

# DFCC Bank PLC

## Merchant Agreement

**THIS AGREEMENT** is made and entered in to on this.....day of.....Two Thousand and .....(.....) (Date of Execution)

**BY AND BETWEEN**

**DFCC BANK PLC** a banking Company duly incorporated under the Companies Act No 07 of 2007 bearing Registration No PQ 233 having its Registered Office at No. 73/5 Galle Road, Colombo 03 in the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as '**the Bank**' which term or expression shall mean and include the said **DFCC BANK PLC** its successors and assigns) ("**Bank**")

**AND**

*\*Note: Delete the inappropriate and fill in the relevant clause*

**(Individual)**

.....(holder of NIC No.....v) carrying on business at ..... (hereinafter referred to as the "Merchant" which term or expression as herein used shall where the context so requires or admits mean and include the said .....his/her heirs, executors/administrators and/or permitted assigns) of the other part

**(Proprietorship)**

..... (holder of NIC No.....v) carrying on business as a proprietorship in the name and style of "....."at..... (hereinafter referred to as the "Merchant" which term or expression as herein used shall where the context so requires or admits mean and include the said ..... his/her heirs, executors/administrators and/or permitted assigns) of the other part

**(Company)**

..... a Company duly incorporated under the Laws of Sri Lanka bearing registration No.....and having its Registered Office at.....(hereinafter sometimes referred to as the "Merchant" which term or expression as herein used shall mean and include the said .....and its successors and/or permitted assigns) of the other part

**(Partnership)**

..... (Names of the partners) (holders of NIC No.....v, .....v, .....v, .....v, .....v) carrying on business as a partnership in the name and style of.....(Registration Number.....) at .....(hereinafter sometimes referred to as the "Merchant" which term or expression as herein used shall mean and include the said ..... (their executors, administrators and/or permitted assigns) of the other part

**(Club/Societies)**

.....a club/Society in the Democratic Socialist Republic of Sri Lanka carrying on its activities at No.....(hereinafter referred to as "the Merchant" which term or expression as herein used shall mean and include the said.....(its executors, administrators and/or permitted assigns) of the other part

**(Government Institutions)**

..... duly established under the ..... Act/Ordinance No:..... of ..... and having its Registered Office at.....(hereinafter referred to as the "Merchant" its successors and assigns);

WHEREAS The Bank is a Licensed Commercial Bank carrying out banking operations;

WHEREAS The Merchant is engaged in the business of ..... desires to facilitate its day to day transaction by way of utilizing a point of sales equipment;

WHEREAS the Bank is desirous of providing Point of Sale equipment to the Merchant subject to the terms and conditions described below;

This Agreement and the following terms and conditions shall apply in respect of each and every transaction involving payment by means of a valid Card and/or Virtual Mobile App issued by an authorized Financial Institution (hereinafter referred to as "Card/Virtual Mobile App")

**1. Definitions**

In these conditions where the contract so requires or admits;

- 1.1 "Agreement" means the Merchant Agreement executed between DFCC Bank PLC and the Merchant, and such terms and conditions as varied from time to time.
- 1.2 "Bank" means DFCC Bank PLC.
- 1.3 "Card" means any physical or virtual Debit/Credit/value stored Card issued by any Issuing Institute to the Customer based on the Agreements entered into between the Issuing Institute and various Payment Associations.
- 1.4 "Cardholder" means any person to whom a Card or any Virtual Mobile App is issued under his name by any Issuing Institute
- 1.5 "Credit slip" means a refund given to a Customer due to reasons agreed between the Issuing Bank, Merchant and the Bank.
- 1.6 "Customer" means any person who carries a Card, or any Virtual Mobile App provided to the Merchant by any Issuing Institute.
- 1.7 "Discount amount" means the fees payable by the Merchant for each transaction calculated as per the Discount Rate to the Bank.
- 1.8 "Discount Rate" means the percentage of the transaction value payable by the Merchant to the Bank.
- 1.9 "Equipment" means Point of Sale (POS) terminals including SIM cards, printers, mobile phones, mobile communication equipment and all related accessories.

