



FNB ZAMBIA MERCHANT SERVICES GENERAL TERMS AND CONDITIONS

The Bank will provide You with a service to enable You to accept any valid and current Cards from Your customers to pay for goods and services. These General Terms and Conditions regulate the relationship between the Parties hereto and have to be read in conjunction with the Product and/or Service Specific Terms and Conditions. You must read and understand this document carefully prior to entering into the agreement with the Bank. It contains **important information about Your conduct and the Bank's legal rights** and duties with regard to this relationship. A copy of this document is available online and can be supplied to You by post, fax and email. **The General Terms and Conditions will be updated from time to time and will be made available on the Bank's website. It is Your duty to speak to the Bank if You do not understand any part of this document.**

THE PARTIES AGREED AS FOLLOWS:

1. PURPOSE OF THE MERCHANT AGREEMENT

1.1 The Bank has agreed to make Acquiring Services available to You for the duration of this Merchant Agreement under the Terms and Conditions contained herein.

2. INTERPRETATION

2.1 First National Bank Zambia Limited is represented in the Merchant Agreement by the FNB Merchant Services, a business unit within the Bank.

2.2 In the Merchant Agreement, unless the context otherwise indicates:

2.2.1 the singular shall include the plural and vice versa;

2.2.2 reference to the masculine gender shall include the feminine gender and vice versa;

2.2.3 natural persons shall include created entities (corporate or unincorporated) and vice versa;

2.2.4 the headings in this Merchant Agreement are used for the sake of convenience and shall not govern the interpretation hereof;

2.2.5 all expressions contained in the main body of the General Terms and Conditions shall have the same meaning in all of the Product and/or Services Terms and Conditions, all Annexures, Schedules and any other documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank (as amended from time to time);

2.2.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definitions clause, effect shall be given to it as if it was a substantive provision of the Merchant Agreement;

2.2.7 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Effective Date and as amended or substituted from time to time;



- 2.2.8 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding Business Day;
- 2.2.9 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail;
- 2.2.10 Any reference to payments in the Merchant Agreement means in Zambian Kwacha (ZMW). Kindly adhere to **the Bank of Zambia (“BOZ”) financial limits specified in ZMW** when processing an amount in foreign currency;
- 2.2.11 no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision;
- 2.2.12 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 2.2.13 the Merchant Agreement is subject to the Competition and Consumer Protection Act No.24 of 2010 (**“CPA”**) and **all other legislation applicable from time to time. The operating rules and regulations for Card Associations** also apply to the Merchant Agreement as long as they are compatible with the Merchant Agreement, Zambian laws and regulations. If there is a conflict between the Merchant Agreement and the rules and regulations for the Card Associations then the provisions of the Merchant Agreement apply;
- 2.2.14 **For purposes of the Merchant Agreement, an authorisation or consent which is “irrevocable” cannot be recalled or changed;**
- 2.2.15 defined terms used in a sentence will have the initial letter capitalised; and
- 2.2.16 terms printed in bold place a strict obligation on You and should therefore be carefully read and understood.

3. DEFINITIONS

- 3.1 **“Acquiring Services” means the services that the Bank, in its capacity as an acquiring bank, makes available and renders to You. Such services include but are not limited to:**
- 3.1.1 providing a facility to allow You to accept Cards and other Card Transactions as a means of payment,
- 3.1.2 providing the means for the Card Transactions to be routed and authorised; and
- 3.1.3 collecting funds from the issuing bank and settling Transactions with You;
- 3.2 **“Acquiring Bank” means the bank or financial institution that processes Card payments for the merchant;**
- 3.3 **“Affiliate” shall mean any subsidiary or a holding company or a subsidiary of the holding company of either Party or any entity that controls, is controlled by or is under common control with either Party. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity through the ownership of voting securities representing 50% (fifty percent) plus one of the remaining possible votes;**



- 3.4 **“Aggregation”** means the practice whereby a merchant acts as a payment facilitator for other merchants (sub-merchants), resulting in several sub-merchants sharing one common merchant facility or merchant number. The term **“Aggregator”** will be construed accordingly;
- 3.5 **“Amex”** means American Express, a charge Card company;
- 3.6 **“Annexure”** means any document annexed to the Merchant Agreement, marked **“Annexure”** or **“Schedule”**;
- 3.7 **“Authorise”** or **“Authorisation”** means the process whereby You transmit a message to the Bank enquiring whether a Cardholder has sufficient funds to enter into a Transaction for the purchase of goods and/or services from You. Should the Bank receive authorisation from the Issuing Bank that it is satisfied that funds are available to the Cardholder, the Bank shall in turn transmit a Message to You either **“Authorising”** the intended Transaction or declining the Transaction. Where the Transaction is authorised, **“Authorisation”** is said to have taken place and the Bank shall then remit the relevant funds to Your Clearing Account in the manner described in the Merchant Agreement. The Bank may in its discretion withhold Authorisation;
- 3.8 **“Audit”** means the validation of compliance of merchant and service providers with Bank and Industry Rules and Regulations; and Regulatory requirements; PCI DSS Standards and Card Associations’ data security programs;
- 3.9 **“the Bank”** means First National Bank Zambia Limited, a licensed Commercial bank Reg. No. 72041 a private limited Company incorporated in accordance with the company laws of the Republic of Zambia;
- 3.10 **“the Bank’s Maintenance Service Provider”** means the third party company(ies) appointed by the Bank to install the Equipment at the Premises and/or to perform the Maintenance Services on the Equipment;
- 3.11 **“Budget Transaction”** means a transaction where the Bank authorises the Cardholder to make a payment over an extended period;
- 3.12 **“Business Day”** means any day other than a Saturday, Sunday or a public holiday recognised as such under the Zambian Public Holidays Act ;
- 3.13 **“Calendar Day”** means all days in a month, including weekends and holidays;
- 3.14 **“Card”** means any valid and current Card issued by a bank or Card Association (this does not include American Express or Diners Cards);
- 3.15 **“Card Association”** means a network of issuing banks and acquiring banks that process payment Cards of a specific brand i.e. UP; Visa and MasterCard etc;
- 3.16 **“Cardholder”** means the person/entity who has been issued with a Card and who is liable for payments of all amounts debited to the Card;
- 3.17 **“Card Not Present Transaction”** or **“CNP Transaction”** means a Transaction which takes place without the physical Card being presented to You by the Cardholder;
- 3.18 **“CAVV”** means Cardholder Authentication Verification Value;
- 3.19 **“Chargeback”** means the return of a Card payment instruction by the Issuing Bank as a result of a Cardholder dispute and/or Fraudulent Transaction;
- 3.20 **“Cashback or Cash@POS Transaction”** means an agreement concluded between You and a Cardholder in terms of which the Cardholder withdraws cash in conjunction with a purchase, using a credit and debit Card;



- 3.21 **“Chip Card”** means a Card which has a chip embedded in it and which is driven by PIN;
- 3.22 **“Communication”** means the impart or exchange of information between the Parties;
- 3.23 **“Cooling off period”** means a period of 5 (five) Business Days from the date of conclusion of the Merchant Agreement, during which the Merchant Agreement can be terminated. **“CPI”** means the Consumer Price Index (all groups, all areas) inflation for the month preceding the month in which the price adjustment is to take effect, which represents the percentage variation in the Consumer Price Index inflation since the same month in the preceding year, as published by Central Statistics Office (or its successor in title) from time to time;
- 3.24 **“CSP”** means Commerce Service Providers;
- 3.25 **“CVV”** means the 3 (three) digit **“Card Verification Value”** printed on the reverse of the Card;
- 3.26 **“Data”** means any data including personal data, as defined in the Electronic Communications and Transactions Act, 2009 and any other legislation related to the protection of data, supplied by the Bank or stored, collected, collated, accessed, received, recorded, modified, retrieved, altered, used or processed on behalf of the Bank;
- 3.27 **“Data Compromise”** means the unauthorised access, transmission and/or use of Data by a third party and/or Third Party Service Provider and/or CSP and/or the damage, erasure, copying, disruption, alteration and/or corruption of the Data in any manner;
- 3.28 **“Despatch”** means the forwarding of goods and/or the delivery of services;
- 3.29 **“Debit Card”** means un-embossed Maestro and Electron Debit Card;
- 3.30 **“Effective Date”** means the date You agreed to the Terms and Conditions of the Merchant Agreement, by whatever means You accepted (i.e. telephonically, in branch, via the internet, etc);
- 3.31 **“EMV”** means the standards defined by Europay, MasterCard and Visa, governing the certification, acceptance and processing of chip enabled Card Transactions;
- 3.32 **“Equipment”** means all point of sale devices, keypads and any other utilities or attachments, which shall be utilised to process Card Transactions from time to time;
- 3.33 **“Equipment Rental Amount”** means the monthly rental amount payable by You to the Bank as agreed upon in the Merchant Agreement and the Schedule of Fees and/or Charges and any other Schedule and/or Annexure attached hereto;
- 3.34 **“Floor Limit”** means the amount which You may allow a Cardholder to spend on a Card without obtaining authorisation from the Bank. The amount is set out in the Schedule of Fees and Charges;
- 3.35 **“Fraudulent Transaction”** means any Transaction that constitutes fraud under the law and/or common law (irrespective of whether or not the Card Transaction has been authorised or whether or not an authorisation code number has been provided to You by the Bank) and/or which arises as a result of but is not limited to:
- 3.35.1 an act and/or omission by You and/or Your employees;
- 3.35.2 non-compliance with the procedures set-out in the Merchant Agreement;
- 3.35.3 the use of a Card, which has not been issued by a bona fide Card Issuer;
- 3.35.4 the use of an invalid Card; and/or



- 3.35.5 the use of a Card by a person other than the authorised Cardholder, etc;
- 3.36 **“Force Majeure” or “Act of God” means an event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution; an inevitable accident;**
- 3.37 **“FST” means forecourt service terminal;**
- 3.38 **“General Packet Radio Service Device” or “GPRS Device” means a device authorised by the Bank which uses cellular communication infrastructure;**
- 3.39 **“General Terms and Conditions” or “Merchant Services General Terms and Conditions” means the terms and conditions governing the relationship between the Parties with relation to the Acquiring Services and products and are to be read in conjunction with the Products and/or Services Specific Terms and Conditions; Annexures; Schedules and any other documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank;**
- 3.40 **“Hot Card” means a card that cannot be honoured for payment, most often because the card has been reported lost or stolen, has been cancelled by the issuer, or has been compromised in some way;**
- 3.41 **“Incidental Credit Agreement” means an agreement, irrespective of its form, in terms of which an account was rendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both of the following conditions apply:**
- 3.41.1 a fee, charge or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date; or
- 3.41.2 two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date;
- 3.42 **“Integrated Solutions” means an integrated POS Device offering Card acceptance as part of a single, fully integrated cash register system. This system may include computer software, and computer and/or terminal hardware components;**
- 3.43 **“Internet” the collection of local area networks, wide area networks and third party networks which all use the same protocol to form a seamless, packet switched network;**
- 3.44 **“Inventory of POS Devices and Site Details Schedule” means a document which details all Your Stores and lists the POS Devices You have on record;**
- 3.45 **“ISO” means International Organisation for Standardisation;**
- 3.46 **“Issuing Bank” means the bank which issued the Card;**
- 3.47 **“Manual Transaction(s)” means a Transaction whereby the Card details are manually keyed into the Equipment, instead of the Card being swiped through or inserted (dipped) into the Equipment;**
- 3.48 **“MasterCard Secure Code” shall mean MasterCard’s interpretation of the 3D Secure code specification;**
- 3.49 **“Merchant Agreement” means the application form; recorded telephone calls (when signing up and accepting the Terms and Conditions of the Merchant Agreement via telephone); General Terms and Conditions; Products and/or Services Specific Terms and Conditions; Annexures; Schedules and any other**



documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank (as amended from time to time) and constitutes the entire agreement between the Parties;

- 3.50 **“Merchant Commission”** means a percentage of the monetary value of the Transactions which is payable by You to the Bank as agreed upon between the Parties. The Merchant Commission shall be a percentage and may be amended from time to time by written agreement between the Parties;
- 3.51 **“Merchant Server”** means the computer equipment and any software therein, which enables You to forward and receive Messages;
- 3.52 **“Message”** means an electronic communication from Your Server to the Payment Gateway or vice versa, in the format as prescribed by the Bank from time to time;
- 3.53 **“MMF”** means the **“Minimum Merchant Fee”** as agreed upon in terms of the Merchant Agreement which is payable by You to the Bank instead of the Merchant Commission for any month(s) where the Merchant Commission amounts is less than the MMF;
- 3.54 **“Month”** also referred to as **“Calendar Month”** means each of the twelve named periods into which a year is divided;
- 3.55 **“MOTO”** means mail order/telephone order Transactions;
- 3.56 **“;”** **“Network Operators”** means MTN, Airtel, Zamtel Z, or any other Network Operator or Service Provider that the Bank may advise You of from time to time;
- 3.57 **“Nominated Bank Account”** or **“Clearing Account”** means the bank account into which the Bank shall pay (settle) all monies in respect of which it Authorised Transactions via Your POS Device and to which the Bank may debit any amounts charged back to You;
- 3.58 **“Party”** or **“Parties”** means either the Bank or You, or both, as the context indicates;
- 3.59 **“Payment Gateway”** means the coding program that transmits a Cardholder’s online Card order to and from an Acquiring Bank;
- 3.60 **“PCI”** means Payment Card Industry;
- 3.61 **“PCI DSS”** mean Payment Card Industry Data Security Standard;
- 3.62 **“PIN”** means the **“Personal Identification Number”** for a Card;
- 3.63 **“POS Device”** means Point of Sale Device or Point of Sale Terminal;
- 3.64 **“Prepaid Airtime”** means any prepaid airtime for any of the Zambian network operators or Service Providers offered by the Bank via the Point of Sale Device (**“POS Device”**);
- 3.65 **“Prepaid Products”** means any prepaid products or services provided by any of the Zambian network operators or Service Providers offered by the Bank via the Point of Sale Device (**“POS Device”**);
- 3.66 **“Preventive”** or **“Routine Maintenance”** means such maintenance as is necessary to maintain the Equipment in good working order and condition;
- 3.67 **“Prime Rate”** means the interest rate published by the Bank from time to time;
- 3.68 **“Product and/or Service Specific Terms and Conditions”** means the terms and conditions governing the respective Acquiring Service and products;



- 3.69 **“Recipient Cellphone Number”** means the cellphone or mobile number selected by You or Your customer which should be topped up with prepaid airtime;
- 3.70 **“Refund”** means the reversing of a Transaction that is unable to be handled as a reversal. This occurs via the Chargeback process.
- 3.71 **“Remedial Maintenance”** means the remedying, repairing and correcting of malfunctions, breakdowns and/or faults in the Equipment;
- 3.72 **“Reversal”** means the act of reversing a Transaction, immediately after the posting of the prior Transaction;
- 3.73 **“RPI”** means Recurring Payment Instruction whereby multiple Transactions are processed at predetermined intervals, not to exceed one year, between Transactions, representing an agreement between a Cardholder and You to purchase goods or services provided over a period of time;
- 3.74 **“SLA”** means Service Level Agreement;
- 3.75 **“Stand Alone Solution”** or **“Stand Alone Terminal Device”** means a solution whereby Stand Alone Terminal Devices are not integrated with other systems in the merchant Card acceptance environment. It is a free-standing terminal device connected via a dedicated communications facility to the Bank;
- 3.76 **“Stores”, “Premises”** or **“Dealers”** means the retail premises at which the Equipment is in use and/or installed as detailed in the **“Inventory of POS Devices and Site Details Schedule”**;
- 3.77 **“Terms and Conditions”** means General Terms and Conditions and Product and/or Service Specific Terms and Conditions, collectively;
- 3.78 **“The Prepaid Airtime Service Facility Accounts”** means the account(s) held by the Bank in Your name that must be pre-funded and which will be debited for the prepaid product sales held by the Bank;
- 3.79 **“The Prepaid Airtime Service Facility Customer”** means the person who purchases a prepaid product offered by the Bank via the POS Device;
- 3.80 **“Third Party Maintenance Service Provider”** means a third party company appointed by the Bank to perform the installation and Routine and Remedial Maintenance Services;
- 3.81 **“Third Party Service Provider”** means a third party switching service provider appointed by You to perform, amongst other things, transaction switching services and configuration management at Stores;
- 3.82 **“Transaction”** means any transaction in respect of which the cardholder purchases goods and/or services from You, and for which Authorisation has been obtained;
- 3.83 **“Three Domain Secure”** or **“3D-Secure”** means electronic data identifying the merchant and verifying the integrity of the Message, which certificate complies with 3D Secure, being secure authentication protocol used by Visa and MasterCard;
- 3.84 **“Trusted Centre”** means a secure environment that is procedurally used in order to protect sensitive data. In the context of this Merchant Agreement, the Trusted Centre is an environment where cryptographic keys are securely stored and injected into the Equipment;
- 3.85 **“VAT”** means value-added tax levied under the Zambian Value Added Tax Act.
- 3.86 **“Verified by Visa”** means Visa’s interpretation and application of the 3D Secure code specification;



- 3.87 “Virtual Transaction” means the purchase of goods and/or services from the merchant by the Cardholder via the Internet;
- 3.88 “Warranty” means an express confirmation on Your part that something is or will be as You have represented and/or promised the Bank or customer.
- 3.89 “Writing” means any written communication between the parties concerned and shall include but not be limited to post, e-mails, letters and fax;
- 3.90 “You” or “Your” means the merchant.

4. THE MERCHANT AGREEMENT

4.1 General

- 4.1.1 The application form, recorded telephone calls, the main body of the General Terms and Conditions, the Products and/or Services Specific Terms and Conditions; all Annexures; Schedules and any other documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank (as amended from time to time), constitute the entire Merchant Agreement between the Parties.
- 4.1.2 The Merchant Agreement governs the Acquiring services delivered in respect of Integrated, Standalone and Mobile POS solutions.
- 4.1.3 **Product and/or Service Specific Terms and Conditions regulate the use of the Bank’s Acquiring Services and products i.e. ; POS Devices and Recurring Transactions etc.**
- 4.1.4 Any rights and privileges specific to Your business will be set-out in separate documents (Schedules and SLA) and be attached to the Merchant Agreement. You must comply with the terms set-out in the SLA, in the event that a separate SLA has been entered into.
- 4.1.5 The General Terms and Conditions, as well as Product and/or Services Terms and Conditions will be updated **from time to time and will be made available on the Bank’s website, www.fnbzambia.co.zm.**
- 4.1.6 **Using the Bank’s Acquiring Service:**
- 4.1.6.1 constitutes Your acceptance of the Terms and Conditions of the Merchant Agreement; and
- 4.1.6.2 serves as confirmation that the Bank has given You adequate opportunity to read and understand the Terms and Conditions.
- 4.1.7 Card Associations may amend their own Terms and Conditions in certain instances. As a result thereof, the Bank may need to amend provisions relating to **the use of the Bank’s products and/or services or website.**
- 4.1.8 The Bank may, from time to time and at any time, revise, update, discontinue or otherwise modify, temporarily or permanently, the Acquiring Services and/or any part of Your access thereto.
- 4.1.9 The Bank reserves the right to make any changes to the system and/or amendment to the Merchant Agreement effective immediately if necessary to maintain the security of the system or to comply with any laws or regulations.



- 4.1.10 Notwithstanding the above, The Bank will inform You of any amendments to the Terms and Conditions of the Merchant Agreement by means of a notice on Your monthly statement, via online messages, email, post and/or sms services etc.
- 4.1.11 You may choose to accept or decline changes by closing or discontinuing use of the services.
- 4.1.12 **The onus is on You to access the Bank's website to view the Merchant Agreement, as well as any amendments made thereto and to contact the Bank in the event of any queries You may have.**
- 4.1.13 Where there is any conflict between the Product and/or Service Specific Terms and Conditions, Schedules, SLA and/or the General Terms and Conditions, then the provisions in the Product and/or Service Specific Terms and Conditions shall prevail. Further, please note that should there be a conflict between the SLA and the remainder of the Merchant Agreement, the provisions of the SLA shall prevail at all times..
- 4.1.14 **The Bank reserves the right, in the Bank's sole discretion, to waive, reduce or reverse charges or fees in individual situations.**
- 4.1.15 No Party will have any claim or right of action arising from any undertaking, representation, or warranty not included in the Merchant Agreement.
- 4.1.16 While the Bank may give You extra time to comply with Your obligations or decide not to exercise some of the Bank's rights, **You must not assume that this means that the Agreement with You has been changed, or that it no longer applies to You.** The Bank can still insist on the strict application of any or all of its rights at a later stage.
- 4.1.17 The Bank does not lose any **of the Bank's rights under the Merchant Agreement if the Bank does not** immediately and in every instance insist on them. You may not raise it as a defence if the Bank has a right that the Bank did not enforce at the relevant time. For example, if the Bank allows You extra time to pay the fees You owe the Bank in one month, it does not mean the Bank has allowed You extra time to pay these fees in the next or any other month.
- 4.1.18 Failure by any Party to enforce any provision of the Merchant Agreement will not constitute a waiver of such provision or affect in any way a Party's right to require performance of such provision at any time in the future, nor will a waiver of a subsequent breach nullify effectiveness of the provision itself.
- 4.1.19 You agree that any failure by You to comply with any of Your obligations set out in this Merchant Agreement with regard to a Transaction will constitute gross negligence on Your part.
- 4.1.20 The Parties shall act as independent contractors for all purposes under this Merchant Agreement. Nothing contained in the Merchant Agreement shall be deemed to constitute either Party as an agent or representative of the other Party, or both Parties as joint ventures or partners for any purpose.
- 4.1.21 Save as expressly stated herein to the contrary, neither Party will have the authority to speak for, represent or obligate the other Party in any way without the prior written approval of the other Party.
- 4.1.22 **Separate agreements must be entered into with Diners' Club and American Express Cards. You may not use the Equipment or Acquiring Service to process Transactions on these cards without the Bank's express approval.** They are not covered by the Merchant Agreement and a separate Addendum must be signed.
- 4.2 Each Clause is Separate



4.2.1 The parties acknowledge that each clause of the Merchant Agreement is separate. If any clause of the Merchant Agreement is or becomes illegal, invalid or unenforceable for any reason, it must be treated as if it had not been included in the Merchant Agreement. This does not:

4.2.1.1 make the rest of the Merchant Agreement illegal, invalid or unenforceable;

4.2.1.2 affect the legality, validity or enforceability of any other clause or the Merchant Agreement as a whole.

4.3 Cession and Assignment

4.3.1 You may not without securing the prior written consent of the Bank:

4.3.1.1 cede any rights;

4.3.1.2 delegate any obligations; and/or

4.3.1.3 assign, transfer or make over any part of this Merchant Agreement

4.3.2 The Bank shall be entitled to sub-contract certain of its service obligations under this Merchant Agreement **to third party (ies) ("Subcontractor/s") in order to fulfil certain obligations set out in this Merchant Agreement, and notwithstanding such sub-contracting, such Subcontractors' obligations shall remain the obligations of the Bank.**

4.4 Duration

4.4.1 This Merchant Agreement will commence on the Effective Date (subject to **the Bank's approval of your application following a vetting process**) and shall endure indefinitely until terminated by either Party in **writing as provided for herein and/or as provided for in the SLA, by providing no less than 1 (one) months' notice to the other Party.**

5. YOUR OBLIGATIONS

5.1 You shall, throughout the duration of the Merchant Agreement:

5.1.1 Not conduct unlawful business activities;

5.1.2 ensure that there is due compliance with all the terms of the Merchant Agreement;

5.1.3 honour each Card that is presented by the rightful Cardholder to You in payment for goods and/ services;

5.1.4 ensure that you take due care in accepting Cards to ensure that no Fraudulent Cards are accepted (as per the Card Association guidelines amended from time to time on Visa.com and MasterCard.com);

5.1.5 ensure that Authorisation is obtained from the Bank in respect of all Transactions undertaken by You in accordance with the Merchant Agreement;

5.1.6 supply the goods and/ services at a price not exceeding Your normal cash price in respect thereof;

5.1.7 not discriminate against any Cardholder by adding any surcharge (i.e. an extra amount or percentage);

5.1.8 not discriminate against any Cardholder by setting a minimum or maximum Transaction amount as a condition of honouring a Card;

5.1.9 ensure that all Transactions are authorised in the manner provided for in the Merchant Agreement;

5.1.10 accept full responsibility for Your, as well the actions of Your employees at all times;



- 5.1.11 accept full responsibility for, and indemnify and hold the Bank harmless against, any fines or penalties imposed upon the Bank and/or You arising out of Your conduct and operation of Equipment which does not comply with Bank, Card Association and/or Industry requirements;
- 5.1.12 allow the Bank such access to the Equipment and/or the Stores and provide reasonable and necessary support as may **be necessary for the Bank to carry out the Bank's obligations under the Merchant Agreement**;
- 5.1.13 cover the cost incurred by the bank to replace equipment which has been lost by the Merchant, or damaged by the negligence of the Merchant, the employees of the Merchant or the agents of the Merchant;
- 5.1.14 **not use the bank's branded roll paper in non FNB devices or use other branded roll paper in FNB devices. Non compliance to this clause will result in a charge of ZMW200.00 per default which will be debited from your account held with the bank.**
- 5.1.15 **provide 14 (fourteen) Business Day's prior written notification to the Bank of any changes in Your network** of Stores that may impact on the availability and provision of the Acquiring Services by the Bank;
- 5.1.16 promptly inform the Bank in writing of any changes in Your Banking details;
- 5.1.17 promptly inform the Bank in writing and in advance if, for whatever reason:
 - 5.1.17.1 the owners of Your business (indicated on the application form) change;
 - 5.1.17.2 the classification of Your business changes; and/or
 - 5.1.17.3 there is any other material change in the nature of Your business;
- 5.1.18 ensure that an appropriate agreement is in place between You and the Third Party Service Provider in order for the Bank to fulfil its obligations in all matters where interaction with the Third Party Service Provider is required to give full effect to the Merchant Agreement;
- 5.1.19 provide the Bank with any information and/or documentation the Bank may require from time to time under the Merchant Agreement and the conditions contained herein;
- 5.1.20 implement fraud prevention measures to ensure the prevention of Fraudulent Transactions;
- 5.1.21 notify the Bank if You are placed into liquidation, sequestration or business rescue;
- 5.1.22 ensure that you comply with the Industry requirements as set-out hereunder as well as in the Product and Service Specific terms and Conditions; and
- 5.1.23 comply with the requirements for Manual Transactions, Fraudulent Transactions; Chargebacks and copy requirements as set out hereunder as well as in the Product and Service Specific Terms and Conditions.

6. INDUSTRY COMPLIANCE

6.1 It is important that You familiarise Yourself with the requirements set-out in:

- 6.1.1 Verified by Visa acquirer and merchant implementation guide;
- 6.1.2 PCI DSS Certification;
- 6.1.3 Annexures; and
- 6.1.4 Schedules.



- 6.2 You must comply with the applicable Payment Association in Zambia, with respect to MasterCard, Visa, Union Pay Rules, Bank and Industry requirements.
- 6.3 You and/or the Third Party **Service Provider must adhere to the Bank's Data Protection Practises** regardless of the number of acquiring relationships You may have entered into;
- 6.4 It is Your responsibility to ensure that You are compliant with any industry rules, regulations and/or related legislation, best practice guidelines, and the terms of this Merchant Agreement;
- 6.5 If You and/or the Third Party Service Provider are not compliant with any industry rules, regulations and/or related legislation, best practice guidelines, and/or the terms of this Merchant Agreement, the Bank can immediately cancel this Merchant Agreement and Your Acquiring Services and You will be liable for all fines imposed and penalties, fraudulent transactions and losses incurred as a result thereof. Any such fines; penalties; losses and/or instances of fraud will be levied against Your account.
- 6.6 PCI DSS Certification
- 6.6.1 The PCI DSS is a set of comprehensive requirements for enhancing payment account data security. The Bank provides a facility whereby You must complete an online self-assessment questionnaire in order to become **PCI DSS compliant. The facility can be accessed by the Bank's website at www.fnb.co.za/pci.** The requirements for PCI DSS compliance vary depending on the number of Transactions You process in a year.
- 6.6.2 You and/or the Third Party Service Provider shall obtain and keep current and valid, a PCI DSS certification in accordance with currently applicable PCI standards (as determined by the applicable Card Associations) in effect, at date of signing of this Merchant Agreement and comply with any requirements set out by the PCI DSS.
- 6.6.3 You and/or the Third Party Service Provider must provide a copy of such certificate to the Bank within 48 (forty eight) hours of signing this Merchant Agreement, alternatively You and/or the Third Party Service Provider must furnish the Bank with proof of its application for such certificate. The Bank will determine **whether such proof is adequate in the Bank's sole discretion.**
- 6.6.4 We can ask You and/or the Third Party Service Provider to provide Us with information and/or data from time to time to help Us determine whether You and/or the Third Party Service Provider are complying with the PCI DSS. Should You and/or the Third Party Service Provider not be PCI compliant at the Effective date You and/or the Third Party Service Provider have 3 (three) months to become compliant.
- 6.6.5 You and/or the Third Party Service Provider shall furnish the Bank annually and as requested from time to time, with proof of Your and/or the Third Party Service Provider PCI DSS compliance and/or any data records pertaining to the implementation and/or monitoring of PCI DSS compliance, including but not limited to any data and/or information related to a potential or actual occurrence of a Data Compromise.
- 6.6.6 Failure by You and/or the Third Party Service Provider to provide the Bank with:
- 6.6.6.1 proof of Your and/or the Third Party **Service Provider's application for a PCI DSS certificate;**
- 6.6.6.2 regular updates regarding the certification process; and/or
- 6.6.6.3 failure by You and/or the Third Party Service Provider to achieve PCI DSS compliance, **may, without prejudice to the Bank's rights hereunder or in law, result in:**



- 6.6.6.4 the Bank suspending the operation of the Merchant Agreement pending PCI DSS certification by You and/or the Third Party Service Provider; and/or
- 6.6.6.5 the Bank terminating this Merchant Agreement forthwith; and/or
- 6.6.6.6 You bearing additional liability as prescribed by the applicable Card Associations from time to time.
- 6.6.7 Furthermore, in the event that You and/or the Third Party Service Provider are no longer PCI DSS compliant and/or You and/or the Third Party Service Provider PCI DSS certificate lapses and You and/or the Third Party Service Provider fail to renew the certificate timely, the Bank will not be liable for any losses that occur and/or fines and penalties that are imposed during Your and/or the Third Party Service Provider non-compliance.
- 6.6.8 **It is Your and/or the Third Party Service Provider's responsibility to ensure** that You and/or the Third Party Service Provider remain PCI DSS compliant at all times.

7. AUDIT

- 7.1 You will ensure that the Bank may conduct an audit of any and all contracts You have in place with Your elected Third Party Service Provider.
- 7.2 You will provide access to the Bank and/or an independent accredited Third Party Service Provider, to be agreed upon between the Parties, to conduct an Audit of Your and/or Your Third Party Service Provider Network, records, documentation and systems pertaining to the Merchant Agreement to establish whether it is in accordance with Bank Specifications and/or specifications introduced by the Card Associations and/or Industry.
- 7.3 **You and/or Your Third Party Service Provider Network agree to cooperate with the Bank's audit requirements and provide reasonable assistance and access to information.**
- 7.4 **Any such audit shall not unreasonably interfere with You and Your Third Party Service Provider Network's normal business operations.**

In the event that the audit determines that You and/or Your Third Party Service Provider Network are not compliant You and/or Your Third Party Service Provider Network will be liable for the cost of the audit; and

- 7.4.1 the Bank will have the right to terminate the Merchant Agreement with immediate effect; and/or
- 7.4.2 the Bank may further rely on any of the remedies available to it by law.

8. TRANSACTIONS

8.1 Manual Transactions

- 8.1.1 Obtaining voice authorisation from the Bank and/or receiving an authorisation code from the Bank:
 - 8.1.1.1 **is merely a confirmation that there are sufficient funds available in the Cardholder's bank account;**



8.1.1.2 does not imply that a Transaction is not Fraudulent;

8.1.1.3 does not guarantee the validity of the Transaction;

8.1.1.4 does not exempt You from Your duty to preventing Fraudulent Transactions;

8.1.1.5 does not imply that the intended Transaction cannot be declined later; and/or

8.1.1.6 does not imply that the Transaction cannot be subject to a Chargeback from Card Issuer.

8.2 Fraudulent Transactions

8.2.1 It is Your responsibility to arrange with the Bank to provide You and Your employees with fraud training.

8.2.2 The onus rests on You to ensure that You are adequately protected against Fraudulent activities.

8.2.3 You must not honour Transactions and/or accept Cards that You know, should have known or suspect are Fraudulent or unauthorised by the Cardholder.

8.2.4 If a Fraudulent Transaction occurs, the Bank is entitled to terminate this Agreement immediately on notice to You.

8.2.5 You have a duty to take reasonable steps to prevent all Fraudulent Transactions.

8.2.6 Obtaining voice Authorisation from the Bank and/or receiving an Authorisation code from the Bank does not exempt You from Your duty to take reasonable steps to prevent Fraudulent Transactions.

8.2.7 Obtaining voice Authorisation from the Bank and/or receiving an Authorisation code from the Bank does not guarantee the validity of the Transaction and/or mean that the Transaction is not a Fraudulent Transaction.

8.2.8 If a Fraudulent Transaction occurs and/or the Transaction is for any reason invalid, erroneous or illegal, the Bank, after it is satisfied that You failed to use all reasonable efforts to prevent such a transaction, may charge the value of the Fraudulent transaction to You and You will carry the financial loss of the Chargeback.

8.3 Chargebacks

8.3.1.1 Transactions may be reversed through a process called Chargeback if: such Transaction is subject to a dispute (if the goods and/or services are not supplied and/or fail to meet the required standard);

8.3.1.2 such Transaction was not Authorised;

8.3.1.3 such Transaction is a Fraudulent Transaction, invalid, erroneous and/or illegal;

8.3.1.4 such Transaction is not in accordance with the provisions of the Merchant Agreement;

8.3.1.5 for any other reason as specified by the applicable Card Association and industry requirements; and/or

8.3.1.6 a Cardholder dispute arises because of something You did and/or something You failed to do.

8.3.2 If a Chargeback is received, a Fraudulent Transaction and/or a suspected Fraudulent Transaction occurs and/or if the Transaction is for any reason invalid, erroneous or illegal, the Bank is irrevocably authorised to:

8.3.2.1 charge the value of the Transaction back to You and You will carry the value of the Chargeback (actual loss);

8.3.2.2 recover from You: any Chargebacks; losses; claims; damages; associated fees; fines and penalties the Bank incurred or suffered at any time, as a result of or in connection with any Fraudulent Transaction posted by You; invalid; erroneous or illegal Transactions etc (i.e. the Bank is indemnified by You in respect of all losses, costs, penalties, payments, claims or any liability whatsoever arising from any dispute, claim or defence



raised against the Bank where such dispute, claim or defence is a direct or indirect result of any act or omission on Your part);

8.3.2.3 debit Your Nominated Bank Account, notwithstanding that such account may be held at another branch, at any time with the value of all the: Chargebacks; Fraudulent Transactions posted by You; losses, claims, damages and associated fees, fines and penalties;

8.3.2.4 deduct the amount of the Chargebacks; Fraudulent Transactions posted by You; losses, claims and/or damage that the Bank incurred or suffered; and associated fees, fines and penalties, from any settlement proceeds due to You; any reserve the Bank may hold; and/or Your settlement account;

8.3.2.5 place a hold on Your account and/or pledge an amount equal to an estimate of any potential losses that the **Bank may incur as a result of future Chargebacks. The Bank's right to apply Chargebacks is not restricted by** the release of the hold referred to in this clause.

8.3.2.6 suspend the service, terminate the Merchant Agreement, and/or both, immediately without notice and without prejudice to any other rights in law.

8.3.3 The Bank will alone handle all disputes raised by Cardholders and You will provide the Bank with any assistance the Bank requires. You are bound by any settlements negotiated between the Bank and the Cardholder and any defences that the Bank may raise against the Cardholder.

8.3.4 The Bank is allowed to treat a Transaction as valid even if You did not comply with Your obligations for that Transaction. If the Bank treats the Transaction as valid, You still have a duty to comply with Your obligations..

8.3.5 There is no time limit during which Chargebacks can occur and/or during which Cardholder disputes must be raised.

8.3.6 Further details on Chargebacks and Fraudulent Transactions are provided in the Product and/or Service specific Terms and Conditions.

8.4 Copy request

8.4.1 You have 7 (seven) Business Days in which to respond to a copy request for a defined sales voucher.

8.4.2 Should the Bank not receive the requested documentation, a second request will be sent to You and You will be granted 3 (three) Business Days to respond to the request.

8.4.3 The Bank is irrevocably authorised by You to debit Your Nominated Bank Account, notwithstanding that such account may be held at another bank with the total value of sales vouchers, alternatively batches of POS Transactions lost as a consequence of Your failure to provide Your copies within ten (10) Business Days of being requested to do so by the Bank.

8.4.4 The contact details on the application form or subsequent written notice of change of contact details will be used when sending the copy request. It is therefore important to ensure that the Bank has the most up to date contact details, as the Bank will carry no responsibility in the event that You do not receive the copy request due to outdated contact details.

8.4.5 Please retain confirmation that You have provided the Bank with the requested copies.



9. FLOOR LIMIT

9.1 Floor limits will not automatically be loaded on Your profile.

9.2 **The Bank can, at the Bank's own discretion, change the Floor Limit but this shall be communicated to You in writing.**

10. PRICING

10.1 The fees and charges payable by You to the Bank in respect of the Acquiring Services are set out in the Schedule of Fees and Charges.

10.2 The amounts quoted in terms of the pricing are subject to pricing reviews.

10.3 In the event that a change in the scope and/or pricing of the Acquiring Services is required during the term of this Merchant Agreement, an appropriate adjustment to the fees and charges will be made in writing and communicated to You by means of monthly statement messages, via online messages, email, website, post and/or sms services. The Bank may at any time amend or introduce new fees for the use of the products and/or services on reasonable notice.

10.4 The latest version of this Schedule of Fees and Charges shall apply at all times.

11. STATEMENTS OF ACCOUNT

11.1 The Bank will provide You with a monthly breakdown of the amount You owe the Bank. The breakdown will be provided in the form of a monthly statement.

11.2 The statement will be sent by email to the contact details on the Application form or to the contact details contained in a subsequent notice of change of contact details. It is therefore important to ensure that the Bank has the most up to date contact details on record, as the Bank will carry no responsibility in the event that You do not receive Your statements due to outdated contact details.

11.3 Your monthly statement constitutes a demand by the Bank for payment and settlement.

11.4 Payment and settlement will be made by a direct debit generated to Your Nominated Bank Account. The funds in your Nominated Bank Account must be equal or in excess of the amount you owe the Bank.

11.5 It is incumbent on You to verify the information contained in the statement.

11.6 You must raise any query regarding the correctness of the monthly statement, including but not limited to any debit and/or credit entry to Your Nominated Bank Account or any amounts invoiced to You, within 30 (thirty) Calendar Days of the date of receipt of statement, failing which the Bank will assume that all the entries on the monthly statement are correct and that the amount so debited and/or credited to Your Nominated Bank Account or invoiced to You (as the case may be) is correct.



- 11.7 The merchant commission will be payable on the gross amount, except if otherwise agreed to in writing by the Parties. Gross amount refers to the total of all purchases, before the deduction of refunds, chargebacks and credits.
- 11.8 You may not deduct or set off any amount You owe to the Bank.
- 11.9 A certificate of balance signed by or issued by an authorised employee of the Bank (whose appointment or authority it shall not be necessary to prove) will constitute prima facie evidence of the outstanding balance, interest and/or any other amounts in respect of the Merchant Agreement.
- 11.10 Email Statements
- 11.10.1 The statement will be sent to You in a PDF format. Your statement is encrypted in order to comply with Bank security requirements that statements sent electronically should be tamperproof. In order to open Your statement You will need the latest version of Adobe Reader software installed on Your computer.

12. DEBITING YOUR BANK ACCOUNT

- 12.1 This clause is to be read in conjunction with the Product and/or Services Specific Terms and Conditions and Schedule of Fees and Charges.
- 12.2 The Bank is irrevocably authorised by You to debit Your Nominated Bank Account, notwithstanding that such account may be held at another bank with:
- 12.2.1 fees and charges set-out in the Schedule of Fees and Charges;
- 12.2.2 the amount reflected on Your monthly statement;
- 12.2.3 any refunds which are due to Cardholders;
- 12.2.4 any amounts which the Bank has overpaid to You or paid in error;
- 12.2.5 an administration fee for each debit returned by the Bank;
- 12.2.6 any legal fees associated with the recovery of any and all sums from You;
- 12.2.7 any amounts which You owe to the Bank from any payments which the Bank makes to You;
- 12.2.8 interest on outstanding amounts will be calculated from the date on which You should have paid to the Bank to the date on which You actually pay the Bank the overdue amount;
- 12.2.9 the value of Card Transactions arising out of disputes raised by the Cardholders with the Bank, Chargebacks received, Fraudulent Transactions, suspected Fraudulent Transaction and/or if the transaction/sales voucher is for any reason invalid, erroneous or illegal;
- 12.2.10 fees and penalties charged by Visa and MasterCard for excessive Chargebacks or for other disputes which involve You;
- 12.2.11 fees and costs involved in the investigation of any default or potential default under the Merchant Agreement;
- 12.2.12 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 the Bank incurs in connection with maintaining and **enforcing the Bank's rights under the Merchant Agreement;**



- 12.3 You will pay all debits upon presentation. A failure by You to do so shall constitute a breach of the Merchant Agreement and such debits shall be immediately due and payable by You and the Bank shall be entitled, in its sole discretion, to terminate the Merchant Agreement forthwith.
- 12.4 The Bank has the right, to do any one or both of the following, if necessary; where the law compels the Bank; where You are in default with Your Merchant Agreement; in the case of Fraudulent Transactions; suspected Fraudulent Transaction and/or invalid erroneous or illegal sales vouchers and/or Transactions:
- 12.4.1 immediately place any of Your funds (credits) on hold pending a discussion with You about any amount You owe the Bank. The Bank can place a hold on Your bank account at any time before the Bank debits Your bank account with the amounts that the Bank is entitled to recover from You under the Merchant Agreement. The Bank will remove the hold once the Bank has recovered the amounts in full which You owe the Bank;
- 12.4.2 debit Your Nominated Bank Account with the value of Card Transactions;
- 12.4.3 immediately freeze or close Your account;
- 12.4.4 **stop the Bank's** Acquiring Service with immediate effect without notice to You; and/or
- 12.4.5 immediately set-off any outstanding amounts that are due and payable against funds (credits) available in Your accounts, in accordance with the set-off provision set-out in the General Terms and Conditions.
- 12.5 The Bank can deduct any amounts which You owe to the Bank from any payments which the Bank makes to you, except that the Bank will give you prior notice before effecting the deduction.
- 12.6 All costs incurred by either Party in the negotiation and execution of this Merchant Agreement shall be for such Party's account.
- 12.7 The Authorisations granted to the Bank above shall not preclude the Bank from any other remedy available to it whether in terms of the Merchant Agreement or at law.
- 12.8 You agree that the Bank shall have the right to recover and can continue to debit Your bank account after termination of the Merchant Agreement to recover any outstanding amounts even after termination of this agreement, including but not limited to the Merchant Commission, MMF, rentals charged, fees and charges details in the Schedule of Fees and Charges and any other amount that would be chargeable back to You by the Card Issuers arising out of this Merchant Agreement.
- 12.9 The authorisation granted to the Bank in this clause shall survive the termination for any reason whatsoever, **of the Merchant Agreement and You further consent to the Bank's right to continue to debit Your banking account after termination of the Merchant Agreement until all charges owned by You to the Bank have been paid in full.**

13. SET-OFF AND CONSOLIDATION

- 13.1 The Bank may set-off any amount which the Bank has to pay You, against any amount which You have to pay to the Bank in respect of any of Your bank accounts, as may be permissible in law. The Bank will inform You promptly that it has applied set-off on Your account. You must notify the Bank beforehand, in writing if



funds in any of Your bank accounts are held by You on behalf of a third party. If You do not do this, the common law principle of set-off will apply.

13.2 You may not deduct or set-off any amount due to the Bank.

13.3 The Bank may consolidate all accounts which You hold with the Bank, as may be permissible in law. No partial **consolidation will prevent the Bank from exercising the Bank's rights** in respect of any accounts or amounts which the Bank did not include in this consolidation.

14. SURCHARGING

14.1 The practice of surcharging is where You charge cardholders more for the goods and/or services than You would normally charge customers when they pay for the goods and/or services in cash. The amount charged to all customers should match the displayed or advertised price. You may, however, offer a discount off the displayed price for cash transactions.

14.2 The practise of levying surcharges is clearly prohibited in terms of VISA and MasterCard Rules.

15. CONFIDENTIAL INFORMATION

15.1 Each Party acknowledges that all material and information, which has or will come into its possession or knowledge in connection with the Merchant Agreement or the performance hereof, consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging to the other Party.

15.2 Both Parties, therefore, agree to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this Merchant Agreement, to release it only to employees reasonably requiring such information in the execution of their duties and not to release or disclose it to any other person, unless so required by law.

15.3 The Parties specifically record that all Data provided by the Bank to You, or to which You may be exposed, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Bank.

15.4 Confidential and proprietary information will not include any information which:

15.4.1 at the time of disclosure, is generally known by the public without breach of this Merchant Agreement by the recipient; and/or

15.4.2 which is known to or in the possession of the recipient before it is received from the disclosing party (save where it was previously received by the recipient under an obligation of confidence).

15.5 Neither Party shall use the names, trademarks or trade names, whether registered or not, of the other Party in publicity releases, advertising or in any other manner, without having secured the prior written approval of the other Party.

15.6 The Parties' obligations of confidentiality under this Merchant Agreement shall survive the termination of this Merchant Agreement for any reason whatsoever.

15.7 In the event of a breach of confidentiality each Party will notify the other of such breach.



16. DISPLAYING OF SYMBOLS

- 16.1 You shall display such marks and symbols in respect of the Card Associations as may be provided by the Bank without limitation.
- 16.2 You may not in any way whatsoever state, imply or create the impression that the Bank, or any Card Association or any other Card Issuer endorses or guarantees any of your goods and/or services.

17. LIABILITY AND INDEMNITY

- 17.1 If You consist of two or more persons, the Bank can choose either to hold all of You responsible or choose whom to hold responsible. You are all jointly and severally liable.
- 17.2 By entering into the Merchant Agreement You promise to make good any loss or damage that the Bank incurs or suffers, as a result of penalties or fines imposed upon the Bank, or any claim that is brought against the Bank as a result of Chargebacks received, Fraudulent Transactions, suspected Fraudulent Transaction and/or if the Transaction/sales voucher is for any reason invalid, erroneous or illegal etc.
- 17.3 You indemnify the Bank against all losses, costs, penalties, payments or any other liability whatsoever arising from any dispute, claim or defence raised against the Bank where such dispute, claim or defence is caused by any act or omission on Your part.
- 17.4 In addition to any other obligations contained elsewhere in this Merchant Agreement, You indemnify the Bank against any claim of whatsoever nature which may be made against the Bank arising out of or in connection with any system failure or equipment malfunction or any act or omission of the Bank, its employees, agents or representatives which is related in any way whatsoever to the execution of this Merchant Agreement.
- 17.5 In the event that You make use of the services of a Third Party Service Provider, more specifically Payment Service Provider, it is Your duty to ensure that a separate agreement is entered into between the Bank and the Third Party Service Provider.
- 17.6 You indemnify the Bank against all losses, costs, penalties, payments or any other liability whatsoever arising from any dispute, claim or defence raised against the Bank where such dispute, claim or defence is caused by any act or omission by Your Third Party Service provider.
- 17.7 The Bank will not be held liable for:
 - 17.7.1 any acts or omissions by Your Third Party Service Providers;
 - 17.7.2 **events beyond the Bank's reasonable control. This includes, but is not limited to:**
 - 17.7.2.1 system failures;
 - 17.7.2.2 equipment malfunctions; and/or
 - 17.7.2.3 damages You may suffer as a result of or in connection with:
 - 17.7.2.3.1 You or any Cardholder not being able to access Your internet infrastructure or use it; and
 - 17.7.2.3.2 any network breakdown, systems failure, equipment malfunction, power failure or similar events which are **beyond the Bank's control.**



- 17.8 The Bank will not be a party to any dispute between You and any Third Part Service Provider appointed by You.
- 17.9 You indemnify the Bank against any loss or damage that the Bank incurs or suffers, as a result of penalties or fines imposed upon the Bank, or any claim that is brought against the Bank as a result of a compromise of Data/security; Fraudulent Transactions; suspected Fraudulent Transaction etc caused by Your Third Party Service Provider.

18. LIMITATION OF LIABILITY

- 18.1 Under no circumstances shall either Party be liable to the other Party for indirect or consequential damages, including but not limited to loss of profits or savings, arising out of or relating to its performance or failure to perform under this Merchant Agreement.
- 18.2 The limitation of liability in the aforementioned clause shall not apply:
- 18.2.1 to liability resulting from gross negligence or wilful misconduct of either Party; and/or
- 18.2.2 so as to restrict liability for death or personal injury resulting from the negligence of either Party.

19. FORCE MAJEURE

- 19.1 **Should either You or the Bank (hereinafter referred to as “the invoking Party”) be prevented from fulfilling any of its obligations in terms of this Merchant Agreement as a result of any “Acts of God”, regulatory or government directives or other cause beyond the reasonable control of such Party, the invoking Party will forthwith give written notice thereof to the other Party:**
- 19.1.1 specifying the cause and anticipated duration of the Force Majeure; and
- 19.1.2 upon termination of the Force Majeure, stating that such Force Majeure has terminated.
- 19.2 Performance of any obligations will be suspended from the date on which notice is given of a Force Majeure event until the date on which notice of termination of a Force Majeure event is given (hereinafter referred to as “the Suspension Period”), **subject always to the remaining provisions of this clause.**
- 19.3 The invoking Party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the Force Majeure during the Suspension Period, provided that:
- 19.3.1 The invoking Party uses and continues to use its best efforts to perform such obligation;
- 19.3.2 If the Force Majeure continues for more than 21 (twenty one) consecutive days, the other Party will be entitled to cancel the Merchant Agreement on the expiry of such 21 (twenty one) day period, but will not be entitled to claim damages against the invoking Party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the Force Majeure; and



19.3.3 The Party not invoking force majeure will be entitled to elect, by giving written notice within 10 (ten) days of termination of the Force Majeure event, as to whether or not it requires the invoking Party to perform any obligations incurred prior to Force Majeure.

20. DEFAULT UNDER THIS AGREEMENT BY EITHER PARTY

20.1 **The Bank may exercise the Bank's rights, which include demanding immediate payment of overdue amounts due to the Bank under the Merchant Agreement or cancelling the Merchant Agreement, as may be permissible by law, without prejudice to any of the Bank's other rights (i.e. without barring any future action the Bank may be entitled to take), if any of the following events occur:**

20.1.1 You do not comply with the provisions of the Merchant Agreement and You do not remedy this breach within 10 (ten) Business Days of receiving written notice from the Bank asking You to do so;

20.1.2 In the event that You have provided the Bank with false, fraudulent or incorrect information ("**Misrepresentation**"), which information was material to the Bank entering into this Merchant Agreement with You, the Bank will be entitled to immediately cancel this Merchant Agreement with You.

20.1.3 Should this Merchant Agreement be cancelled as a result of Your Misrepresentation, You will be held liable for any costs that have been incurred by the Bank as at date of cancellation of the Merchant Agreement.

20.1.4 In the event that the Misrepresentation is determined not to be material to the Bank entering into this Merchant Agreement with You, the Bank will inform You of the Misrepresentation and provide You with 5 (five) Business Days to remedy the Misrepresentation. Should You not remedy the Misrepresentation in this period, the Bank will be entitled to cancel this Merchant Agreement as provided for above.

20.1.5 You, being an individual and:

20.1.5.1 publish notice of the voluntary surrender of Your estate;

20.1.5.2 are placed under administration (after being declared bankrupt) or commit an act of insolvency as defined in the Laws in Zambia.;

20.1.5.3 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 receivership, in any event whether in a manner which is provisional or final, voluntary or compulsory;

20.1.6 You, being a juristic entity and:

20.1.6.1 are wound up, liquidated, dissolved, deregistered or placed under judicial management, 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;

20.1.6.2 are treated as being unable to pay Your debts;

20.1.6.3 resolve that You voluntarily begin business rescue proceedings or have any business rescue proceedings commenced against You as contemplated in the applicable Laws of Zambia.

20.1.7 Judgment of a competent court against You for the attachment of assets or for payment of any amount is not satisfied within 3 (three) days after the date on which it is issued. Attachment refers to the process in terms of which property or goods or both are taken into custody to secure a judgment or to be sold in



satisfaction of a judgment.

20.1.8 You compromise or attempt to compromise with Your creditors generally or defer payment of debts owing by You to Your creditors.

20.1.9 If You are not compliant with any industry or Association rules, regulations, related legislation, best practice guidelines, and/or the terms of this Merchant Agreement, the Bank can immediately cancel this Merchant Agreement and Your services and You will be liable for all penalties, fraudulent transactions and losses incurred as a result thereof

20.1.10 If your primary (settlement) account is closed for whatever reason the bank reserves the right to retrieve its device and other property and terminate the relationship with you immediately without notice

20.1.11 If The Bank breaches any material provision of the Merchant Agreement and does 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 the Merchant Agreement with immediate effect.

21. CONSEQUENCES OF TERMINATION

21.1 Upon the termination of this Merchant Agreement, each Party shall return to the other Party all papers, materials and other property of the other Party in its possession or held by it in connection with the performance of this Merchant Agreement. Notwithstanding the foregoing, each Party shall be entitled to retain information concerning the other Party if and to the extent that it is required to do so in terms of its retention of records policy or in terms of any applicable law or regulation, subject at all times to the confidentiality obligations as set out in these General Terms and Conditions.

21.2 When this Merchant Agreement has been terminated, the clauses in this Merchant Agreement will continue to apply to Transactions which took place on or before the date on which the termination of this Merchant Agreement took effect. Termination of this Merchant Agreement will not affect any rights and/or obligations of the Parties which arose on or before the termination became effective.

22. GOVERNING LAW

22.1 This Merchant Agreement will be governed, construed and take effect in all respects in accordance with the laws of the Republic of Zambia.

22.2 You agree that the Bank may bring legal proceedings against You relating to the Merchant Agreement in any **Magistrate's or High Court that has the authority to hear and decide on the case (this authority is called jurisdiction).**

23. DOMICILE AND COMMUNICATIONS

23.1 The Bank hereby selects the following address as the address at which all legal notices; processes and communication must be delivered to: The Legal Counsel First National Bank Zambia Limited, Head Office, Stand Number 22768, Corner Great East Road and Thabo Mbeki Roads, Lusaka, Acacia Park This address is known in law as Your domicilium citandi et executandi.



- 23.2 You choose the physical address and contact details in Zambia in the application form of the Merchant Agreement as the address to which:
- 23.2.1 The Bank may serve any legal notices, processes and communications;
- 23.2.2 The Bank may execute on any judgment the Bank obtains against You;
- 23.2.3 The Bank may send day-to-day (operational) communications;
- 23.3 For clarity, day-to-day (operational) communications may be sent by the Bank to You via recorded telephone calls, e-mail; statement message; online message; website; post; and/or sms service.
- 23.4 Notwithstanding anything to the contrary contained herein, it is specifically recorded that the Bank may send statements, billing reports and/or invoices to You via e-mail, and may communicate billing information to You via recorded telephone calls.
- 23.5 Any legal notice or communication required or permitted to be given in terms of this Merchant Agreement by You will be valid and effective only if in writing and delivered by hand, electronic mail or telefax.
- 23.6 Day-to-day (operational) communications may be sent by You to the Bank via recorded telephone calls, e-mail, post, and/or sms service (as applicable).
- 23.7 A notice will be treated and presumed as having been received by the Party to whom it was sent, unless contrary is proven:
- 23.7.1 if delivered by hand during normal hours - on the date it was delivered to an authorised Bank representative;
- 23.7.2 if posted by prepaid registered post - at 10H00 on the fourth day after the post office issued the registration receipt;
- 23.7.3 if sent by fax - on the date shown on the receipt the fax machine generated; and
- 23.8 if sent by e-mail - on the date on which the notice was e-mailed.
- 23.9 When the Bank presumes that You received a notice by a certain date, this means the Bank does not have to prove that You did receive it on such date.
- 23.10 If You claim that You did not receive the notice by that date then You will have to prove it.
- 23.11 If You have actually received a written notice or communication from the Bank, even if it was not sent to or delivered at Your chosen address, fax number, postal address or e-mail address, it will still be a valid notice.
- 23.12 Notwithstanding anything to the contrary contained in this Merchant Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party, notwithstanding that the Terms and Conditions of this clause were not strictly complied with.
- 23.13 Either Party may, by written notice to the other Party, change its chosen domicile to another physical address, provided that the change will become effective on the seventh (7th) Business Day after the receipt of the notice by the addressee.
- 23.14 If You change Your address but do not notify the Bank, You agree that the Bank has the right to send notices to You and serve legal processes at Your last address known to the Bank or any other address of which You have given the Bank proper notice.



23.15 It is therefore important to ensure that the Bank has the most up to date contact details on record, as the Bank will carry no responsibility in the event that You do not receive communications from the Bank due to outdated contact details.

24. INCIDENTAL CREDIT AGREEMENT

24.1 Failing to pay any amount owing to the Bank when it is due and/or You generally doing, or allowing anything **to be done that may prejudice the Bank's rights or interests will place You in default of this Agreement** (in respect of the amount due to the Bank) if You do not rectify the situation within 15 (fifteen) Business Days of receiving written notice from the Bank to do so.

24.2 Without limiting any rights that the Bank may have under the common law, the Bank will do the following if You remain in default:

24.3 The Bank can at its discretion charge interest on the outstanding amount due up to the Maximum Interest Rate allowed by the Bank of Zambia.

24.4 **The Bank will draw. If You don't rectify Your default** within 10 (ten) Business Days, the Bank may hand this matter to its attorneys for recovery.

24.5 Collection costs will be charged by the Bank to You if the Bank has to enforce the terms and conditions of this agreement. Such collection costs will include: legal costs as on the scale between attorney and client ; collection commission; tracing fees and other fees or disbursements incurred by the Bank in collecting any amounts owing by You to the Bank, including value-added tax where applicable. The total interest charged by the Bank if You default, will not exceed the maximum percentage of recoverable interest permitted by the Bank of Zambia. A default administration cost, if applicable, can, if You default be charged by the Bank to You.

24.6 The Bank reserves its right to enforce such Merchant Agreement (including the termination thereof) under the laws of Zambia

24.7 You are entitled to settle and/or terminate the incidental credit agreement at any time with or without advance notice to the Bank, by settling the outstanding amount in full. The outstanding amount is the total of the following amounts: a) the total unpaid balance of the amount in default; b) the unpaid interest and all other fees and charges payable by You to the Bank up to the settlement date.

25. INFORMATION SHARING

25.1 You agree that the Bank can access any information about You that is recorded with any credit bureaux or held by any other branch of First National Bank Zambia Limited. The credit bureaux provide credit profiles on persons as well as possibly a credit score on the credit worthiness of persons. You agree that the Bank



can share the following with credit bureaux and other divisions of FirstRand banking group: information about Your non-compliance with this Merchant Agreement; Your application for Acquiring facilities and services; **Your request to terminate the agreement; and/or the Bank's termination of the agreement. The Bank may share information with Third Party Service providers who perform Acquiring Service on the Bank's behalf or as required by law.**

26. CONSENT TO DISCLOSURE OF INFORMATION

26.1 You consent to the Bank providing information about this Merchant Agreement; Your breach of this Merchant Agreement and/or fraudulent transactions processed by You, to other banks, Industry and/or to the Card Associations. This consent extends to any fraud prevention schemes established by the bank other banks and/or the Card Associations. The Bank will only disclose the abovementioned information when it is necessary to preserve the rights and interests of the bank, other banks, the Card Associations or the public in general.

27. CONTACT DETAILS AND CONTACT INFORMATION

27.1 You must contact the Bank on the contact numbers reflected on Your monthly statement and/or online profile with any queries and to report fraud or suspected fraud.

27.2 You are required **to report any Fraudulent Transactions by contacting the Bank's contact centre on telephone number +260 211 366972 or +27 87 312 5771**

27.3 You have the right to resolve a complaint using Alternate Dispute Resolution Mechanism.

28. FICA & SANCTIONS

28.1 The use of the Acquiring Services are subject to You providing the Bank with up to date documentation **and/or information required by the Bank to satisfy the laws in relation to Know Your Client ("KYC") from time to time (including, among others, the Financial Intelligence Centre Act and legislation against terrorism), local and international sanctions and related provisions and the Bank's policies in relation thereto.**

The Acquiring Service and products may not be used if it contravenes any of the above Terms and Conditions, card Association Rules, laws or policies.