



## 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 the Merchant.

### Section 1: 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, herein represented by:

Name of representative \_\_\_\_\_

Designation \_\_\_\_\_  
(Hereinafter referred to as "Capitec") and

1.2 Entity name \_\_\_\_\_

Registration number \_\_\_\_\_  
(If applicable) and

Physical address \_\_\_\_\_  
\_\_\_\_\_

(Hereinafter referred to as "The Merchant", "you" or "your")

The business of the Merchant is that of \_\_\_\_\_  
\_\_\_\_\_

(Full description of the nature of the business as described in the incorporation documents)

### Value Added Services

Personalised automated and non-automated communications:

To assist you, the Merchant, with personalised financial services while protecting your personal information, we undertake to responsibly process personal information (as defined in the Protection of Personal Information Act 4 of 2013) relating to the Merchant, as an identifiable existing juristic person, as well as relevant transactional data to provide additional value to Merchants through the following processing activities:

- Analyse the type of transactions performed to provide insights and make recommendations where appropriate (Insights and Next Best Actions)
- Analyse usage data to provide Merchant with personalised/customised information relating to product and services that may benefit the Merchant (Behavioural/Marketing)
- Pre-assesses Merchant in order to give you further access to products and services, limit changes, discounts and incentives (Pre-assessments)
- Statistical and other analysis to evaluate and improve existing and new personalised/customised products and services to benefit Merchants. (Analysis)

### Collection and/or Sharing with Third-Parties

Capitec may process personal information (as defined in the Protection of Personal Information Act 4 of 2013) and including such personal information relating, where applicable, to the Merchant as an identifiable existing juristic person collected from or shared with our approved Third-Parties, locally and outside the country, as well as within the Capitec Group to provide Merchants with new/improved products and services, and/or personalized offers to your benefit. Approved Third-Parties must comply with our privacy policies and applicable law.

### Data Protection

Capitec respects the Merchant's privacy and Capitec processes the Merchant's personal information (as defined in the Protection of Personal Information Act 4 of 2013) lawfully to the extent necessary to provide the Merchant with quality, secure and affordable products and services. Capitec's personal information processing practices are more fully described on its Privacy Centre on the Capitec website <https://www.capitecbank.co.za/privacy-centre/>

Capitec processes personal information that is necessary for the purpose of providing the Merchant with Capitec's products and services, or that the law requires Capitec to process; or that may be appropriate for the legitimate conduct of banking, or that the Merchant has expressly consented to Capitec processing.

Capitec takes appropriate technical and organisational measures to safeguard the Merchant's personal information against unauthorised access and loss or damage to the information.

The Merchant may request confirmation of what personal information Capitec processes and exercise any of the Merchant's rights in terms of data protection and privacy law, as described on the Capitec website. Capitec's personal information processing practices are more fully described on its Privacy Centre on the Capitec website <https://www.capitecbank.co.za/privacy-centre/>

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 the Bank or financial institution, which processes Transactions and credit payments for the Merchant. The Acquiring Bank transfers Card and other purchase information to a Card Association and the Card Association in turn transmit the information to an Issuing Bank and for purposes of this Agreement, the Acquirer or Acquiring Bank will be Capitec;
- 2.2 **“Acquiring Services”** means the services that Capitec, in its capacity as Acquiring Bank, makes available to the Merchant 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 **“AMT”** stands for authenticated mobile Transaction and means a Card Not Present Bank-PIN-authenticated mobile Transaction.
- 2.5 **“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;
- 2.6 **“Authorisation”** means the process whereby the Acquiring Bank verifies various information, including, whether there are sufficient funds available in a Customer’s Bank account to enter into a Transaction with the Merchant, PIN verification and any other related activity related to authorisation. Should Capitec receive confirmation from the Issuing Bank that it is satisfied that all items have been verified, Capitec shall issue a message to the Merchant “Authorising” the intended Transaction. Should Capitec receive confirmation from the Issuing Bank that there are insufficient funds in the Customer’s Bank account or where an item has not been verified, the Transaction will be declined.
- 2.7 **“Bank”** means a bank registered in terms of the Banks Act, 94 of 1990;
- 2.8 **“Banking Day” or “Business Day”** means any day other than a Sunday or national gazetted public holiday in the Republic of South Africa;
- 2.9 **“Batch”** means a series of electronic financial Transactions in a Settlement;
- 2.10 **“Budget”** means the ability to process a Transaction whereby the Cardholder pays off the Transaction to the Issuing Bank over a specified period of time;
- 2.11 **“Card Association”** means an entity which facilitates Transactions between the Acquirer and the Merchant and include Mastercard and Visa;
- 2.12 **“Card/s”** means any valid and current card issued by a Bank or Card Association for the purposes of processing a Transaction;
- 2.13 **“Cardholder”** means the person, legal person or other entity in whose name the Card is issued
- 2.14 **“Card Machine”** (also known as POS Device or MPOS Device) means a device that records the Card Transactions, produces the Transaction vouchers and which is used to transfer Card Transactions to Capitec;
- 2.15 **“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 by means of a reader, like MO/TO Transactions;
- 2.16 **“Card Transaction”** means any commercial transaction effected by the Cardholder utilising a Card for payment;
- 2.17 **“Chargeback”** means a procedure where an Issuing Bank charges a Transaction back to the Acquiring Bank and the Acquiring Bank subsequently debits the Merchant in accordance with the Rules;
- 2.18 **“Chargeback Fee”** means an administration fee that Capitec charges the Merchant for processing a Chargeback; as set out in Annexure A;
- 2.19 **“Chip Card”** means a plastic Card embedded with an integrated circuit or chip, that communicates information to the Card Machine, which can be used online and offline;
- 2.20 **“Credit Card”** means a card issued against a credit limit with a compulsory interest free period;
- 2.21 **“Customer”** means any person who enters into a Transaction using the Card Machine or QR Code
- 2.22 **“Data Protection Legislation”** means any and all Applicable Laws relating to the protection of personal information in force in the Republic of South Africa;
- 2.23 **“Debit Card”** means a Card issued against a demand deposit account where Card Transactions are authorised online by the Issuer;
- 2.24 **“Embossed Card”** means a Card issued by one of the Card Associations which has the Card number embossed on the face of the plastic, as defined by the Card Association rules
- 2.25 **“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
- 2.26 **“Equipment”** means Equipment rented to the Merchant or purchased by the Merchant in terms of this agreement, as set out in Annexure A
- 2.27 **“Fallback Transaction”** means in the event that the chip on the Chip Card fails, the Card Transaction reverts to an online magnetic stripe Card Transaction.
- 2.28 **“Floor limit”** means the maximum monetary amount, as prescribed by the Card Association from time to time, at or above which the Merchant must obtain an online Authorisation before completing the Transaction, as set out in Annexure A
- 2.29 **“Intellectual Property Rights”** means any and all rights, title and interest, any knowhow (not in the public domain); invention (whether or not patented); design, goodwill, trade name, trade mark (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;
- 2.30 **“Issuing Bank” or “Issuer”** means Capitec or another Bank or entity that issues Cards;
- 2.31 **“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);
- 2.32 **“Manual Entry”** means the keying in of a Card number into the Card Machine to effect a Card Transaction without swiping, inserting or tapping the Card
- 2.33 **“Mastercard”** means Mastercard Asia/Pacific Pty Ltd, a Card Association, which is identified by the mark Mastercard;
- 2.34 **“MCC”** means Merchant Category Code and is a numeric representation of the type of business in which the Merchant engages.

- 2.35 **“Merchant Commission”** means the commission payable by the Merchant to Capitec in respect of Transactions, calculated in accordance with Annexure A;
- 2.36 **“Merchant Portal”** means the interface where the Merchant can view Transaction and Settlement history;
- 2.37 **“Merchant Supervisor PIN”** means the PIN issued by Capitec to the Merchant for purposes of authentication or any amendment of the PIN by the Merchant, which gives the Merchant access to supervisor functions on the Card Machine;
- 2.38 **“MO/TO Transactions”** means mail order and/or telephone order Card Transactions;
- 2.39 **“MPOS Device”** (also known as Card Machine) means device that records the Card Transactions, produces electronic Transaction Vouchers in the Merchant App and which is used to transfer Card Transactions to Capitec
- 2.40 **“Nett-settlement”** means the deduction by Capitec of Merchant commission, charges and fees, payable by the Merchant to Capitec, from the Transaction Value, prior to Settlement of the Transaction Value.
- 2.41 **“Nominated Account”** means the Bank account nominated by the Merchant for processing payments, Settlement and the debit by Capitec of Merchant Commission, charges, rentals and fees, as envisaged in this Agreement;
- 2.42 **“PASA”** means Payment Association of South Africa and its successor-in-title, being the payment system management body as approved by the South African Reserve Bank;
- 2.43 **“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)
- 2.44 **“Personal Information”** has the meaning given to it in the Protection of Personal Information Act, 4 of 2013;
- 2.45 **“POS Device”** (also known as Card Machine) means device that records the Card transactions, produces printed Transaction Vouchers and which is used to transfer Card transactions to Capitec
- 2.46 **“Process”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 2.46.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use of information;
- 2.46.2 the dissemination by means of transmission, distribution or making available in any other form of information; or
- 2.46.3 the merging, linking, as well as restriction, degradation, erasure or destruction of information.
- 2.47 **“Purchase Price”** means the amount payable by the Merchant to Capitec for the MPOS as set out in Annexure A;
- 2.48 **“QR Code”** means a Quick Response Code generated to enable the Merchant to process Transactions. It is a machine-readable code consisting of either an array of black and white squares or a linked numeric code, typically used for storing URLs or other information. The QR Code can be a Static QR code or a Dynamic QR Code which for purposes of this Agreement means:
- 2.48.1 **“Dynamic QR Code”** - a QR code that is linked to a specific Transaction;
- 2.48.2 **“Static QR Code”** - a QR Code that has a predetermined value or will allow the Customer to input value;
- 2.49 **“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;
- 2.50 **“Settlement”** means payment into the Nominated Account of the aggregate Transaction Value by Capitec;
- 2.51 **“Smart Device”** means a compatible electronic device operated by the Customer, including a smartphone or a tablet;
- 2.52 **“Tap to Pay payment”** means the use of advanced Card technology that enables you to tap a Tap to Pay enabled Card against the Card Machine in order to facilitate payment;
- 2.53 **“Transaction/s”** means any transaction where a Customer purchases any product or service from a Merchant through the Card Machine or QR Code and for which Authorisation has been obtained or which is below the Floor limit;
- 2.54 **“Transaction Value”** means the amount the Customer must pay the Merchant for the goods and/or services purchased by the Customer in terms of a Transaction;
- 2.55 **“Transaction Voucher”** means in relation to the POS Device, 2 (two) paper slips printed sequentially by the POS Device as proof of a Card Transaction. In relation to the MPOS Device an electronic voucher is created in the Merchant App which may be shared with the customer according to their preference.
- 2.56 **“VISA”** means Visa International, a Card Association, which is identified by the mark “VISA”;
- 2.57 **“3D Secure”** means an authentication method approved by a Card Association that enables the secure processing of payment Transactions in E-Commerce.
3. **BACKGROUND AND INTRODUCTION**
- 3.1 This Agreement sets out the terms and conditions which govern the relationship between Capitec and the Merchant in relation to the use of the Merchant Acquiring Services by the Merchant.
- 3.2 Capitec may ask you for further information and/or document/s in order 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 The 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 complete the verification process.
- 3.4 **Capitec reserves the right to enter into a relationship with you, and you hereby indemnify us against any and all claims, losses, damages, costs and expenses that may arise from your application being declined and the account not being opened or the service not being provided.**
- 3.5 The outcome of your application will be communicated to you by an e-mail or a phone call. If the outcome is successful, Capitec will activate the Acquiring Services for you. If the outcome is unsuccessful, your application will be declined and we will not provide you with a service or enter into a relationship with you.
4. **APPLICATION OF THE RULES**
- This Agreement is subject to the Rules, including the Acquiring procedures as amended from time to time. The Merchant acknowledges that the Card Associations, PASA or any other regulatory body may amend the Rules from time to time, and as a result thereof, Capitec may need to amend provisions of this Agreement in order to comply with such Rules. Any such amendment to this Agreement for compliance with the Rules will be done in accordance with the provisions of clause 26.

5. **RESTRICTIONS**

- 5.1 The Merchant may not use the Acquiring Services for any other purpose and may not allow any other party to:
- 5.1.1 use the Acquiring Services to engage in fraudulent or illegal conduct of any kind;
- 5.1.2 request, collect, solicit, or otherwise obtain access to the Acquiring Services under false or fraudulent pretences;
- 5.1.3 circumvent or modify any security mechanism used by Capitec and/or Card Association (collectively, the "Restrictions");
- 5.2 The Merchant shall comply with all Applicable Laws relating to the sale of products and services initiated through the Acquiring Service.

6. **SUPPLY AND USE OF EQUIPMENT OR QR CODE RENTAL OF EQUIPMENT**

- 6.1 If Capitec supplies the Merchant with the Equipment on a rental basis the amount, frequency and any increases of the rental payable by the Merchant will be as set out in Annexure A, which shall be payable by way of debit raised against the Nominated account by Capitec
- 6.2 The rented Equipment provided by Capitec will at all times remain the sole property of Capitec. Upon termination of this Agreement the Merchant shall return the Equipment to Capitec. The Merchant may not return the Equipment to any Capitec Branch, but the Merchant shall phone Capitec Bank Merchant Support on 0860 66 77 06 in order to establish which premises of Capitec the Equipment must be returned to, or arrange for the Equipment to be collected.
- 6.3 The Merchant shall at all times keep the Equipment in its possession and under its control and shall take reasonable care in the use of the Equipment. The Merchant shall also ensure that the Equipment is used with due skill and care, and only in the manner and for the purpose for which it was designed and intended, in accordance with the business of the Merchant as specified in this Agreement. The Merchant shall keep the Equipment free from attachment, encumbrance, or other legal charge or process. The Merchant shall not sell, let, loan, pledge, transfer or otherwise encumber the Equipment in any way or permit any loan to arise in respect of the Equipment.
- 6.4 **All risk relating to the Equipment including, but not limited to, its loss, damage or destruction, arising from any cause whatsoever (including all acts of God), will pass to the Merchant on delivery of the Equipment and remain that of the Merchant until the Equipment is returned to Capitec.**
- 6.5 **The Merchant indemnifies Capitec against any loss, injury, damage, fire, penalty or claim arising in any way from the Equipment or its use or possession, whether or not the problem is caused by any act or omission on the part of the Merchant or anyone else. In particular, but not exclusively, the Merchant acknowledges that it will have no claim against Capitec, whether for consequential damages or otherwise, arising from the use of the Equipment or any defect in it, or from the total or partial failure of any communication solutions and connections linking the Equipment to Capitec.**
- 6.6 In the event of any damage being caused to the Equipment, otherwise than by way of normal wear and tear, the Merchant shall pay Capitec the cost of repairing such damage on demand at Capitec's prevailing standard rates in respect of labour and or material. A certificate signed by any of Capitec's managers, whose appointment and authority Capitec need not to prove shall be rebuttable proof of the amount of the damage and the costs of repairing such damage.

- 6.7 If the Equipment or any part thereof is lost, stolen or damaged, irrespective of the cause, the Merchant shall notify Capitec in writing immediately by means of an email to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za) for attention 'Merchant Administration'. In the event of the Equipment being stolen, the Merchant must furnish Capitec with the relevant SAPS case number.
- 6.8 The Merchant may not alter or modify the Equipment.
- 6.9 The Merchant shall at all reasonable times permit Capitec or its representative to inspect the Equipment.
- 6.10 The Merchant may not remove the Equipment from the Merchant's premises without prior written consent of Capitec.
- 6.11 **The Merchant admits and agrees that the Equipment is movable and that the Equipment is installed with the intention that the Equipment shall remain movable and that they shall under no circumstances accede to any property.**
- 6.12 Should the Merchant fail to comply with any of the provisions of this Agreement, Capitec shall be entitled, but not obliged, to effect such compliance or otherwise in protecting its title to the Equipment and the Merchant shall pay to Capitec any costs incurred in this regard by debit passed against the Nominated account.
- 6.13 Capitec reserves the right to remove the Equipment from the Merchant's premises if it is not returned to Capitec upon termination of this Agreement. If the Equipment cannot be retrieved for any reason, Capitec will debit the Nominated account with the replacement value thereof.
- 6.14 **In the event of theft or loss of the Equipment, the Merchant shall be liable for the replacement cost to Capitec. The Merchant will also ensure that the replacement cost of the Equipment is stipulated in his general insurance for the business. The Merchant shall ensure that the respective rights and interests of Capitec and the Merchant are noted on the insurance policy. Capitec will on request from the Merchant, provide the Merchant with the replacement costs of the Equipment from time to time. The Merchant hereby cedes to Capitec all the Merchant's rights in and to each insurance policy taken out by the Merchant in terms of this Agreement. The Merchant also undertakes to notify the insurer immediately in writing of such cession and deliver the policy and proof of this written notification to Capitec.**

**PURCHASE OF EQUIPMENT**

- 6.15 In the event of the Merchant purchasing the Equipment from Capitec, Capitec will supply the Merchant with the MPOS after receipt of the Purchase price. The amount, payable by the Merchant will be as set out in Annexure A.
- 6.16 The ownership of the MPOS provided by Capitec will transfer to the merchant on delivery. Upon termination of this Agreement the Merchant shall keep the MPOS.
- 6.17 Warranty of the MPOS device is 12 (twelve) months and will take effect upon delivery of the new MPOS device to the Merchant. 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 MPOS device. Where the Merchant has opted to use its own Capitec configured device (i.e., acquired a second-hand device from an existing Capitec MPOS Merchant) the remainder of the existing Capitec MPOS Device warranty will remain in force.

- 6.18 **All risk relating to the MPOS device including, but not limited to, its loss, damage or destruction, arising from any cause whatsoever (including all acts of God), will pass to the Merchant on delivery of the MPOS device.**
- 6.19 The Merchant undertakes to comply with the following obligations in relation to the use and ownership of the MPOS:
- 6.19.1 the Merchant shall not itself adjust, repair or maintain the MPOS and shall not request, permit or authorise anyone other than the Supplier (through Capitec) to carry out any adjustments, repairs or maintenance of the MPOS.
- 6.19.2 the Merchant shall use their best efforts to provide, upon request, Capitec with such information and assistance in regard to the MPOS or services as the Supplier may require, so as to best support Capitec's services.
- 6.19.3 the Merchant shall ensure that only trained employees are allowed to operate or use the MPOS, and that adequate security and control procedures are in place to ensure that no unauthorized third party can have access to or use of the MPOS, or remove the MPOS from the Merchant's premises, or operate the MPOS away from the Merchant's premises.
- 6.19.4 the Merchant shall only use the MPOS for the purpose for which they are provided and in accordance with the relevant operating manuals supplied by Capitec.
- 6.19.5 the Merchant shall not use the MPOS for any illegal or fraudulent purpose.
- 6.19.6 the Merchant shall not use the MPOS in conjunction with any software, or hardware accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by Capitec.
- 6.19.7 The Merchant shall comply, at all times in relation to all of their activities with the MPOS, with all laws, export controls, regulations, rules and obligations regarding such activities, including all rules imposed by Capitec and relevant banking and payment associations, from time to time. The Merchant 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, without the prior express written consent of both Capitec and Supplier. The Merchant shall not remove from the MPOS, 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, without the prior written consent of both Capitec and Supplier.
- 6.19.8 The Merchant shall undertake to package the MPOS appropriately and sufficiently when sending it by post/courier. MPOS returned under warranty not so packaged will be treated as Merchant Damaged and the warranty voided.
- 6.19.9 The Merchant shall promptly inform Capitec if it becomes aware of any breach of any of the Terms contained in this clause, who shall so inform the Supplier.
- 6.20 All Intellectual Property Rights that exist in relation to the MPOS belong to the Supplier, or its' Manufacturers or their licensors. Nothing in the Terms contained in this Agreement assigns such Intellectual Property Rights to the Merchants and the only right the Merchant has in relation to such Intellectual Property Rights, is the right to use the MPOS in accordance with the terms of this Agreement. The Merchant agrees that Capitec has the right to enforce this provision against the Merchant and that the Merchant shall be liable to the Supplier in relation to any breach of it.
- 6.21 The Merchant shall inform Capitec if it becomes aware of any circumstances where the MPOS (or any part thereof) infringe 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 MPOS and Capitec shall so inform the Supplier.
- 6.22 Capitec hereby grants the Merchant a non-exclusive sub-license to use the MPOS device for the purpose set out in this Agreement, such sub-license shall not be capable of being sub-licensed and the Merchant agrees to use the MPOS software strictly in accordance with the software license provisions in this Agreement.
- 6.23 **The Merchant indemnifies Capitec against any loss, injury, damage, fire, penalty or claim arising in any way from the MPOS or its use or possession, whether or not the problem is caused by any act or omission on the part of the Merchant or anyone else. In particular, but not exclusively, the Merchant acknowledges that it will have no claim against Capitec, whether for consequential damages or otherwise, arising from the use of the MPOS or any defect in it, or from the total or partial failure of any telecommunication lines and connections linking the MPOS to Capitec**
- QR APPLICATIONS**
- In the event of the Merchant using QR APPLICATIONS:
- 6.24 All Transactions will be authenticated either by 3D Secure, AMT or another accepted authentication method as determined by the Issuing Bank.
7. **BUSINESS OF THE MERCHANT AND PROHIBITED BUSINESS ACTIVITIES**
- 7.1 The business of the Merchant is that as described on the cover page of this Agreement or as contained on the Merchant Portal
- 7.2 The Merchant undertakes 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
- 7.3 The Merchant shall within 5 (five) Business Days from becoming aware or it reasonably ought to know, notify Capitec in writing should there be any change in the nature and/or classification of the Merchant's business or should there be a change in the ownership of the Merchant business.
- 7.4 In the event of such a change in 7.3, irrespective of any clause to the contrary in this Agreement, Capitec will be entitled to:
- 7.4.1 terminate this Agreement immediately without giving notice or reasons; or
- 7.4.2 continue with this Agreement subject to any amendments that it considers appropriate, including the right of Capitec to require the Merchant to re-sign the necessary agreements and documents and re-assess the Merchant.
- 7.5 The Merchant will ensure that for the duration of this Agreement that it has the necessary licenses, permits and authorisations to conduct its business. The Merchant warrants that it will ensure that any such license or permit granted, is renewed timeously if required by the applicable licensing authority or in terms of applicable legislation.
- 7.6 Prohibited Business Activities
- 7.6.1 The Merchant may not use the Acquiring Service in connection with any of the following businesses or activities:
- 7.6.1.1 the sale of any goods or services that violates any Applicable Law;

- 7.6.1.2 pornography in all media types such as Internet, phone and printed materials, including any depiction of forcible sex or bestiality;
- 7.6.1.3 the sale of illegal pharmaceuticals, illegal drugs and/or drug paraphernalia;
- 7.6.1.4 the sale or marketing of any counterfeit goods;
- 7.6.1.5 illegal gambling, lotteries (including sale of lottery tickets), games of chance (including sweepstakes and raffles), sports forecasting or odds-making;
- 7.6.1.6 any activity violating Applicable Law or industry regulations regarding the sale of tobacco products.
- 7.6.2 Capitec may modify the above list of prohibited businesses and activities at any time. Capitec will immediately terminate the Merchant's use of the Acquiring Services if the Merchant engages in any of the above businesses or activities or any other illegal or inappropriate activity in connection with the Merchant's use of the Acquiring Services, as determined by Capitec in its sole discretion, and reserves the right to take any other corrective action Capitec deems appropriate.
- 7.7 The Merchant will comply with the Value-Added-Tax Act, 89 of 1991
- 8. MERCHANT PERSONAL INFORMATION**
- 8.1 To use the Acquiring Service the Merchant must provide Capitec with its Personal Information which Capitec requests when the Merchant applies for the Acquiring Service. If the Merchant does not or cannot provide Capitec with any required Personal Information, Capitec may terminate this Agreement immediately.
- 8.2 The Merchant authorises Capitec to:
- 8.2.1 take all steps as Capitec may deem necessary to verify the Personal Information the Merchant submits;
- 8.2.2 retain and process any Personal Information the Merchant provides;
- 8.2.3 furnish any confidential information relating to any account operated by the Merchant with Capitec for any reason to any person (including, without limitation, any credit bureau) in accordance with generally accepted banking practice; and
- 8.2.4 visit the Merchant's business premises if and when necessary.
- 8.3 The Merchant gives Capitec consent that it may share the Merchant's Personal Information with any third parties to provide the Acquiring Service.
- 8.4 The Merchant grants Capitec consent to disclose the Merchant's Personal Information to any Card Association, Issuer and other financial institution or Bank for use in any fraud prevention schemes.
- 8.5 The Merchant also grants Capitec consent to disclose the Merchant's 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 for the purpose of helping Capitec and other Issuers to identify merchants who are, or are suspected of being, or are likely to become, involved in fraud or in any other fraud prevention matter).
- 9. MERCHANT OBLIGATIONS**
- 9.1 The Merchant agrees to conclude Transactions in compliance with the terms and conditions of the Agreement and in a manner that complies with all Applicable Laws and Rules.
- 9.2 The Merchant shall, throughout the duration of the Agreement:
- 9.2.1 not conduct unlawful business activities;
- 9.2.2 not violate anti-money laundering laws;
- 9.2.3 ensure that there is due compliance with all the Rules and contact Capitec should the Merchant be unsure what Rules applies to it in its capacity as a merchant;
- 9.2.4 honour each Transaction with a Customer;
- 9.2.5 not discriminate against any Customer by setting a minimum or maximum Transaction amount as a condition of honouring a Transaction;
- 9.2.6 be responsible for the Bank charges incurred on the Nominated Account;
- 9.2.7 advise Capitec immediately if it is placed under liquidation, sequestration or business rescue or where any of the foregoing is imminent;
- 9.2.8 accept full responsibility for its actions, as well as the actions of its employees and its third party service providers at all times. In other words, if the Merchant employee uses the Acquiring Service to commit fraud, the Merchant will take responsibility for the consequent losses;
- 9.2.9 **accept full responsibility for, and as far as the law allows, indemnify and hold Capitec harmless against any fines and penalties imposed upon Capitec and/ or the Merchant, arising out of the Merchant's, its employees' or its third-party service provider's actions and/or omissions;**
- 9.2.10 provide Capitec within 5 (five) Business Days with any information and documentation Capitec may reasonably require from time to time;
- 9.2.11 provide reasonable and necessary support to assist Capitec to fulfil its obligations in terms of the Agreement;
- 9.2.12 provide 5 (five) Business Days' prior written notification to Capitec of any changes to the following (without any limitation):
- 9.2.12.1 a change in the business of the Merchant that may impact the availability and provisioning of the Acquiring Services by Capitec;
- 9.2.12.2 a change of address or contact details of the Merchant; and
- 9.2.12.3 a change in the banking details of the Nominated Account.
- 9.3 The Merchant must check all Transaction details and Transaction reports and notify Capitec of any alleged discrepancies immediately when the Merchant becomes aware of the discrepancies, but by no later than 30 (thirty) days after the date of the relevant Transaction(s).
- 9.4 The Merchant undertakes to display all promotional material that Capitec supply to the Merchant, indicating Card Association acceptance, and to replace or remove such material immediately when Capitec request the Merchant to do so.
- 9.5 The Merchant may not charge more than the Merchant's normal cash price for the goods and/or services in order to subsidise any fees or costs the Merchant may incur when processing Transactions.
- 9.6 Should Capitec introduce new capabilities to the Acquiring Services, the Merchant undertakes to operate these in a diligent manner with the necessary skill and care.
- 9.7 The Merchant shall perform all obligations to Customers in relation to a Transaction immediately after any such Transaction has been successfully 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 the Merchant receives 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 the Merchant at the time of the Transaction;
- 9.8 The Merchant may use the Acquiring Services only within the Republic of South Africa.

- 9.9 If the Merchant is unable to process Transactions for any reason the Merchant will, immediately upon becoming aware thereof, notify Capitec by phoning 0860 66 77 06 or sending an email to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za).
- 9.10 The Merchant acknowledges that the Merchant will be responsible for the cost of the infrastructure required for the Card Machine to operate and communicate with Capitec (for example extension leads, double adaptors, cost associated with communications etc.);
- 9.11 The Merchant shall not disclose the Floor limit to any third party;
- 9.12 Card Machine rolls shall be exclusively supplied by Capitec to the Merchant at Capitec's prevailing rate from time to time, which rate is set out in Annexure A;
- 9.13 The Merchant may return Cards that are left at a Merchant's location to the Cardholder if the Cardholder provides positive 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.
- 9.14 The Merchant undertakes to Process Personal Information in compliance with Data Protection Legislation.
10. **AUTHORISATION**
- 10.1 The Merchant shall ensure that online Authorisation is obtained for each respective Transaction undertaken by the Merchant in accordance with the Agreement;
- 10.2 The Merchant may not split or disguise Transactions or act in a way to avoid having to obtain Authorisation in respect of a Transaction;
- 10.3 If the Merchant does not obtain Authorisation and the Transaction is honoured by Capitec, such honouring will not relieve the Merchant from its obligation to obtain Authorisation for any subsequent Transactions.
- 10.4 Irrespective of the fact that Capitec has authorised a Transaction, all the provisions of this Agreement will still apply to such Card Transaction.
- 10.5 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
11. **CARD-NOT-PRESENT TRANSACTIONS**
- 11.1 The Merchant may process Card-not-present Transactions only with the written consent of Capitec, which consent will be given at Capitec's sole discretion.
- 11.2 The Merchant must enter the following information into the Card Machine to obtain Authorisation:
- 11.2.1 Card number
- 11.2.2 Expiry date; and
- 11.2.3 CVV/CVC/4DBC number
- 11.3 **For Card Not Present sales the Merchant must:**
- 11.3.1 **write the Cardholder's name and Card number on the sales voucher, as well as the address to which the goods are to be dispatched;**
- 11.3.2 **label the sales voucher a Card Not Present Transaction and ensure that it is signed by the Merchant (or authorised official) in the Cardholder's signature block on the Transaction voucher;**
- 11.3.3 **retain the order form bearing the Cardholder's signature and attach it to the Transaction voucher; and**
- 11.3.4 **in the case of telephone orders, also record on the sales voucher the Cardholder's contact details (telephone number or email address) and the time and date of the telephone order.**
- 11.4 The Merchant will be liable for the amount reflected on the Transaction voucher should the Cardholder subsequently repudiate or dispute any Card Not Present Transaction.
- 11.5 The Merchant may only retain, record, disclose or use the CVV/CVC/4DBC number, the expiry date of the Card or the Card number in accordance with the terms of this Agreement and the rules of the Card Association and not for any other purpose. Any retention, recording, disclosure or usage contrary to the aforesaid purpose is in direct violation of PCI DSS rules. All fines imposed by the Card Association as a result of such violation will be charged to the Merchant.
12. **TRANSACTING WITH CUSTOMERS**
- 12.1 Each Transaction with a Customer is subject to the Merchant's specific terms and conditions and is a contractual relationship directly between the Merchant and the relevant Customer.
- 12.2 The Merchant is responsible for checking the details of each Transaction. Capitec will process the Transaction and provide Acquiring Services. Capitec is not responsible for any loss which the Merchant suffers if the details of a Transaction are incorrect.
- 12.3 The Merchant shall only accept and process cards that are:
- 12.3.1 genuine, signed, correct and valid;
- 12.3.2 issued by a Bank or a Card issuer in its original form;
- 12.3.3 authorised for use by Capitec;
- 12.3.4 presented by the Cardholder;
- 12.3.5 not discriminate against Cards issued by the same Card Association;
- 12.4 in case a refund is required the Merchant shall:
- 12.4.1 process a refund for the Transaction, on the Card on which the original Transaction was processed, if the Card allows the Transaction type.
- 12.4.2 give a refund if the Card does not allow a refund Transaction
- 12.4.3 give a refund where the Merchant has opted not to have refund Transactions activated on the Card Machine of where the MCC has been blocked for refunds.
- 12.5 The Merchant shall under the following circumstances refund the Cardholder for goods and services:
- 12.5.1 damaged goods;
- 12.5.2 proof of non-delivery; and
- 12.5.3 wrong delivery of a specified order.
- 12.6 The Merchant shall in terms of this agreement:
- 12.6.1 ensure that the amount entered on the Card Machine is the correct amount, corresponding with the price of the goods and/or services;
- 12.6.2 attempt to retain a Cardholder's Card if the Card Machine requests the Merchant to retain the Card or Capitec Merchant Support instructs you to do so;
- 12.6.3 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 with the exception of the data required for reconciliation purposes in terms of the Rules;
- 12.6.4 not retain or store Card Verification Value 2 (CVV2) or CVC data electronically subsequent to the Authorisation of a Card Transaction;
- 12.6.5 may not sell, provide or exchange any information relating to the Card unless this is done with the written consent of Capitec;
- 12.6.6 ensure that all Merchant employees receive training with regard to fraud prevention and how to use the Card Machine;
- 12.6.7 not swipe his/her personal Credit Card on the Card Machine.
- 12.7 With regards to EMV Chip Card Transactions the Merchant will process EMV Chip Card Transactions as follows:

- 12.7.1 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
- 12.7.2 The Cardholder under all circumstances will be requested to key in his or her PIN on a pinpad provided by the Merchant;
- 12.7.3 The Merchant shall ensure that Card Transactions are performed in a secure environment;
- 12.7.4 Should Capitec request information regarding a Card Transaction, the Merchant shall provide such information in the form of a Transaction voucher within 3 (three) business days of the request;  
In the event that the chip on a Chip Card fails, the Merchant may process a Fallback Transaction. In order to prevent fraudulent Transactions, the Merchant must ensure, when processing a Fallback Transaction that a valid Card is presented for payment by the Cardholder.
- 12.7.5 An EMV Transaction will be incomplete under one or more of the following circumstances:
- 12.7.5.1 If the Card is pulled out of the slot of the Card Machine before the Card Transaction is completed;
- 12.7.5.2 If the chip technology fails during the processing of the Card Transaction;
- 12.7.5.3 If the telecoms are interrupted during the Card Transaction flow.
- 13. CAPITEC OBLIGATIONS**  
Capitec must for the term of this Agreement, against proper performance by the Merchant:
- 13.1 Provide the Acquiring Services subject to the terms of this Agreement and the Equipment to the Merchant on the basis as set out in Annexure A and as amended from time to time;
- 13.2 Provide the Merchant with a Merchant Supervisor PIN;
- 13.3 Maintain and service the Equipment subject thereto that the Merchant will be liable to pay Capitec the costs for all such repairs, replacements and/or services caused by the negligence of the Merchant, which costs will be at Capitec's standard tariff from time to time;
- 13.4 Provide the Merchant with reasonable technical support via telephone or email to resolve any faults relating to the use of the Acquiring Services.
- 13.5 Provide training to the Merchant's employees with regard to fraud prevention and how to use the Card Machine and Merchant Supervisor PIN at installation as well as on an ongoing basis thereafter as requested and/or required by the Merchant.
- 13.6 Where the Merchant, as a result of an act or omission of the Merchant, requires Capitec to provide technical support at its premises, the Merchant shall be liable to pay Capitec a reasonable call-out charge for such technical support.
- 13.7 Capitec will use its reasonable endeavours to assist the Merchant with settlement disputes insofar as the provision of information reasonably requested by the Merchant in relation to such disputes is concerned. The Merchant must escalate all queries to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za) or phone 0860 66 77 06.
- 13.8 Capitec will provide the Merchant with access to the Merchant Portal.
- 13.9 Capitec will provide the Merchant with the necessary promotional material, subject to Capitec's Intellectual Property Rights.
- 13.10 Capitec will process Transactions that purportedly come from the Merchant and Capitec will collect, analyse and relay information generated in connection with Transactions.
- 13.11 Capitec may on reasonable grounds withhold Settlement of Transactions and/or decline any Authorisation.
- 13.12 Capitec may monitor the Merchant's Transactions and may suspend or terminate the Acquiring Service if there is a high level of Chargebacks or suspected fraudulent activity.
- 13.13 Capitec will keep a record of Transactions and the Merchant will have access to such record through the Merchant Portal.
- 13.14 Capitec reserve the right to apply Nett-settlement in its sole discretion.
- 13.15 Subject to Capitec's right of Nett-Settlement in clause 13.14, Capitec will do the Settlement.
- 13.16 Comply with PCI DSS and acknowledge responsibility for the security of the Cardholder data that we process, transmit and store on behalf of the Merchant.
- 14. COMMENCEMENT AND DURATION**
- 14.1 Notwithstanding the date of signature, this Agreement shall come into effect on the date on which the suspensive condition in clause 14.3 is fulfilled or waived by Capitec ("Effective Date"), as the case may be, 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. The Merchant shall still be liable for the full monthly rental amount in the event that the Card Machine be returned prior to the expiry of the 30 (thirty) days notice.
- 14.2 Notwithstanding clause 14.1 above, Capitec reserves the right to cancel this Agreement with immediate effect and without liability, upon written notice to the Merchant in the event of a breach by the Merchant of any term or condition of this Agreement or if the Merchant does not use the Acquiring Service for more than 3 (three) consecutive months.
- 14.3 This Agreement is subject to the fulfilment of the condition precedent that the Merchant's application to become a Capitec Merchant is approved by Capitec within 20 (twenty) Business Days of signing this Agreement. This suspensive condition is stipulated for the benefit of Capitec who shall be entitled, in writing only, to waive compliance with same or extend the date by when it is to be fulfilled. Unless the condition is fulfilled, by the date set out above (or such later date as Capitec may extend it to in writing from time to time) then this Agreement shall be of no force or effect. Should this Agreement become of no force or effect by reason of the provisions of this clause 14.3 then the parties shall be restored, as near as may be possible, to the position in which they would have been had this Agreement not been entered into and neither party shall have any claims against the other, except for a failure by a party to comply with its obligations in terms of this clause.
- 14.4 Termination of this Agreement shall not affect any existing obligations.
- 15. PRESENTATION OF TRANSACTION FOR PAYMENT**
- 15.1 The Merchant must ensure that all Transactions are electronically transferred to Capitec within 1 (one) day of the Transaction date.
- 15.2 Capitec 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.
- 15.3 On presentation of Transactions for payment, the Merchant is deemed to warrant that:
- 15.3.1 the Transaction has been submitted by the Merchant;



- 15.3.2 goods or services to the value of the Transaction have been supplied and no additional charges have been included;
- 15.3.3 the information printed on the Transaction voucher is true and correct; and
- 15.3.4 there has been due compliance with all the provisions of this Agreement.
- 15.4 Capitec reserves the right to Nett-Settle the Merchant at Capitec's sole discretion.
- 15.5 Capitec reserves the right to withhold settlement of a given Batch or part thereof while investigating potential irregularities.
- 15.6 The Merchant must query any Settlement that does not reflect in the Nominated Bank Account within a period of 7 (seven) days of the date of the Transaction.
16. **INVALID CARD TRANSACTIONS**
- 16.1 A Transaction is invalid if:
- 16.1.1 the underlying commercial transaction is or appears to be illegal and/or unenforceable;
- 16.1.2 the Transaction voucher is incomplete;
- 16.1.3 the copy of the Transaction voucher provided by the Merchant is not identical to the copy provided by the Cardholder;
- 16.1.4 the Card has expired at the time of the Card Transaction;
- 16.1.5 the Merchant accepts a mutilated, defaced, blank or illegible Card;
- 16.1.6 the Merchant fails to transfer the Transaction to Capitec in terms of clause 15.1;
- 16.1.7 the Merchant accepts a Credit Card to collect or refinance an existing debt;
- 16.1.8 the Merchant submits a Transaction on behalf of another party;
- 16.1.9 the Merchant fails to adhere to the provisions of this Agreement;
- 16.1.10 the Transaction is identified as being fraudulent in terms of clause 17;
- 16.1.11 the Merchant processes a Transaction without obtaining Authorisation when the Transaction exceeds the Floor limit.
- 16.1.12 Card Not Present Transaction is concluded with a Cardholder;
- 16.1.12.1 without indicating all necessary details on the sales voucher; or
- 16.1.12.2 the Merchant fails to retain the signed order form as required for Card Not Present Transactions;
- 16.2 **The value of an invalid Transaction shall be immediately repayable and may be debited against the Merchant's Nominated account at any time or be recovered from the Merchant in any other way.**
17. **FRAUDULENT OR SUSPICIOUS TRANSACTIONS**
- 17.1 **For purposes of this clause the term "fraudulent transaction" will mean any Transaction which would constitute fraud in terms of the common law or any applicable statute (whether an Authorisation has been issued by Capitec or not) and will include any purchase and/or Transaction arising from the use of the Card by a person other than the authorised Cardholder.**
- 17.2 **Capitec reserves the right not to credit the Nominated account with the value of any Transaction where Capitec, in its sole discretion, suspects fraud.**
- 17.3 **Capitec will be entitled to debit the Nominated account at any time with the value of all suspected fraudulent Transactions sent to Capitec by the Merchant as well as a fee for the costs of processing such fraudulent Transaction. Such fee will be equal to or higher than the amount of the Merchant commission which would have been payable on the Transaction. The onus shall be on the Merchant to show that such Transaction is not a fraudulent Transaction.**

18. **FEES**
- 18.1 The Merchant hereby grants Capitec the right and authority to debit the Merchant's Nominated Account (in terms of the Debit Order Authorisation attached hereto Annexure B) monthly with:
- 18.1.1 the Merchant Commission fees and Equipment rental charges set out in Annexure A;
- 18.1.2 reversals, overpayments, disputes or Chargebacks;
- 18.1.3 any fines levied by any Card Association, any penalty fees or assessment fees charged to Capitec as a result of the Merchant's non-compliance with this Agreement or the Rules;
- 18.1.4 the costs of any call out and/or Ad Hoc charges; and
- 18.1.5 any other costs, charges or recoveries payable in terms of this Agreement.
- 18.1.6 The full amount of any Card Not Present Transaction in the event of a subsequent dispute about the Transaction; and
- 18.2 The Merchant agrees that Capitec shall have the right to recover from the Merchant 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 18.1 until all moneys owed by the Merchant to Capitec are paid in full.
- 18.3 The Merchant must ensure that it retains sufficient funds in its Nominated Account at all times to cover the amounts that are due to Capitec, including any Losses.
- 18.4 The rights granted to Capitec in this clause shall survive termination of this Agreement.
- 18.5 Capitec may, in its sole discretion and from time to time, increase or decrease the Merchant Commission fees and charges in Annexure A. Capitec will notify the Merchant of the increase or decrease 30 (thirty) Calendar Days before the effective date thereof.
- 18.6 Capitec reserves the right to charge the Merchant other fees at any time, but will notify the Merchant of such fees 30 (thirty) Calendar Days before they become applicable.
- 18.7 All amounts specified in Annexure A excludes VAT and are payable free of deduction or set-off.
- 18.8 If Capitec does not provide you with a statement it will not constitute a waiver of Capitec's right to claim the Merchant Commission fees or charges payable by you in terms of this Agreement.
19. **CHARGEBACK AND DISPUTED TRANSACTIONS**
- 19.1 Any Transaction may be charged back to the Merchant by reason of:
- 19.1.1 a Customer disputing a Transaction;
- 19.1.2 a Transaction reversal;
- 19.1.3 actual lack of Authorisation;
- 19.1.4 unlawful or suspicious Transactions; or
- 19.1.5 Transactions processed outside the terms of the Agreement.
- 19.2 It is the Merchant's responsibility to request Transaction information from Capitec if a Customer disputes a Transaction or raises a Chargeback.
- 19.3 The Merchant will be liable to Capitec for the full amount of the Chargeback as well as any associated fees, penalties and charges.
- 19.4 Capitec will be entitled to debit the Nominated Account with an amount equal to the amount of the Chargeback.
- 19.5 Capitec may hold the Transaction Value in advance for potential Chargebacks until the Chargeback process has been completed.

- 19.6 The Merchant agrees that it will assist Capitec to investigate any Transactions and that Capitec will share the Merchant's Personal Information with the relevant Customers, Issuers, Banks and other financial institutions and regulators as required to investigate a Chargeback.
20. **INTELLECTUAL PROPERTY RIGHTS**
- 20.1 All Intellectual Property Rights in and to Acquiring Services and Merchant Portal belong to Capitec and the Merchant does not have any Intellectual Property Rights thereto or in any improvements or variations that may be made to it.
- 20.2 The Merchant 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 Capitec has provided the Merchant with written approval as contemplated above, the Merchant 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.
- 20.3 **The Merchant indemnifies Capitec against all actions, claims, costs, demands, expenses and other liabilities suffered or incurred by Capitec as a result of any third-party claims initiated and/or instituted against Capitec relating to the Merchant's unauthorised use of the Acquiring Services and Merchant Portal, the contents therein or any other Intellectual Property Rights flowing from them.**
- 20.4 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 Capitec or such party that may own the trademark.
- 20.5 Any breach of this clause 20 entitles Capitec, in addition to Capitec's other remedies available in law, to take legal action against the Merchant without prior written notice and the Merchant agrees to reimburse the costs associated with such legal action on an attorney and own client scale.
- 20.6 Subject to any Intellectual Property Rights held by any other third parties, Capitec retains all Intellectual Property and Intellectual Property Rights in and to all Intellectual Property in connection with the Acquiring Services
21. **COOLING-OFF PERIOD**
- 21.1 If Capitec approached the Merchant in person or by mail or other electronic communication to promote the Acquiring Services and this Agreement is a result of such promotion, the Merchant has 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 Equipment was delivered to the Merchant.
22. **CONFIDENTIAL INFORMATION**
- 22.1 The Merchant hereby authorises Capitec to request, receive and collect any confidential information from any credit bureau or other person for the purposes of assessing the Merchant's application, reviewing the Merchant's performance under this Agreement and to disclose the Merchant's confidential information to any credit bureau, any fraud prevention service or to any of Capitec's service providers, sharing positive and adverse information.
- 22.2 It is specifically recorded that if the Merchant is in default of its obligations in terms of this Agreement, Capitec may disclose the Merchant's confidential information about the manner in which the Merchant conducts its accounts to credit bureaus.
- 22.3 The Merchant acknowledges that all data, material and information, provided to the Merchant by Capitec, or to which the Merchant has or will come into its possession or knowledge, or to which it 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.
- 22.4 The Merchant therefore agrees 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.
- 22.5 Confidential and proprietary information will not include any information which:
- 22.5.1 at the time of disclosure, is generally known by the public without breaching the provisions of this Agreement; or
- 22.5.2 is known to or in the Merchant's possession before it is received from Capitec (save where it was previously received by the Merchant under an obligation of confidence).
- 22.6 The confidentiality obligations under this Agreement shall survive the termination of this Agreement for any reason whatsoever.
23. **IT FACILITIES**
- The Merchant shall obtain, at its own costs and expense:
- 23.1 its own hardware and software, including current virus protection and firewall software;
- 23.2 adequate and reliable Internet access and available data and adhere to any guidance that Capitec may provide in this regard from time to time; and
- 23.3 all telecommunication facilities, services, products and other equipment needed to access the Internet for example SIM cards and Wi-Fi ("IT Facilities").
- 23.4 If the Merchant is unable to process Transactions for any reason the Merchant will, immediately upon becoming aware thereof, notify Capitec by phoning 0860 66 77 06 or sending an email to [merchantsupport@capitecbank.co.za](mailto:merchantsupport@capitecbank.co.za).
- 23.5 The Merchant acknowledges that by using the Acquiring Services, it may incur Internet access charges, service provider charges and data usage charges and that payment of any such charges is the Merchant's sole responsibility.
24. **WARRANTIES AND DISCLAIMERS**
- 24.1 Merchant's Warranties
- 24.1.1 The Merchant represents and warrants to Capitec that:
- 24.1.1.1 the information the Merchant provides to Capitec in connection with the use of the Acquiring Services are complete, true and correct;
- 24.1.1.2 it will comply with this Agreement and all Applicable Laws relating to the sale of products and services to Customers;
- 24.1.1.3 it is not engaged in any activity prohibited by clause 7.6;
- 24.1.1.4 it has the right, power, and ability to enter into and perform under this Agreement;
- 24.2 Disclaimers
- 24.2.1 **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 the Merchant. All warranties with respect to 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.**
- 24.2.2 Capitec make no guarantees and disclaim any and all implied warranties or representations about the Acquiring Services and its accuracy, relevance, timeliness, or completeness. Capitec do not warrant that the Acquiring Services will be error free or uninterrupted or will function to meet the Merchant requirements.

24.2.3 It is the Merchant's sole responsibility to determine whether the Acquiring Services is suitable and adequate for its needs. The Merchant acknowledges that the provisions of this clause are a material inducement and consideration to Capitec to provide the Acquiring Services.

24.2.4 Capitec will not accept liability for incorrect Transaction details the Merchant submits to Capitec. If the Merchant does not notify Capitec of changes to the Merchant's contact details, Capitec will not be liable

24.2.5 for any loss the Merchant may suffer if Capitec cannot contact the Merchant or if the Merchant does not receive notifications or other documents or information from Capitec.

## 25. LIMITATION OF LIABILITY AND INDEMNITIES

25.1 **To the extent permitted by Applicable Law and regardless of whether any remedy in this Agreement fails of its essential purpose or otherwise, Capitec or any of its, employees, agents, directors, officers, subcontractors, successors and assigns ("Indemnified Parties") shall not be liable to the Merchant 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 the Merchants Personal Information; even if any of the Indemnified Parties have been advised of the possibility of those damages. The Merchant waives any and all claims, now known or later discovered, that it may have against the Indemnified Parties arising out of its use of the Acquiring Services.**

25.2 **The Merchant agrees 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) the Merchant's use of the Acquiring Services, (b) the Merchants breach of this Agreement, (c) the Merchant or any of its staff's negligence, fraud wilful misconduct; and (d) claims of intellectual property infringement, breach of privacy, or violation of any Applicable Law.**

25.3 **You indemnify Capitec against:**

25.3.1 **any liability arising from any dispute the Merchant may have with a Customer in respect of any goods and/or services the Merchant sells the Customer using the Acquiring Service;**

25.3.2 **any claim by a Customer pertaining to the Merchant's use of the Customers Personal Information;**

## 26. AMENDMENT AND CHANGES

26.1 Capitec reserves the right to amend the terms of this Agreement upon 20 (twenty) Business Days written notice to the Merchant. If the Merchant does not accept the amendments to this Agreement it shall be entitled to terminate this Agreement within the 20 (twenty) Business Days' notice period, failing which, the Merchant shall be deemed to have accepted all amendments.

26.2 **Capitec may discontinue, modify or change the Acquiring Services at any time. Such change may also require the Merchant to update its IT Facilities at the Merchant's own cost so that it remains compatible and interfaces correctly with the Acquiring Services. Capitec will have**

**no liability or obligation to the Merchant with regard to any modifications or changes it makes to the Acquiring Services.**

## 27. TERMINATION AND SUSPENSION

27.1 Capitec may, in its sole discretion, immediately suspend the Merchant's use of the Acquiring Services and/or cancel the Agreement with 20 (Twenty) Business Days written notice if (i) the Merchant's contact information is not up-to-date or the Merchant does not respond to communications directed to the Merchant; (ii) the information the Merchant has provided to obtain the Acquiring Services is false, inaccurate, not current, or incomplete; (iii) the Merchant is engaged in any prohibited activity; (iv) the Merchant does not use the Card Machine for more than 3 (three) months; or (v) the Merchant has breached, or Capitec reasonably believes the Merchant is about to breach, any of the terms or conditions of this Agreement or any other agreement between the Merchant and Capitec.

27.2 The Merchant may terminate this Agreement for any reason at its convenience, by sending a written notice to Capitec at merchantsupport@capitecbank.co.za with the word "cancellation" in the subject line and by ceasing all use of the Acquiring Services.

27.3 On the termination of this Agreement for any reason, the rights and licenses granted to the Merchant will immediately terminate, the Merchant shall immediately cease all use of the Acquiring Services, and the provisions contained in this Agreement that by their nature and context are intended to survive the termination of this Agreement shall survive.

## 28. NOTICES

28.1 The Merchant chooses the address as stated on the first page of this Agreement as the Merchant's domicilium citandi et executandi ("domicilium") for the purpose of this Agreement.

28.2 Capitec chooses 5 Neutron Road, Techno Park, Stellenbosch as Capitec's domicilium for the purpose of this Agreement.

28.3 The parties will be entitled, by written notice to the other, to change its domicilium, provided that such address must always be a street address within the Republic of South Africa.

## 29. GENERAL

29.1 No waiver and/or amendments of this Agreement will be allowed, except as set out in clauses 14, 26 and Annexure A to this Agreement, and in writing and signed by both parties.

29.2 The Merchant's rights and obligations in terms of this Agreement may not be transferred or assigned without Capitec's prior written consent.

29.3 If this Agreement is regulated by or subject to the Consumer Protection Act 69 of 2009 ("CPA"), it is not intended that any provision of this Agreement contravenes any provision of the CPA. All provisions in this Agreement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the CPA are complied with.

29.4 **No Provision in this Agreement:**

29.4.1 **does or purports to limit or exempt Capitec from any liability (including, for any Loss directly or indirectly attributable to the gross negligence or wilful default of Capitec or that of any other person acting for or controlled by Capitec) to the extent that the law does not allow such limitation or exemption;**

29.4.2 **requires the Merchant to assume risk or liability, to the extent that the law does not allow such an assumption of risk or liability; or**

- 29.4.3 **limits or excludes any warranties or obligations which are implied in this Agreement by the CPA (to the extent applicable) to the extent that the law does not allow them to be limited or excluded.**
- 29.5 This Agreement is the entire agreement between you and Capitec 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.
- 29.6 In the event that this Agreement is signed electronically, you acknowledge and understand that such an electronic signature will be executed by means of a One Time Pin ("OTP") that will be sent to you on the basis of the information which you have previously provided to Capitec.
- 30. **INTERPRETATION**
- 30.1 Clause headings are for convenience only and will not be used for purposes of interpreting this Agreement.
- 30.2 Words and expressions will bear the meanings assigned to them and related expressions will bear corresponding meanings.
- 30.3 Any reference to the singular includes the plural and vice versa.
- 30.4 Any reference to natural persons includes legal persons and vice versa and references to one gender includes the other gender.
- 30.5 This Agreement is subject to the South African law and the parties submit to the jurisdiction of the South African courts.
- 30.6 A certificate signed by any of Capitec's managers, whose appointment and authority Capitec need not prove, shall be rebuttable proof of the amount owing by the Merchant to Capitec in terms of and under this Agreement for all purposes including proof of claims against deceased and insolvent estates, to the extent that Capitec 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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**Annexure A: Purchase Price, Rental, Commission, Fees and Charges**

**1. PURCHASE OF EQUIPMENT**

1.1 If the Equipment is purchased by the Merchant the following will apply:

Purchase price payable shall be:

Quantity: \_\_\_\_\_

Purchase price per MPOS: \_\_\_\_\_

Total Purchase Price: \_\_\_\_\_

1.2 The above Purchase Price is VAT exclusive;

1.3 The Purchase Price shall be payable in advance using the following payment method

1.3.1 The Nominated account shall be debited;

1.3.2 Electronic Payment to Mercantile Bank as a division of Capitec Bank Limited

Account Name: Capitec Bank.

Account number: 1050933435

Branch Code: 450105.

Proof of payment to be emailed to merchantdisputes@capitecbank.co.za

Reference Number: Merchant Number or Trading Name

\* Delete which is not applicable

**2. RENT OF EQUIPMENT**

2.1 If the equipment is rented by the Merchant the following will apply:

Rental payable shall be:

Card Machine Rental

Terminal Type: \_\_\_\_\_

Quantity: \_\_\_\_\_

Monthly Rental per Terminal: \_\_\_\_\_

Total Rental per Month: \_\_\_\_\_

2.2 The rental shall be payable in advance and the Nominated account shall be debited on the first day of each month;

2.3 The above rental is VAT exclusive;

2.4 In the event that the quantity of devices or terminal type provided and as mentioned above is changed after initial installation the monthly rental amount will be amended by the Bank in order to cater for the actual number of devices and terminal type provided to the Merchant

2.5 Capitec may increase the rental with an amount equal to CPIX plus 5% on the 1st of March of each successive year. CPIX means the average annual rate of change(expressed as a percentage) in the Consumer Price Index, excluding interest rates on mortgage bonds, for all metropolitan areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it, which annual change shall be determined by comparing the most recently published index with the index published in respect of the corresponding month in the previous year.

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

## Annexure A: Purchase Price, Rental, Commission, Fees and Charges

### 3. MERCHANT COMMISSION\*

#### 3.1 Card Machine

The Merchant Commission payable shall be:

##### 3.1.1 Monthly \*

3.1.1.1 \_\_\_\_\_ % of the aggregate Transaction Value of all Credit Card transactions per month, provided that the minimum commission payable in a month is R500.00;

3.1.1.2 \_\_\_\_\_ % of the aggregate Transaction Value of all Debit Card transactions per month, provided that the minimum commission payable in a month is R500.00;

3.1.1.3 The Merchant Commission shall be calculated in arrears and the Nominated Account shall be debited on the first Banking Day of each calendar month.

3.1.1.4 The above Merchant Commission is VAT exclusive

##### 3.1.2 Daily \*

3.1.2.1 \_\_\_\_\_ % of the aggregate Transaction Value of all Credit Card transactions per day, provided that the minimum commission payable in a month is R500.00;

3.1.2.2 \_\_\_\_\_ % of the aggregate Transaction Value of all Debit Card transactions per day, provided that the minimum commission payable in a month is R500.00;

3.1.2.3 The Merchant Commission shall be calculated daily and shall be paid daily by nett settlement;

3.1.2.4 The above Merchant Commission is VAT exclusive

#### 3.2 QR

The Merchant Commission payable shall be:

##### 3.2.1 Monthly \*

3.2.1.1 \_\_\_\_\_ % of the aggregate Transaction Value of all Credit Card transactions per month,

3.2.1.2 \_\_\_\_\_ % of the aggregate Transaction Value of all Debit Card transactions per month,

3.2.1.3 The Merchant Commission shall be calculated in arrears and the Nominated Account shall be debited on the first Banking Day of each calendar month.

3.2.1.4 The above Merchant Commission is VAT exclusive

##### 3.2.2 Daily \*

3.2.2.1 \_\_\_\_\_ % of the aggregate Transaction Value of all Credit Card transactions per day,

3.2.2.2 \_\_\_\_\_ % of the aggregate Transaction Value of all Debit Card transactions per day,

3.2.2.3 The Merchant Commission shall be calculated daily and shall be paid daily by nett settlement;

3.2.2.4 The above Merchant Commission is VAT exclusive

\* Delete which is not applicable

#### 3.3 MPOS

The Merchant Commission payable shall be:

##### 3.3.1 Daily

3.3.1.1 \_\_\_\_\_ % of the aggregate Transaction Value of all Credit Card transactions per day,

3.3.1.2 \_\_\_\_\_ % of the aggregate Transaction Value of all Debit Card transactions per day,

3.3.1.3 The Merchant Commission shall be calculated daily and shall be paid daily by nett settlement;

3.3.1.4 The above Merchant Commission is VAT exclusive

\* Delete which is not applicable

### 4. FLOOR LIMIT

4.1 The Floor limit(s) shall initially be set at Card Association rules for all Card transactions but may be amended downwards by Capitec from time to time upon notice to the Merchant in writing.

### 5. AD HOC CHARGES

5.1 Service request call-outs in respect of the Card Machine shall be chargeable as envisaged in this Agreement or in the event of non-compliance with the terms of this Agreement or failure on the part of the Merchant to have regard to any operating procedures which may be issued by Capitec from time to time.

5.2 MPOS Device repair costs in respective of out of warranty repair costs shall be chargeable at the Suppliers rates.

5.3 Rolls and other consumables will be charged at the standard rates published by Capitec from time to time, which at the date of signature of this Agreement

### 6. CHARGEBACK FEE

6.1 At the date of signature of this Agreement is R0.00.

Initials: Capitec Bank Representative Merchant

