

COALITION REWARDS PROGRAMME

PARTICIPATION TERMS

(FOR FUEL RETAILERS)

(version effective as of 1 March 2021)

1. APPLICATION

These terms (as may be updated by Infinity from time to time) govern participation in the Infinity Rewards Programme. Any qualifying retailer that agrees to participate in the Rewards Programme must agree to the terms and conditions set out in this document. Such an entity is referred to as the “Retailer” under these terms. Failure to agree to these terms will result in the Retailer not being permitted to participate in the Rewards Programme. Queries or concerns regarding the meaning of these terms should be raised with Infinity, as no rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to this Agreement.

2. DEFINITIONS

2.1 **Definitions.** The following terms shall have the following meanings -

- 2.1.1 “**Agreement**” means (i) the forms into which these terms and conditions are incorporated and (ii) these terms and conditions;
- 2.1.2 “**Card**” means an Infinity approved card issued to Cardholders;
- 2.1.3 “**Cardholders**” means valid subscribers to the Rewards Programme;
- 2.1.1 “**Cardholder Information**” means in relation to Cardholders, all *personal information* as it is defined under POPIA which is provided to Retailer by or on behalf of Infinity;
- 2.1.2 “**Cashback**” means a cash amount paid by Infinity to the Retailer on behalf of a Cardholder in respect of a Redeem Transaction;
- 2.1.3 “**Documentation**” means the documentation made available by Infinity to Retailer (whether in electronic or hard copy form) relating to the Rewards Programme, including user manuals and technical instructions;
- 2.1.4 “**Intellectual Property Rights**” means patents, registered designs, trademarks (whether registered or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as its confidential information, including in other jurisdictions, that grant similar rights as the foregoing;

- 2.1.5 “**Fees**” means the fees agreed to be payable by Retailer in consideration for participation in the Rewards Programme, the supply of Cards and/or Retailer Premises Equipment and any other charges agreed to between the Parties from time to time;
- 2.1.6 “**Infinity**” means Infinity Fuel (Pty) Ltd, a company incorporated under the laws of South Africa with physical address at Wrigley Field, 1st Floor, The Campus, 57 Sloane Street, Bryanston, 2021 and company registration number 2018/204062/07;
- 2.1.7 “**Infinity System**” shall mean the computer systems, software and platforms used by Infinity to make available and administer the Rewards Programme, including the Retailer Premises Equipment but excluding Retailer Systems;
- 2.1.8 “**Infinity Account**” means Infinity’s designated bank account for receiving Fees due to it;
- 2.1.9 “**Kiosk**” shall mean a tablet or other device supplied by Infinity to Retailer for use in connection with the Rewards Programme and to assist Cardholders in connection with the Rewards Programme;
- 2.1.10 “**Loss**” means all losses, liabilities, damages and claims, and all related costs and expenses (including legal fees at an attorney and own client scale and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);
- 2.1.11 “**Merchandise**” means petrol and diesel products;
- 2.1.12 “**Parties**” means Infinity and Retailer and “**Party**” means either one of them;
- 2.1.13 “**POPIA**” means the Protection of Personal Information Act, 2013 (as amended), and the regulations and codes of conduct issued pursuant thereto;
- 2.1.14 “**Principal Amount**” means the retail selling price charged by Retailer for the purchase of Merchandise;
- 2.1.15 “**Purchase Transaction**” means a transaction logged with Infinity recording a purchase of Merchandise by a Cardholder from Retailer;
- 2.1.16 “**Redeem Transaction**” means a transaction between Cardholder and Retailer logged with Infinity whereby a Cardholder elects to effect payment (whether part payment or in full) for Merchandise using Cashback;
- 2.1.17 “**Retailer Account**” means the account designated in writing by Retailer for receiving payment of amounts due to Retailer in terms hereof;
- 2.1.18 “**Retailer Premises**” means the business premises of the Retailer at which the Rewards Programme is made available;

- 2.1.19 “**Retailer Premises Equipment**” or “**RPE**” means Kiosks and Terminals;
- 2.1.20 “**Retailer System**” means the computer systems and devices used by Retailer to access the Infinity System (including the software implemented on such systems and devices) and the required connectivity, but excluding RPE;
- 2.1.21 “**Rewards Programme**” means the Infinity retail rewards programme whereby Cardholders can redeem Cashback at Rewards Programme Partners;
- 2.1.22 “**Rewards Programme Partners**” means a retail entity which has contracted with Infinity or one of its affiliates for access to and participation in the Rewards Programme;
- 2.1.23 “**Terminals**” mean devices supplied by Infinity to Retailer to record Purchase Transactions and Redeem Transactions in the absence of an integrated Retailer System;
- 2.1.24 “**Transactions**” means Purchase Transactions and Redeem Transactions;

