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1 Parties

- 1.1 PAYCENTRAL Proprietary Limited, with Registration Number: 2016/169366/07, a private company with limited liability, incorporated in terms of the laws of the Republic of South Africa; and
- 1.2 [Insert full company name],
a private company with limited liability/close corporation, incorporated in terms of the laws of the Republic of South Africa, each hereinafter referred to individually as a "party" and collectively as the "parties".

2 Interpretation

- 2.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.
- 2.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 2.2.1 **Agreement** shall mean this confidentiality and non-disclosure agreement;
- 2.2.2 **Business Day** shall mean any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.2.3 **Confidential Information** shall mean the proprietary information of the Disclosing Party and any information, excluding the Excluded Information, whether in written, graphic, oral, tangible, intangible, electronic or other form relating to the negotiations or transactions between the parties, all intellectual property, trade secrets, information and know-how relating to fields of activity within which the Disclosing Party operates or intends to operate, the policies of the Disclosing Party the know-how, formulae, statistics, processes, business plans, business methods, marketing, pricing, trading and merchandising methods and information, research and product development, business strategies, promotional plans, specifications, records, drawings, reports, samples, financial information, financial models, inventions, long-term plans, user and consumer data, databases and profiles, computer software, contractual business and financial arrangements with third parties, trade secrets, information regarding the personnel and directors and other employees and agents of the Disclosing Party and shall include any other information which:
- 2.2.3.1 is disclosed by the Disclosing Party to the Receiving Party and/or its representatives, irrespective of whether the information is novel, unique, patentable, copyrightable or constitutes a trade secret;
- 2.2.3.2 is notified by the Disclosing Party as being confidential; and/or
- 2.2.3.3 any other information which by its nature is deemed to be confidential information;
- 2.2.4 **Discloser Intellectual Property** shall mean the Intellectual Property owned by the Disclosing Party or that the Disclosing Party may adopt or otherwise acquire, develop and/or register, from time to time;
- 2.2.5 **Disclosing Party** shall have the meaning ascribed to it in clause 3.2;

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- 2.2.6 Discussions shall have the meaning ascribed to it in clause 3.1;
- 2.2.7 **Excluded Information** shall mean any information that:
- 2.2.7.1 the Receiving Party can show was known to or in its possession prior to disclosure thereof by the Disclosing Party;
- 2.2.7.2 is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by any party;
- 2.2.7.3 the Receiving Party can show was developed independently by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;
- 2.2.7.4 the Receiving Party is obliged to disclose to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time, provided that in these circumstances, the Receiving Party shall give the Disclosing Party the right and opportunity to take whatever steps it deems necessary to protect its interests in this regard, and provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and will use its best endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 2.2.7.5 is disclosed by the Receiving Party to a third party pursuant to and in accordance with the prior written authorisation of the Disclosing Party;
- 2.2.7.6 is lawfully received by the Receiving Party from a third party who did not obtain it under a pledge of secrecy from the Disclosing Party or in circumstances that do not result in a breach of the provisions of this Agreement;
- 2.2.8 **Intellectual Property** shall mean any and all intellectual property rights including but not limited to patents and patent applications, trade marks, trade names, designs, brand names, brand marks, trade dress rights, together with the goodwill associated with any of the foregoing, including applications, registrations and renewals thereof, copyrights and works of authorship, proprietary, confidential or non-public information, processes, designs, drawings, specifications, formulae, databases, models, methods, research and development, know-how, trade secrets, technical data and other technical proprietary information; and
- 2.2.9 **Receiving Party** shall have the meaning ascribed to it in clause 3.2.

3. INTRODUCTION

- 3.1 The parties intend on entering into discussions, negotiations, engagements and communications with a view to conclude a business relationship which will develop various platforms and systems for a prepaid card online portal which, inter alia, includes gift cards, virtual cards and international cards (the "Discussions").
- 3.2 The parties wish to protect any Confidential Information which either party (the "Disclosing Party") may disclose to the other (the "Receiving Party") during the Discussions.

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4. NATURE OF INFORMATION

Each party asserts that its Confidential Information is a valuable asset proprietary to it and that the unauthorised disclosure or use of the Confidential Information might result in financial or other harm which may be irreparable.

5. UNDERTAKING

- 5.1 The Receiving Party undertakes to the Disclosing Party that it will not, during the course of their Discussions and/or negotiations nor thereafter disclose or divulge, directly or indirectly, the Confidential Information to any third party for any reason or purpose whatsoever without the express prior written consent of the Disclosing Party. The Receiving Party further undertakes to protect the Confidential Information using the same degree of care it applies to protecting its own proprietary, secret or confidential information, which in any event shall be no less than reasonable care.
- 5.2 The parties agree and acknowledge that the Confidential Information may be disclosed to employees, professional advisors, agents and consultants on a need-to-know basis and strictly in relation to the Discussions and negotiations referred to and each party undertakes to take all steps necessary to procure that such persons agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to third parties.
- 5.3 The parties also each undertake not to use, exploit or in any other manner apply the Confidential Information disclosed to it for any purpose other than the purpose for which it was disclosed save with the prior written consent of that party.

6. INDEMNITY

expense, claim, harm, damage or liability of whatever nature suffered or sustained by the innocent party resulting from any action, proceeding or claim made by any person against the innocent party as a result of the breach of this Agreement by the defaulting party or any of its employees, agents, independent contractors or consultants.

7. INTELLECTUAL PROPERTY AND TITLE TO INFORMATION

- 7.1 All Confidential Information disclosed by Disclosing Party to the other is acknowledged by the Receiving Party to be proprietary to the Disclosing Party and disclosure does not confer any rights whatsoever in the Confidential Information on the Receiving party shall be and remain the property of the Disclosing Party.
- 7.2 All ownership rights in respect of all existing and future and/or Discloser Intellectual Property shall vest exclusively in the Disclosing Party, both during the subsistence and after the termination of this Agreement.
- 7.3 The Receiving Party agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that it applies to safeguard its own proprietary, secret or confidential information and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

8. RETURN OF INFORMATION

Either party may at any time request the other party to return any Confidential Information, in whatever form, disclosed in terms of this Agreement or to destroy such information and to provide a written statement, if required, that all the information has been returned or destroyed. Any such information shall be returned or destroyed within a reasonable time not exceeding 10 (ten) days.

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9. DURATION

This Agreement shall commence on the date of last signature hereof and the obligations undertaken in this Agreement shall continue in perpetuity.

10. NO OBLIGATION TO DISCLOSE

Notwithstanding any other provision to the contrary herein, this Agreement does not create any obligation on either party to disclose any particular Confidential Information to the other, all disclosures being at all times within the sole discretion of the parties.

11. BREACH

The parties agree that in the event that either party ("Defaulting Party") commits a breach of this Agreement, the other party ("Aggrieved Party") shall, if it wishes to enforce its rights hereunder, be obliged to give the Defaulting Party 10 (Ten) Business Days written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement or to claim immediate payment and/or performance by the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law, provided always that, notwithstanding anything to the contrary contained in this Agreement, the Aggrieved Party shall not be entitled to cancel this Agreement, for any breach by the Defaulting Party unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment in money, or if it is incapable of being remedied by a payment in money, the Defaulting Party fails to pay the amount concerned within 10 (Ten) Business Days after such amount has been determined.

12. DISPUTE RESOLUTION

12.1 If a dispute between the parties arises out of or is related to this Agreement, including any matter relating to the breach of any of the provisions of this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after 30 (thirty) days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved the matter shall be determined in accordance with the following provisions.

12.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with this Agreement will be finally resolved by arbitration as follows:

12.2.1 the arbitrator shall be a practising attorney or practising advocate of not less than 15 (fifteen) years standing. The party calling the dispute (the referring Party) shall nominate in writing, 3 (three) arbitrators of its choice to determine the dispute and shall furnish such nomination to the other parties. The other parties shall, within 14 (fourteen) days after receipt of the nomination, nominate 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated in this clause 12. In the event that the other parties fail to nominate or fail to agree on the arbitrator to be appointed as contemplated herein, the referring party shall, in its sole discretion, be entitled to appoint 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated herein;

12.2.2 the arbitration shall be held at [insert location];

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- 12.2.3 he arbitration shall otherwise be held in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA"), or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and the provisions of the Arbitration Act, 1965;
- 12.2.4 the arbitrator shall be entitled to:
- 12.2.4.1 Investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
- 12.2.4.2 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate; and
- 12.2.4.3 the arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 12.3 This clause 12 will be severable from the rest of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
- 12.4 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the parties and each party shall in such circumstances continue to comply with their obligations in terms of this Agreement.
- 12.5 Nothing herein contained shall preclude any of the parties to this Agreement from approaching a court of competent jurisdiction for an interdict or for relief on an urgent basis.

13. DOMICILIUM AND NOTICES

- 13.1 The parties choose an address for the purposes of the giving of any notice, the serving of any process, the payment of any monies and for any other purpose arising from this Agreement, as follows:

PAYCENTRAL PTY LTD
Silverpoint Office Park, 22 Ealing Cres, Bryanston,
Johannesburg, 2191
Telephone 010 012 6676
Email veenash@paycentral.co.za
Contact 0826118080

Name of Company

Physical Address

Telephone

Email

Contact person

- 13.2 Either party shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be the party's chosen address or e-mail address and any such change shall only be effective upon receipt of notice in writing by the other party of such change. Documents in legal proceedings in connection with this Agreement may only be served at a party's Domicilium.
- 13.3 All notices, demands, communications or payments intended for a party shall be made or given at its *domicilium* for the time being.
- 13.4 A notice sent by one party to another party shall be deemed to have been received on the same day if delivered by hand or sent to the party's chosen email address.
- 13.5 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*.

14. SEVERABILITY

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions were not a part of this Agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

15. GENERAL

- 15.1 This agreement constitutes the whole agreement between the parties in regard to the subject matter thereof and no addition to, variation, modification, or consensual cancellation of this agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorised representatives of the parties. For the purposes hereof, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, 25 of 2002 and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 15.2 This agreement may not be assigned without the prior written consent of the other party and such consent may not be arbitrarily withheld or delayed and neither party shall be entitled to sub-license the Intellectual Property to any party.
- 15.3 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 15.4 This Agreement may be executed in counterparts by the parties hereto on separate counterparts, both of which when so executed shall be an original, but such counterparts together shall constitute one and the same instrument.
- 15.5 No party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this document whether it induced the contract and/or whether it was negligent or not.

FOR PAYCENTRAL PTY LTD

Name:

Who warrants that s/he is duly authorised hereto.

Signed at: on this day: of this month: 20

As Witnesses

Signature: _____

FOR THE SUPPLIER

Name:

Who warrants that s/he is duly authorised hereto.

Signed at: on this day: of this month: 20

As Witnesses

Signature: _____