

## CASH MANAGEMENT SERVICE AGREEMENT

entered into between

### **ALTA CASH MANAGEMENT CC**

(Registration number: \_\_\_\_\_ / \_\_\_\_\_ / 23)

(VAT Registration number: \_\_\_\_\_)

and

\_\_\_\_\_

(Registration number: \_\_\_\_\_ / \_\_\_\_\_ / \_\_) **OR** (Identity number : \_\_\_\_\_)

(VAT Registration number: \_\_\_\_\_)

**WHEREBY IT IS AGREED AS FOLLOWS:**

**PART 1: INTERPRETATION AND PRELIMINARY**

**1. INTERPRETATION AND PRELIMINARY**

The headings to the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears –

1.1. words importing –

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and vice versa; and

1.1.3. natural persons include created entities (corporate or unincorporated) and vice versa;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely-

1.2.1. "agreement" means this agreement together with any annexures or schedules attached hereto;

1.2.2. "Alta" means Alta Cash Management Services CC, as more fully described on the cover page;

1.2.3. "Alta account" means the bank account opened by, held by and operated by Alta at local Bank for purposes of receiving cash deposits and transferring same to the designated account of the Alta client in question;

1.2.4. "Alta fee" means the fee, inclusive of value added tax, chargeable by Alta and payable by the Client for the provision of the services;

1.2.5. "business day" means any day other than a Saturday, Sunday or public holiday recognised as such under the Public Holidays Act, 1994;

1.2.6. "cash deposit" means any and all cash deposited by one or more clients of Alta at E-DEPOSIT'S LOCAL BANK ACCOUNT into the Alta

- account;
- 1.2.7. "Client" means [insert name of client], as more fully described on the cover page;
- 1.2.8. "Client bank account" means the bank account designated by the Client at a nominated bank, the account details of are, as at date of signature hereof, [insert bank account details];
- 1.2.9. "Client Deposit" means any and all cash, the quantum of which is determined by E-DEPOSIT'S LOCAL BANK , as may be deposited from time to time by the Client into the Alta account in terms of this agreement;
- 1.2.10. "discretion" means a sole, absolute and unfettered discretion of the party entitled to exercise same in terms of this agreement;
- 1.2.11. "EFT" means electronic funds transfer;
- 1.2.12. "FICA" means Financial Intelligence Centre Act, 38 of 2001;
- 1.2.13. "nominated bank" means, as at date of signature hereof \_\_\_\_\_ being a bank in South Africa registered in accordance with the applicable laws regulating banks in South Africa, or such other bank as may be nominated in writing by the Client from time to time;
- 1.2.14. "NPS" means the National Payment System as defined in the National Payment System Act ,78 of 1998;
- 1.2.15. "parties" means the Client and Alta or where the context requires, either one of them;
- 1.2.16. "SARB directive" means directive number 1 of 2007 issued by the South African Reserve Bank providing for conduct within the national payment system in respect of payment to

- third persons;
- 1.2.17. "service" means the online and telephonic platform developed by Alta in terms of which Client Deposits are transferred, or are to be transferred, by EFT to the Client bank account as contemplated and regulated by this agreement;
- 1.2.18. "sponsoring bank" means LOCAL BANK;
- 1.2.19. "UCC" means a unique client code generated by Alta for each client and given by Alta to the relevant client, which is to be used by that client when processing any cash deposit and used by Alta when processing any EFT or payment or transacting any other business contemplated in this agreement;
- 1.2.20. "written notice" means notice given in writing and transmitted by delivery, telefax or email;
- 1.3. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligation on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.5. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
- 1.8. where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that the term has not been defined in this interpretation clause; and

1.9. the rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.

## 2. **RECORDAL**

It is recorded that: -

- 2.1. Alta was established as a business, in accordance with applicable laws of South Africa to facilitate the generation of savings on bank charges for cash deposits;
- 2.2. Alta has concluded an arrangement with Local Bank of South Africa in terms of which the bank will receive deposits of Alta clients into a specified bank account, where the cash deposit fee therefore will be charged to and be payable by Alta, and in turn Alta will a fee to that client for processing the cash deposit and transferring the funds so deposited by that client into that client's designated bank account;
- 2.3. in terms of the Alta arrangement with the Local Bank of South Africa, the bank charges Alta a discounted cash deposit fee from that which would ordinarily be payable by customers of the bank, and is generally lower than the cash deposit fee that would ordinarily be charged by any of the first tier retail banks in South Africa for the same service;
- 2.4. Alta has developed for itself a system which enables it to electronically identify a client's cash deposit through the UCC and electronically transfer the funds of that client's cash deposit to that client's designated bank account, provided such client bank account is held by a bank in South Africa registered in accordance with the applicable laws regulating banks in South Africa;
- 2.5. Alta is neither a bank, a deposit-taking institution, a credit provider nor a financial services provider, and is accordingly not regulated by the Banks Act 94 of 1990 (as amended), the National credit Act 34 of 2005, nor the Financial Services Board;
- 2.6. the Client wishes to make use of Alta's service offering by making cash deposits at E-deposit's Local Bank Account from time to time, to enable Alta to transfer the funds of such deposit(s) to a designated account in any nominated bank stipulated by the Client; and
- 2.7. the parties wish to record the terms of their agreement in writing.

## **PART II - SERVICE**

## 3. **CONDITION**

The conclusion, validity and implement-ability of this agreement is conditional on the Client at all times having a valid and operational Client bank account.

#### 4. **THE SERVICE**

- 4.1. Alta shall provide the service subject to applicable legislation and in particular the rules and the directives of the SARB.
- 4.2. The Client hereby requests and authorises subject to the terms of this agreement, Alta to -
  - 4.2.1. transfer the funds of any and all Client Deposits in the Alta account;
  - 4.2.2. ensure the transfer through EFT to the Client bank account of any interest, and other benefits, if any, arising from any Client Deposit; and
  - 4.2.3. retain, transfer or deal with funds in or from any Client Deposit in accordance with any order of a competent court or directive or ruling of any competent statutory authority;
- 4.3. In terms of the SARB directive Alta undertakes -
  - 4.3.1. to keep records of payments to third persons which must include, *inter alia*, the date, amount and beneficiary of the transaction and further, that such records will be kept for a period of five years; and
  - 4.3.2. ensure that the systems it uses, are safe and efficient so as not to introduce risk, including reputational risk into the NPS.
- 4.4. Any all Client Deposit funds will be transferred by EFT to the Client's designated bank account.

#### 5. **TERMS AND CONDITIONS**

- 5.1. The Client confirms that it has reviewed *inter alia*, all documentation provided to it by Alta, and that it has concluded this agreement of its own free will.
- 5.2. Subject to the provisions of clause 11 (Exclusion of Liability), Alta undertakes at all times to act in the best interests of the Client when dealing with Client deposit funds.
- 5.3. Alta has no restrictions as to the minimum or maximum amount that the Client may deposit in cash into the Alta account in terms of this agreement.
- 5.4. Alta reserves the right at any time to change or discontinue the service on written notice to the Client, without retaining any Client Deposit funds, save any Alta fee then due and payable.

- 5.5. The parties agree that there shall be periodic changes to the pricing of the Alta fee set out in this agreement, and that such changes will be communicated by written notice 30 (thirty) days prior to the effective date of the change in question.
- 5.6. If the notified fee structure change is not acceptable to the Client, the Client shall be entitled on 30 (thirty) days written notice to Alta to terminate this agreement.
- 5.7. If the Client the does not respond to the written notice in clause 5.3, or proceeds to use the services after such changes have been communicated to the Client, the Client agrees that it will be deemed to have accepted the terms of conditions of the changed fee structure as notified.

### **PART III - RIGHTS AND OBLIGATIONS OF THE PARTIES**

#### **6. RISK DISCLOSURE**

- 6.1. Alta undertakes to proceed with an EFT on behalf of the Client as soon as the Client Deposit is reflected on Alta's system.
- 6.2. Any Client Deposit made later than 15h00 on any business day will only be transferred by Alta by way of EFT on the next business day and Client Deposit made after 10h00 on any Saturday will only be transferred on the next Monday.
- 6.3. The Client further acknowledges that it is aware of the risks pertaining to cash deposits including the fact that there could arise an inherent time delay in respect of when E-DEPOSIT'S LOCAL BANK ACCOUNT receives an instruction and when such instruction is executed on Alta's server during which time there could be a delay in the EFT.
- 6.4. In the event of any failure, interruption or delay in the performance of Alta's obligations in terms of this agreement, resulting from acts, events, circumstances not within Alta's control, including but not limited to, acts of God, acts or regulations of any governmental authority, or of any exchange or clearing house or the breakdown, failure or malfunction of any electronic, telecommunication or postal service, Alta shall not be liable to the Client or any authorised representative or any third party for or in respect of any direct, indirect or consequential liability, loss, damage or cost of any kind or nature.
- 6.5. Alta is afforded, by the Client, a grace period of 4 (four) business days to transfer the funds of any Client Deposit by way of EFT in the event of the said failure, interruption or delay in the performance of Alta's obligations in terms of this agreement, failing which Alta will become liable to repay the funds of any affected Client Deposit to client, together with any interest accumulated from the date of the Client Deposit up until but not including, the day of transfer of the Client Deposit funds together with the interest to the Client bank account.

- 6.6. In the event that transfer cannot take place via E-DEPOSIT'S LOCAL BANK ACCOUNT and/or the ALTA system, for any reason whatsoever, the Client shall be notified of such failure to transfer, via email and/or mobile telephone text short message system (sms). Alta in this instance(s) shall not be liable for any financial loss, damage nor any cost of any nature (direct or indirect) which may be suffered or incurred by the Client or any of its agents or counterparties, and the Client hereby indemnifies Alta accordingly.
- 6.7. In the event that ALTA erroneously transfers funds to a Client's account, the Client is afforded by ALTA, 3 (three) business days to transfer the funds back into ALTA's account, failing which the Client will become liable to repay the funds to ALTA, together with any interest accumulated from the date of the erroneous transfer up until but not including, the day of transfer of the funds to ALTA.

## 7. **CONFIDENTIALITY AND USE OF INFORMATION**

- 7.1. The parties shall treat as strictly confidential all information received or obtained from the other Party as a result of entering into or performing this agreement which relates to -
  - 7.1.1. the provisions of this agreement;
  - 7.1.2. the negotiations relating to this agreement;
  - 7.1.3. the subject matter of this agreement; and/or
  - 7.1.4. any information relating to the other party.
- 7.2. The parties may disclose information which would otherwise be confidential if and to the extent -
  - 7.2.1. required by law;
  - 7.2.2. required by any securities exchange or regulatory or governmental body to which either party is subject, wherever situated, whether or not the requirement for information has the force of law;
  - 7.2.3. required to vest the full benefit of this agreement in either party;
  - 7.2.4. disclosed to the professional advisers or auditors of each party provided that such professional advisers or auditors sign a confidentiality undertaking in this regard;
  - 7.2.5. the information has come into the public domain through no fault of that party;

- 7.2.6. the other party has given prior written approval to the disclosure; provided that any information so disclosed shall be disclosed only after prior written notification to the party.

## 8. **SECURITY**

- 8.1. The Client undertakes to comply with all security procedures provided by Alta to the Client whether supplied electronically, by post or by hand, including, where relevant, those set out in any Terms and Conditions. This clause is to be read together with any provisions regarding security in the Terms and Conditions. In addition, the Client undertakes to take all reasonable precautions to prevent fraudulent or unauthorised use of or access to the Client's security details and of the UCC.
- 8.2. The Client is required contact Alta's contact centre immediately by telephone to be confirmed in writing by the Client to Alta within 24 (twenty four) hours of such telephone call if the Client has grounds to suspect any unauthorised disclosure of the Client's security details or any breach of the security procedures prescribed by Alta (including unauthorised access to the Client's security details or the UCC).
- 8.3. Where the Client has informed Alta in writing that an instruction was not given by the Client and is to be cancelled, the Client will not be responsible for that instruction if Alta has not acted upon it and is able to cancel it by using its reasonable endeavours to do so. If Alta is unable to cancel the instruction for any reason after having employed all reasonably commercial endeavours, Alta shall not be liable to the Client for any losses, damages, costs or claims which the Client incurs and the Client shall indemnify and hold Alta harmless against any losses, damages, costs or claims which the Client may suffer or incur.
- 8.4. The Client shall use its best efforts to comply with Alta's instructions on steps to remedy any breach of the Client's security details, including but not limited to providing Alta with information which it may reasonably request relating to the Client's use of the UCC and co-operating with Alta in any related investigation.

## 9. **ALTA FEE**

- 9.1. the fee payable by Client will be determined according to ALTA's pricing structure, attached hereto as Annexure "A";
- 9.2. the Client will be charged for services rendered by ALTA at the end of every month;
- 9.3. the amount due and payable in terms of any invoice issued by ALTA must be paid on or before the 7<sup>th</sup> business day from date of the invoice, failing which the outstanding amount will be deducted from the next Client deposit.

## 10. **PUBLICITY**

Alta shall, at its discretion from time to time through media, (print and electronic) and newsletters to its clients and such other medium as it may deem appropriate, provide the Client with information pertaining to: -

- 10.1. services available;
- 10.2. benefits then available; and
- 10.3. large cash deposit discounts.

## 11. **EXCLUSION OF LIABILITY**

- 11.1. Alta makes and offers no warranty in respect of any benefits that the Client employing the service may derive, and the Client shall have no claim against Alta arising from or out of any loss, damage, injury or the like or any cause whatsoever suffered or incurred during, before or after any Client Deposit, save where occasioned by the wilful or negligent conduct of Alta.
- 11.2. Alta does not make or offer any warranty in respect of any benefit, and does not warrant seamless availability thereof.
- 11.3. Alta shall not be held liable or accept responsibility for -
  - 11.3.1. any expenses, losses, or damages incurred as a result an unsuccessful or delayed application for a Client bank account from any nominated bank;
  - 11.3.2. any losses, liability, or damages incurred by the Client due to the suspension of the service or any component thereof, occasioned by a force majeure event(s);
  - 11.3.3. any losses, liability or damages incurred by the Client due to the suspension or closing of the Client bank account for whatever reason;
  - 11.3.4. any losses, liability or damages incurred by the Client due to lawful termination of this agreement by Alta;
  - 11.3.5. any losses, damages or liability incurred by the Client as a result of fraud or any other actions committed by customers and/or suppliers of the Client including but not limited to repudiated transactions, card skimming, bank claw-backs and the like; or
  - 11.3.6. any losses or damages incurred by the Client as a result of any failure, fault, or suspension in the services and systems of other service providers upon which the services rendered by Alta rely; or
  - 11.3.7. save as may otherwise be provided for in this agreement, any losses or damages, howsoever arising, of whatsoever nature.

## 12. **FICA DOCUMENTATION REQUIREMENT**

Notwithstanding the fact Alta is not a bank, not a deposit taking institution or a credit provider as contemplated in the Banks Act, 94 of 1990 (as amended) and the National Credit Act, 34 of 2005 the parties are agreed that for sake of good order and governance, the Client will, on signature of this agreement, as soon as may be reasonably following signature of this agreement, furnish to ALTA documentation required in terms of FICA for the know your client requirements.

## 13. **TERMINATION**

13.1. This agreement shall terminate forthwith on the occurrence of one or more of the following events, namely -

13.1.1. when the contract period of 12 months has elapsed and the client has provided Alta with notice of cancellation 45 days prior to the end of the contract period;

13.1.2. when either the client or Alta commits an act of insolvency, is declared insolvent by Court or is placed in liquidation, where provisional or final;

13.1.3. the client has committed fraud, is suspected of committing fraud, or has committed an illegal act using the systems and services provided by Alta and/or its sponsoring bank or its other service providers;

13.1.4. in terms of clause 16 when the aggrieved party exercises its entitlement to cancel this agreement as provided for in clause 14; or

13.1.5. Alta elects to terminate this agreement, by giving 5 (five) business days written notice to that effect to the Client.

13.2. If the Client continues at any time after termination of this agreement to make Client Deposits, Alta shall provide the service in respect of each such deposits and fee equal twice the Alta fee which would otherwise have been due and payable by the Client had this agreement not been terminated.

## **PART IV - GENERAL**

### 14. **BREACH**

If any party breaches any material provision or term of this agreement (other than those which contain their own remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it or him/her to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances) then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it or

him/her at law or under this agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

15. **ARBITRATION**

15.1. Save in respect of those provisions of the agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to -

15.1.1. the interpretation of; or

15.1.2. the carrying into effect of; or

15.1.3. any parties' rights and obligations arising from; or

15.1.4. termination or purported termination of or arising from the termination of;  
or

15.1.5. rectification or proposed rectification of,

of this agreement, or out of or pursuant to this agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

15.2. Either one or both of the parties shall be entitled, as soon as reasonably practicable, to refer any dispute to arbitration in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA") or its successor body, for arbitration by an arbitrator appointed in accordance with the AFSA rules. The arbitrator's decision shall be final and binding on the parties. The arbitrator may make an award as to his costs.

15.3. The arbitration shall be:

15.3.1. held in Pretoria;

15.3.2. conducted in the English language; and

15.3.3. subject to the procedural and substantive laws of the Republic of South Africa where the AFSA rules are silent.

16. **WHOLE AGREEMENT, NO AMENDMENT**

16.1. This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

16.2. No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or

executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

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

16.4. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

17. **DOMICILIUM**

17.1. The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

17.1.1. Alta -

Physical:

Postal:

Tel:

Telefax:

E-mail:

Attention:

17.1.2. Client –

Physical:

Postal:

Tel/fax:

E-mail:

Attention:

- 17.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 17.3. Either party may by notice to the other party change the physical address chosen as its domicilium citandi et executandi to another physical address or its telefax number, provided that the change shall become effective on the business day from the deemed receipt of the notice by the other party
- 17.4. Any notice to a party –
- 17.4.1. sent by prepaid registered post (by airmail) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 10<sup>th</sup> (tenth) business day after posting (unless the contrary is proved);
  - 17.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chose as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
  - 17.4.3. sent by telefax to its chosen telefax number stipulated in clause 17.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 17.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.
- 17.6. The parties record that whilst they may correspond via email during the currency of this agreement, no formal notice required in terms of this agreement, nor any amendment or variation hereto may be given or concluded via email unless specifically provided for otherwise.
18. **NO CESSION OR ASSIGNMENT**
- The Client shall not be entitled to cede its, his/her rights or assign its, his/her rights and obligations hereunder to any third party. Alta shall be entitled to cede and assign its rights hereunder.
19. **JOINT AND SEVERAL LIABILITY OF CLIENT**

If the Client is comprised of two or more persons or is a partnership, the obligations of the persons comprising the Client vis-à-vis Alta shall be joint and several.

20. **JURISDICTION**

This agreement is governed by the procedural and substantive laws of the Republic of South Africa.

21. **AUTHORITY TO BIND**

Each party warrants and represents to the other that it has taken or caused to be taken all steps, actions and corporate procedures necessary to cause this agreement to be binding upon it, him or her. Each party shall, if requested by the other party, furnish sufficient evidence of the authority of the person or persons who will, on behalf of the party so requested, take any action or execute any documents required or permitted to be taken or executed by such party under this agreement.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

DATE                      PLACE                                      NAME AND SIGNATURE

*[name and position of signatory]*

For: **ALTA CASH MANAGEMENT CC**

*[signature]*

DATE                      PLACE                                      NAME AND SIGNATURE

*[name and position of signatory]*

For:

*[signature]*