

## application form Mobile Cashier- Merchant



Serial no.:

Contact no.:  Date:

Please complete this form if you are applying for **Mobile Cashier – Merchant**. Please note that incomplete information may cause delays in service provisioning.

☐ New merchant

☐ New location

### A. Company information

Company name:

Trade License No.:  Issue Date:

Receipt printed name (max 20 characters with space):

Type:

Nature of Business:

Address:

P.O. Box:  Emirate:  Telephone No (Head Office):

Location Details

Telephone No (at location):  Fax No:  Email:

### B. Contact person details

☐ Power of Attorney

☐ Letter of delegation

Name:

Title/Position of the person:

Mobile no.:  Office no.:  Fax no.:  Email:

ID document type: ☐ Emirates ID ☐ Passport

ID document no.:  Date of issuance:  Date of expiry:

P.O. Box:  Emirate:  Nationality:

### C. Merchant Fees\*

Visa/MasterCard Transactions %

CUP %:  Amex %:

Cash recording fee:

Disclaimer

\* The merchant agrees and authorizes NBAD to recover the above mentioned charges from the Merchant's settlement account or from the daily transaction on the due date.

### D. Mode of Settlement:

Credit my bank account number.

IBAN No.:

Account Name:

Bank Name:  Branch:

## E. Additional information for partners/owners/authorised persons

1. How long has your company been doing business in UAE?

2. What is the exact business of this company?

3. Please provide us the names, nationalities and resident status of partners/POA/Owners of this company?

4. If any partner/POA/Owners from any of prescribed jurisdictions (Cuba, Iran, Iraq, Myanmar, North Korea, Russia, Sudan, Syria, Ukraine) for how long they are living in UAE??

5. Please confirm if this company trade with any of the prescribed jurisdictions:

- |         |            |                |          |            |
|---------|------------|----------------|----------|------------|
| a. Cuba | c. Iraq    | e. North Korea | g. Sudan | i. Ukraine |
| b. Iran | d. Myanmar | f. Russia      | h. Syria |            |

6. Which Bank do/did you maintain accounts with over the past 2 years?

7. From which countries do you import Goods/Raw material (names) and in what Percentage?

8. To which countries do you export goods and in what Percentage?

9. Please provide us the names and countries of your main suppliers (top 10)

10. Please provide us the names and countries of your main customers (top 10)

## F. Mobile Cashier Starter Pack

Card reader		Printer	
Upfront AED 299	12 month contract AED 27 p/m	Upfront AED 217	12 month contract AED 20 p/m
Quantity		Quantity	
Disclaimer			
*Etisalat's equipment is subject to the terms and conditions of any manufacturer's warranty or extended warranty plan that the Customer may have obtained on the purchase of the Etisalat equipment. If applicable, Etisalat's repair or replacement obligations shall apply during the warranty period set out in the Agreement/application form. Etisalat may or may not provide technical support for such devices at its sole discretion after the warranty period has expired. The Customer must ensure that the equipment and any software connected or installed into it or used with the service provided by Etisalat, is connected and used in accordance with any applicable safety and security procedures and instructions, including Etisalat's reasonable instructions.			

## G. Mobile Cashier Details

1	Name: ..... Mobile: .....	6	Name: ..... Mobile: .....
2	Name: ..... Mobile: .....	7	Name: ..... Mobile: .....
3	Name: ..... Mobile: .....	8	Name: ..... Mobile: .....
4	Name: ..... Mobile: .....	9	Name: ..... Mobile: .....
5	Name: ..... Mobile: .....	10	Name: ..... Mobile: .....

## H. Merchant authorisation

I/We here by confirm that the above particulars and documents provided are accurate and in event of change in the above instructions I / We undertake to inform NBAD in writing:

Name and Signature of the Authorised Person:

.....  
.....

Name and Signature of the Authorised Person:

.....  
.....

Company stamp

## For Office Use:

Etisalat Representative:

Representative Name: ..... Signature .....

Supervisor Name ..... Signature .....

Checked By NBAD team : ..... Manager Approval: .....

Merchant ID: ..... Terminal ID ..... MCC: .....

System Input: ..... Approved By: .....

# agreement

## Mobile Cashier- Merchant

THIS MERCHANT SERVICES AGREEMENT (the "Agreement") is dated ..... day of ..... 20[ ] and made BETWEEN NATIONAL BANK OF ABU DHABI PJSC ("NBAD") and the MERCHANT. each a "party" and together the "parties".

### WHEREAS:

NBAD appoints the Merchant for the purpose of accepting the Cards presented as a means of payment in accordance with the terms of this Agreement.

### THE PARTIES AGREE as follows:

#### 1. INTERPRETATION

1.1. In this Agreement, except where the context otherwise requires, the following terms shall have the following meanings:

**"AmEx Card"** means any debit, deferred debit, charge or credit card issued by American Express Company and bearing the American Express logo.

**"Authorisation"** means the process by which a Card Transaction request is approved, referred or declined by NBAD and the provision of refund, amendment and settlement.

**"Authorised Person"** means an employee of the Merchant authorized by the Merchant and trained by NBAD to access the MPOST Equipment for acceptance of Card Transactions.

**"Business Day"** means a day (other than a Friday, Saturday or public holiday) on which banks are open for general business in the Emirate of Abu Dhabi.

**"Card"** means (i) a valid Visa Card issued under license from Visa International, Inc., a valid MasterCard issued under license from MasterCard International Incorporated, a valid JCB Card issued under license by Japan Credit Bureau, a valid Diners Club Card issued under license by Diners Club International, a valid AmEx Card issued under license by American Express Company, or a valid CUP Card issued under license by China UnionPay; and (ii) any other valid credit and/or debit card approved by NBAD from time to time.

**"Cardholder"** means the individual for whom a Card has been issued at any time and whose name is embossed/printed on the Card.

**"Card Scheme Operating Procedures"** means the by-laws, rules, operating regulations and any other instructions issued by the card schemes, as the same may be amended or varied from time to time.

**"Card Transaction"** means a transaction between the Merchant and the Cardholder in which a Card is used for payment of goods or services, a refund or any other permitted transaction which is evidenced by a Sales Slip.

**"Card Transaction Data"** means details of a Card Transaction in a form approved by NBAD.

**"CUP Card"** means any debit, deferred debit, charge or credit card issued by China UnionPay and bearing the China UnionPay logo.

**"Confidential Information"** means any information which is disclosed or otherwise comes into either party's possession directly or indirectly as a result of this Agreement and which is of a confidential nature including, without limitation, any business, employee or customer information, any technical or commercial know-how, data, any information relating to NBAD and any entity it controls or is controlled by and the existence and terms of this Agreement but excludes information that:

- is or becomes public information other than as a direct or indirect result of any breach by either party of this Agreement; or
- is identified in writing at the time of delivery as non-confidential by the disclosing party; or
- is known by the party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the recipient party after that date, from a source which is, as far as the recipient party is aware unconnected with the other party and has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Diners Club Card"** means a charge card issued to the Cardholder by Diners Club International of New York, USA a franchisee Diners Club International or a company participating in Diners Club International plan.

**"Etisalat"** means (Emirates Telecommunications Corporation), a statutory corporation, duly established and existing under the laws of the UAE, licensed by the Telecommunications Regulatory Authority to provide telecommunications and VAS (value added services) services in the UAE. Etisalat responsibilities to include:

- engaging Merchants to perform Card Transactions;
- making available MPOS Equipment, approved by NBAD and shall provide maintenance services to the MPOS Equipment in order for Merchants to perform Card Transactions;

**"Effective Date"** means the date of this Agreement.

**"Fees"** means those charges payable by the Merchant to NBAD as detailed in the Application form Schedule 1.

**"Floor Limit"** means a maximum amount as specified in Schedule 1 of a Card Transaction which the Merchant may proceed with on any one occasion without obtaining NBAD's Authorisation.

**"Force Majeure Event"** means a cause outside of either party's reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire or acts of any government authority.

**"JCB Card"** means any debit, deferred debit, charge or credit card issued by Japan Credit Bureau and bearing the JCB logo.

