



# Bancontact Rulebooks

## Payment Scheme Membership Agreement 2100 – General Terms and Conditions

August 2018



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## BETWEEN, ON THE ONE HAND,

**Bancontact Payconiq Company SA/NV**, a company under Belgian law, with registered offices at Rue d'Arlon 82, 1040 Brussels, Belgium, registered with the Crossroads Bank for Enterprises under number 0675.984.882 (RLP Brussels), duly represented by Nathalie Vandepeute, CEO;

Hereinafter called the **"Payment Scheme Manager"**;

## AND, ON THE OTHER HAND,

**[Name and legal form]**, a company under the laws of [country], with registered offices at [address], Belgium, registered with [for Belgium: the Crossroads Bank for Enterprises (RLP [place])] under number [number]), duly represented by [name], [title];

Hereinafter called the **"Member"**;

Both Parties are jointly called **"the Parties"** or separately **"the Party"**.

## THE FOLLOWING HAS BEEN AGREED:

## Introduction

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The Payment Scheme Manager is owner of the Payment Scheme, owner of the Brands and owner or licensee of the Technologies.

The Payment Scheme Manager grants Licenses offering the possibility to:

- (i) issue Branded Cards and Approved Card Substitutes (Card Issuer License);
- (ii) propose settlement of the purchase of products or services by means of electronic payment with Branded Cards (POS Acquirer License & E&M Acquirer License);
- (iii) perform funds collecting and payment services activities (Funds Collector License & P2P Acquirer License); and
- (iv) authorize Cardholders to withdraw cash (ATM Acquirer License);

The present General Terms and Conditions contain the general terms and conditions of the Payment Scheme Membership Agreement.

## 1. Definitions and Interpretations

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### 1.1. Definitions

The terms and expressions used in the Agreement comply with the definitions provided in rulebook “2460 – *Scheme Dictionary*”, which forms an integral part of the Payment Scheme Membership Agreement.

### 1.2. Interpretations

- a) The titles and headings included in the Payment Scheme Membership Agreement are for convenience only and do not express in any way the intended understanding of the Parties. They shall not be taken into account in the interpretation of the provisions of the Payment Scheme Membership Agreement.
- b) The schedules to the Payment Scheme Membership Agreement form an integral part hereof and any reference to the Payment Scheme Membership Agreement includes these schedules and vice versa.
- c) The original version of the Payment Scheme Membership Agreement has been drafted in English. Should the Payment Scheme Membership Agreement be translated into French, Dutch or any other language, the English version shall prevail among the Parties to the fullest extent permitted by Belgian law, however French and/or Dutch translations of certain words or expressions are contained in the original English version of the Payment Scheme Membership Agreement, such translations shall be conclusive in determining the Belgian legal concept(s) to which the Parties intend to refer.
- d) References to any legislation or a legislative provision include that provision as from time to time amended, modified or re-enacted so far as such amendment, modification or re-enactment applies or is capable of applying to the Payment Scheme Membership Agreement and includes any order, instrument, regulation or subordinate legislation made from time to time under that legislation or provision.

## 2. Object of the Payment Scheme Membership Agreement

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- a) The Payment Scheme Membership Agreement describes the operation of the Payment Scheme and the rights and obligations of the Payment Scheme Manager and the Members. This Payment Scheme Membership Agreement governs the relations, on the one hand, between the Payment Scheme Manager and the Members and, on the other hand, between the Members themselves in the context of the Payment Scheme.
- b) The Payment Scheme Manager can refer to its conditions with respect to the (current or future) Members, separately or as a whole. Each Member can refer to its conditions with respect to the Payment Scheme Manager and with respect to any other Member.
- c) The Members can enter into other agreements between themselves, provided that the object of these agreements does not conflict with the Payment Scheme Membership Agreement.



## 3. Structure of the Payment Scheme Membership Agreement

### 3.1. Composition of the Payment Scheme Membership Agreement

The Payment Scheme Membership Agreement comprises the following documents:

- 1) The present General Terms and Conditions;
- 2) One or more of the following License Agreements;
  - a. The Card Issuer License Agreement;
  - b. The POS Acquirer License Agreement;
  - c. The E&M Acquirer License Agreement;
  - d. The Funds Collector License Agreement;
  - e. The P2P Acquirer License Agreement;
  - f. The ATM Acquirer License Agreement;
- 3) The Operating Regulations; and
- 4) The Fees Manual.

### 3.2. General Terms and Conditions

The present General Terms and Conditions describe the rights and obligations that apply to the Payment Scheme Manager and to the Members, irrespective of the Membership Category to which the latter belong.

### 3.3. License Agreements

*The License Agreement(s), referred to under article 3.1 of the present General Terms and Conditions, describe(s) the criteria that a Member must meet to acquire and maintain the corresponding License.*

### 3.4. Operating Regulations

- a) The Operating Regulations comprise all Technologies, principles, procedures, and technical standards with regard to all components of the Payment Scheme (i.e. the Approved Cards and Approved card Substitutes, the Approved ATM and Physical POS and Virtual POS Terminals of any nature, the systems of the Acquirer and of the Card Issuer categories, the security modules, networks, service providers, etc.). The Operating Regulations also relate, amongst others, to the aspects concerning authorization, clearing and settlement of Transactions, general risk management, the required service levels, the standards in connection with the use of the Brands and the Technologies, the use of service providers and suppliers by the Member and the certification of the components. Moreover, the Operating Regulations give a precise description of the general services offered by the Payment Scheme Manager, together with their application standards.
- b) The Operating Regulations have different forms in the various documents, depending on the domain to which they apply (for example the Operating Regulations that apply to all Payment Scheme activities, the ATM Operating Regulations that apply to ATM activities only).
- c) All these documents for their part refer to a series of manuals that form an integral part of them.
- d) The Members can at all times consult the latest version of the Operating Regulations on the Payment Scheme Manager's website (via secured Member login).

### 3.5. Fees Manual

- a) The Fees Manual comprises a list of the rates that are payable, on the one hand, by the Members to the Payment Scheme Manager and, on the other hand, as the case may be and to the extent no deviating agreements have been concluded upon bilaterally between the relevant Members, by the Members between themselves.
- b) The Members can at all times consult the latest version of the Fees Manual on the Payment Scheme Manager's website (via secured Member login).

### 3.6. Hierarchy of the contractual documents

In case a conflict exists between the different contractual documents that form part of the Payment Scheme Membership Agreement, the following order of precedence shall apply:

1. The General Terms and Conditions;
2. The License Agreements;
3. The Operating Regulations and the Fees Manual.

## 4. Membership Eligibility Criteria

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### 4.1. General

- a) An entity that wishes to become a Member of the Payment Scheme must satisfy the License Eligibility Criteria for each Membership Category to which it wishes to belong.
- b) By signing the Payment Scheme Membership Agreement, the Member confirms that it meets the Membership Eligibility Criteria and undertakes to notify the Payment Scheme Manager as soon as it no longer meets one of these criteria.
- c) The Member shall retain the capacity of Member for the entire duration of the Payment Scheme Membership Agreement, for so long as it continues to meet the Membership Eligibility Criteria. When the Member no longer meets these Membership Eligibility Criteria, the Payment Scheme Manager can terminate the Payment Scheme Membership Agreement in accordance with article 15 of the present General Terms and Conditions.

### 4.2. Membership Application Procedure

- a) An entity that meets the aforementioned Membership Eligibility Criteria must, in order to become a Member, submit its application formally and in writing to the Payment Scheme Manager, indicating to which Membership Categor(y)/(ies) it wishes to belong.
- b) The Payment Scheme Manager shall notify the entity as to whether or not its membership application - for one or more of the Membership Categories - has been approved. This notification must be made within a period of thirty (30) days after the date on which the entity has sent its written application to the Payment Scheme Manager.
- c) In case the membership application for at least one Membership Category has been approved (and notwithstanding the fact that the membership application for one or more other Membership Categories may not have been approved), the entity may call itself a Member as of the Effective Date of the Payment Scheme Membership Agreement.

In case the membership application - for one or more of the Membership Categories - has not been approved (and notwithstanding the fact that the membership application for one or more other Membership Categories may have been approved), the Payment Scheme Manager has to clearly and explicitly motivate its decision. The entity concerned has the right to appeal the decision of the Payment Scheme Manager by addressing a request for appeal to the president of the board of directors of the Payment Scheme Manager within a period of thirty (30) days after the date on which the Payment Scheme Manager has notified his decision of non-approval. After analysis of the request, the Payment Scheme Manager's board of directors must make its final decision within a period of thirty (30) days after the reception of the appeal request.

## 5. Membership Categories and License Eligibility Criteria

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### 5.1. Membership Categories

The Member must conclude a License Agreement with the Payment Scheme Manager for each Membership Category that it wishes to be member of. The different Membership Categories are:

- 1 Card Issuer;
- 2 POS Acquirer;
- 3 E&M Acquirer;
- 4 Funds Collector;
- 5 P2P Acquirer; and
- 6 ATM Acquirer.

### 5.2. License Eligibility Criteria

The License Eligibility Criteria are included in the License Agreements. By signing a License Agreement, the Member confirms that it meets the License Eligibility Criteria for this specific License.

## 6. Representations, Warranties and Obligations of the Members

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### 6.1. Representations and Warranties

#### 6.1.1. Member Warranties

The Member represents and warrants that:

- (i) it has and shall continue to have full ability, capacity and authority required by law or otherwise to enter into and to perform this Payment Scheme Membership Agreement in accordance with its terms;
- (ii) this Payment Scheme Membership Agreement is executed by a duly authorized representative of the Member; and
- (iii) once duly executed, this Payment Scheme Membership Agreement will constitute its legal, valid and binding obligations.

#### 6.1.2. Payment Scheme Warranties

The Payment Scheme Manager represents and warrants that:

- (i) it has and shall continue to have full ability, capacity and authority required by law or otherwise to enter into and to perform this Payment Scheme Membership Agreement in accordance with its terms;
- (ii) this Payment Scheme Membership Agreement is executed by a duly authorized representative of the Payment Scheme Manager; and
- (iii) once duly executed, this Payment Scheme Membership Agreement will constitute its legal, valid and binding obligations.

### 6.2. Obligations

- a) The Member undertakes to be part of one or more Membership Categories, and comply with all its obligations set forth in the License Agreements and the Operating Regulations, including those imposed to the Membership Categories to which it belongs.
- b) The Member undertakes to comply at all times with all applicable Laws and Regulatory Requirements.
- c) The Member undertakes to provide reasonable assistance (to be defined in mutual agreement) to the Payment Scheme Manager in the event of an audit or inspection of a regulatory nature by order of the ECB, the NBB, the Belgian Government or any other authority that is legally authorized in that regard, in so far as this is required for the objective of the audit.
- d) The Member undertakes to make reasonable best efforts to make available, to the Payment Scheme Manager, all information and certifications that are required in view of the following objectives:
  - (i) to draw up statistics with regard to the Payment Scheme;
  - (ii) to ensure that the Member complies with the Operating Regulations and the other contractual obligations;
  - (iii) to ensure that the conduct of the Member does not disrupt or harm the operation of the Payment Scheme.
- e) The Member undertakes to observe the operational requirements as described in the Operating Regulations.

## 7. Fees

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### 7.1. General

All Fees are included in the Fees Manual.

### 7.2. Taxes

The Fees are exclusive of VAT. All applicable taxes shall be for the account of the Member.

### 7.3. Payment terms and modalities

All the payment terms with respect to Fees, as well as the modalities concerning any dispute about an invoice concerning Fees which the Parties are obliged to observe, are described in the Fees Manual. With respect to Fees due between the Members themselves, these payment terms and dispute modalities shall only be applicable insofar and to the extent no deviating agreements in this respect have been concluded between the Members.

## 8. Conventional Damages clause

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The Member Forum can set conventional damages that will be imposed on Members in the event that they do not observe the Operating Regulations. These conventional damages shall be included in the Operating Regulations, where applicable.

## 9. Responsibilities and Liabilities

### 9.1. Responsibilities

- a) Each Party undertakes to use its best efforts to meet its obligations under the Payment Scheme Membership Agreement, it being understood that this obligation must be interpreted *in concreto*, taking into account the Party's expertise.
- b) Each Party undertakes to use its best efforts to prevent or limit damage and, if possible, to rectify the situation causing damage within the shortest possible time.
- c) The Member particularly undertakes to have a business recovery plan - compliant with the Regulatory Requirements and the industry's best practices - in place ensuring that the Member's computer system remains at all times connected to the Switching and Settlement Service and ensuring that the Member is at all times able to transfer funds in a timely manner, even in case of a natural disaster or other situation of Force Majeure at the Member's primary location(s) or at the Member's processor's primary location(s). The Member undertakes to inform the Payment Scheme Manager immediately if it becomes aware of any interruption or other situation of inoperability, and undertakes to take all reasonable measures in order to make its system operational again within the shortest possible time.

### 9.2. Liabilities

#### 9.2.1. General

- a) The Indemnifying Party shall indemnify and hold harmless the Indemnified Party from, against and in respect of any and all damages, costs and expenses (including reasonable attorneys' and experts' fees and expenses) incurred or suffered by the Indemnified Party as a result of, arising out of or relating to (i) fault or negligence in connection with the execution of the Payment Scheme Membership Agreement, (ii) a breach from its obligations under the Payment Scheme Membership Agreement by the Indemnifying Party or (iii) a breach of any representation or warranty made by the Indemnifying Party under the Payment Scheme Membership Agreement.
- b) The Indemnifying Party shall indemnify and hold harmless the Indemnified Party from, against and in respect of any and all actions, proceedings, claims, losses, liabilities, costs and expenses (including reasonable attorneys' and experts' fees and expenses) incurred or suffered by the Indemnified Party vis-à-vis third parties as a result of, arising out of or relating to (i) fault or negligence in connection with the execution of the Payment Scheme Membership Agreement, (ii) a breach from its obligations under the Payment Scheme Membership Agreement by the Indemnifying Party or (iii) a breach of any representation or warranty made by the Indemnifying Party under the Payment Scheme Membership Agreement.
- c) Each Party shall immediately notify the other Party of each and any third party action, suit or proceeding regarding the Payment Scheme Membership Agreement. In the event one of the Parties requests indemnification from the other Party in this respect, the Parties shall consult each other and jointly assume control over the defense with respect to the action, suit or proceeding.

#### 9.2.2. Exonerations and Limitations

- a) Except in case of fraud or willful misconduct, the Indemnifying Party will not be liable towards the Indemnified Party for Indirect Damages.
- b) To the fullest extent permitted by Law, the Payment Scheme Manager is not liable for acts performed by its agents, mandatories, contractors or any other persons replacing or assisting the Payment Scheme Manager in the performance of the Payment Scheme Membership Agreement.
- c) The Technologies are provided "as is" without warranties of any kind, expressed or implied, included those of merchantability and fitness for a particular purpose. The Payment Scheme Manager does not warrant or assume any liability or responsibility for the accuracy, completeness, or usefulness of the Technologies, except in case of fraud or willful misconduct or gross negligence. In the absence of fraud or willful misconduct or gross negligence, neither the Payment Scheme Manager, nor its affiliates, directors, employees, agents, mandatories or contractors are liable to any party for any damages that might result from the use of the Technologies.
- d) Except in case of fraud or willful misconduct, the liability of the Payment Scheme Manager will (i) for each single claim in no event exceed thirty per cent (30%) of the recurrent SEPA License Fees set forth in the Fees Manual paid by the Member to the Payment Scheme Manager during the last full calendar year prior to the year in which the loss or damage took place (for the purpose of this article "the Reference Year"), whereby (ii) the aggregate



liability for all claims with the same Reference Year will in no event exceed fifty per cent (50%) of the recurrent SEPA License Fees set forth in the Fees Manual paid by the Member to the Payment Scheme Manager during the Reference Year.

- e) From the moment the Card Issuer has authorized a Transaction, the Card Issuer will be responsible and thus liable for payment of the corresponding amount to the Funds Collector or the ATM Acquirer, even in case of Force Majeure.
- f) From the moment of reception of the Funds by the Funds Collector from the Card Issuer, the Funds Collector will be responsible and thus liable for payment to the Merchants.

### **9.2.3. Force Majeure**

Except if explicitly agreed upon otherwise, none of the Parties may be held liable for shortcomings in the fulfillment of their obligations under the Payment Scheme Membership Agreement if this shortcoming is due to Force Majeure.

## 10. Complaints Management

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- a) All complaints by third parties that are addressed to a Member and that implicate another Member or the Payment Scheme Manager must be delivered to that Member, respectively the Payment Scheme Manager, within the shortest possible time.
- b) The management of complaints between the Members and/or between the Members and the Payment Scheme Manager with respect to the execution of Transactions is described in the Operating Regulations.

## 11. Intellectual Property Rights

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- a) The Member is obliged to use the Brands and the Technologies in a way that is in accordance with the Payment Scheme Membership Agreement.
- b) Without prejudice to the exonerations and limitations agreed upon in article 9.2.2 of the present General Terms and Conditions, the Payment Scheme Manager indemnifies the Member against any claim instituted against the Member for breach or alleged breach of Intellectual Property Rights of third parties, because the Member has used certain Brands or the Technologies in the Territory. The Payment Scheme Manager does not indemnify the Member if the complaint by third parties arises from the fact that the Member has used the Brands or the Technologies in a way that is not in accordance with the Payment Scheme Membership Agreement.
- c) When the Member becomes aware of a breach or threatened breach of the Intellectual Property Rights of the Payment Scheme Manager, or when a third party alleges or complains that the Brands or the Technologies are in breach of its rights or could possibly confuse the public, the Member should inform the Payment Scheme Manager of this as soon as reasonably possible. The Member shall, as the case may be, deliver all useful relevant information and documents to the Payment Scheme Manager. The defense against all claims in connection with the Brands or the Technologies shall only be carried out under supervision of and costs borne by the Payment Scheme Manager.
- d) Except with respect to the limited license to download and print certain material from the Payment Scheme Membership Agreement for non-commercial and personal use only, nothing contained in the Payment Scheme Membership Agreement shall grant any license or right to use any of the Payment Scheme Manager's proprietary material.

## 12. Audit

### 12.1. Audit rights of the Members

- a) The Members are entitled to perform an audit, no more than once per year, to supervise the fulfillment by the Payment Scheme Manager of its obligations under the Payment Scheme Membership Agreement, and its compliance with the Operating Regulations in connection with matters associated with the Payment Scheme Membership Agreement. This audit shall take place at the offices of the Payment Scheme Manager. The costs of such audit, including the costs associated with the time that the employees of the Payment Scheme Manager have spent on the audit, shall be borne by the Members.
- b) The audit requested by the Members can only take place on behalf of all Members, and, depending on the choice of the Member Forum, shall be carried out (i) by a reputable external auditing company or (ii) by the internal auditing department of a Member. A non-disclosure undertaking shall be signed by the external audit company or by the Member whose auditing department is conducting the audit, before the audit can start. The results of this audit shall be made available to all Members and to the Payment Scheme Manager. To the extent the results of the audit contain Confidential Information pertaining to a Member, this Confidential Information will not be made available to the other Members. If the audit is conducted by the internal auditing department or other employees of one or more Members, these employees will not have a commercial function and will not share the findings and results of the audit with other employees that have a commercial function.

### 12.2. Audit Rights of the Payment Scheme Manager

#### 12.2.1 General

- a) The Payment Scheme Manager is entitled to perform an audit, no more than once per year, to supervise the fulfillment by the Member of its obligations under the Payment Scheme Membership Agreement, and its compliance with the Operating Regulations in connection with matters associated with the Payment Scheme Membership Agreement. The costs of such audit, including the costs associated with the time that the employees of the Payment Scheme Manager have spent on the audit, with a maximum of 15.000 EUR (indexed – base = September 2013), shall be borne by the Member.
- b) The audit requested by the Payment Scheme Manager can be carried out (i) by a reputable external audit company, (ii) by the internal audit department of the Payment Scheme Manager, or (iii) by the employees of the Payment Scheme Manager. The results of the audit shall not be made available to any Member, other than the Member that was audited.

#### 12.2.2. Audit in case of serious indications of non-compliance

- a) Without prejudice to the audit rights stipulated in article 12.2.1 of the present General Terms and Conditions, the Payment Scheme Manager reserves the right to carry out an audit of the Member if there are serious indications of non-compliance by the Member with one or more specific obligations under the Payment Scheme Membership Agreement.

These indications could in particular arise from the following circumstances:

- (i) several complaints from Cardholders or Merchants, all of which have the same origin; and
  - (ii) information that the Payment Scheme Manager learns in connection with the performance of the Member's obligations under the Payment Scheme Membership Agreement.
- b) The audit can be carried out (i) by a reputable external audit company, (ii) by the internal audit department of the Payment Scheme Manager, or (iii) by the employees of the Payment Scheme Manager.
- c) The audit report shall state the corrective actions to be undertaken by the Member and the timeframe given to implement these corrective actions. Within a period to be determined on a case-by-case basis, but that shall in no case be more than three (3) months, the Payment Scheme Manager shall perform a second audit, in accordance with article 12.2.2, b) of the present General Terms and Conditions, to verify whether the corrective actions have been properly implemented.
- d) This audit right shall be exercised without prejudice to any penalties for non-compliance that the Member Forum may impose, in accordance with the Operating Regulations, and without prejudice to the termination right stated in article 15.2 of the present General Terms and Conditions.

### 12.2.3. Modalities regarding audits

- a) Each Party may, within the framework of the audits, request the other Party to submit documents to the extent that this is necessary in order to be able to determine that the Party subjected to the audit is in compliance with the provisions of the Payment Scheme Membership Agreement.
- b) If a Party wishes to have the audit of the other Party carried out by a reputable external audit firm, then the latter Party shall be entitled to object to the choice of firm, provided that this objection shall not be unreasonable. This right of objection shall be exercised by means of a written and reasoned notification sent by post, which should be delivered within a period of seven (7) Working Days to the other Party.
- c) The Parties agree that a request for an audit is only acceptable if the following cumulative conditions have been met:
  - (i) It should concern an entirety of audit procedures that relate to one or several activities that come under the Payment Scheme Membership Agreement.
  - (ii) The objective of the requested audit should be clearly described.
  - (iii) The task of the auditors should be clearly defined and in proportion with the objective of the audit.
  - (iv) The auditor Party should draw up a detailed plan of the audit assignment.
- d) The Party that takes the initiative for the audit should announce this audit at least fourteen (14) calendar days in advance and indicate the reasons why the audit is carried out. The period in which the audit takes place should be agreed with the audited Party taking into account the production requirements (freeze period, release and closure). In connection with the audit, one (1) postponement of no more than six (6) months may be proposed.
- e) The Party that performs the audit, undertakes:
  - (i) To observe the safety regulations notified by the audited Party; and
  - (ii) To sign a specific confidentiality agreement submitted by the audited Party.

## 13. Member Forum

### 13.1. Representation of the Members

The Parties agree to organize a Member Forum composed of representatives of all Member Categories and the Payment Scheme Manager.

### 13.2. Authority

In addition to any other powers described elsewhere in the Payment Scheme Membership Agreement, the Member Forum has the following powers:

- 1) The Member Forum functions as a general discussion and advisory group; and
- 2) The Member Forum discusses the changes proposed by the Payment Scheme Manager to the Payment Scheme Membership Agreement.

### 13.3. Composition

a) The Member Forum is composed as follows:

(i) Representation of the Card Issuer Members:

- A seat for each representative of the four most important Card Issuer Members.
- A seat for the representative of the other Card Issuer Members. This representative shall be either the candidate who is proposed by the Members whom he must represent, or a candidate whom the four largest Card Issuers Members have chosen from a list put forward by the other Members if these Members do not succeed in designating a representative. In this case, the four largest Members undertake not to nominate as representative of the other Members a candidate who has a function in a Group company of one of the four most important Members.

(ii) Representation of the ATM Acquirer Members:

- A seat for each representative of the four most important ATM Acquirer Members.
- A seat for the representative of the other ATM Acquirer Members. This representative shall be either the candidate who is proposed by the Members whom he must represent, or a candidate whom the four largest ATM Acquirers Members have chosen from a list put forward by the other Members if these Members do not succeed in designating a representative. In this case, the four most important Members undertake to not appoint a candidate as representative of the other Members, who has a function in a Group company of one of the four most important Members.

(iii) Representation of the Merchant Acquirer Members:

- A seat for each representative of the four most important Merchant Acquirer Members.
- A seat for the representative of the other Merchant Acquirer Members. This representative shall be either the candidate who is proposed by the Members whom he must represent, or a candidate whom the four largest Merchant Acquirers Members have chosen from a list put forward by the other Members if these Members do not succeed in designating a representative. In this case, the four most important Members undertake to not appoint a candidate as representative of the other Members, who has a function in a Group company of one of the four most important Members.

(iv) Representation of the Payment Scheme Manager:

- A seat for the Payment Scheme Manager.

(v) The Funds Collector Members are not represented in the Member Forum.

b) The share in the activity in a certain Member Category is calculated by the Payment Scheme Manager on the following basis:

(i) For the Card Issuer Members: on the number of Transactions performed with the Branded Cards in Circulation that are issued by the Card Issuer Member and the companies of its Group. The number of

Transactions performed between 1 January and 31 December of the year N-1 is used to determine the participation in the Member Forum for the year N.

- (ii) For the ATM Acquirer Members: on the number of Transactions performed with the Branded Cards in Circulation on the Approved ATM Terminals of the ATM Acquirer Member and the companies of its Group. The number of Transactions performed between 1 January and 31 December of the year N-1 is used to determine the participation in the Member Forum for the year N.
  - (iii) For the Merchant Acquirer Members: on the number of Transactions performed with the Branded Cards in Circulation or Approved card Substitutes accepted by the Merchants with whom the Merchant Acquirer Member or the companies of its Group have entered into a service agreement relating to the offering of electronic payment services to Cardholders in the Merchant's points of sale. The number of Transactions performed between 1 January and 31 December of the year N-1 is used to determine the participation in the Member Forum for the year N.
- c) In so far as a Member meets the selection requirements, it can have more than one seat in the Member Forum.
- d) Each representative should either hold a position of responsibility in his organization or have a special power of attorney to represent the Member in the Member Forum, so that he can commit the Party represented in connection with the matters that are discussed during the Member Forum.
- e) The Member Forum is renewed every year in May.

### 13.4. Decision method

- a) Each seat is entitled to one vote, with the exception of the Payment Scheme Manager which does not have a voting right.
- b) A quorum (physically present or by proxy) of at least 50% of the representatives of the Members is required.
- c) The decisions of the Member Forum are taken with a 51% majority of the total number of representatives of the Member Form, present or represented at the time when the forum is held.

### 13.5. Meetings

- a) The Member Forum meets at least two (2) times per year, on the dates determined by the Payment Scheme Manager during the first annual meeting.
- b) The Payment Scheme Manager can convoke extraordinary meetings as a function of the requirements.
- c) The agenda of the meetings shall be notified to the representatives at least 5 working days before the meeting.
- d) The minutes of these meetings shall be drawn up by the Payment Scheme Manager and shall be sent to all representatives.

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## 14. Modification of the PSMA

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### 14.1. Legal or regulatory changes to the PSMA

- a) The Payment Scheme Manager is entitled to unilaterally change with immediate effect the provisions of the Payment Scheme Membership Agreement when such change is required as a result of a legal provision of public policy, or with a mandatory national nature, or a European provision having direct effect, or a mandatory national instruction of an administrative or supervisory authority.
- b) The Payment Scheme Manager will notify the Member Forum of the unilateral changes and inform the Members by Member Letter as soon as possible after the decision to adopt these changes. The modalities with respect to the implementation of the changes must, however, be notified in advance to the Member Forum, as well as to the Members by Member Letter.

### 14.2. Changes other than legal or regulatory changes to the PSMA

- a) In case the Payment Scheme Manager wishes to change to the provisions of the Payment Scheme Membership Agreement, other than in a situation described under article 14.1 of the present General Terms and Conditions (e.g. changes to existing License Agreements or creation of a new type of License Agreement), he must:
  - (i) Submit the proposed changes to the Member Forum for discussion and advice at least 3 months prior to the entry into force of the proposed changes; and
  - (ii) Inform the Members of the proposed changes per Member Letter at least 2 months prior to the entry into force of the proposed changes.
- b) The changes will become effective on the date indicated in the Member Letter. This date must be at least 2 months after the date of receipt of the Member Letter.
- c) Any Member not agreeing with the proposed changes is entitled to terminate the Payment Scheme Membership Agreement or the applicable License Agreement in case the changes only relate to a certain License Agreement, in accordance with article 15.3 of the present General Terms and Conditions.

### 14.3. Form of the changes

- a) In case of changes to the Payment Scheme Membership Agreement, the Member Letters must be considered as the addendum to the Payment Scheme Membership Agreement.
- b) When the Payment Scheme Manager considers it expedient, the Member Letters to the Payment Scheme Membership Agreement shall be compiled in a new version of the Payment Scheme Membership Agreement.



## 15. Term and Termination of the PSMA or one or more License(s)

### 15.1. Term and termination by prior notification

- a) The Payment Scheme Membership Agreement is concluded for an indefinite term as of the Effective Date.
- b) Each Party can terminate the Payment Scheme Membership Agreement or just one or more License Agreement(s) at any time provided that a notice period of twelve (12) months is observed. However, the Parties may agree upon a shorter notice period.

### 15.2. Termination in case of default

#### 15.2.1. Termination by the Payment Scheme Manager

The Payment Scheme Manager can terminate the Payment Scheme Membership Agreement or one or more License Agreement(s) with immediate effect by giving notice to the Member, when the Member no longer meets the Membership Eligibility Criteria and/or the License Eligibility Criteria, the Member does not meet an essential obligation of the Payment Scheme Membership Agreement, respectively License Agreement(s), or the Member is in breach of the Laws applicable to the activities covered by the Payment Scheme Membership Agreement, respectively License Agreement(s) and fails:

- (i) to either rectify the situation within a period of thirty (30) Working Days after the date on which notice regarding the matter is served on the Member by registered letter by the Payment Scheme Manager; or
- (ii) to submit an action plan to rectify the situation within a period of thirty (30) Working Days after the date on which notice regarding the matter is served on the Member by registered letter by the Payment Scheme Manager, if the Member is unable to rectify the situation within a period of thirty (30) Working Days, it being understood that this is subject to said action plan being accepted by the Payment Scheme Manager.

#### 15.2.2. Termination by the Member

The Member can terminate the Payment Scheme Membership Agreement or one or more License Agreement(s) with immediate effect by giving notice to the Payment Scheme Manager, when the Payment Scheme Manager does not meet an essential obligation of the Payment Scheme Membership Agreement, respectively License Agreement(s) and fails:

- (i) to either rectify the situation within a period of thirty (30) Working Days after the date on which notice regarding the matter is served on the Payment Scheme Manager by registered letter by the Member; or
- (ii) to submit an action plan to rectify the situation within a period of thirty (30) Working Days after the date on which notice regarding the matter is served on the Payment Scheme Manager by registered letter by the Member, if the Payment Scheme Manager is unable to rectify the situation within a period of thirty (30) Working Days, it being understood that this is subject to said action plan being accepted by the Member.

### 15.3. Termination by the Member in case of changes to the PSMA

The Member can terminate the Payment Scheme Membership Agreement or one or more License Agreement(s) by giving notice to the Payment Scheme Manager, in case the Member does not agree upon the changes made to the Payment Scheme Membership Agreement in accordance with article 14.2 of the Present General Terms and Conditions. The Member must give notice to the Payment Scheme Manager at the latest 2 months after the date of the Member Letter. The Payment Scheme Membership Agreement or applicable License Agreement will terminate on the day of entry into force of the changes.

### 15.4. Termination with immediate effect

Each Party can terminate the Payment Scheme Membership Agreement or one or more License Agreement(s) with immediate effect by giving notice to the other Party, in case the other Party:

- (i) suffers a change in control which is likely to materially affect the ability of the Payment Scheme Manager to carry out its obligations under the Payment Scheme Membership Agreement, respectively License Agreement(s);
- (ii) is declared bankrupt or files for bankruptcy;
- (iii) (other than in the case of a restructuring under which the continuity of the business activities is retained) ceases its business activities in full or to a substantial extent;
- (iv) makes any assignment for the benefit of creditors, has a receiver, administrative receiver or officer appointed over the whole or a substantial part of its assets; or
- (v) is forced to terminate the Payment Scheme Membership Agreement, respectively License Agreement(s) by any legal provision or court decision or a decision by the regulator.

## 15.5. Consequences of termination

- a) The termination of the Payment Scheme Membership Agreement automatically entails the termination of all License Agreements of the Member, and the termination of all License Agreements of the Member shall result in the termination of the Payment Scheme Membership Agreement. Unless the Payment Scheme Membership Agreement contains a provision to the contrary, the rights and obligations of the Member resulting from membership of the Payment Scheme and one or more License Categories shall automatically cease to exist.
- b) When a License Agreement is terminated, the Payment Scheme Membership Agreement shall only be terminated if the terminated License Agreement is the only License Agreement concluded with the Member. Consequently, the Membership shall be maintained and the Payment Scheme Membership Agreement shall remain in force, so long as the Member remains Party to at least one License Agreement.
- c) In the event of termination, the Member shall not be able to claim repayment of the Fees that it has paid to the Payment Scheme Manager under the terminated License Agreement(s), except when the Payment Scheme Manager terminates the Payment Scheme Membership Agreement in accordance with article 15.1 of the present General Terms and Conditions or if termination takes place by the Member in accordance with article 15.2.2 of the present General Terms and Conditions. In these situations, the Member shall receive a refund in proportion to the recurrent SEPA License Fees set forth in the Fees Manual that it has paid to the Payment Scheme Manager and that extend beyond the duration of the prior notification.
- d) The License Agreements may contain additional, specific provisions on the consequences of termination of the relevant License Agreement.

## 16. Confidentiality

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- a) Subject to the obligations that may be imposed on them under application of a legal provision or court decision, any Confidential Information shall remain the property of the Disclosing Party and shall not, without the prior written consent of that Disclosing Party, be disclosed to any third party or used by the Receiving Party, except for the performance of the Receiving Party's obligations under this Payment Scheme Membership Agreement.
- b) In the event that one of the Parties must submit Confidential Information to a public body or supervisory authority, the Receiving Party shall notify the Disclosing Party of this immediately, unless this is not permitted by law, and undertakes to inform the said authorities of the confidential nature of the Confidential Information. This obligation to inform does not apply if the Confidential Information is passed on in the context of supervision to the National Bank of Belgium.
- c) The following shall not be considered as Confidential Information:
  - (i) Information that is already or will be in the public domain without infringing the present confidentiality clause;
  - (ii) Information that the Receiving Party obtains from a source other than the Disclosing Party, without this information within this Payment Scheme Membership Agreement having been the subject of any notification between the Parties or the Members, in so far as the source and the way in which the information was obtained is permitted and documented in detail, and can be verified;
  - (iii) Information that the Receiving Party has already acquired in a legal and legitimate manner, separately from the Disclosing Party, in particular, as a result of a non-confidential communication from a third party.
- d) The Receiving Party may disclose Confidential Information to companies that belong to the same Group, to its executives, directors, employees and to persons working for them who have the status of a self-employed person or authorized persons, and who require this information within the framework of their activities; the Receiving Party shall ensure that the above-mentioned persons or, in general, each person for whom they are responsible, shall observe the confidentiality obligation.
- e) Any failure to respect this confidentiality obligation shall expose the defaulting Party to the payment of compensation to the Party who is able to provide evidence of the damage incurred.
- f) This confidentiality obligation shall remain in force for a period of ten (10) years after the termination of the Payment Scheme Membership Agreement.
- g) The Receiving Party undertakes:
  - (i) To take all necessary safety measures to protect the Confidential Information;
  - (ii) Not to use the Confidential Information for other purposes than the ones agreed between the Parties in the Payment Scheme Membership Agreement;
  - (iii) Not to retain the Confidential Information for longer than is necessary for the fulfillment of the agreed obligations, unless the law imposes a longer retention period;
  - (iv) To return the data and Confidential Information immediately after it has complied with its obligations or at the request of the Disclosing Party and at the latest upon the termination, for whatever reason, of the Payment Scheme Membership Agreement, or to make it available to the Disclosing Party, or destroy it and provide the evidence of this to the Disclosing Party;
  - (v) Not to retain copies of or extracts from the Confidential Information.

## 17. Subcontracting

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- a) In view of the fulfillment of all or part of its obligations arising from the Payment Scheme Membership Agreement, the Member may make use of subcontractors, provided such subcontracting is in compliance with the applicable Laws and Regulatory Requirements with respect to subcontracting/outsourcing, and the subcontractors comply with the Payment Member Scheme Agreement, in particular the Operating Regulations.
- b) The subcontracting of all its obligations, or of a considerable part thereof, however, is subject to the prior written agreement from the Payment Scheme Manager who shall not withhold this agreement unreasonably. The fact that a subcontractor is not able to offer sufficient guarantees in the area of security shall be regarded as reasonable grounds to refuse consent.
- c) The Member shall remain fully responsible for all its obligations arising from the Payment Scheme Membership Agreement vis-à-vis the Payment Scheme Manager and vis-à-vis the other Members.

## 18. Assignment

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- a) The Members are not allowed to assign all or part of their rights and obligations under the Payment Scheme Membership Agreement to any third party (through a sale, a capital contribution, a donation or any other transaction, including the sale or contribution of a division ("*branche d'activité*" / "*bedrijfstak*") or of a business as a whole ("*universalité*" / "*algemeenheid*") or a merger or split-up) without the prior written consent of the Payment Scheme Manager. As long as such consent has not been obtained, the assigning Member shall continue to be liable for all obligations that it intended to assign.
- b) The Payment Scheme Manager will only consent to the assignment if at least the following cumulative conditions are met:
  - (i) The assignment is performed in compliance with the legislation referred in articles 31 and 31 of the Act of 22 March 1993 *on the status and supervision of credit institutions* or any other applicable local law provision implementing the corresponding provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 *relating to the taking up and pursuit of the business of credit institutions*;
  - (ii) The permitted assign meets the Membership Eligibility Criteria and License Eligibility Criteria associated with the applicable Membership Category(ies); and
  - (iii) Prior to or at the latest on the date of the assignment, the permitted assign has signed a Payment Scheme Membership Agreement with the Payment Scheme Manager, to the extent that the existing Payment Scheme Membership Agreement does not remain in place.

