MEMORANDUM OF AGREEMENT

between

PAYMENTS ASSOCIATION OF NAMIBIA

("the Association")

represented herein by Adrianus Vugs

in his capacity as the PAN Independent Chairperson

and

THE BANK OF NAMIBIA

("the Bank")

represented herein by

Barbara Dreyer in her capacity as the Director: National Payment System and Financial Surveillance

(collectively referred to as **"the Parties")**

1. DEFINITIONS

In this Agreement, unless the context indicates otherwise, the words and expressions used herein will have the same meaning as assigned to them in the Payment System Management Act, 2023 (Act No. 14 of 2023), and in the PAN Constitution dated 14 November 2023, and cognate expressions will have corresponding meanings.

"Act" means the Payment System Management Act, 2023 (Act No. 14 of 2023)*;*

"Association interchangeably "***PAN***"***"*** means the Payments Association of Namibia referred to in section 5 of the Act;

"Bank" means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

"Chairperson" means the independent non-executive Chairperson of the PAN Management Board as elected by the PAN Management Board and approved by the Bank, who is accountable for PAN operations and the successful execution of its delegated mandate;

"Chief Executive Officer (CEO)" means the person who is the principal officer of PAN;

"Forum" means collaborative platform designed to facilitate communication and cooperation among its Members within the national payment system. These forums also actively engage in regional and international initiatives to promote payment system integration and are required to report through the Payments Management Board (the PMB) on matters affecting the national payment system to Bank of Namibia;

"Members" means an institution that has attained membership to PAN in accordance with section 8 of the PSM Act;

"National Payment System" interchangeably ***"NPS"*** means the entire payments ecosystem and includes all the payment systems, clearing systems, settlement systems and the rules, standards, arrangements, procedures, laws, agreements, technologies, payment instruments and institutions that are used in the processing and transferring of funds and securities;

"PAN Executive Office" interchangeably ***"EXCO"*** means the office that carries out the day-to-day operational activities of the Association;

"PAN Management Board" interchangeably *"**PMB**"* means the governing body of PAN;

"Payment Clearing House" **i**nterchangeably **"*PCH*"** means an arrangement between System Participants governing the clearing of payment instructions between those System Participants;

"PCH Participant Group" means parties who are participants to a Payment Clearing House;

"Payment Service Provider" means a person, including a banking institution, licensed under the Act to provide payment services as specified under the Schedule of the Act; and

"Payment System Participant(s) " means a member or members of a payment system that is authorised and recognised in the rules of that payment system or is otherwise recognised by the operator of that payment system.

2. PREAMBLE

WHEREAS Section 3(1) of the Act, gives the Bank powers to ensure the safe, secure, efficient and effective operation of the National Payment System;

AND WHEREAS Section 3(2)(b) of the Act confers on the Bank the functions to regulate, supervise and oversee, the operations of the NPS and all matters relating to payment, clearing and settlement services and systems;

AND WHEREAS Section 3(2)(c) of the Act confers on the Bank the functions to regulate, supervise and oversee, Payment Service Providers, payment system operators, payment services and payment instruments;

AND WHEREAS Section 3(2)(g) of the Act confers on the Bank the functions to authorise and oversee the operations of the Association by issuing to the Association a certificate of commencement of business, after having satisfied itself with the Association's Constitution, rules and readiness to report on matters relating to the operations of the NPS;

AND WHEREAS Section 3(2)(m) of the Act confers on the Bank the functions to investigate and deal with unlawful and improper practices in the National Payment System and impose administrative penalties for non-compliance with the Act and any determination, directive, guideline, standard, circular, specification, order or notice issued or made in terms of the Act;

AND WHEREAS Section 5(1)(a) of the Act stipulates that the Payment System Management Body established under the repealed Payment System Management Act, 2003 (Act 18 of 2003), will continue to exist as a juristic person under the name Payments Association of Namibia;

AND WHEREAS the Bank on 12 August 2005, has authorised the Payment System Management Body now referred to as the PAN to execute its mandate as contemplated in Section 6 of the Act;

AND WHEREAS the Parties are desirous that the Association and in particular the PAN Executive Office, act as an autonomous and self-regulating body, distinct and separate from its Members, with the capacity to conduct all administrative and judicial acts in its own name, subject to the provision of the Act; and

AND WHEREAS the Parties hereto desire to clarify the Association's roles and mandate in terms of the Act, including the powers and oversight responsibilities of the Bank.

NOW THEREFORE the Parties record their understanding as follows:

3. OBJECTIVE

3.1. The Bank is obliged by the Act to ensure the safe, secure, efficient and cost-effective operation of the NPS.

3.2. The Association is obliged to act as a collaborative forum for its Members, set technical standards for the participation of its Members in the NPS and Forums subject to the approval of the Bank, report to the Bank on matters affecting the NPS and perform such further functions relating to payment, clearing and settlement systems as the Bank may assign to it, and make and administer technical rules relating to payment instructions and payment instruments, with the approval of the Bank.

3.3. The Parties have agreed to their respective roles and responsibilities set out in this Agreement to facilitate an effective working relationship and thereby promote an efficient, secure, stable, and competitive payment system in Namibia.

4. INTRODUCTION

4.1. The Association is a not-for-profit association established in 2005 by an Act of Parliament, whose mandate in terms of Section 6 of the Act, is to:

4.1.1. act as a collaborative platform for its Members;

4.1.2. subject to the approval of the Bank, set standards for Member participation in payment systems and forums;

4.1.3. participate in relevant regional and international initiatives and platforms in the promotion of regional and international integration of payment systems;

4.1.4. report to the Bank on matters affecting the National Payment System; and

4.1.5. perform such further functions relating to payment, clearing or settlement system as the Bank may assign to it.

5. PAN EXECUTIVE OFFICE

5.1. The Roles

5.1.1. The PAN Executive Office will be headed by the CEO who is responsible for the day-to-day management of the Association and report directly to the Chairperson;

5.1.2. The CEO is appointed by the PMB, subject to the approval of the Bank to carry out the mandate of the Association in terms of section 6 of the Act;

5.1.3. The CEO must liaise with the Managing Directors/Chief Executive Officers of the Members' institutions where necessary and contribute strategically to the interpretation of the powers and functions of the Association; and

5.1.4. The CEO must ensure that the management of the Association is in line with the relevant regulations. The Association must ensure that the Constitution and rules are fair, equitable and transparent. The Association is further required to assist the Bank in ensuring the safety, efficiency, transparency and interoperability of the NPS, as a whole.

6. THE RESPONSIBILITIES OF PAN

6.1. Administrative Responsibilities

6.1.1. To perform secretarial functions for the PMB and ensure confidentiality in dealing with stakeholders' information;

6.1.2. To prepare and present the annual budget at PMB meetings and act as a point of contact and information dissemination for all payment system related issues and initiatives;

6.1.3. To provide the Association's annual report to the Bank, in particular the National Payment System and Financial Surveillance Department and other stakeholders pertaining to the Association's activities within three (3) months after the financial year of the Association;

6.1.4. To prepare and distribute documentation and minute packages (i.e. position papers, progress report for projects, agenda, feedback from PCH Participant Group's chairpersons, and so forth) to PMB members ten (10) business days in advance of PMB meetings;

6.1.5. To facilitate, in consultation with PCH Participant Groups, committee's and relevant Forums, the development of industry positions and views on the evolution and regulation of payment systems, and to communicate those views to the Bank, PMB, and other stakeholders as needed;

6.1.6. To facilitate and ensure that the respective PCH Participant Groups Forums, as led by the individual Forum's Chairperson, undertake the agreed upon (where applicable, as delegated by the PMB) relevant tasks and functions pertaining to the NPS;

6.1.7. To facilitate, coordinate and monitor payments system development programs or projects as required by its Members in line with the NPS vision as well as any other similar directives or vision that may follow and give project update to PMB and the Bank in consultation with the PCH members;

6.1.8. To perform such further functions relating to payment, clearing or settlement systems as the Bank and PMB may assign to it;

6.1.9. To draft the criteria and conditions for the appointment of the PMB members and the Association's Chairperson for approval by the Bank;

6.1.10. To systematically manage and report risks associated with governance and operations, and those inherent in the national payment system. This includes the obligation to inform and update the Bank of Namibia on the current risk profile, significant risk exposures, and mitigation outcomes of PAN and the national payment system; and

6.1.11. To systematically manage and report risks associated with governance and operations, and those inherent in the national payment system. This includes the obligation to inform and update the Bank of Namibia on the current risk profile, significant risk exposures, and mitigation outcomes of PAN and the national payment system.

6.2. Association's Responsibilities

6.2.1. To submit to the Bank, a report wherein the Chief Executive Officer, every six (6) months, in terms of Section 6(1)(d) of the Act, in the format prescribed by the Bank, report to the Bank on matters affecting the National Payment System, the operations of PAN, the status of compliance of the Members with the Constitution, PAN policies, directives and the regulatory framework of the NPS and a status update of how PAN is executing its mandate, operational matters, such as industry projects and performing such other functions as the Bank may have assigned to the Association. This report should be prepared for the periods 1 January – 30 June and 1 July to 31 December of each year. The report is to be submitted by the last day of the month following the end of the reporting period, i.e., 31st July and 31st January respectively;

6.2.2. With the approval of the Bank, make and administer technical rules relating to payment instructions and payment instruments;

6.2.3. Enable the Bank, when discharging its responsibilities regarding the monitoring, regulation and supervision of payment, clearing and settlement systems, to adequately oversee the affairs and operation of the Association and its Members;

6.2.4. To operationalise the Association strategic plan and report to the Bank and PMB on progress of its implementation on a quarterly basis until fully implemented; and

6.2.5. To put in place Forum rules, agreements, constitutions and procedures, subject to the approval of the Bank, to ensure that representatives of Members on the Forums are fit and proper and in compliance thereof.

7. THE RESPONSIBILITY OF THE BANK OF NAMIBIA

7.1. The Roles

7.1.1. The role of the Bank, as the National Payment System regulator, supervisor and overseer, is particularly relevant to ensure the safe, secure, efficient and effective operation of the NPS.

7.2. The Responsibilities of the Bank

7.2.1. To ensure fair, open and equitable access to the NPS;

7.2.2. To regulate, supervise oversee, the operations of the NPS and all matters relating to payment, clearing and settlement services and systems;

7.2.3. To establish and operate a payment or settlement system;

7.2.4. To license Payment Service Providers or authorise payment system operators and, suspend, revoke or vary the conditions of any such licences, or authorisations conferred on such Payment Service Providers or payment system operators in accordance with the Act;

7.2.5. To authorise payment services or payment instruments and cancel such authorisations conferred on such payment services or payment instruments in accordance with the Act;

7.2.6. To authorise and oversee the operation of the Association by issuing them with a certificate of commencement of business, after having satisfied itself with the Association’s Constitution, rules, competence and readiness to execute its mandate in terms of the Act;

7.2.7. To approve the criteria and conditions for the appointment of the PMB members and the Chairperson and two (2) or more independent non-executive directors;

7.2.8. To approve the Association’s Constitution, rules and any other document for endorsement, as required by the Bank from time-to-time;

7.2.9. To consider and approve dispensations regarding compliance with any laws/regulations set by the Bank;

7.2.10. To annually evaluate, the effectiveness of the Association’s EXCO and the PMB in terms of the Act, any other relevant regulatory requirements and this Agreement;

7.2.11. To approve the Association’s Constitution, any amendments thereof and act on any Member’s non-compliance issues as escalated to the Bank by the Association;

7.2.12. To approve the amendment of annual subscription fees payable by Members of the Association;

7.2.13. To approve the appointment of an independent non-executive chairperson and two or more independent non-executive directors;

7.2.14. To approve the appointment of the PMB members;

7.2.15. To engage other regulators and authorities as provided for in Section 4 of the Act;

7.2.16. To perform ongoing oversight as well as risk-based onsite inspections on authorised service providers in the NPS;

7.2.17. To request in writing, any person, to provide to the Bank, within the period specified in the notice, all such information in its possession relating to their participation in the National Payment System as provided in section 34 of the Act; and

7.2.18. To impose administrative penalties on any Payment Service Provider, payment system operator or person who contravenes or fails to comply with a determination, directive, guideline, standard, circular, specification, order or notice issued by the Bank.

8. LIAISON PROCEDURES

8.1. Both the PAN Executive Office and the Bank will be responsible in setting up quarterly meetings and an agenda which will be agreed upon by both parties prior to the meeting.

8.2. In the quarterly meetings the PAN Executive Office and Bank will discuss the following matters but not limited to:

8.2.1. Any matters addressed at the PMB that could have implications for the Bank's oversight or operational responsibilities of the NPS;

8.2.2. Any matters of current interest to the Bank that could have implications for the Association's roles in seeking to improve the NPS;

8.2.3. The CEO of the PAN Executive Office will inform the Bank in writing of any issues that might have implications for the Bank's operations or policy as soon as practicable rather than waiting for the next regularly scheduled meeting. The Bank will do likewise for any issues having implications for the Association; and

8.2.4. The Association should submit to the Bank information and/or data as and when needed or requested.

9. REVIEW

9.1 This Agreement will be reviewed every two (2) years by the Parties to ensure that it meets its objectives, with any proposed changes to be agreed by the Parties.

10 SIGNATURES

Signing for and on behalf of the Bank of Namibia.

Signed at WINDHOEK on 21 May 2024

Duly Authorised

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DIRECTOR: NATIONAL PAYMENT SYSTEM AND FINANCIAL SURVEILLANCE

Signing for and on behalf of the Payments Association of Namibia.

Signed at Windhoek on 22 May 2024

Duly Authorised

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INDEPENDENT CHAIRPERSON: PAYMENTS ASSOCIATION OF NAMIBIA