

Global Payments Asia Pacific



MERCHANT CARD SERVICES TERMS & CONDITIONS (Philippines)

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1. GENERAL.

- 1.1 This “**Agreement**” consists of these Card Services Terms & Conditions and the Signature Page attached hereto and is made by and among Merchant, Processor, Member, in each case as named on the Signature Page.
- 1.2 Member and Processor are each a member of Visa International, Inc. (“**Visa**”), MasterCard International, Inc. (“**MasterCard**”), and any other card associations as may be specified by Processor from time to time (including their respective successors and assigns, collectively, the “**Card Associations**”).
- 1.3 Under the terms of this Agreement, Merchant will be furnished with the services and products described herein and selected by Merchant herein (collectively and individually, as applicable, the “**Services**”) with respect to transactions for sale of goods and/or services involving cards issued under the Card Associations and/or card issuers accepted by Processor for the time being (“**Card Transactions**”). Merchant agrees to be bound by this Agreement, as may be modified or amended from time to time.
- 1.4 If signed by a firm, the expression “**Merchant**” shall include the person or persons from time to time carrying on the business of such firm and, if Merchant comprises of two or more persons, the expression “**Merchant**” shall include all and each of them and their liabilities under this Agreement shall be joint and several.
- 1.5 Any reference in this Agreement to “**Merchant**”, “**Processor**”, “**Member**” or “**Depository**” shall, if the context permits or requires, be construed so as to include its and any subsequent successors, legal representatives and permitted transferees and assigns in accordance with their respective interests.
- 1.6 If the context permits or requires, 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. Any reference to a “**Clause**” shall mean a clause hereof.

2. SERVICE DESCRIPTIONS.

- 2.1 The card processing services, which are provided under this Agreement, consist of:
 - (a) authorization of Card Transactions;
 - (b) electronic draft capture (or collection of sales slips) of Card Transactions;
 - (c) outclearing of Card Transactions to the appropriate Card Associations and/or card issuers;
 - (d) settlement of such transactions;
 - (e) dispute resolution with cardholders’ banks; and
 - (f) transaction-related reporting, statements and products.

- 2.2 From time to time under this Agreement, upon Merchant's request, Processor may facilitate the transmission of certain payment card transactions ("**Switched Transactions**") to the respective card issuers, including but not limited to American Express®, Diners Club® and various fleet, private label and commercial cards. Switched Transactions require Processor's prior written approval and are subject to applicable pricing.
- 2.3 Merchant has elected to accept cards of the card types as specified on the Signature Page. Merchant agrees to pay, and the Merchant's Account(s) (as defined in Clause 5) will be charged pursuant to Clause 5 of this Agreement for, any additional fees incurred as a result of Merchant's subsequent acceptance of transactions with any card type that it has not elected to accept on the Signature Page (which shall be subject to Processor's agreement to process the same).

3. PROCEDURES.

- 3.1 Merchant will permit holders of valid cards bearing the symbols of the cards authorized to be accepted by Merchant hereunder to charge purchases or leases of goods and services, provided that such Card Transaction complies with the terms of this Agreement. Each such transaction will be evidenced by a valid transaction record in an approved form such as a sales slip. Merchant will not present any sales slip that does not arise out of a Card Transaction between a cardholder and Merchant.
- 3.2 Merchant agrees:
- (a) to follow the Card Acceptance Guide issued by Processor and for the time being in force, which is incorporated into and made part of this Agreement;
 - (b) to be bound by the operating regulations and rules of the Card Associations, including without limitation any rules and regulations related to cardholder and transaction information security, such as Payment Card Industry (PCI) Data Security Standards, Visa's Account Information Security Program and MasterCard's Site Data Protection Program.
- 3.3 Processor may, from time to time, issue written directions (via mail, email or Internet) regarding procedures to follow and forms to use to carry out this Agreement. These directions and the terms of the forms are binding as from the effective date specified in such directions and shall form part of this Agreement.
- 3.4 Merchant shall not use two (2) or more sales slips to avoid authorisation and shall not effect a card transaction when only a part of the amount due is included on a single sales slip except:
- (a) when the balance of the amount is paid in cash or by cheque; or
 - (b) when the goods or services are to be delivered or performed at a later date and one sales slip represents a deposit and the second sales slip represents payment of the balance, in which case the Merchant must obtain authorisation and shall note on the sales slip the authorisation number and the word "deposit" or "balance" as appropriate. The sales slip labelled "balance" shall not be presented until the goods are delivered or the services are performed.
- 3.5 Merchant is not allowed to process multiple sales slips or split sales. Should a Cardholder insist on doing so, Merchant must consolidate the transactions into one sales draft and request only a single approval for the total amount of the transactions.

4. MARKETING.

- 4.1 Merchant shall adequately display the Card Associations and card issuer service marks and promotional materials supplied by Processor or Member. Merchant shall cease to use or display such service marks in any manner (including, without limitation, in promotional materials and transaction related papers or forms of Merchant) immediately upon notice from Processor or Member or upon termination of this Agreement. Merchant shall not issue or dispatch any promotional materials which include any reference to Processor or Member or their respective names, tradenames, logos, service marks and/or trademarks without their prior written consent.
- 4.2 Merchant hereby irrevocably authorizes Processor and Member to include its name in any directory or promotional materials produced by Processor or Member in connection with the acceptance of the cards.

5. PAYMENT AND FEES.

- 5.1 Merchant agrees to pay the fees, charges and expenses described on the Signature Page, together with any other liabilities or expenses described in this Agreement.
- 5.2 Processor and Member will remit to Merchant the payment for Card Transactions submitted under this Agreement by credit to the account(s) designated by Merchant (the “**Merchant’s Account(s)**”) or by delivery of a cheque or other negotiable instrument made payable to Merchant or by any other means acceptable to Processor. Remittance of payment to Merchant will be made for the gross amount of the Card Transactions submitted less the amount of any fees and other charges (including chargebacks and adjustments) set forth in this Agreement and credit vouchers deposited (together with any taxes payable in respect thereof). If the amount of the payment to be remitted to Merchant hereunder is insufficient to cover the outstanding charges described in the preceding sentence on any day and/or any other amount due or payable by Merchant to Processor or Member under this Agreement, Member or Processor shall be entitled to:
- (a) set off and deduct the outstanding amount in whole or in part from any payment due from it to Merchant; and/or
 - (b) debit the outstanding amount in whole or in part from Merchant’s Account(s) (or any other account of Merchant held with Member); and/or
 - (c) deduct the outstanding amount in whole or in part from subsequent credits to Merchant’s Account(s); and/or
 - (d) claim from Merchant the outstanding amount in whole or in part.
- 5.3 Merchant agrees to pay, and Merchant’s Account(s) will be debited, for all fees, arbitration fees, fines, penalties etc. charged by the Card Associations on account of Merchant’s processing hereunder. If an error occurs, Merchant’s Account(s) may be debited or credited therefor.
- 5.4 Merchant represents and warrants that no one other than Merchant has any claim in respect of any Card Transaction submitted hereunder except as authorized in writing by Member and Processor. Merchant agrees that Processor or Member, as the case may be, has the sole right to receive payment from the Card Associations on any Card Transactions submitted hereunder.
- 5.5 Merchant further represents and warrants that remittance of any amount by Member or Processor shall be without prejudice to any claims or rights which

Member or Processor may have against Merchant and shall not constitute any admission by Member or Processor as to the performance by Merchant of its obligations under this Agreement and the amount payable to Merchant.

- 5.6 If Member or Processor suspects, on reasonable grounds, that Merchant has committed or is about to commit a breach of this Agreement, any illegal activity (including, without limitation, money laundering) or dishonesty or fraud against Member, Processor, card issuer or any cardholder, Member and Processor shall be entitled to suspend all payments under this Agreement to Merchant pending enquiries by Member or Processor.
- 5.7 Merchant hereby irrevocably authorizes Processor or Member to make withdrawals from any of its Merchant Account(s) maintained with a financial institution in order to give effect to Merchant's authorization contained herein to Member or Processor to debit its Merchant Account(s). Merchant hereby instructs the related financial institutions to honor any requests made by Processor or Member under the terms of this provision. Merchant will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Processor or Member. If requested by Processor or Member, Merchant shall give a direct debit authorization in favour of any such financial institution (in form and substance satisfactory to such financial institution) for the above purpose.
- 5.8 All sums to be remitted to Member or Processor under this Agreement shall be made in cleared funds in the agreed currency on due date of such amounts and without deduction for any taxes (including but not limited to value added tax, levies, imposts, duties, charges, fees, deduction, withholdings, 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, save for Member's or Processor's regular corporate income tax (including applicable creditable withholding taxes on the merchant discount) and gross receipts tax or any other direct tax that would replace it. All such taxes, levies, imposts, duties, charges and fees, save as specifically indicated herein, shall be charged to and be for the account of the Merchant to this Agreement.

For any applicable creditable withholding tax on the merchant, Merchant shall issue to Processor the certified copies of the relative certificate of tax withheld (BIR form 2306) not later than twenty (20) calendar days from the end of the reference quarter.

6. EQUIPMENT AND SUPPLIES.

- 6.1 Any advertising material, leased or rented equipment (including imprinters, authorization terminals, data capture terminals or printers), software, credit card authenticators, unused forms and Merchant deposit plastic cards provided by Processor or Member are for Merchant's exclusive use and will not become Merchant's property, and shall be returned to Processor on demand, upon termination of this Agreement or upon Merchant ceasing to do business, whichever is the earliest. Merchant will protect them from loss, theft, damage or any legal encumbrance and will allow Processor and its designated representatives reasonable access to Merchant's premises for their repair, servicing, replacement, removal, modification, installation and relocation.
- 6.2 Merchant acknowledges that some equipment provided under this Agreement is embedded with proprietary technology ("**Software**"). Merchant shall not obtain

title, copyrights or any other proprietary right to any Software. At all times, Processor or its suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Processor. Processor's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to such suppliers' ownership rights; such suppliers have the right to rely on and directly enforce such terms against Merchant.

- 6.3 The operating instructions will instruct Merchant in the proper use of the terminals, and Merchant shall use and operate the terminals only in such manner and at the location where they are initially installed (unless otherwise agreed by Processor). Merchant will promptly notify Processor of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon Processor will make the necessary arrangements to obtain required maintenance subject to payment of agreed costs (if any) by Merchant. Merchant shall cooperate with Processor in its attempt to diagnose any problem with the terminal. In the event the Merchant's terminal requires additional Software, Merchant is obligated to cooperate and participate in a dial in down line load procedure.
- 6.4 With respect to any item of equipment leased or rented to Merchant by Processor or Member, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Processor in the event that any leased or rented item of equipment is lost, destroyed, stolen or rendered inoperative. Merchant will indemnify Processor against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Processor will provide a billing invoice for the replacement cost of each item of equipment which Merchant must pay Processor upon the loss or destruction of the equipment which invoice shall be paid by Merchant within 30 days of the invoice date, failing which, Processor shall be permitted to deduct the invoice amount from Merchant's Account or set off from any payment due from Processor or Member to Merchant. Merchant also agrees to hold harmless and indemnify Processor for any liabilities, losses, damages, disputes offsets, counterclaims, claims, demands, actions, costs, expenses and judgments Processor or Member may suffer or incur, including reasonable attorney's fees, as a result of Merchant's use or misuse of the equipment provided hereunder.
- 6.5 All persons using any equipment provided by Processor or Member to Merchant shall be deemed to be agents of Merchant, and Merchant shall be fully responsible for their acts and omissions.
- 6.6 Any unused equipment in its original packaging purchased from Processor or Member hereunder may be returned to Processor at Merchant's expense within 60 days of receipt. Merchant shall receive a refund of any money paid in connection therewith subject to a re-stocking fee of an amount equal to 20 percent of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after 60 days.
- 6.7 Processor reserves the right to impose a minimum monthly Card Transactions hurdle for each terminal installed at Merchant's outlet/s. Failure of Merchant to meet this requirement for three (3) consecutive months gives Processor the option

to pull out the equipment with or without prior notice to Merchant, or to charge a monthly terminal rental fee.

7. FINANCIAL INFORMATION.

- 7.1 Merchant agrees to furnish Processor and Member such financial statements and information concerning Merchant, its owners, principals, shareholders, partners, proprietors, directors, officers or its affiliates as Processor or Member may from time to time request. Processor and Member, or their duly authorized representatives, may examine the books and records of Merchant, including records of all transactions previously submitted hereunder.
- 7.2 Merchant agrees to retain copies of all paper and electronic transaction records and credit slips submitted to Processor for a period of 18 months from submission, or such longer period of time as may be required by the operating rules or regulations of the Card Associations, by law or by Processor as specifically requested in writing in individual cases.
- 7.3 Merchant agrees to keep secure all documents which may contain personal information of any cardholders, such as credit card transaction receipts and order sheets which may contain credit card and personal information of cardholders as well as other relevant documents, and to keep all such cardholder information confidential. Merchant shall retain records pertaining to the destruction of any documents containing personal information of cardholders.

8. CHANGE IN BUSINESS.

Merchant agrees to provide Processor and Member 30 days' prior written notice of its intent to:

- (a) transfer or sell all or any substantial part (10% or more) of its total stock or assets; or
- (b) liquidate or file for bankruptcy; or
- (c) cease business or change the basic nature of its business; or
- (d) convert all or part of its business to mail order sales, telephone order sales, Internet-based sales or other sales where the card is not physically present and processed through Merchant's terminal; or
- (e) remove or relocate any shop or office; or
- (f) make any material change in the management of Merchant; or
- (g) make any change in Merchant's legal status (such as from sole proprietorship to partnership or corporation or vice versa); or
- (h) make any change in any other material particulars relating to Merchant which have been supplied to Processor or Member in connection with this Agreement.
- (i) make any change to its corporate/legal name and/or authorized signatories by submitting the corresponding board resolution and/or corporate/legal papers and/or documents.

Upon the occurrence of any such event, the terms of this Agreement may be modified to address issues arising therefrom, including but not limited to requirements of applicable Card Associations.

9. TRANSFERABILITY.

- 9.1 This Agreement is not transferable by Merchant without the written consent of Processor and Member. Any attempt by Merchant to assign its rights or to delegate its obligations in violation of this Clause shall be void.
- 9.2 Merchant agrees that the rights and obligations of Processor hereunder may be transferred by Processor to any other person without notice to Merchant. For the avoidance of doubt, this includes the right of Processor or Member to collect from Merchant payments and fees under Section 5 hereof (including claims arising from chargebacks and other fees). Merchant agrees that the rights and obligations of Member hereunder may be transferred by Member to any other member of the Card Associations without notice to Merchant. Merchant acknowledges that the transferable rights of Processor and Member hereunder shall include, but shall not be limited to, the authority and right to debit the Merchant's Account(s) as described herein. Processor and Member may subcontract or appoint any agent to carry out any of their respective obligations under this Agreement.

10. WARRANTIES AND REPRESENTATIONS.

- 10.1 Merchant warrants and represents to Processor and Member:
- (a) that each Card Transaction submitted hereunder will represent a bona fide sale to a cardholder by Merchant for the amount shown on the related transaction record as the total sale and constitutes the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever;
 - (b) that each transaction record or other evidence of a transaction will accurately describe the goods and services which have been sold and delivered to the cardholder or in accordance with the cardholder's instructions;
 - (c) that Merchant will comply fully with all laws, rules and regulations applicable to it and its business;
 - (d) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any cardholder dispute or complaint directly with the cardholder;
 - (e) that the signature on the sales slip will be genuine and authorized by cardholder and not forged or unauthorized;
 - (f) that each Card Transaction submitted hereunder shall have been consummated and the related transaction record prepared in full compliance with the provisions of the Card Acceptance Guide and the operating regulations and rules of the applicable Card Association;
 - (g) that none of the Card Transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present at the Merchant's location and processed through Merchant's terminal, unless Merchant is specifically authorized in writing by Processor or Member to submit such transaction records hereunder;
 - (h) that, without limiting the generality of the foregoing, each Card Transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of the Card Associations related to cardholder and transaction information security, including without limitation those referred to in Clause 3.2;

- (i) that all of the information contained in or provided pursuant to this Agreement is true and correct;
- (j) that Merchant shall keep strictly confidential the provisions of this Agreement, and all information and materials received from Processor and/or Member in connection with their respective businesses and instrument provided by them or either of them, and will disclose the same only to such of its employees who require such information for the purposes of performing Merchant's obligations under this Agreement; Merchant shall not, and shall procure that its officers, employees and agents shall not, without the prior written consent of Processor and Member, use or disclose any such information to any other person (except to Merchant's agents for the sole purpose of assisting Merchant to complete or enforce Card Transactions or to Merchant's insurers and professional advisers) unless such disclosure is compelled by law or rules and regulations of the Card Association; that Merchant shall not submit any Card Transaction which is for the supply of gambling or pornographic goods or services without the prior written consent of Processor and Member;
- (k) that Merchant shall not receive any cash payment from a cardholder with respect to charges for goods and/or services included in a Card Transaction;
- (l) that Merchant shall not engage in acceptance practices or procedures that discriminate against or discourage the use of a card of a card type selected to be accepted by it hereunder in favour of any other competing card brand, and shall not promote any other means of payment more actively than promoting payment with a card of such card type (except for any privilege card issued by Merchant solely for the purpose of making purchases at Merchant or under any temporary promotion programme);
- (m) that Merchant shall not require any Cardholder to pay a surcharge, to pay any part of the discount, whether through any increase in price or otherwise, or to pay any contemporaneous charge in connection with the transaction in which a credit card is used;
- (n) that Merchant shall not require, or post signs indicating that it requires a minimum transaction amount below which the Merchant shall refuse to honor a valid credit card;
- (o) Merchant has oriented its staff, employees, agents and personnel on the terms and conditions of this Agreement and will orient them as to other rules and procedures that may be issued by the Member and/or Processor from time to time; and
- (p) except as otherwise disclosed on the Signature Page, no owner or management employee is, or formerly was, an official in the executive, legislative, administrative, military, or judicial branch of any government (elected or not); an official of a political party; an executive of a government-owned commercial enterprise; a family member of any of the above mentioned officials; or a close personal or professional associate of any of the above mentioned officials.

10.2 In the event that any of the warranties or representations in Clause 10.1 are breached, the affected Card Transactions or transaction records may be refused, or prior acceptance revoked and charged back to Merchant.

- 10.3 Merchant must obtain Processor's prior written consent if Merchant wishes to use the terminal service of American Express, Novus or any other third-party provider. If Merchant uses a third-party terminal provider with Processor's consent, that provider becomes Merchant's agent for the delivery of card transactions to Processor via the applicable card-processing network. Merchant agrees to assume full responsibility and liability for any failure of such agent to comply with the operating regulations and rules of the applicable Card Associations, including without limitation any violation, which results in a chargeback to Merchant. Merchant also agrees that Processor's or Member's obligation hereunder to pay Merchant for the value of the Card Transactions captured by such agent is limited to the value of the Card Transactions (less applicable fees) received by the card-processing network from such agent.
- 10.4 NEITHER MEMBER, NOR PROCESSOR, NOR ANY OF THEIR RESPECTIVE SUPPLIERS MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT (INCLUDING IMPRINTERS, AUTHORIZATION TERMINALS, DATA CAPTURE TERMINALS OR PRINTERS) OR ANY OF THE SERVICES FURNISHED HEREUNDER.

11. INDEMNITY.

Merchant agrees to satisfy directly with the cardholder any claim or complaint arising in connection with the sale transaction between Merchant and such cardholder, regardless of whether such claim or complaint is brought by the cardholder, Processor or another party. Merchant agrees to indemnify and hold Processor and Member harmless from and against any and all liabilities (including without limitation fines imposed under the operating regulations and rules of the applicable Card Associations), losses, claims, damages, demands, actions, disputes, offsets, counterclaims, costs, expenses and judgements arising out of or relating to any card transaction (including without limitation claims and complaints made by a cardholder or any other person or entity with regard to any Card Transaction submitted by Merchant hereunder) or any other Service provided hereunder.

12. LIMITATION OF LIABILITY.

- 12.1 Neither Member nor Processor shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of any public enemy, acts of any Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems or other similar causes beyond such party's reasonable control.
- 12.2 To the extent permitted by any applicable law, the liability of Processor and Member for any loss arising out of or relating in any way to this Agreement, including but not limited to damages arising out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or

malfunction of the Services, personal injury, or property damage, shall, in the aggregate, be limited to actual, direct and general money damages in an amount not to exceed one (1) month's average charge paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of Processor's and Member's liability arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, wilful default, or otherwise and regardless of the form in which any legal or equitable action may be brought against Processor or Member, whether in contract, tort or otherwise, and the foregoing shall constitute Merchant's exclusive remedy.

- 12.3 Under no circumstances shall Processor or Member be liable for:
- (a) any lost profits, lost interest, or for special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement, including but not limited to, damages arising out of placement of Merchant's name on any terminated merchant list for any reason, even if Processor or Member has been advised of the possibility of such damages;
 - (b) any settlement amounts pertaining to Switched Transactions, in respect of which Merchant's sole recourse shall be to the applicable card issuer; or
 - (c) any claim, loss, billing error, damage or expense arising out of or relating in any way to this Agreement which is not reported in writing to Processor by Merchant within 30 days of such failure to perform or, in the event of a billing error, within 20 days of the date of the invoice or applicable statement and Merchant expressly waives any such claim that is not brought within the time periods stated herein.

13. TERM AND TERMINATION.

- 13.1 Subject to the provisions hereof, this Agreement shall remain in full force and effect for the term as specified on the Signature Page (the "**Initial Term**"), unless Merchant gives written notice of termination as to this Agreement at least 60 days prior to the expiration of the Initial Term or any extension or renewals thereof. If no term is specified on the Signature Page, subject to the provisions hereof, this Agreement shall continue in full force and effect until Merchant gives not less than 60 days' prior written notice to Member and Processor to terminate it.
- 13.2 Notwithstanding anything to the contrary set forth herein, in the event that a term is specified on the Signature Page and Merchant terminates this Agreement in breach of this Clause 13, all monthly fees assessed to Merchant under this Agreement and due to Processor or Member for the remainder of the then existing term of this Agreement, including all minimum monthly fee commitments, shall be immediately due and payable to Processor and Member, and Merchant hereby authorizes Processor and Member to accelerate the payment of all such monthly fees and to deduct the total amount from Merchant's Account(s), or to otherwise withhold the total amount from amounts due to Merchant from Processor or Member, immediately on or after the effective date of termination. If the Merchant's Account(s) does not contain sufficient funds for the debit or the amount cannot be withheld by Processor or Member from amounts due to Merchant, Merchant shall pay Processor the amount due within ten (10) days of

the date of Processor's invoice for same. The payment of accelerated monthly fees as described herein is not a penalty, but rather is hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate Processor and Member for their termination expenses and all other damages under the circumstances in which such amounts would be payable. Such amounts shall not be in lieu of but shall be in addition to any payment obligations for Services already provided hereunder (or that Processor or Member may continue to provide), which shall be an additional cost, and any and all other damages to which Processor or Member may be entitled hereunder.

- 13.3 Notwithstanding the foregoing, Processor or Member may terminate this Agreement or any portion thereof at any time with immediate effect upon written notice to Merchant. Furthermore, Processor or Member may terminate this Agreement at any time without notice:
- (a) upon Merchant's default in performing under any provision of this Agreement;
 - (b) upon an unauthorized conversion of all or any part of Merchant's activity to mail order sales, telephone order sales, Internet-based sales, or to any sales activity where the card is not physically present and processed through Merchant's terminal;
 - (c) upon any failure to follow the Card Acceptance Guide or any operating regulation or rule of a Card Association;
 - (d) if there has been any misrepresentation by Merchant;
 - (e) upon commencement of bankruptcy or insolvency proceedings by or against Merchant; or
 - (f) in the event Processor or Member reasonably deems itself insecure in continuing this Agreement.
- 13.4 In the event that Processor and Member breach the terms and conditions hereof, Merchant may, at its option, give written notice to Processor and Member of its intention to terminate this Agreement unless such breach is remedied within 30 days of the receipt of such notice. Failure to remedy such a breach shall make this Agreement terminable, at the option of Merchant, at the end of such 30 day period unless notification is withdrawn.
- 13.5 Any Merchant deposit of a transaction record hereunder after the effective date of termination will be returned to Merchant and will not be credited (or debited) to Merchant's Account(s), unless the related Card Transaction was effected on or before the effective date of termination and the deposit was made within 7 days thereafter (in which case the payment for any such Card Transaction will only be made to Merchant after payment is successfully collected by Member from the related Card Association within 180 days from the date of such Card Transaction). Except as provided above, if any such deposit has already been posted to Merchant's Account(s), such posting may be reversed and the deposit returned to Merchant. Termination of this Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any Card Transactions submitted hereunder prior to termination, including but not limited to chargebacks even if such chargebacks come in after termination.
- 13.6 In the event of termination, all equipment supplied by, leased or rented from Processor or Member (but not from any other leasing agent), including but not limited to imprinters, terminals, data capture terminals and printers, all supplies; Card Acceptance Guides and operating instructions must be returned immediately

to Processor at Merchant's expense.

- 13.7 Any termination shall not affect any liabilities incurred prior to the termination nor any provision of this Agreement expressed or intended to survive, or to be effective from, termination. In particular, but without prejudice to the foregoing, Clauses 4, 6.1, 6.4, 7, 10.1, 10.2, 11, 12, 13.5, 13.6, 13.7, 15.2, 15.3, 16.1 and 16.2 shall remain in full force and effect notwithstanding termination.

14. RETURNED ITEMS/CHARGEBACKS.

14.1 If:

- (a) a cardholder disputes any Card Transaction or payment for any Card Transaction (irrespective of the nature or manner of such disputes);
- (b) a Card Transaction is charged back for any reason by the card issuing institution according to the operating rules and regulations of the related Card Association; or
- (c) there has been a breach by Merchant of any term of this Agreement;
- (d) Processor or Member has any reason to believe a transaction previously submitted hereunder is unlawful, unenforceable, irregular, questionable, not genuine, or is otherwise unacceptable; and/or
- (e) any other event or circumstance, which Member or Processor shall have previously notified to Merchant in writing for the purpose of this Clause 14, has occurred in relation to a Card Transaction,

the amount of such Card Transaction may be charged back and deducted from any payment due to Merchant or may be charged against any of the Merchant's Account(s) or a Reserve Account (as defined in Clause 15). A list of some common reasons for chargebacks is contained in the Card Acceptance Guide; provided, however, that such list is not exclusive and does not limit the generality of the foregoing. If any such amount is uncollectible through withholding from any payments due hereunder or through charging the Merchant's Account(s) or the Reserve Account, Merchant shall, upon demand by Processor or Member, pay Processor or Member the full amount of the chargeback.

- 14.2 Merchant understands that obtaining an authorization for any transaction shall not constitute a guarantee of payment and the related sales slips can be returned or charged back to Merchant like any other item hereunder.

15. RESERVE ACCOUNT

15.1 At any time, Processor or Member may, upon notice to Merchant, establish one or more reserve accounts to secure the performance of Merchant's obligations under this Agreement to either or both of them (each a "**Reserve Account**"). A Reserve Account may be funded through any or all of the following:

- (a) direct payment by Merchant by depositing funds in the Reserve Account at the request of Processor or Member;
- (b) the proceeds of Card Transactions presented hereunder; or
- (c) the transfer by Processor or Member into the Reserve Account of funds withdrawn from the Merchant's Account(s) or any other accounts, including certificates of deposit, maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution.

15.2 Merchant and Merchant's guarantor hereby irrevocably authorize Processor or

Member to make such withdrawals from any such other accounts maintained with any designated depository or other financial institution referred to in Clause 15.1(c) at such times and in such amounts as it may deem necessary hereunder. Merchant and Merchant's guarantor hereby instruct the related financial institutions to honor any requests made by Processor or Member under the terms of this provision. Merchant and Merchant's guarantor will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Processor or Member.

- 15.3 Merchant hereby agrees that Processor and Member may deduct from a Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in a Reserve Account may be held until the expiration of any potentially applicable chargeback rights in respect of Card Transactions submitted hereunder as provided for under the rules and regulations of the Card Associations, which holding period may extend beyond termination of this Agreement. Merchant will not receive any interest on funds being held in a Reserve Account. Without limiting the generality of the foregoing and without prejudice to Clause 13.5, Merchant shall, upon termination of this Agreement, maintain the sum of at least five percent (5%) of gross sales for the 90 day period prior to termination to be held in a Reserve Account in accordance with the terms of this Agreement. Processor and Member may, at their discretion upon termination of this Agreement, require that Merchant maintain more than five percent (5%) of gross sales for the 90 day period prior to termination in a Reserve Account.

16. DEFAULT/SECURITY INTEREST

- 16.1 Upon failure by Merchant to meet any of its obligations under this Agreement (including funding a Reserve Account), any of the Merchant's Account(s) or any other accounts belonging to Merchant or Merchant's guarantor held by any designated depository (or by any other financial institution) may be debited without notice to Merchant or Merchant's guarantor, and Merchant and Merchant's guarantor irrevocably authorize Member and Processor to debit any such accounts for these purposes. Merchant's and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Processor or Member, and Merchant's agreement to hold such institutions harmless and to indemnify them, are set out in Clause 15.2.
- 16.2 Merchant also agrees that, in the event of a default by Merchant, Processor and Member have a right of setoff and may apply any of Merchant's balances or any other monies due Merchant from Processor or Member towards the payment of amounts due from Merchant under the terms of this Agreement. The rights stated herein are in addition to any other rights Processor and Member may have under applicable law.

17. CHOICE OF LAW/COLLECTION FEES/JURISDICTION

- 17.1 Should it be necessary for Processor or Member to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Processor and/or Member, as applicable, for all costs and expenses, including reasonable collection agency and attorney's fees, as a result of such collection or legal action.
- 17.2 Processor, Member and Merchant agree that this Agreement and all disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines and Merchant hereby submits to the non-exclusive jurisdiction of the Philippine Courts.

18. AMENDMENTS

This Agreement may be amended only in writing signed by Processor, Member and Merchant, except that (a) the Card Acceptance Guide, fees, and/or charges, may be changed immediately by Processor or Member without notice to Merchant or (b) Processor may give Merchant a notice either describing amendments to this Agreement or enclosing an entirely new agreement, which amendments or new agreement will be binding upon Merchant if it deposits sales or credit slips after the effective date of such amendment or new agreement set forth in Processor's notice.

19. WAIVER

No provision of this Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising on the part of any party hereto, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

20. EXCHANGE OF INFORMATION

- 20.1 Merchant authorizes Member and Processor to obtain from time to time from any person, including without limitation any credit reference agency, financial information on Merchant or any owner, principal, director, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant hereby authorizes (on its own behalf and on behalf of each person mentioned in the preceding sentence) Member and any depository institution to release any financial information concerning Merchant or its accounts to Processor and Member.
- 20.2 Processor and Member may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, directors, officers, shareholders, managing agents and guarantors with each other, other financial institutions, Card Associations and any other party as Processor or Member, as applicable, may deem necessary in connection with the Services and this Agreement. Merchant hereby authorizes (on its own behalf and on behalf of each person mentioned in the preceding sentence) Processor and Member to disclose information as mentioned above and information concerning Merchant's activity to any Card Associations, or any of their member financial institutions, or any other party

without any liability whatsoever to Merchant.

21. USE OF MERCHANT’S NAME

Upon execution of this Agreement, Processor and Member shall have the right to include the Merchant’s name in any directory or promotional material produced in connection with the acceptance of Card Transactions.

22. GENERAL

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Paragraph headings are included for convenience only and are not to be used in interpreting this Agreement.

23. NOTICES

All notices required by this Agreement shall be in writing and shall be sent by telefax, by courier, or by regular or registered mail. Any notices sent:

- (a) to Processor or Member shall be effective upon actual receipt by the Country Sales Head of Global Payments Asia-Pacific Philippines Incorporated, 11th Floor, Robinsons Cybergate Plaza, Pioneer Street corner EDSA, Mandaluyong City, Metro Manila, Philippines, ATTN: Country Sales Head, Philippines ;
- (b) to Merchant (including notices contained in Merchant statements) shall be effective upon the earlier of actual receipt or on the day following the date of posting such notice to the latest address provided by Merchant or upon sending such notice to any e-mail address or facsimile number provided by the Merchant hereunder.

The parties hereto may change the name and address of the person or the facsimile number to whom/which notices or other documents required under this Agreement must be sent at any time by giving written notice to the other party.

24. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between Merchant, Processor and Member with respect to the subject matter hereof and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing.

25. EFFECTIVE DATE

This Agreement shall become effective only upon acceptance by Processor and Member, or upon the acceptance by Processor of the submission of transactions by Merchant at such locations as designated by Processor, whichever event shall first occur.

26. DESIGNATION OF DEPOSITORY.

The financial institution set forth on the Signature Page is designated by Merchant as a depository institution (“**Depository**”) for payments due to Merchant

hereunder. Merchant authorizes Processor and/or Member to make payment hereunder to Depository with instructions to credit the Merchant's Account(s) with Depository. Depository, Member and/or Processor may charge any of Merchant's Account(s) at Depository for any amount due under this Agreement. Processor must approve in writing any proposed changes to the Merchant's Account(s) or to Depository.

27. TRANSACTION CURRENCY.

All transactions submitted hereunder shall be denominated in Philippine Peso or such other currencies as specified on the Signature Page unless otherwise agreed in writing between Processor, Member and Merchant.

28. CARD NOT PRESENT TRANSACTIONS

Where Processor and Member have agreed that Merchant may submit card not present transactions (including without limitation mail order sales, telephone order sales and Internet-based sales) to Processor for processing under this Agreement:

- (a) any reference in this Agreement to "**Card Transaction**" shall include any card not present transaction;
- (b) any reference to use of a card or effecting a Card Transaction shall include use of, or effecting a Card Transaction with, the details of or relating to the card;
- (c) this Agreement shall apply to all card not present transactions except to the extent that any provisions of this Agreement are not applicable where a card is not physically presented to Merchant; and
- (d) Merchant shall comply with all provisions of this Agreement, in particular, such requirements specified in the Card Acceptance Guide and written directions of Processor or Member in connection with processing card not present transactions (including without limitation any software, system, security and website requirements).

