

# Merchant Agreement

This Merchant Agreement (“Agreement”) sets out the contractual relationship between Zapper Marketing (Southern Africa) (Pty) Ltd (“Zapper”) and each person (“Merchant”) who signs up for either the Standard Services or the Business Services.

By ticking the box for “I have read and accepted the “Merchant Agreement”” on Zapper’s website, you (the Merchant) confirm that you have read, understood and agree to be bound by this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, except where the context indicates otherwise, the below words will have the following meanings:

Agreement	this merchant agreement between the Merchant and Zapper;
Acquiring Bank	the bank which Zapper uses for purposes of providing the Services;
Beneficiary Services Provider	a person who accepts money or the proceeds of payment instructions, as a regular feature of that person's business, from multiple payers (Zapper Users) on behalf of a beneficiary (the Merchant) ;
Business Services	the Services together with additional services and features as described as “Business” at <a href="https://www.zapper.com/pricing">https://www.zapper.com/pricing</a> , which may be selected by the Merchant, and if so selected, for which a monthly fee per store is chargeable, (and may be amended by Zapper from time to time);
Change in Control	a change of more than 25% of the voting rights of the shares (or other proprietary interest) of the Merchant and/or the right to appoint or remove, or veto the appointment or removal of 25% or more of the directors or members (as the case may be);
Chargeback	the reimbursement of an amount, equal to the value of the relevant Zapper Transaction, by the Merchant in the event that such Zapper Transaction is disputed by the Zapper User, invalid, unauthorised, fraudulent or suspected to be fraudulent or reversed by the Acquiring Bank or any Third-Party Service Provider;
Intellectual Property Rights	intellectual property rights of whatsoever nature including corporate identification, trademarks, designs, logos, slogans, emblems, copyright, patents, inventions, know-how, improvements, processes, get-ups, database rights, moral rights, specialised technical information or expertise and, in each case, whether registered or not and including applications for the granting of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;
KYC Documents	all “know your client” documents requested by Zapper in order to verify the identity of the Merchant or as may be required by the Acquiring Bank in order to comply with its obligations in terms of the Financial Intelligence Centre Act No. 38 of 2001;
Merchant Bank Account	the South African bank account of the Merchant into which payments will be made by Zapper;
Merchant Collections	the monies collected on behalf of the Merchant in respect of Zapper Transactions;
Merchant Portal	the digital portal which can be accessed via the Website by the Merchant at <a href="https://mp.zapper.com/">https://mp.zapper.com/</a> ;
Monthly Fee	the monthly fee payable by the Merchant to Zapper for the Business Services;
Order Ahead	an ancillary service to the Services that allows the Merchant to showcase a menu of offerings and the Zapper User, by scanning a QR code, to access the Merchant's offering on ‘the Application’, place an order, make payment via Zapper and select from various delivery options (delivery, sit in, collection, deliver to car), with the Merchant being able to view, process and update the status of the User's order either via Whatsapp and/or the Merchant Back Office application, while the User is able to track the status via the User app (delivery services are not included, and remain the responsibility of the Merchant);
Parties	each Merchant and Zapper and “Party” means any one of them;
Protocols	the protocols relating to the Merchant's use of the Services as determined by Zapper from time to time, which includes security and payment authentication mechanisms;
QR Code	the two-dimensional barcode allocated to the Merchant by Zapper upon completion of the Sign Up Process;
Regulatory Authority	any government (including national, provincial and local), regulator or statutory entity, authority, department or agency having competent jurisdiction over this Agreement, the Merchant and/or Zapper, including the South African Reserve Bank and the Payments Association of South Africa;
Services	the provision of a payment processing service to facilitate Zapper Transactions and any other ancillary services and features that Zapper may offer from time to time, whether specifically referenced in this Agreement or not, and which may depend on the service offering (Business Services or Standard Services) that the Merchant selects, as well as access to various third-party offerings of ancillary payment services that may be available on the Zapper Platform from time to time;

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Sign Up Process	the online application process, as set out on the Website, to be completed by the Merchant in order to use the Services;
Standard Services	the Services together with limited additional services as further described as “Free” at <a href="https://www.zapper.com/pricing">https://www.zapper.com/pricing</a> , which may be amended by Zapper from time to time;
Third Party Service Provider	any third-party service provider appointed by Zapper in order to provide some or all of the relevant Services;
Transaction Fee	the processing fee per Zapper Transaction as set out on the Website from time to time, which is payable by the Merchant to Zapper, to which processing fee VAT shall be added and be included in the Transaction Fee;
VAT	Value Added Tax;
Website	the website of Zapper found at <a href="https://www.zapper.com">https://www.zapper.com</a> ;
Zapper App	the smartphone application that facilitates the scanning of a QR Code by the Zapper User;
Zapper Equipment	all equipment, hardware, and systems of Zapper that may be provided to the Merchant from time to time;
Zapper Merchant App	the smartphone or tablet application that facilitates the access to notifications from Zapper to the Merchant;
Zapper Platform	The means by which Zapper provides merchants with access to its suite of APIs, SDKs and code examples, enables developers to integrate the Zapper offerings into third-party mobile apps, websites and payment systems, and provide merchant access to third party ancillary payment services
Zapper Transaction	a transaction in terms of which the Merchant provides goods and/or services to a Zapper User, and the Zapper User pays the Merchant with the Zapper App by scanning the QR Code; and
Zapper User	a customer of the Merchant, who has downloaded and registered as a user on the Zapper App in order to make payments using the Zapper App.

- 1.2. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3. Any references to applicable laws (statutes) will refer to them as amended from time to time.
- 1.4. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable then such provision will be severed (deleted) from this Agreement and the remaining provisions will continue to be of full force and effect.
- 1.5. The rule of construction that, in the event of ambiguity, a contract should be interpreted against the party responsible for the drafting the contract, will not apply in the interpretation of this Agreement.

## 2. COMMENCEMENT

- 2.1. In order to use the Services, the Merchant must complete the Sign Up Process.
- 2.2. This Agreement will commence on the date on which the Sign Up Process has been completed and Zapper has communicated its acceptance of the Merchant’s application, via SMS, email, Zapper Merchant App or other form of communication, with the Merchant.
- 2.3. The Merchant may not start processing Zapper Transactions until Zapper has received and approved the Merchant’s KYC Documents.
- 2.4. The Merchant is entitled to cancel this Agreement on written notice to Zapper, without reason and without penalty, within seven days of Merchant’s application being accepted by Zapper.

## 3. SERVICES

- 3.1. During the Sign Up Process, the Merchant must select either the Standard Services or the Business Services.
- 3.2. Zapper will provide the selected Services to the Merchant as well as access to the Zapper Platform on and subject to the terms and conditions of this Agreement.
- 3.3. In respect of Order Ahead:
  - 3.3.1. The Merchant may only use Order Ahead in the manner instructed by Zapper;
  - 3.3.2. The Merchant will ensure that its offering(s) and prices are correctly reflected on the Application, and will ensure that the timeliness and quality of the orders filled via the Application are of the same standard as those extended to its other customers not using the Application;
  - 3.3.3. The Merchant will promptly field all Order Ahead orders received during the opening times agreed with Zapper, using the order alert mechanism and responding accordingly, and if this is not possible for any reason, will close its web store/s as soon as possible;
  - 3.3.4. The Merchant must advise Zapper of its opening and closing time(s) for its store within the Order Ahead service, and provide reasonable notice of any changes in such times;
  - 3.3.5. The Merchant is responsible for staff training in the operation of Order Ahead but Zapper will use best efforts to assist with training if and when requested by the Merchant;
  - 3.3.6. The Merchant is responsible to ensure that the Services will meet its specific requirements and will be compatible with the hardware and or software used by the Merchant;

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- 3.3.7. The use of the Application is entirely at the Merchant’s own risk and the Merchant hereby assumes full responsibility for any risk or loss resulting from such use or reliance on any information on the Application;
- 3.3.8. The Merchant acknowledges that Zapper has the sole and vested rights in and to “Order Ahead” as well as to its logos and trading name(s), as they currently exist and as they may exist in the future; and
- 3.3.9. Other than as specifically set out herein Zapper bears no additional responsibility or liability to the Zapper User nor the Merchant as a consequence of the use of Order Ahead. Without limiting the foregoing, Zapper will not be held liable for any inaccurate information published and/or any incorrect prices displayed on the Merchant’s offering. Zapper will use all reasonable endeavours to make the Order Ahead Service available 24 hours a day, every day during the year, but gives no warranties in this regard. Order Ahead is made available to the Merchant on an “as is” basis. Zapper will close the Merchant’s store in the Order Ahead service outside the trading hours of the Merchant, and open the store at the commencement of trade, based on trading hours advised by the Merchant to Zapper from time to time.

