



## Merchant Acquiring Services Agreement

The Consumer Protection Act 68 of 2008 ("CPA") requires Capitec Bank to draw the Merchant's attention to important clauses. These clauses have been highlighted in bold text throughout this Agreement. The Merchant must pay special attention to these clauses as they contain information which may have legal consequences for you.

### Consumer Protection Act

The Merchants' attention is drawn to the following clauses

- which limit the risks and liability of Capitec to the Merchant and other parties (clause 3.4, 6.2.1, 14.3, 18.1-18.3, 19.2);
- where the Merchant assumes certain risks and liabilities (clauses 5.13, 11.5); and
- where the Merchant acknowledges certain facts relating to this Merchant Agreement (clauses 6.1.1-6.1.1.3, 7.16, 15.1, 21.3.1-21.3.3).

BY SIGNING THIS AGREEMENT, I CONFIRM THAT I HAVE BEEN GIVEN AN OPPORTUNITY TO READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AND IF I REQUIRE AN EXPLANATION OF THE TERMS I MAY CONTACT CAPITEC MERCHANT SUPPORT ON 0860 66 77 06

### Section1: The parties to this Agreement are:

1.1 Capitec Bank Limited, registration number 1980/003695/06, an Authorised Financial Services and Credit Provider (NCRCP13) with VAT registration number 4680173723, a bank registered in terms of the Banks Act, 94 of 1990 and a public company duly incorporated in terms of the laws of the Republic of South Africa of 5 Neutron Street, Techno Park , Stellenbosch, 7600. (Hereinafter referred to as "Capitec", "us" or "our" or "we") and

1.2 Entity name (You, the merchant): \_\_\_\_\_  
(Hereinafter referred to as "The Merchant", "you" or "your")

Registration number   
(If applicable) and

Physical address

The business of the Merchant is that of   
(Description of the type of business you operate)

Initials: Capitec Bank Representative \_\_\_\_\_ Merchant \_\_\_\_\_

## 2. DEFINITIONS

Words and expressions used in this Agreement shall have the meanings set out hereunder:

- 2.1 **“Acquirer”** or **“Acquiring Bank”** means us, the Bank, which processes Transactions and credit payments for you. We transfer Card and other purchase information to a Card Association which in turn transmits the information to an Issuing Bank;
- 2.2 **“Acquiring Services”** means the services that we, in our capacity as Acquiring Bank, make available to you in terms of this Agreement;
- 2.3 **“Agreement”** means this Merchant Acquiring Services Agreement as amended from time to time and all annexures hereto;
- 2.4 **“Applicable Laws”** means any statute, regulation, policy, by-law, directive, notice, or subordinate legislation (including treaties, multinational conventions, and the like having the force of law), the common law, any binding court order, judgment, or decree, any applicable industry code, policy or standard enforceable by law and any applicable direction, policy or order that is given by a regulator;
- 2.5 **“Authorised Transaction”** means a debit or credit card payment for which the merchant has received approval from the card-issuing bank
- 2.6 **“Bank”** means a bank registered in terms of the Banks Act, 94 of 1990;
- 2.7 **“Banking Day”** or **“Business Day”** means any day other than a Sunday or national gazetted public holiday in the Republic of South Africa;
- 2.8 **“Batch”** means a series of electronic financial Transactions in a Settlement;
- 2.9 **“Card Association”** means an entity that facilitates card payment Transactions between the Acquirer and the Merchant and includes Mastercard and Visa;
- 2.10 **“Card/s”** means any valid and current card issued by a Bank or Card Association to process a Transaction;
- 2.11 **“Cardholder”** means the person, legal or juristic person, or other entity in whose name the Card is issued
- 2.12 **“Card Machine”** means a device that records the Card Transactions, produces the Transaction vouchers, and is used to transfer Card Transactions to us;
- 2.13 **“Card-Not-Present”** means a Transaction processed without the presence of a physical Card, in other words where the physical Card has not been swiped, dipped, or tapped using a reader, but card details are manually entered on the Card Machine;
- 2.14 **“Card Transaction”** means any commercial transaction by the Cardholder utilising a Card for payment;
- 2.15 **“Chargeback”** means a procedure where an Issuing Bank charges a Transaction back to the Acquiring Bank and the Acquiring Bank subsequently debits you in accordance with Card Association Rules;
- 2.16 **“Chip Card”** means a plastic Card embedded with an integrated circuit or chip, that communicates information with the Card Machine, which can be used online and offline;
- 2.17 **“Credit Card”** means a card issued against a credit limit with a compulsory interest-free period;
- 2.18 **“Customer”** means any person who enters into a Transaction using the Card Machine
- 2.19 **“Debit Card”** means a Card issued against a demand deposit account where Card Transactions are authorised online by the Issuer;
- 2.20 **“EMV”** means the acronym for Europay, Mastercard, Visa which enables Issuers, retailers, and consumers to issue and use Chip Cards and Card Machines with added security;
- 2.21 **“Equipment”** means Equipment purchased by you in terms of this agreement;
- 2.22 **“Fallback Transaction”** means if the chip on the Chip Card fails, the Card Transaction reverts to an online magnetic stripe Card Transaction;
- 2.23 **“Gross Settlement”** means the monthly deduction by us of Merchant commission, charges and fees, payable by you to us,
- 2.24 **“Intellectual Property Rights”** means any rights, title and interest, any knowhow (not in the public domain); invention (whether or not patented); design, goodwill, trade name, trademark (whether or not registered), or any material in which copyright subsists (whether or not registered), and all other identical or similar intellectual property as may exist anywhere in the world and any applications for the registration of such intellectual property;
- 2.25 **“Issuing Bank”** or **“Issuer”** means Capitec or another Bank or entity that issues Cards;
- 2.26 **“Loss(es)”** means all losses, liabilities, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest, and penalties);
- 2.27 **“Mastercard”** means Mastercard Asia/Pacific Pty Ltd, a Card Association, which is identified by the mark Mastercard;
- 2.28 **“MCC”** means Merchant Category Code and is a numeric representation of the type of business in which you engage.
- 2.29 **“Merchant Commission”** means the commission payable by you to us in respect of Transactions;
- 2.30 **“Merchant Portal”** means the interface where the Merchant can view Transaction and Settlement history;
- 2.31 **“Merchant Manager PIN”** means the PIN issued by us to you for purposes of authentication or any amendment of the PIN by you, which gives you access to supervisor functions on the Card Machine;
- 2.32 **“Nett-settlement”** means the deduction by us of Merchant commission, charges and fees, payable by you to us, from the Transaction Value, before Settlement of the Transaction Value.
- 2.33 **“Nominated Account”** means the Bank account nominated by you for processing payments, Settlement, and the debit by us of Merchant Commission, charges, and fees, as envisaged in this Agreement;
- 2.34 **“PASA”** means Payment Association of South Africa and your successor-in-title, being the payment system management body as approved by the South African Reserve Bank;
- 2.35 **“PCI DSS”** means Payment Card Industry Data Storage Standards as stipulated by the Card Associations which is a comprehensive set of international security requirements that help safeguard sensitive Cardholder data. You can view full details of the obligations and processes on the PCI DSS website at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)
- 2.36 **“Personal Information”** has the meaning given to it in the Protection of Personal Information Act, 4 of 2013;
- 2.37 **“Process”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 2.37.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use of information;
- 2.37.2 the dissemination through transmission, distribution, or making