3. COMMENCEMENT AND DURATION

- 3.1 **Commencement.** This Agreement shall become effective upon Infinity issuing to Retailer confirmation that Retailer has successfully signed up for the Rewards Programme. Retailer’s participation in the Rewards Programme shall be enabled from the date specified in the notice.
- 3.2 **Duration.** This Agreement will, subject to these terms and conditions endure on an indefinite basis, provided:
 - 3.2.1 that either Party can terminate this Agreement by giving the other Party at least 90 (ninety) days prior written notice thereto; and
 - 3.2.2 this Agreement shall terminate on the date that the Rewards Programme is no longer offered by Infinity.

4. MARKETING AND PROMOTION

- 4.1 **Marketing.** In return for payment of the Fees, Infinity shall promote Retailer’s participation in the Rewards Programme to Cardholders. Retailer agrees to promote the Rewards Programme to its clients, including by installing suitable Infinity approved signage to promote the Rewards Programme at the Retailer Premises and by promoting the Rewards Programme on its web sites. Retailer will assist interested persons to sign-up for the Rewards Programme and become registered Cardholders.
- 4.2 **Licence.** Each Party hereby grants the other a non-exclusive, non-transferable right to use and display its trademarks in the form and format provided by it solely for the purposes specified under 4.1 and in accordance with the terms and conditions of this Agreement and the written instructions of the proprietor of such trademarks. Save as specified herein, a Party is granted no right, title, licence or interest to or in the other Party’s trademarks.
- 4.3 **Usage Approval.** A Party will not use or authorise the use of the other Party’s trademarks on any promotional,

marketing or advertising materials (whether electronic or printed), without first obtaining the other Party’s prior written approval thereto. Use of a Party’s trademarks by the other Party shall be limited to the scope of the authorisation granted by the Party which is the proprietor of the trademarks.

- 4.4 **Undertakings.** Each Party warrants that it is authorised to grant to the other Party the right to use of the trademarks as contemplated under clause 4.1, and furthermore undertakes that it shall not challenge, represent that it has any right of any nature in, nor cause any challenge to the other Party’s rights in and to its trademarks or do anything that might harm the reputation or goodwill of the other Party or any of its trademarks. A Party shall also not take any action or cause an action to be taken that is inconsistent with the other Party’s rights in its trademarks, nor shall it adopt, use or register any name, trade name, trade mark, service mark or other designation confusingly similar to any of the other Party’s trademarks or incorporate in any way a such a trademark into one of its own trademarks or cause that or assist a third party in performing any of the above.

5. SYSTEMS AND PROCESSING OF TRANSACTIONS

- 5.1 **Retailer Systems/Terminals.** Retailer shall be responsible for procuring, installing, and maintaining all components of the Retailer Systems (which if required shall include procuring Terminals from Infinity) as required to enable access to the Infinity System for the purposes of processing Transactions pursuant to the Rewards Programme.
- 5.2 **Implementation.** Retailer shall comply with the directions of Infinity to enable the processing of Transactions by Retailer pursuant to the Rewards Programme, including with respect to steps to be undertaken to enable the interoperation of the Retailer System with the Infinity System to enable processing of Transactions.
- 5.3 **Transaction Processing.** Retailer shall ensure that Transactions are submitted to and processed in the format prescribed by Infinity, whether on an online real time or offline batch file basis. Retailer will notify Infinity of any problems experienced or detected with respect to the processing of Transactions and will work together with Infinity to resolve such problems.

6. RETAILER PREMISES EQUIPMENT

- 6.1 **Retailer Premises Equipment.** In consideration for the payment of the Fees therefor, Infinity will provide RPE to Retailer for use at the Retailer Premises in connection with the Rewards Programme, including by Cardholders. Retailer will keep all RPE implemented at the Retailer Premises secure. Retailer may not sell, dispose of, deploy at or utilise for any third party, pledge or allow any of the RPE to become subject to a lien or other encumbrance. Furthermore, Retailer shall ensure that:
 - 6.1.1 the RPE are used with care and that reasonable precautions are taken to avoid accidents and to

safeguard RPE from loss or damage and excessive wear and tear;

6.1.2 Infinity is notified immediately of any loss of, or damage to, the RPE or part thereof or any failure of the RPE to function;

6.1.3 the RPE are not moved, connected, disconnected, altered or repaired by anyone other than Infinity or its authorised subcontractors;

6.1.4 Infinity or anyone duly authorised by Infinity is allowed to inspect, test, modify and maintain the RPE at all reasonable times;

6.1.5 Infinity is provided with all such information as it may reasonably require to protect its right of ownership in the RPE;

6.1.6 the RPE are not sub-let, does not leave Retailer's possession, are not used for any purposes other than for the Rewards Programme; and

6.1.7 the RPE are used RPE in accordance with Infinity's reasonable instructions.

6.2 **Infrastructure.** Retailer shall ensure that the environment and infrastructure at the Retailer Premises at which RPE are to be implemented complies with Infinity's requirements therefor, including with respect to security, power supply, internet connectivity and network infrastructure by the planned date of implementation. If Infinity is unable to implement the RPE or is delayed by reason of Retailer's failure to ensure same, Retailer will pay all reasonable wasted costs of Infinity attributable to such delay, including the costs of abortive site visits.

6.3 **Damage.** Retailer shall be liable for any loss of or damage to RPE while implemented at the Retailer Premises. Without limiting the aforesaid, Retailer shall be liable for the costs of replacement or repair of RPE as a result of any loss of or damage, malfunction or defect in the RPE caused by the breach of its obligations under 6.1.

6.4 **Landlord Notices.** In the event that a Retailer Premises is leased by the Retailer, it will ensure that its landlord is promptly notified of all RPE and that such RPE are owned by Infinity. Retailer will obtain an acknowledgement of receipt of such notice from the landlord and will provide a copy of the notice containing the receipt acknowledgement to Infinity. Retailer will repeat the aforesaid process promptly following any change of landlord.

7. REWARDS PROGRAMME

7.1 **Transactions.** The Parties will use commercially reasonable efforts to procure that Transactions are able to be performed at Retailer at least during its normal trading hours. It shall be the responsibility of Retailer to ensure that:

7.1.1 Transactions are submitted and processed in accordance with the instructions of Infinity; and

7.1.2 Retailer personnel assisting Cardholders with the purchase of Merchandise and related queries are able to provide such assistance to Cardholders.

7.2 **Redeem Transactions.** A Cardholder may elect to pay for Merchandise using all or part of the Cashback accrued to such Cardholder as indicated by the Cardholder and confirmed by the Infinity System and Retailer shall accept such mode of payment. Payment of Cashback amounts by Infinity to Retailer on behalf of the Cardholder shall be made subject to the provisions of 8.2 below.

7.3 **Adjustments.** Infinity will endeavour to provide Retailer with reasonable advance written notice of any adjustments affecting the Rewards Programme, including with respect to the processing of Transactions. Retailer will to the extent required cooperate with Infinity to implement any changes to ensure the continued processing of Transactions, including as may relate to the Retailer Systems or the submission and processing of Transactions.

7.4 **Support.** Infinity will provide a helpdesk to support the Retailer with problems and queries regarding the Rewards Programme at between the hours of 08h00 and 17h00 on weekdays (excluding South African public holidays). Support queries may be logged telephonically at the call centre number as published on the Infinity website from time to time 0861 663 111 or via email to the support email address as published on the Infinity website from time to time support@infinityrewards.co.za

7.5 **Training.** Retailer shall if required by Infinity ensure that its personnel are available for training with respect to Retailer's participation in the Rewards Programme. The date and venue for such training will be arranged at a mutually agreed time and place.

7.6 **Suspension and Termination.** Without prejudice to any other rights or remedies it may have in Law, Infinity may suspend or terminate Retailer's participation in the Rewards Programme if:

7.6.1 Retailer's participation in the Rewards Programme is or becomes, or will become contrary to applicable law or prejudicial to Infinity;

7.6.2 Retailer fails to comply with the terms of this Agreement, including with respect to the processing of Transactions;

7.6.3 Infinity is required to do so by law, including pursuant to an instruction by any relevant governmental authority.

8. REPORTING AND SETTLEMENT OF CASHBACK

8.1 **Cashback Calculation.** The available Cashback balance of a Cardholder will prior to the processing of the Redeem Transaction be confirmed by the Infinity System and communicated to Retailer via the Retailer System or Terminal (as the case may be). Notwithstanding the aforementioned, it is the responsibility of the Retailer to confirm the correctness of the Cashback amount to be awarded or redeemed in respect of each Transaction.

Infinity will not be liable for any failure or error made in this regard.

8.2 **Reporting and Transfer.** Infinity will on a monthly basis provide to Retailer a report reflecting the total number of Transactions authorised by the Infinity System received via the Retailer System or Terminals, which report shall separately detail the number of Purchase Transactions and Redeem Transactions and confirm the total amount due to Retailer for the particular month. Infinity will procure settlement of amounts due to Retailer into the Retailer Account.

8.3 **Transaction Reversals.** Retailer shall promptly notify Infinity in the event that a refund related to a Purchase Transaction is processed by Retailer which involves a cash repayment by Retailer to the relevant Cardholder of the amount paid by such Cardholder to Retailer for the relevant Merchandise. Refunds will result in a reversal of Cashback previously accrued, limited to the available Cashback balance of the Cardholder.

9. PAYMENT

9.1 **Fees.** Infinity will invoice Retailer for Fees. Duly invoiced Fees shall become due upon the date on which the invoice is issued and shall be paid in accordance with clause 9.4. The Fees to be paid must include sales and value added tax, be free from set-off or deductions and exclusive of all withholding, excise and ad valorem taxes. Retailer shall pay withholding, excise and ad valorem taxes, customs fees and similar charges, whether directly to the appropriate taxing authority or by reimbursing Infinity for payments it made on the Retailer's behalf.

9.2 **Interest.** Fees amounts which are overdue will accrue interest at the maximum rate permitted under applicable law from the date on which it falls due until date of actual payment.

9.3 **Increases.** The Fees may be adjusted once annually by way of a written notice thereto and such changes will take effect on the date therefore as specified in the notice.

9.4 **Debit Order.** Unless otherwise agreed in writing, Retailer shall ensure that all amounts payable to Infinity hereunder are paid into the Infinity Account by way of debit order which debit order will authorise Infinity to debit the Fees directly from Retailer's bank account. Retailer shall ensure that Infinity is provided with the correct details of Retailer's bank account against which the debit order will be debited, and shall immediately notify Infinity in the event of any changes to such banking details.

9.5 **Payment Disputes.** If there is any dispute about the amounts due to any Party, the Parties shall appoint an independent registered public accountant to act as an expert. If the Parties are unable to reach agreement as to the appointment of such independent registered public accountant, an independent registered public accountant shall be appointed at the request of either Party by the President for the time being of the Society of Chartered Accountants of South Africa (or the successor

body thereto). The independent registered public accountant shall act as an expert and not as an arbitrator and the Parties shall provide each other and any such expert with any and all information that it may reasonably require in order to determine the correct amount payable. Such expert's decision shall be final and binding on the Parties. The cost of the aforesaid determination shall be borne by the Parties in equal shares unless a Party is found to be materially in default, whereupon the defaulting Party shall bear the costs of such expert. A correcting payment in the amount as determined by the expert shall be paid to the non-defaulting Party within 14 (fourteen) days of the determination.

10. PROPRIETARY RIGHTS

10.1 **Retention of Rights.** Infinity reserves all rights in and with respect to the Infinity System and the Documentation not expressly granted to Retailer. Retailer accordingly acknowledges that Infinity and its licensors shall remain solely entitled to all Intellectual Property Rights and other proprietary rights in the Infinity System and the Documentation.

10.2 **Statistical Data.** Infinity shall be entitled to use data submitted by the Retailer to Infinity in connection with the Rewards Programme, including which is processed or generated by Infinity in connection with the processing of Transactions to derive statistical, non-personalised data ("**Statistical Data**") and to use such Statistical Data in an unrestricted manner and on a royalty free basis, including to improve its offerings to Cardholders.

11. CONFIDENTIAL AND CARDHOLDER INFORMATION

11.1 **Confidentiality.** Retailer shall for the duration of this Agreement and thereafter treat the terms of this Agreement and the Documentation as proprietary and confidential to Infinity and shall not make any use of the Documentation or information contained therein other than in connection with its participation in the Rewards Programme.

11.2 **Cardholder Information.** The Retailer acknowledges that it may receive Cardholder Information from Infinity, and accordingly agrees that it will Process such information ("**Process**" will for the purposes of this clause 11 have the meaning ascribed to it under POPIA):

11.2.1 strictly in compliance with POPIA;

11.2.2 only to the extent required to enable the Transactions; and

11.2.3 otherwise in accordance with Infinity's lawful and reasonable instructions, including by providing, updating, correcting, and deleting relevant records thereof upon Infinity's request.

Retailer hereby indemnifies Infinity against any claims, fines, or penalties for which they may become liable as a result of a failure to comply with this clause 11.

11.3 **Treatment of Cardholder Information.** Retailer shall treat Cardholder Information (including the form and format in which it is made available) as confidential and

proprietary to Infinity, and accordingly shall not and shall not permit Processing thereof other than in accordance with the term of this Agreement. Furthermore, Retailer shall not obtain any right, title or interest in the Cardholder Information, save as may be expressly granted by Infinity in writing. Retailer may not, unless agreed with Infinity in writing, transfer Cardholder Information to be Processed by any third party or outside South Africa.

11.4 **Data Security.** Retailer will be responsible for the security and integrity of Cardholder Information and will take all reasonable precautions and implement, update and maintain all appropriate reasonable technical and organisational security measures to prevent any unauthorised disclosure, access, processing, use, alteration, destruction, damage or loss of the Cardholder Information, and shall ensure that its personnel and agents appointed by it to Process Cardholder Information on its behalf do so strictly in accordance with this Agreement having regard to specific professional or industry rules, standards, practices and procedures and generally accepted international standards, practices and procedures applicable to the type of service or data involved, including through secure storage, encryption of data and the use of suitable access control, firewall, intrusion prevention and virus detection mechanisms.

11.5 **Incidents.** Retailer will inform Infinity immediately if any unauthorised disclosure, use, access, alteration, Processing, loss, damage or destruction of Personal Information has occurred, or if Retailer has reasonable grounds to believe that such has occurred or may occur, and Retailer shall provide full details of the scope and nature of the incident and the affected Cardholders. Retailer shall furthermore provide such assistance as Infinity may require in relation to the investigation of the incident and shall implement such measures as required to resolve the incident and prevent similar incidents from occurring in future.

12. WARRANTIES

12.1 **Warranty of Authority.** Retailer warrants that it has the legal right and full power and authority to execute this Agreement.

12.2 **Disclaimer of warranties.** Infinity hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in this Agreement. Without limiting the foregoing, Infinity disclaims that the systems, services, data and the Rewards Programme will always be available, free of errors, non-infringing or fit for a particular purpose.

12.3 **No representations.** Retailer acknowledges that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this Agreement.

13. LIABILITY

13.1 **Excluded damages.** In no event shall Infinity, its affiliates or its personnel be liable for be liable for any punitive, indirect, incidental, extrinsic, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including, without limitation,

loss of profits, loss of income, loss of goodwill, loss or corruption of data, loss of use, third party claims or any other pecuniary loss) arising in connection with this Agreement, whether based on contract, delict, statute or otherwise, except to the extent that the limitation of liability contained herein is not permitted by applicable law.

13.2 **Aggregate Limit.** In any event and save to the extent not permitted by applicable law, Infinity's total aggregate liability in respect of any and all claims, actions, damages, costs, losses, expenses and other liabilities arising in connection with this Agreement during any 12 (twelve) month period will be limited to the amount of Fees received by Infinity during such period, regardless of whether such liability is based on contract, statute, tort, delict or otherwise.

13.3 **Indemnity.** Retailer hereby indemnifies Infinity, its affiliates and its personnel against all claims, losses, damages and liabilities (including fines) incurred or suffered by Infinity as a result of:

13.3.1 The failure by Retailer to comply with applicable law regarding its participation in the Rewards Programme, including with respect to the offering of benefits, incentives or rewards to Cardholders in relation to the purchase of Merchandise;

13.3.2 the use of its trademarks in the manner and for the purposes contemplated under clause 4; and

13.3.3 The failure by the Retailer to comply with the instructions of Infinity with respect to the submission and processing of Transactions.

14. BREACH AND TERMINATION

14.1 Termination for Breach. If Retailer –

14.1.1 commits a material breach of this Agreement, and fail to remedy such breach within 7 (seven) calendar days of having been called upon in writing by the other Party to do so; or

14.1.2 fail to pay any amount due that is more than 14 (fourteen) calendar days outstanding; or

14.1.3 commences with business rescue proceedings; or

14.1.4 defers or suspends payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or

14.1.5 effects or attempts to effect a compromise or composition with its creditors; or

14.1.6 takes steps for its voluntary winding up or be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final or ceases to conduct business;

then, without prejudice to any other rights or remedies it may have in Law, Infinity may, in its discretion, terminate this Agreement on written notice to Retailer, such termination to take effect on the date specified in the notice.

15. EFFECT OF TERMINATION

- 15.1 **Accrued Rights.** Termination of this Agreement shall be without prejudice to any rights of the Parties accrued as at the date of such expiry or termination.
- 15.2 **Duties upon termination.** Upon termination, cancellation or expiry of this Agreement:
- 15.2.1 Retailer shall deliver or destroy all originals and copies of the Documentation and will certify to Infinity that it has done so;
- 15.2.2 Retailer shall return all RPE to infinity which are owned by Infinity;
- 15.2.3 Retailer shall cease Processing (as defined under POPIA) of Cardholder Information and shall destroy all copies of such information in its possession or under its control and certify that it has done so upon request by Infinity; and
- 15.2.4 Each Party shall immediately cease to use, whether by advertising or in any other manner whatsoever, any of the other Party's trademarks and will refrain from doing anything that would indicate that it is still involved with the other Party regarding the Rewards Programme.
- 15.3 **Survival.** Termination of this Agreement shall not affect the enforceability of the provisions which have been specified or are by their nature required to operate after such expiry or termination, including without limitation, the following provisions contained in this Agreement: Clause 1 (Definitions), clause 4 (Marketing and Promotion), clause 10 (Proprietary Rights), clause 13 (Limitation of Liability), clause 15 (Effect of Termination), clause 17 (Assignment), clause 18 (Severability), clause 19 (Notices and Domicilia), clause 20 (Relationship) and clause 21 (General).

16. FORCE MAJEURE

Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including failure to act) of any governmental authority (de jure or de facto), sabotage, nuclear incidents, epidemics, general power failures, general communications failures, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.

17. ASSIGNMENT

- 17.1 **Infinity.** Infinity shall be entitled to cede, assign, delegate and transfer any of its right and obligations under this Agreement to any of its affiliates or to any entity which acquires all or substantially all of its assets or business or to any successor entity in a merger or acquisition.
- 17.2 **Retailer.** Retailer shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Infinity, provided that Retailer may cede all of its rights and delegate all of its obligations under this Agreement to any entity which acquires all or substantially all of its assets or business or to any successor entity in a merger or acquisition.

18. SEVERABILITY

- 18.1 **Reading Down.** If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.
- 18.2 **Severability.** If the whole or any part of a provision of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Agreement shall have full force and effect, provided such severance does not alter the nature of the Agreement between the Parties.

19. NOTICES AND DOMICILIA

- 19.1 **Addresses.** The Parties hereby choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes under this Agreement the physical addresses set out on the cover sheet of this Agreement.
- 19.2 **Change of Address.** Either Party may give written notice to the other and change its Domicilium to any other physical address in the Republic of South Africa, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.
- 19.3 **Deemed Delivery.** Notice will be deemed given –
- 19.3.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 19.3.2 if sent by an express courier with a system for tracking delivery, when received; and
- 19.3.3 if sent by email during business hours, upon confirmation by the email server of the Party sending the email that the email has been successfully delivered to the email address of a responsible person, and if outside such business hours then at the beginning of the next business day provided that delivery of the email to the email address of the responsible person is confirmed in the manner described above.

19.4 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

20. **RELATIONSHIP**

This Agreement does not create a fiduciary relationship between the Parties. The Parties act as independent contractors and, save as may be expressly stated to the contrary, nothing in this Agreement is intended to make either Party a general or special agent, joint venture, partner, or employee of the other for any purpose. Neither Party shall have any authority to bind, make any express or implied agreements, warranties, guarantees or representations or incur any debt or liability in the name of or on behalf of the other or represent that their relationship is other than as independent contractors.

21. **GENERAL**

21.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Infinity and Retailer in respect of the subject matter of this Agreement and supersedes and replaces all other agreements, representations or warranties between the Parties pertaining to the subject matter contained in the Agreement, which will no longer be binding on the Parties as from the Effective Date hereof.

21.2 **Variation.** No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of both Parties.

21.3 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.

21.4 **Governing Law and Jurisdiction.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa and, subject to clause 9.4, the Parties agree to submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town regarding any and all disputes arising in connection with this Agreement.

21.5 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the negotiation of this Agreement.

21.6 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with this Agreement without the prior written consent of the other Party, provided that either Party may name the other of them and disclose the general nature of the overall arrangement between them.