

Terms and Conditions

Merchant Acquiring Services

** Fees are agreed by you and Bidvest Merchant Services at the time of application and may be reviewed from time to time.*

Contact Details

Bidvest Merchant Services 0860 111 441

1. Defined Terms

- 1.1. **Agreement** has the meaning set out in Section 26.18 of those Terms and Conditions. The Agreement sets out the agreement understanding and undertakings of the parties in relation to provision of the Services by Bidvest Merchant Services and Bidvest Bank to you.
- 1.2. **Account Set-up Fee** means the once-off set-up fee shown in the Change Schedule in the Merchant Application payable by you to Bidvest Merchant Services.
- 1.3. **American Express** means American Express and any affiliate thereof with responsibility for operations in South Africa, and any of their successors and assigns.
- 1.4. **Authorisation** means the process of referring a Transaction to the Authorisation Centre at the time of the Transaction for approval for the Transaction to go ahead.
- 1.5. **Authorisation Centre** means the Bidvest Merchant Services credit card centre or such other centre as we may from time to time establish and notify you of.
- 1.6. **Authorisation Code** means a code number advised by the Issuer to Bidvest Merchant Services in respect of a particular Transaction during the course of Authorisation.
- 1.7. **Banking Day** means any day Bidvest Bank is open for business in South Africa.
- 1.8. **Business** means your business as a merchant as described in the Agreement or such other description as Bidvest Merchant Services may agree from time to time.
- 1.9. **Card** means all valid and current payment cards approved by Bidvest Merchant Services and notified to you in writing from time to time.
- 1.10. **Cardholder** means an individual, company, firm or other body to whom a Credit or Debit Card has been issued and who is authorised to use that Card.
- 1.11. **Cardholder's Account** means an account in the name of the Cardholder, as identified in the Card Number.
- 1.12. **Cardholder's Information** means any information in relation to a Cardholder including any Card Number and personal data.
- 1.13. **Card Issuer** means the institution that issued the Card to the Cardholder.
- 1.14. **Card Not Present (CNP)** means an order for goods or services where the Card or the Cardholder is not physically present at your premises at the time of the Transaction. This often arises from postal or telephone requests for goods or services.
- 1.15. **Card Number** means the number displayed on a Card identifying the Cardholder's Account.
- 1.16. **Card Present** means a Transaction where the Card is physically presented to you by the Cardholder as the form of payment at the time of a sale.
- 1.17. **Chargeback** means a demand by a Card Issuer or a Card Scheme to be repaid a sum of money by Bidvest Merchant Services in respect of a Transaction which has been previously subject to Settlement and for which we have been paid by the relevant Card Scheme.
- 1.18. **Charges Schedule** means the schedule in the Merchant Application listing the fees and charges payable by you to Bidvest Merchant Services as issued and varied by us in our absolute discretion from time to time.
- 1.19. **Chip** means an electronic device in a Card which enables the Card to communicate Cardholder details to a Chip and PIN Terminal.
- 1.20. **Contract Summary** means a summary of the Agreement which Bidvest Merchant Services may provide to you.
- 1.21. **Contract Year** means a period of 12 months commencing on the date of deemed acceptance of the Agreement in accordance with 'Notes' of these Terms and Conditions, and, thereafter, the period of 12 months commencing on each anniversary of that date.
- 1.22. **CVV2/CVC2** means the three-digit security code printed on the reverse of Cards and intended to enhance the authentication of the Card.
- 1.23. **Data** means Card Transaction and Refund data.
- 1.24. **Diners** means Diners Club International Limited and any affiliate thereof with responsibility for operations in South Africa, and any of their successors and assigns.
- 1.25. **Documentation** means any and all manuals, operating policies and procedures and other written materials in any form or format provided or made accessible to you in conjunction with any element of the Services, as amended by us from time to time.
- 1.26. **Electronic Commerce** means a non-face-to-face online Transaction using electronic media in which Card details are transmitted by a Cardholder to you via the Internet, the extranet or any other public or private network.
- 1.27. **Equipment** means all equipment provided to you under a Leasing Agreement by Bidvest Merchant Services, its agents, or any other entity in the Bidvest Merchant Services Group, including in particular any imprinter, electronic data capture device or Sales Vouchers and including any replacements, substitutions or additions thereto.
- 1.28. **Fallback Procedures** means the procedures set out in the Operating Guide.
- 1.29. **Floor Limit** means the amount above which Authorisation is required in respect of a Transaction, as determined by the relevant Card Scheme or Bidvest Merchant Services from time to time.
- 1.30. **Internet** means the internet being a collection of various separate networks worldwide which are connected together, using a standardised set of communication protocols.

- 1.31. **Internet Service Provider (ISP)** means the provider of a service to enable Card details to be sent securely over the Internet to enable payment to be made for goods or services.
- 1.32. **IPG Services** means the provider of a service to enable Card details to be sent securely over the Internet to enable payment to be made for goods or services.
- 1.33. **Issuer** means an organisation that issues Cards and whose name appear on the Card as the Issuer or who enters into a contractual relationship with the Cardholder for the use of the Card.
- 1.34. **Leasing Agreement** means an agreement (other than these Terms and Conditions) for the lease of Terminals and associated Equipment entered into by you with Bidvest Merchant Services, its agents or any other entity in the Bidvest Merchant Services Group.
- 1.35. **MATCH** means MasterCard's Member Alert to Control High-risk Merchants list.
- 1.36. **Mail/Telephone Transaction** means the processing of a Transaction arising from an order for goods or services where the Card or the Cardholder is not physically present at the time of the Transaction. This often arises from mail or telephone requests for goods or services.
- 1.37. **Maestro** means a Card for use with the debit card Mastercard scheme known as "MAESTRO" through which payments are made for goods, services, accommodation or other facilities.
- 1.38. **MasterCard** means MasterCard International Incorporated and any affiliate thereof with responsibility for operations in South Africa, and any of their successors and assigns.
- 1.39. **Merchant Application** means the application form completed and delivered by a person or entity which wishes to receive Services on the terms of the Agreement.
- 1.40. **Merchant Information** means any information in relation to a Merchant including any personal data.
- 1.41. **Merchant Service Charge** means a percentage charge that Bidvest Merchant Services applies to you for the handling of Visa and Mastercard Transactions.
- 1.42. **Merchant Systems** means any hardware or software used by you to access website(s) operated or maintained by us through which Transactions are submitted for processing, and all other associated systems.
- 1.43. **Nominated Bank Account** means the Rand bank account which you have advised Bidvest Merchant Services is to be debited and credited with funds due by and to you.
- 1.44. **Operating Guide** means the operating guide issued and varied by Bidvest Merchant Services, in its absolute discretion, from time to time setting out those detailed procedures and operating instructions you must follow in connection with accepting and processing Transactions and your other obligations under the Agreement.
- 1.45. **Payment Card Industry (PCI) Data Security Standards** means the standards laid down by the Schemes to minimise the potential for Card and Cardholder data to be compromised and used fraudulently.
- 1.46. **Payment Service Provider (PSP)** means a provider of a service which enables Card payments to be made over the Internet.
- 1.47. **PIN** means personal identification number. This is the secret number used by Cardholders with Chip Cards to authorise Transactions to be debited to their account.
- 1.48. **PIN Pad** means a secure device with an alphanumeric keyboard which complies with the requirements established from time to time by Bidvest Merchant Services and through which the Cardholder can enter their PIN.
- 1.49. **Platform** means the First Data platform(s) through which the IPG Services contemplated under this Agreement are provided.
- 1.50. **Point of Sale** means the physical location at which you accept Transactions and in the case of Card Not Present Transactions via a website where you have your fixed place of establishment.
- 1.51. **Recurring Transaction** means a Transaction which the Cardholder has agreed can be debited to their Cardholder's Account at agreed intervals or on agreed dates. The Transaction can be for a specific amount or for an amount due to you for an ongoing service or provision of goods.
- 1.52. **Refund** where you agree to make a refund to the Cardholder's Card of the whole or part of any sum authorised by a Cardholder to be debited to their Cardholder's Account.
- 1.53. **Rental** means the rental charge payable by you under a Leasing Agreement for the use of the point-of-sale Terminals and associated Equipment.
- 1.54. **Reserve Account** means an account under the sole control of Bidvest Merchant Services where funds due to you are credited until it agrees to release the funds to you.
- 1.55. **Reversal** means the reversing of a Transaction.
- 1.56. **Sales Vouchers** mean vouchers to be used with your manual imprinter during Fallback Procedure.
- 1.57. **Schemes** mean Visa, Mastercard, Maestro and other schemes notified to you by Bidvest Merchant Services from time to time.
- 1.58. **Scheme Rules** mean the rules and operating instructions issued by particular Schemes from time to time.
- 1.59. **Service Charge** means a charge that Bidvest Merchant Services levies on you for the services provided to you by it.
- 1.60. **Services** mean the Transaction Authorisation and Settlement, and related services to be provided by Bidvest Merchant Services to you pursuant to the Agreement.
- 1.61. **Settlement** means the payment of amounts to be reimbursed by Bidvest Merchant Services to you or by you to it under the Agreement.
- 1.62. **Software** means all protocols, software components and other interfaces and software provided by Bidvest Merchant Services to you or accessed by you pursuant to the Agreement, and any and all updates.
- 1.63. **Statement/Tax Invoice** means the regular advice from Bidvest Merchant Services to you advising of the Transactions performed by you and the charges due by you.
- 1.64. **Terminal** means an electronic device used to capture Card details, for obtaining Authorisations and submitting Transactions to Bidvest Merchant Services SA for Settlement. The term also includes any PIN entry device (PED) if it is a separate device.
- 1.65. **Terminal Supplier** means any company authorised by Bidvest Merchant Services to supply Terminals to Merchants.
- 1.66. **Termination** means the termination of the Agreement by any of the parties in accordance with Section 24 of these Terms and Conditions.
- 1.67. **Termination Events** means each of the events set out in clause 24 (3) to (5) (inclusive) of these Terms and Conditions.
- 1.68. **Termination Fee** means the fee payable by you on termination of the Agreement as set out in the Charges Schedule in the Merchant Application.

- 1.69. 3D Secure** means the Three-Domain Secure protocol developed by Visa and for the Agreement includes “Verified by Visa” and “MasterCard SecureCode” and such other programmes notified to you by Bidvest Merchant Services from time to time.
- 1.70. Transaction** means the purchase or lease by a person of goods and/or services from you (including a credit or refund) by use of a Card or an alternative payment method.
- 1.71. Transaction Data** means all data relating to Transactions.
- 1.72. Transaction Record** means the particulars of a Transaction required from you by Bidvest Merchant Services in order to process a Transaction in the form as prescribed by it.
- 1.73. Virtual Private Network (VPN)** means a private network that encompasses links across a shared or public network.
- 1.74. Visa** means Visa International and any affiliate thereof with responsibility for operations in South Africa, and any of their successors and assigns.
- 1.75. Visa Electron** means the use of the debit card Visa scheme known as “Visa Electron” through which payments are made for goods, services, accommodation or other facilities.
- 1.76. VMAS** means Visa Merchant Alert System.
- 1.77. Website Page** means the form issued and varied by Bidvest Merchant Services, in its absolute discretion from time to time, setting out those details required from you to enable it to process under the Agreement Transactions which you have accepted over the Internet.
- 1.78. Wi-fi Protected Access (WPA)** means technology for encryption and authentication with wireless LAN technology.
- 1.79. Wireless Equivalent Privacy (WEP)** means a security protocol for wireless local area networks.
- 1.80. Wireless Local Area Network (LAN)** means a computer network that allows wireless communications using radio waves, microwaves or both to transmit Card or Cardholder data; and “Wireless Terminal” means a terminal that allows wireless processing.
- 1.81. “You” or “Your” or “Merchant”** means the merchant who has entered into the Agreement.

Notice of Use of Information

- a.** This Notice explains how Bidvest Merchant Services and Bidvest Bank may use information provided by you.
- b.** Reference in these Terms and Conditions to “Bidvest Merchant Services” is a trading name of and refers to Bidvest Merchant Services (Pty) Ltd, and reference to “Bidvest Merchant Services Group” means Bidvest Merchant Services (Pty) Ltd, its holding company, and its subsidiaries, and its holding company’s subsidiaries, and their associated companies from time to time.
- c.** Reference in these Terms and Conditions to “Bidvest Bank” means Bidvest Bank Limited, a licensed financial services and registered credit provider, number NCRCP17, and its subsidiaries. Reference to “The Bidvest Group” means each of its holding companies, and its subsidiaries, and its holding company’s subsidiaries, and their associated companies from time to time.
- d.** For the purposes of the above “subsidiary” and “holding company” shall have the meanings given to them in the Companies Act, 2008 (as amended or superseded from time to time) including any subsidiary acquired after the date of this Agreement, and “affiliate” shall mean, when used with reference to a specific person or entity, any person or entity that directly or indirectly, or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or common control with, such specified person or entity. As used herein “ownership” means (i) the legal or beneficial ownership of 5% or more of the equity securities of the person or entity, or (ii) the right directly or indirectly, through one or more intermediaries, to appoint a majority of the board of directors of any such person or entity.
- e.** Bidvest Merchant Services is a wholly owned subsidiary of Bidvest Bank Limited. The information provided by you to Bidvest Merchant Services and Bidvest Bank may be shared within the Bidvest Merchant Services Group and The Bidvest Group. The information may be disclosed outside the Bidvest Merchant Services Group and The Bidvest Group in accordance with these Terms and Conditions, and with Bidvest Merchant Services third-party processor.
- f.** The information that you provide to Bidvest Merchant Services or Bidvest Bank will be held by Bidvest Merchant Services or Bidvest Bank on a computer database and may be held in any other way. We will use this information to administer the products and services we supply to you and any future agreements we may have with you or may wish to have with you.
- g.** You have the right to access any personal data provided by you to Bidvest Merchant Services or Bidvest Bank and held by Bidvest Merchant Services or Bidvest Bank by sending a written request to Bidvest Merchant Services’ current registered office or Bidvest Bank’s physical address with payment of a fee (please contact Bidvest Merchant Services or Bidvest Bank for the current fee payable). Please note that there is no fee required in relation to receiving confirmation from us as to whether we hold personal data about you. You also have the right to require us to correct any inaccuracies in the information we hold about you.
- h.** Where you apply for finance or enter into a financial obligation, Bidvest Merchant Services and Bidvest Bank may give details of your agreement(s)/account(s) and how you conduct your agreement(s)/account(s), to other financial institutions and to licensed credit reference agencies on a regular basis and may exchange information about you between Bidvest Bank and Bidvest Merchant Services and with certain members of the Bidvest Merchant Services Group and The Bidvest Group. Licensed credit reference agencies may record details of each type of search we make whether or not your application proceeds.

