

NBM ONLINE MERCHANT AGREEMENT

1. PARTIES

THIS AGREEMENT, made and entered into this day of.....
2022 by and between
..... located at
..... (hereinafter called "the Merchant") and
NATIONAL BANK OF MALAWI PLC, of NBM Towers, 7 Henderson Street, P O Box 945
Blantyre, Malawi (hereinafter called "the Bank").

WHEREAS:

- A. The Bank is engaged in general banking business which includes but not limited to acquiring Mastercard and Visa debit/credit Cards, (hereinafter called "Cards") and desires to make available to Merchants the opportunity to accept electronic payment for merchandise and/or services through the use of cards on the online gateway.
- B. The Merchant desires to honour such Cards in connection with its sales of merchandise and/or services.

2. PURPOSE

- A. This agreement provides for the acceptance of certain cards by the Merchant as a form of payment, 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 -

- A. "Card" means the debit or credit card that is issued by a financial institution to its account holders for purposes of processing electronic transactions such as paying for goods/ services and ATM withdrawals.
- B. "the Cardholder" means the person to whom a card has been issued.
- C. "Card issuer" means The Bank or any other entity which issues a Card;
- D. "E Commerce Service" is the activity of electronically buying or selling of products and services over the Internet platform.
- E. "Merchant" means a person or company engaged in the business of selling or trading goods and/or provision of services for profit.
- F. "Payer" means a person or an organization that uses their card details to pay for goods and/or services through the merchant portal.
- G. "Merchant Portal" is a web application that allows our Merchants businesses to accept e-commerce payments

- H. “E-commerce transaction” means a transaction effected on the Merchant portal and resulting in the electronic transfer of funds.
- I. “Procedure manual” means the directives given by the Bank to the Merchant as amended from time to time.
- J. “Merchant discount” means a portion of the total value of all card transactions effected by the Merchant and payable to the Bank.
- K. “PIN” means the personal identification number issued to the Cardholder by the Card Issuer.
- L. “Laundering” means the processing of e-commerce transactions on behalf of another merchant.
- M. “An Order” is the concept that the Payment Gateway uses to link all the transactions that relate to one instance of a sale between the Merchant and the payer.
- N. “CVV (Card Verification Value) number is 3-digit number printed at the back of the card just beside the signature panel
- O. “3D Secure (3-domain structure)”, also known as a payer authentication, is a security protocol that helps to prevent fraud in online credit and debit card transactions.
- P. “Association Rules” means Visa, Mastercard and National Switch rules.
- Q. “Cash Price” is the amount of money that the buyer gives to the seller when paying for goods and services using cash as a means of exchange.
- R. “A payment gateway” is an ecommerce platform used by merchants to accept debit or credit card purchases from customers

4. ACCEPTANCE OF CARDS

- A. All Mastercard and Visa cards will be accepted by means of a cardholder entering details such as the card number and CVV number when purchasing items on the merchant’s website. If the card is enrolled for 3D service, the cardholder will be prompted to enter the one-time-password sent to them by their bank through SMS or email.
- B. In offering payment options to customers, the Merchant may accept all types of Mastercard and Visa Cards including consumer credit and debit cards.
- C. The Merchant shall not require the cardholder to provide any personal information as a condition of honouring Cards unless otherwise required by the Association rules. Personal information includes but is not limited to a home or business address, telephone number, or a photocopy of a driver’s license.
- D. If the Merchant chooses to limit the types of Cards to accept, it must display it appropriately on the website and indicate acceptance of the limited acceptance category it has selected.
- E. 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 Cardholder by adding any surcharge or by setting a minimum or maximum transaction amount as a condition of honouring any card.

5. PROCESSING OF SALES AND CREDIT TRANSACTIONS

- A. All transactions will be processed through the Merchant portal.
- B. The collection and payment of all statutory taxes is the merchant’s responsibility. Taxes collected shall be included in the total transaction amount and not collected separately as cash.

6. REFUNDS/CREDITS

- A. The Merchant shall complete a credit for the total amount of the refund and identify the merchandise being returned and any shipping and handling charges being returned.
- B. The Merchant shall not process a Credit without having completed a previous purchase transaction with the same cardholder.
- C. The Merchant may not make a cash refund to credit a Cardholder.
- D. The merchant using the Payment Gateway, will usually provide all the information about the order in the initial transaction — the billing, shipping, payment details, full amount and so on. Then to initiate a Capture, Refund, or Void, the merchant will reference the original order. For example, if it wants to refund, then it will provide the order identifier and the amount it wants to refund, and the gateway will provide all the details that the bank needs to move the money.
- E. The Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any transactions provided that disclosure is made and purchased goods or services are delivered to the Cardholder within the agreed time. Proper disclosure by the Merchant shall be determined to have been given at the time of the transaction if the following words or similar wording reflecting its policy is legibly displayed on its check out page: “NO REFUND” or “EXCHANGE ONLY” or “IN-STORE CREDIT ONLY”.

7. CHARGEBACKS

- A. The term “Chargeback” refers to the debiting of the Settlement Account or withholding of settlement funds for all or part of the amount of a particular sale.
- B. If the Merchant has reason to dispute or respond to a chargeback, then it must do so by the date provided by the Bank on its report to you. The bank shall not investigate, reverse or make any adjustment to any chargeback when thirty (30) calendar days have elapsed from the date of the chargeback.

8. SETTLEMENT

- A. In order to receive funds from the Bank for the Merchant’s acquired transactions, the Merchant shall be required to maintain a Settlement Account with the Bank to which it will be solely liable for all fees, costs, and expenses associated with its bank account.
- B. The Merchant authorises the Bank to initiate electronic credit and debit entries and adjustments to its bank account at any time without regard to the source of any monies in the Settlement Account. This authority shall remain in full force and effect during the period of this agreement. The Bank will not be liable for any of the Merchant’s losses or expenses whatsoever resulting from delays in receipt of funds or errors in Settlement account entries caused by third parties, including, without limitation, delays or errors by the Mastercard and Visa Payment systems.
- C. The Merchant hereby irrevocably authorises the Bank to debit and credit its nominated Bank account number at Service centre
- D. The Merchant undertakes to immediately notify the Bank in writing of any changes in its bank account details.
- E. The Bank shall promptly after receiving credit for such acquired transactions, provide provisional credit to the Settlement Account for the proceeds. The proceeds payable to the

Merchant shall be equal to the amounts received by the Bank in respect of Merchant's transactions minus the following: all fees, charges, and discounts as set forth in this Agreement, all adjustments and Chargebacks, all customer refunds, returns and any fees, charges, fines, penalties, or other liabilities that may be imposed on the Bank from time to time by Mastercard and Visa Payment Systems and all related costs and expenses incurred by the Bank.

- F. The Merchant agrees that all such fees, charges, discounts, adjustments, and all other amounts are due and payable at the time the related services are rendered to the Merchant. In the event the Bank does not deduct such amounts from the proceeds payable to the Merchant, the Merchant agrees to pay all such amounts to the Bank. The Bank shall debit the Settlement Account for such amounts.
- G. Statements reflecting the activity for the merchant account(s) can be accessed by online banking access (or otherwise if the Parties agree). The Bank will not be responsible for any error that the Merchant does not bring to the Bank's attention within 45 days from the date a transaction has been initiated.
- H. Settlements for Merchants that don't have settlement accounts with the Bank shall be remitted to their bank account at the designated bank less fees and charges accruing to the Bank. All remittance costs will be borne by the Merchant.
- I. The Bank may retain funds in the case of excessive charge backs, bankruptcy, fraud, suspected fraud or invalid transactions. Any crediting of the Merchant's nominated bank account does not deprive the Bank of its right to cancel payment of ecommerce transactions by debiting the Merchant's nominated bank account with the amount of the ecommerce transaction in question.
- J. The Bank is irrevocably authorised to debit the Merchant's nominated settlement account a percentage of the total day volume sales which shall be agreed upon by the two parties from time to time.
- K. The Merchant undertakes to operate the Merchant Portal in accordance with the terms of this agreement and the Bank's Standard operating instructions issued from time to time. Such instructions will be issued through trainings, publications, email notifications and any other forms of communication acceptable and agreed to by both parties.
- L. The Bank shall be entitled to debit the Merchant's settlement account with:
 - i. The value of reversals of invalid merchant portal generated transactions;
 - ii. The Merchant discount rate;
 - iii. Any refund due to a Cardholder and not rectified by the Merchant;
 - iv. Any overpayments due to clerical or electronic errors by either party;
 - v. The value of disputed transactions as raised by Cardholders with the Bank;
 - vi. Interest at the Bank's prime overdraft rate payable by the Merchant to the Bank on any sum due;
 - vii. The values referred to in this section will be subject to exchange rate variations where applicable.
 - viii. Any other charges that may become due from the Merchant in respect of National Bank of Malawi plc e-commerce transaction acquiring.

9. RETRIEVAL REQUESTS

- A. Retrieval Request is when the cardholder's bank request retrieval of information. This is done in order to substantiate a chargeback claim made by a customer.
- B. The Merchant agrees to store original documentation of each transaction for at least one year from the date of such transaction, and to retain copies of all transaction data for at least eighteen months from the date of such transaction. The Merchant may not charge a fee to its customers for the creation or storage of such copies.
- C. Response to Retrieval Requests: The Bank will send the Merchant any Retrieval Request that the Bank cannot satisfy with the information it has concerning any transaction. In response, the Merchant must provide the Bank in writing by certified or overnight mail or confirmed fax (or by other means agreed to by the Bank) the resolution of your investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within seven business days after the Bank sends it to the Merchant (or such shorter time as Mastercard / Visa payment rules may require). The Merchant acknowledges that its failure to fulfil a Retrieval Request in accordance with payment rules may result in an irreversible Chargeback.

10. MERCHANT PORTAL

- A. The Merchant Portal allows the Merchant to collect payment details from its payer through an interaction hosted and displayed by a Payment Gateway.
- B. The payer will order the merchants goods and services through the merchant portal and all payment transactions must be handled by the Cardholder.
- C. The merchant shall not use the Merchant Portal to capture and keep sensitive card information (card number, expiry date, CVV and Cardholder name) in line with security standards that the bank shall be publishing from time to time.
- D. The merchant agrees that the merchant portal will solely be used for processing authentic transactions originating from the rightful cardholders. The merchant shall not use the merchant portal to process fraudulent transactions by entering card details that have been obtained unlawfully or fraudulently.
- E. The Merchant shall provide comprehensive and accurate information regarding the products offered and contractual terms of sale.
- F. The Merchant shall ensure that the contents which it uploads are not prohibited under the applicable laws and regulations, and it will attend to the reports or complaints made about its uploaded contents.
- G. The Merchant must comply with its obligations under this agreement and other applicable laws and regulations.

11. OPERATION OF THE MERCHANT PORTAL

- A. The Merchant undertakes to operate the Merchant portal 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.
- B. The Merchant shall ensure that at all times, at least one member of the Merchant's staff who has been trained to operate the merchant portal is available and monitoring transactions as they are being processed.

- C. The Merchant shall ensure that the operation of the merchant portal does not breach or contravene any laws, by laws, rules or other regulations relating to such operation.
- D. The Merchant shall be free to accept any Mastercard / Visa Debit or credit cards on the merchant portal.
- E. The Merchant shall be obliged to report to the bank any cases of fraud, suspected fraud or attempted fraud by a cardholder.
- F. The Merchant shall ensure that only a trained employee of the Merchant who is duly authorised to do so shall operate the Merchant Portal.

12. DATA SECURITY AND PRIVACY

- A. Visa and Mastercard rules provide that Cardholder information and transaction data is owned by the Payment Associations, the card issuer and the cardholder. The Bank also asserts some ownership rights in the data to the extent it belongs to the Visa system.
- B. The Merchant shall be responsible for securing Cardholder information. It will not capture, store or keep Card or Cardholder information except for cardholder name and address which should be used for shipping purposes.
- C. The Bank or Payment Associations have the right to inspect the Merchant' premises, computers and any company the Merchant has contracted with, for the purposes of verifying that sensitive Cardholder information is not stored and is not used for any purpose other than processing the transaction to which it relates.
- D. The Bank shall not be liable for any damage 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 the Merchant portal or to utilise it.

13. FRAUDULENT TRANSACTIONS

- A. In this Clause the term "fraudulent transactions" means any transaction which in terms of the common law or statute would constitute fraud and will include any purchase and/or transaction arising from the use of a card by a person other than the authorised Cardholder or the use of a card which has not been issued by a *bona fide* card issuer.
- B. The Merchant shall not process transactions that it knows or should have known were fraudulent, suspected to be fraudulent or unauthorised by the Cardholder. The Merchant agrees that it shall be responsible for the actions of its employees at all times.
- C. Merchant transaction laundering (the action whereby a merchant processes payment card transaction on behalf of another merchant or cardholder) will lead to immediate suspension of the merchant portal and termination of the contract.
- D. The Bank is entitled to debit the Merchant's Bank account at any time with the value of all fraudulent transactions deposited or electronically posted by the Merchant.
- E. The Bank reserves the right to immediately terminate this agreement if fraud is perpetrated by the Merchant.
- F. The Bank reserves the right to report all fraud and suspected fraud activities to relevant authorities (FIA and Fiscal Police) for investigation and action without giving notice to the Merchant.

- G. In the event of this agreement being cancelled for any reason whatsoever, the merchant portal shall be closed and the merchant will be informed by the Bank of such action.
- H. Merchants are not allowed to use the Merchant portal for illegal or brand-damaging activities such as but are not limited to:
 - i. Illegal sale of drugs, foods, and/or beverages that are otherwise prohibited by applicable law from being sold.
 - ii. Illegal sale of prescription drugs & tobacco products;
 - iii. Brand-damaging sale of images of offensive and/or any form of pornography;
 - iv. Illegal sale of images of child exploitation;
 - v. Facilitation of Internet gambling, lottery, and/or betting-related content in jurisdictions where it is illegal;
 - vi. Sale of counterfeit merchandise;
 - vii. Sale of goods or services in violation of intellectual property rights;
 - viii. Sale of provocative contents (such as discrimination, abuse, and hate crimes);
 - ix. Sale of Hacking and/or cracking services;
 - x. Services related to provision of or access to narcotics;
 - xi. Sale of illegal electronic devices (such as modification chips and jammers);
 - xii. Sale of certain types of drugs or chemicals (such as synthetic drugs, salvia divinorum, psilocybin mushrooms and spores, and nitrite inhalants);
 - xiii. Human or human organ trafficking;
 - xiv. Sale of dangerous weapons, military products, and/or explosives;
 - xv. Illegal sale of any other product or service;
 - xvi. Sale of Protected flora and fauna;
 - xvii. Sale of hazardous chemicals and substances;
 - xviii. Services offering uncertified marriages;
 - xix. Health-related contents that do not comply with applicable laws and regulations.

14. WARRANTIES

The Merchant warrants that:

- A. All transactions processed by the merchant portal are free of fraud and money laundering.
- B. Goods and/or services shall be delivered or supplied at the Merchant's normal cash price and that the price shall contain no additional charges or element of credit whatsoever.
- C. The said transaction between the Merchant and the Cardholder shall not be illegal.
- D. The Bank shall be indemnified by the Merchant against any claim or liability that may arise from a dispute between the Merchant and the Cardholder 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 Cardholder's account was authorised by the Cardholder.
- E. The goods and/or services referred to in the ecommerce transactions shall have been in fact supplied by the Merchant to the Cardholder.
- F. It shall comply with all the terms of this agreement.

15. INVALID TRANSACTIONS

Merchant portal generated transactions will be invalid if:

- A. The transaction does not comply with any warranty contained in Clause 14 above;
- B. The value of the transaction exceeds the authorization amount and no prior authorisation has been obtained from the issuing bank;
- C. The Merchant does not capture the transaction within the agreed period;
- D. At the time of the conclusion of the transaction, any term of this agreement has been violated;
- E. 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.
- F. The price charged to the cardholder is in excess of the merchant's normal prices for goods and/or services rendered.
- G. 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.
- H. In the event of an invalid transaction as set out above, the Bank shall have the right to accept chargebacks from the issuing bank.

16. DISCOUNT RATES AND TRANSACTION FEES

- A. The Merchant shall pay a discount rate (fee) for each payment transaction processed by the gateway which shall be subject to change depending on the prevailing card scheme rates.
- B. The Bank may revise the merchant discount rate payable by the Merchant from time to time upon giving the Merchant thirty (30) days prior written notice of such revision.
- C. A rejection of the new discount rate payable by the Merchant will result in the immediate deactivation of the Merchant Portal and termination of the Contract by the Bank notwithstanding anything to the contrary in this agreement or any other agreement with the Bank.
- D. The monthly subscription fee is at fixed price of \$50.
- E. The Bank reserves the right to revise the rates in line with Visa and Mastercard pricing and undertakes to give notice to the merchant of two calendar months before changes can take effect.
- F. Fees shall automatically be debited to the said merchant account.
- G. The Merchant shall be responsible for the payment of any charges or additional charges by Internet Service Provider or any other Governmental or non-Governmental body having the authority to control the use of the Merchant portal or any connections required for the proper functioning of the Merchant portal.

17. DISCLOSURE OF INFORMATION

- A. 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.
- B. 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.

- C. The Merchant may not disclose, sell, purchase, provide or exchange Cardholder's name or account number information in whatever form, including but not limited to the form of mailing lists, tapes, or other media obtained by reason of a card transaction, to Third Parties, except as required by Law. The Merchant must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account number, card imprints 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.
- D. 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.

18. INSPECTIONS

- A. The Bank reserves the right to conduct physical inspections and investigations at the Merchant's premises in handling claims of Cardholders and for purposes of investigating suspected fraud. In the event that the Bank suspects any irregularities during such investigations, the Bank shall have the right to terminate this contract.

19. PROCEDURE MANUALS

- A. 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 the E Commerce service and the Merchant Portal including the presentation of sales vouchers and which shall be strictly complied with by the Merchant at all times.
- B. The Procedure Manual and the Quick Reference Guide shall be deemed to form part of this agreement.
- C. 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.

20. DISPLAYING OF SYMBOLS

- A. The Merchant shall display on its website such marks and symbols in respect of the card 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 card in payments of goods and/or services.
- B. 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.

- C. 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.

21. BREACH

- A. 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 of all the defaulting party's obligations whether or not such obligations would otherwise have fallen due for performance, in either event without prejudice to the aggrieved party's right to claim damages.
- B. Failure to comply with the provisions under this agreement may trigger the imposition of sanctions provided under the Malawi Law. Criminal sanctions in the form of imprisonment and fines for acts conducted on Platforms may be imposed for violations of the Malawi Law, such as violation of privacy, indecent contents, insults or defamations, misleading information that could harm consumers, and hate speech or hostility against individuals with a certain ethnicity, religion or race.

22. DISPUTE RESOLUTION

- A. 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.
- B. 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. 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.
- C. The arbitration will be held in Blantyre, Lilongwe, and Mzuzu with only the legal and other representatives of the parties to the dispute present.
- D. In accordance with the formalities and procedures settled by the arbitrator, the arbitration 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 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.
- E. The following arbitrators will be acceptable to both parties, if the matter in dispute is principally:
 - I. A legal matter - a practising attorney of at least 10 (ten) year's standing;

- II. An accounting matter - a practising chartered accountant of at least 10 (ten) year's standing and should be recommended by ICAM, must have good understanding of digital payments;
 - III. any other matter – Financial Services Regulator.
- F. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed to be a legal matter.
 - G. Should the parties fail to agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of Clause 22B the arbitrator will be appointed at the request of any party to the dispute by the Chairman of the Law Society of Malawi according to the provisions of Clauses 22 E and 22F.
 - H. The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.
 - I. The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.
 - J. The law applicable for Arbitration shall be Malawian Laws as read with UNCITRAL Rules. The language of arbitration shall be English.
 - K. The provisions of this Clause:
 - i. Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
 - ii. Are severable from the rest of this agreement and will remain in effect despite the termination of or invalidity for any reason of this agreement.

23. DURATION

- A. This agreement shall, save for the provisions of 24B, 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 60 (Sixty) days written notice subject to the provisions of 13E.
- B. The e-commerce acquiring service shall be provided by the Bank for a period of at least 12 (twelve) months from date of signature hereof before the application of provisions of Clause 23A.

24. GENERAL

- A. 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.
- B. 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.
- C. The Merchant may not cede or assign any of its rights or obligations under this agreement.

- D. 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.
- E. 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.

25. TERMINATION

- A. Either Party may terminate this Agreement upon 60 (sixty) days written notice to the other Party. If either Party exercises its right to terminate, then the Merchant hereby agrees and undertakes not to take any injunctive step or seek an injunction to restrain the deactivation of the Payment Gateway facility at any time whether or not the Parties are in court or dispute.
- B. The Bank reserves the right to immediately terminate this Agreement if:
 - I. Any of the terms of the Merchant Agreement are violated by the Merchant or the
 - II. There is any fraud on the Merchants part or on the part of the Merchant's employees;
 - III. The Merchant fails to supply goods and/or services or the Merchant supplies faulty goods and/or services to the Cardholder;
 - IV. The Merchant rejects the revised fee or charges as provided by the Bank.

26. DOMICILIA AND NOTICE

- A. The parties choose as their respective *domicilia citandi et executandi* ("domicilium") for all purposes the addresses as set out in Clause 1.A.
- B. Either party may change its domicilium to any other physical address within the Republic of Malawi by written notice to the other.
- C. Any notice given by either party to the other ("the addressee") which -
 - I. 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;
 - II. 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;
 - III. is sent by telefacsimile to the addressee's telefacsimile number will be presumed to have been received by the addressee on the date of transmission thereof.
 - IV. Is sent by email to the addressee's email address will be presumed to have been received within one business day of sending it;

27. FORCE MAJURE

- A. No failure or omission by any Party to carry out its obligations or observe any of the stipulations or conditions of this Agreement, shall give rise to any claims against the Party in question or be deemed a breach of this Agreement, if such failure or omission arises from a force majeure event, such as acts of God, war or warlike hostilities, civil commotion or unrest, riots, blockades, embargoes, sabotage, strikes, lockouts, governmental interventions, shortage of material or labor, delay in deliveries from subcontractors or machine failure, or any other event outside the control of the said Party.

- B. If such an event occurs, the affected party shall notify the other party in writing within two days of the fact and details of the event and shall take all reasonable steps necessary to resume performance of the affected obligation as soon as reasonably possible under the circumstances.
- C. If the occurrence of such event renders performance of the obligation commercially impractical or impossible, the parties shall negotiate in good faith an equitable adjustment of the terms and conditions of this Agreement affected by such event, or where necessary, termination of the Agreement.

28. AMENDMENTS

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

*NB: Signing **Section A** is for non-limited Companies, signing **Section B** is for limited Companies*

The **COMMON SEAL** of

[NATIONAL BANK OF MALAWI PLC](#)

Was hereunto affixed in the presence of:-

1. _____
Director

2. _____
Secretary

SECTION A: FOR NON-LIMITED COMPANIES

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

SECTION B: FOR LIMITED COMPANIES WITH A COMPANY SEAL

The COMMON SEAL of

was hereunto affixed in the presence of:-

- 1. _____
Director

- 2. _____
Secretary