

# DINERS CLUB MERCHANT AGREEMENT

Please complete in full using block letters and black ink only. Please sign all alterations. Do not use Tippex on the application form, as this is a legal document. Please supply a copy of a cancelled business cheque. A Diners Club International representative and the authorised signatory must initial the terms and conditions. Thank you.

Return to: Diners Club International, Private Bag X67, Auckland Park, 2006. Fax number 0861 11 5092.

## IT IS AGREED:

### A. THE PARTIES

The Parties to this agreement are:

Diners Club SA (Pty) Ltd (*Diners Club*) and:

(*The Merchant*)

### B. THE MERCHANT AGREEMENT

The Agreement between the parties shall indivisibly comprise of this Agreement and the Terms on the reverse hereof, which the parties hereby accept and agree to be binding and enforceable on them.

### C. THE MERCHANT'S INFORMATION

Business details:

Name:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Trading name:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Registration number:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
VAT number:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Type of business:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Full name of owner/s:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Identity number/s:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Manager's name:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Authorised signatory/s:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Street address:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Postal address:	<div style="border: 1px solid black; height: 20px; width: 650px;"></div>	Postal code: <div style="border: 1px solid black; height: 20px; width: 60px;"></div>
Email:	<div style="border: 1px solid black; height: 20px; width: 712px;"></div>	
Telephone:	<div style="border: 1px solid black; height: 20px; width: 280px;"></div>	Cellular number: <div style="border: 1px solid black; height: 20px; width: 280px;"></div>
Fax:	<div style="border: 1px solid black; height: 20px; width: 280px;"></div>	

### D. BANKING DETAILS

Bank:	<div style="border: 1px solid black; height: 20px; width: 320px;"></div>	Branch:	<div style="border: 1px solid black; height: 20px; width: 320px;"></div>
Bank account number:	<div style="border: 1px solid black; height: 20px; width: 320px;"></div>	Branch code:	<div style="border: 1px solid black; height: 20px; width: 100px;"></div>
Account type:	<div style="border: 1px solid black; height: 20px; width: 320px;"></div>		
EDC Term:	STD <input type="checkbox"/> FNB <input type="checkbox"/> BOE <input type="checkbox"/> NED <input type="checkbox"/> ABSA <input type="checkbox"/> CAPITEC <input type="checkbox"/>		
Merchant number:	<div style="border: 1px solid black; height: 20px; width: 230px;"></div>		

NB. A cancelled cheque must be attached.



## E. COMMISSION AND AUTHORISATION

The parties agree that the -

1. commission due by the Merchant to Diners Club shall be \_\_\_\_\_ % on every transaction, subject to Clause 8 of the Schedule on the reverse hereof;
2. limit after which authorisation for Clause 4 of the Terms and Conditions, shops and car rental Merchants is required from Diners Club shall be R\_\_\_\_\_;
3. limit after which authorisation for Clause 4 of the Terms and Conditions for restaurant and hotel advisory procedures is required from Diners Club shall be R\_\_\_\_\_;
4. a once off admin fee of R\_\_\_\_\_ will be levied;
5. limit after which authorisation for internet, mail telephone order merchants, is required from Diners Club shall be R zero.

## F. CONSENT

Please tick 'Yes' or 'No'

We hereby consent to Diners Club communicating with our contact person as referred to in section A in terms of:

- You marketing your products, services and special offers to us.  Yes  No
- You communicating other companies' products, services and special offers to us.  
If we respond positively to such communication, we may be contacted by that company.  Yes  No
- You sharing our personal information within the group for marketing purposes and the group then marketing its products, services and special offers to us.  Yes  No
- You contacting us for research purposes. (The research companies we use follow strict codes of conduct and treat customer information confidentially).  Yes  No

## G. LIABILITY ELECTION

We, the Merchant and the signatories hereto, agree that the Merchant is bound by the terms and conditions printed on the reverse hereof with which we acknowledge the Merchant and ourselves to be acquainted and which we accept and agree to on behalf of the Merchant. We, the signatories expressly warrant that we are duly and fully authorised to sign the Agreement on behalf of the Merchant.

Signed by the Merchant at \_\_\_\_\_ on this date:  Y  Y  Y  Y  M  M  D  D

Name of Authorised signatory	Job title	Signature
ID Number: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		

### WITNESSES

1. _____	2. _____
Full Name: _____	Full Name: _____
ID Number: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	ID Number: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Designation: _____	Designation: _____

For and on behalf of Diners Club

Accepted and signed at \_\_\_\_\_ on this Date:  Y  Y  Y  Y  M  M  D  D

Name of Authorised signatory	Job title	Signature
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### WITNESSES

1. _____	2. _____
Full Name: _____	Full Name: _____
ID Number: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	ID Number: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Designation: _____	Designation: _____



FOR OFFICE USE	(ELO CODE)	(ZONE CODE)	(MERCHANT NO)	(CLASS CODE)	(SUB CL CODE)	
Diners Club Merchant number:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Group number:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Cancelled cheque attached:	Yes	<input type="checkbox"/>				
Payment option taken:	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	(mark one only)		
Copy of ID attached:	Yes	<input type="checkbox"/>				
Commission:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	%	
Merchant number:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Other Merchant:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>		
Checked by:	_____			Signature:	_____	
Permanent text:	_____					
Regional Manager - name:	_____			Signature:	_____	

## DINERS CLUB MERCHANT AGREEMENT

### Terms and Conditions (Terms)

Effective 1 April 2011

#### 1. INTRODUCTION

- 1.1 This Agreement becomes effective when you register as a Diners Club Merchant.
- 1.2 You must know, understand and comply with the Agreement.
- 1.3 ***Important clauses, which may limit our responsibility or involve some risk for you, appear in bold and italics or highlighted. You must pay special attention to these clauses.***

#### 2. DEFINITIONS

2.1 We have defined some words for consistency. These words will begin with a capital letter, where indicated. Singular words include the plural and the other way round. The headings in this Agreement are only for convenience and will not have any effect on its interpretation.

- ***Account Holder*** means the person or legal entity who has successfully applied for a Diners Club Card. The Account Holder can be the Cardholder or someone on whose behalf the Cardholder is nominated or given permission to use the Card, or someone who has given you permission to hold and use the Card;
- ***Agreement*** means these Terms concluded between Diners Club and the Merchant;
- ***Business Days*** means any days other than a Saturday, Sunday or Public Holiday in the Republic of South Africa;
- ***Cards*** means all or any cards that may be issued by Diners Club to Account Holders and /or nominated Cardholders and shall include all Lodged Cards with the Merchant;
- ***Cardholders*** means nominated holders and/or users of any Cards, Card Account numbers or PINs as may be given by Diners Club;
- ***Card Transaction*** means any transaction by a Cardholder, or in the case of a Lodged Card a transaction by the Merchant, with or without the card, or any cash withdrawal from an ATM or other transaction using any electronic device or by furnishing any Card or PIN for the purchase or acquisition of goods or services;
- ***CPA*** means Consumer Protection Act 68 of 2008 and any delegated legislation as amended from time to time;
- ***CVV*** means the customer verification code being the three digits that appear on the reverse side of the Card;

- ***Diners Club, we, us or our*** means Diners Club (South Africa) (Pty) Ltd, (Registration Number 1956/000068/07), its successors in title or any duly authorised agent;
- ***Due Date*** means the date for payment of all amounts owing to us as shown on the Statement.
- ***EDC*** means an electronic data capture terminal, including any electronic transfer point of sale (EFTPOS) terminal, used to process Card Transactions;
- ***Incidental Credit Agreement*** means an agreement that comes into being 20 (twenty) Business Days after we commence charging interest on any Overdue Amounts, provided these amounts are still overdue on this day if the NCA applies to you;
- ***Lodged Card*** means a virtual Card held by a user, used to instruct you to perform Card Transactions;
- ***Merchant, you*** means the supplier of goods or services as identified in the Agreement, which accepts Cards or PINs or Card Account numbers from Cardholders for the purchase or supply of goods or services;
- ***NCA*** means the National Credit Act, 34 of 2005, and any delegated legislation as amended from time to time;
- ***Overdue Amount*** means a part of an amount payable on your Statement that has not been paid by Due Date;
- ***Personal Information*** means information relating to an identifiable, natural or juristic person, including but not limited to, information relating to race, gender, sex, marital status, nationality, ethnical social origin, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identifying number, telephone number, e-mail address, postal address, physical address, biometric information and financial, criminal or employment history as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- ***PIN*** means a personal identification number used to identify an Account Holder;
- ***Statement*** means the document provided to you, which will reflect the full amount owing to us by you and the Due Date;
- ***Website*** means the Diners Club website or another website specified by Diners Club from time to time as being the website for accessing and processing electronically formatted



Agreements; and

- **Your Account** means the account nominated by the Merchant in this Agreement.

### 3. YOUR OBLIGATIONS

- 3.1 You will accept a Cardholder's valid Card, Lodged Card, Card number or PIN as payment for goods or services, at the usual price for the goods and services which are the subject of the Card Transactions
- 3.2 When a Cardholder makes Card Transactions other than via mail, internet, electronic telephone or telefax order, you must:
- where possible, use credit card charge forms as given or approved by Diners Club, which the Cardholder must sign, and imprint the Card on the charge form;
  - legibly write all the relevant Card information on the credit card charge form if, for reasons acceptable to Diners Club, an approved imprinter could not be used or there was no access to an EDC or other computer terminal to perform the Card Transaction;
  - give a copy of the completed credit card charge form or voucher to the Cardholder; and
  - swipe the Card for every Card Transaction when an EDC or EFTPOS is used. The Cardholder must key in the PIN or sign the EDC signature slip.
- 3.3 You must not:
- cancel an EDC terminal's authorisation requirement without Diners Club agreeing beforehand in writing; or
  - duplicate any Card Transactions.
- 3.4 You must keep all written requests or authorisations to debit a Cardholder's account and signed charge forms, vouchers, signature slips or proof of delivery for at least 180 days after a Card Transaction.
- 3.5 You must provide the supporting documents, orders, invoices and permission slips which show that the Account Holder or Cardholder has authorised a specific Card Transaction within seven days of being asked for them by Diners Club, the Account Holder or Cardholder.
- 3.6 You must adequately display all promotional material as given to you by Diners Club.
- 3.7 You acknowledge that you may, if asked by the Account Holder or Cardholder, accept or keep a Lodged Card to use on their behalf. If this happens, you, your employees, agents and/or representatives must:
- use the utmost care, control and good faith in carrying out instructions received from the Account Holder to perform Card Transactions on the Lodged Card; and
  - get written instructions from the Account Holder or Cardholder before performing a Card Transaction and keep a copy of the instructions for at least 12 (twelve) months from the date of the Card Transaction.
- 3.8 *You indemnify and hold Diners Club harmless against any claims, actions, or liability of any nature that may be brought against Diners Club arising from any Card Transaction or the use or loss of any Lodged Card entrusted to you.*
- 3.9 Any disputes, including those involving Lodged Cards, with regard to any Card Transaction including non – payment, non delivery or effective goods or services, as the case may be, shall be resolved or settled between the Account Holder, the Cardholder and the Merchant without any recourse to Diners Club.
- 3.10 You must notify Diners Club in writing if there is any material change to your business, for example, but without limiting the generality of this clause, when changing acquiring banks, changing point of sale device, banking details, address or company registration, within seven (7) days of such change. Failure to comply with this clause 3.10 will be a breach of these Terms and clause 21 will apply.

### 4. PROCEDURES FOR AUTHORISATION

- 4.1 For any Card Transaction, you must:
- make sure that the Account Holder or Cardholder has authorised the Card Transaction and the use of the Card, Card number or PIN;
  - get authorisation from Diners Club before any Card Transaction; and
  - write the authorisation code numbers obtained from Diners Club and the authorization date on all EDC or other charge forms for Card Transactions.
- 4.2 You must not:
- split or disguise any Card Transactions; or
  - act in any way to avoid the authorisation procedures.
- 4.3 Diners Club may, in its sole discretion:
- turn down any request for authorisation for a Card Transaction; or
  - accept any Card Transaction despite not being authorised in terms of this Agreement. This will not waive Diners Club's requirement for authorisation for all other Card Transactions.
- 4.4 You must phone Diners Club's Johannesburg offices to get authorisation numbers. Where possible, authorisation may be received from an EDC terminal. The electronic link between you and Diners Club must be fully operational when asking for authorisation.

### 5. THE COMMISSION YOU PAY

- 5.1 You must pay Diners Club a commission of 5 (five) percent of the total value of every valid Card Transaction you submit and which is accepted by Diners Club.
- 5.2 Diners Club may change the commission percentage and will give you written notice before it does so. Receipt of such notice need not be proved.

### 6. CONSENT TO CREDIT REFERENCES AND DISCLOSURE OF INFORMATION

- 6.1 The Merchant hereby authorises and consents to Diners Club;
- 6.1.1 making enquiries about its credit record with any credit reference agency and any other Party to confirm the details contained in this Agreement;
- 6.1.2 providing regular updates regarding the conduct of the Merchant facility to the credit reference agencies;
- 6.1.3 allowing the credit reference agencies to, in turn, make these records and details available to other credit grantors;
- 6.1.4 carrying out identity and fraud prevention checks and sharing information relating to the Merchant facility with the South African Fraud Prevention Services (SAFPS);
- 6.1.5 providing details to the SAFPS of any conduct that gives Diners Club reasonable cause to suspect that the Merchant facility is being used for improper purposes. The record of this suspicion will then be available to other members of the SAFPS should they carry out credit or other checks.

### 7. AUTHORITY TO DEBIT OR CREDIT YOUR ACCOUNT

- 7.1 Diners Club may debit your Account with the following:
- Commissions, refunds or overpayments due to Diners Club;
  - Chargebacks claimed in terms of Clause 11; or
  - The total amount of any charges lost in transit after deposit with Diners Club if you cannot give Diners Club duly reconstructed documents within seven (7) banking days of receiving Diners Club's written request.
- 7.2 Diners Club may set off any debits due by you in terms of this Agreement against any credits due to you.

- 7.3 If, for any reason, you cancel the authorisation granted in Clauses 7.1 and 7.2, Diners Club may terminate this Agreement immediately without notice.
- 7.4 You must tell Diners Club in writing about any change in your banking arrangements, which will become effective after Diners Club has confirmed receipt of such notice, in writing.

## 8. MONTHLY STATEMENTS AND PAYMENTS

- 8.1 Diners Club will send you a Statement to your chosen postal or electronic mail address every month.
- 8.2 The Statements will show all Card Transactions, including commission and chargebacks, and also the total debit or credit balance.
- 8.3 Statements will be treated for all purposes as having been received by you on the date on the Statement. All debit balances on Statements are payable in full on the date stated in the Statement.
- 8.4 You must pay all amounts due to Diners Club through direct debit order in terms of the authorisation given in terms of clause 7 above, even if you did not get a Statement.
- 8.5 *Any payment by Diners Club to you in the form of a cheque sent by post or an electronic transfer will be seen as having been paid on date of posting or transfer, at which time the risk of losing of the payment will pass to you.*
- 8.6 All payments to or from Diners Club will be seen as having been made from or received by Diners Club, in Johannesburg.

## 9. ELECTRONIC MAIL

- 9.1 Diners Club may decide to accept notices and submissions of any Diners Club Card charges by email. Diners Club will inform you of such decision in writing. If this occurs, the information must be sent to Diners Club in a format acceptable to Diners Club.
- 9.2 If you submit claims to Diners Club by email, you warrant to Diners Club that;
- 9.2.1 you have complied with and are bound by this Agreement;
- 9.2.2 the Cardholder's Card was present at the time of the Card Transaction; and
- 9.2.3 that before doing the Card Transaction, you checked the Card for:
- a genuine blue-and-silver Diners Club logo;
  - the expiry date to make sure that it was valid at the date of the Card Transaction;
  - the unique raised "double D" on the front right-hand side;
  - the CVV number;
  - a clearly visible hologram; and
  - the Diners Club logo on the background of the signature strip, which must not have been tampered with.
- 9.3 The billing vouchers for the Card Transactions must be received by Diners Club at its Johannesburg office within 30 days of the Card Transactions. If the billing vouchers are not received within the allowed 30 days, Diners Club may charge back the Card Transactions.
- 9.4 Diners Club will pay any charge for payment in line with clause 8 directly into your Account, less any chargeback for any previous Card Transactions.

## 10. WARRANTY AND INDEMNITY

- 10.1 You warrant to Diners Club that you are aware of your obligations in terms of and are fully compliant with the CPA.
- 10.2 If you accept any Card, Account number or PIN for any charge to Diners Club or the implementation of EDC or electronic banking, you warrant that:
- all statements of fact are, to your knowledge, true;
  - the goods or services were supplied at your normal cash price and that the prices have no element of credit;
  - the Card Transaction was not illegal;

- the Card Transaction has been authorised by the Cardholder; and
  - you have complied with all the provisions of this Agreement.
- 10.3 *You indemnify and hold Diners Club harmless against any liability action or claim of any nature arising from any dispute between you and the Cardholder, Account Holder or any third party relating to the goods or services supplied in any Card Transaction.*
- 10.4 *You indemnify Diners Club against any loss or damage which Diners Club may suffer or claim which may be made against Diners Club (and costs of defending such claim) by the Cardholder, Account Holder or any third party because you have not or may not have complied with the CPA or any other applicable legislation.*

## 11. CHARGEBACKS

- 11.1 Diners Club will be entitled in its sole discretion, to charge back to you any amount for any Card Transaction or part of it if:
- the charge or Card Transaction does not, in Diners Club's opinion, comply with the warranty in terms of clause 10.2;
  - you have not complied with your obligations in terms of clause 3;
  - the Card details or Cardholder's signature does not appear on a Card charge form or computer-produced signature slip;
  - the Card Transaction has been completed without a PIN or Card Number and without the Cardholder's written permission to debit a Card;
  - the signature on the form, slip or written permission is noticeably different to that on the Card;
  - charges on the Card Transaction are changed by any person;
  - the Card or PIN is no longer valid, was used too soon or has been tampered with, mutilated or defaced;
  - the number of the Card or PIN appears on any cancellation, red warning bulletin or notification sent to the Merchant by Diners Club or its approved agent by post, magnetic tape, electronically or otherwise;
  - at a point of sale terminal or EDC, the Merchant did not make sure that the PIN was properly used by the Cardholder and ensured that the Point of Sale device was able to link to Diners Club for authorisation;
  - the Merchant did not confirm with Diners Club that the Cardholder has been authorised by Diners Club to use the Card, Card number or PIN to carry out the Card Transaction through or with the Merchant;
  - the Merchant did not get authorisation numbers, or split or disguise transactions to avoid authorisation;
  - the Merchant received authorisation seven (7) Business Days or more before the date of the Card Transaction;
  - where the Merchant's charge is more than the amount authorised by Diners Club. In such case, the full amount of the Card Transaction may be charged back to the Merchant;
  - the Card Transaction record, credit card charge form, EDC slip or voucher or Accountholder's or Cardholder's authorisation is materially incomplete;
  - the Merchant did not submit the charge to Diners Club within three days of the Card Transaction;
  - charges were incorrectly repeated or have been paid to the Merchant by the Accountholder or Cardholder or any other party;
  - charges for which nothing was received in exchange by the Accountholder or the Cardholder or which cannot, after reasonable search, be added to the account of a specific Accountholder or Cardholder;
  - the Merchant did not give proof of dispatch or delivery of the goods or services in the Card Transaction;
  - any charges were incurred by the director, shareholder, owner, manager or employee of the Merchant with their Card and/or Card number and/or PIN through the Merchant



that is a party to this Agreement;

- any charge or part of it, if the Merchant does not give Diners Club any information or documentation, within a period of seven banking days after date on which Diners Club asks for it;
- any charge or part of it for which the Merchant gave a refund to the Cardholder and for which a refund slip was not received by Diners Club within seven (7) days of issue;
- any charges for claims for damage or consequential loss or any insurance claims; or
- the amount is for car rental, charges for claims for damage to or loss of a vehicle, for lost or stolen accessories, fines for traffic offences and similar claims which are not rental charges or incidental to rental charges, including insurance claims.