- 1.10 **"Floor limit"** means the amount determined by the Bank to Merchants, up to which transactions can be processed without authorization from the Bank. Such circumstances and amounts shall be decided at the discretion of the Bank and will be informed to the Merchant as and when required.
- 1.11 **"Issuing Institute"** means any Bank or Financial institution who issues any physical or virtual Debit/Credit/value stored Card
- 1.12 **"Merchant"** means a person or organization who will possess any payment acceptance mechanism provided by the Bank who to the best knowledge of the Bank is legally authorized to sell goods and/or services on the acceptance of the Card using such payment acceptance mechanism.
- 1.13 **"Payment Associations"** means who authorizes its members to issue Cards and acquire Transactions under specific brands including but not limited to Visa, Master Card, Amex, Union Pay, Lanka Pay etc;
- 1.14 **"Sales slips"** means electronic advices, manual and QR based transactions
- 1.15 **"Transaction"** means a transaction carried out by using a Card, with/without a PIN or via otherpayment channels facilitating transactions including mobile apps, Tele-banking, Call banking, E-wallet and Internet Payment Gateways, Near Field Communication as described and explained in the conditions pertaining to those service/products or otherwise, with or without the knowledge of Customer.
- 1.16 **"Virtual Mobile App"** means any payment software application including but not limited to QR pay provided by a financial institution downloaded by the Customer to a mobile device.
- 2. Process**  
The Merchant shall submit to the Bank duly completed application form which will form part and parcel of this Agreement (**Annexure One (1)**).
- 3. Honour Card/Virtual Mobile App**  
The Merchant shall honor every Card/Virtual Mobile App based transaction when properly presented as payment from Customer. The Merchant shall not engage in acceptance practices or procedures that discriminate against or discourage the use of a specific Card/Virtual Mobile App in favor of any other competing Card/Virtual Mobile App brand that is also accepted.
- 4. Invalid/Unacceptable Transactions**  
The Merchant shall not complete a transaction if the Card/Virtual Mobile has expired/invalid or if the transaction is declined by the Issuer in the authorization process.
- 5. Authorization**
- 5.1 Manual Authorization**  
The Merchant shall obtain authorization from the authorization center at the Bank and record legibly on the Sales Slip the authorization number before completing a transaction if:
- (a) the amount of a charge or a series of charges incurred on a card in a single day exceeds the Floor Limit as advised by the Bank from time to time; or
  - (b) the Merchant wishes to delay presentation; or
  - (c) the Customer does not present his/her Card; or
  - (d) the Merchant believes the Card may be counterfeit or stolen or lost; or
  - (e) there are suspicious circumstances surrounding the presentation or proposed transaction.
- 5.2 Electronic Authorizations**  
In cases, where the Merchant is equipped with the Electronic Data Capture Terminal ("EDCT"), allowing access to the Bank's Authorization Processing System ("the System") the Merchant shall obtain authorization through the EDCT for every transaction. If in the event of a breakdown in the EDCT or is inoperable for any reason the Merchant shall obtain such authorization from the authorization centre at the Bank in accordance with **Clause 5.1** herein.
- 5.3** In cases, where the Merchant is equipped with a Mobile Point of Sale Machine ("MPOS") allowing access to the system of the Bank, the Merchant shall obtain authorization through the MPOS for every transaction. If in the event of a breakdown of the MPOS or is inoperable for any reason the Merchant shall obtain such authorization from the authorization centre at the Bank in accordance with **Clause 5.1** herein.
- 5.4** In case, where the Merchant is equipped with a Merchant App, the Merchant shall receive authorization through the Merchant App for every transaction. In the event where the Merchant App is inoperable for any reason the transaction will be deemed incomplete.
- 6. Retention and Retrieval of Cards**  
The Merchant shall use its best efforts, by reasonable and peaceful means:
- (a) to retain a Card while making an authorization request; and
  - (b) to comply with advice or instructions given by the authorization centre
- 7. Cash Payment and Currency**
- 7.1** The Merchant shall not receive any payment from a Cardholder with respect to charges for goods or services included on a Sales Slip.
- 7.2** All Sale Slips must be drawn in Sri Lankan Rupees unless otherwise agreed in writing between the Bank and the Merchant.
- 8. Installation of EDCT / MPOS /DFCC QR Pay Stickers and Decals**  
The Bank may request the Merchant to install at the Merchant's premises the EDCT / MPOS (s)/DFCC QR Pay Stickers and Decals and such related accessories and software (collectively, the "Equipment" which expression shall include any replacement, modifications, enhancements and/or additions to the Equipment) as the Bank thinks fit.
- 9. Operation of EDCT / MPOS (S)**  
In all cases where the Bank has delivered and installed EDCT/ MPOS(s)/DFCC QR Pay Stickers and Decals at the Merchant's premises the Merchant shall:
- (a) operate the Equipment only in accordance with and comply with such instructions as the Bank may give the Merchant from time to time;
  - (b) be responsible for the cost of any electricity consumed by the Equipment and for any telephone and/or data pack line charges payable in connection with it;
  - (c) not alter or otherwise tamper with the program in the Equipment;
  - (d) ensure that at all times during ordinary business hours at least two members of the Merchant's staff (a sales person and supervisor) who have been trained to operate the Equipment are available;
  - (e) report promptly to the Bank any fault or suspected fault in the operation of the Equipment;
  - (f) except with the Bank's consent, not permit any removal of, interference with or addition to the Equipment or any markings thereon;
  - (g) keep strictly confidential all information received from the Bank in connection with the System and will disclose the same only to those of its staff who require information for the purpose of the operation of the Equipment and the use of System. The Merchant shall take all necessary steps to ensure its staff are aware of such confidentiality, obligations and, in particular but without

- limitation, will maintain strict security measures with respect to the encryption and terminal initialization procedures affecting the use of the System; and
- (h) not permit a third party to use the Equipment for any purpose without the prior written consent of the Bank.

**10. Transaction Handling**

**10.1** The Merchant in handling transaction(s) via EDCT(s) and other electronic devices must:

- (a) ensure that the EDCTs and other electronic devices are acceptable to the Bank;
- (b) ensure that the extraction of data from Cards must be in the manner specified by the Bank (this may vary from time to time but the Bank will give prior notice of variation to the Merchant);
- (c) ensure that the amount of the transaction and any further information (such as cardholder number and data) which the Bank from time to time requires must be printed on a terminal receipt which should be in a form approved by the Bank;
- (d) ensure that the Equipment, software technical standards and procedures for the electronic extraction, retention and transmission of data for the purposes of this Agreement must be approved by, or (as the case may be) in accordance with the requirements of the Bank;
- (e) require the Cardholder to sign the credit card slip/sales invoice recording the relevant sales;
- (f) verify the Customer's signature against the signature on the back of the Card to ascertain that they are the same and, if the card has a photograph, that the photograph and the Cardholder are the same. The Merchant should ensure the signature appears on all copies of the credit card slip/sales invoice;
- (g) ensure there is no discrepancy between the embossed and displayed Card number before completing the transaction;
- (h) deliver to the Customer a true and completed copy of the credit card slip;
- (i) collect the daily transaction detail report for accounting purposes. The Bank's copy shall be batched by terminal number and then transaction sequence order together with the deposit summary and these must be returned to the Bank for records within seven working days unless otherwise agreed in writing between the Bank and the Merchant. Merchant shall keep the Merchant copy for at least one year and shall present to the Bank upon request;
- (j) batch separately with a deposit slip listing the individual sales and credit slips accounts and the net total for manual transactions with authorization only (i.e. Call Bank situation).