#### 4. FEES AND PAYMENT

- 4.1. Zapper will charge the Merchant a Transaction Fee for each Zapper Transaction.
- 4.2. The Transaction Fee will be calculated:
  - 4.2.1. as a percentage of the total amount payable by the Zapper User for the goods and/or services, VAT and gratuity (if any) and before any deduction (including vouchers, promotions or other discount given to the Zapper User)
  - 4.2.2. By way of example only:

Amount payable for the goods/service services before VAT	150.00
VAT (@ 15%)	22.50
Gratuity (inclusive of any VAT)	17.50
<b>Amount on which Transaction Fee will be calculated</b>	<b>190.00</b>
Less in-app promotion voucher	(25.00)
<b>Total amount payable by Zapper User</b>	<b>165.00</b>

- 4.3. The percentages used to calculate the Transaction Fee for the Standard Services and the Business Services are set out on the Website at <https://www.zapper.com/pricing/>.
- 4.4. Zapper will provide the Merchant with a monthly invoice setting out the Transaction Fees for that month, which invoice shall record the individual processing fee charged for each Zapper Transaction and the VAT on the aggregate amount of such processing fees.
- 4.5. Payment of the Transaction Fees will be made as follows:
  - 4.5.1. Zapper deducting the Transaction Fee from the Merchant Collections; or
  - 4.5.2. where Zapper deems appropriate and agrees in writing, Merchant making payment of the Transaction Fees via debit order or electronic funds transfer (as elected by Zapper) to Zapper within seven (7) days from date of invoice; and
  - 4.5.3. if an electronic funds transfer is not received within the period stipulated in 4.5.2 above, then Zapper will have the right to deduct the Transaction Fees from the Merchant Collections without further notice to the Merchant.
- 4.6. Where the Merchant has selected the Business Services, the Merchant will also make payment of the Monthly Fee in advance each month via debit order, bank card or electronic funds transfer (as elected by Zapper) to Zapper within 3 (three) days from date of invoice.
- 4.7. The Merchant may be liable for a pro-rated Monthly Fee for Business Services, in the event that the Business Services commence or terminate, as the case may be, on a date which does not fall on the first or last day of a calendar month.

- 4.8. ORDER AHEAD FEES:  
The Fees due by the Merchant to Zapper for the Order Ahead Service will be based on the following:

Monthly Fee for the Order Ahead Service	Transaction Fee
As set out at <a href="https://www.zapper.com/pricing/">https://www.zapper.com/pricing/</a>	As set out at <a href="https://www.zapper.com/pricing/">https://www.zapper.com/pricing/</a>

- 4.9. Payment of Order head fees will be in line with the merchants existing fee configuration.
- 4.9. All fees and charges payable by the Merchant to Zapper exclude VAT. VAT will be payable by the Merchant to Zapper.
- 4.10. All amounts payable to Zapper will be paid without set-off or deduction of any nature.
- 4.11. All fees, charges and payments (including amounts collected or paid through the Service) will be in South African Rand.
- 4.12. Should the Merchant fail to make payment of any monies due to Zapper in terms of this Agreement timeously, and Zapper has not acted in accordance with 4.5.3 above, Zapper will have the right to charge interest on the outstanding amount at the Prime Rate of interest charged by Standard Bank Limited plus 5% (five percent) compounded monthly from the due date for payment up to and including the date of payment in full.
- 4.13. Zapper will make payment of the Merchant Collections to the Merchant Bank Account less the Transaction Fees as set out in clause 4.5.1 (if applicable) in accordance with the settlement interval as may be then applicable to the Standard or Business Services, and in accordance with which of the said two Service options the Merchant has then selected, or as otherwise agreed in writing with Zapper.

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- 4.14. The Merchant acknowledges and agrees that actual receipt of funds into the Merchant's Bank Account will be subject to inter-bank agreements and other delays outside the control of Zapper and/or any Third-Party Service Provider, acting as Beneficiary Service Provider.

## 5. CHANGES TO SERVICES, FEES AND THIS AGREEMENT

- 5.1. Zapper reserves the right (at its sole discretion) to change from time to time:
  - 5.1.1. the Services, including removing, adding or substituting ancillary services and/or features;
  - 5.1.2. the third-party offerings on the Zapper Platform;
  - 5.1.3. the percentage processing fee, the Monthly Fee and any other charges; and/or
  - 5.1.4. the provisions of this Agreement (including this clause),
  - 5.1.5. by giving the Merchant at least 30 days' prior notice.
- 5.2. Should the Merchant not agree to any change to the Services, fees and charges and/or this Agreement, the Merchant will be entitled to terminate this Agreement on written notice to Zapper at any time during the 30 days' notice period, which termination will be effective on the expiry of the 30 days' notice period.

## 6. AUTHORISATIONS AND GRANTING OF AUTHORITY

- 6.1. Where Zapper acts as the Beneficiary Service Provider, the Merchant irrevocably authorises:
  - 6.1.1. Zapper to be the agent of the Merchant, when acting as the Beneficiary Service Provider, and to process each Zapper Transaction;
  - 6.1.2. Zapper to receive and hold the Merchant Collections; and
  - 6.1.3. Zapper to deduct from the Merchant Collections, the Transaction Fees, Chargebacks, refunds and any other amount payable by the Merchant to Zapper in terms of this Agreement.
- 6.2. Where a Third-Party Service Provider acts as Beneficiary Service Provider, the Merchant irrevocably authorises:
  - 6.2.1. and appoints Zapper to be its attorney in its name and on its behalf to appoint a Third-Party Service Provider to be the agent of the Merchant when acting as the Beneficiary Service Provider and to process each Zapper Transaction (including the right to replace any such Third-Party Service Provider with another Third-Party Service Provider);
  - 6.2.2. the Third-Party Service Provider to receive and hold the Merchant Collections; and
  - 6.2.3. the Third-Party Service Provider to pay the Transaction Fees, Chargebacks, refunds and any other amount payable by the Merchant to Zapper in terms of this Agreement directly to Zapper from the Merchant Collections.
- 6.3. The Merchant authorises Zapper to provide all information and details of the Merchant (including financial information) to the Regulatory Authority, Acquiring Bank, Third Party Service Provider or payment scheme as may be requested by such parties from time to time.
- 6.4. The Merchant authorises Zapper to access its personal information and/or credit record Information from the Credit Bureau selected and engaged by Zapper from time to time, for the purposes of credit checking, and hereby unconditionally indemnifies Zapper, the third-party Credit Bureau and its information suppliers, against any liability that may result from the processing of its personal information and/or credit information.
- 6.5. The Merchant further authorises Zapper to monitor Merchant transaction activity in accordance with the following monitoring standards:
  - 6.5.1. sudden and unusual change in transaction velocity;
  - 6.5.2. high occurrence of transactions with rounded sales drafts sales amounts, transactions from the same card in a short timeframe, transactions outside the service area of the merchant;
  - 6.5.3. unusual credit voucher activity;
  - 6.5.4. dispute and fraud advice activity that approaches or exceeds monitoring programme thresholds;
  - 6.5.5. force transaction activity;
  - 6.5.6. new and inactive merchant transaction activity with sudden velocity spikes;
  - 6.5.7. reason to believe that there is engagement in transaction laundering;
  - 6.5.8. situations where there are significant number of low-value transactions compared to the Merchant's average transaction value; or
  - 6.5.9. average elapsed time between the authorisation and settlement for a transaction.

## 7. THE MERCHANT'S WARRANTIES

The Merchant warrants that:

- 7.1. it has full capacity, authority and all necessary consents to enter into and to perform the Merchant's obligations under this Agreement;
- 7.2. all information provided to Zapper during the Sign Up Process, and from time to time, is true and correct;
- 7.3. its business does not involve any illegal goods and/or services or any prohibited business activity as may be determined by any Regulatory Authority, Acquiring Bank and/or any Third-Party Service Provider;
- 7.4. it will maintain compliance with applicable Payment Card Industry Data Security Standard (PCI DSS), as well as Mastercard and VISA security requirements;

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- 7.5. it has never been party to a merchant agreement or other contract that has been terminated at the instance of Visa or Mastercard, or by any payment scheme or card association, or by direction of any Regulatory Authority or court of law;
- 7.6. its obligations under this Agreement will be performed in compliance with applicable laws or regulations, including but not necessarily limited to:
  - 7.6.1. compliance with card scheme rules, including sections regarding use of card scheme brand owned marks, acceptance, risk management, transaction processing and any products, programs, or services in which the Merchant is required to or chooses to participate;
  - 7.6.2. being wholly responsible for its employees' actions while in its employ; and
  - 7.6.3. Cooperating fully with any forensic investigations, until completed; and
- 7.7. it will not:
  - 7.7.1. submit previously disputed transactions;
  - 7.7.2. submit illegal transactions;
  - 7.7.3. submit fraudulent or unauthorised transactions;
  - 7.7.4. be in possession of written cardholder information (cardholder's account number, card expiration date, signature, or any other card account data and CVV2);
  - 7.7.5. surcharge, unless explicitly done so in accordance with applicable law, regulations, and card scheme rules;
  - 7.7.6. Disburse funds in the form of traveller's cheques if the sole purpose is to enable cash purchase of goods or services from the merchant;
  - 7.7.7. Allow for transaction laundering (factoring) by accepting a transaction that does not result from an act between the cardholder and the merchant; or
  - 7.7.8. Collect tax separately from the transaction amount
- 7.8. In respect of Order Ahead:
  - 7.8.1. It will not produce and/or offer to sell via Order Ahead any product which is illegal or may possibly prejudice the reputation of Zapper, nor upload any text, pictures or any copy onto the Zapper platform that include profanities or any copy that may bring Zapper into disrepute;
  - 7.8.2. It indemnifies Zapper against any possible legal action as a result of a breach of 7.8.1 and accepts all and any resultant liability;
  - 7.8.3. It agrees that Zapper has the right to take the Merchant's access to Order Ahead off-line with immediate effect and without issuing any notice should Zapper in its sole discretion determine that 7.8.1 has been or is to be breached; and
  - 7.8.4. it hereby indemnifies Zapper against any loss, claim or damage, which may be suffered by it or any third party arising in any way from its use of the Application.

## 8. CHARGEBACKS

- 8.1. Zapper will be entitled to deduct any Chargeback from the Merchant Collections.
- 8.2. If there are no or insufficient funds in the Merchant Collections for a period longer than 5 days, then the Merchant will make payment of the Chargeback to Zapper within 30 days of written demand by Zapper. Notwithstanding any demand, Zapper reserves the right to deduct at any time the Chargeback (or any part thereof) from funds in the Merchant Collections.
- 8.3. The Merchant will not be entitled to any refund on the Transaction Fee in respect of any Chargeback.

## 9. REFUNDS

- 9.1. The Merchant will be responsible for processing all refunds due to Zapper Users for Zapper Transactions.
- 9.2. The Merchant may request Zapper to process a refund due to a Zapper User. Zapper may, but will not be obliged, to give such refund to a Zapper User. Should Zapper agree to process such refund on behalf of the Merchant, it will deduct the amount of the refund from the Merchant Collections.
- 9.3. In no event will Zapper agree to process a refund if the Merchant does not have sufficient funds in its Merchant Collections account to cover the refund, or if Zapper has reason to believe that it will not have such funds at the time the refund is expected to be processed.
- 9.4. The Merchant will not be entitled to any refund on the Transaction Fee in respect of any refund given for the Zapper Transaction.

## 10. THE MERCHANT'S OBLIGATIONS

- 10.1. The Merchant will only use the Services for the business operations identified in the Sign Up Process and in accordance with this Agreement.
- 10.2. The Merchant must ensure all details of the Zapper Transaction are correct (including the price and quantity of the goods and/or service). Zapper is not liable for any loss or liability where the details of the Zapper Transaction are incorrect.
- 10.3. The Merchant will comply with all applicable laws and the Protocols when entering into each Zapper Transaction and performing the Merchant's obligations as set out in this Agreement.
- 10.4. Where a Zapper User uses the Zapper App to pay the Merchant, the Zapper App will transmit the payment credentials and initiate a request for payment authorisation for the transaction by credit card, debit card, or any

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- other recognised payment method. A request is submitted to the Zapper User's bank or other payment provider, and both the Merchant and the Zapper User will be notified, via SMS, email, Zapper App or other form of communication, of whether the transaction has been approved or declined. It is the responsibility of the Merchant to ensure that it has received such approval notification as confirmation of payment by the Zapper User.
- 10.5. The Merchant will be responsible for resolving any complaint or dispute relating to the Merchant's goods and/or services, vouchers, loyalty programme or any other in-app promotions offered by a Merchant. Zapper is not responsible for resolving any complaint or dispute between the Merchant and the Zapper User.
  - 10.6. The Merchant will not do anything, or engage in any activity, which is likely to adversely affect or damage the good name and/or reputation of Zapper.
  - 10.7. The Merchant will cooperate with Zapper, any Regulatory Authority, the Acquiring Bank and/or Third-Party Service Provider in the investigation of any actual or suspected fraudulent transactions or other criminal activity related to this Agreement, the Merchant and/or its goods and/or services, which may include the Merchant providing information, evidence and/or records.
  - 10.8. On written request from Zapper, the Merchant will provide full transaction information and related information in respect of any Zapper Transaction.
  - 10.9. The Merchant will immediately notify Zapper in writing if the Merchant's Visa and/or Mastercard turnover pursuant to this Agreement exceeds the equivalent of R4 000 000.00 (Four Million Rand) per year, and will thereafter engage with its acquiring bank for the purpose of concluding a direct merchant agreement with such bank
  - 10.10. The Merchant will ensure that the Merchant's details on the Merchant Portal (including the Merchant Bank Account) are at all times up to date and correct. Zapper accepts no liability for payments made to an incorrect bank account due to a Merchant providing the incorrect bank account details.
  - 10.11. The Merchant will keep his/her/its Merchant Portal sign-in details secret and secure at all times.
  - 10.12. Unless otherwise requested by the Merchant and agreed, in writing, by Zapper (which approval shall not unreasonably be withheld), the Merchant will provide Zapper with at least 30 days prior written notice of any sale of the Merchant's business or Change in Control. The Merchant will submit the relevant KYC Documents as may be requested by Zapper, and in such circumstances, the provisions of clause 2.3 will apply to the processing of transactions.

## 11. EQUIPMENT

- 11.1. The Zapper Equipment in the possession of the Merchant will be used by the Merchant solely for the purposes of the Service.
- 11.2. The Zapper Equipment will remain the property of Zapper and must be returned to Zapper on termination of this Agreement.
- 11.3. The Merchant will pay Zapper for any damage to or loss of any Zapper Equipment in the possession of the Merchant, including any damage caused by the misuse, misconfiguration, or tampering of the Zapper Equipment by the Merchant or any third-party.

## 12. DISCLAIMER

- 12.1. The Services are provided "as is" and on an "as available" basis.
- 12.2. To the maximum extent permitted by applicable law, the Services are provided without warranties of any kind, and Zapper specifically disclaims any obligations in respect of the availability, functionality and/or security of any third-party ancillary payment services accessed via the Zapper Platform.
- 12.3. The Merchant acknowledges and agrees that use of the Services may have certain risks and that the Merchant assumes all risks associated with the use of the Services.

## 13. INDEMNITY

- 13.1. The Merchant hereby unconditionally and irrevocably indemnifies and holds Zapper, its licensors and the Third Party Service Providers (and their respective employees, directors, and representatives) harmless from and against any and all claims, damages, losses, liability, costs and expenses arising from or in connection with the use of the Services and/or any breach of the Merchant's warranties or obligations set out in this Agreement. This indemnity shall not cover any claim in respect of which Zapper fails to give the Merchant prompt notice, but only if and to the extent that such failure materially prejudices the Merchant's ability to defend such claim.

## 14. LIABILITY

- 14.1. To the fullest extent permissible by applicable law, Zapper, its licensors and the Third Party Service Providers (and their respective employees, directors and representatives) will not be liable for any and all claims, damages, losses, liability, costs and/or expenses (direct, indirect, consequential, special or otherwise), including loss of profits and goodwill, which the Merchant may suffer or incur from any cause, other than as a result of Zapper's own gross negligence or wilful intent, arising from or in connection with this Agreement, including the Merchant's use of, inability to use, or unavailability of the Services.

## 15. PROCESSING AND STORAGE OF INFORMATION

- 15.1. The Merchant gives his/her/its express and informed consent to Zapper to process his/her/its personal information for purposes of: (i) processing the application for the Services; (ii) providing the Services; (iii) communicating with the Merchant; (iv) complying with applicable laws; (v) Zapper defending itself against any claim or legal action; and (vi) Zapper's operational business purposes.
- 15.2. Zapper may disclose the Merchant's personal information to its employees, directors, representatives, any Regulatory Authority, the Acquiring Bank, licensors and Third Party Service Providers in order to provide the Services and for research and analysis purposes.
- 15.3. Zapper will process and securely store data in accordance with its Privacy Policy, the latest version of which may be accessed on the Website at <https://www.zapper.com/privacypolicy>.

## 16. TERMINATION AND SUSPENSION

- 16.1. Either Party may terminate this Agreement at any time on 30 days prior written notice to the other Party.
- 16.2. Zapper may immediately suspend the Services or terminate this Agreement (in its sole discretion), if:
  - 16.2.1. the Merchant breaches any warranty;
  - 16.2.2. the Merchant breaches any of its obligations set out in this Agreement and, if such a breach is capable of being remedied, fails to remedy the breach within 7 days of receipt of written notice requiring the Merchant to do so;
  - 16.2.3. the Third Party Service Provider, acting as Beneficiary Service Provider, informs Zapper that it is no longer willing to be an agent of the Merchant;
  - 16.2.4. Zapper or the Third Party Service Provider, acting as Beneficiary Service Provider, has received notice from the Merchant's bank that the Merchant is no longer accepted by such bank;
  - 16.2.5. the Merchant has committed, or Zapper reasonably suspects that the Merchant has committed, fraud or is involved in any fraudulent or other criminal activity;
  - 16.2.6. the Merchant's turnover exceeds an amount equivalent to \$1 000 000.00 (One Million United States Dollars) per annum (in which case the merchant will be required to enter into a direct relationship with the acquiring bank);
  - 16.2.7. the Merchant directly or indirectly causes the Services to apply to the purchase and/or sale of any illegal goods and/or services;
  - 16.2.8. the Merchant directly or indirectly causes the Services to apply to the purchase and/or sale of any goods or service that the Third-Party Service Provider (acting as Beneficiary Service Provider) and/or the Acquiring Bank regards as undesirable or against public policy and instructs or requests Zapper to terminate this Agreement;
  - 16.2.9. in the sole opinion of Zapper (acting reasonably):
    - 16.2.9.1. the Merchant's conduct or treatment of Zapper User(s) or the Merchant's relationship with Zapper is having, or is likely to have, a material adverse effect on the reputation of Zapper; or
    - 16.2.9.2. the number of Chargebacks is excessive compared to other merchants.
  - 16.2.10. the business of the Merchant is sold or there is a Change in Control without giving Zapper advanced written notice of such sale or change;
  - 16.2.11. The Merchant's business practices and activity, in the opinion of Zapper or the Acquiring Bank, creates substantial risk of loss or harm to the goodwill of the payment system, including participation in illegal or prohibited or
  - 16.2.12. Zapper is required by the Acquiring Bank, any applicable laws, Regulatory Authority or order by a competent court to do so.
- 16.3. Upon termination of this Agreement for any reason whatsoever:
  - 16.3.1. all amounts owing to Zapper will immediately become due and payable to Zapper;
  - 16.3.2. all amounts owing to the Merchant will immediately become due and payable to the Merchant;
  - 16.3.3. the Merchant will immediately stop any use of Zapper's trademarks; and
  - 16.3.4. the Merchant will no longer have access to and use of the Services.

## 17. INTELLECTUAL PROPERTY

- 17.1. All Intellectual Property Rights owned by, or licensed to, Zapper will remain the sole and exclusive property of Zapper or its licensors (as the case may be).
- 17.2. The Merchant is granted a non-exclusive, revocable and non-transferable licence (without the right to sublicense) to use Zapper's trademarks for the duration of this Agreement solely for the purpose of notifying Zapper Users that payment for the Merchant's goods or services may be made using the Zapper App.
- 17.3. The Merchant will reproduce Zapper's trademarks exactly and accurately and in accordance with the specifications and directions of Zapper from time to time.
- 17.4. The Merchant will not do anything which brings or is likely to bring Zapper's Intellectual Property (including its trademarks) into disrepute or which damages or is likely to damage the rights or interests of Zapper and / or its licensors.

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- 17.5. Zapper will have the right, but not the obligation, to publicly announce in any and all media, including on the Platform and through social media, that the Merchant is a client of Zapper, and is using the Application and the Platform.
- 17.6. In addition, at the request of Zapper, the parties shall jointly issue press releases/social media posts publicising their relationship and /or any other marketing material. The specific timing and content of each such press release/social media post shall be mutually determined by the parties.

## 18. ADDRESSES FOR NOTICES

- 18.1. The Merchant's chosen address for receiving notices and legal process (for example, a summons) is the address provided by the Merchant during the Sign Up Process. The Merchant will update a change of address through the Website.
- 18.2. Zapper's chosen address for receiving legal documents or is:

Office 3 The Business Exchange  
3 Bridgeway Century City  
Cape Town  
Western Cape  
7446

Email: legal@zapper.com

## 19. GENERAL

- 19.1. This Agreement sets out the entire agreement between Zapper and the Merchant relating to the Merchant's use of the Services and replaces any other discussions, promises, representations and agreements.
- 19.2. No failure or delay by a Party in exercising any rights under this Agreement will be deemed to be a waiver (giving up) of that right.
- 19.3. Neither Party will be in breach of the terms and conditions of this Agreement, nor liable for any delay in performing, or failure to perform, its obligations in terms of this Agreement if the delay or failure to perform is a result of any cause beyond its reasonable control, including laws and regulations, electricity outages, natural disasters, fire, accident, pandemic, lock down, labour disturbances, breakdown of equipment and non-delivery or delay by third party suppliers.
- 19.4. The Merchant may not cede, delegate and/or assign (transfer) its rights and obligations set out in this Agreement to any other person.
- 19.5. Termination of this Agreement will not affect clauses 1, 13, 14, 17, 18 and 19, which are intended to and will continue to have effect and apply after termination.
- 19.6. The laws of South Africa govern this Agreement (including any dispute between the Parties) and the Parties submit to the jurisdiction of the South African courts.
- 19.7. The Merchant consents to the non-exclusive jurisdiction (the authority of a court to hear a matter) of the High Court of South Africa (KwaZulu-Natal Local Division, Durban) for any legal proceedings arising from this Agreement. Zapper may institute legal proceedings against the Merchant in a Magistrates' Court, even if its claim against the Merchant is greater than would otherwise be allowed.
- 19.8. Should Zapper be successful in any legal proceedings against the Merchant, the Merchant will be responsible for payment of all Zapper's collection costs, tracing fees, legal fees and any other costs that it may reasonably incur.

## 20. SYSTEM OPERATOR

To the extent that Zapper acts as a system operator (as defined in the National Payment System Act No. 78 of 1998) ("**NPS Act**") in providing the Services to the Merchant ("**SO Services**"), the Parties also agree with the following:

- 20.1. Compliance with laws
  - 20.1.1. Zapper and the Merchant will comply with all the appropriate requirements and rules for providing SO Services, including the NPS Act and any other applicable law.
- 20.2. Problem management and service levels
  - 20.2.1. Should the Merchant be unable to make use of the SO Services, the Merchant will contact Zapper via email at support@zapper.com or call +27 87 150 1001.
  - 20.2.2. Zapper will use reasonable endeavours to respond to the Merchant within 2 business days of receiving notification.
  - 20.2.3. Zapper will determine if there is a fault with the Services (rather than a specific Zapper Transaction failing) and if so, will notify the Merchant (at its election notify all other affected merchants) of the problem and the estimate time to resolve.
- 20.3. Disaster recovery plan
  - 20.3.1. Should an unplanned interruption occur that prevents Zapper from providing the SO Services, Zapper will implement a disaster recovery plan.

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20.4. Provision and retention of information

- 20.4.1. Subject to the terms and conditions of this Agreement, Zapper shall:
- 20.4.2. retain all records obtained by Zapper during the course of providing the SO Services for a period as required by the NPS Act and any appropriate legislation;
- 20.4.3. provide required information owned by the Merchant on written request by the Merchant;
- 20.4.4. treat the information of each Merchant as confidential, subject to a lawful request for the disclosure; and
- 20.4.5. supply information regarding the Merchant requested in terms of the NPS Act to the South African Reserve Bank or the Payments Association of South Africa, where applicable, except for client information (names and account numbers).

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## 21. DISCLOSURE IN THE TERMS OF THE ELECTRONIC COMMUNICATION AND TRANSACTIONS ACT 25 OF 2002

Full name:	Zapper Marketing (Southern Africa) (Pty) Ltd
Legal status:	Zapper is a private company, duly incorporated in terms of the applicable laws of South Africa
Registration number:	2014/018049/07
Name(s) of director(s):	Dawn Marie Harris Emma Louise Wright
Physical address:	Office 3 The Business Exchange  3 Bridgeway  Century City  Cape Town, Western Cape  7446
Registered address:	Office 3 The Business Exchange  3 Bridgeway  Century City  Cape Town, Western Cape  7446
Telephone number:	087 150 1001
E-mail address:	<a href="mailto:support@zapper.com">support@zapper.com</a>
Website address:	<a href="https://www.zapper.com">https://www.zapper.com</a>
Description of the main Services:	Zapper develops, and makes available to its merchant customers a proprietary mobile payment platform and various related value-added products
Full price of the main Services:	As displayed at <a href="https://www.zapper.com">https://www.zapper.com</a>
Manner of payment for the Services:	Refer to Clause 4.5 above
Electronic location of terms and conditions of the Service:	<a href="https://www.zapper.com">https://www.zapper.com</a>
Manner and period within which the Merchant can access and maintain a full record of the transaction:	<a href="https://mp.zapper.com">https://mp.zapper.com</a>  90 days
Membership of any self-regulatory or accreditation bodies?  If yes, please name them.	Payment Association South Africa
Any code of conduct to which Zapper subscribes and how that code of conduct may be accessed electronically by the Merchant:	South African Reserve Bank  Payment Association South Africa

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