

Merchant Terms and Conditions

1. Agreement

- 1.1 Swish is an application that is owned and operated by Netone Payment Systems Limited. The Swish Merchant app (the “M-App”) is an application deployed over smartphones which is owned and operated by Netone Payment Systems Limited. The Merchant Portal is a browser-based module owned and operated by Netone Payment Systems Limited which can be used by Merchants for registration, management and reporting (the “Portal”). The Swish app, the M-App, the Portal and all Netone owned technology and payment platforms utilized by you and your customers are collectively referred to herein as the “Platform”.
- 1.2 These Terms and Conditions comprise a contract (this “Agreement”) between you (the Merchant) and Netone Payment Systems Limited (“Netone”) pertaining to your and your customers’ usage of the Platform. Please review this entire Terms and Conditions before you decide whether to accept them and continue with the registration process.
- 1.3 You indicate that you accept every term and condition of this Agreement by ticking a box or clicking on a button (or something similar) when asked to confirm this during sign up to the Swish app, M-App or other portion of the Platform at which time this Agreement is displayed to you. These Merchant Terms and Conditions are also available on our website: www.swish.co.zm
- 1.4 Netone undertakes to provide Services and Additional Services as set out in Schedule 2 subject to the terms and conditions contained herein.
- 1.5 The Services will enable Users to make payments to the Merchant for goods or services sold by the Merchant in Zambia.

2. Definitions

- 2.1 In these Terms and Conditions, the following terms shall have the following meanings:
 - (a) **“Additional Fees”** means the fees for the Additional Services set out in Schedule 2;
 - (b) **“Additional Services”** means the services set out in Schedule 2;
 - (c) **“Applicable Laws”** means all applicable laws, enactments, regulations, regulatory policies, regulatory guidelines, industry codes and regulatory licenses which are in force in Zambia from time to time;
 - (d) **“Authentication Procedure”** means the security protocols and/or payment authentication mechanisms as selected/directed by Netone or the relevant Financial Services Provider, as may be amended by NetOne or the relevant Financial Services Provider from time to time in its sole discretion.
 - (e) **“Fees”** means Transaction Fees and Additional Fees;
 - (f) **“Financial Services Provider”** means a registered financial institution in Zambia who has integrated to the Swish platform and holds funds on behalf of a Swish User or Merchant.
 - (g) **“Intellectual Property Rights”** means all present and future right, title and interest in and to (including, without limitation, the benefit of all licences in any part of the world) patents, patent applications, trade secrets, data, materials, products, technology, ideas, techniques,

sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, formulae, trademarks, service marks, trade names, signs, logos, other indicia of origin, registered and unregistered trademarks, registered designs, copyrights, design rights, unregistered designs, inventions, confidential information, know-how, registrable business names, database rights, domain names, applications for any of the foregoing and any other rights of every kind deriving from or through the exploitation of any of the foregoing;

- (h) **“Services”** means the services provided by us hereunder relating to payment processing services;
- (i) **“Swish User”** means any person who uses Swish, who typically but not necessarily makes a payment to the Merchant;
- (j) **“Transaction”** means any transaction processed by Swish;
- (k) **“Transaction Fees”** means the fees set out in Schedule 1;
- (l) **“VAT”** means value added tax charged under the Value Added Tax Act, Chapter 331 of the Laws of Zambia, or any replacement legislation thereof;
- (m) **“We”** or **“Us”** or **“Our”** refers to Netone; and
- (n) **“You”** or **“Your”** means the Merchant.