**10.2** The Merchant in handling transaction(s) via MPOS(s) must:

- (a) ensure that the extraction of data from Cards must be in the manner specified by the Bank (this may vary from time to time but the Bank will give prior notice of variation to the Merchant);
- (b) ensure that the Equipment, software technical standards and procedures for the electronic extraction, retention and transmission of data for the purposes of this Agreement must be approved by, or (as the case may be) in accordance with the requirements of the Bank;
- (c) require the Customer to sign the Signature screen recording the relevant sales;
- (d) verify the Customer's signature on the Signature screen against the signature on the back of the Card to ascertain that they are the same and, if the Card has a photograph, that the photograph and the Customer are the same.
- (e) ensure there is no discrepancy between the embossed and displayed Card number before completing the transaction;

**10.3** Where any transaction is not handled via EDCT/MPOS the Merchant shall use a Manual Sales Voucher. The Manual Sales Voucher shall have three (3) copies namely: Bank Copy, Merchant Copy and Customer Copy on which the Merchant must;

- (a) imprint legibly the embossed data from the Card and shall enter the Merchants name and account number;
- (b) enter an adequate description of all the goods or services sold, the price in Sri Lankan Rupees and the date of the transaction;
- (c) obtain the signature of the Customer and compare the signature with the signature on the card to ascertain that they are the same and, if the Card has a photograph, that the photograph and the Customer are the same. The Merchant should ensure that the signature that appears on all copies of the Sales Slip and sales invoice; and
- (d) deliver to the Customer a true and completed copy of the sales slip.

**11. Multiple Sales Slips**

The Merchant shall not use two or more Sales Slips to avoid authorization and shall not effect a Transaction when only a part of the amount due is included on a single Sales Slip except:

- (a) when the balance of the amount is paid in cash or by cheque; or
- (b) when the goods or services are to be delivered or performed at a later date and one Sales Slip represents a deposit and the second Sales Slip represents payment of the balance, in which case the Merchant must obtain authorization and shall note on the Sales Slip the authorization number and the words "deposit" or "balance" as appropriate. The Sales Slip labeled "balance shall not be presented until the goods are delivered or the services are performed.

**12. Presentment of Paper and Refunds**

**12.1 Manual/Electronic Transactions**

(a) *Manual Transactions*

The Merchant shall complete a deposit slip and/or such other document as may be required by the Bank totaling and attaching the relevant Sales Slips. The total amount due to the Merchant shall be calculated net of discount amount presented within seven (7) days after the transaction date.

(b) *Electronic Transactions*

If the Bank agrees to the presentation of such information by the Merchant electronically, the Merchant shall submit them in such form and manner and to such processing facility as shall from time to time be approved or required by the Bank of such information in respect of the transactions.

**12.2 Refunds**

- (a) If, in respect of any transaction, any goods are not received by the Customer or are lawfully rejected or accepted for return or services are not performed or cancelled or price is lawfully disputed by the Cardholder or price adjustment is allowed, the Merchant shall not make cash refund but shall complete a credit slip supplied or approved by the Bank. The Merchant shall sign and date each credit slip and include a brief description of the items concerned. A true and completed copy of the credit slip must be delivered or forwarded to the Customer.
- (b) In the event of a refund to a Customer the Merchant shall complete a deposit slip (marked with the word "Credit") totaling and attaching the relevant credit slips and present the said papers to the Bank within seven (7) days after the agreed refund date between the Merchant and the Customer. The Merchant is required to refund the net proceeds (i.e. the total credit-less the discount) to the Bank forthwith.
- (c) In the event that only credit slips are presented to the Bank at any given time, the Merchant shall at the same time make payment of the net refund (i.e. the total refund(s) to the Customer(s) minus the discount) to the Bank.

**12.3** By presentation of any Transaction Information (which for the purposes of this Agreement means any Sales Slip and/or any information or documents in respect of any Transaction presented to the Bank by or on behalf of the Merchant) the Merchant warrants to and agrees with the Bank;

- (a) that all statements of fact, figures and calculations contained therein are true and complete to the best of the knowledge of the Merchant;
- (b) that the Merchant has supplied, or caused to be supplied, the good and/or service which the Transaction information relates to and to the value stated therein, at a price not greater than the same price and on terms no less favourable than the same terms at and on which such goods and / or services are supplied by the Merchant for cash;
- (c) that no other sales slips or Transaction information has been or will be issued or presented in respect of the goods and/or services to which the Transaction information relates;
- (d) that the provision of credit for the supply of the goods and / or services to which the Transaction information relates is lawful ; and
- (e) that the Transaction information relates to a Transaction and that the Merchant has complied with this Agreement.

**12.4** Neither the receipt by the Bank of any Transaction information nor any payment by or other act or omission of the Bank (other than an express written acknowledgement or waiver thereof by the Bank) shall constitute or be deemed to constitute any acknowledgement or waiver of compliance by the Merchant with any of the warranties specified in **Clause 12.3** above or any other provision of this Agreement.

**13. Payment**

**13.1** Subject to the terms of this Agreement, the Bank shall pay to the Merchant the amount of each Transaction within seven (7) business days following the day on which the sales Slips/electronic transmission details are received by Card Centre of the Bank less the discount amount for all the Card Transactions processed and accepted by both parties or any other agreed frequency.

**13.2** Net payments to the Merchant shall be made by the Bank to the account of the Merchant with the Bank designated by the Merchant (the "Merchant Account") or to a bank nominated in writing by the Merchant.

**13.3** Payment by the Bank shall be without prejudice to any claims or rights which the Bank may have against the Merchant and not constitute any admission by the Bank as to the performance by the Merchant of its obligations under this Agreement and the amount payable to the Merchant.

**13.4** The Bank shall be entitled to set off and deduct from any payment due to the Merchant with:

- (a) the amount of any refund due to any Cardholder in accordance with the refund procedure set out in **Clause 12** above; and
- (b) any overpayment made by the Bank due to mathematic errors or otherwise; and
- (c) any other sums due from or payable by the Merchant to the Bank herein; and
- (d) at the Bank's discretion, an amount equal to interest at the rate then currently charged to Cardholders in respect of their indebtedness from the due date until the date of payment (as well as after and before any demand made or judgment obtained) on the amount of any credit slip details of which are not presented as required under this Agreement within seven (7) days after the refund has been agreed between the Merchant and the Cardholder, or which is not dispatched to the Bank within such period together with a cheque in favor of the Bank for the full amount thereof ( the seventh such day being the due date for the purpose of the calculation of such interest) and in doing so the Bank may;
  - (i) debit the Merchant's Account forthwith; and/or
  - (ii) deduct the outstanding amount from subsequent credits to the Merchant's account; and/or
  - (iii) if there is no account or insufficient funds available in any account maintained at the Bank, the Merchant shall authorize the Bank to initiate a Direct Debit to the Bank nominated by the Merchant or debit any account maintained with the Bank by the Merchant. In addition to the amount claimed, the Bank shall charge interest at the Bank's discretion, an amount equal to interest at the rate then currently charged to Cardholders in respect of their indebtedness from the due date.

**13.5** If the Bank suspects, on reasonable ground/s that the Merchant has committed a breach of this Agreement being dishonest or commitment of fraud against the Bank or any Cardholder, the Bank shall be entitled to suspend all payments under this Agreement to the Merchant pending inquiries by the Bank.

**14. Charges to Cardholders**

The Merchant shall not require any Cardholder to pay a surcharge, to pay any part of the discount, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction in which Card/is used.

**15. Chargeback**

**15.1** The Bank shall be entitled at any time to refuse total or partial payment to the Merchant or if payment has been made, to debit the Merchants Account with such amount or to seek immediate reimbursement from the Merchant, notwithstanding any authorization and/or authorization code numbers given by the Bank to the Merchant, in any of the following situations;

- a) The Transaction is for any reason unlawful or unenforceable;
- b) Cardholder's signature is missing when signature is required;
- c) the Cardholder's signature on the Sales Slip or credit card slip or any other document required to be signed by the Cardholder/Customer in relation to the transaction is a forgery or the Cardholder's signature on the credit card slip or the document does not match the signature on the Card used for the transaction;
- d) the copy of the Sales Slip or terminal receipt or any other document required to be signed by the Customer in relation to the transaction presented to the Bank or retained by the Merchant is incompatible with any copy provided to the Customer;
- e) Cardholder's account number is found to be omitted, incomplete or invalid, or Cardholder's account number is not imprinted;
- f) the Card presented to the Merchant in respect of the Transaction has been altered or had not yet become valid or had expired at the time of the Transaction;
- g) the Card presented to the Merchant in respect of the Transaction was listed in a warning list or any other communication or advice (in whatever form) from time to time issued or made available by or on behalf of the Bank to the Merchant;
- h) The price charged to the Customer was in excess of the price at which the goods supplied or the services performed were supplied by the Merchant for cash;
- i) The sales price was in excess of the Floor limit and no prior authority thereof was obtained from the Bank;
- j) The Merchant fails to provide at all or to the Cardholder's satisfaction, goods and/or services to the Cardholder where the goods and/or services covered by the transaction are rejected or returned or the transaction or part thereof, is validly cancelled or terminated by a Cardholder;
- k) The Sales Slip or credit card slip or any part thereof is illegible, incomplete or unsigned or not prepared or completed or submitted in accordance with this Agreement;
- l) the Cardholder disputes the nature, quality or quantity of the goods and/or services covered by the Transaction;
- m) any information presented electronically to the Bank in respect of the Transaction, is not received in accordance with the Bank's requirements from time to time;
- n) the Bank has requested evidence in accordance with **Clause 21** in relation to the Transaction which the Merchant has failed to provide;
- o) there has been any departure from the terms of this Agreement in relation to that Transaction;
- p) the Transaction information required as per **Clause 11** to be presented in respect of the Transaction is not presented to the Bank within seven (7) days of the Transaction;

- q) the Cardholder disputes or denies the Transaction or the sale or delivery of goods and/or services covered by the Transaction within reasons;
- r) in seeking authorization for a Transaction, the Merchant has given an incorrect Cardholder's name or Card account numbers to the Bank;
- s) there has been a breach by the Merchant of this Agreement, other than the breaches more specifically provided in this sub-clause, in connection with the Transaction or the Sales Slip or otherwise;
- t) Transaction is posted more than once to Cardholder's account due to the deposit of incorrect copy of Sales Slip (copy other than Bank copy) by the Merchant;
- u) the Bank reasonably believes that the Transactions are irregular;
- v) the Bank reasonably believes that there are suspicious circumstances surrounding the Transaction;
- w) the Bank reasonably believes that the submission is out of the normal pattern;
- x) the Issuing Institute refuses to honor the Sales Slips presented by the Merchant;
- y) any other event or writing shall have occurred at the date of the Transaction;
- z) notwithstanding the provisions of **Clause 5.1** and **5.2** hereof, the circumstances of the Transaction were so suspicious that the Merchant should have realized that the Card is a counterfeit or stolen and should have therefore declined the Transaction.

**15.2** Where the Merchant fails to comply with a demand by the Bank to pay the sum due to the Bank as a result of Chargeback rights under the **Clause 15**, the Bank may have the right to set-off and/or deduct the Chargeback amount as specified in **Clause 13.4** of this Merchant Agreement.

**16. Use of Merchant's Name**

**16.1** The Merchant irrevocably authorizes the Bank to include the Merchant's name in any directory of promotional material (including but not limited to print media, social media, electronic media etc;) produced in connection with the acceptance of Cards.

**16.2** The Merchant hereby agrees to pay the Bank related marketing fees to be agreed between the Parties in writing for carrying out promotional activities as specified in **Clause 16.1**.

**17. Displaying Symbols and Names of Payment Associations**

The Merchant shall display current symbols and names of the relevant Payment Association/s as well as promotional material to inform the public that the Payment Association/s will be honored at the Merchant's place(s) of business. The Merchant's right to use or display symbols and names of the Payment Association/shall continue only so long as the Merchant Agreement remains in effect and exterminated or until the member is notified by such Payment Association/s and/or the Bank that the Merchant must cease such usage or display.

**18. Merchant Discount Amount**

The Merchant Discount Rate shall be advised by the Bank from time to time.

**19. Floor Limit**

The Floor Limit(s) shall be advised by the Bank from time to time.

**20. Fees and Charges**

**20.1** The Merchant shall pay the fees and charges specified in the Fee Structure which forms part and parcel of this Agreement (**Annexure Two (2)**).

