



## **MOBIPAY WALLET TERMS AND CONDITIONS**

**Last Amended: 31 January 2014**

### **1. Introduction**

- 1.1. These Terms and Conditions, as amended from time to time, apply to and govern the use of MobiPay's Wallet service and form a binding agreement between you as a MobiPay Wallet account holder ("You") and MobiPay when You register for the Wallet service, or access the Wallet for the first time, whichever occurs first.
- 1.2. Mobicash Payment Solutions (Pty) Ltd trading as MobiPay is an authorized payment instrument issuer in terms of the Payment System Management Act, 2003 (Act No. 18 of 2003).
- 1.3. The MobiPay Wallet Service ("Wallet") allows registered MobiPay customers with a valid Namibian cell phone number to carry out certain transactions and services linked to the MobiPay Wallet in Namibian currency only.

### **2. Acceptance of Terms and Conditions**

- 2.1. By registering for and using MobiPay's Wallet, You acknowledge that You have read, understood and fully accept these Terms and Conditions as described herein and expressly consent to the collection, processing, storage and sharing of certain personal information by MobiPay in the ordinary course of MobiPay's business and in accordance with MobiPay's privacy policy and notices.

### **3. Other Agreements**

- 3.1. These Terms and Conditions are subject to and must be read with MobiPay's general terms and conditions, as well as MobiPay's privacy policies and notices. If there are any conflicts between these agreements regarding the use of Your MobiPay Wallet, this agreement will apply.

### **4. Your Information**

- 4.1. In accordance with the Financial Intelligence Act of Namibia 2012 (Act No. 13 of 2012) and in order to provide You with the Wallet services, MobiPay will require certain personal information from You and may collect such further information from You through Your use of the MobiPay Wallet service.
- 4.2. The information required from and provided by You and collected by MobiPay through Your use of the Wallet will be collected, processed, used, stored and shared in accordance with MobiPay's privacy policy.
- 4.3. You are entirely responsible for providing correct and accurate information to MobiPay and keeping this information up to date. You accordingly indemnify MobiPay against any and all loss or damage suffered by Yourself arising from any

cause whatsoever as a result of inaccurate and/or out dated information provided by Yourself.

4.4. MobiPay may also collect, process, use, store and share with certain third parties transaction records related to Your use of the MobiPay Wallet service.

## **5. Access to Wallet and PIN (Personal Identification Number)**

5.1. Upon registration and/or first access and/or receipt of funds in the Wallet, You will be issued with a secret PIN code by MobiPay with which to securely authorize transactions and/or access Your Wallet funds. This PIN code is for the sole purpose of protecting Your Wallet account from unauthorized access and is linked to Your cell phone number.

5.2. You have the obligation and responsibility to and must maintain and store this PIN Code securely, as well as keep it secret and not share it with any unauthorized person, so that no unauthorized party can get access to Your Wallet.

5.3. By allowing another person to access Your Wallet account via the secure PIN, You give that person the authority to act as Your authorised agent. Any act or omission by this person will be attributed to and will be regarded as an act or omission by Yourself and MobiPay shall not be liable for any loss or damages suffered of whatsoever nature and howsoever caused by/to You in relation to Your MobiPay Wallet by such access and use by this person.

5.4. You hereby indemnify and hold harmless MobiPay, its affiliates, directors, employees, representatives and/or consultants from and against all claims, any and all losses or damages of whatsoever nature and howsoever caused in relation to:

5.4.1. The use of the Wallet services;

5.4.2. Any breach or non-compliance of these Terms and Conditions, or any of MobiPay's general terms and conditions or policies;

5.4.3. Any dispute or litigation caused by Your actions or omissions; and

5.4.4. Any unauthorized access to Your MobiPay Wallet.

5.5. If You believe that your PIN has been compromised or that your Wallet has been opened / registered, accessed, or used in an unauthorised manner, You must immediately notify MobiPay thereof and request that Your PIN be deactivated or reset. Until You notify MobiPay as aforesaid, MobiPay will not in any way whatsoever be liable for any transactions, damage or loss suffered by Yourself or third parties and You hereby indemnify MobiPay against any and all such damage or loss You or third parties may suffer as a result of the aforesaid.

5.6. As the Wallet can be accessed via mobile connections and the internet, You agree that MobiPay is entitled to assume that after You have accessed the Wallet through the entering of Your PIN, You have authorised all such access to Your Wallet and all transactions. This provision will not apply if You have notified MobiPay that Your PIN has been compromised and that it must be deactivated or reset as aforesaid.

## **6. Use of Services**

6.1. MobiPay authorizes You, once registered, to access all MobiPay services within regulatory limits as set by the Bank of Namibia.

6.2. The MobiPay Wallet services may only be used for transactions in Namibia

Dollars and within Namibia. The MobiPay Wallet service does not support payments in any foreign currency.

- 6.3. No interest is, or shall be earned on any funds held in Your MobiPay Wallet.
- 6.4. MobiPay reserves the right to close Your MobiPay Wallet account if it has not been used or has been dormant for longer than 365 days and You hereby accept responsibility to keep such account active.
- 6.5. By using the Wallet account You hereby undertake that You will not use the Wallet for any illegal transactions or unlawful purposes, and that You will at all times adhere to the laws of the Republic of Namibia in this regard.
- 6.6. You also hereby irrevocably permit and authorize MobiPay, its employees, representatives and/or consultants to monitor your MobiPay Wallet account for suspicious or illegal activities. MobiPay shall deal with any suspicious transactions as prescribed by with the Financial Intelligence Act 2012 (Act No. 13 of 2012).
- 6.7. If You have any inquiry regarding the use of Your MobiPay Wallet or believe there has been an error or unauthorized transaction regarding your MobiPay Wallet please contact MobiPay immediately.
- 6.8. Notwithstanding any limitations described elsewhere in this Agreement, MobiPay reserves the right to, establish general practices and limits concerning the use of the Wallet services without notice to Yourself or any liability on MobiPay's part, including without limitation the imposition of individual or aggregate transaction limits on the monetary amount or number of transactions during any specified time periods and Your access to some or all of the Wallet services.
- 6.9. MobiPay reserves the right to in its sole discretion, change, suspend or discontinue any aspect of Your MobiPay Wallet services at any time, including hours of operation or availability of the Wallet services or any service feature, without notice to Yourself and without any liability to MobiPay whatsoever.
- 6.10. MobiPay may in its sole discretion delay, cancel or reverse processing of any Wallet transaction if MobiPay believes that the transaction is invalid, unlawful, suspicious, involves misconduct or fraud, or is in contravention of the laws applicable to this agreement.
- 6.11. You hereby acknowledge that You make use of the MobiPay Wallet service at Your own risk. MobiPay, to the fullest extent permissible by law, gives no warranties, whether express or implied whatsoever, in respect of the service channels or the Wallet services, including in respect of their performance, quality; security; suitability; content; information; availability; accuracy; safety or reliability.

## **7. Fees**

- 7.1. For service or transaction fees MobiPay refers to its general pricing guide on services and transactions. In addition to service and transaction fees, You might incur network charges, which rates and charges can be obtained from Your respective Mobile Network Operator or Internet Service Provider.

## **8. Limitation of Liability**

- 8.1. Although MobiPay has taken reasonable care to prevent damage or loss to You, You hereby indemnify and hold harmless MobiPay, its affiliates, directors,

employees, representatives and/or consultants from and against all claims, any and all direct or indirect loss or damages of any nature whatsoever and howsoever arising as a result of your use or inability to use the Wallet.

- 8.2. You hereby indemnify MobiPay against any and all claims by third parties howsoever caused arising from the use of the Wallet.
- 8.3. You are liable for any unauthorised access to your MobiPay Wallet through the use of your PIN and you shall be liable for any loss or damage of any nature whatsoever suffered by such unauthorised access, unless it can be proven that a person gained such unauthorised access as a result of MobiPay's gross negligence.
- 8.4. You hereby agree that You make use of the MobiPay Wallet service at Your own risk and that MobiPay shall not be held liable for any loss or damage of any nature whatsoever suffered as a result of your use of the Wallet, including but not limited to loss suffered by the Wallet service not being available for any reason whatsoever and unauthorised access by another person to your Wallet.

## **9. Termination**

- 9.1. MobiPay reserves the right to in its sole and absolute discretion, without liability to You or any third party, suspend or terminate this agreement and Your use of his Wallet account by giving reasonable notice to Yourself, or immediately without notice should MobiPay believe that You have committed one of the following activities:
  - 9.1.1. Fraud or suspected fraudulent activity
  - 9.1.2. Breach of this agreement
  - 9.1.3. Disclosed or compromised his/her PIN
  - 9.1.4. Misconduct
  - 9.1.5. Illegal transactions
  - 9.1.6. Unlawful purposes
  - 9.1.7. Poses a threat to MobiPay, its customers, its systems or third parties
- 9.2. MobiPay may also at any time terminate this agreement and the provision of Wallet services to You if Your cell phone number is deregistered / terminated by your Mobile Network Operator.
- 9.3. MobiPay also reserves the right to close Your MobiPay Wallet account should MobiPay be compelled by law or a competent court to do so.
- 9.4. Upon the suspension or termination of Your Wallet account / service, for any reason whatsoever, MobiPay has the right to prohibit Your access to the Wallet and related services, as well as refuse future access to any and all MobiPay services.
- 9.5. Nothing in this provision prevents MobiPay from taking any other action it is permitted to take according to law.

## **10. Unclaimed Funds**

- 10.1. In the event that the Your Wallet account/service is suspended or closed for any reason whatsoever and You have funds in such suspended or closed Wallet, MobiPay shall endeavor to notify You of such funds, but such funds may be forfeited in accordance with applicable laws if it is not claimed by

Yourself.

## **11. Privacy**

- 11.1. MobiPay makes use of a privacy policy which sets out what personal information about You MobiPay collects, processes, stores, protects, keeps confidential and shares, even if You are no longer a user of the MobiPay Wallet service.
- 11.2. By making use of the MobiPay Wallet, You agree that Your personal information provided or obtained in connection with the Wallet services is subject to the MobiPay privacy policy and by agreeing to these terms and conditions, You hereby agree to the MobiPay privacy policy.

## **12. Legal Age**

- 12.1. By using the MobiPay Wallet You represent and warrant that You are of full legal age, emancipated or have your guardian's consent and assistance and that You have full legal capacity to be bound by these Terms and Conditions.

## **13. Notices**

- 13.1. Any notices required to be sent to You in terms of this agreement, or otherwise will be sent to your cell phone number or postal address or electronic address and any summons required to be served on you will be served at the physical address provided by Yourself when you registered for the MobiPay Wallet service. This address shall be your *domicilium citandi et executandi* and You must notify MobiPay of any change of these addresses in writing.
- 13.2. Any notice which may be required to be sent to MobiPay in terms of this agreement, or otherwise, can be sent electronically or per mail to the following address: info@mobipay.com.na
- 13.3. Any notice sent as set out above will be deemed to have been received within 5 days of it being sent, save for electronic or cellular notices which will be deemed to have been received on the day it was sent.

## **14. Amendments and Changes**

- 14.1. MobiPay reserves the right to from time to time and in its sole and absolute discretion, amend, change or modify any part or the whole of these Terms and Conditions without giving prior notice to You. MobiPay will however endeavor to notify You of material amendments hereto.
- 14.2. The date on which these terms and conditions were last amended appear at the top of these terms and conditions.
- 14.3. If You do not agree to such amended Terms and Conditions, Your only remedy is to terminate Your use of the Wallet services by giving MobiPay notice thereof and not making use the Wallet account and services anymore.
- 14.4. If You do make use of the Wallet account and services after an amendment of the Terms and Conditions, MobiPay assumes that You have read, understood and agree to the amended Terms and Conditions and accordingly that such Terms and Conditions will become binding on You.

## **15. Applicable Law and Jurisdiction**

- 15.1. This agreement will in all respects be governed and construed under the laws of the Republic of Namibia.
- 15.2. MobiPay and Yourself hereby, subject to MobiPay's general terms and conditions, consent and submit to the non-exclusive jurisdiction of the High Court of Namibia regarding any dispute which may arise from or in connection with this agreement.

## **16. Severability and Survival**

- 16.1. In the event that any of these terms and conditions is found to be unlawful or unenforceable, such provision shall be severable from the remainder of this agreement and not affect the validity thereof and the remaining provisions shall be of full force and effect and remain binding on the parties.
- 16.2. In the event that a Your access to and use of the Wallet services is terminated for any reason whatsoever, the following clauses, 3; 4; 8; 9; 10; 11; 12; 13; 15; 17; 18 and including this clause 16 shall survive such termination and remain binding on the parties.
17. These terms and conditions are not intended and shall not be construed to create any rights, obligations or remedies for any parties other than MobiPay and Yourself.

## **18. General**

- 18.1. Headings in this agreement are merely for reference purposes and shall not be taken into account in the interpretation hereof.
- 18.2. Any dispute which may arise between Yourself and MobiPay will be dealt with in accordance with MobiPay's General Terms and Conditions.
- 18.3. No failure, indulgence, delay, relaxation or extension of time by MobiPay of any provisions or to exercise any rights in terms of these terms and conditions shall constitute a waiver of such rights or provisions and shall not estop MobiPay from exercising such rights.
- 18.4. You may not cede, assign or transfer in any way any of the rights or obligations pertaining to you contained in this agreement to any other person without the express written consent of MobiPay.