

**MERCHANT SERVICE AGREEMENT**



**ERCAS INTEGRATED SOLUTIONS LIMITED**

## **ERCAS INTEGRATED SOLUTIONS LIMITED MERCHANT AGREEMENT FOR ONLINE ACCEPTANCE THROUGH THE ERCAS PAYMENT GATEWAY**

**THE COMMENCEMENT AND EFFECTIVE DATE OF THIS MERCHANT AGREEMENT** shall be deemed to be the date that the Merchant registers on the payment gateway, which date shall be deemed as the date of commencement of the Agreement.

**BETWEEN Ercas Integrated Solutions Limited (“ERCAS”)** a limited liability Company duly registered under the laws of the Federal Republic of Nigeria and having its registered address at House 5, Plot 265 S.E. Asebe Street Dantata Estate, Opposite Emadeb Filling Station Beside Kingfem Plaza Mabushi, Abuja, FCT, Nigeria (hereinafter called **“Ercas”** which expression shall where the context so admits include its legal representatives and assigns) of the one part.

The Merchant (Hereinafter called **“The Merchant”**) which expression shall where the context so admits include its legal representatives and assigns) of the other part.

The Merchant may include but not limited to limited companies, business names, schools, churches, self-help groups, hospitals, counselling and any other institutions;

### **WHEREAS:**

1. Ercas is engaged in payment services business through a payment gateway and as part of its operations is engaged in the business of processing payments for establishments in respect of payments sought to be made by way of debit/credit cards & mobile money wallets (as hereinafter provided), through the said payment gateway.
2. The Merchant undertakes the activities and/or business as described in the profile provided of and as further stated in the online application form, at the premises situated at the address (es) specified by the Merchant.
3. The Merchant wishes to conduct the activities and/or business as described in the profile provided and as further stated in the online application and the activities and receive Credit/Debit Card, USSD, Bank transfer or QR Codes scan to pay for the same over the Internet via the payment gateway.
4. The Merchant is desirous of being able to receive payment through credit/debit cards and mobile wallets on the internet, and the Merchant is desirous of utilising the payment gateway of Ercas.
5. The Merchant is desirous of being approved as an establishment for the purpose of payment processing of transactions made by credit/ debit cards and mobile money wallets on the terms and conditions hereinafter mentioned.
6. Ercas has agreed to provide the Merchant and has based on the documentation provided approved the Merchant to use the payment gateway, for a commission as stated hereunder, and upon the terms and conditions as set out hereunder.

**NOW THIS AGREEMENT WITNESSETH** as follows: -

## **1. DEFINITIONS AND INTERPRETATION**

**Definitions** Headings and sub - headings: The headings and subheadings in this Agreement are for convenience only and do not affect the meaning of the relative section/clause.

In this Agreement, unless the context otherwise requires, the terms set forth in this Agreement whether in singular or plural form shall have the following meanings, unless the context otherwise states:

"Authorization" shall mean the process by which Ercas confirms to the merchant whether the valid funding source has the required credit limit/funds (as the case may be) to make payments for the transaction with the merchant as more particularly described in Article 6 hereunder.

"Cardholder" shall mean a person holding a valid card, i.e. a MasterCard/ Visa Card or an approved Card product properly issued by a licensed Bank.

"Delivery" means, delivery of service, upon confirmation of payment from ercaspay.

"Effective Date" shall be the date that the Merchant registered on the payment gateway.

"Facility" means the payment gateway facility provided by Ercas to the Merchant in terms of this Agreement and any other services that augment or enhance the current facility.

"Issuing Bank" in respect of a Cardholder means the bank which has issued the Valid Credit/Debit Card to the Cardholder with which Cardholder makes the payment for the Products / Services.

"Merchant Commission Rate" means, with respect to a Transaction amount, the percentage of that Transaction Amount as specified by Ercas Systems based on the risk rating of the merchants and additionally the amount per Transaction as specified and communicated to the merchants via the Ercas Payment platform. Provided however that the Merchant Commission Rate may be revised by Ercas, at any time based on the Risk review of the merchant without giving notice to the merchant.  
"Order" means an order for the purchase of Product(s) / Services placed by the Cardholder on the Merchant website.

"Premises" shall mean the place(s) of business of the merchant

"Product" means a tangible or intangible product that is manufactured or distributed by the Merchant, and that is purchased by the Cardholder, the payment for which is to be made on the Cardholder's Valid Credit/Debit Card.

"Tithe/donations/sponsorships means intangible sums/products that are offered by the contributor to the institution/organization.

"Promotional material" shall include all posters, stickers, brochures, decals, take-ones, signage, advertisements, and any other material, which is used to promote the payment processing services of Ercas offered under this agreement.

"Settlement Amount" shall mean the transaction amount less the agreed merchant commission (referred to as MCR) and any other related charges/ fees payable by the merchant to Ercas

"Software" means a program provided by Ercas to the Merchant that enables the Merchant to utilise the payment gateway.

"Transaction amount" shall mean the amount payable by the valid customer on the Product/ Service offered by the merchant inclusive of shipping charges and other taxes, duties, cost, charges and expenses in respect of the Product / Service that are to be charged to the customer's funding source.

"Transaction" means every order that results in the Delivery by the Merchant to the Customer of the Product(s) / Services in respect of which the Order was placed.

"Valid Card" shall mean an unexpired card issued by any institution designated to issue a Visa, MasterCard, Visa Electron or other card as may be specified by the bank 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 person in whose name the card is personalized.

"Settlement date" means Five (5) days after date of transaction.

"Merchant Trademarks" shall include any graphics, posters or advertisement belonging to the merchant

"Rolling Reserve" means a percentage of the transaction amount that shall be held by Ercas for a specified period and which shall be specified in the payment gateway. "Material adverse effect" includes, among other things, any change in Applicable Law that has a significant impact on the financial or operational burdens or rewards of either Party under this Agreement.

## **2. Interpretation**

In this Agreement, unless the context otherwise requires, reference to:

- (a) Words importing the masculine gender shall include the feminine and neuter genders, and words in the singular number shall include the plural number and vice versa.
- (b) Clauses shall be construed as references to Clauses of this Agreement;

- (c) Any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation made there under or under any such re-enactment;
- (d) Indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which could not have arisen but for that circumstance;
- (e) Costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof; and
- (f) Any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
- (g) Headings to clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

### **3. TERM: NON-EXCLUSIVE**

Nothing in this Agreement shall prohibit Ercas from furnishing the services like those provided under this Agreement to others, including competitors of the Merchant.

### **4. SERVICE APPLICATION KNOW YOUR CUSTOMER (KYC) REQUIREMENTS:**

The Merchant shall upon registration and prior to use of the portal, provide for verification by Ercas the following documents and any other documents that may be sought by Ercas from time to time:

For Corporate Entities duly incorporated in its country of operation:

- Certificate of Incorporation
- Current Status Report (Not more than two months).
- Memorandum and Articles of Association
- Operating license where the business is a regulated trade (additional requirement)
- SCUML certificate where applicable
- BVN of shareholders & directors
- Government issued means of identification for directors.
- An operational bank account in Nigeria
- URL/Website
- Utility Bill for corporate office and the directors

For Small and Medium Enterprises

- Registered business name
- Certificate of registration

- BVN of Directors and shareholders
- Government issued means of identification
- An operational bank account in Nigeria
- URL/Website
- Utility Bill for business owner NGOs/Charity
- Must be duly incorporated by the CAC

For Incorporated Trustee the following documents shall be submitted:

- Certificate of incorporation
- Memorandum of Guidance
- Constitution
- Particulars of nominated Trustee.
- BVN of Trustee(s)
- Government issued means of Identification of 2 trustees
- An operational bank account with a financial institution in Nigeria
- URL/Website
- Utility Bill for NGOs/Charity and the directors 2.5 Individuals and Developers
- Bank Verification Number
- Government issued means of identification
- An operational bank account with a financial institution in Nigeria

For individuals using a trading name or DBA (Doing Business As) must register as an individual as the law does not recognize DBA or trading names as entities.

- URL/Website/social media page
- Utility Bill

#### Additional Requirements

For Direct Card Charge API, PCIDSS certificate to be provided For expatriates, resident/work permit to be provided Notarized means of ID for nonresident but the company must have resident officers.

#### **Details of Settlement Account:**

Bank Name:

Bank Branch:

Bank Account Number:

Bank Account Name:

4.1 By providing the above documents and/or information, Ercas is not liable to enroll the applicant Merchant onto the portal. Ercas has the sole discretion to allow or reject any applicant without giving any reasons of such rejection.

4.2 Ercas shall carry out due diligence on the documents provided and may seek further/additional documents as it may require/deem necessary. The due diligence period may range from a minimum of Seven (7) days to Thirty (30) days after which the applicant Merchant shall be notified of the acceptance or rejection of the application.

## 5. UNDERTAKINGS OF ERCAS

**5.1 Provision of the Facility:** Ercas agrees to enable the merchant to receive payments made to it by a customer through a Valid Credit/Debit Card, USSD, Bank transfer or QR Codes scan to pay and Ercas hereby reserves the right to appoint a third party to enable receipt of such payments, on such terms and conditions as it may deem fit.

### 5.2 Facility Standard:

Ercas shall:

- i. Make its reasonable best efforts to maintain the Facility in operation 24 hours a day, seven days a week.
- ii. Make its reasonable best efforts to provide the Facility in a manner that protects information transmitted by the Software from:
  - a. unauthorized interception,
  - b. Undetected unauthorized modification or alteration after its origination,
  - c. undetected initiation by persons posing as other persons or entities,
  - d. unauthorized replication.

**5.3 Limitations:** Ercas' obligations described above are subject to the following limitations:

- i. Messages/instructions that originate from the server of the Merchant or the server of a third party designated by Merchant (e.g. a host) shall be deemed to be authorized by the Merchant, and Ercas shall not be liable for processing such messages.
- ii. Messages/instructions that originate from the customer are deemed to be authorized by the Cardholder and Ercas shall not be liable for processing such messages.
- iii. Ercas is not responsible for the security of data residing on the server of the Merchant or a third party designated by the Merchant (e.g., a host) or on the server of a Cardholder, server of a Cardholder's issuer or a third party designated by a Cardholder, merchant's or customer's bank, USSD processor (e.g., a host).
- iv. Ercas shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay:
  - a. is caused by the Merchant's acts or omissions.

- b. results from actions taken by Ercas in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority or to prevent fraud on customers; or
- c. Should third parties query either delivery of services, or question use of their card or bank account
- d. is caused by circumstances beyond Ercas control, including but not limited to vandalism, hacking, theft, phone service disruptions, Internet disruptions, loss of data, extreme or severe weather conditions or any other causes in the nature of "ACTS OF GOD" or force majeure.

**5.4 Compliance with Law:** Ercas shall at all times comply with applicable laws, rules and regulations insofar as relevant to its provision of the Facility.

## 6. UNDERTAKINGS OF THE MERCHANT

**6.1 Use of the Facility:** It is hereby agreed that the use of the Facility by the Merchant is strictly for the services as declared by the Merchant. Following the said declaration by the Merchant, the Merchant doth hereby irrevocably indemnifies Ercas against any actions that may arise as a result of any transactions that may be made using the facility. The Merchant agrees:

- i. Not to use the Facility in any manner, or in furtherance of any activity which constitutes a violation of any law or regulation or which may result in fraud on any person or which may cause Ercas to be subject to investigation, prosecution or legal action.
- ii. To be responsible for the security of the customer's details and data.
- iii. To use the Software in accordance with the terms on which the Software has been provided to the Merchant and not to attempt to modify, translate, disassemble, decompile or reverse engineer the Software, or use it for any purpose other than for the utilization of the Facility.
- iv. Not to provide this facility to a third party without the express consent from Ercas.
- v. Not to use the facility to facilitate payments by other merchants not directly onboarded and/or contracted by Ercas.

**6.2 Customer Support:** The Merchant shall provide a commercially reasonable level of support to the customers with respect to sales using the Facility. Such support shall include appropriate notice to the Customer of:

- i. a means of contacting Merchant in the event the customer has questions regarding the nature or quality of the goods or services that Merchant offers for sale and
- ii. procedures for resolving disputes
- iii. return of goods policy. If Ercas determines in good faith that the Merchant's failure to comply with this requirement is causing an unacceptable burden on its customer support facilities, Ercas may suspend or terminate this Agreement.



### **6.3 Compliance with Law & Guidelines:**

- i. Merchant shall at all times comply with applicable laws, rules and regulations insofar as relevant to its use of the Facility.
- ii. Merchant will at all times comply with the guidelines set for Merchants by Ercas. iii. Should the utilisation of the Facility by the Merchant result in or may result in additional liability being placed on Ercas under the Payment Industry guidelines, such utilisation shall be deemed to be a violation of this Agreement and the Merchant hereby agrees to at all times indemnify Ercas against such liability.

### **6.4 Prevention of Infringement:**

- i. If for any reason the Facility or any component of the Facility becomes, or in Ercas' opinion is likely to become, the subject of a claim of infringement, Ercas reserves the right to, at its sole discretion, either
  - (a) to revoke the right of the Merchant to continue using the Facility as permitted in this Agreement, or
  - (b) to replace or modify Facility or the infringing component of the Facility so that it becomes non-infringing or
  - (c) to withhold any monies due to the merchant to ensure that any claims from the customer from fault of the merchant are honored, and any penalties arising are paid.
- ii. If, after using reasonable efforts, Ercas is unable to cure the infringement, any of the Parties may terminate this Agreement on written notice to the other Party upon giving notice of the intention to terminate.
- iii. iii.

### **6.5 Honour Payment Source:**

- i. The Merchant shall honour every valid source presented for payment from customers for all transactions.
- ii. The Merchant shall not engage in acceptance practices or procedures that discriminate against or discourage the use of Payment channel in favour of any other competing payment channel that is also acceptable.
- iii. The Merchant shall also not prefer or indicate that they prefer a Payment channel or impose additional commissions in respect to particular valid Cards that would make them less favorable.

### **6.6 Displaying Payment Channels Symbols And Names:**

- i. The merchant shall display current Payment channel symbols and names as well as promotional materials to inform the public that the Payment Card will be honoured at the merchant's place(s) of business.

### **6.7 Account Number Information:**

- i. The Merchant shall not be allowed to store information in any form obtained by reason of a Payment transaction. Further, the materials containing customer account information must be made unreadable and unusable before they are discarded in an approved manner.

## 7. AUTHORIZATIONS

7.1 The Merchant shall not accept any Order for which payment is to be made through the Ercas payment gateway via a Valid Credit/Debit/Prepaid Card/Mobile Payment Card unless the Transaction is authorised by the Payment Gateway.

7.2 The merchant shall not process or deposit transactions with Ercas for any other merchant establishment who may or may not be a merchant with Ercas.

7.3 **The** merchant will not give cash advance by showing the transaction as a sale transaction.

7.4 Ercas will not accept liability of any chargebacks or disputed sums/sales.

7.5 **Minimum or Maximum Transaction Amount:** The Merchant shall not require, or post signs indicating that they require, a transaction amount below or above which the merchant shall refuse to honour an otherwise valid Master Card/ Visa Card.

7.6 Ercas reserves the right to block any Card, Pin or Card number that it deems to be high risk in accordance to the Ercas risk rating algorithms or suspicious. Such transactions will be passed to the compliance officer and explanation provided to the merchant.

## 8. TRANSACTION HANDLING

8.1 The Merchant in handling transaction(s) via the payment gateway must ensure that the extraction of data from the Cards and collection of phone number for payment must be in the manner specified by Ercas (this may vary from time to time but Ercas will give prior notice of variation to the Merchant)

8.2 The Merchant shall deliver to the Cardholder a bill including mention of charges covered in the payment received from the cardholder through the payment gateway.

8.3 **Ercas** reserves the right to impose limits on the number of Transactions undertaken using a particular Valid Credit/Debit/Prepaid Card and the value of a single Transaction during any time and reserves the right to refuse to make payments in respect of Transactions exceeding such limit.

8.4 The Merchant can include their merchant service commission as charged by Ercas into the amount paid by their customer for a particular transaction meaning that the amount to be paid will include the merchant service commission. The merchant shall not require any cardholder or mobile wallet holder to pay any additional surcharge, to pay any part of the discount, whether through any additional increase in price or otherwise, or to pay any additional contemporaneous finance charge in connection with the transaction in which a Bank Card is used or such other card as Ercas may offer.

#### 8.5. Use of the Escrow facility

Ercas shall have a sole discretion to impose Escrow facility to particular Merchants without any notice of the same. Escrow facility confirms receipt of the goods or service before funds are released to the Merchant

## 9. PAYMENT TO THE MERCHANT

9.1 Subject to the terms of this Agreement, Ercas shall normally settle to the Merchant a minimum of Five (5) business days (Monday to Friday) which days are exclusive of the transaction day, following the day on which the transactions took place, the transaction amount less the commission for all the card transactions and mobile wallet transactions processed and accepted by Ercas for all Products/Services.

9.2 Net payments to the Merchant shall be made by Ercas to the account of the Merchant at their bank or their stated phone number which holds a valid mobile wallet.

9.3 Payment by Ercas shall be made without prejudice to any claims or rights that Ercas may have against the Merchant and shall not constitute any admission by Ercas as to the performance by the Merchant of its obligations under this Agreement and the amount payable to the Merchant.

9.4 Ercas shall be entitled to set off and deduct from any payment due to the Merchant:

- a) The amount of any refund due to any cardholder in accordance with the refund procedure set out below; and
- b) Any overpayment made by Ercas due to computational, Exchange rate and/or system errors or any other circumstances that may cause such an error; and
- c) Any other sums/commissions due from or payable by the Merchant to Ercas herein; and

**9.5** If Ercas suspects, on reasonable ground and in its sole and exclusive opinion, that the Merchant has been negligent, or has committed a breach of this agreement or act/s of dishonesty or fraud against Ercas or any Cardholder, Ercas shall be entitled to suspend all payments under this agreement to the Merchant pending enquiries by Ercas and resolution of the same to Ercas' satisfaction.

**9.6 Rejection of Payment:**

Notwithstanding anything stated elsewhere in this agreement or the annexed schedule/s, Ercas may reject payment in respect of Orders where:

- i. The authorization process cannot be completed/fails in relation to a Transaction;
- ii. Any Order which the Cardholder refuses to pay because the Product Service was not as promised or was defective.
- iii. Any order which the Cardholder refuses to pay because the Product/Service were not delivered as per the delivery terms.
- iv. Payment in respect of the Order or the relevant installment of the purchase price has already been made;
- v. The Merchant fails to follow the rules set out by Ercas as to Escrow;
- vi. Ercas suspects a transaction to be fraudulent
- vii. If the Merchant is unable to deliver any part of the Cardholder's Order the Merchant shall cancel the Order and the Cardholder shall be refunded.

**9.7 CHARGEBACKS, REFUND & DISPUTES:**

Where Ercas is entitled to reject payments in respect of an Order or demand a refund, or a chargeback has arisen, it or if a transaction is issued or presented in breach of this Agreement or a Cardholder makes a claim against Ercas relating to a Card Transaction in respect of which the transaction has been issued, Ercas shall be entitled to:

- i. Demand payment of the relevant amount from the Merchant.
- ii. Deduct the Order or charge back amount from any of the transaction Amount and/or payments that may be held and/or made in respect of subsequent Transaction amounts until Ercas has been refunded in full;
- iii. Should such chargebacks and/or disputed sale arise, the Company will notify the Merchant to make good of such chargebacks or disputed sums/sales. Should the Merchant fail and/or refuse to honour such demand, the Company shall without any notice withhold any sums in the Merchants wallet until such chargebacks or disputed sums/sales are resolved;
- iv. Ercas shall have a sole discretion and absolute right as to the decision it shall make on such chargebacks and/or disputed sums/sales and may only notify the Merchant after

the investigations have been completed. Ercas shall have sole discretion as to the level of investigations it may carry out and such investigations shall not be limited to a particular chargeback and/or dispute but to all transactions that the Merchant may have carried out through the payment gateway to its satisfaction. Ercas will notify the Merchant the outcome of such investigations after completion;

- v. Ercas may without specifying a reason withhold any or all the payments on presentation of the dispute or chargeback of any of the transactions;
- vi. if the Merchant has already been paid for the transaction, Ercas shall be entitled to recover the amount from the Merchant Account and where this is not possible, require the Merchant to immediately repay the amount of the transaction.
- vii. Deduct the Order or charge back amount from any of the transaction Amount and/or payments that may be held and/or made in respect of subsequent Transaction amounts until Ercas has been refunded in full;
- viii. Ercas will impose a penalty on any chargeback , which shall not be less than Five (5%) percent of the charge back amount.
- ix. Upon presentation of any charge back and/or suspected charge back, Ercas shall withhold any monies in the Merchants wallet and/or any monies held including but not limited to Rolling Reserve for a period of One Hundred and Twenty Days (120) from the date. Such monies shall be released to the Merchant at the expiry of the said days and further upon Ercas being satisfied that the period for the charge backs has expired.

## **10. PRESENTMENT OF TRANSACTIONS AND REFUNDS**

The Merchant agrees to inform the cardholder about its credit refund policy clearly mentioning the same in bill invoice and/or on the website.

i. If in respect of any transaction any goods/services that are not received as described, by the Cardholder or are lawfully rejected or accepted for or services are not performed or partly performed or cancelled or price is lawfully disputed by the Cardholder or price adjustment is allowed, the Merchant shall send Ercas a signed and dated email instruction and include a brief description of the items concerned to refund their customer. The merchant shall not make a cash refund. ii. In situations where sale date and refund date differ between them, which or otherwise causes a currency translation difference for transactions on foreign cards, Ercas will have the right to recover the equivalent amount pertaining to such foreign exchange currency translation differences from the Merchant, for the purpose of crediting the same to the Cardholder's Card Account.

## **11. MERCHANT COMMISSION RATE (MCR)**

In consideration of the services provided by Ercas, the Merchant agrees to pay to Ercas the Merchant Commission Rate and further charges as may be communicated to the

Merchant from time to time, which shall be deducted by Ercas from the amount payable to the Merchant in terms of this agreement hereof in respect of a transaction amount.

Ercas reserves the right to adjust the Merchant Commission Rate from time to time. Ercas shall inform the Merchant of such adjustments in writing. For the purpose of this agreement the commission rate would be as shall be indicated in the Merchants wallet.

11.1 For the purpose of calculating the Merchant commission rate, the amount would be the aggregate amount of the bill including taxes, tips, shipping charges, etc.

11.2 If any extra credit is given by the Merchant to the cardholder without prior approval of Ercas, the Merchant shall do so at its own risk and responsibility, and Ercas shall not be held liable for such decision and doth hereby agree to at all times indemnify Ercas against such decisions.

11.3 All applicable tax whether currently in force or introduced after the date of this Agreement and any other taxes, duties, fees and charges arising out of the performance of this Agreement shall be borne by the Merchant.

## **12. PUBLICITY**

12.1 The merchant irrevocably authorizes Ercas to include the merchant's name in any directory or promotional material produced in connection with the acceptance of Visa Card or any other Card as the bank may introduce.

12.2 The merchant hereby agrees, undertakes and covenants to prominently display and maintain Ercas promotional material as supplied by Ercas from time to time.

## **14. BREACH OF AGREEMENT & TERMINATION**

Ercas may terminate this Agreement before the expiry of the contract period:

14.1 By giving the Merchant One (1) month's written notice without necessarily stating the reason for the termination. This is subject to liabilities and costs already incurred till date being settled in full. Upon the termination of this Agreement the Merchant shall remove all decals and other promotional materials from its premises and return the same to Ercas together with all stationery and equipment supplied to it by Ercas.

Termination shall not affect obligations and warranties in respect of Card Transactions already effected under the provisions of this Agreement.

14.2 Ercas may terminate the Agreement immediately without giving prior notice on the following instances:

- i. In the event of suspected terrorist financing,
- ii. In the event of suspected money laundering,
- iii. In the event of suspected human trafficking activities
- iv. In the event of multiple card trials/transactions on the same card

- v. In the event of an infringement
- vi. In the event of Fraud as determined by Ercas
- vii. In the event of force Majeure
- viii. By order of the regulator

14.3 Should Merchant be in a material breach of any representation or warranty, or default in the performance of any covenant or obligation of any of the terms of this agreement and or any other terms of using the facility as provided for in this Agreement, Ercas may first give notice to the Merchant to rectify and/or correct the breach within a certain period in any case such notice should not exceed 14 days. Should the Merchant fail, refuse, and/or neglect to make such rectification, Ercas shall thereafter have an exclusive and irrevocable right, after the expiry of the said notice period to either:

- i. Immediately rescind the use of the facility;
- ii. To debit the Merchant's Account or deduct from the deposit any refund claimed and or any other monies such as commissions owing to Ercas;
- iii. In the event that there are no sufficient funds no account with Ercas or there is insufficient funds available therein to claim from the merchant or that the deposit is inadequate to compensate Ercas for any refund claimed and or any other monies such as commissions that may be owed by the merchant, the Merchant undertakes to pay the same;
- iv. Should the Merchant fail to pay any of the monies owing to Ercas as mentioned hereinabove, then Ercas be unable to pay that it would forth with become indebted to Ercas and on demand by or on behalf of Ercas pay to Ercas the amount of the refund to the extent to which such funds or deposit proves inadequate.

14.4 Should Ercas be in breach of any of the terms of this agreement and or any other terms of using the facility as provided for in this Agreement, the Merchant may first give notice to Ercas to rectify and/or correct the breach within a certain period in any case such notice should not exceed 14days. The Merchant shall after the expiry of the said notice period to:

- i. To seek for payment of the monies that Ercas may be holding less the agreed commissions and any other charges that may be due from the Merchant to Ercas. Such settlement shall be done according to the terms and conditions of this Agreement after clearance of any pending chargebacks, commissions, costs, disputes;
- ii. Upon the termination of this Agreement the Merchant shall remove all decals and other promotional materials from its premises and return the same to Ercas together with all stationery and equipment supplied to it by Ercas

## 15. TERMINATION

15.1 It is agreed by and between the parties hereto that this agreement shall remain in force for a period of 12 months unless terminated by either party by giving one month's notice in writing to the other. In the event of the agreement being in subsistence at the end of the period of 12 months, this agreement shall automatically stand renewed thereafter until terminated by either party by giving to the other party at least 1 month written notice about the same.

15.2 Should the parties hereto be ready and willing to renew this Agreement, the notice of such intent shall be communicated in writing.

## **16. RECORDS OF DOCUMENTS**

16.1 The Merchant hereby agrees to keep records of any goods, payments, donations, and any other records for all the transactions carried out through the portal and at all times maintain and share with Ercas the following documents before settlement is made to Merchant:

- Order form
- Invoice
- Proof of dispatch of the goods
- Proof of delivery of goods Certificate of insurance will be maintained when goods are to be exported.

16.2 Ercas will at all times have a right to demand for any evidence of transactions, and/or any documents that the Merchant may be holding on behalf of a card holder. Upon such request and/or demand the Merchant will promptly on Ercas' request (whether or not the same is disputed by the Cardholder), the Merchant shall:

- i. Produce to Ercas evidence satisfactory to Ercas of the Cardholder's authority for the Cardholder's Card account to be debited with any transaction amount;
- ii. Retain all documents and records relating to each transaction for a period of not less than one year.

16.3 The Merchant shall whenever called upon, provide such reasonable assistance for the prevention and detection of fraud in respect of any transaction/s as Ercas may from time to time request.

## **17. REMOVAL AND CESSATION OF BUSINESS**

The Merchant shall inform Ercas of any closure and/or relocation of shops or offices, change of address and/or its cessation of business in writing 30 working days prior to its effective date/happening.

## **18. DISCLOSURE**



Ercas will be entitled at any time to disclose any and all information concerning the Merchant within the knowledge and possession of Ercas to any party in connection with the credit/debit card facility provided by Ercas, including inter alia information relating to the cause for termination of this Agreement. This clause will survive the termination of this Agreement.

Ercas reserves the right to verify the information provided by the Merchant at the time of signing this agreement through its own staff or third party. Ercas may thereafter seek to verify any market information that it may receive about the Merchant's business activities including background checks that Ercas may deem necessary.

## **19. INDEMNITY**

**19.1** The Merchant hereby agrees and undertakes to irrevocably indemnify Ercas for any claims, costs of transaction, chargebacks, demands, actions, suits, proceedings, liabilities, loss, costs, damages of any kind, including Advocates fees and costs of litigation, arising from claims from of any third party (including but not limited to claims, assertions and investigations by any institution, governmental agency), and any other claims that may ensue and not limited to the above, which claims arise in whole or part from, and/or brought asserted against Ercas on account of the Merchant's use of the Facility in relation to the following:

- i. Any acts, omissions and/or commissions by the Merchant in connection with the transactions and/or sale of Products/ Services and the performance of this Agreement.
- ii. The negligence or willful misconduct of Merchant or its employees or agents;
- iii. A breach of any obligation of Merchant to Ercas under this Agreement; or
- iv. Failure by the Merchant in keeping proper records
- v. Failure by the Merchant to carry out due diligence of the cardholder.
- vi. Failure by the Merchant to verify delivery of goods and services.

**19.2** should any such suits or proceedings be brought against Ercas from the above actions, commissions and/or omissions of the Merchant as stated hereinabove, Ercas shall at its own sole discretion be at liberty to have full conduct of all proceedings and negotiations, whether directly or through representation, relating to any such claim and in its discretion to accept, dispute, compromise or otherwise deal with the same and shall be under no liability in respect thereof to the Merchant and the Merchant hereby agrees that they will at all times when so called upon to provide any evidence whether by way of documents, information and any other or further requests and/or demands in connection with any such claim that Ercas may require.

**19.3** Should Ercas be made to refund any amount from any transaction effected by the Merchant by the bank and/or the Purchaser, Ercas shall have the authority to debit and or claim the said amount from the Merchant pending settlement of any disputes or claims by the Merchant, which amount the Merchant hereby agrees may be deducted

any monies held by Ercas and/or any future monies that may be held by Ercas In such an event the merchant shall pay the amount without demur.

19.4 Should the Merchant be unable to meet any of the costs, liabilities, damages, loss, legal fees or damages of any kind, including Advocates fees and costs of litigation, that may ensue as a result of their failure and/or negligence in meeting their obligations as stipulated under this Agreement, Ercas shall be at liberty to seek legal redress to recover such costs.

## **20. CONFIDENTIALITY**

20.1 The Merchant will not without the prior written consent of the Cardholder, use or disclose information on the Cardholder or his/her transactions howsoever obtained and in whatsoever form the information shall take, to any third party (other than the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the transactions and the Merchant's insurers and professional advisers) unless such disclosure is compelled by law.

20.2 The Merchant will not, without the prior written consent Ercas use or disclose information howsoever obtained and in whatever form about the business of Ercas or the system of this Agreement, to any third party (other than to the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the transactions and the Merchant's insurers and professional advisors) unless such they are compelled to such disclosure through a court order which compulsion should be brought to Ercas' attention immediately.

## **21. CHANGE IN APPLICABLE LAW**

If there is a modification or other change in Applicable Law that has a material adverse effect on the ability of either Ercas or the Merchant to continue Card business contemplated by this Agreement, the parties shall:

21.1 Mutually agree on the amendments that may be required to be made on this Agreement in order for the parties to be able to continue carrying out the obligations under this Agreement. Should the parties mutually agree on a solution, an Addendum to this Agreement shall be made which addendum shall form part of this Agreement.

21.2 should the parties hereto fail to agree on a mutually agreeable solution, either Party may terminate this Agreement upon prior written notice to the other Party.

## **22. ASSIGNMENT**

- i. This Agreement is not assignable to third parties unless with the written consent of Ercas.
- ii. Ercas is entitled at any time to assign this Agreement or any of Ercas' rights and obligations herewith in favour of any subsidiary or associated company of Ercas or of Ercas' holding company or any other Bank or other company and to

subcontract or appoint any agent or agents to carry out any of Ercas' obligations herein.

### **23. WAIVER**

The failure by Ercas to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of right at any time subsequently to enforce all terms and conditions of this Agreement.

No failure or delay by the Ercas to enforce at any time or for any period any one or more of the terms or conditions and/or in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or the exercise of any other claim, right or power.

### **24. ACCEPTANCE OF CHARGES WITH RECOURSE**

The Merchant agrees that payment made in respect of which the Issuing Bank raises a claim on Ercas shall be the financial responsibility of the Merchant. The Merchant agrees to the non-payment in respect of such Order or the charging back of such uncollectable charge as the case may be without any demur or protest. The Merchant hereby authorizes Ercas to debit the Merchant's bank account to the extent of the aforesaid uncollectable amounts and any other moneys due for any reason to Ercas by the Merchant, or deduct the same from amounts payable to the Merchant in terms of Section 5 of this Agreement.

### **25. DISCLAIMER**

Ercas will at all times endeavour to make sure that the facility is working in the best possible manner. The Merchant hereby acknowledges that the Facility may not be uninterrupted or error free. And having acknowledged the above, the Merchants doth hereby agree to indemnify Ercas against such errors and confirms that should such errors occur, they will not hold Ercas liable for such errors. In cases of such errors, the Merchant agrees to allow Ercas to resolve such errors to the best of its capabilities.

### **26. LIMITATION OF LIABILITY**

Ercas and its vendors (and any officers, directors, employees and agents of the Parties and their vendors) shall be liable only for direct damages as awarded by any Court, and shall not be liable for any consequential, incidental or indirect damages under any theory or cause of action whether in tort, contract or otherwise, regardless of whether Ercas has been advised of the possibility of such damages provided further that the liability of Ercas hereunder shall always be limited to Nigeria Shillings only, and any person including the Merchant shall not be entitled to recover moneys in excess of such limit. In no cases shall the Merchant be entitled to punitive or exemplary damages.

## **27. INSPECTION OF PLACE OF BUSINESS**

The Merchant shall permit the authorised representatives of Ercas to carry out physical inspections of the place(s) of business of the Merchant and any goods owned warehousing facilities of the Merchant, Products, Services and the System Server.

## **28. TRADEMARKS**

Merchant's Trademarks: Merchant hereby grants Ercas a non-exclusive, royalty-free limited license to use, display and reproduce the trademarks, service marks, and logos of the Merchant solely in connection with Ercas' marketing of the Facility. Ercas shall use the Merchant Trademarks in accordance with policies as provided by Merchant from time to time. The Merchant warrants that all intellectual property used by the Merchant (excluding the intellectual property being provided by Ercas) in connection with its obligations under this Agreement is either owned or properly licensed by the Merchant for the uses contemplated hereby and that such intellectual property does not infringe the rights of any third parties. Should Ercas be found liable for any infringement of such use of the Trademarks, the Merchant hereby agrees to indemnify Ercas for and against all suits, liabilities, loss, damage, costs, claims and expenses that may arising out of any such infringement.

## **29. ROLLING RESERVE**

**29.1** As security for the obligations of the merchant arising in terms of this Agreement, Ercas shall at all times maintain an amount as specified directly to the Merchant which shall be done through the email address provided by the Merchant, in the form of Rolling Reserves which amount shall be held by Ercas for a maximum period of One hundred and Twenty Days (120) (hereinafter referred to as "the Rolling Reserve" ). Ercas shall have an exclusive lien over the Rolling Reserve.

**29.2** Ercas shall be entitled to appropriate all amounts due to it from the Merchant, including amounts in respect of refunds, charge backs and indemnities from the Rolling Reserve.

**29.3** In the event of termination of this Agreement by reason of breach of its terms by the Merchant, Ercas shall be entitled to forfeit the Rolling Reserve.

**29.4** Ercas shall increase the Rolling Reserve from time to time as it deems fit and shall notify the Merchant of the same in writing.

**29.5** In the event of termination of this Agreement by reason other than breach by the Merchant, Ercas shall be entitled to withhold refund of the Rolling Reserve for a period of One Hundred and Twenty (120) days from the date of termination. During this period, it shall be entitled to appropriate any amounts due and payable to it from the Merchant in terms of this Agreement.

### **30. MINIMUM ENCRYPTION STANDARDS AND SECURITY OF CARDHOLDER DATA**

The Merchant must use encryption standards of 128 bits or more in respect of all processing of Order or such other standard as may be specified by Ercas.

### **31. GENERAL**

31.1 If signed by a firm, the expression "the Merchant" shall include the person or persons from time to time carrying on the business of such firm and, if, there are two or more signatories hereto, the expression "the Merchant" shall include all and each of them and their liabilities under this Agreement shall be joint and several. The person authorized to sign this agreement has got power and authority from the concerned authority and make them liable as per the governing laws.

31.2 If any provision of this Agreement is, or proves to be or becomes illegal, invalid, or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be in any way affected thereby.

31.3 Any notices or communication by either party to the other shall be in writing and shall be deemed to have been duly served if sent and delivered to the email address provided during the registration and/or enrollment of the Merchant

31.4 All costs, including but not limited to the due diligence to be carried out on the Merchant (including costs between the Advocate and client), charges, expenses, taxes, duties (including stamp duty) in relation to this agreement and any document executed pursuant thereto and in relation to the enforcement of this agreement shall be borne and paid by the Merchant.

31.5 Entire Agreement: This Agreement constitutes the entire agreement between Merchant and Ercas and supersedes in their entirety all written or oral agreements entered into prior to this agreement between the Parties.

31.6 Relationship between Parties: The Parties to this Agreement are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other Party hereto. Neither Party shall make any representation that suggests otherwise.

31.7 Survival of Provisions: Notwithstanding any other provision to the contrary herein, terms which by their nature survive termination or expiration of this Agreement shall bind the parties following any expiration or termination of this Agreement.

### **32. VARIATION OF AGREEMENT**

32.1 Ercas reserves the right at all times to vary or amend this terms and conditions of this Agreement and/or to introduce new terms and conditions.

32.2 Ercas shall notify the Merchant via email whenever they make amendments, variations, or any updates to this Agreement, upon such notification, the amendments, variation will become effective and binding from the date of the email. Should the Merchant be unwilling to accept the said variations, amendments and/or updates, the Merchant shall notify Ercas via email. Failure to notify Ercas of any such objection shall be deemed as an automatic acceptance of the amendments, variations, or any updates.

### **33. ANTI-BRIBERY, CORRUPTION AND TERRORISM**

- 33.1** The Parties are committed to observing the highest standards of legal and ethical behavior in the conduct of their relationship under this Agreement. The Parties hereby undertake to comply with the applicable provisions of the anti-corruption Laws, and all laws relating to anti-money laundering and corruption, terrorism financing etcetera.
- 33.2** The Parties undertake that it will not engage in, promote or support other organizations or individuals who engage in or attempts to commit or promote or support terrorist activity or knowingly provide material support or resources to any individual or entity that commits, attempts to commit, facilitated, or participated in terrorist acts.
- 33.3** The Parties undertake that they will not and will ensure that their Personnel will not engage in any fraudulent or unethical business practices or by an act or omission, including any misrepresentation knowingly misleading, or attempts to mislead, a party in order to obtain any financial or other advantage, or to avoid any obligation, to benefit the perpetrator or a related party.
- 33.4** The Parties undertake that they have complied with all anti-money laundering laws and regulations and all other relevant guidelines.
- 33.5** The Parties shall maintain policies and procedures designed to prevent, and which are likely to prevent, violations of the anti-corruption Laws and will conduct the requisite due diligence in connection with all its transaction and will maintain sufficient information to identify its customers for the purposes of all Anti-Corruption Laws.
- 33.6** Any violation of this clause **Error! Reference source not found.**, will constitute a material breach of this Agreement and either Party shall be entitled to terminate this Agreement.

### **34. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be exclusively governed and construed in accordance with the Laws of Nigeria and the same law shall exclusively govern the merits of any dispute arising out of or in connection with this Agreement.

Any aggrieved party to this Agreement shall have a right to seek legal redress in any Court in Nigeria.

### **35. INTELLECTUAL PROPERTY**

- 35.1. Nothing set forth in this Agreement shall constitute a transfer or assignment by one Party to another Party of any Intellectual Property Rights owned or otherwise controlled by such Party, and each Party hereby retains all of its rights, title and interest in such Intellectual Property Rights.

- 35.2. All Intellectual Property Rights in or related to the Payment Gateway are and will remain the exclusive property of Ercas, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Payment Gateway is used or licensed. The merchant shall not take any action that jeopardizes Ercas' proprietary rights or acquire any right in the Payment Gateway, or the Confidential Information, as defined herein. Unless otherwise agreed on a case-by-case basis, Ercas will own all rights in any copy, translation, modification, adaptation or derivation of the Payment Platform or other items of Confidential Information, including any improvement or development thereof. The merchant shall obtain, at Ercas' request, the execution of any instrument that may be appropriate to assign these rights to or perfect these rights in Ercas' name.
- 35.3. For this purpose, the term "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

### **36. ACCEPTANCE OF TERMS AND CONDITIONS OF THIS AGREEMENT**

By clicking I accept the term and conditions while registering on the portal shall be deemed to be the execution of this Agreement by the Merchant and constitutes acceptance of and agreement to be bound by all the above terms and conditions.

### **37. REPRESENTATION**

The Merchant acknowledges and agrees that the Merchant has not entered into this Agreement in reliance on any representation statement or warranty (whether written or oral and whether express or implied) made by or on behalf of Ercas other than such as are expressly set out herein.

### 38. COMMERCIALS

We offer competitive pricing to our merchants, ensuring cost effectiveness and transparency. Checkout

Local Cards	1.4 capped at 2000
International Cards	3.8%
Transfer	1.4 capped at #2000
NQR	1.4 % capped at #2000
USSD	1.4 % capped at #2000

Virtual Account : 1.4% capped at #200

Static NQR : 1.4% capped at #200

Payout:

Local currencies : NGN-#15

International currencies : \$20

Conversion is free based on prevailing rates

### 3.9 SETTLEMENT

Our settlement schedules differ for local and international transactions. By this schedule, funds are made available in the merchant's available balance, where it is then accessible to be withdrawn manually or automatically.

Local Transactions : T + 1

International Transactions : T + 5



INTERNAL CLASSIFICATION