3. Requirements for Registration

- 3.1 In order to use the Platform, you hereby consent to provide and agree to register and complete all required information and forms for registration on the Platform and to submit the required supporting documentation as may be required from time to time by NetOne.
- 3.2 When registering for the Platform, you will be required to provide certain personal information and will also be required to provide the Know Your Customer (“KYC”) information that we deem necessary in order for us to comply with Applicable Laws.
- 3.3 You undertake and agree to provide current, complete and accurate information and maintain it as current and accurate. We may require you to provide additional information as a condition of continued use of the Platform. We reserve the right not to register you for the Platform without this information. In the case of an already existing registration that does not provide the required additional information we reserve the right to terminate that existing registration.
- 3.4 Registration for, and use of, the Platform shall only be permitted in your personal or corporate capacity once for any legal personality. You will therefore not be permitted to register and use Swish more than once in respect of any legal personality.
- 3.5 By agreeing to these terms and conditions of this Agreement, you represent that you are capable of entering into a legally binding agreement.
- 3.6 We, in our sole and absolute discretion, may refuse to approve or may terminate existing registrations with or without cause or prior notice, other than any notice required by any applicable law, and not waived herein.

4. Transaction Fees

- 4.1 Unless otherwise agreed in writing by Netone, the Transaction Fees for the provision of the Services shall be charged by Netone in accordance with the rates shown in Schedule 1, and the Additional Fees for the Additional Services shall be charged by Netone in accordance with the rates shown in Schedule 2.
- 4.2 The above Transaction Fees and Additional Fees exclude VAT. VAT and other taxes required by law, will be added, as applicable, to all Fees due and payable by the Merchant in terms of this Agreement.
- 4.3 Netone reserves the right to amend the Transaction Fees and Additional Fees at any time, on one month's written notice to the Merchant. The Merchant may terminate this Agreement within such one-month period if it does not accept the changes, failure to which the Merchant shall be deemed to have accepted the amendment to the Fees

Additional Fees for Additional Services will be paid monthly in advance via EFT or Direct Debit Order, within 7 (seven) days of the Merchant's receipt of a tax invoice for such Additional Fees. Alternatively, the Merchant may pay the Additional Fees via a debit order from the Merchant's settlement account.

- 4.4 If Netone decides in its sole and absolute discretion to allow the Merchant a free trial period in respect of certain of the Additional Services, as selected by Netone, then any such free period shall not apply in respect of the charges for Services as stipulated in Schedule 1, and the corresponding Transaction Fees will still be due and payable by the Merchant.

5. Chargebacks

We shall have the right to charge back the amount (or portion of the amount, as applicable) of a Transaction (including applicable VAT) (a "Chargeback") if we determine in our discretion that:

- i) The Transaction is invalid or a fraud was perpetrated by you, your employees or agents;
- ii) The User disputes their liability for any reason (other than in the case of a valid and correctly processed Transaction);
- iii) Any User's claim, defense, dispute, or basis for non-payment is based on an alleged action or inaction by you;
- iv) You or your payment service provider disable any Authenticated Procedure in respect of such Transaction;
- v) We dispute liability for any valid reason; and
- vi) There is a breach of any warranty made by you under Clause 7 with respect to the applicable Transaction records.

If we have accepted any Transaction in terms of the Agreement it is not binding on us and we may charge back the Transaction amount or part of it to you at any time (or reverse such Transaction, if we become aware of it before settlement). Notice of the Chargeback will have an explanation and, if needed or available, supporting documents. Subsequent to the Chargeback, we will give you the opportunity for 5 days to advise us why such Chargeback should be reversed. If we Chargeback any Transaction or part of it in terms of the Agreement, Netone reserves the right to apply a Chargeback fee of K100 (One Hundred Zambian Kwacha) . With respect to any amounts to be charged back, Netone will offset such amount from the assigned settlement account and to the extent the balance thereof is not sufficient, Netone may demand payment from you for the full or any partial amount of such Chargeback. This clause will survive any termination of the Agreement.

