

**REGULATION
ON ELECTRONIC FUNDS TRANSFER
IN GUYANA**

DRAFT

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REGULATIONS ON ELECTRONIC FUNDS TRANSFER

made under

THE NATIONAL PAYMENTS SYSTEM ACT

IN THE EXERCISE OF THE POWERS CONFERRED UPON THE BANK BY SECTIONS 3 AND 55 OF THE NATIONAL PAYMENT SYSTEM ACT, THE BANK HEREBY MAKES THE FOLLOWING REGULATIONS:

PART I – GENERAL PROVISIONS

1- Definitions

In this Regulation:

“agent” means a natural or legal person who acts on behalf of a payment service provider to provide payment services;

“bank” shall have the same meaning assigned to it in the Financial Institutions Act;

“Bank” means the Bank of Guyana established under the Bank of Guyana Act;

“consumer” means a natural or legal person using an electronic device or facility to execute electronic funds transfer services;

“credit transfer” means the series of transfers, beginning with the payer’s payment order, made for the purpose of making payment to the payee and includes a payment order issued by the payer’s bank or payment service provider, made for the purpose of making payment to the payee and includes a payment order issued by the payer’s bank or payment service provider, or an intermediary intended to carry out the payer’s payment order;

“currency” has the same meaning assigned to it by the Anti-Money Laundering and Countering The Financing of Terrorism Act;

“debit transfer” means the series of transfers, initiated by the payee, on the basis of the payer’s consent given to the payee, to the payee’s payment service provider or to the payer’s own payment service provider and includes any payment order issued by the payee’s bank or payment service provider, or an intermediary intended to carry out the payee’s order;

“designated payee” means a natural or legal person located in Guyana or in a foreign country and identified by the sender as the authorized recipient of an electronic funds transfer service;

“electronic funds transfer provider”, hereinafter referred to as “Provider”, means a payment services provider that provides electronic funds transfer services;

“electronic funds transfer” means a transfer of funds which is initiated by a person, so as to, instruct, authorize or order a payment service provider to debit or credit an account through an electronic terminal, telephonic instrument or other automated device excluding the sale of postal money orders, and including:

- (i) point-of-sale transfers;
- (ii) automated teller machine transactions;
- (iii) transfers initiated by telephonic devices, including mobile phones;
- (iv) transactions through the internet and other communication channels; and
- (v) credit card and debit card transfers.

“electronic terminal” means an electronic device other than a telephone call by a consumer, through which a consumer may initiate an electronic fund transfer and includes, but is not limited to point of sale terminals, automated teller machines and cash dispensing machines;

“electronic consent” means any sound, symbol, or process which is related to technology (i) having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, including (but not limited to) mobile telephony, and internet and (ii) which may only be accessed through a security access code, and logically associated with a legally binding

- agreement or authorization and executed or adopted by a person with the intent to be bound by such agreement or authorization;
- “financial institution” includes a non-banking financial institution as defined in the Financial Institutions Act;
- “framework contract” means a contract between the consumer and the Provider which governs the future execution of individual and successive electronic funds transfer services and which may contain the obligation and conditions for setting up an account to execute such transfers;
- “payee” means the person who is the intended final beneficiary of funds in an electronic funds transfer service;
- “payer” means a person who holds an account and allows an electronic funds transfer service from that account, or, where there is no account, a person who originates a transfer of funds, to the benefit of a payee;
- “payment order” means a payment instruction initiated by a payer (credit transfer) or a payee (debit transfer) to their respective Provider, transmitted electronically or in writing, to transfer, or to cause another Provider to transfer, a fixed or determinable amount of funds to a payee if-
- (a) the instruction does not state a condition of payment to the payee other than time of payment; and
 - (b) the instruction is transmitted by the payer directly to the payer’s Provider or to an agent, electronic funds transfer services system or communication system for transmittal to the payer’s provider;
- “preauthorized electronic funds transfer service” means an electronic funds transfer service authorized in advance by any prior arrangement or agreement between a customer and a Provider to make fixed payments to one or more third parties from funds in the payer’s account at pre-determined periods.
- “security access code” means a personal identification number (PIN), password, code or any other electronic identifier providing a means of certified access to a consumer’s account for the purposes of, among other things, initiating an electronic funds transfer service;

“security procedure” means a procedure whereby the user of the card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation;

“unauthorized electronic funds transfer” means an electronic funds transfer service from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit. The term does not include any electronic funds transfer service:

- (a) initiated by a person other than the consumer who was actually provided with the card, code, or means of access to such consumer’s account by such consumer; or
- (b) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer.

2- Scope of the Regulation

This Regulation applies to any electronic funds transfer service in Guyana.

PART II

AUTHORIZATION OF ELECTRONIC FUND TRANSFERS

3. (1) An electronic fund transfer is considered to be authorized only if the sender has given consent to execute such transfer. Consent to execute an electronic fund transfer or a series of transfers shall be given in the form agreed between the parties. In the absence of such consent, a transfer shall be considered to be unauthorized.

(2) When a payment instruction is issued electronically in the name of the customer as sender, the instruction will be verified pursuant to a security procedure by the customer’s Provider.

3) Payment instructions failing authorization will not be transmitted.

- 4) A payment instruction received by the receiving Provider is effective as the order of the customer, if the security procedure is accepted as industry standard.
- 5) When a payment instruction is issued non-electronically or partially electronically, the authenticity of the instruction shall be verified by a standard procedure agreed upon by the payment service provider and the sender of the instruction. Any rules agreed multilaterally by the participants of an electronic fund transfer system in this regard may also be accepted as the standard procedures of verifying the authenticity.

Records and issuance of Receipts

4. (1) Unless it is otherwise agreed, for each electronic funds transfer service initiated by a consumer the Provider holding the consumer's account shall, at the time the transfer is initiated, make available to the consumer written or electronic receipt of such transfer. The receipt shall clearly set forth to the extent applicable:
 - (a) the amount involved in the transfer;
 - (b) the date and time when the transfer is initiated;
 - (c) the type of transfer;
 - (d) the name(s) and account no(s). of the account(s) being debited and credited;
 - (e) the identity of any third party to whom or from whom funds are transferred;
 - (f) the balance remaining in the account which is debited or credited, unless it is likely to compromise the privacy or security of the customer;
 - (g) the location or identification of the electronic terminal involved.
- (2) If a payment order is given by voice communications (including an automated voice response system by telephone), the Provider is allowed to provide the information required in subregulation (1), letters (a) through (f), by voice communication at the time of the order (other than by written or electronic receipt);
- (3) The Provider may choose to provide customers with the option to specify, at the time the transfer is initiated, that the receipt as specified in subregulation (1) is not required.

- (4) A charge may not be imposed on a customer for the issuing of a receipt under subregulation (1) and subregulation (2).

Periodic statement

5. The Provider shall provide each consumer with a periodic statement [at least monthly] in writing for each account of such consumer that may be accessed by means of an electronic funds transfer service. The statement shall clearly set forth, at a minimum-

- (a) The amount(s) of the transfer(s)
- (b) Dates of posting of the transfers;
- (c) the amount of any fee or charge assessed by the Provider during the period for the Electronic Funds Transfer service or for account maintenance;
- (d) the opening and closing balances and transactions processed for the period in question; and
- (e) the address, telephone number or other contact details of the Provider to be used to for enquiries concerning the account, transaction (s) or to report any errors in the statement.

Receipt as evidence

6. In any act involving a customer, any documentation required by this Part to be given to the customer, which indicates that an Electronic Funds Transfer service was made to another person, shall be admissible as evidence of such transfer and shall constitute *prima facie* proof that such transfer was made. Receipts are permissible either electronically or in paper form.

Privacy

7. (1) The Provider shall ensure that any information relating to an electronic funds transfer service shall not be disclosed unless the information is provided-

- (a) pursuant to a legal duty or responsibility; or
 - (b) with the consent of a consumer.
- (2) No person other than an officer of, or agent appointed by, the Provider, or the consumer, may have access through an electronic terminal to information relating to an electronic funds transfer service, the affairs or an account of the consumer.
- (3) No electronic terminal shall be capable of providing any information relating to an electronic funds transfer service, the affairs or an account of a customer unless-
- (a) the electronic funds transfer service is operated by an authorized officer of, or agent appointed by, the Provider; or
 - (b) the request for information is preceded by the entry of the consumer's access code or card.

PART III

PREAUTHORIZED ELECTRONIC TRANSFERS

Preauthorized electronic transfers

8. (1) A preauthorized electronic funds transfer from a consumer's account shall be authorized by the consumer under the terms and conditions agreed with the Provider, and a receipt evidencing such authorization shall be provided to the consumer when made.
- (2) For a consumer's account which is scheduled to be credited by a preauthorized electronic funds transfer from the same payer at least monthly, the Provider shall elect to provide promptly notice to the consumer when the credit is either made or not made as scheduled.
- (3) A consumer may stop payment of a preauthorized electronic funds transfer by notifying the Provider under the terms and conditions agreed with the Provider, by [12.00 PM] of the day preceding the scheduled date of such transfer.

- (4) The instruction of a consumer to stop payment of a preauthorized electronic funds transfer service as mentioned under subregulation (3) shall operate immediately unless agreed otherwise by the consumer and the Provider, whereby a date or time is predetermined.
- (5) In conformity with subregulation (4), once the payer and the payee mutually terminate preauthorized periodical arrangements, or such arrangement expires, the payer has automatic and immediate right to dishonor payments.
- (6) In the case of preauthorized transfers from a consumer's account, to the same person, which may vary in amount, the Provider or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, of the amount to be transferred and the scheduled date of the transfer.

PART IV

EXECUTION OF ELECTRONIC FUNDS TRANSFER SERVICES

General Provisions

- 9.(1) The Provider shall execute all electronic funds transfer services orders originated by the payer immediately upon receipt, unless otherwise instructed by the payer, and after having checked for the availability of funds in the payer account or unless the Provider has reasonable grounds for believing that the payment instructions is illegal, fraudulent suspicious or payment is barred by any lawful authority.
- (2) The immediacy of execution shall be established by rules of electronic funds transfer services systems through which the order is processed. Fund transfers originated by the payer shall in any case be subject to a maximum of [three] business days' execution time.
- (3) Notwithstanding subregulation (1), in no event the Provider shall be obliged to execute the payment order if there are insufficient funds in the

- payer's account, except if there is a prior agreement with the Provider for an overdraft.
- (4) The payee's Provider shall ensure that the amount of the transaction is at the payee's disposal immediately after that amount is credited to the payee's Provider's account.
 - (5) In case of a payment order initiated by or through the payee, including direct debits and card payments, the payee's provider shall execute the payment order within the time limits (maximum of 3 working days) agreed between the payee and his Provider.

Receipt of payment orders

10. (1) The point in time of receipt is the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's Provider.
 - (1) The payer's Provider may fix a cut-off time or times on a business day for the receipt and processing of payment orders. Different cut-off times may apply to payment orders, or to different categories of payment orders. Depending on the payer, type of payment instructions and amount, the cut-off time may vary. A cut off time may be approved by the Bank and thereafter be fixed.
 - (2) If a payment order is received after the close of a business day or after the appropriate cut-off time, the Provider may treat the payment order as received at the opening of the next business day.
 - (3) Providers are obliged to inform their customers of such cut off times.

Irrevocability

11. (1) The payer may not revoke a payment order once it has been received by the payer's Provider, unless otherwise provided by agreement. It is mandated that the revocation of payment instructions be provided in writing by the agreement of the payer and the payer's Provider.

- (2) Where the payment order is initiated by or through the payer, the payer shall not revoke the payment order after transmitting the payment order or giving his consent to execute the transaction to the payee.
- (3) Notwithstanding subregulations (1) and (2), and without prejudice to any refund rights he has, the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.
- (4) Rules applicable to payment orders shall equally apply to communications cancelling or amending a payment order.

PART V

ERROR IN EXECUTION OF ELECTRONIC FUNDS TRANSFER SERVICES

Error in execution of electronic funds transfer

12. (1) Subject to regulations (04) and (05), the payer's Provider shall be liable for any error in execution of electronic funds transfer services.
 - (2) For the purposes of subregulation (1) an error in execution of an electronic funds transfer services may include, but is not limited to, the following:
 - (a) an unauthorized electronic funds transfer service;
 - (b) an amount that does not correspond with the amount stated in the payer's instructions received by the designated payee with the electronic funds transfer service;
 - (c) the omission of an electronic funds transfer affecting the consumer's account from a periodic statement in which it should have been included;
 - (d) a computational or bookkeeping error made by the Provider relating to the electronic funds transfer service;

- (e) the consumer's receipt of an incorrect amount of cash from an electronic terminal;
- (f) the failure to make funds available in a timely manner when properly instructed to do so by the consumer;
- (g) any failure to stop payment of a preauthorized transfer from a payer's account when instructed to do so in accordance with the terms and conditions of the account; or
- (h) any other error described in regulations of the Bank.
- (i) Erroneously transmitting a duplicate of payment instructions previously sent by the payer.
- (j) If such transfers are allowed when the payer's account has insufficient funds or exceeds an established credit limit.

Duty to inform consumers in cases of system malfunction

13. (1) The Provider shall immediately inform the consumer through-
- (a) notice at ATM, POS or other electronic terminals;
 - (b) notice at its branches; website, newspaper or
 - (c) any other means it deems suitable,
- if it is aware that the system or equipment to carry out electronic funds transfer services is not available for use or where there is a malfunction.
- (2) The Provider shall immediately inform the consumer of any failure which has occurred in the execution of a payment order for any previously undetected malfunctioning of the system.
- (3) Where the customer should have been aware that the system or equipment was not available for use or malfunctioning, the provider's responsibilities are limited to the correction of any error in the customer's account, and the refund of any charges or fees imposed on the customer for that transaction

Circumstances where the payer's provider is not liable

14. The payer's Provider shall not be liable under regulation 12 if –

- (a) the Provider shows that its action or failure to act resulted from:
 - i) force majeure or other circumstance beyond its control, provided that it exercised reasonable care and diligence to prevent such an occurrence; or

a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic funds transfer service or, in the case of preauthorized transfer, at the time such transfer should have occurred ;

- (b) if the payer's account has insufficient funds or
 - (c) such transfer would exceed an established credit limit with the Provider; or
 - (d) an electronic terminal has insufficient cash to complete the transaction.

Intent

15. In the case of a failure described in regulation 12) which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the Provider shall be liable for actual damages proved.

Complaints and Investigation Procedures

16. A Provider shall establish formalized procedures, for the lodgment of complaints by consumers of matters covered by this Regulation, for the investigation and resolution of any complaint by a consumer and set out in standard terms and conditions the means and procedures to lodge a complaint.

Notification of loss, theft or unauthorized use

17. (1) A Provider shall provide an effective and convenient means by which a consumer can notify any loss, misuse, theft or unauthorized use of a card or other electronic device or breach of a security access code.

(2) A Provider shall provide procedures for acknowledging receipt of notifications, including telephone notification, by a consumer for any loss, misuse, theft or unauthorized use of a card or other electronic device or breach of access code security.

(3) The acknowledgment need not be in writing provided the Provider has a means by which a consumer can verify that he had made a notification and when such notification was made.

(4) A consumer is required to disclose to the Provider all relevant information relating to the complaint except his access code, password or other any unique reference number.

(5) A Provider may require written confirmation of notification to be provided to it within ten business days of an oral notification of a complaint.

Duty of consumers to notify errors

18. (1) A consumer shall notify his Provider of any error, in his statement of account or possible unauthorized transaction in relation to his card or security access code.

2) The notification shall be made in writing within 15 days from the date of the statement of account and set forth the reasons for the consumer's belief (where applicable) that an error has occurred. Where available and relevant to making a complaint concerning unauthorized electronic transfers information should be provided including:

- (a) Type of access method used;
- (b) Name and address of User;
- (c) Whether device lost, stolen or security codes breached;

- (d) Date and time of loss, theft or security breach if known;
 - (e) Details of transaction to be investigated, amount, payee etc.
 - (f) Time of report of the Provider
 - (g) Any other details that may be pertinent.
- 3) Where there is a complaint by a consumer of an unauthorized electronic fund transfer, the burden of proof is on the consumer's Provider to show that the electronic fund transfer was authorized.
- 4) The burden of proof in subregulation 3 shall be satisfied if the Provider proves that:
- a) the security access code, card or other electronic device permitting electronic consent was fully functional on that day; and
 - b) the officers of or agents appointed by, the payment service provider were not fraudulent or negligent in carrying out the electronic fund transfer.
- 5) For the purposes of this regulation error in a statement of account includes:
- a) an incorrect electronic fund transfer to or from the consumer's account; or
 - b) an addition or omission in the periodic statement of an electronic fund transfer affecting the consumer's account.

Investigation of Complaint by Provider

19. (a) The Provider shall investigate the alleged complaint and determine whether a valid complaint has been made and report to the consumer the results of such investigation and determination within seven business days.
- (b) Where a Provider is unable to settle a complaint within seven business days, it shall inform the consumer of the need for an extension of time which shall not in any case exceed fifteen business days from the date the complaint is lodged.
- (c) The Provider's decision in relation to a complaint shall be made on the basis of all relevant established facts and not on the basis of inferences unsupported by evidence.

Remedies

20. (1) If the Provider determines, after its investigation pursuant to regulation 19 that an error occurred, the Provider shall, not later than [10] business days after the date of receipt of a complaint from the consumer, as may be applicable to the error and as designated by the consumer-

(a) Refund to the payer the total unauthorized amount and where applicable restore the payer's account to the state it would have been in including any fees or interest charges if the payment had not been authorized;

(b) make available to the payee, without additional cost to the payer or to the payee, the amount appropriate to resolve the error; or

(c) provide such other remedy, as determined appropriate by the Bank for the protection of consumers.

(2) In case of an authorized electronic funds transfer service, initiated by or through a payee, which has already been executed, the payer's Provider shall refund the payer if the following conditions are met-

(a) the authorization did not specify the exact amount of the transaction when the authorization was made; and

(b) the amount of the payment exceeded the amount the consumer could reasonably have expected taking into account:

- i) his previous spending pattern,
- ii) the conditions in his framework contract and
- iii) relevant circumstances of the case.

(3) The consumer and his Provider may agree in the framework contract that the consumer is entitled to a refund even though the conditions for refund in subregulation (2) are not met.

(4) Where as a result of the investigation of a complaint, a Provider discovers that the consumer's account has been incorrectly credited or debited, it shall where appropriate-

- a) make adjustment to the consumer's account including interest or charges; and
- b) notify the consumer in writing of the adjustments made to his account.

(5) If the Provider determines, after its investigation pursuant to regulation 19 that an error did not occur, or that an error occurred in a manner or amount different from that described by the consumer, or is of the view that the consumer is liable for loss arising from any loss, misuse, theft or unauthorized use of a card or breach of access code security the Provider shall deliver upon request of the consumer a written report of its findings, with an explanation responding to the specific complaint of the payer and make available to the consumer, copies of any documents or other evidence relevant to the outcome of its investigation, including information from the log of transactions provided always that the Provider will not be required to furnish any information that has a direct relation to or impacts the security of the Provider or its system.

Damages

21. If an adjudicating body finds that the Provider-

- (a) did not make a good faith investigation of the alleged error;
 - (b) did not have a reasonable basis for believing that the consumer's complaint was without merit; or
 - (c) knowingly and willfully concluded that the consumer's complaint was without merit when such conclusion could not reasonably have been drawn from the evidence available to the Provider at the time of its investigation,
- then the consumer shall be entitled to damages as may be determined by that adjudicating body.

PART VI CUSTOMER'S LIABILITY

Circumstances where the customer is not liable

22. A consumer shall not be liable for loss:

- (a) resulting from an unauthorized electronic funds transfer service, if the consumer has notified, promptly and without any delay, the Provider that his card has been lost, misused or stolen, or that the security access code or other electronic device to permit electronic consent has been breached;
- (b) not attributable to or not contributed by the consumer;
- (c) caused by the fraudulent or negligent conduct of officers of or agents appointed by the Provider or merchants who are linked to the card or other communication system;
- (d) relating to a card that is forged, faulty, expired or
- (e) which occurred before the consumer received his card or security access code.
- (f) caused by the same transaction being incorrectly debited more than once to the same account.

Consumer Liability

23. (1) A consumer shall not-

- a) directly or indirectly disclose to any person the security access code of his card or any electronic device used to effect an electronic fund transfer or give electronic consent; or
- b) fail to take reasonable care to keep the security access code or other electronic device secret.

(2) Where the consumer has contributed to a loss resulting from an unauthorized transaction by delaying notification of loss, misuse or theft of the card, or by informing someone else of the security access code of the card or other electronic device, the consumer shall be liable for the actual loss which occurred, with the exception of;

- a) that portion of the loss incurred on any one day which exceeds the daily transaction limit applicable to the card, other device or account; or

b) that portion of the total loss incurred which exceeds the amount of funds standing in the consumer 's account.

Burden of proof

24. In any action which involves a consumer's liability for an unauthorized electronic funds transfer, the burden of proof is upon the Provider-

- (a) to show that the electronic funds transfer was authorized; or,
- (b) if the electronic funds transfer was unauthorized, to establish that the conditions of liability set forth in regulation 23(2) have been met.

PART VII OTHER DUTIES OF PROVIDERS

Security of deposits at electronic terminal

25. (1) The security of a deposit received at an electronic terminal shall be the responsibility of the Provider receiving the deposit, from the time the transaction is completed, subject to verification of amount deposited.

(2) Where there is a discrepancy between the amount recorded by the consumer as having been deposited at an electronic terminal and the amount recorded as having been received, the Provider shall notify the consumer of the difference on the next business day and shall advise the actual amount which has been credited to the consumer's account.

Audit trails & File Retention

26. (1) A Provider shall ensure that the electronic fund transfers process generates sufficient records to enable a transaction to be traced checked and where any error has occurred, to be identified and corrected including accurate originator information and other related messages on such electronic fund transfer and that information shall remain with the electronic funds transfer.

2) Providers shall retain electronic records of transactions for seven (7) years from the date the transaction was completed.

PART VIII
ACCOUNT WITH BASIC FEATURES

Right of access to an account with basic features

27. Providers may provide accounts with basic features which can be extended to off-line usage.

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