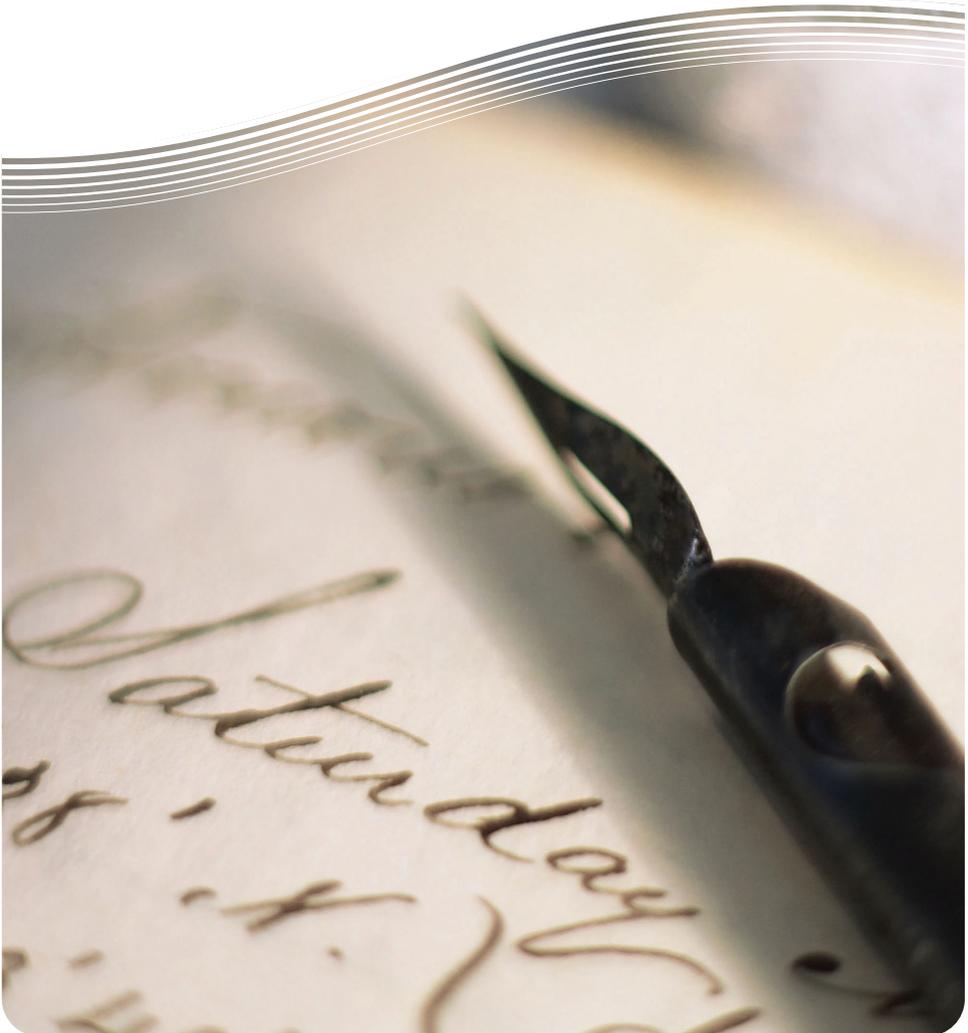


ADIB
Merchant Services



أبوظبي الإسلامي
خدمات أنظمة المدفوعات

ADIB Merchant Acquiring Business Terms and Conditions



ADIB Merchant Acquiring – T&Cs V3 Dec 2016

1. DEFINITIONS

In these Terms and Conditions the following expressions will, unless the context otherwise requires, have the following meanings:

“Acquirer” means ADIB in its capacity as the Islamic financial institution that contracts with Merchant to accept Cards for payment of Goods and/Services.

“ADIB” means Islamic financial institution incorporated under the laws of United Arab Emirates and having its registered office at P.O. Box 313, Abu Dhabi, UAE provides various Shari’a compliant banking products and services.

“ADIMAC” means a Shari’a compliant service provider to ADIB in relation to ADIB Services or other services as determined by ADIB and has its registered address at 601/602 Al Jazeera 1, Qanat al Qasba, Sharjah, UAE and which is a subsidiary of ADIB.

“ADIB Materials” means all Equipment, software and any other information provided by ADIB to the Merchant in the course of providing the ADIB Services.

“ADIB Services” means collectively the Payment Transactions, the DCC Services (as relevant) and its related services as provided by ADIB through ADIMAC to the Merchant as described in Merchant Application, e-commerce or any other such services related to Payment Transaction.

“Authorization” means the electronic process by which a Payment Transaction is transmitted for approval, referral or decline by ADIB, Issuer or any Card Association.

“Authorization Center” means the center dedicated by ADIB to process Payment Transactions which operates 24 hours 7 days a week.

“Bank Account” means the bank account opened and held by the Merchant as described in the Merchant Application.

“Best Practice Guide” means the operation guide available on each individual Card Association official website which contains the necessary instructions, rules and regulations in connection to each Card Association as may be amended from time to time at the sole discretion of each of the Card Association.

“Business Day” means every day except Fridays, Saturdays and public holidays in the Territory.

“Card(s)” means an integrated-circuit card and/or magnetic stripe credit, debit or covered card which has a CVV (Card Verification Value) number either at the front or back of the Card issued to a Cardholder by an Issuer which shall include any subsequently issued, renewed or replaced card (or account number issued by an Issuer) which can be used to purchase Goods and/or Services at Merchants.

“Card Association” means any Card licensing company which has granted a POS Acquiring License to ADIB, which shall include but not be limited to one or more of the following: Visa,

MasterCard, Diners, American Express, JCB and CUP (China Union Pay) and "Card Associations" shall be construed accordingly.

"Cardholder" means a person who has opened a Card account with any Issuer and includes any person whose name is embossed on the Card and authorized to use the Card.

"Card Verification Value code" means CVV, (CVV2 for Visa, CVC2 for MasterCard and CID for AMEX) and is the three or four digit number located either on the front or back of a Card.

"Chargeback" means a Payment Transaction that an Issuer returns to the Acquirer which is disputed by Cardholder or the Issuer.

"Chargeback Window" means the permissible period between a Payment Transaction and the date of a dispute raised by the Cardholder or the Issuer as defined by the Card Association rules.

"Consents" means all approvals, consents, licenses, permissions and authorizations required from any person which are, from time to time, necessary in relation to the activities contemplated by the Merchant Agreement.

"Contactless Payment Transaction" means credit cards, debit cards, covered cards, charge cards, key fobs, smart cards and any devices including but not limited to smart phones, using radio frequency identification ("RFID") or near field communications ("NFC") for making secure payments.

"DCC Services" means dynamic currency conversion services more particularly described in clause 13 of these Terms and Conditions.

"DCC Services Participation Payment" means the percentage discount to be made by the Merchant to ADIB as more particularly set out in the Merchant Application.

"Double-Swipe" means the act of a merchant completing a second swipe of a payment the Card at ECR after the Card has been used to obtain Authorization from the Card Issuer.

"E-Commerce Services" means providing Merchants with the capability to participate in transactions on the internet as part of an e-commerce gateway.

"e-Vouchers" means pre-paid vouchers purchased by Customers from Merchants which may be used to recharge pre-paid mobile phones from the relevant mobile service providers in the Territory.

"Equipment" means the hardware and software which are to be provided by ADIB to the Merchant as part of the ADIB Services including but not limited to the Manual Imprinter, the POS Terminal, the PIN Pads, the software programs and any and all accessories and connections and peripherals thereto.

"EMV Card" means issued as per standards of EMV Co, a global standard for inter-operation of integrated circuit (IC) cards and IC card capable point of sale (POS) terminals and automated teller machines (ATMs), for authenticating payment card transactions.

“Fees” mean all actual fees, costs, expenses, levies or taxes charged in connection with the ADIB Services as agreed upon in the Merchant Application form and the pricing sheet or as otherwise stipulated in these Terms and Conditions.

“Floor Limit” means the maximum value permitted for the Merchant to accept for a single Payment Transaction without obtaining Authorization.

“Force Majeure Event” means any act of God including fire, flood, earthquake, wind storm or other natural disaster; act of any sovereign including terrorist attacks, war, invasion, act of foreign enemies, hostilities, labor dispute including strike, lockout or boycott; act of or failure to act by any Card Association; interruption or failure of utility service including electric power, gas, water or telephone service; acts or failure to act on rulings of administrative boards, government authorities or any other cause beyond the reasonable control of either Party but shall not include causes related to the Parties.

“Foreign Transactions” has the meaning as set out at clause 12.1 of these Terms and Conditions.

“Goods and/or Services” means only Shari’ah compliant Goods and/or Services as determined by ADIB Fatwa and Shari’a Supervisory Board. The word Goods and/or Services under this Merchant Agreement shall be read either conjunctively or disjunctively as the context required.

“Intellectual Property Rights” means all patents, inventions, know how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database rights and design rights, trademarks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing off.

“Issuer” means a bank, financial institution or other company which issued the Card to the Cardholder with the prior approval/permission of the respective Card Association.

“Laws” means any decree, ministerial decision, statute, statutory instrument, law, proclamation, order, implementing regulation, regulation, resolution, notice, ruling by a court, by-law, directive, treaty or other instrument or requirement having the force of law.

“Magnetic Stripe Reader” means cardholder swipe the card thru POS Terminal Card reader the Cardholder swiping the Card through POS Terminal Card reader.

“Manual Imprinter” means the device supplied to the Merchant by ADIB to produce an imprint of the embossed characters of the Card on all copies of the Manual Sale Draft.

“Manual Sale Draft” means a clear sale record (in the form provided by ADIB) used to obtain the Card imprint from a manual Imprinter.

“Merchant” means a Shari’a compliant legal entity as specified in the Merchant Application as

the same legal entity as specified in the Trade License issued by the relevant authority and which has executed the Merchant Agreement.

"Merchant Application" means an application form executed by the Merchant to request ADIB Services and shall form as integral part of the Merchant Agreement.

"Merchant Agreement" means the Merchant Application, Pricing Sheet, these Terms and Conditions, the Best Practice Guide and each addendum made thereto.

"Merchant Transaction" means a Shari'a compliant transaction made by the Merchant to complete a Payment Transaction following a Pre-Authorization.

"Notices" shall have the meaning as set out in clause 9.1 of the Merchant Application.

"Party" means the Merchant or ADIB, as the context requires, and "Parties" shall mean both Merchant and ADIB.

"Pre-Authorization" means an electronic or voice process used by the Merchant to block or freeze certain funds on the Card for subsequent Payment Transaction.

"POS Record" means the printed receipt produced on POS Terminal recording an approved, referral or declined Payment Transaction.

"POS Terminal" means the Manual Imprinter, electronic point of sale device or E-Commerce Services through which Cardholders are able to purchase Goods and/or Services from Merchants using a Card.

"Payment Client" shall have the meaning as set out in clause 7.2.1 of these Terms and Conditions.

"Payment Transaction" means an authorized Shari'a compliant transaction made by the Cardholder using the Card to pay for Goods and/or Services supplied by the Merchant.

"PIN Pad" means the device to be used in conjunction with a POS terminal which enables the Cardholder to enter a Personal Identification Number.

"Pricing Sheet" means the pricing sheet attached to the Merchant Application as may be amended from time to time.

"PFI" means PCI forensic investigator.

"QPS" or "Quick Payment Services" means a program developed and provided by one of Card Association (MasterCard) for facilitating payment acceptance at the POS Terminal.

"Recovery Bulletin" means a bulletin issued and updated by Card Association from time to time and which includes details of Cards which shall be recovered from their holders as result of being lost, stolen, forged or otherwise illegally held.

"Refund Voucher" means a credit note issued by ADIB confirming refund of the actual Payment Transaction to the Bank Account.

"Representatives" means, in relation to the Merchant, its officers, directors, employees or owners who are authorized to act for and on behalf of the Merchant.

“Sale/Payment Proceeds” means any and all funds resulting from the completion and settlement of any Payment Transaction.

“Shari’a” means the general rules and principles of Islamic Shari’a as determined by the Fatwa and Shari’a Supervisory Board of ADIB.

“Term” shall have the meaning as set out in Merchant Application.

“Terms and Conditions” means these terms and conditions (as to be amended from time to time) and its annexure (if any) as attached to the Merchant Application and shall form an integral part of the Merchant Agreement.

“Territory” means the United Arab Emirates (UAE).

“Third Party” means any person or entity which is not a Party to this Merchant Agreement, and the term “Third Parties” shall be construed accordingly.

“VEPS” or **“Visa Easy Payment Service”** means a program developed and provided one of Card Association (Visa) for a faster and easier payment process.

2. TERM

This Merchant Agreement (the “Agreement”) will commence on the signing date of this Agreement and continue until terminated in accordance with clause 2.1 (Termination).

2.1 Termination

- (a) The Merchant will enter into the Agreement exclusively with ADIB for 36 months thereafter either Party may terminate the Agreement with or without any cause by providing the other Party 30 calendar days’ prior written notice of termination.
- (b) Without prejudice to other rights, ADIB shall have the right to terminate the Agreement by written notice to the Merchant and to retrieve the Equipment. In addition, ADIB shall have the right to retrieve all equipment and to claim for any resulting actual losses or expenses if:
 - (i) Merchant commits a breach of a material condition of the Agreement and fails to remedy the breach within fifteen (15) days of a written notice from ADIB
 - (ii) Merchant commits any act which in the opinion of ADIB is considered as an act of deception, scam, dishonesty, fraud, wilful misrepresentation or an act that would result in significant losses or damages to ADIB;
 - (iii) Merchant ceases operations, commits an act of bankruptcy, is adjudicated bankrupt, enters into liquidation (whether compulsory or voluntary) other than for the purpose of an amalgamation or reconstruction, makes an arrangement with its creditors, petitions for an administration order, has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts.

3. SERVICES

Upon execution of the Merchant Agreement, the Merchant acknowledges and agrees to use ADIB Services in accordance with the Terms and Conditions of the Merchant Agreement.

4. CARDS

4.1 Unless otherwise notified by ADIB, the Merchant shall accept the Card types set out in Merchant Application as the payment method for the Payment Transactions:

4.2 Merchant agrees to display, announce or inform its customers of its acceptance (subject to the rules and regulations of the acceptance) of the Cards as the payment method for the sale of its Goods and/or Services.

4.3 Merchant agrees to display in its premises (including on its website) suitable signs and information to indicate its acceptance of the Cards.

4.4 Merchant shall and hereby undertakes, not to use the Cards which are:

4.4.1 expired at the time of presentation;

4.4.2 recoverable according to the Recovery Bulletin or pursuant to information earlier provided by ADIB;

4.4.3 presented by a person who is not the Cardholder;

4.4.4 reasonably believe the Cards are forged, counterfeit, altered or otherwise damaged; or

4.4.5 in violation of any applicable Laws.

5. EQUIPMENT

5.1 ADIB hereby grants to the Merchant during the Term of this Merchant Agreement a non-exclusive, non-transferable licence in the Territory to use ADIB Materials and any Intellectual Property Rights in the ADIB Materials, for the limited purpose of receiving the ADIB Services.

5.2 Merchant acknowledges and agrees that all Intellectual Property Rights which subsist in the ADIB Materials now or in the future vest solely in ADIB and save to the extent expressly set out in clause 5.1, Merchant does not have, nor shall it acquire under this Merchant Agreement, any right, title or interest in any Intellectual Property Rights which subsist in ADIB Materials now or in the future.

5.3 ADIB shall install the Equipment at such points in the Merchant premises or as otherwise agreed upon between the Parties.

5.4 Merchant hereby acknowledges and agrees that the Equipment will be exclusively maintained and serviced by ADIB and its duly authorized agents and subcontractors, and the Merchant hereby grants ADIB, its agents and subcontractors unrestricted access to the Equipment during normal working hours for the purpose of maintenance, replacement or any other reason as required by ADIB in order to provide ADIB Services.

- 5.5** Merchant agrees that it shall not, at any time or under any circumstances move, alter, adjust or in any manner tamper with the Equipment without written permission of ADIB.
- 5.6** Merchant shall ensure that the Equipment shall at all times be operated;
- 5.6.1** solely by its Representatives; and
 - 5.6.2** in accordance with the Best Practice Guide or any other operations manual that may be provided by ADIB.
- 5.7** Merchant shall ensure the Equipment is kept in good working condition and shall be responsible for any damage to the Equipment caused by anything other than a natural deterioration in the course of its use in accordance with the terms of this Merchant Agreement.
- 5.8** Merchant shall ensure its Representatives are well trained, no criminal records and enrolled in the necessary training programs provided by ADIB to enable them to operate the Equipment and ADIB hereby reserves the right to refuse to authorize any Representative of the Merchant if, in the sole opinion of ADIB such individual is not capable of operating the Equipment.
- 5.9** If any of the Equipment sustains any error or malfunction, the Merchant shall immediately notify ADIB on its 24 hours service line and ADIB will, upon such notification, arrange for the necessary repair or replacement of the relevant Equipment, provided that such error or malfunction was not caused by the misuse or abuse of the Equipment or the negligence in the operation of the Equipment on the part of the Representatives.

6. PAYMENT TRANSACTION

- 6.1** Merchant shall accept the Cards in making Payment Transactions in connection to the sale of all Goods and/or Services offered by the Merchant without any differentiation and in strict adherence to this Merchant Agreement.
- 6.2** No Payment Transaction shall be made other than for the Goods and/or Services defined above under these Terms and Conditions and in accordance with the course of its licensed business, Shari'a and the applicable Laws.
- 6.3** Notwithstanding the requirement of observing the permitted Floor Limit, Merchant shall accept Payment Transaction irrespective of its value. Merchant shall not announce or pre-set any rule to accept minimum or maximum value for a Payment Transaction.
- 6.4** Those transactions which are not Contactless Payment Transaction, Merchant shall ensure to have the Card inserted or swiped into the POS Terminal. In case of EMV Card the Merchant must insert the EMV Card into the POS Terminal and - if prompted - shall request the Cardholder to enter the PIN (Personal Identification Number). Merchant accepts full liability for, and hereby agrees to indemnify ADIB for any actual losses or expenses incurred or sustained in connection to any dispute arising out of any Payment Transaction for which an Authorization was made on Card not physically presented to the Merchant.
- 6.5** It is understood that if a Payment Transaction is initiated using the Card which is issued by Issuer outside the Territory for an amount of AED 2,000 or more, the Merchant shall use its

best endeavour to verify the identity of the Cardholder, record details of the identification document on the POS Record/Manual Sale Draft, obtain a photo copy of such documents and retain such documents for presentation to ADIB upon demand.

- 6.6** Merchant shall not split i.e. divide a sales invoice into multiple smaller transaction invoices for the cost of Goods and/or Services, a Payment Transaction by initiating multiple Authorizations at any given time. Merchant hereby acknowledges that splitting a Payment Transaction into multiple Authorizations may result in Issuer's rejection of any or all Payment Transactions made and ADIB shall be entitled to debit the exact values of the rejected Payments Transactions plus all actual expenses related thereto against any future Sales/ Payment Proceeds.
- 6.7** All details of Payment Transaction shall be made available to ADIB within maximum seven (7) days from ADIB request.
- 6.8** The value of Payment Transaction shall be reduced in accordance with any discount that is offered on sale of Goods and/or Services by Merchant. If offered, Merchant agrees to apply discount to the value of Payment Transaction made in relation to Goods and/or Services sold on discount basis.
- 6.9** Merchant shall not accept Payment Transaction, which is made:
- 6.9.1** by the Representative;
 - 6.9.2** to advance cash to the Cardholder (unless specifically authorized by ADIB);
 - 6.9.3** to refinance a debt of the Merchant, Representative or any Cardholder;
 - 6.9.4** to debit any additional charge, surcharge, bank charge or any other charge which is non-related or considered as additional commission in connection to accepting Cards as payment method or;
 - 6.9.5** for Goods which are not sold or for Services which are not rendered for the Cardholder or upon its request.
- 6.10** No Payment Transaction shall be made before the Merchant:
- 6.10.1** verifies the format of the logo appearing on the Card with the approved format authorized by the relevant Card Associations as provided by ADIB;
 - 6.10.2** verifies the validity date on the Card;
 - 6.10.3** verifies the identity of the Cardholder
 - 6.10.4** uses reasonable effort to verify the signature of the Cardholder on the back of the Card to ensure there is no forged signature or any fraudulent act; and
 - 6.10.5** obtains an Authorization.
- 6.11** For the purpose of this clause, it is agreed that if Merchant is not certain of the nature of the Card, the identity of the Cardholder or is unable to verify the validity of the Card, Merchant shall immediately contact the Authorization Center for verification. If no sufficient information on the verification is provided, Merchant shall then cease to complete the Payment Transaction and shall use as reasonable means to recover the Card from the Cardholder and to promptly send the same to ADIB.
- 6.12** All Payment Transactions shall be processed for Authorization using the Equipment and in the

manner prescribed in the Best Practice Guide. It is agreed that no Payment Transaction will be approved, accepted or processed by ADIB and no Sale and Payment Proceeds may be deposited to the Bank Account if Payment Transaction is not processed through the Equipment or if processed by virtue of using third party point of sale, manual imprinter or otherwise.

- 6.13** In the event where an Authorization attempt generates messages such as “decline”, “pick up” or “referral”, the Merchant shall immediately obtain Authorization through the Authorization Center. If the Authorization Center approves the Payment Transaction, the Merchant shall then use the same Authorization code that will be given by the Authorization Center to complete the Payment Transaction otherwise the Merchant shall comply with the Authorization Center instructions if the Payment Transaction is declined.
- 6.14** When processing a Payment Transaction, Merchant shall strictly adhere to these Terms and Conditions as well as the guidelines set out in the Best Practice Guide as updated and notified to the Merchant from time to time.
- 6.15** Any incorrect Payment Transaction done by the Merchant that requires giving credit to the Cardholder shall be sent to ADIB to initiate a sale reversal. If as a result of such incorrect Payment Transaction any losses or expenses are incurred by ADIB, the actual losses or expenses shall be debited to the future Sales/Payment Proceeds.
- 6.16** In addition to clause 6.15 above, in case of any cancellation or return of the Goods and/or Services by the Cardholder who purchased such Goods and/or Services with the Card from the Merchant, the Merchant shall use the Card originally presented as the mode of refund for such cancelled or returned Goods and/or Services. In exceptional circumstances the Merchant may use any other authorised mode of acceptance as advised by ADIB

7. RECOVERY OF CARDS

The Merchant will use its best efforts to recover and retain any Card for which the Merchant receives notifications of cancellation, restrictions, theft, lost, stolen, pickup or counterfeiting. This notice may be given electronically through the Equipment or by Authorization Centre by any means acceptable by ADIB. Further the Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen. Such recovered Cards shall immediately be sent to r ADIB with POS Sales slip indicating response as pickup.

8. OPERATION

To the extent applicable for its business, the Merchant agrees to abide by the following obligations with respect to initiating and processing the Payment Transactions:

8.1 Commercial Services:

- 8.1.1** If Payment Transaction is not to be made at the time of contracting for services, Merchant shall request Pre-Authorization to withhold the necessary funds on the Card to cover the anticipated services.
- 8.1.2** For the purpose of Pre-Authorization, Merchant shall estimate the value of the Payment

Transaction which would be concluded for the entire services to be rendered on the basis of the following:

8.1.2.1 type and duration of the Merchant services as may be anticipated at the time of contracting; and

8.1.2.2 the estimated pricing for such services during the intended period.

8.1.3 Merchant shall insert or swipe the Card through the Magnetic Stripe Reader of the POS terminal if enabled, to obtain the required Pre Authorization. In case of an EMV Card the Merchant may insert the EMV Card into the POS Terminal and, if prompted, shall request the Cardholder to enter the PIN.

8.1.4 Merchant shall inform the Cardholder of the amount for which the Pre-Authorization was obtained at the time of contracting and the Merchant shall record the date, the amount and the Pre-Authorization approval code received or obtained on the POS Record or Manual Sale Draft as the case may be.

8.1.5 At the completion of its services, and in order for the Merchant to complete a Payment Transaction on the basis of the earlier Pre-Authorization, the Merchant shall process a Merchant Transaction for value not exceeding fifteen (15%) percent of the funds booked through Pre-Authorization. The approval code entered by the Merchant for Merchant Transaction must be the same as the one obtained in the Pre Authorization.

8.1.6 Merchant shall not alter the term of its services or the underlying agreement with the Cardholder without obtaining the consent of the Cardholder.

8.1.7 If necessary, the Merchant may obtain Pre-Authorizations for additional amounts (not cumulative of previous amounts) at any time during its services offering. It is understood that Pre-Authorization for additional funds may be necessary if the value of the services to be rendered exceeds or would exceed the sum of the funds Pre-Authorized by more than fifteen (15%) per cent.

8.1.8 No Payment Transaction shall be made for additional/excessive services or other ancillary charges unless such provision of charges are agreed by the Cardholder. For the purpose of these Terms and Conditions, additional charges shall be limited to only traffic fines, other traffic violations, room rentals, halal food, soft beverages, taxes, rental, takaful and fuel. The Merchant must not charge for damage or loss or theft of Goods and/or Services Merchant shall obtain from the Cardholder written acceptance to such additional charges at the time of completion of the services. Merchant shall process Payment Transactions for additional charges approved by the Cardholder within ninety (90) days from the date the services are completed. POS Record and/or Manual Sale Draft used as a result of Payment Transaction for additional services may not be accepted unless noted with statement advising Cardholder

consent is obtained such as: "SIGNATURE ON FILE" or otherwise.

8.1.9 Payment Transaction in relation to additional charges may, if approved by Cardholder, be presented within ninety (90) calendar days from the date of last Payment Transaction. The POS Record/Manual Sale Drafts for such additional charges may be deposited within described period above, without the Cardholder signature, provided that the Merchant has already obtained the Cardholder signature on the file, and the words "SIGNATURE ON FILE" are entered on the signature panel of the POS Record/Manual Sale Drafts.

8.1.10 Merchants engaging in vehicle rental services shall (if applicable):

8.1.10.1 retain for five (5) years : the signed vehicle lease agreement; the POS Record or the Manual Sale Draft; and the related traffic fines issued during the services;

8.1.10.2 not, unless agreed by the Cardholder, include charges representing vehicle takaful deductible/contributions, sum to cover potential damages when takaful coverage is waived at the time of renting the vehicle, traffic fines, taxes, maintenance cost, fuel compensation or other similar charges;

8.1.10.3 provide ADIB with a copy of the Merchant takaful policy, if the Cardholder pays a takaful deductible for damage;

8.1.10.4 provide ADIB with copy of an official accident report if the cost of repairing vehicle damage is to be charged to the Cardholder, along with an estimate by competent vehicle repair workshop and such other documents evidencing Cardholder consent to assume such charges.

8.1.10.5 shall contact the Cardholder to confirm if a delayed or amended charge for loss, theft or damage appears which is related to the same vehicle rented earlier by the Cardholder and will charge such actual amount to the Card only after Cardholder's confirmation and agreement to accept such charges.

8.1.11 Merchant engaging in hotel/accommodation services shall (if applicable):

8.1.11.1 retain for five (5) years: the guest registration forms signed by the Cardholder; the POS Record or the Manual Sale Draft; and all related documents issued during the services;

8.1.11.2 in the event the Cardholder does not "check in", to initiate a Payment Transaction for the cost of one night only, if any losses are incurred by ADIB in respect of such Payment Transaction, such actual losses shall be debited against any future Sales Proceeds.

8.1.12 Merchant engaging in halal restaurant/catering services shall not alter or amend the amount of tip agreed and written by the Cardholder.

8.2 Online Transactions:

8.2.1 Merchant shall install and maintain the software that connects the Merchant to payment gateway application through an information technology known as "Secure Socket Lay-

er”, which is provided, updated or otherwise revised by ADIB (“Payment Client”).

8.2.2 Merchant hereby acknowledges and agrees that Payment Client shall be used in the manner and according to the instructions provided in the Best Practice Guide or as otherwise communicated by ADIB from time to time.

8.2.3 Merchant shall choose an acquiring mode for accepting online Payment Transactions:

8.2.3.1 if 3Party SSL+ is used as an acquiring mode for accepting online Payment Transaction then Card details will not be disclosed to the Merchant as ADIB or its Payment Gateway Service providers will store and maintain such data; or

8.2.3.2 if 2Party (MOTO) is used, the Merchant accepts full responsibility for storing and protecting the Cards and the Cardholder Information as such details will be disclosed and available to the Merchant.

8.2.4 Merchant shall provide Cardholder a receipt with the following info:

8.2.4.1 Merchant name and online address;

8.2.4.2 Payment Transaction amount;

8.2.4.3 Payment Transaction currency;

8.2.4.4 Payment Transaction date and shipping date;

8.2.4.5 unique Payment Transaction ID;

8.2.4.6 authorization code;

8.2.4.7 description of services or merchandise;

8.2.4.8 suppressed Card number;

8.2.4.9 expected delivery date; and

7.2.4.10 delivery method.

8.2.5 Merchant shall include in each online Payment Transaction the order reference number further to which the status of that Payment Transaction will be sent to the Merchant by ADIB or its Payment Gateway Service Providers quoting the order reference number used by the Merchant when initiating the Payment Transaction.

8.2.6 Merchant shall include the following on its website:

8.2.6.1 complete description of Goods and/or Services provided;

8.2.6.2 Merchant terms and conditions of the purchase for the Goods and/or Services;

8.2.6.3 Merchant’s refund or return policy and provide “Click to Accept” to acknowledge policy;

8.2.6.4 Merchant’s contact information for customer service contact including electronic mail address;

8.2.6.5 Transaction currency;

8.2.6.6 export restrictions as applicable;

8.2.6.7 delivery mode and policy;

8.2.6.8 country of its Domicile;

8.2.6.9 logos of Cards accepted in the format authorized by ADIB;

8.2.6.10 other related tariffs and/or regulations;

8.2.6.11 security capabilities and policy for transmission of payment Card details;

8.2.7 Merchant hereby authorizes ADIB to hold service codes with respect to the Merchant website used for initiating Payment Transactions.

8.2.8 Merchant acknowledges that ADIB accepts no liability whatsoever arising out of or in connection to processing Payment Transactions made online unless such liabilities are arising from ADIB's gross negligence or willful misconduct. For this purpose and for the purpose of complying with the applicable guidelines of the Card Associations, the Merchant agrees that Card Associations may hold the Merchant liable for any losses arising out of or in connection with Payment Transactions made online (including but not limited to those arising from the MasterCard global merchant-only liability shift for interregional transactions) and that subsequently ADIB is hereby authorized to withhold from any Sales Proceeds or to debit the Bank Account accordingly.

8.3 Mail, Telephone and Internet:

8.3.1 Subject to clause 6.4 above, Merchant accepts it shall identify the Cardholder at the Merchants own risk for mail, telephone or internet Payment Transactions.

8.3.2 Merchant may enter Payment Transactions received by mail, by telephone, by fax, or in person from the Cardholder using the manual data entry screen available via the Payment Client installed on the server maintained by the Merchant or by using the POS Terminal or by obtaining Authorization through the Authorization centre.

8.3.3 Any Authorization obtained from ADIB does not guarantee that the Payment Transaction is being authorized by the person whose card number and name appears on the Card or mail order document or whose Card number and name is obtained over the telephone or via the internet.

8.3.4 Merchant agrees that receiving any approval code from ADIB does not guarantee validity of the Payment Transaction and that the Payment Transaction presented to ADIB will be handled by ADIB in its ordinary course of business.

8.3.5 It is hereby agreed that if charge over mail, telephone or internet is disputed by the Cardholder for any reason, such charge shall be subject to an immediate charge back in accordance with clause 10.

9. FEES

9.1 The Merchant agrees and undertakes to:

9.1.1 pay ADIB the Fees due on each Payment Transaction made by POS Terminal at the rates

listed out in Merchant Application and the Pricing Sheet;

9.1.2 pay ADIB the monthly/yearly rental fee and/or one-time setup fee applicable for each POSTerminal as described in Merchant Application and Pricing Sheet;

9.1.3 provide at its own cost all local telephone land line(s), for the exclusive use of the POS Terminal, and pay all periodical rental charges and call charges for use of land line(s).

10. SETTLEMENT AND PROCEEDS

10.1 Following completion of Payment Transactions:

10.1.1 all POS Records shall be transmitted electronically to ADIB at the end of each day (and in any event no later than Two (2) days from the date of the Payment Transaction); and

10.1.2 all Manual Sale Drafts shall be sent to ADIB within Two (2) Business Days and in any event no later than Ten (10) Business Days.

10.2 Sale/Payment Proceeds will be paid to the Merchant on the next Business Day after receiving details of the Payment Transaction by the respective Card Association.

10.3 Subject to clauses 10.2 and 10.4 and 10.5 below, all Sale/Payment Proceeds shall be credited to the Bank Account in the manner and at the frequencies described in the in the Merchant Application form.

10.4 Merchant hereby authorizes ADIB at its sole discretion to withhold settlement in part or in full, in case of non-conforming, suspicious or irregular transactional activity (in the reasonable opinion of ADIB),

10.4 Merchant hereby authorizes ADIB to deduct from the Sale/Payment Proceeds or if the Sale/Payment Proceeds are already credited to the Bank Account the Merchant agrees to pay and hereby authorize ADIB to debit the Bank Account, the amount of:

10.4.1 the applicable Fees

10.4.2 any additional actual payment amount made by ADIB as a result of any failure or error in the system or pursuant to negligence, misconduct or fraudulent act of any employee of ADIB; and

10.4.3 any other actual payment amount which is mistakenly or wrongfully received by the Merchant pursuant to negligence, misconduct or fraudulent act of the Merchant.

10.5 The Merchant hereby authorizes ADIB to withhold or freeze any Chargeback amount in the Bank Account or indemnify ADIB if the balance in the Bank Account is not sufficient to meet the Merchant's financial obligations arising out of such Chargeback that may be imposed on ADIB by any Card Associations or competent authority in connection to Payment Transactions made by the Merchant.

10.6 Any settlements pursuant to this clause 9 are subject to verification and audit by ADIB and in case of any inaccuracies, ADIB is hereby authorized to debit, hold or credit the Payment Proceeds for any deficiencies or overages or invalid POS Records or Manual Sale Drafts.

10.7 Merchant shall retain the POS Records, the Manual Sale Drafts and related sale invoices for a period of five (5) years from the date each relevant Payment Transaction is completed.

10.8 Upon receiving a written request in advance by ADIB, Merchant shall grant to ADIB (or its

duly authorised representative) the right of access to any of the Merchant's premises, employees and/or records, during normal business hours to the extent relevant to access or investigate any Payment Transaction as ADIB may reasonably require.

11. DISPUTES AND CHARGEBACK

11.1 ADIB may withhold Sales/Payment Proceeds in relation to Payment Transaction or may charge back and debit the actual amount to the Merchant even after termination of the Merchant Agreement, in any of the following circumstances where:

11.1.1 Payment Transaction is suspected to be fraudulent or requires Chargeback;

11.1.2 Payment Transaction is found to be illegal upon investigation by ADIB;

11.1.3 Payment Transaction is found to be non-Shari'a compliant upon investigation by ADIB;

11.1.4 Authorization for a Card transaction is not obtained in accordance with the Merchant Agreement or as per Card Association rules.

11.1.5 Payment Transaction data is issued or presented in violation of the procedures set out in clause 5 of these Terms and Conditions;

11.1.6 The particulars inserted in the POS Record/Manual Sale Draft are not identical with the particulars inserted in the copy given to the Cardholder;

11.1.7 The Card relating to a Payment Transaction is not valid for any reason whatsoever including, but not limited to, forgery or expiry;

11.1.8 The Payment Transaction is not authorized by the Issuer or the Cardholder or by the Card Associations;

11.1.9 The POS Record and other related documents /Manual Sale Draft is incomplete or illegible;

11.1.10 Merchant fails to produce to ADIB, within five (5) days of an ADIB request for information, evidence of the Cardholder approval to process the Payment Transaction; and/or a copy of the signed POS Record or Manual Sale Draft; and/or any other supporting documents related to the Payment Transaction requested by ADIB 11.1.10. The signature on the POS Record/Manual Sale Drafts is not reasonably similar to the signature on the Card or is a forged signature;

11.1.11 The Payment Transaction is processed via multiple fraudulent Authorizations;

10.1.12 Merchant has processed a fictitious, suspicious, and/or counterfeit Payment Transaction or otherwise defrauded or attempted to defraud ADIB or the Cardholder;

11.1.13 A "Chargeback Window" has been opened by the Card Associations for excessive fraudulent or Chargeback Payment Transactions.

11.1.14 The sales transaction is not a valid sales transaction based on investigation made by ADIB, Card Association or any relevant authority;

11.1.15 The Payment Transaction relates to Goods and/or Services not rendered, in respect of which the Cardholder disputes liability for any reason and/or the Cardholder makes a claim for set-off or a counterclaim; or

11.1.16 The Merchant authorizes ADIB to deduct any actual liabilities, losses, fees, costs or

expenses or any other amounts payable by the Merchant to ADIB pursuant to this Merchant Agreement which shall include, without limitation, any arising as result of incoming charge back or a fraudulent confirmation received in relation to the Card Transaction processed by the Merchant.

12. MERCHANTS OBLIGATIONS

12.1 Merchant hereby warrants, represents and undertakes that:

12.1.1 all Payment Transactions tendered to ADIB will represent the obligations of the Cardholders to the Merchant for bona-fide transactions in the amount set forth thereon for Goods sold and/or Services rendered only;

12.1.2 it shall establish a fair policy for the exchange or return of Goods and/or Services purchased pursuant by virtue of Payment Transactions and shall give exact credit upon each such return by means of Refund Vouchers only;

12.1.3 it shall process exact refund through the "Refund" function on a POS Terminal and if a Payment Transaction is initiated through Manual or if a POS Terminal accepts no refund the Merchant shall issue a Refund Voucher to ADIB for the actual amount;

12.1.4 it shall not refuse the exchange or return of Goods and/or Services merely because they were originally purchased by Card;

12.1.5 it shall not make cash advances or withdrawals to any Cardholder;

12.1.6 it shall notify ADIB of or any sale, restructure, acquisition, merger or any other material change in nature or size of its business.

12.1.7 it shall not infringe upon the Intellectual Property Rights of ADIB or the Card Associations, nor otherwise use the mark or logo of Cards in such a manner as to create the impression that the Merchant's Goods and/or Services are sponsored, produced, affiliated with, offered, or sold by ADIB and/or any of the Card Associations;

12.1.8 it shall use its best endeavours to assist ADIB, if requested from time to time, in preventing or detecting fraud and undertakes to inform ADIB, as soon as reasonably practicable, of any fraudulent activity the Merchant becomes aware or any such activities which, in the opinion of the Merchant would involve fraud, misrepresentation or other illegal activities in relation to a Card;

12.1.9 not to sell, purchase, provide or exchange Card account number information in the form of Card transaction document, mailing lists, tapes, journal rolls or other media obtained by reasons of a Card transaction to any third party.

12.1.10 not to process any transaction which is non-Sharia compliant Goods and/or Services.

12.1.11 it must not request or use a Card account number for any purpose that it knows or should have known to be fraudulent or in violation of rules, operating regulations, Shari'a, procedure, or policies available or which are communicated by ADIB from time to time.

12.1.12 it shall not sell, store, share, purchase, provide, or exchange a Cardholder and Card information or account number information in any form to any third party other than ADIB or authorized personal or pursuant to an official court order. The Merchant therefore must keep all systems and media containing account information, Cardholder or Card information,

Cardholder or Card transaction information in media form in a secure manner to prevent access by or disclosure to any third party other than ADIB. The Merchant must destroy in the appropriate manner, all such media that will render unreadable which the Merchant no longer deems necessary to store.

12.1.13 it shall ensure its Representatives does not have any criminal records.

12.2 The Merchant shall complete a minimum value of AED10,000/- (UAE Dirhams Ten Thousand Only) worth of Payment Transactions per month or any other amount as approved by ADIB.

12.3 The Merchant shall abide by and fully comply with the applicable Card Associations' rules and regulations in connection to payment card industry (PCI), data security standards (DSS) and business risk assessment & mitigation (BRAM) and to comply with the process of any program or service provided or introduced by the Card Associations from time to time such as VEPS and QPS. The Merchant acknowledges and agrees that any of the following practices shall be considered as non-compliance with BRAM:

12.3.1 making an aggregate Payment Transactions for multiple content suppliers;

12.3.2 failing to submit Payment Transactions for or on behalf of third party (ie other business entities); or

12.3.3 failing to submit a Payment Transaction that may, in the opinion of the Card Association (acting at its sole discretion) damages the goodwill or reflect negatively on the Card Association's brand.

12.4 The process of any Payment Transaction or the presentation of any POS Record/Manual Sale Draft by the Merchant to ADIB shall constitute a warranty by the Merchant to ADIB that:

12.4.1 all statements of fact therein are true;

12.4.2 the Card or POS Record/Manual Sale Draft is valid; and

12.4.3 the sales are not subject to any dispute, set-off and/or counterclaim.

12.5 Except as expressly authorised by ADIB in writing, neither the Merchant nor any Representative shall have any power:

12.5.1 to bind, make any commitment or give any instructions on behalf of ADIB;

12.5.2 to provide finance on behalf of ADIB or in any way pledge the Equipment's;

12.5.3 to settle any claims, demands or actions against ADIB; or

12.5.4 to contract on behalf of ADIB.

12.5.5 to sell, purchase, provide or exchange Card account number information in the form of Card transaction document, mailing lists, tapes, journal rolls or other media obtained by reasons of a Card transaction to any third party.

12.6 Upon demand made by ADIB the Merchant shall pay to ADIB through ADIMAC Fees in relation to ADIB Services which include but not limited to the maintenance of POS Terminal, E-Commerce Services, Equipment, any rental for any devices, value of Chargeback transactions, collateral or deposit (if any) from time to time. The payment of such Fees shall be made under the name of ADIMAC.

12.7 Merchant shall under no circumstances carry out Double-Swipe on any of its internal registers and other Equipment that has not been provided by ADIB. If any Cardholder data is stored

as a result of Double-Swipe which is then compromised in anyway, Merchant shall be held responsible and shall indemnify ADIB in accordance with clause 12.9 below.

- 12.8** It shall pay ADIB on demand any actual expenses imposed on ADIB by the Card Association or any regulatory authority as a result of the Merchant breach or non-compliance of Best Practice Guide or any rules and regulations or any law arising out of the Payment Transaction initiated or made by the Merchant.
- 12.9** It shall not undertake Double-Swipe of Cards, nor store the Card data in any systems.
- 12.10** Merchant shall be required to pay all Fees due to ADIB under this Merchant Agreement by means of a cheque drawn in favour of ADIB or by electronic payment transfer to the account of ADIB. Merchant shall under no circumstances make a cash payment to ADIB or to any of its representatives.
- 12.11** Merchant agrees to indemnify and keep ADIB indemnified and compensate ADIB in respect of all actual claims, costs and expenses suffered or incurred by ADIB as a consequence of the Merchant's failure to comply with any of the above listed Merchant obligations.

13. DCC SERVICES

- 13.1** ADIB shall enable certain of a Merchant's customers ("Foreign Cardholders"), whose Cards are denominated in certain currencies other than the UAE Arab Emirate Dirham (the "DCC Services Currency"), to present a Card at a Merchant's POS and to pay for a purchase in the currency of the Foreign Cardholder, based upon the then prevailing spot exchange rate at the time of executing the transaction as determined by ADIB, while the Merchant receives settlement of the foreign transaction (a "Foreign Transaction") in UAE Dirham, (collectively the "DCC Services").
- 13.2** The Merchant acknowledges and agrees that a Foreign Transaction will be converted to the DCC Services Currency in which the Card is denominated based upon the then prevailing spot exchange rate in effect at the time of authorization for retail transactions and that the Foreign Transaction, as converted, will be cleared through a Card Association, in the currency in which the Card is denominated.
- 13.3** The DCC Services shall be applicable only to those Cards issued by Card Associations that approve the DCC Services or under the brands of such other Card Association included within the DCC Services that are billed to the Foreign Cardholder in a DCC Services Currency.
- 13.4** Additionally, the DCC Services may not apply to credit-return transactions or certain Foreign Transactions that are referred to ADIB for Authorization or otherwise authorized by Merchant via telephone.
- 13.5** ADIB reserves the right to add, delete or suspend any currency to or from the DCC Services, as the case may be, at any time without notice to Merchant.
- 13.6** ADIB may terminate or suspend the DCC Services for any reason upon notice to the Merchant.

14. DCC SERVICES REQUIREMENTS

- 14.1** Merchant will comply with all reasonable instructions provided by ADIB pertaining to Mer-

chant's participation in the DCC Services.

14.2 Without limiting the foregoing, Merchant agrees to comply with the following specific DCC Services requirements:

14.2.1 DCC Services Disclosure:

14.2.1.1 Merchant agrees to comply with all instructions and specifications applicable to the DCC Services as provided by ADIB from time-to-time;

14.2.1.2 Merchant shall follow DCC Services procedures, as may be amended by ADIB from time-to-time.

14.2.2 Foreign Cardholder Opt-In:

14.2.2.1 Merchant shall, based upon the instructions provided by ADIB and/or the Card Association from time to time, provide Foreign Cardholders with the ability to "opt-in," or consent to participate in the DCC Services;

14.2.2.2 in the event that a particular Foreign Cardholder elects not to opt-in, it is understood that ADIB will process that Foreign Cardholder's transaction in UAE Dirham;

14.2.2.3 Merchant agrees to make such reasonable modifications as ADIB may request to increase the likelihood of Foreign Cardholders opting-into the DCC Services;

14.2.2.4 any Foreign Transaction for which Merchant fails to provide a Foreign Cardholder with the opt-in procedure as described herein may be subject to a "charge back";

14.2.2.5 Merchant shall seek the prior consent of the Cardholder for the purposes of their participation in the DCC Services.

14.2.3 Timely presentment of Foreign Transactions:

14.2.3.1 Merchant acknowledges that the timely presentment of Foreign Transactions is necessary for participation in the DCC Services, Foreign Transactions must be presented within twenty-four (24) hours of the completion of the Foreign Transaction;

14.2.3.2 Notwithstanding the foregoing, Foreign Transactions submitted by Merchants involved in the hotel, lodging and cruise industries must be submitted within twenty-four (24) hours of a Foreign Cardholder's checkout from the Merchant's establishment.;

14.2.3.3 Merchant acknowledges that as a result of its failure to present a Foreign Transaction within the specified timeframe, ADIB may reduce the amount of the DCC Services Participation Payment (as defined below).

14.2.4 Credits>Returns:

14.2.4.1 Unless Merchant uses POS that is not capable of processing credit/returns in the DCC Services Currency in the manner required by ADIB, a credit/return to a Foreign Cardholder's account (reflecting either the partial or complete return or reimbursement of a Foreign Transaction) will be converted to the DCC Services Currency using the prevailing spot exchange rate applicable at the time of presentment of the credit by the Merchant;

14.2.4.2 any credit, as converted, will be cleared through the applicable Card Association in the DCC Services Currency in which the Card is denominated, and if such support is not in place, then such credit/ return Transaction will be processed in UAE Dirham using the than prevailing spot exchange rate, subject always to applicable Card Association rules;

14.2.4.3 Merchant acknowledges and agrees that the original amount of the credit/returns

will likely differ from the original settlement amount received by the Merchant for the Foreign Transaction in UAE Dirham and that the Merchant may incur losses as a result of the credit/returns;

14.2.4.4 Notwithstanding anything herein to the contrary, Merchant acknowledges that it will be responsible for the actual amount of the credit/returns under the terms of this Merchant Agreement.

14.2.5 Chargebacks:

14.2.5.1 A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ADIB by the applicable Card Association in the DCC Services Currency and converted by such Card Association into UAE Dirham at the Card Association's designated spot foreign exchange rate at the time of executing such Chargeback;

14.2.5.2 Merchant acknowledges and agrees that the original amount of the Chargeback will likely differ from the original settlement amount received by the Merchant for the Foreign Transaction in UAE Dirham and that the Merchant may incur losses as a result of the Chargeback.

14.2.5.3 Notwithstanding anything herein to the contrary, Merchant acknowledges that it will be responsible for the full amount of the Chargeback under the terms of this Merchant Agreement.

14.3 Merchant agrees that commission as applicable due to participation in this DCC Services shall be borne by Merchant and that all actual current charges will be applicable on the purchase amount under the DCC Services.

14.4 The DCC Services will apply only for currencies approved by ADIB from time to time.

14.5 Merchant agrees that it will display marketing collaterals as may be deemed necessary by ADIB in order to create necessary awareness and offer an option to the Cardholder.

14.6 Merchant agrees to indemnify ADIB, ADIB's subcontractors, the Card Association and any other Card sponsor against any and all actual claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards and expenses (including reasonable attorneys' fees), to which ADIB, Card Association, and other Card sponsors may be subjected arising in whole or in part from the DCC Services, any Transaction involving Merchant, any act or omission of Merchant in connection with any such Transaction, use of any third-party vendor or any breach of the Merchant Agreement by the Merchant or the Merchant's or any third-party vendor's violation of applicable laws or Card Association operating regulations, or any return of Goods and/or Service, price adjustment or other dispute with or claim by a Foreign Cardholder with Merchant (whether or not such Foreign Cardholder's claim is valid), including, but not limited to, actual claims or losses of any Foreign Cardholder or of any third party.

14.7 Without limiting the generality of the foregoing, Merchant agrees to be solely responsible for its actions in honouring or refusing to honour Cards, including without limitation any failure to adequately provide required or recommended disclosures or notification, and in retaining Cards in accordance with Card Association merchant operating procedures and Merchant will indemnify, defend and hold ADIB, ADIB's subcontractors, the Card Association, and any other Card sponsors harmless from any claim, loss or liability which occurs as a result thereof.

15. PRIVACY AND CONFIDENTIALITY

15.1 Subject to clause 15.2 below, the Merchant agrees to keep in strict confidence and not to disclose to any person any information in relation to the Merchant Agreement, the Cards, the DSS (as described in clause 13 above) or any Payment Transaction except as directed by ADIB and to use such information solely for the purpose of initiating legitimate Payment Transactions.

15.2 ADIB and the Merchant shall keep in strict confidence all technical and business information including but not limited to that which may be disclosed or confided to it by the other party or which it may obtain from the other party during the course of performance of the Merchant Agreement, and shall not disclose the same to any third party unless if so required by a court order, government or competent authority. Provided, however, ADIB shall disclose any of such information as it may be required by any of the Card Associations and or to its respective directors, officers, employees agents and subcontractors to who are directly involved in, and need to know such information for the purpose of ADIB's performance of its obligations under the Merchant Agreement. For avoidance of doubt any technical and business information which is no longer necessary for the purpose of performance under this Merchant Agreement shall be returned to ADIB or as reasonably practicable destroyed by the Merchant.

16. RECORDS AND AUDIT

16.1 Merchant shall keep and maintain appropriate books and records in relation to the ADIB Services in accordance with generally accepted cash accounting principles, such books and records to reflect all Payment Transactions between the Merchant and ADIB and all transactions processed by the Merchant using the ADIB Services.

