

MAKE
THINGS
HAPPEN



**E-COMMERCE
MERCHANT AGREEMENT**

between

**NEDBANK LIMITED
(Reg No 1951/000009/06)**

of

135 Rivonia Road, Sandown, Sandton
(‘Nedbank’)

and

.....
(Name of sole proprietor, close corporation, company, etc)

.....
(Trading as – ie name on website)

.....
(Registration/Identity number, where applicable)

.....
(VAT number of sole proprietor, where applicable)

of

.....
.....
.....
(Physical address)

(‘the merchant’)

(Collectively ‘the parties’)

1 IT IS RECORDED THAT:

- the merchant wishes to market and sell its goods and/or services online over the internet by accepting cardholders' cards as the method of payment;

AND

- the merchant wants to appoint Nedbank as its acquiring bank in order to effect settlement of the purchase of such goods and/or services over the internet, subject to the terms and the conditions set out below.

Therefore the parties agree as follows:

2 BUSINESS OF MERCHANT

The business of the merchant is that of:

.....
.....
(Full description of the nature of online internet business)

3 DEFINITIONS

- 3.1 In this agreement, unless it is clearly inconsistent with the context or otherwise indicated in the wording:
- 3.2 '**acquiring bank**' means a financial institution that establishes a contractual service relationship with a merchant for the purpose of accepting cards;
- 3.3 '**agreement**' means this agreement and all annexures and addendums attached hereto;
- 3.4 '**authentication**' means the process of verifying that a person making an e-commerce purchase is entitled to use the tendered payment card;
- 3.5 '**authorisation**' means approval of a transaction by or on behalf of an issuer according to defined operational regulations;
- 3.6 '**Card**' means MasterCard debit and credit cards, Visa debit and credit cards and fleet cards;
- 3.7 '**cardholder**' means the person to whom a card has been issued by a recognised financial institution that is affiliated to one of the card associations;
- 3.8 '**card issuer**' means a bank that is affiliated to one of the card associations that issues cards and who enters into a contractual relationship with the cardholder for the issuance of one or more cards;
- 3.9 '**chargeback**' means a procedure where a card issuer charges a card transaction back to the acquiring bank and subsequently its merchant in accordance with card association rules;
- 3.10 '**client agreements**' means any loan or other agreement or any facility letter applicable to the client;
- 3.11 '**client**' means, for business rescue and related provisions, the merchant that has a contractual relationship with Nedbank, and includes any of its subsidiaries, related and interrelated persons and/or any security provider and/or its subsidiaries;
- 3.12 '**floor limit**' means the total amount that the merchant may allow a cardholder to spend with his card on any one occasion without obtaining prior authorisation from the card issuer;
- 3.13 '**fraudulent transaction**' means any transaction that would constitute fraud in terms of common law (irrespective of whether Nedbank has issued an authorisation code in good faith to the merchant). This includes any card purchase and/or transaction made by someone other than the authorised cardholder, and the use of a card or card account number that has not been issued by a *bona fide* card issuer to conclude this purchase;
- 3.14 '**internet**' means the collection of local area networks, wide-area networks and third-party networks that all use the same protocol (namely TCP/IP) to form a seamless, packet-switched network, colloquially referred to as the internet, and accessible by any person or business through an internet service provider;
- 3.15 '**juristic person**', '**related and interrelated person**', '**business rescue**', '**business rescue practitioner**', '**affected persons**', '**subsidiary**' and '**financially distressed**' have the meanings contemplated in section 128 of the Companies Act. The term '**security provider**' means the juristic person that provides security in respect of the obligations of the merchant;
- 3.16 '**liability shift**' means that, when a merchant is enrolled in the 3DSecure programme, the burden of proof for qualifying e-commerce transactions shifts from the acquiring bank and its merchant to the card issuer;
- 3.17 '**merchant server plug-in (MPI)**' means a component that is incorporated into the merchant's web storefront and performs functions related to Verified by Visa and SecureCode on behalf of the merchant;
- 3.18 '**merchant**' means an entity/client that contracts with an acquiring bank to facilitate transactions for which cards are accepted as payment;
- 3.19 '**merchant discount (MSC)**' means a portion of the total value of the card transactions carried out by the merchant and payable to Nedbank at a rate that can be amended by Nedbank from time to time;
- 3.20 '**message**' means an electronic communication from the merchant's server to the payment gateway or vice versa, in a format currently prescribed by Nedbank;

- 3.21 '**nominated bank account**' means the bank account nominated by the merchant from time to time in accordance with clause 19 and which is used by Nedbank to credit amounts due to the merchant and debit any costs, chargebacks and/or amounts for which the merchant is liable in terms of this agreement;
- 3.22 '**payer authentication request (PAREq)**' means a message sent from the MPI to the card issuer's access control server (ACS) (via the cardholder browser) requesting the authentication of the cardholder;
- 3.23 '**payer authentication response (PAREs)**' means a message formatted, digitally signed and sent from the card issuer's ACS to the MPI (via the cardholder browser) providing the results of the issuer's authentication of the cardholder;
- 3.24 '**payment gateway**' means software used by Nedbank to forward and receive messages and to adapt messages received from the merchant's server in order to process transactions;
- 3.25 '**PCI DSS**' means Payment Card Industry Data Storage Standards as stipulated by the card associations;
- 3.26 '**3DSecure**' means an e-commerce protocol that enables the secure processing of payment card transactions over the internet;
- 3.27 '**SecureCode**' means the MasterCard 3DSecure programme;
- 3.28 '**transaction**' means the purchase of goods and/or services from the merchant by the cardholder over the internet;
- 3.29 '**UCAF/ECI**' means Universal cardholder authentication field or e-commerce indicator, which identifies an internet transaction;
- 3.30 '**Verified by Visa**' means verified by Visa 3DSecure programme; and
- 3.31 '**Volume-based pricing**' means the merchant commission payable by the merchant to Nedbank, which fluctuates depending on the merchant's monthly turnover, as set out in **Annexure A**. The fluctuating merchant commission for which a merchant qualifies will be applied in the following month.

4 INTERPRETATION

- 4.1 Clause headings are for ease and convenience only and must not be used for the purpose of interpreting this agreement.
- 4.2 Words and expressions will bear the meanings assigned to them and related expressions will bear corresponding meanings.
- 4.3 Any reference to the singular includes the plural and vice versa, any references to natural persons include legal persons and vice versa and references to any gender include the other genders.
- 4.4 The validity and interpretation of this agreement will be governed by the laws of the Republic of South Africa.

5 RIGHTS AND OBLIGATIONS OF THE MERCHANT

- 5.1 The merchant undertakes to incorporate in its website all the details that customers will need to make an informed buying decision, including:
- 5.1.1 a comprehensive description of the goods on offer;
- 5.1.2 comprehensive details of return and refund policies;
- 5.1.3 customer service contact details, including email address and telephone number;
- 5.1.4 the total price of the goods or services on offer, including any relevant taxes and delivery charges (all prices quoted must be in South African rands);
- 5.1.5 a disclosure to the cardholder that the merchant, not the supplier of the goods or service, is the merchant of record and responsible for fulfilment of the transaction; and
- 5.1.6 the merchant's full name and online address.
- 5.2 The merchant must make provision to record:
- 5.2.1 the cardholder's name;
- 5.2.2 the expiry date of the card; and
- 5.2.3 the authorisation code as supplied by the acquiring bank.
- 5.3 The merchant undertakes to accept and honour all valid cards, without discrimination, when properly presented and validated in payment of goods and/or services.
- 5.4 The merchant must check the expiry date of every card presented. If the card is not yet valid or has expired, the transaction may not go ahead without authorisation.
- 5.5 The merchant must prominently and unequivocally identify itself as the merchant of record at all points of cardholder interaction (including on its internet site, promotions and invoices).
- 5.6 The merchant must notify the cardholder that the merchant is responsible for:
- 5.6.1 payment transactions;

- 5.6.2 products and services;
- 5.6.3 direct customer service;
- 5.6.4 the resolution of disputes; and
- 5.6.5 all terms and conditions of sale.
- 5.7 The merchant must have policies and procedures in place to keep card numbers secure and confidential and is allowed to retain cardholders' card details.
- 5.8 A message received from the merchant server will be deemed to be a message from the merchant.
- 5.9 The merchant must ensure that it has checks and balances in place for all transactions.
- 5.10 All chargebacks arising from a disputed virtual transaction may be debited to the merchant's account.
- 5.11 The merchant must comply with all legislation regulating its business, products and services, including the Consumer Protection Act, 68 of 2008, and the Electronic Communications and Transactions Act, 25 of 2002.
- 5.12 Where Verified by Visa or SecureCode cardholder authentication has successfully occurred or has been successfully attempted through the use of the Verified by Visa or SecureCode MPI, the merchant will be protected against card-not-present (reason code 75) and cardholder dispute (Reason code 83) chargebacks, and liability will shift to the card issuer.

6 ADDITIONAL UNDERTAKINGS

In addition to the other undertakings in the client agreements, the client unconditionally and irrevocably undertakes:

- 6.1 promptly to inform Nedbank in writing of –
 - 6.1.1 any alterations to its constitutional documents;
 - 6.1.2 any change in the present shareholding or ultimate beneficial control relating to voting rights of the client;
 - 6.1.3 any other events or circumstances relating to business rescue proceedings in respect of the client or members of the client or by an affected person contemplated under the Companies Act, 71 of 2008 (**'the Companies Act'**) or at the instance of the court pursuant to a court order commencing business rescue proceedings (whether such proceedings are anticipated, threatened or have commenced), and immediately to provide Nedbank with full details thereof, copies of all relevant documents, including applications, notices of meetings, resolutions, etc, and of any steps that the client is taking or proposes to take in respect thereof; and
 - 6.1.4 receipt by the client of notices from the Companies and Intellectual Property Commission (**'the Commission'**) in terms of sections 22(2) and 22(3) of the Companies Act;
- 6.2 to deliver to Nedbank written notice of a board or members' meeting of the client to approve a resolution contemplated under section 129 of the Companies Act, no later than 5 (five) business days prior to the date on which it is to be held, together with the details of the date and place at which the meeting will be held, so as to enable Nedbank, at its discretion, to attend such meeting. The client further agrees that Nedbank will be entitled, at its discretion, to attend the meeting and should Nedbank do so, Nedbank will have the right, subject to applicable laws, to be consulted in respect of the appointment of an appropriate business rescue practitioner;
- 6.3 not to enter into any amalgamation, demerger, merger or corporate reconstruction without Nedbank's prior written consent;
- 6.4 to comply with section 75 (Disclosure of financial interest) of the Companies Act in respect of all agreements the client contemplates and, in the event of non-compliance, to obtain a ratifying extract from its shareholders;
- 6.5 if applicable, promptly to deliver the written notice contemplated in section 129(7) of the Act to Nedbank; and
- 6.6 promptly to comply with the requirements of section 11(3)(b) ('RF' Companies) and section 13(3) of the Companies Act in respect of any special conditions contained in its memorandum.