Reconciliations: The parties shall, from time to time as is arranged or deemed necessary between the parties or at the request of either party reconcile their account statements. The Merchant may request a statement from NetOne through its call centre or may view such through the Merchant Portal. Should the Merchant require a reconciliation of their account settlement, such will be initiated by sending a request via email submitted to: Merchant.Support@swish.co.zm. Similarly, should NetOne require a reconciliation exercise to be initiated regarding the account, NetOne shall request such reconciliation via notice sent to the registered email address of the Merchant. It is further agreed that the parties shall initiate a reconciliation of accounts, within 14 (fourteen) days from receipt of such notice. After the reconciliation of the parties' accounts each party may raise any disputes with the other within 14 (fourteen) days, after which the aforementioned records shall be deemed to be correct. The parties shall repay any undisputed amounts due to the other party within 7 (seven) days after reconciliation of their accounts.

6. Services

- 5.1 The Services are provided to assist Merchants in processing bank, mobile money and other e-wallet transactions and to facilitate rapid payments from a Swish User to the Merchant's nominated settlement account, less the Transaction Fees due to Netone. Any dispute whatsoever relating to the Merchant's goods or services remains between the Merchant and the Swish User, and Netone shall have no liability in relation to such disputes.
- 5.2 Netone shall appoint one or more financial services providers ("Our FSP") for purposes of the Services, including the collection of money on behalf of the Merchant under the Transactions ("Merchant Collections").
- 5.3 Use of the smartphone application/ USSD by a Swish User will transmit the payment details and initiate a request for payment processing. Netone will submit the request to the Swish User's bank account, mobile money wallet or e-wallet (the "User Account") held with the relevant service provider (the "User FSP"), and both the User and the Merchant will be notified, via the Swish platform, of whether the Transaction has been approved or declined. In case of doubt, the Merchant may use the Merchant Portal to confirm details of a successful transaction.
- 5.4 Your designated FSP will collect the Merchant Collections, and pay the Merchant Collections, less Transaction Fees, into the Merchant's nominated bank account/Mobile money wallet (the "Designated Account") with a service provider ("Your FSP"). Settlement terms are detailed in Schedule 1, but receipt into the Merchant's account shall be subject to any delays outside the control of Netone and/or the designated FSP.
- 5.5 The Merchant shall not use the Services for unlawful purposes.
- 5.6 Netone shall not be liable for (i) any loss suffered by the Merchant as a result of fraud, (ii) any loss suffered by the Merchant or a Swish User based on the actions or inactions of Our FSP, Your FSP or the User's FSP.
- 5.7 Netone shall at any time during the operation of this Agreement be entitled to require that Transactions are subject to the Authentication Procedure. Netone shall not be liable for any loss suffered by the Merchant, and the Merchant shall be liable to Netone for any loss suffered by Netone, due to failure of the Merchant to follow Authentication Procedure.
- 5.8 You acknowledge and agree that Netone is required to comply with all applicable laws and regulations, including Bank of Zambia circulars and directives pertaining to item value limits,

transaction limits and otherwise, in its provision of the Services. Netone shall have no liability to you resulting from such compliance.

5.9

7. Merchant Undertakings and Warranties

6.1 The Merchant shall ensure that it receives approval of a Transaction before releasing goods to a User and shall provide a written request for any refund due to a Swish User.

6.2 The Merchant irrevocably authorises and instructs Merchant's approve or designated FSP to pay the Transaction Fees directly to Netone from the Merchant Collections.

6.3 The Merchant hereby warrants to Netone that –

6.3.1 it (the Merchant) is not a payment services provider;

6.3.2 it has never been party to a contract with a bank, financial services business, payment system or Mobile money operator (a "Conduit Counterparty") that has been terminated at the instance of such Conduit Counterparty, or by direction of any regulatory authority or court of law;

6.3.3 on written notice from Netone or Our FSP, it will provide transaction information to such requesting entity;

6.3.4 it will not request that the Our FSP pay out any monies collected on the Merchant's behalf to a bank account in Zambia other than the Designated Account;

6.3.5 it will not attempt to limit its liability by asking or requiring that Swish Users waive their dispute rights;

6.3.6 it will not set turnover limits but will track suspicious activities;

6.3.7 it will flag suspicious activities when they occur and report them accordingly to Netone and to any regulatory body as required by law as soon as it suspects or becomes aware of such activity;

6.3.8 it has full capacity and authority to enter into the Agreement and to perform all of the obligations recorded in the Agreement on behalf of the Merchant;

6.3.9 the Agreement will, when executed, form valid, binding and enforceable obligations of the Merchant;

6.3.10 by performing its obligations under the Agreement it will not cause a breach of any other agreement to which the Merchant is a party;

6.3.11 the Merchant has all the necessary consents, registrations, filings, certificates, licences, approvals, permits and insurances to operate its business and enter into this Agreement;

6.3.12 shall honor and make available all agreed rewards programs and promotions within the limits and provisions of the terms and conditions of each such reward, offer or promotion to the Swish Users as agreed with Netone, and any dispute whatsoever relating to the such programs remains between the Merchant and the Swish User, and Netone shall have no liability in relation to such disputes; and

- 6.3.13 performance of the Merchants obligations under the Agreement will fully comply with applicable laws and rules.
- 6.4 Without restricting the rights of Netone or its ability to claim damages on any basis, the Merchant hereby indemnifies Netone in respect of all liabilities, losses, charges, costs, claims or demands incurred or made by Netone as a consequence of, or which would not have occurred or arisen either directly or indirectly but for, any of the above warranties being breached, inaccurate or misleading.
- 6.5 The Merchant undertakes to cooperate (including but not limited to the provision of information and documentary evidence or records) with Netone and/or the Financial Service Provider and/or law enforcement agencies in any investigation into fraudulent transactions related to the Merchant, its offering or transactions processed with a Swish User.
- 6.6 The Merchant shall display at its store or business free of charge such marketing content as provided by Netone for purposes of informing Swish Users of the availability of the Swish App at such location.

8. Termination

- 7.1 Unless otherwise agreed in writing, the Agreement shall be valid for twelve (12) months from the date hereof and shall automatically renew for additional twelve (12) months periods unless terminated by either party three (3) months prior to the expiration of any such twelve (12) month period.
- 7.2 Either party shall be entitled to terminate this Agreement on written notice to the other party of not less than one month.
- 7.3 Netone shall be entitled to cancel this Agreement on written notice to the Merchant (with immediate effect) if –
- (a) the Merchant has breached the Agreement;
 - (b) A FSP has informed Netone that it is no longer willing to provide Services to the Merchant;
 - (c) the Merchant has filed for bankruptcy, insolvency, receivership, or business rescue proceedings or applied for reorganization, it has been put into liquidation, or it is otherwise declared to be unable to meet its contractual obligations or debts when they fall due;
 - (d) if in Netone's opinion the hardware, software or communication connections used by the Merchant may pose risk to the security of Swish or Netone's systems, or the Merchant's operations otherwise entail a data security risk, and the Merchant has not rectified the situation despite a written notification by Netone;
 - (e) the Merchant uses the service contrary to Netone's instructions;
 - (f) if the Merchant refuses to apply the Authentication Procedure;
 - (g) in the reasonable opinion of Netone, the Merchant's conduct or treatment of Users or the Merchant's relationship with Netone is having a negative effect on the reputation of Netone;
- or

- (h) a fraudulent transaction occurs in connection with goods or services supplied or sold by the Merchant.

9. Hardware

- 8.1 In the event that NetOne provides any hardware, and systems to the Merchant for purposes of the Services (the "Hardware"), such Hardware shall remain the property of Netone and must be returned to Netone upon the earlier of our request or the termination of this Agreement.
- 8.2 The Merchant shall compensate Netone for damage to or loss of any Hardware provided by NetOne for provisioning of Services.

10. Indemnity

You indemnify, defend and hold us, our affiliated companies, and our officers, directors, employees, and agents, harmless from and against any and all claims, damages, losses and expenses of any kind (including reasonable legal fees and costs) that we may suffer or incur or for which we may be held responsible as a result of or in connection with:

- i) Your use of the Services, and any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Merchant or any of the officers or employees of the Merchant;
- ii) Any breach, non-observance, or non-performance of the Agreement by you or your failure to comply with any of your obligations under this Agreement and/or any other applicable laws;
- iii) You giving us any incorrect or misleading information or you withholding any information that would have made any information given to us incorrect or misleading;
- iv) Any action taken by us, or any regulatory authority as a result of any act of, or omission by, you, including any fees, fines, penalties or other amounts imposed by any regulatory authority on us as a result of any such act or omission; and
- v) Any dispute between any or all of us, you, any User and any third party.

We reserve the right to take exclusive control and defense of any claim, and you will cooperate fully with us in asserting any available defenses.

11. Disclaimers/Limitations on Liability

11.1 Netone does not promise that the Swish app will be error-free or uninterrupted.

11.2 We provide our Platform to you "as is" and "as available". we try to keep the platform up, bug-free and safe, but you use it at your own risk. to the fullest extent permissible by law, and to the extent that applicable law permits the disclaimer of express or implied warranties, we disclaim all warranties, express or implied, including any warranty of title, non-infringement, accuracy, merchantability, fitness for a particular purpose, or warranties that may arise from course of dealing or course of performance or usage of trade. we do not guarantee that the platform will always be safe, secure or error-free or that the site will always function without disruptions, delays or imperfections. We are not responsible for the actions or information of third parties, and you release us from any claims and damages, known and unknown, arising out of or in any way connected with any claim you have against any such third parties.

11.3 In no event will our aggregate liability for all claims arising in connection with the Services exceed the Transaction Fees in respect of the relevant Transaction, irrespective of the

cause of action (whether in contract, statute or tort, including for negligence), save to the extent that such liability cannot be excluded by law.

- 11.4 In no event will we or our officers, directors, employees and agents be responsible or liable to you or anyone else for, and you hereby knowingly and expressly waive all rights to seek, direct, indirect, incidental, special or consequential damages of any type other than out of pocket expenses, and any rights to have damages multiplied or otherwise increased, arising out of or in connection with the Platform or any Services, even if we have been advised of the possibility of such damages, and regardless of whether the claim is based upon any contract, tort, or other legal or equitable theory. Without limiting the foregoing, you expressly acknowledge and agree that we will have no liability or responsibility whatsoever for (a) personal injury or property damage, of any nature whatsoever, whether arising in contract or in tort, resulting from your access to and use of our Platform, (b) any unauthorized access to or use of our systems and/or any and all personal information and/or financial information stored therein, (c) any bugs, viruses, worms, trojan horses, defects, data bombs, time bombs or other items of a destructive nature which may be transmitted to or through our Platform, (d) any errors, mistakes, inaccuracies or omissions in any content on our Platform, or (e) any direct or indirect damages or losses suffered by you, a User or a third party as a result of act of God, government control, restrictions or prohibitions or other government act or omission, whether local or national, industrial disputes, political or labour unrest; or technical problems to the Platform or loss of connectivity or other aspect that is outside of the control of the Company. The limitations in this section will apply even if any limited remedy fails of its essential purpose. The allocation of risk between us is an essential element of the basis of the bargain between us. In no event will attorneys' fees be awarded or recoverable. Our liability will be limited under this paragraph to the fullest extent permitted by applicable law.

12. Notices

- 9.1 Any notice to Netone under the Agreement shall be issued by email to notice@swish.co.zm.
- 9.2 Any notice to the Merchant under the Agreement shall be issued by email to the email address provided on the application form duly completed by the Merchant.

13. Intellectual Property / Confidentiality

All Intellectual Property Rights to the Swish app, the Platform, the Services and associated documentation are property of Netone and no such rights will be transferred to the Merchant. The Swish app, the M-App, the Platform and all data, text, designs, pages, print screens, images, artwork, photographs, audio and video clips, and HTML code, source code, or software that reside or are viewable or otherwise discoverable on them (collectively, the "Content") are owned by us or our licensors. We own a copyright and, in many instances, patents and other intellectual property in the Swish app, the M-App, the Platform and the Content. We may change the Content and features of the Swish app, the M-App and the Platform at any time.

You will not disclose any Confidential Information pertaining to our products, services and modes of operation to anyone outside your organization. You agree that, for purposes of confidential information to be disclosed pursuant to the terms of this Agreement, "Confidential Information" shall mean any product plans, pre-release products, marketing plans, business opportunities, customer lists, personnel data, research and development activities, know-how and third party information. Except as expressly authorized by our prior written consent, you shall limit access to the Confidential Information to your employees and agents who have a reasonable need-to-know solely

for the purposes of this Agreement and who have been advised of the proprietary nature thereof and the obligations of this Agreement. You shall hold Confidential Information in confidence and shall use the same degree of care that it uses to protect your own confidential information (but in no event less than a reasonable degree of care) to prevent unauthorized use or disclosure. You agree that (a) monetary damages may be inadequate to compensate the offended party for any breach of the obligations set forth in this Clause; (b) any such violation or threatened violation may cause irreparable injury to Netone and (c) in addition to any other remedies that may be available at law or in equity, Netone shall be entitled to obtain injunctive relief against the threatened or continued breach without the necessity of proving actual damages.

14. Amendment / Severability / Integration / Relationships

The Merchant hereby agrees to abide by, without need of notice and express consent, any and all future modifications, innovations, amendments or alterations to these terms and conditions. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose. No failure or delay by any of the Parties in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by any of the Parties of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

15. Dispute Resolution

It is agreed that any dispute or proceedings arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or enforceability of this Agreement) (a "Dispute") shall be referred to and finally resolved by arbitration in accordance with the Arbitration Act (No. 19 of 2000 of the Laws of Zambia). The arbitration shall take place in Zambia at a location to be agreed upon by the arbitrators. The Parties shall agree on the person to act as single arbitrator. If the Parties fail to agree on who shall act as single arbitrator within two calendar months from the date upon which notice regarding the Dispute has been provided to the Parties, then the Parties consent to submit such Dispute for settlement by arbitration by an arbitrator chosen by the Chartered Institute of Arbitrators (Zambia). The arbitration award shall be final and binding on the Parties. It shall deal with the question of costs of arbitration and all matters relating thereto. The language to be used in the arbitration proceedings shall be English.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Zambia.

17. Acceptance

By signing these terms and conditions, the Merchant through its' representatives hereby confirm having read, understood and accept all aspects of this Agreement and agree to abide by the terms and conditions presented herein.

Schedule 1

Merchant Name	Fee Charged to Merchant
	2% of transaction value

Schedule 2

Additional Services:

	Additional Services	Additional Fees
(a)	Real-time Settlements – settlements at the actual time during which a process or event happens if provided by the acquiring FSP	None
(b)	Merchant Portal – an online portal provided to Netone Payment Systems Limited merchants that allows them to monitor transactions, business patterns and performance in real time. Merchants can also download financial collateral in line with the selected additional services	None
(c)	Digital Rewards - shall mean coupon campaigns subject to SWISH's Fair Usage. There will be no coupon redemption fees payable under the coupon campaigns;	None
(d)	Targeted In App Messages – shall mean message campaigns subject to SWISH's Fair Usage Policy;	None
(e)	Customer Rating and Reviews (Merchant Portal) - a feature that allows the merchant to review customer evaluations of its business, service or products. It further allows the merchant to communicate with users via targeted in-app messages;	None
(f)	Transaction Data History (Merchant Portal)- a feature that allows the merchant to view customer transactions within the allowed date range provided by the selected additional services;	None
(g)	Exportable Transaction Data History (Merchant Portal) – A feature available to merchants that allows the merchant the ability to export customer transactions within the date range selected.	None