

Syntell Receiver Agreement

entered into by and between –

Syntell (Proprietary) Limited
(hereinafter referred to as "Syntell")

and

Cape Agulhas Municipality
(hereinafter referred to as the "Receiver")

INTRODUCTION

The Receiver supplies various utilities and other services to customers and wishes to engage the services of Syntell to assist the Receiver in its desired objective of expanding its distribution network of point of sale outlets to:-

- dispense and sell prepaid electricity to customers

To achieve these objectives Syntell shall perform the Receiver Services through Collector(s) appointed by Syntell and through internet websites, utilizing the Syntell Vending Gateway.

(hereinafter referred to as "Receiver Services).

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS —

PART 1 -GENERAL TERMS

1 DEFINITIONS

The following words and expressions shall have the meanings hereunder assigned them and cognate words and expressions will have their corresponding meanings, unless the context indicates to the contrary —

- 1.1 "ACB" means the Automated Clearing Bureau, being the South African Banks' representative institution, which accepts input magnetic tape transactions for settlement between various account drawers and beneficiary payees;



- 1.2 "Collector(s)" mean the various legal entities appointed by Syntell, and approved by the Receiver, to perform the Receiver Services on behalf of Syntell;
- 1.3 "Confidential Information" means, without prejudice to the generality of the expression, all information of any nature whatsoever disclosed by the parties hereto to each other, their legal counsel, agents, associates or representatives and relating to Syntell and the Receiver, whether orally, in writing or in software format, in relation to:
- 1.3.1 the business of Syntell and the Receiver;
- 1.3.2 all information relating to the Website, the software, trademarks, logos and all intellectual property rights relating thereto.
- 1.4 "Day" means one 24 hour day, excluding public holidays, Saturdays and Sundays.
- 1.5 "Gross Sales" means the daily gross rand value of electricity sales including VAT thereon by the Collectors (including any debt component), and recorded on the Syntell Vending Gateway;
- 1.6 "Parties" means the Receiver and Syntell.
- 1.7 "Payment(s)" means any payments, made using the Syntell Vending Gateway in respect of Receiver Services.
- 1.8 "Receiver" means the Cape Agulhas Municipality, a local municipality, established in terms of the Local Government: Municipal Structures Act, 1998.
- 1.9 "Receiver Agreement" means this Agreement entered into by and between the Receiver and Syntell.
- 1.10 "Receiver Nominated Bank Account" means —
- BANK: ABSA Bank
BANK ACCOUNT NO:405 883 2586
BRANCH CODE:
BRANCH: Tygervalley
ACCOUNT HOLDER: CAPE AGULHAS MUNICIPALITY
REFERENCE: SYNTELL



- 1.11 "Receiver Services" means the following service:
- 1.11.1 dispense and sell prepaid electricity to customers
- 1.12 "Server" means the server/s on which all transactions envisaged in terms of this Agreement are recorded and stored and which is —
- 1.12.1 to be housed at the premises of the Receiver;
 - 1.12.2 required to interact with and be integrated to the Syntell Vending Gateway.
- 1.13 "Syntell" means Syntell (Proprietary) Limited (Registration No. 2003/022275/07) a company duly registered in accordance with the laws of South Africa;
- 1.14 "Syntell Bank Account" means
- BANK: ABSA Bank
 - BANK ACCOUNT NO: 405 879 5823
 - BRANCH CODE: 632005
 - BRANCH: Tokai
 - ACCOUNT HOLDER: SYNTELL PTY LIMITED
- 1.15 "Syntell Vending Gateway" means the Syntell revenue switch, through which the Collector's POS network routes all transaction requests to the Server;
- 1.16 "Syntell Vending Gateway Reports" means the Gross Sales and Payment reports automatically generated and emailed to the Receivers on a daily basis;
- 1.17 "Transaction Data" means the data as is held in the transaction data base records stored on the Server;
- 1.18 "Variance Report" means the report generated by Syntell, indicating the variances between the Receiver's aggregated daily sales report versus the Syntell Vending Gateway Reports;
- 1.19 "Website" means the websites, including the Paycity website, which shall be utilised from time to time to enable customers to make Payments.
- 1.20 Words importing the singular shall include the plural and vice versa, words importing any gender shall include the other genders and words importing persons shall include partnerships and bodies corporate.



- 1.21 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.22 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.23 If any provision in a definition is a substantive provision conferring rights imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.

2 OBLIGATIONS AND DUTIES OF THE RECEIVER

The Receiver hereby agrees and undertakes:-

- 2.1 to reverse any Payment made where an error has arisen due to a technical problem or a duplication of Transaction Data resulting in the Receiver receiving a payment to which it is not entitled, or where a Payment is reversed for any reason whatsoever. Syntell shall as soon as it becomes aware of such an erroneous Payment or reversal, notify the Receiver, in writing, who undertakes to forthwith investigate the Payment concerned. If the Receiver is satisfied that an error or reversal has occurred, it undertakes to immediately refund Syntell for the amount of the erroneous payment or reversal;
- 2.2 to reimburse Syntell in respect of Payments made to Syntell or a Collector by a customer using a credit or debit card, the fees charged to Syntell/ Collector by the supplier of the credit or debit card. These fees are reflected in Schedule 1 and may be changed from time to time;
- 2.3 to reimburse Syntell, at Syntell's instance, in respect of cash payments made to a Collector any cash handling fees charges by the Collector's bank;
- 2.4 to use its reasonable endeavours to ensure that the Server remains on line on a 24 hour a day basis;
- 2.5 where reasonably possible to give Syntell prior written notice of any down times as may be necessary to maintain and support the Server;
- 2.6 provide Syntell with the Receiver's aggregated daily sales report on a daily basis;
- 2.7 to exclusively use Syntell to collect Payments for the duration of this Agreement.



3 OBLIGATIONS AND DUTIES OF SYNTELL

Syntell hereby agrees and undertakes —

- 3.1 to use its best endeavours to ensure that the Syntell Vending Gateway remains on line on a 24 hour a day basis;
- 3.2 to approach any prospective Collector as well as those recommended in writing by the Receiver with a view to signing them up as a Collector;
- 3.3 to ensure that all Collectors sign a Point of Sale Collector Agreement as approved by the Receiver and in so doing adhere to certain risk and management criteria and standards set by Syntell;
- 3.4 to notify the Receiver of all existing Collectors prior to signature hereof, if applicable;
- 3.5 to furnish the Receiver by no later than close of business on the 15th day of each month, with a consolidated report of all transactions that occurred in the preceding month, setting out the details of payments to the Receiver transmitted via ACB from Syntell to the Receiver's Nominated Bank Account.

4 METHOD OF PAYMENTS

- 4.1 The daily consolidated total of all Payments reflected in the Syntell Vending Gateway Reports must be transferred within 2 Days of date of receipt of the Payments by Syntell, to the Receiver via ACB by crediting the Receiver's Nominated Bank Account.
- 4.2 The Receiver hereby agrees and undertakes to allow Syntell restricted access to the Receiver's Nominated Bank Account via ACB in order to only pass a credit of the consolidated total referred to in paragraph 4.1 above.
- 4.3 In the event that the Receiver's aggregated daily sales report varies from the Syntell Vending Gateway Report in the Variance Report, Syntell will pay based on the Syntell Vending Gateway Report described in paragraph 1.16.



5 COLLECTION FEE AND OTHER CHARGES

- 5.1 The Receiver shall pay to Syntell a collection fee for each collected Payment reflected in the Syntell Vending Gateway Reports and at the rate specified in Schedule 1 annexed hereto.
- 5.2 The fee for each collected Payment shall be consolidated and the charges due in terms of paragraph 5.1 above shall be consolidated and shall be paid into the Syntell Bank Account within 30 (thirty) days of receipt by the Receiver of a detailed invoice.
- 5.3 The collection fee referred to in paragraph 5.1 above shall be reviewed annually on the anniversary of the signing of this Agreement, and if necessary the collection fee shall then be adjusted by mutual written agreement between the parties, and a fresh Schedule 1 signed.

6 MARKETING

The parties may not use the others logo's without the other's written consent.

7 CONFIDENTIALITY

- 7.1 The Parties acknowledge that all Confidential Information disclosed by them, their legal counsel, their associates or representatives during negotiations and discussions between the parties is private and confidential.
- 7.2 The parties shall at all times, unless otherwise agreed to in writing between the parties, hold the Confidential Information disclosed to them in strict confidence and shall use such Confidential Information only for such purpose and to the extent that it may be necessary for the parties to comply with their obligations in terms hereof.
- 7.3 Syntell agrees that it shall treat as confidential all Transaction Data and information of whatever nature acquired or received by it from the Receiver and furthermore agrees that such Transaction Data and information shall only be divulged and disclosed to any other third party with the Receiver's prior written consent.
- 7.4 Intellectual Property Rights
 - 7.4.1 All intellectual property rights (including, without limitation, any copyright, patents, design rights, trademarks or service marks) in the Website and



any improvements or modifications thereto from time to time, whether carried out by Syntell or the Receiver shall remain the sole and exclusive property of Syntell.

7.4.2 As used here, "intellectual property rights" mean, without limitation, any technology, content, data, hyperlinks, graphic and any icons on the Website, all related patent rights, copyrights, inventions, designs, including software and hardware, layouts, trademark rights and other intellectual property rights therein and thereto, including all moral rights. In particular, it is recorded that Syntell does not dispose of the ownership of or its rights under license to use any intellectual property on its Site.

7.5 This clause 7 shall survive the termination of this Agreement.

8 DURATION

This Agreement shall commence on 1 April 2015 and shall continue for a period of three (3) years.

9 NON-PAYMENT / LATE PAYMENTS

9.1 In the event, that for any reason whatsoever, Syntell is unable to deposit payments via ACB in terms of the provisions of this Agreement timeously or at all, Syntell shall be liable to the Receiver for such deposit together with interest on the said deposit calculated at the prime bank overdraft rate charged by the Standard Bank Ltd. from time to time plus 1% reckoned from the Day the deposit should have been made until the Day on which it is made. Any such interest owing shall be calculated by the Receiver and deducted from the collection fee due by the Receiver to Syntell in terms of paragraph 5 above.

9.2 In the event that Syntell is unable to deposit Payments timeously, or at all, Syntell shall immediately upon becoming aware of this fact, notify the Receiver in writing thereof, together with a written explanation therefore. It is specifically recorded and acknowledged by Syntell that this notification is essential as the Receiver might otherwise disconnect or discontinue services to Syntell.

10 NON-LIABILITY

10.1 Subject to the provisions of paragraphs 9 and 11, Syntell shall not be held liable to the Receiver whatsoever for any damages suffered, claims instituted or loss sustained by reason of Syntell's failure to make the deposits in terms of clause 4

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timeously or at all, provided that such failure does not arise from the negligence or fraud of Syntell.

10.2 Syntell shall not be held liable to the Receiver in any way whatsoever, for any damages suffered, claims instituted or loss sustained, howsoever arising, by reason of any Collector's omission or failure to perform, provided such Collector has signed a Point of Sale Collector Agreement and Syntell has diligently exercised its rights in terms thereof.

10.3 Syntell does not warrant that the service will operate uninterrupted and error free, and shall not be liable for any damages suffered, claims instituted or loss sustained by any such interruption. Syntell shall however endeavour to ensure the uninterrupted and error free operation of the services provided.

10.4 Neither party shall be liable for consequential damages, indirect damages, loss of goodwill, loss of revenue or loss of profit. The provision of this clause shall not apply to loss occasioned by a breach of Clause 7 above.

11 BREACH

11.1 Should either Party hereto breach or fail to comply with any term or condition of this Agreement, then the party aggrieved thereby shall give the defaulting Party written notice to rectify such a breach.

11.2 In the event of the defaulting party failing to rectify such a breach within fourteen (14) days of the dispatch of such notice, the aggrieved party shall be entitled to give written notice of termination of this Agreement to the other party. Such termination shall take effect upon dispatch of such notice to the other party.

11.3 Should either Party repeatedly breach any of the terms and conditions of this Agreement in such a manner as to justify the aggrieved party in holding that the defaulting party's conduct is inconsistent with the defaulting party's intention to carry out the terms and conditions of this Agreement, then and in such event the aggrieved party shall without prejudice to its legal rights and remedies, be entitled to terminate this Agreement.

11.4 On terminating this Agreement, the aggrieved party will be entitled to claim and recover such damages as the aggrieved party may be able to prove that it has sustained.



12 TERMINATION

This Agreement shall terminate with immediate effect upon the happening of any of the following events:

- 12.1 If either party fails to rectify a breach of this Agreement as provided for in terms of Clause 11;
- 12.2 If Syntell commits any act of insolvency or is placed under final or provisional liquidation.
- 12.3 The end of the contract period as provided for in clause 8.

13 CESSION

The Parties shall not cede, assign, transfer or make over any of their rights, nor delegate any of their obligations, in terms of this Agreement to any third party without the prior written consent of the other Party which consent shall not unreasonably be withheld.

14 DOMICILIUM CITANDI ET EXECUTANDI

14.1 Each of the parties chooses *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any legal process and for any purposes arising from this Agreement at their respective addresses set forth hereunder:

Receiver: Cape Agulhas Municipality
1 Dirkie Uys Street
Bredasdorp
7280

Syntell: Syntell Proprietary Limited
64 - 74 White Road
Retreat
7945

14.2 Any notice to any party shall be addressed to it at its *domicilium* aforesaid and be sent either by pre-paid registered post or be delivered by hand. In the case of any notice —

- (a) Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the seventh day after posting; and



- (b) Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day.
- (c) Any party shall be entitled by notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.

15 VIS MAJOR

- 15.1 Neither party shall be liable to the other for any prevention, suspension or postponement of its performance in terms of this Agreement where such prevention, suspension or postponement is due to any event of *vis major* (including but not limited to any act of God, flood, fire, earthquake, terrestrial or extraterrestrial interference, satellite malfunction, war, riot, insurrection, strike or act of any civil or military authority, or other cause of similar nature beyond the reasonable control of a party hereto).
- 15.2 If any such event *vis major* shall continue for a period of sixty non-consecutive days, or ninety consecutive days, in the aggregate in any one-year contract period during the terms of this Agreement, either party shall have the option thereupon to terminate this Agreement upon no less than ten days written notice to the other party.
- 15.3 In the event of such termination, neither party hereto shall have any further obligations hereunder to the other party, except for payment of any fees, other sums or other consideration past due hereunder and obligations of indemnification expressly contained herein.

16 DISPUTE RESOLUTION

Any dispute between the Parties arising from or in connection with this Agreement shall be determined in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators nominated by it, save that either Party may have recourse to a court of competent jurisdiction where urgent relief is sought. Arbitration shall take place in the Western Cape.



17 GENERAL CONDITIONS

- 17.1 No alteration, cancellation, variation of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by Syntell and the Receiver or their duly authorised representatives.
- 17.2 This Agreement constitutes the entire Agreement between the parties hereto and neither of the parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 17.3 No extension of time or other indulgence granted by either party to the other in respect of either of the parties obligations will constitute a waiver of either of the parties right to enforce compliance with the terms of this Agreement. Neither shall it constitute a novation of this Agreement

18 GOVERNING LAW

The construction, validity, performance and interpretation and implementation of this agreement will be governed by the laws of the Republic of South Africa.

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PART 2 – PREPAID ELECTRICITY PAYMENTS

These further terms and conditions listed in this Part 2 are applicable in respect of the collection of prepaid electricity payments.

1 DEFINITIONS

The following words and expressions shall have the meanings hereunder assigned them and cognate words and expressions will have their corresponding meanings, unless the context indicates to the contrary —

- 1.1 "Coupon" means a computer generated meter specific coupon whereon is recorded an encoded number by means of which a customer can activate and control his Energy Dispenser;
- 1.2 "Energy Dispenser" means the metering device utilised to measure and control electrical energy consumed at a consumer's premises;

2 OBLIGATIONS AND DUTIES OF THE RECEIVER

The Receiver hereby agrees and undertakes:-

- 2.1 to allow the Syntell Vending Gateway to interface with the Server for the sale of Coupons;
- 2.2 to deal with Receiver consumer queries relating to the transactions.

3 OBLIGATIONS AND DUTIES OF SYNTELL

Syntell hereby agrees and undertakes:-

- 3.1 to ensure that the Syntell Vending Gateway is able to communicate and interact with the Server for the Sale of Coupons;

SIGNED AT Bredasdorp THIS 23rd DAY OF April 2015

AS WITNESSES:

1 [Signature]

2 [Signature]

[Signature]

DULY AUTHORISED TO SIGN ON
BEHALF OF THE RECEIVER

SIGNED AT Cape Town THIS 28th DAY OF April 2015

AS WITNESSES:

1 Uthene Thomas 

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DULY AUTHORISED TO SIGN
ON BEHALF OF SYNTELL

SCHEDULE 1

FEES PAYABLE BY RECEIVER:-

1. Prepaid electricity payments:

Commission of 5% on the Rand value of a Prepaid electricity sales recorded by Syntell and the Collectors, the total commission payable to be capped as follows:-

- o no more than R1 million for the first calendar year;
- o R1 million plus escalation equal to the percentage increase of council's electricity tariffs for the second calendar year;
- o the third calendar year escalation capped at second year amount plus escalation equal to the percentage increase of the Receiver's electricity tariffs for that year.

ALL FEES ARE QUOTED EXCLUSIVE OF VAT

BANK COSTS RECOVERABLE FROM RECEIVER:-

Fees will vary depending on the Collector involved and/or the Card type used:-

- Cash Handling Commissions : up to 1%
- Debit Card Commissions : up to 1%
- Credit Card Commissions : up to 2,5%