## 19. Member Data Sheet (MDS)

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The Payment Scheme Manager shall draw up a "Member Data Sheet" (MDS) or identification sheet of the Member, which shall be attached to the present General Terms and Conditions. This document contains all information of the Member that is required for the performance of the Payment Scheme Membership Agreement and shall be updated on a regular basis upon receipt of notification set forth in article 20.1, e) of the present General Terms and Conditions. This document shall not contain Confidential Information pertaining to any Member.

## 20. General

### 20.1. Communication between the Parties

- a) Without prejudice to article 14 of the present General Terms and Conditions, every communication between the Parties, taking place pursuant to the Payment Scheme Membership Agreement, should be sent by messenger or registered letter to the address stated on the MDS.
- b) The routine notifications for which the Payment Scheme Membership Agreement does not specify a written format, as well as the operational notifications of the Parties, may be sent by e-mail to the e-mail address that the Party receiving the e-mail has given to the other Party.
- c) All notifications that are sent by messenger or registered letter are considered as having been received:
  - (i) If the notification is sent by messenger: on delivery;
  - (ii) If the notification is sent by registered letter: at 10 AM on the third day after the date of posting.
- d) The Parties acknowledge that when the delivery of the notification by messenger takes place on a Working Day after 6 PM, receipt shall be considered to have taken place on the following Working Day at 9 AM.
- e) Every Member must inform the Payment Scheme Manager of a change to the name, address, fax number, contact point or any other information included in the MDS. Such notification is only valid if the notification has been sent by messenger, registered letter or e-mail with delivery and read receipt, signed by the Member. The notification becomes effective on:
  - (i) The date on which, as stated in the notification, the change shall take place; or
  - (ii) On the fifth working day after the sending of the notification.
- f) The Parties agree to use the English language among them as official language.

### 20.2. Invalidity clause

The invalidity or non-applicability of one of the clauses of the Payment Scheme Membership Agreement shall not detract from the validity or applicability of the Payment Scheme Membership Agreement in its entirety. In case one of the clauses of the Payment Scheme Membership Agreement is invalid or not applicable, the Parties undertake to act in good faith in order to replace this clause by a legal, legitimate, and enforceable clause. The Parties also undertake, within the framework of these negotiations, to arrive at a Payment Scheme Membership Agreement that is as close as possible to the original intent of the Parties.

### 20.3. Waiver of rights

Except where the opposite is expressly stipulated in the Payment Scheme Membership Agreement, no declaration whatsoever on the basis of which a Party declares to renounce its rights or legal remedies by virtue of the Payment Scheme Membership Agreement, can be regarded as valid unless this declaration has taken place in writing.

No omission or delay whatsoever on the part of either Party in exercising one of their rights or legal remedies by virtue of the Payment Scheme Membership Agreement, can detract from the existence of this right or legal remedy, and neither can it be interpreted as a renunciation of this right or legal remedy. The fact that a Party waives a right or legal remedy that it has by virtue of the Payment Scheme Membership Agreement has no influence whatsoever on the later exercise of this, or on the exercise of any other right or legal remedy.

### 20.4. Full Payment Scheme Membership Agreement

Unless a clause to the contrary is included in the Payment Scheme Membership Agreement, the Payment Scheme Membership Agreement replaces and cancels all messages, declarations, guarantees, the internal rules of procedure

and other earlier agreements (including the Former Payment Scheme Membership Agreement) with regard to the object of the Payment Scheme Membership Agreement between the parties or their legal predecessors.

## **20.5. Independence of the Parties**

The Payment Scheme Membership Agreement is entered by two, legally independent Parties. Neither Party has the authority or capacity to obligate the other Party with respect to third parties.



## 21. Disputes

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### 21.1. Dispute Settlement Procedure

Any dispute between the Parties in connection with the interpretation or performance of the Payment Scheme Membership Agreement shall be subject to the following dispute settlement procedure:

1. First level of the procedure: In case of a dispute, the Parties shall refer the case to the Member Forum which will then attempt to find a solution to the dispute. This referral formally confirms the existence of the dispute. Each Party shall submit to the Member Forum all useful documents that may contribute to the amicable settlement of the dispute.
2. Second level of the procedure: If the Member Forum is unable to find a solution within thirty (30) Working Days as of the referral to the Member Forum, either Party may refer the case to the CEO of the Payment Scheme Manager and a Member of the Board of Directors of the Member. The latter must try to come to an agreement within the following thirty (30) Working Days.

### 21.2. Competent court

On the assumption that after application of the above-mentioned dispute settlement procedure no agreement has been reached, the Parties agree to refer the dispute to the Courts of Brussels.

### 21.3. Applicable law

The Payment Scheme Membership Agreement is subject to Belgian law.

\* \* \*

Drawn up and signed in Brussels on [redacted], in two copies, of which each Party has received its copy.

**By signing these General Terms and Conditions, the Member declares to have received a copy of the Operating Regulations and the Fees Manual and to agree with the content thereof and accepts to be fully bound by their provisions.**

The Payment Scheme Manager	The Member
Nathalie Vandepeute	[name]
CEO	[title]

	The Member
	[name]
	[title]

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**End of document**