



CONSTITUTION OF THE PAYMENTS ASSOCIATION OF SOUTH AFRICA

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1. DEFINITIONS AND INTERPRETATIONS

1.1 The headings of the clauses in this Constitution are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Constitution nor any clause hereof. Unless a contrary intention clearly appears, words importing –

1.1.1 any one gender includes the other gender; and

1.1.2 the singular includes the plural and *vice versa*;

1.2 In this Constitution, the following terms shall have the meanings assigned to them and cognate expressions shall have corresponding meanings, namely –

1.2.1 "**Applicable Laws**" in relation to any person or entity include all and any –

1.2.1.1 statutes, subordinate legislation and common law;

1.2.1.2 regulations;

1.2.1.3 ordinances and by-laws;

1.2.1.4 directives, codes of practice, circulars, guidance notices, judgements and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and

1.2.1.5 other similar provisions; from time to time, compliance with which is mandatory for that person or entity;

1.2.2 "**Business Day**" means any Day, other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;

1.2.3 "**Casting Vote**" means a vote exercised by the Chairperson to break a tie vote;

- 1.2.4 “**Chief Executive Officer**” means the person who is the principal executive officer of PASA, appointed as contemplated in clause 20;
- 1.2.5 “**Chairperson**” means the person selected and appointed in accordance with clause 19;
- 1.2.6 “**Constitution**” means this document, including all annexures hereto;
- 1.2.7 “**Council**” means the governing body of PASA as contemplated in clause 18;
- 1.2.8 “**Councillor**” means a person appointed as contemplated in clause 24, and includes the Chairperson and Independent Councillors appointed as contemplated in clause 19;\
- 1.2.9 “**Council Subcommittee**” means a committee as contemplated in clauses 18.5 and 18.8;
- 1.2.10 “**Day**” means a calendar day;
- 1.2.11 “**Designee**” means the person contemplated in clause 15.1.2;
- 1.2.12 “**End-to-End Payment Value Chain**” includes the process from the point when a payment instruction is issued until the payment obligation is finally settled;
- 1.2.13 “**Entry and Participation Criteria**” mean the requirements for membership of PASA as set out in clause 8.1;
- 1.2.14 “**Ex Officio Councillor**” means a person appointed as contemplated in clause 24.7;
- 1.2.15 “**General Meeting**” means the meeting convened by PASA as contemplated in clauses 16 and 17;
- 1.2.16 “**Knowingly**” or “**knows**”, when used with respect to a person, and in relation to a particular matter, means that the person either—
- 1.2.16.1 had actual knowledge of that matter;

1.2.16.2 was in a position in which the person reasonably ought to have—

1.2.16.2.1 had actual knowledge;

1.2.16.2.2 investigated the matter to an extent that would have provided the person with actual knowledge; or

1.2.16.2.3 taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;

1.2.17 “**Member**” means an institution which has been admitted as member of PASA and which complies with the Entry and Participation Criteria;

1.2.18 “**NPS**” means the national payment system, which includes all payment systems governed by the Regulatory Framework of the NPS;

1.2.19 “**NPS Act**” means the National Payment System Act 78 of 1998, as amended from time to time;

1.2.20 “**NPS Information**” means information within the NPS which PASA is entitled, subject to Applicable Laws, to collect and process for the lawful purpose of executing its duties as payment system management body;

1.2.21 “**Participation Percentage**” means the percentage, relative to all Members, of a Member’s Throughput in terms of Volumes, multiplied by its Throughput in terms of Value, multiplied by the number of PCHs in which the Member is a participant;

1.2.22 “**PASA**” means the Payments Association of South Africa, a payment system management body recognised by the Reserve Bank in terms of the NPS Act;

1.2.23 “**PASA Authorised Contact**” means the person contemplated in clause 15.1.3;

1.2.24 “**PASA Policies**” mean all circulars, criteria, principles, policies, position papers, instructions, requirements, rules (including clearing rules and the PASA Regulatory Framework), processes, procedures and the like, prescribed and issued by PASA;

- 1.2.25 “**PASA Regulatory Framework**” means the document containing general and specific rules, structures and processes approved by Council;
- 1.2.26 “**PASA Structures**” include committees, forums and PCH participant groups, but exclude Council and Council Committees;
- 1.2.27 “**payment**” means the execution of a payment instruction issued by a payer for the benefit of a beneficiary or payee, independent of any underlying obligation in terms of which the payment obligation may have been incurred;
- 1.2.28 “**Period of Calculation**” means a period calculated from 1 October of the previous year to 30 September of the following year;
- 1.2.29 “**Provisional Member**” means an institution or body who has been granted provisional membership by PASA as contemplated in clause 8.2;
- 1.2.30 “**Regulatory Framework of the NPS**” means the NPS Act and policies, position papers and directives issued by the Reserve Bank;
- 1.2.31 “**Reserve Bank**” means the South African Reserve Bank referred to in section 2 of the South African Reserve Bank Act, Act 90 of 1989;
- 1.2.32 “**Responsible Senior Officer (RSO)**” means the person contemplated in clause 15.1.1;
- 1.2.33 “**Simple Majority Vote**” means a vote of more than 50% (fifty percent) of those Councillors voting;
- 1.2.34 “**Special Councillor**” means a person appointed as contemplated in clause 24.8;
- 1.2.35 “**Sponsored Clearing Member**” means a Member on whose behalf a Reserve Bank settlement system participant clears, provided that the Reserve Bank settlement system participant shall settle payment obligations on behalf of the Sponsored Clearing Member, as contemplated in section 4(2)(d) of the NPS Act;
- 1.2.36 “**Sponsored Settlement Member**” means a Member who is allowed by a Reserve Bank settlement system participant to clear, provided that the Reserve Bank settlement

system participant shall settle payment obligations on behalf of the Sponsored Settlement Member, as contemplated in section 4(2)(d) of the NPS Act;

1.2.37 **“Throughput in terms of Volume”** means the quantity of all transactions, which by way of payment instructions, has passed through all PCHs in the preceding Period of Calculation; and

1.2.38 **“Throughput in terms of Value”** means the value of all transactions, which by way of payment instructions, has passed through all PCHs in the preceding Period of Calculation.

1.3 In this Constitution, unless the context requires otherwise –

1.3.1 all annexures hereto will form part of this Constitution. If there is any conflict between this document and any annexure, this document will prevail;

1.3.2 when any number of Days is prescribed in this Constitution, same shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or statutory holiday, in which case the last Day shall be the next succeeding Day which is not a Saturday, Sunday or statutory holiday;

1.3.3 where figures are referred to in numerals and in words, if there is any if there is any conflict between the two, the words shall prevail;

1.3.4 the use of the word “including” followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example;

1.3.5 any approval or notice referred to or required in terms of this Constitution, must be in writing, unless otherwise specified;

1.3.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Constitution;

- 1.3.7 all words and expressions not defined herein but defined in and for purposes of the NPS Act, shall bear the same meaning in this Constitution; and
- 1.3.8 terms other than those defined within this Constitution, will be given their plain English meaning, and those terms, acronyms and phrases known in the payments or information technology industry, will be interpreted in accordance with their generally accepted meanings.
- 1.3.9 in the event of conflict between this Constitution and the NPS Act, the NPS Act shall prevail.

2. RECORDAL

- 2.1 PASA was duly constituted on 15 August 1996 as an association recognised by the Reserve Bank as payment system management body as contemplated in section 3(1) of the NPS Act. A copy of the “Certificate of Establishment” of PASA, dated 15 August 1996, is attached hereto as Annexure AA.
- 2.2 No person may participate in the Reserve Bank settlement system and/or be allowed to clear unless such a person is a member of the payment system management body recognised by the Reserve Bank, being PASA.
- 2.3 This Constitution, which replaces and supersedes all previous constitutions, sets out –
- 2.3.1 the obligations and powers of PASA as payment system management body established with the object of organising, managing and regulating the participation of its Members in the payment system including, in relation to its Members, all matters affecting payment instructions; and
- 2.3.2 the rights and obligations of Members and of Provisional Members.
- 2.4 This Constitution and any amendments thereto, bind PASA to every Member in its capacity as Member of PASA, and in such capacity every Member of PASA to every other Member. In addition, Members agree to be bound by PASA Policies as if included in this Constitution. If there is a conflict between the provisions of this Constitution and a PASA Policy, this Constitution will prevail.

- 2.5 This Constitution will furthermore serve to –
- 2.5.1 assist PASA in maintaining its recognition by the Reserve Bank as payment system management body;
 - 2.5.2 ensure compliance by PASA of its obligations as payment system management body;
 - 2.5.3 enable the Reserve Bank to effectively oversee PASA and to monitor, regulate and supervise payment, clearing and settlement systems as contemplated in section 10(1)(c) of the South African Reserve Bank Act 90 of 1989;
 - 2.5.4 ensure that each Councillor, in discharging his duties, shall -
 - 2.5.4.1 act consistently in the best interests of the NPS;
 - 2.5.4.2 exercise an independent and unfettered discretion and judgment on matters that come before Council.
- 2.6 Except to the extent expressly provided for in this Constitution, no person other than a Member shall have any rights under this Constitution or to enforce any provision (express or implied) of this Constitution. This clause is not intended to prejudice any right or remedy of a third party which may exist or be available apart from this Constitution.

3. LEGAL STATUS

- 3.1 PASA is a juristic person with its own legal identity which is separate from its Members. PASA shall continue to exist, despite changes in its membership from time to time.
- 3.2 PASA may acquire, own and dispose of property (movable, corporeal and/or incorporeal), enter into contracts and institute or defend itself against any legal action.
- 3.3 No Member or Provisional Member shall be liable in any way for loss and/or damage that may be suffered by PASA through any act or omission of any other Member, Provisional Member and/or PASA and/or any of its servants and/or agents and/or employees in the execution of any

duty, unless such loss or damage is the result of that Member's negligence, wilful misconduct or fraud.

3.4 No Member shall have any right to and/or interest in any of the property or funds of PASA.

3.5 PASA shall apply its surplus and/or income in promoting its objectives and shall not at any time, make any distribution or pay any dividend and/or surplus to any of its Members.

4. REGISTERED ADDRESS

4.1 The registered address of PASA shall be as determined by Council from time to time.

5. PURPOSE, VISION, MISSION AND GOALS

5.1 The objectives of PASA as set out in clause 6 below are aligned to the following purpose, vision, mission and goals –

5.1.1 Purpose

PASA exists to manage payment systems in the interest of economic development of South Africa.

5.1.2 Vision

PASA aspires to be acknowledged as world class, in assisting in the evolution and oversight of the payments industry.

5.1.3 Mission

The mission of PASA is to manage and develop the NPS and facilitate integration with international payments.

5.1.4 Goals

5.1.4.1 The goals of PASA to achieve the mission, are to ensure improved or greater:

5.1.4.1.1 Financial stability;

5.1.4.1.2 Risk management;

5.1.4.1.3 Fairness and Transparency;

- 5.1.4.1.4 Innovation;
- 5.1.4.1.5 Access;
- 5.1.4.1.6 Inclusion;
- 5.1.4.1.7 Efficiency;
- 5.1.4.1.8 Competition;
- 5.1.4.1.9 Sustainability;
- 5.1.4.1.10 Interoperability; and
- 5.1.4.1.11 Legal certainty.

6. OBJECTIVES

- 6.1 The objectives of PASA are to organise, manage and regulate in relation to its Members all matters affecting payment instructions, including its Members' participation in the NPS, by –
- 6.1.1 adoption of a strategic focus on payments, including payment instruments and payment systems, whilst simultaneously aligning it to national strategy;
 - 6.1.2 focusing on national interest, but simultaneously considering the influences, conditions and developments in the Southern African region and the rest of the world;
 - 6.1.3 promoting international liaison and understanding of global developments in payments, payment instruments and payment systems;
 - 6.1.4 promoting a safe and sound payment system;
 - 6.1.5 focusing on the End-to-End Payment Value Chain and on the participants in such a process;
 - 6.1.6 promoting transparency in the End-to-End Payment Value Chain, where appropriate;
 - 6.1.7 making and facilitating decisions in the payments industry;
 - 6.1.8 guiding and supporting all participants in the NPS with reference to innovation within the Regulatory Framework of the NPS;

- 6.1.9 adopting and maintaining appropriate structures and frameworks for purposes of monitoring and governance;
- 6.1.10 promoting, proposing, supporting or opposing as may be deemed to be appropriate and expedient any proposed legislative or other measures affecting the interests of the Members and the NPS;
- 6.1.11 co-operating with other organisations or entities which are in existence or which may be established to deal with matters which affect PASA, its Members or the NPS;
- 6.1.12 creating a forum through which all Members can collectively voice and address issues of common interest and concern;
- 6.1.13 seeking direct representation on all forums which directly affect the Members;
- 6.1.14 acting as a medium for communication by its Members with the South African Government, the Reserve Bank, the Prudential Authority, the Co-operative Bank Supervisors, the Financial Sector Conduct Authority, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and
- 6.1.15 doing such other lawful things as may appear to be in the interests of PASA, the NPS and its Members acting within the Regulatory Framework of the NPS and which are not inconsistent with the objectives or any matter specifically provided for in this Constitution.

7. POWERS AND FUNCTIONS

- 7.1 Subject to Applicable Laws and to this Constitution, PASA shall have all powers which are necessary, conducive or incidental to the attainment or furtherance of its objectives as set out in clause 6 and in particular, without limiting the generality of the afore-going, PASA may –
 - 7.1.1 Admit Members and with the approval of the Reserve Bank, terminate membership;

- 7.1.2 in accordance with criteria approved by the Reserve Bank, authorise a Reserve Bank settlement system participant to settle and/or to clear on behalf of a Sponsored Clearing Member or a Sponsored Settlement Member, as the case may be;
- 7.1.3 authorise a person to act as system operator and PCH system operator as contemplated in section 4(2)(c) of the NPS Act;
- 7.1.4 issue PASA Policies;
- 7.1.5 appoint employees to assist in the performance of its functions;
- 7.1.6 own and acquire by purchase, exchange, lease, donation, servitude, cession or otherwise movable and immovable and incorporeal property of any kind;
- 7.1.7 sell, lease, mortgage, cede, donate, dispose of or deal in any manner with the property and rights of PASA;
- 7.1.8 receive and apply funds to the advancement of PASA;
- 7.1.9 invest and deal with the funds of PASA not immediately required in such manner as may from time to time be determined;
- 7.1.10 borrow and guarantee or otherwise secure the repayment of money in such manner and on such terms as it may think fit;
- 7.1.11 open and operate banking accounts of any type and overdraw such accounts;
- 7.1.12 raise funds by fees, subscriptions, levies, charges or by any other means from its Members and recover by legal process funds due by Members or former members;
- 7.1.13 make donations in cash or in kind;
- 7.1.14 impose penalties and/or fines on Members or former members for any breach or contravention of the terms of this Constitution or of any other obligation and to recover such penalties and/or fines by administrative or legal process;

- 7.1.15 regulate relations between Members and between Members and PASA insofar as it concerns the participation of Members in the NPS;
- 7.1.16 organise, manage and regulate entities authorised by PASA in terms of the NPS Act and as contemplated in criteria approved by the Reserve Bank;
- 7.1.17 take all such actions as may be required or necessary to fully and effectively enforce all obligations of whatsoever nature and howsoever arising which may be owed to PASA by its Members or former members;
- 7.1.18 achieve the objectives of PASA by applying the powers herein or any principles or decisions to Members;
- 7.1.19 enter into agreements of any nature to carry out and/or further the objects and powers of PASA;
- 7.1.20 collect and process NPS Information;
- 7.1.21 institute, conduct, oppose, compound or abandon any legal proceedings by and against PASA or otherwise concerning the affairs of PASA and also compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against PASA;
- 7.1.22 purchase and maintain insurance of any kind for the benefit of PASA, its employees, Members, Designees and Councillors;
- 7.1.23 constitute, establish or dissolve any PASA Structure, and which has an impact on, interacts with, has access to or makes use of payment, clearing or settlement systems or operations; and
- 7.1.24 do all things necessary to promote the interests of PASA, the NPS and its Members acting within the Regulatory Framework of the NPS.

8. MEMBERSHIP

8.1 PASA shall admit institutions or bodies who are eligible in terms of the NPS Act as Members, subject to compliance with the following Entry and Participation Criteria-

8.1.1 **Entry Criteria**

8.1.1.1 In order to obtain membership of PASA, an institution or body eligible in terms of the NPS Act must –

8.1.1.1.1 have the necessary skills and resources to be a member in good standing;

8.1.1.1.2 be willing and able to provide and apply the necessary resources to implement systems and any enhancements as may be reasonably required from time to time;

8.1.1.1.3 confirm its concurrence with and willingness to comply with the terms of this Constitution and with PASA Policies in a format prescribed by PASA;

8.1.1.1.4 save for a Sponsored Clearing Member, be a participant in a PCH and a signatory to the relevant clearing agreements;

8.1.1.1.5 save for a Sponsored Clearing Member or a Sponsored Settlement Member, be a Reserve Bank settlement system participant and a signatory to the relevant settlement agreement; and

8.1.1.1.6 pay the relevant fees, subscriptions, levies or charges as required by PASA.

8.1.2 **Participation Criteria**

8.1.2.1 In order to maintain membership of PASA, a Member must comply on a continuous basis the requirements set out in clause 8.1.1 above.

8.2 PASA shall be entitled to grant provisional membership to an institution or body, provided that the institution or body meets the Entry and Participation Criteria within 12 (twelve) months from

the date of being granted provisional membership. If provisional membership is granted to an institution or body, such an institution or body shall be-

8.2.1 entitled to all the rights of Members as contemplated in clauses 9.1.4 to 9.1.7, except for the right to vote; and

8.2.2 subject to all of the obligations of Members as contemplated in clause 10.

8.3 PASA shall maintain a register of all Members and of Provisional Members.

9. RIGHTS OF MEMBERS

9.1 Members shall have the right to –

9.1.1 clear as contemplated in the NPS Act, save for Sponsored Clearing Members;

9.1.2 participate in the Reserve Bank settlement system as contemplated in the NPS Act, save for Sponsored Clearing Members and Sponsored Settlement Members;

9.1.3 as Reserve Bank settlement system participants be authorised, in accordance with criteria approved by the Reserve Bank, and as contemplated in section 4(2)(d) of the NPS Act, to –

9.1.3.1 allow a Sponsored Settlement Member to clear; or

9.1.3.2 clear on behalf of Sponsored Clearing Member:

9.2 Provided that the Member shall settle payment obligations on behalf of such Sponsored Clearing Members and Sponsored Settlement Members.

9.2.1 in respect of General Meetings or any other PASA Structures –

9.2.1.1 receive notifications, view agendas and minutes, table matters for discussion, address other Members on any matter tabled for discussion and decision;

- 9.2.2 request PASA to do research on an appropriate subject matter;
- 9.2.3 appeal as contemplated in clause 34;
- 9.2.4 view and have access to –
 - 9.2.4.1 annual financial statements published by PASA;
 - 9.2.4.2 research conducted by PASA containing NPS Information which cannot be used to achieve an anti-competitive effect; and
 - 9.2.4.3 the services and assistance of the employees of PASA where appropriate.

10. OBLIGATIONS OF MEMBERS

- 10.1 Subject to Applicable Laws, the Regulatory Framework of the NPS and this Constitution, all Members shall –
 - 10.1.1 observe and be bound by PASA Policies and all resolutions and decisions of Council;
 - 10.1.2 participate in the NPS in such a manner as to –
 - 10.1.2.1 enable PASA to execute its mandate in terms of this Constitution in order to –
 - 10.1.2.1.1 minimise risk in the NPS;
 - 10.1.2.1.2 achieve its vision, mission and objectives;
 - 10.1.2.1.3 foster co-operation between themselves and PASA; and
 - 10.1.2.1.4 foster trust in themselves, the NPS and PASA as the payment system management body;
 - 10.1.3 preserve the integrity of the NPS and refrain from acts which are detrimental to PASA or the NPS;

- 10.1.4 participate in the NPS with due skill, care and diligence;
- 10.1.5 act as responsible custodians of their payment systems in the NPS;
- 10.1.6 as participants in the NPS, pursue the objectives of PASA;
- 10.1.7 inform PASA immediately of becoming aware of any other Member failing to fulfil its obligations in terms of the Constitution and/or any PASA Policy;
- 10.1.8 protect themselves, other Members and PASA, against risks emanating from their participation in the NPS, as well as from other participants or stakeholders in and/or users of the NPS;
- 10.1.9 assist PASA in enabling the Reserve Bank to adequately oversee the affairs of PASA and its Members in the discharge of the Reserve Bank's responsibilities regarding the monitoring, regulation and supervision of payment, clearing and settlement systems;
- 10.1.10 have at their disposal knowledgeable staff, infrastructure and support structures required and necessary for their participation in the NPS;
- 10.1.11 accept (whether as Member, Sponsored Clearing Member or Sponsored Settlement Member) overall responsibility for the settlement of its payment obligations within the payment system, and in doing so, assume all settlement risk;
- 10.1.12 have in place appropriate and legally sound structures that will assist in fulfilling its obligations within the NPS and towards PASA;
- 10.1.13 provide (and/or allow any appointed PCH System Operator and/or system operator to provide) NPS Information to PASA in a format acceptable to PASA;
- 10.1.14 provide adequate resources and funding to allow PASA to actively fulfil its role, pursue its objectives and to implement decisions of Council;
- 10.1.15 use all reasonable endeavours to ensure that Members comply with their obligations set out in this Constitution; and

10.1.16 when interacting with PASA, act ethically.

11. FINANCIAL LIABILITY OF MEMBERS

11.1 PASA shall, subject to approval by Council, be entitled to levy fees, subscription and other charges from time to time to further its objectives as set out in clause 6.

11.2 Members shall, in addition to paying such other fees, subscriptions, levies and charges as determined by PASA from time to time, pay an annual subscription to PASA, calculated in accordance with clause 33.

11.3 PASA shall utilise all its funds in the furtherance of its objectives as set out in clause 6.

11.4 This does not preclude payment made by PASA, subject to approval by Council, of –

11.4.1 remuneration by way of honorarium, fees or salaries, and the refund of authorised expenses incurred by any Member or Councillor, representatives, official, employee or person in return for any services rendered to PASA; and

11.4.2 travelling, transport and subsistence expenses incurred by representatives and Members or Councillors in attending to the business of PASA, at rates specified by Council from time to time.

12. NOTIFICATION OF CHANGES TO MEMBER STATUS

12.1 If any Member disposes of all or the greater part of its assets, or amalgamates or merges with another entity or if there is a change in the controlling shareholding of that Member, that Member shall notify PASA in writing within 7 (seven) Days of such disposal, merger, amalgamation or change in shareholding and Council may-

12.1.1 require the Member to re-apply for participation in PCHs;

12.1.2 with the approval of the Reserve Bank, terminate Membership; and/or

12.1.3 take or require any other action, as it may deem necessary.

12.2 Members must also notify PASA in writing, within 7 (seven) Days of –

12.2.1 any and all changes which have an effect on their Membership or their participation in the NPS, or any PASA Structure;

12.2.2 changes in domicile and representation;

12.2.3 obtaining required approval of a change of status from the Registrar of Banks or other relevant regulator.

12.3 If any Member should fail to notify PASA as required by this clause¹², such a Member will not be acting as a Member in good standing as contemplated in clause 13.3 below.

13. MONITORING AND COMPLIANCE

13.1 PASA is responsible for –

13.1.1 promoting good practice by all its Members, by ensuring observance of the terms of this Constitution, PASA Policies and the Regulatory Framework of the NPS; and

13.1.2 preparing and publishing reports on the levels of compliance by Members.

13.2 PASA has the power to investigate alleged non-compliance with or contraventions of this Constitution, the Regulatory Framework of the NPS and PASA Policies and has the discretion to impose the appropriate sanctions for non-compliance and contraventions which include, but are not limited to the following –

13.2.1 publishing the details of non-compliance or contravention by a Member in its annual review;

13.2.2 withdrawing a Member's status of good standing as directed by Council after consultation with the Reserve Bank;

13.2.3 imposing a fine as directed by Council or as provided for in the Compliance Enforcement Policy; and/or

- 13.2.4 terminating Membership as contemplated in clause 14 below.
- 13.3 A Member shall not be acting as a Member in good standing if such a Member, when participating in the NPS –
- 13.3.1 does not comply with its obligations in terms of this Constitution;
 - 13.3.2 acts in contravention of any PASA Policy or the Regulatory Framework of the NPS;
 - 13.3.3 is in arrears with or defaults on payment of annual subscriptions levied by PASA;
 - 13.3.4 acts in a manner which has a significant negative impact on the objectives of PASA;
 - 13.3.5 brings PASA or any other Member of PASA into disrepute; or
 - 13.3.6 causes unacceptable risk to PASA or to any of its Members.
- 13.4 As soon as PASA becomes aware of any conduct or action by a Member as contemplated in clause 13.3, such a Member shall be given written notice of PASA's intention to invoke the provisions of clause 13.2. The Member shall be entitled to make written representations in its defence to PASA as contemplated in the provisions of this Constitution, the Constitution of the PASA Structure involved or the Compliance Enforcement Policy.
- 13.5 When determining whether to withdraw a Member's status of good standing and/or to impose any sanction, including a fine, PASA shall, inter alia, consider the following factors –
- 13.5.1 whether written notice of non-compliance or contravention has been provided to the Member and the Member has failed to remedy the non-compliance or contravention;
 - 13.5.2 the nature, duration, gravity and extent of non-compliance or the contravention;
 - 13.5.3 any loss or damage suffered as a result of non-compliance or the contravention;
 - 13.5.4 the behaviour of the Member;
 - 13.5.5 the circumstances in which the non-compliance occurred or the contravention took place;
 - 13.5.6 the degree to which the Member has co-operated with PASA; and

- 13.5.7 whether the Member has previously been non-compliant or in contravention of its obligations.
- 13.6 If PASA decides to-
- 13.6.1 impose a fine, the maximum amount of such fine shall be determined by Council but may not exceed R1 million; and/or
- 13.6.2 with the approval of the Reserve Bank, withdraw a Member's status of good standing, such a Member's rights and privileges will be suspended. A Member's status of good standing shall be re-instated only if Council and the Reserve Bank are satisfied that the Member has remedied the contravention or transgression, or has rectified the action causing it to be not in good standing; or
- 13.6.3 terminate membership of a Member, it may only do so subject to the approval of the Reserve Bank.
- 13.7 Notwithstanding anything to the contrary above, a Member or Provisional Member who is dissatisfied with the decision of Council, shall be entitled to request Council to reconsider its decision and / or request a review of and/or to appeal the Council decision as contemplated in clause 34.
- 13.8 PASA shall be entitled to institute proceedings in a competent Court for the recovery of any fine imposed.

14. TERMINATION OF MEMBERSHIP

- 14.1 Membership shall, subject to approval by the Reserve Bank, be terminated by Council-
- 14.1.1 on at least 90 (ninety) Days prior written notice of resignation by such Member to PASA, subject to –
- 14.1.1.1 fulfilment of all current and future obligations in terms of payment, clearing and settlement agreements and operator agreements, or
- 14.1.1.2 any other condition set by Council;

- 14.1.2 due to a Member being placed under curatorship, deregistered, or having any provisional or final winding up order, business rescue as provided for in the Companies Act 71 of 2008, if appropriate, or other similar order made in respect of it;
- 14.1.3 in the event of a Member having its participation in all PCHs being terminated; or
- 14.1.4 in the event of a Member continuously not complying with this Constitution despite having been provided with a reasonable opportunity to rectify or remedy such non-compliance.
- 14.1.5 Provisional membership granted to an institution or body shall be terminated by cancellation or revocation of provisional membership by Council;
 - 14.1.5.1 by being admitted as a Member, having met the Entry and Participation Criteria;
 - 14.1.5.2 on expiration of 12 (twelve) months from the date of being granted provisional membership if the provisional Member fails to meet the Entry and Participation Criteria within such time period; and
 - 14.1.5.3 written notice of termination to PASA, subject to any conditions which PASA may impose.

14.2 A Member whose membership has been terminated may re-apply for membership and may be readmitted on such conditions as PASA may determine.

15. MEMBER REPRESENTATION

15.1 A Member shall be represented by-

- 15.1.1 A Responsible Senior Officer who has the authority to make decisions regarding all matters affecting the NPS on behalf of the Member, and who is appointed by the Member's chief executive officer;
- 15.1.2 Designees, appointed and authorised by the Responsible Senior Officer of the Member to represent the interests of such Member in any PASA Structure other than Council; and

- 15.1.3 A PASA Authorised Contact who has been appointed and authorised by his Responsible Senior Officer of the Member to inform the Member of all matters and decisions affecting the NPS as conveyed by the Reserve Bank and by PASA, to ensure appropriate responses within requested timeframes, or to escalate matters to the Reserve Bank or PASA in an appropriate manner when required.
- 15.2 With the exception of the Responsible Senior Officer, the Designees and the PASA Authorised Contact of a Member do not have to be employees of the Member but must be properly appointed and authorised by the Responsible Senior Officer to represent the Member at appropriate PASA Structures and have the necessary mandate to make decisions and vote on behalf of Members whenever required to do so by PASA or by PASA Structures.
- 15.3 Prior to the official appointment of a Responsible Senior Officer and an alternate Responsible Senior Officer by the Member's chief executive officer, such appointment must be discussed with the Head of the National Payment System Department of the Reserve Bank and the Chief Executive Officer.
- 15.4 The Member shall inform PASA of each appointed Designee and PASA Authorised Contact in a format acceptable to PASA.
- 15.5 The Member shall inform the Reserve Bank and PASA of each appointed Responsible Senior Officer and PASA Authorised Contact in writing, which shall at a minimum contain the following information –
 - 15.5.1 name and surname;
 - 15.5.2 designation;
 - 15.5.3 postal address;
 - 15.5.4 physical address;
 - 15.5.5 cell phone number;
 - 15.5.6 office telephone number; and
 - 15.5.7 e-mail address.
- 15.6 PASA shall maintain a register of all appointments.

16. MEETINGS

- 16.1 PASA shall convene a General Meeting at least once per year by delivering written notice of such meeting to each Member and each Councillor at least 21 (twenty-one) Days before the meeting is to begin. The notice shall specify the –
- 16.1.1 Business Day, venue and the time of the meeting; and
 - 16.1.2 agenda for the meeting.
- 16.2 PASA may of its own accord or at the request of the Reserve Bank call other meetings with PASA Authorised Contacts, Designees and/or Responsible Senior Officers from time to time.
- 16.3 A special meeting of Council must be called by PASA whenever appropriate by delivering a written notice to each Councillor at least 14 (fourteen) Days before the meeting, for the purpose of –
- 16.3.1 appointing a Chairperson;
 - 16.3.2 electing a deputy chairperson for Council;
 - 16.3.3 appointing Independent Councillors;
 - 16.3.4 appointing Councillors to Council Committees; or
 - 16.3.5 considering any such matter deemed necessary by PASA from time to time
- 16.4 Any special meeting of Council called for the purpose as contemplated in clause 16.3, shall be chaired by the Chairperson of PASA.
- 16.5 PASA shall, in consultation with the Reserve Bank, convene annual meetings between Responsible Senior Officers and the Reserve Bank.
- 16.6 PASA shall ensure that minutes of all meetings are timeous, complete, accurate and indicate confidentiality, when required.

17. GENERAL MEETINGS

- 17.1 The Chairperson of Council or failing him, the deputy chairperson of Council, shall be the chair of each General Meeting, provided that if neither the Chairperson nor deputy chairperson is present and willing to act, the Members present shall elect a representative of one of the Members to be the chair of the General Meeting.
- 17.2 Matters to be dealt with at a General Meeting, shall include, but not be limited to –
- 17.2.1 confirmation of minutes of previous meetings;
 - 17.2.2 subject to clause 18.4.13, presentation of the annual report;
 - 17.2.3 subject to clause 18.4.13, presentation of the financial statements for the preceding financial year;
 - 17.2.4 election of Independent Councillors;
 - 17.2.5 notification of Councillors appointed by Members in accordance with clause 24;
 - 17.2.6 subject to clause 31, adoption or a resolution to appoint the auditor;
 - 17.2.7 adoption of a resolution to amend the PASA Constitution as contemplated in clause 35, if and when required;
 - 17.2.8 subject to clause 18.4, adopt a resolution to approve Independent Councillor fees;
 - 17.2.9 any matter referred to the General Meeting by Council; and
 - 17.2.10 attending to other matters on the agenda.
- 17.3 General Meetings shall be attended by Members, who shall be represented by such Member's Responsible Senior Officer or such Responsible Senior Officer's duly authorised representative.
- 17.4 All Members shall be entitled to vote except for –
- 17.4.1 a Member whose status of good standing has been withdrawn by PASA; and
 - 17.4.2 Provisional Members.
- 17.5 A General Meeting may not begin until a quorum is established at the meeting by –

- 17.5.1 sufficient persons to represent at least 60% (sixty percent) of the Members entitled to vote, or failing that;
- 17.5.2 persons representing the 4 (four) Members with the highest Participation Percentage for the preceding 3 (three) Periods of Calculation.
- 17.6 If no quorum is present at any duly convened meeting, the meeting shall be adjourned to a Business Day, venue and time as determined by PASA.
- 17.7 Each Member shall be entitled to one vote. All resolutions adopted at a General Meeting shall require the support of at least 60% (sixty percent) of the voting rights exercised on the resolution.
- 17.8 Voting shall be by a show of hands unless a poll is demanded, which may be demanded by any Member present either before or on the declaration of a result of show of hands. A poll shall be taken in such manner as the Chairperson directs.
- 17.9 The Chairperson shall immediately declare the result of a vote.

18. COUNCIL

- 18.1 Council is hereby constituted as the governing body of PASA and shall be responsible for the management of PASA, for which purpose Council may exercise all the powers and functions of PASA, as contemplated in clause 7.
- 18.2 Council is authorised to do all such acts and things as it may consider, at any time or from time to time, necessary or desirable in order to achieve PASA's objectives and to ensure the implementation and upholding of the vision, mission statements and the objectives of PASA, subject to the provisions of this Constitution.
- 18.3 Council shall consist of Councillors.
- 18.4 Apart from the powers and duties mentioned in any other provisions of this Constitution, and without limiting the generality of clauses 18.1 and 18.2, Council shall –
 - 18.4.1 adopt and adhere to sound governance processes and meeting procedures;
 - 18.4.2 determine the strategy of PASA taking into account the objectives of PASA in clause 6 and giving effect thereto;

- 18.4.3 take decisions on behalf of PASA and give effect to those decisions;
 - 18.4.4 provide guidance and direction to the Chief Executive Officer;
 - 18.4.5 Issue and amend PASA Policies and ensure that such PASA Policies are reduced to writing and, upon adoption, enforced;
 - 18.4.6 use reasonable efforts to obtain consensus on any matters affecting PASA, its Members and/or other participants or stakeholders in the NPS;
 - 18.4.7 appoint to office a Chairperson in accordance with clause 19;
 - 18.4.8 remove from office a Chairperson in accordance with clause 19;
 - 18.4.9 appoint to office a Chief Executive Officer in accordance with clause 20;
 - 18.4.10 Appoint to office a deputy chairperson in accordance with clause 19;
 - 18.4.11 remove from office a Deputy Chairperson in accordance with clause 19;
 - 18.4.12 Approve the financial statements and the annual report;
 - 18.4.13 review and approve all proposed budgets;
 - 18.4.14 ensure that minutes of meetings of Council are complete, accurate and indicate confidentiality, where required;
 - 18.4.15 establish and monitor policies and procedures to safeguard the assets and future viability of PASA;
 - 18.4.16 have the power to refer any matter deemed necessary by it to Members for consideration and approval at a General Meeting; and
 - 18.4.17 consider and recommend Independent Councillor fees, for approval at a General Meeting.
- 18.5 Subject to clauses 18.6 and 18.7, Council may delegate its powers and assign its duties to:
- 18.5.1 PASA Structures;

18.5.2 the Chief Executive Officer; and

18.5.3 Council Committees established by Council: -

18.5.3.1 by such means;

18.5.3.2 to such an extent;

18.5.3.3 in relation to such matters; and

18.5.3.4 on such terms and conditions, as it thinks fit, provided that such delegation or assignment is done in writing.

18.6 Subject to the provisions of clause 20.6.7, it is specifically acknowledged that Council may not delegate its powers and authority to –

18.6.1 govern PASA;

18.6.2 amend the Constitution;

18.6.3 direct PASA to withdraw or to reinstate a Member's status of good standing;

18.6.4 dissolve PASA, subject to clause 37 below;

18.6.5 constitute, establish, maintain or dissolve any PASA Structure and which has an impact on, interacts with, has access to, or makes use of payment, clearing or settlement systems or operations as contemplated in the NPS Act.

18.7 Council may revoke any delegation in whole or in part, or alter the terms and conditions of such delegation in writing.

18.8 A Council Committee may consist of –

18.8.1 Councillors; and/or

18.8.2 Designees; and/or

18.8.3 other persons with appropriate knowledge, expertise and experience; and/or

18.8.4 employees of PASA.

18.9 If Council delegated its powers and assigned its duties to a Council Committee -

18.9.1 any delegated power or duty so exercised is regarded to have been exercised or performed by the Council;

18.9.2 Council is not absolved from exercising or performing any power or duty so delegated or assigned; and

18.9.3 any delegated power or duty exercised or performed by the Council Committee must be exercised or performed in accordance with obligations imposed on Councillors as set out in clauses 25 and 27.

19. APPOINTMENT OF THE CHAIRPERSON, INDEPENDENT COUNCILLORS AND ELECTION OF A DEPUTY CHAIRPERSON FOR COUNCIL

CHAIRPERSON

19.1 Council shall, subject to approval of the Reserve Bank, appoint an independent Chairperson to Council in terms of an appointment contract approved by Council.

19.2 When appointing a Chairperson to Council, Council shall take into account; inter alia, the applicant's skills, knowledge, experience and any criteria for a Chairperson approved by Council from time to time.

19.3 A Chairperson shall not be in the temporary or permanent employ of or act as a consultant on an exclusive basis for any Member, system operator or PCH system operator.

19.4 Any person appointed as Chairperson shall be subject, mutatis mutandis, to clauses 24.6, 25 and 27.

19.5 The Chairperson's term of office shall be 3 (three) years, which term may be renewed at the discretion of Council.

- 19.6 No person may serve as Chairperson for more than 2(two) consecutive terms of 3 (three) years each.
- 19.7 An annual assessment of the Chairperson shall be conducted by the Nomination and Induction Committee.
- 19.8 The appointment of a Chairperson shall take place at a special meeting of Council and in accordance with the provisions of clauses 16.3, 16.4 and 23.
- 19.9 If a Chairperson is unable to continue acting as a Chairperson for any reason, Council shall as soon as possible, subject to clauses 19.1, 19.2 and 19.3, appoint a new Chairperson.
- 19.10 Council may remove the Chairperson from office, in accordance with clauses 26.5 and 26.6, subject to the approval of the Reserve Bank.
- 19.11 Subject to clause 22.1, or in the event of failure to elect a Chairperson, the Reserve Bank will be empowered to appoint an interim Chairperson who may at the discretion of the Reserve Bank remain in office until a Chairperson is appointed by Council in terms of this Constitution.

INDEPENDENT COUNCILLORS

- 19.12 Council shall comprise at least 1 (one), but not more than 5 (five), Independent Councillors, appointed in terms of contract approved by Council.
- 19.13 Independent Councillors shall be elected by a General Meeting, following a recommendation by Council.
- 19.14 When considering the appointment of an Independent Councillor for recommendation to a General Meeting, Council shall take into account, inter alia, the applicant's skills, knowledge, experience, as well as the collective knowledge, skills, diversity and experience required by Council, and whether the candidate meets the appropriate fit and proper criteria as defined by the regulator.
- 19.15 An Independent Councillor shall not be in the temporary or permanent employ of or act as a consultant on an exclusive basis for any Member, system operator or PCH system operator.

- 19.16 Any person appointed as Independent Councillor shall be subject, mutatis mutandis, to clauses 24.6, 25 and 27.
- 19.17 The term of office of an Independent Councillor shall be 3 (three) years, which term may be renewed at the discretion of Council.
- 19.18 No person may serve as Independent Councillor for more than 3(three) terms of 3(three years) each out of a total of 15(fifteen) years.
- 19.19 An annual assessment of the Independent Councillors shall be conducted by the Chairperson, in conjunction with the Nomination and Induction Committee.
- 19.20 The appointment of an Independent Councillor shall take place at a special meeting of Council and in accordance with the provisions of clause 16.3.
- 19.21 The provisions in this Constitution applicable to Councillors, shall mutatis mutandis apply to Independent Councillors.

DEPUTY CHAIRPERSON

- 19.22 When electing a deputy chairperson from nominated Independent Councillors (excluding the Ex Officio Councillors and the Chairperson), Council shall take into account the nominees' skills, knowledge and experience.
- 19.23 The election of a deputy chairperson shall take place on a vacancy of office or once every third year at a special meeting of Council following that year's General Meeting, or at a special meeting of Council as provided for in clause 19.8.
- 19.24 The term of office for the deputy chairperson shall be 3 (three) years or the remaining part of a term, which remaining part shall not be regarded as any term contemplated in clause 19.24.
- 19.25 No deputy chairperson may serve as deputy chairperson for more than 2(two) terms of 3(three) years each.
- 19.26 Council has the power to remove from office the deputy chairperson.