16.2 Merchant shall grant to ADIB and any of its agents or subcontractors (or their duly authorised representatives) the right of access to any of the Merchant's premises, employees and/or records, to the extent relevant to the receipt of the ADIB Services, as ADIB and any of its agents or subcontractors may reasonably require during normal business hours in order to:

16.2.1 verify that the Merchant is complying with the terms of this Merchant Agreement;

16.2.2 identify suspected fraud or accounting mistakes; and

16.2.3 inspect any assets in the other Party's possession or control as may reasonably be relevant for the purposes of clauses 16.2.1 and 16.2.2 above.

16.3 Any audit, investigation or monitoring undertaken in accordance with this clause 15, shall be subject to ADIB providing at least fifteen (15) Business Days' notice of any audit including terms of reference it intends to carry out pursuant to these provisions unless such audit is required for reasons of suspected fraud.

17. INDEMNITY

17.1 Regardless of any takaful available to ADIB, Merchant shall at all times indemnify and shall keep ADIB indemnified, its respective directors, officers, employees agents and subcontractors, against any and all actual losses arising out of or in connection with:

- 17.1.1** the performance by the Merchant in relation to ADIB Services;
- 17.1.2** any Payment Transaction made by the Merchant;
- 17.1.3** the failure or malfunction of any system, software or Equipment used by the Merchant in relation to ADIB Services;
- 17.1.4** the failure of any of the Equipment due to the inadequate application of appropriate securities measures by the Merchant; and/or
- 17.1.5** any failure by the Merchant to observe or abide by its obligations under the Merchant Agreement
- 17.1.6** the cost of a data breach in terms of appointing a PFI is the responsibility of the Merchant.
- 17.1.7** any organization or regulator against ADIB in consequence of Double-Swipe of payment Cards.

17.2 Notwithstanding clause 16.1 above the indemnity shall not apply in the event the actual losses suffered by the Merchant arise from any wilful or negligent act or omission by ADIB, its directors, officers, employees, subcontractors or agents.

18. LIABILITY

18.1 Nothing in this Merchant Agreement shall exclude or limit liability of either party in relation to:

- 18.1.1** death or personal injury caused by negligence or wilful or reckless misconduct;
- 18.1.2** any fraud or fraudulent misrepresentation; or
- 18.1.3** any other losses which cannot be excluded by Law.

18.2 ADIB hereby excludes all liability to the Merchant, the Representatives, or the Cardholders for any losses caused by:

- 18.2.1** the Equipment;
- 18.2.2** any system malfunction;
- 18.2.3** any failure in connection or communication links;
- 18.2.4** any error in the design or manufacture of any Equipment; and
- 18.2.5** processing Payment Transactions made online.

19. FORCE MAJEURE

19.1 Should any Force Majeure Event delay the performance by ADIB of its obligations under the Merchant Agreement, ADIB shall notify the Merchant in writing within seven (7) days of such event.

19.2 Upon the occurrence of a Force Majeure Event ADIB's duty to perform its obligations under the Merchant Agreement shall cease until such Force Majeure Event has been remedied and ADIB shall not be liable for any non-performance during such time.

19.3 Should a Force Majeure Event delay the performance of the ADIB Services for a period of three (3) months or longer, ADIB may elect to terminate the Merchant Agreement immediately by providing written notice to the Merchant.

20. GOVERNING LAW AND JURISDICTION

- 20.1** The Merchant Agreement shall be governed by and construed in accordance with the laws of United Arab Emirates as applied in Abu Dhabi courts to that extent such laws do not conflict with the principles of Shari'a as determined by the Fatwa and Shari'a Supervisory Board of ADIB.
- 20.2** Any disputes arising from and in connection of this Merchant Agreement shall be submitted to a non-exclusive jurisdiction of Abu Dhabi courts.

21. GENERAL

- 21.1** The Merchant shall not assign, transfer or otherwise deal with any of its rights or obligations under this Merchant Agreement, or sub-contract the performance of any of its obligations under this Merchant Agreement without the prior written consent of ADIB.
- 21.2** ADIB shall be entitled, in its sole discretion to subcontract its obligations under this Merchant Agreement to a third party.
- 21.3** Any subcontractor, appointed by ADIB in accordance with clause 21.2 above, shall have the express right to benefit from and enforce the terms of this Merchant Agreement as if it were a Party to this Merchant Agreement.
- 21.4** Except as otherwise stated in clause 20.3, a person who is not a party to this Merchant Agreement shall have no right to enforce any terms of this Merchant Agreement. The consent of a third party beneficiary will not be required to effect any amendment to or termination of this Merchant Agreement. This clause does not affect any right or remedy of any person which exists or is available by Law.
- 21.5** The Merchant Agreement will remain valid and enforceable notwithstanding any change in its constitution or ownership, merger or amalgamation of the Merchant or ADIB.
- 21.6** The Merchant Agreement shall take effect from its execution date and continue thereafter unless terminated:
- 21.6.1** by either Party without any cause at any time by giving at least thirty (30) days prior written notice; or
 - 21.6.2** by ADIB immediately in the event the Merchant ceases operations, commits an act of bankruptcy, is adjudicated bankrupt, enters into liquidation (whether compulsory or voluntary) other than for the purposes of an amalgamation or reconstruction, commits any act of fraud or any other acts which is in violation of law.
- 21.7** In the event of termination for any reason whatsoever, the Merchant shall return to ADIB all ADIB Materials or any other materials which is proprietary to ADIB which includes, but not limited to marketing materials, training materials or any documents of ADIB or ADIMAC in relation to ADIB Services and all Cardholder Payment Transaction copies for the last six (6) months from the last date of transaction or date of termination of this Merchant Agreement whichever comes earlier.
- 21.8** The rights and remedies of each Party under, or in connection with, the Merchant Agreement may be waived only by express written notice to the other Party. Any waiver shall apply only

in the instance, and for the purpose for which it is given.

- 21.9** No right or remedy under or in connection with the Merchant Agreement shall be precluded, waived or impaired by:
- 21.9.1** any failure to exercise or delay in exercising it;
 - 21.9.2** any single or partial exercise of it;
 - 21.9.3** any earlier waiver of it, whether in whole or in part; or
 - 21.9.4** any of the above in relation to any other right or remedy (be it of similar or different character).
- 21.10** The rights and remedies arising under or in connection with, the Merchant Agreement are cumulative and, except where otherwise expressly provided in the Merchant Agreement, do not exclude any rights or remedies provided by Law or otherwise.
- 21.11** Any termination of the Merchant Agreement and/or parts thereof does not affect any accrued rights or liabilities of either party and nor does it affect the coming into force or the continuance in force of any provision of the Merchant Agreement that is expressly or by implication intended to come into or continue in force on or after such termination.
- 21.12** If any part of this Merchant Agreement is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of this Merchant Agreement.
- 21.13** If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.
- 21.14** This Merchant Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Merchant Agreement by or on behalf of the Parties and relating to its subject matter.
- 21.15** No variation of this Merchant Agreement shall be valid unless it is in writing signed by or on behalf of each of the Parties to this Merchant Agreement.
- 21.16** The headings contained in these Terms and Conditions are so employed for convenience of reference only and are not intended to define, construe, limit, expand or describe the scope or intent of the Merchant Agreement.
- 21.17** Clauses 5.2, 12.7, 14.7, 15, 17, 20, 21.7 and 21.11 of these Terms and Conditions will survive the completion, expiration, termination or cancellation of the Merchant Agreement.

Executed on the date set out hereinabove

For and on behalf of

Abu Dhabi Islamic Bank:

Name: _____

Signature: _____

Company Stamp:

For and on behalf of

Merchant:

Name: _____

Signature: _____

Company Stamp: