

MERCHANT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this ____ day of _____, 20 ____, at the City of Makati, by and between:

METROBANK CARD CORPORATION (A Finance Company), a Philippine corporation with principal office address at the MCC Center, 6778 Ayala Avenue, Makati City, represented herein by its Deputy Cards Head, **Anna Therese D. Cuenco** and its Head of Merchant Acquiring and Payments, **Celeste Marie V. Lim** hereinafter referred to as "**MCC**."

- and -

_____, a corporation (or partnership) duly organized and existing by virtue of the laws of the Philippines, with principal office address at _____, represented herein by its [State Position] _____, [State Name] _____,

For Single Proprietorships:

[State Name] _____, [State Nationality] _____, of legal age, doing business under the name and style of _____, with office address at _____, hereinafter referred to as the "**MERCHANT**."

(**MCC** and the **MERCHANT** shall also, hereinafter, be individually referred to as "**Party**" and collectively referred to as "the Parties".)

WITNESSETH: That –

WHEREAS, **MCC** is duly licensed to engage in the business of issuing Credit Cards including **VISA** and **MASTERCARD**, and desires to make available to holders of Credit Cards the opportunity to purchase goods, merchandise and/or services from **MERCHANT** with the use of such Credit Cards;

WHEREAS, the **MERCHANT** is duly licensed to engage in the business of selling and/ or supplying goods and/or services and has agreed to honor every valid unexpired **VISA** and **MASTERCARD** and any other credit card brands which may be issued or acquired by **MCC** in relation to the purchase by Cardholders of its goods/services under the terms and conditions hereinafter stipulated;

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITION OF TERMS – the following terms used in this Agreement shall have the following meanings:

- a. "**AUTHORIZATION**" refers to the approval required to be obtained by the **MERCHANT** by telephone from the MCC Authorization Hotline before a Credit Card transaction is honored, provided, that such telephone authorization shall only be required if a Point-of-Sale (POS) has not been installed or if present, has failed to provide the necessary approval number. The Authorization contemplated herein shall take the form of an authorization code number obtained from MCC Authorization Hotline by the **MERCHANT**.
- b. "**BANKING DAY**" shall mean the day when banks are open for business. Provided, however, that Saturday and Sunday shall at all times be considered as a non-banking day for purposes of this Agreement and notwithstanding any declaration to the contrary.
- c. "**CARDHOLDER**" shall mean the person whose name is imprinted/embossed on the Credit Card and whose signature appears on the signature panel as the authorized user thereof.
- d. "**CHARGEBACK**" shall mean the process by which **MCC** will charge the **MERCHANT** the full/partial amount of the Transaction Draft which has been paid by **MCC** under such circumstances and situations where sales transaction is disputed by the Cardholder and/or where the **MERCHANT** failed to comply with any of its obligations under this Agreement.
- e. "**CHARGE SLIPS**" shall mean the forms supplied or approved by **MCC** for the purpose of consummating sales or credits to be charged or credited to the account of the Cardholder on the basis of the Credit Card properly honored by the **MERCHANT** pursuant to the terms hereof. This is used whenever the transaction is processed manually.
- f. "**CREDIT CARD**" shall mean an unexpired **VISA** and **MASTERCARD** currently issued by **MCC** and other Credit Card issuers or brands which may be acquired by **MCC**.
- g. "**CARD TRANSACTION**" means any payment instruction effected by the Cardholder with the **MERCHANT** by the use of the Credit Card.
- h. "**ELECTRONIC DRAFT CAPTURE (EDC) MODE**" shall mean the electronic means by which a Credit Card is processed. This transaction processing method does not require the **MERCHANT** to submit paper drafts to **MCC** for posting into Cardholder accounts or interchange settlement with other issuing banks.
- i. "**INSTALLMENT**" shall mean the installment feature of MCC Credit Cards that shall allow the Cardholder to avail of a certain product/s or service/s by paying **MCC** in pre-determined installments at a stipulated rate over a fixed term. MCC installment programs are classified under regular rate installment, reduced rate installment, 0% installment and deferred installment.
- j. "**MANUAL TRANSACTIONS**" refers to transactions consummated between the Merchant and the Cardholder, whose approval did not come online, or through EDC Mode, but through phone conversation between the Merchant and MCC Authorizations.
- k. "**MERCHANT**" shall mean any business establishment contracted by **MCC** to honor Credit Cards as payment for the **MERCHANT's** goods and/or services.
- l. "**MERCHANT DISCOUNT RATE**" refers to the percentage rate used by **MCC** to calculate the discount charged for credit card transactions acquired by **MCC**.
- m. "**SALES SUMMARY SHEET**" refers to the summary document that the merchant accomplishes and submits to **MCC** and must obtain the gross sales amount, total amount of charge slips, discount rate, applicable government tax and net payable amount.
- n. "**SETTLEMENT**" the electronic process of transferring funds for sales and credits between the **MERCHANT** and **MCC**.
- o. "**POINT-OF-SALE (POS)**" shall mean an authorization and/or transaction terminal or device that is provided by **MCC** to its accredited merchants to be used for securing approval for all Credit Card transactions.
- p. "**TRANSACTION DRAFT**" shall mean the drafts generated by the **MERCHANT's** POS as proof of consummation of a sales transaction done on-line through the use of Credit Card.
- q. "**WARNING BULLETIN**" means a notification issued by **VISA** and **MASTERCARD**, or by any other issuer of any Credit Card, which lists the Credit Card not to be accepted for card transactions.

2. ACCEPTANCE OF CREDIT CARD

- a. The **MERCHANT** shall honor, without any discrimination, all valid Credit Cards presented by bonafide Cardholders in the purchase of goods and/or services supplied by it on credit.

Every Credit Card issued to bonafide Cardholders is non-transferrable, thus **MERCHANT** should process transaction only of such Cardholder.

- b. The **MERCHANT** shall honor Credit Cards only after it has determined and satisfied that:
 - i. The Credit Card security features have been reviewed and that the card has not yet expired
 - ii. The signature affixed by the Cardholder in the presence of the personnel of the **MERCHANT** on the Transaction Draft or Charge Slip prepared by the latter is the same as the specimen appearing on the Credit Card. In case of doubt, additional identification to determine the genuineness of the signature should be requested mandatorily
 - iii. Credit Card is not mutilated, defaced nor bears any marking(s) of alteration in embossing or signature.
- c. The **MERCHANT** shall observe all security measures, whether or not prescribed by **MCC** in respect of the acceptance of any Credit Card for payment of any card transaction, including but not limited to, ensuring that any Credit Card which is accepted is a valid card and not listed in any warning bulletin.
- d. The **MERCHANT** shall obtain authorization and authorization code numbers for every card transaction electronically through the POS terminal or following the manual authorization procedure set forth in the Manual Operating Guide ("MOG") provided by **MCC** to the **MERCHANT**.
- e. The **MERCHANT** shall comply with all instructions whatsoever given through the POS Terminals in response to requests for authorization of Credit Card Transactions made electronically through the POS terminals by the **MERCHANT**, or over the telephone in response to manual authorization requests following the manual authorization procedure. The **MERCHANT** shall not mislead the Cardholder by indicating that his card transaction is being declined or refused but shall properly notify the Cardholder that the POS terminal registered such response which requires the **MERCHANT** to call **MCC** providing the following details: name of **MERCHANT**, Merchant ID number, Cardholders name, Card Account Number, expiry of the Card, the amount of the Card Transaction and the reason for the request of the Card Transaction.
- f. The **MERCHANT** may not infer any impropriety, wrongdoing, or lack of credit worthiness on the part of any Cardholder from the referral of the card transaction to **MCC** or declining of any authorization request made in respect of a card transaction attempted to be effected by the Cardholder or from any instruction given to the **MERCHANT** by **MCC** under any provision of this Agreement.
- g. **MERCHANT** shall, at no time, open its own charge account for Cardholders or bill Cardholders directly or offer its own credit, debit and similar programs without the prior written conformity of **MCC**.
- h. Procedures relative to credit authorization and the processing of Credit Card transactions not covered by this Agreement are embodied in the MOG, the terms and conditions thereof shall form part of this Agreement. **MCC** may from time to time, by notice to **MERCHANT**, modify or amend the MOG.

3. SURCHARGING PROHIBITION

The selling price of goods and/or services sold/rendered by the **MERCHANT** to the cardholder shall be at the regular selling price to cash customers, without adding-on any extra percentage of any kind to the Cardholder transactions. However, with respect to items on "Sale" during bargain/discount sale when the prices of goods and/or services are substantially reduced, the **MERCHANT**, after giving one (1) week written notice to **MCC**, has the option to (1) charge the regular price for such item/s or (2) provide the Cardholder a different discount or (3) exclude the "Sale" items from the credit facility, Provided, however, that in exercising any of the enumerated options, it is agreed that the **MERCHANT** shall first disclose and explain the same to the Cardholder.

4. COMPLETION OF CREDIT CARD TRANSACTION

- a. Credit Card transactions supported by a Transaction Draft for online transactions or Charge Slip for manual transactions, shall be accomplished and generated strictly in accordance with the MOG provided by **MCC** to the **MERCHANT**.
- b. Unless otherwise provided in this Agreement, all Transaction Draft or Charge Slip must be signed by the Cardholder in the appropriate space.
- c. **MERCHANT** represents and warrants to **MCC** that all Transaction Drafts or Charge Slips to be submitted to and accepted by **MCC**:
 - i. represent bonafide sales of merchandise and/or services in the usual course of business for the total price;
 - ii. are not/will not be defective, illegal or otherwise impair the validity or enforceability of collection thereof from the Cardholder who made the transaction; and;
 - iii. shall consistently be for the full amount of the transaction and shall not be processed in parts constituting "Split Sale" unless the transaction is covered under the conditions stated in section 4.c.ii.
- d. **MERCHANT** assumes full responsibility for any goods and/or services returned and / or questioned by the Cardholder as well as for the accuracy and correctness of any data or information appearing on the Transaction Draft or Charge Slip. **MERCHANT** agrees to indemnify and hold **MCC** free and harmless from any claims relating to any Transaction Draft or Charge slip or as may be made by way of defense, offset, counterclaim or affirmative action by the Cardholder.
- e. **MERCHANT** shall not complete the transaction when only part of the amount due is indicated on the Transaction Draft or Charge Slip except under the following circumstances:
 - i. when the balance of the amount of sales is paid by the Cardholder in cash, check or other Credit Card at the time of the transaction;
 - ii. in a delivery transaction or where goods/services are to be delivered or performed at a later date and where one Transaction Draft or Charge Slip represents the "deposit" "initial payment" or "down payment" and another represents the "balance" or "final payment", the Transaction Draft or Charge Slip for the "balance" or "final payment" shall not be presented to **MCC** until the goods are delivered or services performed completely and accepted by the Cardholder. Separate approval is required for "deposit" and "balance" drafts or slips. Approval on the "deposit" transaction does not guarantee subsequent approval of the "balance" nor shall it bind or obligate **MCC** to, thereafter, authorize the "balance" Transaction Draft or Charge Slip.
- f. **MERCHANT** shall give the original copy of the establishment's sales/commercial invoice or receipt directly to the Cardholder at the time of the purchase, together with the Cardholder's copy of the Transaction draft or Charge Slip.

5. TRANSACTION DRAFT/CHARGE SLIP

- a. In case of on-line or electronic transactions, Transaction Drafts generated by POS terminals shall be distributed as follows: one (1) copy goes to the **MERCHANT** and one (1) copy is given to the Customer. **MERCHANT** is required to maintain copy of the Transaction Draft for eighteen (18) months. In case of dispute, **MERCHANT** should present its copy to **MCC** once requested within, five (5) business days from the date of such request. Failure to present said copy will result to an outright chargeback.
- b. **MERCHANT** operating twenty four (24) hours a day/seven (7) days a week ("24/7") shall settle the day's transactions from the POS terminal, at the end of each transaction date or at the designated cut-off time and send it to **MCC** immediately.
- c. In the case of card transactions with respect to which authorization and authorization codes were manually obtained in accordance with this Agreement, all Charge Slips relating to such Card transactions effected with the **MERCHANT** during each day shall be submitted to **MCC** together with the Sales Summary Sheet duly approved by **MCC** containing the information indicated below, on or before the fifth (5th) day following the Card Transaction date, viz:
 - i. Merchant name and address
 - ii. Merchant Code
 - iii. Actual number of attached Transaction Drafts or Charge Slips;
 - iv. Total Gross sales;
 - v. Discount rate and amount of discount
 - vi. Applicable government tax;
 - vii. Net amount payable to **MERCHANT**;
 - viii. Signature of the **MERCHANT** personnel who accomplished the Sales Summary Sheet.

6. MERCHANT DISCOUNT RATE

MCC shall undertake to pay the **MERCHANT** for all the Transaction Drafts or Charge Slips validly incurred via genuine charge availments at the Discount Rate indicated in the Letter of Offer which MCC shall provide to the **MERCHANT**. MCC reserves the right to change the Discount Rate upon prior written notice to the **MERCHANT**; provided that no change in the Discount Rate shall be effective for any period prior to the time of receipt by the **MERCHANT** of such notice.

7. SETTLEMENT PAYMENT

- a. MCC shall, during the term and subject to the terms and conditions of this Agreement, pay to the **MERCHANT** at such time/s determined by MCC from time to time in accordance with the prevailing practice at the relevant time, the total amount of the Card Transactions effected with the **MERCHANT** which have been so submitted less: (i) the aggregate Discount Rate on all such Card Transactions; (ii) the government taxes; (iii) the aggregate refunds or rebates granted to Cardholders, if applicable; and (iv) all other amounts payable or due to MCC under this Agreement or otherwise.
- b. All payments made to the **MERCHANT** shall be made available to the **MERCHANT** by check, drawn in favor of the **MERCHANT**, or credited to the **MERCHANT's** account with any branch of the Metropolitan Bank & Trust Company ("MBTC") or with other banks, subject to MCC's right at its discretion at any time to change the mode of such payment to the **MERCHANT**. For crediting to the **MERCHANT's** account with other banks, the relevant transfer fees and other related charges shall be borne by the **MERCHANT**.
- c. All approval codes given to the **MERCHANT** does not guarantee outright payment, there may be instance/s of fraud and/or disputes that may preclude such payment. If the **MERCHANT** does not raise any objection to the amount of payment by MCC within thirty (30) days after the date MCC issues the check or credits the **MERCHANT's** account, the **MERCHANT** shall be deemed to have accepted such amount as correct; Provided that nothing in this Section shall preclude MCC from correcting any error or discrepancy in such amount paid.
- d. Subject to proof to the contrary, any payment by MCC 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 MCC may have against the **MERCHANT**, and shall not constitute any admission or acknowledgment by MCC that the **MERCHANT** has duly performed its obligations under this Agreement or of the correctness of the amount so paid.

8. CHARGEBACK

- a. Notwithstanding any provision of this agreement to the contrary or any authorization given in relation to such Card Transaction, MCC shall be entitled, without giving any reason, to refuse payment to the **MERCHANT** of all or part of any amount of any Card Transaction less the discount and less applicable taxes, in case of any of the following events (each a Chargeback Event) occurs:
 - i. The Cardholder disputes the nature, quality, use or fitness of the goods sold and/or services rendered under the 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 Cardholder or any representation or warranty made by the **MERCHANT** to the Cardholder;
 - ii. The Cardholder disputes or denies that the Card Transaction was effected by him or the contract of sale or service with the **MERCHANT** was entered into by him or delivery of the goods sold and/or performance of the services rendered under the Card Transaction was received by him;
 - iii. MCC shall refer to the **MERCHANT** all transaction/s disputed by the Cardholder and **MERCHANT** undertakes to resolve the dispute with the Cardholder within five (5) business days upon receipt of advice from MCC. Disputed transaction(s) which the **MERCHANT** has failed to resolve within the aforesaid period shall be automatically charged back by MCC to the **MERCHANT**.
 - iv. The contract of sale or service entered into between the **MERCHANT** and the Cardholder in relation to the goods and/or services rendered under the Card Transaction is void or voidable at law or the use of the Credit Card or the performance of any person's obligation's under such contract of sale or service involves any illegal or unlawful act;
 - v. Payment in relation to the Card Transaction has been mistakenly or wrongly made by MCC or the Cardholder to the **MERCHANT**;
 - vi. No authorization and/or authorization code numbers were sought by and/or granted to the **MERCHANT** for the Card Transaction as required under this agreement;
 - vii. The Credit Card used for the Card Transaction is not a valid Credit Card and/or has been listed in any warning bulletin;
 - viii. The Cardholder alleges that the Transaction Draft or Charge Slips has been drawn or altered without his consent or authority;
 - ix. The Transaction Draft / Charge Slips is not signed by the Cardholder or any part of it is illegible;
 - x. The copy of any Transaction Draft/Charge Slips or any document required to be signed by the Cardholder in relation to any Card Transaction presented to MCC or retained by the **MERCHANT** is not identical to the copy of the same as given to the Cardholder;
 - xi. The **MERCHANT** does not furnish MCC the original copy of the Transaction Draft/Charge Slip or a copy of it, invoice or other document or record relating to the Card Transaction forthwith upon request of MCC;
 - xii. The **MERCHANT** does not comply with any of its obligations or the requirements under this agreement in relation to any Card Transaction or any security measures or guidelines relating to this agreement issued by MCC;
 - xiii. There has been a breach by the **MERCHANT** of any other of its obligations under this agreement not specified herein, or of any other agreement entered into between the **MERCHANT** and MCC or of any other obligation whatsoever owed by the **MERCHANT** to MCC, whether or not related to this agreement;
 - xiv. The **MERCHANT** processed the same Card Transaction more than once; or
 - xv. The occurrence of fraud and other events determined by Visa International, MasterCard International or any other issuer of any Credit Card and notified by MCC as a Chargeback Event.
- b. If any of the foregoing Chargeback Event occurs, MCC has the right not to accept the transactions and chargeback such to the **MERCHANT** via a Chargeback Advice.
- c. The amount corresponding to the Chargeback ("Chargeback Amount") shall first be applied by MCC against the future billings of the **MERCHANT**. If no sum or payment is due to the **MERCHANT** that will allow MCC to deduct/set-off the Chargeback Amount, MCC shall seek reimbursement from the **MERCHANT** of the Chargeback Amount, upon which the **MERCHANT** shall reimburse MCC immediately upon receipt of a demand. If despite receipt of such demand, **MERCHANT** fails to reimburse MCC, **MERCHANT** hereby expressly authorizes MCC to deduct the Chargeback Amount due without need of demand or any further act or deed, against any money, securities and things of value which are now or may hereinafter be in the possession of MCC or any of its subsidiaries and affiliates.
- d. MCC shall also enjoy and exercise preferential lien on the stocks, inventories, properties, banks accounts and all other forms of monetary deposits and investments of the **MERCHANT**. Accordingly, upon failure of the **MERCHANT** to reimburse MCC for any duly paid Transaction Draft or Sales Slip, whether arising from a Chargeback Advice or such other amount due to MCC under this Agreement, MCC is fully authorized and empowered by the **MERCHANT** as its attorney-in-fact to take possession of the **MERCHANT's** stock inventories and properties, to forthwith sell the same at public auction or private sale, and to apply the proceeds thereof in payment of the **MERCHANT's** unpaid obligations and expenses of sale; Provided, however, that any excess shall be turned over to the **MERCHANT**.

9. COUNTERFEIT CARDS / FRAUD

- a. Where the **MERCHANT** receives a Credit Card which it believes or suspects may be counterfeit or stolen or otherwise belong to a person other than the purporting to be the Cardholder, the **MERCHANT** shall, without at any time informing the Cardholder or the purported Cardholder or arousing suspicion, immediately inform MCC by calling MCC Authorization and Fraud Department at the telephone numbers notified to the **MERCHANT** by MCC for such purpose and comply with the instructions given by MCC.

- b. In the event that the **MERCHANT** is instructed to retain a Credit Card for any reason, the **MERCHANT** shall exert its best effort to do the same as discreetly as possible. The **MERCHANT** shall, at **MCC's** request, furnish to **MCC** full particulars of the circumstances surrounding the retention of such Credit Card. In the event that **MERCHANT** is unable to retain a Credit Card, the **MERCHANT** shall exert reasonable efforts to furnish **MCC** with the following information: Name of Cardholder, Card Account Number and Card Expiry date of the Card.
- c. The **MERCHANT** shall not process a Card Transaction that it knows or ought to have known to be fraudulent or not authorized by the Cardholder nor present payment any record in respect of any such transaction. The **MERCHANT** shall be responsible for the action of its employees while acting in its employ or of its agents while acting in its behalf.
- d. Nothing in this Section or any instructions given to the **MERCHANT** under letter shall be taken to imply that the **MERCHANT** is authorized by **MCC** to breach the peace or injure any person or property, or make any defamatory statements or act illegally or unlawfully in any way, and **MCC** shall not be liable for any such deed, act or conduct on the part of the **MERCHANT**, its employees and its representatives.
- e. The approval codes given to the **MERCHANT** does not guarantee that it will be paid, in case fraudulent transactions are found to be consummated in the POS terminal of the **MERCHANT** or through other means, **MCC** may opt to suspend the operation of the POS Terminal pending further investigation

10. INSTALLMENT TRANSACTIONS

MERCHANT may be allowed to honor Credit Cards for purchase of goods or services under Installment subject however to the prior written approval and/or accreditation by **MCC**. Upon such approval, **MERCHANT** shall be bound by the rules governing Installment as specified herein which may be modified and amended by **MCC** from time to time, to wit:

- a. **MERCHANT** shall observe all the standard procedures for card acceptance, completion of card transaction and settlement as provided under this Agreement. **MERCHANT** shall likewise observe all the applicable procedures on Installment in the MOG.
- b. **MERCHANT** has the option to avail of the following installment programs that it deems preferable for its business: regular rate installment, reduced rate installment, zero percent (0%) interest installment and deferred installment. The mechanics, procedures and rates for these programs shall be provided by **MCC** to the **MERCHANT**. **MCC** reserves the right to change the rate on Installment upon prior written notice to the **MERCHANT**.
- c. The minimum transaction for Installment is PhP3,000.00 or such other amount as may be notified in writing by **MCC** to the **MERCHANT**.
- d. **MERCHANT** shall acquire prior authorization from **MCC** for the amount being charged to the Credit Card. In requesting authorization for Installment, **MERCHANT** shall provide **MCC** with the following minimum information: Cardholder Name, Card Account Number, Merchant Code, Price of the item or service, Payment Terms selected by the Cardholder, Applicable Rate to be used and the Monthly Amortization to be paid by the Cardholder.
- e. As a rule, an Installment shall be done on-line. **MERCHANT** shall strictly follow the procedures governing Installments contained in the MOG. If however, the POS terminal is unavailable, Installment Transactions shall be done via the Manual mode, where the **MERCHANT** shall call **MCC** and request for the Authorization specifically for Installment. **MCC** may modify the approval process and the approving authority from time to time, as may be notified to **MERCHANT**.
- f. The foregoing conditions shall govern only to Installment and shall not apply to regular purchases not made on installment basis.
- g. All other terms and conditions in the Agreement, including but not limited to the provisions on Chargeback, Fraud, et al., which are not inconsistent with this provision on Installment shall remain in full force and effect.

11. MERCHANT MATERIALS/SUPPLIES

- a. **MCC** shall provide the **MERCHANT** with sufficient forms of Transaction Drafts, Charge Slips and other forms/supplies and marketing/promotional materials which shall be used exclusively in connection with the credit purchases contemplated under this Agreement.
- b. The **MERCHANT** will prominently display marketing/promotional materials provided by **MCC** to inform the public that Credit Cards will be honored and accepted at the **MERCHANT's** place(s) of business. Such displayed Credit Card mark or logotype must be at least of the dimension of and as prominent as any other card program mark or logotype displayed. The cost of these materials shall be shouldered by **MCC**.
- c. **MCC**, without cost to the **MERCHANT**, shall include the **MERCHANT's** name, address and telephone numbers in **MCC's** Merchants Directory.
- d. **MCC** reserves the right to charge the **MERCHANT** for the costs of stationery including paper rolls that will be used in the Point-of-Sale terminal.

12. POINT-OF-SALE (POS) TERMINAL

- a. **MCC**, shall provide the **MERCHANT** with POS terminal(s) and reserves the right to charge the **MERCHANT** a rental fee for the use of the said terminal(s). It is understood, that the **MERCHANT** shall exercise reasonable care in handling and operating the POS terminal(s). **MCC** shall shoulder all costs related to the installation, repair and maintenance of the POS terminal(s) including but not limited to the ordinary wear and tear except those repairs which can be traced to negligence on the part of the **MERCHANT**. All electrical consumption for the use of the POS terminal(s) shall be for the account of the **MERCHANT**.
- b. **MERCHANT** shall at all times provide communication lines for the POS terminal(s). It is agreed in the event that such telephone is rendered inoperative, **MERCHANT**, on its part, shall provide the POS terminal(s) with another telephone line as a substitute.
- c. In the event the POS terminal(s) is lost or stolen or damaged beyond repair which can be traced to negligence while in the possession of the **MERCHANT**, it shall pay **MCC** for the replacement cost of the POS terminal plus installation charges.

13. CONFIDENTIALITY

MERCHANT shall keep strictly confidential the terms of this Agreement and its annexes, as well as any information pertaining to Cardholder and/or his/her transactions, and/or relating to **MCC's** Credit Card business, and shall not disclose the same to any third party without the prior written consent of **MCC**. This provision shall survive the termination of this Agreement.

MERCHANT shall not retain documents with card information, name and other sensitive data after the lapse of eighteen (18) months from transaction date. After the said retention period, **MERCHANT** shall immediately turnover the aforesaid documents to **MCC**, without need of any demand from **MCC**. In the conduct of its review of the records of **MERCHANT** pursuant to paragraph 18 herein, if there are above-mentioned documents which should have been turned-over to **MCC** but **MERCHANT** failed to do so, such breach may be a ground for termination of this Agreement by **MCC**.

14. ACCOUNT DATA SECURITY

- a. Should storage of customer information be required by the **MERCHANT** for business, legal, and/or regulatory purposes, the **MERCHANT** should only store such specific information as is expressly required and should establish a data retention and disposal policy and procedure. For this purpose, the **MERCHANT** should provide **MCC** a copy of the policy, instructions, ruling for the storage of customer information.
- b. The **MERCHANT** shall securely safe keep the merchant copy of the sales slips and limit access only to authorized personnel.
- c. Under no circumstances shall the **MERCHANT** store sensitive card authentication data prior to, during, or subsequent to authorization, even if such sensitive card authentication data is encrypted. Sensitive card authentication data shall include:
 - i. any data from the magnetic stripe or chip;
 - ii. the card validation code which is the three digit code found at the back of the card such as the CVV2 and CVC2; and
 - iii. the Personal Identification Number, or PIN.

d. The **MERCHANT** undertakes to strictly abide by the rules and procedures of Visa and MasterCard, including but not limited to the rules on prohibition of Sale or Exchange of Information under Rule 5.12.1 of the MasterCard Rules.

15. LOYALTY/PROMOTIONAL PROGRAM

MERCHANT hereby agrees to participate in loyalty/promotional programs which may be developed and implemented by **MCC** without cost or expense to the **MERCHANT**. The **MERCHANT** may, however, develop and implement its own loyalty/promotional program at its own cost and expense. **MCC** shall not be liable in case of failure of **MERCHANT** to fulfill its obligations under its own loyalty/promotional program.

16. SUSPENSION OF OPERATION

The **MERCHANT** shall notify **MCC** in writing, thirty (30) calendar days in advance, in the event that the **MERCHANT** decides to stop operating its business.

17. RIGHT OF INSPECTION

- a. Upon prior notice, **MCC** reserves the right to send its representatives to visit and enter the premises of the **MERCHANT** at reasonable time and subject to the **MERCHANT's** security measures, to inspect its records, finances, properties and operation.
- b. The **MERCHANT** shall take the necessary corrective measures to comply with the findings and recommendations of the internal/external auditors of **MCC** or its own auditors.
- c. **MCC** reserves the right to request documents from the **MERCHANT** from time to time to comply with the requirements of various government and regulatory agencies.
- d. If there are findings including but not limited to non submission of requested document as aforementioned the preceding paragraph, and no corrective action was taken after the next visit, unless said finding may be due not to the fault of the **MERCHANT**, operations of the POS terminal on said **MERCHANT** shall be suspended until such time that corrective actions have been taken.

18. REVIEW

- a. The **MERCHANT** acknowledges that **MCC** has the right to conduct a regular review and evaluation of the **MERCHANT's** over-all performance of its obligations under this Agreement. Should **MCC** determine, based on such criteria and conditions at it deems appropriate, that the **MERCHANT** has failed to satisfactorily comply with its obligations hereunder, **MCC** shall have the option to terminate this Agreement.
- b. For this purpose, the performance of the **MERCHANT** shall be measured by the use of Performance Indicators to be provided by **MCC**.

19. LIABILITY CLAUSE

The **MERCHANT** shall hold **MCC** or any of its officers or representatives free and harmless from any and all liabilities, claims, losses or causes of action arising from the errors incurred by or judgments/decisions made by the **MERCHANT's** cashiers/POS terminal operator, such as in the release of goods despite (a) the POS terminal, does not display a message of approval or (b) the POS terminal displays a message other than "APPROVED". **MCC** shall be indemnified for any loss that it may incur relating to these errors.

MCC shall not be liable in any way 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 foregoing:

- a. any disruption, defect or breakdown in or failure of any POS terminal or any system used to authorize or record card transactions or any other facilities;
- b. any authorization or authorization code number or other information or instruction requested by the **MERCHANT** being inaccurate, incomplete, delayed or not given for any reason;
- c. any direction, instruction, notice or request given to **MCC** by any of the **MERCHANT's** employees or agents and all act's or omission by **MCC** pursuant thereto, whether or not such direction, instruction, notice or request was followed and regardless of whether **MCC** 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** Articles of Incorporation or Partnership and By-Laws or Registration of Business Name or other rules of incorporation or was otherwise irregular in any way;
- d. any act, omission or variation of this Agreement by **MCC** which is required by any change in law, regulation or official directive; or
- e. the inability of **MCC**, including its head office or other branch or subsidiary thereof, to perform any of its obligations under this agreement, which inability is due directly or indirectly to the defect, failure or damage of any machine or communications system, industrial dispute, civil disorder, war, act of God, or anything outside the control of **MCC** or its agents.
- f. The **MERCHANT** shall be held solely liable and hold **MCC**, its officers, employees and agents free and harmless for whatever claims, liabilities and judgements, directly or indirectly, that any cardholder may have against the **MERCHANT** or **MCC** due to identity theft, account takeover or other similar machinations in relation to the use of POS terminals, **MERCHANT's** cash registers and other similar appliance or instruments or perpetuated by the **MERCHANT** or its employees, officers, or agents.

20. TAXATION

All sums payable to **MCC** under this Agreement shall be payable in cleared funds in the agreed currency on the due date of such amounts and without deduction for any taxes, levies, imposts, duties, charges, fees deductions, withholding restrictions or conditions of any nature now or hereafter imposed by the Republic of the Philippines or any political subdivision or taxing authority thereof or therein. All such taxes, levies, imposts, duties, charges and fees shall be charged to and will be borne solely by the **MERCHANT**.

MCC shall pay the **MERCHANT** the full amount in the Sales Summary Sheet, net of the following: (1) the one-half percent (½ %) creditable withholding tax on income payments made by credit card companies to be withheld by **MCC**; and the (2) Merchant Discount Rate as agreed in the Letter of Offer.

MCC shall furnish **MERCHANT** the corresponding Certificate of Taxes Withheld (CTW) pertaining to the amount of creditable withholding taxes withheld.

21. TERM and TERMINATION OF AGREEMENT

- a. **MCC** reserves the right to unilaterally terminate this Agreement without prior notice to the **MERCHANT** and without giving the reason, in case the **MERCHANT**, as solely determined by **MCC**, has committed acts prejudicial to the interest of **MCC** or if any of the terms and conditions contained herein is violated or when **MCC**, at its sole discretion, deems necessary for reasons including, but not limited to, fraud or counterfeit card transactions, excessive Chargeback or if the **MERCHANT** has breached the fraud threshold imposed by **MCC** or by **VISA** and **MASTERCARD**.
- b. In the event that the **MERCHANT** shall decide to dispose of or discontinue its business, **MCC** shall be given at least thirty (30) days prior written notice.
- c. In the event of termination, the **MERCHANT** shall return to **MCC** all materials pertaining to the **MCC** program, including but not limited to **MCC** POS terminal (which shall be in good working order and condition), Transaction Draft, Charge Slips and Sale Summary Sheet and promotional materials and shall remove all decals and signs from the premises immediately.
- d. This agreement shall remain in force upon signing hereof and terminated by either party for any reason provided notice in writing shall be sent to other party thirty (30) days prior to the efficacy.

22. NOTICES

All notices permitted or required by this Agreement will be sent by regular mail, posted prepaid at the address set forth at the beginning of this Agreement, unless notification in writing of change of address is received by the other party.

23. GOVERNING LAW

The Agreement shall be governed by and interpreted by the laws of the Republic of the Philippines.

24. VENUE OF ACTION

Venue of all actions arising from this Agreement shall be brought exclusively to the jurisdiction of the appropriate Court of Makati City, Philippines.

25. SEPARABILITY CLAUSES

If any one or more of the provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable, the remaining provisions contained herein shall not in any way be affected or impaired.

26. AMENDMENTS AND REVISIONS

Any amendments, revision or change in this Agreement should be in writing and upon mutual agreement of both parties.

27. ENTIRE AGREEMENT

Both parties acknowledge that this Agreement constitutes the entire agreement between them and shall completely supersede all other prior understanding, previous communications or contracts, oral or written, between the parties relating to the subject matter thereof.

IN WITNESS WHEREOF, the parties herein have hereunto signed these presents by their respective authorized signatories this _____ at Makati City, Philippines.

METROBANK CARD CORPORATION

By:

Anna Therese D. Cuenco
Deputy Cards Head

Celeste Marie V. Lim
Head of Merchant Acquiring and Payments

Merchant Name

By:

Printed Name & Signature

Title

Signed in the presence of:

ACKNOWLEDGMENT

Republic of the Philippines)
Makati City) S.S.

Before me, A Notary Public and in the above jurisdiction personally appeared:

NAME	ID Type and Number	Date Issued	Place Issued
Anna Therese D. Cuenco	Passport XX4736442	October 13, 2009	Manila
Celeste Marie V. Lim	Passport XX3578014	April 27, 2009	Manila

made known to me to be the same person/s who executed the foregoing instrument and acknowledged to me that the same is his free and voluntary act and deed and of the principal he represents. This document refers to the Merchant Agreement executed by and between MCC and _____ of _____ (____) pages signed by the above-named. WITNESS MY HAND AND SEAL this _____ day of _____ 20__ at Makati City.

Doc. No. _____:
Page No. _____:
Book No. _____:
Series of _____: