**INTERNET MERCHANT ACQUIRING AGREEMENT**

This **Internet Merchant Acquiring Agreement (the “Agreement”)** is made at [●] on this [●] day of [●].

**BY AND BETWEEN**

**HABIB BANK LIMITED**, a banking company incorporated under the laws of Pakistan and having its head office at HBL Plaza, I.I. Chundrigar Road, Karachi (hereinafter referred to as “**HBL**” which expression shall mean and include, where the context so requires or admits, its successors-in-interest and permitted assigns);

**AND**

[\_\_Mumtaz ul haque Ansari\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], son of / ~~daughter of / wife of~~ [\_Riaz ul haque Ansari\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], holding CNIC No: [42101-8202535-5\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and residing R-1222/15 F.B Area, Karachi, Pakistan at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (hereinafter referred to as the "**Merchant**" which expression shall mean and include, where the context so requires or admits, his/her legal heirs, successors-in-interest and permitted assigns).

**Or**

[\_\_\_Zumbeel\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] a sole proprietorship established under the laws of Pakistan and carrying on business through its sole proprietor [\_Mumtaz ul haque Ansari\_\_\_\_\_\_\_], son of / ~~daughter of / wife of~~ [Riaz ul haque Ansari\_\_\_\_\_\_\_\_], holding CNIC No: [\_\_42101-8202535-5\_\_], and having its principal place of business at [\_\_Suite # 631-C, Mashriq Center, Stadium Road, Karachi\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (hereinafter referred to as the " **Merchant** " which expression shall mean and include, where the context so requires or admits, his/her legal heirs, successors-in-interest and permitted assigns).

**Or**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a partnership firm established under the laws of Pakistan and consisting of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] as partners and having its principal place of business at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (hereinafter referred to as the " **Merchant** " which expression shall mean and include, where the context so requires or admits their respective legal heirs, successors-in-interest and permitted assigns).

**Or**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a company incorporated under the laws of Pakistan and having its registered office at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (hereinafter referred to as the “Merchant**”** which expression shall mean and include where the context so

requires or admits its successors-in-interest and permitted assigns).

(HBL and Merchant are hereinafter collectively referred to as the “**Parties**” and each individually referred to as a “**Party**”)

**RECITALS**

**WHEREAS**

1. HBL is offering the HBL payment gateway, a real time connectivity solution designed for merchants whereby their online corporate website is supported and connected with HBL’s merchant acquiring network. This gateway shall handle routing of all online/card transactions from a merchant’s website to VISA / Mastercard / Union Pay Cards global directory;
2. The Merchant wishes to conduct trading activities from the Merchant Website and receive credit / debit Card Transactions for the same over the internet; and
3. The Merchant requires payment gateway services from HBL and has agreed to avail the said services on the terms and conditions as herein contained.

**NOW THEREFORE, THIS AGREEMENT WITNESSETH** and in consideration of the mutual covenants contained herein, the Parties do hereby agree, undertake and declare as under:

**1. DEFINITIONS & INTERPRETATION**

1 .1 In this Agreement, unless the context otherwise requires, the following definitions shall apply.

**“All Charges”** shall mean collectively, the Membership Fee, Set-up Fee, Discount, service charges, transaction fees, administrative fees, Chargeback Transaction Service Charge and Refund Transaction Service Charge and any other amounts payable by the Merchant to HBL from time to time under this Agreement.

**"Authorization”** means the process, as described in Clause 3.8 below, by which HBL confirms to the Merchant whether the Card has the required credit limit / funds (as the case may be) to make payment for the Card Transaction with the Merchant.

**“Authorization Code"** means a code provided to the Merchant, generated subsequent to a Card Transaction request received on the Merchant Website and processed by Visa/MasterCard/Union Pay and/or Card issuing bank.

**"Batch Settlement"** means the processing of the file containing a number of online authorized Card Transactions occurring after clearing and settlement of a previous batch.

**"Business Days"** means days on which HBL is open in Pakistan to conduct banking business.

**"Card"** shall mean any:

1. Visa Card; or
2. MasterCard Card; or
3. Union Pay Card;

issued by any bank, financial institution or corporation, with the name and Card or Card account number of the Card Member imprinted or embossed on the Card, which Card pursuant to this Agreement may be used by the Card Member as a means of payment for a Card Transaction.

**"Card Member"** in relation to any Card means the person to whom the Card is issued.

**"Card Transaction"** means any payment transaction effected or to be effected by any Card Member with the Merchant, on the Merchant Website, by the use of a Card, which definition shall include a reference to any payment transaction effected by the Merchant requesting for payment by charging to the said Card Member's Card and his Card account for the payment to be made, as contemplated by the Payment Instructions.

**"Card Transaction Date"** in relation to any Card Transaction means the date on which the Card Transaction is effected.

**"Charge Back Claim"** means any sum claimed from HBL or any refusal of any payment to HBL by an issuer of any Card in relation to a Card Transaction for whatever reason or as otherwise defined in this Agreement.

**“Chargeback Transaction Service Charge”** has the meaning given to the term in the Payments Schedule.

“**Confidential Information**” means any information, document or material which has been or may be disclosed (in whatsoever form and through whatsoever medium) by a Party to the other Party or any information, document or material that is obtained or may be obtained (directly or indirectly) by a Party in connection with this Agreement and includes without limitation, any information, document or material that is either designated ‘confidential’ or which by its nature is clearly confidential, any information, document or material relating to this Agreement, the services provided or to be provided by HBL under this Agreement, any Card, Card Member, Payment Instructions and/or Card Transactions, but excludes information which (i) at the time of its disclosure is in the public domain as evidenced by printed publications or otherwise; or (ii) after its disclosure becomes part of the public domain by publication or otherwise through no fault of any Party or its respective nominees/employees; or (iii) is obtained by a Party from a third party who is lawfully in possession of such information and is not subject to any contractual or fiduciary relationship that would preclude its disclosure.

**"Discount"** in relation to any Card Transaction means the amount equivalent to the percentage discount of the amount of the Card Transaction set out in the Payments Schedule.

**"Dispute"** means an event wherein the Card Member did not authorize or participate in a Card Transaction and/or contests a Card Transaction.

**"Effective Date"** shall mean the date of execution of this Agreement by the Parties.

**“Intellectual Property Rights”** means any and all patents, trademarks, domain names, website designs and layouts, service marks, trade names, registered designs, copyrights, database rights, design rights, service marks, business names, logos, trade secrets, technical and commercial know-how, whether registered or otherwise, and all and any other similar type of proprietary rights, whether it can be registered or not.

**“Force Majeure Event”** shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and which materially and adversely affects the performance by such Affected Party of its obligations under or pursuant to this Agreement, provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care. “Force Majeure Events” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirement:

1. natural disasters including lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
2. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion;
3. acts of any government in either its sovereign or contractual capacity;
4. any strike, electricity outage, work-to-rule, go-slow, or analogous labor action that is politically motivated and is widespread or nationwide;
5. hacking, cyber attack or cyber warfare;
6. fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation; or
7. epidemic or plague.

**“MasterCard”** shall mean MasterCard International.

**“MasterCard Card”** shall mean any card bearing the MasterCard logo and/or other relevant service marks licensed by MasterCard International.

**“Membership Fee”** means a fee payable by the Merchant to HBL in accordance with the Payments Schedule.

**"Merchant"** shall have the meaning ascribed to it in the preamble above and includes its officers, employees and/or agents of the Merchant where the context so requires.

**"Merchant Account"** shall have the meaning ascribed to it in Clause 5.1.

**“Merchant Website”** has the meaning given to the term in "Schedule “A”.

**“Payment Application”** means the HBL payment gateway, a real time connectivity solution exclusively designed for merchants whereby their online corporate website is supported and connected with the HBL merchant acquiring network and which shall handle routing of all online / Card Transactions from Merchant Website to Visa / MasterCard / Union Pay global directory, where each transaction is authorized and returned with approved / declined status.

**"Payment Instructions"** means any instruction given by a Card Member, whether contained in an electronic order form or otherwise, instructing and authorizing the Merchant to charge to the said Card Member's Card and his Card account the amount of any payments due and payable to the Merchant for goods and/or services provided or to be provided by the Merchant to the said Card Member or at his request.

**“Payments Schedule”** shall the payments schedule attached hereto as Schedule “B”.

**"PSP"** means a payment service provider, engaged by HBL to provide payment gateway services for the performance of this Agreement.

**“Refund Transaction Service Charge”** has the meaning given to the term in the Payments Schedule.

**“Set-up Fee”** means a onetime non-refundable fee payable by the Merchant to HBL in consideration of the use of the Payment Application and any other equipment or technical support provided by HBL at the time of initial installation of the Payment Application by the Merchant, in accordance with the Payments Schedule.

**"SSL"** shall have the meaning ascribed to it in Clause 3.1.

**“Union Pay”** shall mean Union Pay International.

**“Union Pay Card”** shall mean a card bearing the Union Pay logo and/or other relevant service marks licensed by Union Pay International.

**"Valid Card"** means an unexpired Card which has a validity period imprinted thereon within which the Card Transaction Date falls or would fall, issued by any institution designated to issue a Visa, MasterCard or Union Pay card as may be specified by HBL from time to time provided that the Card is not listed in a current warning or restricted card bulletins or notices and bears the signature of the Card Member.

**“Visa”** shall mean Visa International.

**“Visa Card”** shall mean any card bearing the Visa logo and/or other relevant service marks licensed by Visa International.

1.2 In this Agreement, unless the context shall otherwise require:

1. headings in the Agreement are inserted only for convenience and shall not affect its construction and interpretation.
2. the singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.
3. a reference to any Clause or Schedule shall be construed as a reference to a clause or schedule to this Agreement.
4. recitals and Schedules to this Agreement shall be an integral and operative part of the Agreement and any breach thereof or any misrepresentation contained therein shall entitle the Parties to the same remedies as are available in respect of other terms of this Agreement.
5. in case of conflict or inconsistency between any term of a Schedule and this Agreement, the terms of this Agreement shall prevail to the extent of the inconsistency / conflict.

1...3 The headings to the clauses are for the purpose of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement or any of its provisions.

1. **CARD TRANSACTIONS**

2.1 The Merchant shall accept all Cards in payment only for purchases of either the Merchant's goods and/or services and/or the goods and/or services of such third party(ies) with whom the Merchant has an existing agreement or arrangement for such third party(ies) to provide and sell its goods and/or services to the Merchant's customers through the Merchant Website and who shall bill the Merchant's customers only through the Merchant and which agreement or arrangement was notified to and approved by HBL in writing, subject to the terms and conditions of this Agreement.

2.2 The Merchant shall not require any Card Member to pay any part of the Discount whether through an increase in price or otherwise or to pay any other charge or to require any security from or otherwise impose any condition on a Card Member in connection with any Card Transaction.

2.3 The Merchant shall observe all security measures including those prescribed by HBL and/or the Merchant's internal security measures under prior intimation to HBL, in respect of the acceptance of any Card for payment of any Card Transaction.

2.4 The Merchant shall provide the means for Payment Instructions to be given by any Card Member who desires to make payments to the Merchant with the use of a Card for the goods and/or services provided by the Merchant through the Merchant Website.

2.5 The Merchant shall seek authorization from HBL for each and every Card Transaction. Subsequently, in accordance with Clause 5.3, the batch of Card Transactions will be processed within three (03) Business Days' time of previous Card Transaction Batch Settlement.

2.6 The Merchant shall comply with all reasonable instructions given to the Merchant by HBL in response to a request by the Merchant for payment in connection with any Card Transaction conducted pursuant to the Payment Instructions.

2.7 The Merchant may not infer any impropriety, wrongdoing or lack of credit-worthiness on the part of any Card Member from the declining of any authorization request made in respect of any Card Transaction attempted to be effected by the Card Member pursuant to the Payment Instructions.

2..8 All Card Transactions shall be in Pakistani Rupees unless the Merchant submits a prior written request to HBL to accept Card Transactions in some other currency and HBL, in its absolute discretion, approves such request in writing.

**3. MERCHANT'S SYSTEM**

3.1 The Merchant agrees to use the third party Secure Socket Layer technology system **("SSL")** for management of Card details. In this SSL system, card details shall not be disclosed to the Merchant.

3.2 The Parties acknowledge that the setting-up, maintenance, upgrading, security and integrity of the Merchant Website and all related systems and technologies (including computer system, servers, hardware and software), and all costs thereof, and any other matters related thereto, shall be borne by the Merchant and are the Merchant's sole responsibility.

3.3 The Merchant and its agents / contractors shall keep all systems and media containing any information or data (whether physical or electronic) relating to Payment Instructions, Card Members and their Card Transaction(s) details in a secure manner, to prevent access by or disclosure to anyone other than the Merchant's authorized personnel and/or HBL and/or such other third parties as authorized by HBL in writing. In the event that any of the aforesaid information or transaction data stored in any part of the Merchant's system is lost, damaged, stolen or otherwise compromised, the Merchant shall report and give written notice of such loss, damage, theft or compromise to HBL and the relevant Card Member immediately (in any case no later than one (1) day of the Merchant having taken notice thereof). Thereafter, the Merchant shall, at its own cost, in consultation with HBL, take immediate steps to remedy the situation and prevent its recurrence.

3.4 If the Merchant intends to upgrade or change the version or type of its software and/or hardware or any other part of its system which would, in any manner whatsoever, impact the Payment Application, Merchant Website and/or provision of services by HBL under this Agreement, the Merchant shall only do so with the prior written consent of HBL and if consent is provided by HBL, conduct testing with HBL's system prior to such change taking effect. HBL shall not be liable for any loss or damage suffered by the Merchant, any Card Member or other party for any incompatibility between the Merchant's system and HBL's system and/or any changes made therein.

3.5 The Merchant shall accept full responsibility, and hereby acknowledges that HBL shall not be liable in any way whatsoever, for any claims, liabilities, expenses, costs, loss or damage of whatever nature brought against, suffered or incurred by or caused to any party whosoever (including but not limited to any Card Members) due to or arising out of or in connection with this Agreement, Payment Instructions, Card Members or Card Transactions or any breach or compromise of the security or integrity, or malfunction, of any encryption and identification software, any electronic code keys and any equipment provided to any party or the Merchant Website or any of the Merchant's systems.

3.6 HBL shall be entitled to enter any of the Merchant's premises, with prior reasonable written notice, to: (i) inspect the Merchant's, software, hardware, Merchant Website, system programming, and/or any other part of its system for the purposes of: (i) ascertaining whether the setting-up, operation, maintenance, security and integrity thereof or any other matter related thereto may adversely affect HBL's interests or rights under this Agreement and/or the rights and interests of Card Members; and/or (ii) reviewing business operations and security controls of Merchant.

Notwithstanding the aforementioned inspections, Merchant shall at all times be liable and responsible for setting-up, maintenance, upgrading, security and integrity of the Merchant Website and all related systems and technologies, and all costs thereof shall be solely borne by the Merchant.

3.7 The Merchant shall install the Payment Application provided by HBL in merchant online server, to send the payment details to HBL's secure service using SSL technology. The Merchant shall also include in each Card Transaction the order/transaction reference number and any other details HBL may prescribe in writing from time to time.

3.8 The status of Card Transactions shall be sent back to the Merchant by HBL and/or Payment Gateway (i.e. approved /declines as the case may be) with the order/transaction reference number as and when received from Visa, MasterCard and/or Union Pay (as the case may be).

3.9 The Merchant handling Card Transactions via the Payment Application must ensure that the extraction of data from the Card(s) must be in a manner specified by HBL, which may vary from time to time with prior written notice.

3.10 The Merchant shall deliver (electronically and/or otherwise) to the Card Member a bill / invoice for the Card Transaction which shall, *inter alia*, state the charges covered in the Payment Instructions received from a Card Member through the Payment Application.

3.11 HBL reserves the right to impose limits on the number of Card Transactions undertaken using a particular Valid Card and / or the value of a single Card Transaction during any time period, and reserves the right to refuse payment(s) in respect of any Card Transaction exceeding such limit.

**4.. WEBSITE REQUIREMENTS**

4.1 The Merchant shall promptly inform HBL of any security breach, suspected fraudulent Card account numbers or any suspicious activities, Card Transactions and/or Cards that may be connected with attempts to commit a security breach or to use fraudulent Card account numbers in the Merchant's security system or at the Merchant Website immediately upon the Merchant becoming aware of the same and in any event no later than one (1) day of the Merchant becoming aware thereof.

4.2 All representations contained in / on the Merchant Website, as well as the web pages therein, or any advertisement or printed matter relating to the goods and / or services offered therein shall be deemed to have been made solely by the Merchant and HBL shall not in any way be liable for any claim whatsoever related thereto.

4.3 The Merchant shall observe and comply with all security measures, control guidelines and instructions that may be communicated from time to time in prior writing, including but not limited to, emails, delivery by messenger or courier or sent by pre-paid mail at the address of the Merchant mentioned in Schedule “A”. HBL has the right to amend, modify and revise such instructions as it deems fit and the Merchant shall be bound to observe such instructions and advice so received.

4.4 The Merchant shall be solely responsible to develop its own security controls, business rules and to obtain updates from the PSP and/or HBL to implement any/all security measures, control guidelines and instructions for the prevention of any fraudulent activity or any unauthorized Card Transaction.

4.5 Neither Party shall use the other Party’s Intellectual Property Rights in any manner whatsoever (whether on the Merchant Website, in any other media or materials or otherwise) without the other Party’s prior written approval. Under no circumstances shall the use of a Party’s Intellectual Property Rights imply that the using Party endorses, sponsors, certifies, or in any way guarantees the goods and / or services.

4.6 The Merchant shall display the following information on the Merchant Website (to the extent applicable):

1. Complete description of the goods and/or services;
2. Refund / return policy;
3. Customer service contact including electronic mail address;
4. Transaction currency;
5. Export restrictions as applicable;
6. Delivery policy;
7. Country of Merchant domicile;
8. Logos of cards accepted in the format authorized by the card scheme provided to the Merchant;
9. Import tariff(s) and / or regulation(s);
10. Securities, capabilities and policy for transmission of Card details (i.e. to let customers know how the Merchant is protecting the Card Member’s data and other related information);
11. Customer data privacy policy; and
12. HBL and PSP logos, slogans, and internet merchant services tagline (if any).

4.7 The Merchant shall provide a reasonable level of support to the Card Members in respect of Card Transactions effected through the Merchant Website. Such support shall include appropriate notice to the Card Member of: (i) a means of contacting Merchant in the event the Card Member has questions regarding the nature or quality of the goods and/or services that Merchant offers for sale and (ii) procedures for resolving disputes. If HBL determines in good faith that the Merchant’s failure to comply with this Clause 4.7 is causing an unacceptable burden on its Card Member support facilities, HBL may suspend and/or terminate the Agreement.

4.8 Merchant shall maintain the Card Member information and the Card Transaction data which includes the Card Member's contact details, delivery details, shipment details (if applicable) and description of goods and/or services ordered. If applicable, the Merchant shall ship the order to the Card Member within seven (07) days from the date of Card Transaction authorization.

4.9 All information concerning Card Member(s) and Card Transaction(s) obtained by the Merchant shall be maintained in a secured manner with appropriate industry standard encryption and controls, limited access to selected and authorized personnel of the Merchant until discarding, and must be destroyed in a manner that will render the data unreadable subject to requirements of applicable laws.

4.10 Merchant shall use security firewalls and separate servers to prevent intrusions to any Payment Instructions, Card Member or Card Transaction data being stored on the Merchant Website and take all such other measures as may be required to safeguard data.

4.11 HBL shall not be responsible for any loss or damage arising from the hacking, tampering or breach of the Merchant Website or Card Transaction data (including breaches of Card data or Card Member details).

4.12 HBL shall be informed forthwith in writing if any new site or banner is linked with the Merchant Website.

4.13 HBL shall be entitled to copy any service codes of the Merchant Website for the purposes of performing its obligations under this Agreement.

4.14 The Merchant shall not, without the Card Member's prior written consent, sell, purchase, provide or otherwise disclose any Card Member information or other Card Member personal information or Card Member Card Transaction details to any third party other than HBL.

4.15 HBL shall have the right to verify and investigate all Card Transactions and to examine the Merchant's books, records and other papers relating to the Card Transactions covered by the terms of this Agreement. For this purpose, the Merchant shall preserve all records pertaining to Card Transactions for a period of at least eighteen (18) months (or such other period notified by HBL) in the format required by HBL and notified to the Merchant.

4.16 The Merchant shall fully cooperate with HBL and provide all reasonable assistance as requested by HBL during any investigation being conducted by HBL in connection with a Dispute or in relation to any fraudulent activity related to a Card, Card Member, Payment Instruction, Payment Application, Card Transactions and/or any other matter related to this Agreement.

