

# MERCHANT AGREEMENT

## 1 PARTIES

The parties to this agreement are:

- 1.1 **THIS AGREEMENT**, made and entered into this.....day of..... by and between .....located at ..... (hereunder called "the Merchant") and **NATIONAL BANK OF MALAWI PLC**, Victoria Avenue 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 issuance of National Bank of Malawi Visa debit Cards, (hereunder called "Cards") to make available to card holders the opportunity to purchase merchandise and/or services from Merchants through the use of cards.
- 1.3 The Merchant desires to honour such Cards in connection with its sales of merchandise and/or services.
- 1.4 The Bank desires that Point of Sale Terminals (hereunder called "POS") be placed at the Merchant's locations to accept, process and record transactions arising at such locations in connection with the cards.

## 2 RECORDAL

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 -

- 3.1.1 "Card" means the card(s) as selected by the Merchant and recorded in the Schedule of Services annexed hereto as Schedule A which Schedule A may be substituted from time to time by execution of a new Schedule A to allow for the addition or reduction of cards/services;
- 3.1.2 "the Cardholder" means the person to whom a card has been issued;
- 3.1.3 "Card issuer" The Bank or any other entity which issues a Card;
- 3.1.4 "EDC service" means the electronic data capture service provided by the Bank to the Merchant which enables the Merchant to capture and dispatch data electronically by means of electronic interface with the Bank's computer network;
- 3.1.5 "EDC-TERMINAL" means the electronic data capture terminal at the point of sale which is linked by electronic interface to the Bank's computer network and which has been supplied by the Bank to the Merchant or has been approved by the Bank; It is also referred to as POS Terminal.
- 3.1.6 "Electronic authorisation function" means a facility whereby an authorisation for a transaction may be obtained from the Bank by means of electronic linkage with the computer network of the Bank by using the EDC-TERMINAL;
- 3.1.7 "Electronic transaction" means a transaction effected by an EDC-TERMINAL and resulting in the electronic transfer of funds;
- 3.1.8 "Merchant Supervisor Function" means the function provided by means of the EDC-TERMINAL which enables the Merchant and/or an authorised employee of the Merchant to perform certain functions by using a supervisor card and secret number to be supplied with the EDC-TERMINAL;
- 3.1.9 "Procedure manual" means the directives given by the Bank to the Merchant as amended from time to time;
- 3.1.10 "Floor limit" means the total value including any part of the value of sales paid for by means other than with a card which the Merchant may permit a Cardholder to spend on a card on any one occasion without prior authorisation from the Card issuer;
- 3.1.11 "Merchant discount" means a portion of the total value of all card transactions effected by the Merchant and payable to the Bank;
- 3.1.12 "Debit card(s)" means a plastic card providing online access via an EDC-Terminal to the Cardholder's account with a bank allowing debit card transactions from the said account, resulting in the immediate debiting of the Cardholder's account with the total amount of the debit card transactions effected;
- 3.1.13 "Debit card transactions" means the purchase of goods and/or services and balance inquiries.
- 3.1.14 "PIN" means the personal identification number issued to the Cardholder by the Card Issuer;
- 3.1.15 Code "....." means the code used by a Merchant to notify the authorization centre of the Bank of a suspicious Cardholder or transaction;
- 3.1.16 "Laundering" means for purposes of Clause 7.9 hereof, the presentation of sales vouchers that did not result from an act between the merchant and the Cardholder.

#### **4 HONOURING OF CARDS**

- 4.1 The Merchant undertakes to honour all valid Visa cards including NATIONAL BANK OF MALAWI plc Visa cards bearing the National Bank and Visa Logo presented by the rightful Cardholders, in payment for goods and/or services.
- 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 Cardholder by adding any surcharge or by setting a minimum or maximum transaction amount as a condition of honouring any card.
- 4.3 The Bank shall pay to the Merchant the value of all goods and/or services supplied by the Merchant the posting of an Electronic Transaction as proved by an EDC-Terminal generated receipt. 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 4 percent 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 NATIONAL BANK OF MALAWI plc Visa Debit card scheme in accordance with the terms of this agreement and the Bank's Standard operating instructions from time to time.

#### **5 FLOOR LIMITS**

- 5.1 The authorised floor 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 floor limits from time to time by giving the Merchant notice in writing of such amendment.
- 5.3 The Bank shall have the right to vary the floor limits at any time by giving the Merchant written notice, should the Merchant commit a breach of any material provision of this agreement.

#### **6 AUTHORISATIONS**

- 6.1 In the case of an Electronic Transaction the Merchant shall obtain authorisation for such transaction by using the Electronic Authorisation Function of the EDC-Terminal.
- 6.2 Where the EDC-Terminal instructs the Merchant to do so, the Merchant shall obtain the Bank's prior authorisation in respect of transaction amounts in excess of the authorised floor limit.
- 6.3 The Merchant must indicate the authorisation code number by using the Merchant Supervisor Function, manually key in the authorisation code number on the EDC-Terminal whereupon it will be printed on the EDC-Terminal generated receipt by the EDC-Terminal.
- 6.4 Subject to the provisions of Clause 20.3, if the EDC-Terminal is unable for whatsoever reason to electronically read the card the Merchant shall not effect any transaction.
- 6.5 The Merchant may not split or disguise transactions or act in any way to avoid obtaining authorisation.
- 6.6 The Bank shall be entitled to refuse an authorisation without giving any reasons.
- 6.7 Any payment by the Bank of an amount in excess of the floor limit for which no prior authorisation was obtained, shall be without prejudice to the Bank's rights, and shall not exempt the Merchant from its obligation to obtain authorisation for subsequent transactions.
- 6.8 In the event that the EDC-Terminal gives a message of "DECLINE", the Merchant is not obliged to contact the Bank. However, should the EDC-Terminal give a message of "PLEASE CALL", the Merchant is obliged to contact the Bank.
- 6.9 An authorisation granted by the Bank in terms of this Clause 6 merely indicated that the relevant Cardholder has sufficient funds in its relevant card account to meet payment of the specific authorised transaction as at the time and date of authorisation. Such authorisation does not warrant:
  - 6.9.1 the validity or genuineness of the card;
  - 6.9.2 the genuineness of the person presenting the card;
  - 6.9.3 the eventual payment by the Bank of the value of the authorised transaction;
  - 6.9.4 that payment by the Bank of the value of the authorised transaction, can not be charged back by the Bank to the Merchant.

#### **7(A) MERCHANT'S OBLIGATIONS IN RESPECT OF EDC-TERMINALS**

- 7.1 Only tally rolls issued and/or approved by the Bank or its authorised suppliers may be used by the Merchant.
- 7.2 In the event of an Electronic Transaction, the Merchant shall, by using the Merchant Supervisor Function, ensure that the time mechanism which forms part of the EDC-Terminal, reflects the correct date and time.
- 7.3 The Merchant must obtain the signature of the Cardholder on the sales voucher or EDC-Terminal generated receipt and provides the Cardholder with a copy thereof. The signature must be compared to the signature on the back of the card, and should the signatures not correspond, the Merchant must obtain a Code 10-authorisation from the Bank irrespective of the transaction amount.
- 7.4 The Merchant must verify that the commencement date on the card has been reached, and that the expiry date indicated on the card has not lapsed.
- 7.5 The Merchant shall retain a copy of each signed EDC-Terminal generated receipt ("Merchant's copy") for a period of at least 180 (one hundred and eighty) days from the date of the transaction.
- 7.6 The Merchant shall submit the Merchant's copy 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; provided that such request may be made by the Bank via the EDC-Terminal and the Merchant shall be

responsible to check the Bank slip produced by the EDC-Terminal under the heading "Electronic Mail" on a daily basis, in order to ascertain whether such request has been made or not.

7.7 The Merchant acknowledges that the laundering of sales vouchers shall be regarded as a breach of this contract.

7.8 All Point of Sale device connectivity costs will be borne by the merchant.

## **7 (B) OPERATION OF POS TERMINAL**

The Merchant shall:

- 7.1 Operate the POS terminal(s) 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.
- 7.2 Ensure that at all times during ordinary business hours, at least one member of the Merchant's staff who has been trained to operate the POS terminal(s) is available to operate it.
- 7.3 Ensure that the operation of the POS terminal(s) does not breach or contravene any laws, by laws, rules or other regulations relating to such operation.
- 7.4 Be fully responsible for any loss or damage to the POS terminal(s) in his premises whether the same is caused by fire, theft, vandalism or otherwise.
- 7.5 Report any loss or damage, fault or suspected fault in the POS terminal(s) to the Bank immediately.
- 7.6 Ensure that every Card is properly verified prior to the completion of any transaction made with any customer of the Merchant.
- 7.7 Be free to accept the National Bank Visa Debit card through the POS terminal(s).
- 7.8 Be obliged to report to the bank any cases of fraud or attempted fraud by a cardholder.

## **8 PRESENTATION FOR PAYMENT**

8.1 The following procedures shall apply:

- 8.1.1 presentation for payment of an EDC-Terminal generated receipt shall be effected by means of interchange of electronic data between the EDC-Terminal and the computer network of the Bank. The frequency of the interchange of data shall be at the sole discretion of the Bank. However, The Merchant must ensure that all EDC-Terminal batches have been uploaded to the bank each business day at an appointed time.
- 8.1.2 if for any reason whatsoever, the interchange of data cannot take place, the Bank shall be entitled to obtain the necessary information from the Merchant's copy of the EDC-Terminal generated receipt and then to process each transaction manually.
- 8.1.3 the Merchant undertakes to immediately notify the Bank of any erroneous interchange of data occurring as a result of a defective EDC-Terminal or communication link, in which event the Bank's liability shall be limited to correcting such erroneous interchange of data in the system.

8.2 The Bank will credit or debit the Merchant's nominated Bank account with the total net amount of all duly completed and, valid EDC-Terminal generated receipts presented for payment.

8.2.1. transactions done in local currency will be credited in the merchant's local currency account

8.2.2. transactions done in foreign currency will be credited in the merchant's FCDA account

8.3 Any crediting of the Merchant's nominated bank account does not deprive the Bank of its right to cancel payment of electronic transactions by debiting the Merchant's nominated bank account with the amount of the electronic transaction in question.

8.4 The Merchant shall not present or deposit, directly or indirectly for processing any document which did not originate from a transaction between Cardholder and the Merchant.

## **9 WARRANTIES**

By presenting electronic transactions for payment to the Bank, the Merchant warrants that:

- 9.1 all statements of fact contained therein are true;
- 9.2 goods and/or services were delivered or supplied at the Merchant's normal cash price and that the price contains no additional charges or element of credit whatsoever;
- 9.3 the said transaction between the Merchant and the Cardholder is not illegal;
- 9.4 the Bank is indemnified 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;
- 9.5 the goods and/or services referred to in the electronic transactions were in fact supplied by the Merchant to the Cardholder.
- 9.6 there has been due compliance with all the terms of this agreement;

## **10 INVALID TRANSACTIONS**

10.1 EDC-Terminal generated receipt will be invalid if:

- 10.1.1 the commencement date indicated on the card has not yet been reached or the card has expired;
- 10.1.2 the transaction does not comply with any warranty contained in Clause 9 above;
- 10.1.3 the value of the transaction exceeds the authorised floor limit and no prior authorisation has been obtained from the Bank;
- 10.1.4 the Cardholder has tendered a card but no signature appears on the EDC-Terminal generated receipt, alternatively the signature appearing thereon does not correspond with the signature on the card;
- 10.1.5 the EDC-Terminal generated receipt differs from the copy given to the Cardholder;
- 10.1.6 the EDC-Terminal generated receipt is materially incomplete;
- 10.1.7 a mutilated, defaced, blank or illegible card was accepted;

- 10.1.8 the Merchant does not present the electronic transaction within the agreed period;
  - 10.1.9 at the time of the conclusion of the transaction, any term of this agreement has been violated;
  - 10.1.10 the EDC-Terminal generated receipt was not processed on EDC-Terminal supplied or approved by the Bank.
  - 10.1.11 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.
  - 10.1.12 The price charged to the cardholder is in excess of 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 charge back 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 Cardholder or returned to the Merchant and if the purchase price thereof is to be refunded to the Cardholder or should the Merchant allow an adjustment of the purchase price, an EDC refund transaction must be completed.
- 11.2 The Merchant may not make a cash refund to a credit Cardholder.
- 11.3 The Merchant must obtain the signature of the Cardholder on the EDC-Terminal generated receipt.
- 11.4 A copy of the EDC-Terminal generated receipt must be provided to the Cardholder.
- 11.5 The Merchant must post the value of the EDC-Terminal generated receipt within the same periods as set out in Clause 8 above.
- 11.6 The Merchant shall retain a copy of the EDC-Terminal generated receipt for a period of at least 180 (one hundred and eighty) days.

## 12 OTHER PROVISIONS RELATING TO POS TERMINAL

For purposes of this Clause 12 any reference to EDC-Terminal shall include "accessories" as set out in the Schedule of Equipment Provided to the Merchant.

- 12.1 The POS terminal(s) shall remain the property of the bank and nothing contained in this Agreement shall confer or be deemed to confer any interest in the POS terminal(s) to the Merchant and upon termination of this agreement, the Merchant shall return the terminal(s) to the Bank. The Merchant acknowledges that he has a duty of care to the bank in respect of the terminal(s) and undertakes to compensate the bank in the event of damage caused to the terminal(s) due to negligence and/or wilful conduct on the part of the Merchant and/or his servants/agents.
- 12.2 Any EDC-Terminal 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 EDC-Terminal.
- 12.3 The Merchant must take due and proper care of any EDC-Terminal and shall be liable to the Bank for any damage to or loss of any EDC-Terminal supplied by the Bank. The Merchant must forthwith notify the Bank in writing by means of facsimile of such damage to or loss of any EDC-Terminal.
- 12.4 The Merchant shall ensure that the POS terminal including the markings thereon and/or its associated software 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 EDC-Terminal supplied by the Bank and the Bank shall be entitled to take possession of such EDC-Terminal on the premises of the Merchant where it is kept. Should the Merchant return the EDC-Terminal to a branch of the Bank, then the nearest Regional Office of the Electronic Banking and Merchant Division of the Bank (as stated on the Merchant Statements) must be informed by facsimile of such action.
- 12.6 The Merchant shall under no circumstances relocate an EDC-Terminal from one sales outlet to another unless permitted and effected by the Bank.
- 12.7 The Merchant shall provide and maintain all electrical and or other connections necessary in accordance with the Bank's normal requirements for the operation of the EDC-terminal.
- 12.8 The Merchant shall be responsible for the payment of any charges or additional charges by Telkom Limited or any other Governmental or non-Governmental body having the authority to control the use of the EDC-Terminal or any connections required for the proper functioning of the EDC-Terminal.
- 12.9 To gain access to and to utilise the EDC service, the Merchant shall only use software and hardware (including terminals) supplied or approved by the Bank from time to time in accordance with the procedure manual referred to in Clause 18 hereof.
- 12.10 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 EDC-Terminal or to utilise it.
- 12.11 With reference to the Merchant Supervisor Function in terms of this agreement;
  - 12.11.1 the Merchant shall ensure that only a trained employee of the Merchant who is duly authorised to do so shall perform the Merchant Supervisor Function;

- 12.11.2 each Merchant Supervisor Function thus performed shall be deemed to be valid and the validity thereof may not be disputed by the Merchant;
- 12.11.3 the Merchant shall be liable for any error occurring or fraud committed through the use of the Merchant Supervisor Function.
- 12.12 Ensure that the operation of the POS terminal(s) does not breach or contravene any laws, by laws, rules or other regulations relating to such operation.

**13 DEBITING OF MERCHANT'S ACCOUNT**

- 13.1 The Bank shall be entitled to debit the Merchant's bank account:
  - 13.1.1 the value of reversals of invalid EDC-Terminal generated receipts;
  - 13.1.2 the Merchant discount referred to in 4.4;
  - 13.1.3 any refund due to a Cardholder 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 Cardholders with the Bank;
  - 13.1.6 the total value of batches of electronic transaction lost as a consequence of the Merchant's failure to provide valid Merchant's copies within 7 (seven) days of being requested to do so by the Bank, subject to the provisions of 11.6;
  - 13.1.7 interest at the Bank's prime overdraft rate payable by the Merchant to the Bank on any sum due;
- 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 will pay a call-out fee should it be established that an EDC-Terminal is malfunctioning due to maltreatment, maloperation, or neglect by the Merchant or his employees.
- 13.4 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.
- 13.5 The values referred to in 13.1.1 and 13.1.6 will be subject to exchange rate variations where applicable.
- 13.6 Any other charges that may become due from the Merchant in respect of NATIONAL BANK OF MALAWI plc Visa Debit card transactions.

**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 authorisation code number has been issued by the Bank to the Merchant) 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.
- 14.2 The Merchant shall not present records of transactions that it knows or should have known were fraudulent or unauthorised by the Cardholder. The Merchant agrees that it shall be responsible for the actions of its employees at all times.
- 14.3 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.
- 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 authorizes the Bank to investigate the Merchant's previous Merchant Agreements.
- 15.3 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 imprinted sales vouchers, carbon copies of imprinted sales vouchers, 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 system and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account number, card imprints, 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 (MERCHANT) 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

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 take possession of all card 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 the EDC Service and the EDC-Terminal including the presentation of sales vouchers 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 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.

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 OTHER DEBIT CARDS PROVISIONS**

20.1 Insofar as the provisions of Clause 20 are contrary or irreconcilable with other provisions of this agreement, the former will apply.

20.2 The Merchant undertakes to honour each valid debit card that is presented by the Cardholder to the Merchant for purposes of effecting debit card transactions subject to the Merchant obtaining express prior authorisation thereto from the Bank's card division by means of the electronic authorisation function. A zero floor limit shall apply to all card transactions effected with debit cards. The Bank shall be entitled to refuse such authorisations without giving any reasons.

20.3 All debit card transactions shall be electronic transactions as defined, and the Merchant may not make use of any other device other than the EDC-Terminal. If for any reason whatsoever, the EDC-Terminal is not functioning, no transactions may be effected. All debit card transactions shall be swipe-PIN based transactions.

20.4 The Merchant undertakes to pay a fee to the Bank in respect of each debit card transaction effected by means of the EDC-Terminal which fee is set out in Clause 4.4 hereof.

20.5 The Merchant acknowledges that the fee as described in 20.4 may be adjusted by the Bank by notification of such adjustment to the Merchant.

20.6 On presentation of a debit card by a Cardholder to effect a debit card transaction, the following specific provisions shall apply:

20.6.1 the Merchant shall enter the transaction type and amounts;

20.6.2 the Merchant shall present the EDC-Terminal to the Cardholder complete with its cover, to allow the Cardholder to swipe his/her card and enter his/her PIN;

20.6.3 the Merchant shall ensure that the Cardholder can effect debit card transactions in a secure environment;

20.6.4 the debit card will remain in possession of the Cardholder at all times. Under no circumstances may the Merchant request the Cardholder to provide his/her card and/or PIN. The Merchant hereby acknowledges that it will be liable for all losses or damages suffered by the Bank as a result of the Merchant requesting and obtaining the Cardholder's card or PIN.

20.6.5 the Merchant may, on request of the Cardholder, allow the Cardholder to effect balance inquiries.

## **21 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.

## **22 RESOLUTION OF DISPUTES**

22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 The arbitration will be held:
- 22.4.1 in Blantyre, Lilongwe, and Mzuzu;
  - 22.4.2 with only the legal and other representatives of the parties to the dispute present;
  - 22.4.3 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
  - 22.4.4 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.
- 22.5 The following arbitrators will be acceptable to both parties, if the matter in dispute is principally:
- 22.5.1 a legal matter, a practising attorney of at least 10 (ten) year's standing;
  - 22.5.2 an accounting matter, a practising chartered accountant of at least 10 (ten) year's standing;
  - 22.5.3 any other matter, any independent person.
- 22.6 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.
- 22.7 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of Clause 22.2 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 22.5 and 22.6.
- 22.8 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.
- 22.9 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.
- 22.10.1 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;
  - 22.10.2 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

- 23.1 This agreement shall, save for the provisions of 24.2, 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.
- 23.2 The EDC 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 23.1 will apply.

## 24 GENERAL

- 24.1 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.
- 24.2 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.
- 24.3 The Merchant may not cede or assign any of its rights or obligations under this agreement.
- 24.4 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 nett amount owing by the Merchant to the Bank after set-off.
- 24.5 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.

## 25 DOMICILIA AND NOTICE

- 25.1 The parties choose as their respective *domicilia citandi et executandi* ("domicilium") for all purposes the addresses as set out in Clause 1.1.
- 25.2 Either party may change its *domicilium* to any other physical address within the Republic of Malawi by written notice to the other.
- 25.3 Any notice given by either party to the other ("**the addressee**") which-
- 25.3.1 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;
- 25.3.2 is posted by prepaid registered post to the addressee's *domicilium*, will be presumed to have been received by the addressee on the 7<sup>th</sup> (seventh) day after date of posting;
- 25.3.3 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.

## **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:-

1. \_\_\_\_\_  
Director
2. \_\_\_\_\_  
Secretary

The **COMMON SEAL** of

\_\_\_\_\_

was hereunto affixed in the presence of:-

1. \_\_\_\_\_  
Director
2. \_\_\_\_\_  
Secretary