

## Merchant Agreement

This Agreement made and entered into the Democratic Socialist Republic of Sri Lanka on this ..... day of ..... Two Thousand ..... (20.....) by and between People's Bank duly Established under the People's Bank act no. 29 of 1961 and having its head office at 75, Sir Chittampalam A. Gardinar mawatha, Colombo 02 in the democratic socialist republic of Sri Lanka (here in after referred to as the **"Bank"** which term or expression shall where the context so requires or admits mean and include the said People's bank its successors and assigns) of the One Part and ..... a proprietorship/partnership/company duly incorporated in Sri Lanka bearing Company Registered Number ..... and having its registered office at ..... (here in after referred to as **"the Merchant"** which term or expression as here in used shall where the context so requires or admits mean and include the said ..... and its successors and permitted assigns) of the Other Part WHEREAS the Bank has been appointed as a Principal Member to issue and acquire VISA Cards by VISA International Inc. USA and Master Cards by Master Card World wide China Union Pay and WHEREAS the Merchant has agreed with the Bank to accept any valid VISA or Master Cards at the offices/branches/outlets/establishments of the Merchant and WHEREAS the Bank has agreed to pay to the Merchant the amount of all sales carried out by the Merchant through the use of the said cards less any discounts and other amounts the Bank is entitled to retain, subject to and upon the terms and conditions set out here in after here by agrees with Bank as follows:

### 1. DEFINITIONS

Unless the context otherwise requires, in this Agreement, the following terms shall have the following meanings:

- a) **"Authorisation"** Means the approval granted to the Merchant by the Bank to make a charge on the Card;
- b) **"Authorisation code"** Means the code provided to the Merchant by the Bank or the card issuer and communicated via the acquire at the time of Authorisation;
- c) **"Card"** means a card bearing the trademark or trade name **"VISA"/ "Master"** Card is a valid and unexpired card assigned to a cardholder by a Bank or an institution bearing the service marks of VISA or Master Card;
- d) **"Cardholder"** is a person to whom a nominated card has been issued and whose name is imprinted on the face of the card and there on whose signature appears on the rear of the card;
- e) **"Discount"** means the percentage of a portion of a charge which the Merchant is obliged to pay to the Bank as may be decided by the Bank from time to time;
- f) **"Charge"** means the total price being charged to the card including all applicable taxes payable by the cardholder to the Merchant for the purchase of goods or services using a card;
- g) **"Sales Voucher/Charge Record Form"** means the form or receipt issued by the Merchant manually or issued through an EDCT recording details of the charge and /or such other records as may be required by the Bank;
- h) **"Credit Voucher"** means a form supplied by the Bank in which credits to the cardholder's account in respect of returned goods that are entered;
- i) **"Electronic Data Capture Terminal"** or **"EDCT"** means the machine provided by the Bank or a person other than the Bank to the Merchant which enables the Merchant to electronically process transactions carried out through the Card;
- j) **"Imprinters"** means the machine provided by the Bank or a person other than the Bank to the Merchant which enables the Merchant to Manually process transactions carried out through the Card;
- k) **"Equipment"** includes EDCT, all related accessories and software including imprinters and includes any replacement, modifications, enhancements and/ or additions made there to from time to time;

### 2. VISA CARDS / MASTER CARDS AND CHINA UNION PAY

The following terms and conditions of this Agreement shall apply the following terms and conditions in respect of each and every transaction involving a payment made on or through a VISA / Master Card or a China Union Pay .

### 3. HONOUR CARDS / MASTER CARDS AND CHINA UNION PAY

Subject to the terms and conditions set out in this Agreement, the Merchant shall accept and honour every valid, unexpired card when properly presented as payment from cardholders for all transactions. The Merchant shall not in any way engage in practices or procedures that discriminate against or discourage the use of a card in favour of any other competing card brand that is also accepted.

