

# Merchant Agreement E-Commerce

## Confidential

### 1 Parties

The parties to this agreement are:

#### 1.1 Emerge Mobile (RF) Proprietary Limited;

Reg. No. 2012/067507/07;  
3<sup>rd</sup> Floor Ridgeview Building, 1 Nokwe Avenue, Umhlanga Ridge 4319 ;  
Fax No. +27 31 566 1967  
(hereinafter referred to as "iKhokha")

and

#### 1.2

\_\_\_\_\_

registration number/Identity number \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ("you")

### 2 Introduction

This agreement regulates the circumstances in which you agree to accept certain cards as a form of payment when cardholders buy goods and services over the internet using SSL protocol.

### 3 Interpretation

3.1 In this agreement, the words on the left have the meanings set out on the right unless the context clearly shows a different meaning:

- **Application form** means the written application form you complete, sign and deliver to us when you apply to provide goods and services over the internet using SSL protocol.
- **Business day** means any day which is not a Saturday, Sunday or South African public holiday.
- **Cards** means MasterCard debit and credit cards and VISA debit and credit cards.
- **Cardholder** means the person to whom a card has been issued.
- **Card issuer** means us or any other entity which issues a card.
- **Card Schemes** means a Payment System Operator in the payment network that processes debit and credit card transactions, of which a bank or any other eligible financial institution can become a member
- **CAVV** means "card authentication verification values" and means a cryptographic value derived by the cardholder's bank during payment authentication that can give proof of the results of payment authentication during an online purchase.
- **Chargeback** means a transaction that is reversed because the cardholder has successfully disputed the transaction.
- **Chargeback liability shift** means a reversal of a chargeback which we first debited to your nominated account, but only if the chargeback is because a cardholder rejected a transaction, i.e. the cardholder denies that he or she participated in the transaction.
- **CPA** means the Consumer Protection Act 68 of 2008 and its regulations, as amended or replaced from time to time.
- **CSP** means "commerce service provider" and means a third party that supplies merchants with the tools and services they need to buy and sell products and services over the internet.
- **CVC number** means the "card validation code" number and means, for a particular card, the term used by MasterCard to refer to the three- or four-digit number printed on the back of the credit card for security purpose (i.e. as a way for you to confirm that the cardholder actually has the card which he/she is using for a transaction in his/her possession).
- **CVV number** means the "card verification value" number and means, for a particular card, the term used by Visa to refer to the three- or four-digit number printed on the back of that card for security purposes (i.e. as a way for you to confirm that the cardholder actually has the card which he/she is using for a transaction in his/her possession).
- **ECI** means "electronic commerce indicator" and means the indicator, included on the payment transaction message format to show that an electronic transaction started from an internet source, assigned by your POS-terminal.

- **Floor limit** means the total amount, including any part of the value of sales, which you may allow a cardholder to spend on a card at any one time without authorisation from the card issuer in advance.
- **Fraudulent transaction** means any transaction which, in terms of the common law or statute, would be fraud (regardless of whether we provide you with an authorisation code number or not). This will include all purchases and transactions which a person other than the authorised cardholder makes with a card and all use of a card which has been unlawfully or illegally issued.
- **Internet** means a global client/service network accessible through an internet services provider by any person or business possessing a personal computer.
- **MSP** means “merchant server plug-in” and means a software application that creates and processes payer authentication messages and then returns control to the merchant software for further authorisation processing.
- **Merchant service fee** means a portion of the total value of all card transactions which you process and which you must pay to us.
- **Merchant number** means a number issued by a certificate management system approved by us. This number allows for your authentication.
- **Merchant operating regulations** means the terms and conditions specified by the Card Schemes from time to time. You can access the regulations for MasterCard at [mastercard.com](http://mastercard.com) and for VISA at [visa.com](http://visa.com), or any other websites which we will tell you about from time to time.
- **Merchant server** means the server which enables you to send and receive messages.
- **Message** means an electronic communication from the merchant server to the payment gateway or from the payment gateway to the merchant server, in the format we determine from time to time.
- **Payment gateway** means software that we use to forward and receive messages and to adapt messages received from the merchant server to process transactions.
- **PAR** means “payer authentication request” and means an authorisation programme that uses personal passwords to ensure the identity of the online card user
- **PCI DSS** means “payment card industry data security standard” and means an international information security standard defined by the Payment Card Industry Security Standards Council.
- **Prime overdraft rate** means the publicly quoted basic rate of interest [per cent, per year, compounded monthly in arrears and calculated on the basis of a 365-day-year (even if it is a leap year)] published by us from time to time as your prime rate, as certified by any of the bank’s managers. We do not have to prove the authority, appointment and designation of the bank manager.
- **SET** means the secure electronic transaction protocol prescribed by VISA and MasterCard as an industry standard security specification.
- **Signature date** means the date on which this agreement is signed by the party that signs it last in time.
- **SSL** means secure socket layer.
- **SSL protocol** means a payment industry standard which enables cardholders to conclude transactions over the internet.
- **Transaction** means the transaction in terms of which the cardholder buys goods or services or both over the internet using the SSL protocol.
- **VAT** means value added-tax payable in terms of the Value Added Tax Act 89 of 1991.
- **We** means Emerge Mobile (RF) Proprietary Limited, a public company duly registered under the laws of the Republic of South Africa, with registered address at 3rd Floor Ridgeview Building, 1 Nokwe Avenue, Umhlanga Ridge 4319
- **You** means our client identified on the title page of this agreement.
- **3D secure transaction implementation guide** means the 3D secure and SecureCode implementation guides that the Card Schemes make available from time to time.
- **3D secure** means “3-Domain Secure” and means the protocol which leverages SSL technology developed by Card Schemes as an important part of their payment authentication programmes to make it possible for issuers to confirm that the person processing a transaction is an authorized cardholder.

