

MERCHANT AGREEMENT

entered into by and between

CGRATE ZAMBIA LIMITED

and

[•]¹

¹ Insert the Merchant's name.

1. **PREAMBLE**

- 1.1. cGrate is a company that provides virtual payment processes by connecting Merchants, Issuers and Customers.
- 1.2. The Merchant wishes to utilise cGrate's platforms to offer various financial services as provided for herein on the terms and subject to the conditions set forth in this Agreement.

2. **DEFINITIONS**

In this Agreement, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 2.1. **"534 Pay"** means cGrate's virtual platform that enables a Customer to perform payment transactions using various social media chat applications including WhatsApp, SMS, near field communication (NFC) payments, and QR codes payments;
- 2.2. **"543 Pay Services"** means the transactional payment services as provided on the 543 Pay platform, which services include:
 - 2.2.1. Cash-In Services;
 - 2.2.2. Cash-Out Services;
 - 2.2.3. Send Services;
 - 2.2.4. Merchant Payment Services;
 - 2.2.5. Online Payment Services; and
 - 2.2.6. EVD Services;
- 2.3. **"Agreement"** means this Merchant Agreement between the Parties as contained in this document, together with all of its annexures and appendices, as amended, novated and/or replaced from time to time in accordance with its terms;
- 2.4. **"Applicable Law"** means in relation to a Party, all and any of the following: (i) statutes and subordinated legislation and common law; (ii) regulations; (iii) ordinances and by-laws; (iv) directives, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation; and (v) other similar provisions, from time to time, compliance with which is mandatory for that Party;
- 2.5. **"Cash-In Services"** means the paperless cash deposit services that enables a Customer to deposit funds through the Merchant to any recipient account held with an Issuer through the 543 Pay platform, as more fully described in clause 10 below;

- 2.6. **“Cash-Out Services”** means the card-less cash withdrawal and payment services that, *inter alia*, enables a Customer to withdraw from the Merchant funds standing in its credit with an Issuer through the 543 Pay platform as more fully described in clause 8 below;
- 2.7. **“cGrate”** means cGrate Zambia Limited, registration number 97905, a private company with limited liability duly incorporated in accordance with the laws of the Territory;
- 2.8. **“Service earning”** means discount or interchange fees earned by and is payable to the Merchant for offering services to customers. These fees are a share of the overall fees earned.
- 2.9. **“Confidential Information”** means any information, trade secret or data which is marked as confidential or which by its nature or content is identifiable as confidential and/or proprietary to the Party disclosing the information (the **“Disclosing Party”**) and/or any third party, or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on its behalf may disclose or provide to the other Party (the **“Receiving Party”**) or which may come to the knowledge of the Receiving Party by whatsoever means, and includes all information relating to:
- 2.9.1. cGrate’s Intellectual Property;
 - 2.9.2. the Disclosing Party’s’ past, present and future research and development;
 - 2.9.3. the Disclosing Party’s’ business activities, strategies, products, methodologies and processes, Intellectual Property, information concerning customers and clients, as well as its technical knowledge and trade secrets; or
 - 2.9.4. the terms and conditions of this Agreement;
- 2.10. **“Customer”** means any of the Merchant’s client who makes use of any of the 543 Pay Services from time to time and **“Customers”** shall have a corresponding meaning;
- 2.11. **“Effective Date”** means the Signature Date;
- 2.12. **“Equipment”** means the devices and any other machinery, equipment, materials and other items of whatever nature (including spare parts, special tools, and other items) which will be hosted by the cGrate’s system for the implementation of the 543 Pay Services;
- 2.13. **“EVD Services”** means the electronic voucher distribution services which entail the marketing and distribution of the Stock and various other vouchers of value using the 543 platform as more fully described in clause 13 below;
- 2.14. **“First Line Support”** means the technical support services to be provided to the Customers by the Merchant in respect of the day to day operational issues including but not limited to transaction maintenance, product training, system reporting, and service reconciliations;