4.17 The Merchant shall be solely responsible for complying and demonstrating compliance with all applicable rules of card associations such as Visa/ MasterCard/Union Pay, including, without limitation, the Payment Card Industry – Data Security Standards (PCI-DSS) and shall meet with baseline security requirements related to the Merchant’s assets security control implementation, transaction information, storage and disclosure. If utilization of the Payment Application by the Merchant results in or may result in additional liability being placed on HBL (as determined by HBL in its sole and absolute discretion) under any Visa / MasterCard / Union Pay rules / guidelines / policies and/or the PCI-DSS, such utilization shall be deemed to be a breach of this Agreement by the Merchant.

4.18 The Merchant hereby acknowledges that even though the Payment Application provided by HBL to the Merchant under the terms of this Agreement shall have the inbuilt fraudulent management system to avoid and monitor suspicious / fraudulent online transactions, no guarantee and/or warranty is provided by HBL that the system / Payment Application shall provide complete protection from fraud.

**5. PAYMENT**

5.1 Merchant shall open an account with HBL on the Effective Date (the **Merchant Account”**).

5.2 The Merchant hereby instructs and authorizes HBL to transfer into its Merchant Account all proceeds of sale of goods and/or services from the Merchant Website covered under this Agreement within five (05) Business Days of their receipt by HBL. The Merchant agrees, instructs and authorizes HBL not to allow the amount of each particular Card Transaction in respect of a sale by the Merchant to be withdrawn from Merchant Account by any party (including the Merchant) for a minimum period of five (05) Business Days.

5..3 The Merchant shall submit all Card Transactions effected by Card Members with the Merchant to HBL for settlement within three (03) Business Days of the Card Transaction. HBL shall not be liable to pay the Merchant for any fraudulent or any unauthorized Card Transaction (as determined by HBL in its sole and absolute discretion). The Merchant shall solely bear the entire loss without recourse to HBL in case of fraudulent or any unauthorized Card Transaction.

5.4 HBL shall pay to the Merchant within five (05) Business Days from the date of Batch Settlement, vide payments made to the Merchant Account, the total amount of the Card Transactions effected with the Merchant which have been so accepted for payment by HBL less: (i) the aggregate Discount on all such Card Transactions; and (ii) the aggregate amount of refunds and rebates granted to Card Members; and (iii) all other amounts payable or due to HBL from the Merchant; and (iv) all applicable taxes. In case where HBL has reason to believe that any charges have been fraudulently incurred, charged either on an invalid Card, in case chargeback is received by HBL or where HBL has reasons to inquire or causes to be inquired any charges, whether suspicious or otherwise, HBL hall be authorized by the Merchant to hold payment for a maximum period of one hundred and eighty (180) Business Days from the date the transaction was posted on the Card, and take a decision accordingly at its sole discretion. HBL shall not be liable to share the inquiry report with the Merchant.

5..5 All payments to the Merchant shall be made available in Pakistani Rupees.

5.6 If the Merchant does not raise any objection to the amount of the payment by HBL within fifteen (15) days after the date HBL credits the Merchant Account, the Merchant shall be deemed to have accepted such amount as correct and shall not be entitled to object to it thereafter, provided that nothing in this Clause 5.6 shall preclude HBL from correcting any error or discrepancy in such amount paid by deducting / adjusting the same from the Merchant Account by making the adjusting entries.

5.7 Any payment by HBL under this Agreement whether or not the Merchant has complied with all its obligations under this Agreement shall be made without prejudice to any claims, rights or remedies that HBL may have against the Merchant, and shall not constitute any admission or acknowledgment by HBL that the Merchant has duly performed its obligations under this Agreement.

5.8 Notwithstanding any other provision of this Agreement or any authorization and/or authorization code numbers given in relation to a Card Transaction, HBL shall be entitled by giving notice thereof to refuse payment to the Merchant of all or part of the amount of any disputed Card Transaction or if payment has been made to seek immediate reimbursement from the Merchant of such sum or deduct / adjust the same from either the Merchant Account or through any other mode(s), in any one or more of the following events:

1. A Card Member disputes the nature, quality, quantity, use or fitness of the goods and/or services sold / rendered to a Card Member pursuant to a Card Transaction, or alleges that the Merchant has breached the terms of the contract of sale or service entered into between the Merchant and the Card Member or any representation or warranty made by the Merchant to the Card Member;
2. A Card Member disputes or denies that the contract of sale or service with the Merchant was not entered into by the Card Member, or that delivery of the goods sold and/or performance of the services rendered under the Card Transaction was not received by the Card Member, or alleges that the Payment Instructions have been given or altered without the Card Member’s consent or authority;
3. The contract of sale or service entered into between the Merchant and the Card Member in relation to the goods and/or services rendered under the Card Transaction is void or voidable at law or the use of the Card or the performance of any person's obligations under such contract of sale or service involves any illegal or unlawful act(s);
4. The Card used to effect the Card Transaction is counterfeit or the Card Transaction is or the Card Member alleges that the Card Transaction is in any way fraudulent or tainted or affected by fraud or forgery, whether or not the Merchant is aware of the same;
5. The Card Transaction is not submitted for settlement by the Merchant within three (03) Business Days of the Card Transaction;
6. Payment in relation to the Card Transaction has been mistakenly or wrongly made by HBL or by the Card Member to the Merchant;
7. No authorization and/or authorization code numbers (if necessary) has / had been sought by and/or granted to the Merchant for the Card Transaction, as required under this Agreement;
8. The Card used for the Card Transaction is not a valid Card;
9. The Merchant does not furnish to HBL for the purpose of investigating a Dispute, the original or copy or printout of any statement, bill or invoice or any other document or record relating to the Card Transaction forthwith upon request as required by HBL;
10. In seeking authorization for a Card Transaction, the Card Member's name and/or Card or Card account number and/or the validity period of the Card and/or any other details were given to HBL incorrectly (whether or not as a result of the Merchant's fault or neglect);
11. A Charge Back Claim relating to the Card Transaction is received by HBL or the issuer of any card refuses for whatever reason to honor any Card Transaction;
12. HBL is of the opinion that there is any fraud, forgery or suspicious circumstances surrounding any Payment Instructions, Card Transaction, Card, or Card Member;
13. There has been a breach by the Merchant of any of its obligations under this Agreement, or of any security measures or guidelines issued by HBL;
14. The Card presented to the Merchant in respect of the transaction was listed in a warning list or any other communication or advice (in whatever form) from time to time, issued or made available to HBL by any other institutions or Card issuing bank or financial institution or if such intimation is made available by or on behalf of HBL to the Merchant; or
15. The goods and/or services in respect of a Card Transaction are rejected or returned or the Card Transaction, or any part thereof, is validly cancelled or terminated by a Card Member or if the Merchant fails to provide at all or to the Card Member’s satisfaction, goods and/or or services which are the subject matter of a Card Transaction.

5.9 HBL’s determination of whether any of the events in Clause 5.8 have occurred shall be final and binding on the Merchant unless the Merchant can provide evidence to the contrary to HBL’s absolute satisfaction.

5.10 In addition to and without prejudice to Clause 5.8 above and notwithstanding any other provision of this Agreement or any authorization and/or authorization code numbers given in relation to such Card Transaction, in the event that any Card Transaction is for any reason suspected by HBL to be counterfeit or in any way tainted or affected by any fraud or forgery, HBL shall be entitled at its discretion to withhold payment to the Merchant of the full amount of the Card Transaction or any part thereof; or if payment has been made, to seek reimbursement within seven (07) Business Days from the Merchant of such sum.

5.11 Settlements of Card Transactions between Merchant and HBL shall be in Pakistani Rupees at the exchange rate(s) notified by HBL to the Merchant from time to time.

5.12 HBL is entitled in its discretion to vary, at any time, with mutual consent of the Merchant, the amount, discount rate, type and/or basis of calculation of any markup or charge payable by the Merchant under this Agreement.

5.13 All payments made by HBL under this Agreement shall be subject to the deduction of any applicable taxes in accordance with applicable law.

5.14 The Merchant shall make payments of All Charges to HBL in accordance with and in the manner stated in the Payments Schedule.

5.15 HBL shall be entitled to charge the Refund Transaction Service Charge to the Merchant for all refund transactions processed at the Merchant's end.

5. 16 HBL shall be entitled to charge the Chargeback Transaction Service Charge to the Merchant for all chargeback transactions occurred on the Merchant.

1. **REFUNDS AND REBATES**

61 Where a request for repayment under a Card Transaction has been submitted by the Merchant to HBL and if the Merchant accepts a return from a Card Member of any goods and/or services sold under the Card Transaction or agrees to make a refund or provide a rebate to a Card Member of the amount of the Card Transaction or any part thereof for any reason, or if the Card Member validly cancels the Card Transaction or claims a refund or rebate to which he is entitled of all or part of the amount of the Card Transaction, the Merchant shall give a refund or rebate to the Card Member through HBL by making the necessary arrangements with HBL to effect such refund or rebate to the Card Member's Card account.

6.2 The Merchant agrees that no cash refunds shall be given to the Card Members against refunds of goods and/or services already purchased by the Card Member by use of his/her Valid Card. Upon receipt of such refund request from the Card Member, the Merchant shall effectuate the refund (less a deduction equal to the existing Discount rate percentage) as per the instructions of HBL.

6.3 The Merchant shall, if HBL so requires, pay to HBL within seven (07) days on prior written demand the amount of any refund or rebate granted to the Card Member as instructed by the Merchant.

1. **SUSPICIOUS CARD TRANSACTIONS**

7.1 Where the Merchant receives Payment Instructions relating to a Card Transaction which the Merchant believes or suspects may relate to a Card which is stolen or otherwise belonging to a person other than the person purporting to be the Card Member or where the circumstances surrounding the Card Transaction are in any way suspicious or irregular, the Merchant shall, without at any time informing the Card Member or purported Card Member or arousing his suspicions, (i) not process the Card Transaction, (ii) immediately inform HBL by telephone at the telephone number(s) mentioned at Clause 19 *(Communication)*, and (iii) comply with the instructions given to it by HBL.

7.2 The Merchant shall monitor the pattern/trend of the Payment Instructions constantly and shall immediately notify HBL in writing in the event of any surge/abnormal increase in the Payment Instructions received. In case such an abnormal increase is observed, the Merchant shall immediately inform HBL in writing for advice and instructions.

1. **SET-OFF**

8.1 HBL may at any time, at its discretion, without any prior notice to the Merchant, deduct from, set-off, appropriate, combine, consolidate and/or apply any monies owed by the Merchant to HBL under this Agreement. This Clause shall, without limitation, apply to any amount previously overpaid by HBL to the Merchant under this Agreement, any claim that HBL may have against the Merchant and all sums payable or due to HBL from the Merchant under this Agreement or in any way connected to this Agreement. HBL reserves the right to set-off / adjust / deduct/ debit All Charges and any other amount payable by the Merchant to HBL from the Merchant Account if the Merchant fails to pay the same in accordance with the terms of this Agreement.

8.2. Where any deduction, set-off, appropriation, combination, consolidation and/or application of monies requires the conversion of one currency into another, HBL shall be entitled to effect such conversion at such time and rate of exchange as notified by HBL. The Merchant shall solely bear all exchange risks, losses, commission and other bank charges which may thereby arise.

8.3 The Merchant agrees, instructs and authorizes H B L to debit the Merchant Account and/or set-off/adjust/ deduct any payments payable by the Merchant to HBL from any amounts / payment payable by HBL to the Merchant under this Agreement (including, without limitation, All Charges).

1. **PRODUCTION/INSPECTION OF RECORDS**

9.1 Forthwith on receipt of a request by the Merchant from HBL (in any case no later than two (2) days), the Merchant shall furnish to HBL, the original or photocopies or printouts (as required by HBL) of the Payment Instructions, all statements, bills or invoices, receipt of the Card Member, sales and/or other records of the Merchant pertaining to any Card Transactions and/or Card Member.

9.2 The Merchant shall retain all such Payment Instructions, statements, bills or invoices, receipt of the Card Member, sales or other records for a period of at least eighteen (18) months from the relevant Card Transaction Date or such longer period as may be required by applicable law.

9.3 HBL shall be entitled to enter any of the Merchant's premises with prior written notice to carryout inspections of and audit the Merchant's records and/or with a view to ascertaining whether the Merchant or its officers, employees and/or agents are involved in any fraudulent or unlawful activity which may adversely affect HBL's rights under this Agreement.

1. **TERMINATION**

10.1 Either Party may terminate this Agreement at any time without assigning any reason(s) whatsoever by giving to the other Party thirty (30) days prior written notice.

10.2 Notwithstanding anything mentioned in this Agreement, HBL shall be entitled at its discretion at any time to terminate this Agreement forthwith in any of the following events:

1. Where the Merchant is an individual or a partnership firm, the Merchant or any of the partners comprising the Merchant dies, becomes mentally incapacitated or is otherwise legally disabled, or proceedings are commenced for the bankruptcy/ insolvency, whether voluntary or otherwise, of the Merchant or any of the partners comprising the Merchant.
2. Where the Merchant is a society or corporation or company, proceedings are commenced or a resolution is passed for the winding up or dissolution, whether voluntary or otherwise, of the Merchant or where the Merchant is a corporation proceedings are commenced for the administration or liquidation of the Merchant or a receiver or receiver and manager is appointed over the Merchant or any of its assets;
3. The Merchant enters into a composition or arrangement with its creditors;
4. The Merchant or any of its officers, employees and/or agents is or is suspected by HBL or is notified to HBL by Visa International or MasterCard International or Union Pay International or any other issuer of any Card to be involved in any suspicious, fraudulent or unlawful activity with regard to the arrangement under this Agreement or relating to any Card Transaction whether or not relating to the Merchant's business;
5. The Merchant causes any harm to the reputation and goodwill of HBL, Visa/ MasterCard/Union Pay or PSP, as determined by HBL; or
6. The Merchant has failed to perform any obligation under this Agreement or has otherwise breached any term of this Agreement and the breach is either incapable of remedy or, if it is capable of remedy, the Merchant fails to cure it within fifteen (15) days of receipt of written notice from HBL.

10.3 Termination of this Agreement shall not affect any rights or obligations which may have accrued prior to termination. The obligations of each Party set out in any Clause intended to survive termination, including this Clause 10.3 and Clauses 3.5, 5.2, 5.3, 5.5, 5.6, 5.7, 5.8, 5.9, 7, 9, 12, 13, 14 and 16 and the Payments Schedule where applicable shall continue in full force and effect notwithstanding termination or expiry of this Agreement.

10.4 HBL shall not be liable to pay for any Card Transaction occurring post termination of this Agreement.

10.5 Upon termination of this Agreement, the Merchant shall forthwith return to HBL all items provided to the Merchant in connection with this Agreement (if any) in good working order and condition (fair wear and tear expected) and shall provide any and all Card data, Card member details, and all records of Payment Instructions and Card Transaction effectuated in pursuance of this Agreement

10.6 Termination of this Agreement in terms of this Clause 10 shall not affect the rights of a Party to receive any amount due to it as provided for in this Agreement.

1. **CONCLUSIVENESS**

11.1 Any records of any matter under this Agreement stored in any medium (including without limitation, records stored electronically, via a computer medium or microfilm or scanning) howsoever obtained, including but not limited to, any records obtained from Visa/MasterCard/Union Pay International or any other party, system, database or network shall be conclusive and binding on the Merchant for all purposes whatsoever save for manifest error.

1. **CONFIDENTIALITY& PERMISSIONS**
   1. The Merchant hereby agrees with HBL that:

12.1.1 any Confidential Information disclosed by HBL to the Merchant and/or received or obtained by the Merchant as a result of entering into this Agreement, shall be held in strict confidence by it, using no lesser diligent measures and degree of care as it uses to protect its own Confidential Information. The Confidential Information shall not be used, copied, reproduced, distributed or disclosed by any Party for any purpose except to its employees or agents on an only need to know extent basis in order to effectively implement or perform this Agreement provided its employees and agents are subject to and maintain the confidentiality obligations under this Agreement.

12.1.2 it shall not sell, transfer, publish, disclose, display, or otherwise make the Confidential Information available to third parties without the prior written consent of HBL.

12.1.3 it shall promptly notify HBL if it becomes aware of any breach of its confidentiality obligations under this Clause.

12.1.4 it can be held legally liable for any disclosure, advertent or inadvertent, of any Confidential information prohibited herein or any breach of the provisions herein.

12.1.5 this Clause 12 shall survive termination of this Agreement without any limit as to time.

12.1.6 it shall indemnify the Merchant and hold it harmless against any claim, suits, proceedings, litigation or any other action and all losses, damages, costs, expenses and liability incurred by the Merchant due to an unauthorized disclosure of the Confidential Information by the Merchant.

* 1. The Merchant hereby understands, agrees and acknowledges that HBL shall be entitled to use and/or disclose the Confidential Information and any information relating to the Merchant or the Merchant Account, if and to the extent:
     1. the disclosure or use is required by law, any stock exchange, financial institution, governmental authority (whether it be a multinational, national, federal, state, provincial or local governmental or regulatory or supervisory authority, including the State Bank of Pakistan or entity or body or any subdivision thereof, including any agency, instrumentality, division, department, court or other body thereof) Visa, MasterCard, Union Pay or PSP;

* + 1. the disclosure or use of Confidential Information is required to vest the full benefit of this Agreement in HBL and/or is required to enable HBL to perform its obligations under this Agreement;
    2. the disclosure or use is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement;

* + 1. the information is or becomes publicly available (other than by breach of this Agreement);

* + 1. the Merchant has given prior written approval to the disclosure or use; or

* + 1. the information is independently developed by HBL after the date of execution hereof.

1. **MERCHANT'S UNDERTAKINGS AND INDEMNITY**

13.1 The Merchant represents and warrants to HBL that:

(i) it duly organized and validly existing under the laws of Pakistan and has the authority to enter into this Agreement;

1. the performance by it of its covenants and obligations hereunder, have been duly authorized by all necessary corporate action, and this Agreement constitutes, valid and legally binding obligations of it, enforceable against it in accordance with their respective terms;
2. execution and delivery by it of this Agreement, the performance by it of its covenants and obligations hereunder will not:
3. result in a breach of any provision of its constitutive documents;
4. result in a breach of any statute, order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it or any of its assets are bound; or
5. result in breach of any agreement to which it is a party.
6. there are no proceedings pending, or to the best of its knowledge, threatened for its liquidation or that could materially adversely affect the performance by it of its obligations under this Agreement;
7. the person(s) signing on behalf of the Merchant is/are specifically authorized and directed to do so by the Merchant;
8. it is lawfully engaged in the business in carries out and is duly licensed (if required) under the laws of Pakistan to conduct such a business;
9. it will give prior notice to HBL if it intends to change the nature of its business or ownership of the business / Merchant; in which case, HBL shall have the right to terminate this Agreement or amend this Agreement accordingly;
10. the Merchant’s use of the Payment Application shall be subject to State Bank of Pakistan’s approvals/permissions that may be required from time to time as well as any applicable guidelines, circulars, rules and regulations issued by the State Bank of Pakistan;
11. as to each Card Transaction covered under this Merchant Agreement, the Merchant specifically represents and warrants that the Card Transaction is valid in form and has been completed in accordance with all applicable laws, requirements and rules.

13.2 The Merchant shall be deemed to have notice of and shall comply with all security measures and guidelines relating to this Agreement and all instructions issued or provided by HBL, State Bank of Pakistan, PSP, Visa International/MasterCard International/Union Pay International or any other relevant entity from time to time in connection with Card Transactions.

13.3 The Merchant shall not, at any time after any valid Card Transaction has been effected by the Card Member with the Merchant, make any claim or take any proceedings against that Card Member in relation to the said Card Transaction or the underlying contract of sale or service, notwithstanding any dispute between HBL and the Merchant or the Merchant's failure to receive any payment from HBL for any reason whatsoever until it is settled between HBL and the Merchant and the Merchant is not to receive payment under the Card Transaction in question and the Card Transaction shall be reversed or cancelled as against the Card Member.

13.4 The Merchant shall indemnify HBL against all claims, suits, proceedings, litigation, liabilities, expenses, costs, loss or damage of whatever nature (including legal costs on a full indemnity basis incurred by HBL) brought against, suffered or incurred by HBL, arising out of or in connection with this Agreement, including without prejudice to the generality of the following:

1. The occurrence of any of the events set out in Clause 5.8;
2. Breach of any provision of this Agreement by the Merchant;
3. Any act, omission, fraud, negligence or default whatsoever of the Merchant and/or any of the Merchant's officers, employees and/or agents;

(d) Any enforcement or attempted enforcement by HBL of its rights or remedies against the Merchant and/or any of its officers, employees and/or agents;

1. Any law, regulation or official directive, or any change thereof, whether issued by any government, competent authority, regulator, HBL and/or Visa International/MasterCard International/Union Pay International which may have an effect on this Agreement or any Card Transaction;
2. Any disclosure by HBL whatsoever as may be required under Clause 12;
3. Any action brought by a Card Member against HBL in relation to Card Transaction(s) including without limitation, for fraud and/or misrepresentation made by the Merchant concerning the good(s) or service(s) which the Card Member has purchased from the Merchant or in respect of the quality or fitness for purpose of the aforesaid good(s) or service(s); and
4. Any breach of confidentiality, leakage of Customer data and/or any representations made by the Merchant proving to be incorrect or untrue when made and/or for breach of any warranties made hereunder or to Card Members by the Merchant.

13.5 The Merchant warrants that all Card Transactions tendered to HBL will represent obligations of Card Members to the Merchant for bona fide transactions in the amount set forth thereon for goods and / or services rendered only, and shall not involve any element of credit for any other purpose and shall not involve the Merchant receiving or accepting any payment from the Card Member for any charge included in a transaction resulting from the use of a Card. The Merchant agrees not to make any cash advance or withdrawals to any Card Member.

13.6 The Merchant warrants that any information related to a Card Member and / or Card Transaction, if the same has been stored on the Merchant Website and or related systems, shall be communicated to HBL in advance.

13.7 The Merchant warrants that the Merchant shall not involve itself in telemarketing related activities in relation to Card Transactions and/or the arrangements under this Agreement and/or taking details of Card Members over the phone for the purposes of processing orders / Card Transactions on behalf of customers / Card Members, in case of any breach, without prejudice to the other rights and remedies available to HBL under this Agreement and/or law, HBL shall be entitled at its discretion at any time to forthwith terminate this Agreement on written notice to the Merchant.

**14. EXCLUSION OF LIABILITY**

14.1 HBL shall not be liable in any way whatsoever to the Merchant for any claims, liabilities, expenses, costs, loss or damage of whatever nature brought against, suffered or incurred by or caused to the Merchant due to or arising out of or in connection with this Agreement, including without prejudice to the generality of the following:

1. Any disruption, defect or breakdown in or failure of any system used in connection with the Card Transactions or for receiving any submission of request from the Merchant or any telephone or other communication system or facilities;
2. Any authorization or authorization code number or other information or instructions requested by the Merchant being inaccurate, incomplete, delayed or not given for any reason;
3. Any direction, instruction, notice or request given to HBL by any of the Merchant's officers, employees and/or agents and all acts or omissions by HBL pursuant thereto, whether or not such direction, instruction, notice or request was followed and regardless of whether HBL had any notice or knowledge that such direction, instruction, notice or request was lawfully given or given in breach of any part of the Merchant's constitutive documents or was otherwise irregular in any way;
4. Any act, omission or variation of this Agreement by HBL which is required by any change in any law, regulation or official directive;
5. Any disclosure by HBL (including without limitation, disclosure of Confidential Information) as may be required and/or permissible under this Agreement or law.

14.2 In the event that any wrong, untrue, inaccurate or erroneous information is provided by HBL to any person pursuant to Clause 12 or otherwise, HBL shall not be liable to the Merchant in any way for such misinformation, whether in defamation or any other cause of action, or for any direct or consequential loss or damage to the Merchant resulting therefrom.

14.3 HBL shall not be liable to the Merchant if it is unable to perform any of its obligations under this Agreement, due directly or indirectly, without limitation, to the defect, failure, unavailability or damage of any machine or communication system, computer hacking, unauthorized access to computer data and storage device, computer crashes, breach of security and encryption, acts of God, act of governmental authority at of the public enemy or due to war or terrorism, the outbreak or escalation of hostilities, riot, civil commotion, insurrection, labor difficulty in relation to a third party (including without limitation, any strike or other work stoppage or slow down), severe or adverse weather conditions or other similar cause or anything outside HBL’s control or the control of its servants and/or agents.

14.4 All representations contained in any advertisement or printed matter relating to the goods and/or services offered by the Merchant shall be deemed to have been made by the Merchant and HBL shall not in any way be liable for any claim whatsoever arising therefrom.

14.5 HBL shall have the absolute discretion to use third parties, independent agents, contractors and / or correspondents to carry out or perform or procure any of the matters under or contemplated in this Agreement and HBL shall not be liable to the Merchant for any act, omission, neglect or willful default on the part of such third parties, independent agents, contractors and/or correspondents.

14.6 In no circumstances shall HBL be liable to the Merchant or any third party, whether in contract (including under any indemnity), in tort (including negligence) or otherwise, under or in connection with this Agreement or the provision of the services by HBL under this Agreement, for any liability to the extent that such liability is for or in respect of any indirect or consequential losses, of whatever nature (including without limitation any loss of profits, business, revenue or goodwill) whether or not reasonably foreseeable, reasonably contemplated or actually contemplated by the Parties

1. **FORCE MAJEURE**

15.1 If a Party (the"**Affected Party**") is prevented, hindered or delayed from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party's obligations under this Agreement shall be suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed. As soon as reasonably possible after the start of the Force Majeure Event the Affected Party will notify the other Party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement.

* 1. The Affected Party will make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement and as soon as reasonably possible after the end of the Force Majeure Event the Affected Party will notify the other Party that the Force Majeure Event has ended and will resume performance of its obligations under this Agreement immediately.
  2. The Affected Party shall notify the other Party of the occurrence of the Force Majeure Event as soon as practicably possible, and in any event not later than seven (07) days from the occurrence of the Force Majeure Event.
  3. Where the delay in performance due to the Force Majeure Event continues for a period of thirty (30) continuous days, the other Party may forthwith terminate this Agreement by written notice.

1. **WAIVER AND CUMULATIVE RIGHTS/REMEDIES**

16.1 No delay or omission by either Party in exercising any of its rights or remedies under this Agreement or otherwise available to it, shall impair such right or remedy or constitute a waiver thereof, nor shall any single or partial exercise of such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The Parties' rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies which the Parties would otherwise have available to them.

1. **AMENDMENT AND ENTIRETY**

17.1 Save as expressly provided in this Agreement (or any Schedule), no variation / amendment of this Agreement shall be effective unless in writing and signed by or on behalf each Party.

17.2 This Agreement supersedes and cancels all prior understandings and agreements, communications, proposals, written or oral, express or implied, given or made by or between the Parties, and constitutes the entire agreement between the Parties in respect of the matters set out herein, and no other terms and conditions shall be included or implied.

1. **SEVERABILITY**

18.1 Each of the Clauses of this Agreement is severable and distinct from one another and if any one or more of the Clauses of this Agreement or any part thereof is or becomes invalid, illegal or unenforceable, the validity legality, or enforceability of the remaining Clauses of this Agreement shall not thereby be affected or impaired in any way.

1. **COMMUNICATION**
   1. Unless otherwise provided for herein, all Notices shall be in writing, shall be addressed for the attention of the person indicated below at 19.3 hereof and shall either be delivered personally, sent by post or registered/certified courier or facsimile.
   2. Any such notice, communication or other document shall be deemed to be effective if sent by personal delivery, upon delivery and upon acknowledgment of receipt of the notice or other communication by the receiving Party, if sent by post, two days after being deposited in the post, and if sent by registered/certified courier, one day after being deposited with the said courier, and if sent by facsimile, when sent (on receipt of a confirmation of the document having been dispatched to the correct facsimile number).

* 1. The following addresses shall be used for day to day communication, and service of notices, communication and other documents:

For Merchant:

Name: Mumtaz ul haque Ansari

Address: Suite #: 631-C, 6th Floor, Mashriq Center, Stadium Road, Karachi.

Attention:

Tel No: 0213-4890600

Fax No:

Email address: mhansari@zumbeel.pk

For HBL:

Name: Syed Muhammad Ehsanullah

Address: HBL Plaza, 19th Floor, Zone-B

Attention:

Tel No: 021-32418000 Ext 3510

Fax No:

Email address: syed.ehsan@hbl.com

* 1. Either Party may notify the other Party to this Agreement of a change to its contact person/relevant addressee or address provided that such notification shall only be effective on (a) the date specified in the notification i.e. the date on which the change is to take place; or (b) if no date is specified or the date specified is less than five (05) Business Days after the date on which notice is given, to the date falling five (05) Business Days after notice of any such changes has been given.
  2. HBL may at its discretion rely upon and act in accordance with any Notices it receives which are or purport to be from any of the Merchant’s officers, employees and/or agents (by whatever title called), and may assume that all such persons are duly authorized by the Merchant to attend to all matters relating to this Agreement.

19.6 Notwithstanding the foregoing, HBL shall be entitled at its discretion to rely and act on any Notices, agreements, requests, instructions, permissions, approvals, demands and other communications which are or purport to be from or given on behalf of the Merchant (in writing and whether genuine or with or without the Merchant's consent or authority), and any action taken by HBL pursuant thereto shall bind the Merchant and HBL shall not be liable to the Merchant for any loss or damage incurred or suffered by the Merchant as a result of such action.

**20. ASSIGNMENT/NO AGENCY OR PARTNERSHIP**

20.1 This Agreement and the Merchant's rights, interests and benefits hereunder shall not be assigned or transferred by the Merchant. This Agreement and HBL's rights, interests and benefits hereunder may be freely assigned or transferred by HBL.

20.2 Neither Party shall by virtue of this Agreement be deemed to be in a relationship of partnership or agency with the other Party.

**21.**  **DISPUTE RESOLUTION & GOVERNING LAW**

21.1The Parties agree that any dispute, difference of opinion or claim arising out of or relating to this Agreement or breach or the validity thereof, shall firstly be attempted to be settled amicably by the senior management of the Parties. However if any claim or dispute shall remain unresolved for thirty (30) days, the same shall be referred to arbitration under a panel of three arbitrators. Each Party shall be entitled to elect an arbitrator and the elected arbitrators’ shall then elect an umpire. The arbitration proceedings shall be made in accordance with the Arbitration Act, 1940. The seat of arbitration shall be Karachi and the language of arbitration shall be English. Competent courts of Pakistan shall continue to have supervisory jurisdiction in accordance with the Arbitration Act, 1940 or any amendment or re-enactment thereof.

21.2 This Agreement shall be governed by the laws of the Islamic Republic of Pakistan.

**22. FURTHER ASSURANCES**

22.1 In connection with this Agreement, as well as all transactions contemplated by this Agreement, the Merchant agrees to execute and deliver such additional documents and to perform such additional actions as may be necessary, appropriate or reasonably requested to carry out or evidence the transactions contemplated thereby.

**23. COUNTERPARTS**

23.1 This Agreement is executed in two counterparts, one of which shall be retained by each Party hereto. It is clarified that each counterpart of the Agreement shall be deemed to be an original and both counterparts of the Agreement shall together constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties, acting through their duly authorized representatives, have put their respective hands on this Agreement on the day, month and year hereinabove mentioned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of For and on behalf of

**HABIB BANK LIMITED** **[INSERT MERCHANT TITLE]**

By: By: Mumtaz ul haque Ansari

CNIC No.: CNIC No.: 42101-8202535-5

Title: Title: Director

Stamp: Stamp:

**WITNESSES:**

1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Address: Address:

CNIC No.: CNIC No.:

1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Address: Address:

CNIC No.: CNIC No.:

**SCHEDULE A**

**Merchant Details**

(a) Merchant Commercial Name: [\*] - Zumbeel

(b) Merchant Legal Name: [\*] - Zumbeel

(c) Address: [\*] – Suite # 631-C, 6th Floor, Mashriq Center, Stadium Road, Karachi

(d) Telephone Number: [\*] 021-4890600

(e) Facsimile Number: [\*]

(f) E-mail Address: (Corporate E-mail): [\*] – info@zumbeel.pk

|  |  |  |  |
| --- | --- | --- | --- |
| S. No. | Name of Contact Person | Email Address | Contact Number |
| 1 | Mumtaz ul haque Ansari | [mhansari@zumbeel.pk](mailto:mhansari@zumbeel.pk) | 0333-3036853 |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |

\* Preferably, communication will be made by HBL on the provided E-mail addresses.

1. Type/ Nature of Business: [\*] E-Commerce Store
2. Merchant Website URL: (Corporate URL): [\*] www.zumbeel.pk
3. IP Address: [\*] 216.224.162.195
4. Proxy Address: [\*]
5. Site Hosted By: [\*] myhosting.com
6. Hosting Company Address: [\*]

(m) HBL Account Details: [\*]

Account Title: [\*]

Account Number: **[\*]**; Branch Code: [\*]

(n) Funds Holding Period: (0 days)

**SCHEDULE B**

**Payments Schedule**

Discount Rate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Membership Fee:

Set-up Fee:

Refund Transaction Service Charge: N/A

Chargeback Transaction Service Charge: N/A

1. Set-up Fee shall be non-refundable if the Merchant is approved or if the Merchant Website integration with PSP is initiated irrespective of whether the Merchant application is rejected or the Merchant's relationship with HBL is terminated.

2. The Set-up Fee shall be paid by the Merchant [At the time of execution of this HBL agreement] in the following manner: [through cheque in favor of HBL]

3. Membership Fee shall be non-refundable if the Merchant is approved or if the Merchant Website integration with PSP is initiated irrespective of whether the Merchant application is rejected or the Merchant's relationship with HBL is terminated.

4. Membership Fee shall be paid by the Merchant by or before [At the time of execution of this HBL agreement] in the following manner: [through cheque in favor of HBL]

5. HBL shall be entitled at all times to charge the Merchant a reasonable service charge, transaction fee and/or administrative fee as may be mutually agreed by the Parties in writing or such other charges as HBL deems fit in respect of any service provided or any action taken by HBL related to this Agreement, subject to such other charges also being agreed between the Parties.

6. The Refund Transaction Service Charge shall be paid by the Merchant by or before [N/A] in the following manner: [N/A]

7. The Chargeback Transaction Service Charge shall be paid by the Merchant by or before [N/A] in the following manner: [N/A]