**20.2** The Merchant shall ensure that Minimum Sales Volume Target/s indicated in **Annexure Two (2)** is/are collected monthly on or before the final day of the month. In the event where Merchant failing to achieve the Minimum Target/s, the Merchant shall pay to the Bank the following Charge/s as indicated in the Agreement.

**21. Minimum Transaction Amount**

**21.1** The Merchant shall not request, or post sign indicating that they require a transaction amount below which the Merchant shall refuse to honor otherwise valid Cards.

**21.2** The Merchant shall pay the Bank a minimum target charge as described in **Annexure Two (2)**.

**22. Breach of Agreement**

Without prejudice to the Bank's right to terminate this Agreement under **Clause 31**, in the event of a breach by the Merchant of any of these terms, the Bank is authorized to debit the Merchant's Account or deduct from the deposit any refund claimed. In the event that there is no account with the Bank or there is insufficient funds available therein to claim from the Merchant or that the deposit is inadequate to compensate the Bank for any refund claimed, the Merchant shall authorize the Bank to initiate a Direct Debit to the Bank nominated by the Merchant or debit any account maintained with the Bank by the Merchant. In addition to the amount claimed, the Bank shall charge interest at the Bank's discretion, an amount equal to interest at the rate then currently charged to Cardholders in respect of their indebtedness from the due date.

**23. Evidence and Documents**

**23.1** The Merchant will promptly on the Bank's request (and whether or not the same is disputed by the Cardholder) produce to the Bank evidence satisfactory to the Bank of the Cardholder's authority for the Cardholder's Card account to be debited with any transaction amount and (but without prejudice to the foregoing) will retain all documents and records relating to each transaction for a period of not less than one (1) year thereafter and produce the same to the Bank on request.

**23.2** The Merchant shall provide such reasonable assistance for the prevention and detection of fraud in respect of any transaction as the Bank may from time to time request.

**24. Equipment and /or Imprinter(s)**

**24.1.**

- (a) The Merchant will retain in the Merchant's possession and for the Merchant's exclusive use all Equipment and materials supplied by the Bank (except as otherwise required under this Agreement).The Merchant shall ensure that the Equipment are maintained in good condition.
- (b) It is the sole responsibility of the Merchant to safe-keep and control the use of Equipment. All use of the Equipment shall be deemed to be authorized and sanctioned by the Merchant.
- (c) As between the Bank and Merchant, all persons using the Equipment shall be deemed to be agents of the Merchant and the Bank shall not be responsible for any dispute whatsoever arising between the Merchant and its agents or customers. The Merchant shall indemnify the Bank against all claims, losses, demands, actions, costs, expenses and liabilities whatsoever that may be suffered, Incurred or sustained by the Bank as a result of or arising from the use or misuse of the Equipment.

- (d) Any Equipment supplied to the Merchant shall remain the property of the Bank and shall be surrendered to the Bank on demand.
- (e) The Merchant will also provide such reasonable assistance for the prevention and detection of fraud in respect of usage of the Equipment.
- (f) The Bank may charge the Merchant the costs of the Equipment and/or the costs of repairing the equipment if they were damaged as a result of the improper handling by the Merchant.
- (g) All Equipment shall be returned to the Bank upon termination of this Agreement or if/when the Merchant ceases to do business.

**24.2. The Merchant will not:**

- (a) sell, assign, transfer, lease or otherwise cause or allow or attempt to cause or allow, any dealings with the Equipment or any encumbrance on the Equipment to be created;
- (b) remove, conceal or alter any markings, tags or plates attached to the Equipment or part of the Equipment which indicate the Bank's ownership of the Equipment;
- (c) cause to allow the Bank's right to access, repossession or disposition of the Equipment pursuant to this Agreement or otherwise to be encumbered in any way jeopardized by any act of the Customer or its servants or agents or by any other factor within its control;

**24.3.** Subject to the provisions of **Clause 25** hereof, the Bank shall be responsible for any servicing, repairs or replacements required. For this purpose the Merchant shall allow the Bank, its representatives, its contractors or its agents, access to the Equipment at all reasonable times.

**24.4** The Merchant will not permit any third party to perform the maintenance service on the Equipment or to effect modifications, enhancement or engineering changes to the Equipment without the prior written consent of the Bank.

**25. Removal and Cessation of Business**

The Merchant shall inform the Bank *any* removal of shops or offices and its cessation of business in writing Thirty (30) working days prior to its effective date.

**26. Disclosure**

The Merchant hereby authorizes the Bank to disclose any information relating to the Merchant's Account or the conduct thereof, the Merchant's particulars and affairs (Financial or otherwise) to any part, including but not limited to any person, corporation, and bank, financial institution, any of the Bank's branches and related companies and to obtain such information from any such party.

**27. Disclaimer**

**27.1** The Bank shall not be under any liability to the Merchant or any of the Merchant's customers for the inaccuracy or invalidity of any point of sale authorization communicated by the Bank in connection with these services except for the Bank's gross negligence and willful default and the Merchant shall indemnify the Bank for any claims arising therefrom.

**27.2** Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings inducements or representations whether express, implied, statutory or otherwise relating in any way to the System, are excluded. Without limiting the generality of the preceding sentence, the Bank shall not be under any liability to the Merchant in any loss or damage (Including, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Equipment or as a result of failure or error in the Equipment the programmers the data or the System.

**28. Indemnity**

**28.1** The Merchant will indemnify the Bank on demand in respect of any actions, claims, costs, damages, demands, expenses, losses and liabilities made against, suffered or incurred by the Bank arising directly or indirectly from or in connection;

- (a) with any failure by the Merchant to comply with the provisions of this Agreement and/or;
- (b) with any Transaction between the Merchant and a Cardholder and including, but without prejudice to foregoing, any alleged misrepresentation or breach of contract or other breach of duty by the Merchant (or any of the Merchant's officers employees or agents) to any Cardholder.
- (c) from and against all actions, claims, demands, liabilities, obligations, losses, costs including, but not limited to legal fees, expenses and penalties and interest suffered, incurred or sustained by or threatened against the Bank arising out of (i) any regulatory requirements of the Merchant (ii) the exercise by Banks of the rights granted to it in accordance with this Agreement, or (iii) the Merchant's use of the Bank Services other than in accordance with the terms of this Agreement, which a third party alleges as constituting unauthorized use or infringement of any of its Intellectual Property rights.
- (d) Sale of any prohibited products

**28.2** The Bank will be entitled to have full conduct of all proceedings and negotiations relating to any such claim and in its discretion to accept, dispute, compromise or otherwise deal with the same and shall be under no liability in respect thereof to the Merchant and the Merchant will provide any assistance in connection with any such claim that the Bank may require.