- 2.15. **“Intellectual Property”** means rights associated with, patents, copyrights, trademarks, trade names, designs, models, logos, style names, slogans, know-how, inventions, trade, and business secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain, use or for the protection of the same);
- 2.16. **“Issuer”** means a duly licensed financial services provider, [or a mobile network operator] which provides financial or telecommunications products and services to the Customers via the Merchants;
- 2.17. **“Kwacha”** means the Zambian Kwacha, the lawful currency of the Territory;
- 2.18. **“Merchant”** means [●], a cGrate authorised vendor who provides the 543 Pay Services at its place of business; [*Drafting Note: Please insert the details of the Merchant*]
- 2.19. **“Merchant Account”** means the Merchant’s 543 platform trading account held with cGrate;
- 2.20. **“Merchant Payment Services”** means the virtual platform service that enable Customers to pay for goods and/or services to providers of such goods and/or services;
- 2.21. **“Online Payment Services”** means the virtual platform service that enable Customers to pay for goods and/or services online to providers of such goods and/or services;
- 2.22. **“Parties”** means, collectively, cGrate and the Merchant, and **“Party”** shall, as, the context requires, be a reference to any one of them;
- 2.23. **“POS”** means Point of Sale;
- 2.24. **“POS Machine Purchase Price”** means the amount payable for acquiring a POS machine from cGrate.
- 2.25. **“POS Machine Rental Amount”** means the rental amount for the POS device, amounting to K [●]; [*Drafting Note: Please insert the relevant amount*]
- 2.26. **“POS Paper Price”** means K [●]; [*Drafting Note: Please insert the relevant amount*]
- 2.27. **“Prime Rate”** means the rate of interest (nominal annual compounded monthly in arrears) from time to time published by cGrate’s bank from time to time, as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be prima facie proof thereof);
- 2.28. **“Second Line Support”** means the support services to be provided to the Customers by cGrate in respect of all system bug related issues, connectivity and integration problems with

the service and utility providers, and system reports, and all approved system enhancements;

- 2.29. **“Send Service”** means the money transfer service that enables a Customer to send funds standing in its credit from its transactional account held with an Issuer to a recipient within the Territory who is a registered 543 Pay user;
- 2.30. **“SMS”** means Short Message Service, a store and forward based protocol used by GSM cellular telephones to communicate with cGrate’s computers;
- 2.31. **“Signature Date”** means date on which the last of the Parties signs this Agreement;
- 2.32. **“Stock”** means the electronic tokens of value which the Merchant is authorised to sell to Customers pursuant to this Agreement;
- 2.33. **“Stock Price List”** means a schedule of prices charged by cGrate and communicated to the Merchant for purchase of items of Stock as may be amended by cGrate from time to time;
- 2.34. **“Territory”** means the Republic of Zambia;
- 2.35. **“VAT”** means value-added tax as levied in accordance with the VAT Act; and
- 2.36. **“VAT Act”** means the Value Added Tax Act, Chapter 331 of the laws of the Territory.

3. **INTERPRETATION**

In this Agreement, unless a contrary intention is implied or expressly indicated, the following shall apply:

- 3.1. Clause headings are for convenience only and shall not be used in the interpretation of this Agreement.
- 3.2. An expression which denotes:
 - 3.2.1. one gender includes the other genders;
 - 3.2.2. a natural person includes a legal person and vice versa; and
 - 3.2.3. singular includes plural and vice versa.
- 3.3. Any reference to an enactment is to that enactment as at the Effective Date and as amended or re-enacted from time to time.
- 3.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.

- 3.5. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.6. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.7. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 3.8. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definitions clause.
- 3.9. The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement, as expressly provided that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.10. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 3.11. Any reference in this Agreement to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- 3.12. The words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s.
- 3.13. The words "**other**" and "**otherwise**" shall not be construed as falling in the same class as any preceding words where a wider construction is possible.

4. **AGREEMENT**

cGrate and the Merchant, with effect from the Effective Date, agree that cGrate shall provide, and the merchant shall utilize a platform that will enable the merchant to provide the 543 Pay Services to the Customers, on the terms and in accordance with the conditions set out in this Agreement.

5. **COMMENCEMENT AND DURATION**

- 5.1. This Agreement comes into effect on the Effective Date and shall endure for a period of 24 (twenty-four) months, unless otherwise terminated earlier in accordance with its terms.

- 5.2. Notwithstanding anything herein to the contrary, either Party may terminate this Agreement at any time on 3 (three) months' written notice.

6. **543 PAY SERVICES**

- 6.1. cGrate undertakes to provide the 543 Pay Services to the Merchant in accordance with the provisions of this Agreement.
- 6.2. The 543 Pay Services shall enable the Customer to:
- 6.2.1. pay Merchants;
 - 6.2.2. process cash withdrawals;
 - 6.2.3. process cash deposits;
 - 6.2.4. process online payments;
 - 6.2.5. send funds to a 543 Pay registered recipient; and
 - 6.2.6. purchase goods and/or services.
- 6.3. Prior to the commencement of the 543 Pay Services, cGrate shall, where applicable, integrate the 543 Pay platform into the Merchant's core IT network systems in order to facilitate the operation of the 543 Pay Services.
- 6.4. The Parties acknowledge that the 543 Pay Services are dependent on an efficient IT network system, and thus the Merchant undertakes to maintain an efficient IT network system and Equipment which enables the integration of the 543 Pay Services platform.

7. **CUSTOMER REGISTRATION**

- 7.1. It is recorded that in order to utilize the 543 Pay Services, each Customer must duly register with cGrate as a user of the 543 Pay Services in accordance with this clause 7.
- 7.2. The Merchant shall procure, by, *inter alia*, marketing and advertising the 543 Pay Services to its clients, that the Customers register as users of the 543 Pay Services in accordance with the 543 Pay user interface tools or as otherwise directed by cGrate from time to time.

8. **CASH-OUT SERVICES**

- 8.1. cGrate hereby undertakes to provide the Cash Out Services to the Merchant in accordance with this clause 8.
- 8.2. The Cash-Out Services shall enable a Customer to withdraw from the Merchant funds standing in its credit with an Issuer bank, ("**Withdrawal Transaction**").

8.3. Each Withdrawal Transaction shall not exceed such maximum amount as may be determined and gazetted by the Bank Of Zambia ("**Withdrawal Transaction Limit**") from time to time.

8.4. As consideration for the provision of the Cash-Out Services in accordance with this Agreement and upon completion of each Cash-Out Service transaction, the Parties agree that the Merchant shall be entitled to share of the interchange fees payable by the issuers via ZECHL. The interchange fees will be settled to the merchant via cGrate platform.

9. **MERCHANT PAYMENT SERVICES**

9.1. cGrate hereby undertakes to provide the Merchant Payment Services to the Merchant in accordance with this clause 9.

9.2. The Merchant Payment Services shall enable:

9.2.1. a Customer to pay for goods and/or services through the Merchant, ("**Payment Transaction**"); and

9.2.1. the Merchant to electronically transfer funds standing in its credit in the Merchant Account to such Merchant's bank account held with an Issuer bank ("**Transfer Transaction**").

9.3. As consideration for the provision of the Merchant Payment Services in accordance with this Agreement and upon completion of each Merchant Payment Service transaction:

9.3.1. the Merchant is charged the sum of K10,00 (ten Kwacha) in respect of a Transfer Transaction;

9.3.2. the Merchant pays an amount equal to 2.5% (two and half percent) of value of the Payment Transaction completed.

10. **CASH-IN SERVICES**

10.1. cGrate hereby undertakes to provide the Cash-In Services to the Merchant in accordance with this clause 10.

10.2. The Cash-In Services enables the Customer to deposit funds through the Merchant to any recipient account held with an Issuer through the 543 Pay platform.

10.3. The Customer may only deposit funds of up to such maximum amount as may be determined and gazetted by the Bank Of Zambia from time to time.

10.4. As consideration for the provision of the Cash-In Services in accordance with this Agreement and upon completion of each Cash-In Service transaction the Merchant shall be entitled to a share of the interchange fees payable by the issuers via ZECHL. The interchange fees will be settled to the merchant via cGrate platform.

11. ONLINE PAYMENT SERVICES

- 11.1. cGrate hereby undertakes to provide the Online Payment Services to the Merchant in accordance with this clause 11.
- 11.2. The Online Payment Services enables the Customer to undertake payment transactions via the internet using any smart mobile telephone device or tablet.
- 11.3. As consideration for the provision of the Online Payment Services in accordance with this Agreement and upon completion of each Online Payment Service transaction, the Merchant pays an amount equal to 2.5% (two and half percent) of value of the Online Payment Service transaction completed, which amount shall, simultaneously with such completion.

12. SEND SERVICES

- 12.1. cGrate hereby undertakes to provide the Send Services to the Merchant in accordance with this clause 12.
- 12.2. The Send Service enables the Merchant to make electronic funds transfers to any person registered as a user of the 543 Pay Services.
- 12.3. Upon completion of each Send Service transaction:
 - 12.3.1. the Merchant is charged the sum of K[●]. ([●] Kwacha) in respect of an intra-Issuer Send Service transaction so completed by the Merchant, which amount shall, simultaneously with completion of such transaction, be paid to cGrate; and/or
 - 12.3.2. the Merchant is charged the sum of K[●]. ([●] Kwacha) in respect of an inter-Issuer immediate clearance Send Service transaction so completed by the Customer.

13. EVD SERVICES

- 13.1. cGrate hereby undertakes to provide the EVD Services to the Merchant in accordance with this clause 13.
- 13.2. The EVD Services shall facilitate for the Merchant to sell and distribute Stock and other vouchers of value, including but not limited to the following:
 - 13.2.1. airtime vouchers of mobile telephone network operators including Airtel, MTN and Zamtel;
 - 13.2.2. television subscription payments, including DSTV and GOTV;

- 13.2.3. utilities' bills payments, including ZESCO; and
- 13.2.4. insurance policy premium payments, including Madison Life.
- 13.3. cGrate reserves the right, in its sole and absolute discretion, to add or remove any service providers and/or their respective services that fall under the EVD Services offering.
- 13.4. In the event that in providing the EVD Services, the Merchant utilizes the POS, the following provisions shall apply:
 - 13.4.1. cGrate shall:
 - 13.4.1.1. supply the Merchant with the POS either for monthly rental at the prescribed POS Machine Rental Amount, or for outright purchase at the prescribed POS Machine Purchase Price;
 - 13.4.1.2. provide any and all service and maintenance support to the POS;
 - 13.4.1.3. pay all communication charges relating to the POS including but not limited to data charges, GPRS charges, and POS SIM card charges where applicable; and
 - 13.4.1.4. supply the Merchant with the POS paper at the POS Paper Price per each roll;
 - 13.4.2. cGrate reserves the right to recall any deployed POS rented device under rental in the event that the Merchant fails to meet its POS Target.
- 13.5. EVD Services Fees
 - 13.5.1. The Parties hereby agree that all discounts earned from service providers in respect of the EVD Services will be shared between the Merchant and cGrate as follows:
 - 13.5.1.1. the Merchant, as to [●]%; and
 - 13.5.1.2. cGrate, as to [●]%. ***[Drafting Note: Please insert the respective amount as negotiated]***
 - 13.5.2. The Parties undertake to fully disclose to each other all service provider discounts at all times.

14. MERCHANT ACCOUNT AND TRADING OF STOCK

- 14.1. The Merchant shall hold and maintain the Merchant Account through which all of the Merchant's trading activities in respect to the 543 Pay Services shall be conducted.

- 14.2. In the event that the Merchant wishes to conduct Stock trade, the Merchant shall place an order for Stock with cGrate and simultaneously pay the equivalent cash consideration, either by means of direct deposit or electronic funds transfer, without set-off or deduction and free from any bank fees and charges, into cGrate's nominated bank account.
- 14.3. Following the payment contemplated in 14.2 above, cGrate shall credit the Merchant Account and use its reasonable endeavours to make Stock available to the Merchant within 24 (twenty four) hours after the receipt of confirmation of the full payment for the order, but will have no liability to the Merchant or any third party as a result of any delays in or non-delivery of any such Stock orders.
- 14.4. For each and every voucher sold by the Merchant, cGrate shall deduct the voucher value less the respective discount for the voucher sold.
- 14.5. Upon reasonable notice to the Merchant, cGrate may, from time to time, and in its sole and absolute discretion, vary the Stock Price List and/or any of the discounts.

15. SERVICE FEES AND PAYMENT TERMS

- 15.1. All payments and fees due to the Merchant in terms of this Agreement shall be paid, into the Merchant Account.
- 15.2. The parties agree that each party is liable for payment of their share of VAT and any other taxes that may arise from the fees and earnings earned from the provision of the services agreed in this agreement.
- 15.3. If payment is demanded of the Merchant of any amount in terms of or arising out of this Agreement and the Merchant disputes the obligation to make payment, the Merchant may make the payment under protest and institute action therefor.

16. SERVICE SUPPORT

- 16.1. The Parties agree that in the event that any service related queries that may be raised by a Customer, the Merchant shall provide such Customer with the First Line of Support and cGrate shall provide the Second Line of Support as may be required by the Customer from time to time.
- 16.2. Each Party shall endeavour to address all service related queries from a Customer in respect of the 543 Pay Services within 48 (forty eight) hours of receipt thereof.
- 16.3. cGrate shall manage and provide all service support to the Merchants.

17. MARKETING OF THE SERVICES

- 17.1. Each Party shall use its reasonable endeavours to market and advertise the 543 Pay Services at its own cost.

- 17.2. The Parties may by written agreement between them jointly market and advertise the 543 Pay Services and any and all marketing and branding costs associated therewith shall be equally borne by the Parties or as otherwise agreed to between them.

18. **EQUIPMENT AND TRAINING MATERIAL**

- 18.1. cGrate shall procure and make available to the Merchant all the necessary Equipment to be hosted by the Merchant's system for the provision of the 543 Pay Services.
- 18.2. cGrate shall select and procure the Equipment in accordance with industry good practice.
- 18.3. Ownership and title of all Equipment shall at all times vest in cGrate, and nothing herein shall be construed to indicate otherwise.
- 18.4. The Merchant shall take full responsibility for the care and maintenance of any and all Equipment provided to it from any such date that such Equipment is in its custody.
- 18.5. In the event of any damage, destruction or loss occurring to any Equipment whilst in the Merchant's custody, the Merchant shall pay such costs to repair or replace the damaged, destructed or lost Equipment, as the case may be.
- 18.6. cGrate shall provide the Merchant with the necessary training material on the 543 Pay Services.

19. **MERCHANT'S UNDERTAKINGS**

- 19.1. The Merchant undertakes throughout the term of this Agreement:
- 19.1.1. to co-operate with cGrate and to comply with the reasonable requests made by cGrate in order to facilitate the rendering of the 543 Pay Services;
 - 19.1.2. to use the 543 Pay Services only for the intended purpose in accordance to this Agreement, and not to do anything that damages the good name and reputation of cGrate or the 543 Pay Services in the fulfilment of its obligations under this Agreement;
 - 19.1.3. to act in strict accordance with the instructions and directions provided, and standards set by, cGrate from time to time, regarding advertising, promotions (including promotional items) and publicity in relation to the subject matter of this Agreement; and
 - 19.1.4. where the Merchant conducts Stock trade, to, at all times, use all reasonable commercial endeavours to market, distribute, and sell the Stock.
- 19.2. Without derogating from the generality of sub-clause 19.1 above, the Merchant shall:

- 19.2.1. provide cGrate with access to such requested information as may be reasonably necessary for the performance of the 543 Pay Services; and
- 19.2.2. take decisions and obtain relevant approvals as soon as is reasonably practicable in order to facilitate timeous and efficient provision of the 543 Pay Services by cGrate.
- 19.3. cGrate shall not be liable to the Merchant for any delay or failure to render the 543 Pay Services either at all or in a timely manner.

20. **PROTECTION OF PERSONAL DATA**

- 20.1. The Parties acknowledge and agree that in implementing the provisions of this Agreement, and/or undertaking their respective obligations, they may become privy to certain personal and confidential information of the Customers, ("**Personal Information**"). The Parties, therefore agree as follows:
 - 20.1.1. use the Personal Information solely for purposes of implementing the transactions contemplated in this Agreement;
 - 20.1.2. ensure that such Personal Information is only used for purposes authorised by the Customer;
 - 20.1.3. notify the Customer of any request it receives from third parties for access to or changes to the Personal Information;
 - 20.1.4. not transfer the Personal Information in any manner to any third party unless authorised in writing by the Customer; and
 - 20.1.5. comply with all laws, policies and procedures relating to the protection, storage, handling, privacy, processing, retention and destruction of Personal Information; and
 - 20.1.6. take appropriate and reasonable technical and organisational security measures to prevent the loss of, damage to or unauthorised destruction of the Personal Information, and the unlawful access to or processing of the Personal Information.
- 20.2. The measures taken to protect the Personal Information must at all times be at least of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with the best industry practice for the protection, control and use of personal data.

21. WARRANTIES

- 21.1. In addition to the other warranties given by cGrate in this Agreement, cGrate warrants and represents to the Merchant that:
- 21.1.1. it has the necessary skills and expertise to provide the 543 Pay Services in terms of this Agreement; and
 - 21.1.2. all work related to the provision of the 543 Pay Services will be skilfully performed in all respects in accordance with the Applicable Law and industry good practices.
- 21.2. Each Party represents and warrants to the other that, as at the Effective Date –
- 21.2.1. it has the requisite authority and capacity to enter into this Agreement;
 - 21.2.2. this Agreement constitutes obligations that are legal, valid, binding and enforceable against it in accordance with its terms;
 - 21.2.3. the provisions of this Agreement are not in conflict with, and will not constitute a breach of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
 - 21.2.4. it has all permits required to perform or receive performance of the 543 Pay Services and all obligations herein (as applicable) and it has obtained and shall keep current any and all necessary licences, approvals, permits, certifications and authorisations which are required for the performance of its respective obligations under this Agreement; and
 - 21.2.5. it has not and shall not commit the other Party or use the other Party's name on any business transactions without obtaining the prior written consent of such other Party.
- 21.3. Each of the representations and warranties given by a Party in terms of this Agreement shall *prima facie* be deemed to be a material representation of fact inducing the other Party to enter into this Agreement and be a separate warranty and in no way be limited or restricted by reference to or inference.

22. NON-EXCLUSIVITY

The Parties hereby acknowledge and agree that the Merchant holds no exclusive right to the use of the 543 Pay Services and/or any such related cGrate products or services and that cGrate is and shall remain at liberty at all times to provide any such services to any third party as it may, in its sole and absolute discretion, deem fit.

23. INDEPENDENT CONTRACTOR

23.1. In providing the 543 Pay Services as contemplated in this Agreement, cGrate is acting as an independent contractor, accordingly, the Merchant shall incur no obligation with regard to cGrate or its employees in terms of any law applicable to employees.

23.2. Neither Party shall be an employee, agent, partner or joint venture partner of the other, and neither Party shall be entitled to bind nor attempt to bind the other to any obligation nor to use the other Party's name, property, trademarks or other assets and information except as provided for in this Agreement or with the prior written consent of the other Party.

24. GOOD FAITH

The Parties undertake to at all times work in the closest co-operation and in good faith with each other in carrying out and giving effect to this Agreement.

25. LIMITATION OF LIABILITIES

25.1. Save as otherwise expressly provided for in terms of this Agreement, cGrate shall not be liable in any manner whatsoever for any Customer related claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses or other liabilities including without limitation, claims for personal injury arising out of, related to or resulting from the Customer's use of the services rendered by cGrate as contemplated herein.

25.2. Neither Party shall be liable to the other for any:

25.2.1. loss of profits;

25.2.2. loss of business;

25.2.3. loss of goodwill; or

25.2.4. any indirect or consequential loss or damages howsoever arising even if the other Party has been advised of the possibility of such damages in advance.

25.3. The Merchant hereby indemnifies and holds cGrate and its representatives or agents harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses or other liabilities including without limitation, claims for personal injury or death arising out of, related to or resulting from:

25.3.1. fraudulent acts or omissions or wilful default or misrepresentation on the part of the Merchant, its personnel or any third party under the control of the Merchant;
or

- 25.3.2. the breach of any of the representations or warranties by the Service Provider or anyone directly or indirectly employed by it or anyone for whose acts or omissions the Merchant may be liable,

which indemnity obligations shall be in addition to any other rights available to any party indemnified hereunder.

26. INTELLECTUAL PROPERTY

- 26.1. All proprietary assets or related materials provided by a Party for use in accordance with this Agreement shall remain the exclusive property of that Party, who shall retain all Intellectual Property rights therein. Where one Party grants the other access to its proprietary assets, this shall be restricted to a non-transferable right of use solely in relation to this Agreement.
- 26.2. cGrate owns and shall continue to own all Intellectual Property rights in the 543 Pay platform and the 543 Pay Services and unless expressly stated, nothing in this Agreement shall entitle the Merchant to such Intellectual Property rights.
- 26.3. cGrate shall, at its discretion and where it is necessary, grant to the Merchant (and if necessary will procure the grant to the Merchant) a licence to allow the use of cGrate's trademark and brand livery ("**the Trademarks**") by the Merchant for the duration of the Agreement and such licence shall be subject to the provisions set out in sub-clause 26.6.
- 26.4. cGrate shall grant to the Merchant free of charge such other licences for the use of Intellectual Property owned by cGrate as are necessary from time to time to enable the Merchant to receive and use the 543 Pay Services as contemplated by this Agreement subject to the approval of cGrate.
- 26.5. The Merchant shall be entitled to use and display the Trademarks in accordance with this Agreement to promote the 543 Pay Services and subject to the reasonable guidelines and directions of cGrate as notified to the Merchant from time to time.
- 26.6. In the event of cGrate granting the Merchant the licence to use the Trademarks as envisaged in clause 26.3, the Parties accordingly agree that such licence shall be subject to the following provisions –
- 26.6.1. the Merchant undertakes to enter into such agreement/s as from time to time may be required by cGrate in order to protect the Intellectual Property rights of cGrate. In particular, the Merchant undertakes to take whatever steps may reasonably be required by cGrate to protect such Trademarks;
- 26.6.2. the Merchant shall not apply to register or permit any third party to use or apply to register any of the Trademarks; and
- 26.6.3. all Intellectual Property rights in or pertaining to the Trademarks shall remain the property of cGrate and the Merchant shall acquire no rights therein.

26.7. The Merchant shall -

- 26.7.1. notify cGrate forthwith upon becoming aware of any unauthorised use by any third party of cGrate's Intellectual Property or of any infringement or alleged infringement by any third party of any of cGrate's rights as set out above; and
- 26.7.2. extend to cGrate all assistance reasonably requested by cGrate in the conduct by cGrate of any legal proceedings instituted by or against cGrate in relation to cGrate's Intellectual Property.

27. CONFIDENTIALITY

- 27.1. The Receiving Party shall treat and hold as confidential all Confidential Information which it may receive from the Disclosing Party or which becomes known to it during the currency of this Agreement.
- 27.2. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its Confidential Information:
 - 27.2.1. it will not utilise, employ, exploit, or in any other manner whatsoever use the Confidential Information for any purpose other than the carrying out of its obligations under this Agreement;
 - 27.2.2. it will restrict the dissemination of the Confidential Information to only those of its staff who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis;
 - 27.2.3. it will initiate, maintain and monitor internal security procedures to prevent unauthorised disclosure by its staff;
 - 27.2.4. it will take all practical steps, both before and after disclosure to impress upon its staff who are given access to Confidential Information, the secret and confidential nature thereof;
 - 27.2.5. it will not at any time, whether during the term of any agreement or thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to third parties unless authorised by the Disclosing Party; and
 - 27.2.6. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its staff, will be, and will at all times remain, the sole and absolute property of the Disclosing Party and shall be promptly handed over to the Disclosing Party when no longer required for the purposes of this Agreement.

27.3. The obligations in this clause 27 shall not apply to any information which:

27.3.1. is lawfully in the public domain at the time of disclosure;

27.3.2. subsequently and lawfully becomes part of the public domain by publication or otherwise;

27.3.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; or

27.3.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order. In the latter case, the Receiving Party shall promptly inform the Disclosing Party of that legal requirement so that the Parties may take appropriate measures to minimise the consequences of such disclosure.

28. **FORCE MAJEURE**

Neither Party shall be in breach of this Agreement by reason of any failure or delay in the performance of any obligation under this Agreement where such failure or delay arises out of any cause beyond the reasonable control and without the fault or negligence of such Party. Such causes shall include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war or civil disturbance, strikes of labour unrests, embargoes and other governmental actions or regulations.

29. **CONSEQUENCES OF TERMINATION**

29.1. If this Agreement is terminated for any reason:

29.1.1. cGrate shall immediately discontinue the provision of the 543 Pay Services;

29.1.2. any and all fees due pursuant to the provision of the 543 Pay Services and payable to cGrate shall become immediately due and payable by the Merchant; and

29.1.3. the Merchant shall hand over all relevant documents belonging to cGrate to cGrate.

29.2. The termination of this Agreement shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or impliedly intended to come into force or continue in force on or after its termination.

30. **BREACH**

30.1. Should either Party ("**Defaulting Party**") commit a breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days after receiving written notice from the other Party ("**Aggrieved Party**") requiring the Defaulting Party to remedy such breach,

then the Aggrieved Party shall, without prejudice to its other rights in law, be entitled to cancel this Agreement or to claim immediate specific performance of all of the Defaulting Party's obligations then due for performance, without prejudice to the Aggrieved Party's rights to claim damages.

30.2. A Party's right to claim damages shall be limited to the actual expenses they incurred in entering into and discharging its obligations under this Agreement.