3.2 Reference to:

- one gender includes the other gender;
- the singular form of a word includes the plural;
- the plural form of a word includes the singular;
- a law or regulation is a reference to that law or regulation on the date you sign this agreement.

3.3 This agreement is subject to all applicable legislation, as amended from time to time. The operating regulations for Visa and MasterCard merchants for South Africa also apply to this agreement as long as they are compatible with these terms and conditions and with South African laws and regulations. If there is a conflict between these terms and conditions and the merchant operating regulations then these terms and conditions apply.

3.4 For purposes of this agreement, an authorisation or consent which is “irrevocable” cannot be recalled or changed.

#### 4 Accepting cards as a form of payment

- 4.1 You agree to:
- accept each valid card that is presented electronically by the cardholder to you as payment for any goods or services you offer to the cardholder over the internet;
  - not set any minimum or maximum limit on transaction values for which you accept card payments. You must treat purchases by card in exactly the same way as cash purchases, including charging the same price.
- 4.2 You may not refuse to complete a transaction if your only reason is that a cardholder, who has presented his or her card electronically and has complied with all related conditions, does not want to provide extra identification information (such as a telephone number or home address).
- 4.3 You must identify yourself clearly and unmistakably as the merchant at all cardholder points of interaction, for example on your website, on promotional materials and on your invoices.
- 4.4 You must tell the cardholder that you are responsible for:
- payment transactions;
  - products and services;
  - direct client service;
  - dispute resolution; and
  - all terms and conditions of sale.
- 4.5 You may not accept cards if the cardholder wants to use the card to buy shares.

#### 5 3D secure transactions

##### 5.1 Specifications for 3D secure transactions

- In order to participate in 3-D secure transactions, you must integrate and test a merchant server plug-in with your existing server.
- You may only use CSPs and MSPs which we have certified and approved.
- The MSP will generate messages to the Card Schemes directory and to various card issuers' access control servers. This is to make sure that each cardholder is an authorised user of the card being used.
- You or your CSPs must configure the authentication page as an inline page, rather than as a pop-up page or screen, according to the card associations' best practices.
- You must implement the MSP using best practices as defined by us and the card associations in the 3-D secure implementation guides.

##### 5.2 Disputed 3D secure transactions

- We have a right of full recourse against you, if you fail to meet the 3D secure standards as developed.
- We will not get involved in any dispute between you and the cardholder. You must provide proof that satisfies us that you have delivered and that the cardholder has received, all the goods and services which caused the dispute failing which, we will have a right of recourse against you.

##### 5.3 Chargeback liability shift

- Subject to the relevant merchant operating regulations, you can benefit from chargeback liability shift because you participate in e-commerce transactions with individuals, as long as the relevant CAVVs and the correct ECI indicators are present for the transaction.
- If the authentication is successful for enrolled cards, you will process the authorisation as usual, passing on authentication data to us or our agent for processing.

##### 5.4 Transactions which do not qualify for chargeback liability shift

- You are liable for any disputed transaction on any card where authentication is unavailable.
- If the authentication is unsuccessful for enrolled cards and you decide to proceed with the transaction, there will be no chargeback liability shift and you will be acting at your own risk.

##### 5.5 Limitation of our liability in relation to chargeback liability shift

- We will not be liable for any transactions if the correct CAVV and ECI indicators are not presented in a transaction.
- We will not be liable for any transactions if the infrastructure or systems or both of any participating party, other than ours, fail or are out of order. In these circumstances you will remain liable for possible chargebacks.