11.2 If Diners Club accepts any charge described in clause 10.2, it is not binding on Diners Club and Diners Club may charge the amounts back to you at any time. Notice of the chargeback will give an explanation and, if necessary or available, supporting documents.

11.3 If Diners Club charges back any Card Transaction in terms of this Agreement, you must pay Diners Club interest on the amount of the Card Transaction, subject to the provisions of clause 17, from the date of the Card Transaction until Diners Club has received payment.

## 12. CONFIDENTIAL INFORMATION

12.1 You will receive Personal Information of or from the Cardholder or Account Holder. You must:

- treat all Personal Information as confidential and not use the information other than as strictly necessary for the Card Transaction; and
- disclose the information only to parties involved in the Card Transaction and then only as is necessary to give effect to the Card Transaction.

## 13. DOCUMENTARY EVIDENCE OF DEBT

13.1 Any of the Diners Club managers, whose status and appointment need not be proved, may sign a certificate stating:

- that you are indebted to Diners Club for a certain amount; and
- that the amount or any other debt is due and payable to Diners Club.

13.2 This certificate will be sufficient proof of the amount you owe Diners Club and may be used for any purpose, including, but not limited to, getting judgement or any other court order or relief against you.

## 14. ADDRESSES FOR NOTICES

14.1 Your physical address given in the form you complete to apply to be a Merchant (Application Form), will subject to clause 14.2, be the address used for serving legal documents and notices (In law this is referred to as the domicilium citand et executandi). Your postal address given in the Application Form is the address to which Diners Club will send all other correspondence.

14.2 You may change any of your addresses to another within the Republic of South Africa by sending Diners Club a written notice. Diners Club must acknowledge its receipt of the notice in writing before the change becomes effective.

14.3 If Diners Club sends you any notice at your last known physical or postal address, for all purposes you will be considered to have received the notice within seven days of Diners Club posting it.

14.4 You will be considered to have received all notices in Johannesburg.

## 15. JURISDICTION

You consent to the jurisdiction of the Magistrate's Court in any legal proceedings arising out of this Agreement, even if the amount claimed by Diners Club might otherwise exceed the jurisdiction of the Magistrate's Court. Diners Club may choose to institute any proceedings against you out of any other competent court having jurisdiction.

## 16. LEGAL COSTS

If Diners Club institutes any legal action against you arising out of this Agreement, other than in relation to an Incidental Credit Agreement, in which case the provisions in clause 20 will apply, you must pay all legal costs on an attorney and own client scale, including tracing fees and collection charges. You authorise Diners Club to debit your Account with such charges.

## 17. INTEREST

17.1 If any Overdue Amount is not paid within 25 (twenty five) calendar days of the Due Date, you will be liable to pay us interest on all such Overdue Amounts at a rate of 2 (two) percent per month, or such other maximum rate that may be prescribed from time to time by the NCA.

17.2 The interest will be due and payable immediately and calculated as from the date:

- of the Card Transaction;
- on which you received payment; or
- the date of the chargeback in terms of Clause 11, whichever is the later.

17.3 Interest is calculated on a daily basis on the outstanding balance and charged monthly in arrears.

## 18. DURATION, CANCELLATION OR RELAXATION OF AGREEMENT

18.1 This Agreement replaces all earlier agreements, arrangements between, or representations by, you and Diners Club.

18.2 The Agreement is effective from date of signature by both parties for an indefinite period, but any party may end the Agreement on at least 30 days' written notice.

18.3 Diners Club may end the Agreement without notice if it realises that you or anyone related to your business submitted charges incurred by his/her Card, Card number and/or PIN through the Merchant in this Agreement.

18.4 If this Agreement is cancelled or ended, it will not affect the obligations of either party that arose before cancellation, or obligations which survive this Agreement being cancelled or ended.

18.5 The Agreement cannot be assigned or transferred.

18.6 The failure of Diners Club to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy available because of a breach of this Agreement will not be a waiver by Diners Club of its right to require strict and punctual compliance with each and every provision of this Agreement.

18.7 Diners Club will not be bound by any change to any of the provisions in this Agreement unless given in writing and signed by a duly authorised representative of Diners Club.

## 19. DEBT COUNSELLOR

If you are a natural person and you experience difficulty in paying Your Account, we invite you to contact us without delay. You have the right to apply to a debt counsellor to be considered for an order to be declared over-indebted. You should inform us immediately if you make such an application.

## 20. PROCESS TO BE FOLLOWED FOR INCIDENTAL CREDIT AGREEMENTS

- 20.1 If you are in default and this Agreement becomes an Incidental Credit Agreement –
- 20.1.1 we will levy default administration charges in respect of each letter we need to write to you. Such charges will be equal to that payable in respect of a registered letter or demand in an undefended action in terms of the Magistrate's Court Act together with necessary expenses incurred in delivering such letter; and
- 20.1.2 we will charge (and you will pay) in respect of enforcement by us of your payment obligations under this Agreement, all costs incurred by us in collecting any amount due and/or payable in terms of this Agreement in terms of –
- the Supreme Court Act 59 of 1959;
  - the Magistrate's Court 32 of 1944 Act;
  - the Attorneys Act 53 of 1979;
  - the Debt Collector's Act 110 of 1998,
- as the case may be, but excluding any default administration charges.
- 20.2 If you are in default and this Agreement becomes an Incidental Credit Agreement under the NCA, we may –
- 20.2.1 give you written notice of such default and may propose that you refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under this Agreement or develop and agree on a plan to bring repayments up to date;
- 20.2.2 commence legal proceedings to enforce this Agreement, if –
- we have given you notice as referred to in clause 20.2.1 above or we have given notice to terminate any debt review process under section 86 of the NCA which may then be underway in respect of this Agreement; and
  - you have been in default under this Agreement for at least 20 (twenty) Business Days; and
  - at least 10 (ten) Business Days have elapsed since we delivered the notice contemplated in clause 20.2.1; and
  - in the case of a notice in terms of clause 20.2.1 you –
  - have not responded to that notice; or
  - have responded to the notice by rejecting our proposal;
- 20.2.3 recover collection costs (if the default is in respect of a payment obligation) and default administration charges from you.

## 21. BREACH

This clause 21 does not apply to this Agreement if the Agreement becomes an Incidental Credit Agreement, in which case clause 20 will apply. Should either you or Diners Club commit a breach of any provision of this Agreement ("the Defaulting Party"), and fail to remedy such breach, or if the breach is not capable of remedy, fail to implement remedial action acceptable to the innocent party ("the Aggrieved Party"), within 14 (fourteen) days of receiving a written notice from the innocent party requiring the Defaulting Party to do so, the Aggrieved Party shall be entitled in addition to its other remedies in law or in terms of this Agreement to cancel this Agreement forthwith and without prejudice to its rights to claim damages; provided that if the Defaulting Party commits two or more breaches of any material provision of this Agreement in any 6 (six) month period of this Agreement, the Aggrieved Party shall be entitled without prejudice to any of its other rights or remedies in law or under this Agreement to terminate this Agreement forthwith by notice in writing to the Defaulting Party. The provisions of this clause 21 apply to the extent that will be consistent clause 20, if the later clause applies to this Agreement.

## 22. TERMINATION

- 22.1 Either you or Diners Club will be entitled to terminate this Agreement immediately if the other:
- 22.1.1 takes steps to place itself, or is placed, in liquidation (whether voluntary or compulsory, or provisionally or finally) or business rescue; or
- 22.1.2 takes steps to deregister itself or is deregistered; or
- 22.1.3 commits an act which would be an act of insolvency as defined by the Insolvency Act, 24 of 1936, as amended from time to time, if committed by a natural person; or
- 22.1.4 fails to satisfy a judgement in excess of R1 000 000.00 (one million rand) entered against itself within 21 (twenty one) days after it becomes aware of the judgement, except if it provides evidence on an ongoing basis to the reasonable satisfaction of the other party that steps have been initiated within the 21 (twenty one) days to appeal, review or rescind a judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued; the period of 21 (twenty one) days shall run from the date on which the judgement becomes final, or the date on which the attempt to procure the suspension of the execution fails.
- 22.2 Termination of this Agreement will not relieve you or Diners Club of obligations imposed upon such party by statute or regulation or by this Agreement, prior to its termination.

## 23. THE ONLINE METHOD

*If you access Diners Club's electronically formatted agreement via a computer terminal under your control, you will do so at your own risk. You also warrant that you have accessed and read all the component parts of the Website and/or the Agreement before completing, signing and submitting the document to Diners Club.*

## 24. DISCLAIMER AND LIMITATION OF LIABILITY

- 24.1 *Diners Club will not be responsible for any failure, malfunction or delay of any Website, EDC, email, electronically formatted facility, ATM, or other mechanical or electronic devices, or be liable for any resulting damages or expenses.*
- 24.2 *The Website and the electronically formatted form of agreement, and any electronic communication link are given "as is" and Diners Club makes no express or implied representations or warranties about it. Although Diners Club has taken reasonable steps to make sure that the Website is safe, they do not warrant that any files or downloads available from the Website are free from viruses or any other data or code that can corrupt or affect the operation of your computer system.*
- 24.3 *Diners Club does not warrant that the Website, the electronically formatted form of Agreement or its contents will be error free or will be accurate or of a specific quality. Diners Club expressly makes no warranties of non-infringement, compatibility, security and correctness.*
- 24.4 *You use the website and receive the form of Agreement or any email at your own risk. Neither Diners Club nor any of its affiliates will be liable for any damages relating to the use of the Website, including, without limitation, any direct, indirect, special, incidental, or consequential damages, whether in an action arising out of contract, statute, delict or otherwise. Neither Diners Club, its holding company or franchise holder, its business partners, its directors or shareholders, agents, consultants or employees will be liable for any damages relating to the use of it.*
- 24.5 *While Diners Club has taken reasonable steps to make sure that the Website has integrity, no warranty, express or implied is given that any files, downloads or forms of Agreement or*

*terms and conditions available via the Website are free from viruses or any other data or code which can corrupt or affect the operation of the Merchant's or any other person's system.*

## 25. AMENDMENT

Diners Club may change any of the provisions of this Agreement at any time, by sending you a written notice of such changes or a copy of the latest Agreement and together with any other terms and conditions as amended by Diners Club from time to time, will form the whole Agreement between you and Diners Club. You will be considered for all purposes to have received such documents within seven days of posting. You may at any time give 30 calendar days notice of your intention to terminate this Agreement in terms of Clause 18.2.

## 26. SEVERABILITY

The parties (you and us) agree that the setting aside or suspension of any provision contained in this Agreement shall not render this Agreement void but such provision must be severed from the Agreement or altered by a court of competent jurisdiction (if it is reasonable to do so having regard to the Agreement as a whole).

## 27. CONFIRMATION

You confirm that Diners Club has explained the Terms of this Agreement to you and you understand your rights and obligations under the Agreement. You have been informed that you can refer any further questions you may have to the Diners Club at any time. You are aware of the importance of all the clauses printed in bold;

## 28. GENERAL

- 28.1 This Agreement may be completed in Counterparts. Diners Club does not have to give you notice of its signature. Once signed by Diners Club, the Agreement will be seen to have been entered into in Johannesburg.
- 28.2 No amendment to this Agreement is binding on Diners Club, unless it has been reduced to writing and is signed on behalf of Diners Club.
- 28.3 Unless Diners Club is told otherwise within seven (7) days, you are considered to have received the regular hot card file updates for all purposes.



**Member Service Centre**  
0860-DINERS (346377) or  
e-mail: [custserv@dinersclub.co.za](mailto:custserv@dinersclub.co.za)

**Gauteng (Head office)**  
35 Symons Road,  
Auckland Park 2092  
Private Bag X67,  
Auckland Park 2006  
Tel: 011 358 8400  
Fax: 086 111 5092

**Western Cape**  
Madison Place, Alphen Park  
Constantia Main Road,  
Constantia  
PO Box 788, Constantia 7848  
Tel: 0860-DINERS (346377)  
Fax: 021 794 8185

**KwaZulu-Natal**  
8 Nollsworth Park,  
Nollsworth Crescent  
La Lucia Ridge Office Estate, 4052  
PO Box 47237, Greyville 4023  
Tel: 0860-DINERS (346377)  
Fax: 031 556 2740

Visit us at [www.dinersclub.co.za](http://www.dinersclub.co.za)

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