31. **DISPUTES**

Save where any other dispute resolution mechanisms are provided for elsewhere in this Agreement, should any dispute arise between the Parties in connection with or arising out of this Agreement, including in relation to:

- 31.1. the formation or existence of this Agreement;
- 31.2. the implementation of this Agreement;
- 31.3. the interpretation or application of the provisions of this Agreement;
- 31.4. the Parties' respective rights and obligations in terms of or arising out of, or the breach or termination of this Agreement;
- 31.5. the validity, enforceability, rectification, termination or cancellation of this Agreement, whether in whole or in part;
- 31.6. any documents furnished by the Parties pursuant to the provisions of this Agreement; or
- 31.7. any matter affecting the interests of the Parties in terms of this Agreement, (the "**Dispute**"),

then the disputing Party may first escalate the dispute for informal resolution to be held between the Parties, as contemplated in clause 32. If the Dispute still remains unresolved, then either Party may refer the Dispute for arbitration in terms of clause 33, as applicable.

32. **INFORMAL RESOLUTION**

- 32.1. If a Dispute arises between the Parties, the disputing Party may notify the other Party in writing of its intention to amicably resolve the Dispute.
- 32.2. The Parties shall negotiate with each other in good faith in an effort to resolve the Dispute. If such negotiations fail or do not occur within 7 (seven) days (or such other period that the Parties agree to) after the referral of the Dispute, then either Party may refer the Dispute to arbitration.

33. **ARBITRATION**

- 33.1. If informal resolution is unsuccessful, and if this Agreement requires the Dispute to be referred to arbitration or does not specify a dispute resolution mechanism, the Dispute shall be determined in terms of this clause 33.
- 33.2. The Parties shall agree in writing to the identity of the arbitrator within 10 (ten) days of the referral of the Dispute to arbitration, failing which, the arbitrator shall be appointed at the request of either Party in terms of the Applicable Law. The decision of the arbitrator shall be final and binding on the Parties to the Dispute and may be made an order of the court at the instance of either Party.
- 33.3. Nothing contained in this clause 33 prevents either Party from seeking interim urgent relief from any court of competent jurisdiction.
- 33.4. The Parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order.

34. **ADDRESSES**

- 34.1. The Parties choose the following as their addresses for the service of all notices under this Agreement.

34.1.1. **cGrate:**

Physical address: Plot No 35214, Alick Nkhata Road, Kalingalinga, Lusaka, Zambia.

Email: accounts@cgrate.co.zm

Fax: +260 211 840008.

Marked for the attention of: The Managing Director.

34.1.2. **The Merchant:**

Physical address: [●]

Email: [●]

Fax: [●]. *[Drafting Note: Please insert the relevant details]*

or at such other address of which the Party concerned may notify the other Party in writing.

- 34.2. Any notice given in terms of this Agreement shall be in writing and shall:

- 34.2.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; or
- 34.2.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting, unless the contrary is proved.
- 34.3. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice or communication to such Party.
- 34.4. The Parties record that whilst they may correspond by email during the currency of this Agreement for routine operational reasons, no formal notice, demand or request required in terms of this Agreement may be given sent or concluded by email.

35. **COSTS**

Each Party shall bear its own costs of and incidental to the preparation of this Agreement, including prior drafts and consultations.

36. **WHOLE AGREEMENT, NO AMENDMENT**

- 36.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 36.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 36.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an *estoppel* against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 36.4. To the extent permissible by law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

37. **MISCELLANEOUS**

37.1. Where the approval, agreement or consent of any Party is required under any provision of this Agreement to any particular matter, such approval, agreement or consent may be given subject to such terms and conditions as that Party may require and any breach of such terms and conditions shall *ipso facto* be deemed to be a breach of the Agreement.

37.2. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

37.3. Notwithstanding anything to the contrary contained herein, this Agreement shall inure for the benefit of and be binding on the successors-in-title and permitted assigns of the Parties. Accordingly, the rights and obligations of each Party arising out of or pursuant to this Agreement or its termination or cancellation shall devolve upon and bind its successors-in-title and permitted assigns.

38. **GOVERNING LAW**

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

39. **ASSIGNMENT**

Neither Party may cede, delegate, assign, transfer, or otherwise dispose of its rights nor obligations under this Agreement to a third party without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

40. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from the Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

41. **COUNTERPARTS**

This Agreement may be signed in counterparts and the individual signed versions thereof shall together constitute the agreement between the Parties.

For: **CGRATE ZAMBIA LIMITED**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

For: **[•]**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____