- i. This information would be shared in order to prevent credit losses and potential fraudulent applications and transactions. When considering a request, proposal, application; or when administering your agreement(s), managing your account(s) or making decisions regarding credit, including whether to make credit available or to continue or to extend existing credit, Bidvest Merchant Services and Bidvest Bank may carry out searches (for the purpose of verifying your identity) and credit searches with one or more licensed credit reference agencies. Bidvest Merchant Services and Bidvest Bank may use credit scoring and other automated decision-making systems.
- j. To prevent or detect fraud, Bidvest Merchant Services and Bidvest Bank may make searches of your records. Bidvest Merchant Services and Bidvest Bank may also pass information to financial and other organisations involved in fraud prevention to protect ourselves and our customers from theft and fraud. If you give us false or inaccurate information and we suspect fraud, we will record this without any liability to us.
- k. You have the right of access to the personal data held about you by licensed credit reference agencies. Please write to Bidvest Merchant Services if you would like to know the names of the agencies used by us.
- l. Further details of how Bidvest Merchant Services and Bidvest Bank use information about you are set out in Section F of these Terms and Conditions.
- m. If you decide to continue to utilise the Services pursuant to the Agreement, you accept the use by Bidvest Merchant Services and Bidvest Bank of your data as indicated above.

Notes

- a. The Agreement for the provision of the Services to you is entered into by Bidvest Bank, Bidvest Merchant Services and the Merchant. Bidvest Bank is a party to the Agreement in compliance with the Scheme Rules. The Services are performed by Bidvest Merchant Solutions to the maximum extent permitted by law and by the Scheme Rules.
- b. The Agreement for the provision of the Services to you is entered into by Bidvest Bank, Bidvest Merchant Services and the Merchant. Bidvest Bank is a party to the Agreement in compliance with the Scheme Rules. The Services are performed by Bidvest Merchant Solutions to the maximum extent permitted by law and by the Scheme Rules.
These Terms and Conditions have been drafted on the basis that the Agreement between Bidvest Bank, Bidvest Merchant Services and you will comprise these Terms and Conditions, the Operating Guide, the Merchant Application (where relevant), the Supporting Information Form (where relevant) and the Website Page (where relevant) and any other documents as the parties may from time to time agree to. The above referenced documents are (where relevant), incorporated into and form the Agreement, which sets out the terms upon which you will receive the Services.
- c. The completion and delivery to Bidvest Merchant Services by you of a Merchant Application and the processing of a Transaction accepted by you, shall constitute acceptance of, and your agreement to be bound by, the Agreement.
- d. Please refer to Bidvest Bank's Privacy Notice for further information on how the Bank will treat your personal information. Visit the website on: www.bidvestbank.co.za
- e. Your personal information will be processed outside of South Africa, but all service providers are required to have adequate safeguards in place to protect your personal information.
- f. We may monitor or record telephone conversations with you to aid us in the provision of services in terms of this Agreement and to detect or prevent fraud or other crimes.

Section A – General Terms and Conditions

1. Definitions and Interpretation

- 1.1. Capitalised words have the meaning given to them in the *'Defined Terms'* of these Terms and Conditions.
- 1.2. If there are any inconsistencies between these Terms and Conditions and the Operating Guide, these Terms and Conditions will prevail.

2. Services

- 2.1. Bidvest Merchant Services will, to the maximum extent permitted by law, and the Scheme Rules, provide the Service to you.
- 2.2. Bidvest Bank is a member of the Schemes, and sponsors Bidvest Merchant Services to enable Bidvest Merchant Services to provide the Services to you.

3. Honouring of Cards

- 3.1. You agree, in consideration of receiving from Bidvest Bank the right to participate in the Schemes, to accept all valid and current Cards presented by Cardholders, and to provide your full range of goods and services at prices not greater than your normal cash prices.
- 3.2. If you indicate a price to a Cardholder which is not a price applicable to all methods of payment accepted by you, then before you accept the Transaction you must display a statement explaining any methods of payment to which the indicated price does not apply and the difference in price either as an amount or a percentage. The statement must be displayed at each public entrance to your premises and (except for Card Not Present Transactions) at each Point of Sale. Statements in respect of Card Not Present Transactions must be made in accordance with the Operating Guide.

4. Authorisation

- 4.1. If a Cardholder wishes to purchase goods or services from you, the cost of which is equal to or more than the relevant Floor Limit for the Card concerned, you must obtain prior Authorisation for such Transaction before you can accept it from that Cardholder. The Floor Limit for all Transactions is to be zero, and Bidvest Merchant Services may vary the Floor Limit at any time and by such means and on such notice as it deems fit.
- 4.2. You must seek Authorisation from the Authorisation Centre when prompted to do so, by following the procedures set out in the Operating Guide, or as Bidvest Merchant Services may otherwise instruct you. Authorisation does not guarantee payment for a Transaction.
- 4.3. If Authorisation is granted, you shall (where relevant) record on the Transaction Record the code number allocated to the Authorisation. If the Transaction so authorised is not forthwith concluded, you must immediately contact the Authorisation Centre to cancel/reverse the Authorisation, except if otherwise provided in the Operating Guide.
- 4.4. If Authorisation is refused, the Transaction must not proceed, and you must not seek Authorisation for any different amount.
- 4.5. Should a Cardholder deny having authorised or participated in a Transaction, Bidvest Merchant Services may, at its discretion, withhold or return Transactions as unpaid. Authorisation is not a guarantee of payment, particularly where the Cardholder or the Card are not present.

5. All Transactions

- 5.1. All Transactions accepted by you must be in Rand unless Bidvest Merchant Services has given prior consent in writing (including via email) that payment in other currencies may be accepted.
- 5.2. If you have been authorised to undertake Transactions, you are automatically authorised to provide Refunds of such Transactions. You must not Refund Transactions to a Card which was not originally used to make such Transactions, and you must not, under any circumstances, accept money from a Cardholder in connection with processing a Refund to the Cardholder's Account. No cash is to be given as a Refund if the Transaction were performed with a Card. A Refund must be processed to the Card Nominated Bank Account.
- 5.3. You must evidence the presence of the Card tendered for each Transaction (except for Mail/Telephone Transactions and Electronic Commerce Transactions), either by Chip read or Card swipe through an electronic Terminal.
- 5.4. You must not:
 - 5.4.1. undertake Transactions for anything other than the genuine purchase,
 - 5.4.2. of goods or services that you supply,
 - 5.4.3. impose any minimum or maximum Transaction values,
 - 5.4.4. discriminate against the use of Cards in any way,
 - 5.4.5. split a Transaction into two or more Transactions,
 - 5.4.6. accept Transactions relating to goods or services which fall outside the description of your Business without the prior written approval of Bidvest Merchant Services,
 - 5.4.7. accept a Transaction or present Transaction Data for processing which was not undertaken directly between you and the Cardholder,
 - 5.4.8. process Transactions on behalf of a third party without the prior written consent of Bidvest Merchant Services,

- 5.4.9. accept Transactions relating to goods or services for which the Point of Sale is outside South Africa unless Bidvest Merchant Services gives you prior written consent;
 - 5.4.10. accept or process Transactions in order to give Cardholders cash; or
 - 5.4.11. accept any Transaction using any Card issued in your name, or on the Nominated Bank Account or of a partner in, or director or other officer of your Business, or of the spouse or any member of the immediate family or household.
- 5.5. If you use a wireless Terminal, you agree to the additional requirements in **Section C** of these Terms and Conditions.
- 5.6. The appointment by you of a Payment Service Provider, or other form of intermediary, to process Transactions on your behalf is subject to the prior written approval of Bidvest Merchant Services.
- 5.7. You agree to operate and to comply with the Scheme Rules, and to process Transactions as required in, and in accordance with, the Agreement.

6. Processing Limits

Bidvest Merchant Services may, at its discretion, impose a limit on the total value of Transactions it processes for you over a given period of time. The Merchant Application Form indicates the annual value of Transactions that you anticipate you will require Bidvest Merchant Services to process on your behalf. The limit may be amended from time to time, and, if you exceed an established limit, processing may be suspended/or funds held in a Reserve Account until a new limit is agreed.

7. Mail/Telephone Transactions and E-Commerce Transactions

- 7.1. Mail/Telephone Transactions or Electronic Commerce Transactions should not be undertaken by you unless you have the prior agreement in writing of Bidvest Merchant Services, and then only in accordance with the Operating Guide and any requirements notified to you by Bidvest Merchant Services from time to time. Clause 4 or 5 of these Terms and Conditions (as appropriate), will apply and bind you in respect of any Mail/Telephone Transactions or Electronic Commerce Transactions processed for you by Bidvest Merchant Services (appropriate), will also apply and bind you in respect of any Mail/Telephone Transactions or Electronic Commerce Transactions processed for you by us.
- 7.2. Undertaking Mail/Telephone Transactions or Electronic Commerce Transactions will be at your own risk. Even if an Authorisation Code has been issued in respect of a Transaction, Bidvest Merchant Services cannot guarantee that such Transaction will be honoured or will not be charged back and debited to your account. For the avoidance of doubt, authorisation does not guarantee payment for a Transaction.
- 7.3. Bidvest Merchant Services may immediately, on giving you notice, withdraw its permission for you to accept or process Mail/Telephone Transactions and/or Electronic Commerce Transactions where there are, in its sole opinion, unacceptable levels of Cardholder disputes resulting from Mail/Telephone Transactions and/or Electronic Commerce Transactions which you have accepted and/or Transactions which you have accepted, and which subsequently turn out to be fraudulent.

8. Special Transaction

- 8.1. For each Recurring Transaction, you are required to obtain a prior written request from the Cardholder for the goods or services to be charged to their account. The request must be dated and signed by the relevant Cardholder and must state the amount and frequency of the recurring charge to be made against that Cardholder, and the duration of time during which the charges comprising that Recurring Transaction can be made.
- 8.2. You agree that you will not complete any Recurring Transaction after receiving:
 - 8.2.1. Cancellation from the Cardholder,
 - 8.2.2. Notice from Bidvest Merchant Services that you may no longer process Transactions, or
 - 8.2.3. Advice that the Card is not to be honoured.
- 8.3. You accept Recurring Transactions at your own risk. Any Recurring Transaction accepted by you which is in breach of this Clause 8 or the Operating Guide, or such other requirements as Bidvest Merchant Services may notify you of from time to time, and which is disputed by the Cardholder and/or Card Issuer, may be charged back to you.
- 8.4. You agree not to accept any Transactions representing a deposit, partial payment or payment in respect of a future delivery of goods or services unless this is expressly permitted on the Merchant Application Form signed by you, or has been agreed to by Bidvest Merchant Services in writing, otherwise your acceptance of such a Transaction shall constitute a breach of the Agreement and either Bidvest Bank or Bidvest Merchant Services may terminate the Agreement with relevant notice provided, or has been agreed by Bidvest Merchant Services in writing (including, but not limited to email).
- 8.5. In relation to Recurring Transactions, you will in addition to getting Authorisation:
 - 8.5.1. process Transaction Data in a form Bidvest Merchant Services approves in accordance with the Cardholder's written request and provided that notice of cancellation has been given by the Cardholder; and
 - 8.5.2. notify the Cardholder of the amount of any Recurring Transaction or the date on which the Recurring Transaction will take place if such amount or date is different from that specified in the Cardholder's written request, not less than fourteen (14) days prior to presentation to Bidvest Merchant Services of the Transaction Data.

9. Security

- 9.1. Before completing any Transaction, you are required to comply with all security procedures that Bidvest Merchant Services requires you to comply with from time to time, and to attempt, by reasonable, discreet and peaceful means, to retain a Card if so requested by it or the Authorisation Centre.
- 9.2. You agree to retain all Transaction details and Data in the strictest confidence, and in a secure environment where it can only be accessed by authorised members of your staff, and to ensure that any such details stored electronically are fully protected. You will take all reasonable precautions to ensure that Cardholder Information is not misused or disclosed to any person other than Bidvest Merchant Services.
- 9.3. You may not retain or store magnetic stripe or CVV2/CVC2 data after Authorisation for a Transaction has been received.
- 9.4. If you operate a Wireless, Local Area Network (LAN) you must also meet and accept the criteria in Clause 3 of these Terms and Conditions which you hereby agree to be bound by.
- 9.5. You agree to comply with the Payment Card Industry (PCI) Data Security Standards, Visa Account Information Security Programme and the MasterCard Site Data Protection Programme, and any changes to those programmes and standards which may occur. Bidvest Merchant Services will provide you with details of such data standards and programmes on written request.
- 9.6. You will be liable for and hereby agree to indemnify Bidvest Merchant Services and Bidvest Bank on a full and continuing basis, against all claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for non-compliance, resulting from any loss of Cardholder's Information or Data, or a violation by you, or your employees, officers, agents or subcontractors of any of the standards or programme requirements referenced in Clause 9(5). You will also confirm to Bidvest Merchant Services in writing that all third parties that store, transmit or process Transactions on your behalf are fully compliant with the standards and programmes referenced in Clause 9(5).
- 9.7. Since the documents constituting the Agreement contain certain information designed to help you reduce the risk of fraud arising on Transactions, you must treat such documentation as confidential and keep it secure and if possible, not disclose it to the general public.

10. Presentation of Transaction

- 10.1. You may present Transactions to Bidvest Merchant Services for Authorisation and Settlement by way of electronic transfer (or other media as may be agreed in writing). Transactions are to be presented to Bidvest Merchant Services within three (3) Banking Days of a Card being accepted as a means of payment or Refund. Bidvest Merchant Services will endeavour to settle Transactions within two (2) Banking Days of their receipt by it unless Bidvest Merchant Services has informed you otherwise. Authorisation does not guarantee payment for a Transaction - it merely verifies that there is available credit on the Card, and that the Card has not been reported lost or stolen at the time of the Authorisation.
- 10.2. The Transaction Data requirements are set by the Schemes and will be advised to you from time to time. Changes to such Transaction Data advised to you must be implemented by you within the required timescale as detailed with such notification(s).
- 10.3. You must not present, or allow anyone else to present, to Bidvest Merchant Services more than one set of Transaction Data for each Transaction.
- 10.4. If Transactions are not presented directly by you to Bidvest Merchant Services, any third party used to manage or send transactions to Bidvest Merchant Services on your behalf must be approved in writing by Bidvest Merchant Services to handle Transactions before they may do so.

11. Providing Information

- 11.1. Upon request, you will provide Bidvest Merchant Services or Bidvest Bank, or their agents, copies of interim and annual audited financial statements (including management accounts), and other required documentation or information concerning your Business.
- 11.2. Upon request, you shall provide Bidvest Merchant Services or its representatives, reasonable access to your facilities for the purpose of performing an inspection of your books, records and/or systems, and to take copies of such books and records as Bidvest Merchant Services require.
- 11.3. You must retain in a secure place legible copies of all Transaction Records and receipts, vouchers, Terminal tally rolls, invoices, receipts or equivalent documents relating to each Transaction. All the above-mentioned documents must be kept by you in a safe, secure and confidential manner for at least two (2) years from the date of the relevant Transaction (or in the case of Recurring Transactions, at least two (2) years from the date of the last Transaction forming part of the Recurring Transaction), in line with Card Scheme requirements.
- 11.4. After twelve (12) months from the date of a Transaction you may, subject to the prior written approval of Bidvest Merchant Services, transfer all the information referenced in 11 to a suitable electronic format such as the cloud. This information must be kept confidential by you for the remainder of the two (2) years.
- 11.5. Bidvest Merchant Services shall be entitled, at any time, and from time to time, up to two (2) years after the Transaction date, to request from you, and you must provide us, within the timeframe stated, and at no charge, with evidence acceptable to Bidvest Merchant Services of any Transaction(s) including (without limit) the documents listed above, and any other evidence of the Cardholder's authority to debit their account with the amount of the Transaction. Failure to do so within the specified timescales may result in a Chargeback.

11.6. You are responsible for ensuring that all Transaction Data which you retain or submit to Bidvest Merchant Services is correct, complete, and not lost or damaged, and that all Transaction Data is confidentially and securely held in accordance with this Clause 11 and the Operating Guide and can be reconstituted, in a complete and easily readable form. Neither Bidvest Merchant Services nor Bidvest Bank will in any circumstances (other than if due to our gross negligence) be liable in respect of the face-value of any Transaction Data, or the costs of reconstituting such data, or for any other loss or damage arising from any loss of Transaction Data. If any loss or damage to the physical medium containing any Transaction Data occurs and is agreed, or shown to be due to our gross negligence, Bidvest Merchant Services will reimburse you the replacement value of the lost or damaged medium.

12. Credits and Debits to your Bank Account

- 12.1. You must at all times during the period that Bidvest Merchant Services processes Transactions for you, maintain a Nominated Bank Account, acceptable to Bidvest Merchant Services, in Rand, for the purpose of enabling it to credit payments due to you, and to debit any sums payable by you to it. If you require more than one such account, Bidvest Merchant Services' prior agreement in writing must be given.
- 12.2. You will maintain with your bank an instruction to pay on presentation all requests for payment of a debit initiated by Bidvest Merchant Services in respect of amounts due by you to it, even after the Agreement has ended for any reason.
- 12.3. If you intend to change your Nominated Bank Account, you must notify Bidvest Merchant Services first and then provide Bidvest Merchant Services with all such documentation as Bidvest Merchant Services may reasonably request. In addition, you shall initiate a new payment instruction in relation to your new Nominated Bank Account on the terms contained in the Agreement.
- 12.4. The Account Set-Up Fee is payable by you to Bidvest Merchant Services immediately upon its agreement to process Transactions for you. Subsequent Debits will not be presented by Bidvest Merchant Services to your Nominated Bank Account until at least fourteen (14) days after your Statement date. This may result in the Nominated Bank Account being debited prior to your receipt of the Statement in accordance with Scheme Rules on Debits.

13. Payment by Bidvest Merchant Services

- 13.1. Subject to Clause 13.2 and 26.8 hereof, Bidvest Merchant Services will pay to you all sums due and recorded as Transaction Data (less the amount of any sums payable by you under Clause 18 submitted in accordance with the Agreement by crediting your Nominated Bank Account).
- 13.2. Bidvest Merchant Services may, with or without notice, change processing or payment terms and suspend credits or other payments of any and all funds, money and amounts now due or which subsequently become due to you pursuant to the Agreement if in good faith it suspects that any Transaction is fraudulent or involves other criminal activity, or that the Transaction was not in the ordinary course of your Business, or if the number or size of the Transaction(s) is significantly greater than expected, or if any of the Termination Events have occurred or if it suspects that any such Termination Event has, or is likely to occur (whether or not Bidvest Merchant Services or Bidvest Bank has terminated the Agreement). All payments so suspended may be retained by Bidvest Merchant Services until it has satisfied itself that such Transaction(s) is/are legitimate and no longer liable to be the subject of a Chargeback. No interest shall accrue in respect of any such amount that is so withheld.
- 13.3. Neither Bidvest Merchant Services nor Bidvest Bank will be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, but not limited to, any Scheme or your financial institution.

14. Invalid Card Transactions/Chargebacks

- 14.1. Card Issuers are entitled to refuse to settle a Transaction or to undertake the Chargeback of a Transaction undertaken and processed by you and presented to them by Bidvest Merchant Services for a variety of reasons. If a Card Issuer declines to settle a Transaction or elects to undertake a Chargeback, Bidvest Merchant Services is entitled, with or without notice to you, to debit your Nominated Bank Account, or to recover from you, the amount paid by Bidvest Merchant Services to you in respect of that Transaction. Bidvest Merchant Services' right to do this will not be affected by any arrangement between you and the Cardholder.
- 14.2. Neither Bidvest Merchant Services nor Bidvest Bank is under any obligation to notify you of any defect in any Transaction Data, or other liability to Chargeback except where a Chargeback is in fact made; or to procure, or assist you in procuring, payment from a Cardholder where the relevant Transaction has been charged back.
- 14.3. When a card issuer presents a chargeback of a transaction processed by you, we will immediately, and without notice, debit your nominated bank account, or recover from you by any other means, the amount paid by us to you in respect of that transaction. Should proof be received to remedy the chargeback from the issuer, you will be refunded.

15. Promotion

You are required to comply with all instructions given by Bidvest Merchant Services as to the adequate and correct display of promotional signs or other material provided by it to indicate that Cards issued under the Schemes are accepted as a means of payment. You shall not use any other material associated with the Schemes without Bidvest Merchant Services' prior approval.

16. Terminals and Equipment

- 16.1. In circumstances where you have agreed that Bidvest Merchant Services shall supply, or cause to be supplied, to you Terminals and associated Equipment, the delivery and use of such Terminals will be governed by the provisions of this clause 16 and the relevant Leasing Agreement. For the avoidance of doubt the provisions of this clause 16 shall not apply in relation to Terminals provided pursuant to an agreement entered into with a third-party supplier.
- 16.2. You shall use only the Terminals, associated Equipment and peripherals supplied under a Leasing Agreement for the purposes set out in the Leasing Agreement, you shall pay the Rental as set out in the Leasing Agreement, and you shall return on request the Terminals and Equipment. You will supply and be responsible for all necessary power and telecommunications links for the Terminals and Equipment, and neither Bidvest Merchant Services nor Bidvest Bank shall be under any obligation to provide a Terminal or associated Equipment if such links are not in place.
- 16.3. Wireless Terminals can be subject to limitations affecting their performance, coverage, reliability and processing ability. If you operate wireless Terminals, you confirm that you are aware of the limitations, and liabilities, affecting wireless Terminals, as set out in Section C of these Terms and Conditions.
- 16.4. Terminals and associated Equipment on your premises shall be at your sole risk and you will indemnify Bidvest Merchant Services and Bidvest Bank, on a full and continuing basis against any claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for noncompliance, caused to or by the Terminals or Equipment, howsoever arising. You will ensure adequate insurance cover in respect of Terminal(s) and peripheral Equipment is in place at all times. You will take reasonable care of the Terminals and Equipment, keeping them in a safe condition and in good working order without alteration, amendment or interference.
- 16.5. Bidvest Merchant Services and Bidvest Bank shall not be liable to you for any direct or other loss resulting from any breakdown of, or fault in, any Terminals or Equipment unless that breakdown or fault is caused by Bidvest Merchant Solution's material breach of this Agreement, or as a result of Bidvest Merchant Services' negligence or the wilful, direct and material misconduct of Bidvest Merchant Services, Bidvest Merchant Services' employees, agents or subcontractors.
- 16.6. You will allow Bidvest Merchant Services or its agents to inspect, repair, maintain and remove the Terminals and Equipment at any time, and will allow Bidvest Merchant Services and its agents all reasonable access to your premises and assistance for such purpose(s).
- 16.7. Upon any termination, or expiry, of the Leasing Agreement, you shall immediately arrange at your expense to have the Equipment and peripherals in good order, repair and condition (fair wear and tear excepted) returned to us or our agents to an address specified by us, no later than ten (10) Banking Days after expiration of the Hire Term or termination. Alternatively, you may request Bidvest Merchant Services to arrange collection of the Equipment and you shall pay forthwith all costs as quoted, associated with the collection. If you fail to return the Equipment as detailed in the Leasing Agreement, this will result in a charge equal to the full replacement value of the Equipment and peripherals. If you do not do so, without notice, enter any premises where the Terminals and Equipment are or where Bidvest Merchant Services believes them to be, without incurring liability to you or any person claiming through you. In such circumstances, you will pay Bidvest Merchant Services or its agents:
 - 16.7.1. any rentals remaining at the time of termination,
 - 16.7.2. arrears of Rental,
 - 16.7.3. any outstanding fees,
 - 16.7.4. if the Terminals and associated Equipment are not recovered within ten (10) Banking Days after the termination or expiry of the hiring, the amount advised in the Leasing Agreement, and damages for any breach of contract and all loss, damages, costs, expenses and fees we may incur in recovering and attempting to recover the Terminals and associated Equipment and enforcing Bidvest Merchant Services' rights under this Agreement,
 - 16.7.5. damages for any breach of contract and all loss, damages, costs, expenses and fees Bidvest Merchant Services may incur in recovering and attempting to recover the Terminals and enforcing its rights under the Agreement, and
 - 16.7.6. full replacement value of the Equipment in the event the Equipment is not recovered.

17. FICA and Sanctions

You agree to provide Bidvest Bank with up-to-date documentation and information to satisfy the requirements relating to Know your Client ("KYC"), which includes but is not limited to the Financial Intelligence Centre Act and legislation against terrorism, local and international sanctions and related provisions relating to Bidvest Bank's policies and procedures. The failure to provide the documentation and/or information could result in the suspension of services provided.

18. Fees and Charges

- 18.1. You agree to pay all fees and charges at Bidvest Merchant Services' current rates, together with all relevant taxes and its reasonable costs (including management time) of managing the Nominated Bank Account. The Merchant Service Charge is payable by you for Transactions and Refunds.
- 18.2. Bidvest Merchant Services may also require you to make one or more of the following payments:
 - 18.2.1. the amount of any Refunds issued (if not already deducted from sums paid by you to it),
 - 18.2.2. the full amount of any overpayments made by it in respect of Transaction Data, however caused,
 - 18.2.3. the full amount of any payments made by it in respect of invalid Transaction Data,
 - 18.2.4. the full amount of any Chargebacks,

- 18.2.5. the amount of any fees, fines, penalties and other charges payable by it to a Scheme, or any other person, as a result of any failure by you to comply with the Agreement, or if the ratio of your Chargebacks to Transactions exceeds the relevant industry average (as determined by the Schemes from time to time), and
- 18.2.6. any other sums due and payable by you under the Agreement.
- 18.3. Charges and other sums payable by you will in general be debited from your Nominated Bank Account or in the manner otherwise set out in the Agreement.
- 18.3. Please note that the fees and charges are subject to variation by Bidvest Merchant Services from time to time on at least thirty (30) days' notice pursuant to 26.11 of these Terms and Conditions, and any such variation(s) will be notified to you in accordance with the Agreement, specifying the date upon which the change will take effect.
- 18.5. Unless otherwise stated, all charges, fees and other payments to be made by you under the Agreement are exclusive of VAT and any other relevant taxes (if any) and in addition to paying such sums you will be responsible for paying any such VAT and other relevant taxes.
- 18.6. Bidvest Merchant Services will provide you with a periodic Statement/Tax Invoice by electronic billing or written request which shall constitute a proper demand for payment of the amount shown by it as being due by you to Bidvest Merchant Services, which will be prima facie proof, unless inaccurate on the face of the Statement. You must check each such Statement or written request on receipt and notify Bidvest Merchant Services within thirty (30) days of any errors in it.

19. Indemnity, Compromise and Liability

- 19.1. You agree to indemnify Bidvest Merchant Services and Bidvest Bank, on a full and continuing basis, against all claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for non-compliance, howsoever arising, suffered, made against or incurred by us and arising from or in connection with your breach of the Agreement, or from any Transaction or any other dealing between you and a Cardholder. If you are a partnership, you hereby also agree that each partner will be jointly and severally liable under the Agreement.
- 19.2. You further agree to indemnify Bidvest Merchant Services and Bidvest Bank, on a full and continuing basis, against all claims, damages, demands, losses, costs and expenses, fines, penalties, including Scheme fines for non-compliance, or liability howsoever arising, suffered, made against or incurred by us and arising from or in connection with any breach of Scheme Rules, or any other reason where a Scheme levies a fee, fine, penalty or charge against us due to any action or inaction by you. You shall, at your own expense, provide Bidvest Merchant Services with all reasonable assistance to resolve any dispute arising under the Scheme Rules. We shall have complete discretion to decide whether or not to resist or defend any claim made against Bidvest Merchant Services and Bidvest Bank by any Scheme or Cardholder, or whether to compromise any such claim, and the decision of Bidvest Merchant Services shall be binding on you.
- 19.3. You agree that if Bidvest Merchant Services or Bidvest Bank is threatened with the loss or sequestration of any goods or property as a result of any act or Transactions carried out by or for you, you will immediately cease the relevant business and indemnify us against all claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for non-compliance, arising as a result of your having carried on that business.
- 19.4. Furthermore, in respect of all Transactions between you and a Cardholder the onus shall be on you to provide evidence to the satisfaction of Bidvest Merchant Services that the debit of the Cardholder's Account was authorised by the Cardholder. Without prejudice to the foregoing, or to the indemnities set out in Clause 19.1 to 19.3 inclusive, you also agree that Bidvest Merchant Services shall have discretion to accept, dispute, compromise or otherwise deal with any claim made against you or us arising out of a Transaction accepted by you for loss or liability in respect thereof on your behalf.
- 19.5. You will, at your own expense, provide Bidvest Merchant Services, or its agents, with all information and assistance which we, or its agents, may reasonably require in relation to any Transaction between you and any Cardholder.
- 19.6. Subject to Clause 19.7 the maximum aggregate liability of Bidvest Merchant Services and Bidvest Bank for all claims or losses, whether arising in contract or delict (including negligence and breach of statutory duty) or otherwise, shall not in any Contract Year exceed the amount of charges received by Bidvest Merchant Services from you in consideration for the provision of Services to you hereunder in the relevant Contract Year in which the claim arises.
- 19.7. Neither Bidvest Merchant Services nor Bidvest Bank shall have any liability to you whether in contract or delict (including negligence or breach of statutory duty) or otherwise and whatever the cause for any increased costs or expenses, loss of profit, loss of business, loss of goodwill, loss of data, or loss of revenue or anticipated savings; or special, indirect or consequential loss or damage of any nature whatsoever.

20. Warranties

In presenting Transaction Data to Bidvest Merchant Services, you warrant that:

- 20.1. all statements contained in the Transaction Data are true, accurate and complete,
- 20.2. you have supplied (or, where the Transaction Data relates to a prepayment or deposit, you have agreed to supply) the goods or services to which the Transaction Data relates and to the value stated therein,
- 20.3. there is no element of credit given,
- 20.4. no other Transaction has been or will be processed in respect of the same goods or services,
- 20.5. the Transaction has been entered into by you in good faith and you are not aware of any dispute relating to or any matter which may affect the validity of the Transaction,
- 20.6. the Transaction was made in accordance with the Agreement and the Scheme Rules,

- 20.7. the receipt by you, and the processing of Cardholder's Information and Transaction Data supplied by you to Bidvest Merchant Services in the course of administering and discharging our obligations and liabilities under the Agreement, will not infringe the rights of any third party, and
- 20.8. you are in compliance with your obligations under all applicable South African legislation, including but not limited to data privacy and protection laws.

21. Reserve Account/Security

- 21.1. Bidvest Merchant Services may establish a Reserve Account or require you to provide guarantees or other security and to apply special terms and conditions in relation to your acceptance of Transactions at any time, for the purpose of providing a source of funds to pay Bidvest Merchant Services for any and all amounts and liabilities owed by you to Bidvest Merchant Services and Bidvest Bank to include actual and contingent liabilities. The amount of the Reserve Account shall be set and increased by Bidvest Merchant Services, in its sole discretion as it may determine from time to time. All funds held in the Reserve Account and all rights, title and interest to such funds, are at all times exclusively for the benefit of and vested in Bidvest Merchant Services and Bidvest Bank.
- 21.2. The Reserve Account may, at the reasonable discretion of Bidvest Merchant Services be funded by you depositing into the Reserve Account an amount determined by Bidvest Merchant Services; Bidvest Merchant Services debiting the Nominated Bank Account for any amount for deposit to the Reserve Account; and Bidvest Merchant Services depositing into the Reserve Account any funds that it is obliged to pay to you.
- 21.3. Bidvest Merchant Services may, without notice, apply funds in the Reserve Account or any other security, against any outstanding or future: charges, fees, penalties, Chargebacks and Refunds; amounts owing to it under the Agreement; or otherwise to Bidvest Bank as a member of the Schemes and the Bidvest Merchant Services Group or under any right of set-off; and amounts demanded by any competent authority or third party in response to a tax levy or other court order as necessary to comply with any applicable law.
- 21.4. Any security held or funds held in the Reserve Account and not withdrawn or otherwise applied by Bidvest Merchant Services, will remain available to Bidvest Merchant Services until the Agreement has been terminated or expired and you have paid in full all amounts owing, or which could ever be owing, under the Agreement or any right of set-off or any amount due under any applicable law.
- 21.5. Bidvest Merchant Services and Bidvest Bank may rely on any general guarantees or other security provided to us now or in the future.

22. Other Agreements

You agree to notify Bidvest Merchant Services forthwith in the event that you have any existing arrangement with any other party operating in any of the Schemes referred to in the Agreement.

23. Financial and Other Information

- 23.1. Upon request you will provide Bidvest Merchant Services or its agents with such certified copies of financial accounts (including management accounts), trading terms, supplier invoices, customer contracts, product information and such other documentation or information concerning your Business as Bidvest Merchant Services requests to assist it with its determination as to whether to enter into an agreement with you, or with its continuing evaluation of your financial and credit status.
- 23.2. You authorise Bidvest Merchant Services and its agents to obtain such documents or information, as referred to in clause 23.1, from third parties, subject to banking regulations and applicable laws.
- 23.3. You authorise Bidvest Merchant Services and its agents, to contact the individuals at your Business as identified in your Merchant Application or as you may notify Bidvest Merchant Services from time to time.
- 23.4. You must advise Bidvest Merchant Services immediately of any change in the circumstances affecting your Business including:
 - 23.4.1. any insolvency event (or impending insolvent event), as set out in clause 24.3,
 - 23.4.2. any actual or impending change of voting control in you or your holding company,
 - 23.4.3. any actual or impending change in your trading terms, directors, other officers, members or partners, business or trading name, legal status, business or trading address or in any of your other details that you have provided to us, and
 - 23.4.4. any actual or impending sale or other disposal of all or any material part of your assets, which may result in a material adverse change to your Business.

24. Termination of the Agreement

- 24.1. You may, without giving any reason, end the Agreement with immediate effect at any time during the first fourteen (14) days after signing the Agreement, by written notice (formal letter via email) to Bidvest Merchant Services, provided you have not yet accepted any Card Transaction by the time Bidvest Merchant Services receives such notice.
- 24.2. Subject to clause 24.1, the Agreement will continue until terminated by any party by giving not less than thirty (30) days prior written notice (formal letter via email) to the other parties (subject to the other terms contained in the Agreement).

- 24.3. Any party to the Agreement will be entitled to end the Agreement at any time with immediate effect by notice to the other parties if: another party breaches the Agreement including (without limit), any of the other parties become insolvent, or any step is taken for the liquidation, bankruptcy, receivership, administration, dissolution, business rescue or other similar action of another party, or if another party makes any agreement with its creditors generally.
- 24.4. Bidvest Merchant Services or Bidvest Bank will be entitled to end the Agreement at any time with immediate effect by notice to you if you fail to pay any amount due to us under the Agreement, on the due payment date.
- 24.5. In addition, Bidvest Merchant Services or Bidvest Bank will also be entitled to end the Agreement with immediate effect at any time by notice to you if:
- 24.5.1. you are a partnership and the partnership ends,
 - 24.5.2. you change your Nominated Bank Account, other than as permitted by this Agreement,
 - 24.5.3. you are an individual and you die (in which case notice will be sent to your personal representatives),
 - 24.5.4. there is any significant change, or we suspect a significant change is impending (as determined by us), in the nature, level, scope or control of your business activities or your financial condition,
 - 24.5.5. there is fraud or suspicion of fraud or other criminal activity,
 - 24.5.6. you process a Transaction for your own Card, or any Card, without the sale of any goods or services,
 - 24.5.7. in our opinion your ability or willingness to comply with the terms of the Agreement is at risk,
 - 24.5.8. any of our efforts to comply with statutory obligations under applicable laws, the Scheme Rules or a court order binding upon us, are obstructed,
 - 24.5.9. we are required to do so by any regulator or Scheme, or the integrity or reputation of the Schemes or ourselves, in our opinion, is brought into disrepute by you,
 - 24.5.10. your activities are, or are likely to have, in our opinion, a material impact on our business, commercial arrangements, reputation and/ or goodwill,
 - 24.5.11. your activities contravene any South African or other national or international laws and regulations, or any codes of practice that we may adopt from time to time, or which otherwise relate directly or indirectly to matters that we may view, from time to time, as being unlawful or otherwise objectionable in kind and nature,
 - 24.5.12. you have not sent Bidvest Merchant Services a Transaction for six (6) consecutive months,
 - 24.5.13. we consider excessive the percentage, number or amount of fraudulent Transactions submitted by you under the Agreement, or the number of Chargebacks in relation to your Business. Furthermore, you accept liability for, and you will indemnify us on a full and continuing basis, against all claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for non-compliance, in relation to excessive levels of Chargebacks, or
 - 24.5.14. where you are required to do so by law, fail to file your annual return in compliance with the law, or within the timeframes prescribed by the law, or the South African Companies and Intellectual Property Commission. Bidvest Merchant Services or Bidvest Bank shall be entitled, at our discretion, to terminate the Agreement if we believe, in our sole discretion, that you are violating any of the foregoing.
- 24.6. The ending of the Agreement will not affect any actual or contingent liabilities or claims of any party hereto which accrue before the Agreement ends, and in particular this clause 24 and clauses 11, 19, 20, 21, 25, 26, 27 and 32 shall remain in full force and effect. You will continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Transactions processed pursuant to the Agreement, all other amounts then due or which may thereafter become due under the Agreement, and breaches of Scheme Rules which are notified to Bidvest Merchant Services or Bidvest Bank at any time after the Agreement has ended.
- 24.7. If the Agreement ends you must as soon as reasonable possible:
- 24.7.1. return to Bidvest Merchant Services or its agents, all Terminals, associated Equipment and any other materials supplied by Bidvest Merchant Services, its agents or any other entity in the Bidvest Merchant Services Group, and
 - 24.7.2. pay Bidvest Merchant Services all amounts owed by you under the Agreement, in addition, after the date of termination of the Agreement you may not use the names of Bidvest Merchant Services or Bidvest Bank's trademarks or logos or any promotional materials they or their agents have provided to you or which refer to Bidvest Merchant Services of Bidvest Bank or the provision of Services by Bidvest Merchant Services to you as a merchant.
- 24.8. If Bidvest Merchant Services or Bidvest Bank terminates the Agreement under clause 24.3, 24.4 or 24.5, Bidvest Merchant Services may notify the Schemes of the termination and the reasons for it. Details of your Nominated Bank Account may be notified to the Schemes and to credit reference agencies.

25. Intellectual Property Rights

- 25.1. All Intellectual Property Rights with respect to the Services and Bidvest Merchant Services, Bidvest Bank, any Bidvest Merchant Services Group companies, Bidvest Bank Group companies and/or any licensors' names and trademarks/brands, whether now existing or in the future, are reserved to Bidvest Merchant Services, Bidvest Bank, any Bidvest Merchant Services Group company, any Bidvest Group company and any licensor.
- 25.2. Save for the limited license(s) expressly granted under the Agreement, nothing in the Agreement shall be interpreted as granting to you a license to use Bidvest Merchant Services' Intellectual Property Rights or the Intellectual Property Rights of Bidvest Bank, any Bidvest Merchant Services Group company, any Bidvest Group company or any licensor.
- 25.3. You will promptly notify Bidvest Merchant Services of any infringement or threatened infringement, or of any challenges to validity or ownership of any Intellectual Property Rights or other rights belonging to Bidvest Merchant Services or to Bidvest Bank, any Bidvest Merchant Services Group company, any Bidvest Group company which you become aware of and you will provide reasonable assistance to Bidvest Merchant Services, at our reasonable expense, in connection therewith.

- 25.4. Bidvest Merchant Services may include at its discretion, your company name, description and hyperlink on the Bidvest Merchant Services and Bidvest Bank websites and other marketing material.
- 25.5. You may, at your discretion display any graphic and hyperlink provided to you by Bidvest Merchant Services on your website(s), (without altering the form or presentation of such graphic, and in no way that implies or represents that you operate or own any element of the Services and Bidvest Merchant Services' related brand(s)).

26. General

- 26.1. If Bidvest Merchant Services or Bidvest Bank chooses not to, or if any term which forms part of this Agreement is found to be unenforceable, this will not affect our right to subsequently enforce that term or to enforce any of the remaining terms.
- 26.2. Bidvest Merchant Services and Bidvest Bank can transfer all or any of their rights and obligations under the Agreement at any time. Any such transfer will not reduce your rights under this Agreement unless you agree otherwise. You authorise disclosure of details relating to you and your merchant arrangements to any prospective persons or entity to which the Agreement may be transferred to.
- 26.3. You are not permitted to assign the Agreement or your rights or obligations under it without the prior written consent of Bidvest Merchant Services. Bidvest Merchant Services may assign or novate this Agreement, and transfer or sub-license any or all of its rights and obligations under it, at any time and you hereby expressly consent to any such assignment, novation, transfer or sub-license.
- 26.4. You shall not, except for the purposes of the Agreement, compile or make use of any information relating to Bidvest Merchant Services, Bidvest Bank, any Bidvest Merchant Services Group company, any Bidvest Group company, any Scheme, any Card, any Cardholders or the terms of the Agreement or any documents provided with it, except where necessary for the performance of- the Agreement. You shall use your best endeavours to ensure that your employees and agents will maintain strictest confidence with respect thereto and not divulge or communicate to any third-party information concerning our Business or Transactions of Cardholders which may come to your notice during the term of the Agreement. Bidvest Merchant Services will use its reasonable endeavours to ensure that its employees and agents maintain such information in strictest confidence.
- 26.5. You agree to indemnify and keep Bidvest Merchant Services and Bidvest Bank and their agents indemnified, on a full and continuing basis, against all claims, damages, demands, losses, costs and expenses, fines, penalties or liability, including Scheme fines for non-compliance howsoever arising, suffered, made against or incurred by us or our agents and arising directly or indirectly in connection with the breach of the duty of confidentiality set out in clause 26.4.
- 26.6. You acknowledge and consent to Bidvest Merchant Services and Bidvest Bank disclosing relevant and applicable information about your business to our Bidvest Merchant Services Group company, the police, Schemes, regulator or any other investigating body for use in the prevention or detection of fraud or other criminal activity, or to any credit reference agency which is used as a source of information.
- 26.7. None of the parties (or any of their agents or subcontractors) shall be liable for any failure to perform any of their obligations under the Agreement or any associated agreement where such failure arises directly or indirectly through any circumstances whatsoever beyond their reasonable control and is not a result of their negligence or wilful default.
- 26.8. Bidvest Merchant Services may at any time (without notice to you) set off and apply any or all sums due and payable by it to you under the Agreement, or under some other agreement with you, and/or any or all sums of money held in accounts with Bidvest Merchant Services, against:
 - 26.8.1. any or all sums due and payable by you to the Bidvest Merchant Services Group under the Agreement, and
 - 26.8.2. the amount of any liability incurred by you to the Bidvest Merchant Services Group under the Agreement.
 - 26.8.3. In addition, if Bidvest Merchant Services has reasonable grounds for believing that you are likely to incur any liability in relation to (26.8.1) or (26.8.2) above, it shall not be obliged to make payment of any sums which would be payable to you until such time as either:
 - 26.8.3.1. the liability is actually incurred and determined within a mutually acceptable period of time (if this occurs Bidvest Services will promptly pay the balance of such sums to you after deducting the amount of any liability), or
 - 26.8.3.2. Bidvest Merchant Services is satisfied that no such liability is likely to be incurred. Should such liability be subsequently incurred you agree to reimburse Bidvest Merchant Services on demand, the full amount.
- 26.9. No waiver by any party of any breach of the Agreement or any delay or omission by any party in enforcing the terms of the Agreement shall prejudice their rights or operate as a waiver of any subsequent or continuing breach.
- 26.10. If any provision of the Agreement is or becomes illegal or invalid, that provision will be deemed deleted from the Agreement and the remaining provisions shall continue in force.
- 26.11. Any notice required to be given under the Agreement must be in writing and shall be served on the other parties, in the manner detailed below, by personal delivery, by registered post in an envelope properly addressed and marked for the attention of you or Bidvest Merchant Services. Notice can be served by Bidvest Merchant Services to you by email to the email address advised by you, notification on a Statement, or by publishing on our website. Notice served on you by Bidvest Merchant Services shall be deemed also to constitute notice being served on you by Bidvest Bank, and notice served on Bidvest Merchant Services by you shall be deemed also to constitute notice being served on Bidvest Bank by you. Notice given by post, Statement transmission or website, shall be deemed to have been received seventy-two (72) hours after the time of its posting, transmission or advice of availability. Notice given by email shall be deemed to have been received twenty-four (24) hours after the time of transmission. Notice shall be served by you on Bidvest Merchant Services at its current registered office, which shall be deemed also to constitute the service by you of notice on Bidvest Bank.
- 26.12. You agree that Bidvest Merchant Services may from time to time, vary or supplement the Agreement, its terms (including, for example, any, or all of the individual documents which form part of the Agreement, such as Charges Schedule, and any or all of the fees and charges themselves) and any accompanying documentation. Any such variation shall become effective upon Bidvest Merchant Services notifying you in the manner provided in these Terms and Conditions, and subject to such notice periods as it may operate from time to time. If you do not wish to accept the changes made to the Agreement, you may terminate the Agreement immediately by giving Bidvest Merchant Services notice in writing (including but not limited to email) within thirty (30) days of such change coming into effect.

- 26.13. Bidvest Merchant Services and Bidvest Bank may appoint at any time, and without notice to you, an agent or subcontractor to perform any of our obligations under the Agreement.
- 26.14. You may not appoint a subcontractor or agent in connection with the Agreement without the prior written approval of Bidvest Merchant Services. Notwithstanding such approval, you will remain primarily liable for anything done (or omitted to be done) by any such subcontractor or agent appointed by you.
- 26.15. Each party shall comply with all laws, regulations, Scheme Rules and codes of practice, which they are each obliged to follow for the purposes of the Agreement.
- 26.16. If you comprise more than one person, the liability of such persons to Bidvest Merchant Services, Bidvest Bank and the Schemes shall be joint and several, and if such persons are a partnership, then any act or omission of any one partner shall be deemed to be an act or omission of all the partners.
- 26.17. Any person that is not a party to the Agreement shall not have any rights under or in connection with it except where such rights are expressly granted under the Agreement.
- 26.18. The Agreement (comprising the Merchant Application, these Terms and Conditions, the Operating Guide, the Supporting Information Form (where relevant), and the Website Page (where relevant) (together with such other documents as the parties may from time to time agree shall constitute part of the Agreement) (the "Agreement") constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings. The parties have not entered into the Agreement in reliance on any agreement, representation or warranty which is not made or repeated in the Agreement.
- 26.19. Except where expressly agreed otherwise in the Agreement, the rights and remedies of the parties under the Agreement are cumulative, may be exercised as often as the parties consider appropriate and are in addition to their rights and remedies under general law.

27. Governing Law

- 27.1. The Terms and Conditions herein contained replace Bidvest Merchant Services Terms and Conditions previously in force (if any) and govern the provision of the Services and/or the operation, management and control of the Schemes and shall be binding on and enforceable against you.
- 27.2. The Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of South Africa and the parties irrevocably agree that the courts of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 27.3. Bidvest Merchant Services and Bidvest Bank are bound by law to apply procedures in order to carry out statutory obligations in relation to the prevention of money laundering under the Financial Intelligence Centre Act, 2001 (or any modifications or amendments of same) in South Africa.

28. Customer Complaints

- 28.1. Complaints may be directed to Bidvest Bank Limited by calling Complaints Resolutions on:
0860 444 664 or emailing
BBcomplaints@bidvestbank.co.za
Complaints may also be logged at:
www.bidvestbank.co.za
- 28.2. Should a complaint not be resolved to your satisfaction, you may refer such complaint in writing to the following Ombud Office for Financial Services Providers:
FAIS Ombud:
Address: 11th Floor, Menlyn Central Office Building, 125 Dallas Ave, Waterkloof Glen, Pretoria, 0040
Email Address: **info@faisombud.co.za**
Tel Number: **0860 066 3274 / 012 762 5000**
Website: www.faisombud.co.za

Section B – Chip and PIN

29. The following Terms and Conditions apply in addition to the Terms and conditions set out in Section A above. In event of any inconsistency, Section B of the Terms and Conditions shall prevail.

- 29.1. You agree and acknowledge that you are required properly to use Chip and PIN technology for each Transaction, and you shall incur full liability for fraudulent Transactions that arise from your failure to do so including, without limitation:
 - 29.1.1. Transactions where you accept a Chip and PIN Card,
 - 29.1.2. Transactions using any Terminal that incorporates Chip and PIN technology without using the Chip and PIN functionality to accept the Transaction, or
 - 29.1.3. Failing to use a PIN Pad.
- 29.2. In the event that you fail to accept Chip and PIN Card Transactions using a Chip and PIN Terminal and after notification by Bidvest Merchant Services continue to fail to accept such Transactions, your right to process Transactions may be terminated immediately.
- 29.3. You may not request a Cardholder to disclose their PIN at any point during a Transaction. You must provide a reasonably secure place for the Cardholder to enter their PIN into the PIN Pad. You shall require that every Cardholder enters their PIN using the PIN Pad when initiating a Chip and PIN Transaction.
- 29.4. The PIN Pad is for the Cardholder's exclusive use.
- 29.5. The Cardholder's PIN is not in any circumstances to be printed on a Transaction receipt or to be recorded or stored in any way.
- 29.6. In the event of Chip failure during a Transaction, it can be completed in accordance with the Fallback Procedures contained in the Operating Guide.

Section C – Wireless Networks and Terminals

30. If you use a wireless network or Terminal, the following Terms and Conditions apply in addition to the Terms and Conditions set out in Section A above. In the event of any inconsistency, this Section C of the Terms and Conditions shall prevail.

- 30.1. If you use wireless technology to connect networks or servers that process or store Transactions or account data, you must comply with the following requirements. Wi-Fi Protected Access (WPA) technology must be implemented for encryption and authenticated when wireless LAN technology is WPA-capable. Use of a Virtual Private Network (VPN) is also recommended; when the wireless LAN is not WPA-capable, a VPN must be implemented; and Wireless Equivalent Privacy (WEP) must not be the sole method used to protect confidentiality and access to a wireless LAN.
- 30.2. You acknowledge and agree that you are aware of the limitations affecting the use of wireless technology (due to technical and geographical factors) which may affect the security, performance, coverage and reliability of wireless Terminals and their processing ability. If for any reason your ability to process wireless Transactions is limited or prevented, you agree that you will process by an alternative method.
- 30.3. If you undertake a Transaction without an Authorisation or store data in the Terminal for subsequent Authorisation which is not given by the Issuer you do so at your own risk. Authorisation does not guarantee payment for a Transaction.

Section D – Mail / Telephone

31. Where you have indicated on the Merchant Application that you wish to raise Mail/Telephone Transactions, relying on the number and details of the Card without its actual presentation, as the means of effecting payment for goods and services, and Bidvest Merchant Services and Bidvest Bank have agreed to this, or if you submit Mail/Telephone Transactions without their written agreement, the following Terms and Conditions apply in addition to the Terms and Conditions set out in Section A above. In the event of any inconsistency, this Section D of the Terms and Conditions shall prevail.

For the purpose of the Agreement, the expression 'Mail/Telephone', (also known as Card Not Present (CNP)) means an order for goods or services where the Card or the Cardholder is not physically present at the time of the Transaction. This Section D of the Terms and Conditions applies to Mail/Telephone Transactions raised by you, and you agree to comply with the following Terms and Conditions in respect of such Mail/Telephone Transactions:

- 31.1. You confirm that you will not request Card details to be submitted by email, or over the Internet, and then input Transactions as CNP to an electronic Terminal. You also confirm that you shall not submit paper vouchers to Bidvest Merchant Services but rather shall seek Authorisation and payment in the manner set out in Section A of these Terms and Conditions where you use Sales Vouchers. In the event of you accepting Card details in this way Bidvest Merchant Services reserves the right to terminate your Card processing immediately. Authorisation does not guarantee payment for a Transaction, it merely verifies that there is available credit on the Card, and that the Card has not been reported lost or stolen at the time of the Authorisation.
- 31.2. In relation to the dispatch of goods, you undertake not to raise a Transaction Record prior to the goods being dispatched. If, for any reason, you do not have the goods available for dispatch to the Cardholder within 7 days of receipt of the order, the Cardholder must be notified of that fact and the order reconfirmed by the Cardholder.
- 31.3. Authorisations obtained for Mail/Telephone Transactions do not guarantee payment. When the Cardholder or the Cardholder's bank refutes a Mail/Telephone Transaction and charges back the Transaction, Bidvest Merchant Services has the right, in its absolute discretion, to debit you with the amount charged back to it in respect of such Transaction.
- 31.4. Cardholders do not have to prove their claim to their Card Issuer for a Chargeback to occur; they simply have to advise the Card Issuer of their claim.

- 31.5. It is your absolute responsibility to verify the Cardholder's address and ensure the goods are dispatched to this address. Bidvest Merchant Services cannot and will not provide name and address verification as part of the Authorisation process.
- 31.6. Whenever you make a Mail/Telephone Transaction you shall keep available for Bidvest Merchant Services, and retain for inspection for a period of two (2) years from the date of the Transaction, a record of the following information or particulars:
- 31.6.1. Card number and the expiry date of the Card which is being used for the purchase of such order,
 - 31.6.2. name and address of the Cardholder,
 - 31.6.3. date of the order,
 - 31.6.4. amount of the Transaction,
 - 31.6.5. Cardholder's written order in the case of mail order Transactions,
 - 31.6.6. date and number of the Authorisation, and
 - 31.6.7. date of invoicing the goods.

Section E – Electronic Commerce

32. Where you have indicated that you wish to raise Electronic Commerce Transactions, relying on the number and details of the Card without its actual presentation, as the means of effecting payment for goods and services and Bidvest Merchant Services and Bidvest Bank have agreed, or if you submit any Electronic Commerce transactions without our written agreement, the following Terms and Conditions apply in addition to the Terms and Conditions set out in Section A above. In the event of any inconsistency, this Section E of the Terms and Conditions shall prevail to the extent of such inconsistency.

- 32.1. You warrant and represent to Bidvest Merchant Services and Bidvest Bank that:
- 32.1.1. you will not, and you will also ensure your agents and customers do not, use any website in any way which might jeopardise the integrity, confidentiality, or security of your or your agent's Terminals, associated Equipment, any computer system, servers or network used by you to communicate with Bidvest Merchant Services or with Cardholders or other computer systems including through disabling devices and unsolicited emails; and
 - 32.1.2. you will display and maintain an appropriate privacy policy on each website and provide information on the websites security capabilities. The privacy policy and information on security capabilities must be in accordance with the requirements in all applicable laws, regulations and codes of practice.
- 32.2. You agree that you will operate within all legal and regulatory requirements which may apply and will meet all Scheme terms and conditions for Electronic Commerce Transaction acceptance advised to you by Bidvest Merchant Services. You hereby confirm and warrant that you are, and that you shall remain throughout the term of the Agreement, fully compliant with the Schemes' Payment Card Industry (PCI) Data Security Standards. You also confirm that you are responsible for, and you undertake that you will meet all costs associated with achieving and maintaining compliance, and any fines, costs or charges arising from you being compromised or not being compliant or data held by you being compromised and/or used for fraudulent purposes.
- 32.3. You confirm that only those goods and services specified in your Merchant Application or subsequently agreed to by Bidvest Merchant Services in writing, will be offered on your website and agree that if it considers that any goods or services offered may affect it or the Schemes' reputation, it may stop accepting Transactions immediately.
- 32.4. You agree and confirm that (in addition to complying with the requirements of clause 30.5 below), you will not accept or process Electronic Commerce Transactions other than through an Internet Payment Service Provider (IPSP) agreed by Bidvest Merchant Services or Bidvest Merchant Services itself by use of Bidvest Merchant Services' IPG Services. You agree to maintain your website and related technology, to ensure the encryption and secure transmission of Data provided by the Cardholder when ordering goods or providing Card details.
- 32.5. You agree and confirm that (in addition to complying with the requirements of clause 30.4 above), you will not accept or process Electronic Commerce Transactions other than through a Payment Service Provider (PSP) agreed by Bidvest Merchant Services. You agree to maintain your website and related technology, to ensure the encryption and secure transmission of Data provided by the Cardholder when ordering goods or providing Card details.
- 32.6. You confirm that you will not hold Bidvest Merchant Services or Bidvest Bank liable for any losses, damages, costs or expenses which may occur as a result of you entering into a contract with an Internet Payment Service Provider or allowing the Internet Payment Service Provider to process Transactions on your behalf.
- 32.7. Bidvest Merchant Services reserves the right to require you to undertake Transactions using 3D Secure programmes. If, when so requested, you fail to implement 3D Secure within a timescale acceptable to Bidvest Merchant Services, your right to process Transactions may be terminated immediately.
- 32.8. In relation to the dispatch of goods, you undertake not to raise a Transaction Record prior to the goods being dispatched. You must advise the Cardholder of the time it will take to dispatch the goods and if, for any reason, you do not have the goods available for dispatch to the Cardholder within such advised time period, then the Cardholder must be notified of that fact and the order reconfirmed by the Cardholder.
- 32.9. You are to clearly display on any website:
- 32.9.1. a complete and accurate description of all goods and services offered for sale,
 - 32.9.2. a full description of the commitment the Cardholder is entering into,
 - 32.9.3. full details of your delivery and returns policy,
 - 32.9.4. information that the Cardholder is committing to a Transaction before they select the "Pay Now" button, with an obvious option to cancel the payment at this point as an alternative to paying,
 - 32.9.5. Customer Service and contact details including email, mail, telephone and facsimile,
 - 32.9.6. notification that subsequent charges will be debited to Cardholder's Cards and details of online cancellation requirements if Recurring Transactions are being offered,

- 32.9.7. your country of domicile, and details of currencies accepted, and
- 32.9.8. an appropriate privacy policy.
- 32.10. Bidvest Merchant Services may give you immediate notice if it considers that in its opinion, which shall be final, the content of your website does not meet the standards required for it to continue to offer you a Merchant facility.
- 32.11. Whenever you make an Electronic Commerce Transaction you shall, subject to clause 9.3, keep available for Bidvest Merchant Services, and retain for inspection for a period of two (2) years from the date of the Transaction a full record of the Transaction.
- 32.12. Authorisations obtained for Electronic Commerce Transactions do not guarantee payment. Whenever the Cardholder or the Cardholder's bank refuses an Electronic Commerce Transaction and charges back the Transaction, Bidvest Merchant Services has the right, in its absolute discretion, to debit you with the amount charged back to Bidvest Merchant Services in respect of such Transaction.
- 32.13. Cardholders do not have to prove their claim to their Card Issuer for a Chargeback to occur; they simply have to advise the Card Issuer of their claim.
- 32.14. It is your absolute responsibility to verify the Cardholder's address and ensure the goods are dispatched to this address. Bidvest Merchant Services cannot provide name and address verification as part of the Authorisation process. Bidvest Merchant Services cannot provide name and address verification as part of the Authorisation process.
- 32.15. Bidvest Merchant Services may at any time, and at your reasonable cost, be entitled to undertake an attestation of compliance of your Business to ensure Payment Card Industry (PCI) Data Security Standards certification by you. This attestation of compliance may be undertaken and completed before you are authorised to undertake Electronic Commerce Transactions hereunder and may be performed by certified security audit company approved by the Schemes.

Section F – Use of Information

33. Protecting your personal information is important to us. To do so, Bidvest Merchant Services and Bidvest Bank adheres to the Protection of Personal- Information Act 4 of 2013 (POPIA).

- 33.1. The information which Merchant Services and Bidvest Bank holds now or obtains and holds at any time in the future, about you and your relationship with Bidvest Merchant Services and Bidvest Bank may, subject to banking regulations and the law, be disclosed by them and recorded, analysed, assessed, used and held by Bidvest Merchant Services and Bidvest Bank for the purposes set out at (33.2) to (33.19) below. This information includes any information which relates to or comes from:
 - 33.1.1. information, appraisal, proposal, referral or application forms or other dealings with Bidvest Merchant Services, including details of Transactions, the nature of same, with whom and how payment is effected, and
 - 33.1.2. products and services that are chosen by you,
 - 33.1.3. the operation of the Agreement, Merchant accounts and other Merchant agreement(s) with Bidvest Merchant Services, including details of Transactions, the nature of same, with whom and how payment is effected, and
 - 33.1.4. information supplied by others or obtained by Bidvest Merchant Services as a result of enquiries we make, and from such third parties associated with Merchants and licensed credit reference agencies.
- 33.2. When considering Merchant Applications or reviewing your facility, Bidvest Merchant Services may use credit scoring and other automated decision-making systems. Bidvest Merchant Services may also use some of your information and other Merchant Information to develop standard scoring criteria to assist it in assessing future Merchant Applications and in reviewing your facility. Bidvest Merchant Services may search Bidvest Merchant Services' own records, and a credit search may be made with one or more credit reference agencies, which will record the making of such search.
- 33.3. To ensure Bidvest Merchant Services carry out your instructions accurately, to help improve its services and in the interests of security, it may monitor and/or record your telephone calls with it.
- 33.4. Bidvest Merchant Services may give details of your Merchant arrangements and how you conduct your Merchant arrangements to licensed credit reference agencies or its legal advisers and to applicable regulatory entities, where appropriate. In particular, Bidvest Merchant Services may give those entities details of non-payment where:
 - 33.4.1. any monies are not paid in accordance with the terms of the Agreement; or
 - 33.4.2. you have not made proposals satisfactory to Bidvest Merchant Services or to its agents or affiliates for repayment of your debt, following formal demand, and
 - 33.4.3. you have been given at least 28 days' notice of its intention to disclose, or
 - 33.4.4. fraud has been suspected relating to your facility.
- 33.5. Bidvest Merchant Services may also seek information relating to your financial situation from your financial institution, subject to banking regulations and the law, and you agree that it is entitled to provide such information to Bidvest Merchant Services.
- 33.6. You consent to Bidvest Merchant Services reporting to the Visa VMAS and MasterCard MATCH listings, your business name and principals, as required under their rules. You agree to hold Bidvest Merchant Services harmless from all claims and liabilities you may have arising from the listings.
- 33.7. Credit searches and other information which is provided to Bidvest Merchant Services and/or the credit reference agencies about you and those with whom you are financially linked may be used by Bidvest Merchant Services and other companies if credit decisions are made about you. This information may also be used for debt tracing and the prevention of money laundering as well as the management of your Merchant arrangements. In addition, subject to any banking regulations and the law, Bidvest Merchant Services and Bidvest Bank may:
 - 33.7.1. exchange their Merchant Information about you and your relationship with similar information held from time to time by Bidvest Merchant Services, or by the Bidvest Group, to enable them to get a full picture of your relationship with us and in order to operate the Agreement fully,

- 33.7.2. disclose information about you and your relationship with them to other companies in the Bidvest Merchant Services Group or The Bidvest Group and to their agents or affiliates, so that they may record, analyse, assess, use and retain same for the same purposes described above in relation to their own businesses, products and services; and
- 33.7.3. disclose information about you and your relationship with them to the Scheme Rules require them to do so or to any regulatory body as required under any applicable law or regulations.
- 33.8. Bidvest Merchant Services and Bidvest Bank may also disclose information about you and your relationship with them to:
- 33.8.1. any party, including their advisers, to whom they are transferring or propose to transfer their business,
- 33.8.2. any party, including their advisers, to whom they transfer or assign, or propose to transfer or assign, their rights and obligations under the Agreement,
- 33.8.3. any party who participates or wishes to participate, wholly or in part, in the financing of any of their products or services,
- 33.8.4. any insurance company for the purpose of insuring risk, and
- 33.8.5. other companies inside and outside the Bidvest Merchant Services Group and/or The Bidvest Group in such other circumstances where they are obliged to by law or to law enforcement agencies for the purposes of registration of fraud or suspected fraud or where they have your consent.
- 33.9. Bidvest Merchant Services may link information about you between accounts, including your Merchant arrangements and any account(s) you may guarantee, and between accounts and the other products and services you may have with the Bidvest Merchant Services Group. Bidvest Merchant Services may also link information about you with information about other companies.
- 33.10. You (or any individual whose details you have provided) have the right of access to the personal data held about you (or such individual as appropriate) by Bidvest Merchant Services by sending a written request to Bidvest Merchant Services at its current registered office, and on payment of a fee.
- 33.11. You (or such individual as appropriate) also have the right to require Bidvest Merchant Services to correct any inaccuracies in the information it holds about you (or such individual as appropriate).
- 33.12. The information that you provide will be held by Bidvest Merchant Services on a computer database and/or in any other way and will be kept only for as long as required or permitted by law. This information will be used to administer the products and services supplied to you and any future agreements Bidvest Merchant Services may have with you.
- 33.13. You confirm that you have the authority to give the personal details of the contact nominated in the Merchant Application which will be used in providing the Services and in the operation of the Nominated Bank Account.
- 33.14. All Transaction Data shall be and remain at all times the property of Bidvest Merchant Services or Bidvest Bank or its agents. During the term of the Agreement, Bidvest Merchant Services hereby grants you a revocable, nonexclusive, non-transferable license to use, store, copy and distribute the Transaction Data as necessary for the performance of a Transaction or the Agreement.
- 33.15. You must not give, sub-license, sell, or in any way transfer, dispose of or grant any kind of right in any Transaction Data, or part thereof, to any third party.
- 33.16. You must only process Cardholder's Information in accordance with this Agreement, or the written instructions of Bidvest Merchant Services. You must not transfer, or cause or permit the transfer of, Cardholder's Information to a country outside South Africa without Bidvest Merchant Services' prior written approval.
- 33.17. You must ensure that you have in place appropriate technical and organisational measures which ensure an appropriate level of security for the processing of Cardholder's Information and which protect Cardholder's Information against accidental or unlawful destruction or accidental loss or alteration or unauthorised disclosure access or processing.
- 33.18. To process, use, record and disclose Cardholder's Information and Merchant Information, Bidvest Merchant Services may transfer such Cardholder's Information and Merchant Information to agents in countries outside South Africa. You consent to any such Transfer of Cardholder's Information and Merchant Information. Bidvest Merchant Services is responsible for ensuring that personal data continues to be adequately protected during the course of, and after, any such transfer.
- 33.19. Bidvest Merchant Services will be the data controller of all existing and new data in relation to the card acceptance and related services provided to you. Through your use of the services, you consent, subject to applicable laws, to:
- 33.19.1. where relevant, Bidvest Bank sharing with Bidvest Merchant Services your name, address and historical card acceptance related account information,
- 33.19.2. the exchange of information about you between Bidvest Bank and Bidvest Merchant Services, and by Bidvest Bank and Bidvest Merchant Services with certain members of the Bidvest Merchant Services Group and The Bidvest Group.
- Please refer to Bidvest Bank's Privacy Notice and Privacy Policy for further information on how the Bank treats your Personal Information. Visit the website at: www.bidvestbank.co.za

Section G – Dynamic Currency Conversion

- 34. Where you have indicated to Bidvest Merchant Services (whether on the Merchant Application or otherwise) that you wish to raise Transactions using Dynamic Currency Conversion and this has been agreed to, or if you submit any such Transactions without Bidvest Merchant Services' written agreement, the following paragraphs apply in addition to the General Terms and Conditions set out in Section A. In the event of any inconsistency, this Section G shall prevail to the extent of such inconsistency.**
- 34.1. You confirm that you understand that Scheme Rules require that Cardholders must:
- 34.1.1. always be advised before a Transaction is completed as a DCC Transaction in a currency other than the currency of the country in which the sale is being carried out; and
- 34.1.2. be given the option of having a Transaction completed in the currency of the country in which the sale is taking place.
- 34.2. You shall provide us with a list, if applicable, of all the premises or outlets in which you conduct your Business where DCC is enabled.

- 34.3. You agree that you will be liable for any Scheme fines arising from infringements of Scheme Rules resulting from the use of DCC processing.
- 34.4. Where a Transaction is to be completed as a DCC Transaction you agree to provide to the Cardholder information about any fees or charges that are payable because the Transaction is taking place in the other currency.

Section H – IPG Services

35. Where you have indicated to Bidvest Merchant Services (whether on the Merchant Application or otherwise) that you wish to receive IPG Services and it has been agreed to, the following paragraphs apply in addition to the General Terms and Conditions set out in Section A. In the event of any inconsistency, this Section H shall prevail to the extent of such inconsistency.

- 35.1. Subject to the terms of the Agreement, Bidvest Merchant Services hereby grants to you a personal, non-exclusive and non-transferable right to use the Platform, Software and Documentation in order to avail of the IPG Services during the Term solely in relation to the Transactions and for the purposes expressly described in the Documentation and/or for other transactions which we have expressly agreed to process. In the event of conflict between this Section H and anything set out in the Documentation, Section H shall prevail.
- 35.2. You shall not, and shall not cause or permit any third party to:
 - 35.2.1. use the IPG Services in any way, other than in accordance with the terms of the Agreement or as otherwise instructed by us in writing,
 - 35.2.2. circumvent or attempt to circumvent any applicable security measures of any element of the IPG Services including disassembling, decompiling, decrypting, extracting, reverse engineering or modifying the Software, or otherwise apply any procedures or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software,
 - 35.2.3. except as specifically authorised in accordance with the terms of the Agreement, allow any third-party access to the IPG Services other than to your authorised employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of the Agreement,
 - 35.2.4. make any copies of the Documentation, except as is incidental to the purposes of the Agreement; or
 - 35.2.5. remove or alter in any way whatsoever any copyright notice or acknowledgements appearing on any element of IPG Services from time to time save to the extent instructed and/or approved in writing by Bidvest Merchant Services.
- 35.3. You shall ensure that if you receive a password from us to access any element of the IPG Services, you will:
 - 35.3.1. keep the password confidential,
 - 35.3.2. not allow any other party to use the password or gain access to the IPG Services except as expressly agreed by Bidvest Merchant Services,
 - 35.3.3. be liable for all acts or omissions of any user of the password, and
 - 35.3.4. notify Bidvest Merchant Services immediately if the IPG Services have been compromised by use of the password. If you receive passwords from a third party on our behalf or otherwise in connection with the Agreement, you must protect such passwords in the manner required by such third party.
- 35.4. You acknowledge and agree that the IPG Services as of from the date of the Agreement may be modified at any time by Bidvest Merchant Services on written notice to you (and it does not guarantee to future proof any technical or functional aspects of the IPG Services accordingly).
- 35.5. Provision to you of the IPG Services is subject to any operational limitations notified to you from time to time (and subject to any specific software or other technical system interface requirements Bidvest Merchant Services may notify to you that you may be required to fulfil (at your cost) in order to receive the IPG Services).
- 35.6. While Bidvest Merchant Services provides the IPG Services to you, you acknowledge that the IPG Services are in themselves insufficient to allow the Merchant Systems to function with the Platform. Programming, development and maintenance of the Merchant Systems and their functionality is your sole responsibility. You have the ultimate responsibility to ensure the Merchant Systems function correctly. You shall be responsible for all technical support for the Merchant Systems and integration related issues on your side. You will be responsible for all of your own development and implementation costs associated with such integration.
- 35.7. Bidvest Merchant Services reserves the right in its absolute discretion, from time to time, without prior notice, to suspend the provision of the IPG Services for a reasonable period of time, for any reason including, but not limited to, maintenance and/or software upgrades.

36. Termination

- 36.1. We may terminate our relationship with you under the following circumstances:
 - 36.1.1. Where we are legally required to do so.
 - 36.1.2. Where we reasonably believe a relationship with you, or any party related to you will expose us to reputational risk or to be outside of our risk appetite.
 - 36.1.3. Where you or any party related to you appears on any sanction list.
 - 36.1.4. Where you or any party related to you is linked to any restricted countries.

36.1 5. Where there are reasonable grounds suggesting:

- Fraudulent activity on the account or facilities linked to your account(s) or any party related to you.
- Illegal financial activity
- Terrorist activity
- Money laundering
- Contravention of Exchange Control Regulations
- Any unlawful activity

Section I – Rental Agreement Terms and Conditions

37. How BMS will use Information

- 37.1. In order to complete the application process BMS will require the Merchant to provide BMS with certain information which is considered personal data under applicable data protection and privacy laws and regulations, including the Protection of Personal Information Act, 2013. For the purposes of applicable data protection and privacy laws and regulations, BMS shall be considered a responsible party or data controller in relation to this personal data or information. BMS will process personal data or information for the following purposes to:
- (i) process this Rental Agreement,
 - (ii) assess applications for credit and other products and services that the Merchant requires,
 - (iii) manage Merchant's account and provide services to the Merchant,
 - (iv) conduct, monitor and analyse BMS's business,
 - (v) contact the Merchant (unless the Merchant informs BMS that the Merchant prefers not to be contacted) about products and services including those of carefully selected third parties which may interest the Merchant,
 - (vi) recover debts and prevent fraud, and
 - (vii) comply with applicable law and regulations.
- 37.2. BMS may sometimes use a credit scoring or other automated decision-making system when processing the information, including personal data or information, provided.
- 37.3. BMS may disclose and transfer personal data or information to other companies within BMS's group, other persons who provide a service to BMS, or to BMS's employees, agents, associated companies, insurers or anyone to whom BMS proposes to transfer any of its rights and/or responsibilities under this Agreement, each of whom may also use the personal data in the ways described in this Agreement and may be located outside the Republic of South Africa. BMS may also disclose any information, including personal data or information that the Merchant provides to:
- (i) anyone to whom the Merchant authorises BMS to give such information, and
 - (ii) comply with any legal or regulatory requirements imposed on BMS or any company within BMS's group (located outside the Republic of South Africa).
- 37.4. In order to use and disclose personal data for the purposes set out above BMS may transfer the personal data or information to its affiliated companies outside the Republic of South Africa, including the United States of America, which may not have laws comparable to those in the Republic of South Africa which protect such personal data or information.
- 37.5. BMS or its agents may monitor or record telephone calls or other forms of communication from the Merchant or the Merchant's employees or agents to ensure instructions are carried out correctly and to help improve the quality of the service.

38. Credit Reference and Fraud Prevention

- 38.1. BMS shall be entitled to conduct any searches it deems necessary with any credit reference or fraud prevention agency in order to:
- 38.1.1. manage the Merchant's account,
 - 38.1.2. verify the Merchant's credit history and take decisions about credit, and
 - 38.1.3. protect against money laundering. This authorisation will remain in place during the term of this Rental Agreement.
- 38.2. BMS may keep any information provided by the Merchant or about this Rental Agreement in its records and may disclose this information and information relating to the Merchant and held by other companies within BMS's group to credit reference and fraud prevention agencies. A credit reference or fraud prevention agency contacted by BMS in connection with this Rental Agreement may keep a record of BMS's inquiry, which will be available to later inquirers. The credit reference and fraud prevention agencies will share the search details with the BMS and with other organisations so that BMS and they might:
- 38.2.1. assess applications for credit and related services and manage accounts,
 - 38.2.2. check the Merchant's identity to prevent money laundering,
 - 38.2.3. prevent, detect or prosecute fraud or other crimes,
 - 38.2.4. recover and trace debts, and
 - 38.2.5. undertake statistical analysis.

Please write to BMS at the address specified on page one of this Rental Agreement to the attention of The Information Officer if you would like the details of the credit reference and fraud prevention agencies.

39. Personal Data or Information of other Persons

By including personal data or information about other persons in this Rental Agreement, the Merchant confirms that the Merchant has the consent of and is entitled to disclose such information and that each such person has consented to BMS's use and disclosure of his, her or its personal data or information for the purposes and in the ways described in this Rental Agreement. Where information about other persons is provided in or in connection with this Rental Agreement, the Merchant and each such person understands that an "association" will be created at the credit reference agencies, which will link their financial records.

40. Rights to Personal Data or Information

Individuals have a right to a copy of the personal data or information, which BMS holds about them, and to have any inaccuracies corrected. If the Merchant or other persons wish to exercise this right, they should apply in writing to BMS at the address specified on page one of this Rental Agreement to the attention of The Information Officer. A fee will be payable in respect of any request for a copy of the personal data or information which BMS holds about them and to have any inaccuracies corrected, however, no fee will be charged in respect of a request for BMS to confirm that BMS holds personal data or information relating to the person making the request.

41. Consent to use of Personal Data

41.1. To view our privacy policy, visit the website on: www.bidvestbank.co.za

41.2. By signing this Rental Agreement, you consent to BMS's use and disclosure of your personal data or information and the personal data of any other persons specified above in the ways described in this Rental Agreement and confirm the information given is true and complete.

42. Default charges

If the Agreement is terminated as a result of the Merchant's default, the Merchant shall pay the cost of replacing or putting the Equipment into Good order, repair and working condition (fair wear and tear expected). In addition, the Merchant shall be required to pay an amount as detailed in clause 62 of the General Terms and Conditions of Rental. The Merchant shall pay BMS enforcement costs and indemnify BMS for all losses, liabilities, damages and expenses as detailed in clause 59 of the General Terms and Conditions of Rental.

43. Rental Conditions

The Merchant agrees to rent the Equipment from BMS on the Terms and Conditions above and contained herein. Under this Agreement the Equipment does not become property of the Merchant and the Merchant is not entitled to sell or otherwise dispose of same.

44. Unpaid Rental

Failure to honour rental payments could lead to severe consequences and may make obtaining credit more difficult.

45. Other Charges:

Details of other charges payable under the Agreement are set out in clause 55, 56 and 62 of the General Terms and Conditions of Rental and clause 37, headed "How BMS will use Information."

General Terms and Conditions of Rental

46. Equipment

- 46.1. BMS agrees to let, and the Merchant agrees to rent the equipment identified on page nine (9) of the Rental Agreement section of the Merchant Application Form, (the 'Equipment' and which expression shall include all accessories and also any additions or replacements made to the Equipment) pursuant to these General Terms and Conditions of Rental.
- 46.2. A third-party supplier retains ownership of all Equipment and BMS may supply Equipment of a different model than that stated as long as the specification is at least equal.
- 46.3. The Merchant shall not have or acquire any rights of ownership in or to the Equipment at any stage during or on expiration or termination of the Agreement.

47. Merchant Declaration and Acknowledgement

- 47.1. The Merchant acknowledges and agrees that it has selected the Equipment from an approved range made available by BMS solely on the basis of its own judgment and that the Equipment shall only be used for the purpose of a business carried on by the Merchant. The Merchant is satisfied that the Equipment chosen is suitable for all its requirements and conforms with any conditions and/or requirements stipulated by the Merchant. Therefore, BMS does not make or give any representation, stipulation or undertaking express or implied by the law as to the state, quality or performance of the Equipment for present and future use, or its correspondence with description or sample or its fitness for any or particular purpose, all of which are hereby expressly excluded.
- 47.2. The Merchant acknowledges that the Equipment will be configured to work with services and systems offered by BMS at the time the Equipment is supplied to the Merchant and will not be compatible with the systems of other processors. At time of installation by BMS, the Merchant will be required to acknowledge receipt of the Equipment and that it is in working order.
- 47.3. The Merchant undertakes to return the Equipment to BMS on termination of the Agreement or if required to do so by BMS at any time and at BMS' sole discretion.

48. Commencement and Term of Agreement

- 48.1. This Agreement becomes effective on the date of signature. The Merchant must inspect and select the Equipment on delivery and must inform BMS within 48 hours of delivery if the Equipment is defective or is unsuitable for the purpose for which it is acquired. If the Merchant gives no notice the Merchant will be deemed to have accepted the Equipment and to have acknowledged that it is in good working order, is fit for purpose and is satisfactory in every way. This Agreement remains in effect until all of the Merchant's obligations (including but not limited to payment obligations) under it have been satisfied.
- 48.2. BMS agrees to let the Equipment to the Merchant for the Rental Term detailed on page one of this Agreement and the rental shall continue until terminated as provided in this Agreement. Upon expiry of the Rental Term, this Agreement shall be automatically extended for successive calendar months until terminated on 30 days written notice given by one party to the other, to expire at the end of any calendar month. For each calendar month that the Rental Term is extended, the Merchant shall pay BMS an amount equal to the Monthly Payment in effect immediately prior to such extension and all other provisions of this Agreement shall continue to apply.

49. Manufacturer

The manufacturer(s) of the Equipment is not BMS's agent and neither manufacturer(s) nor any person on its behalf has any authority to make or give any representation or warranty on BMS's behalf in relation to the Equipment or to vary the terms or conditions set out in this Agreement. Subject to any law, BMS makes no representations whatsoever in respect of the design, condition, operation, suitability, compliance or compatibility with other systems, of the Equipment.

50. Site Preparation

- 50.1. The Merchant acknowledges that BMS shall arrange for a sub-contractor of the BMS to deliver, install and commission the Equipment at the business or Installation Address as identified in this Agreement.
- 50.2. The Merchant shall:
 - 50.2.1. prepare the installation site(s) for the Equipment in conformance with the specifications provided by BMS, and
 - 50.2.2. allow installation of the Equipment in accordance with the BMS' instruction.
- 50.3. **The Merchant shall make the site(s) available for installation on the confirmed installation date and pay the On-Site Installation Fee.**

51. Condition Precedent

The obligations of BMS to arrange delivery of the Equipment shall be subject to the completion of a valid Merchant Agreement between the Merchant and BMS, and on termination of such Agreement, this Agreement shall be terminated without any further action of either party. Upon such termination neither BMS nor the Merchant shall have any further obligations under this Agreement, save for any obligations which arose prior to the termination of the Agreement.

52. Obligations of the Merchant

- 52.1. The Merchant shall:
 - 52.1.1. cause the Equipment to be operated by competent and qualified personnel in accordance with all relevant operating instructions,
 - 52.1.2. maintain the Equipment in good operating condition (normal wear and tear expected),
 - 52.1.3. not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without BMS's prior written consent,
 - 52.1.4. not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with

possession of, or sublease the Equipment without BMS's prior written consent and will inform any landlord of the premises where the Equipment is used, including the business or Installation Address identified on page nine (9) of the Merchant Services Application and Rental Agreement form, in writing that the Equipment belongs to a third party,

- 52.1.5. obtain all permits and comply with all laws, rules and regulations relating to the use of the Equipment,
- 52.1.6. maintain the Equipment at the Installation Address as indicated on the Rental Agreement,
- 52.1.7. permit BMS or its representatives to enter the Merchant's premises during normal business hours or otherwise for purposes of inspecting, testing or repairing the Equipment, and
- 52.1.8. not tamper with labels or stencils on the Equipment evidencing third party ownership.

53. Maintenance

Subject to any law, the Merchant is solely responsible for the operation and maintenance of the Equipment. If the Equipment fails due to a manufacturing, mechanical or electronic defect that is covered by a warranty or guarantee that is held from the manufacturer, provided that the Merchant duly performs its obligations under this Agreement, BMS will on reasonable notice and request from the Merchant, and free of charge to the Merchant, arrange for the necessary repairs and adjustments to the Equipment and supply such replacement parts as provided for under the terms of the manufacturer's warranty or guarantee. **If the Equipment breaks down and cannot be repaired the Merchant shall accept an equivalent replacement from the manufacturer and at all times continue paying the Monthly Payments under this Agreement.**

54. Insurance

The Merchant is responsible for insuring the Equipment under an acceptable insurance policy endorsed with BMS's interest for an amount of the replacement value per terminal and shall provide satisfactory proof of such insurance policy upon request to BMS. Any loss of or damage to the Equipment shall not affect the continuance of this Agreement of the Merchant's liability for Rental Payments under this Agreement. **If in the event that the Merchant's insurance policy lapses and Merchant fails to renew such insurance policy or if the Merchant's policy fails to pay out in the event of for loss damage of theft of the Equipment, the Merchant remains liable for the Equipment.**

55. Payment of Amounts Due

- 55.1. The Rental Payments due under this Agreement shall begin to accrue on the Rental Commencement Date and shall be payable as specified on page one of this Agreement.
- 55.2. Each Rental Payment shall be collected, together with any other costs, fees and expenses as they fall due under this Agreement, by means of direct debit to the account specified by the Merchant unless the parties have otherwise agreed to an alternative method of payment. Any payments made other than by direct debit may be subject to an administration charge (as advised at the relevant time) to cover BMS's processing costs. Any sums shall be deemed paid when credited to BMS's account.
- 55.3. The Merchant agrees to give BMS at least 30 (thirty) days' prior notice if the account from which the direct debit payment is made from, is changed. Punctual payment shall be of the essence of this Agreement. If any Rental Payment is not paid in full when due, Merchant shall pay BMS the default charges specified on page one and two of this Agreement. BMS shall be entitled to charge interest on any Rental Payment or other sum due to BMS under this Agreement but unpaid at a rate of 2% (two per cent) per month from its due date to the date of payment, such interest to run from day to day and after as well as before judgment. Such interest shall be compounded monthly.
- 55.4. BMS may charge the Merchant an administration fee (as advised at the relevant time) for:
 - 55.4.1. any copies of this Agreement, invoices, settlement quotes or VAT schedules Merchant requests, and/or
 - 55.4.2. providing any statement of account, assignment or change of contract documentation, other than those to which Merchant is entitled free of charge, by law.
- 55.5. BMS reserves the right to arrange for the Equipment to be disconnected in the event monies are overdue and outstanding by the Merchant. Once the overdue amounts have been paid, BMS may arrange for the Equipment to be reconnected and a reconnection fee may be payable by the Merchant. This would include disconnection of a terminal on an alternative Agreement (which may or may not be delinquent) under the same entity.
- 55.6. BMS may charge the Merchant an administration fee of R50 where a direct debit payment is rejected by the Merchant's bank. In such circumstances BMS may re-submit the debit payment request on the 15th day of the month following the initial rejection (or the first business day thereafter if the 15th falls on a weekend or public holiday).
- 55.7. Where the Merchant disputes any debit payment with its bank and it is subsequently found that the payment was due, the Merchant shall reimburse BMS with any charges levied by BMS's bank (at the date of printing R680, but subject to change). It is therefore advised that any dispute regarding debit payments is raised first with BMS.
- 55.8. Rental payments may increase from 1 September each year by no more than the Consumer Price Index (CPI) plus 1%.

56. Change in/of Equipment

BMS may, if it considers it necessary to do so, and for such period or periods as it may deem expedient, replace the Equipment with other equipment of the same or similar type as the Equipment. The equipment so substituted shall then be subject to the terms and conditions of this Agreement. The Equipment has been supplied to the Merchant in conjunction with the Equipment configuration requested by the Merchant. If the Merchant requests changes to the Equipment in order for the provision of additional facilities and BMS incurs any related costs from the manufacturer or other third party, BMS will pass such costs to the Merchant and collect them by direct debit to the Merchant's account.

57. Software Licence

BMS retains all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and the Merchant shall have only a non-exclusive licence to use the Software during the Merchant's operation of the Equipment.

58. Warranties and Limits of Liability

- 58.1. BMS warrants to the Merchant that it will perform its obligations under this Agreement with reasonable skill and care.
- 58.2. The Merchant warrants that it has used its own skill and judgment in choosing the Equipment and not that of BMS, to the extent necessary it has taken advice from an independent source and not from BMS, and it is satisfied that the Equipment is suitable for all of its requirements.
- 58.3. The Merchant warrants that it shall comply with all applicable laws and legislation.
- 58.4. Except as expressly provided in this Agreement and subject to any applicable law, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.
- 58.5. **Subject to mandatory provisions of law, the total liability of BMS, whether in negligence, contract or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstance exceed a sum equal to the aggregate amounts payable by the Merchant under this Agreement. Subject to mandatory provisions of law, neither party shall be liable to the other (whether in negligence, contract or otherwise) for the following types of loss even if it has been advised of the possibility of such loss:**
 - 58.5.1. special damage, even though the party was aware of the circumstances in which such special damage could arise,
 - 58.5.2. loss of profits or anticipated savings,
 - 58.5.3. loss of, or damage to, data or
 - 58.5.4. indirect or consequential loss.

59. Indemnification

- 59.1. The Merchant shall fully indemnify and hold BMS harmless from and against any and all losses, liabilities, damages and expenses, (including legal fees) resulting from:
 - 59.1.1. the operation, use, condition, liens against, or return of the Equipment,
 - 59.1.2. any breach by the Merchant of any of the Merchant's obligations under this Agreement, except to the extent any losses, liabilities, damages or expenses result directly from BMS' gross negligence or wilful misconduct,
 - 59.1.3. the enforcement of any provision of this Agreement or recovery of any payment due under this Agreement by BMS,
 - 59.1.4. BMS' collection or recovery of the Equipment, or
 - 59.1.5. loss, theft or destruction of the Equipment.

60. Early Termination

The Merchant may terminate this Agreement prior to the expiration of the Rental Term by giving 1 (one) months' notice and making the payment specified in clause 62 and returning the Equipment in accordance with clause 64 of this Agreement.

61. Termination on Default

- 61.1. BMS may terminate the rental of the Equipment and/or this Agreement, if any of the following events occur:
 - 61.1.1. if any debit of the Merchant's bank account initiated by BMS is rejected when due or if the Merchant otherwise fails to pay BMS any amounts due under this Agreement within 10 (ten) days of it becoming due,
 - 61.1.2. if the Merchant defaults in any material respect in the performance or observance of any obligation or provision of this Agreement or any other agreement between (a) the Merchant and BMS or (b) the Merchant and any holding company, subsidiary company or associated company of BMS,
 - 61.1.3. an insolvency order is made against the Merchant or the Merchant petitions for its own insolvency or,
 - 61.1.4. the Merchant makes any composition, scheme or arrangement with its creditors or calls a meeting of his creditors or is otherwise unable to pay its debts when due,

- 61.1.5. (where the Merchant is a limited company) an application is made for the appointment of an administrator, liquidator, business-rescue practitioner or examiner or if a receiver is appointed in respect of the Merchant's assets or any part thereof or if the Merchant enters into liquidation except a voluntary liquidation for the purpose of amalgamation or reconstruction on terms previously approved in writing by BMS or if the Merchant becomes unable to pay its debts as they fall due, or
- 61.1.6. (if the Merchant is a partnership) any of the partners die or a petition is presented for an insolvency order against one of the partners or the partnership is dissolved.
- 61.2. Any termination of this Agreement shall be without prejudice to any right of BMS in respect of any breach of this Agreement by the Merchant committed prior to the date of return or repossession of the Equipment.

62. Payments on Termination

- 62.1. Upon the termination of this Agreement, the Merchant shall immediately pay to BMS all arrears in respect of Rental Payments, charges and fees due and unpaid at the date of termination. If this Agreement shall terminate in accordance with clauses 60 or 61 above or upon repudiation or termination by the Merchant accepted by BMS, the Merchant shall in addition pay to BMS:
- 62.1.1. the cost of replacing or putting the Equipment into good order, repair and working condition (fair wear and tear only excepted).
- 62.1.2. and a Cancellation Fee calculated as follows:
- 62.1.2.1. should the remaining Rental Term exceed six (6) months, a Cancellation Fee equivalent to three (3) Monthly Payments shall be payable by the Merchant, or
- 62.1.2.2. should the remaining Rental Term exceed three (3) months, but fall below six (6) months, a Cancellation Fee equivalent to two (2) Monthly Payments shall be payable by the Merchant, or
- 62.1.2.3. should the remaining Rental Term exceed one (1) month, but fall below three (3) months, a Cancellation Fee equivalent to one (1) Monthly Payment shall be payable by the Merchant, or
- 62.1.2.4. should the remaining Rental Term be one (1) month, no Cancellation Fee shall be payable by the Merchant.

63. Set-Off

- 63.1. BMS's rights in and to the Rental Payments and any other amounts due under this Agreement are to the extent permitted by law absolute and unconditional and are not subject to any abatement, reduction, set-off, defence, counterclaim or recoupment due or alleged to be due to or by reason of, any past, present or future claims which the Merchant may have against BMS, the manufacturer or BMS of the Equipment, or against any person for any reason whatsoever. **If the Merchant is required by tax authorities or by law to make any withholding or deduction, then the Monthly Payments shall be increased to the extent necessary to ensure that the Merchant retains a net sum equal to the sum it would have received but for such withholding or deduction.** Punctual Payment of the Monthly Payments and all other sums due under this Agreement are of the essence of this Agreement.
- 63.2. BMS may at any time (without notice to the Merchant) set off and apply any or all sums due and payable by BMS to the Merchant under this Agreement or any other agreement or procure the set off and application of all sums due and payable by BMS to the Merchant under any agreement between BMS and the Merchant against all sums due and payable by, and any liability incurred by, the Merchant to BMS under this Agreement.

64. Return of Equipment

- 64.1. When this Agreement or rental of the Equipment expires or is terminated, the Merchant shall:
- 64.1.1. at its own expense, ensure that the Equipment and peripherals are safely and properly stored until they are collected by BMS or BMS' agent in accordance with (64.1.4) below,
- 64.1.2. not use the Equipment,
- 64.1.3. ensure that the Equipment and peripherals are returned to BMS clean with all markings removed in good condition (fair wear and tear excepted) and operating order and free from cracks, dents, scratches and stains,
- 64.1.4. make the Equipment available for collection by BMS or its agent. If the Merchant fails to make the Equipment and peripherals available for collection in accordance with this clause 64, BMS will charge the Merchant an amount equal to the cost of any repairs or improvements to the Equipment to restore it to good working condition or the full replacement value of each item of Equipment, as appropriate.

65. Assignment

The Merchant may not assign or transfer this Agreement without BMS' prior written consent. **BMS reserves the right to charge an administration fee for processing the Merchant's assignment request.** For purposes of this Agreement, any transfer of voting control of the Merchant or the Merchant's holding company, and the merger of the Merchant into another entity, shall be considered an assignment or transfer of this Agreement. BMS may assign and/or transfer this Agreement and BMS' rights and obligations under this Agreement, in whole or in part, to any third party without the necessity of obtaining the Merchant's consent.

66. Waiver

If BMS fails to exercise a right or remedy which arises from any breach of the terms of this Agreement, either immediately or at all, such failure shall not prevent BMS from exercising that right or remedy subsequently in respect of that or any other breach. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.

67. Miscellaneous

- 67.1. The Merchant shall not claim capital allowances on the Equipment at any time and the Merchant shall provide BMS such information as is required concerning the Equipment, its location and the use of it when requested.
- 67.2. **If the Merchant is 2 (two) or more individual persons, each is jointly and severally liable under this Agreement.**
- 67.3. Notwithstanding termination or expiry of this Agreement any of the Merchant's liabilities capable of surviving termination or expiry, including the indemnity under clause 59, shall survive.
- 67.4. Any consent given by BMS will be conditional on no breach of this Agreement occurring while the consent is in force. If a breach occurs such consent shall be automatically withdrawn.

68. Governing Law Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties irrevocably agree that the courts of the Republic of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or information (including non-contractual disputes or claims).

69. Notices

All notices must be in writing and shall be given:

- 65.1. if sent by mail, when received, and
- 65.2. if sent by courier, when delivered, if to the Merchant at the address identified on page nine (9) of the Merchant Application and Rental Agreement Form, and if to BMS at the address specified on page nine (9) of this the Merchant Application and Rental Agreement Form to the attention of BMS' Managing Director.

70. Entire Agreement Invalidity

This Agreement constitutes the entire Agreement between the parties with respect to its subject matter and supersedes any previous agreements and understandings with respect to its subject matter and can be varied only by written agreement signed by all parties. Notwithstanding any other term of this Agreement, the consent of any person who is not a party to this Agreement is not required to vary this Agreement at any time. If at any time the whole or any part of any provision of this Agreement is or becomes invalid, illegal or unenforceable, the remaining parts and/or provisions shall continue in full force and effect.

Annexure A – Bidvest Merchant Acquiring Services Terms and Conditions

Secure EFT Payments

1. Additional Service

- 1.1. Upon signature of this Annexure A to the Bidvest Merchant Acquiring Service Terms and Conditions, ('the Agreement') you elect the Secure EFT payment option as an additional service, and agree to be bound by the Agreement, the provisions of this Annexure A and the additional fees applicable to Secure EFT.
- 1.2. Additional fees are applicable for Secure EFT and are payable in accordance with the terms of clause 6 below.

2. Terms Used

- 2.1. In this Annexure A the definitions and terms contained in the Agreement shall apply.
- 2.2. In addition to the definitions contained in the Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
 - 2.2.1. **Customer** means any person using Secure EFT to pay for Products purchased from or through the Merchant or via the Merchant's online or mobile platform,
 - 2.2.2. **Fraudulent Transaction** means any Transaction which may constitute fraud,
 - 2.2.3. **Payment Notification** means a notification sent by Bidvest Merchant Services to the Merchant indicating either a successful or unsuccessful payment of a requested order,
 - 2.2.4. **Products** means any goods or services offered by a Merchant via a website, mobile application or online platform or service operated by the Merchant or third party,
 - 2.2.5. **Secure EFT** means the payment functionality providing Customers with a secure payment mechanism and platform through which Customers are able to pay for Products purchased by electronic funds transfer via the internet by securely using their existing internet banking facilities, and
 - 2.2.6. **Undesirable Products** means any Products offered for sale by the Merchant which Bidvest Merchant Services, in its sole discretion, considers undesirable for any reason, including ethical or moral reasons or factors which may have an adverse effect on the reputation of Bidvest Merchant Services or Bidvest Bank.

3. Scope

- 3.1. Bidvest Merchant Services merely facilitates the Transactions and all disputes relating to the Products, including but not limited to, returns, warranties, price, payment or delivery remain between the Merchant and the Customer.
- 3.2. Signature of this Annexure A has the effect of its incorporation into the Agreement, with the consequence that in addition to and notwithstanding any obligations detailed in this Annexure A, the terms of the Agreement apply to this Annexure A in full and should there be a conflict between the terms of Annexure A and the Agreement, the Agreement shall prevail.

4. Payment Notification

- 4.1. The Merchant shall request Customer authorisation by transmitting to Bidvest Merchant Services the relevant order details in the form specified by Bidvest Merchant Service from time to time or by capturing the relevant information on Bidvest Merchant Services' secure IPG payment page.
- 4.2. Payment for the Products shall be authorised by the Customer using their existing internet banking facilities.
- 4.3. Transaction history will be made available to the Merchant via the Bidvest Bank Online Payments Merchant portal detailing all successful and unsuccessful Secure EFT Transactions processed.

5. The Merchant's Obligations

- 5.1. In addition to the obligations contained in the Agreement and elsewhere in this Annexure A, the Merchant must:
 - 5.1.1. only request Customer authorisation at the time of and for a particular Transaction after receipt of a successful Payment Notification, record and release the Product(s) to the Customer,
 - 5.1.2. ensure that you obtain a successful Payment Notification for all Secure EFT Transactions before releasing any Product(s) to the Customer; and
 - 5.1.3. verify the status of a payment before releasing the Product(s) where the original Payment Notification message was not received.
- 5.2. Any refunds for Products shall be settled between the Merchant and the Customer or between the Merchant and the bank as the case may be.

6. Fees and Payment

- 6.1. The Merchant shall be charged a minimum monthly fee and a percentage of the value of the Transaction as a per Transaction fee, according to Bidvest Merchant Services' current rates as published from time to time. All fees shall exclude VAT.
- 6.2. Fees are subject to variation by Bidvest Merchant Services from time to time in Bidvest Merchant Services' discretion and on thirty (30) days' written notice of any such variation.
- 6.3. In providing Secure EFT to its Customers, the Merchant warrants in addition to and notwithstanding any warranty in the Agreement that—
 - 6.3.1. the information provided in respect of any Transaction is correct,
 - 6.3.2. there has been due and proper performance by the Merchant of its obligations in terms of the supply of Products to the Customer,
 - 6.3.3. the value provided in respect of any Transaction is in respect of the undertaking to supply Products and that no additional charges are included,
 - 6.3.4. Bidvest Merchant Services is indemnified by the Merchant in respect of all losses, costs, penalties, payments or any other liability whatsoever arising from any dispute, claim or defence raised against Bidvest Merchant Services where such dispute, claim or defence is a direct or indirect result of any act or omission on the part of the Merchant or any third party as a result of use of Secure EFT,
 - 6.3.5. Bidvest Merchant Services will be afforded all reasonable and necessary assistance from the Merchant in handling any actual or potential claim by a Customer against Bidvest Merchant Services,
 - 6.3.6. there has been due compliance with all applicable laws and the terms of the Agreement, including this Annexure A.
- 6.4. A monthly invoice shall be sent to the Merchant. It shall be the Merchant's responsibility to check the invoice in order to ensure that the contents thereof are correct.

7. Fraudulent Transactions

The Merchant undertakes to assist Bidvest Merchant Services and any relevant authority with any investigation relating to fraud or suspected fraudulent activity.

8. Undesirable Products

Where the Merchant offers for sale any Undesirable Products, Bidvest Merchant Services is entitled to terminate this Agreement, and any other related services, on notice to the Merchant.

9. Disclosure of Information

Any consent relating to the disclosure of data in the Agreement extends to any fraud prevention scheme established by Bidvest Merchant Services, Bidvest Bank or any other relevant payment organisation or any investigative body as determined by law, in their efforts to prevent fraud.

For BMS Use Only

Agreement Number

Merchant ID

Date Deployed

MCC / Description

Sales Channel

Sales Rep Name

The below footer will appear at the bottom of each page of the terms and conditions:

Bidvest Merchant Services Proprietary Limited is a subsidiary of Bidvest Bank Limited (Reg No. 2000/006478/06) an authorised Financial Services and Registered Credit Provider NCRCP17.