

## Universal Terms and Conditions Merchant Agreement

Control Number: 00000000002

This Agreement is made the \_\_\_\_ day of \_\_\_\_\_ 2\_\_ between the party more particularly described in Item 1 of the Schedule (hereinafter referred to as the 'Merchant') and National Commercial Bank Jamaica Limited (hereinafter called the 'Bank')

### DEFINITIONS & INTERPRETATION

1.1 Throughout this Agreement where the context so requires the singular includes the plural and vice versa and the masculine the feminine and neuter.

1.2 The following terms used in this Agreement shall have the following meanings, unless the context requires otherwise:

- a) **Access Numbers** means the electronic access numbers provided to the Merchant (where applicable) by the Bank in Mobile Phone Transactions to facilitate Top-up by customers of the Merchant.
- b) **AML** means Anti Money Laundering.
- c) **Authorization** means the process whereby the Bank (whether based on information received from an Issuer, an Authorizing Processor or Stand-in Processor) approves a Transaction certifying that the Account has credit available which is equal to, at least, the amount for which the Transaction is being authorized. An Authorization, while confirming the availability of funds, is not an absolute guarantee of payment.
- d) **Authorization Code** shall mean the number that an Issuer, its Authorizing Processor or Stand-in Processor provides to indicate approval of a Transaction. The number is returned in the Authorization Response and is usually recorded on the Transaction Slip as proof of Authorization.
- e) **Authorization Processor** means a recognized payment organization, or a processor approved by an international card organization, that provides Authorizations for Transactions on behalf of Member.
- f) **Authorization Response** means the response issued by the Bank to a request for an Authorization. The Authorization Response may be provided to the Merchant electronically by means of the Point Of Sale Terminal, orally or in any other manner deemed appropriate by the Bank and notified to the Merchant. Authorization System means the system by which the Bank issues an Authorization Response to the Merchant.
- g) **Bill Payment Register** shall mean a designated third party company account number assigned to the Merchant, to which a Cardholder may direct payment.
- h) **Business day** means a day on which the Bank or its third party service providers are normally open for business.
- i) **CFT** means Counter Financing of Terrorism.
- j) **Card** shall mean a Credit Card, Prepaid Card or Debit Card issued by a member bank or organisation.
- k) **Cardholder** shall mean the authorized user of a Card, being either the person to whom a Card is issued by the Bank or whose name is embossed on the Card.
- l) **Cardholder Access Device** means a terminal, personal computer, or other device that a Cardholder uses to initiate an Electronic Commerce Transaction.
- m) **Cardholder Certificate** means an electronic document that authenticates a Cardholder in a Secure Electronic Commerce Transaction (defined below).
- n) **Card Organisation** means the Bank, Visa International, MasterCard International, or such other body whose cards the Bank has in writing authorised the Merchant to accept on behalf of the Bank from time to time.
- o) **Card-not-present Transactions** shall mean Transactions which arise from a request from a Cardholder received by the Merchant either by mail or telephone and whereby a Transaction Slip cannot be completed with a Cardholder's signature and/or Card imprint. Such Transactions may be settled by the use of Credit Cards only.
- p) **Chargeback** shall mean a reversal by the Bank against the Merchant in whole or in part of the dollar value (financial obligation) represented by a given Transaction whereby the liability for such Transaction reverts to the Merchant.
- q) **Credit Card** shall mean a Card issued by the Bank for use in credit transactions by the Cardholder.
- r) **Customer** shall mean any person who uses an electronic payment instrument.
- s) **Debit Card** shall mean a Card issued by the Bank for use in debit transactions by the Cardholder.
- t) **Designated Account** means those accounts maintained at the Bank in the name of the Merchant that may be accessed in the manner identified by the Bank from time to time.
- u) **Discounts** shall mean the relevant amounts charged by the Bank from time to time for services provided by the Bank pursuant to this Agreement.
- v) **Electronic Commerce Transaction or E-Commerce Transaction** means a transaction between the Merchant and a Cardholder carried out over the Internet using Cardholder Access Device and which results in the generation of an electronic or paper record of such transaction via an Electronic Commerce Transaction Receipt or a Transaction Slip. Such transactions may be settled by the use of credit cards only.
- w) **Electronic Commerce Transaction Receipt** is a paper record or a printed copy of an electronic record of an Electronic Commerce Transaction containing all the information described in clause 6.4.
- x) **Electronic File Transfer** shall mean a web based application maintained by the Bank and used in transferring information from the Bank to the Bill Payment Merchant regarding payments collected by the Bank and credited to the Bill Payment Merchant.
- y) **Electronic Retail Payment Instrument** shall mean any tangible or intangible instrument device or mechanism that enables an individual to make payment(s) for goods or services or to transfer money.
- z) **E-Money** shall mean electronically, including magnetically stored monetary value, in any device instrument or server as represented by a claim on the Issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted as a means of payment by persons other than the Issuer. This includes e-money stored in a device such as a SIM card or a server and accessible via mobile, telephone, internet or other access devices, Cards, and other similar products but excludes any electronic means to only permit transfers to/from a deposit or current account.
- aa) **EMV** means a standard for globally interoperable secure payments which enables customers with EMV chip payment cards to use their card on any EMV compatible payment terminal and reduces card present fraud resulting from counterfeit, lost or stolen cards.
- bb) **Event of Default** shall mean the occurrence of any of the events specified in clause 8.6
- cc) **Fee Schedule** means the schedule attached hereto as Appendix 1 (as same may be amended from time to time by the Bank upon thirty (30) days written notice to the Merchant) setting out the current fees chargeable by the Bank for the provision of certain services to the Merchant.
- dd) **Floor Limit** shall mean the maximum amount, as authorized from time to time in writing by the Bank, of a single Transaction that the Merchant is authorized to enter into without first obtaining a specific Authorization for the Transaction.
- ee) **Issuer** shall mean a Member that issues credit cards.
- ff) **Internet** shall mean an electronic communications network that connects computer networks and organizational computer facilities around the world.
- gg) **Member** shall mean an organisation that is a member of an international card organization and thereby authorized to issue credit or debit cards.
- hh) **Member Service Provider (MSP)** is a provider of program services, other than transaction and Cardholder processing, to a MasterCard or Visa or Discover Card member or such other card organization which the Bank has in writing authorised the Merchant to accept on behalf of the Bank in furtherance of the member's program. By way of example and not limitation such services include merchant solicitation, Cardholder solicitation, and customer service.
- ii) **Merchant Deposit Summary** shall mean a summary prepared by the Merchant setting forth in respect of all Credit Card Transactions completed by the Merchant manually:

1. The total sales less credits showing the net total of Transactions; and
  2. separately the Discounts at such rate or rates as The Bank shall from time to time determine; and
  3. The net deposit total after deduction of the aforementioned Discount.
- jj) **Mobile Phone Summary** shall mean a summary prepared by the Merchant setting forth in respect of all Mobile Phone Transactions completed by the Merchant showing:
1. The total sales;
  2. Any commission payable by the Bank to the Merchant;
  3. Any Discounts chargeable by the Bank to the Merchant;
  4. The net deposit total after addition and deduction of the aforementioned commission and discounts.
- Mobile Phone Transactions** shall mean transactions in which the purchaser acquires/purchases pre-paid electronic access numbers in specified denominations from the Merchant.
- kk) **Net Proceeds** are the total sales less credits less discount at such rate as shown or advised by the Bank from time to time.
- ll) **Non-Authenticated Security Transaction** means an Electronic Commerce Transaction that has some level of security (such as commercially available data encryption) or that complies with the Secure Electronic Transaction Specification, but lacks a Cardholder Certificate.
- mm) **Non-Secure Transaction** means an Electronic Commerce Transaction that has no data protection.
- nn) **Non-Qualified Transaction** means Credit Card transactions which are not Qualified Transactions and which are processed at a higher interchange rate.
- oo) **Purchaser** means a Cardholder who uses a Card to complete an Electronic Commerce Transaction.
- pp) **Payment Detail File** shall mean a file containing details of payments received by the Bank from its customers for the benefit of the Merchant pursuant to this Agreement.
- qq) **PCI** means Payments Card Industry.
- rr) **PCI DSS** means Payment Cards Industry Data Security Standard. It provides a baseline of technical and operational requirements designed to protect Cardholder data. PCI DSS applies to all entities involved in payment card processing, including merchants, processors, acquiring banks, issuing banks, third party service providers, as well as all other entities that store, process or transmit Cardholder data. PCI DSS comprises a minimum set of requirements for protecting Cardholder data, and may be enhanced by additional controls and practices to further mitigate risks.
- ss) **Prepaid Card** shall mean a Card issued by a bank or financial institution with a stored value.
- tt) **PIN** shall mean the numerical code provided by the Cardholder to the Bank for use in connection with a Card to access designated accounts held with the Bank through a Point Of Sale Terminal or other means as may be defined by the Bank from time to time.
- uu) **Point Of Sale** shall mean the physical location where the Merchant completes a Transaction Slip.
- vv) **Point Of Sale Terminal** shall mean an electronic device used at the Point Of Sale that allows the Merchant to obtain:
1. In the case of Credit Card/Debit Cards/Prepaid Cards Transactions, Authorization and/or capture and transmit for settlement, and a Transaction Slip; or
  2. In the case of Mobile Phone Transactions, electronic recharge numbers for Top-up.
  3. In the case of eMoney, authorisation and/or transmit for settlement.
- xx) **Portal** shall mean the web-based applications or set of applications which is provided to the Merchant by the Bank.
- yy) **Qualified Card** shall mean any valid unexpired Card bearing the name of the Issuer and its identifying card logos and/or in the case of Visa or MasterCard the Visa logo and hologram or the MasterCard logo and hologram.
- zz) **Qualified Transaction** means a Credit Card transaction processed in accordance with the following conditions: :
1. Card is present, full magnetic stripe/chip is read by the terminal and signature/pin is obtained; and
  2. One electronic authorization request is made per transaction and transaction/purchase date is equal to the authorization date; and
  3. Transaction (batch) electronically transmitted no later than 1 day from transaction/purchase date; and
  4. 3D Secure compliant for E-Commerce Transactions; and
  5. Authorized transaction amount must match settled transaction amount, except for:
    - a. Restaurants, where transaction amount may be within 25% of the original authorized amount;
    - b. Lodging & Car Rental where settled transaction amount must be within 15% of the total authorised amount
    - c. Incremental authorization requests are permitted ( for Lodging & Car Rental )
- aaa) **Restricted List** shall mean a list of blocked card/account numbers which may be provided to, or made accessible by, the Merchant from time to time.
- bbb) **Return** means a charge initiated by the Cardholder through the Merchant or by the Merchant itself against an Electronic Commerce Transaction Receipt previously presented by the Merchant to the Bank and includes a reversal or refund to an account for Debit Card and Prepaid Card transactions.
- ccc) **Secure Electronic Transaction** means an Electronic Commerce Transaction that meets the Secure Electronic Transaction Specification.
- ddd) **Secure Electronic Transaction Specification** means a software development protocol that enables the secure processing of an Electronic Commerce Transaction over the Internet.
- eee) **Security Code** shall mean a three-digit security number which may be printed on the back of credit cards to help validate that a customer is in possession of a legitimate Card at the time of a Transaction.
- fff) **Signature** shall mean information (whether in the form of data, text, images, sounds or other codes) that is used by a Cardholder to indicate his acceptance of a Transaction, including:
1. Manual signature;
  2. A PIN;
  3. Other information contained in, attached to, or logically associated with the Transaction; or
  4. Any other means deemed acceptable by the Bank
- ggg) **Telebanking Service** means a telephone-based (or other medium acceptable to the Bank) service providing the Cardholder with access to Designated Accounts and/or approved Bill Payment Registers in order to facilitate Telebanking Transactions.
- hhh) **Telebanking Transaction** means a Transaction in which the Cardholder instructs the Bank by telephone or other medium acceptable to the Bank, to remit payment from his Designated Account to a Merchant in settlement of the total price outstanding on the purchase of goods/services from the Merchant.
- iii) **Top-up** shall mean the re-charging of the account balance on a pre-paid mobile phone by means of electronic access numbers purchased from the Merchant, where the Merchant is approved by the Bank to sell electronic access numbers for use in pre-paid mobile phones.
- jjj) **Transaction** shall refer to:
1. Any bona fide transaction between the Merchant and the Cardholder (including Card-not-present Transactions) in which a Qualified Card is used in respect of the purchase of goods or services from the Merchant or a refund or other money adjustment on a Credit Card Transaction is provided to the Cardholder pursuant to a sale of goods or services by the Merchant or other

permitted transaction, between the Merchant and the Cardholder, as the case may be;

2. Any bona fide transaction between the Merchant and its customer for Top Up;
3. Any bona fide transaction between the Merchant and its Customer using an Electronic Retail Payment Instrument, or E-Money; or
4. Any bona fide transaction between the Merchant and its Customers contemplated by the Merchant Agreement as amended from time to time .

kkk) **Transaction Date** shall mean the date of consummation of the Transaction as a result of which the Transaction Slip was issued. In any Card-not-present transaction the date shall be deemed to be the date of shipping/ date of fulfilment of the order and not the order date in any Card-not-present Transactions. Any subsequent dispute as to whether the order was fulfilled to its specifications will not affect the date so deemed.

lll) **Transaction Identifier** means a unique value that the Card Organization assigns to each Electronic Commerce Transaction and returns to the Bank as part of the response to the request for Authorisation. The Card Organization uses this value to maintain an audit trail throughout the life cycle of the Electronic Commerce Transaction and all related transactions such as Chargebacks.

mmm) **Transaction Receipt or Slip** shall mean the form provided or authorized by the Bank to be used by the Merchant to record a Transaction and, in the case of any Transactions other than Mobile Phone Transactions, to which the Signature of the Cardholder of a Qualified Card has been provided to the Merchant an electronic transaction receipt as defined in 1.2t.

nnn) **User Guide** means the procedures and instructions as may be established by the Bank from time to time and available on the Bank's Website .

ooo) **Website** means one or more Internet addresses at which an individual or organization provides information to others often including links to other locations where related information may be found.

ppp) **3D Secure** means Three Domain Secure, an Internet authentication standard which allows the authentication of cardholders while making remote payments over the Internet.

## 2. CREDIT CARD TRANSACTIONS

2.1 The provisions of this clause 2 will only apply where the Merchant has, as indicated in Item 2 of the Schedule hereto, agreed with the Bank that it will accept Credit Cards in payment for its goods and services.

### Honouring Cards

2.2 The Merchant agrees to honour in accordance with the conditions set out in this Agreement, any Qualified Card properly tendered by any bona fide Cardholder to the Merchant for use in a Transaction.

2.3 The Merchant agrees not to impose any surcharge, minimum or maximum purchase amounts or otherwise discriminate as to price, service or other conditions of sale with respect to any Transaction in which a Qualified Card may be used or tendered for use without the prior approval of the Bank and subject to any limitations or restrictions imposed by the Bank. Save and except that this shall not be deemed to prohibit the Merchant from offering a discount for cash transactions provided that the offer is clearly disclosed to customers of the Merchant and the cash price is presented as a discount from the standard price charged for all other forms of payment.

2.4 Where the Transaction involves a refund, whether for returned merchandise or otherwise, originally purchased with a Credit Card, the Merchant agrees not to provide a cash refund.

2.5 The Merchant will check all security features as identified in the document titled "**Credit Card Security Features**" (or in any other document supplied by the Bank from time to time before processing a Transaction against a Qualified Card.

2.6 The Merchant shall evidence all Transactions made through the honouring of Qualified Cards on Transaction Slips.

2.7 Each Transaction Slip, where manually completed, shall be legibly completed (in triplicate) in the manner prescribed by the Bank showing the Cardholder's Card number, the Merchant information, together with:

- a) In the case of the purchase/sale of goods:
  1. The date of purchase;
  2. Total cash price, including sales or other applicable taxes, delivery or other charges;
  3. A brief description of the goods or services provided; or
- b) In the case of a refund (which is applicable to Credit Card Transactions only):
  1. The preparation date;
  2. Total amount of the credit, including sales or other applicable taxes;
  3. A brief description of the Transaction in respect of which the refund is granted.

2.8 Transaction Slips may be produced electronically by swiping the Credit Card through a Point Of Sale Terminal, in which event, a copy of the Transaction Slip will be deemed to have been automatically delivered to the Bank.

2.9 The Merchant shall deliver a copy of the Transaction Slip to the Cardholder at the time of the Transaction and, where the Transaction was completed manually, shall forward a copy to the Bank in accordance with clauses 2.13 and 2.14

2.10 No Transaction Slips shall be forwarded to the Bank until all goods and/or services the subject of such Transactions have been delivered to the Cardholder (or to such address as agreed with the Cardholder) save in the case of delayed delivery agreed upon with the Cardholder, in which event, a Transaction Slip for the agreed deposit may be forwarded on the Transaction Date and a separate Transaction Slip for the balance shall be forwarded upon delivery.

### Off Line Transactions

2.11 If the Point of Sale Terminal does not function or the Authorisation System is offline, the Merchant must take an imprint of the Card when he calls for voice authorisation. The manual imprint of the card should include:

- a) The card number
- b) The expiry date
- c) Cardholder's name
- d) Date of the transaction
- e) Amount of the transaction
- f) Authorisation Code
- g) Signature of the Cardholder
- h) Transaction type (purchase or credit)
- i) Merchant Name

2.12 Once the Point of Sale Terminal is online, the Merchant shall "key enter" the transaction into Point of Sale Terminal in such manner as may be designated by the Bank.

### Settlement of Transaction Slips

2.13 The Merchant will deliver to the Bank copies of all Transaction Slips prepared manually together with a Merchant Deposit Summary and an adding machine tape, listing the amount of each manual Transaction. The total displayed on the adding machine tape must agree with the total shown on the Merchant Deposit Summary.

2.14 The Merchant Deposit Summary and all supporting documentation shall be prepared in respect of each day's Transactions and shall be delivered to the Bank within three (3) business days after the Transaction Date, except in cases where the Merchant requests and receives approval from the Bank for delayed delivery within an agreed period.

2.15 The Merchant by delivery assigns the Transaction Slips to the Bank. The Bank is authorised to complete any incomplete Merchant Deposit Summary and /or adjust any errors in the Merchant Deposit Summary, the Bank's count being conclusive in such event.

2.16 The Bank is entitled, but shall not be obliged, to audit the Merchant Deposit Summary and all Transaction Slips received electronically for accuracy and for compliance with this Agreement. The Bank may set off or credit the

Merchant's account without notice or invoice to the Merchant any inaccuracies, deficiencies or overcharges determined.

- 2.17 The Merchant waives notice of default or non-payment, protest or notice of protest demand for payment and other demands or notices in connection with this Agreement or any Transaction Slip.
- 2.18 The Merchant hereby agrees that the Bank in its sole discretion may, decline at any time or from time to time to process any Transaction Slip that does not include a Signature, even if the Cardholder's consent or instruction has been obtained by telephone or mail.
- 2.19 Except in the case of Card-not-present Transactions that the Bank has agreed in writing to process, no Credit Card sale shall be completed by the Merchant if the Cardholder fails to present his Card to the Merchant.
- 2.20 Any Transaction complying with all terms of the Agreement shall be on a non-recourse basis except as provided in the Rejections/Chargebacks section.

Card-not-present Transactions

- 2.21 The Merchant acknowledges that this type of transaction carries a greater risk of repudiation from Cardholders, and refusals and Chargebacks by the Bank as the transaction is not conducted in an environment where you and a Cardholder are both present in person.
- 2.22 Where Transaction Slips are manually or electronically delivered to the Bank in instances in which a Card is not presented such as in Card-not-present Transactions the following prerequisites must be complied with. The Merchant must:
  - a) Obtain prior written approval from the Bank for this type of Transaction; and
  - b) Hold a written authorization from the Cardholder in a form acceptable to the Bank and bearing the Signature of the Cardholder; and
  - c) Indemnify the Bank against any claim or chargeback by the Cardholder.
- 2.23 For Card-not-present Transactions that the Bank has agreed to process, the Merchant shall obtain:
  - a) The exact name of the Cardholder;
  - b) The billing address of the Cardholder;
  - c) The Card's number;
  - d) The expiry date of the Card;
  - e) Date of the Transaction;
  - f) Amount of the Transaction;
  - g) Transaction type (purchase or refund);
  - h) Where the Transaction is a Credit Card Transaction, the Security Code.
- 2.24 The Merchant shall forward the information obtained pursuant to clause 2.22 and 2.23 to the Bank at the time when authorization for the Transaction is being sought from the Bank.
- 2.25 If the Merchant agrees to accept a pre-authorized Transaction, the Merchant shall require the Cardholder to execute and deliver to the Merchant a written request for such pre-authorization, which request shall be retained by the Merchant and be made available upon request to the Bank. The Merchant shall not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is cancelled or that the Card used to effect the pre-authorization order is not to be honoured.
- 2.26 The Merchant agrees to use some form of identification approved by the Bank to identify all Card-not-present Transactions included in the Merchant Deposit Summary and on the Transaction Slips evidencing such Transactions.

Floor Limit/Transaction Authorisation

- 2.27 From time to time the Bank will establish Floor Limits. In the event a Cardholder desires to make a purchase or purchases within a calendar day in excess of this amount, the Merchant shall first request Authorisation from the Bank and, if received, shall record the Authorisation Code given by the Bank on all Transaction Slips executed in connection therewith.

- 2.28 The Merchant will at the Bank's election request and examine items of personal identification, in such numbers and types as the Bank shall designate, of the Cardholder, and will at the Bank's election note all such pertinent information upon the Transaction Slip evidencing such Transaction.
- 2.29 For the avoidance of doubt, it is hereby expressly declared that an Authorisation given by the Bank pursuant to clause 2.27 permits a purchase in excess of the Merchant's Floor Limit but does not permit use of an invalid or expired Card or affect or impair any other warrant or obligation in this Agreement.

Representations and Warranties

- 2.30 The Merchant warrants that each Transaction Slip represents a valid bona fide obligation for the amounts set forth therein which:
  - a) Is not subject to any disputes, set offs or counter claims; and
  - b) Bears the signature of the proper Cardholder
- 2.31 The Merchant further warrants that:
  - a) The information on the Transaction Slip including, but not limited to the Cardholder's account number and Card expiration date is accurate and correct;
  - b) The total purchases made within any twenty-four (24) hour period at the Merchant's place of business (whether physical or online) does not exceed the Floor Limit set by the Bank for the Merchant except where authorised by the Bank or where because of the nature of the Credit Card Transaction a Floor Limit is inapplicable;
  - c) The purchase of any single item of goods and/or services has not been consummated by the execution by the Cardholder of more than one (1) Transaction Slip and no attempt has been made to divide the amount of any Transaction by the completion of more than one Transaction Slip;
  - d) A Transaction evidenced by a Transaction slip does not involve any element of credit except a sale of goods and/or services;
  - e) A Transaction Slip has not been effected for the purpose of advancing any cash to a Cardholder, either directly or by deposit to the Cardholder's account;
  - f) The Discount payable on any Card transaction has not been passed on to the Cardholder as part of the purchase price for goods or services;
  - g) It has good title to the Transaction Slip which has not previously been assigned or encumbered and the Transaction Slip does not represent any illegal sale;
  - h) Where a manual Signature is affixed to Transaction Slip by the customer, such Signature has been checked against the manual Signature on the back of the Card and found to match save that where the card was not previously signed a valid identification was obtained from the Cardholder and the reference number noted on the Transaction Slip.

PCI DSS and 3D- Secure Compliance

- 2.32. The Merchant warrants that it is familiar with and comply with the following requirements set out in clause 2.33 and notified by the Bank from time to time:
- 2.33. The merchant must ensure that;
  - a) The 3-digit CVV number is not stored after processing a Transaction;

- b) Cardholder data (expiry date, PIN Number) is destroyed after every Transaction and not stored electronically;
- c) The Card number is masked on the Cardholder copy. The minimum requirements for masking are that the first 6 and last 4 digits be displayed and the middle digits be masked. The Bank will ensure that the PAN is masked on all stand-alone Point of Sale Terminal. In the event of the PAN not being masked then the Merchant must immediately notify the Bank of same;
- d) The Merchant's employees shall not have access to the supervisor card/supervisor PIN to access transactional menus, other than for the purpose of processing Transactions;
- e) All paper-based documentation containing full, unmasked card numbers be marked confidential, stored securely and destroyed in accordance with PCI requirements;
- f) At least once a year, inspect all Point of Sale Terminal surfaces to detect tampering (for example, addition of card skimmers to devices), or substitution (for example, by checking the serial number or other device characteristics to verify it has not been swapped with a fraudulent device) and whenever requested by NCB relevant documents as evidence need to be provided for compliance.
- g) All staff is appropriately trained to handle Card payments securely and that training is conducted on an annual basis or as needed;
- h) The Merchant monitors the compliance status of any third party service providers with which it shares Cardholder data and must maintain written agreements with all third party service providers whereby they acknowledge their responsibility for Card data in their possession;
- i) Obtain current PCI DSS certification in accordance with the applicable PCI standards in effect at the time and comply with any requirements set out by the PCI DSS;

2.34. If the Merchant fails to (a) complete regular updates regarding the PCI DSS certification process or (b) achieve PCI DSS compliance or (c) become 3D-Secure compliant, the Bank may, without prejudice to the Bank's rights hereunder or in law:

1. Suspend the operation of this Agreement pending completion of the Merchant's PCI DSS certification or
2. Terminate this Agreement forthwith.
3. Assess the Merchant for additional liability as prescribed by the PCCI DSS and/or 3D Secure rules from time to time, and/or
4. Charge to the Merchant all losses and penalties incurred by the Bank as a result of the said noncompliance.

2.35. In the event that the Merchant is no longer PCI DSS and/or 3D-Secure (whichever is applicable) compliant or PCI DSS certification lapses and failure to renew the certificate timeously, the Merchant hereby indemnifies the Bank against any and all losses that are imposed on the Bank during the Merchant's non-compliance. It is the responsibility of the Merchant to ensure PCI DSS and/or 3D-Secure (whichever is applicable) compliance at all times.

#### Non-Qualified Transactions

2.36 If a Transaction is a Non-Qualified Transaction, then the applicable Card Organization will downgrade the Transaction and will process it at the higher applicable interchange level. In this event, the Merchant agrees that they will be subject to an interchange downgrade rate and any applicable (as set forth in the Fee Schedule), and agree to accept said fee and

surcharge which will be billed back to the Merchant and reflected on its statement.

### **3. ELECTRONIC BANKING TRANSACTIONS**

- 3.1 The provisions of this clause 3 will only apply where the Merchant has, as indicated in Item 2 of the Schedule hereto, agreed with the Bank that it will enable its customers to make payments for the purchase of goods and services using the Telebanking Services.
- 3.2 The Merchant shall, at such time as may be agreed upon by the parties, permit the Bank to install appropriate software at the Merchant's premises to facilitate Telebanking Transactions. Such software shall enable the Bank to transfer to the Merchant details on the Bill Payment Register as updated from the Electronic File Transfer web based application.
- 3.3 At intervals agreed between the Bank and the Merchant from time to time (the current interval, where applicable, being set forth in Item 3 of the Schedule), the Bank shall provide a Payment Detail File to the Electronic File Transfer web based application.
- 3.4 The Payment Detail File shall conform to the file layout specification agreed upon by the parties and must contain the following minimum information with respect to each payment:
  - a) Date of payment;
  - b) Transaction reference number;
  - c) Customer's account number;
  - d) The amount paid by the customer;
  - e) The batch number.
- 3.5 At the close of each business day, the Bank will forward to the Merchant electronically, a remittance report stating:
  - a) The name(s) of each Payment Detail File(s) downloaded for that day;
  - b) The total amount of payments received by the Bank for the benefit of the Merchant for that day;
  - c) The total number of transactions for that day.
- 3.6 For the purposes of this clause 3, any payments received or Transactions carried out during non-business days or otherwise after the settlement cut off time established pursuant to item 3 of the Schedule, shall be deemed to have been received and carried out on the next business day following the date of the Transaction.
- 3.7 The Merchant undertakes and agrees that it shall:
  - a) Pay to the Bank the current fees specified in the Fee Schedule representing the Bank's charges for the provision of the Telebanking Service.
  - b) Make its own arrangements to obtain, install and maintain at its own expense, the required equipment more particularly described in Item 4 of the Schedule;
  - c) Set up its own systems to receive and process data electronically which meet the operating capabilities and specifications as established by the Bank;
  - d) Maintain computerized customer records with unique account numbers;
  - e) Validate payment details within a maximum period of 48 hours of receipt of the Payment Detail File;
  - f) Operate a settlement account(s) with the Bank to which payments received by the Bank for the benefit of the Merchant will be credited;
  - g) Comply with the procedures and instructions as may be established by the Bank from time to time in the User Guide ; and
  - h) Undertake to meet all security requirements covering the various services as issued and recommended by the Bank.
- 3.8 The Bank agrees and undertakes to credit to the Merchant's settlement account referred to in clause 7.56 all payments received for the benefit of the Merchant from its customers prior to the daily settlement cut-off time as defined by the Bank from time to time.
- 3.9 The Bank shall be further entitled to debit the Merchant's settlement account in respect of all fees, service charges and any other payments due from the Merchant to the

Bank associated with the Telebanking Service as set forth in the current Fee Schedule, including any chargebacks or rejections pursuant to clause 7.8.

- 3.10 The Bank shall accept partial payments, payments after the due date and payments on tendered bills with arrears or balances brought forward with the understanding that customers paying part or after the due date pay at their own risk, that is, partial or late payments do not exempt customers from disconnection or denial of service by the Merchant concerned for overdue amounts.
- 3.11 In the event of any claim being made by a cardholder or customer, pursuant to a late or partial payment which may arise due to the error, act or omission of the Merchant, the Merchant shall indemnify the Bank for all liability for loss and damages which the Bank may suffer against the customer including the costs of litigation and Attorney's costs. This indemnity shall not extend to claims arising from the Bank's failure to provide a Payment Details File to the Electronic File Transfer web based application through its negligence or that of its servants or agents.

### **3A. Electronic Retail Payment Transactions**

- 3A.1 The Provisions of this clause 3A will only apply where Merchant has, as indicated in Item 2 of the Schedule hereto agreed with the Bank that it will enable its Customers to make payments for the purchase of good and services using e-money or an Electronic Retail Payment Instrument.
- 3A.2 The Merchant can access and download a Payment Detail File from the Portal at their discretion.
- 3A.3 For the purposes of this Clause 3A, the Payment Details File will contain a statement or summary of the Merchant's transactions and will contain the following minimum information with respect to each payment:
- a) Date of payment
  - b) Transaction reference number
  - c) Customer E-Money Account number
  - d) The amount paid by the Customer
- 3A.4 For the purposes of this Clause 3A, any payments received or Transactions carried out during non-business days or otherwise after settlement cut-off time established pursuant to the Merchant Agreement, shall be deemed to have been received and carried out on the next business day following the date of the Transaction.
- 3A.5 The Merchant undertakes and agreed that it shall:
- a) Pay to the Bank the fees specified in the Fee Schedule;
  - b) Operate a settlement account(s) with the Bank to which payments received by the Bank for the benefit of the Merchant will be credited;
  - c) Comply with the procedures as set out in the User Guide, (which the Merchant confirms it has read; and understood);
  - d) Undertake to meet all security requirements covering the various services as issued and recommended by the Bank.
- 3A.6 The Bank agrees and undertakes to credit to the Merchant's settlement account referred to in clause 3A.5b. all payments received for the benefit of the Merchant from its Customers prior to the daily settlement cut-off time as defined by the Bank from time to time.
- 3A.7 The Bank shall be further entitled to debit the Merchant's settlement account in respect of all fees, service charges and any other payments due from the Merchant to the Bank as set forth in the current Fee Schedule.
- 3A.8 The Bank shall accept partial payments, payments after the due date and payments on tendered bills with arrears or balances brought forward with the understanding that Customers paying part or after the due date pay at their own risk, that is, partial or late payments do not exempt customers from disconnection or denial of service by the Merchant concerned for overdue amounts.
- 3A.9 In the event of any claim being made by a Customer pursuant to a late or partial payment which may arise due to the error act or omission of the Merchant, the Merchant shall indemnify the Bank for all liability for loss and damages which the Bank may suffer against the Customer including the cost of litigation and Attorney's costs.

### **4. MOBILE PHONE TRANSACTIONS**

- 4.1 The provisions of this clause 4 will only apply where the Merchant has, as indicated in Item 2 of the Schedule hereto, agreed with the Bank that it will purchase from the Bank Access Numbers for resale to its customers for use in pre-paid mobile phones.
- 4.2 The Bank undertakes and agrees with the Merchant to:
- a) Install and maintain at the Merchant's premises terminals and/or equipment that facilitate the sale of Access Numbers for Top-up by its customers;
  - b) Provide the means by which the Merchant can pay for a group of Access Numbers, either by cash, cheque, money transfer, or any other means approved by the Bank;
  - c) Make Access Numbers available to the Merchant for resale;
  - d) Provide the means by which the Merchant can check its account balance and receive acknowledgement of funds deposited;
  - e) Provide user training to the Merchant in respect of the Point Of Sale Terminals;
  - f) Provide 24-hour user support to the Merchant in respect of the Point Of Sale Terminals;
  - g) Pay the Merchant such commission as may be agreed between the parties from time to time (the current rate of commission being set out in Appendix 4);
- 4.3 The Merchant undertakes and agrees with the Bank that it will:
- a) Pay to the Bank such fees as may be specified in the Fees Schedule for the services undertaken by the Bank in connection with Mobile Phone Transactions;
  - b) Open and maintain a Designated Account;
  - c) Advise the Bank within 24 hours of receipt of notification from its customers of the non-activation of any Access Numbers purchased by such customer from the Merchant;
  - d) Not re-sell Access Numbers to its customers until the next business day after it has received confirmation from the Bank of the receipt of payment.
  - e) Assume all responsibility for explaining to its customers how the Mobile Phone Transactions work and promoting the use of the Point Of Sale Terminals by its customers for use in Mobile Phone Transactions.
  - f) Provide feedback to the Bank on an on-going basis regarding how the system is working and will encourage customer feedback regarding Mobile Phone Transactions and forward such feedback to the Bank;
  - g) Upon the re-sale of each Access Number, prepare a Transaction Slip in respect of such Mobile Phone Transaction and deliver a copy of the Transaction Slip to the customer at the time of the Transaction;
  - h) Provide the Bank with a Mobile Phone Summary detailing total sales for such day for each mobile phone provider at the close of each business day;
  - i) Comply with all procedures and instructions in the User Guide, which the Merchant confirms it has read and understood.

### **5. DEBIT CARD TRANSACTIONS**

- 5.1 Where the Merchant has, as indicated in Item 2 of the Schedule hereto, agreed with the Bank that it will accept Debit Cards in payment for its goods and services the provisions of this clause 5 shall apply.
- 5.2 It is hereby expressly declared for the avoidance of doubt that the provisions of clause 2 hereof (save and except for clause 2.4) shall apply to Debit Card Transactions.
- 5.3 The Merchant acknowledges and agrees that although cash refunds may be permitted in respect of Debit Card Transactions no such refund may be effected by use of a Debit Card.

**6. ELECTRONIC COMMERCE TRANSACTIONS**

- 6.1 Where the Merchant has, as indicated in item 2 of the Schedule hereto, agreed with the Bank that it will accept Electronic Commerce Transactions the provisions of this clause 6 shall apply.
- 6.2 The Merchant acknowledges that this type of transaction carries a greater risk of repudiation from Cardholders, and refusals and Chargebacks by the Bank as the transaction is not conducted in an environment where you and a Cardholder are both present in person.
- 6.3 The Merchant agrees to comply with the following:
  - a) That, for Non-Secure Transactions and Non-Authenticated Security Transactions, the Merchant shall have obtained the Cardholder's Card expiration date and the three digit security code indent printed on the Card's signature panel (CVV2 or CVC2) and forward it as part of the request for Authorization.
  - b) That in respect of all Electronic Commerce Transactions, it shall do all of the following:
    - 1. Obtain Authorisation for each Electronic Commerce Transaction on any day up to seven (7) days prior to the Transaction Date. This Authorization is valid if the Electronic Commerce Transaction amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs.
    - 2. Provide written disclosure to the Purchaser of any shipping and handling charges and any applicable tax.
  - c) That, if it offers an instalment option for an Electronic Commerce Transaction, in addition to the matters referred to above, it shall do all of the following:
    - 1. Obtain Authorisation for each instalment payable in respect of the Electronic Commerce Transaction:
    - 2. Disclose, in writing, to the Cardholder, whether the instalment terms limit the goods or services that a Cardholder may purchase.
    - 3. Inform a Cardholder not billed in the Electronic Commerce Transaction currency that each instalment amount may vary due to currency conversion rate fluctuations.
    - 4. Ensure that the sum of the instalments for the Electronic Commerce Transaction does not exceed the total price of the goods.
    - 5. Ensure that finance charges are not added to the instalment Electronic Commerce Transaction.
- 6.4 Each Electronic Commerce Transaction shall be reflected in an Electronic Commerce Transaction Receipt in the form furnished by the Merchant to the Bank and which shall contain the following information:
  - a) Electronic Commerce Merchant name
  - b) Electronic Commerce Merchant online address
  - c) Electronic Commerce Transaction amount indicated in transaction currency
  - d) Electronic Commerce Transaction Date, or in the case of instalments, the preparation date of the Electronic Commerce Transaction Receipt
  - e) Unique Electronic Commerce Transaction identification number
  - f) Cardholder name
  - g) Authorisation Code
  - h) Electronic Commerce Transaction type (purchase or refund)
  - i) Description of merchandise/services

- j) Return/refund policy
- k) Cardholder's partially concealed credit card account number
- l) A recommendation that the Cardholder/Purchaser print or save the Electronic Commerce Transaction Receipt for his/her records
- m) Customer Service or contact info
- n) Cancellation policy
- o) Privacy policy
- 6.5 In any Electronic Commerce Transaction Receipt the Merchant's name must not be the name of the network provider or other entity unless the Electronic Commerce Transaction represents membership service charges or merchandise/services provided by the network provider itself.
- 6.6 The Merchant must not return the full account number on the Electronic Commerce Transaction Receipt sent to the Cardholder instead the Merchant must assign a unique number to each transaction processed.
- 6.7 The Merchant agrees that, in addition to any other information required by any law to be stated on its Website, its Website will contain all of the following information:
  - a) Complete description of the goods or services offered
  - b) Return/refund policy
  - c) Customer service contact, including electronic mail address & telephone number
  - d) Electronic Commerce Transaction currency (e.g., US dollars, Jamaican Dollars)
  - e) Export restrictions (if known)
  - f) Delivery policy
  - g) Country of Electronic Commerce Merchant Domicile
  - h) Currency converter
  - i) Logos of the Cards accepted by the Merchant
- 6.8 The Merchant agrees that it will (if necessary) update its software to include Internet Transaction Identifiers and Secure Electronic Transaction Specifications in accordance with the requirements of its Internet service provider or gateway provider.
- 6.9 It is hereby acknowledged and agreed that payment for E-Commerce Transactions will be via the use of a Credit Card. Therefore, to the extent not in conflict with any of the provisions of this clause 6, the provisions of clause 2 shall apply to all E-Commerce Transactions.
- 6.10 Within seven (7) days (including the Transaction Date) of the Transaction Request Date, or such other period or periods as the Bank and the Merchant may agree given the nature of the goods sold by the Merchant, the Merchant agrees to ship and/or deliver the goods.
- 6.11 The Merchant shall follow the following procedure for processing each Electronic Commerce Transaction:
  - a) Each Electronic Commerce Transaction Receipt must be completed in sufficient detail to identify the transaction;
  - b) The Merchant must present the Electronic Commerce Transaction Receipt to the Bank within three (3) Business Days of the Transaction Date, unless presented under an approved deferred or instalment plan, or within three (3) Business Days of the date the Merchant receives the Cardholder's returned merchandise, cancellation of service, or a price adjustment request for a credit.
  - c) The Bank reserves the right to refuse to process any Electronic Commerce Transaction Receipt presented by the Merchant if the Bank did not issue an Authorisation, if any Authorisation previously issued by the Bank is or becomes invalid or if the Bank reasonably determines that the Electronic Commerce Transaction Receipt is or will become uncollectible from the Cardholder to which the sale would be otherwise charged, or if the Bank determines that the Electronic Commerce Transaction Receipt was prepared in violation of any provision of this Agreement.
  - d) For Electronic Commerce Transactions, the Bank will process the Electronic Commerce

Transaction Receipts in the applicable interbank clearing systems. After the Bank receives such Electronic Commerce Transaction Receipts, the Bank will initiate transfer of the net proceeds to the Merchant's bank account with the Bank. The Merchant agrees that the transfer of net proceeds to its bank account constitutes provisional credit for its Electronic Commerce Transaction Receipts so long as no Cardholder has a dispute or challenge with respect to the Electronic Commerce Transaction Receipts for any reason.

- e) To the extent the net proceeds for any day are negative, the Bank may pursue one or more of the following options: (1) recoup all amounts due to the Bank from any funds otherwise due from the Merchant's next transmission of Electronic Commerce Transaction Receipts; (2) debit any of the Merchant's accounts with the Bank for the amount of the negative balance; (3) delay presentation of the Merchant's credits until it makes a payment to the Bank of a sufficient amount to cover the negative balance; (4) reverse credit to the Cardholder where the Merchant does not have funds to cover (5) request (either verbally or in writing) payment for such amounts, and the Merchant agrees to resolve any negative balance within two Business Days of the Bank's advice of a negative balance.

6.12 The Merchant undertakes and agrees to comply with the provisions and requirements of the Electronic Transactions Act, including but not limited to the provision to the customer of the opportunity to do the following, in the order of their occurrence:

- a) Review the Transaction;
- b) Correct any errors;
- c) Withdraw from the Transaction before finally placing an order; and
- d) Access electronically and reproduce an accurate summary of the order and the terms, including the total cost relating to any Transaction.

## 7. GENERAL

7.1 The following general provisions shall apply to all Transactions:

### Representations and Warranties

7.2 The Merchant represents and warrants to the Bank that: All statements of fact contained in each Transaction Slip are true and it has no knowledge that would impair the validity or collectability of any Transaction Slip submitted to the Bank;

7.3 Where the services provided by the Merchant involve the provision of hotel accommodation, the Transaction is not one in which the notification period for cancellation of the service is in excess of 72 hours;

7.4 It has checked the validity of the Card and in the case of a Credit Card Transaction carried out manually, that such Credit Card does not appear on the Restricted List supplied by the Bank; and

7.5 All information required from the Merchant's customer in order to fully and accurately complete any Transaction Slip, has, where possible, been personally examined and verified by it.

### Refunds, Adjustments etc.

7.6 The Merchant shall use its best endeavours to maintain a fair policy with regards to the exchange, return, cancellation or adjustment of Electronic Commerce Transactions (the "return/cancellation policy"). The Merchant's policy shall be applied equally to all Cardholders and shall be clearly posted on its Website or disclosed to Purchasers by some other means of which the Bank has notice. If the Merchant allows an exchange (which results in a lower charge to the Cardholder), return of goods, cancellations of services or any other adjustments in connection with an Electronic Commerce

Transaction Receipt resulting from a prior Electronic Commerce Transaction, the Merchant will prepare and deliver to the Bank a credit receipt to offset the specific Electronic Commerce Transaction Receipt previously presented by the Merchant. The amount of the credit receipt shall not exceed the amount shown as the total on the original Electronic Commerce Transaction Receipt except by the exact amount required to reimburse the Cardholder for postage that the Cardholder paid to return goods, in accordance with the above return/cancellation policy. The Merchant agrees not to accept cash or any other consideration from a Cardholder in return for preparing a credit receipt to be deposited to the Cardholder's account, nor to give cash refunds to Cardholders in connection with an Electronic Commerce Transaction.

- 7.7 The Merchant agrees to submit a copy of its return/cancellation policy to the Bank at the date of this Agreement. Any subsequent changes to such policy shall be submitted in writing to the Bank not less than thirty (30) days prior to such change becoming effective. The Bank will signify in writing within 10 days of receipt of the amended policy its acceptance of the changes. Failure by the Bank to respond within 10 days will be deemed as acceptance of these changes. The Bank reserves the right to refuse to process any credit receipt prepared in accordance with a revised return/cancellation policy deemed not acceptable by the Bank.

### Rejections/Chargebacks

7.8 The Merchant agrees that the Bank shall be entitled to Chargeback to the Merchant the dollar amount of any Transaction in the event of the occurrence of any of the events specified in clause 7.9

7.9 The events referred to in clause 7.8 are as follows:

- a) Where a Qualified Card recites a date of validity which is not yet valid or has expired;
- b) Where a Qualified Card used in a situation where authorisation is not required is counterfeit, invalid, voided or revoked, provided notice of such invalidity, voiding or revocation was advised by the Bank;
- c) Where the Transaction Slip is executed or endorsed incorrectly, or executed or accepted fraudulently;
- d) Where the Cardholder disputes sale of goods/or services, execution of the Transaction Slip or in the case of a Telebanking Transaction, the whole or any part of any instructions to the Bank to make any payment to the Merchant and the Bank has, if it deems necessary, investigated such dispute and concluded that the claim is legitimate;
- e) Where circumstances surrounding the Transaction constitute a breach of any of the terms or conditions of this Agreement, including a breach of any warranty or representation contained in this Agreement;
- f) Where the Transaction Slip is illegible, or incomplete;
- g) Where the amount of the Transaction Slip exceeds the Floor Limit and /or an Authorisation Number was not properly obtained;
- h) In the case of a Card-not-present Transaction, for any reason deemed sufficient by the Bank, including failure to comply with the terms specified in the **Card-not-present Transactions** section herein;
- i) Where the Merchant chooses to process EMV chip cards manually and not on the Bank's EMV enabled terminals, the Merchant may become liable for payment of any transaction submitted for chargeback by the applicable EMV chip card issuer fraud claim.

7.10 The Transaction evidenced by a Transaction Slip or any other credit extended in respect thereof includes a cash advance made by the Merchant to a Cardholder;

7.11 The Merchant can be shown to have attempted to reduce or disguise the amount of any one Transaction by the use of multiple Transaction Slips (known as split-ticketing);

- 7.12 Copies of the same Transaction Slip have been deposited by the Merchant more than once or where the Bank has credited the Merchant more than once with the same Transaction Slip;
- 7.13 The Merchant has deposited, or attempted to deposit, with the Bank Transaction Slips in respect of fictitious Transactions, or has otherwise defrauded or attempted to defraud the Bank;
- 7.14 The Merchant has failed to comply with the terms of this Agreement;
- 7.15 The Merchant has not provided the Bank with copies of a requested Transaction Slip at any time during the period in which the Merchant is required by this Agreement to maintain a copy of same;
- 7.16 Transactions which for any reason are unacceptable to the Bank;
- 7.17 The Transaction Receipt is in excess of the Merchant's Floor Limit. The Bank has established the Merchant's current Floor Limit at zero, and the Bank may from time to time raise or lower the Merchant's Floor Limit upon notice to the Merchant. It is understood and agreed that no Transaction Receipt for a total amount in excess of the Merchant's Floor Limit in effect from time to time will be accepted by the Bank unless the Merchant has obtained Authorisation for such sale and the code number given to it to indicate said Authorisation appears on the Transaction Receipt.
- 7.18 The Transaction Receipt is based on a pre-authorisation form and the Card on which the pre-authorisation form was based has been revoked and the Merchant was so notified.
- 7.19 The Card giving rise to the sale has been placed on the caution list by the issuer and prior to the sale the Merchant had received notice of such listing in writing or otherwise. If such Card appears on a caution list, the Merchant shall immediately call the Bank.
- 7.20 The Transaction Receipt was not delivered to the Bank within the allowable time period contained in Clause 6.11 hereof.
- 7.21 The Transaction Receipt contains an over the Floor Limit Authorisation that expired prior to the Transaction Date.
- 7.22 The Transaction Receipt or credit form used is not the form authorised by the Bank.
- 7.23 The Merchant does not provide electronic data requested by the Bank within five (5) business days of the date of the request.
- 7.24 Where the Cardholder is entitled pursuant to the Electronic Transactions Act to a full refund of any payment made by him.
- 7.25 The Merchant agrees to repay to the Bank on demand the amount of any Chargebacks. Without prejudice to the foregoing, the Bank shall be entitled to debit the Merchant's account or bill the Merchant for such Chargebacks.
- 7.26 The Merchant shall be responsible to the Bank for any overdrafts of the Merchant's account resulting from any Chargebacks made by the Bank pursuant to clause 7.8.
- 7.27 Where any claim for rejection or Chargeback is made by the Merchant, such claim shall be made within forty five (45) days of the date of posting of the charge to the Merchant's account, and the Bank shall not be bound to reverse or reprocess any charge to the Merchant if claimed outside such period.
- 7.28 The Merchant acknowledges that depending on the type of goods and/or services offered by the Merchant, or such other factors as the Bank considers appropriate, the Bank may at any time classify the Merchant as being involved in a high risk business. If so classified, the Merchant acknowledges and agrees that payments from the Bank to the Merchant may, without more, be delayed by the Bank for a period not exceeding sixty (60) days from the date of receipt by the Bank of the Transaction Slip to seek to minimize Chargebacks.
- 7.29 Where the Bank has not yet made payment to the Merchant in respect of any Transaction Slips received from the Merchant, and the Bank determines that such Transaction Slip is likely to be uncollectible for any of the reasons specified in clause 7.9, the Merchant acknowledges and agrees that the Bank shall be entitled to reject such Transaction Slip and return same to the Merchant.

- 7.30 Within 3 Business Days from the date of any request from the Bank, the Merchant undertakes and agrees to provide to the Bank all necessary information to assist the Bank in any investigation and resolution of any rejections/Chargebacks or other disputed Transaction.
- 7.31 The Bank shall also be entitled to debit the Merchant's account or bill the Merchant for any additional fees levied by the Bank from time to time resulting from the processing of any such rejections/Chargebacks or due to any non-compliance by the Merchant with any of its obligations under this Agreement. Such additional fees shall be determined from time to time by the Bank and shall be notified to the Merchant.

#### Provision for Charge-Backs

- 7.32 The Merchant agrees to maintain funds on deposit with the Bank in a minimum amount of [J\$\_\_\_\_\_ & US\$\_\_\_\_\_] (the "Deposit"). The Deposit will be blocked so that the balance does not fall below [J\$\_\_\_\_\_] at any time, and the Merchant agrees that the Bank may appropriate the Deposit at any time, without notice, to satisfy any obligations which may arise from time to time in the Bank's favour by way of settlement of any payments for Chargebacks, potential Chargebacks and adjustments on any Transactions made with the Merchant. The Deposit will be in a collateral account under the name [Electronic Commerce Merchant] - Collateral Account.
- 7.33 The Merchant also agrees that the Bank may review the minimum amount of the Deposit from time to time at its discretion, and the Bank reserves the right to increase the required minimum amount accordingly. In the event the Bank does increase the required minimum amount, the Merchant must meet the new minimum amount within five (5) days. In the event that the Merchant fails to meet the new minimum amounts in the five (5) days the Bank reserves the right to suspend/terminate the Agreement.
- 7.34 In the event that the Merchant's participation in the Bank's card system is terminated the Merchant agrees that the Bank will retain the Deposit for a minimum period of eighteen (18) months or for such further period as may be required to satisfy any obligations which were entered into before the termination date, but which may arise after the termination date in the Bank's favour by way of settlement of any Charge-backs on any Transaction made with the Merchant.
- 7.35 The Merchant further agrees not to grant or purport to grant to any other person any security or other legal or beneficial interest in such funds.
- 7.36 If and to the extent that the Bank is obliged to pay any fee or other charge to any international payment entity (including but not limited to Visa International, MasterCard, Discover Card, or any other credit card company or agent or facilitator of credit card transactions) as a result of the Merchant exceeding any limit imposed by it on the number or value of Chargebacks per month allowed in relation to the Merchant, the Bank shall charge the Merchant and the Merchant shall pay to the Bank an amount equal to such fee or other charge

#### Rules, Instructions and Procedures

- 7.37 The Bank is permitted to amend the rules and regulations governing any Transactions provided that it provides the Merchant with no less than thirty (30) days prior written notice of such amendments. Any amendments made in accordance with this clause 7.37 from time to time are herein incorporated by reference.

#### Advertising

- 7.38 The Bank will furnish the Merchant with forms, advertising aids, promotional material, and any other bank forms necessary to facilitate the Transactions. The Merchant will adequately exhibit advertising displays supplied by the Bank. All such items and material remain the property of the Bank and, upon termination of this Agreement or upon request by the Bank at any time during its operation, shall be returned to the Bank forthwith.

## Fees

- 7.39 The Merchant will pay to the Bank such annual membership fees and rental for each imprinter, Point Of Sale Terminal or other equipment supplied by the Bank to the Merchant from time to time in accordance with the Fee Schedule current from time to time. The Merchant acknowledges that details of the current Fee Schedule have been provided to it and that the Fee Schedule may be amended at any time by the Bank upon thirty (30) days written notice to the Merchant.
- 7.40 The Merchant agrees to pay for the services as set forth in the Fee Schedule in accordance with this Agreement. The Bank may modify the pricing set forth in the Fee Schedule or terminate this Agreement in accordance with the provisions hereof.
- 7.41 In addition to the above, from time to time, the Bank may change its fees and discounts. The Merchant's presentation of any Transaction Receipt to the Bank after the effective date will constitute acceptance of the new prices.
- 7.42 As to any price changes the Bank will provide the Merchant with at least thirty (30) days' notice of the effective date of this price change. Should the Merchant choose not to accept the new prices it agrees to notify the Bank, within fifteen (15) days of the Bank's price change notice, of the Merchant's intent to terminate this Agreement. Such termination shall be in accordance with the provisions of this Agreement and existing prices will continue to operate through to the date of termination of the agreement.
- 7.43 The Merchant further agrees that all fees, charges, credits or adjustments pursuant to this Agreement that it may owe constitute a debt that is payable on demand and that the Bank may debit its account(s) with the Bank for this debt. If any such debit results in an overdraft on the Merchant's account(s) it will pay the Bank the amount of such overdraft plus applicable interest and fees.
- 7.44 The Merchant agrees to notify the Bank in writing of any discrepancy or billing error within forty five (45) days of the applicable statement or invoice. If failure to notify the Bank within the forty five (45) days period, the Merchant will be deemed to have accepted the fees and charges set out in the applicable statement or invoice and the Bank will have no obligation to investigate.

## Solicitation or Acceptance of Payments

- 7.45 The Bank shall be the absolute owner of all Transactions Slips sold to it and have the sole right to make billings and collections thereon.
- 7.46 The Merchant agrees:
- a) Not to solicit or make any collections thereunder;
  - b) It will not accept any payment from any Cardholder for purchase of goods and/or services if a Transaction Slip evidencing such Transaction has been sold to the Bank or if payment in respect of such goods and/or service was tendered to the Merchant by the Telebanking Service;
- 7.47 The Bank shall have the right to verify all sales and services and payments made for tax duties and imposts and to audit the Merchant's books, accounts, records and other papers relative to any Transaction carried out pursuant to this Agreement.

## Records

- 7.48 The Merchant is required to keep records of all Transaction Slips for a minimum period of eighteen (18) months.
- The Merchant agrees:
- a) To preserve all records pertaining to Transaction Slips for eighteen (18) months from the date thereof and to allow the Bank to examine and verify the same;
  - b) To execute and file any and all statements and notices requested by the Bank in order to

preserve or protect the Bank's interest under this Agreement; and

- c) To comply within five (5) calendar days with any requests for the production of documents or other information made by the Bank.

- 7.49 The Merchant further agrees that it shall not charge any fee for the preservation of records, execution of statements, and notices, or compliance with document production requests.

## Cardholders Disputes

- 7.50 Any and all disputes between the Merchant and Cardholder respecting any sale of goods or any rendition of service or payment of taxes, duties and imposts in respect of any Transaction shall be resolved between the Cardholder and the Merchant. In the event that disputes are not resolved between the Merchant and the Cardholder the Bank reserves the right to charge the item back in accordance with the provisions of this Agreement.

## Retention and Retrieval of Card

- 7.51 The Merchant agrees to use its best efforts by reasonable and peaceful means to retain or recover a Card: when the Merchant is instructed by the Bank so to do; or where the Card number is listed on any Restricted List.

## General Indemnity

- 7.52 The Merchant will fulfill completely all obligations on its part to be performed under the terms of the sale of goods and/or services and/or payments of taxes, duties and imposts and agrees to indemnify and hold the Bank harmless from:
- a) Any and all claims by Cardholders arising thereon imposed by way of defence, dispute, setoffs or counterclaims; and
  - b) Any and all claims arising from the violation of any applicable law or regulation.

## Compliance

- 7.53 The Merchant will comply with all bye-laws and rules of the Bank applicable to Transactions as are now in effect, as amended from time to time. All such bye-laws and rules are incorporated herein by reference and shall be available for inspection upon request.
- 7.53A The Merchant will comply with all required security, AML/CFT, PCI DSS, or other requirements covering the various services as issued and recommended by the Bank.
- 7.53B Further to the provisions of clause 7.78 of the Merchant Agreement, the Merchant agrees and acknowledges that the Bank is permitted to disclose the confidential information of the Merchant to the Bank's affiliates or subsidiaries, law enforcement, any applicable regulatory body, the Bank's sub-contractors, to facilitate any security AML/CFT PCI DSS or other requirement that the Bank may require its Merchants to meet.

## Audits and Inspection

- 7.54 Upon providing at least 24 hours prior written notice to the Merchant (and during the Merchant's normal business hours), the Bank or its duly authorised representatives may visit the Merchant's business premises, and may examine the equipment provided by the Bank in connection with this Agreement, that part of the books and records of the Merchant that pertain to the Merchant's sales made by honouring Cards, those portions of the Merchant's Website or web presence that accepts and or processes Cardholder information including web, database and application servers, or any other supporting or connected hardware or software or to the Merchant's practices regarding any Transaction including the Merchant's books and records concerning all Transaction Slips.
- 7.55 The Merchant undertakes and agrees to cooperate with, and assist the Bank in completing any such audit and inspection and shall provide any and all assistance as may be required.

#### Settlement Account

- 7.56 The Merchant undertakes and agrees with the Bank to establish, if necessary, operate and maintain a bank account at the Bank to facilitate the settlement of sums due from the Bank to the Merchant and from the Merchant to the Bank. At usual intervals, as with any other account maintained by the Bank, the Bank will provide to the Merchant statements of the movements in respect of this account. The Merchant shall be entitled to request and obtain reprints of any such statements free of cost if such a request is made within thirty (30) days of the initial statement date. Where the requests are made after thirty days, the merchant will be charged the fee set out in their current Fee Schedule.
- 7.57 The Merchant further agrees that it will conduct timely reconciliation of their settlement totals to their bank accounts and will complete the reconciliation of its records to the statements received from the Bank within thirty (30) days of receiving same, any queries, claims or disputes against the Bank regarding any Transactions or any other elements reflected in the account or the statement regarding such account must be made within this period.
- 7.58 The Bank shall not be obliged to keep any records of statements or other records regarding the Merchant's account for more than eighteen (18) months since the date of creation.

#### Insolvency

- 7.59 The Merchant agrees to provide the Bank with prompt written notice if the Merchant or any of its parent, subsidiary or affiliated entities is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. In order to protect the Bank, Chargebacks will be honoured even after such a petition or proceeding has commenced or been filed.

#### Warning

- 7.60 The Merchant shall not sell, provide, exchange, or otherwise disclose to third parties (other than to the Merchant's agents and contractors for the purpose of assisting the Merchant in completing the Transaction, or to MasterCard or Visa, or as specifically required by law) any Cardholder's number information nor any other information about the Cardholder or about the Cardholder's account, without obtaining the proper written consent of the Cardholder on a document other than the Transaction Slip. The prohibitions of this section shall be applicable to any and all forms, documents and media in which such Card numbers or other information may be set forth or stored (including as examples but without limitation Transaction Slips, carbon copies and photocopies), and the Merchant shall utilise storage and disposal procedures that will prevent any improper disclosure of such Card numbers or other information.

#### Investigation

- 7.61 The Merchant agrees that the Bank may obtain from any credit agency or other financial institution whatever commercial and credit information that the Bank deems appropriate with respect to the Merchant.
- 7.61A The Merchant hereby consents to the disclosure to the Bank such credit information that one or more credit bureaus duly licensed under the Credit Report Act may have in regard to the Merchant.
- 7.61B The Merchant hereby consents to the Bank providing this Agreement which evidences its consent to the credit bureau by electronic means and to the credit bureau providing the said information to the Bank by electronic means.
- 7.61C The Merchant hereby acknowledges and agrees that some of the services that are offered by way of this agreement require the extension of credit to the Merchant and are therefore credit facilities.
- 7.61D The Merchant understands and agrees that its consent which is hereby given (a) shall subsist for the duration of

this or any future credit facility (b) shall remain valid and binding unless expressly revoked by the Merchant (c) cannot be revoked during the subsistence of any credit facility with the Bank (d) will be applicable to all applications made by the Merchant to the Bank for credit facilities either as borrower or guarantor and also for the purpose of facilitating risk assessment for granting further extension of credit for any current credit or future credit facility.

#### Information About The Merchant's Business

- 7.62 The Merchant agrees to furnish to the Bank upon five (5) days written notice such financial statements and information concerning the Merchant or its parent, subsidiary or affiliated entities as the Bank may from time to time request.

#### Amendment

- 7.63 The Bank shall have the right to amend this Agreement at any time and from time to time upon five (5) days' notice in writing thereof to the Merchant, except in the case of the Fee Schedule which is guided by clause 1.2. If such amendment is unacceptable, the Merchant may by notice to the Bank terminate this Agreement.

#### Strict Performance

- 7.64 No delay by the Bank in demanding payment herein, or in charging the Merchant's account, or pursuit by the Bank of alternate remedies, shall constitute a waiver or estoppel against it.
- 7.65 No act or conduct by the Bank, or failure to enforce any provision hereof by the Bank shall be alleged by the Merchant to constitute a waiver of any of the Bank's rights or remedies flowing from a breach of any provision hereof, nor shall such act, or indulgence be alleged to be an amendment to the Merchant's obligations under the Agreement, unless such amendment is agreed upon in writing by the Bank and the Merchant.
- 7.66 The Merchant acknowledges that the Bank has relied upon the Merchant's representations and warranties herein as well as representations made by the Merchant in the Merchant application, on which basis the Bank made its decision. The Merchant agrees to immediately advise the Bank of any material change in the nature of its operation, variation in its usual activities, or in the nature and volume of business transacted by the Merchant.

#### Governing Laws

- 7.67 This Agreement shall be governed by and construed in accordance with the laws of Jamaica and shall be binding upon the parties hereto, and upon their heirs, administrators, executors, successors and assigns.

#### Notice

- 7.68 All notices and publications made by:
- a) Either party shall be deemed to have been sufficiently given to each party if in writing and if sent by prepaid post letter, or delivered by hand, to the last known address of such party's principal place of business in Jamaica and shall be deemed to have reached the addressee on the fifth day following the posting thereof, or if by personal delivery, on the date that same is handed to a person duly authorized to accept service on behalf of such party.
- b) The Bank shall be deemed to have been sufficiently given to the Merchant if communicated by any of statement messages, online messages, e-mail, website message and/or SMS.

#### Force Majeure

- 7.69 The Bank shall not be liable for delays in processing or other non-performance caused by such events as fires, telecommunications failure, equipment failures, strikes, riots, wars, non-performance of the Bank's vendors or

suppliers, Acts of God, or other causes over which the Bank has no control.

#### Limitation of Liability

- 7.70 There are no conditions, warranties or representations, expressed or implied, oral or written, statutory or otherwise, except as herein expressly stated regardless of the form of action, whether in contract or in tort.
- 7.71 The Bank shall not be liable for indirect or consequential damages.
- 7.72 In no event shall the Bank's liability exceed a maximum amount of Ten Thousand Jamaican Dollars (J\$10,000.00) for any one incident even if it has been advised of the possibility thereof, including loss of anticipated profits or savings or other economic loss in connection with or arising out of the existence, furnishing, functioning or the Customer's use of the Services.
- 7.73 In no event will the Bank be responsible for the accuracy and completeness of any information provided to the Bank by third parties.

#### Whole Agreement

- 7.74 The terms of this Agreement form the whole agreement between the Bank and the Merchant and shall not be removed, or varied in any way, other than as provided for in the Agreement. No other express terms, written or oral, shall be incorporated into the Agreement.

#### Confidentiality

- 7.75 Any process, specifications, routines or techniques including software, (together called "supplied facilities") which are disclosed and/or supplied by the Bank to the Merchant pursuant to this Agreement are the confidential proprietary information of the Bank and shall remain the property of the Bank.
- 7.76 The Merchant shall not, without the prior written consent of the Bank, disclose or make the same available to any person other than an employee of the Merchant for use for purposes of and as authorized by this Agreement.
- 7.77 The Merchant agrees to honour and be bound by any third party copyright restrictions associated with the supplied facilities which the Bank is likewise bound to observe and shall indemnify the Bank for any third party claim in breach of copyright pursuant to the disclosure by the Merchant of the supplied facilities.
- 7.78 Save and except for the sharing of information by the Bank with its subsidiaries and affiliates to facilitate the marketing of new products, to provide more efficient service to the Merchant, to ensure robust AML/CFT / PCI DSS compliance and any information required to be disclosed by and law, regulation, or order of the Court, neither party shall disclose any proprietary or confidential information relating to this Agreement or the business or operations of the other party without the prior written consent of such other party. Confidential and proprietary information shall include information in written or oral form relating to the Agreement or to any matter connected with either party which is not generally available to the other party and which comes into the possession of such other party by virtue of doing business under this Agreement.
- 7.79 The Merchant shall not assign, transfer or purport to assign the provisions of this Agreement or any part thereof to any person without the consent in writing of the Bank, such consent not to be unreasonably refused.
- 7.80 The Bank may at any time transfer or assign this Agreement to any of its subsidiaries or affiliates, or another Bank or financial institution and in such case shall give the Merchant reasonable notice thereof.

#### Care of Point of Sale Terminals Equipment and Supplies

- 7.81 The Merchant agrees that it will take full and proper care of all terminal, equipment, supplies and any other material provided by the Bank and shall bear the cost of repairs or replacement of such equipment necessitated by physical damage not arising from fair wear and tear or usage. If the terminal is damaged in the possession of the merchant, the Bank

shall be entitled to repair it at the cost and expense of the merchant and such cost will be payable and deducted from the designated account.

- 7.82 The Merchant agrees to ensure that all equipment supplied by the Bank is monitored during and after closing. The equipment should be left on to allow for remote application updates. The Merchant agrees to develop security procedures around unauthorized use of the equipment and train employees on them. Security procedures include direction and conditions for contacting the Bank in the event the employee suspect that the equipment has been lost, stolen or tampered with.

#### Fines and Charges

- 7.83 The Merchant agrees that it will abide by all applicable rules and implement recommendations to mitigate against fraudulent activities that the Card Organizations may institute from time to time. The Merchant further agrees that the Bank shall be entitled to pass on to or recover from the Merchant any charges, fees, and/or penalties levied upon the Bank by other Card Organizations as a result of activities relating to fraudulent transactions directly attributable to the Merchant's business including without limitation improper card account use, use of counterfeit, lost or stolen cards, These amounts will become payable immediately upon demand and the Merchant further agreed that the Bank shall deduct same in accordance with clause 7.43.

## **8. TERMINATION**

- 8.1 This Agreement shall become effective on the date first above written when accepted by the Merchant and shall remain in full force and effect unless either party terminates it by giving thirty (30) days' written notice of termination to the other, upon the occurrence of any Event of Default, upon the Bank reasonably suspecting that an Event Of Default has occurred or as is otherwise provided for in this Agreement.
- 8.2 The obligations of both parties for any particular Transaction completed on or prior to the date of termination shall survive termination.
- 8.3 The Bank may terminate this Agreement immediately if the Merchant becomes insolvent or bankrupt, becomes involved in any prohibited activity set out in clause 10 or the Bank deems itself to be insecure with respect to the Merchant's business.
- 8.4 Following termination, the Merchant agrees, where applicable, that it will not represent that it honours any Card Organization's Card through participation in the Bank's card system as a Merchant.
- 8.5 Upon the occurrence of any circumstance which would enable the Bank pursuant to the terms of this Agreement to terminate this Agreement, the Bank shall be entitled, in lieu thereof, to suspend this Agreement, list the Merchant on terminated merchant files, freeze the Merchant's accounts with the Bank and take such other steps as it deems necessary.
- 8.6 An Event of Default shall occur if:
  - a) The Merchant makes any warranty or representation hereunder which is or becomes incorrect in any material aspect
  - b) The Merchant fails to observe or perform any of the terms and obligations contained herein, or any of the rules issued by the Bank from time to time;
  - c) The Merchant institutes, or does anything which would permit to be instituted, any proceedings leading to the Merchant being declared a bankrupt or being found insolvent,
  - d) The Bank feels unsafe or insecure in the manner in which the Merchant is conducting its business.
- 8.7 The Merchant becomes inactive for a period of sixty (60) days.
- 8.8 Within five (5) days of the termination of this Agreement, all equipment, advertising displays, stationery or other property provided by the Bank must be returned to the Bank, or if so elected by the Bank, destroyed.

## **9. WARRANTIES**

The Merchant warrants and/or agrees with the Bank as follows:

- 9.1 That no setoffs or counterclaims of any kind shall exist in favour of any Purchasers against the Merchant that may be asserted in defence of an action to enforce payment against such Purchaser for any goods and services purchased through the use of a card.
- 9.2 To indemnify and hold the Bank harmless against any dispute, claim, action or liability whatsoever which may arise in respect of this Agreement (where such dispute does not arise as a result of the breach of obligations of the Bank under this Agreement or the fraud or gross negligence of the Bank and or its servants or agents) and without prejudice to the generality of the foregoing the Merchant agrees that this indemnity shall include the reasonable fees and expenses of outside legal counsel on a full indemnity basis as well as the time and costs of in-house counsel. The Merchant shall forthwith upon demand pay such reasonable sums as the Bank may certify as due hereunder, and for these purposes a certificate given under the hand of an officer of the Bank shall (absent fraud or manifest error) be conclusive for all purposes in connection herewith.
- 9.3 That the Bank makes no representation as to the operation or fitness for any particular purpose of any equipment or virtual terminal, and shall not be liable for any loss of profit, loss of business, special, consequential or punitive damages arising out of or in connection with the use of

any equipment or virtual terminal or in connection with the operation or termination of this Agreement.

- 9.4 That the Bank will, in no event, be responsible for the Merchant's acts or omissions or those of any third parties.
- 9.5 That the Bank reserves the right to suspend or completely cancel the Merchant's participation in any of the Bank's programmes offered pursuant to this Agreement, in accordance with the provisions of this Agreement.
- 9.6 To deliver to the Bank within five (5) Business Days its most recently prepared financial statements and credit information as the Bank may request from time to time.
- 9.7 That any Transaction Receipt sold or tendered by it to the Bank represents a valid bona fide obligation for the amounts set forth therein.
- 9.8 That each Cardholder appears to have legal capacity to contract at the time of purchase.
- 9.9 That all statements of fact contained in any document, including any Transaction Receipt, submitted to the Bank, are true and it has no knowledge that would impair the validity of such document or collectability of any such Transaction Receipt submitted to the Bank.
- 9.10 That the Merchant has checked the validity of any Card submitted by a Cardholder by obtaining the necessary information to properly complete the Transaction Receipt.
- 9.11 That the purchase of any single item of goods and/or services has not been consummated by the execution by Cardholder of more than one (1) Transaction Receipt and no attempt has been made to divide the amount of any Transaction by the completion of more than one Transaction Slip
- 9.12 That a Transaction evidenced by a Transaction Receipt or a Transaction Slip does not involve any element of credit except a sale of goods and/or services.
- 9.13 That a Transaction Receipt has not been effected for the purpose of advancing any cash to a Cardholder, either directly or by deposit to the Cardholder's account.
- 9.14 That the Discount payable on any Transaction has not been passed on to the Cardholder as part of the purchase price for goods and services.
- 9.15 That the Merchant has good title to the Transaction Receipt which has not previously been assigned or encumbered and the Transaction Receipt does not represent any illegal sale.
- 9.16 That no claim or proceeding shall be brought by the Merchant, or by any person acting through or for the Merchant, against the Bank in respect of any Transaction entered into more than 18 months prior to the notification, institution or commencement of such claim or proceeding.
- 9.17 That in the event the Bank incurs any liability to the Merchant or to any person acting through or for the Merchant, such liability, if not otherwise excluded in this Agreement, shall in all circumstances be limited to J\$10,000.00.
- 9.18 That the Merchant understands that this Agreement, and the Schedules and Addenda that are incorporated herein, have been prepared based on the information submitted by the Merchant on the Merchant Application and the Merchant warrants, undertakes and agrees that all the information contained therein is true and correct.
- 9.19 That it will give to the Bank at least seven (7) days prior written notice of its intent to change location.
- 9.20 That it will give to the Bank at least thirty (30) days prior written notice of its intent to change the basic nature of its business, product line or services, trade name or style, or the manner in which it accepts cards. If the Bank in its sole discretion determines that such a change is material to this Agreement, the Bank reserves the right to refuse to process Transactions posted after the change. Further, the Bank will have the option of terminating the Merchant's participation in the Bank's card system.

## **10. PROHIBITED ACTIVITIES**

- 10.1 The Merchant agrees to observe and comply with the following and should the Bank detect that the Merchant is or has been involved in any prohibited activities referred to in this clause 10 since the date of this Agreement, the Bank will have the option of immediately terminating the Merchant's participation in any of the programmes offered by the Bank pursuant to this Agreement:

- a) The Merchant agrees to observe business integrity and accordingly will not conduct any activity or facilitate Transactions prohibited under the Jamaican law including but not limited to money laundering, counter financing of terrorism and tax evasion as well as any transaction listed in this clause 10 as a prohibited transaction;
- b) The Merchant agrees that it will not conduct activity or Facilitate Transactions in any business segment identified by the Bank and communicated to the Merchant as prohibited, from time to time.
- c) The Merchant will know its customer, and accordingly will not knowingly aid or abet any activity prohibited by law. For the purposes of this Agreement the Merchant shall be deemed to sufficiently 'know its customer' if in addition to any other information regarding the Cardholder required to be obtained pursuant to this Agreement, the Merchant shall also obtain the full name of the customer, the full name of the person to be billed on the Card statement, the billing address and any other relevant Card information or as may be requested by the Bank from time to time;
- d) The Merchant will know its own business, and accordingly will inform itself and exercise good judgement so as not knowingly to render any service in respect of any electronic record or information which contravenes sub-clauses (a) and (b) of this Clause, or which ought reasonably to be considered as likely to contravene or already to have contravened the laws of Jamaica as may be amended from time to time;
- e) The Merchant will protect personal data, and accordingly will respect the privacy, accuracy and security of personal information and report immediately to the Bank any breach of cardholder or Bank information in its possession or that of its agents;
- f) The Merchant will avoid abusive language, and will not send bulk, unsolicited emails, seek unauthorised access to other people's systems or seek to interrupt other people's use of electronic communications, or enable others to do so;
- g) The Merchant will not store Cardholder's information electronically or in any other format.

#### Gambling

- 10.2 The Merchant agrees not to process or facilitate any transaction in relation to prohibited activities in this clause 10.2. The Bank will not facilitate any Transactions where it suspects the purchase of any form of gambling services which is offered by unregulated persons or entities in Jamaica, or, any form of gambling services which is offered by persons or entities located otherwise than in Jamaica and may be facilitated over the Internet or other networks ("online gambling"). Gambling services include, but are not limited to the following:
- a) Betting;
  - b) Lotteries;
  - c) Casino-style games;
  - d) Funding an account established by the Merchant on behalf of the Cardholder;
  - e) Purchase of value for proprietary payment mechanisms, such as electronic gaming chips.

#### Adult Entertainment

- 10.3 The Merchant agrees not to process or facilitate any transaction in relation to prohibited activities in this clause 10.3. The Bank will not facilitate any Transactions where the Bank suspects the purchase of any form of adult

entertainment / services over the Internet or other networks. Adult entertainment includes, but is not limited to the following:

- a) Obscene photographs, images or articles involving such things as extreme violence, bestiality and pornography;
- b) Indecent photographs or indecent pseudo-photographs of a child.

#### Drug Sales

- 10.3 The Merchant agrees not to process or facilitate any transaction in relation to prohibited activities in this clause 10.3. The Bank will not facilitate any Transactions where the Bank suspects the purchase of any form of drugs that violate applicable laws. Such drugs may include, but are not limited to the following:
- a) Controlled substances
  - b) Prescription medicines
  - c) Other regulated products

### **11. FURTHER RESPONSIBILITIES**

- 11.1 The Merchant shall not electronically transmit or otherwise process any Transactions to the Bank resulting from merchandise sold or services performed (or alleged to have been sold or performed) by parties other than itself.
- 11.2 The Merchant agrees not to disclose or remit to any third party any credit card account information or other documents or forms evidencing such information, except to its accountants or lawyers or under compulsion of law.
- 11.3 The Merchant agrees to comply with the operating guidelines the Bank will issue to it from time to time (including where applicable guidelines or requirements imposed by any of the Card Organizations).
- 11.4 The Merchant agrees to accept responsibility for incorrect data it provides or that is provided by its employees or agents or any other persons inputting data through any virtual terminal installed on premises that it controls.
- 11.5 The Merchant agrees to retain the "Merchant copy" of any completed Transaction Receipt and credit form and any other records relating to Transactions for at least eighteen (18) months in original and/or disk, microfilm or microfiche form or such other period as may from time to time be required by the rules of the various Card Organisations or as may be requested by the Bank.
- 11.6 The Merchant agrees to produce any requested electronic data to the Bank within five (5) business days of the date of the request. The Merchant understands and agrees that it will be liable for any Charge-backs imposed as a result of its failure to deliver requested documents within the specified time period.
- 11.7 The Merchant agrees that the Bank will generally settle card transactions based on gross sales less refund adjustments, the applicable processing rate when due, chargebacks and any other amount owed to the Bank.
- 11.8 The Merchant agrees that the Bank's records as to whether any Transaction has been performed, and the Bank's account or determination of the details of any Transaction, whether maintained electronically or by some other medium, will be correct and binding on them in the absence of any contrary evidence that is satisfactory to the Bank.
- 11.9 The Merchant agrees that the Merchant shall not hold itself out in any way as the agent of the Bank for any purpose and further agrees that Merchant shall not link to or frame any Website or portion thereof belonging to the Bank, or the Card Organizations without their specific permission in writing. The Merchant shall not infringe any copyright of the Bank's, or the Card Organization's nor appropriate in any way any of their Intellectual Property. Neither the Bank, nor the Card Organizations will be liable for any statement that the Merchant may make about the Bank, this Agreement or the card processing system generally.

## **12. DISPUTE RESOLUTION**

- 12.1 The parties will use their best efforts to negotiate in good faith and settle any dispute arising out of or relating to this Agreement, or any breach of it. If such dispute cannot be settled amicably through direct discussions with the parties, it is agreed that the parties will endeavour in good faith to settle such dispute by mediation conducted by the Dispute Resolution Foundation or any other mediation referral body provided for by rules of the Supreme Court of Jamaica, in accordance with, to the extent that same is not in conflict with the provisions of this clause 12, rules, regulations and/or Practice Directions of the Supreme Court of Jamaica in relation to mediation, subject to any replacement or amendment thereof.
- 12.2 The parties shall determine the mediator from the roster of mediators maintained pursuant to any rules, regulations and/or Practice Directions of the Supreme Court of Jamaica.
- 12.3 The party seeking to have the matter mediated will give fourteen (14) days written notice to the other party of its intention to pursue mediation and to refer the matter to such mediation referral body. Upon referral, the parties will endeavour to have the matter mediated within 30 days or such lesser or greater period, but not exceeding 60 days from the date of referral or such other time as the parties may agree in writing.
- 12.4 If the parties fail to reach agreement at such mediation, such failure shall be without prejudice to the rights of any party subsequently to refer any dispute or differences to litigation but the parties agree that before resorting to litigation mediation in accordance with this clause 12 shall have taken place.
- 12.5 Nothing contained in this clause 12 shall restrict either party's freedom to commence local proceedings to preserve any legal rights or remedy or protect any proprietary or trade secret right.

**ITEM 1: MERCHANT INFORMATION**

Commercial Name													
Legal Name													
TRN Number												MCC Code	
Nature of Business													
Business Address (1)													
Business Address (2)													
City/Town							Postal Code						
Parish							Country						
Telephone	( )						Telephone	( )					
Fax							Email						

**ITEM 2: THE SERVICES**

Auth only	<input type="checkbox"/>
EDC Cr	<input type="checkbox"/>
EDC Dr	<input type="checkbox"/>
EDC Dr/Cr	<input type="checkbox"/>
Imprinter	<input type="checkbox"/>
TeleMidas/IVR	<input type="checkbox"/>
Internet Banking	<input type="checkbox"/>
Electronic Recharge	<input type="checkbox"/>
Electronic Commerce	<input type="checkbox"/>
Electronic Mall	<input type="checkbox"/>
Other	<input type="checkbox"/>

Item 3: Required Intervals pursuant to clause 3.3:

Item 4: Equipment required pursuant to clause 3.7(b):

ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE  
 SIGNED FOR AND ON BEHALF OF THE MERCHANT  
 HAVING BEEN DULY AUTHORISED TO DO SO, THE SAME  
 HAVING BEEN READ BY ME AND FULLY UNDERSTOOD:

(If a limited company you may be asked to complete a corporate resolution to be return to the Bank).

NATIONAL COMMERCIAL BANK JA. LTD.		MERCHANT		TRN AND DRIVER'S LICENCE INFO
AUTHORISED SIGNATURE		AUTHORISED SIGNATURE		
NAME		NAME		
TITLE		TITLE		
		AUTHORISED SIGNATURE		
		NAME		
		TITLE		

*For Bank use only – Please do not write in this space.*

Merchant Identification Number(s):

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Bank Call Account(s):

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

*Upon acceptance of this Agreement by The Bank, copies must immediately be sent to the following parties:*

Merchant

APPENDIX 1

**NCB MERCHANT FEE SCHEDULE**

**BUSINESS COMMERCIAL NAME:** \_\_\_\_\_

PRODUCTS						
POINT OF SALE	BILL PAYMENT	ECOMMERCE	EPINS	QUISK Mobile Money		
Standard	IVR	3D Secure				
IP Standard	Internet Banking	Card Registration			OTHER	
Mobile						
Manual Imprinter						
Pin Pad						
Mail Order						
CARD TYPE SETUP & DISCOUNT RATE						
Visa		% +GCT	Debit Card	J\$		+GCT
MasterCard		% +GCT	EPins			% +GCT
Keycard/Keycard Cash		% +GCT	QUISK Mobile Money			% +GCT
Discover		% +GCT				
AMEX		% +GCT	Non-Qualified /Downgraded Transaction Fee			0.50% +Commission Rate+ GCT
		% +GCT				

**Note:** The discount rate listed above applies to all card type: Visa, Visa Debit, MasterCard, Debit MasterCard, Discover Credit, Discover Debit Card, and KeyCard Visa Debit. Fee Schedule may be amended at any time by the Bank upon thirty (30) days written notice to the Merchant.

**SPECIAL INSTRUCTION:**

Bill Payment Download Frequency	Daily <input type="checkbox"/>	Hourly <input type="checkbox"/>	2 Hours <input type="checkbox"/>	Other _____
# of Merchant Locations	Notes: _____			
# of POS Terminals				

FEES					
PER OCCURANCE	MONTHLY	ONE TIME SETUP FEE			
Chargeback	US\$12.00 + GCT or J\$ Equivalent	POS: Standard/IP	J\$ _____ + GCT	POS: Standard/IP/Mobile	J\$ _____ +GCT per location
Arbitration (losing merchant pays)	US\$500.00 +GCT or J\$ Equivalent	POS: Mobile	J\$ _____ + GCT	Ecommerce Set Up Fee	US\$ _____ +GCT or J\$ Equivalent
PCI Breach Fines:		Bill Payment/Telemidas:			
1 <sup>st</sup> Breach	US\$50.00 +GCT or J\$ Equivalent	File Download Fee	J\$ _____ + GCT		
2 <sup>nd</sup> Breach	US\$75.00 +GCT or J\$ Equivalent	eCommerce: Maintenance Fee	US\$ _____ + GCT or J\$ Equivalent		
3 <sup>rd</sup> Breach	US\$100.00 +GCT or J\$ Equivalent	PCI Non Compliance fee:			
eCommerce: per transaction fee	US\$ _____ +GCT or J\$ Equivalent	POS: After 30Days	J\$ _____ + GCT		
POS Reactivation Fee	J\$2,000.00 + GCT	POS: After 90 Days	J\$ _____ +GCT		
Bill Payment Reactivation Fee	J\$2,000.00 + GCT	eCommerce: After 30 Days	J\$ _____ + GCT		
Ecommerce Reactivation Fee	US\$50.00 +GCT or J\$ Equivalent	eCommerce: After 365 Days	J\$ _____ +GCT		

**Note:** Fee Schedule may be amended at any time by the Bank upon thirty (30) days written notice to the Merchant

**Warranty:** Each of the undersigned owner/officer of the merchant also represents and warrant that he/she has read and agreed to the fees set forth herein;

Sign Here:  \_\_\_\_\_ Date \_\_\_\_\_

Sign Here:  \_\_\_\_\_ Date \_\_\_\_\_

Appendix 4

The Commission

(Pursuant to clause 4.2(g))

All commissions due to the Merchant will be payable on the gross amount unless otherwise agreed in writing by the Parties. Gross amount refers to the total of all purchases, before the deduction of refunds, reversals, chargebacks and other amounts.