20. THE CHIEF EXECUTIVE OFFICER

- 20.1 Council shall, subject to approval of the Reserve Bank, appoint the Chief Executive Officer in terms of an employment contract approved by Council and shall ensure that he fulfils the duties set out in this clause 20.
- 20.2 Council may remove the Chief Executive Officer from office, subject to approval of the Reserve Bank.
- 20.3 The organisation of PASA and its day-to-day business and operations will be under the charge and general management and control of the Chief Executive Officer, subject to the powers and authority, general or special directions and instructions that Council may, from time to time, issue and/or delegate to the Chief Executive Officer.
- 20.4 The Chief Executive Officer shall be entitled to delegate any of his powers and/or assign any of his duties to any employee of PASA for any particular period or purpose, provided that such delegation or assignment is done in writing and is subject to the same terms and conditions as that set out in the Chief Executive Officer's employment agreement and to any general or special directions and instructions that Council may, from time to time, issue to the Chief Executive Officer.
- 20.5 The employee of PASA to whom the Chief Executive Officer has delegated or assigned powers or duties in accordance with the provisions of clause 20.4 shall act as alternate Councillor in the Chief Executive Officer's place during his absence and on such appointment being made, the appointed employee shall, in all respects, be subject to the duties, qualifications and conditions existing with reference to the other Councillors.
- 20.6 The Chief Executive Officer is accountable to Council, and is the chief executive officer of PASA. Apart from powers and duties included in an employment agreement by Council, the Chief Executive Officer –
- 20.6.1 must give effect to the strategy of PASA and the Reserve Bank and assist in the development of new strategies in order to achieve the objectives of PASA;
- 20.6.2 must establish relationships with other interested parties, participants and stakeholders (other than Members) in the NPS and build trusted relationships with such parties in order to provide guidance on risk reduction measures in the NPS;

- 20.6.3 must, at the direction of Council, authorise a person to act as a system operator or PCH system operator who complies with criteria recommended by Council and approved by the Reserve Bank;
- 20.6.4 must appoint suitable staff to assist PASA in the performance of its functions and determine the conditions of service, remuneration, allowances and other benefits of such staff, subject to any general or special direction from Council;
- 20.6.5 must actively assist Council in co-operation with the Reserve Bank to influence policy regarding the NPS;
- 20.6.6 is responsible for the preparation and publication of –
 - 20.6.6.1 the annual report to be tabled at the General Meeting regarding the activities of PASA;
 - 20.6.6.2 the annual financial statements; and
- 20.6.7 may establish PASA Structures and assign duties and functions to them.

21. PASA STRUCTURES

- 21.1 PASA Structures, established by PASA as contemplated in clause 7.1.23 or by the Chief Executive Officer as contemplated in clause 20.6.7, shall consist of –
 - 21.1.1 employees of PASA (who are not entitled to vote); and/or
 - 21.1.2 designees; and/or
 - 21.1.3 other persons with appropriate knowledge, expertise and experience, who may not include Councillors, and who may be invited to attend PASA Structures on an ad hoc basis.

- 21.2 Forums shall primarily be called by PASA to consult on matters related to payments, payment systems and on strategy. Forums thus established shall be entitled to invite participants or stakeholders in the NPS other than Members to attend such meetings.
- 21.3 No decisions shall be binding on PASA or its Members, other than those taken by Council, the Chief Executive Officer and/or PASA Structures.

22. MEETINGS OF COUNCIL

- 22.1 The Chairperson failing him, the deputy chairperson of Council, shall be the chairperson of each meeting of Council, provided that if neither the Chairperson nor deputy chairperson is present or willing to act, the Councillors present shall elect a Councillor to be the chairperson of such a meeting.
- 22.2 The meetings of Council shall be held at such times and places as Council may determine, provided that –
- 22.2.1 at least 4 (four) meetings of Council are convened per year by not less than 14 (fourteen) days' prior written notice to all Councillors provided by PASA; and
 - 22.2.2 the first meeting of Council shall be held in the month of February of each year and thereafter as and when required;
 - 22.2.3 the Chief Executive Officer, Chairperson, deputy chairperson or any 3 (three) Councillors acting in concert may at any time convene a special meeting of Council, by giving written notice to all Councillors, at which meeting such shorter notice (if any) must be agreed to by all Councillors attending the meeting before the start of the meeting: provided further that if it is established that no quorum will be present based on the acceptance of invitations, such a meeting must be rescheduled by PASA;
 - 22.2.4 any special meeting of Council may be cancelled by the person(s) who convened it;
 - 22.2.5 a quorum is present.
- 22.3 A quorum for a Council meeting (including a special meeting of Council) shall be established at the meeting by sufficient persons to represent at least 80% (eighty percent) by number of the

Councillors (excluding the Ex Officio Councillor appointed by the Reserve Bank and the Chairperson) entitled to vote.

22.4 If a quorum is not present a further meeting shall be scheduled by not less than 14 (fourteen) Days' prior written notice to all Councillors or as contemplated in clause 22.2.3.

23. VOTING AT MEETINGS OF COUNCIL

23.1 Council is required to seek consensus on any matter affecting PASA and / or its Members and / or other participants or stakeholders in the payments industry, including the granting of membership. If no consensus can be reached on any such matters at any meeting where the matter was tabled, or as contemplated in clause 23.8 below, then such matter must be put to a vote at such meeting or at the next scheduled meeting or alternatively, Council shall call a special meeting of Council for this purpose.

23.2 Where no consensus can be reached at a meeting of Council –

23.2.1 each Councillor, excluding the Ex Officio Councillor appointed by the Reserve Bank and the Chairperson, shall be entitled to 1 (one) vote;

23.2.2 alternate Councillors shall be entitled to vote if the principal Councillor appointed by the same Member is not present at the meeting;

23.2.3 the Chairperson shall be entitled to a Casting Vote only.

23.3 All decisions by Council shall be carried by consensus, a Simple Majority Vote or a vote carried by the Chairperson's Casting Vote.

23.4 If Council is unable to make a decision for whatever reason, such matter may be referred by any Councillor to the Reserve Bank for a decision, which shall be final and binding.

23.5 The appointment of the Chairperson shall take place at a meeting of Council.

23.6 The election of the deputy chairperson of Council shall take place by secret ballot at a meeting of Council.

- 23.7 Save for clauses 23.6 and 23.8, voting on any other matter shall take place in the manner, at the time and place that the Chairperson directs.
- 23.8 Subject to clause 23.9, resolutions on matters may, in the Chairperson’s discretion, be adopted by Council at an informal meeting or forum or in writing or by electronic communication (hereinafter referred to as a “round robin” approval), but excluding telephonic consent. Subject to clause 23.9, such resolutions, if passed, shall be as valid and effective as if passed at a meeting of Council properly called and held.
- 23.9 Resolutions on matters adopted by Council as contemplated in clause 23.8, shall -
- 23.9.1 In the event of a round robin approval, only be obtained if considered urgent by the Chairperson which, in his opinion does not warrant Council debate; or
 - 23.9.2 In the event of an informal meeting or forum, only be obtained following debate and in principle support by Council; and
 - 23.9.3 Following the round robin approval or the informal meeting, be ratified by Council at a subsequent formal meeting of Council.

24. COUNCILLORS

- 24.1 Members that have maintained a Participation Percentage of more than 10% (ten percent) for the preceding 3 (three) Periods of Calculation may appoint 1 (one) principal and 1 (one) alternate Councillor each for a term of 3 (three) years. However, if such Members are less than 4 (four), then those 4 (four) Members with the highest Participation Percentage for the preceding 3 (three) Periods of Calculation must appoint 1 (one) principal and 1 (one) alternate Councillor each for a term of 3 (three) years (Members qualifying in terms of this clause shall annually be so advised by PASA).
- 24.2 Members not qualifying in terms of clause 24.1 above, excluding the Reserve Bank, must appoint 3 (three) Members from amongst them, which Members shall be entitled to appoint 1 (one) principal and 1 (one) alternate Councillor each for a term of 3 (three) years. Members qualifying in terms of this clause shall be so advised by PASA when scheduling a meeting with these Members. The purpose of the said meeting shall be to appoint the Members contemplated in this clause 24.2, for purposes of appointment of Councillors.

- 24.3 Members must, subject to clause 24.5, appoint principal and alternate Councillors who –
- 24.3.1 are suitably qualified and experienced to comply with the standards of Councillors' conduct as set out in clause 27; and
 - 24.3.2 are committed to the vision, mission and objectives of PASA.
- 24.4 When a Councillor is appointed by a Member, a Member's chief executive officer or similar officer must submit to PASA a written declaration in a format acceptable to PASA, stating that the said Councillor has been mandated to act as provided for in clause 27.
- 24.5 Members must, before a Councillor is appointed,
- 24.5.1 nominate a candidate for approval by the Nomination and Induction Committee, which approval shall be informed by the appropriate mix of seniority, skills, experience and diversity required on PASA Council.
 - 24.5.2 the Nomination and Induction Committee shall provide reasons in the event of it not approving a candidate nominated by a Member.
 - 24.5.3 the Member shall be entitled to meet with the Nomination and Induction Committee to discuss and agree on a suitable candidate for appointment by the Member.
- 24.6 A person may not be a Councillor if that person –
- 24.6.1 represents a Member as contemplated in clause 15.1;
 - 24.6.2 is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
 - 24.6.3 has ever been, or is, removed from an office of trust on account of misconduct involving dishonesty;
 - 24.6.4 is subject to an order of a competent court holding that person to be mentally unfit or disordered;

- 24.6.5 within the previous 10 (ten) years has been, or is convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined for theft, fraud, forgery, perjury or an offence involving fraud, misrepresentation or dishonesty.
- 24.7 Ex Officio Councillors (excluding the Chief Executive Officer) may be appointed by the Reserve Bank to serve on Council by virtue of an office or position held but shall not be entitled to vote. The Chief Executive Officer shall also be regarded as an Ex Officio Councillor but shall have the right to vote.
- 24.8 Councillors appointed as contemplated in clauses 24.1 and 24.2 may from 1 January 2019 not serve as a Councillor for more than 3(three) terms of 3(three) years each out of a total of 15(fifteen) years.
- 24.9 Terms served before 1 January 2019 by a Councillor appointed as contemplated in clauses 24.1 and 24.2, shall not be taken into account in the calculation of a term of office of such Councillor.

25. CONFLICTING INTERESTS

- 25.1 Councillors have a fiduciary duty to PASA to avoid any conflict of interest or potential conflict of interest;
- 25.2 A Councillor must not knowingly attend, participate in or influence the proceedings during a meeting of Council, if, in relation to the matter before Council, that Councillor has an interest that precludes that Councillor from performing the functions of a Councillor as contemplated in clause 27;
- 25.3 Councillors must annually in advance, as well as on an ongoing basis, disclose any conflict of interest or potential conflict of interest as contemplated in clause 25.2;
- 25.4 A Councillor must recuse himself from a meeting and/or voting on a matter where he has a conflict of interest or a potential conflict of interest as contemplated 25.2.

26. RESIGNATION, REMOVAL FROM OFFICE AND VACANCIES

- 26.1 Members who may appoint Councillors as contemplated in clause 24.1 shall ensure that if a vacancy should occur during the tenancy of a specific Councillor's term of office appointed by those Members, another Councillor is duly appointed.
- 26.2 Members who may appoint Councillors as contemplated in clause 24.2 shall ensure that if a vacancy should occur during the tenancy of a specific Councillor's term of office appointed by those Members, a meeting is called by PASA, as contemplated in clause 24.2, for the appointment of another Councillor.
- 26.3 A Councillor may either resign or a Member may remove a Councillor (excluding Ex Officio Councillors and the Chairperson) appointed by it by giving written notice to PASA.
- 26.4 A Chairperson may resign by giving written notice to PASA in accordance with the appointment contract approved by Council.
- 26.5 Council, after taking the steps required by clause 26.6 may remove a Councillor, including a Chairperson, from office, only if that Councillor, or Chairperson, has-
- 26.5.1 become disqualified in terms of or act contrary to clause 24.6; or
 - 26.5.2 failed to recuse himself from a meeting as contemplated in clause 25.3; or
 - 26.5.3 neglected to properly perform the functions of their office as required by clause 27.
- 26.6 Before removing a Councillor, or Chairperson, from office in terms of clause 26.4, Council must afford the person an opportunity to state a case in defence of his position at a meeting called by Council for that purpose. Any decision by Council thereafter shall be final.

27. STANDARDS OF COUNCILLORS' CONDUCT

- 27.1 It is specifically acknowledged that a Councillor stands in a fiduciary relationship to PASA. In accordance with his fiduciary duties, such Councillor must—
- 27.1.1 not use the position of Councillor, or any information obtained while acting as Councillor to –
 - 27.1.1.1 gain an advantage for the Councillor, (or for another person other than PASA), make private use of, or profit from any such information; or

27.1.1.2 divulge any information, which has been obtained as a result of performing that person's functions as a Councillor and which has been identified or classified as confidential information, to any Member or third party, except as required as part of that person's official functions as a Councillor; or

27.1.1.3 knowingly cause harm to PASA;

27.1.2 communicate to Council at the earliest practicable opportunity any information that comes to the Councillor's attention and which affects or concerns PASA, unless the Councillor —

27.1.2.1 reasonably believes that the information is—

27.1.2.1.1 immaterial to PASA; or

27.1.2.1.2 generally available to the public, or known to the other Councillors;
or

27.1.2.2 is bound not to disclose that information by a legal or ethical obligation of confidentiality.

27.2 The fiduciary duties owed by each Councillor to PASA, also requires that such Councillor must exercise the powers and perform the functions of the Councillor and attend, participate in or influence the proceedings during a meeting of Council and Council Committees —

27.2.1 in good faith and for a proper purpose;

27.2.2 with independent and unfettered discretion and judgment;

27.2.3 with due care, skill and diligence; and

27.2.4 in accordance with this Constitution, the Regulatory Framework of the NPS and all Applicable Laws.

28. ACCOUNTING RECORDS

28.1 PASA must keep accurate and complete accounting records at the registered office of PASA or at such other place as Members think fit, and shall always be open to inspection by Members.

28.2 Such accounting records must fairly present the state of affairs and business of PASA and explain the transactions and financial position of PASA.

29. FINANCIAL YEAR

29.1 The financial year of PASA shall end on 31 December.

30. ANNUAL FINANCIAL STATEMENTS AND REPORTS

30.1 Each year, PASA must prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate.

30.2 The annual financial statements must be audited, and include an auditor's report;

30.3 PASA must prepare, at least annually, a report concerning its functions and activities as set out in this Constitution, which report must be submitted to the Reserve Bank.

30.4 PASA shall make the audited financial statements and the report referred to in clause 30.3 available to each Member together with the notice of the General Meeting convened as contemplated in clauses 16 and 17.

31. AUDITORS

31.1 Council shall recommend the appointment of an auditor at a General Meeting.

32. INDEMNITIES

32.1 PASA indemnifies each Member, Chairperson, Councillor, Designee and each employee of PASA against any loss, expense, liability or damage incurred by such person in the lawful, legal and bona fide execution and discharge of their rights and obligations in terms of this Constitution, save where such loss or liability arises out of and/or in connection with the negligence, wilful misconduct or fraud of such person.

33. SUBSCRIPTIONS OF MEMBERS

33.1 All Members, excluding Sponsored Clearing Members, shall pay upon admittance and thereafter annually, a subscription fee to fund PASA's budget, which subscription is calculated according to the formula, $A = B + C + D + E$ where –

- 33.1.1 each Member's subscription (A) is calculated to include –
- 33.1.1.1 30% (thirty percent) of PASA's budget divided equally amongst the Members (B);
 - 33.1.1.2 20% (twenty percent) of PASA's budget divided equally amongst the sum of all Members of the PCHs added together (C);
 - 33.1.1.3 25% (twenty five percent) of PASA's budget in the proportion of the Members' Throughput in Volume as a percentage of total Throughput in Volume of all the Members of PASA (D);
 - 33.1.1.4 25% (twenty five percent) of PASA's budget in the proportion to the Members' annual Throughput in Value as a percentage of Throughput in Value of all the Members of PASA (E).
- 33.2 This subscription formula and structure may be changed from time to time by a Simple Majority Vote of Council, after consultation with Members and having taken cognisance of the Constitution.
- 33.3 Sponsored Clearing Members shall upon admittance and thereafter annually, pay a subscription fee to fund PASA's budget, as determined by Council from time to time.
- 33.4 Annual subscriptions shall be paid in advance for each financial year, starting on 1 January and ending on 31 December of each year, and shall be due and payable each year within 30 (thirty) days from the date of the valid tax invoice issued by PASA. PASA shall issue and distribute invoices by no later than 31 January of each year.
- 33.5 Newly admitted Members shall pay a pro-rata fee of the fixed component referred to in clause 33.1.1.1, which fee shall be –
- 33.5.1 payable once membership is granted and within 30 (thirty) days from the date of the valid tax invoice issued by PASA; and
 - 33.5.2 calculated on the remaining number of months of the financial year, inclusive of the month in which membership is granted,
 - 33.5.3 after which the normal annual subscription shall be payable.

- 33.6 Should a Member terminate its membership before 31 March in any year, and notice of such termination has been given in the preceding year, subscriptions will not be levied against that Member.
- 33.7 If, due to unforeseen circumstances and in the opinion of Council, further funds are required for purposes of carrying on the work of PASA, Council may impose additional levies proportionate to subscriptions of Members. The additional amount so levied shall be payable within such time as Council may specify.
- 33.8 Council shall not give a rebate in respect of the whole or a portion of a Member's subscriptions in any financial year.
- 33.9 Any unpaid subscriptions of any Member, which ceases to be a Member of PASA, shall be due and payable immediately.
- 33.10 It is specifically recorded that subscription fees payable by any Member shall not be disclosed or made known to any other Member.