##### 5.6 Participation marks

- If you participate in 3-D secure transactions, you must display the "Verified by Visa" and "MasterCard SecureCode" logos and other

trademarks on your website. As a minimum, you must display these marks on your website payment page. In addition, you can also display these marks on your homepage or your security information page, or both.

- You must never use the “Verified by Visa” and “MasterCard SecureCode” marks in a way that implies that Visa or MasterCard endorses any of the products or services which you make available to cardholders on your website. You must also not use any of these marks as an acceptance mark in any application.
- You must display the “Verified by Visa” and “MasterCard SecureCode” learn more mark prominently on your website, both early in the shopping experience and on the payment page. As a minimum, you should place the "learn more" mark on the checkout page on which the cardholder enters his/her card number or on another page in the checkout flow that cardholders must view when placing their order.

#### 5.7 Risk management functionality

- You must ensure that you have adequate risk management and fraud reduction tools in place.
- You and your CSP must ensure that you both continue to utilise other risk and fraud management tools and systems, such as transaction screening and velocity checking.
- All transactions must be processed with the CVV/CVC number and must be sent with the authorisation request. You must not store the CVV/CVC number on your systems or write these numbers down.
- You must also not store the full card number on your systems or print this number on any electronic receipt.
- You must comply with the payment card industry data security standard if you store any cardholder data or account information.

#### 5.8 Cost to participate

- You must pay us the following fees for 3-D Secure transactions:
  - R \_\_\_\_\_ for each transaction; and
  - R \_\_\_\_\_ as a fixed monthly service fee.
- These fees include VAT.
- We may change the amount of these fees from time to time and we will give you reasonable notice in writing of any changes.
- You must also pay all fees related to integration between your systems and those of the MSP and the CSP to the relevant person.

#### 5.9 Split shipment

- You will have a split shipment (also referred to as a split fulfilment) if a single purchase order results in multiple shipments of bought goods. This happens, for instance, when a cardholder has run out of stock.
- If you have to split the shipment of an order, you may consider each authorisation request as part of the original purchase and may submit these authorisations with the original authentication data.
- If a dispute develops between you and a cardholder, you must be able to show that these authorisation requests were related to the original, client authenticated purchase transaction.
- The total amount of the split transaction must not be more than 15% of the original authentication amount. The 15% variation allows for shipping costs associated with the items.

#### 5.10 Recurring transactions (if applicable to your agreement)

- You will have a recurring (ongoing) transaction when you agree with a cardholder that he/she can buy goods or services or both over a period of time. Recurring transactions are multiple transactions processed regularly and with not more than 1 (one) year passing between transactions.
- The first transaction in the series must be authenticated and must follow the authorisation rules associated with an authenticated transaction. Subsequent authorisation requests in the recurring series are processed as recurring transactions.
- These transactions must not contain authentication data, specifically the ECI and the CAVV indicators.
- You will only benefit from chargeback liability shift protection for the initial transaction and not for subsequent recurring transactions. But you will have the right to make representations to us on why you should benefit from chargeback liability shift protection for subsequent recurring transactions once the initial transaction is fully authenticated, as long as you provide the following when you make your representations:
  - a copy of the payer authentication request which contains the relevant recurring payment data, including:
    - the frequency of recurring transactions and
    - recurring expiry obtained from the initial transaction; and
  - documentation of the cardholder agreement as required in the merchant operating regulations.
- The “Recurring Payment Data” field, “Recurring Frequency” field, and “Recurring Expiry” field in the payer authentication request message are required when you and a cardholder have agreed to recurring payments. The “Recurring Expiry” field must contain a

date that is later than the original authentication date.

#### 5.11 Instalment Transactions

- Like recurring transactions, instalment transactions are divided into two or more transactions and are billed to an account in multiple segments over a period of time that you agree to with the cardholder.
- But an instalment transaction is for one purchase or service only rather than an ongoing or recurring purchase.
- The transactions must have a specified end date.
- Similar to processing recurring payments, the initial instalment transaction must be authenticated and must follow authorisation rules associated with an authenticated transaction.
- The remaining transactions are processed as instalment transactions, so must not contain authentication data, specifically the ECI and the CAVV indicators.
- Chargeback liability shift protection does not apply to the subsequent instalment transactions.
- The “Instalment Payment Data” field in the payer authentication request message is required when you and the cardholder have agreed to an instalment payment option.

#### 5.12 Authentication Data Limits

Data received in an original authentication may be obtained up to 90 (ninety) days before an authorisation date. This allows for instances such as prepurchase transactions where the cardholder may pre-order and purchase goods or services prior to the item’s availability in the market.

#### 5.13 Amount Variation

The original authentication data will be valid authorisation for amounts that are not more than 15% of the authenticated amount. This variation allows for additional shipping costs associated with the transaction.

### 6 Payment and fees

6.1 We will pay you the value of all goods and services which you supply electronically as soon as you have posted the related transaction electronically. We may keep back payment in the case of excessive chargebacks, bankruptcy, fraud, suspected fraud or invalid transactions.

6.2 You irrevocably give us permission to debit the bank account held in your name which you chose for this purpose, regardless of the bank where you hold this account (“your nominated account”), on a monthly basis with the following for cards:

- a merchant service fee;
  - a chargeback fee per chargeback; and
  - an account administration fee
- The Merchant fee categories are set out in Schedule A.

### 7 Floor Limits

A zero floor limit applies to all transactions.

### 8 Authorisations

8.1 You must obtain authorisation for all transactions by sending a message.

8.2 You must give the authorisation code number when presenting a transaction for payment.

8.3 We may refuse an authorisation without giving any reasons.

8.4 Authorisation means that the cardholder has enough money in his card account to pay for the authorised transaction at the time and on the date of the authorisation. The fact that we authorise a transaction does not mean that we warrant or guarantee:

- the validity or genuineness of the card;
- the genuineness of the person presenting the card;
- that we will eventually pay the value of the authorised transaction; or
- that we will not chargeback the transaction.

### 9 Your obligations in respect of the transaction data

9.1 You must save all information which relates to each transaction on your database for a period of at least 180 (one hundred and eighty) days from date of that transaction. **You must encrypt each transaction.**

9.2 You must keep proof that you have delivered all goods and services which relate to each transaction for a period of at least 180 (one hundred and eighty) days from date of the transaction.

## 10 Presentation for payment

- 10.1 You must send a message to the payment gateway to present each transaction to us for payment. In this message you must give details of all authorised transactions and the fact that you have sent the goods which relate to these transactions.
- 10.2 We will decide at our discretion how often the sending of data must happen.
- 10.3 You must inform us immediately if there are any errors in the interchange of data because of a faulty communications link. If this happens, our responsibility is only to correct these errors in the interchange of data on the system (this is known in law as a limitation of liability).
- 10.4 We will credit or debit your nominated account with the total nett amount of all transactions which you present to us for payment.
- 10.5 The fact that we credit your nominated account at any time does not mean that we lose our right to:
  - charge the credited amount back to you; or
  - cancel payment of transactions by debiting your nominated account with the amount of the invalid transaction in question.

## 11 Warranties

- 11.1 When you present an electronic transaction to us for payment, you guarantee that:
  - the information on the record of that transaction is true, accurate and correct;
  - you charged your normal cash price for all goods or services or both which you delivered or supplied in terms of that transaction and that the price contained no extra charges or interest or fees for providing credit;
  - that transaction is legal;
  - you complied with all the terms and conditions of this agreement; and
  - you did in fact supply all the goods and services referred to in the transactions to the cardholder at the agreed location and within the agreed time period.

## 12 Indemnity

You promise to pay any claim brought against us and to make good any loss or liability we may suffer because of any dispute between you and the cardholder about any goods or services which you supplied or delivered to the cardholder. (This is known in law as an indemnity.) You must prove to our satisfaction that the cardholder authorised us to debit his or her account.

You will be liable for and indemnify us against any penalty imposed by a Card Scheme and/or Payment Association of South Africa and against any loss, damage or other liability which we incur if you fail to comply with the EMV standards, PCI DSS or any other regulatory requirements.

## 13 Invalid transactions

- 13.1 A transaction will be invalid if:
  - the card has expired and you did not get authorisation;
  - the transaction does not comply with the warranties contained in 10 above;
  - the amount of the transaction is more than the authorised floor limit and you did not obtain our authorisation in advance;
  - you do not present the transaction for payment, or deliver any of the goods or services within the agreed period;
  - you are in default of this agreement at the time when you concluded the transaction;
  - the cardholder, after paying for shipped goods, realises when he receives the goods that they are broken or otherwise not suitable for the purpose for which the cardholder bought these goods, and the cardholder returns or offers to return these goods.
- 13.2 We may in our sole discretion choose to treat any invalid transaction as valid but without prejudice to our right in any later transaction to treat any similar transaction as invalid.
- 13.3 If there is an invalid transaction as set out above, we have the right to charge each such invalid transaction back to you in accordance with 17.1 below.
- 13.4 If you have:
  - a 1% or higher ratio of chargeback transactions to total sales transactions in any month for two following calendar months; or
  - a 2,5% or higher ratio of chargeback dollar volume to interchange sales volume in each month for two following calendar months,then you may in terms of the MasterCard and VISA merchant operating regulations be declared an excessive chargeback special merchant. In this instance we will have the right to cancel this agreement immediately.

## 14 Refunds

You may not give refunds via Electronic Funds Transfer.

## 15 Provisions relating specifically to software and infrastructure

- 15.1 You may only process transactions if you have:

- infrastructure which we have approved; and
- a valid merchant number issued by IKhokha.

15.2 It is your responsibility to make sure that the following information is displayed on your website:

- a catalogue containing a complete and detailed description of the goods and services which you offer to cardholders;
- your return and refund policy, which must comply with this agreement and the CPA and must set out an address which cardholders can use to return the goods they buy from you according to your return and refund policy;
- your email address, client service contact, telephone number and street address;
- your delivery policy;
- the total price in South African Rands which you charge for your goods or services on offer, including any appropriate taxes and delivery charges; and
- a disclosure which informs the cardholder that you, rather than any other supplier of these goods and services, are the merchant of record and are responsible for the transaction.

15.3 You are responsible for payment of connections you need for the proper functioning of your internet infrastructure.

15.4 You agree to implement any hardware or software we require you to use for agreed periods from time to time to manage or reduce levels of fraud.

If you do not use this hardware and software as agreed, we may cancel this agreement with immediate effect.

15.5 You confirm your commitment to the implementation of SET and other security standards. You agree to take the necessary steps we require you to take from time to time to ensure this implementation.

## 16 Complying with import and export laws

You agree to comply with all applicable laws regarding import and export transactions effected over the internet.

## 17 Limitation of liability

17.1 Unless we acted with gross negligence or fraudulent intent, we will not be liable for any damage you may suffer because of (i.e. as a result of or in connection with) the fact that you or any cardholder cannot access your internet infrastructure or use it, or because of any network breakdown, systems failure, equipment malfunction, power failure or similar events which are beyond our control.

17.2 We will not be a party to any dispute between you and any service provider you appoint to put in place your internet infrastructure. Unless we acted with gross negligence or fraudulent intent, we will not be liable for any damage you may suffer because of (i.e. as a result of or in connection with) any failure or malfunction of your internet infrastructure.

## 18 Debiting of your account

18.1 You authorise us to debit your nominated bank account number \_\_\_\_\_ held at the \_\_\_\_\_ branch of \_\_\_\_\_. You agree to inform us immediately in writing if any of these bank account details change.

18.2 We may debit your nominated account with the amount of:

- the value of all reversals of invalid transactions;
  - the merchant service fee, the chargeback fee and the administration fee referred to in 6.2;
  - any refund due to a cardholder which you do not pay;
  - any overpayments due to clerical or electronic errors made by either party;
  - the value of transactions which a cardholder disputes with us;
  - interest on any amount which you owe to us and have not paid, calculated using our prime overdraft rate. Interest is calculated from the date on which you should have paid us to the date on which you actually pay us the overdue amount;
  - the value of transactions which you process using a card that has been cancelled or is otherwise invalid; and
  - fees charged by Visa and MasterCard for excessive chargebacks or for other disputes which involve you.18.3
- Your bank will honour all debits that we present for payment and you must pay all the costs associated with any cheques which we draw for this purpose.

18.4 You will pay an administration fee for each payment which is due by you to us and is returned unpaid by your bank.

18.5 The amounts referred to in 18.2 will be subject to exchange rate variations where applicable.

18.6 You must pay VAT on all fees referred to in this agreement where applicable.

18.7 We may immediately cancel this agreement if any debit referred to in this agreement is returned unpaid by your bank.

## 19 Fraudulent transactions

- 19.1 You must not present records of transactions that you know or should have known were fraudulent or unauthorised by the cardholder. You agree that you will be responsible for the actions of your employees at all times.
- 19.2 We are entitled to debit any of your bank accounts at any time with the amount of all fraudulent transactions which you deposit or post electronically.
- 19.3 We reserve the right to cancel this agreement immediately if you commit fraud or we reasonably suspect that you have committed fraud.

## 20 Disclosure of information

- 20.1 You must tell us in writing and in advance if, for whatever reason:
  - the owners of your business (indicated on the application form) change;
  - the classification of your business changes; or
  - there is any other material change in the nature of your business. If the nature of your business changes to include providing gaming, gambling or pornography or related infrastructure or services, this change will be regarded as a material change for the purposes of this agreement.
- 20.2 You must disclose to us all information about any previous merchant agreements you concluded with other financial institutions including any restrictive conditions contained in those agreements and the reasons why you ended those agreements. This is so that we can properly evaluate, assess and approve your application. You consent and authorise us to investigate your previous merchant agreements.
- 20.3 If at the time of signing this e-Commerce agreement you are not a member of an organisation where you qualify for a reduced merchant service fee and you subsequently join an organisation at a later stage, the onus is on you to advise us accordingly. Your failure to advise us will not oblige us to refund any reduced merchant service fee.
- 20.4 If you do not comply with this clause, we will immediately suspend your access to the SSL technology, report you to the relevant authorities and cancel this agreement.

## 21 Secure and confidential data processing

- 21.1 You warrant that you will comply with all applicable legislation regarding the processing of data in respect of us and the cardholder. In particular, you may not disclose, sell, purchase, provide or exchange a cardholder's name or account number information in whatever form, including mailing lists, tapes or other media obtained by reason of a card transaction, to third parties, except as required by law.
- 21.2 You must keep all systems and media that contain account, cardholder or transaction information (physical or electronic, including but not only account number, card imprints, signatures of cardholders) in a safe manner. This is to stop anyone other than you or your authorised personnel and us from getting access to the information. You must destroy, in a manner that will make the data unreadable, all media that in your opinion, you need no longer store.
- 21.3 You give us permission to make known information about you to any card scheme or other financial institution for use in any fraud prevention schemes they may set up, including the National Merchant Alert Service, the Merchant Performance Reporting Service and the Member Alert to Control High Risk (Merchant) System. This is to help us and these financial institutions to identify merchants who are or may become involved in, amongst other things, fraud or suspected fraud, and in our and their efforts to prevent fraud.
- 21.4 If you do not comply with this clause, we will immediately suspend your access to the SSL technology, report you to the relevant authorities, and cancel this agreement.

## 22 Inspections

- 22.1 You will permit us, or our agent, reasonable access to your business premises to:
  - do physical inspections to ensure that you are complying with the terms and conditions of this agreement;
  - investigate any cardholder claims that you are not complying with the terms of this agreement; and
  - investigate instances in which we reasonably suspect that you are involved in fraud.

## 23 Monthly statements

You have to check all the statements we send you. You must let us know in writing within 30 (thirty) days of the date of the bank statement if there is something on a statement that you do not agree with. If you do not let us know within this time, we have the right to treat the bank statement as correct. You will then have to prove that the bank statement is not correct.

## 24 Promoting Payment Acceptance

- 24.1 You must display the branding so that the public is aware that you are willing to accept the card as an online method of payment for your



**Default under this agreement by either party**

- 25.1 We may exercise our rights, which include demanding immediate payment of overdue amounts due to us under this agreement or cancelling this agreement, as may be permissible in law, without prejudice to any of our other rights if any of the following events occur:
- You do not comply with a material provision of this agreement and you do not remedy this breach within 20 (twenty) business days of receiving written notice from us asking you to do so.
  - Any representation or warranty made in connection with this agreement or any other documents supplied by you to us in connection with this agreement is materially incorrect or false (where a warranty refers to an express confirmation on your part that something is or will be as you have represented to us or promised us that it is or will be).
    - You:
      - being an individual:
        - publish notice of the voluntary surrender of your estate or die;
        - are placed under administration or commit an act of insolvency as defined in the Insolvency Act 24 of 1936;
        - have any application or other proceedings brought against or in respect of you where a third party seeks to have you sequestered or placed under curatorship, in any event whether in a manner which is provisional or final, voluntary or compulsory;
      - being a juristic entity:
        - are wound up, liquidated, dissolved, deregistered, in any event in a manner which is provisional or final, voluntary or compulsory, or you pass or it passes a resolution providing for any such event;
        - are treated as being unable to pay your debts;
        - resolve that you voluntarily begin business rescue proceedings or have any business rescue proceedings commenced against you as contemplated in section 132(1) of the Companies Act 71 of 2008.
      - judgment of a competent court against you for the attachment of assets or for payment of any amount is not satisfied within 7 (seven) days after the date on which it is issued.
      - You compromise or attempt to compromise with your creditors generally or defer payment of debts owing by you to your creditors.

- 25.2 If we breach any material provision of this agreement and do not remedy this breach within 20 (twenty) business days after receiving written notice from you asking us to do so, then you will be entitled to cancel this agreement with immediate effect or to claim specific performance of all of our obligations which are due at that time, in either event without prejudice to your right to claim damages and other rights under this agreement or in law.

**26 Resolution of disputes**

- 26.1 If any dispute arises between the parties about the interpretation or application of the provisions of this agreement, this dispute will, unless the parties resolve it, be referred to and be settled by arbitration in terms of this clause. This excludes a dispute of when a party is in breach of this agreement, but includes a dispute about the agreement being ended or the validity of any documents given by the parties according to the provisions of this agreement.
- 26.2 Any party to this agreement may demand that a dispute be settled in terms of this clause by giving written notice to the other party.
- 26.3 This clause will not stop any party from obtaining urgent interim relief from a court of competent jurisdiction pending the decision of the arbitrator.
- 26.4 The arbitration will be held:
- in Pretoria;
  - with only the legal and other representatives of the parties to the dispute present;
  - according to the formalities and procedures decided on by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and
  - on the basis that the arbitrator will be entitled to decide the dispute according to what he considers to be just and equitable in the circumstances.
- 26.5 The following arbitrators will be acceptable to both parties. If the matter in dispute is principally:
- a legal matter, a practising attorney or advocate of at least 10 (ten) years' standing;
  - an accounting matter, a practising chartered accountant of at least 10 (ten) years' standing;
  - any other matter, any independent person.
- 26.6 If the parties to the dispute do not agree on whether the dispute is principally a legal, accounting or other matter within 7 (seven) days

after the arbitration was demanded, the matter will be regarded as a legal matter.

- 26.7 If the parties do not agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of clause 26.2 the arbitrator will be appointed at the request of any party to the dispute by the chairman for the time being of the Pretoria Bar Council according to the provisions of clauses 26.5 and 26.6.
- 26.8 The arbitrator's decision will be final and binding on the parties to the dispute. The arbitrator's decision may be made an order of any court under whose jurisdiction the parties fall at the instance of any of the parties to the dispute.
- 26.9 The arbitrator will have the right to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he or she considers appropriate. The arbitrator will have the right to deal with the question of costs, including if applicable, costs on the attorney and client scale, and his/her own fees, as he or she considers appropriate.
- 26.10 The provisions of this clause is an irrevocable consent by the parties to the proceedings envisaged in this clause and no party will have the right to withdraw from these proceedings or claim at these proceedings that it is not bound by the provisions of this clause.

## 27 Duration

This agreement will be effective from the date on which it was signed. It will remain valid for an indefinite period until one of the parties ends it by giving to the other 30 (thirty) days' written notice, subject to the express provisions of this agreement that entitle either party to cancel/end this agreement.

## 28 General

- 28.1 This agreement is only valid and the parties are only legally obliged to comply with it if it is in writing and signed by or on behalf of all the parties. unless this agreement provides otherwise, to be valid, all changes to this agreement must be in writing and signed by all parties.
- 28.2 We do not lose any of our rights under this agreement if we do not immediately and in every instance insist on them. You may not raise it as a defence if we have a right that we did not enforce at the relevant time. For example, if we allow you extra time to pay the fees you owe us in one month, it does not mean we have allowed you extra time to pay these fees in the next or any other month.
- 28.3 You may not transfer any of your rights or obligations under this agreement to anyone else without our prior written permission.
- We may set off any amount which we have to pay you, against any amount which you have to pay to us in respect of any account which you hold with us, as may be permissible in law. You must immediately pay us any amount owing by you to us after set-off.
  - We may consolidate all accounts which you hold with us, as may be permissible in law. No partial consolidation will prevent us from exercising our rights in respect of any accounts or amounts which we did not include in this consolidation.
- 28.4 Nothing in this agreement may be taken to mean that you are our partner or agent. Neither party may do anything or allow anything to be done that might cause anyone to reasonably believe that we are partners or agents of each other.
- 28.5 When you sign this agreement, you confirm that you have read and understand the terms and conditions of this agreement.

## 29 Your chosen address

- 29.1 You choose the physical address and email address in South Africa on the title page of this agreement as the address at which you agree to accept any notices we send to you (including letters reminding you of any payments under this agreement you may have missed), where we may serve any legal process and may execute on any judgment we obtain against you, and for all other purposes relating to this agreement. (This address is known in law as your *domicilium citandi et executandi*.)
- 29.2 If you want to change this address or email address, you must send us a notice in writing by registered post. This notice must:
- tell us that you are changing your address or email address; and
  - set out the new address or email address which you agree will be used for this purpose. This new address must be a physical address in the Republic of South Africa.
- 29.3 If we send a notice to you:
- by prepaid registered post to your chosen address, we will presume that you received it 7 (seven) days after we posted it;
  - by hand to your chosen address, we are entitled to presume that you received it on the date on which we delivered it; and
  - by email at the email address which is part of your chosen address, we will treat it as if you have received it at the time of the transmission.
- 29.4 When we presume that you received a notice by a certain date, this means we do not have to prove that you did receive it then. If you claim that you did not receive the notice by that date then you will have to prove it.

- 29.5 If you have actually received a written notice or communication from us, even if it was not sent to or delivered at your chosen address, postal address or email address, it will still be a valid notice.
- 29.6 If you change your address but do not notify us, you agree that we have the right to send notices to you and serve legal processes at your last address known to us or any other address you have given us proper notice of.

### **30 Governing law and jurisdiction**

- 30.1 This agreement is in all respects governed by the laws of the Republic of South Africa.
- 30.2 You agree that we may bring legal proceedings against you relating to this agreement in any Magistrate's Court that has the authority to hear and decide on the case. (This authority is called jurisdiction.) You agree to the jurisdiction of the Magistrate's Court even if the amount we claim from you is more than the Magistrate's Court limit. This does not prevent us from bringing legal proceedings in a high Court that has jurisdiction.

### **31 Costs and expenses**

- 31.1 You must pay and refund us on demand for all reasonable:
- costs, fees and expenses (including legal fees) and other out-of-pocket expenses which we incur in connection with:
    - any variation or amendment to this agreement and the documents, matters or things referred to in this agreement;
    - the investigation of any default or potential default under this agreement; and
    - costs, fees and expenses (including legal fees on the attorney and own client scale and other out-of-pocket expenses and any VAT or other similar tax) which we incur in connection with maintaining and enforcing our rights under this agreement.

### **32 Certificates**

A certificate signed by one of our managers is sufficient evidence of any amount that you owe and that is due to us under this agreement. Unless you can prove the contrary, we may use this certificate to obtain provisional sentence, default judgment or summary judgment or to commence with any other legal proceedings. You agree that we do not have to prove the appointment of the manager who signs the certificate.

### **33 Entire agreement**

This agreement is the only record of the agreement between the parties in regard to the subject matter of this agreement. Unless a court holds otherwise, no party is legally obliged to comply with any term, condition or undertaking, not recorded in this agreement, and this agreement replaces any arrangement or understanding held by the parties before this agreement was signed.

### **34 Separation of Clauses**

- 34.1 The parties acknowledge that each clause of this agreement is separate. If any clause of this agreement is or becomes illegal, invalid or unenforceable for any reason, it must be treated as if it had not been included in this agreement. This does not:
- make the rest of the agreement illegal, invalid or unenforceable;
  - affect the legality, validity or enforceability of any other clause or this agreement as a whole.

### **35 The parties do not have to sign in the presence of each other**

The parties might not be present at the same time or place to sign this agreement. For this reason, different versions of the same agreement may be signed by the parties. Together the signed versions will make up the original agreement between the parties.

### **36 Financial status**

- 36.1 By signing this agreement you confirm the following:
- You have checked the information we have about your personal, financial and account details and you agree that we may verify this information.
  - The information we have about your personal, financial and account details is correct.
  - You have not applied for and no order has been given against you for sequestration, liquidation or judicial management.
  - You have not entered into a compromise with any of your creditors or attempted to do so generally or defer payment of debts owing by you.
  - No business rescue proceedings have begun in relation to your business, as contemplated in the Companies Act 71 of 2008.
  - You understand that if any of these statements are not true, it may prevent you from exercising some or all of your rights.



Signed at \_\_\_\_\_ on \_\_\_\_\_

**Witnesses**

1 \_\_\_\_\_ on our behalf

2 \_\_\_\_\_ on our behalf

Signed at \_\_\_\_\_ on \_\_\_\_\_

**Witnesses**

1 For and on your behalf, duly authorised thereto \_\_\_\_\_

2 For and on your behalf, duly authorised thereto \_\_\_\_\_

Item	Merchant fee category	Rate
1	Local Credit – CP – Both EMV compliant	
2	Local Credit – CP – Acquirer EMV compliant	
3	Local Credit – Issuer EMV compliant	
4	Local Credit – CNP/Manual/MOTO/Both 3D compliant/AMT	



5	Local Debit – CP – Both EMV compliant	
6	Local Debit – CP – Acquirer EMV compliant	
7	Local Debit – CP – Issuer EMV compliant	
8	Local Debit – CNP/manual/MOTO/Both 3D compliant (authenticated transaction)/AMT	
9	Local Credit – CNP – Acquirer 3D compliant (authentication attempted)	
10	Local Credit – CNP – Issuer 3D compliant (Non-3D merchant and/or authentication not attempted)	
11	Local Debit – CNP – Acquirer 3D compliant (authentication attempted)	
12	Local Debit – CNP – Issuer 3D compliant (Non-3D merchant and/or authentication not attempted)	
13	VISA International – Normal	
14	VISA International – Downgraded	
15	MC International – Normal	
16	MC International – Downgraded	

## Schedule A

to Merchant Agreement	3-D Secure Transaction	Transaction fee	Monthly service fee
Account administration fee			
Chargeback Fee (charged per chargeback)			

## Schedule B

(Fees charged excluding VAT)