

MERCHANT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

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

METROPOLITAN BANK & TRUST COMPANY, a Philippine universal banking corporation with principal office address at The MCC Center, 6778 Ayala Avenue, Makati City, represented herein by its Head of Operations - CPC Sector, **Harrison C. Gue** and its Head of Acquiring Business - CPC Sector, **Jose Caesar B. Plofino** hereinafter referred to as "**METROBANK.**"

- and -

For Corporations/Partnerships:

_____, a corporation (or partnership) duly organized and existing by virtue of the laws of the Philippines, with principal office address at _____, represented herein by its [State Position] _____, [State Name] _____, hereinafter referred to as the "**MERCHANT.**"

For Single Proprietorships:

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

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

WITNESSETH: That -

WHEREAS, METROBANK is engaged in the business of electronic payment processing and issuing credit cards including **VISA, MASTERCARD, JCB** and **UNION PAY** ("Credit Cards") to qualified natural persons and/or juridical entities ("Cardholders"), and desires to make available to Cardholders the opportunity to purchase goods, merchandise and/or services from **MERCHANT** with the use of such Credit Cards;

WHEREAS, the MERCHANT is duly licensed to engage in the business of selling and/or supplying goods and/or services and has agreed to honor every valid unexpired **VISA** and **MASTERCARD** and is authorized to accept transactions using BancNet Cards and any other card brands (e.g. **JCB, UNIONPAY, etc.**) which may be issued or acquired by **METROBANK** in relation to purchases by Cardholders of its goods/services under the terms and conditions hereinafter stipulated;

NOW, THEREFORE, the Parties hereby agree as follows:

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

- a. "**ACCESS DEVICE**" – means any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument).
- b. "**AUTHORIZATION**" refers to the approval required to be obtained by the **MERCHANT** from the **METROBANK** Authorizations before a Credit Card transaction is honored, provided, that such authorization shall only be required if a Point-of-Sale (POS) terminal has not been installed or if present, has been inoperative. The Authorization contemplated herein shall take the form of an authorization code obtained from **METROBANK** Authorization Hotline by the **MERCHANT**.
- c. "**BANCNET CARD**" shall refer to the unexpired ATM debit and prepaid card including cash card issued by any of the BancNet member banks or unexpired debit or cash cards issued by other card issuers that have been accredited by **METROBANK** to use POS terminals.
- d. "**BANKING DAY**" shall mean any day when banks are open for business. Provided, however, that Saturday and Sunday shall at all times be considered as a non-banking day for purposes of this Agreement notwithstanding any declaration to the contrary.
- e. "**CARD**" shall mean either Credit Card or BancNet Card, as the case may be.
- f. "**CARDHOLDER**" shall mean the person whose name is imprinted/embossed on the Credit Card or BancNet Card, and whose signature appears on the signature panel as the authorized user thereof.
- g. "**CARD NOT PRESENT (CNP) TRANSACTIONS**" shall mean transactions that are processed by keying in the credit card number and the transaction amount in EDC Mode or by file upload to the system (Cardholder not present).
- h. "**CARD TRANSACTION**" shall mean any payment instruction effected by the Cardholder with the **MERCHANT** by the use of the Credit Card or BancNet Card, as the case may be.
- i. "**CHARGEBACK**" shall mean the process by which **METROBANK** charges the **MERCHANT** the full/partial amount of the Transaction Draft which had been paid by **METROBANK** under such circumstances and situations where a sales or services transaction is disputed by the Cardholder and/or where the **MERCHANT** failed to comply with any of its obligations under this Agreement.
- j. "**CHARGE SLIPS**" shall mean the forms supplied or approved by **METROBANK** as proof or evidence of sales or credits to be charged or credited to the account of the Cardholder on the basis of the Credit Card properly honored by the **MERCHANT** pursuant to the terms hereof. This is used whenever a transaction is processed manually.

- k. **"CREDIT CARD"** shall mean an unexpired **VISA, MASTERCARD, JCB** and/or **UNION PAY** currently issued by **METROBANK** and other Credit Card issuers or brands which may be acquired by **METROBANK**.
- l. **"DEPOSITORY BANK"** shall refer to the BancNet Member Bank where the **MERCHANT** maintains its account, and where transactions subject of this Agreement shall be credited or debited.
- m. **"ELECTRONIC DRAFT CAPTURE (EDC) MODE"** shall refer to Credit Card electronic transaction processing method which does not require the submission of paper drafts by the **MERCHANT** to **METROBANK** for posting into the Cardholder accounts or interchange settlement with other issuing banks.
- n. **"INSTALLMENT"** shall mean the installment feature of **METROBANK** Credit Cards that allows the Cardholder to avail of a certain product/s or service/s by paying **METROBANK** in pre-determined installments at a stipulated rate over a fixed term. **METROBANK** installment programs are classified either as regular rate installment, reduced rate installment, 0% installment or deferred installment.
- o. **"MANUAL TRANSACTIONS"** shall refer to transactions consummated between the **MERCHANT** and the Cardholder, the approval of which did not come online or through EDC Mode, but through phone conversation between the **MERCHANT** and **METROBANK** Authorizations.
- p. **"MERCHANT"** shall mean any business establishment contracted by **METROBANK** to honor Credit Cards and BancNet Cards as payment for the **MERCHANT's** goods and/or services.
- q. **"MERCHANT DISCOUNT RATE"** shall refer to the percentage rate used by **METROBANK** to calculate the discount charged for card transactions acquired by **METROBANK**.
- r. **"POINT-OF-SALE (POS) Terminal"** shall refer to the authorization and/or transaction terminal or device provided by **METROBANK** to its accredited merchants to be used for securing approval for all card transactions.
- s. **"SALES SUMMARY SHEET"** shall refer to the summary document that the merchant accomplishes and submits to **METROBANK** and must contain the gross sales amount, total amount of charge slips, discount rate, applicable government tax and net payable amount.
- t. **"SETTLEMENT"** shall refer to the electronic process of transferring funds for sales and credits between the **MERCHANT** and **METROBANK**.
- u. **"TRANSACTION DRAFT"** shall mean the drafts generated by the **MERCHANT's** POS terminal as proof of consummation of a sale or service transaction done on-line through the use of Credit Card.
- v. **"TRANSACTION RECEIPT"** shall refer to the paper receipt generated by the POS terminal after each successful transaction processed thereat using a BancNet Card.

2. TERM

This Agreement shall commence upon execution hereof and shall be effective for a period of one (1) year, which shall automatically renew for another year, unless the Parties agree to terminate this Agreement under Section 23 (Termination of Agreement).

3. ACCEPTANCE OF CREDIT CARD

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

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

- b. The **MERCHANT** shall honor Credit Cards only after it has determined and become satisfied that:
 - i. The Credit Card security features presented during the merchant orientation or as stated in the Merchant Operating Guidelines (MOG) have been thoroughly examined and that the Credit Card is valid and not yet expired. For this purpose, a valid Credit Card is one which is not expired, not tampered with and presented or used by the Cardholder whose name and signature appears thereon;
 - ii. The signature affixed by the Cardholder in the presence of the personnel of the **MERCHANT** on the Transaction Draft or Charge Slip prepared by the latter is the same as the specimen appearing on the Credit Card. In case of doubt, additional identification to determine the genuineness of the signature should be mandatorily requested from the Cardholder; and
 - iii. The Credit Card is neither mutilated, defaced nor bears any marking/s of alteration in embossing or signature.
- c. The **MERCHANT** shall obtain authorization and authorization code numbers for every card transaction electronically through the POS terminal or following the manual authorization procedure set forth in the Manual Operating Guide ("MOG") provided by **METROBANK** to the **MERCHANT**.
- d. The **MERCHANT** shall comply with all instructions whatsoever given through the POS terminals in response to requests for authorization of Credit Card transactions made electronically through the POS terminals by the **MERCHANT**, or over the telephone in response to manual authorization requests following the manual authorization procedure. The **MERCHANT** shall not mislead the Cardholder by indicating that his Credit Card transaction is being declined or refused, but shall properly notify the Cardholder that the POS terminal registered such response which requires the **MERCHANT** to call **METROBANK** providing the following details: name of **MERCHANT**, Merchant ID number, Cardholder's name, Card Account Number, expiration date of the Credit Card, the amount of the Credit Card transaction and the reason for the request of the Credit Card transaction.
- e. The **MERCHANT** may not infer any impropriety, wrongdoing, or lack of credit worthiness on the part of any Cardholder from the referral of the Credit Card transaction to **METROBANK** or declining of any authorization request made in respect of a Credit Card

transaction attempted to be effected by the Cardholder or from any instruction given to the **MERCHANT** by **METROBANK** under any provision of this Agreement.

- f. **MERCHANT** shall, at no time, open its own charge account for Cardholders or bill Cardholders directly or offer its own credit, debit and similar programs without the prior written conformity of **METROBANK**.
- g. Procedures relative to credit authorization and the processing of Credit Card transactions not covered by this Agreement are embodied in the MOG, the terms and conditions thereof shall form part of this Agreement. **METROBANK** may from time to time, by notice to **MERCHANT**, modify or amend the MOG or this Agreement.

4. CARD TRANSACTIONS

4.1 Credit Cards

a. INSTALLMENT TRANSACTIONS

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

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

b. CARD NOT PRESENT TRANSACTIONS

- i. Approval of CNP Transactions –
 - a. Before the **MERCHANT** may accept any CNP Transaction, it shall require the Cardholder to submit an Order Form which must be signed by the Cardholder and contain the following details:
 - i. The name and the address of the **MERCHANT**, the Merchant ID Number, and the name, Card or Card account number and Card expiry date of the Cardholder;
 - ii. The name or trade name of the issuer of the Card as it appears on the face of the card; and
 - iii. The total amount of the order in Philippine Pesos or such other currency permitted by **METROBANK**.
 - b. The **MERCHANT** shall also request and keep a photocopy of the Cardholder's valid identity card and the front portion of the Card subject to the Account Data Security.
 - c. The **MERCHANT** shall always secure authorization and authorization code numbers for CNP Transactions through the EDC Terminals or through manual authorization, in accordance to this Agreement. There is no Floor Limit for CNP Card Transactions.
 - d. **METROBANK** reserves the right to reject any CNP Transaction if the Card account has no available credit, has been delinquent, is canceled, or has expired. CNP Transactions shall likewise be disapproved in accordance with the Terms and Conditions Governing the Issuance and Use of **METROBANK** Credit Cards or when the Cardholder is in default under any of his obligations on one or more **METROBANK** Credit Cards or any of his credit facilities with **METROBANK**.
 - e. If the reason for disapproval of the CNP Transaction is that the Cardholder is over the credit limit or delinquent or the Card is canceled or expired, the **MERCHANT** may submit another request for approval two (2) weeks after first attempt. Should the CNP Transaction be disapproved again after the second attempt, the **MERCHANT** must cancel the order.

PLEASE SIGN ON ALL PAGES

- ii. Liability – Any claim or loss suffered by the Cardholder arising from unauthorized CNP transactions such as, but not limited to the following, shall be absorbed by the **MERCHANT**:

- a. Recurring;
- b. E-Commerce;
- c. Batch Authorization; or
- d. Manual Key Entry (MKE).

The Authorization given by **METROBANK** to the **MERCHANT** to approve the CNP Transaction shall not excuse the **MERCHANT** from its obligation to absorb the claim or loss suffered by the Cardholder arising from an unauthorized CNP Transaction.

4.2. BancNet Cards

- a. The **MERCHANT** shall honor and accept the **BancNet Card** presented by the Cardholder in the purchase of merchandise and/or services rendered by the **MERCHANT**, subject to the following verification:
 - i. the BancNet Card has not yet expired;
 - ii. it belongs to any of the BancNet Member Banks or to any card issuer accredited by BancNet;
 - iii. its ownership has been ascertained through the PIN encoded on the PIN pad; and
 - iv. the approval of the transaction by the Cardholder Bank was obtained through the **METROBANK** POS terminal BancNet application.
- b. The **MERCHANT** shall secure electronic transaction approval through the **METROBANK** POS terminal BancNet application in accordance with the verification procedures set forth above. Manual or voice-approval of BancNet transactions is not allowed.
- c. Each transaction shall be covered by a Transaction Receipt generated by the **METROBANK** POS terminal BancNet application. The amount in the Transaction Receipt represents the amount debited from the account of the Cardholder for the merchandise purchased and/or services rendered.

5. SURCHARGING PROHIBITION

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

6. COMPLETION OF CREDIT CARD TRANSACTION

- a. Credit Card transactions supported by a Transaction Draft for online transactions or Charge Slip for manual transactions shall be accomplished and generated strictly in accordance with the MOG provided by **METROBANK** to the **MERCHANT**.
- b. Unless otherwise provided in this Agreement, all Transaction Drafts or Charge Slips must be signed by the Cardholder on the designated signature space.
- c. **MERCHANT** represents and warrants to **METROBANK** that all transactions (including EDCs and CNP transactions), Transaction Drafts or Charge Slips to be submitted to and accepted by **METROBANK**:
 - i. Represent valid sales of merchandise and/or services in the usual course of business for the total price;
 - ii. Are not/will not be defective, illegal or otherwise impair the validity or enforceability of collection thereof from the Cardholder who made the transaction; and
 - iii. Shall consistently be for the full amount of the transaction and shall not be processed in parts constituting "Split Sale". For this purpose, a Split Sale refers to an intentional act of dividing a single transaction into multiple transactions that would generate multiple charge slips. There is presumption of splitting transactions if there are 2 or more transactions in one merchant outlet or establishment over one and the same product, and the interval between these transactions is 10 minutes or less.
- d. **MERCHANT** assumes full responsibility for any goods and/or services returned and/or questioned by the Cardholder as well as for the accuracy and correctness of any data or information appearing on the Transaction Draft or Charge Slip. **MERCHANT** agrees to indemnify and hold **METROBANK** free and harmless from any claims relating to any Transaction Draft or Charge slip or as may be made by way of defense, offset, counterclaim or affirmative action by the Cardholder.
- e. **MERCHANT** shall not complete the transaction when only part of the amount due is indicated on the Transaction Draft or Charge Slip except under the following circumstances:
 - i. When the balance of the amount of sales is paid by the Cardholder in cash, check or other Credit Card at the time of the transaction;
 - ii. In a delivery transaction or where goods/services are to be delivered or performed at a later date and where one Transaction Draft or Charge Slip represents the "deposit," "initial payment" or "down payment" and another represents the "balance" or "final payment," the Transaction Draft or Charge Slip for the "balance" or "final payment" shall not be presented to **METROBANK** until the goods are delivered or services performed completely and accepted by the Cardholder. Separate approval is required for "deposit" and "balance" Transaction Drafts or Charge Slips. Approval on the "deposit" transaction does not guarantee subsequent approval of the "balance" nor shall it bind or obligate **METROBANK** to, thereafter, authorize the "balance" Transaction Draft or Charge Slip.
- f. **MERCHANT** shall give the original copy of the establishment's sales/commercial invoice or receipt directly to the Cardholder at the time of the purchase, together with the Cardholder's copy of the Transaction Draft or Charge Slip.

7. TRANSACTION DRAFT/CHARGE SLIP

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

8. MERCHANT DISCOUNT RATE

METROBANK shall undertake to pay the **MERCHANT** for all the Transaction Drafts or Charge Slips or Transaction Receipts validly incurred via genuine availments at the Discount Rate indicated in the Letter of Offer or Application Form or other related documents which **METROBANK** shall provide to the **MERCHANT**. **METROBANK** reserves the right to change the Discount Rate and other fees (eg. POS rental fees, etc.) upon prior written notice to the **MERCHANT**; provided that no change in the Discount Rate shall be effective for any period prior to the time of receipt by the **MERCHANT** of such notice.

9. PAYMENT

9.1. Settlement Payment

- a. **METROBANK** shall, during the term and subject to the terms and conditions of this Agreement, pay to the **MERCHANT** at such time/s determined by **METROBANK** from time to time in accordance with the prevailing practice at the relevant time, the total amount of the Credit Card transactions effected with the **MERCHANT** which have been so submitted less: (i) the aggregate Discount Rate on all such Credit Card transactions; (ii) the government taxes; (iii) the aggregate refunds or rebates granted to Cardholders, if applicable; and (iv) all other amounts payable or due to **METROBANK** under this Agreement or otherwise.
- b. As applicable, all payments made to the **MERCHANT** shall be made available to the **MERCHANT** by check, drawn in favor of the **MERCHANT**, or credited to the **MERCHANT's** account with any branch of the Metropolitan Bank & Trust Company ("MBTC") or with other banks, subject to **METROBANK's** right at its discretion at any time to change the mode of such payment to the **MERCHANT**. For crediting to the **MERCHANT's** account with other banks, the relevant transfer fees and other related charges shall be borne by the **MERCHANT**.
- c. All approval codes given to the **MERCHANT** does not guarantee outright payment. There may be instance/s of fraud and/or disputes that may preclude such payment. If the **MERCHANT** does not raise any objection to the amount of payment by **METROBANK** within thirty (30) days after the date **METROBANK** issues the check or credits the **MERCHANT's** account, the **MERCHANT** shall be deemed to have accepted such amount as correct; Provided that nothing in this Section shall preclude **METROBANK** from correcting any error or discrepancy in such amount paid.
- d. Subject to the submission of proof to the contrary, any payment by **METROBANK** under this Agreement, whether or not the **MERCHANT** has complied with all its obligations under this Agreement, shall be made without prejudice to any claims, rights or remedies that **METROBANK** may have against the **MERCHANT**, and shall not constitute any admission or acknowledgment by **METROBANK** that the **MERCHANT** has duly performed its obligations under this Agreement or of the correctness of the amount so paid.

9.2. Crediting of MERCHANT account for purchases using BancNet Card

Given that BancNet is a switch composed of many member banks:

- a. The **MERCHANT** agrees and warrants that it shall maintain a deposit account with its Depository Bank into which will be credited the aggregate amount of purchases net of the agreed commission rate or transaction fee as specified in Section 6.
- b. The **MERCHANT** shall allow the Depository Bank to make the required adjustments within three (3) days from the transaction date without any adverse consequence on the BancNet cardholder, BancNet or the Member Banks for uncredited payments, provided the delay in crediting was unavoidable and beyond the control of the Depository Bank.
- c. The **MERCHANT** shall allow the Depository Bank to debit the account of the **MERCHANT**, upon prior notice to the latter, for the amount previously credited thereto and which was subsequently proven invalid. Furthermore, the account shall be subject to the terms and conditions, and documentary requirements stipulated in the deposit account agreement.

10. CHARGEBACK

- a. Notwithstanding any provision of this Agreement to the contrary or any authorization given in relation to such Credit Card transaction, **METROBANK** shall be entitled, without giving any reason, to refuse payment as stated under 9.1.a above to the **MERCHANT** of all or part of any amount of any Card Transaction and to be compensated or indemnified of whatever losses that it may incur, in case of any of the following events (each a Chargeback Event) occurs:
- i. The Cardholder disputes the nature, quality, use or fitness of the goods sold and/or services rendered under the Card Transaction, or alleges that the **MERCHANT** has breached the terms of the contract of sale or service entered into between the **MERCHANT** and the Cardholder or any representation or warranty made by the **MERCHANT** to the Cardholder;
 - ii. The Cardholder disputes or denies that the Card Transaction was effected by him or the contract of sale or service with the **MERCHANT** was entered into by him or delivery of the goods sold and/or performance of the services rendered under the Card Transaction was received by him. **METROBANK** shall refer to the **MERCHANT** all transaction/s disputed by the Cardholder and **MERCHANT** undertakes to resolve the dispute with the Cardholder within five (5) business days upon receipt of advice from **METROBANK**. Disputed transaction(s) which the **MERCHANT** has failed to resolve within the aforesaid period shall be automatically charged back by **METROBANK** to the **MERCHANT**;
 - iii. The contract of sale or service entered into between the **MERCHANT** and the Cardholder in relation to the goods and/or services rendered under the Card Transaction is illegal, contrary to law, public order, public policy, public morals, good customs, and those transactions that are inexistent and void from the beginning under Article 1409 of the Civil Code of the Philippines;
 - iv. Payment in relation to the Card Transaction has been mistakenly or wrongly made by **METROBANK** or the Cardholder to the **MERCHANT**;
 - v. No authorization and/or authorization code numbers were sought by and/or granted to the **MERCHANT** for the Card Transaction as required under this Agreement;
 - vi. The Credit Card used for the Card Transaction is not a valid Credit Card and/or has been listed in any warning bulletin;
 - vii. The Cardholder alleges that the Transaction Draft or Charge Slips has been drawn or altered without his consent or authority;
 - viii. The Transaction Draft / Charge Slips is not signed by the Cardholder or any part of it is illegible;
 - ix. The copy of any Transaction Draft/Charge Slips or any document required to be signed by the Cardholder in relation to any Card Transaction presented to **METROBANK** or retained by the **MERCHANT** is not identical to the copy of the same as given to the Cardholder;
 - x. The **MERCHANT** does not furnish **METROBANK** the original copy of the Transaction Draft/Charge Slip or a copy of it, invoice or other document or record relating to the Card Transaction forthwith upon request of **METROBANK**;
 - xi. The **MERCHANT** does not comply with any of its obligations or the requirements under this agreement in relation to any Card Transaction or any security measures or guidelines relating to this agreement issued by **METROBANK**;
 - xii. There has been a breach by the **MERCHANT** of any other of its obligations under this agreement not specified herein, or of any other agreement entered into between the **MERCHANT** and **METROBANK** or of any other obligation whatsoever owed by the **MERCHANT** to **METROBANK**, whether or not related to this Agreement;
 - xiii. The **MERCHANT** processed the same Card Transaction more than once; or
 - xiv. The occurrence of fraud and other similar events determined by **METROBANK**, Visa International, MasterCard International or any other issuer of any Credit Card and notified by **METROBANK** as a Chargeback Event.
- In cases of disputed transactions processed as CNP, chargeback will be effected without notice of confirmation from **METROBANK**.
- b. If any of the foregoing Chargeback Event occurs, **METROBANK** has the right not to accept the transactions and chargeback such to the **MERCHANT** via a Chargeback Advice.
- c. The amount corresponding to the Chargeback ("Chargeback Amount") shall first be applied by **METROBANK** against the future billings of the **MERCHANT**. If no sum or payment is due to the **MERCHANT** that will allow **METROBANK** to deduct/set-off the Chargeback Amount, **METROBANK** shall seek reimbursement from the **MERCHANT** of the Chargeback Amount, upon which the **MERCHANT** shall reimburse **METROBANK** immediately upon receipt of a demand. If despite receipt of such demand, **MERCHANT** fails to reimburse **METROBANK**, **MERCHANT** hereby expressly authorizes **METROBANK** to deduct the Chargeback Amount due without need of demand or any further act or deed, against any money, securities and things of value which are now or may hereinafter be in the possession of **METROBANK** or any of its subsidiaries and affiliates.
- d. **METROBANK** shall also enjoy and exercise preferential lien on the stocks, inventories, properties, banks accounts and all other forms of monetary deposits and investments of the **MERCHANT**. Accordingly, upon failure of the **MERCHANT** to reimburse **METROBANK** for any duly paid Transaction Draft or Sales Slip, whether arising from a Chargeback Advice or such other amount due to **METROBANK** under this Agreement, **METROBANK** is fully authorized and empowered by the **MERCHANT** as its attorney-in-fact to take possession of the **MERCHANT's** stock inventories and properties, to forthwith sell the same at public auction or private sale, and to apply the proceeds thereof in payment of the **MERCHANT's** unpaid obligations and expenses of sale; Provided, however, that any excess shall be turned over to the **MERCHANT**.

11. COUNTERFEIT CARDS / FRAUD

- a. Where the **MERCHANT** receives a Credit Card or BancNet Card which it believes or suspects may be counterfeit or stolen or otherwise belonging to a person other than the one purporting to be the Cardholder, the **MERCHANT** shall, without at any time informing the Cardholder or the purported Cardholder or arousing suspicion, immediately inform **METROBANK** by calling **METROBANK** Authorization at the telephone numbers notified to the **MERCHANT** by **METROBANK** for such purpose and comply with the instructions given by **METROBANK**.
- b. In the event that the **MERCHANT** is instructed to retain a Credit Card or BancNet Card for any reason, the **MERCHANT** shall exert its best effort to do the same as discreetly as possible. The **MERCHANT** shall, at **METROBANK's** request, furnish to **METROBANK** full particulars of the circumstances surrounding the retention of such Credit Card or BancNet Card. In the event that **MERCHANT** is unable to retain a Credit Card or BancNet Card, the **MERCHANT** shall exert reasonable efforts to furnish **METROBANK** with the following information: Name of Cardholder, Card Account Number and Card Expiry date of the Card.
- c. The **MERCHANT** shall not process a Card Transaction that it knows or ought to have known to be fraudulent or not authorized by the Cardholder nor present payment any record in respect of any such transaction. The **MERCHANT** shall be responsible for the action of its employees while acting in its employ or of its agents while acting in its behalf. Should the **MERCHANT** or any of its employees, agents or partners be found, after due investigation, to have violated this provision or directly or indirectly participated in the processing, payment, or facilitated the crediting or release of payment, of any transaction involving credit cards or access device that are fraudulent, unauthorized or counterfeit, all of them shall be liable under existing criminal, civil or administrative laws, and to pay **METROBANK** the total amount represented by the fraudulent or unauthorized transaction(s), penalties and fees imposed by the Credit Card schemes, plus damages.
- d. Nothing in this Section or any instructions given to the **MERCHANT** under letter shall be taken to imply that the **MERCHANT** is authorized by **METROBANK** to breach the peace or injure any person or property, or make any defamatory statements or act illegally or unlawfully in any way, and **METROBANK** shall not be liable for any such deed, act or conduct on the part of the **MERCHANT**, its employees and its representatives.
- e. The approval codes given to the **MERCHANT** does not guarantee that it will be paid, in case fraudulent transactions are found to be consummated in the POS terminal of the **MERCHANT** or through other means, **METROBANK** may opt to suspend the operation of the POS Terminal pending further investigation.

12. MERCHANT MATERIALS/SUPPLIES

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

13. POINT-OF-SALE (POS) TERMINAL

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

14. CONFIDENTIALITY

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

MERCHANT shall not retain documents with card information, name and other sensitive data after the lapse of eighteen (18) months from transaction date. After the said retention period, **MERCHANT** shall immediately turnover the aforesaid documents to **METROBANK**, without need of any demand from **METROBANK**. In the conduct of its review of the records of **MERCHANT** pursuant to Section 19 herein, if there are above-mentioned documents which should have been turned-over to **METROBANK** but **MERCHANT** failed to do so, such breach may be a ground for termination of this Agreement by **METROBANK**.

15. ACCOUNT SECURITY AND DATA PRIVACY

- a. Should storage of customer information be required by the **MERCHANT** for business, legal, and/or regulatory purposes, the **MERCHANT** should only store such specific information as is expressly required and should establish a data retention and disposal

policy and procedure. For this purpose, the **MERCHANT** should provide **METROBANK** a copy of the policy, instructions, ruling for the storage of customer information.

- b. The **MERCHANT** shall securely safe keep the merchant copy of the sales slips and limit access only to authorized personnel.
- c. Under no circumstances shall the **MERCHANT** store sensitive card authentication data prior to, during, or subsequent to authorization, even if such sensitive card authentication data is encrypted. Sensitive card authentication data shall include:
 - i. any data from the magnetic stripe or chip;
 - ii. the card validation code which is the three digit code found at the back of the card such as the CV2 and CVC2; and
 - iii. the Personal Identification Number, or PIN.
- d. The **MERCHANT** undertakes to strictly abide by the rules and procedures of BancNet, Visa and MasterCard, including but not limited to the rules on prohibition of Sale or Exchange of Information under Rule 5.12.1 of the MasterCard Rules.
- e. Furthermore, in order to ensure compliance to Payment Card Industry Data Security Standards (PCI DSS) as mandated by Visa and MasterCard, **MERCHANT** is therefore required to submit to **METROBANK** fully accomplished Attestation of Compliance (AOC) and Self-Assessment Questionnaire (SAQ), as applicable, as part of the accreditation process and on an annual basis thereafter. Non-submission of annual attestation by **MERCHANT** would imply presumption of PCI DSS compliance and will be subjected to penalties or fines if found otherwise. The most recent PCI DSS information and documentation are available on their website at <https://www.pcisecuritystandards.org>.
- f. **MERCHANT** acknowledges that both the **MERCHANT** and **METROBANK** are covered by Republic Act No. 10173 ("The Data Privacy Act of 2012") and its implementing rules and regulations, pursuant to which **MERCHANT** is required to strictly observe and protect the privacy the "Personal Data" of **METROBANK's** clients or prospective clients. Therefore, the **MERCHANT** shall:
 - 1. Protect and keep confidential all Personal Data of **METROBANK** Cardholders, prospective cardholders or other individuals about whom **METROBANK** has collected or disclosed by **METROBANK** or otherwise obtained by the **MERCHANT** in the performance of its duties under this Agreement. For the avoidance of doubt, Personal Data shall have the same meaning as the term "personal information" is defined in the Data Privacy Act, and applicable regulations. During the term of the Agreement, the **MERCHANT** shall keep and use these Personal Data only to the limited extent necessary to perform its obligations under this Agreement; and
 - 2. The **MERCHANT** shall ensure that its personnel shall not attempt to access, or allow access to, any **METROBANK** Data that they are not permitted to access under this Agreement.
- g. The **MERCHANT** hereby expressly authorizes **METROBANK** to share the Personal Data or other information generated by the POS or EDC to the regulatory bodies (e.g. the BSP, BIR, SEC, etc.), judicial bodies, third-party entities tasked to provide consumer credit reporting or reference schemes, the appropriate government agencies, including but not limited to The National Privacy Commission under Republic Act No. 10173, Credit Information Corporation pursuant to R.A. 9510 (the "Credit Information Act of 2008"), etc. and third parties with whom **METROBANK** may reasonably share such information, wherever situated, for references, referrals, cross selling, data processing and storage, anti-money laundering monitoring, credit review and reporting, statistical and risk analysis purposes.

16. COMPLIANCE WITH LAWS

- a. The **MERCHANT** agrees that it will comply with all applicable national, and local laws, ordinances, regulations and codes in the performance of its obligations under this Agreement, including but not limited to the procurement of permits, licenses and certificates where required, employment and labor laws and payment of applicable taxes.
- b. The **MERCHANT** adheres to the information security standard set forth by the Payment Card Industry Data Security Standards (PCIDSS) pursuant to Bangko Sentral ng Pilipinas (BSP) Memorandum No. M - 2009-019, complies with the Anti-Money Laundering rules and regulations mandated primarily by BSP Circular No. 706, series of 2011, and The Manual of Regulations for Banks, if applicable, and shall abide by and comply with the requirements and procedures on collection, processing and handling of personal information specifically enumerated under Republic Act 10173, otherwise known as the Data Privacy Act of 2012, if any.
- c. The **MERCHANT** further agrees to hold harmless and indemnify **METROBANK** or the appropriate subsidiary or affiliate against any loss or damage, to include reasonable attorney's fees that may be sustained by reason of the failure of the **MERCHANT** to comply with such laws, ordinances, regulations and codes.

17. LOYALTY/PROMOTIONAL PROGRAM

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

18. SUSPENSION OF OPERATION AND CHANGE OF OWNERSHIP

The **MERCHANT** shall notify **METROBANK** in writing, thirty (30) calendar days in advance, in the event that the **MERCHANT** decides to stop operating its business or should there be a change of ownership.

19. RIGHT OF INSPECTION

- a. Upon prior notice, **METROBANK** reserves the right to send its representatives to visit and enter the premises of the **MERCHANT** at reasonable time and subject to the **MERCHANT's** security measures, to inspect its records, finances, properties and operation.
- b. The **MERCHANT** shall take the necessary corrective measures to comply with the findings and recommendations of the internal/external auditors of **METROBANK** or its own auditors.
- c. **METROBANK** reserves the right to request documents from the **MERCHANT** from time to time to comply with the requirements of various government and regulatory agencies.

- d. If there are findings including but not limited to non-submission of requested document as aforementioned the preceding paragraph, and no corrective action was taken after the next visit, unless said finding may be due not to the fault of the **MERCHANT**, operations of the POS terminal on said **MERCHANT** shall be suspended until such time that corrective actions have been taken.

20. REVIEW

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

21. LIABILITY CLAUSE

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

METROBANK shall not be liable in any way to the **MERCHANT** for any claims, liabilities, expenses, costs, loss or damage of whatever nature brought against, suffered or incurred by or caused to the **MERCHANT** due to or arising out of or in connection with this Agreement, including, without prejudice to the generality of the foregoing:

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

Furthermore, in case of unauthorized storage of sensitive Credit Card information, or sensitive card authentication data, as the case may be, or failure of the **MERCHANT** to abide with the provisions of Section 15 (Account Security and Data Privacy) which would result to monetary claims or damages, or the imposition of fines and/or penalties against **METROBANK**, the **MERCHANT** shall indemnify **METROBANK** in full the corresponding monetary claims or damages, or fines and/or penalties imposed.

22. TAXATION

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

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

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

23. TERMINATION OF AGREEMENT

- a. **METROBANK** reserves the right to unilaterally terminate this Agreement without prior notice to the **MERCHANT** and without giving the reason, in case the **MERCHANT**, as solely determined by **METROBANK**, has committed acts prejudicial to the interest of **METROBANK** or if any of the terms and conditions contained herein is violated or when **METROBANK**, at its sole discretion,

deems necessary for reasons including, but not limited to, fraud or counterfeit card transactions, excessive Chargeback or if the **MERCHANT** has breached the fraud threshold imposed by **METROBANK** or by **VISA, MASTERCARD, JCB** and **UNION PAY**.

- b. In the event that the **MERCHANT** shall decide to dispose of or discontinue its business, **METROBANK** shall be given at least thirty (30) days prior written notice.
- c. In the event of termination, the **MERCHANT** shall return to **METROBANK** all materials pertaining to the **METROBANK** program, including but not limited to **METROBANK** POS terminal (which shall be in good working order and condition), Transaction Draft, Charge Slips and Sale Summary Sheet and promotional materials and shall remove all decals and signs from the premises immediately. The **MERCHANT** shall provide full cooperation and support to **METROBANK**, including the transition assistance in order to assure an orderly and efficient turnover of the said materials.
- d. This Agreement shall remain in force upon signing hereof and terminated by either party for any reason provided notice in writing shall be sent to other party thirty (30) days prior to the efficacy.

24. NOTICES

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

25. GOVERNING LAW

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

26. VENUE OF ACTION

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

27. SEPARABILITY CLAUSES

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

28. AMENDMENTS AND REVISIONS

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

29. ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, the parties herein have hereunto signed these presents by their respective authorized signatories on the date and place first above-written.

METROPOLITAN BANK & TRUST COMPANY

By:

By:

Merchant Name

Harrison C. Gue

Head of Operations – Cards and Personal Credit Sector

Printed Name and Signature

Job Title

Jose Caesar B. Plofino

Head of Acquiring Business – Cards and Personal Credit Sector

Signed in the presence of:

ACKNOWLEDGMENT

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

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

NAME	ID Type and Number	Date Issued	Place Issued
Metrobank	TIN: 000-477-863-000		
Harrison C. Gue	SSS# 03-8597503-8		
Jose Caesar B. Plofino	SSS # 02-1042247-8		

made known to me to be the same person/s who executed the foregoing instrument and acknowledged to me that the same is his free and voluntary act and deed and of the principal he represents.

This document refers to the Merchant Agreement executed by and between METROBANK and _____ of _____ (____) pages signed by the above-named.

WITNESS MY HAND AND SEAL this _____ day of _____ 20__ in Makati City.

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

ACKNOWLEDGMENT

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

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

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