34. RIGHT OF APPEAL and REQUEST FOR RECONSIDERATION

Appeal by an institution or body against a decision by the Chief Executive Officer regarding membership

- 34.1 Any institution or body, eligible for membership of PASA in terms of the NPS Act, may appeal to Council against a decision by the Chief Executive Officer, to decline membership to such institution or body, provided that –
- 34.1.1 such institution or body gives written notice of appeal to Council, and a copy thereof to the Chief Executive Officer, within 14 (fourteen) days after being notified by PASA in writing of the Chief Executive Officer's decision; and
- 34.1.2 the notice referred to in clause 34.1.1 above, includes the grounds for appeal, as well as written representations to Council.
- 34.2 The Chief Executive Officer shall have the right, having considered the grounds for appeal and the written representations by the institution or body, to make written representations to Council within 14 (fourteen) days of receipt of the said notice.

- 34.3 Council shall, after considering the appeal, either, ratify, amend or reject the Chief Executive Officer's decision and provide written reasons for its decision.
- 34.4 If the affected institution or body is not satisfied with Council's decision, such institution or body shall be entitled to appeal to the Reserve Bank, provided that-
- 34.4.1 such institution or body gives written notice of appeal to the Reserve Bank, and a copy thereof to Council, within 14 (fourteen) days after being notified by PASA in writing of Council's decision or within such further period as the Reserve Bank may allow, on good cause shown; and
 - 34.4.2 the notice of appeal referred to in clause 34.4.1 above, includes the grounds for appeal, as well as written representations to the Reserve Bank.
- 34.5 Council shall have the right, having considered the grounds for appeal and the written representations by the institution or body to the Reserve Bank, to make written representations to the Reserve Bank within 14 (fourteen) days of receipt of the notice.
- 34.6 The Chief Executive Officer shall not have the right to appeal Council's decision in terms of clause 34.3, to the Reserve Bank.

Request by a Member or Councillor, to Council, to reconsider its decision

- 34.7 Any Member shall be entitled to request Council to reconsider a decision made by it, or by the Chief Executive Officer, if the Member considers the decision to be unfair or prejudicial to its interests or on the grounds mentioned in clause 34.15. The Member must submit a request, together with written representations, to Council within 14 (fourteen) days of being notified by PASA in writing of the decision of Council or the Chief Executive Officer, or within such further period as Council may allow on good cause shown. Council shall have a discretionary right to suspend any action and not to implement the decision made by it or by the Chief Executive Officer, pending the outcome of the reconsideration.
- 34.8 Any Member or any Councillor shall be entitled to request Council to reconsider a decision, made by it, or by the Chief Executive Officer, if it considers such decision to be harmful to the NPS or to PASA or on the grounds mentioned in clause 34.15. The Member or Councillor must submit the request, as well as its written representations, to Council within 14 (fourteen) days of being notified by PASA in writing of the decision of Council, or within such further period as Council may allow, on good cause shown. Council shall have a discretionary right to suspend any action

and not implement its or the Chief Executive Officer's decision, pending the outcome of the reconsideration.

34.9 The Chief Executive Officer or any other Member may reply to the request and the written representations mentioned in clauses 34.7 and 34.8 in writing within 14 (fourteen) days of being notified thereof by PASA, or within such other period as Council may allow on good cause shown, for consideration by Council.

Appeal by a Member to the Reserve Bank against a decision by Council

34.10 If any Member is not satisfied with the outcome of the decision by Council pursuant to a request in terms of clauses 34.7 or 34.8, the Member shall be entitled to appeal to the Reserve Bank, provided that-

34.10.1 the Member submits its notice of appeal to the Reserve Bank in writing within 14 (fourteen) days of being notified by PASA in writing of the decision by Council pursuant to a request in terms of clauses 34.7 or 34.8 or within such further period as the Reserve Bank may allow on good cause shown; and

34.10.2 the notice referred to in clause 34.10.1 includes the grounds for appeal, as well as the written representations to the Reserve Bank.

34.11 Subject to clause 34.12, the decision of Council, pursuant to a request in terms of clauses 34.7 or 34.8, shall stand.

34.12 The Reserve Bank has a right to suspend the decision made by Council pending its decision referred to in clause 34.14.

34.13 Council shall be entitled to reply to the grounds for appeal and the written representations referred to in clause 34.10.2 within 14 (fourteen) days of being notified thereof by PASA in writing, by making written representations to the Reserve Bank for its consideration.

34.14 The Reserve Bank may confirm, vary or set aside the decision of Council. The Reserve Bank shall communicate the outcome of the appeal, together with any instructions it deems fit, in writing to Council and the Member. Any such decision by the Reserve Bank shall be final.

Grounds for appeal

34.15 The phrase “grounds for appeal” as mentioned in this clause 34 includes any grounds available in law.

35. AMENDMENTS TO THE CONSTITUTION

35.1 Any proposed amendment/s to this Constitution may be approved at a General Meeting, provided that –

35.1.1 at least 21 (twenty-one) days prior written notice of the meeting was provided to each Member; and

35.1.2 the notice of such meeting shall contain the full text of the proposed amendment/s, if any;

35.2 The amendment/s shall thereafter be provided to the Reserve Bank for approval, together with minority views by Members not supporting the amendment/s.

35.3 Subject to clauses 35.4 to 35.6, any amendment/s to this Constitution shall be effective, following approval thereof by the Reserve Bank.

35.4 If any Member (“aggrieved Member”) is not satisfied with the outcome of the decision by Members at a General Meeting, the aggrieved Member shall be entitled to appeal to the Reserve Bank, provided that-

35.4.1 the aggrieved Member submits its notice of appeal to the Reserve Bank and to Council in writing within 14 (fourteen) days of the date of the General Meeting or within such further period as the Reserve Bank may allow on good cause shown; and

35.4.2 the notice referred to in clause 35.4.1 includes the grounds for appeal, as well as the written representations to the Reserve Bank.

35.5 Council shall be entitled to reply to the grounds for appeal and the written representations referred to in clause 35.4.3.

36. NOTICES

36.1 Any notice given by PASA shall be in writing and shall –

- 36.1.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 36.1.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting;
 - 36.1.3 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch;
 - 36.1.4 if sent electronically, shall be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt (unless the contrary is proven).
- 36.2 Notwithstanding anything to the contrary contained in this Constitution, a written notice or communication actually received by a Member at its chosen address set out above shall be an adequate written notice of communication to such Member.

37. DISSOLUTION

- 37.1 Subject to approval by the Reserve Bank, PASA may be dissolved, if at a meeting of Council convened for the purpose of considering the matter, Councillors voted in favour of dissolution by Simple Majority Vote.
- 37.2 Not less than 21 (twenty-one) days written notice shall be given of a meeting of Council where the dissolution of PASA is the item to be discussed and such notice shall clearly state that the question of dissolution and disposal of the assets of PASA shall be considered.
- 37.3 Upon the dissolution of PASA, all debts of PASA shall be discharged and the remaining funds and assets shall, at the direction of the Reserve Bank, be transferred to another association, body or institution having similar objects, and which is exempt from income tax under section 10(1)(cA)(i) of the Income Tax Act, No 58 of 1962..
- 37.4 It is specifically recorded that the liability of Members on dissolution shall be limited to the amount of subscriptions due by them to PASA in terms of this Constitution as at the date of dissolution.

PAYMENTS ASSOCIATION OF SOUTH AFRICA

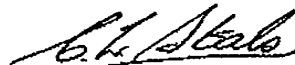
CERTIFICATE OF ESTABLISHMENT

THIS IS TO CERTIFY that the Payments Association of South Africa is hereby duly constituted in accordance with the terms and provisions of its constitution.

IT IS FURTHER CERTIFIED that the Payments Association of South Africa is hereby established by the South African banking industry, in conjunction with the South African Reserve Bank, in accordance with the framework and strategy of the national payment system.

IT IS FURTHER CERTIFIED that the Payments Association of South Africa will be the governing body for Payment Stream Associations and will determine and enforce policy regarding all aspects relating to payment streams.

SIGNED AT PRETORIA ON THIS THE 15TH DAY OF AUGUST 1996.



Dr C L Stals
Governor
South African Reserve Bank



Mr R C M Laubscher
Vice-Chairman
Council of South African Banks