

## WHEREAS:

- a. The Bank has agreed to partner with the Company to provide a Digital Payment Solution.
- b. The parties therefore wish to record herein the terms and conditions governing this Agreement.
- c. Unless inconsistent with the context, an expression which denotes;
  - Any gender; includes the other and the neutral gender
  - A natural person includes an artificial person and vice versa and;
  - The singular includes the plural and vice versa
- d. The headings of the paragraphs of this Agreement are for convenience only and shall not affect the meaning of any of the provision hereof.
- e. This Agreement does not replace the product terms and conditions. In the event of any inconsistency between the terms of this Agreement and the product terms and conditions, the product terms and conditions shall prevail.

NOW THEREFORE, in recognition of their common interests and objectives, and in order to create and strengthen understanding amongst the parties with respect to cooperation in the provision of Digital Payment Solution to Companies, the parties confirm their mutual understanding in the following:

## 1. PURPOSE

The purpose of this Agreement is to set the framework under which the Bank and the Company will engage to avail the Digital Payment Solution. The solution is to be provided to:

- The Company to aid in collections reconciliations.
- Customers who pay for goods/services to your company and are banking with HFCB. They have the option of paying via their mobile phones using HFCB Whizz. They can pay from Mpesa, HFCB account or borrow to pay.

## 2. DURATION

This Agreement shall commence with effect from the Effective Date and shall continue for a period of one (1) year ("Initial Term"). Thereafter the agreement shall be automatically renewed for successive periods of three (3) years unless terminated pursuant to this agreement.

## 3. BANK'S OBLIGATIONS

The following are the banks obligations in regards to this agreement:

- 3.1 Provide a platform for reconciliations of amounts paid by customers. HFCB will provide a platform that will be available 24 hours a day for Comp any to access payment information the data. This platform will be accessed through the internet.
- 3.2 To remedy erroneous credits to the Company account by way of reversal to the customer.
- 3.3 HFCB hereby appoints the business as its authorized marketer, for the sole purpose of promotion and marketing of the solution.
- 3.4 To Provide system administrator services which shall include but not be limited to:
  - 3.4.1 Development and testing of Software enhancements required to modify the platform
  - 3.4.2 Regular checks of the platform and performing data backup.
  - 3.4.3 Deployment of operating system updates, configuration changes, installation and configuration of new hardware/software.
  - 3.4.4 Addition/deletion/creation/modification/updating of user account information, resetting passwords, etc.
  - 3.4.5 Responsibility for technical system queries, maintenance of system security, System performance tuning and maintenance of the platform.
  - 3.4.6 To keep and maintain up to date records of accounts and customer information
  - 3.4.7 To provide all customer service information, enquiries and customer care telephone contacts.

## 4. THE COMPANY OBLIGATIONS

- 4.1 Open collections and transaction accounts with HFCB. The Company will provide all the necessary documentation for account opening as required by HFCB.
- 4.2 Provide HFCB with opportunities to engage with customers The Company will provide a platform and or opportunities for HFCB to engage customers on the products availed to them.
- 4.3 Provide customers with details of how to make Company related payments. The Company will provide the customers with the product information and details on how to access the platform.
- 4.4 The Company shall meet the transactional fees for payments made by customers as follows; For credits below KES 200 - Free For credits between KES 200 to KES 9,999.00 - KES 30 per instance For credits between KES 10,000 to KES 19,999 – KES 40 per instance  
For credits above KES 20,000.00 – 0.25% of the amount up-to a maximum of KES 200
- 4.5 The Company shall use marketing material provided and/or approved by HFCB and seek written confirmation from HFCB to use any marketing material not directly provided by HFCB.
- 4.6 The Parties may by mutual agreement in writing undertake joint-marketing or co-marketing programs or activities as appropriate to further the intent of this Agreement.
- 4.7 Each party shall be responsible for settlement of accruing payments from any such undertaking and the performance of individual obligations hereunder

## 5. PARTIES OBLIGATIONS

- 5.1 Each Party warrants and represents that it holds the necessary licenses, consents, approvals, permissions, permits and other certificates and authorities (public and private) necessary for the carrying on of its business in the places, in the manner in which such business is carried on and that it may require to provide the Service, all of which are valid and subsisting and shall be maintained throughout the term of this Agreement.
- 5.2 Each Party shall bear its own tax liability in connection with this Agreement
- 5.3 The Parties will cooperate as required in connection with the periodic review of the Company during the course of the Company's utilization of the HFCB solution service as may be required, to help HFCB assess any concerns or risks relating to providing services to the Company. The Parties shall at all times during the course of the relationship notify the other Party of any material changes to the Company's due diligence/ KYC profile. If HFCB reasonably believes that a Company may pose a higher risk with respect to AML, terrorist financing, (corruption) or breach of contract, the Company shall cooperate to carry out further due diligence and KYC enquiries on the Company and HFCB shall reserve the right in its absolute discretion to, at any time, suspend, modify, or discontinue any services to a Company that through the periodic review it considers to be higher risk.
- 5.4 The total liability for either Party to the other for all damages and other amounts related to all claims of every kind (including in contract, tort (including negligence), breach of statutory duty or otherwise for any lost profits, revenues or goodwill, anticipated savings, business interruption, diminished value of its business, or special, incidental, indirect, consequential, exemplary, or punitive loss or damages) related to this Agreement will not exceed the total amount of credit issued in the last [twelve/thirty six] months. For the avoidance of doubt, nothing in this Agreement shall limit or exclude a Party's liability for any liability which cannot be limited or excluded by applicable law.
- 5.5 The foregoing aggregate limitations upon liability apply to all potential bases of liability, including (without limitation) breach of contract; breach of warranty; negligence, misrepresentation and other tortious acts and omissions; and (except as otherwise expressly provided below) indemnification.
- 5.6 The foregoing aggregate limitations upon liability do not apply to:
  - a) Breach of confidentiality
  - b) The Parties respective express Indemnified obligations as set out below in this Agreement
  - c) Claims of intentional wrongdoing (such as fraud) or other matters for which liability cannot be excluded as a matter of law;
  - d) Third party claims subject to indemnification; or
  - e) Any payment obligations.

Unless prohibited by law (including any obligation of confidentiality) the Parties shall notify each other in writing of any claims, actions or proceedings being made, threatened or brought in connection with the provision of the credit services.

### Indemnified obligations

- 5.7 The Company shall indemnify HFCB and keep HFCB indemnified, from and against any and all loss, damage or liability, whether criminal or civil suffered, and any legal fees and costs incurred, resulting from a breach of this Agreement caused by any act, omission, or default by the Company.
- 5.8 Without prejudice to the foregoing, the Company shall indemnify and keep HFCB indemnified from, defend HFCB against, any loss resulting from companies' claims arising from the use of the services leading to loss or damage where the direct cause of such loss or damage is attributable to the Company's gross negligence, recklessness, indifference, delay or failure to deliver services after a Company has successfully effected an application for provision of the services.
- 5.9 The Parties shall give reasonable assistance in connection with any litigation or negotiation arising from this Agreement, and each Party agrees not to make any material admission which might be prejudicial to the other Parties without giving reasonable notice of its intention to do so.

## 6. INTELLECTUAL PROPERTY RIGHTS

### Pre-Existing Materials

- 6.1 Each Party shall retain ownership of any Intellectual Property Rights in any material created by it and/or any of its third-Party licensors prior to or outside the scope of this Agreement (Pre-Existing Materials). The parties agree that the Intellectual Property Rights in any enhancements and modifications to such Pre-Existing Materials carried out in the course of this Agreement are to vest in the party which owns such Pre-Existing Materials, regardless of who carries out such enhancements or modifications. To the extent that any Intellectual Property Rights in such enhancements and modifications do not vest in the Party which owns such Pre-Existing Materials and software by operation of law:
  - 6.1.1 where possible each Party assigns both present and future Intellectual Property Rights in such enhancements and modifications to transfer all interests and ownership of such rights to give effect to this clause; and
  - 6.1.2 Each party shall do all such things and sign all documents reasonably necessary to transfer all interests and ownership of such rights.
- 6.2 Each Party warrants that it will respect the intellectual property rights of the other and that it will not make use of the same whether by way of trade or otherwise, except as is expressly permitted by this Agreement.
- 6.3 Each Party warrants that it has sought protection of its intellectual property and undertakes to indemnify the other against all third-party infringement claims, suits and actions brought against it.
- 6.4 The parties in this agreement shall on request (and in any event no more than once every six months, excluding, however, any request issued upon the service of a termination notice or within six months prior to expiry of the Term), promptly provide a list of third party material licensed or otherwise supplied and used by it in relation to the services.
- 6.5 The Company acknowledges that Intellectual Property Rights in any material created within the scope of this Agreement rests in HFCB and shall be registered in favour of HFCB.

## 7. TERM AND REVIEW OF THE AGREEMENT

- 7.1 This agreement shall be valid for a period of 3 years on the understanding that each party is at liberty to terminate it at any time by giving a (3) three months' notice in writing to the other parties.
- 7.2 Should the Agreement be terminated by one party, steps shall be taken to ensure that the termination is not prejudicial to any program or activity undertaken within the framework of the Agreement.
- 7.3 This agreement may be amended at any time by mutual agreement of the parties and the intention to amend any terms or conditions shall be communicated to the parties in writing.

## 8. MISCELLANEOUS

- 8.1 Any specific activity under this Agreement shall be subject to the approval of the respective authorities of the Parties in accordance with their rules and procedures.
- 8.2 The Company authorizes the bank to block amounts in dispute and upon resolution authorizes the bank to debit such amounts and credit back to the right beneficiary.
- 8.3 All information obtained and derived from exchange of information either in writing or otherwise shall be treated as confidential during and after the expiration of this Agreement unless otherwise mutually agreed upon in writing by the Parties
  - 8.3.1 Each Party shall hold in confidence all information that relates to this Agreement, or that is obtained from the Company and shall only disclose the confidential Information to the personnel who are directly involved in the provision of the services and who need to know the information and shall ensure that all personnel are aware of and shall comply with these obligations as to confidentiality.
  - 8.3.2 Without limiting either any Party's rights, each Party shall promptly notify the other Party of any unauthorized possession, use or knowledge, of the other Party's confidential information or any attempt at the same by any person or entity that may become known to such Party.
  - 8.3.3 For purposes of this clause the expression "Party" shall include the affiliate companies of that Party and that Party's holding company and any subsidiary companies of that holding company and any other company controlled by that Party.
- 8.4 Each Party must comply with any relevant data protection laws and/or regulatory provisions or policies that apply to it in relation to any Data processed in connection with this Agreement, and furthermore, each Party shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use, and disclosure of the Data. A Party shall be responsible for and remain liable to the other Party for the actions and omissions of authorized employees concerning the treatment of Data as if they were that Party's own acts and omissions. In recognition of the foregoing, each Party Agrees and covenants that it shall: -
  - 8.4.1 Keep and maintain all Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure.
  - 8.4.2 Use and disclose the Data solely and exclusively for the purposes for which the data, or access to it, is provided pursuant to this Agreement, and not use, sell, transfer, distribute or otherwise disclose or make available that data for the benefit of any other third party.
  - 8.4.3 Not directly, or indirectly, disclose the Data to any person, other than authorized employees or agents, without the express written consent of the other Party unless and to the extent required by government authorities or as otherwise to the extent expressly required by applicable law, in which case that Party will use best efforts to notify the other Party prior to such disclosure, to the extent it lawful and permitted to do so.
  - 8.4.4 Any consent of a Party pursuant to the clause above, shall be subject to written confidentiality obligations sufficient to protect the data in accordance with the terms of this Agreement being put in place prior to any disclosure being made to those persons.
  - 8.4.5 Each Party shall ensure that its collection, access, use, storage, disposal of Data will comply with the applicable data protection laws in Kenya. To the extent that any terms of this Agreement are inconsistent or conflict with any of these laws, the laws shall prevail.
  - 8.4.6 A Party shall notify the other Party as soon as reasonably practicable after it becomes aware of a security breach and immediately following such notification, the Parties will coordinate with each other and provide such cooperation as may be reasonably required to investigate and resolve the security breach, including making available any records, logs, files, data reporting on other materials that may be reasonably required in connection with such investigation.

## 9. TERMINATION

Either party shall be entitled to terminate this Agreement for its sole convenience by giving ninety (90) days prior written notice to the other Party.

- 9.1 Either party may terminate this agreement with immediate effect if:
  - 9.1.1 The other party commits a material breach of its obligations under this Agreement, and, in the case of a breach capable of being remedied, does not remedy the breach within thirty (30) days after receipt of notice in writing from the non-defaulting party requiring it to do so; or
  - 9.1.2 The other party ceases to trade or to pay its debts in the normal course of business, enters into or proposes to enter into a voluntary arrangement or composition with its creditors, becomes insolvent, bankrupt or goes into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or has a receiver, administrator, trustee or similar officer appointed in respect of all or a substantial part of its business and assets or otherwise ceases to be a validly existing corporation.
- 9.2 After receipt of a 'Notice of termination' the Bank shall immediately proceed with the following obligations:
  - 9.2.1 Stop the provision of the services as specified in the notice;

9.3 Any clauses intended by the Parties or this Agreement to survive the termination of this Agreement shall survive the termination of this Agreement by whatever cause.

9.4 Termination of this Agreement shall have no effect on the rights and remedies of either party which have arisen prior to termination.

#### **10. FORCE MAJEURE**

Neither party will be liable to the other party for any delay in or failure to perform or comply with its obligations under this Agreement as a result of Force Majeure. The affected party shall promptly notify the other of the commencement and cessation of Force Majeure. If Force Majeure continues for a period in excess of ninety (90) days either party shall be entitled to terminate this Agreement forthwith by written notice and without liability for termination.

#### **11. ASSIGNMENT**

This Agreement may not be assigned by either party, by operation of law or otherwise, without the prior written consent of the other party.

#### **12. NOTICES**

Except as otherwise specified in the Agreement, all notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by mail, registered or certified, return receipt requested, postage pre-paid, courier service to the address specified below. Notices shall be deemed given on the day actually received by the party to whom the notice is addressed.

HFCB Limited

Koinange Street/ Kenyatta Avenue

P.O. Box 30088 – 00100

Nairobi

Attention: Director Retail

#### **13. COUNTERPARTS**

This Agreement may be executed simultaneously in two counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement.

#### **14. WAIVER**

No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

#### **15. SEVERABILITY**

Any provision of this Agreement held by a court of competent jurisdiction to be contrary to any law shall be severed from the Agreement, but such severance shall not render the remaining provisions of this Agreement ineffective. The remaining provisions of this Agreement will remain in full force and effect.

#### **16. GOVERNING LAW AND JURISDICTION;**

This Agreement shall be governed by the Laws of the Republic of Kenya.

#### **17. DISPUTE RESOLUTION**

All disputes will be resolved as per the existing bank dispute resolution procedures.