**"MasterCard"** means any debit, deferred debit, charge or credit card bearing the MasterCard logo and includes any standard, gold or business card. A payment card bearing "Maestro" or "Cirrus" logo and which is accepted at any MPOS Terminal shall also be considered as a MasterCard.

**"Merchant"** means the merchant identified in Application form who is to accept the Cards as a means of payment under this Agreement.

**"PA-DSS"** means the Payment Application Data Security Standard.

**"PCI-DSS"** means the Payment Card Industry Data Security Standard as declared by the Payment Card Industry Data Security Standards Council ("PCI SSC") from time to time.

**"MPOS Terminal"** means the electronic point-of-sale terminal as approved by NBAD and provided by ETISALAT to the Merchant.

**"MPOST Equipment"** means the MPOS Terminal and all accessories, connections and peripherals provided by Etisalat to the Merchant.

**"Pre-Authorization"** means a temporary freeze of a specific amount from the available balance on a Card, which is performed by the Merchant prior to the completion of the transaction for the delivery of goods or performance of services.

**"Sales Slip"** means the receipt (physical print-out or electronic record) of a Card Transaction generated on the MPOS Terminal for which the Cardholder's signature or PIN-based authorization is obtained by the Merchant, or such other sales voucher approved by NBAD from time to time and provided to the Merchant for its use to manually document the details of a Card Transaction and on which the Cardholder's signature or PIN-based authorization is obtained by the Merchant.

**"Visa Card"** means any debit, deferred debit, charge or credit card bearing Visa logo and includes any classic, premier, business, platinum or electron card. A payment Card bearing a "Plus", "Interlink", or "Delta" logo and which is accepted at any MPOS Terminal shall also be considered as a Visa Card.

1.1. Unless the context otherwise requires:

- 1.1.1. words importing the singular include the plural and vice-versa and words importing a gender include any gender;
- 1.1.2. the words "including" and "include" shall mean including without limitation and include without limitation respectively;
- 1.1.3. a reference to a Clause or a Schedule is a reference to a clause of, or a schedule to, this Agreement;
- 1.1.4. the headings and the table of contents are for convenience only and shall not affect the construction of this Agreement;
- 1.1.5. any reference to time of day is to Abu Dhabi time;
- 1.1.6. subject to Clause 18, references to a party to this Agreement include references to the successors and assigns (immediate or otherwise) of that party;
- 1.1.7. any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Agreement or that document; and
- 1.1.8. any reference to a person includes a body corporate, unincorporated association of persons (including a partnership or joint venture), government, state, agency, organisation and any other entity whether or not having a separate legal personality and an individual, his estate and personal representatives.

1.2. Clause 1.1 applies unless the contrary intention appears.

1.3. Any schedules or appendices to this Agreement form part of this Agreement.

#### 2. TERM

2.1. This Agreement shall commence on the Effective Date and shall continue in force unless terminated in accordance with the terms of this Agreement.

#### 3. REPRESENTATIONS AND WARRANTIES OF THE MERCHANT

- 3.1. The Merchant represents, warrants and undertakes to NBAD that: 2.1.1. it has been duly incorporated, organized and/or established and is validly existing under the laws of the jurisdiction of its incorporation, organization or establishment (as the case may be);
- 3.1.2. it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- 3.1.3. the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, the Merchant, enforceable against the Merchant in accordance with its terms;
- 3.1.4. it possesses all requisite certificates, authorisations and permits (whether issued by any regulatory authority or otherwise) for the performance of its obligations;

3.1.5. it shall maintain all applicable licenses, consents and permissions necessary to perform its obligations under the Agreement;

3.1.6. it has adequate expertise, staffing and other resources necessary to meet its obligations under this Agreement;

3.1.7. it shall comply with all NBAD's instructions that it may receive in relation to, or in connection with, this Agreement;

3.1.8. it shall comply and its obligations will be performed in accordance with all applicable laws and regulations;

3.1.9. it shall honour all Cards presented by as a means of payment for a Card Transaction by accepting them and, where relevant, by supplying goods, services or other facilities on the same terms (including price) as they are supplied for cash;

3.1.10. it shall only perform Card Transactions by swiping the Card through the MPOST Equipment in the presence of the Cardholder or by inserting the Card into the MPOS Terminal and, if so required, request that the Cardholder enter their personal identification number (PIN);

3.1.11. it shall comply with all rules, instructions and procedures contained in this Agreement, in the Card Scheme Operating Procedures and any other procedure or guidelines which may be supplied by NBAD from time to time. NBAD may issue from time to time amendments in connection with these rules, instructions and procedures. Such amendments shall become an integral part of this Agreement and the Merchant undertakes to comply with such amendments as soon as it or any of its employees become aware of it, whether through NBAD or otherwise;

3.1.12. it shall obtain Authorisation from NBAD if a particular Card Transaction exceeds the Floor Limit;

3.1.13. if a sale, for which an Authorisation was obtained in accordance with Clause 3.1.12 above, was not concluded, the Merchant shall immediately forward a written request to NBAD to cancel the said Authorisation;

3.1.14. for all Card Transactions where the PIN is not entered and the slip contains signature panel, the Merchant shall obtain the signature of the Cardholder on the Sales Slip and provide the Cardholder with a copy thereof;

3.1.15. it shall submit all Card Transactions Data daily to NBAD. NBAD reserves the right to levy higher fees for delayed submission if such submission is delayed by more than 7 Business Days;

3.1.16. it shall keep copies of all Sales Slips for such time and in such manner as may be required by law, but in no event for less than 2 years from the date of the Card Transaction, regardless of the expiry or early termination of this Agreement. NBAD shall have the right to inspect such copies within 5 Business Days of requesting such inspection and the Merchant agrees to surrender such copies to NBAD. If the Merchant fails to make available any such copies, the Merchant agrees to indemnify NBAD in full for all damages, losses or costs which NBAD may sustain as a result of being unable to obtain such Sales Slips;

3.1.17. it shall not submit to NBAD for Authorisation any other data relevant to any transaction other than a Card Transaction;

3.1.18. it shall not allow the MPOST Equipment to be used for any transaction other than a Card Transaction;

3.1.19. subject to its obligation under Clause 3.1.12 it shall not specify any minimum or maximum Card Transaction amount for acceptance of Cards;

3.1.20. it shall not request or use any Card or Cardholder information for any purpose that it knows or should have known to be fraudulent or in violation of the law or any rules, operation regulations, procedures, or policies which are communicated by NBAD from time to time;

3.1.21. it shall not sell, purchase, provide, or exchange any Card or Cardholder information in any form to any third party other than NBAD or Authorised Persons or pursuant to an official court order. The Merchant therefore must keep all systems and media containing Card, Cardholder or Card Transaction information in any media form in a secure manner to prevent access by or disclosure to any third party other than NBAD. The Merchant must destroy in the appropriate manner all such media which the Merchant no longer deems necessary or appropriate to store;

3.1.22. it shall not process any Card Transactions by mail, telephone or over the Internet;

3.1.23. exchange or return of goods or services will be governed by the Merchant's policy on the matter. Any claim or dispute regarding such exchange or return of goods shall be settled directly between the Merchant and the Cardholder. In the event of the return of goods or cancellation of services which comply with the Merchant's published refund policy, the Merchant will obtain a confirmation from the Cardholder and forward the request to NBAD in order to process the refund.

3.1.24. it shall not add any tax or surcharges to Card Transactions, unless the applicable law expressly requires that the Merchant be permitted to impose a surcharge. Any surcharge amount, if allowed, must be included in the Card Transaction and may not be collected separately;

3.1.25. it shall not to use a Card to process a Card Transaction for the purpose of obtaining credit for the Merchant's own



benefit;

- 3.1.26. it shall not perform any Card Transaction for returned goods or services acquired in cash;
- 3.1.27. it shall not make any cash refund to a Cardholder who has made a purchase with a Card. All credits will be issued to the same Card used for such purchase;
- 3.1.28. it shall not or attempt not to do any act (including splitting sales vouchers) to circumvent the Floor Limit;
- 3.1.29. it shall not impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment or charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check; and
- 3.1.30. it shall not during the term of, and for a period of 12 months from the termination of, this Agreement, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or entice away from NBAD any employee of NBAD without prior written consent. This prohibition does not prevent offering employment to any of NBAD's employees who may respond to a recruitment advertisement or campaign of the Merchant.

#### 4. REPRESENTATIONS AND WARRANTIES OF NBAD

- 4.1. NBAD represents, warrants and undertakes to the Merchant that:
  - 4.1.1. it has been duly incorporated and is validly existing under the laws of the jurisdiction of its incorporation;
  - 4.1.2. the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, NBAD, enforceable against NBAD in accordance with its terms;
  - 4.1.3. NBAD will pay to the Merchant the amount(s) of all Card Transactions effected and presented in accordance with the terms of this Agreement, after deducting all charges due to NBAD as set out in Schedule 1 under this Agreement by:
    - i. crediting a bank account maintained by the Merchant with NBAD in the United Arab Emirates;
    - ii. transferring the funds via SWIFT facility to the Merchant's accounts maintained with other banks in the United Arab Emirates as notified in writing to NBAD; or
    - iii. issuing a managers cheque in favour of the Merchant.
  - 4.1.4. it shall not during the term of, and for a period of 12 months from the termination of, this Agreement, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or entice away from the Merchant any employee of the Merchant without prior written consent. This prohibition does not prevent offering employment to any of the Merchant's employees who may respond to a recruitment advertisement or campaign of NBAD.

#### 5. PRE-AUTHORISATION APPLICABLE TO HOTELS AND CAR RENTALS

- 5.1. Where the Merchant is a hotel or car rental company it may estimate the Card Transaction amount for Pre-Auth. In the event the Merchant is not a hotel or car rental company this Clause in its entirety shall not be applicable.
- 5.2. Upon check out / rental return the Merchant shall complete the Card Transaction with the relevant amount which shall not exceed the Pre-Auth. amount by more than 15% thereof and authorisation must be obtained and recorded for charges actually incurred in excess of such amount.
- 5.3. Regardless of the terms and conditions of any written Pre-Auth. form, the Card Transaction amount for any hotel lodging or vehicle rental transaction shall include only those charges that are evidenced as bona fide by the Merchant to the Cardholder and shall not include any consequential charges.
- 5.4. Nothing contained herein is intended to restrict the Merchant from enforcing the terms and conditions of its Pre-Auth. form in relation to transactions other than a Card Transaction.
- 5.5. The Merchant may also obtain additional Pre-Auth. for any additional amounts as may be necessary at any time during which it is providing the Cardholder with goods or services under this Clause. It is understood that Pre-Auth. for additional amounts may be necessary if the value of the services to be rendered under this Clause exceeds or would exceed the sum of the Pre-Auth. amount by more than 15%.
- 5.6. If the Merchant engages in restaurant or catering services it shall not alter or amend the amount of tip agreed and written by the Cardholder on the Sales Slip.

#### 6. MPOST EQUIPMENT

- 6.1. The Merchant shall, at its own cost, provide and maintain all power and telephone connections necessary for the operation of the MPOST Equipment in accordance with ETISALAT's requirements. The cost of installation of telephone line(s), periodical rental charges, and Card Transaction communication charges shall be incurred by the Merchant.
- 6.2. The MPOST Equipment must only be operated by Authorised Persons.
- 6.3. NBAD shall maintain records of Card Transactions. In case of a dispute in relation to a Card Transaction between the Merchant and a Cardholder, NBAD's record shall be conclusive evidence of the existence and extent of such Card Transactions.

#### 7. RECOVERY OF CARDS

- 7.1. The Merchant will use its best efforts to recover and retain any Card for which the Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given electronically through the MPOST Equipment or by NBAD by any

means. The Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

#### 8. FEES

- 8.1. The Merchant shall pay the Fees as set out in Application form until the date of termination.
- 8.2. The Merchant acknowledges, agrees and authorises that NBAD to recover the Fees by deducting the amount from the Merchant's settlement account or from the Card Transactions.

#### 9. CHARGEBACKS

- 9.1. NBAD may withhold payment to the Merchant in relation to a Card Transaction or having credited the Merchant's account may charge back the amount under any of the following circumstances:
  - 9.1.1. The Authorisation for a Card Transaction was not obtained in accordance with the Operating Manual;
  - 9.1.2. Card Transaction Data is issued or presented in breach of the Card Scheme Operating Procedures;
  - 9.1.3. The Merchant fails to produce, at NBAD's request, a Sales Slip;
  - 9.1.4. The signature on the Sales Slip is not reasonably similar to the one on the signature panel of the Card or the signature is forged;
  - 9.1.5. The Sales Slip is illegible;
  - 9.1.6. The Merchant's account is credited more than once for the same Card Transaction;
  - 9.1.7. The Merchant has processed a fictitious Card Transaction, or has otherwise defrauded or attempted to defraud NBAD or the Cardholder;
  - 9.1.8. The Card Transaction is for any reason illegal, null or invalid;
  - 9.1.9. The Merchant has failed to comply with the terms of this Agreement or is otherwise in breach of any rule, instruction or procedure issued pursuant to this Agreement;
  - 9.1.10. The Merchant has done multiple Card Transactions for the same Cardholder or has split the Sales Slip for particular Card Transactions; or
  - 9.1.11. The Card Transaction is, in NBAD's sole opinion, a suspicious Card Transaction.
- 9.2. In addition to any costs incurred by NBAD in withholding payment or charging back payment, the Merchant also agrees to pay all penalties or fines imposed upon NBAD by any of the Card issuers imposed due to non-compliance by the Merchant with such Card issuer's standard terms or regulations.
- 9.3. Claims in relation to withheld payments under this Clause, if any, must be made within 7 Business Days from the date of the said Card Transaction.
- 9.4. The Merchant authorises NBAD to deduct any liabilities, losses, fees, costs or expenses or any other amounts payable by the Merchant to NBAD pursuant to this Agreement which shall include, without limitation, any arising as a result of incoming charge backs or a fraudulent confirmation received in relation to the Card Transactions processed by the Merchant.

#### 10. PA-DSS / PCI-DSS COMPLIANCE

- 10.1. The Merchant hereby undertakes that it shall notify NBAD immediately in writing if any of its payment applications are not compliant with the PA-DSS and/or PCI-DSS requirements and only use payment applications for the processing of Card Transactions and any related matters that have been validated by the PCI SSC and comply with the PA-DSS and PCI-DSS.
- 10.2. The Merchant acknowledges and agrees that it shall be liable in full for all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by NBAD and arising from the Merchant's failure to comply with any of the requirements under the PA-DSS and PCI-DSS and/or any fraud which may arise out of non-compliance with the provisions of Clause 10.1.

#### 11. CONFIDENTIALITY

- 11.1. Each party acknowledges and agrees that it shall have access to Confidential Information and that it shall not use the Confidential Information other than for the purpose of providing the Services (the "Permitted Purpose").
- 11.2. Each party may only disclose the Confidential Information to those of its employees, officers, representatives or advisers who need to know such Confidential Information for the Permitted Purpose, provided that:
  - 11.2.1. it informs such persons of the confidential nature of the Confidential Information; and
  - 11.2.2. at all times, it is responsible for such persons' compliance with the confidentiality obligations set out in this Agreement.
- 11.3. Unless expressly provided under this Agreement or required by law or regulation, neither party shall disclose (and shall insofar as reasonably practicable prevent any disclosure of) any Confidential Information to any third party without the prior written consent of the other party.
- 11.4. Each party shall use the same degree of care to avoid disclosure of the Confidential Information:
  - 11.4.1. as it employs with respect to its own confidential information; or
  - 11.4.2. as may be reasonably expected of a company providing services similar to the Services, whichever is the highest.
- 11.5. The Merchant shall not, without the prior consent of NBAD, advertise or publicly announce it is providing or has provided services to NBAD, or otherwise identify NBAD in the Merchant's marketing and publicity activities.

- 11.6. The Merchant shall indemnify and hold NBAD harmless against all losses, damages, costs (including legal fees) and expenses incurred or suffered as a result of a failure by the Merchant to comply with the terms of this Clause.

#### 12. TERMINATION

- 12.1. Without prejudice to any right or remedy either party may have against the other for breach or non-performance of this Agreement, either party shall have the right by notice in writing to the other party to terminate all or any part of this Agreement on or at any time after the occurrence of any of the following events:
  - 12.1.1. the passing by the other party of a resolution of its winding up or the marking by a court of a competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;
  - 12.1.2. the making of an order in relation to the other party or the appointment of a custodian, trustee, receiver, intervener or like official receiver or an administrative receiver over, or the taking possession or sale by an encumbrance of, any of the other party's assets;
  - 12.1.3. the other party making an arrangement, composition or conferring with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or
  - 12.1.4. if either party's ability to carry out its obligations under this Agreement is prevented or substantially interfered with by any regulation, law, decree or any act of state or other governmental action or by if the other party is refused or has revoked any official or regulatory license, authorisation or permission necessary for the performance of its obligations hereunder.
- 12.2. The Merchant shall have the right by notice in writing to NBAD to terminate all or any part of this Agreement immediately, if NBAD breaches any terms or conditions of this Agreement; and such breach has not been cured by NBAD within 20 Business Days of receiving the notice of such breach from the Merchant.
- 12.3. NBAD shall have the right by notice in writing to the Merchant to terminate all or any part of this Agreement after the occurrence of any of the following events:
  - 12.3.1. immediately, if the Merchant breaches any terms or conditions of this Agreement; and such breach has not been cured by the Merchant within 10 Business Days of receiving the notice of such breach from NBAD;
  - 12.3.2. the Merchant ceasing to carry on a material part of its business at any time or disposing of all its assets or a substantial party of its assets;
  - 12.3.3. a change of control of the Merchant; or
  - 12.3.4. commits an act of misconduct.
- 12.4. NBAD may terminate this Agreement at its convenience on 3 months' notice to the Merchant, without further penalty, obligation or liability to the Merchant.

#### 13. CONSEQUENCES OF TERMINATION

- 13.1. On termination of this Agreement for any reason:
  - 13.1.1. the Merchant shall immediately cease use of all equipment provided by ETISALAT, including, where appropriate, MPOST Equipment;
  - 13.1.2. the Merchant shall immediately deliver or return to NBAD at the Merchant's expense all materials and copies thereof (whether in hard or electronic format) relating to any Card or Cardholder together with written confirmation from the Merchant that it has complied with all of its obligations under this Clause;
  - 13.1.3. NBAD shall be entitled to all of the Merchant's outstanding Fees set out in Schedule 1 for Card Transactions completed up to the date of termination; and
  - 13.1.4. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages for any breach of the Agreement which existed at or before the date of termination.

#### 14. LIMITATION OF LIABILITY

- 14.1. The Merchant shall indemnify NBAD against any loss of or damage to any property or injury to or death of any person (including NBAD or NBAD's employees) caused by any negligent act or omission or wilful misconduct of the Merchant and its personnel.
- 14.2. The liability of the Merchant shall not be limited for the Merchant's acts or omissions of gross negligence, wilful default or for claims by NBAD under Clause 14.1.
- 14.3. Subject to clause 14.3 the liability for either party for loss or damage arising out of or in connection with any breach of that party's obligations under this Agreement, whether arising from breach of contract, tort, negligence or howsoever in respect of each event or series of connected events, shall not exceed AED 1 million.
- 14.4. Nothing in this Clause limits or excludes the liability of either party for:
  - 14.4.1. death or personal injury resulting from negligence; or
  - 14.4.2. fraud or fraudulent misrepresentation.
- 14.5. In no event shall either party be liable for loss of profits or business, anticipated savings or any special, indirect or consequential loss whether arising from negligence, breach of contract or howsoever.
- 14.6. NBAD shall in no way be liable to the Merchant or the Cardholder in case of any dispute arising between them, including, without limitation, any claim or dispute arising between them regarding exchange or return of goods.
- 14.7. NBAD shall in no way be liable to the Merchant in case of any dispute arising between NBAD and the Merchant, including, without limitation, in relation to faulty, damaged or defective MPOST Equipment.

- 14.8. NBAD shall not be liable to the Merchant or to any Cardholder or to any other person for any costs, losses, expenses, damages whether caused directly or indirectly by the MPOST Equipment or systems malfunction, failure of connection or communication links.
- 14.9. A Card Transaction is a transaction between the Merchant and the Cardholder and NBAD shall not be liable to either the Merchant or the Cardholder in case of any dispute arising between them in relation thereto provided that the said dispute is not caused by any wrong doing by NBAD.
- 14.10. The Merchant shall be liable to reimburse NBAD, either during the tenure of the Agreement or after the termination of this Agreement, for any disputed amount for a period of 36 months from the date of the relevant Card Transaction.
- 14.11. NBAD shall indemnify and hold harmless the Merchant from any liability whatsoever arising from the intentional misconduct or fraudulent activity of NBAD.

#### 15. SET-OFF

- 15.1. In addition to any legal or other remedy available to it in accordance with this Agreement or by law, NBAD may set off any amounts due to NBAD under this Agreement against any of the Merchant's accounts held with NBAD or any amounts due by NBAD to the Merchant under this Agreement (including, without limitation, any amounts owed to the Merchant under a Card Transaction).

#### 16. FORCE MAJEURE

- 16.1. Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this Agreement due to a Force Majeure Event.
- 16.2. Any party which is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 16.2.1. it promptly notifies the other party in writing of the nature and the extent of the Force Majeure Event causing its delay or failure in performance;
- 16.2.2. and it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 16.3. If the Force Majeure Event continues for a continuous period of more than 60 Business Days, either party may terminate this Agreement by giving 20 Business Days written notice to the other party.

#### 17. NO PARTNERSHIP OR AGENCY

- 17.1. The parties acknowledge and agree that this Agreement is entered into on a principal to principal basis and that nothing in this Agreement shall constitute, or be deemed to constitute, a joint

venture, partnership or employment relationship between the parties.

- 17.2. Neither party, nor any of its officers, directors, employees, representatives, sub-contractors, advisers and agents) shall have any authority (and shall not hold itself out as having authority) to:

- 17.2.1. represent or act for and on behalf of the other party (as representative, agent or in any capacity whatsoever); or
- 17.2.2. incur any expenditure in the name or for the account of the other party.

#### 18. ASSIGNMENT

- 18.1. The Service Provider may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of NBAD.
- 18.2. NBAD may at any time assign or transfer any of its rights or obligations under this Agreement to an affiliate.

#### 19. NOTICES

- 19.1. Any notice or other communication in respect of this Agreement shall be given in English and may be delivered in any manner described below to the address or number provided in Schedule 2.
- 19.2. A notice under Clause 19.1 shall be deemed to be effective if:
- 19.2.1. in writing and delivered by person or by courier, on the date it is delivered; or
- 19.2.2. sent by facsimile transmission, on the date it is transmitted as evidenced by the transmission report.
- 19.3. In case of notice being given after 4pm on a Business Day or on a day which is not a Business Day, the date of service shall be deemed to be the next Business Day.
- 19.4. Either party may by notice to the other change the address or facsimile number details at which notices or other communications are to be given to it.

#### 20. ENTIRE AGREEMENT

- 20.1. This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 20.2. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

#### 21. AMENDMENTS

- 21.1. Any amendment, modification or waiver in respect of this Agreement will only be effective if in writing and executed by both parties.

- 21.2. Notwithstanding Clause 21.1, NBAD may add cards or services by notifying the Merchant in writing of any amendment. All provisions of this Agreement shall apply to cards or services added to this Agreement. NBAD shall notify the Merchant of the fees to be charged for processing the additional cards and services. Acceptance by the Merchant of a new approved card as payment for goods and/or services after NBAD has sent the Merchant notice of an amendment shall constitute the Merchant's agreement to the amendment and the fees or charges related to these additions.

#### 22. COUNTERPARTS

- 22.1. This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

#### 23. REMEDIES AND WAIVERS

- 23.1. No failure to exercise, nor any delay in exercising, on the part of NBAD, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

#### 24. PARTIAL INVALIDITY

- 24.1. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions will in any way be affected or impaired.

#### 25. SURVIVAL

- 25.1. The provisions of Clauses 11, 13, 14, 23, 24, 25 and 26 shall continue to apply notwithstanding termination of this Agreement.

#### 26. GOVERNING LAW AND JURISDICTION

- 26.1. This Agreement will be governed by and construed in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applicable in the Emirate of Abu Dhabi.
- 26.2. Any dispute arising out of or in connection with this Agreement shall be referred by written notice to the Project Managers of each party who shall meet and endeavour to resolve the dispute between them. If the parties fail to resolve the dispute, then the dispute shall be referred to senior managers of each party who shall meet and endeavour to resolve the dispute.
- 26.3. If the parties fail to amicably resolve a dispute in accordance with the above procedure within a period of 20 Business Days from such dispute coming to existence. The parties hereby agree that the courts of the Emirate of Abu Dhabi shall have jurisdiction to hear and determine any action or proceeding, and to settle any disputes, which may arise in relation to this Agreement.

THIS AGREEMENT has been signed on behalf of the parties by their duly authorized representatives on the date which appears first on page 1.

Signed by:  .....	Signed by:  .....
Signed by ..... For and on behalf of NATIONAL BANK OF ABU DHABI PJSC	For and on behalf of [MERCHANT]
Name: .....	Name: .....
Title: .....	Title: .....
Date: .....	Date: .....

Signed by:  .....	Signed by:  .....
Signed by ..... For and on behalf of NATIONAL BANK OF ABU DHABI PJSC	For and on behalf of [MERCHANT]
Name: .....	Name: .....
Title: .....	Title: .....
Date: .....	Date: .....

All notices to the Merchant shall be sent to the following address:

[MERCHANT]

[Insert address]

For the attention of: .....

Telephone: ..... Fax no: .....



# agreement

## Mobile Cashier- Merchant

THIS MERCHANT SERVICES AGREEMENT (the "Agreement") is dated ..... day of ..... 20[ ] and made BETWEEN NATIONAL BANK OF ABU DHABI PJSC ("NBAD") and the MERCHANT. each a "party" and together the "parties".

### WHEREAS:

NBAD appoints the Merchant for the purpose of accepting the Cards presented as a means of payment in accordance with the terms of this Agreement.

### THE PARTIES AGREE as follows:

#### 1. INTERPRETATION

1.1. In this Agreement, except where the context otherwise requires, the following terms shall have the following meanings:

**"AmEx Card"** means any debit, deferred debit, charge or credit card issued by American Express Company and bearing the American Express logo.

**"Authorisation"** means the process by which a Card Transaction request is approved, referred or declined by NBAD and the provision of refund, amendment and settlement.

**"Authorised Person"** means an employee of the Merchant authorized by the Merchant and trained by NBAD to access the MPOST Equipment for acceptance of Card Transactions.

**"Business Day"** means a day (other than a Friday, Saturday or public holiday) on which banks are open for general business in the Emirate of Abu Dhabi.

**"Card"** means (i) a valid Visa Card issued under license from Visa International, Inc., a valid MasterCard issued under license from MasterCard International Incorporated, a valid JCB Card issued under license by Japan Credit Bureau, a valid Diners Club Card issued under license by Diners Club International, a valid AmEx Card issued under license by American Express Company, or a valid CUP Card issued under license by China UnionPay; and (ii) any other valid credit and/or debit card approved by NBAD from time to time.

**"Cardholder"** means the individual for whom a Card has been issued at any time and whose name is embossed/printed on the Card.

**"Card Scheme Operating Procedures"** means the by-laws, rules, operating regulations and any other instructions issued by the card schemes, as the same may be amended or varied from time to time.

**"Card Transaction"** means a transaction between the Merchant and the Cardholder in which a Card is used for payment of goods or services, a refund or any other permitted transaction which is evidenced by a Sales Slip.

**"Card Transaction Data"** means details of a Card Transaction in a form approved by NBAD.

**"CUP Card"** means any debit, deferred debit, charge or credit card issued by China UnionPay and bearing the China UnionPay logo.

**"Confidential Information"** means any information which is disclosed or otherwise comes into either party's possession directly or indirectly as a result of this Agreement and which is of a confidential nature including, without limitation, any business, employee or customer information, any technical or commercial know-how, data, any information relating to NBAD and any entity it controls or is controlled by and the existence and terms of this Agreement but excludes information that:

- is or becomes public information other than as a direct or indirect result of any breach by either party of this Agreement; or
- is identified in writing at the time of delivery as non-confidential by the disclosing party; or
- is known by the party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the recipient party after that date, from a source which is, as far as the recipient party is aware unconnected with the other party and has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Diners Club Card"** means a charge card issued to the Cardholder by Diners Club International of New York, USA a franchisee Diners Club International or a company participating in Diners Club International plan.

**"Etisalat"** means (Emirates Telecommunications Corporation), a statutory corporation, duly established and existing under the laws of the UAE, licensed by the Telecommunications Regulatory Authority to provide telecommunications and VAS (value added services) services in the UAE. Etisalat responsibilities to include:

- engaging Merchants to perform Card Transactions;
- making available MPOS Equipment, approved by NBAD and shall provide maintenance services to the MPOS Equipment in order for Merchants to perform Card Transactions;

**"Effective Date"** means the date of this Agreement.

**"Fees"** means those charges payable by the Merchant to NBAD as detailed in the Application form Schedule 1.

**"Floor Limit"** means a maximum amount as specified in Schedule 1 of a Card Transaction which the Merchant may proceed with on any one occasion without obtaining NBAD's Authorisation.

**"Force Majeure Event"** means a cause outside of either party's reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire or acts of any government authority.

**"JCB Card"** means any debit, deferred debit, charge or credit card issued by Japan Credit Bureau and bearing the JCB logo.

**"MasterCard"** means any debit, deferred debit, charge or credit card bearing the MasterCard logo and includes any standard, gold or business card. A payment card bearing "Maestro" or "Cirrus" logo and which is accepted at any MPOS Terminal shall also be considered as a MasterCard.

**"Merchant"** means the merchant identified in Application form who is to accept the Cards as a means of payment under this Agreement.

**"PA-DSS"** means the Payment Application Data Security Standard.

**"PCI-DSS"** means the Payment Card Industry Data Security Standard as declared by the Payment Card Industry Data Security Standards Council ("PCI SSC") from time to time.

**"MPOS Terminal"** means the electronic point-of-sale terminal as approved by NBAD and provided by ETISALAT to the Merchant.

**"MPOST Equipment"** means the MPOS Terminal and all accessories, connections and peripherals provided by Etisalat to the Merchant.

**"Pre-Authorization"** means a temporary freeze of a specific amount from the available balance on a Card, which is performed by the Merchant prior to the completion of the transaction for the delivery of goods or performance of services.

**"Sales Slip"** means the receipt (physical print-out or electronic record) of a Card Transaction generated on the MPOS Terminal for which the Cardholder's signature or PIN-based authorization is obtained by the Merchant, or such other sales voucher approved by NBAD from time to time and provided to the Merchant for its use to manually document the details of a Card Transaction and on which the Cardholder's signature or PIN-based authorization is obtained by the Merchant.

**"Visa Card"** means any debit, deferred debit, charge or credit card bearing Visa logo and includes any classic, premier, business, platinum or electron card. A payment Card bearing a "Plus", "Interlink", or "Delta" logo and which is accepted at any MPOS Terminal shall also be considered as a Visa Card.

1.1. Unless the context otherwise requires:

- 1.1.1. words importing the singular include the plural and vice-versa and words importing a gender include any gender;
- 1.1.2. the words "including" and "include" shall mean including without limitation and include without limitation respectively;
- 1.1.3. a reference to a Clause or a Schedule is a reference to a clause of, or a schedule to, this Agreement;
- 1.1.4. the headings and the table of contents are for convenience only and shall not affect the construction of this Agreement;
- 1.1.5. any reference to time of day is to Abu Dhabi time;
- 1.1.6. subject to Clause 18, references to a party to this Agreement include references to the successors and assigns (immediate or otherwise) of that party;
- 1.1.7. any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Agreement or that document; and
- 1.1.8. any reference to a person includes a body corporate, unincorporated association of persons (including a partnership or joint venture), government, state, agency, organisation and any other entity whether or not having a separate legal personality and an individual, his estate and personal representatives.

1.2. Clause 1.1 applies unless the contrary intention appears.

1.3. Any schedules or appendices to this Agreement form part of this Agreement.

#### 2. TERM

2.1. This Agreement shall commence on the Effective Date and shall continue in force unless terminated in accordance with the terms of this Agreement.

#### 3. REPRESENTATIONS AND WARRANTIES OF THE MERCHANT

- 3.1. The Merchant represents, warrants and undertakes to NBAD that: 2.1.1. it has been duly incorporated, organized and/or established and is validly existing under the laws of the jurisdiction of its incorporation, organization or establishment (as the case may be);
- 3.1.2. it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- 3.1.3. the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, the Merchant, enforceable against the Merchant in accordance with its terms;
- 3.1.4. it possesses all requisite certificates, authorisations and permits (whether issued by any regulatory authority or otherwise) for the performance of its obligations;

3.1.5. it shall maintain all applicable licenses, consents and permissions necessary to perform its obligations under the Agreement;

3.1.6. it has adequate expertise, staffing and other resources necessary to meet its obligations under this Agreement;

3.1.7. it shall comply with all NBAD's instructions that it may receive in relation to, or in connection with, this Agreement;

3.1.8. it shall comply and its obligations will be performed in accordance with all applicable laws and regulations;

3.1.9. it shall honour all Cards presented by as a means of payment for a Card Transaction by accepting them and, where relevant, by supplying goods, services or other facilities on the same terms (including price) as they are supplied for cash;

3.1.10. it shall only perform Card Transactions by swiping the Card through the MPOST Equipment in the presence of the Cardholder or by inserting the Card into the MPOS Terminal and, if so required, request that the Cardholder enter their personal identification number (PIN);

3.1.11. it shall comply with all rules, instructions and procedures contained in this Agreement, in the Card Scheme Operating Procedures and any other procedure or guidelines which may be supplied by NBAD from time to time. NBAD may issue from time to time amendments in connection with these rules, instructions and procedures. Such amendments shall become an integral part of this Agreement and the Merchant undertakes to comply with such amendments as soon as it or any of its employees become aware of it, whether through NBAD or otherwise;

3.1.12. it shall obtain Authorisation from NBAD if a particular Card Transaction exceeds the Floor Limit;

3.1.13. if a sale, for which an Authorisation was obtained in accordance with Clause 3.1.12 above, was not concluded, the Merchant shall immediately forward a written request to NBAD to cancel the said Authorisation;

3.1.14. for all Card Transactions where the PIN is not entered and the slip contains signature panel, the Merchant shall obtain the signature of the Cardholder on the Sales Slip and provide the Cardholder with a copy thereof;

3.1.15. it shall submit all Card Transactions Data daily to NBAD. NBAD reserves the right to levy higher fees for delayed submission if such submission is delayed by more than 7 Business Days;

3.1.16. it shall keep copies of all Sales Slips for such time and in such manner as may be required by law, but in no event for less than 2 years from the date of the Card Transaction, regardless of the expiry or early termination of this Agreement. NBAD shall have the right to inspect such copies within 5 Business Days of requesting such inspection and the Merchant agrees to surrender such copies to NBAD. If the Merchant fails to make available any such copies, the Merchant agrees to indemnify NBAD in full for all damages, losses or costs which NBAD may sustain as a result of being unable to obtain such Sales Slips;

3.1.17. it shall not submit to NBAD for Authorisation any other data relevant to any transaction other than a Card Transaction;

3.1.18. it shall not allow the MPOST Equipment to be used for any transaction other than a Card Transaction;

3.1.19. subject to its obligation under Clause 3.1.12 it shall not specify any minimum or maximum Card Transaction amount for acceptance of Cards;

3.1.20. it shall not request or use any Card or Cardholder information for any purpose that it knows or should have known to be fraudulent or in violation of the law or any rules, operation regulations, procedures, or policies which are communicated by NBAD from time to time;

3.1.21. it shall not sell, purchase, provide, or exchange any Card or Cardholder information in any form to any third party other than NBAD or Authorised Persons or pursuant to an official court order. The Merchant therefore must keep all systems and media containing Card, Cardholder or Card Transaction information in any media form in a secure manner to prevent access by or disclosure to any third party other than NBAD. The Merchant must destroy in the appropriate manner all such media which the Merchant no longer deems necessary or appropriate to store;

3.1.22. it shall not process any Card Transactions by mail, telephone or over the Internet;

3.1.23. exchange or return of goods or services will be governed by the Merchant's policy on the matter. Any claim or dispute regarding such exchange or return of goods shall be settled directly between the Merchant and the Cardholder. In the event of the return of goods or cancellation of services which comply with the Merchant's published refund policy, the Merchant will obtain a confirmation from the Cardholder and forward the request to NBAD in order to process the refund.

3.1.24. it shall not add any tax or surcharges to Card Transactions, unless the applicable law expressly requires that the Merchant be permitted to impose a surcharge. Any surcharge amount, if allowed, must be included in the Card Transaction and may not be collected separately;

3.1.25. it shall not to use a Card to process a Card Transaction for the purpose of obtaining credit for the Merchant's own

benefit;

- 3.1.26. it shall not perform any Card Transaction for returned goods or services acquired in cash;
- 3.1.27. it shall not make any cash refund to a Cardholder who has made a purchase with a Card. All credits will be issued to the same Card used for such purchase;
- 3.1.28. it shall not or attempt not to do any act (including splitting sales vouchers) to circumvent the Floor Limit;
- 3.1.29. it shall not impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment or charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check; and
- 3.1.30. it shall not during the term of, and for a period of 12 months from the termination of, this Agreement, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or entice away from NBAD any employee of NBAD without prior written consent. This prohibition does not prevent offering employment to any of NBAD's employees who may respond to a recruitment advertisement or campaign of the Merchant.

#### 4. REPRESENTATIONS AND WARRANTIES OF NBAD

- 4.1. NBAD represents, warrants and undertakes to the Merchant that:
  - 4.1.1. it has been duly incorporated and is validly existing under the laws of the jurisdiction of its incorporation;
  - 4.1.2. the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, NBAD, enforceable against NBAD in accordance with its terms;
  - 4.1.3. NBAD will pay to the Merchant the amount(s) of all Card Transactions effected and presented in accordance with the terms of this Agreement, after deducting all charges due to NBAD as set out in Schedule 1 under this Agreement by:
    - i. crediting a bank account maintained by the Merchant with NBAD in the United Arab Emirates;
    - ii. transferring the funds via SWIFT facility to the Merchant's accounts maintained with other banks in the United Arab Emirates as notified in writing to NBAD; or
    - iii. issuing a managers cheque in favour of the Merchant.
  - 4.1.4. it shall not during the term of, and for a period of 12 months from the termination of, this Agreement, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or entice away from the Merchant any employee of the Merchant without prior written consent. This prohibition does not prevent offering employment to any of the Merchant's employees who may respond to a recruitment advertisement or campaign of NBAD.

#### 5. PRE-AUTHORISATION APPLICABLE TO HOTELS AND CAR RENTALS

- 5.1. Where the Merchant is a hotel or car rental company it may estimate the Card Transaction amount for Pre-Authisation. In the event the Merchant is not a hotel or car rental company this Clause in its entirety shall not be applicable.
- 5.2. Upon check out / rental return the Merchant shall complete the Card Transaction with the relevant amount which shall not exceed the Pre-Authisation amount by more than 15% thereof and authorisation must be obtained and recorded for charges actually incurred in excess of such amount.
- 5.3. Regardless of the terms and conditions of any written Pre-Authisation form, the Card Transaction amount for any hotel lodging or vehicle rental transaction shall include only those charges that are evidenced as bona fide by the Merchant to the Cardholder and shall not include any consequential charges.
- 5.4. Nothing contained herein is intended to restrict the Merchant from enforcing the terms and conditions of its Pre-Authisation form in relation to transactions other than a Card Transaction.
- 5.5. The Merchant may also obtain additional Pre-Authisations for any additional amounts as may be necessary at any time during which it is providing the Cardholder with goods or services under this Clause. It is understood that Pre-Authisation for additional amounts may be necessary if the value of the services to be rendered under this Clause exceeds or would exceed the sum of the Pre-Authisation amount by more than 15%.
- 5.6. If the Merchant engages in restaurant or catering services it shall not alter or amend the amount of tip agreed and written by the Cardholder on the Sales Slip.

#### 6. MPOST EQUIPMENT

- 6.1. The Merchant shall, at its own cost, provide and maintain all power and telephone connections necessary for the operation of the MPOST Equipment in accordance with ETISALAT's requirements. The cost of installation of telephone line(s), periodical rental charges, and Card Transaction communication charges shall be incurred by the Merchant.
- 6.2. The MPOST Equipment must only be operated by Authorised Persons.
- 6.3. NBAD shall maintain records of Card Transactions. In case of a dispute in relation to a Card Transaction between the Merchant and a Cardholder, NBAD's record shall be conclusive evidence of the existence and extent of such Card Transactions.

#### 7. RECOVERY OF CARDS

- 7.1. The Merchant will use its best efforts to recover and retain any Card for which the Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given electronically through the MPOST Equipment or by NBAD by any

means. The Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

#### 8. FEES

- 8.1. The Merchant shall pay the Fees as set out in Application form until the date of termination.
- 8.2. The Merchant acknowledges, agrees and authorises that NBAD to recover the Fees by deducting the amount from the Merchant's settlement account or from the Card Transactions.

#### 9. CHARGEBACKS

- 9.1. NBAD may withhold payment to the Merchant in relation to a Card Transaction or having credited the Merchant's account may charge back the amount under any of the following circumstances:
  - 9.1.1. The Authorisation for a Card Transaction was not obtained in accordance with the Operating Manual;
  - 9.1.2. Card Transaction Data is issued or presented in breach of the Card Scheme Operating Procedures;
  - 9.1.3. The Merchant fails to produce, at NBAD's request, a Sales Slip;
  - 9.1.4. The signature on the Sales Slip is not reasonably similar to the one on the signature panel of the Card or the signature is forged;
  - 9.1.5. The Sales Slip is illegible;
  - 9.1.6. The Merchant's account is credited more than once for the same Card Transaction;
  - 9.1.7. The Merchant has processed a fictitious Card Transaction, or has otherwise defrauded or attempted to defraud NBAD or the Cardholder;
  - 9.1.8. The Card Transaction is for any reason illegal, null or invalid;
  - 9.1.9. The Merchant has failed to comply with the terms of this Agreement or is otherwise in breach of any rule, instruction or procedure issued pursuant to this Agreement;
  - 9.1.10. The Merchant has done multiple Card Transactions for the same Cardholder or has split the Sales Slip for particular Card Transactions; or
  - 9.1.11. The Card Transaction is, in NBAD's sole opinion, a suspicious Card Transaction.
- 9.2. In addition to any costs incurred by NBAD in withholding payment or charging back payment, the Merchant also agrees to pay all penalties or fines imposed upon NBAD by any of the Card issuers imposed due to non-compliance by the Merchant with such Card issuer's standard terms or regulations.
- 9.3. Claims in relation to withheld payments under this Clause, if any, must be made within 7 Business Days from the date of the said Card Transaction.
- 9.4. The Merchant authorises NBAD to deduct any liabilities, losses, fees, costs or expenses or any other amounts payable by the Merchant to NBAD pursuant to this Agreement which shall include, without limitation, any arising as a result of incoming charge backs or a fraudulent confirmation received in relation to the Card Transactions processed by the Merchant.

#### 10. PA-DSS / PCI-DSS COMPLIANCE

- 10.1. The Merchant hereby undertakes that it shall notify NBAD immediately in writing if any of its payment applications are not compliant with the PA-DSS and/or PCI-DSS requirements and only use payment applications for the processing of Card Transactions and any related matters that have been validated by the PCI SSC and comply with the PA-DSS and PCI-DSS.
- 10.2. The Merchant acknowledges and agrees that it shall be liable in full for all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by NBAD and arising from the Merchant's failure to comply with any of the requirements under the PA-DSS and PCI-DSS and/or any fraud which may arise out of non-compliance with the provisions of Clause 10.1.

#### 11. CONFIDENTIALITY

- 11.1. Each party acknowledges and agrees that it shall have access to Confidential Information and that it shall not use the Confidential Information other than for the purpose of providing the Services (the "Permitted Purpose").
- 11.2. Each party may only disclose the Confidential Information to those of its employees, officers, representatives or advisers who need to know such Confidential Information for the Permitted Purpose, provided that:
  - 11.2.1. it informs such persons of the confidential nature of the Confidential Information; and
  - 11.2.2. at all times, it is responsible for such persons' compliance with the confidentiality obligations set out in this Agreement.
- 11.3. Unless expressly provided under this Agreement or required by law or regulation, neither party shall disclose (and shall insofar as reasonably practicable prevent any disclosure of) any Confidential Information to any third party without the prior written consent of the other party.
- 11.4. Each party shall use the same degree of care to avoid disclosure of the Confidential Information:
  - 11.4.1. as it employs with respect to its own confidential information; or
  - 11.4.2. as may be reasonably expected of a company providing services similar to the Services, whichever is the highest.
- 11.5. The Merchant shall not, without the prior consent of NBAD, advertise or publicly announce it is providing or has provided services to NBAD, or otherwise identify NBAD in the Merchant's marketing and publicity activities.

- 11.6. The Merchant shall indemnify and hold NBAD harmless against all losses, damages, costs (including legal fees) and expenses incurred or suffered as a result of a failure by the Merchant to comply with the terms of this Clause.

#### 12. TERMINATION

- 12.1. Without prejudice to any right or remedy either party may have against the other for breach or non-performance of this Agreement, either party shall have the right by notice in writing to the other party to terminate all or any part of this Agreement on or at any time after the occurrence of any of the following events:
  - 12.1.1. the passing by the other party of a resolution of its winding up or the marking by a court of a competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;
  - 12.1.2. the making of an order in relation to the other party or the appointment of a custodian, trustee, receiver, intervener or like official receiver or an administrative receiver over, or the taking possession or sale by an encumbrance of, any of the other party's assets;
  - 12.1.3. the other party making an arrangement, composition or conferring with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or
  - 12.1.4. if either party's ability to carry out its obligations under this Agreement is prevented or substantially interfered with by any regulation, law, decree or any act of state or other governmental action or by if the other party is refused or has revoked any official or regulatory license, authorisation or permission necessary for the performance of its obligations hereunder.
- 12.2. The Merchant shall have the right by notice in writing to NBAD to terminate all or any part of this Agreement immediately, if NBAD breaches any terms or conditions of this Agreement; and such breach has not been cured by NBAD within 20 Business Days of receiving the notice of such breach from the Merchant.
- 12.3. NBAD shall have the right by notice in writing to the Merchant to terminate all or any part of this Agreement after the occurrence of any of the following events:
  - 12.3.1. immediately, if the Merchant breaches any terms or conditions of this Agreement; and such breach has not been cured by the Merchant within 10 Business Days of receiving the notice of such breach from NBAD;
  - 12.3.2. the Merchant ceasing to carry on a material part of its business at any time or disposing of all its assets or a substantial party of its assets;
  - 12.3.3. a change of control of the Merchant; or
  - 12.3.4. commits an act of misconduct.
- 12.4. NBAD may terminate this Agreement at its convenience on 3 months' notice to the Merchant, without further penalty, obligation or liability to the Merchant.

#### 13. CONSEQUENCES OF TERMINATION

- 13.1. On termination of this Agreement for any reason:
  - 13.1.1. the Merchant shall immediately cease use of all equipment provided by ETISALAT, including, where appropriate, MPOST Equipment;
  - 13.1.2. the Merchant shall immediately deliver or return to NBAD at the Merchant's expense all materials and copies thereof (whether in hard or electronic format) relating to any Card or Cardholder together with written confirmation from the Merchant that it has complied with all of its obligations under this Clause;
  - 13.1.3. NBAD shall be entitled to all of the Merchant's outstanding Fees set out in Schedule 1 for Card Transactions completed up to the date of termination; and
  - 13.1.4. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages for any breach of the Agreement which existed at or before the date of termination.

#### 14. LIMITATION OF LIABILITY

- 14.1. The Merchant shall indemnify NBAD against any loss of or damage to any property or injury to or death of any person (including NBAD or NBAD's employees) caused by any negligent act or omission or wilful misconduct of the Merchant and its personnel.
- 14.2. The liability of the Merchant shall not be limited for the Merchant's acts or omissions of gross negligence, wilful default or for claims by NBAD under Clause 14.1.
- 14.3. Subject to clause 14.3 the liability for either party for loss or damage arising out of or in connection with any breach of that party's obligations under this Agreement, whether arising from breach of contract, tort, negligence or howsoever in respect of each event or series of connected events, shall not exceed AED 1 million.
- 14.4. Nothing in this Clause limits or excludes the liability of either party for:
  - 14.4.1. death or personal injury resulting from negligence; or
  - 14.4.2. fraud or fraudulent misrepresentation.
- 14.5. In no event shall either party be liable for loss of profits or business, anticipated savings or any special, indirect or consequential loss whether arising from negligence, breach of contract or howsoever.
- 14.6. NBAD shall in no way be liable to the Merchant or the Cardholder in case of any dispute arising between them, including, without limitation, any claim or dispute arising between them regarding exchange or return of goods.
- 14.7. NBAD shall in no way be liable to the Merchant in case of any dispute arising between NBAD and the Merchant, including, without limitation, in relation to faulty, damaged or defective MPOST Equipment.



- 14.8. NBAD shall not be liable to the Merchant or to any Cardholder or to any other person for any costs, losses, expenses, damages whether caused directly or indirectly by the MPOST Equipment or systems malfunction, failure of connection or communication links.
- 14.9. A Card Transaction is a transaction between the Merchant and the Cardholder and NBAD shall not be liable to either the Merchant or the Cardholder in case of any dispute arising between them in relation thereto provided that the said dispute is not caused by any wrong doing by NBAD.
- 14.10. The Merchant shall be liable to reimburse NBAD, either during the tenure of the Agreement or after the termination of this Agreement, for any disputed amount for a period of 36 months from the date of the relevant Card Transaction.
- 14.11. NBAD shall indemnify and hold harmless the Merchant from any liability whatsoever arising from the intentional misconduct or fraudulent activity of NBAD.

## 15. SET-OFF

- 15.1. In addition to any legal or other remedy available to it in accordance with this Agreement or by law, NBAD may set off any amounts due to NBAD under this Agreement against any of the Merchant's accounts held with NBAD or any amounts due by NBAD to the Merchant under this Agreement (including, without limitation, any amounts owed to the Merchant under a Card Transaction).

## 16. FORCE MAJEURE

- 16.1. Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this Agreement due to a Force Majeure Event.
- 16.2. Any party which is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 16.2.1. it promptly notifies the other party in writing of the nature and the extent of the Force Majeure Event causing its delay or failure in performance;
- 16.2.2. and it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 16.3. If the Force Majeure Event continues for a continuous period of more than 60 Business Days, either party may terminate this Agreement by giving 20 Business Days written notice to the other party.

## 17. NO PARTNERSHIP OR AGENCY

- 17.1. The parties acknowledge and agree that this Agreement is entered into on a principal to principal basis and that nothing in this Agreement shall constitute, or be deemed to constitute, a joint

venture, partnership or employment relationship between the parties.

- 17.2. Neither party, nor any of its officers, directors, employees, representatives, sub-contractors, advisers and agents) shall have any authority (and shall not hold itself out as having authority) to:

- 17.2.1. represent or act for and on behalf of the other party (as representative, agent or in any capacity whatsoever); or
- 17.2.2. incur any expenditure in the name or for the account of the other party.

## 18. ASSIGNMENT

- 18.1. The Service Provider may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of NBAD.
- 18.2. NBAD may at any time assign or transfer any of its rights or obligations under this Agreement to an affiliate.

## 19. NOTICES

- 19.1. Any notice or other communication in respect of this Agreement shall be given in English and may be delivered in any manner described below to the address or number provided in Schedule 2.
- 19.2. A notice under Clause 19.1 shall be deemed to be effective if:
- 19.2.1. in writing and delivered by person or by courier, on the date it is delivered; or
- 19.2.2. sent by facsimile transmission, on the date it is transmitted as evidenced by the transmission report.
- 19.3. In case of notice being given after 4pm on a Business Day or on a day which is not a Business Day, the date of service shall be deemed to be the next Business Day.
- 19.4. Either party may by notice to the other change the address or facsimile number details at which notices or other communications are to be given to it.

## 20. ENTIRE AGREEMENT

- 20.1. This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 20.2. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

## 21. AMENDMENTS

- 21.1. Any amendment, modification or waiver in respect of this Agreement will only be effective if in writing and executed by both parties.

- 21.2. Notwithstanding Clause 21.1, NBAD may add cards or services by notifying the Merchant in writing of any amendment. All provisions of this Agreement shall apply to cards or services added to this Agreement. NBAD shall notify the Merchant of the fees to be charged for processing the additional cards and services. Acceptance by the Merchant of a new approved card as payment for goods and/or services after NBAD has sent the Merchant notice of an amendment shall constitute the Merchant's agreement to the amendment and the fees or charges related to these additions.

## 22. COUNTERPARTS

- 22.1. This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## 23. REMEDIES AND WAIVERS

- 23.1. No failure to exercise, nor any delay in exercising, on the part of NBAD, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 24. PARTIAL INVALIDITY

- 24.1. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions will in any way be affected or impaired.

## 25. SURVIVAL

- 25.1. The provisions of Clauses 11, 13, 14, 23, 24, 25 and 26 shall continue to apply notwithstanding termination of this Agreement.

## 26. GOVERNING LAW AND JURISDICTION

- 26.1. This Agreement will be governed by and construed in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applicable in the Emirate of Abu Dhabi.
- 26.2. Any dispute arising out of or in connection with this Agreement shall be referred by written notice to the Project Managers of each party who shall meet and endeavour to resolve the dispute between them. If the parties fail to resolve the dispute, then the dispute shall be referred to senior managers of each party who shall meet and endeavour to resolve the dispute.
- 26.3. If the parties fail to amicably resolve a dispute in accordance with the above procedure within a period of 20 Business Days from such dispute coming to existence. The parties hereby agree that the courts of the Emirate of Abu Dhabi shall have jurisdiction to hear and determine any action or proceeding, and to settle any disputes, which may arise in relation to this Agreement.

THIS AGREEMENT has been signed on behalf of the parties by their duly authorized representatives on the date which appears first on page 1.

Signed by:  .....	Signed by:  .....
Signed by ..... For and on behalf of NATIONAL BANK OF ABU DHABI PJSC	For and on behalf of [MERCHANT]
Name: .....	Name: .....
Title: .....	Title: .....
Date: .....	Date: .....

Signed by:  .....	Signed by:  .....
Signed by ..... For and on behalf of NATIONAL BANK OF ABU DHABI PJSC	For and on behalf of [MERCHANT]
Name: .....	Name: .....
Title: .....	Title: .....
Date: .....	Date: .....

All notices to the Merchant shall be sent to the following address:

[MERCHANT]

[Insert address]

For the attention of: .....

Telephone: ..... Fax no: .....