#### **4. ACCEPTANCE OF CARDS / MASTER CARDS AND CHINA UNION PAY**

The Merchant shall permit cardholders to purchase goods or services with the card at the Establishment only if;

- a. The card is presented subsequent to the Date of Commencement and prior to Date of Expiry (if the said dates are shown on the face of the Card);
- b. The card bears the signature of the person whose name is printed on the face of the Card;
- c. The charge record form is signed by the cardholder in the presence of an employee of the Merchant with the same signature as of that written on the signature panel of the Card;
- d. The card is not visibly altered or mutilated;
- e. The Merchant shall not complete a transaction if, the account number is listed on a current warning notice; or the card as expired or is not yet valid; or card can only be used overseas, locally or the Bank as advised to decline the card after authorization checking;
- f. The transaction complies with all of the provisions of this Agreement and all other terms and conditions, rules or procedures set out by the Bank and notified to the Merchant from time to time;

#### **5. AUTHORIZATION**

In case of a transaction effected other than through an EDCT, the Merchant shall obtain Authorization from the Authorization Centre at the Bank and record legibly on the charge record form the Authorization Code before completing such transaction in the event if;

- a. The charge requires Over Limit Authorization;
- b. The cardholder does not present the Card;
- c. The amount of a charge or charge incurred on a single day exceeds the floor limit as advised by the Bank from time to time;
- d. The Merchant wishes to delay the presentation;
- e. The Merchant believes the card may be counterfeit or stolen or lost;
- f. There are suspicious circumstances surrounding the presentation of the card or proposed transaction.
- g. The Merchant shall inform the Bank of such circumstances and obtain approval to proceed with the transaction.
- h. In cases where the Merchant is equipped with an EDCT from the Bank, allowing access to the Bank's Authorization Processing System, the Merchant shall obtain Authorization through the EDCT for every charge made on a Card;
- i. In the event of a breakdown in the EDCT or the EDCT is inoperable for any reason, the Merchant shall obtain authorization from the Authorization Centre at the Bank for all transactions made on a Card until such time the EDCT is functional, unless otherwise instructed by the Bank.

#### **6. RETRIVEL AND RETENTION OF CARDS DURING A TRANSACTION**

The Merchant shall use its best efforts to;

- a. Retain a Card while making an Authorization request to the Bank;
- b. Retain copies of a valid identification i.e. Passport from a foreign cardholder or NIC/Driving License from a local cardholder for transaction performed over LKR 50,000 or equivalent sum in different currency form .
- c. Use its best efforts by reasonable and peaceful means to retain a card where the Bank directs that card be retained and not returned to the cardholder;
- d. Comply with advice or instructions given by the Authorization Centre of the Bank or received via the EDCT;

#### **7. INSTALLATION OF ELECTRONIC DATA CAPTURE TERMINALS AND THE AUTHORIZATION PROCESSING SYSTEM**

The Bank may install the EDCT and provide the Merchant with such other Equipment and software access to the System as the Bank thinks fit and the Merchant shall permit the Bank to install the Equipment in the Establishments (collectively the "Equipment" which expression shall include any replacement, modifications, enhancements and/or additions to the Equipment)

## **8. OPERATION OF EDCT(S) AND USE OF THE SYSTEM**

In all cases where the Bank has delivered and installed the EDCT(s) at the Establishments, the Merchant shall;

- a. Operate the Equipment and use the system 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 line charges payable in connection with the use of the Equipment;
- c. Not alter or otherwise tamper with the software or hardware of the Equipment;
- d. Ensure that at all times during ordinary business hours, at least two employees of the Merchant (a sales person and a 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. Not except without the written consent of the Bank, permit any removal of or interference with or addition to the Equipment or make any markings thereon;
- g. Keep strictly confidential all information received from the Bank in connection with the Equipment and /or the system and only be entitled to disclose the same to its employees who require the said information for the purpose of the operation of the Equipment and the use of the system. The Merchant shall take all necessary steps to ensure its employees 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 Equipment and the system; and
- h. Not permit a third party to use the Equipment or have access to the system for any purpose whatsoever without the prior written consent of the Bank;
- i. The Merchant is responsible to safeguard the EDCT / or the Imprinter at all times, the machine is in the custody of the Merchant;
- j. In the event the Merchant or any employee working under the Merchant misplaces the machine willfully or accidentally, the Merchant will be liable to settle the Bank the cost of replacing the machine with a new unit;
- k. If the machine is damaged due to negligence, the cost of the repair estimated by the local agents of the machine will be charged to the Merchant;

## **9. TRANSACTION HANDLING MANUALLY AND VIA EDCT(S)**

- 9.1. At the time of each transaction conducted through a card other than through an EDCT, the Merchant shall legibly complete a charge record form recording the details of the charge. The said charge record form shall bear;
  - a. The imprint of the Card by means of an imprinter acceptable to the Bank;
  - b. The date on which the charge was made to the Card (if the imprinter used by the Merchant cannot imprint the date on which the charge was made, that date must be written legibly on the charge record form by the Merchant);
  - c. An adequate description of all the goods or services;
  - d. The amount of the charge in Sri Lankan Rupees (or other currency only if the Merchant has been authorized to carry out transactions through the Card in such a currency);
  - e. An Authorization Approval Code or any other Over Limit Approval Code if necessary;
  - f. Ensure that the signature of the cardholder appears on all copies of the sales invoice issued by the Merchant (in transactions where the Bank has required the signature of the cardholder to be placed on such sales invoices);
  - g. The name of the Establishment, its address and the Merchant Identification Number assigned to that Establishment by the Bank; and
  - h. All the other information that may be required by the Bank to be included on the charge record form as notified by the Bank to the Merchant from time to time;
  - i. Collect the day's transaction slips/sales invoices 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 five working days unless otherwise agreed in writing between the Bank and the Merchant;
- 9.2. The Merchant handling transactions via EDCT(s) shall;
  - a. Ensure that the EDCT is acceptable to the Bank (in the case where the EDCT is provided by a person other than the Bank);
  - b. Ensure that the extraction of data from cards is 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 charge and any further information (such as cardholder number and data) which the Bank from time to time requires is printed on the charge record form which will be in a form approved by the Bank;

- d. Ensure that the equipment and procedures for the electronic extraction, retention and transmission of data for the purposes of this Agreement are approved by in accordance with the requirements of the Bank;
- e. Ensure that the signature of the cardholder appears on all copies of the printed sales invoice issued by the Merchant (in transactions where the Bank has required the signature of the cardholder to be placed on such sales invoices); and
- f. Ensure that there is no discrepancy between the card number embossed or printed and the card number displayed on the EDCT before completing the transaction; g. Ensure that the signature of the cardholder appears on the charge record form and shall deliver to the cardholder a true and completed copy of the charge record form; h. Ensure that the EDCT transaction batch is settled daily for the payments;
- h. Keep the Merchant copy for at least one year and shall present to the Bank upon request;

## 10. MULTIPLE SALES SLIPS / CHARGE RECORD FORMS

- 10.1 The Merchant shall not use two or more sales slips to avoid exceeding the floor limit per transaction;
- 10.2 The Merchant shall not effect a transaction through the card when only a part of the amount due in respect of such transaction is included on a single charge 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 from the Bank to use more than one sales slip and shall note on the sales slip, the Authorization Code and the words **“deposit”** or **“balance”** as appropriate. The sales slip with the notification **“balance”** shall not be presented to the Bank until the goods are delivered or the services are performed

## 11. PRESENTMENT OF TRANSACTION INFORMATION AND REFUNDS

- 11.1 In respect of transactions effected other than through the use of an EDCT, the Merchant shall complete a slip referred to as a **“charge summary”** and /or such other documents as may be required by the Bank (‘transaction information’) setting out;
  - a. The total amount charged through the sales slips being submitted (and attach the relevant sales slip);
  - b. The Discount and the net amount due to the Merchant on those sales slips and the Merchant shall present the said transaction information to the Bank within seven (7) days of the transaction date;
- 11.2 In the event the Bank has agreed to the presentation of transaction information set out in Clause 11.1 electronically, the Merchant, shall at the close of business of each day, effect a settlement of the transactions for that day on the EDCT and arrive at the amount due to the Merchant in respect of the transactions carried out for that day (**“settlement amount”**),
- 11.3 If in respect of any transaction, any goods are not received by the cardholder or are lawfully rejected or accepted for return or services are not performed or cancelled or the price is lawfully disputed by the cardholder or price adjustment is allowed, the Merchant shall not make a cash refund and shall follow the procedure set out herein to provide a refund to the cardholder;
  - a. In the event information relating to the transaction requiring a refund has already been presented to the Bank with the transaction information referred to in Clause 11.1 the Merchant shall;
    - I. Complete a sales slip indicating therein the amount which must be credited to the cardholder, a brief description of the goods or services, the number of the card, the date on which the refund was requested, state clearly on the said sales slip the words **“refund”** (hereinafter referred to as a **“refund slip”**) and sign the said refund slip;
    - II. Deliver to the cardholder a true and completed copy of refund slip;
    - III. Within Seven (7) days of the Merchant generating the refund slip, deliver a copy of the said refund slip to the Bank along with a request in writing to the Bank to cancel the authorization previously obtained for that transaction (if any);
  - b. In the event information relating to the transaction requiring a refund has not been presented to the Bank with the transaction information referred to in Clause 11.1, the Merchant shall;
    - I. Destroy the sales slip and any copies thereof and handover the said destroyed copies to the cardholder;

II. Inform the Bank in writing to cancel the authorization previously obtained (if any);

c. In the event a refund is being effected through an EDCT, in respect of a transaction for which the Merchant has not obtained a settlement amount as referred to in Clause 11.2 the Merchant shall;

I. Void the transaction on the EDCT, generate a charge record form stating the terms “void” or “credit sales” (hereinafter referred to as a “void slip”) and hand over a copy of the said void slip to the cardholder;

d. In the event a refund is being effected through an EDCT, in respect of a transaction for which the Merchant has obtained a settlement amount as referred to in Clause 11.2 the Merchant shall immediately inform the Bank in writing, to reverse the transaction (with a copy of the sales slip requiring to be cancelled) and provide the cardholder with a copy of the said letter;

e. In the event of that only refund slips or void slips are presented to the Bank at any one time, the Merchant shall at the same time make payment of the net refund {i.e. the total refund(s) to the cardholder(s) less the discount} to the Bank;

11.4 By presentation of the transaction information, the Merchant represents, warrants to and agrees with the Bank;

a. That all statements of fact contained therein which are within the knowledge of the Merchant are true and complete;

b. That the Merchant has supplied, or caused to be supplied, the goods and/or services to which the transaction information relates and to the value stated therein at a price not greater and otherwise on terms no less favorable than the price and terms at and on which such goods and/or services supplied by the Merchant for cash; c. That no other sales slip or 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 provision of credit for the supply of the goods and/or services to which the transaction information relates is not unlawful; e. That the transaction information relates to a transaction actually carried out by the Merchant; and f. That the Merchant has complied with this Agreement.

11.5 Neither the receipt by the Bank of any transaction information nor any payments 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 11.4, above or any other provision of this Agreement.

## 12. PAYMENTS

12.1 The transfer of payments, debits or credits between the two parties may be facilitated through the account maintained by the Merchant with the Bank, subject to the Bank’s usual service charge or discounts. Each sales slip will be presented to the Bank no later than the fifth banking business day following the Date of Issuance.

12.2 Subject to the terms and conditions of this Agreement, the Bank shall pay to the Merchant the amount of each sales slips on the next working day, credit the aforementioned account with the total face amount less discount, so set forth by the Bank and subject to change from time to time, on each sales slip so presented to the Bank; 12.3 Net payment to the Merchant will be made by the Bank to the account of the Merchant with the Bank designated by the Merchant (the “Merchant Account”) or to the Bank nominated in writing by the Merchant;

12.4 Payment by the Bank shall be without prejudice to any claims or any 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;

12.5 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 11 above; and b. Any over payment made by the Bank due to mathematical errors or otherwise; and c. Any other sums due from or payable by the Merchant to the Bank herein; and

c. At the Bank’s discretion, and amount equal to interest at the rate then currently charged to cardholder 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 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 favour 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 amount; and/or
- III. if there is no account with the Bank, or in insufficient funds available therein, claim from the Merchant the amount credit to the account in respect of the relative sales slip;

12.6 If the Bank suspects, on reasonable ground, that the Merchant has committed a breach of his agreement of dishonesty or fraud against the Bank or any cardholder, the bank shall be entitled to suspend all payment under this Agreement to the Merchant pending inquiries by the Bank; or until such time the Bank confirms authorization with the issuing Bank.

### **13. CHARGES TO CARDHOLDERS**

The Merchant shall not require any cardholder to pay a surcharge or to pay any part of the discount payable by the Merchant whether through any increase in price or otherwise or to pay any other fee in connection with the transaction relating to the use of a Card.

### **14. CHARGEBACK**

The Bank shall be entitled at any time to refuse total or partial payment to the Merchant or, if the payment has been made, and/or to debit/hold the account of the Merchant with such amount and/or to seek immediate reimbursement from the Merchant for any amount already paid to the Merchant in the event of a breach by the Merchant of any of the terms and conditions of this Agreement including but not limited to any of the following situations;

- a. The transaction is for any reason unlawful or unenforceable;
- b. The cardholder's signature is missing;
- c. The cardholder's signature on the charge slip or any other document required to be signed by the cardholder in relation to the transaction is a forgery or the cardholder's signature on the document does not match the signature on the card used for the transaction;
- d. The copy of the sales slip or invoice of the Merchant or any other document required to be signed by the cardholder in relation to the transaction presented to the Bank or retained by the Merchant is incompatible with any copy provided to the cardholder;
- e. Cardholder's account number is found to be omitted, incomplete or invalid or cardholder's account number is not imprinted on the charge record form;
- 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 cardholder was in excess of the price at which the goods supplied or the services performed were provided by the Merchant for cash;
- i. The sales price was in excess of the floor limit and no prior authority therefore was obtained from the Bank;
- j. The goods and/or services covered by the transaction are rejected or returned or the transaction or part thereof is invalid, cancelled or terminated by a cardholder or if the Merchant fails to provide at all or to the cardholder's satisfaction, goods and/ or services to the cardholder;
- k. The charge record form 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 this Agreement;
- n. The Bank has requested evidence in accordance with Clause 22 in relation to the transaction which the Merchant has failed to provide;
- o. The transaction information required to be presented in respect of the transaction is not presented to the Bank within the agreed time;
- p. The cardholder disputes or denies the transaction or the sale or delivery of goods and/or services covered by the transaction within reason;
- q. In seeking authorization for a transaction the Merchant has given an incorrect cardholder's name or card account numbers to the Bank;
- r. Transaction is charged more than once to cardholder's account due to the deposit of an incorrect copy of a charge record form by the Merchant;
- s. The Bank reasonably believes that the transactions are irregular;
- t. The Bank is of the opinion that there are suspicious circumstances surrounding the transaction;
- u. The Bank is of the opinion that the submission of the transaction information by the Merchant is out of the normal

- pattern;
- v. The issuing Bank refuses to honour the sales slips presented by the Merchant;
- w. Notwithstanding the provisions of Clause 5 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. USE OF MERCHANT’S NAME**

The Merchant irrevocably authorizes the Bank to include the Merchant’s name in any directory or promotional material produced in connection with the products and services of the Bank including the acceptance of the Card.

**16.DISPLAYING VISA/MASTER & CHINA UNION PAY CARD SYMBOLS AND NAMES**

The Merchant shall display such signs and materials of the Bank including current VISA/MASTER & CHINA UNION PAY Card symbols and names as well as promotional material provided only by the Bank to inform public that the VISA/MASTER & CHINA UNION PAY Card will be honored at the establishment. The right to use or display such signs, symbols and materials and names by the Merchant shall continue only so long as this Agreement remains in force or until the Merchant is notified by the Bank that the Merchant must cease such usage or display.

**17. MERCHANT DISCOUNT RATE**

The rate of the discount shall be advised by the Bank from time to time and shall be subject to change by the Bank with notice to the Merchant.

**18. MINIMUM TRANSACTION AMOUNT**

The Merchant shall not require or post signs indicating that they require a transaction amount below which the Merchant shall refuse to honor valid VISA/MASTER & CHINA UNION PAY Cards.

**19. MINIMUM TURNOVER CHARGERS**

The Merchant will be charged a fee according to the below grid in the event that they do not generate a minimum monthly turnover of LKR .....which the Bank shall change from time to time.