**29. Confidentiality**

**29.1** The Merchant will not, without the prior written consent of the Cardholder, use or disclose information on the Cardholder or his/her Transactions howsoever obtained and in whatsoever form the information shall take, to any third party (other than the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the Transactions and the Merchant's insurers and professional advisors) unless such disclosure is compelled by law.

**29.2** The Merchant will not, without the prior written consent of the Bank use or disclose information howsoever obtained and in whatsoever form on the business of the Bank or the system or this agreement, to any third party (other than to the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the Transactions and the Merchants insurers and professional advisors) unless such disclosure is compelled by law.

**30. Account Number Information**

**30.1** The Merchant shall not sell, purchase, provide or exchange a Cardholder's Name or Card account number information in the form of imprinted sales slips, Carbon copies of Imprinted sales slips, mailing lists, tapes or other media obtained by reason of a Card Transaction to any third party other than to the Merchant's agents for the purpose of assisting the Merchant in its business, to its acquiring member, to Card, or pursuant to a Government request.

**30.2** The Merchant shall adhere to PCIDSS and applicable regulations including Central Bank Information Security Guidelines all of which are currently in effect or which shall come to effect in the future.

**31. Term, Renewal, Revision and Termination**

**31.1 Term**

This Agreement shall be effective from the date of execution by the Parties hereto until termination as per **31.3** below.

**31.2 Renewal and Revision**

This Agreement shall not be revised and/or amended/ and /or supplemented unless agreement in writing by both Parties.

**31.3 Termination**

- a) This Agreement may be terminated by the Bank at any time prior the expiry of the term in the following circumstances:
  - i) Immediately by the Bank upon a material breach of any of the terms of this Agreement by the Merchant
  - ii) Immediately by the Bank in the event the Bank suffers damage due to the Merchant's intentional fraud, gross negligence or willful misconduct;
  - iii) Immediately by the Bank in the case the Merchant is subject of bankruptcy proceedings, commences liquidation whether compulsory or voluntary other than for the purposes of an amalgamation or reconstruction, makes an arrangement with its creditors and/or generally becomes unable to pay its debts as and when they fall due.
- b) The Bank may at its absolute discretion without prior notice cancel the user access provided and/or refuse to provide access in case of replacement requests in the event that the Bank is of the view that the Equipment are being used for illegal or unauthorized activities and/or purposes.
- c) However the Bank reserves the right to terminate by merely giving the Merchant Thirty 30 days' notice to suspend or place restrictions on the Merchant at its discretion without prior intimation for reasonable cause.
- d) If the Merchant wishes to terminate this Agreement for whatever reason shall give Bank three (03) months notice in writing.

**31.4 Effects of Termination**

- 31.4. a)**
  - i)** The termination by the Bank shall be made without prejudice to due completion and payment in respect of all transactions processed and accepted by the bank on or before the termination date.
  - ii)** In the event of termination the Merchant shall present all completed Transactions to the Bank's representative at the time of termination. However, subject to clauses **12.2, 13.4** and **14**, payment for all such items received will only be made to the Merchant after the payment is successfully collected by the Bank from the Card issuer(s) within 180 days from the date of transaction.
  - iii)** Where any refund claimed by the Bank exceeds the amount due to the Merchant, the difference thereof shall be:
    - debt due from the Merchant to the Bank and debit the Merchant's Account forth with; and/or
    - deduct the outstanding amount from subsequent credits to the Merchant's account; and/or
    - be forthwith recoverable by action.
  - iv)** Where there is no account or insufficient funds available in any account maintained at the Bank, the Merchant shall authorize the Bank to initiate a Direct Debit to the Bank nominated by the Merchant or debit any account maintained with the Bank by the Merchant.
  - v)** In addition to the amount claimed, the Bank shall charge interest at the Bank's discretion, an amount equal to interest at the rate then currently charged to Cardholders in respect of their indebtedness from the due date.
  - vi)** Upon termination, the merchant shall forthwith, and at the Merchant's expenses, return to the Bank all the equipment and all related material and documentation.
  - vii)** The Merchant to provide access to the Merchant's business premises and relevant systems.
  - viii)** The Merchant shall settle all outstanding payments due to the Bank from the Merchant as specified in **Annexure Two (2)**.
  - ix)** The Bank shall settle the Merchant's valid and lawful Transactions.
- b) Any termination shall not affect any liabilities incurred prior to the termination nor any provision expressed to survive or to be effective on termination and (but without prejudice to the foregoing Clauses **12.2,13.4,15, 23, 28** and **29** and this Clause) shall remain in full force and effect notwithstanding termination.
- c) Any paper presented to the Bank after the termination date, whether it bears authorization or not, shall not be paid by the Bank.
- d) In the event that this Agreement is terminated for any reason other than for breach of the provisions of this Agreement by the Merchant or contravention of applicable laws and regulations including but not limited to anti money laundering legislation by the Merchant, the Bank shall settle all dues pending.
- e) In the event that the Agreement is terminated by reason of breach of the provisions of this Agreement by the Merchant or by reason of contravention of applicable laws and regulations including but not limited to anti money laundering legislation by the Merchant, the Bank will be entitled to withhold payment till the completion of any investigation and/or prosecution conducted in relation thereto and/or make payments in such manner as may be prescribed by a regulatory authority.
- f) If a Merchant discontinues its use of the Equipment given under this Agreement for any reason whatsoever, the Merchant will take all necessary actions to remove any related material displayed at all Merchant locations.
- g) In the event that this Agreement is terminated by the Bank on unlawful and illegal means the bank reserves the right to black list the Merchant and share information with the regulators.

