

DIAMOND BANK MOBILE POS TERMINAL APPLICATION FORM



MERCHANT INFORMATION

Account Name

Account Number (Settlement Account)

Business Address

Telephone Numbers

E-mail Address

Preferred Name to be Captured on POS Receipt

Description of Business Supermarket pharmacy hotels & guest houses computer & electronics bar and restaurant fast food others specify

NUMBER OF OUTLETS/LOCATIONS WHERE MPOS TERMINALS WILL BE USED

(if more than 3 locations, please state below the form)

i. Location/Address

ii. Location/Address

iii. Location/Address

Business Opening Hours (please specify)

PARTICULARS OF DIRECTOR

Mr. Mrs. (others specify)

Name
(Surname) (First Name) (Other Names)

Mobile Phone Number:

Occupation:

DETAILS OF PRIMARY CONTACT PERSON

Mr. Mrs. (others specify)

Name
(Surname) (First Name) (Other Names)

Mobile Phone Number:

Designation

DETAILS OF PRIMARY CONTACT PERSON

Name
(Surname) (First Name) (Other Names)

Mobile Phone Number:

Designation

TERMS AND CONDITIONS

THIS AGREEMENT is made this...day of 20... BETWEEN DIAMOND BANK PLC having its business office at PGD's place, Plot 4, Block 5, BIS Way, Oniru Estate, Lekki, Lagos (hereinafter referred to as "DIAMOND Bank" which shall unless the context otherwise admits include its Successors-In-Title and Assigns) **AND**(Hereinafter referred to as "The Merchant" which shall unless the context otherwise admits include its/his Successors- In-Title and Assigns or heirs as may be applicable).

WHEREAS:

- DIAMOND BANK is a provider of electronic based payment systems, acquirer of payment card transactions that may be used in connection with payment services.
- The Merchant desires to accept cards and such other payment system as DIAMOND Bank may acquire as a payment method for the value of goods sold or services provided by the merchant to its customers or purchasers.

NOW IT IS HEREBY AGREED AS FOLLOWS:

The above parties to this Agreement shall hereinafter be referred to as ("the party "or" "the parties")

1. DEFINITIONS

In this Agreement unless expressly indicated otherwise, the following words and expressions have the meanings specified below:-

"Acquirer" means DIAMOND Bank Plc ;

"Card" means a payment card used as means of payment for goods and services and which transaction is acquired by DIAMOND Bank.

"Card not present" means a transaction where the card is not present at the time of the transaction, like telephone orders etc;

"Cardholder" means any legal entity or natural person to whom a card issued and/or who is authorized to use it;

"Card Issuer" means any entity legally entitled to issue cards

"Card Transaction" means any commercial transaction for which a card processing equipment are used and which transaction is acquired by DIAMOND Bank

"Debit Card" means a card giving online DIAMOND via the MPOS terminals to the Bank holders account, allowing a immediate debit to this account for the full transaction amount.

"Deposit Bank" means the bank where the Merchant has settlement account domiciled

"PTSP" means a licensed organization by CBN to deploy both online and offline POS terminals, maintain and support the terminals at merchant locations around the country.

"Merchant Identification Number" means a number provided by DIAMOND Bank to identify the merchant in a transaction;

"Merchant Operating Manual" means a detailed description and instructions to the merchant relating to the operating procedures and processing of valid card payment transactions;

"Parties" means DIAMOND Bank, the Payment Terminal Service Provider (PTSP) and the Merchant;

"Penalty" means a fine levied by DIAMOND Bank for the contravention of their regulations and/or operational risk parameters by the merchant;

"PIN" means a cardholder's personal identification security number/code allowing him/her to carry out a chip card transaction;

"Pin-Driven Card" means a card which is operated by the cardholder by entering the Pin into the Point of Sale Terminal or Pin pad or otherwise

"MPOS Terminal" means the equipment or device used for accepting payment card as a means of payment or otherwise used for processing card transactions

"Processor" means licensed service provider used by the Issuer to authorize and process card transactions;

"Settlement" means the part of the clearing process where the acquirer credits the merchant account with the amount of a card purchase and the acquirer debits the issuer for the transaction thus settling the transaction;

"Transaction" means any action between a cardholder and a merchant that results in activity on the cardholder's account such as a purchase, refund, or reversal and settlement and shall have the same meaning as card transaction

2. PURPOSE

During the entire period of this Agreement:-

- The merchant shall at the request of cardholders or card beneficiaries sell goods/services to the same beneficiaries that are present in person during the completion of the transactions by accepting and applying the card payment rules and procedures, subject to all the terms and conditions imposed by this Agreement.

The merchant is not authorized to sell goods/services to cardholders that are not present in person during the completion of the transaction without prior written consent of DIAMOND Bank.

3. RESPONSIBILITIES OF DIAMOND BANK

In this Agreement DIAMOND Bank through its appointed PTSPs shall:

- Assign the Merchant Registration/Identification number to the Merchants;
- Enable the Merchant with equipment necessary for card transactions against the explicit Merchant's confirmation of receipt for each equipment;
- Supply the Merchant all relevant manuals, Merchant Operating Instructions, MPOS terminals etc. against the explicit Merchant's confirmation of receipt for each such items;
- Subject to the terms and conditions in this Agreement, maintain the System Equipment and apply all available measures so that they are kept in good operational condition;
- Organize and host Merchant's staff training to handle and operate system equipment and transactions in appropriate manner.
- Supply the Merchant with 'relevant Point of Sale promotional Materials indicating that the Merchant accepts approved cards in payment for goods and/or services.
- Make payments to the Merchant when due and payable under this Agreement subject to all the terms and conditions provided by this Agreement.
- Pay the value of the transaction made through the MPOS less the relevant charges according to the conditions of this Agreement to the Merchant within such a period as may be agreed between the parties

4. RESPONSIBILITIES OF MERCHANT

In this Agreement the merchant shall:

- Accept all cards in use in the country irrespective of the issuing bank.
- Apply to the Bank in writing to accept cards issued abroad
- Provide an indemnity to the bank in the event of card fraud or charge backs
- Pay the appropriate Merchant Service Charge (MSC) as agreed with the DIAMOND Bank. The MSC will be deducted from payment due to the merchant during settlement.
- Keep copy of all approved transaction receipt for a period not less than 6months and provide same to the bank upon request
- Be responsible for safe keeping and proper handling of the terminal. The merchant will be responsible for replacement of stolen terminals and repair or replacement of terminals that are mishandled by the users.
- Promptly inform DIAMOND Bank of any detected issues on the terminal through agreed communication channel.
- Promptly inform DIAMOND Bank of any re-location
- Fully indemnify DIAMOND Bank in the event that it is not able to produce the following information in the event of an occurrence of fraud on the terminal under its custody:
 - Type of goods(s) purchased
 - Invoice or receipt for the items purchased
 - Inventory record(s) to show movement of goods from the store
 - Name, Address, Phone number and copy of Customer Identity Card.

5. DISPUTED TRANSACTIONS

Notwithstanding any other provision to the contrary, DIAMOND Bank shall have the right to:

- Send the settled transactions received from the Merchant to the issuing banks/authorities concerned for the purpose of checking and in any case of objection and/or opposition on the executed transactions by the issuing Bank or the authorities concerned for any reason.
- Suspend, withhold, or refuse payment indefinitely to the Merchant in the event that DIAMOND Bank suspects fraud in respect of any transaction.

6. REVERSAL OF FAILED POSTTRANSACTIONS AND CHARGE BACK RESOLUTION

For all failed MPOS transactions or declined transactions for which cardholders were debited:

- Merchants are required to advise their customer (cardholders) to report such failed MPOS transactions to their Bank for reversal. Merchants should not refund cardholders for failed MPOS transactions.
- Upon the Merchants notification by the Bank of a chargeback, the Merchant shall ensure that they respond to the claim 24 hours from date of notification.
- Upon the Merchants response, the following shall apply

- Acceptance of liability to claims will lead to a debit of the Merchants Account and a credit of the cardholder.
- Declining of a claim will mean no debit to merchant and the provision of a receipt to the cardholder as proof of a successful transaction.
- Non Response to claim within stipulated chargeback cycle will lead to an automated debit to merchants' account in favor of the cardholder

D. Diamond Bank will not be held liable for claims, liabilities, damages, losses, consequences, costs and expenses of whatever nature that may be incurred from unlawful parting with goods and or service for declined or failed POS transactions

7. EQUIPMENT

All equipment and stationaries supplied to the Merchant by DIAMOND Bank or its appointed PTSPs in the implementation of the provisions of this agreement shall be in the possession of the Merchant and the merchant shall have no right to use it unless for the purposes of processing their sales transactions provided it is used only for its account and DIAMOND Bank or its appointed PTSP shall have the right to recover it at any time, and the Merchant shall:

- Preserve the equipment and machines, take care of them, and ensure that only trained and authorised employees of the Merchant will use the equipment in accordance with the directions provided by DIAMOND Bank.
- Inform DIAMOND Bank /PTSP immediately if any failure occurs to the equipment and machines.
- Guarantee all damages to the equipment and machines as a result of usage in a manner contrary to and/or for purposes not stated in this Agreement.
- Not use or lend the system equipment received from DIAMOND Bank/ PTSP for the sale of goods/services of third parties.

8. NOMINATED BANK ACCOUNT

The Merchant shall advise the details of the Merchant's account with the Bank and shall not make any Change to the Bank account without the written consent of Diamond Bank."

9. FRAUDULENT TRANSACTIONS

Fraudulent transactions shall include but not be limited to:

- Any purchase and/or transaction arising from the use of a card by a person other than the authorized cardholder.
- The use of a card that is not authorized in terms of the rules governing the issue and use of cards.

10. COMMISSION / FEE/ CHARGES

The merchant shall pay the current applicable industry Merchant Service Charges shown below or any other fee as the Bank may stipulate based on money market changes or industry regulations.

MERCHANT CATEGORY	MASTERCARD / VERVE	FEE CAP (NAIRA)	VISA	FEE CAP (NAIRA)	FEE BEARER
General Merchant	0.75%	1,200	0.75%	1,200	Merchant
Airline (Operators)	0.75%	1,200	0.75%	1,200	Merchant
Wholesale	0.20%	1,000	0.75%	1,200	Merchant
Fuel Stations	0.69%	N/A	0.69%	N/A	Acquirer
Fast Food Churches & NGOs	1.25%	100	0.75%	1,200	Merchant
Hotels & Guest Houses	1.25%	N/A	2.00%	N/A	Merchant
Travel Agencies	N200	Flat Fee	1.25%	N/A	Merchant

**Applicable Charges Apply*

11. SETTLEMENT AND REVERSAL OF TRANSACTIONS

Notwithstanding any provisions to the contrary, DIAMOND Bank shall have the right to:

- Pass into the merchant's account the daily net (debit or credit) due settlement as advised by the switching company.
- Debit the merchant's account while advising the merchant with the details of the day's settlement where the daily net settlement is a debit position.
- Debit the merchant's account for any wrongly settled amount which was not due to it.
- Debit the merchant's account where a dispute claim is initiated by a cardholder against the merchant and a response is not received within a stipulated time with valid proof of service rendered

12. ARBITRATION

A. Any dispute, controversy or claim between DIAMOND Bank and the merchant arising out of or in connection with this agreement or breach, termination or invalidity thereof shall be settled by arbitration as stipulated hereunder.

B. The dispute shall be referred to two arbitrators and each party shall choose its own arbitrator, and the two arbitrators shall choose a third arbitrator to act as Chairman if necessary. The arbitrators' award shall be either unanimous or by majority.

C. The proceedings of the arbitrators shall be governed by the provisions of the Arbitration and Conciliation Act (Cap A18 Laws of the Federation of Nigeria, 2004).

13. NOTICES

Unless otherwise provided herein or agreed to by the parties, any notices, requests or other communications mentioned herein shall be in writing (by telex, cable, facsimile or letter) and sent to the address of the party as contained in this Agreement or such other address as any party may advise the other in writing.

14. AGREEMENT

A. The term of this Agreement shall be for an unlimited period and shall not be transferred and/or assigned to any other person and shall remain in effect between both parties until it is terminated in accordance with the provisions of this Agreement. The Agreement is valid and applicable to all outlets owned by the merchant.

B. For the purposes of this Agreement, both parties have taken the address stated hereinafter beside their names as their chosen domicile where all the letters and the written notification shall be duly served.

C. Both parties acknowledge that this Agreement has been signed by the authorised person(s) who is/are fully empowered to sign it and both parties shall have no right to challenge the validity of this Agreement and that no such procedure shall affect the validity of the transactions already done.

D. The inapplicability of any clause/clauses of this Agreement for any reason shall not be considered as an abandonment or waiver of this term or any right thereof and shall not affect the validity of the remaining terms.

E. This Agreement shall remain valid regardless of any amendment or change in the name, Memorandum and Articles of Association or constitution of membership of partnership of the Merchant including reform and the Merchant shall be bound to notify DIAMOND Bank immediately upon the occurrence of any change or amendment.

F. The terms of any form, forms, manual or written instructions or directives by DIAMOND Bank including but not limited to merchant application form, any operating guide, card security features documentation, etc. in respect

of the transactions contemplated by this agreement shall be considered an integral part of this Agreement, and in case of any inconsistency with the provisions of this agreement the provision that achieves the best interest of DIAMOND Bank shall be applicable at the absolute discretion of DIAMOND Bank.

G. This Agreement constitutes the entire agreement between the Parties hereto and the Parties acknowledge that they have not entered into this Agreement in reliance wholly or partly on any statement or representation made to any of them by the other except as contained or referred to herein.

H. No forbearance or indulgence by any party in enforcing any term or condition of this Agreement shall prejudice the party's rights or powers under this Agreement and no waiver of any breach shall operate as a waiver of any subsequent or continuing breach.

I. The Merchant shall not assign or transfer or permit the assignment or transfer of its rights and obligations under this agreement without the prior written consent of DIAMOND Bank.

J. This agreement shall be constructed and enforced in accordance with the laws of the Federal Republic of Nigeria.

K. This agreement may be amended or changed at the absolute discretion of DIAMOND Bank provided that such amendment shall only be binding on the Merchant effective 30 (thirty)days from the date that DIAMOND Bank gives the Merchant written notice of such amendment (such date inclusive).

L. Nothing contained in this Agreement shall operate to constitute a partnership or similar legal association between DIAMOND Bank and the Merchant.

TERMINATION

Both parties shall have the right to terminate this Agreement by giving the other party thirty days prior written notice. - -

Notwithstanding any provision to the contrary, DIAMOND Bank may terminate 'this agreement at its absolute discretion and without prior notice to the Merchant if:

- The Merchant is in breach or defaults in the performance of any of the merchant's obligations.
- The Merchant ceases to carry on its business or if an order is made for the winding up of the business
- Any execution or distress levied upon or against any of the chattels or property of the Merchant is not discharged within 7 days
- The merchant shall stop payment or shall cease or threaten to cease to carry on its business or any substantial part thereof
- A receiver or manager shall be appointed for the merchant's business or the undertaking of the merchant or any part thereof.
- Sufficient fraudulent transactions occur on the MPOS Terminal in the opinion of DIAMOND Bank.
- Without prejudice to any other remedy available to DIAMOND Bank and notwithstanding any provision to the contrary, the merchant shall pay to DIAMOND Bank, the cost of installation and deployment of every equipment as may be determined by DIAMOND Bank if the merchant terminates this Agreement within six months of the date of installation of any equipment.

IN WITNESS WHERE OF the parties have executed these present the day and year first above mentioned in the manner herein contained.

Signed for and on behalf of the within named:

SIGNATURE:

NAME:

POSITION:

In the presence of:

NAME OF WITNESS:

SIGNATURE:

POSITION:

Signed for and on behalf of DIAMOND BANK Plc

SIGNATURE:

NAME:

POSITION:

In the presence of:

NAME OF WITNESS:

SIGNATURE:

POSITION: