

IN THE MATTER OF ARBITRATION

UNDER THE ZIMIKTU INSTITUTE OF ARBITRATORS (ZIARB) RULES, 2022

BETWEEN

THE REGISTERED TRUSTEES OF ZIMIKTU ECOLOGISTS (ZIMECO) -

CLAIMANT

VERSUS

PAY-UP CO. - RESPONDENT

Introduction

1. Soto is a metropolitan state which lies in the heart of the Federal Republic of Akanlandia. The futuristic city has for over a century been the core centre of technological innovations and has been the hub for the earliest Artificial Intelligence systems in the South of the Terre continent. The state boasts extreme innovative attractions such as futuristic museums, robot-served restaurants, AI monitored underground farms and the first ever bullet train. In the 1940s the country sought to enable the enhancement of several AI subfields amongst others, including Expert systems, Natural Language Processing (NLP), Machine Learning (ML), Computer Vision and Neural Networks (NN).
2. With the development of rudimentary and mostly theoretical AI systems in the 1940s, Akanlandia as a country sought to put in collective effort towards the advancement of a sophisticated financial technology (fintech) industry in the 1970s and 1980s. This went hand in hand with the advanced development of computer systems and electronic banking technology in the financial service sector. Further, the fintech evolution was also impelled by the development of online stock trading in Terre.
3. Still at its infant stage, the late 1990s and early 2000s saw mass development of simplistic digitalization of the bank systems. The epoch also saw a rise in the development of the first internet money transfer e-commerce companies by creative developers and programmers. One of the first ever celebrated and accoladed programmers Lady Ella-Eugenia Lau who together with her husband Sizu Lau developed the code which ultimately led to the birth of **OctoPay** in 1998. OctoPay was meant to serve as a low-cost, effortless digital payment system between consumers and businesses within the eight countries; Akanlandia, Zimiktu, Oceanova, Prunis, Kaber, Inika, Lervia and Hanacu, within the Terre continent.

4. In later years of the mid-2000s Soto's banking sector revolutionized the industry by deploying AI systems across the entirety of the digitalized systems. The period featured automation of manual tasks and replacement of human decisions with advanced diagnostics via deployment of sophisticated AI technologies including; facial recognition and machine learning for yielding improved real time analyses of large and complex customer data sets. In the latter period, Lady Ella-Eugenia successfully developed a form of Distributed Ledger Technology (DLT) as a platform for the creation of block-chain technology for the enhancement of accountability, security and accessibility.

PlutusCoin: The Inception

5. Although the DLT was not subject to strong regulation under the State laws of Soto due to its intricacy and difficulty in scaling, Mr. Sizu Lau against the advice of his wife and business partner, Lady Ella-Eugenia, decided to launch a cryptocurrency through OctoPay in 2008. PlutusCoin named after the Greek God of wealth, was the cryptocurrency product developed as a virtual currency to act as a form of money and a payment system 'without any third-party control' in the transactions. In an ambitious attempt to make the currency accessible world-wide, Mr. Lau launched a series of nano-satellites to act as build-up infrastructure in the development of the cryptocurrency.
6. Being one of the most trusted developers in Soto and Akanlandia in general Mr. Sizu gained mass public support despite the fact that the form of technology being deployed under PlutusCoin was not as certain and as such was not subject thorough regulation. Within PlutusCoin, users had the option of using manual and automated trading tactics through the use of automated AI crypto trading bots where coins in the form of 'cryptocurrency packages' were being purchased by users. Although the cryptocurrency was marketed to be in use of true blockchain technology, that is a public and verifiable blockchain, the currency was actually using a private blockchain.

7. Furthermore, in an effort to attract many individuals the PlutusCoin platform operated as some sort of Multi-Level-Marketing Scheme (MLM), this was through motivating the available users to influence others to join the platform in exchange for receiving commissions in form of monetary deposits in their PlutusCoin user-linked bank accounts. By the last quarter of 2008 and early 2009, PlutusCoin featured in advertisements in many media outlets, as a technological novelty geared at making users rich in a short amount of time. The advertisements used AI marketing tools to target 'investors' in this case these were business owners and corporate managers.
8. By the beginning of 2010 PlutusCoin had amassed a total of 20 million Alkanlandian PlutusCoin owners, 24 million PlutusCoin wallets, an estimate of 200,000 daily PlutusCoin users per day and over 38 million PlutusCoin traders per day. The year was ended with the total value of the plutuscoins being estimated at more than €1.2 Trillion in value. The steps leading up to this progress being mainly owed up to the users' own recruitment of new users in exchange of commissions by Plutus Coin. The said commissions were paid up for two years since the launch of the platform.
9. After reaching their targeted goal of surpassing €1 Trillion with over 10 million users in the MLM scheme membership, on 18th January 2011, PlutusCoin announced to its MLM scheme users that the company would no longer be paying cash commissions to them. In exchange the company announced that commission payments under the MLM scheme would be made through plutuscoins which would be credited to such users annually effective immediate from 15th May 2011. The decision was met with mixed feelings from the MLM scheme users, some of whom were worried that the cryptocurrency may not be doing well.
10. However, PlutusCoin's management assured all investors that there was no need for panic and that the change came about due to internal reforms and due to the positive effects in receiving the payment in the form of the ever-appreciating coins. As if to aggravate the matter further, PlutusCoin had knowingly been issuing

select fake plutuscoins to its users since 2010, this was a move mostly targeted towards users who made little to no withdrawals and who did not engage in sale transactions of their user-owned coins.

11. By mid-2011 Mr. Lau at 67 was reported to have an estimated net worth of around €200 Billion, calculated from his impressive real estate portfolio all over Terre estimated to be worth €50 Billion, a privately-held jewellery collection worth €100 Million, a remarkable collection watch collection worth €20 Million and a luxury car collection including a McLaren Elva worth €1.5 Million, three yachts and a Gulfstream G650 private jet with a total worth of €100 Billion, with the rest being reported to be held in cash. Whereas, Lady Ella-Eugenia's net worth was reported to be around €200 Million. These estimations being mostly from her real estate assets and shareholding proceeds from OctoPay.
12. Meanwhile, subsequent to the announcement made on 18th January, 2011, PlutusCoin, all users had been facing problems in making cash withdrawals from their crypto accounts. The persistence of the problem prompted PlutusCoin's management to make a public statement in the lines of the fact that they had been making systemic changes which ultimately had the effect of making the withdrawals holding periods longer than normal.
13. Ultimately, by the end of 2011, the Bank of Akanlandia being the central bank of the state, after receiving various complaints from PlutusCoin users on their inability to withdraw cash from their PlutusCoin user-linked bank accounts; issued a public notice regarding the fact that neither the laws of Akanlandia nor its regulations catered for handling dispute resolution nor catered for the regulation of cryptocurrency trading incidents and disputes, and that all participants were thus participating at their own peril.
14. In 2012 rumors of the cryptocurrency being a disguised deceptive undertaking spread to the continued dismay of its users, still in disbelief, users resorted to initiate contact with the OctoPay's management to no avail. On visiting OctoPay's

headquarters in Sotto, users were shocked to discover that the offices had been closed since the early months of 2011's last quarter. Pursuant to this discovery users resorted to initiate complaints with the law enforcement agencies on claims of fraud and misrepresentation by OctoPay over its cryptocurrency product PlutusCoin.

15. On investigation by the Akanlandia National Bureau of Investigation (ANBI), it was quickly realized that all the founders, current shareholders, directors and key personnel of the company had flown from Akanlandia in October 2011, with no trace of their whereabouts. Nevertheless, rumours had it that the alleged perpetrators of the fraudulent scheme had received protection from the Akanlandian government. This was said to be due to their importance in the AI ecosystem in the country, also owing to the fact that the founders of OctoPay had developed and managed various cybersecurity systems in Akanlandia and as such had been in possession of crucial state secrets. Therefore, the official reports stated that they were nowhere to be located and as such could not be prosecuted for the complained criminal activities.

The Multilateral Investment Treaty

16. On 12th April 2014, the governments of seven out of the eight states in Terre signed a Multilateral Investment Treaty for the promotion of investment and trade amongst each other. These states included Akanlandia, Zimiktu, Oceanova, Prunis, Kaber, Inika and Lervia. The agreed terms of the Treaty included the promotion of foreign direct investments in the fintech and mining industries.
17. Zimiktu being the least technologically developed country out of the seven in the agreement had agreed to allow technocrats from the other six countries to establish themselves in the country. Zimiktu agreed to create systems which would promote expedited registrations and licensing of such businesses. In a bid to implement the latter commitment, the Central Bank of Zimiktu (CBZ) devised some laws to cater for fintech regulation amongst other areas. The laws developed included the

National Payment Systems Act, 2015, the Payment Systems Licensing and Approval Regulations, 2015 and the Electronic Money Regulations, 2015.

Redemption

18. From 2013 Mr. Lau still under Akanlandian government protection had decided to reestablish himself in Hanacu, a country situated in the South Western coastal region of Terre. Hanacu had been notorious for being a well-resorted to tax heaven, the country also did not have any extradition arrangements with the neither Akanlandia, Zimiktu, Oceanova, Prunis, Kaber, Inika nor Lervia. With the advice from the Akanlandian government, Mr. Lau decided make the reestablishment in Hera, Hanacu's capital city. In Hanacu, Mr. Lau managed to garner supporters with whom he incorporated a new company, Pay-up Co., a shell fintech company said to be providing various products in the lines of digital wallets for payments and e-money transfers.
19. On the conclusion of the MIT between the seven states in 2015, Pay-up Co. resorted to establish a subsidiary in Zimiktu, where with the assistance of the Akanlandian government the company was able to enjoy the same perks as those enjoyed by fintech companies from within the member states to the concluded MIT. The company received a National Payment Systems License and an Electronic Money Issuance License from Zimiktu's Central Bank with effect from 14th September 2015. Subsequently, Pay-up Co. officially launched on 20th December 2015, with its headquarters established at Zamuri, Zimiktu's commercial city.
20. In an effort to avoid negative publicity, the subsidiary appointed Mr. Kase Leo to act as the Chief Executive Officer and the face of the company in Zimiktu. Despite company information at Zimiktu's company registry being publicly accessible, the company had bribed some personnel at the registry to always manipulate the system and to always inform requesting parties that the system had been having some technical issues.

Pay-up Co: The strategy

21. The subsidiary had specifically targeted rich retirees in the lavish city of Zamuri, as if inspired by the law of attraction principles, the company had its head offices in a lavish coastal designated business/residential area in the city. The company presented itself as a high-tech fintech which facilitated payments via digital wallets and virtual debit and credit cards, accessible through their application. The company bragged of their use of sophisticated Artificial Intelligence systems that allowed swift payments and money transfers, with state-of-the-art security systems.
22. The subsidiary had within three months from its establishment partnered with various commercial banks, insurance companies, social security funds and mobile network operators in facilitating payments from customers to the businesses and from the businesses to the customers. The increase of these fintech products together with the use advertising algorithms gained the company over 15 million users within the first five years of operation. The growing user-base consisted of users above 60 years (70%), users between 40-60 years (20%) and the youth group between 16-39 years (10%).
23. In 2019, Pay-up Co, the subsidiary even received Zimiktu's Customers Choice Award in the fintech category. This further gained the company an even wider customer-base within Zimiktu, exceeding their initial expectation. All the operations were thus far running smoothly, there had not been any significant customer complaints, no significant cases instituted against the company.

The 'Epic' Product

24. In the first quarter of 2020, Mr. Lau, a criminal fugitive billionaire and the actual head of the company's management came up with a brilliant plan of launching a new investment product within the Pay-up Co. Application. The product was meant to essentially offer its users with various investment and saving options.

25. The first scheme was that of saving money for specific expenditure targets, the artificial intelligence (robo-advisor) employed as part of the investment technology guided the users on how much cash to deposit in their e-wallets per a reasonable time in order to achieve an established user-goal purchases or payments. In this scheme, users would not be able to withdraw the amounts deposited, unless if the user decided to opt out of the scheme. Additionally, once the goal had been reached, the system would seek a human-based decision from the users to agree to the intended payments or purchases to be made. This product had been developed to target the users ranging between 16-39 years. The scheme was branded and advertised as **SavePlus**.
26. The second scheme allowed the users to deposit money to the Pay-up Co. App, whereas the subsidiary would invest the money in forex trading and cryptocurrencies in Zimiktu and other parts of Terre, on behalf of those users. In this regard the subsidiary would be operating as a Decentralized Finance (DeFi) platform with a guaranteed annual interest at 30% per annum return together with the principal amount invested, to their respective users. This particular product was developed to target wealth managing trusts and gullible users above the age of 60 (retirees). This scheme was branded and advertised as **InvestPlus**.
27. Within the InvestPlus scheme, the subsidiary offered the investors a commission of 1.5% in profit, in addition to the 30% interest, if they managed to bring in ten new users each. This being a typical Multi-Level Marketing scheme as was implemented in Akanlandia, with an intended effect of bringing in a high number of new subscribers within a short period of time.
28. The launched products were well received in their first year of their launch, with the 78% of Pay-up Co's old users subscribing to the schemes, the subsidiary also gained 15 million new users who had subscribed to the two schemes. By the end of 2021, Pay-up Co in Zimiktu was estimated to be worth over €420 Billion. At the time, the schemes were doing quite well, the initial users had been getting their

commensurate returns under InvestPlus and the SavePlus packages had also been performing greatly.

29. On 2nd January 2022, the Registered Trustees of Zimiktu Ecologists (ZimEco) being one of the largest donor fund management and administrating trusts in Zimiktu, was interested to subscribe to the InvestPlus scheme, with an intention of expanding the donor fund portfolio, although the latter was not part of the organization's objectives. The trust against the advice of their lawyers decided to invest €100 Million of the donor funds into the scheme, with an expectation to gain €30 Million more by the end of the year.
30. Prior to the investment ZimEco's Board of Trustees had personally visited Pay-up Co's impressive fancy offices, where the subsidiary's management had explained the process of investment and had showed the company's active investment portfolios on crypto assets and forex. ZimEco's management was highly impressed as such had concluded an InvestPlus Agreement with the company on 5th January 2022.
31. From 15th December 2022, users of the SavePlus scheme started noticing that they could not make human-based decisions to neither withdraw the amounts in their wallets nor were their approvals before payment of the saved amounts to the intended businesses being sought. The AI tool employed simply made automated decisions to make the payments for the initially intended purchases or subscriptions without seeking any further approvals from the users. The App also presented the payment receipts made through the automated means. However, the businesses to which the said payments were made did not deliver the user-selected goods and services stating that the alleged payments had not been made to them.
32. Additionally, around the same time, other users of the InvestPlus scheme did not receive neither their profit from their invested amounts nor the principal amounts. Affected users under both schemes under SavePlus and InvestPlus made initiative

to contact the company, where the company simply stated that there was a glitch in the system, and that matters will be settled by 1st January 2023.

33. On 1st January 2023, no progress had been made, at the time, there were speculations that the founder of the company had devised the system to defraud unsuspecting users, just as he had masterminded the fraudulent scheme in Akanlandia. On 2nd January 2023, ZimEco together with millions of users of the schemes contacted Pay-up Co with others visiting the company's office, where the company administrative personnel simply directed them to make reference to their respective contracts, in invoking the complaint process. The contracts states that all complaints had to be made to the company's parent company in Hera, Hanacu pursuant to the SavePlus and InvestPlus Agreements.
34. In a panic ZimEco's Board of Trustees Chairperson Mama Maluma who had also personally been a subscriber of both SavePlus and InvestPlus sought the opinion of their external attorneys on how to possibly recover the invested amounts with the contractually agreed interest amount. On reviewing the contract, the lawyers noted that Clause 12.1 on dispute resolution directed subscribers to initiate an internal complaint process in Hera, Hanacu, failure of mediated settlement through the complaint process the matter calls for the dispute to be referred to arbitration under the Zimiktu Institute of Arbitrators, pursuant to Clause 12.2 of the Agreement.
35. Furthermore, the legal team noted that Pay-up Co. had exempted themselves from all sorts of liabilities under the contract. On making inquiries with the Zimiktu Capital Market and Securities Authority on Pay-up Co. licensing status they were informed that the company was not a licensed fund manager to corroborate the scheme under InvestPlus. On further inquiry with the Central Bank of Zimiktu (CBZ) on whether Pay-up Co. had been licensed to accept money deposits from the general public, they were informed that the entity was not licensed as such.

36. On receiving this information and being in fear of being found out by the donors for their misuse of the donor funds for activities not captured under the Trust Deed Constitution; Mama Maluma instructed the external attorneys to institute the arbitration proceedings against the company for the recovery of the principal amount €100 Million, agreed interest €30 Million, costs and general damages amounting to €50 Million.

The Arbitration

37. Pursuant to Clause 12.2 of the InvestPlus Agreement, the legal team instituted the arbitration proceedings under the Zimiktu Institute of Arbitrators Rules, 2022. Also pursuant to Clause 12.2 of the Agreement, the arbitration proceedings are to be presided by three arbitrators, of whom each party designated one arbitrator from the ZI Arb's panel of arbitrators; Ms. Renee Daniels and Mr. Luke Mei. The third arbitrator (Chairperson), Ms. Zuri Jones. was then jointly appointed by the two party-appointed arbitrators from ZI Arb's panel of arbitrators.
38. The established issues for determination before the Arbitral Tribunal on both jurisdiction and merit combined issues for determination were;
- i Whether the matter had been prematurely instituted under the Zimiktu Institute of Arbitrators (ZI Arb), taking into consideration the contractual requirement for instituting consumer complaints for mediated reliefs under Clause 12.1 of the InvestPlus Agreement
- AND
- Whether the requirement for invoking the consumer complaint dispute resolution mechanism outside the country of contract implementation is an unconscionable term violating the Zimiktu Central Bank (Financial Consumer Protection) Regulations, 2019 on consumer complaints.

- ii Whether the matter is inadmissible before ZI Arb due to non-escalation of the matter before the Central Bank of Zimiktu, pursuant to the Zimiktu Central Bank (Financial Consumer Protection) Regulations, 2019.
- iii Whether the Respondent's lack of licensing by the Central Bank of Zimiktu for collection of funds from the general public rendered the InvestPlus Agreement invalid.
- iv Whether the Respondent misrepresented themselves in providing services for which they were not licensed to undertake under the InvestPlus Agreement.
- v Whether non-payment of the principal amount with profit under Clause 1 of the InvestPlus Agreement is a violation of the contract warranting compensation and damages payment by the Respondent.
- vi Whether no liability can be attributed to the Respondent, pursuant to the liability exemption clause.

NOTE:

1. Any attempt to contact the author in relation to Moot Problem Question shall lead to the disqualification of the team.
2. The National Payment Systems Act, 2015, the Payment Systems Licensing and Approval Regulations, 2015 and the Electronic Money Regulations, 2015 and the Zimiktu Central Bank (Financial Consumer Protection) Regulations, 2019, Arbitration Act [CAP 15 R.E. 2020], Banking and Financial Institutions Act, 2006, together with other principle and subsidiary legislations, case laws any other applicable sources of law are equivalent to those of the United Republic of Tanzania. However, this does not preclude participants from employing the use of persuasive sources of law from other jurisdictions.
3. The proposition is neither intended to nor does it attempt to resemble any incident or any person, living or dead. Any such resemblance is purely coincidental. The proposition is a fictitious factual account prepared for the purpose of the present competition only, and it does not attempt to influence or predict the outcome of any matter whatsoever.
4. Memorials to be drafted on behalf of both the Claimant and Respondent, and oral arguments are to be limited and based on the facts within this Problem Question. They shall not be influenced by any occurring or existent event within the United Republic of Tanzania or any part of the world.

InvestPlus Agreement

This is an agreement between **Pay-up Co.** a subsidiary with a parent company registered in Hera, Hanacu, with the subsidiary being registered in Zimiktu, the subsidiary is signing this contract on behalf of the parent company in Hanacu (the subsidiary shall hereinafter be referred to as “the Company”);

and

The **Registered Trustees of Zimiktu Ecologists (ZimEco)**, is a trust (body corporate) registered in Zimiktu (hereinafter referred to as “the Subscriber”).

RECITALS

- a) The Subscriber agrees that they have read, understood, and accepted all of the terms and conditions contained herein (in the "InvestPlus Agreement").
- b) Entering into this Agreement constitutes a renunciation of a Subscriber’s right to a trial in a court of law and participation in a representative lawsuit in any court of law against the company.
- c) By utilizing our services and entering into this Agreement, the Subscriber confirms that they are a corporate body with the capacity to enter into this Agreement and agree to be legally bound by the Terms and Conditions stipulated herein.

Clause 1: Scope of Services

The Company shall provide investment-related services to the Subscriber, through collecting and investing the Subscriber’s money in forex trading and cryptocurrency schemes in Zimiktu and other parts of Terre, on behalf of the Subscriber. The Company will be operating as a Decentralized Finance (DeFi) platform with a guaranteed annual interest return at 30% per annum to the Subscriber. The interest together with the principal amount collected from the Subscriber shall be paid to the Subscriber by the Company, annually (payments shall always be made in the month of December).

Clause 2: Amendments

The company reserves the right to make changes in the terms and in the implementation of this Agreement at any time. All such changes shall take effect when posted on the Pay-up Co. **App.** Subscribers are encouraged to read Agreement sensibly on each occasion where they

use the covered services. A Subscriber's continued use of the services shall imply their willingness and consent to be bound by the Agreement.

Clause 3: Compliance with Applicable Law

The Subscriber's legal relationship with the Company and use of any of the services mentioned hereto is be subject to the laws, regulations, and directives and guidelines of institutional frameworks within the Zimiktu jurisdiction ("Applicable Law"). By entering into this Agreement, the Subscriber agrees to act in compliance with and be legally bound to any and all Applicable Laws.

Clause 4: Security & User Access

4.1 The Subscriber shall be responsible for handling and upholding the security of any data relating to their credentials and agree that the Company shall not be held responsible for any unauthorised access to the App and any damages suffered as a result of such unauthorized access.

4.2 The Subscriber's access to one or more Services may be contingent upon creating a user account in the Pay-Co. App. The information the Company may require through the App may include, without limitation; personally identifiable information such as network address; name; email; physical address; telephone number; date of birth; taxpayer identification number; photo identification, and bank account information or other information we may reasonably deem helpful. The Subscriber's failure to update information in their user account (within 14 days from the date of any such changes) may result in a discontinuation of services to them.

Clause 5. Risks

5.1 The Subscriber must note that transactions involving digital assets in the form of cryptocurrencies are coupled with significant risks. The Subscriber should therefore, prudently consider whether subscribing to the agreed investment scheme is apt for them in the light of their financial condition.

5.2 The Subscriber should be aware that the price or value of digital assets can change rapidly, decrease, and with a possibility of falling to zero.

5.3 The Subscriber recognizes that the Company is not responsible for any loss of the Subscriber's digital asset, resulting from theft, loss, or mishandling of private keys outside the Company's control.

5.4 The Company shall not be responsible for providing investment advice and any content contained on the App should not be considered as a substitute for tailored investment advice. The contents of the Pay-up Co App and the Company's services should not be used as a basis for making investment decisions.

Clause 6: Intellectual Property.

Unless otherwise indicated by the Company, all intellectual property rights and any content provided in connection with the App or the services, are the properties of the Company or the Company's licensors or suppliers and are protected by applicable intellectual property laws.

Clause 7: Disclaimer of Representations

7.1 The Company disclaims all promises, representations and warranties, whether express, implied or statutory, including, but not limited to, any warranties of merchantability, fitness for a particular purpose, data accuracy, system integration, title, non-infringement and/or quiet enjoyment. All any services provided by the Company are provided as available in the App and as presented through this Agreement.

7.2 The Company does not make any representations or warranties that access to the services shall be continuous, uninterrupted, timely, or error-free.

Clause 8: Limitation of Liability

8.1 In no circumstance shall the Company, its affiliates and service providers, or any of their respective officers, directors, agents, employees or representatives, be liable for any lost profits or any special, incidental, indirect, intangible, or consequential damages, whether based in contract, tort, negligence, strict liability, or otherwise, arising out of or in connection with authorized or unauthorized use of the services, or this agreement, even if an authorized representative of the Company has been advised of, knew of, or should have known of the possibility of such damages. The Subscriber may not recover for lost profits, or other types of special, incidental, indirect, intangible, or consequential damages.

8.2 The Company shall not be liable for any damages caused in whole or in part by the malfunction of any computer or cryptocurrency network, including without limitation losses associated with network-related attacks

Clause 9: Indemnification

5.1 The Subscriber agrees to indemnify and hold harmless the Company, its affiliates, subsidiaries, directors, managers, members, officers, and employees from any and all claims, demands, actions, damages, losses, costs or expenses, including without limitation, reasonable legal fees, arising out of or relating to:

- (a) the Subscriber's use of the App or the services;
- (b) breach of this Agreement

9.2 The Subscriber shall not indemnify the Company for claims or losses arising out of the Company's gross negligence or willful misconduct.

9.3 The indemnification clause shall apply to the Subscriber's successors and assignees and shall survive any termination or cancellation of this Agreement.

Clause 10: Force Majeure

10.1 If by reason in whole or in part of any *Force Majeure* event, preventing or delaying contract performance by either the Subscriber or the Company, such delay or non-compliance shall not be deemed to be a breach of this Agreement and no loss or damage shall be claimed by the Subscriber or the Company by reason thereof.

10.2 *Force Majeure* event means any event beyond the party's reasonable control, including, but not limited to; pandemics, floods, extraordinary weather conditions, earthquakes, amongst other acts of God. These events also include fires, wars, insurrections and riots.

Clause 11: Termination

The Company shall have the right to close, terminate, enable, or disable any or all of the services or the Subscriber's access to the services at any time and for any reason thought as reasonable to the Company.

Clause 12: Dispute Resolution

12.1 Any dispute between the Subscriber and the Company arising from the Subscriber's use of the Pay-up Co. App and arising out of this Agreement, shall first be mutually resolved. This process shall be instigated by 'physical' submission of a Formal Complaint by the Subscriber (where the Subscriber is the aggrieved party) to the Company's parent company's offices in Hera, Hanacu.

12.2 On failure to amicably resolve disputes mutually (reference is made to Clause 12.1) any such shall be finally resolved by arbitration in accordance with the Zimiktu Institute of Arbitrators Rules, 2022 for institutionally administered arbitration. The proceedings shall be presided by three arbitrators of whom each party shall designate one, with the third arbitrator (Chairperson) to be designated by the two party-appointed arbitrators. The arbitration proceedings shall be governed by the Arbitration Act [CAP 15 R.E. 2020], and enforcement of the award that shall be rendered by the arbitrators shall be entered by courts having jurisdiction thereof. The seat and physical venue of Arbitration shall be in Zamuri, Zimiktu. The language of arbitration shall be English.

IN WITNESS WHEREOF the parties hereto have duly executed these presents in the manner and on the date hereinafter appearing;

SIGNED and DELIVERED on behalf of ZimEco by;

Name: Maluma Davis

Signature: 

Designation: Board of Trustees Member

Date: 5th January 2022

SIGNED and DELIVERED on behalf of ZimEco by;

Name: Estelle Maruqi

Signature: 

Designation: Board of Trustees Member

Date: 5th January 2022

SIGNED and **DELIVERED** on behalf of Pay-up Co. by;

Name: Kase Leo

Signature: 

Designation: Director

Date: 5th January 2022

SIGNED and **DELIVERED** on behalf of Pay-up Co. by;

Name: Reign Fiji

Signature: 

Designation: Director

Date: 5th January 2022