- available in any other form of information; or
- 2.37.3 the merging, linking, as well as restriction, degradation, erasure, or destruction of;
- 2.38 **“Rules”** means the applicable policies, industry requirements, codes, legislation, and rules of a Card Association, PASA, or any other Bank as amended from time to time;
- 2.39 **“Settlement”** means payment into the Nominated Account of the aggregate Transaction Value by us;
- 2.40 **“Tap to Pay payment”** means the use of advanced Card technology that enables you to tap a Tap to Pay enabled Card, phone, or watch against the Card Machine to facilitate payment;
- 2.41 **“Transaction/s”** means any transaction where a Customer purchases any product or service from you through the Card Machine and for which Authorisation has been obtained ;
- 2.42 **“Transaction Value”** means the amount the Customer must pay you for the goods and/or services purchased from you in terms of a Transaction;
- 2.43 **“Transaction Voucher”** means 2 (two) paper slips printed sequentially or an electronic voucher which may be shared with the Customer
- 2.44 **“Username and PIN”** means the email address supplied by you (Username) and the PIN issued by us to you for purposes of authentication or any changes of the PIN by you, which gives you access to the Card Machine and the supervisor functions on the Card Machine. Once registered on the Card Machine it is your responsibility to update the PIN;
- 2.45 **“VISA”** means Visa International, a Card Association, which is identified by the mark “VISA”;

### 3. BACKGROUND AND INTRODUCTION

- 3.1 This Agreement sets out the terms and conditions that govern the relationship between us and you concerning the use of the Merchant Acquiring Services by you.
- 3.2 We may ask you for more information and/or document/s to comply with Applicable Laws and/or regulatory requirements to provide you with services. If requested, you must provide the information and/or document/s for us to continue with the application.
- 3.3 Our relationship will only begin if all conditions are met. This will only be determined once we have received all the requested information and/or document/s and completed the verification process.
- 3.4 **Capitec reserves the right to enter into a relationship with you, and you hereby indemnify us against any claims, losses, damages, costs, and expenses that may arise from your application being declined, the account not being opened, or the service not being provided.**
- 3.5 The outcome of your application will be communicated to you. If the outcome is successful, we will activate the Acquiring Services for you. If the outcome is unsuccessful, your application will be declined, and we will not provide you with the Acquiring Services. We don't have to provide you with specific reasons if we decline your application.

### 4. APPLICATION OF THE RULES

- 4.1 This Agreement is subject to the Rules, including the Acquiring procedures as amended from time to time. You acknowledge that the Card Associations, PASA, or any other regulatory body may amend the Rules from time to time, and as a result thereof, we may need to amend provisions of this Agreement to follow the Rules and will be done in terms of clause 19.

### 5. OUR OBLIGATIONS

- 5.1 For the duration of this Agreement, and against proper performance by you we shall:
- 5.1.1 Provide the Acquiring Services subject to the terms of this Agreement and the Card Machine to you on the basis as set out in this agreement and as amended from time to time;
- 5.1.2 Provide you with a Merchant Manager PIN and/or Username and PIN;
- 5.1.3 Provide you with reasonable technical support via telephone or email to resolve any faults relating to the use of the Acquiring Services.
- 5.2 Where you, as a result of an act or omission by you, require us to provide technical support at your premises, you shall be liable to pay us a reasonable call-out charge for such technical support.
- 5.3 We will use reasonable endeavours to assist you with settlement disputes insofar as the provision of information reasonably requested by you about such disputes is concerned. You must escalate all queries to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za) or phone 0860 66 77 06.
- 5.4 We will provide you with access to your Merchant Portal.
- 5.5 We will provide you with the necessary promotional material, subject to Capitec's Intellectual Property Rights.
- 5.6 We will process Transactions that come from you, and we shall collect, analyse, and relay information generated in connection with Transactions.
- 5.7 We will keep a record of Transactions and you will have access to such records through your Merchant Portal.
- 5.8 We reserve the right to apply Gross-Settlement at our sole discretion.
- 5.9 We will comply with PCI DSS and acknowledge responsibility for the security of the Cardholder data that we process, transmit, and store on behalf of you.
- 5.10 We may monitor your Transactions and we may suspend or terminate the Acquiring Service if there is a high level of Chargebacks or suspected fraudulent activity.
- 5.11 We will credit the Nominated account with the amount of the Card Transaction on the day following the day of receipt of the electronically transferred Card Transactions if such day is a Banking Day. If the day of receipt is not a Banking Day, the Nominated account will be credited on the next Banking Day following the receipt day.
- 5.12 We may on reasonable grounds withhold Settlement of Transactions and/or decline any Authorisation and we reserve the right to withhold settlement of a given Batch or part thereof while investigating potential irregularities or potential fraud.
- 5.13 **We will be entitled to debit the Nominated account at any time with the value of all suspected fraudulent Transactions sent to us by you as well as a fee for the costs of processing these fraudulent Transactions. Such fee will be equal to or higher than the amount of your commission which would have been payable on the Transaction. The onus shall be on you to show that such Transaction is not a fraudulent Transaction.**
- 5.14 We may hold the Transaction Value in advance for potential Chargebacks until the Chargeback process has been completed.

### 6. YOUR OBLIGATIONS

- 6.1 **Use of the Acquiring Services**
- 6.1.1 **You may not conduct unlawful business activities or violate anti-money laundering laws. You may only use**

- the Acquiring Services as provided for in this agreement, and for no other purpose and you may not allow any other party to:**
- 6.1.1.1 **use the Acquiring Services for any reason, whether legitimate or fraudulent or illegal conduct of any kind;**
- 6.1.1.2 **request, collect, solicit, or otherwise obtain access to the Acquiring Services under false or fraudulent pretences;**
- 6.1.1.3 **circumvent or modify any security mechanism used by Capitec and/or Card Association (collectively, the “Restrictions”);**
- 6.1.2 You undertake to enter into Transactions initiated through the Acquiring Service in payment of goods and/or services relating only to the business as described on the cover page, which goods and/or services may not be in contravention of any Applicable Laws.
- 6.1.3 You must within 5 (five) Business Days from becoming aware, notify us in writing should there be any change in the nature and/or classification of your business or if there is or will be a change in the ownership of your business. In such an event we will be entitled to terminate this Agreement at once with Notice to you without giving reasons or continue with this Agreement subject to any amendments that we deem appropriate, including our right to require you to re-sign the necessary agreements and documents and to risk re-assessing you.
- 6.1.4 You must ensure that you have the necessary licenses, permits, and authorisations to conduct your business and that it is renewed timeously if required by the applicable licensing authority or in terms of the applicable legislation.
- 6.1.5 You must ensure that you comply with all the Rules and contact us if you are unsure what Rules apply to you.
- 6.1.6 You must not discriminate against any Customer by setting a minimum or maximum Transaction amount as a condition of honouring a Transaction.
- 6.1.7 You are responsible for the Bank charges incurred on the Nominated Account.
- 6.1.8 You must advise us immediately if you are placed under liquidation, sequestration, or business rescue or where any of the foregoing is imminent.
- 6.1.9 You accept full responsibility for your actions, as well as the actions of your employees and your third-party service providers at all times. In other words, if your employee uses the Acquiring Service to commit fraud, you will be responsible for the consequent losses.
- 6.1.10 It is your responsibility to comply with all applicable tax legislation, including the Value-Added-Tax Act, 89 of 1991.
- 6.1.11 Card Machine rolls must be purchased by the merchant from designated suppliers as prescribed by Capitec from time to time;
- 6.1.12 You may return Cards that are left at your location to the Cardholder if he or she provides identification. If the Cardholder does not claim the Card by the close of the next business day, it must be cut in half and mailed to the address details as reflected on the reverse of the Card.
- 6.1.13 Chip Cards and “Tap to Pay” capabilities will determine whether to obtain an online/offline Authorisation before the completion of the Transaction and will be determined by the Issuing Bank
- 6.2 **You shall, throughout this Agreement:**
- 6.2.1 **accept full responsibility for, and as far as the law allows, indemnify and hold us harmless against any fines and penalties imposed upon us and/ or you, arising out of your, your employees, or your third-party service provider’s actions and/or omissions;**
- 6.2.2 provide us within 5 (five) Business Days with any information and documentation we may reasonably require from time to time.
- 6.2.3 provide the reasonable and necessary support to assist us in fulfilling your obligations in terms of the Agreement.
- 6.2.4 provide 5 (five) Business Days’ prior written notification to us of any changes in the banking details of the Nominated Account.
- 6.2.5 check all Transaction details and Transaction reports and notify us of any alleged discrepancies immediately when you become aware of the discrepancies but by no later than 30 (thirty) days after the date of the relevant Transaction(s).
- 6.2.6 undertake to display all promotional material that we supply to you, indicating Card Association acceptance, and to replace or remove such material when we request you to.
- 6.2.7 not charge more than your normal cash price for the goods and/or services to subsidise any fees or costs that you may incur when processing Transactions.
- 6.2.8 diligently operate new capabilities to the Acquiring Services that we introduce with the necessary skill and care.
- 6.2.9 perform all Transaction obligations to Customers immediately after a Transaction has been completed including the dispatch or fulfilment of goods or services agreed to be supplied; dispatch the goods and/or services as soon as reasonably practicable after you receive an authorised Receipt unless the Customer has agreed to a delayed delivery of goods or performance of services that was properly disclosed to the Customer by you at the time of the Transaction;
- 6.2.10 only use the Acquiring Services within the Republic of South Africa and we require that you confirm the location by enabling geo-location services on the device to show that you are within the borders of South Africa for us to enable the acceptance of payments.
- 6.2.11 immediately notify us by phoning 0860 66 77 06 or send us an email to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za) if you are unable to process Transactions for any reason.
- 6.2.12 be responsible for the cost of the infrastructure required for the Card Machine to operate and to be able to communicate with e.g. extension leads, double adaptors, the cost associated with communications, etc.);
- 6.3 **Prohibited Business Activities**
- You may not use the Acquiring Service any of the following:
- 6.3.1 the sale of any goods or services that violates any Applicable Law;
- 6.3.2 pornography in all media types
- 6.3.3 the sale of illegal pharmaceuticals, illegal drugs, and/or drug paraphernalia;
- 6.3.4 the sale or marketing of any counterfeit goods;
- 6.3.5 illegal gambling, lotteries (including sale of lottery tickets), games of chance (including sweepstakes and raffles), sports forecasting or odds-making;
- 6.3.6 the illegal sale of tobacco and/or alcohol products.
- 6.4 **Card-Not-Present (“CNP”) Transactions**
- 6.4.1 You may process CNP Transactions only with our written consent, given or not in our sole discretion. A CNP addendum will have to be signed.
- 6.5 **Processing of EMV Chip Card Transactions**
- 6.5.1 The Cardholder shall be present when the Card is being processed and shall verify the Card Transaction by entering his/her valid PIN on the Card Machine when requested to do so.

- 6.5.2 You must ensure that Card Transactions are performed in a secure environment.
- 6.5.3 If the chip on a Chip Card fails, you may process a Fallback Transaction. To prevent fraudulent Transactions, you must ensure, when processing a Fallback Transaction that a valid Card is presented for payment by the Cardholder.
- 6.5.4 Should we request information regarding a Card Transaction, you shall provide such information in the form of a Transaction voucher within 3 (three) business days of the request.
- 7. TRANACTING WITH CUSTOMERS**
- 7.1 Each Transaction with a Customer is subject to your specific terms and conditions and is a contractual relationship directly between you and the relevant Customer.
- 7.2 You are responsible for checking the details of each Transaction. We will process the Transaction and provide Acquiring Services but we are not responsible for any loss you may suffer if the details of a Transaction are incorrect.
- 7.3 You shall only accept and process cards that are:
- 7.3.1 genuine, signed, correct, and valid;
- 7.3.2 issued by a Bank or a Card issuer in the original form;
- 7.3.3 authorized for use by us;
- 7.3.4 presented by the Cardholder;
- 7.4 You shall not discriminate against Cards issued by the same Card Association;
- 7.5 In case a refund is needed you shall:
- 7.5.1 process a refund for the Transaction, on the Card on which the original Transaction was processed, if the Card allows the Transaction type.
- 7.5.2 give a refund by any other payment method if the Card does not allow a refund Transaction
- 7.5.3 give a refund by any other payment method where you do not have refund Transactions activated on the Card Machine or where the MCC has been blocked for refunds.
- 7.6 You shall ensure that the amount entered on the Card Machine is the correct amount, corresponding with the price of the goods and/or services.
- 7.7 You must ensure that all Transactions are electronically transferred to us within 1 (one) day of the Transaction date.
- 7.8 You shall try to retain a Cardholder's Card if the Card Machine requests you to retain the Card or our Merchant Support instructs you to do so.
- 7.9 You shall not, under any circumstances attempt, cause to attempt or assist any other person to attempt, or be allowed or entitled in any way whatsoever to store Track 1 or Track 2 information except for the data required for reconciliation purposes in terms of the Rules;
- 7.10 You shall not retain or store Card Verification Value 2 (CVV2) or CVC data electronically after the Authorisation of a Card Transaction;
- 7.11 You shall not sell, provide, or exchange any information relating to the Card unless this is done with the written consent of Capitec;
- 7.12 You shall ensure that all your employees receive fraud prevention training and know how to use the Card Machine;
- 7.13 On presentation of Transactions for payment, you warrant that:
- 7.13.1 the transaction has been submitted by you;
- 7.13.2 goods or services to the value of the Transaction have been supplied and no additional charges have been included;
- 7.13.3 the information printed on the Transaction voucher is true and correct; and
- 7.13.4 there has been due compliance with all the provisions of this Agreement.
- 7.14 You must query any Settlement that does not reflect in the Nominated Bank Account within 7 (seven) days of the date of the Transaction.
- 7.15 A Transaction is invalid if:
- 7.15.1 the underlying commercial transaction is or appears to be illegal and/or unenforceable;
- 7.15.2 you accept a mutilated, defaced, blank, or illegible Card;
- 7.15.3 you accept a Credit Card to collect or refinance an existing debt;
- 7.15.4 you submit a Transaction on behalf of another party;
- 7.15.5 you fail to adhere to the provisions of this Agreement;
- 7.16 **The value of an invalid Transaction shall be immediately repayable and may be debited against your Nominated account at any time or be recovered from you in any other way.**
- 7.17 You will be liable to us for the full amount of the Chargeback as well as any associated fees, penalties, and charges.
- 7.18 You agree that you will assist us in investigating any Transactions and that we will share your Personal Information with the relevant Customers, Issuers, Banks, and other financial institutions and regulators as required to investigate a Chargeback.
- 8. YOUR WARRANTIES**
- 8.1 You warrant to us that the information you provide to us in connection with the use of the Acquiring Services is complete, true, and correct and that you will comply with this Agreement and all Applicable Laws relating to the sale of products and services to Customers.
- 8.2 You warrant that you are not engaged in any prohibited or illegal activity and that you have the right, power, and ability to enter into and perform under this Agreement.
- 8.3 It is your sole responsibility to determine whether the Acquiring Services are suitable and adequate for your needs. You acknowledge that the provisions of this clause are material in our decision to provide the Acquiring Services.
- 8.4 You warrant that your address and contact details are correct, and you agree that if you do not notify us of changes to your contact details, we will not be liable for any loss you may suffer if we cannot contact you or if you do not receive notifications or other documents or information from us.
- 9. DATA PROTECTION**
- 9.1 You undertake to Process Personal Information in compliance with Data Protection Legislation.
- 9.2 We respect your privacy and we process your personal information lawfully to the extent necessary to provide you with quality, secure, and affordable products and services. Our personal information processing practices are more fully described in our Privacy Notice on the Website: <https://www.capitecbank.co.za/privacy-centre/>
- 9.3 We process personal information that is necessary for providing you with our products and services, or that the law requires to process; or that may be appropriate for the legitimate conduct of banking, or that you have expressly consented for us to Process.
- 9.4 We take appropriate technical and organisational measures to safeguard your personal information against unauthorised access and loss or damage to the information.
- 9.5 You may request confirmation of what personal information we process and exercise any of your rights in terms of data protection and privacy law, as described on our website: <https://www.capitecbank.co.za/privacy-centre/>

9.6 By accepting this Agreement and by utilising any products or services offered by us you acknowledge and hereby agree that in order to:

- 9.6.1 conclude and fulfil contractual terms or obligations to you;
  - 9.6.2 comply with obligations imposed by law; and
  - 9.6.3 to protect or pursue your, our, or a third party's legitimate interests, including offering you products and services, including personalised offers, that may be of value to you;
- 9.7 Your personal and special personal information, including credit bureau information, geolocation tracking and transactional behaviour data pertaining to you, may be processed through centralised functions and systems across entities (including joint ventures and companies) in the Capitec Group and may be used for the purposes of risk monitoring and analysis to improve, develop, price, and market products or services, in the manner, and with the appropriate controls as set out in our Privacy Notice

## 10. PERSONAL INFORMATION

- 10.1 To use the Acquiring Service you must provide Capitec with your Personal Information which we request when you apply for the Acquiring Service. If you don't or cannot provide Capitec with the required Personal Information, Capitec may decline your application or terminate this Agreement immediately, whichever is applicable.
- 10.2 You authorise us to verify the Personal Information that you submit and to retain and process any Personal Information you provide;
- 10.3 You authorise to furnish any confidential information relating to any account operated by you with us for any reason to any person (including, without limitation, any credit bureau) per generally accepted banking practice and to visit your business premises.
- 10.4 You give Capitec consent that it may share your Personal Information with any third parties to provide the Acquiring Service.
- 10.5 You grant Capitec consent to disclose your Personal Information to any Card Association, Issuer, and other financial institution or Bank for use in any fraud prevention schemes.
- 10.6 You also grant Capitec consent to disclose your Personal Information to the Member Alert High-Risk System (a system hosted by Mastercard referred to as MATCH which is a database of merchants and individuals who have been terminated by their Acquirers for cause and/or to the Merchant Performance Reporting Service to help Capitec and other Issuers to identify merchants who are, or are suspected of being, or are likely to become, involved in fraud or any other fraud prevention matter).

## 11. PURCHASE OF CARD MACHINE

- 11.1 In the event that you purchase the Card Machine from us, we will supply you with the Card Machine after receipt of the Purchase price. The amount, payable by you will be as advertised from time to time on the Capitec Website. [www.capitecbank.co.za](http://www.capitecbank.co.za)
- 11.2 The ownership of the Card Machine provided by us shall transfer to you on delivery. Upon termination of this Agreement, you may keep the Card Machine.
- 11.3 The warranty of the Card Machine is 12 (twelve) months and will take effect upon delivery of the new Card Machine (Only applicable to the first card machine purchased and not subsequent replacements) to you. The warranty is limited to faulty workmanship or defective materials and does not cover accidental or malicious damage, hazard, humidity,

liquid, ingress, electrical power stress, or other environmental conditions not common in the normal use of the Card Machine. Where you have opted to use your device configured by us (i.e., acquired a second-hand device from an existing Capitec Machine Merchant) the remainder of the existing Card Machine warranty will remain in force. Any returns or exchanges of the Card Machine by you during the warranty period will be by courier only and you will be responsible for the associated costs.

11.4 If damage caused to the Card Machine was not by way of normal wear and tear, you shall pay us the cost of a replacement device on demand at our prevailing standard rates. A certificate signed by any of Capitec's managers, whose appointment and authority need not be proved, shall be rebuttable proof of the amount of the replacement costs of the device.

11.5 **All risks relating to the Card Machine including, but not limited to, your loss, damage, or destruction, arising from any cause whatsoever (including all acts of God), will pass to you on delivery of the Card Machine.**

11.6 You undertake to comply with the following obligations concerning the use and ownership of the Card Machine:

11.6.1 You shall ensure that only trained employees are allowed to operate or use the Card Machine and that adequate security and control procedures are in place to ensure that no third party can have access to or use the Card Machine, or remove the Card Machine from your premises, or operate the Card Machine away from your premises.

11.6.2 You shall not use the Card Machine in conjunction with any software, hardware accessory, attachment, or additional equipment other than that which has been supplied by or approved in writing by Capitec.

11.6.3 You shall comply with all laws, export and exchange controls, regulations, rules, and, including all rules imposed by us and the banking and payment associations. You shall not reverse engineer, decompile, disassemble, translate, modify or alter the Software, or create any derivative works based upon the Software, or any part thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software or any part thereof you shall not remove from the Card Machine, or alter, any trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products.

11.6.4 You undertake to package the Card Machine appropriately and sufficiently when sending it by post/ courier. Card Machines returned under warranty not so packaged will be treated as Merchant Damaged and the warranty voided. The courier or postage costs will be for your account.

11.7 All Intellectual Property Rights that exist concerning the Card Machine belong to the Supplier, the Manufacturers, or their licensors. Nothing contained in this Agreement assigns such Intellectual Property Rights to you. The only right you have concerning such Intellectual Property Rights, is the right to use the Card Machine under the terms of this Agreement. You agree that we have the right to enforce this provision against you and that you shall be liable to the Supplier for any breach if it (or any part thereof) infringes the Intellectual Property Rights of any third party, or where any third party infringes (or may infringe) any of the Intellectual Property Rights that exist in the Card Machine and we will inform the Supplier.

11.8 We hereby grant you a non-exclusive sub-license to use the Card Machine for the purpose set out in this Agreement, and this sub-license shall not be capable of being sub-licensed and you agree to use the Card Machine software strictly in terms of this agreement.

12. **COMMENCEMENT AND DURATION**

- 12.1 Notwithstanding the date of signature, this Agreement shall come into effect on the date on which the suspensive condition in clause 12.3 is fulfilled or waived by us ("Effective Date"), and shall continue for an indefinite period thereafter. Either party shall have the right to terminate this Agreement at any time by giving 30 (thirty) days prior written notice to the other party.
- 12.2 Notwithstanding clause 12.1 above, we reserve the right to cancel this Agreement with immediate effect and without liability, upon written notice to you in the event of a breach by you of any term or condition of this Agreement or if you do not use the Acquiring Service for more than 3 (three) consecutive month, or if you fail to provide us with any due diligence information requested by us from you for purposes of complying with financial crime risk management legislation and policies
- 12.3 After you sign this agreement it will only be binding if we approve your application within 20 business days. We may decide to extend the period or waive it for our benefit alone, in writing.
- 12.4 Termination of this Agreement shall not affect any existing obligations.

13. **FEES AND COMMISSION**

- 13.1 You hereby grant us the right and authority to debit your Nominated Account (in terms of the Debit Order Authorisation attached hereto Annexure A) daily with:
  - 13.1.1 Your commission fees set out as follows:
    - 13.1.1.1 \_\_\_\_\_% of the aggregate Transaction Value of all Credit Card transactions per day,
    - 13.1.1.2 \_\_\_\_\_% of the aggregate Transaction Value of all Debit Card transactions per day,
    - 13.1.1.3 \_\_\_\_\_% of the aggregate Transaction Value of all Card Not Present and Foreign Card transactions per day,
    - 13.1.1.4 The Merchant Commission shall be calculated daily and shall be paid daily by nett settlement;
  - 13.1.2 reversals, overpayments, disputes, or Chargebacks;
  - 13.1.3 any fines levied by any Card Association, any penalty fees or assessment fees charged to us as a result of your non-compliance with this Agreement or the Rules;
  - 13.1.4 the costs of any call-out and/or Ad Hoc charges; and
  - 13.1.5 any other costs, charges, or recoveries payable in terms of this Agreement.
- 13.2 You agree that we shall have the right to recover from you and may continue to debit the Nominated Account after termination of this Agreement, with any outstanding amounts, including but not limited to the amounts in clause 13.1 amounts of money owed by you to us are paid in full.
- 13.3 You must ensure that you retain sufficient funds in your Nominated Account at all times to cover the amounts that are due to Capitec, including any Losses.
- 13.4 The rights granted to us in this clause shall survive termination of this Agreement.
- 13.5 We may, in our sole discretion and from time to time, increase or decrease your Commission fees. We will notify you of the increase or decrease 30 (thirty) Calendar Days before the effective date thereof.
- 13.6 We reserve the right to charge you other fees at any time but will notify you of such fees 30 (thirty) Calendar Days before they become applicable.
- 13.7 All amounts exclude VAT and are payable free of deduction or set-off.

- 13.8 If we do not provide you with a statement it will not constitute a waiver of our right to claim the Commission fees or charges payable by you in terms of this Agreement.
- 13.9 We will be entitled to debit the Nominated Account with an amount equal to the amount of the Chargeback.

14. **INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property Rights in and to Acquiring Services and Merchant Portal belong to us and you do not have any Intellectual Property Rights thereto or in any improvements or variations that may be made to it.
- 14.2 You shall not use Capitec's name, trademark, or trade name, whether registered or not, in publicity releases, advertising, or in any other manner, without having secured the prior written approval of Capitec. Where have provided you with written approval as contemplated above, you shall in no way represent, except as specifically permitted by Capitec, that it has any right, title, or interest in or to the name, trademark, or trade name, whether registered or not.
- 14.3 **You indemnify us against all actions, claims, costs, demands, expenses, and other liabilities suffered or incurred by us as a result of any third-party claims initiated and/or instituted against us relating to your unauthorised use of the Acquiring Services and Merchant Portal, the contents therein or any other Intellectual Property Rights flowing from them.**
- 14.4 Nothing contained in this Agreement shall be construed as granting, by implication or otherwise, any license or right to use any Intellectual Property without the express permission of Us or such party that may own the trademark.
- 14.5 Any breach of this clause 14 entitles us, in addition to our other remedies available in law, to take legal action against you without prior written notice and you agree to reimburse the costs associated with such legal action on an attorney and own client scale.
- 14.6 Subject to any Intellectual Property Rights held by any other third parties, We retain all Intellectual Property and Intellectual Property Rights in and to all Intellectual Property in connection with the Acquiring Services

15. **COOLING-OFF PERIOD**

- 15.1 **If we approached you in person or by mail or other electronic communication to promote the Acquiring Services and this Agreement is a result of such promotion, you have the right to cancel this Agreement by written notice, within 5 (five) Business Days after the date on which this Agreement was concluded or the Card Machine was delivered to you.**
- 15.2 If you elect to cancel the purchase agreement within the cooling-off period, you will only be allowed to do so if the original packaging of the Card Machine has not been opened or used whatsoever.
- 15.3 You will be responsible for returning the purchased Card Machine to us by post/courier at your cost.

16. **CONFIDENTIAL INFORMATION**

- 16.1 You hereby authorise us to request, receive, and collect any confidential information from any credit bureau or other person to assess your application, review your performance under this Agreement, and disclose your confidential information to any credit bureau, any fraud prevention service, or to any of our service providers, sharing positive and adverse information.

Initials: Capitec Bank Representative \_\_\_\_\_ Merchant \_\_\_\_\_

- 16.2 It is specifically recorded that if you are in default of your obligations in terms of this Agreement, we may disclose your confidential information about how you conduct your accounts to credit bureaus.
- 16.3 You acknowledge that all data, material, and information, provided to you by Capitec, or which has or will come into your possession or knowledge, or to which you may be exposed, shall constitute confidential and proprietary information, and where applicable, Intellectual Property belonging to Capitec, which disclosure to or use by third parties will be damaging to Capitec.
- 16.4 You, therefore, agree to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this 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.
- 16.5 Confidential and proprietary information will not include any information which:
- 16.5.1 at the time of disclosure is generally known by the public without breaching the provisions of this Agreement; or
- 16.5.2 is known to or in your possession before it is received from us (save where it was previously received by you under an obligation of confidence).
- 16.6 The confidentiality obligations under this Agreement shall survive the termination of this Agreement for any reason whatsoever.

17. **WARRANTIES AND DISCLAIMERS**

- 17.1 The Acquiring Services is provided "as is," "as available," and "with all faults" and the entire risk as to the quality and performance of the Acquiring Services is with you. All warranties concerning the Acquiring Services, express or implied, including any warranties of fitness for purpose, quality of information, title, and fitness for a particular use or purpose are disclaimed.
- 17.2 We make no guarantees and disclaim any implied warranties or representations about the Acquiring Services and its accuracy, relevance, timeliness, or completeness. We do not warrant that the Acquiring Services will be error-free or uninterrupted or will function to meet your requirements.
- 17.3 We will not accept liability for incorrect Transaction details that you submit to us.

18. **LIMITATIONS OF LIABILITY AND INDEMNITIES**

- 18.1 **To the extent permitted by Applicable Law and regardless of whether any remedy in this Agreement fails of its essential purpose or otherwise, we or any of our, employees, agents, directors, officers, subcontractors, successors, and assigns ("Indemnified Parties") shall not be liable to you for any direct, indirect, special, consequential, or any other damages whatsoever, including without limitation, any property damage, loss of use, loss of business, economic loss, loss of data, or loss of profits without regard to the form of action (including, but not limited to, contract, negligence, or other actions) arising out of or in connection with (a) this Agreement; or (b) the unauthorised access by any party to Capitec's services and systems, including your Personal Information; even if any of the Indemnified Parties have been advised of the possibility of those damages. You waive any claims, now known or later discovered, that it**

**may have against the Indemnified Parties arising out of your use of the Acquiring Services.**

- 18.2 **You agree to defend, indemnify and hold harmless the Indemnified Parties from and against and all claims, liabilities, damages (actual and consequential), Losses, fines, and expenses (including but not limited to legal and other professional fees) arising from or in any way related to (a) your use of the Acquiring Services, (b) your breach of this Agreement, (c) your or any of your staff's negligence, fraud wilful misconduct; and (d) claims of intellectual property infringement, breach of privacy, or violation of any Applicable Law.**
- 18.3 **You agree that you indemnify us against any liability arising from any dispute you may have with a Customer in respect of any goods and/or services sold by you to the Customer using the Acquiring Service, or any claim by a Customer of your use of the Customer's Personal Information.**

19. **AMENDMENTS AND CHANGES**

- 19.1 We reserve the right to amend the terms of this Agreement upon 20 (twenty) Business Days notice to you. If you do not accept the amendments to this Agreement you shall be entitled to terminate this Agreement within the 20 (twenty) Business Days' notice period, failing which, you shall be deemed to have accepted all amendments.
- 19.2 **We may stop, modify, or change the Acquiring Services at any time. Such change may also require you to update your IT Facilities at your own cost so that they remain compatible and interface correctly with the Acquiring Services. We will have no liability or obligation to you about any modifications or changes it makes to the Acquiring Services.**

20. **NOTICES**

- 20.1 You choose the address on the first page of this Agreement as your chosen address for receiving legal notices and for carrying out or enforcing this agreement by us.
- 20.2 We choose 5 Neutron Road, Techno Park, Stellenbosch as our address for receiving legal notices.
- 20.3 We may, by written notice to the other, change our addresses but it must always be a street address within the Republic of South Africa.

21. **GENERAL**

- 21.1 No waiver and/or amendments of this Agreement will be allowed, unless it is in writing and signed by us and you.
- 21.2 Your rights and obligations in terms of this Agreement may not be transferred or assigned without Capitec's prior written consent.
- 21.3 **No Provision in this Agreement:**
- 21.3.1 **limit or exempt us from any liability (including, for any Loss directly or indirectly attributable to the gross negligence or wilful default of us or that of any other person acting for or controlled by us) to the extent that the law do not allow such limitation or exemption;**
- 21.3.2 **requires you to assume risk or liability, to the extent that the law does not allow such an assumption of risk or liability; or**
- 21.3.3 **limits or excludes any warranties or obligations that are implied in this Agreement by the CPA (to the extent applicable) to the extent that the law does not allow**

Initials: Capitec Bank Representative \_\_\_\_\_ Merchant \_\_\_\_\_



**them to be limited or excluded.**

- 21.4 This Agreement is the entire agreement between us and you regarding your use of the Services as contemplated herein and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter.
- 21.5 If this agreement is signed electronically, you acknowledge and understand that such an electronic signature will be executed using a one-time PIN ("OTP") that will be sent to you based on the information that you have previously provided to us, or with In-App authorisation from your Capitec App.

**22. INTERPRETATION**

- 22.1 Clause headings are for convenience only and will not be used for purposes of interpreting this Agreement.
- 22.2 Words and expressions will bear the meanings assigned

to them and related expressions will bear corresponding meanings.

- 22.3 Any reference to the singular includes the plural and vice versa.
- 22.4 Any reference to natural persons includes legal persons and vice versa and references to one gender include the other gender.
- 22.5 This Agreement is subject to South African law and the parties submit to the jurisdiction of the South African courts.
- 22.6 A certificate signed by any of Capitec's managers, whose appointment and authority we need not prove, shall be rebuttable proof of the amount owing by you to us in terms of and under this Agreement for all purposes including proof of claims against deceased and insolvent estates, to the extent that we may obtain default judgment or summary judgment or provisional sentence on the strength of such certificate.

**The Merchant**

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

D	D	M	M	Y	Y	Y	Y		

Signature \_\_\_\_\_

Merchant ID Number

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**Capitec Bank Limited**

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

D	D	M	M	Y	Y	Y	Y		

Signature \_\_\_\_\_

Merchant Service CP Number

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