**32. Assignment**

This Agreement is not assignable but in case of the Merchant being an individual or individuals shall bind his/her or their respective estates as well as heirs, executors and administrators. The Bank is entitled at any time to assign this Agreement or any of the Bank's rights and obligations here with in favour of any subsidiary or associated company of the Bank or of the Bank's holding Company and to sub-Contract or appoint any agent or agents to carry out any of the Bank's obligations here in.

**33. Representations & Warranties**

- 33.1** Each Party shall make each of the following representations and warranties to the other Party, and acknowledges that such other Party is relying on these representations and warranties in entering into this Agreement.

*Authorization*

The Party represents and warrants the following (collectively, the "**Authorization Warranties**"):

- (i) merchant warrants that the Merchant is a legally incorporated body or is legally authorized to sell goods and/or services under the laws of jurisdiction of its incorporation;
- (ii) it is properly registered to do business in all jurisdictions in which it carries on business;
- (iii) it has all licenses, regulatory approvals, permits and powers legally required to conduct its business in each jurisdiction in which it carries on business; and
- (iv) it has the corporate power, authority and legal right to execute and perform this Agreement and to carry out the transactions and its obligations contemplated by this Agreement.

*Validity*

- (i) Each Party represents and warrants that once duly executed by the Party this Agreement shall constitute valid and binding obligations on the Party, enforceable in accordance with its terms.
- (ii) Each Party represents and warrants that all the required approval or consent of any person or government department or agency that is legally or contractually required is obtained or shall be obtained by each relevant Party in order to enter into this Agreement and perform its obligations.

*No Conflicts*

Each Party represents and warrants that (a) the execution of this Agreement, nor (b) the consummation by the Party of this Agreement will (i) conflict with the certificate of incorporation or by-laws or any other corporate or constitutional document of the Party or (ii) breach any obligations of the Party under any contract to which it is a party or (ii) violate any Applicable Law.

*Litigation*

Each Party represents and warrants that there is no litigation, proceeding or investigation of any nature pending or, to the Party's knowledge, threatened against or affecting the Party or any of its Affiliates, which would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement.

33.2 The Merchant acknowledges and agrees that the Merchant has not entered in to this Agreement in reliance on any representation statement or warranty (whether written or oral and whether express or Implied) made by or on behalf of the Bank other than such as and expressly set out herein.

**34. Waiver**

The failure by the Bank to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a Waiver of such right or remedy or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

**35. General**

- 35.1 If signed by a proprietorship/individual/partnership the expression "the Merchant" shall include the person or persons from time to time carrying on the business of such firm/proprietorship and, if there are two or more signatories hereto, the expression "The "Merchant" shall include all and each of them and their liabilities under this Agreement shall be joint and several.
- 35.2 This Agreement shall be governed by and construed in accordance with the laws of Sri Lanka. The parties hereto agree that the sole and exclusive jurisdiction and venue for actions related to this agreement shall be the District of Colombo.
- 35.3 If any provision of this Agreement is or proves to be or becomes illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be in any way affected there by.
- 35.4 This Agreement shall be deemed to be made when it is signed both on behalf of the Bank and on behalf of the Merchant.
- 35.5 Any notice or Communication by either party to the other shall be in writing and shall be deemed to have been duly given if either delivered personally or by prepaid registered post addressed to the other party at the appropriate address stated above or at such other address as such party here to may hereafter specify to the other party via following;

The Bank  
Designation : Manager Merchant Acquiring  
Address : DFCC Bank PLC, Lake House Building, No 35,  
D.R Wijewardena Mawatha,  
Colombo 10  
Tel No : 0112880880/0112350000

The Merchant  
Name : .....  
Address : .....  
Tel. No : .....  
Email : .....

35.6 In this Agreement, if the context permits or requires words importing the masculine gender shall include the feminine and neuter genders, and words in the singular number shall include the plural number and vice versa.

**36. Variation of Agreement**

The Bank reserves the right at all times to vary or amend these terms and conditions. Any such variation or amendment or introduction will become effective and binding on the Merchant upon entering into a written amendment/ exchange of letters by both parties.

**37. Illegal Products.**

37.1 The Merchant fully acknowledges that Bank must not provide Bank Services with respect to any Transaction which is prohibited (including Payments in relation to illegal Products), under Applicable Law or violates Bank's internal policies. Merchant will provide the Bank information about Merchant's Products as reasonably requested by the Bank from time to time. Merchant will procure that Merchants do not sell products through the Bank's Platform where such products contain articles prohibited from being sold to customers under any Applicable Law. The Merchant will ensure that no Transaction being submitted for Bank's processing involves or relates to any illegal Products ("Illegal Transaction").The Bank will have the right to refuse to provide any Bank Services with respect to any Illegal Transaction and the Merchant will indemnify and hold the Bank harmless for any damages, losses and liabilities that the Bank may suffer arising from or in connection with such Illegal Transactions.

**37.2 Products**

The Merchant shall ensure that each Merchant will use Bank Services only for the products in connection with Merchant's principal business accordance with this Agreement.

**38. Compliance with Law.**

**38.1 General.**

Each of the Parties will comply with any Applicable Law in connection with the operation of its business and performance of its obligations under this Agreement. Each of the Merchant and the Bank will at its own cost, keep such records and do such things as are reasonably necessary to ensure that the parties comply with any Applicable Law; provided always that the parties shall not be required to do anything which is inconsistent with or in breach of any applicable laws.

**38.2 Information Verification.**

In order for the parties to satisfy its obligations and to comply with the relevant requirements under Applicable Law, upon reasonable request by the Bank the Merchant will share records and information (including Transaction information and records or any change of Applicable Law) with the Bank from time to time and the Merchant authorizes the Bank to provide the relevant records and information to governmental agencies, regulatory authorities and third party service providers for examination and verification as necessary. However the relevant records and information of the Bank shall be limited to payment confirmation for the settlements processed to the Merchant.

**38.3 AML Requirements.**

The Bank and the Merchant shall comply with all Applicable Law on anti-money laundering, counter-terrorism financing and sanctions (together "AML") and shall fully cooperate with the Bank's AML policies and procedures, including but not limited to merchant management, sanctions and political exposed people review, suspicious transactions monitoring and reporting. However the Merchant shall fully cooperate with Bank's reasonable due diligence (on site or in writing) to the Merchant's AML policies and procedures.

**38.4 Limitation and Reporting.**

In accordance with its AML, anti-fraud, and other compliance and security policies and procedures, the Bank may impose reasonable limitations and controls on Merchant's ability to utilize the Bank Services. Such limitations may include but are not limited to rejecting payments and/or suspending/restricting any Bank Service with respect to certain Transactions carried out by the Merchants. The Bank may, for the purposes of complying with relevant suspicious transaction reporting and tipping-off requirements under Applicable Law, report suspicious transactions to the relevant authorities without informing any of the other Parties.

**39. Fraud and Risk**

**39.1** If the Bank / Customer claims that an Unauthorized Payment or an otherwise fraudulent Transaction has been submitted by the Merchants and made via the Bank Equipment using Bank's Platform, the Merchant will comply with the following rules:

*a) Transaction Evidence*

Merchant shall provide the Transaction Evidence within five (05) Working Days upon Bank's request.

*b) Reimbursement*

If Bank does not receive the Transaction Evidence or the Unauthorized Payment is a result of Merchant's willful default or negligence, then Merchant will immediately pay to Bank an amount equal to the sum that Bank settled to Merchant's designated bank account maintained with the Bank regarding the Transaction in question.

*c) Reimbursement Obligation.*

Provided Transaction Evidence has been requested, Bank may, having made due enquiry of the Customer, determine to reimburse the Customer in the event of any unauthorized payment. The Merchant agrees to, jointly and severally, indemnify and hold Bank harmless for the amount to be agreed between the Merchant and the Bank (each acting reasonably) reimbursed to the Customer .

**39.2** The Merchant agrees that, if Bank reasonably believes that a number of Transactions are Illegal Transactions, unauthorized payments or otherwise fraudulent Transactions, it will on reasonable prior written notice from the Bank , provide access to the Bank to the premises of the Merchant during normal business hours for the purpose of the Bank to conduct onsite reviews of their risk management capabilities and the effectiveness of the Merchant (as applicable) in rejecting Illegal Transactions, unauthorized payments or otherwise fraudulent Transactions.

**40. Relationship**

Nothing contained in this Agreement will be construed as creating a joint venture, partnership, agency, fiduciary or employment relationship among or between the Parties.

**41. Force Majeure.**

No Party, its Affiliates or agents will be held liable for any default, delay or failure in performing its obligations under this Agreement resulting directly or indirectly from acts of nature, forces or causes beyond such Party's, its Affiliates' or agents' reasonable control, including without limitation, (i) fire, flood, element of nature or other act of God, (ii) outbreak or escalation of hostilities, war, riot or civil disorder, or act of terrorism; (iii) internet failure, computer, telecommunications, electrical power failure or any other equipment failure; (iv) labor dispute (whether or not employees' demands are reasonable or within the Party's power to satisfy), (v) act or omission of a government authority prohibiting or impeding the affected Party (or its Affiliates or agents) from performing its obligations under this Agreement, including order of a domestic or foreign court or tribunal, governmental restriction, sanctions, restriction on foreign exchange controls, etc. or (vi) the nonperformance by a third party for any similar cause beyond the reasonable control of the Party (collectively, a "Force Majeure Event"). If a Force Majeure Event occurs, the non-performing Party will be excused from any further performance of the obligations affected by the event only for as long as the Force Majeure Event continues and only to the extent of such Force Majeure Event and the Party continues to use commercially reasonable efforts to resume performance.

**42. Entire Agreement**

This Agreement is the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any previous agreements and understandings.

**43. Assignment**

This Agreement and the rights and obligations of the Bank and the Merchant to this Agreement may not be assigned, transferred, subcontracted or delegated by the Bank and the Merchant, by operation of law or otherwise.

**44. Headings**

Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of the relevant section.

**45. Language**

This Agreement has been prepared in English. In the event of any inconsistency between the original English version and any translation, the English version shall govern.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year below written.

**The Bank**

Signed by

.....

And ..

the authorized signatories of the **DFCC Bank PLC** on this ..... day of

..... Two Thousand and ..... at Colombo in the

presence of

Witnesses

1.

2.

**The Merchant**

*\*Note: Delete the inappropriate and fill in the relevant clause*

***If the Merchant is an Individual***

Signed by ..... being the Merchant at

Colombo on this ..... day of ..... Two Thousand and ..... in

the presence of

Witnesses

1.

2.

***If the Merchant is a Proprietorship***

Signed by ....., Proprietor of

..... being the Merchant at Colombo on

this ..... day of ..... Two Thousand and ..... in the

presence of

Witnesses

1.

2.

***If the Merchant is a Partnership***

Signed by .....  
.....  
.....  
.....  
.....being Partners of .....  
.....  
being the Merchant at Colombo on this .....day of .....  
Two Thousand and .....in the presence of

Witnesses

- 1.
- 2.

***If the Merchant is a Club/Society***

Signed by .....  
and.....  
being the Authorised Signatory/ies of .....  
.....club/ society being the Merchant  
at Colombo on this .....day of ..... Two Thousand and  
.....in the presence of

Witnesses

- 1.
- 2

***If the Merchant is a Government Institution***

Signed by .....  
and.....being the Authorised  
Signatory/ies of ..... being the  
Merchant at Colombo on this .....day of ..... Two Thousand and  
..... in the presence of

Witnesses

- 1.
- 2.

*If the Merchant is a Company*

Signed by .....  
and .....  
the authorized signatories of .....  
.....on this ..... day of  
.....Two Thousand and.....at Colombo in the presence of

Witnesses

1.

2.

**OR**

The Common Seal of the within  
named.....was affixed hereto at  
Colombo on this ..... day of ..... Two Thousand and ..... in the presence of  
.....and .....two of the  
Directors of the said Company who do hereby attest the sealing thereof

Witnesses

1.

2.