves 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 paragraph 6.

6. COMMENCEMENT AND DURATION OF SERVICES

- 6.1. Unless terminated earlier in accordance with the provisions of paragraph 17, these General Terms will continue until the last remaining Service terminates or expires in accordance with the provisions of the applicable Service Terms or these General Terms.
- 6.2. Our engagement in respect of each of the Services you have registered for shall commence on the Service commencement date applicable to the relevant Services. You agree and understand that whilst you may be able to indicate the desired Service commencement date



in the Application Form, such dates are estimates only and depend on the Service specific integration requirements to be met by you (including those specified in paragraph 8 below).

6.3. If we provide more than one Service to you, unless otherwise stated in these General Terms or the relevant Service Terms, the terms of any one Service do not apply to any other Service and each Service shall be capable of termination in accordance with the provisions of paragraph 17 (or the specific provisions relating to termination as contained in the relevant Services Terms) without affecting the remaining Services.

6.4. **YOU STRICTLY AGREE THAT WE WILL ONLY ACCEPT AND PROCESS CANCELATIONS FOR ANY SERVICE IF ALL MONIES DUE TO US HAS BEEN PAID BY YOU**

7. INTEGRATION PROCESS

7.1. Each Service can only commence following successful Service integration (the “**Integration Process**”). Upon acceptance of your application for our Service(s), we will send you and any third party service providers (for example, developers) you have appointed to assist you, our integration documents applicable to the Service you have subscribed for (“**Integration Documents**”).

7.2. The Integration Documents provide you with instructions on how to set up your website or software application(s) in order to enable you to successfully access and use the Service you have subscribed for. You understand and agree that you are required to read and follow our instructions contained in the Integration Documents. The Integration Documents may also include an Integration and API licence agreement which governs the licence terms and conditions in which we licence our software and integration materials to you, as well as our branding specifications. BroPay is entitled to update its Integration Documents from time to time, in which case we will notify you by placing a notice on the Website or emailing you.

7.3. You are responsible for ensuring that your website or software application (or both) is operational and ready for business, and that it complies with all applicable legislation, rules and regulations (including, for example, all necessary banking approvals).

8. NOTIFY EXPRESS TERMS OF USE: (EMAIL/SMS/RCS AND WHATSAPP)

8.1. Merchants are required to comply to the terms of use of BroPay’s Notify express and notification services.

8.2. It is hereby required that necessary consent has been obtained by the individual’s contacted by our messaging service.

8.3. By accepting the terms, you consent to send and receive messaging via RCS, WhatsApp, phone call or SMS facilitated via BroPay. Message and data rates may apply. Message frequency varies.

9. BRANDING & MARKETING

9.1. Unless we agree otherwise in writing, all Services provided by BroPay shall bear approved BroPay trade marks (including word marks, logos, slogans and domain names) owned or ordinarily used by BroPay (whether registered or not) (“**BroPay Trade Marks**”).

9.2. Any use of BroPay’s Trade Marks must be strictly in line with our branding specifications, standards and reasonable directions that we provide to you in our Integration Documents (or



we provide to you from time to time). You shall not do anything, or cause anything to be done, that may prejudice the reputation and integrity of BroPay's Trade Marks.

- 9.3. You agree to include, in your successful payment confirmation mailers you send to your customers, the following BroPay slogan: "*payments secured by BroPay, our trusted payments provider*" or such phrase as may be reasonably provided by BroPay in writing from time to time.
- 9.4. BroPay may also, subject to your prior approval indicated on the Application Form or otherwise, use your Merchant trade marks (including word marks, logos, slogans) ("**Merchant Marks**") for advertising and awareness purposes such as on our Website or when we are promoting events, offers and new products, features or services BroPay. The use of Merchant Marks will be in line with your branding specifications, standards and reasonable directions you provide to BroPay and we will not do anything, or cause anything to be done, that may prejudice the reputation and integrity of the Merchant Marks. You are required to provide us with your branding specifications, standards and directions at the beginning of the Integration Process or upon our written request and your approval shall not be unreasonably withheld or unduly delayed.
- 9.5. To the extent required, each of BroPay and the Merchant grants to the other a non-exclusive licence to use the other's Trade Marks and the Merchant Marks (as the case may be) for the purposes described in these General Terms and for no other purpose.

10. COLLECTION AND PROCESSING OF INFORMATION

- 10.1. When registering for and maintaining a Merchant Account, you will be required to provide certain personal and other information (including in certain instances, information of your users and/or Payers) to us to enable us to provide the Services to you ("**Your Information**").
- 10.2. We will collect, process, transfer, collate, organise, update, store and distribute ("**Process**") Your Information in accordance with these General Terms and our Privacy Policy. For the purposes of these General Terms, "**Processing**" and "**Processed**" shall have a corresponding meaning.
- 10.3. By disclosing or submitting Your Information to us you consent to us Processing Your Information for the purposes described in the Application Form, these General Terms and our Privacy Policy.
- 10.4. You are responsible for the accuracy of Your Information and that Your Information is correct. **We are not responsible for checking the accuracy of any aspect of any Your Information, files or records you provide to us and we will not be liable (legally responsible) for any payment related errors made resulting from errors or incorrect information in your files or records.**
- 10.5. Should Your Information change, please inform us and provide us with updates to Your Information as soon as reasonably possible to enable us to update Your Information.
- 10.6. You authorise BroPay, directly or through our authorised third parties, to make any inquiries we consider necessary to validate your identity and registration. This may include requiring you to provide BroPay with faxed or scanned documentation such as a government issued identification card, ordering a credit report and performing other credit checks or verifying



Your Information provide against third party databases. However, **because user verification on the Internet is difficult, we cannot and do not guarantee any Merchant's or Payer's identity.** You understand and agree that we may engage carefully selected third parties, such as credit reporting agencies or identity verification companies in order to review your credit report so as to assess your eligibility to hold a Merchant Account and your ability to use the Services or associated features.

10.7. You are solely responsible for securing all data in your possession or under your control.

11. SECURITY AND RISKS

11.1. Your Security Obligations

11.1.1. Username and Password: As a registered Merchant, you will be required to select a unique username and password which you have to use in order to sign into your Merchant Account made accessible on our Website. If you are a Legal Entity, you may also have to designate a specific number of users of your Merchant Account. It is your responsibility to keep your username and password secret and secure at all times. You will not disclose your username and password to any other persons, or enable any other persons to otherwise access your Merchant Account. If you are a Legal Entity, you must further ensure that the persons authorised by you to access your Merchant Account do so within the scope of their authority and do not disclose your username and password to any unauthorised person or enable any unauthorised person to otherwise access your Merchant Account. All Merchants are required to make use of our two factor authentication system to access BroPay Merchant account or back office. We will not disable such requirements as this is a PCI requirement and if disabled could pose security risk

11.1.2. Fraudulent or Irregular Activities: Should you believe that your username or password has become compromised, someone has accessed your Merchant Account without your authority or you suspect any security breach, phishing attack, misuse, irregularity, fraudulent transaction, or any other suspicious activity that may be connected with attempts to commit fraud or other illegal activities through the use of your website or application you must contact us immediately. You agree to co-operate fully with BroPay to investigate any suspected unlawful, fraudulent or suspicious activities.

11.1.3. Phishing: Please be aware of 'phishing' attacks where criminals attempt to obtain Your Information by sending you an email, masquerading as an email from BroPay, asking you to access your account or verify information via links in the email, or diverting you to a fake BroPay website. It is important to remember that BroPay will never ask you to confirm your password, username or other sensitive information by clicking on any links in an email.

11.1.4. 3D Secure: 3D Secure is a protocol developed by the card schemes (for example, Visa offers 3-D Secure under the name Verified by Visa and MasterCard offers it as MasterCard SecureCode). 3D Secure improves the security of Internet payments. It allows you, as a Merchant to authenticate cardholders through the cards' issuers. 3D Secure reduces the chance of fraud when using supported cards and improves transaction performance. If you do not use 3-D Secure you expose yourself to risk and



you will be liable (legally responsible) for fraudulent transactions even if the transaction was authorised by other means. It is also important that you read your Service Terms carefully when considering 3D Secure. In particular, you understand that for both Real Time Recurring and MOTO transactions, the transaction will not be passed through 3D Secure or require CVV, which may result in increased risk of chargebacks and as such, you are solely responsible for all chargebacks and other losses that may arise as a result of you having elected to process transactions as Real Time Recurring or MOTO, you are solely responsible for all chargebacks and other losses that may arise as a result of you having elected to process transactions as Real Time Recurring or MOTO. Please note: Even if transactions are passed through 3D Secure, in the event that there are an excessive number of chargebacks, you, as the Merchant, may exceed the thresholds prescribed by card associations and as a result, you could be liable to fines from the card associations.

11.1.5. Additional Fraud Protection: If you are a merchant that falls within BroPay's high risk merchant category based on merchant category codes assigned to classify businesses by payment card processors such as Visa and MasterCard (also known as MCC codes), we recommend you implement additional fraud protection. In particular, you understand that if you do not implement additional fraud protection, you are solely responsible for all other losses that may arise as a result of you having elected to process transactions without additional fraud protection. To learn more about additional fraud protection Services we offer, please visit our Website.

11.2. Our Security Obligations

11.2.1. BroPay secures the integrity and confidentiality of Your Information and transactional information with reference to appropriate, reasonably accepted technological and organisational standards acceptable at the time of the transaction and the type of the transaction concerned.

11.2.2. BroPay complies with PCI DSS, which sets out the industry standards for maintaining a secure environment in the payment industry. Our PCI DSS compliance certificate is available for viewing on our Website.

11.2.3. All Your Information is stored in our secure Payment Card Industry ("PCI") environment. Whilst all Your Information stored by BroPay meets the requirements of the security standards prescribed by the Payment Schemes, we are not responsible and/or liable for any of Your Information stored and/or processed outside of BroPay's secure PCI environment.

11.2.4. BroPay Processes Your Information and its transactional information on computers and servers located in the Republic of Ireland.

11.2.5. All Payers' credit card details and banking credentials are secured by encryption and reinforced through various encryption processes (including HSM (hardware security module) and Internet security protocols called SSL (Secure Socket Layer) and TLS (Transfer Layer Security)) in order to provide protection for all sensitive payment information.



- 11.2.6. When required for purposes of a transaction between you, as a Merchant, and a Payer, BroPay retrieves and forwards the encrypted credit card details to you. You never access or store any Payer's credit card details. This means that you must not capture, by any means, cardholder payment card details including but not limited to the cardholder's primary account number (PAN), personal identification number (PIN) or card verification value (CVV).
- 11.2.7. We use independent third parties to verify and certify privacy principles and our registration documents.
- 11.2.8. BroPay reserves the right to take any actions as may be regarded as necessary at any time to preserve the security and reliable operation of BroPay's network infrastructure and you undertake that you will not do or permit anything to be done which will compromise BroPay's security.
- 11.2.9. If we are unable to verify or authenticate any of Your Information, reasonably believe that your activities pose a significant credit or fraud risk to BroPay or our other Merchants, or may cause financial loss or legal liability for us, our other Merchants, or you, or your use of your Merchant Account is regarded as abuse of the credit card system or a violation of Card Payment Processing Rules by BroPay or any Payment Schemes, then we may be entitled to take any one or more of the steps listed in paragraphs 17.1 or 17.2 as are reasonable and appropriate under the circumstances.

12. FEES AND CHARGES

- 12.1. **Fees and Charges:** The fees, charges and payment terms are described in the relevant Application Form and /or the corresponding Service Terms (the "**Service Fees**"). Upon submission of your Application Form (and thus your acceptance of the relevant Service Terms and these General Terms), you will be regarded as having agreed to the then current Service Fees for the Services for which you have contracted. It is your responsibility to familiarise yourself with the Service Fees and the date of payment of the Service Fees applicable to the Services you have subscribed for.
- 12.2. **Due Dates:** The Service Fees payment due dates are as follows:
- 12.2.1. transaction-based Service Fees are due upon the bank or third party payment service provider (as the case may be) authorising the relevant payment to be made to you and you remain liable (legally responsible) to us notwithstanding any subsequent reversals, chargebacks or refunds;
- 12.2.2. non-transaction-based Service Fees are due from the date of activation by BroPay of the Service notwithstanding any delays by you to commence usage of the Service;
- 12.2.3. where a monthly Service Fee is charged and your use of the Service commences at any time other than the first day of a calendar month, you will be charged on a *pro rata* basis (in proportion to) for the Service provided during that month; or
- 12.2.4. where you require additional services not agreed specified in the Service Terms, we may charge you additional service fees on a times and materials basis at



our then current standard rates subject to prior agreement between BroPay and the Merchant.

- 12.3. **Service Fee Changes:** We reserve the right to amend or vary the Service Fees and charges from time to time on 30 (thirty) days prior written notice to you, by posting the revised Service Fees on the “**Notices**” section of the Website. When we notify you of any adjustments to the Service Fees which affect a Service, you are entitled to terminate the relevant Service on written notice to us prior to the date in which the adjustments come into effect. If you do not terminate the relevant Service after the adjustments come into effect, the adjustments apply to you from the date they come into effect.
- 12.4. **Taxes:** Unless otherwise stated, Service Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited value-added, sales, use or withholding taxes assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with the Services. If BroPay has the legal obligation to pay or collect Taxes for which you are responsible the appropriate amount shall be invoiced to and paid by you, unless you provide BroPay with a valid tax exemption certificate authorised by the appropriate taxing authority. BroPay remains solely responsible for taxes assessable against it based on BroPay’s income, property and employees.
- 12.5. **No Set-off or Deductions:** You are not entitled to withhold any payment of any Service Fees due to BroPay by reason of any alleged breach of the General Terms or Service Terms by BroPay or for any other reason whatsoever. In addition, you may not apply set-off to or demand any discount, rebate or reduction in respect of any Service Fees owed to BroPay.
- 12.6. **Payment Defaults:** Should you fail to pay any amount to BroPay on the due date for payment, then BroPay may, without prejudice to any of its other rights in law or under the Agreement:
- 12.6.1. charge interest at prime + 10% (**the prime rate published by BroPay’s bankers from time to time plus ten percent**) on the overdue amount, calculated from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalised monthly; and/or
- 12.6.2. take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation using external debt collection agencies or attorneys; and/or
- 12.6.3. recover from you any additional expenditure incurred by BroPay relating to the tracing and/or collection of unpaid amounts, which costs shall be for your account; and/or
- 12.6.4. inform any credit bureau of your payment default; and/or
- 12.6.5. suspend our Service(s) and your access to your Merchant Account as described in paragraph 17.2.1.4.
- 12.7. **Payment Queries or Disputes:** You may direct any billing or account queries to BroPay at support@BroPay.com. A certificate signed by either the General Manager or Financial Manager of BroPay, whose appointment, qualification and authority need not be proved,



shall be *prima facie* proof of the amount in Service Fees due and payable by you at any time. In the event of any dispute arising between us regarding the determination of the amounts owing by you under any invoice presented to you by BroPay. If we are unable to resolve within fourteen (14) days of the dispute arising, the dispute will be addressed in accordance with provisions of paragraph 20. You will pay the undisputed amount of such invoices in accordance with the Agreement.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. All the content, trade marks, data, information or information contained in any materials or documents (“**Documentation**”) or used in relation to the Services, including but not limited to any and all copyrighted works, software, databases, text, graphics, icons, designs, hyperlinks, domain names, information and agreements (“**Content**”), are the property of or licensed to BroPay and as such are protected from copying and infringement by local and international legislation and treaties. The Content may not be reproduced, distributed or copied by any means, whether electronically or not, without our prior written permission.
- 13.2. Any and all intellectual property rights subsisting in the Documentation (including Integration Documents), Content, Services and their underlying software (“**Software**”), these General Terms and in the Service Terms, or otherwise developed by or on behalf of BroPay, including all patents, rights in inventions, rights in designs, trademarks, trade and business names and all associated goodwill, rights to sue for passing off or for unlawful competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know how and trade secrets) and all other similar or equivalent rights subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term (“**Intellectual Property Rights**”), vests in BroPay, its licensors or suppliers, as the case may be, and all rights not expressly granted are reserved.
- 13.3. Although BroPay grants you, for the duration of the Service, a limited, non-exclusive, non-transferable right and licence to use the Service and its underlying Software in accordance with the provisions of the Agreement, you acknowledge that you have no claim of any nature in and to the Intellectual Property Rights. You accordingly agree not to copy, duplicate, reproduce, transmit, modify, reverse engineer, decompile, or disassemble the Service, including the Software and/or Integration Documents, any user manuals and/or any printed material associated with the Service or any portion thereof in any way whatsoever and shall only use it for the purpose it is supplied.
- 13.4. You will not at any time during or after termination or cancellation of the Agreement dispute the validity or enforceability of such rights, or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of any of the Intellectual Property Rights and shall not counsel or assist any other person to do so.
- 13.5. You may not use or alter any trademarks, trade or business names, designs or logos forming part of the Intellectual Property Rights, including our BroPay Trade Marks or do (or fail to do) anything that could adversely affect our rights in the BroPay Trade Marks or their value



and you agree to fully reimburse us for any loss or damage that we suffer as a result of any use by you of our BroPay Trade Marks which is not in accordance with the Agreement.

- 13.6. Solely to enable BroPay to use Your Information as contemplated by the Agreement and our Privacy Policy (so that we are not violating any rights you might have in Your Information), you hereby grant BroPay a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in Your Information, in any media now known or not currently known. BroPay will use and protect Your Information in accordance with our Privacy Policy.
- 13.7. You are obliged to comply with all laws applicable to any intellectual property rights (including without limitation trade secrets, copyright, trademarks, registered designs and patents) in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of the Services.
- 13.8. If, while the Agreement is in force, you make any improvement to any aspect of BroPay's Intellectual Property Rights ("**Improvement**"), you will promptly inform BroPay thereof in writing and will assign all rights in such Improvement to us and will assist us to obtain patent, design, copyright and all similar forms of protection for such Improvement at our expense wherever we may choose to obtain such protection. All intellectual property rights in respect of such Improvement will be deemed to be included in the Intellectual Property Rights in terms of the Agreement.
- 13.9. You shall comply with any and all relevant Payment Scheme Rules relating to the trademarks, data, logos, images, copyrighted materials or any other protected intellectual property of such Payment Scheme.

14. CONFIDENTIALITY

- 14.1. You may obtain software and other information relating to the Services which is confidential and proprietary to BroPay ("**Proprietary Information**"). Such Proprietary Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, and data. You will at all times, including following termination of this Agreement, keep all such Proprietary Information in confidence and will not disclose or use such Proprietary Information other than as expressly authorized under this Agreement, nor will you disclose the Proprietary Information to third parties without prior written consent. You further agree to immediately return to BroPay or destroy and confirm in writing that you have destroyed all Proprietary Information (including copies) in your possession, custody or control upon termination of this Agreement at any time and for any reason.
- 14.2. The obligations of confidentiality in this paragraph 14 will not apply to the extent that information (i) has entered the public domain through no fault of your own; (ii) prior to disclosure was already rightfully in your possession; (iii) subsequent to disclosure is obtained by you on a non-confidential basis from a third party who has the right to disclose such information; (iv) is subsequently or independently developed by you without reference to the Proprietary Information disclosed hereunder; or (v) is required to be disclosed by law or any regulatory authority with jurisdiction or pursuant to a court order, so long as (if this is possible in the circumstances) you give BroPay adequate notice and the ability to challenge or limit



such disclosure. You will not make any announcement, provide any press release, use BroPay's Trade Marks or otherwise disclose any information to the press or other media concerning BroPay's services, Software or the terms of this Agreement without the prior written approval of BroPay, except for any release necessitated by the rules of any stock exchange or any other regulatory authority with jurisdiction.

15. DISCLAIMER AND LIMITATION OF LIABILITY

15.1. Whilst we take all reasonable steps within our control to make each of our Service(s) available to you on a consistent and continuous basis, we cannot always guarantee or warrant fault free Services.

15.2. **As far as the law allows, we offer our Services "as is" and on an "as available" basis without warranties or implied by statute, common law or otherwise (including satisfactory quality and fitness for purpose). You understand and agree that we do not guarantee or that:**

15.2.1. **the Service(s) are merchantable, of satisfactory quality, accurate, fit for your particular purposes or needs;**

15.2.2. **the Service(s) will operate error-free;**

15.2.3. **the Service(s) are accessible (either directly or through third-party networks) at all times or locations of your choosing, including that the connection between your computer, system, terminal or other electronic devices and the acquiring bank will be 100% uninterrupted; or**

15.2.4. the time it will take to complete a transaction will remain consistent because the Services are largely dependent upon many factors beyond BroPay's reasonable control, including (but not limited to) delays by the banks and its facilities.

16. **LIMITATION OF LIABILITY**– Unless otherwise provided for in the applicable Service Terms, as far as the law allows and subject to paragraph 16.2, in no event will BroPay be liable for:

16.1.1. financial or similar loss of any kind, including, for example, loss of profits, business, estimated savings, chargeable time or goodwill; or

16.1.2. any interruption to your business (including interruption to Services) or loss of or damage to information;

16.1.3. loss or damage suffered by you which we could not have reasonably known about at the time you entered into the Agreement; or

16.1.4. losses you suffer as a result of using any of the Services other than as described in the relevant documents or as otherwise described in our Service Terms.

16.1.5. except only for the event where actual financial loss is suffered as a direct result of BroPay system malfunction and/or human error will BroPay be liable for such actual financial loss.

16.2. You acknowledge that the allocation of risk and responsibility as set out in the Agreement is reasonable because it accords with:

16.2.1. BroPay's inability to control how, and for what purposes, you use the Services;



- 16.2.2. BroPay not having developed any of the Services specifically for you;
- 16.2.3. the fact that, while BroPay follows good industry practice, it is not economically feasible for BroPay to exhaustively test any software that supports the Services; and
- 16.2.4. the Service Fees, if any, paid by you for the Services.

16.3. **As far as the law allows, and subject to paragraph 16.2, our maximum aggregate liability under, or in connection to this Agreement, for each and every claim arising out of the same cause or source, shall not exceed the Service Fees paid by you in respect of such Service(s) during the 12 (twelve) month period in which the cause of action arose (the first such 12 (twelve) month period in respect of the Services in question to commence on the Service commencement date as specified in the Service Terms).**

16.4. Nothing in this Agreement will prevent or limit your, or BroPay's , liability:

- 16.4.1. for fraudulent or wilful misconduct; or
- 16.4.2. for death or personal injury arising out of its negligence;
- 16.4.3. for any matter which such liability cannot be lawfully excluded or limited.

17. INDEMINITY

17.1. **As far as the law allows, you indemnify and hold harmless BroPay, its parent, subsidiaries, affiliates, officers, directors and employees, against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorneys' fees) arising from your use of and access to Services, your violation of any term of Agreement (including the documents incorporated by reference), your violation of any third party right, including without limitation any copyright, trademark, trade secret or other property, or privacy right or any claim that your content caused damage to a third party.**

17.2. This paragraph 17 will survive termination, modification or expiration of these General Terms and your use of the Services.

18. TERMINATION AND CONSEQUENCES OF TERMINATION

18.1. Termination by BroPay

18.1.1. Without limiting any other rights and remedies that BroPay may have in law or under this Agreement, BroPay may immediately terminate this Agreement (or an individual Service) in the event that you commit one or more of the following events of default:

- 18.1.1.1. you breach (including non-payment of undisputed amounts due by you) any term or condition of this Agreement and you fail to remedy such breach within 7 (seven) days of BroPay notifying you of such breach;
- 18.1.1.2. you do or allow any act or omission which adversely affects the operation of BroPay's Services, including our network infrastructure;
- 18.1.1.3. you use our Service(s) unlawfully or for any illegal activities;
- 18.1.1.4. you fail to comply with the Card Payment Processor Rules;



18.1.1.5. you commit any act of insolvency in terms of the Insolvency Act, 1936 or, being a Legal Entity, commit an act which would be such an act of insolvency if committed by a natural person;

18.1.1.6. you are declared bankrupt or take steps to place yourself, or are placed in provisional or final liquidation or judicial management or administration, or enter into or attempts to enter into any scheme similar to or in the nature of a composition, compromise or scheme of arrangement, release or novation with any or all of your creditors, or take steps to de-register yourself or are de-registered or you contemplate, consider, discuss or agree to any business rescue proceedings.

18.1.2. You understand and agree that BroPay may immediately terminate this Agreement in the event our licence to act as System Operator is revoked or terminated for any reason whatsoever.

18.2. **Suspension of Services by BroPay**

18.2.1. Our Services to you may be suspended and your access to the Merchant Account may be denied if:

18.2.1.1. you breach any of the terms and conditions of this Agreement until such time as you have remedied the breach provided we have provided you notice of such breach;

18.2.1.2. you use our Service(s) unlawfully;

18.2.1.3. on our reasonable discretion, your use of the Service (s) is considered by us, our banks or Card Processors as unlawful or potentially unlawful;

18.2.1.4. you do not pay all the amounts due to you on or before the due date for payment.

18.2.2. We will notify you before we suspend one or more of our Services. If our Services are suspended, you may terminate the Service in accordance with the provisions of paragraphs 18.3.2 and 18.4.

18.2.3. You will continue to be liable (legally responsible) for payment of your Service Fees during any suspension period and BroPay reserves the right to charge you an additional re-connection fee should you request BroPay to restore the Service.

18.3. **Termination by the Merchant**

18.3.1. Without limiting any other rights and remedies you may have in law or under this Agreement, you may immediately terminate this Agreement (or an individual Service) in the event that we commit one or more of the following events of default:

18.3.1.1. we breach any term or condition of this Agreement and we fail to remedy such breach within 7 (seven) days of you notifying BroPay of such breach;

18.3.1.2. we commit any act of insolvency in terms of the Insolvency Act, 1936;

18.3.1.3. we are declared bankrupt or we are liquidated.



18.3.2. Notwithstanding the provisions of paragraph 7.1, you may terminate all of our Services on 90 (ninety) days prior written notice to BroPay.

18.4. **Termination of an individual Service**

18.4.1. Notwithstanding the provisions of paragraph 7.1, BroPay may terminate any Service for any location or industry vertical without any prior written notice to the Merchant. As stated in paragraph 7.3, the termination of one individual Service will not result in the termination of any other Services or these General Terms.

18.5. **Consequences of Termination of a Service or the Agreement**

18.5.1. If a Service is terminated for any reason, you will responsible to pay all Service Fees payable by you up to the termination date.

18.5.2. If a Service is terminated for any reason, you shall immediately cease to access or use the Service, its underlying Software and related Documentation and you are required to either destroy or return to BroPay (as BroPay may direct) any copies of the Software and Documentation provided to you by BroPay.

18.5.3. You shall remove any reference to BroPay or the Service, including the BroPay Trade Marks from all your promotional and corporate materials, including all your electronic communications and websites. To the extent that BroPay displays any of your Merchant Marks, BroPay shall remove any such reference to you from our Website or marketing materials.

18.5.4. In the event that you are able to utilise the relevant Service following a termination, the terms and conditions of the Agreement will apply to you and you will be liable to pay the full usage costs to BroPay.

18.5.5. Termination of the Agreement shall be without prejudice to either party's rights or obligations which arose prior to the termination date and in this regard, you shall be entitled to utilise the Service following a termination to the extent required in order to exercise such rights and fulfil such obligations. However, you acknowledge that such use of the Service after termination of the Agreement shall in no way constitute a revival or a novation of the Agreement and BroPay shall incur no liability of whatsoever nature to you or to any third party arising out of your continued use of the Service after termination of the Agreement. For example, as chargebacks may arise a considerable period after the date of the relevant transaction, BroPay shall remain entitled to recover chargebacks and associated costs from you in respect of all chargebacks, even after the termination of the contractual relationship between you and BroPay.

18.5.6. The expiration or termination of this Agreement shall not affect such of the provisions of the Agreement (be it in these General Terms or in the Service Terms) 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.

19. **FORCE MAJEURE**

19.1. Whilst we aim to provide uninterrupted Services, we cannot guarantee this as interruptions may be caused by factors beyond our reasonable control including, but not



limited to an event of fire, lightning, explosion, electricity and utility services, flood, hurricane, act of God, war, terrorism, civil disorder, delivery failures, failure of communications networks and facilities, including the Internet, epidemics, plagues, strikes; boycotts, and lock-outs of all kinds and go-slows (excluding boycotts, strikes, lock-outs and go-slows by or of BroPay's own personnel) or any other event beyond our reasonable control (a "**Force Majeure Event**").

19.2. If we are prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement or a Service in terms of the applicable Service Terms due to a Force Majeure Event, we shall be relieved of our obligations during the period that such event and its consequences continue but only to the extent so prevented and we shall not be liable for any delay or failure on the performance of any obligations hereunder or loss or damages, either general, special or consequential which the Merchant may suffer due to or resulting from such delay or failure, provided always that we (i) shall give written notice to you of any such inability to perform or interruption to our Services and (ii) shall use reasonable endeavours to mitigate the effects and duration of the Force Majeure Event. We shall, upon termination of the Force Majeure Event, giving rise to such non-performance, give you written notice. We shall not be entitled to invoke this clause if we failed to take all steps and precautions which could reasonably be expected to have been taken, in order to prevent such act or event occurring and in order to mitigate and minimise the effect of such event.

19.3. Should the Force Majeure Event continue for a period of more than 14 (fourteen) days, then you are entitled to terminate the affected Service with immediate effect.

19.4. We will, wherever possible, will provide advance warning on our Website of any known or planned interruptions and will try to ensure any interruption is kept as brief as possible.

19.5. In no event will BroPay be legally responsible (liable) to you for any failure by you and/or your third party service providers (including banks) or any of your and/or third party service providers systems, network and/or equipment which has an impact on the Services.

20. CHANGES TO THE AGREEMENT

20.1. Any part of the Agreement, be it the Service Terms or these General Terms (including the Privacy Notice and other policies or documents incorporated by reference), may be changed from time to time by BroPay upon reasonable notice to you. Upcoming material changes will be posted on the Website 30 (thirty) days prior to their effective date.

20.2. If you do not agree to the changes made are entitled to terminate the Agreement on written notice to us prior to the date in which the changes come into effect. If you do not terminate the Agreement after the adjustments come into effect, the adjustments apply to you from the date they come into effect.

21. COMPLAINTS AND DISPUTES

21.1. Should you have any concerns or issues relating to the provision of the Services, please contact BroPay's Customer Relations at support@bropay.co.za.

21.2. Should a dispute of any nature whatsoever arise between you and BroPay on any matter provided for in or arising out of the Agreement and such dispute is not resolved through the Customer Relations Department of BroPay then, save for urgent or interim relief



which may be granted by a competent court, such a dispute may be submitted to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa. Arbitration proceedings shall be conducted in Cape Town in English. The expedited arbitration rules may be downloaded from http://www.arbitration.co.za/downloads/expedited_rules.

22. GOVERNING LAW AND JURISDICTION

22.1. BroPay is controlled and operated from the Republic of South Africa and therefore governed by South African law. The Agreement is also governed by South African law. Subject to the 'Complaints and Disputes' paragraph of these General Terms, you and BroPay submit to the non-exclusive jurisdiction of the South African courts.

23. ADDRESSES FOR NOTICES

23.1. All legal notices given in terms of this Agreement will be in writing and all notices may be sent to the addresses you have provided in your Application Form. Any change in your address will only be effective if and when we receive written notification of your change in address.

23.2. BroPay chooses as its physical address for all purposes, including legal notices, under the Agreement, the following address: Unit 4, Flexisuites, Nedbank Building, 135 Rivonia Road, Sandton, Gauteng, South Africa, 2196.

23.3. Where communications are made electronically, where provided for in accordance with the Agreement, such communications shall be deemed to have been received within 48 hours after having been sent, save where the sender knows that delivery thereof has failed

24. ELECTRONIC COMMUNICATIONS

24.1. To the fullest extent permitted by applicable law, you consent to receiving the Agreement or any part thereof, and any other agreements, notices or other communications ("**Communications**") from BroPay regarding your Merchant Account and your use of the Services electronically. Electronic Communications may be posted on the Website and/or sent to the e-mail address we have on record for you. Please print a copy of each Communication and retain it for your records.

24.2. BroPay reserves the right, but assumes no obligation to, provide Communications in paper format.

24.3. You agree that in the event of a dispute between you and BroPay or between you and any other Merchant or Payer, BroPay's electronic records of your transactions, these General Terms, Privacy Policy, Service Terms, any identity verification information provided in a paper format and subsequently scanned or otherwise converted into an electronic format, and any other information stored or created electronically shall be admissible in a court of law or in relation to a law enforcement or regulatory investigation or prosecution.

25. GENERAL

25.1. BroPay is entitled to assign the Agreement to any third party without your consent other than if such assignment would be to your detriment, but for security reasons, you may not cede,



assign or otherwise transfer the Agreement or any of your rights or obligations thereunder to any other person without obtaining BroPay's prior written consent thereto.

- 25.2. If either of us fails or delays the exercise of any rights or remedies under the Agreement, we will not be deemed to have waived (i.e. given up) those rights or remedies in any way.
- 25.3. If a court or similar body decides that any wording in the Agreement is invalid or unenforceable, that decision will not affect the rest of the Agreement, which will remain binding on both of us. However, if the wording that is invalid or unenforceable can be made valid and enforceable by deleting part of it, we will both treat the wording as if it is deleted, so that the remainder of the wording in question becomes valid and enforceable.
- 25.4. The Agreement (including the Privacy Notice and other documents or policies incorporated into these General Terms or the relevant Service Terms) is the entire agreement between you and BroPay with respect to your use of the relevant Services, and supersedes all documentation, information and other communications (in each case whether spoken or written) between us with respect to such access and use.
- 25.5. If the Consumer Protection Act, 2008 ("**CPA**") applies to these General Terms, the Wallet Service Terms or the Service Terms, it is not intended that any of the provisions in the General Terms, the Wallet Service Terms or the Service Terms contravene anything contained in the CPA. All the provisions in these General Terms, the Wallet Services or the Service Terms must be treated as being qualified, to the extent necessary, to ensure the provisions of the CPA are complied with.