Turnover (LKR)                      Charges (LKR)


**20. TRANSACTION EFFECTED IN BREACH OF THE AGREEMENT**

Without prejudice to the Bank’s right to terminate this Agreement under Clause 31, the Bank shall be authorized to debit the account of the Merchant or deduct from any payment or refund due to the Merchant, any sum claimed by that cardholder if such claim arises from a breach by the Merchant of any of the terms or conditions contained in this Agreement. In the event that Merchant does not have an account with the Bank or there are insufficient funds available therein, the Merchant shall forthwith on demand by or on behalf of the Bank pay to the Bank the amount of the said claim to the extent to which such funds proves inadequate. For the avoidance of doubt, the Merchant expressly agrees that the ability of the Bank to demand payment from the Merchant under this Clause shall continue even after the termination of this Agreement and in respect of claims made by cardholders at any time after the termination of the Agreement.

**21. EVIDENCE AND DOCUMENTS**

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 year there after and produce the same to the Bank on request. The Merchant shall provide reasonable assistance for the prevention and detection of fraud in respect of any transaction as the Bank may from time to time request.

## 22. MAINTENANCE OF EDC EQUIPMENT AND/ OR IMPRINTERS

The Merchant will retain in the Merchant's possession and for the Merchant's exclusive use all

Equipment and materials supplied by the Bank;

- a. The Merchant shall maintain the Equipment in good condition;
- b. It is the sole responsibility of the Merchant to safe-keep and control the use of the Equipment; the 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; the Bank shall not be responsible for any disputes whatsoever arising between the Merchant and its agents or its customers; the Merchant shall indemnify the Bank against all claims, losses, 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 shall also provide such responsible assistance for the prevention and detection of fraud in respect of using of the Equipment;
- f. The Bank may charge the Merchant the costs of the Equipment and/or costs of repairing the Equipment if the Equipment was 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 upon the Merchant ceasing to do business for any reason or as and when required to do so by the Bank;
- h. The Bank has the right to charge the Merchant a rent on an EDCT, if the sufficient card sales are not generated by the Merchant to cover the EDCT cost.

### 22.1. The Merchant can't;

- 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 any part of the Equipment which indicates the ownership of the Equipment by the Bank; or c. Cause or allow any action to be taken that will affect the Bank's right to access, repossess or dispose of the Equipment or otherwise to encumber or in any way jeopardize the Equipment, whether by any act of a customer or any of its servants or agents or by any other factor within control;

### 22.2. Subject to the provisions of Clause 26 hereof, in respect of Equipment provided by the Bank, the Bank shall be responsible for any servicing, repairs or replacement required to be carried out to the Equipment. For this purpose the Merchant shall allow the Bank, its representative, contractors or agents to have access to the Equipment at all times.

### 22.3. The Merchant shall not permit any third party to perform any maintenance services on the Equipment provided by the Bank or to effect modifications, enhancement or engineering changes to the said Equipment without the prior written consent of the Bank

## 23. REMOVAL AND CESSATION OF BUSINESS

The Merchant shall inform the Bank in the event of the closure of any Establishment and/or the transfer or sale of its business to another person at least thirty (30) working days prior to the effective date of closure, transfer or sale.

## 24. 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 party, including but not limited to any person, corporation, bank, financial institution, any of the Bank's branches and related companies and to obtain such information from any such party.



## **25. DISCLAIMER**

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 sales authorization communicated by the Bank hereunder except for the Bank's gross negligence and willful default and the Merchant shall indemnify the Bank for any claims arising therefrom. Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings, inducements, 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 for any loss or damage (including consequential loss or damage) however caused which may be suffered or incurred by the Merchant or which may arise directly or indirectly in respect of the Equipment or as a result of failure or error in the Equipment or the system.

## **26. INDEMNITY**

The Merchant will indemnify the Bank on demand in respect of any action, claims, costs, damages, demands, expenses, losses and liabilities made against, suffered

or incurred by the Bank arising directly or indirectly from or in connection with;

- a. Any failure by the Merchant to comply with the provisions of this Agreement and/or;
- b. Any transaction between the Merchant and 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. The Bank acting on instructions received from the Merchant through facsimile or email; The Bank will be entitled to have full conduct of all proceedings and negotiations relating to any such claims 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.

## **27. CONFIDENTIALITY**

The Merchant shall not, without prior written consent of the cardholder use or disclose information of the cardholder or his/her transactions howsoever obtained and in whatsoever form the information shall take to any third party (other than to the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the transaction and the Merchant's insurers and professional advisers) unless such disclosure is required by law or by a court. The Merchant shall not, without prior written consent of the Bank, use or disclose information howsoever obtained and in whatsoever form of 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 transaction and the Merchant's insurers and professional advisers) unless such disclosure is required by law or by a court. Confidentiality remains even after the expiry/termination of this Agreement.

## **28. CARD ACCOUNT NUMBER INFORMATION**

The Merchant shall not sell, purchase, provide or exchange a Cardholder's name or VISA / Master 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 Visa/Master & China Union Pay Card transaction to any third party other than to the Merchant's agents for purpose of assisting the Merchant in its business, to its Visa/Master & China Union Pay Card acquiring member, to Visa/Master & China Union Pay Card, or pursuant to a Government request.

## **29. DOUBLE SWIPE**

The Merchant who accepts Visa/Master & China Union Pay Cards in receiving of dues for a transaction shall not swipe such cards in any other devices in addition to the EDCT or POS (point of sales) terminal issued by the Bank. (This practice may compromise the data security of the cardholders and would lead to creation of counterfeit cards and perpetrate frauds).

## **30. TERMINATION**

30.1 This Agreement may be terminated;

- I. by the Merchant giving to the Bank at least thirty (30) day's prior notice in writing; or
- II. by the Bank forthwith, without prejudice due completion and payment in respect of all transaction processed and accepted by the Bank on or before the Date of Termination;

30.2 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 11.3, 12.6 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) and in any event only after 180

days from the date of the receipt by the Bank of the transaction information relating to that transaction. Where any refund claimed by the Bank exceeds the amount due to the Merchant the difference there of shall be a debit due from the Merchant to the Bank and be forth with payable by the Merchant to the Bank.

- 30.3 In the event the Merchant has informed the Bank under Clause 24 above of the closure, transfer or sale of its business, this Agreement shall terminate at the expiry of the period of thirty (30) days required to be given under the said Clause 24. Provided however, until the Merchant returns the Equipment to the Bank, the Merchant shall remain liable for any transactions affected through the use of the Equipment provided to the Merchant.
- 30.4 Upon such termination the Merchant shall forthwith and at the Merchant's expense return to the Bank the Equipment and all related documentation.
- 30.5 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 11.3, 12.6, 14, 20, 21, 26 and 27 and this Clause shall remain in full force and effect notwithstanding termination.
- 30.6 Any transaction presented to the Bank for payments after the termination date, whether it bears authorization or not, shall not be paid by the Bank.
- 30.7 The Bank has the right to terminate the Agreement and remove the machine, if sufficient credit card sales are not generated by the Merchant.

**31. ASSIGNMENT**

This Agreement is not assignable by the Merchant. But the Bank is entitled at any time, with notice to the Merchant, to assign this Agreement or any of the Bank's obligations here under and/or sub-contract or appoint any agent to carry out any of the Bank's obligations herein.

**32. REPRESENTATIONS**

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

**33. 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 the rest of them right at any time subsequently to enforce all terms and conditions of this Agreement.

**34. GENERAL**

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 legality, validity and enforceability of the remaining provisions of this Agreement shall not be in anyway effected thereby. 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 parts hereto may hereafter specify to the other party. The Merchant shall advise the Bank in writing of any change of address, status, contact details or any other change, thirty (30) days prior to any change.

**35. 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 instruction will become effective and binding on the Merchant upon notification to the Merchant by regular post and if the Merchant is unwilling to accept any such variation or amendment or instruction, the Merchant shall notify the Bank in writing by registered post within five working days from the receipt of the notification by the Bank. A notification sent by the Bank by post shall be deemed to have been received by the Merchant on the day following the date of posting.

**36. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of Democratic Socialist Republic of Sri Lanka.

Merchant No. ....

Discount Rate .....

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

Signed by

.....

Name of the Authorized Signatory:

Title. :

Date:

.....

Business Name

Business Registration No.

.....

Name of the Authorized Signatory:

Title :

Date:

For and behalf of Peoples Bank

.....

Name:

Title:

Date:

.....

Name:

Title :

Date:

