



## MERCHANT AGREEMENT

entered into between

**Yoco Technologies Proprietary Limited, (“Yoco”)**, a legal entity with company registration number 2013/203377/07

and

**You, (“the Merchant”)**, whose details were provided to Yoco during your Merchant Onboarding Process with Yoco

**PHYSICAL** 56 SHORTMARKET, SHORTMARKET STREET CAPE TOWN WESTERN CAPE 8000 RSA  
**WEB** WWW.YOCO.COM

**POSTAL** POSTNET SUITE 303 PRIVATE BAG X3 ROGGEBAAI 8012

**DIRECTORS** KMS MAPHAI [SOUTH AFRICA] C WAZEN [LEBANON/ UK] M BRAND ENGEL [UNITED STATES] C COLLON [FRANCE]

**REGISTRATION** YOCO TECHNOLOGIES (PTY) LTD REG. NO. 2013/203377/07

# 1 INTERPRETATION AND PRELIMINARY

1.1 The following terms have the following meanings, namely –

- 1.1.1 **Acceptance Date** means the date on which this Agreement is accepted by you (the Merchant) in the manner contemplated in clause 3.1;
- 1.1.2 **Acquiring Bank** means the bank(s) which Yoco partners with for the purposes of providing the Services contemplated by this Agreement and as further described at <https://www.yoco.co.za/za/terms/acquiring-faqs>;
- 1.1.3 **Agreement** means this written agreement and all annexures and schedules to this Agreement;
- 1.1.4 **Association Rules** means the bylaws, rules, and regulations published and updated by the Associations from time to time;
- 1.1.5 **Associations** means the card associations supported by the Acquiring Banks from time to time for the purposes of processing Transactions;
- 1.1.6 **Authorised Account Holder** means the person nominated during the Business Onboarding Process as the primary person responsible for managing the Merchant Account;
- 1.1.7 **Bank Account** means the South African bank account nominated by you during the Business Onboarding Process, into which all settlement funds will be paid by Yoco and used for any other purposes as described in this Agreement;
- 1.1.8 **Card** means any of the cards supported by the Associations from time to time for the purposes of processing Transactions;
- 1.1.9 **Cardholder** means the person in whose name a Card is issued by an issuing bank;
- 1.1.10 **Card Reader** means a device, forming part of any Compatible Device, which device records each Transaction;
- 1.1.11 **Chargeback** means any Transaction that:
  - 1.1.11.1 is disputed by the Cardholder in question;
  - 1.1.11.2 is reversed for any reason by an Association, any of the Third Party Service Providers, or the Acquiring Bank;
  - 1.1.11.3 is, in the reasonable opinion of Yoco, suspicious or activity described in clause 10.3; and/or
  - 1.1.11.4 if processed, would amount to a breach of the terms of this Agreement, the Yoco Operating Rules or any Association Rules;
- 1.1.12 **Commencement Date** means the date on which the Merchant Onboarding Process has been completed and Yoco has approved your application, as contemplated in Step 4 of clause 4;
- 1.1.13 **Compatible Device** means the device(s) as outlined on the Website, and include all devices used to facilitate and provide the Services;
- 1.1.14 **Fee Schedule** means the fee schedule according to which Yoco will charge you for Transactions completed using the Services, from time to time, which is accessible on the pricing page of the Website and / or as communicated to you by Yoco from time to time;
- 1.1.15 **FICA Documentation** means all documentation requested by Yoco from you in order to enable Yoco to comply with its contractual obligations to the Acquiring Bank and to enable the Acquiring Bank to comply with its obligations in terms of the Financial Intelligence Centre Act, No. 38 of 2001;



- 1.1.16 **Intellectual Property** means all intellectual property rights of whatever nature (whether registered or unregistered) including, without limitation, all rights of copyright; compilations, collections and databases; computer programs (including the source and object code thereof); mask works, invention rights, patents; trade marks; designs; know-how; trade secrets, internet domain names and/or web site addresses; applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.1.17 **Merchant Account** means an account set up by Yoco on your behalf for the purpose of managing settlements due to you by Yoco and deducting the fees due to Yoco;
- 1.1.18 **Merchant Onboarding Process** means the process described in clause 4.1 of this Agreement;
- 1.1.19 **Personal Information** has the meaning set out in the Privacy Policy;
- 1.1.20 **Privacy Policy** means Yoco's standard privacy policy, which is accessible on the Website and Yoco App;
- 1.1.21 **Reserve Account** means a separate reserve account operated by Yoco to secure the performance of any of your payment obligations in terms of this Agreement, including in relation to any liability for any amounts arising due to a Chargeback;
- 1.1.22 **Services** means, together, the Yoco App, the Website, the services described in clause 5 and any other ancillary services that Yoco may offer from time to time;
- 1.1.23 **Third Party Features** means any additional services provided by independent third parties, as approved by Yoco, and which additional services do not form part of the Services;
- 1.1.24 **Third Party Service Provider** means any third party service provider that Yoco has contracted with in order to provide the Services;
- 1.1.25 **Transaction** means any payment made by a Cardholder to you, which payment transaction is effected by a Card, processed by a Card Reader and cleared and settled by the Acquiring Bank;
- 1.1.26 **Website** means the website operated by Yoco, located at any domain or subdomain of yoco.co.za or yoco.com, as updated from time to time;
- 1.1.27 **Yoco App** means the mobile application developed by Yoco, downloadable from the Website or an App Store;
- 1.1.28 **Yoco Intellectual Property** means all Intellectual Property owned or used by Yoco at any time whether as part of the provision of the Services or otherwise;
- 1.1.29 **Yoco Operating Rules** means the operating rules relating to your use of the Services determined by Yoco from time to time, which are accessible on the Website and the Yoco App which includes, but is not limited to, the Card Reader Policies, available on the Website and Yoco App; and
- 1.1.30 **Yoco Settlement Schedule** means the schedule according to which Yoco will make payment of settlement funds to you in accordance with clause 9.

## 2 INTRODUCTION

- 2.1 This Agreement creates a legal relationship between you (the Merchant) and Yoco.
- 2.2 Yoco is not a bank and does not conduct the business of a bank, nor the provision of any financial services, in any form whatsoever.



- 2.3 Yoco is a payment service provider, which means that it facilitates the processing of Transactions.
- 2.4 In its role as a payment service provider, Yoco has entered into agreements with the Associations, the Acquiring Bank and the Third Party Service Providers.
- 2.5 The Associations require that you, Yoco and the Acquiring Bank comply with the Association Rules, which are amended from time to time. Further, Yoco will publish and update the Yoco Operating Rules on the Website and the App. By entering into this Agreement, you are agreeing to be bound, at all times, to the Yoco Operating Rules and the Association Rules.
- 2.6 In terms of your relationship with Yoco, you agree that –
  - 2.6.1 you are not in partnership with Yoco; and
  - 2.6.2 you have no right or ability to bind Yoco or incur any obligations on Yoco’s behalf.

### 3 ACCEPTANCE, COMMENCEMENT, DURATION AND TERMINATION

- 3.1 By clicking on the acceptance button on the Website during your online application process, you confirm that you have read and understood the meaning and effect of this Agreement and that you agree to be bound by it from the Acceptance Date. If you do not understand the meaning or effect of any of the clauses contained in this Agreement, you must request that it be explained to you before accepting and concluding this Agreement, by contacting Yoco at [legal@yoco.com](mailto:legal@yoco.com).
- 3.2 In specific circumstances, the Associations and payment regulations require that you enter into a merchant agreement directly with the relevant Acquiring Bank. For this purpose, by accepting the terms of this Agreement, you also accept the terms of the merchant agreement of the relevant Acquiring Bank which can be accessed at <https://www.yoco.co.za/za/terms/acquiring-faqs> along with further information in this regard.
- 3.3 This Agreement will start on the Commencement Date.
- 3.4 This Agreement may be terminated –
  - 3.4.1 by you at any time, by contacting [support@yoco.com](mailto:support@yoco.com); or
  - 3.4.2 by Yoco –
    - 3.4.2.1 immediately, in its discretion, if Yoco is empowered or required to do so by the rules or directions of any Association or the Acquiring Bank, or if you have committed a material breach; and
    - 3.4.2.2 in all other circumstances by giving 14 (fourteen) days' notice to you.

### 4 YOCO MERCHANT ONBOARDING PROCESS

- 4.1 In order to use the Services, you will need to complete the Merchant Onboarding Process, which is as follows –
  - 4.1.1 Step 1: You apply to accept Card payments using a Merchant Account on the Website;
  - 4.1.2 Step 2: You pay Yoco the fees for the Card Reader that you have chosen;
  - 4.1.3 Step 3: Yoco will conduct various checks on you to determine whether it can approve your application. Upon completion of these checks, Yoco will notify you as to whether or not your application has been approved or declined;
  - 4.1.4 Step 4: If Yoco approves your application, it will arrange to have the Card Reader that you have chosen delivered to your business trading address;



- 4.1.5 Step 5: Yoco's representatives will undergo a verification process with regard to your FICA Documentation on delivery;
- 4.1.6 Step 6: You must download the Yoco App and connect the Card Reader to your Compatible Device; and
- 4.1.7 Step 7: You must provide all FICA Documentation, as requested by Yoco from time to time.
- 4.2 Your application is an offer to do business with Yoco, and Yoco is entitled to decide whether or not to accept the offer. For this purpose, you expressly authorise Yoco to perform credit and regulatory checks on you, your business and/or any other principal, partner, proprietor, or owner of your business.
- 4.3 The Card Reader that is delivered to you is linked to the Merchant Account that you created under Step 1, in clause 4.1.1 and will not work with any other Merchant Accounts.
- 4.4 You can commence processing Transactions from the date on which you have activated the Card Reader (Step 6), but settlement of these Transactions will not be completed by Yoco until and unless your FICA Documentation (see Step 5, in clause 4.1.5 and Step 7, in clause 4.1.7) has been received, reviewed, approved and electronically stored by Yoco.
- 4.5 Please note that should you dispose of your business (in any way), or if there is any change to the Authorised Account Holder, any principal, partner, proprietor, or owner of your business, this will mean that –
  - 4.5.1 you will have to inform Yoco in writing of this change and resubmit any relevant FICA Documentation;
  - 4.5.2 your access to the Services will be suspended; and
  - 4.5.3 you will have to complete the Merchant Onboarding Process again, as set out in clause 4.1 to receive the Services rendered by Yoco.

## 5 SERVICES RENDERED BY YOCO

- 5.1 The Services provided by Yoco to you are the following, namely –
  - 5.1.1 clearing and settlement services, which entails –
    - 5.1.1.1 debit and credit card clearing and settlement services, in terms of which you accept Cards from a Cardholder as a form of payment for goods, services and/or facilities supplied by you to that Cardholder, and Yoco clears and settles such payments for you; and
    - 5.1.1.2 Yoco paying you the amounts due to you, and retaining the amounts due by you to Yoco, arising out of the provision by Yoco of the debit and credit card clearing and settlement services referred to in clause 5.1.1.1;
  - 5.1.2 supply and support services, which entails –
    - 5.1.2.1 the supply of the Card Reader (see Step 4, in clause 4.1.4);
    - 5.1.2.2 support and replacement of the Card Reader;
    - 5.1.2.3 support in respect of the debit and credit card clearing and settlement services referred to in clause 5.1.1.1;
    - 5.1.2.4 billing and invoicing services; and
    - 5.1.2.5 any extra services which may, from time to time, be introduced by Yoco in relation to the debit and credit card clearing and settlement services referred to in clause 5.1.1.



## 6 PAYMENT AND PRICING

- 6.1 Before you are able to use the Service, you are required to purchase at least 1 (one) Card Reader, which you will order during the online application process. The price of the Card Reader is included in the Fee Schedule.
- 6.2 After the payment of the price of the Card Reader, you will be required to make the payments set out in the Fee Schedule to Yoco on an ongoing basis, on the terms set out in the Fee Schedule, unless agreed otherwise in writing with Yoco.
- 6.3 Yoco reserves the right to change any of the fees referred to in clause 6.2 by giving you 30 (thirty) days' advance notice. In this event –
  - 6.3.1 in order to keep using the Services, you must agree to the changes to the fees;
  - 6.3.2 if you do not agree to the changes to the fees, you will need to close your Merchant Account.
- 6.4 If Yoco does not approve your application under Step 3 (clause 4.1.3), you have the option to either keep your Card Reader or request Yoco, in writing, to refund your Card Reader amount within 14 (fourteen) days of being informed thereof.
- 6.5 All balances in your Merchant Account and all fees, charges, and payments collected or paid through the Services are denominated in South African Rand.

## 7 AUTHORISATIONS

- 7.1 By entering into this Agreement, you –
  - 7.1.1 grant Yoco a cession in security of the rights and claims in and to your Merchant Account, for repayment of any obligations due by you to Yoco in terms of this Agreement;
  - 7.1.2 grant Yoco a right of set-off against all amounts standing to the credit of your Merchant Account for repayment of any obligations due by you to Yoco in terms of this Agreement;
  - 7.1.3 authorise Yoco to hold, receive, and disburse all settlement funds on your behalf;
  - 7.1.4 authorise Yoco to process your Personal Information (including but not limited to sharing your Personal Information with any Third Party Service Provider for the purposes contemplated in clause 4.2, 8.4 and 10.2), in accordance with the Privacy Policy; and
  - 7.1.5 agree that in the event that there is no amount standing to the credit of your Merchant Account for repayment of any obligations due by you to us in terms of this Agreement, we have the right to debit your Bank Account for any outstanding amounts due to us in order to settle your Merchant Account.
- 7.2 To avoid doubt, your authorisations and grants (set out in clauses 7.1.1 to 7.1.5) –
  - 7.2.1 permit Yoco to process each Transaction that you authorise; and
  - 7.2.2 will remain in full effect until your Merchant Account is closed.

## 8 TRANSACTIONS AUTHORISED BY YOU

- 8.1 You agree that –
  - 8.1.1 you will not process any Transaction if it does not relate to a genuine transaction for goods and/or services;



- 8.1.2 you will only process Transactions that take place inside and outside of South Africa in amounts denominated in South African Rand;
  - 8.1.3 you will accept each valid Card that is presented to you by the rightful Cardholder in payment for goods and/or services;
  - 8.1.4 you will supply the goods and/or services at your normal price for those goods and/or services;
  - 8.1.5 you will not add any extra charges or set any minimum or maximum Transaction amount for any particular Transaction;
  - 8.1.6 you will retain a copy of each signed sales voucher and the receipt for a period of at least 180 (one hundred and eighty) days from the date of the transaction; and
  - 8.1.7 you will not attempt to limit your liability by asking or requiring Cardholders to waive their dispute rights in your favour.
- 8.2 In terms of additional Transaction functionality with the Yoco App, you will be able to –
- 8.2.1 reverse Transactions on the same day back to the Cardholder;
  - 8.2.2 refund a Transaction for up to 90 (ninety) days back to the Cardholder;
  - 8.2.3 send / resend receipts to the Cardholder;
  - 8.2.4 view your Transaction data in different ways;
  - 8.2.5 update your business details (e.g. including your Bank Account, business trading address);
  - 8.2.6 add employees who can accept Cards under your Merchant Account;
  - 8.2.7 add and access Third Party Features, which are subject to their own separate terms and conditions; and
  - 8.2.8 perform any other actions using any functionality that Yoco may add to the Services from time to time.
- 8.3 You agree to manage all functions relating to the Transactions on your Merchant Account and agree to accept all risk connected and or related to managing these functions for as long as you are the Authorised Account Holder or until such time as the new Authorised Account Holder assumes these obligations.
- 8.4 You agree that we may share the details regarding your Transactions with our employees, agents, and Third Party Service Providers for training, research, analysis and operational business purposes, in accordance with our Privacy Policy.

## 9 BANK ACCOUNTS, SETTLEMENT AND INVOICING

- 9.1 Subject to clause 9.2, Yoco will, on a per-Transaction basis and in accordance with the Yoco Settlement Schedule, credit your Bank Account with the total net amount of valid Transactions presented for payment, LESS the fees as set out in clause 6.
- 9.2 For purposes of clause 9.1, Yoco is entitled to delay settlement and/or to withhold payment of settlement funds –
- 9.2.1 if there is any outstanding FICA Documentation from you; and/or
  - 9.2.2 for any of the reasons set out in clause 11.1.
- 9.3 You will receive a monthly settlement invoice, setting out –
- 9.3.1 the record of Transactions on your Merchant Account; and/or
  - 9.3.2 settlement payments made by Yoco to you in accordance with this clause.



## 10 AUDIT AND INSPECTION RIGHTS

- 10.1 You agree that you will, at your cost –
- 10.1.1 establish and maintain, complete and accurate books of account and financial records in relation to each Transaction authorised by you;
  - 10.1.2 provide Yoco with a copy of the statements relating to your Bank Account within 5 (five) business days of Yoco requesting such statements from you;
  - 10.1.3 provide Yoco with a copy of –
    - 10.1.3.1 to the extent available, any audited financial statements relating to your business, within 5 (five) days of such statements becoming available; or
    - 10.1.3.2 any unaudited financial statements relating to your business, within 5 (five) days of Yoco requesting such statements from you.
  - 10.1.4 provide and submit to Yoco such further information relating to the Services as Yoco may require in order to assist Yoco in the exercise of its rights or the discharge of its duties in terms of this Agreement.
- 10.2 You hereby authorize Yoco to share any such financials and / or bank statements received from you to the Acquiring Bank, if requested by the Acquiring Bank.
- 10.3 If, at any time, Yoco has cause to suspect that any fraudulent activity is taking place (in relation to anything relevant to this Agreement, the Services, any Transaction or on any other basis), Yoco (or its agent) may –
- 10.3.1 conduct physical inspections and investigations at your place of business, or at any other place that Yoco may consider relevant; and/or
  - 10.3.2 suspend your access to the Services, on terms determined by Yoco.

## 11 DISPUTES AND CHARGEBACKS

- 11.1 You agree that in the event of a Chargeback, Yoco may –
- 11.1.1 withhold the full value of the Chargeback amount in the Reserve Account, subject to clause 11.2;
  - 11.1.2 adjust the fees set out in the Fee Schedule;
  - 11.1.3 delay the payment of any settlement amounts into your Bank Account;
  - 11.1.4 terminate, modify or suspend your access to the Services; and/or
  - 11.1.5 debit the amount of any Chargeback and any associated fees, fines, or penalties applicable or imposed by any Association or any Third Party Service Provider from your Merchant Account (including without limitation any Reserve Account), any settlement funds due to you.
- 11.2 For purposes of clause 11.1.1, Yoco may withhold the amount of the potential Chargeback from settlements due to you until such time that –
- 11.2.1 a Chargeback is finally assessed in favour of a Cardholder, in which case Yoco will retain such funds;
  - 11.2.2 the period of time under applicable law or Association Rules by which the Cardholder may dispute the Transaction has expired; or
  - 11.2.3 Yoco determines that a Chargeback on the Transaction will not occur.





- 11.3 If Yoco is unable to recover funds related to a Chargeback for which you are liable, you will pay Yoco the full amount of the Chargeback immediately upon demand. You agree to pay all costs and expenses, including, without limitation, attorneys' fees on an attorney and own-client scale, incurred by Yoco in connection with the collection of all such amounts from you. For this purpose, you agree that Yoco shall be entitled to debit the full amount of any Chargeback from the Reserve Account. If you successfully defend any Chargeback claim in any South African court, you shall also be entitled to claim your attorneys' fees on an attorney and own-client scale.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 For the purposes of this clause, “**Purpose**” means (i) accessing and using the Services with any Compatible Device, for the purpose of accepting payments by the Merchant from Cardholders for goods and/or services provided by the Merchant and (ii) managing the settlement funds the Merchant receives from Yoco, in accordance with this Agreement.
- 12.2 For the duration of this Agreement and subject to your compliance with the payment obligations in clause 6 and the conditions and restrictions in this clause 12, Yoco grants you a personal, limited, non-exclusive, revocable and non-transferable license, without the right to sublicense, to use the Yoco Intellectual Property strictly for (and only to the extent required to achieve) the Purpose.
- 12.3 Unless expressly permitted in this Agreement, you agree that you will not (nor will you allow or enable any third party to) do, cause or attempt any of the following, namely –
- 12.3.1 copying, modifying, duplicating, creating derivative works from, framing, mirroring, republishing, downloading, displaying, transmitting, or distributing all or any portion of the Services or Yoco Intellectual Property in any form or media or by any means;
  - 12.3.2 reverse compiling, disassembling, reverse engineering or non-literal copying of all or any part of the Yoco Intellectual Property or otherwise reducing any computer programs forming part of the Yoco Intellectual Property to human-readable form;
  - 12.3.3 using the Yoco Intellectual Property to create any software, applications, products or systems whose expression is substantially similar to that of the Yoco Intellectual Property or any of the Services;
  - 12.3.4 accessing all or any part of the Services or Yoco Intellectual Property in order to build a product or service which competes with the Services;
  - 12.3.5 (sub-)licensing, selling, renting, leasing, transferring, assigning, distributing, displaying, disclosing, commercially exploiting (except as required to achieve the Purpose), or otherwise making the Services or Yoco Intellectual Property (including the Card, Compatible Devices and applicable hardware) available to any third party, unless agreed otherwise in writing with Yoco and subject to the Yoco Card Policies;
  - 12.3.6 challenging the validity or enforceability of, or Yoco's entitlement to use, any of the Yoco Intellectual Property;
  - 12.3.7 anything which may adversely affect the Yoco Intellectual Property or Yoco's rights in and to the Yoco Intellectual Property; or
  - 12.3.8 anything which brings or is likely to bring the Yoco Intellectual Property, the Services, Yoco or any other licensee of Yoco, into disrepute or which damages or is likely to damage the rights or interests of Yoco.
- 12.4 You agree that the Services are rented and not sold, and for this purpose, you agree that all rights, title and interest, including but not limited to all rights of ownership and copyright in or to the Yoco Intellectual Property shall continue to vest in Yoco and that you will not, under any circumstances whatsoever, acquire any rights (proprietary or otherwise) in or to the Yoco Intellectual Property.



- 12.5 In the event of you becoming aware of any infringement of Intellectual Property by Yoco in the course of rendering the Services or of any unauthorized use of the Yoco Intellectual Property or the Services, you shall inform Yoco thereof, in writing. To the extent necessary and applicable, Yoco shall, at its discretion, stop providing any infringing material and/or may replace the infringing material or may cancel this Agreement and refund you accordingly for the Card Reader.

## 13 WARRANTIES

### 13.1 You warrant to Yoco that –

- 13.1.1 you truthfully and accurately disclosed the nature of your business to Yoco upon your registration with Yoco;
- 13.1.2 your business does not involve offering goods and/or services to or in respect of any business listed on the Website or which Yoco may identify, from time to time, due to regulatory, risk or operational reasons, and which has been notified to you by Yoco no later than 2 (two) months before they become enforceable by Yoco;
- 13.1.3 you are not a payment service provider;
- 13.1.4 you are at least 18 (eighteen) years of age;
- 13.1.5 you are eligible to register and use the Services and have the right, power, and ability to enter into and perform under this Agreement;
- 13.1.6 the name identified by you when you registered with Yoco is your name or business name under which you sell goods and/or services;
- 13.1.7 you are the Authorised Account Holder and that you will inform Yoco, in writing, if there is any change to your Authorised Account Holder status or details and warrant that you will provide any additional FICA-related documentation, as may be required, from time to time;
- 13.1.8 any Transaction submitted by you will represent a genuine sale by you;
- 13.1.9 any Transactions submitted by you will accurately describe the goods and/or services sold and delivered to a Cardholder;
- 13.1.10 you will fulfill all of your obligations to each Cardholder for which you submit a Transaction and will resolve any consumer dispute or complaint directly with the Cardholder;
- 13.1.11 you will, and all Transactions initiated by you, will comply with all provincial, national laws, rules, and regulations applicable to you and/or your business and employees;
- 13.1.12 except in the ordinary course of business, no Transaction submitted by you through the Services will represent a sale to any principal, partner, proprietor, or owner of your business;
- 13.1.13 you will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Services;
- 13.1.14 no Transaction submitted by you through the Services will involve your Cards (except for reasonable test swipes);
- 13.1.15 your use of the Services will be in compliance with this Agreement;
- 13.1.16 you have never had a contract with a Card Association which contract was terminated at the direction of Card Association or any regulatory authority or court of law.

### 13.2 THEREFORE, PLEASE NOTE THAT –

- 13.2.1 Yoco shall take reasonable steps to ensure that the Services are delivered in accordance with this Agreement and that on discovery of any defects, these are addressed timeously,



however, due to the nature of the Services, these are necessarily provided on an “as is” and “as available” basis to the maximum extent permitted by applicable law;

- 13.2.2 by signing this Agreement, you understand that use of the Services may have certain risks, and that due to the nature of the Services, use of these is at your own risk (please ensure that you guard against these risks appropriately);
- 13.2.3 to the maximum extent permitted by applicable law, the Services are provided without warranties of any kind;
- 13.2.4 Yoco does not warrant –
  - 13.2.4.1 that the Services will meet your requirements;
  - 13.2.4.2 that the Services will be available at any particular time or location, uninterrupted or secure;
  - 13.2.4.3 that any defects or errors in the Services will be corrected; or
  - 13.2.4.4 that the Services are free of viruses or other harmful components.

## 14 LIMITATION OF LIABILITY

- 14.1 Subject to section 14.2 below, to the maximum extent permitted by applicable law, neither Yoco nor the Third Party Service Providers (and their respective employees, shareholders, directors, agents, affiliates and representatives, in whose favour this clause is a third party stipulation, capable of acceptance in writing at any time) shall be liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data, or other intangible losses, that result from:
  - 14.1.1 your use of, inability to use, or unavailability of the Services;
  - 14.1.2 hacking, tampering, or other unauthorised access or use of the Services or your Merchant Account;
  - 14.1.3 errors, mistakes, or inaccuracies of the Services
  - 14.1.4 even if the alleged liability is based on contract, delict, negligence, strict liability, or any other basis, and even if Yoco has been advised of the possibility of such damage.
- 14.2 If you qualify as a consumer in terms of the Consumer Protection Act 68 of 2008, the limitation of liability in section 14.1 above will not apply to any loss directly or indirectly caused through the gross negligence of Yoco or the Third Party Service Providers (and their respective employees, shareholders, directors, agents, affiliates and representatives).

## 15 INDEMNITY

- 15.1 Subject to section 15.2 below, to the maximum extent permitted by applicable law you agree to indemnify and hold harmless Yoco and the Third Party Service Providers (and their respective employees, shareholders, directors, agents, affiliates and representatives in whose favour this clause is a third party stipulation, capable of acceptance in writing at any time) from and against any and all claims from any third parties, for costs, damages (including, without limitation, direct, indirect, extrinsic, special, penal, punitive, consequential or exemplary loss or damage of any kind), penalties, actions, judgements, suits, expenses, disbursements, fines or other amounts that arises out of or relates to -
  - 15.1.1 any actual or alleged breach of your warranties or obligations set out in this Agreement, including, without limitation, any breach of the Yoco Operational Rules or the Association Rules by you;



- 15.1.2 any Transaction submitted by you through the Services; or
- 15.1.3 your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property rights.
- 15.2 If you qualify as a consumer in terms of the Consumer Protection Act 68 of 2008, the indemnity in section 15.1 above will not apply to the extent that a claim relates to loss directly or indirectly caused through the gross negligence of Yoco or the Third Party Service Providers (and their respective employees, shareholders, directors, agents, affiliates and representatives).

## 16 SECTION 43 DISCLOSURE IN TERMS OF THE ELECTRONIC COMMUNICATION AND TRANSACTIONS ACT 25 OF 2002

- 16.1 Site owner: Yoco Technologies Proprietary Limited (Trading as Yoco);
- 16.2 Legal status: Yoco is a private company, duly incorporated in terms of the applicable laws of South Africa;
- 16.3 Registration No: 2013/203377/07;
- 16.4 Director(s): Katlego Modise Selekane Maphai, Carl Wazen, Monica Brand Engel, Cyril Collon;
- 16.5 Description of main business of Yoco: Card payment systems;
- 16.6 E-mail address: legal@yoco.com;
- 16.7 Website addresses: <https://www.yoco.co.za/> and <https://www.yoco.com/>;
- 16.8 Physical Address: 7<sup>th</sup> Floor, 56 Shortmarket Street, Cape Town, 8001;
- 16.9 Postal Address: Postnet Suite 303, Private Bag X3, Roggebaai, Western Cape, 8012; and
- 16.10 Registered Address: 7<sup>th</sup> Floor, 56 Shortmarket Street, Cape Town, 8001.

## 17 DISPUTE RESOLUTION

- 17.1 You agree that any dispute that arises in terms of this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) must be dealt with and be formally decided by way of arbitration.
- 17.2 For purposes of this clause 17.1–
  - 17.2.1 the arbitration will be held at Cape Town;
  - 17.2.2 the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa;
  - 17.2.3 the arbitrator will be an impartial admitted attorney whether practicing or non-practicing of not less than 10 (ten) years experience appointed by Yoco;
  - 17.2.4 you agree to keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential;
  - 17.2.5 the arbitrator shall be obliged to give his award in writing fully supported by reasons, and the arbitrator's award shall be final and binding on you and Yoco; and
  - 17.2.6 the costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the arbitration shall be borne by you and Yoco in equal shares and shall be recoverable, as costs in the cause under the provisions of any award.

## 18 ADDRESS FOR SERVICE

18.1 Yoco nominates the address set out below as the address it will receive all communications required in terms of this Agreement –

Physical: 7<sup>th</sup> Floor, 56 Short-market Street, Cape Town, 8000, South Africa

Postal: Postnet Suite 303, Private Bag X3, Roggebaai, Cape Town, 8012, South Africa

E-mail: [support@yoco.com](mailto:support@yoco.com)

18.2 You nominate the address set out in your application as the address it will receive all communications required in terms of this Agreement. You may change this address at any time through the Website.

## 19 GOVERNING LAW AND SUBMISSION TO JURISDICTION

19.1 This Agreement will be governed at all times by the substantive laws of South Africa.

19.2 You agree that any legal action or proceedings arising out of or in connection with the terms of this Agreement and/or use of the Services, whether directly or indirectly, will be brought in any competent court in the High Court of South Africa (Western Cape Division, Cape Town).

## 20 ENTIRE AGREEMENT

20.1 This Agreement sets out the entire agreement between you and Yoco relating to our use of the Services and replaces any other discussions, agreements and/or understandings regarding your use of the Services.

20.2 Yoco is entitled, at any time, and from time to time, to amend the terms of this Agreement. If Yoco amends the terms of this Agreement, it will immediately take reasonable steps to notify you of the amendments. IT IS YOUR RESPONSIBILITY TO REVIEW AND BE FAMILIAR WITH THE AMENDMENTS TO THE TERMS OF THIS AGREEMENT. All amendments to this Agreement contemplated in this clause will become effective 5 (five) days of the date on which you receive the notification referred to in this clause.

20.3 If you do not agree to any amendments to this Agreement, you must –

20.3.1 stop using the Services; and

20.3.2 cancel your Merchant Account,

before the date on which the amendment becomes effective, as described in clause 20.2.

20.4 You will not be entitled at any time to transfer any of your rights or any of your obligations set out in this Agreement.

20.5 Yoco will, at all times, be entitled to exercise its rights to the fullest in terms of this Agreement, even if it has previously not exercised such rights.

