**MUTUAL CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT**

**BETWEEN**

**GCB BANK LIMITED**

**AND**

…………………………………………………..

This Mutual Confidentiality and Non-Disclosure Agreement is entered into this .....................day of May, 2019

Between:

**GCB Bank Limited** a limited liability company registered under the laws of the Republic of Ghana and having its registered office at GCB Bank Building, Thorpe Road, Accra and of P.O. Box GP134 Accra-Ghana (hereinafter referred to as ‘**GCB’**) which expression shall where the context so requires or admits includes its successors, nominees or assigns of the one part;

And

**……………………………………………………..**having its registered office at XXXXXXXXXXXXXXXXXXXX, Accra and of P. O. Box XXXXXXXXXXXXXXXXXXX Cantonments, Accra (hereinafter referred to as “**…………..”** which expression shall where the context so requires or admits includes its successors, nominees or assigns of the other part.

Individually referred to as the “Party” and jointly as the “Parties”

**Whereas**:

1. GCB and .................. have entered into discussions in relation to the Proposal (as defined below) and it is envisaged that each Party may from time to time receive or disclose Information (as defined below) relating to each other which may be confidential in nature to enable them evaluate the Proposal.
2. In consideration of such disclosure, each Party agrees that all Confidential Information received by it pursuant to this Agreement shall be governed by the following terms and conditions.

IT IS AGREED AS FOLLOWS:

# Definitions

## In this Agreement, unless inconsistent with the context or otherwise specified, the following words shall have the following meanings:

**“Affiliates”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. "Control" and its derivatives shall mean, with regard to any entity, holding directly or indirectly more than fifty percent of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;

**“Agreement”** means this Mutual Confidentiality and Non-Disclosure Agreement, as may be varied or amended from time to time;

"**Confidential Information**" means all proprietary and confidential information of the Parties and those of their customers, clients personnel or suppliers whether commercial, financial, technical or otherwise (whether oral, in writing, machine readable or in any other form) and material (whether electronically recorded, in writing or otherwise) which by its very nature should reasonably be treated as secret and confidential or which is designated as such and which the Parties desire to protect against unrestricted disclosure or competitive use, including without limitation:

* + 1. information relating directly or indirectly to the Disclosing Party's business, including but not limited to details of trade secrets, know-how, strategies, ideas, operations, compliance information, processes, methodologies and practices;
    2. information relating directly or indirectly to a member of the Disclosing Party’s plans, intentions, know-how, market opportunities and business affairs or those of its suppliers, customers (including potential customers) and clients;
    3. works of authorship, products and materials written and prepared by the Disclosing Party in relation to this Agreement including but not limited to computer programs, data, diagrams, charts, reports, specifications, sketches, inventions and working papers or similar materials of whatever nature or on whatever media relating thereto;
    4. any information resulting directly or indirectly from the discussions or negotiations relating to this Agreement and all copies, notes, records, minutes and all related information (in any form) generated by the Disclosing Party or another member of the Disclosing Party’s based on or arising from any disclosures for this Agreement; and
    5. the terms of any agreement reached by the Parties or proposed by either Party (whether agreed or not) in connection with the Agreement;

**“Disclosing Party”** means, in relation to any Confidential Information, the Party or its Affiliate or Agent which discloses such information directly or indirectly to the

|  |  |
| --- | --- |
|  |  |
| “**Information**” | means all information including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not; |
|  |  |
| “**Intellectual Property Rights**” | Includes:-   1. any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, Internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods, trade secrets, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off; 2. applications for registration and the right to apply for registration for any of these rights; and 3. all other intellectual property rights and similar forms of protection;   existing anywhere in the world; |
|  |  |

**“Parties”** means both GCB and .................. and “Party” shall be construed as either GCB or ..................;

**“Person”** meansany individual including their personal representatives, sole proprietorship, partnership, corporation, limited liability company, unincorporated society or association, trust or other entity or organisation including the directors and officers of such entity or organisation;

**“Proposal”** means GCB’s discussions with .................. with a view to collaborating on various business transactions including allowing G-Money payment to the merchants on the .................. payment platforms and any other related business.

**“Receiving Party”** means, in relation to any Confidential Information, the Party, Affiliates or its Agent who receives such information directly or indirectly from the Disclosing Party;

**“Representative”** means in respect of either Party, it’s directors, officers, employees, agents, insurers, reinsurers, brokers, financiers, auditors, contractors, subcontractors and professional advisers collectively or individually.

# Disclosure of Confidential Information

## The Receiving Party shall not at any time without the prior written consent of the Disclosing Party:

* + 1. utilise, copy, employ, exploit or use in any other manner any of the Confidential Information otherwise than for the purposes of the Proposal.
    2. disclose any of the Confidential Information to any third party, other than to any of the Receiving Party's Representatives who are required in the course of their duties to receive and acquire the same. The Receiving Party shall remain liable for any breach of these provisions by any of its Representatives.

## The Receiving Party shall only use the Confidential Information for the sole purpose of technical and commercial discussions between the Parties in relation to the Proposal and shall not (without the prior written consent of the Disclosing Party) carry out any investigation, research, development or design of the Proposal in the same technical area as the Proposal.

2.3 Notwithstanding clause 2.1 and 2.2 above, the Disclosing Party may disclose Confidential Information:

1. to those of his Representatives who strictly need to know the Confidential Information for the sole purpose set out in this clause 2 provided that the Receiving Party shall ensure that such Representatives are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidentiality to the Disclosing Party. The Receiving Partyshall at all times remain liable for any actions of such Representatives that would constitute a breach of this Agreement; or
2. to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

## In the event that theReceiving Party is required to disclose any Confidential Information in accordance with clause 2.3 (b) above, it shall promptly notify the Disclosing Party and co-operate with Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

* 1. In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and, if requested by the Disclosing Party, take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

# Excluded Information

## The Receiving Party's obligations in relation to Confidential Information under this Agreement shall not apply to any Confidential Information that:

(a) is in possession of the Receiving Party prior to receipt from the Disclosing Party from sources other than the Disclosing Party and without bar against disclosure (as far as it is reasonably aware) by the Receiving Party;

(b) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;

(c) is developed independently by the Receiving Party;

(d) it is disclosed to the Representatives of the Receiving Party who strictly need to know the Confidential Information for the sole purpose set out in clause 2.3 provided that the Disclosing Party shall ensure that such Representatives are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Representatives or that would constitute a breach of this Agreement; or

(e) is disclosed by the Receiving Party to satisfy any applicable laws including but not limited to a legal demand or order by a competent court of law or governmental body, or the rules or requirements of any regulatory authority or stock market by whose rules the Receiving Party is bound, provided however that in these circumstances the Receiving Party shall insofar as it is able advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure, and provided further that the Receiving Party will disclose only that portion of the Confidential Information which is required by law or regulation to be disclosed and the Receiving Party will exercise all reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Confidential Information required to be disclosed;

(f) is disclosed to a third party pursuant to written authorisation from the Disclosing Party; and

(g) is received by the Receiving Party from a third party without similar confidentiality restrictions and without breach of this Agreement.

# Standard of Care

## The Receiving Party undertakes to take proper care and all reasonable measures to protect the confidentiality of the Confidential Information and without prejudice to the foregoing it undertakes to use not less than the same standard of care as it applies to its own confidential information and shall minimise the risk of unauthorised disclosure or use thereof.

# Title and Intellectual Property Rights

## All Confidential Information disclosed by the Disclosing Party is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of Confidential Information shall not be deemed to confer any proprietary rights to that Confidential Information on the Receiving Party.

## All title rights and intellectual property rights of whatever nature (including but not limited to copyright, patents, trademarks, registered designs and the right to apply therefor) to the Confidential Information and to the matters referred to therein are vested in the Disclosing Party and its third party suppliers and no rights, interests or licences in any part of the Confidential Information are granted or transferred either expressly or impliedly to the Receiving Party. The Disclosing Party shall in its sole discretion be entitled to apply in any jurisdiction for any patents, trademarks and designs and applications in respect of any part of the Confidential Information, including without limitation, author certificates, inventor certificates, improvement patents, utility certificates and models and certificates of addition including revisions, renewals, continuation, extensions or reissues thereof.

# Records and Return of Confidential Information

6.1The Receiving Party agrees to ensure proper and secure storage of all Confidential Information and any copies thereof to at least the same standard as the Receiving Partykeeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.

## The Disclosing Party may request in writing at any time that any material containing Confidential Information and any copies of such shall be returned by the Receiving Party with a written statement of certification to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies of such.

## The Receiving Party shall, upon receipt of a written demand from the Disclosing Party or of its ceasing to be interested in the Proposal:

1. return all written Confidential Information (including all copies); and
2. expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Receiving Party or on its behalf (including by any person to whom disclosure has been made as permitted under clause 2.4(a) above).

The obligations in this clause 6.3 shall not apply to the extent that (but only for so long as) it is necessary to retain copies for the purpose of providing information to any regulatory authority in accordance with the terms of this Agreement.

## The Receiving Party shall comply with any such request within ten (10) days of receipt of such request. Any of the Confidential Information and copies thereof which the Receiving Party agrees with the Disclosing Party does not have to be returned to the Disclosing Party will be destroyed or irretrievably deleted (as applicable) at the request of the Disclosing Party and such destruction or deletion will be confirmed to the Disclosing Party in writing. The Receiving Party shall not be required to comply with the foregoing to the extent needed to comply with the Receiving Party’s backup, disaster recovery, data retention or business continuity systems and practices, provided however such Confidential Information shall remain subject to the Receiving Party’s obligations as set out in this Agreement.

# Representations and Warranties

## Each Party represents and warrants to the other that:

1. it is a company duly incorporated and validly existing under the laws of the Republic of Ghana.
2. that it has full corporate power and authority to enter into this Agreement and to do all things necessary for the performance of this Agreement.

(c)Each Party agrees that any Information made available to the Receiving Party and its Representatives for the purpose of negotiations or discussions in relation to the Proposal will not form the basis of, or any representation in relation to, any contract, nor constitute an offer or invitation by the Disclosing Party unless the parties expressly agrees otherwise.

## The Disclosing Party (including its Representatives) does not make any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information. Nothing in this clause shall operate to limit or exclude any liability for fraudulent misrepresentation.

8. Announcements

## 8.1 Neither Party will make or permit to be made any announcement or disclosure of its prospective interest in the Proposal without the prior written consent of the other Party.

## 8.2 Neither Party shall make use of the other Party’s name or any information acquired through its dealings with the other Party for publicity or marketing purposes without the prior written consent of the other Party.

9. Indemnity

9.1 Each Party agrees to indemnify the other Party against any costs, claims, damages, demands or liabilities of whatsoever nature arising directly or indirectly out of a breach of its obligations under this Agreement.

# 10. Data Protection

## 10.1 In the event that the Disclosing Party discloses Confidential Information that contains Personal Data and the Receiving Party processes such Personal Data (including but not limited to holding, retrieving, or carrying out any operation on such data) on behalf of the Disclosing Party for the Project, then the Receiving Party shall:

* + 1. act only on instructions from the Disclosing Party regarding access to, or the processing, erasure, disclosure, transfer or other use of such data;
    2. comply with any request made or direction given by the Disclosing Party in connection with its obligations under any current and/or any future applicable statute, law, regulation or regulatory obligations relating to the protection of Personal Data;
    3. take appropriate technical and organisational security measures against unauthorised or unlawful processing of such Personal Data and against accidental loss or destruction of or damage to such Personal Data;
    4. comply with all applicable laws and regulations, amendments, re-enactments therefore (including but not limited to compliance with the Data Protection Act, 2012 (Act 843) relating to the holding, retrieval, processing and use of such Personal Data.

1. The Parties and their Representatives shall comply with Data Protection Legislation and all applicable laws and regulations relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall procure that its Representatives shall observe the provisions of the same.

11. Miscellaneous

**11.1 Warranty**

The Parties expressly warrant and represent to each other that on the date of signature hereof that neither they nor their Representatives they do not have in their possession any Confidential Information whatsoever, whether in documentary or electronic form.

**11.2. Breach**

In the event that the Receiving Party shall be in breach of the provisions of this Agreement and fail to remedy such breach within seven (7) days from date of a written notice to do so, then the disclosing party shall be entitled to invoke all remedies available to it in law including, but not limited to, the institution of urgent interim proceedings and/or an action for damages.

11.3. **Amendments**

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced to writing and signed by both Parties.

**11.4 Enforceability**

The failure by the Disclosing Party to enforce or to require the performance at any time of any of the provisions of this Agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this Agreement or any part hereof or the right of the Disclosing party to enforce the provisions of this Agreement.

**11.5 Entire Agreement**

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this Agreement.

## **11.6 Non-Assignability**

Neither Party may assign the benefit of this Agreement.

**11.7 Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provisions. If a provision of this Agreement is fundamental to the accomplishment of the purpose of this Agreement is held invalid, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

## **11.8 Notices**

### be given in writing and in the English language and sent to the address of the Party for which it is intended to be given, or such other address as shall have been notified to the other Party in accordance with this Clause; and

### be sent by registered post or equivalent, facsimile, courier or other electronic transmission; and

### if sent by registered post, shall be deemed to have been received five working days after the date of posting or,

### in the case of facsimile or other electronic transmission, upon confirmation of complete receipt being given by the intended Receiving Party; or

### if couriered or delivered by hand, on delivery.

**11.9 Third Party Rights**

This Agreement does not create any rights or benefits enforceable by any person not a party.

**11.10 Counterparts**

This Agreement may be executed in separate counterparts each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A counterpart of this Agreement in an electronic form shall be conclusive evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.

**12 No Commitment**

12.1 For the avoidance of doubt, neither Party shall be under any obligation or commitment to enter into any further agreement relating to the Proposal merely by reason of the execution of this Agreement or the disclosure or evaluation of Confidential Information and this Agreement shall not constitute nor shall it be construed to constitute an offer or commitment to enter into such further agreement. Any further agreement shall be subject to satisfactory counterparty due diligence.

**13 Limitation of Liability**

13.1Each Party excludes all liability for indirect, consequential, special or punitive loss or damage (whether the loss arises in contract, tort, under any statute or otherwise in connection with this Agreement).

13.2 Each Party remains liable for any direct loss the other suffers arising from such first Party’s fraud, gross negligence or wilful misconduct.

# 14 Duration

14.1 This Agreement shall become effective as of the date set forth above (the "**Effective**

**Date**") and shall continue in full force and effect for six months from the date of the last disclosure of Confidential Information

**15 GOVERNING LAW AND JURISDICTION**

15.1 This Agreement and the relationship of the parties in connection with the subject matter of this Agreement and each other shall be governed and determined in accordance with the laws of the Republic of Ghana.

15.2 The parties hereby submit to the exclusive jurisdiction of the law courts of Ghana.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first above written.

Signed for and on behalf of **GCB Bank Limited** by:

Authorised Signatory

Signature: -----------------------------------------

Name : -----------------------------------------

Designation: --------------------------------------

In the presence of:

Signature:

Name:

Signed for and on behalf of **…………………………………………….** by:

Authorised Signatory

Signature: -----------------------------------------

Name: -----------------------------------------

CEO

Designation: -------------------------------------

In the presence of:

Signature:

Name: