

1. INTERPRETATION

- 1.1. Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement or in any Schedules hereto, bear the meanings ascribed to them:
 - 1.1.1. "Action date" means the date/s on which Three Peaks has been instructed to collect funds from the Customer;
 - 1.1.2. "API" means the application programming interface owned and developed by Three Peaks, which allows access to the Three Peaks Service;
 - 1.1.3. "Client" means the party specified in Company Information;
 - 1.1.4. "Client's Bank" means the financial institution nominated by the Client;
 - 1.1.5. "Collections" means the collection of funds by means of debit order on behalf of the Client which have been collected by Three Peaks on the action date;
 - 1.1.6. "Commencement Date" means the date specified to commence the Three Peaks Service;
 - 1.1.7. "Consent" means any freely-given, specific and informed expression of will whereby a person agrees to the processing of personal information relating to him/her;
 - 1.1.8. "Consumer Credit Information" shall bear the meaning set out in Section 70 (1) of the National Credit Act;
 - 1.1.9. "Call Account" means the call account opened on the Nominated Bank's platform by Three Peaks on behalf of the Client to receive collected runs;
 - 1.1.10. "Credit Bureau Services" means the access to credit related information provided by a registered Credit Bureau;
 - 1.1.11. "Customer" means the Client's Customer identified on the Debit Order Mandate;
 - 1.1.12. "Customer's Bank" means the financial institution nominated by the Customer which shall debit the Customer's account in accordance with the Debit Order Mandate from time to time;
 - 1.1.13. "Data" means the information or assistance that Three Peaks requires from the Client to enable it to recover the debt purchased by and ceded to Three Peaks from the third parties effectively and timeously;
 - 1.1.14. "Debit order mandate" means the written authority given by the account holder or an authorized signatory of the account giving permission for a debit order to be processed against such account;
 - 1.1.15. "Debitsure Online Portal" means the website <https://wp.threepeaks.co.za> that acts as a doorway to a variety of services;
 - 1.1.16. "Fraudulent transaction" means any transaction which, in terms of the common law constitutes fraud (irrespective of whether or not the transaction has been authorized);
 - 1.1.17. "Intellectual property" means any copyright registered design, trademark or other industrial or intellectual right, whether registered or not;
 - 1.1.18. "Item limit" means the maximum value of a single transaction which the client is allowed to process as a debit order;
 - 1.1.19. "Medium" means any computer hardware, software, paper and electronic methods, including direct links to the internet, upon which information shall be supplied and data transferred to and by Three Peaks to and from the Client;
 - 1.1.20. "NCA" means the National Credit Act, 34 of 2005 together with the Regulations;
 - 1.1.21. "Nominated Bank" means the financial institution nominated by Three Peaks;
 - 1.1.22. "Parties" means both Three Peaks and the Client and party means Three Peaks or the Client;
 - 1.1.23. "Schedule 1" means the signed document outlining the specific payment terms, which has been completed and signed by the parties to this agreement
 - 1.1.24. "Service/s" means the service/s provided by Three Peaks, including the services made available via the Debitsure Online portal and the API, to the Client;
 - 1.1.25. "Service Provider" means the third-party service provider nominated by Three Peaks;
 - 1.1.26. "Settlement amount" means the amount equal to the total amount of the collective transactions ceded to Three Peaks;
 - 1.1.27. "Software" means any computer software developed or purchased by Three Peaks or licensed to Three Peaks as well as customization of such software in order to provide the services;
 - 1.1.28. "Statement" means documentation created as a result of the use of the service including, but not limited to, batch reports and account statements,
 - 1.1.29. "Three Peaks" means Three Peaks Management (Pty) Ltd to whom the Client is contracted to for the purposes of procuring the Debit Instructions to the Service Provider, of its Customer's banking accounts and thereafter instructing the transferring of the debited funds to the Client.
 - 1.1.30. "Transfer Date" means the date upon which Three Peaks executes payment of funds collected to the Client as instructed;
 - 1.1.31. "Transfer instructions" means the instruction by the Client to Three Peaks for the transfer of collected funds to the Client in specified amounts from time to time, given by electronic – or other means;
 - 1.1.32. "Unpaid Levy" means the levy payable by the Client to Three Peaks on unpaid Customer debits as prescribed from time to time by Three Peaks.
- 1.2. Clause and paragraph heading are for purposes of reference only and shall not be used in interpretation.
- 1.3. Unless the context clearly indicates a contrary intention, any word connoting:
 - 1.3.1. any gender includes the other two genders
 - 1.3.2. the singular includes the plural and vice versa;
 - 1.3.3. natural persons include artificial persons and vice versa;
 - 1.3.4. Insolvency includes provisional or final sequestration, liquidation or judicial management;
- 1.4. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not Saturday, Sunday or a public holiday in the Republic of South Africa.
- 1.5. A reference to a business day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 1.6. A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

2. INTRODUCTION

- 2.1. Three Peaks has developed an electronic service for collection of funds from Customers and payment to Clients.
- 2.2. The Client wishes to make use of the Three Peaks service for purpose of procuring the debiting of its Customer's banking accounts & thereafter transferring the debited funds to the Client's nominated account.
- 2.3. The parties wish to record the terms and conditions of their agreement in writing.

3. THE THREE PEAKS SERVICE

Three Peaks will provide a payment and collection service which will provide for:

- 3.1. Receipt of Debit Instructions from the Client;
- 3.2. Processing of the Debit Instructions;
- 3.3. Holding of funds so debited;
- 3.4. Receipt of transfer Instructions from the Client;
- 3.5. Processing of Transfer Instructions to the nominated account
- 3.6. Reporting to the Clients on Debit Instructions which are unpaid by Customers; and
- 3.7. All other matters incidental thereto.

4. USE OF THE SERVICE AND LINKAGE TO THE DEBITSURE ONLINE PORTAL AND/OR API

- 4.1. The Client acknowledges and accepts that it will only gain access to the Three Peaks System and/or API, if it has the necessary medium/s prescribed by Three Peaks.
- 4.2. The Client undertakes to ensure that it has the prescribed medium/s, and hereby acknowledges that it shall be solely responsible for the acquisition, installation and uninterrupted functioning of such medium/s and that any related costs or expenses shall be borne by the Client
- 4.3. Three Peaks shall provide the Client with the relevant username and password on the date of activation in order to affect the capturing and transmission of data.
- 4.4. Once the Client has used the access codes provided, Three Peaks will regard all activities conducted or instructions given to us by the Client as being authorized by them and intended to have full legal force and effect.
- 4.5. In the event that alterations to the software are required to enable Three Peaks to render its service, the Client must allow Three Peaks a reasonable period of time to render such support to effect such changes.
- 4.6. Three Peaks shall, where possible, afford the Client prior notice of scheduled maintenance and shall schedule such maintenance for the most convenient time so as to minimize the inconvenience to Clients in general.
- 4.7. The Client undertakes to, in the event of experiencing problems via internet and/or Telkom SA Limited, with the transmission and/or transmission facilities or transmission connection, to first contact the service provider and/or Telkom SA Limited prior to contacting Three Peaks.
- 4.8. In the event that the Client elects to establish a direct (data) line/link to Three Peaks, any loss and/or maintenance of the line/link shall be for the client's own account.
- 4.9. The Three Peaks System contains links to Third Party Service provider systems via reputable communication systems, for which Three Peaks cannot accept responsibility or liability for the information provided as Three Peaks have not scrutinized or endorsed the owners or administrators of such communication systems or their business or security practices or operations.
- 4.10. Three Peaks shall not be liable for any damages, losses and/or consequential damage that the Client may suffer as a result of;
 - 4.10.1. the malfunctioning of computer hardware of the Client;
 - 4.10.2. defects in the software components of the Client;
 - 4.10.3. any loss of data on the Client's computer;
 - 4.10.4. malfunctioning of the telephone system;
 - 4.10.5. industrial action;
 - 4.10.6. erroneous, unauthorized or unlawful sessions from the Client;
 - 4.10.7. unlawful or unauthorized access by any third parties who gained access to the Three Peaks system, directly or indirectly, by using the Client's username or password;
 - 4.10.8. force majeure;
 - 4.10.9. any other defect in the computer system of the Client and/or Three Peaks that is beyond the control of Three Peaks;
 - 4.10.10. the incorrect, late execution or non-payment of any instructions of the Client as a result of any of the circumstances mentioned in paragraphs
 - 4.10.11. Except as stipulated in this agreement, the Client acknowledges that no representations have been made by Three Peaks and that no guarantees have been extended by Three Peaks.
 - 4.10.12. Three Peaks warrants that all computer software and hardware under its supervision is free of any computer viruses and shall at all-time apply the latest version of any recognized anti-virus software.
 - 4.10.13. Three Peaks shall accept full liability for transporting the data to and from nominated banks and third-party service providers and shall take the necessary precautions to ensure that the data is delivered and timeously submitted, however, Three Peaks shall accept no liability for damages and/or losses which may arise as a result of delay or causes beyond the control of Three Peaks in delivering the data.
 - 4.10.14. Three Peaks shall provide the service/s to the Client according to the instructions of the Client provided that Three Peaks reserves the right to deviate should the computer system of Three peaks so require.

6. DEBIT ORDER COLLECTIONS

- 6.1. The Client shall ensure that all the debtors have signed the necessary instruction mandate or have accepted the method of collection on a high-quality voice recording, authorizing the Client and/or its agent and/or its cessionary, to recover the debt by a specific collection method.
- 6.2. The Client warrants that it shall produce, on demand, the relevant documentation conferring upon it the necessary authority to the third-party account/s, failing which, Three Peaks reserves the right to cancel this agreement forthwith and retain all monies which may be due to the Client until all or any disputes have been settled in full.

7. SETTLEMENT OF COLLECTIONS

- 7.1. The payment in respect of any particular collection shall be calculated as the total collection amount;
- 7.2. less, tariffs and fees, calculated in accordance with the formula and at the times and frequencies fully set out in Schedule
- 7.3. less such security as required by Three Peaks from time to time and agreed to between the Three Peaks and the Client.
- 7.4. less any unpaid or unsuccessful or disputed collections returned by the customers' banks, during the disputable period calculated from the day on which the said amount was paid into the Clients account by Three Peaks, or such other period as determined by interbank clearing rules within which collections may be turned unpaid in the normal course of business.
- 7.5. less any interest, bank fees and other costs incurred by Three Peaks in respect hereof.
- 7.6. less any fees that Three Peaks may have incurred and paid on behalf of the Client for the provision of access to Third Party Services.
- 7.7. Despite any provisions to the contrary contained in this agreement, Three Peaks reserves the right to amend the times, frequencies, discounts, tariffs, fees and formulae as set out in Schedule 1 at its discretion.
- 7.8. Three Peaks endeavours, where possible, to limit its prices to an annual increase in March of each year, except for increase of a statutory nature or basis, or increases occasioned by the increase in charges by a third-party service provider. The increase will be notified via email or letter.

8. CREDITSURE PAYMENTS

- 8.1. Three Peaks undertakes to create electronic funds transfer (EFT) record suitable for delivery to, and processing by, the nominated bank in the respect of credits comprising of the payment of amounts owed or payable to any third party.
- 8.2. The (EFT) records referred to, will be created by Three Peaks at the request of the Client from data provided to Three Peaks by the Client on dates as agreed upon between the parties on confirmation and authorisation of the said transactions by Three Peaks.
- 8.3. The Client undertakes to ensure that the required credit balance will be available on the Three Peaks account, from which the third party's bank account/s will be credited by Three Peaks.

9. TERMS OF AGREEMENT

- 9.1. This agreement shall come into effect on the date of acceptance of these terms or last signature of Schedule 1, whichever date is latest.
- 9.2. Either party shall be entitled to terminate the agreement by giving 60 (sixty) days written notice to the other party, provided that the Client shall remain liable to Three Peaks for any funds not recovered by Three Peaks.
- 9.3. Upon cancellation of the service Three Peaks shall retain any funds held in retention for the 60 (sixty) days' notice period to allow for disputed or returned transactions.
- 9.4. The termination of this agreement for any reason whatsoever, shall not prejudice the validity or enforceability of indemnifications and/or indemnities in respect of damage and/or losses and/or consequential damage and/or claims that may have arisen during the existence of this agreement.

10. OWNERSHIP & LICENSE

- 10.1. Ownership and copyright in the programme (Three Peaks Service) and all related documentation shall vest in Three Peaks or the suppliers or licensors of any software forming part of the Three Peaks Service.
- 10.2. Three Peaks hereby licenses the Client the use of the Three Peaks Service for the reasons detailed in this Agreement only.
- 10.3. Both parties agree that the Data, placed in the Three Peaks Service after logon into the portal by the Clients belong to the Client.
- 10.4. The Client authorises Three Peaks to use such data as per clause 9.3 to provide the services in terms of this agreement.

11. CLIENT'S GENERAL OBLIGATIONS

- 11.1. The Client agrees and undertakes:
 - 11.1.1. to ensure that proper supervision, control and management of its use of the Three Peaks Service, including but not limited to ensuring only suitably qualified persons are utilising the Three Peaks Service, that the Client has proper and adequate audit controls in place where required, and that proper procedures are employed for the security of data, accuracy of input and output, and back-up plans including but not limited to the saving of details to be submitted to Three Peaks via the Three Peaks Service;
 - 11.1.2. that all of the employees who are to use the Three Peaks Service are properly trained in the operation and usage thereof, and that the Client shall ensure that the operation and use of the Three Peaks Service is in accordance with the advice and material made available to the Client;
 - 11.1.3. to immediately notify Three Peaks of identified errors of malfunctioning in the Three Peaks Service;
 - 11.1.4. that the Client shall be responsible for checking that the results produced by Three Peaks via the Three Peaks Service are accurate and in accordance with the specification and immediately report any errors and inaccuracies to Three Peaks. Further, to ensure a smooth and efficient operation of the Three Peaks Service, the client undertakes to:
 - 11.1.5. supply Three Peaks with the required files by delivery of electronic medium or such other method and in such format as Three Peaks may prescribe from time to time;
 - 11.1.6. deliver monthly Debit instructions within the prescribed time before the first Action Date;
 - 11.1.7. inform Three Peaks timeously of any changes to the Transfer Instructions;

11.1.8. make any changes to the Debit Instructions and electronic Transfer Instructions within the time allowed and rules of the Three Peaks Service.

12. THREE PEAKS' GENERAL OBLIGATIONS

Three Peaks agrees to:

- 12.1. Provide the necessary training to the Client on the Three Peaks Service.
- 12.2. Provide reasonable ongoing support on the Three Peaks Service.
- 12.3. Receive the Debit Instructions from the Client:
 - 12.3.1. provided that the receipt in 10.1.5 is timeous, procure the debiting of the Customer's bank account in accordance with the Debit Instructions and on the Action date.
- 12.4. Receive the Transfer Instructions from the Client in respect of amounts debited under 10.1.5:
 - 12.4.1. provided that the receipt of 10.1.5 is timeous, procure the transfer of funds to the Client's bank account in accordance with the Transfer Instructions on the Transfer date.
- 12.5. Comply with the provisions of 12 regarding unpaid debits.

13. UNPAID FEES

- 13.1. Three Peaks will not be obliged to pay Clients in accordance with the Transfer Instructions where the corresponding debit on the Customer's account has not been cleared or has not been paid.
- 13.2. Where Three Peaks has paid Clients in accordance with the Transfer Instructions and the corresponding debit is later unpaid or found to be unpaid, then the amount of the unpaid debit will be deducted from the following debit collection or otherwise recoverable from the Client.
- 13.3. Three Peaks will be entitled to debit the Client with Unpaid Levy in respect of any unpaid debits, which arise following the Clients Debit Instructions.

14. DISCLAIMER

- 14.1. The Client hereby indemnifies Three Peaks, its officers and its employees and hold them harmless against all claims or action whatsoever in nature which may be instituted against Three Peaks in respect of loss and/or damages which may be incurred by the Client arising out of;
 - 14.1.1. the Client's utilization of the service or any breach of these terms and conditions by the Client;
 - 14.1.2. the entry or execution of any erroneous data or the erroneous execution thereof supplied by the Client to Three Peaks;
 - 14.1.3. the entry or execution of any fraudulent data supplied by the Client to Three Peaks.

15. POSITION OF TRUST

- 15.1. The Client and Three Peaks hereby acknowledge that the rendering of the service/s to the Client, by Three Peaks, results in information which may be regarded as secret and/or confidential being made available to each party in order to fulfil this agreement and the parties therefore undertake not to make known to other parties and/or otherwise divulge in any way whatsoever, any information made available to either party without the prior written consent of the other party, unless same is required by the prevailing laws of the Republic.
- 15.2. The Client and Three Peaks undertake, in respect of any and all such information disclosed by either party to the other, to:
 - 15.2.1. preserve the confidentiality of such information by using the utmost good care;
 - 15.2.2. use the information only to meet their obligations contained in this agreement;
 - 15.2.3. obtain the other party's written consent to disclose the information to a third party.

16. DOMICILIUM

- 16.1. For the purposes of this agreement, the Client elects the addresses specified in the aforementioned Physical Address, as their domicilium citandi et executandi.
- 16.2. The parties shall be entitled to alter the above domicilia, provided that such changed address shall only be effective on receipt of such notice by the other party.
- 16.3. Three Peaks Management (Pty) Ltd elects Three Peaks House, Suite 9, 22A Underwood Road, Pinetown as their domicilium citandi et executandi.

17. BREACH OF CONTRACT

- 16.1 Three Peaks shall, without prejudice to any other rights which it may have in law, be entitled to cancel this agreement with immediate effect, by written notice to the Client, in the event that:
 - 16.1.1 the Client fails to pay any amounts that become payable in terms of this agreement on the agreed date;
 - 16.1.2 the Client breaches or fails to satisfy any other provision of this agreement 7 (seven) days after Three Peaks has requested the Client (in writing) to rectify such breach or failure in terms of this agreement;
 - 16.1.3 an order of attachment be issued against the assets of the Client or part thereof;
 - 16.1.4 a provisional or final order for sequestration, liquidation or judicial management is issued against the Client;
 - 16.1.5 a resolution is taken for the voluntary liquidation of the Client;
 - 16.1.6 an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936, as amended, is committed by the Client.
- 16.2 Should this agreement be terminated for any reason whatsoever, the Client will make payment of all amounts which the Client may then owe to Three Peaks, notwithstanding that the due date for payment of such amounts may not yet have arrived.

18. FORCE MAJEURE

- 18.1. For purposes of this agreement, 'Force Majeure' means anything wholly outside the control of a party and include acts of God, war, strike, sanctions or changes in laws, regulations, ordinance or the like made by any competent authority.
- 18.2. Failure by either party to perform in accordance with any provision of this agreement (but excluding payment obligations) shall not constitute a breach of this agreement if the failure arose from force majeure. In such event, the party in default shall within 48 (forty-eight) hours after the force majeure has taken effect, give notice thereof to the other party.
- 18.3. If notice as aforesaid is not given by the party in default, the failure to perform will constitute breach of this agreement, and the other party may exercise all rights that it may have in respect thereof.
- 18.4. The party in default shall do its utmost to reinstate the performance due in terms of this agreement in the shortest possible time. All obligations not affected by force majeure must continue as stipulated herein. If a period of 1 (one) week has elapsed and the condition of force majeure persists thereby preventing a party from performing in terms of this agreement, either party shall be entitled to cancel this agreement by notice, with immediate effect.

19. MISCELLANEOUS

- 19.1. Relationship between parties – The relationship between the parties will be that of principal and will not constitute an employment relationship as envisaged by labour legislation. This agreement will not constitute a partnership between the parties. Neither party will hold itself out as an agent of the other party.
- 19.2. Protection of rights – Either party shall ensure that the property of the other party which may be in its possession in order to fulfil this agreement, shall not be subject or become subject to attachment, pledge, retention or any other legal impediment.
- 19.3. Limitation of liability – Neither party shall be liable to the other for any indirect, special or consequential damages arising from this agreement, of whatever nature and regardless of how it arose, unless provision for such liability is expressly contained elsewhere in this agreement.
- 19.4. No waiver – No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this agreement, shall constitute a waiver of the provisions of this agreement and a party may at any time require strict compliance with the provisions of this agreement.
- 19.5. Whole agreement – This agreement and signed schedule constitute the entire agreement between the parties as far as the subject matter is concerned, and it is acknowledged that there are no other oral or written understandings or agreements between the parties relating to the subject matter.
- 19.6. Variation – No amendment, consensual cancellation, variation or other modification of this agreement, including this clause shall be valid or binding on a party unless reduced to writing and signed on behalf of all parties hereto.
- 19.7. Cession and Delegation – A party may not cede any of its rights or delegate any of its obligations in terms hereof to another person without the prior written approval of the other party.
- 19.8. Severability – All the provisions of this agreement shall be severable, and no provision shall be affected by the invalidity of any other provision of this agreement.
- 19.9. Governing Law – This agreement shall be subject to the jurisdiction of the courts of the Republic of South Africa and shall be governed under and in accordance with the laws of the Republic of South Africa. The parties acknowledge and agree that this agreement does not fall within the ambit of the NCA as no credit is provided by Three Peaks to the Client and the agreement does not fall within the definition of a credit agreement as described in section 1 of the NCA, read with section 8 thereof.
- 19.10. Jurisdiction – In the event of legal action being instituted by Three Peaks for any reason hereof, the Client hereby consents to the jurisdiction of the Magistrates Court in terms of Section 45 of Act 32 of 1944, as amended.
- 19.11. Notification – All written notices given in terms of this agreement by Three Peaks to the Client shall be deemed duly given provided that they were sent to the domicilium of the Client.
- 19.12. Costs – In the event of Three Peaks instituting legal action against the Client, and the Client being found in breach in a court of law, of this agreement, the Client shall pay Three Peaks' costs on an attorney and own client scale, including collection commission and tracing costs.

20. SIGNATORIES

- 20.1. These terms shall be valid and binding only upon the signature of 'Schedule 1' by the duly authorised representatives of both parties.
- 20.2. In the event that a signatory accepts these terms in a representative capacity, then such person warrants that he or she is duly authorised thereto.
- 20.3. In the event that these terms are accepted on behalf of a company or close corporation to be formed, the person accepting them in such capacity hereby binds himself to Three Peaks personally in the event that such company or close corporation is not formed and registered within 45 (forty-five) days.

20. CONSENT

- 20.1. The Client and its principals give Three Peaks the consent to carry out a credit enquiry in respect of the Client and its principals by accessing Credit Bureau databases.
- 20.2. Three Peaks may transmit details to Credit Bureaus of how the Client and its principals has performed in meeting the obligations in terms of any agreement concluded between Three Peaks and the Client and its principals and share such information with other Credit Grantors for purposes of making any risk management decisions.
- 20.3. If a Client fails to meet the commitments to Three Peaks, Three Peaks may record the Client's, and its principals' non-performance with Credit Bureaus.
- 20.4. The Client and its principal's consents that any information conveyed by Three Peaks to a Credit Bureaus may be searched by other Credit Grantors and used in making risk management decisions. 20.7 The existence of the Client's account with Three Peaks may be recorded by a Credit Bureau.