7 RIGHTS AND OBLIGATIONS OF NEDBANK

- 7.1 Nedbank will pay to the merchant the value of all goods and/or services supplied less the agreed MSC payable by the merchant after a transaction has been electronically posted. However, Nedbank may retain funds in the event of excessive chargebacks, bankruptcy, fraud, suspected fraud or invalid transactions or unfulfilled transactions.
- 7.2 Nedbank is authorised to debit any other account of the merchant held at Nedbank or any other financial institution with items listed in clauses 5.10, 11, 12, 19 and 20 in the event that debits to the nominated bank account are unsuccessful.
- 7.3 Nedbank may apply setoff in respect of any amount that is to be paid by Nedbank under this agreement against any such amount that the merchant is obliged to pay Nedbank, whether under this agreement or otherwise, but may not apply setoff against amounts owing by the merchant to Nedbank arising from any possible commercial banking relationship that may from time to time exist between the parties.
- 7.4 Nedbank will immediately delete from the directory server any terminated/closed merchant number, suspect merchants, or any merchant that fails to comply with the requirements of the merchant agreement governing merchant participation in Verified by Visa and SecureCode.
- 7.5 Nedbank will retain chargeback rights if no authentication was attempted or if the card issuer's response to a PAREq was a denial.

8 CARDHOLDER DISPUTES

- 8.1 The cardholder may dispute any transaction for a period of 180 (one hundred and eighty) days following the transaction through a procedure initiated by the card issuer.
- 8.2 Nedbank reserves the right to charge back the amount of such disputed transaction directly to the merchant's account on receipt of the dispute.
- 8.3 The merchant will be liable for such amounts and will take up the resolution of disputes directly with the cardholder. Nedbank will not intervene on behalf of any of the parties and will not become involved in a dispute between a cardholder and a merchant.

9 FLOOR LIMITS

- 9.1 A zero floor limit applies to all transactions.

10 AUTHORISATIONS

- 10.1 The merchant must obtain authorisation from Nedbank for a transaction by means of a message.
- 10.2 The merchant must provide the authorisation code when presenting a transaction for payment.
- 10.3 Nedbank may refuse to authorise a transaction without giving any reasons.
- 10.4 An authorisation granted by Nedbank merely indicates that the cardholder has sufficient funds in his card account and is able to pay for the purchase at the time when the transaction is authorised. This authorisation does not warrant that:
 - 10.4.1 the card is valid or genuine;
 - 10.4.2 the person presenting the card is genuine;
 - 10.4.3 Nedbank will eventually pay the value of the authorised transaction; or
 - 10.4.4 payment by Nedbank of the authorised transaction will not be charged back to the merchant.

11 MERCHANT'S OBLIGATIONS IN RESPECT OF TRANSACTION DATA

- 11.1 The merchant must keep all information relating to a transaction on its database for at least 3 (three) years from the transaction date.
- 11.2 The merchant must keep proof of supply/delivery of the goods/services for at least 3 (three) years from the transaction date.
- 11.3 The merchant will be liable for the value of the sale should the cardholder subsequently repudiate or dispute any transaction.
- 11.4 For transactions processed through the payment gateway, the merchant must, within 5 (five) days of the deposit date, query any non-reflected credits.
- 11.5 When processing card transactions the merchant must at all times comply with PCI DSS and must therefore:
 - 11.5.1 at its own cost, comply with all aspects of the Payment Card Industry (PCI) Data Security Standards (DSS) as published by the card associations from time to time;
 - 11.5.2 report all instances of a data compromise immediately to Nedbank not later than 24 (twenty-four) hours from when the incident becomes known to the merchant; and
 - 11.5.3 ensure that identified breaches of the PCI Security Standards are rectified within 3 (three) months of the reported breach.
- 11.6 The Merchant will be liable to settle any fines or penalties levied by the card associations in the event of a data breach.
- 11.7 A transaction requiring payment must be presented by means of a message to the payment gateway. The message must include a record of all authorised transactions relating to goods that have been dispatched. The frequency of the data interchange will be at the sole discretion of Nedbank. However, the merchant must ensure that all transactions are presented for payment within 3 (three) banking days of the transaction date.
- 11.8 The merchant undertakes to notify Nedbank immediately if there are any errors in the data interchange arising from a defective communication link. Nedbank's liability will then be limited to correcting the faulty data interchange in the system.
- 11.9 Nedbank will credit the merchant's nominated bank account with the total net amount of all transactions presented for payment, subject to clause 19 below.
- 11.10 The fact that Nedbank may have credited the merchant's nominated bank account does not deprive Nedbank of its right to effect chargebacks or cancel payment of transactions by debiting the merchant's nominated bank account with the amount of the invalid transaction.
- 11.11 The merchant acknowledges that a transaction may not be presented for payment unless the relevant goods and/or services have been supplied.

- 11.12 The merchant must accept and apply 3DSecure processes for all e-commerce transactions that require the use of real-time card authentication processes and payment authorisation systems, and the merchant agrees to be bound by the terms and conditions applicable to this service and specifically those terms and conditions in clause 12 below.

12 PROVISIONS RELATING SPECIFICALLY TO SOFTWARE AND INFRASTRUCTURE

- 12.1 The merchant will carry the risk relating to the operational effectiveness of the merchant server (or any other server attached to the merchant server through which transactions are acquired) if PCI DSS requirements, as defined in this agreement, are not complied with.
- 12.2 The merchant must, in accordance with the bank's requirements and with reference to clause 11.12 above, install or integrate with the bank's Verified by Visa and SecureCode merchant plug-in technology to identify the merchant to the bank and/or the cardholder in accordance with the standards and specifications of the bank.
- 12.3 A 3DSecure transaction will be invalid:
- 12.3.1 if the merchant inserts falsified 3DSecure authentication information into the transaction message by inserting invalid card numbers; or
 - 12.3.2 if the UCAF/ECI indicators are incorrect; or
 - 12.3.3 if the 3DSecure authentication response from the issuer is tampered with in any way by the merchant; or
 - 12.3.4 if the merchant does not process a transaction in compliance with the 3DSecure authentication process.
- 12.4 Verified by Visa and SecureCode liability shift protection is provided only for Visa and MasterCard e-commerce internet transactions and this protection applies to cardholder disputes or card-not-present transactions.
- 12.5 The merchant must implement Verified by Visa and SecureCode in such a way that cardholder account details are never stored in an unprotected manner. Merchants must adhere to PCI DSS requirements.
- 12.6 A message received from the merchant server will be deemed to be a message from the merchant.
- 12.7 The merchant must supply Nedbank with the PAREq and/or PAREs messages if requested to do so to resolve disputes.
- 12.8 If the merchant does not comply with this entire clause 12, the merchant will be liable for such transaction and the amount of the transaction will be debited to the merchant's nominated bank account.

13 ADDITIONAL PROVISIONS RELATING SPECIFICALLY TO SOFTWARE AND INFRASTRUCTURE

- 13.1 The merchant may carry out transactions only if it has an infrastructure approved by Nedbank and a valid merchant certificate (or if such a certificate was provided as part of the payment gateway).
- 13.2 The merchant must comply with all applicable laws regarding import and export transactions performed over the internet.
- 13.3 Nedbank will not be party to any dispute between the merchant and an e-commerce service provider appointed by the merchant to establish its internet infrastructure. Nedbank will also not be liable for any damage suffered by the merchant resulting from any failure or malfunction of this infrastructure.
- 13.4 The merchant will be responsible for paying any charges or additional charges levied by Telkom or other government/non-government body authorised to control any connections that the infrastructure needs to function properly.
- 13.5 Nedbank will not be liable for damage caused by a network breakdown, system failure or equipment malfunction, or by the destruction of or damage to facilities caused by power failures or similar occurrences. It will also not be liable for loss or damage caused by events beyond Nedbank's control and/or the fact that the merchant or cardholder is unable to gain access to the merchant's infrastructure or to use it.
- 13.6 The merchant must, within a period agreed to by both parties, implement any hardware/software prescribed by Nedbank to manage/reduce fraud. If the merchant fails to do so, Nedbank will have the right to cancel this agreement with immediate effect.
- 13.7 The merchant agrees to implement security standards in the manner prescribed by Nedbank.
- 13.8 If the merchant decides to make use of the CyberSource Solution Services, the merchant agrees to be bound by the terms and conditions applicable to the services. The merchant will be responsible for obtaining a copy of these terms and conditions from Nedbank.

14 WARRANTIES

By presenting transactions to Nedbank for payment, the merchant warrants that:

- 14.1 all statements of fact contained in them are true;
- 14.2 the goods and/or services concerned were supplied at the merchant's normal cash price and that the price includes no additional charges or element of credit;
- 14.3 the transaction between the merchant and the cardholder is legal and conforms to the laws of the Republic of South Africa;
- 14.4 the goods and/or services supplied in terms of the transactions are not in conflict with the laws of the Republic of South Africa;

- 14.5 there has been full compliance with the terms of this agreement;
- 14.6 it indemnifies Nedbank against any claim or liability that may arise from a merchant-cardholder dispute in respect of goods and/or services supplied, with the onus being on the merchant to provide satisfactory evidence to Nedbank that the debit of the cardholder's account was authorised by the cardholder;
- 14.7 the goods and/or services referred to in the transactions were in fact supplied by the merchant to the cardholder at the agreed location and within the agreed period of time;
- 14.8 if the merchant is:
 - 14.8.1 a legal person or trust, the merchant will be incorporated in terms of the relevant laws of the Republic of South Africa and be registered in accordance with South African law; or
 - 14.8.2 a natural person, the merchant is a South African citizen and domiciled in the Republic of South Africa; or
 - 14.8.3 a partnership, the majority of the partners are South African citizens and domiciled in the Republic of South Africa and the main business of the partnership is conducted in the Republic of South Africa.

15 ADDITIONAL WARRANTIES

In addition to any warranties contained in the client agreements that govern the relationship between the client and Nedbank, the client represents and warrants to Nedbank that:

- 15.1 it has not received any notices from the Commission in terms of section 22(2) or 22(3) of the Companies Act;
- 15.2 it is not financially distressed or reasonably likely to become financially distressed within the next 12(twelve)-month period;
- 15.3 the board or members of the client have neither resolved to commence business rescue proceedings, nor has any such board or members or any of its agents, officers or employees taken any other steps contemplated under the Companies Act in anticipation of business rescue proceedings in respect of itself;
- 15.4 no person has applied or threatened to apply to court for an order commencing business rescue proceedings in respect of the client;
- 15.5 no corporate action, legal proceedings or similar procedure or steps have been taken or threatened, nor do any circumstances exist that are likely to give rise to steps being taken in respect of the client relating to the appointment of a business rescue practitioner or similar officer of it or of any of its assets, nor has anything analogous to any of the foregoing occurred in any applicable jurisdiction; and
- 15.6 the entry into and performance by the client of and the transactions contemplated in this agreement and the client agreements are not in conflict with any law or regulation applicable to it, its constitutional documents, or any agreement or instrument binding on it or any of its assets.

16 INDEMNITY

The merchant hereby indemnifies Nedbank against and waives its rights in respect of any demand, claim or action relating to or in connection with this agreement, whether arising directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or wilful misconduct of Nedbank or any of its employees. Any demand, claim or action arising against Nedbank as a consequence of the circumstances referred to in this clause will be limited to direct damages only, and special or consequential damages are specifically excluded.

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17 INVALID TRANSACTIONS

- 17.1 A transaction will be invalid if:
 - 17.1.1 the commencement date indicated on the card has not yet been reached;
 - 17.1.2 the card has expired;
 - 17.1.3 the transaction does not comply with any warranty contained in clause 14 above;
 - 17.1.4 the merchant does not present the transaction or supply the goods/services within the agreed period; or
 - 17.1.5 the merchant has not processed a 3DSecure transaction in accordance with clause 12.3 above; or
 - 17.1.6 at the time of the transaction any provision of this agreement has been violated.
- 17.2 Nedbank may at its sole discretion elect to treat any of the abovementioned transactions as valid, but without prejudice to Nedbank's right to treat any subsequent, similar transaction as invalid.
- 17.3 In the event of an invalid transaction as set out above Nedbank may charge back this transaction as described in clause 11.10.

18 REFUNDS

- 18.1 If the merchant is of the reasonable opinion that the cardholder is entitled to a refund or if a refund is requested by a cardholder, the merchant must:

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- 18.1.1 process the refund transaction through the applicable e-commerce facility;
- 18.1.2 confirm the relevant refund details with the cardholder;
- 18.1.3 not give a cash refund to the cardholder;
- 18.1.4 determine the amount of the refund as at the date when the merchant processed it, taking into account the prevailing exchange rate (where applicable), less any service fees and other charges that Nedbank may levy at the time.

19 DEBITING THE MERCHANT'S ACCOUNT

- 19.1 Nedbank may debit the merchant's nominated bank account, at whatever bank this account is held, with:
 - 19.1.1 any refund due to the cardholder in accordance with the refund procedure set out in clause 18;
 - 19.1.2 the value of reversals of invalid transactions;
 - 19.1.3 rentals for software and/or devices and/or fees for the provision of merchant facilities;
 - 19.1.4 merchant service commission as detailed in Annexure A;
 - 19.1.5 any refund due to a cardholder and not attended to by the merchant;
 - 19.1.6 the value of disputed transactions brought to the attention of Nedbank by cardholders;
 - 19.1.7 interest at Nedbank's prime overdraft rate payable by the merchant to Nedbank on any sum due;
 - 19.1.8 the value of transactions performed by a cancelled or otherwise invalid card; and
 - 19.1.9 fees and/or fines and/or penalties charged by Visa, MasterCard and industry regulatory bodies for excessive chargebacks or other disputes relating to the merchant and/or failure to comply with regulatory requirements.
- 19.2 The merchant must pay an administration fee for each payment that is due to Nedbank and is returned unpaid by the merchant's bank.
- 19.3 The merchant authorises Nedbank, for the duration of this agreement, to debit its nominated bank account, with account number held at the branch of
- 19.4 The merchant undertakes to notify Nedbank immediately in writing or by electronic mail of any changes in the details of its nominated bank account. Such advice must reach Nedbank at least 10 (ten) business days before such change will come into effect. The merchant waives any right to claim damages from Nedbank if such damages result from non-compliance with this clause.
- 19.5 The amounts referred to in 19.1 will be subject to exchange rate variations, where applicable.
- 19.6 VAT will be payable on all fees referred to in this agreement and Annexure A, where applicable.
- 19.7 Nedbank reserves the right to terminate this agreement immediately if any debit referred to in this agreement is returned unpaid by the merchant's bank for whatever reason.
- 19.8 Nedbank reserves the right to vary any other fees provided for in the agreement by giving the merchant written notification thereof, which notification could be a letter, a statement message or a statement insert, etc.
- 19.9 The merchant hereby agrees and acknowledges that, if the merchant facility is cancelled, Nedbank may debit the merchant's nominated bank account with all the amounts specified in this agreement for not more than a 180 (one hundred and eighty) days from the date of the cancellation.

20 FRAUDULENT TRANSACTIONS

- 20.1 The merchant may not present records of transactions that it knows or should have known were fraudulent or unauthorised by the cardholder. The merchant agrees to take responsibility for the action of its employees at all times.
- 20.2 Nedbank may debit the merchant's nominated bank account at any time with the value of all fraudulent transactions posted by the merchant.
- 20.3 Nedbank reserves the right to terminate this agreement immediately if the merchant or its employees perpetrate fraud, or if the level of fraudulent transactions exceeds the levels defined by Visa International Service Association and MasterCard International Incorporated.

21 DISCLOSURE OF INFORMATION

- 21.1 The merchant must advise Nedbank of any material change in the nature of its business and/or ownership as indicated on the application form.
- 21.2 The merchant must disclose to Nedbank information about any previous merchant agreements concluded with other financial institutions (including any restrictive conditions) and the reasons for cancelling those agreements, and the merchant authorises Nedbank to investigate these.
- 21.3 Except where required by law, the merchant may not disclose, sell, store, purchase, provide or exchange any cardholder's card details, name or account number to third parties in the form of mailing lists, tapes or other media, if these details have

been obtained by means of a card transaction. The merchant must keep securely all systems and media containing account, cardholder or transaction information (physical or electronic), including account numbers, to prevent access by or disclosure to anyone other than the merchant's authorised employees or Nedbank. The merchant must destroy all material that is no longer needed in such a way that the data is illegible.

- 21.4 Nedbank will disclose information concerning the merchant to card networks and other financial institutions for use in any fraud prevention schemes they may set up.

22 INSPECTIONS

- 22.1 Nedbank may conduct physical inspections and investigations at the merchant's premises when handling claims of cardholders and investigating suspected fraud. The merchant acknowledges that Visa International Service Association and MasterCard International Incorporated have the right to conduct an audit of the merchant at any time.
- 22.2 Nedbank may do an inspection to ascertain whether the server is housed in a secure environment as required by Nedbank.

23 ACCOUNT QUERIES

If the merchant wishes to query the accuracy or any other aspect of an entry on its account, this must be done within 30 (thirty) days of the date on which the entry appeared on the merchant's bank statement, otherwise the merchant will forfeit any claim against Nedbank in respect of this entry.

24 DISPLAY OF SYMBOLS

- 24.1 The merchant must display all marks and symbols provided by Nedbank in relation to the card in such a way that the public can clearly see that the merchant is willing to honour the card in payment of goods and/or services. These marks and symbols must be the same for any card.
- 24.2 The merchant's right to use or display such marks and symbols will continue only as long as this agreement remains in force, or until Nedbank notifies the merchant that they should no longer be used or displayed.
- 24.3 The merchant may in no way state or create the impression that Nedbank, Visa International Service Association, MasterCard International Incorporated or any other card issuer endorses or guarantees any of its goods and/or services.
- 24.4 In promoting its products or services the merchant may not refer to Nedbank, Visa International Service Association, MasterCard International Incorporated or any other card issuer.
- 24.5 Other than where Nedbank has given confirmation to the contrary, the merchant must display the Verified by Visa and SecureCode marks at least on its website, as well as on its payment page and, optionally, on its home page and/or security information page.
- 24.6 The merchant must adhere to the Verified by Visa and SecureCode content and placement guidelines as supplied by Nedbank from time to time.

25 BREACH

Should either party breach any material provision of this agreement and not remedy such breach within 14 (fourteen) days after it has received written notice from the other party to do so, the aggrieved party may, without prejudice to its other rights in law, cancel this agreement with immediate effect. Alternatively, it may insist that the defaulting party carry out all its obligations, irrespective of whether these obligations would otherwise have been due for performance. In either event the aggrieved party's right to claim damages will not be prejudiced.

26 ADDITIONAL EVENTS OF DEFAULT

- 26.1 The following will, in addition to the other events listed in the client agreements and together with the additional warranties given in respect of the occurrence of the events listed in clause 25 above, be events of default, each of which is severable and distinct from the others:
- 26.1.1 if the client fails to comply with any term or condition or undertaking in this agreement or any other agreement entered or to be entered into with Nedbank; or
- 26.1.2 if in any proceedings in respect of or against the client a court orders, or indicates that it may order, the commencement of business rescue proceedings in respect of the client; or
- 26.1.3 if a moratorium is declared in respect of any indebtedness of the client; or
- 26.1.4 if any provision of an agreement to which the client is party is cancelled or suspended (whether entirely, partially or conditionally) by the client, or any liquidator, business rescue practitioner, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the client or any of its assets, including a cancellation or suspension contemplated under section 136(2) of the Companies Act.
- 26.2 Where an event of default occurs and the client fails to remedy the matter within the period, if any, stipulated by Nedbank at such time, Nedbank may, in respect of all entities that comprise the client and without limiting any other right Nedbank may hereby or otherwise acquire, at its sole discretion:

- 26.2.1 refuse to advance any further amounts to the client or suspend the availability of any of the facilities; or
 - 26.2.2 conduct an immediate review of the client's obligations to Nedbank, in which event the client must supply Nedbank with any documentation or information required to complete this review; or
 - 26.2.3 restrict the client's access to the facilities, including any agreements, to limits considered acceptable by Nedbank; or
 - 26.2.4 increase the interest rate applicable to one or more of the facilities, including any agreements, which increased rate will not exceed the default interest rate; or
 - 26.2.5 require that the client supply sufficient additional security; or
 - 26.2.6 do any combination of any of the above.
- 26.3 The client hereby indemnifies Nedbank from and holds it harmless on demand against any loss, liability or cost suffered by Nedbank if any obligation provided for in this agreement is or becomes unenforceable, invalid or illegal or is cancelled or suspended entirely, partially or conditionally, including any damage suffered by Nedbank contemplated in section 136(3) of the Companies Act, and/or any claim that Nedbank has or may have against the client for restitution, arising from the exercise by any business rescue practitioner of the powers granted to him in accordance with section 136(2) of the Companies Act. The amount of that loss, liability or cost must include at least the amount that Nedbank would otherwise have been entitled to recover.

27 RESOLUTION OF DISPUTES

- 27.1 Subject to clause 25 any dispute that may arise between the parties in respect of this agreement or its interpretation must be resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the foundation.
- 27.2 Either party to this agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party. This clause will not preclude either party from obtaining urgent interim relief from a competent court pending the arbitrator's decision.
- 27.3 The arbitration will be held in English, at Sandton, and without delay, with a view to completion within 21 (twenty-one) days after it is requested.
- 27.4 The parties irrevocably agree that the decision in arbitration proceedings:
- 27.4.1 will be final and binding on the parties;
 - 27.4.2 will be carried into effect; and
 - 27.4.3 may be made an order of any court of competent jurisdiction.

28 DURATION

This agreement will be effective from the date on which it is signed and will remain in force until terminated by either party, who will give the other party 30 (thirty) days' written notice subject to 19.7, 20.3, 25, 26, 29 and 31.

29 SUSPENSION

Nedbank may, irrespective of anything to the contrary contained elsewhere in this agreement, on good cause suspend this agreement at any time with immediate effect and without notice to the merchant, provided that transactions for which payment instructions have already been authorised in terms of clause 10 prior to such suspension will be duly processed.

30 SETOFF

- 30.1 To the extent permitted by law and in instances where the National Credit Act is not applicable to this agreement and without derogating from any of Nedbank's rights or entitlements, on the commencement of business rescue proceedings, or the taking of any steps contemplated in the Companies Act in anticipation of business rescue proceedings, all amounts owing by the client to Nedbank will at Nedbank's option (and without prior notice to the client being required) be reduced by setoff against any other amounts ('**other amounts**') payable by Nedbank to the client (whether or not arising under this agreement and whether or not these other amounts are due and payable or contingent). To the extent that any other amounts are so set off, those other amounts will be discharged promptly in all respects.
- 30.2 Nedbank will advise the client of any setoff effected under this clause.

31 GENERAL

- 31.1 Nedbank may add to, amend or replace all or any of the terms and conditions of this agreement by notice to the merchant and, unless the merchant terminates this agreement by giving notice to that effect, the merchant will be deemed to have accepted such additional, amendment or new terms and conditions.
- 31.2 This agreement, as amended by Nedbank from time to time, constitutes the entire agreement between the parties regarding Verified by Visa and SecureCode and cannot be varied or consensually terminated unless it is in writing and is signed non-electronically by the duly authorised representatives of both parties.

- 31.3 Any relaxation, indulgence or extension of time granted by Nedbank to the merchant will not mean that Nedbank has nullified or waived any of its rights against the merchant.
- 31.4 Neither party may cede or assign any of its rights or obligations under this agreement.
- 31.5 In respect of any account that the merchant holds with Nedbank or any other financial institution, Nedbank may elect to set off any amount due and payable by Nedbank to the merchant against any amount due and payable by the merchant to Nedbank. The merchant must immediately pay any net amount that it owes to Nedbank after setoff.
- 31.6 Nedbank may elect to consolidate all accounts held by the merchant with Nedbank. A partial consolidation will not preclude Nedbank from exercising its rights in respect of any accounts or amounts not included in this consolidation.
- 31.7 The terms of this agreement will be deemed to be, in respect of each part, entire, separate, severable and separately enforceable in the widest sense from the rest of the agreement.
- 31.8 Should any provision of this agreement be found by any competent court to be defective or unenforceable, the remaining provisions of this agreement will continue to be of full force and effect.

32 DOMICILIA AND NOTICES

- 32.1 The parties choose as their respective *domicilia citandi et executandi* ('domicilium') for all purposes the addresses furnished on the cover page of this agreement.
- 32.2 Either party may change its domicilium to any other physical address within the Republic of South Africa by means of a written notice to the other.
- 32.3 Any notice given by either party to the other ('the addressee') that:
 - 32.3.1 is delivered by hand during normal business hours at the addressee's domicilium, will be presumed to have been received by the addressee at the time of delivery;
 - 32.3.2 is posted by prepaid registered post to the addressee's domicilium, will be presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; and
 - 32.3.3 is faxed to the addressee's fax number, will be presumed to have been received by the addressee on the date of transmission.
- 32.4 A notice may not be sent by electronic mail, except as specifically provided for in this agreement in clause 19.4.
- 32.5 Any such notice referred to in clauses 32.2 and 32.3 must reach Nedbank at least 10 (ten) business days before coming into effect. The merchant waives any right to claim damages from Nedbank if such damages result from non-compliance with this clause.

Signed at on / /
Place Day Month Year
Signature Here
Signature
For and on behalf of the merchant, duly authorised

Witnesses:
1
2

Signed at on / /
Place Day Month Year
Signature
For and on behalf of Nedbank Limited, duly authorised

Witnesses:
1
2

STANDARD DECLARATION

RETAIL AND BUSINESS BANKING

NATURAL PERSONS AND NON-NATURAL PERSONS

LEGAL AND GENERAL INFORMATION

While Nedbank Group Limited and all its subsidiaries and associates and its cessionaries, delegates or successors in title (collectively 'Nedbank') are constantly striving to provide a service that is intended to make your banking as easy and convenient as possible, all South African banks are legally obliged to verify, including identity verification with statutory bodies, and retain information received from you.

Apart from the information you will provide in your application, Nedbank may therefore require additional documentation and information from you.

Where the words 'I', 'me', 'my', 'you' and 'your' are used, these also refer to entities other than natural persons in the event that such entities are represented in this document.

PRIVACY CONSENT

I give my express consent to Nedbank to process my personal information as defined in legislation, including fingerprints, biometric personal identification details, photographs and identity verification in terms of the Financial Intelligence Centre Act of 2001, for purposes of providing financial services and preventing fraud and money laundering, and to send my personal information to third parties in order to provide a service to me, and also to send such information to foreign countries, when necessary, by electronic or other means for processing. I understand that such countries may not have specific data privacy laws.

FURTHER PROCESSING

- 1 Nedbank may search, update or place my records at credit reference bureaus and government agencies in order to verify my identity, assess my ability to obtain credit or to provide collateral of any kind, including guarantees or suretyships, and may, on request from another credit provider with whom I have applied for credit, provide my personal information, including my credit reference data, to such credit provider and also make any enquiries that it deems necessary to confirm the details on this form for marketing purposes and to assess my creditworthiness.
- 2 Nedbank may use my personal information for debt enforcement, including but not limited to recovery, collection, repayment, surrender, enforcement and cession of debts.
- 3 I confirm that I have fully disclosed my debt repayment history.

COMMUNICATION AND MARKETING

- 1 I would like Nedbank to inform me of new Nedbank products and special offers. Yes No
- 2 I would like Nedbank to present exclusive offers from other organisations to me. Yes No
- 3 Nedbank may request reputable research organisations to contact me. Yes No
- 4 My preferred method of communication is as follows: Email SMS Direct mail Telephone All
- 5 Nedbank may use a method of communication other than that preferred by me as well as my personal information to market its products to me, including electronic marketing and telesales, until I give an instruction to the contrary. Yes No

CONFIRMATION

- 1 Nedbank has explained this application form, the product and costs, where applicable, to me and I confirm that I fully understand the contents thereof and that I am completing it of my own free will.
- 2 I warrant that I have fully and truthfully answered all questions and responded to requests for information as part of the assessment process, and that I am not aware of any other information that may affect this application negatively.
- 3 Nedbank may undertake identity and fraud prevention checks and share information relating to this application with South African Fraud Prevention Services.
- 4 All consents provided in this document will survive any contractual relationship that I have with Nedbank, unless I provide written notice to Nedbank that I have cancelled such consents.

NATURAL PERSONS: PLEASE SIGN BELOW

Signatures

Signed at on / /
Place Day Month Year

Applicant Spouse (if married in community of property)
who attests to the above who attests to the above

Legal guardian (if unemancipated minor) Surety, guarantor or coapplicant
who attests to the above who attests to the above

Signature of administrator (if under administration) Signature Here

NON-NATURAL PERSONS: PLEASE COMPLETE THE RESOLUTION BELOW

RESOLUTION (NON-NATURAL PERSONS ONLY)

Signed at on / /
Place Day Month Year

Extract from the minutes of a meeting of the directors/members/trustees/partners, etc of
(the business)

held at on / /
Place Day Month Year

RESOLVED THAT
in his/her capacity as (full names)
..... (designation)
and/or (full names)
in his/her capacity as (designation)

be authorised to complete and sign this document, as well as any other subsequent documentation submitted to Nedbank, on behalf of the business.

Full names

Identity number

If not a South African citizen or resident: Nationality Passport no

Residential address

Suburb City Postcode

Tel Cell

Fax Email

Signature Date

Signature Here Chairman/Company Secretary/Director/Member/Trustee/Partner

ANNEXURE A

MERCHANT COMMISSION/TRANSACTION FEE/ADMINISTRATION FEE/OTHER FEES

- 1 The merchant commission (MSC) payable by the merchant to Nedbank for credit card transactions processed using 3D Secure will be an amount equal to N/A of the aggregate daily transfers to the nominated bank account; alternatively aggregated monthly transfers will be used to apply the volume-based pricing matrix.
- 2 The MSC payable by the merchant to Nedbank for debit/hybrid/cheque card transactions will be an amount equal to N/A of the aggregate daily transfers to the nominated bank account; alternatively aggregated monthly transfers will be used to apply the volume-based pricing matrix.
- 3 As background, if an issuer receives an e-commerce transaction from a 3D Secure-enabled merchant and finds that a given transaction has not been processed as a 3D Secure transaction, then the issuer is entitled to and will claim a greater merchant interchange determination for that transaction. The MSC payable by the merchant for such transactions will be the amount reflected in clause 1 above, plus a punitive amount equal to N/A of that transaction. Likewise, a punitive amount for debit card transactions will apply and that amount will be the value reflected in clause 2 above plus a value of N/A of that transaction. These punitive amounts will be billed retrospectively. If it is discovered that 3D Secure processes are not being applied to transactions either routinely or periodically by the merchant, Nedbank reserves the right to increase the MSC to the above rate and/or to claim the difference between the lower MSC rate and the increased MSC rate from the merchant retrospectively from the time it is evident that the 3D Secure processes were not consistently applied. Nedbank will also have the right to claim any resultant and/or related fines or penalties levied by the relevant regulatory bodies.
- 4 An initial administration charge of: N/A (exclusive of VAT) will be payable by the merchant.
- 5 Nedbank reserves the right to vary the MSC and transaction fee and any other fees provided for in the agreement on written notification to the merchant, which notification may be included in, but will not be limited to, a letter, a statement message or a statement insert.
- 6 The monthly charge for rental of software and/or devices and/or fees for the provision of merchant facilities will be N/A (exclusive of VAT) and will be subject to annual review.
- 7 A minimum commission fee of N/A (exclusive of VAT) will be payable by the merchant monthly.

VOLUME-BASED PRICING MATRIX APPLIES ONLY IN THE MONTH AFTER THE THRESHOLD IS REACHED

Turnover per month (R)	Credit rate (%)	Debit rate (%)
Above 0 to 30,000	N/A	N/A
Above 30 000 to 60 000	N/A	N/A
Above 60 000 to 120 000	N/A	N/A
Above 120 000 to 180 000	N/A	N/A
Above 180 000 to 300 000	N/A	N/A
Above 300 000 to 500 000	N/A	N/A
Above 500 000 to 1 000 000	N/A	N/A
Above 1 000 000 to 1 500 000	N/A	N/A
Above 1 500 000 to 2 000 000	N/A	N/A
Above 2 000 000 to 2 500 000	N/A	N/A
Above 2 500 000 to 3 000 000	N/A	N/A
Above 3 million	N/A	N/A

DECLARATION OF ANTICIPATED TURNOVER APPLICABLE TO VOLUME-BASED PRICING

The turnover as declared below will be used to calculate the qualifying rate for month one.

Anticipated turnover per month

Volume-based pricing rate (month one only)

Merchant name: Signature

Date Signature Here