

MO626PAY MERCHANT AND AGENT AGREEMENT

1 PARTIES

- 1.1 **THIS AGREEMENT**, made and entered into this.....day of.....
20..... by and between
.....located
at (hereunder called “the Merchant”) and **NATIONAL BANK
OF MALAWI PLC**, P O Box 945, Blantyre, Malawi (hereunder called
“the Bank”).
- 1.2 The Bank is engaged in general banking business which includes but not limited to mobile push payment solutions (Mo626Pay) which provide a channel (mobile channel) to access the Visa network, with VisaNet providing the route for mobile accessible accounts to transact with each other.
- 1.3 The Mo626Pay service desires to honour a mode of payment in connection with the sale and purchase of merchandise and/or services.
- 1.4 The Bank desires that the Mo626Pay service should enable payment to a merchant, person-to-person money transfer, cash deposit and cash withdrawal. The solution is thus adapted for a card-less (no plastic card), device-less (no POS machine), digital world.

2 RECORDAL

This agreement provides for the acceptance of Mo626Pay /Push payments subject to the terms and conditions as set out hereunder.

3 INTERPRETATION

In this agreement, unless clearly inconsistent with or otherwise indicated by the context -

- 3.1.1 “Customer” means the person that initiates a payment, funds transfer, agent cash withdraw or agent cash deposit through the consumer application (Mo626Pay, Visa on Mobile, Masterpass and other QR payment applications).
- 3.1.2 “Consumer Application” means the mobile phone application through which payment transactions can be made.
- 3.1.3 “Issuer” means the Bank or any other entity which provides the consumer application.
- 3.1.4 “Merchant” means a person or company engaged in the business of selling or trading goods and/or provision of services for profit.
- 3.1.5 “Static QR Code ” means Quick Response code with fixed Merchant information encoded in its pattern.
- 3.1.6 “Dynamic QR Code” means Quick Response code where by its encoded information is modifiable.

- 3.1.7 “Merchant Application” means the mobile phone application provided by the Bank to the merchant.
- 3.1.8 “Acquirer” means the Bank or any other entity which provides the merchant application.
- 3.1.9 “Association Rules” means Visa, Mastercard and National Switch rules.
- 3.1.10 “Push Payment” means a transaction that is initiated by the customer that transfers funds from the customer’s account to the recipient’s or merchant’s account.
- 3.1.11 “Person to Person Payment” a transfer of funds between your bank account and the bank account of another individual.
- 3.1.12 “Cash in” means to deposit money through an Agent to a bank account.
- 3.1.13 “Cash out” means withdrawing money from your bank account through an Agent.
- 3.1.14 “the Cardholder” means the person to whom a card has been issued.
- 3.1.15 “Merchant discount” means a portion of the total value of all transactions effected by the Merchant and payable to the Bank.
- 3.1.16 “Agent” means the banks retail arm, supporting cash-in/cash-out transactions as well as person-to-person fund transfers, mobile phone, airtime purchases, and bill payments.
- 3.1.17 “M-PIN” means the Mobile Personal identification number issued to the Merchant or Customer by the Issuer.
- 3.1.18 “Laundering” means the presentation of sales vouchers that did not result from an act between the merchant and the Customer.

4 ACCEPTANCE OF PUSH PAYMENTS

- 4.1 The Bank will provide QR Code(both static and dynamic) and the Merchant Application to the merchant. The QR code display contains information about the merchant, required by the consumer to initiate the payment.
- 4.2 The customer will initiate a push payment by either scanning the QR Code or entering the Merchant ID on the consumer application.
- 4.2 The Merchant undertakes to supply the goods and/or services at a price not exceeding the Merchant’s normal cash price in respect thereof and not to discriminate against any customer by adding any surcharge or by setting a minimum or maximum transaction amount as a condition of accepting push payments.

- 4.3 The Bank shall pay to the Merchant the value of all goods and/or services supplied by the Merchant based on the posting of an Electronic Transaction as proved by the Mo626Pay reports. However, the Bank may retain funds in the case of excessive charge backs, bankruptcy, fraud, suspected fraud, or invalid transactions.
- 4.4 The Bank is irrevocably authorised to debit the Merchant's nominated bank account a percentage (Merchant Discount Rate) of the total day volume sales as agreed by the two parties or as revised from time to time.
- 4.5 The Merchant undertakes to operate the Mo626Pay service in accordance with the terms of this agreement and the Bank's Standard operating instructions from time to time.
- 4.6 Instructions and standards issued by the Bank in form of operating manuals, training materials, emails and bulletins will be considered as part of this agreement.

5 LIMITS

- 5.1 The authorised transaction limits at each place of business of the Merchant shall be advised to the merchant by the Bank.
- 5.2 The Bank shall have the right to vary such limits from time to time by giving the Merchant 7 day notice in writing of such amendment.
- 5.3 The Bank shall have the right to vary the limits at any time by giving the Merchant written 7 day notice, should the Merchant commit a breach of any material provision of this agreement.

6 AUTHORIZATIONS

- 6.1 The merchant shall make sure that they clearly display the correct QR on their business premises for purposes of accepting push payments.
- 6.2 The merchant must make sure that they receive a notification from the Bank as confirmation of a successful transaction either through the merchant application or SMS.
- 6.3 The Bank shall not be held liable for failed transactions for which the merchant never received confirmation.
- 6.4 The merchant must reverse all transactions done in error immediately after the error has been reported or observed.

7 MERCHANT'S OBLIGATIONS

- 7.1 The Merchant shall keep transaction related documents for a period of not less than 7 years. Such documentation shall include but not limited to signed invoices, receipts, quotations, delivery notes, sale agreements, contracts, copy of IDs / Passports and offer letters.
- 7.2 The Merchant shall submit the transaction related documents upon request thereof to the Bank within 7 (seven) days from date of such request, failing which the Bank shall be entitled to debit the account of the Merchant with the amount of the transaction.
- 7.3 The Merchant acknowledges that the laundering of sales shall be regarded as a breach of this contract.

7.4 Merchants shall ensure that they avail Mo626Pay to customers for payment of goods and services at all times and that they immediately report any faults to the Bank.

8 OPERATION OF MO626PAY

The Merchant shall:

8.1 Safeguard the QR Code and the merchant application in a proper, correct and efficient manner strictly in accordance with the Bank's operating instructions and any such other instructions as the Bank may give the Merchant from time to time.

8.2 Ensure that the Usage of the Mo626Pay does not breach or contravene any laws, by-laws, rules or other regulations relating to such operation.

8.3 Be fully responsible for any loss or damage to the Mo626 infrastructure in his/her premises whether the same is caused by fire, theft, vandalism or otherwise.

8.4 Report any loss or damage, fault, or suspected fault on Mo626Pay to the Bank immediately.

8.5 Ensure that every Payment is properly verified prior to the completion of any transaction made with any customer of the Merchant.

8.6 Be obliged to report to the bank any cases of fraud, suspected fraud, money laundering or attempted fraud by a Customer.

9 WARRANTIES

The Merchant warrants that:

9.1 all statements of fact contained in the transaction related documents will be true.

9.2 goods and/or services will be delivered or supplied at the Merchant's normal cash price and that the price will contain no additional charges or element of credit whatsoever.

9.3 the said transactions between the Merchant and the customers will not be illegal.

9.4 the Bank is indemnified against any claim or liability that may arise from a dispute between the Merchant and the Customer in respect of goods and/or services supplied or delivered and the onus shall be on the Merchant to provide evidence to the satisfaction of the Bank that the debit of the customers' account was authorised by the owner;

9.5 the goods and/or services referred to in the electronic transactions will be in fact supplied by the Merchant to the Customer.

9.6 there will be due compliance with all the terms of this Agreement.

10 INVALID TRANSACTIONS

10.1 Mo626Pay transactions will be invalid if:

10.1 The merchant does not receive confirmation alert through the merchant application or SMS.

10.2 The transaction does not comply with any warranty contained in Clause 9 above

10.3 at the time of the conclusion of the transaction, any term of this agreement has been violated;

10.4 the shipped goods paid for by the Cardholder were received broken or otherwise not suitable for the purpose for which they were sold, and the Cardholder tendered return thereof.

10.5 The price charged to the cardholder is more than the merchant's normal prices for goods and/or services rendered.

10.2 The Bank may in its sole discretion elect to treat any of the above-mentioned transactions as valid but without prejudice to the Bank's right in any subsequent transaction to treat any defect of a similar kind as invalid.

10.3 In the event of an invalid transaction as set out above, the Bank shall have the right to reverse the said transaction as described in Clause 13.1.1 hereof.

11 REFUNDS

11.1 Goods purchased may on reasonable grounds be exchanged by the Customer or returned to the Merchant and if the purchase price thereof is to be refunded to the Customer or should the Merchant allow an adjustment of the purchase price, a refund transaction must be completed through the NBM Merchant Application.

11.2 The Merchant may not make a cash refund to credit a Customer.

11.4 If using a POS, a POS generated receipt must be provided to the Customer.

11.6 The Merchant shall retain a copy of the POS generated receipt for a period of at least 180 (one hundred and eighty) days.

12 OTHER PROVISIONS RELATING TO MO626PAY

12.1 Mo626Pay equipment shall remain the property of the Bank and nothing contained in this Agreement shall confer or be deemed to confer any interest in the equipment to the Merchant and upon termination of this agreement, the Merchant shall return the equipment to the Bank. The Merchant acknowledges that he has a duty of care to the Bank in respect of the equipment and undertakes to compensate the Bank in the event of damage caused to the equipment due to negligence and/or wilful conduct on the part of the Merchant and/or his servants/agents.

12.2 Any equipment supplied to the Merchant in terms of this agreement shall remain the property of the Bank and the Merchant shall (if applicable) give written notice to any lessor of the premises on which the Merchant is trading of the fact that the Bank is the owner of such equipment.

12.3 The Merchant must take due and proper care of any equipment and shall be liable to the Bank for any damage to or loss of any equipment supplied by the Bank. The Merchant must forthwith notify the Bank in writing by means of email of such damage to or loss of any equipment.

12.4 The Merchant shall ensure that the QR Code including the markings thereon and/or merchant application are not altered, adjusted, modified or otherwise interfered or tampered with unless the same has been approved by the Bank.

12.5 In the event of this agreement being cancelled for any reason whatsoever, the Merchant shall forthwith return to the Bank each equipment supplied by the Bank and the Bank shall be entitled to take possession of such equipment on the premises of the Merchant where it is kept. Should the Merchant return the equipment to a service centre of the Bank, then the nearest Regional Office of the Digital Financial Services Division of the Bank must be informed by email of such action.

12.6 The Merchant shall under no circumstances relocate a QR Code from one sales outlet to another unless permitted and effected by the Bank.

12.7 The Merchant shall be responsible for the payment of any penalties, charges or additional charges that may arise due to breach of any terms of this agreement or illegal use of Mo626Pay. The penalties, charges and fees may be applied by any Governmental or non-Governmental body having the authority to control the use of the QR Code or any connections required for the proper functioning of the service.

12.8 Merchant shall only use software supplied or approved by the Bank from time to time in accordance with the procedure manual. The merchant may use their mobile phones to run the merchant application.

12.9 The Bank shall not be liable for any damage or loss in the event of a network breakdown, system failure or equipment malfunction or arising from the destruction of or damage to facilities caused by power failures or similar occurrences or loss or damage caused by events beyond the Bank's control and/or the fact that the Merchant or Cardholder is not able to gain access to Mo626Pay or to utilise it.

13 DEBITING OF MERCHANT'S ACCOUNT

13.1 The Bank shall be entitled to debit the Merchant's bank account with:

13.1.1 the value of reversals transactions.

13.1.2 the Merchant discount referred to in clause 4.4. The Merchant acknowledges that the fee as described in clause 4.4 may be adjusted by the Bank by notification of such adjustment to the Merchant.

13.1.3 any refund due to a Customer and not rectified by the Merchant.

13.1.4 any overpayments due to clerical or electronic errors by either party.

13.1.5 the value of disputed transactions as raised by Customers with the Bank.

13.1.6 the total value of disputed transactions lost as a consequence of the Merchant's failure to provide valid transaction related documents within 7 (seven) days of being requested to do so by the Bank, subject to the provisions of Clause 7.1.

13.1.7 interest at the Bank's prime overdraft rate payable by the Merchant to the Bank on any sum due.

13.1.8 the total value of fraudulent or suspicious transactions until investigations are concluded.

13.1.9 Any other charges that may become due from the Merchant in respect of the Bank's Mo626Pay transactions.

13.2 The Merchant will pay all debits upon presentation and the costs associated with any cheques drawn by the Bank in respect thereof will be for the Merchant's account.

13.3 The Merchant hereby irrevocably authorises the Bank to debit its nominated Bank account . number at the branch of The Merchant undertakes to immediately notify the Bank in writing of any changes in its bank account details.

13.4 The values referred to in this clause will be subject to exchange rate variations where applicable.

14 FRAUDULENT TRANSACTIONS

14.1 In this Clause the term "fraudulent transactions" means any transaction which in terms of the common law or statute would constitute fraud (irrespective of whether an electronic authorization was obtained) and will include any purchase and/or transaction arising from the use of Mo626Pay by a person other than the authorized Customer or the use of a Consumer application which has not been provided by a *bona fide* issuer.

14.2 The Merchant shall not process transactions that it knows or should have known were fraudulent or unauthorised by the Customer. The Merchant agrees that it shall be always responsible for the actions of its employees.

14.3 The Bank is entitled to debit the Merchant's Bank account at any time with the value of all suspected and confirmed fraudulent transactions deposited or electronically posted by the Merchant.

14.4 The Bank reserves the right to immediately terminate this agreement if fraud is perpetrated by the Merchant.

15 DISCLOSURE OF INFORMATION

15.1 The Merchant must advise the Bank in advance of any material change in the nature of its business and/or ownership as indicated on the application form.

15.2 The Merchant must disclose to the Bank information about any previous Merchant Agreements it had concluded with other financial institutions, including but not limiting to any restrictive conditions and the reasons for cancellation of the said Merchant Agreements. The Merchant hereby authorises the Bank to investigate the Merchant's previous Merchant Agreements.

15.3 The Merchant may not disclose, sell, purchase, provide or exchange Customer's name or account number information in whatever form, including but not limited to the form of printed receipts, carbon copies of receipts, mailing lists, tapes, or other media obtained by reason of a Mo626Pay transaction, to Third Parties, except as required by Law. The Merchant must keep all system and media containing account, Customer or transaction information (physical or electronic, including but not limited to account number, signatures of Cardholders) in a secure

manner, to prevent access by or disclosure to anyone other than the Merchant's authorised personnel or the Bank. The Merchant must destroy in a manner that will render the data unreadable, all such media that the Merchant no longer deems necessary or appropriate to store.

- 15.4 The Bank may disclose information concerning the Merchant to VISA International Service Association, MasterCard International Incorporated and other financial institutions for use in any fraud prevention schemes they may set-up, including the NATIONAL MERCHANT ALERT SERVICE, the MERCHANT PERFORMANCE REPORTING SERVICE and the MEMBER ALERT TO CONTROL HIGH RISK (MATCH) SYSTEM, for the purpose of assisting the Bank and the said institutions in identifying Merchants who are or may become involved in, amongst other things, fraud or suspected fraud, bankruptcy or any other similar proceedings and any other such matter which would assist the Bank and the other financial institutions in their effort to prevent fraud.

16 INSPECTIONS

The Bank has the right to conduct physical inspections and investigations at the Merchant's premises in handling claims of Customers and for purposes of investigating suspected fraud and money laundering. In the event that the Bank suspects any irregularities during such investigations, the Bank shall have the right to take possession of all Mo626Pay equipment on the Merchant's premises.

17 ACCOUNTS

The Merchant shall raise any query regarding the correctness or any other aspect of any entry on his account within 30 (thirty) days from the date on which such entry appeared on the bank statement relating to his current account, failing which the Merchant shall forfeit any claim it may have against the Bank with regards to such entry.

18 PROCEDURE MANUALS

18.1 The Bank shall from time to time, issue the Merchant with a Procedure Manual and/or a Quick Reference Guide which regulate the use of Mo626Pay Service including the processing of transactions and which shall be strictly complied with by the Merchant at all times.

18.2 The Procedure Manual and the Quick Reference Guide shall be deemed to form part of this Agreement.

18.3 The Bank may amend the Procedure Manual and the Quick Reference Guide at any time by notifying the Merchant of such amendments. Such amendments shall be deemed to come into effect 7 (seven) days after dispatch of such notification by the Bank.

19 DISPLAYING OF SYMBOLS

19.1 The Merchant shall display such marks and symbols in respect of the Mo626Pay as may be provided by the Bank, in such a manner that the public will be informed of the Merchant's willingness to honour the Mo626Pay payments of goods and/or services.

19.2 The Merchant may not in any way whatsoever state, imply or create the impression that the Bank, VISA International Service Association, MasterCard International Incorporated, Diners Club, American Express or any other card issuer endorses or guarantees any of its goods and/or services.

19.3 In stating the eligibility of its products, services or membership, the Merchant may not refer to the Bank, VISA International Service Association, MasterCard International Incorporated, Diners Club, American Express or any other card issuer.

20 BREACH

Should either party commit a breach of any material provision of this agreement and fail to remedy such breach within 14 (fourteen) days after receiving written notice from the other party requiring it to do so, then the aggrieved party will be entitled, without prejudice to its other rights in law, to cancel this agreement with immediate effect or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages.

21 RESOLUTION OF DISPUTES

21.1 Should any dispute arise between the parties in connection with the interpretation or application of the provisions of this agreement excluding when a party is in breach of this Agreement, but including its termination or the validity of any documents furnished by the parties pursuant to the provisions of this agreement, this dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this Clause.

21.2 Any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.

21.3 The dispute shall be determined by a single arbitrator jointly appointed by the parties. Should the parties fail to agree on an arbitrator within 14 days of the notice in clause 21.2 above, then the arbitrator shall be appointed by the Registrar Of Financial Institutions.

21.4 This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

21.5 The arbitration will be held:

21.5.1 in Blantyre, Lilongwe, or Mzuzu;

21.5.2 with only the legal and other representatives of the parties to the dispute present;

21.5.3 in accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and

21.5.4 on the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

22 DURATION

22.1 This agreement shall, save for the provisions of clause 22.2, be effective from date of signature hereof and shall remain in force for an indefinite period until terminated by either party giving to the other 30 (thirty) days written notice subject to the provisions of 14.4.

22.2 The Mo626Pay Service shall be provided by the Bank for a period of at least 12 (twelve) months from date of signature hereof following which the provisions of 22.1 will apply.

23. GENERAL

- 23.1 Unless otherwise provided in this agreement, no alteration of this agreement and no waiver by either party shall be of any force or effect unless reduced to writing and signed by both parties.
- 23.2 Any relaxation or indulgence or extension of time granted by the Bank to the Merchant will not constitute nor be deemed to be a novation or waiver of any of the former's rights against the Merchant.
- 23.3 The Merchant may not cede or assign any of its rights or obligations under this agreement.
- 23.4 The Bank may in its sole discretion set off any amount which is due and payable by the Bank to the Merchant, against any amount which is due and payable by the Merchant to the Bank, in respect of any account which the Merchant holds with the Bank. The Merchant shall immediately pay to the Bank any net amount owing by the Merchant to the Bank after set-off.
- 23.5 The Bank may in its sole discretion consolidate all accounts, which the Merchant holds with the Bank. Any partial consolidation will not preclude the Bank from exercising its rights in respect of any accounts or amounts not included in such consolidation.

24 DOMICILIA AND NOTICE

- 24.1 The parties choose as their respective *domicilia citandi et executandi* ("domicilium") for all purposes the addresses as set out in Clause 1.1.
- 24.2 Either party may change its *domicilium* to any other physical address within the Republic of Malawi by written notice to the other.
- 24.3 Any notice given by either party to the other ("**the addressee**") which-
- 24.3.1 is delivered by hand during the normal business hours at the addressee's *domicilium* will be presumed to have been received by the addressee at the time of delivery;
- 24.3.2 is posted by prepaid registered post to the addressee's *domicilium*, will be presumed to have been received by the addressee on the 7th(seventh) day after date of posting;
- 24.3.3 is sent by email to the email address of the other party will be presumed to have been received by the addressee on the date of transmission thereof.

25 APPLICABLE LAW

- 25.1 Except for issues on accounts as stipulated in clause 17 above and settlement of payments, this contract shall be governed by the Laws of Malawi.
- 25.2 Issues of accounts and settlement of payments shall be governed by Visa and Mastercard Rules attached to this contract and also accessible on www.visaonline.com.

26 AMENDMENTS

All future amendments to the original Agreement shall be communicated in form of an addendum which must be duly signed by both parties.

The **COMMON SEAL** of
NATIONAL BANK OF MALAWI PLC

was hereunto affixed in the presence of:-

Director _____

Secretary _____

The **COMMON SEAL** of

was hereunto affixed in the presence of:-

1. _____
Director

2. _____
Secretary

MERCHANT AUTHORISED SIGNATURES SECTION

Signed by _____ at _____

WITNESSES

1. _____
On behalf of Merchant and duly authorised thereto

2. _____
On behalf of Merchant and duly authorised thereto