



بنك الإمارات دبي الوطني
Emirates NBD

Pay

MERCHANT ACQUIRING - TERMS AND CONDITIONS (BUSINESS BANKING)

EMIRATES NBD BANK (P.J.S.C.)



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Annex A

This Agreement (as defined below) is a legal agreement between Emirates NBD Bank (P.J.S.C.) ("**Emirates NBD**", "**ENBD**" "**us**", or "**we**" or "**our**") and the entity mentioned on the first page of your Application ("**Merchant**", "**you**", "**your**", or "**user**").

It is agreed as follows:

1 Parties

The Agreement, including these Terms and Conditions, governs the entire Merchant relationship and interaction with Emirates NBD for the provision of the Services and shall apply throughout the Term.

You agree that any electronic or other method of acceptance of these Terms and Conditions prescribed by us from time to time shall constitute your acceptance and you agree to be bound by these Terms and Conditions, as if the you had accepted and agreed to be bound by them in writing.

1.1 Identification of Merchant: You shall provide to us copies of the documents specified in the Application as well as, where requested by us, any further documents required to: (a) identify the Merchant, its legal representatives, and beneficial owners; and (b) to record the business activities of the Merchant.

1.2 Risk Management: We are entitled, for the purpose of our risk management, to: (a) request, at a frequency determined by us in our sole discretion, the update of the documents submitted for the purpose of identifying the Merchant; and (b) assess the business activities and the financial situation of the Merchant at any time. The Merchant shall provide us with the required information (including financial statements) within 10 days following our request or as otherwise requested by us.

1.3 Sector allocation: The Merchant shall solely operate in the sector categories specified in the Application, and shall sell goods and/or provide services to Cardholders that are exclusively allocated to these sector categories.

1.4 Changes on the part of the Merchant: If at any time the information provided by the Merchant in Clause 1.1 (*Identification of Merchant*) becomes inaccurate due to a change in the business of the Merchant, including if its business or businesses are sold or there is a change in beneficial ownership (a "**Change in Business**"), the Merchant shall immediately communicate such Change in Business to us in writing. If there is a significant Change in Business, the Merchant shall inform us in writing at least one (1) month in advance. In such an instance, we shall be entitled to request that the information provided pursuant to Clause 1.1 (*Identification of Merchant*) be updated. Should higher risks for us arise from any Change in Business, we are entitled to terminate this Agreement with immediate effect by written notice to the Merchant. For as long as we are not informed in writing of a Change in Business, we may credit all reimbursements (including settlement) to the designated account of the previous Merchant, as detailed in the Application.



1.5 **Credit rating:** If at any time there is a material adverse change in the Merchant's credit rating (e.g. you become, or may become, subject to an Insolvency Event), the Merchant shall notify us in writing without delay and we shall be entitled, at our sole discretion, to immediately take suitable measures, including: (a) withholding or delaying reimbursements or sums we owe to you; or (b) requiring you to pay funds to us, in an amount reasonably determined by us, to hold as a reserve against a liability you may incur. The Merchant shall be notified without delay of the measures taken.

1.6 **Card Scheme Rights:** You acknowledge and agree that the Card Scheme(s) shall at all times have a right to limit or terminate our agreement with you for any reason (such right to be exercised at the Card Scheme(s) sole discretion). In the event of any exercise by the Card Scheme(s) of this right, the provisions of Clause 9.1.1.ix (*Suspension or Termination by us*) shall apply and we shall have no liability in relation to the same.

2 Services and Term

2.1 **Term:** The Agreement shall come into force on the Commencement Date and remain in effect for a period of twelve (12) months unless otherwise terminated in accordance with the terms of the Agreement (the "**Initial Term**"). Thereafter, the Agreement will automatically continue for successive periods of 12 months (each a "**Renewal Term**"), unless you send a notice of non-renewal in writing to us no later than two (2) months before the expiry of the Initial Term or the then applicable Renewal Term. The Initial Term and any Renewal Term together shall constitute the "**Term**".

2.2 **Provision of Services:** We agree to provide the Services outlined in the applicable Application subject to the terms and conditions of this Agreement and Applicable Laws.

2.3 **Receipt of Services:** You agree to comply at all times with this Agreement, the Card Scheme Rules and all Applicable Laws and regulations.

3 Taxes, Fees and Charges

3.1 **Fees:** All Payment Transactions processed by us shall be subject to Fees and Charges payable by you to us in accordance with this Agreement. Fees and Charges once received shall not be refundable unless received in error by us.

3.2 **Payment:** You agree to pay and authorize us to charge the Fees and Charges, Fines and Levies, Refunds, Chargebacks and any Reversals together with any applicable taxes by adjustment of the Sale Proceeds or by debit to the Bank Account or any other mode in accordance with terms of this Agreement. All Fees and Charges and other amounts payable under this Agreement are exclusive of any Value Added Tax (VAT) or any other taxes or levies under Applicable Laws and are payable by you. We shall, where required by Applicable Law, provide a tax invoice in respect of such VAT or other taxes or levies every 30 days.



3.3 Taxes: All payments made by you to us under this Agreement, shall be free from any withholding or any other similar taxes levied under Applicable Laws. If you are required under Applicable Laws to withhold or deduct any tax out of the payments due to us ("**WHT**"), then the sum payable shall be increased to the corresponding amount as necessary, so that after making all such required deductions we receive an amount equal to the sum we would have received had no WHT or such deduction been made. You shall be responsible for remitting the withheld tax amount to the relevant tax authorities as required by the Applicable Law. You shall issue the necessary withholding tax certificates or documents to us for the amounts withheld under this Agreement. If a tax treaty (hereafter referred to as the "**Treaty**") exists between our respective countries that provides for a reduced withholding tax rate or exemption, you agree to cooperate with us and provide us with the necessary information and documentation required to enable the application of the reduced rate under the Treaty. You shall cooperate with us in good faith to facilitate any claim we may make for withholding tax credits and refunds. You shall provide us with any necessary information, documentation, or assistance to ensure compliance with the tax related requirements under this Agreement.

3.4 Late Payment of any sums owed to ENBD: If the payments made by you do not result in entire settlement of sums owed, we will claim all outstanding sums owed by you to us from the Sale Proceeds. The term of payment is 10 days upon notice by us to you; upon its expiration you shall fall into arrears without further notice. In the event you fall into arrears, we shall be entitled to charge default interest at the statutory rate on the outstanding amount and charge all costs for dunning and debt collection to you.

4 Your Bank Account

4.1 Bank Account: You shall maintain a Bank Account with a bank licensed by the UAE Central Bank, and where the settlement is to a Bank Account with a bank outside the UAE, such bank shall be agreed in writing with us, and you shall maintain sufficient funds in the Bank Account to ensure timely payment of any Fees and Charges, Fines and Levies, Chargebacks, Refunds, Reversals and any other amounts payable to us under this Agreement.

4.2 Account Changes: Your Bank Account shall be as detailed in the Application. You agree to provide us with at least fourteen (14) days advance written notice of any change in the Bank Account, or in case the Bank Account is outside UAE, effect a change in the Bank Account only with our prior written agreement. You also agree to notify us immediately if there are any restrictions imposed on the Bank Account.

4.3 Direct Debit: Where Applicable, by signing the direct debit mandate attached with the Application and this Agreement, you undertake and warrant that you have given written authorization to the bank where the Bank Account is being maintained to accept and honour direct debit instructions executed through us.



4.4 **Debits:** We reserve the right to debit the Bank Account for any and all amounts owed by you to us under this Agreement and such amounts as determined by us to meet your obligations under this Agreement. If the balance in the Bank Account is not sufficient to meet your obligations under this Agreement including for payment of Fees and Charges, Chargebacks, Refunds, Reversals, Fines and Levies and any other amounts payable to us under this Agreement then we may recover such amounts and related expenses by deduction of the same from the Sale Proceeds and/or from the collateral.

5 Sale Proceeds

5.1 **Settlement:** Subject to the tax provisions under Clause 3.3, we shall settle the Sale Proceeds by a credit to the Bank Account, in accordance with the settlement frequency set out in the Application. We reserve the right to change the funding frequency period upon notice to you.

5.2 **Consolidation:** We may from time to time, consolidate any or all of your funds and other accounts with us if any; and set off, apply or transfer any and all such sums to satisfy any debt or liability that you owe to us, including any debt or liability incurred to effect any required currency conversions.

5.3 **Interest:** You agree that the Payment Transactions processed, or any collateral held under this Agreement shall not constitute a deposit with us and shall not bear any interest.

5.4 **Records:** We may record, or store information related to settlement of funds in any form or by any means as we may deem appropriate however, we are under no obligation to retain original documents, instruments or vouchers belonging to you.

5.5 **Deductions:** You hereby authorize us to apply or deduct from the Sale Proceeds, or if the Sale Proceeds are already credited to the Bank Account, then you agree to refund and/or if considered appropriate by us, charge against any collateral held in the order of priority mentioned below:

- a) Refunds and Reversals;
- b) VAT;
- c) Chargebacks;
- d) Fines and Levies;
- e) Manual adjustments;
- f) Fees and Charges;



- g) any amount that you may request in writing in accordance with Clause 5.9 (Merchant Financial Solutions) of this Agreement; and
- h) any other amounts, if applicable.

5.6 Sums owed: We in addition to our other rights under this Agreement, may delay, withhold, or retain settlement of funds and/or amounts otherwise payable to you under this Agreement and/or adjust the same against any collateral amount, and/or against Chargebacks, Fees and Charges, Refunds, Reversals, and Fines and Levies payable by you. Further, you irrevocably grant us a lien over the Sale Proceeds and authorize us at any time, upon written notice to you, to exercise such rights in relation to the above.

We may exercise the rights set out in this Clause 5.6 (*Sums owed*) where:

- a) the Agreement is terminated;
- b) you commit an event of default or fraud, or undertake a Transaction prohibited by the Card Scheme Rules and/or Applicable Law;
- c) we reasonably believe that you are or are likely to experience an adverse change or deterioration in your financial standing, including but not limited to you being the subject to insolvency proceedings, or where we reasonably believe that insolvency proceedings are likely to be initiated against you;
- d) there are changes to your business practices which we reasonably believe will expose us to higher financial risk;
- e) you fail to maintain a direct debit mandate in our favour;
- f) you fail to provide any information reasonably requested by us;
- g) you do not provide any security document to us as requested under Clause 20 (*Data Security Compromise*) or where security is terminated or otherwise not honoured;
- h) you (or your employees or agents) are suspected of or reported for fraud or any other criminal activity;
- i) you exceed or are likely to exceed the Excessive Chargeback threshold;
- j) you are in breach of any of your obligations under this Agreement;
- k) the value of Refunds, Fines and Levies or Chargeback exceeds the value of Payment Transactions;



- l) any sanction or limitation is imposed upon us by Card Schemes or a regulatory authority as a result of your activity; and
- m) in the event 3D secure authentication is disabled at any time other than as a result of gross negligence or wilful misconduct by us.

5.7 Continuation: Our rights under Clauses 4.4 (*Debits*), 5.5 (*Deductions*) and 5.6 (*Sums Owed*) shall continue, including after termination or expiry of this Agreement, until we are satisfied that all sums due and payable by you under this Agreement have or will be paid.

5.8 Retention: We may retain any amounts held by us in accordance with Clause 5.6 (*Sums Owed*) for a period of up to five hundred and forty (540) days following the later of the: (a) date of delivery of goods or performance of Services that are the subject of Payment Transactions; or (b) the date of termination of this Agreement. Such funds will be retained up to five hundred and forty (540) days as above or until the Chargeback and/or Refund window has ended in accordance with the Card Scheme Rules, whichever is earlier, following which any remaining funds will be transferred to the Bank Account.

5.9 Merchant Financial Solutions:

- a) In the event you procure any financial solutions including a loan or any cash advance from a Lender that is secured against your future Sale Proceed receivables then we may upon your written request, at our sole and absolute discretion, mark a lien on all or a part of the Sale Proceeds in favour of the Lender.
- b) If you take an advance from the Lender against your future Sale Proceeds receivables, we shall after it has marked a lien on your Sale Proceeds in favour of the Lender and till such time that the Lender has advised us in writing that the lien be released:
 - (i) deposit the Sales Proceeds to your Bank Account designated by you; and/or
 - (ii) deposit all or a proportion of the Sale Proceeds
 - (iii) to your designated bank account with the Lender; and
 - (iv) that such payment to your Bank Account or your designated account with the Lender (as the case may be) shall be full and final settlement of our obligation to transfer the Sale Proceeds to you under this Agreement, subject to the tax provisions at Clause 3.3.
- c) You agree that marking of such lien as requested by you in writing, and transfer of Sales Proceeds to your Bank Account(s) or your designated account with the Lender shall remain subject to our rights under this Agreement and Applicable Law and shall be without prejudice to our right to



withhold, retain, deduct and/or apply the Sale Proceeds in accordance this Clause 5 (Sale Proceeds) and other applicable provisions of this Agreement.

6. Cards

6.1 Acceptance

Subject to the Card Scheme Rules and unless otherwise notified by us, and irrespective of the amount involved, you shall accept the Card types (agreed card brands and agreed card types) described in the Application and those notified by us from time to time, as a payment method for Payment Transactions only in respect of Payment Transactions that are within your designated area of use which are as follows:

- a) for Card Present Transactions, this will be the country where the Merchant conducts its business and engages in Payment Transactions in the designated area as per the registered trading address which shall be as described in the Application and governed by this Agreement;
- b) for Card Not Present Transactions, this will be the country in which you are proposing to engage in the Card Not Present Transaction and in respect of which you must certify that, and by entering into this Agreement, you (a) conduct business locally; (b) hold all necessary permits to operate locally; and (c) comply at all times with Applicable Laws and regulations; and
- c) we reserve the right and may require you to provide to us, within a reasonable time period from the date of our request, with a written certification statement signed by one or more of your duly authorized senior executives or officers attesting compliance with the same.

6.2 Limitations: You shall:

- a) only accept Cards that have not expired at the time of presentation, as payment for goods and services sold by you;
- b) accept all responsibility and liability in respect of goods and services sold by you, including without limitation customer service and/or any disputes that may arise; and
- c) not impose minimum or maximum financial limits on Payment Transactions, unless otherwise requested by you and agreed by us.

6.3 Loss: You must make reasonable efforts to recover any Card if advised by us or where instructed to do so by an Issuer, or where you have reasonable grounds to believe the Card is lost, stolen, counterfeit or otherwise invalid or its use is not authorized by Cardholder.

6.4 Communication: Subject to Clause 6.1 above, Merchants that do not accept all types of the agreed card brands shall communicate this to the Cardholder clearly and at the same time inform the Cardholder about the acceptance of other card types of the same card brand and in any case prior to



the execution of the transaction. In Card Present Transactions, this information will be provided to you by ENBD in ENBD branding and is to be displayed clearly by you at the entrance of the store as well as at the point of sale. In Card Not Present Transactions, this information is to be displayed clearly within the Merchant's ecommerce store or any other electronic or mobile medium.

6.5 Split Transactions: In all cases, within the context of the acceptance, the Merchant shall not split a transaction across several cards or in several partial amounts on the same card, unless:

- a) it concerns an initial payment paid in advance and a second payment as the final payment for a service or good that was rendered or delivered at a later date;
- b) it concerns an individual instalment amount of which has been agreed in writing between the retailer and the card holder;
- c) the Cardholder pays one part of the total amount by Card and the remaining purchase amount in another form (e.g. cash or cheque);

6.6 Rejection: Subject to the Card Scheme Rules, you may not accept the Card for:

- i. transactions involving goods and/or services that are not offered or provided by you but by a third party (sub-acquiring prohibition);
- ii. transactions that do not correspond to the agreed sector categories; an additional agreement must be concluded in order to execute transactions outside the sector categories specified in the Agreement;
- iii. any transactions that are brand damaging or may be potentially brand damaging, knowingly illegal, immoral or unethical (or which you should have known was illegal, immoral or unethical) in its country, at the place of receipt and/or according to the law applicable to the legal transaction with the Cardholder or that require an official authorization that you do not have; or
- iv. transactions used to load other means of payment (e.g. prepaid cards, gift cards or e-wallet solutions).

6.7 Card acceptance in Card Present Transactions: In electronic execution by means of POS Terminal, you shall ensure that the reading of the Card data and, where necessary, authentication (e.g. by entering the PIN) can be carried out on the terminal by the Cardholder in person without this being observed by you or third parties. You cannot ask the Cardholder for their PIN under any circumstances. If the terminal does not request authentication (e.g. by entering the PIN), the Merchant must comply with the instructions issued by us, and the requirements of the Card Scheme Rules (including PCI DSS), in respect of Card acceptance in such circumstances.

6.8 Card acceptance in Card Not Present Transactions:

a) General

- i. For the execution of distance business transactions, you must always obtain the last name, first name and residential address of the Cardholder as well as the card number and expiry date of the card or have it confirmed in the case of previously stored information and validate the plausibility of this information; in particular if the delivery address and residential address differ. You must specify the company name used in the ecommerce store on all information transmitted to the Cardholder (e.g. order, delivery and transaction confirmations, invoice).

b) Secure transactions in the ecommerce store (3-D Secure procedure)

- i. You agree to implement and promptly update to the newest available versions, as designated by Issuers or Card Schemes (as applicable) from time to time, the online authentication solutions, including by participating in the 3D secure system. By authenticating the Cardholder within the scope of “secure e-commerce” transactions, you can reduce the risk of fraudulent transactions subsequently disputed by the Cardholder. The Merchant must ensure that the Cardholder can authenticate themselves in accordance with PCI DSS and the 3-D Secure standards of the Card Schemes (e.g. “Verified by Visa”, “Mastercard SecureCode” or “ProtectBuy”), unless exceptional circumstances apply, as determined by us and subject always to PCI DSS. The Merchant acknowledges that such transactions are associated with a higher risk of Chargebacks, for which the Merchant shall be responsible.

c) Distance business transactions by post, telephone or fax (mail/phone order)

- i. Where applicable, the acceptance of Cards via “mail/phone order” requires use of a certified virtual terminal. You must destroy all manually recorded card data (in particular card number, expiry date and card verification number) after the transaction has been executed. The Merchant acknowledges that such transactions are associated with a higher risk of Chargebacks, for which the Merchant shall be responsible.

7. Payment Transactions

- 7.1 Non-discrimination:** You shall treat purchases by Card in the same way as cash purchases, including the offering the goods and/or services sold by you at the same price regardless of whether the payment is by Card or cash. You shall not discriminate against Transactions made by Card to give preference to specific Cards or Card Scheme(s).



- 7.2 **Scope:** No Payment Transaction shall be made for goods or services other than those goods offered, or services rendered, by you in accordance with the course of your licensed business and licensed activities
- 7.3 **Floor Limit:** You shall observe the permitted Floor Limit, you shall not impose a financial limit in respect of Payment Transactions or preset any rule to accept minimum or maximum values for a Payment Transaction
- 7.4 **Method:** You shall ensure to have the Card swiped into the POS Terminal, or tapped for contactless transactions, or imprinted on the Manual Imprinter for all Payment Transaction at the time of initiating any Authorization. In case of EMV Card you shall insert the Card into the POS Terminal and if prompted shall request the Cardholder to enter the PIN.
- 7.5 **ID Check:** If a Payment Transaction is initiated using a Card which is issued by an Issuer outside the UAE for an amount of five thousands dirham (AED 5000) or more, you shall verify the identity of the Cardholder, record details of the identification document on the POS Record / Manual Sale Draft, obtain a photo copy of such documents and retain such documents for presentation to us upon demand.
- 7.6 **Records:** All details of Payment Transactions as further described under Clause 7.5 above shall be made available to us within two (2) days from our request.
- 7.7 **Discount:** The amount of Payment Transactions shall be reduced in accordance with any discount that is offered on sale of goods and services by you.
- 7.8 **Restrictions:** You shall not accept a Payment Transaction, which is made:
- a) to advance Cash to the Cardholder unless previously authorized by us;
 - b) to refinance a debt for you, a Representative or Cardholder;
 - c) to debit any additional charge, surcharge, or other charge which is not related to the acceptance of a Payment Transaction;
 - d) for goods which are not sold or services which are not rendered to the Cardholder; or
 - e) in any currency which is not set out in the Application or otherwise agreed between us from time to time.
- 7.9 **Verification:** No Payment Transaction shall be made before you:
- a) verify the format of the logo appearing on the Card with the approved format authorized by the relevant Card Schemes as provided by us;



- b) verify the validity date on the Card;
- c) verify the identity of the Cardholder;
- d) use reasonable effort to verify the signature of the Cardholder on the back of the Card; and

7.10 Equipment: All Payment Transactions shall be processed for Authorization using the Equipment and as communicated by us to you. It is agreed that no Payment Transaction will be approved, accepted or processed by us and no Sale Proceeds will be credited to the Bank Account if the Payment Transaction is not processed through the Equipment or if processed by virtue of using third party point of sale.

7.11 Refunds: Any incorrect Payment Transaction submitted by you that requires to give refund or partial refund to the Cardholder shall be sent to us to initiate a Refund. You shall be liable for any incorrect or unauthorized Payment Transaction. If as a result of such incorrect or unauthorized Payment Transaction any losses or expenses are incurred by us, the same may be recovered by adjustment against your future Sales Proceeds or by a debit to your Bank Account. We may provide you, in our sole discretion, with a self-service option to refund Cardholders via the Portal which you can access as part of the Service offering.

7.12 Transaction Volume and Value Limits: We reserve the right to limit the volume of Payment Transactions and value of Payment Transactions which we will accept from you where we consider it reasonably necessary to manage our credit risk. Where a limit is imposed we reserve the right to change the limit from time to time as may be considered necessary, and communicate the same to you.

7.13 Presentation: You shall present all Payment Transactions to us within two (2) days of the date of completion of the Payment Transaction and in all events no later than seven (7) days of the date of completion of the Payment Transaction. For MO/TO and Online, Payment Transactions shall not be presented until the relevant goods and/or services ordered by the Cardholder have been dispatched or arrangements made for services to be provided.

7.14 Transaction Obligations: You shall:

- a) accept Payment Transactions for previously disputed Card charges incurred at your location;
- b) ensure you are clearly identified in authorization and clearing Payment Transaction messages;
- c) not require a Cardholder to complete a postcard or similar device that includes any of the following in plain view when mailed: the Cardholders account number, card expiration date, signature, or any



other Card account data or request the Card Verification Value 2 (CVV2) data on any paper order form;

- d) not add any tax to Transactions, unless Applicable Law expressly requires that you be permitted to impose a tax. Any tax amount, if allowed, shall be included in the Payment Transaction amount and not collected separately;
- e) use your best efforts to assist us, if requested at any time, in preventing, and detecting fraud. In this respect you undertake to inform us, as soon as reasonably practicable, of any actual or suspected fraudulent activity you become aware of, or any actual or suspected, misrepresentation or any illegal activities in relation to a Card;
- f) not, directly or indirectly, require any Cardholder to pay a surcharge or any part of any discount or any contemporaneous finance charge in connection with a Transaction;
- g) not make an aggregated Payment Transaction for multiple content suppliers, unless otherwise required and as notified by us to you in writing;
- h) not submit a Payment Transaction for or on behalf of third party (i.e. other business entities); and
- i) not submit a Payment Transaction that may, in the sole discretion of us or the Card Scheme, damage the goodwill or reflect negatively on our brand or the brand of the Card Scheme.

7.15 Validity: You agree that any Payment Transaction or presenting a POS Record/ Manual Sale Draft shall constitute warranties to us that (a) all statements of fact therein are true; (b) the Card or POS Record / Manual Sale Draft is valid; and (c) the sales are not subject to any dispute, set-off and/or counterclaim.

8. Authorization of Payment Transactions

8.1 Authorized Floor Limit: The authorized floor limit for all Payment Transactions will be zero unless otherwise agreed by us and communicated in writing to you. You must not split the value of a Payment Transaction by initiating multiple authorization requests to avoid obtaining Authorization. You acknowledge that splitting a Payment Transaction into multiple authorizations may result in Chargebacks and we shall be entitled to recover the values of the rejected Payments Transactions plus all associated expenses from you in accordance with the terms of this Agreement.

8.2 Claim to Reimbursement: An Authorization code does not guarantee that a Payment Transaction will not be subject to a Chargeback at a later date. You acknowledge that within the context of the authorization procedure, it can only be verified whether a Card is not blocked and no limit has been exceeded. An authorization granted therefore does not confer on you any claim to the reimbursement of the transaction by us.



8.3 Mandatory Authorization Procedure: If you do not make a request for Authorization or if Authorization is refused you shall not complete the Payment Transaction. If you resubmit a Payment Transaction for Authorization and subsequently rely upon an Authorization which is then granted you will be liable for any Chargeback in relation to such Payment Transaction.

8.4 Authorization Request: You shall not submit an Authorization request in order to validate a Card where there is no associated Payment Transaction. You shall process such requests as account status inquiry if you wish to validate a Card.

8.5 Cardholder Authority: You shall obtain the Cardholder's authority for each Payment Transaction. Unless a Card is previously reported lost or stolen or compromised, Cardholder authority will be deemed given:

- a) for Card Present Transactions when Cardholder correctly enters a PIN into the POS Terminal or uses a contactless payment method and the PIN or contactless payment is successfully verified or where you obtain the Cardholder signature on the Payment Transaction receipt and the signature matches the Cardholders' signature written on the panel on the reverse side of the Card. The Merchant agrees that it is wholly liable and responsible to us and the Card Schemes for matching and validating the Cardholder's signature on the Payment Transaction receipt.
- b) for Mail Order Transactions by obtaining the signed written authority of the Cardholder and for Telephone Order Transactions by keeping written evidence of the Cardholder's authority to debit the Card;
- c) for Online Transactions by obtaining the CVV/CW2/CVC2 number from the Cardholder's Card, and authentication via 3D secure.

If an Authorization attempt generates messages such as "referral", you shall obtain Authorization. If we approve the Payment Transaction, you shall then use the same Authorization code that we will provide to you to complete the Payment Transaction. Alternatively, where the Payment Transaction is declined, or the Cards categorized as "pick-up" you shall comply with the instructions that may be issued by us with regard to the said Payment Transaction.

8.6 One Time Swipe: You shall comply with Circular No. 242/2016 issued by the Central Bank of UAE on "Double Swiping of Payment Cards" by swiping cards at POS terminals only once to obtain authorization of transactions from the Issuers. You shall not double swipe cards or capture and store Cardholder information to create any secondary record to support in-house accounting, reporting or for the purpose of managing other programs such as loyalty and rewards.

8.7 Dispatch of goods in Card Not Present transactions: Where you are involved in dispatching of goods in Card Not Present Transactions, you are responsible for verifying the Cardholder's address and ensuring the goods are dispatched to this address. We cannot provide name and address verification



as part of the Authorization process and exclude all liability in relation to the same. In relation to the dispatch of goods, you undertake not to raise a Transaction Record prior to the goods being dispatched. You shall advise the Cardholder of the time it will take to dispatch the goods and if, for any reason, you do not have the goods available for dispatch to the Cardholder within such advised time period, then the Cardholder shall be notified of that fact and the order re-confirmed by the Cardholder.

8.8 **System:**

- a) The Transactions delivered by the Merchant are processed and settled in accordance with Clause 5.1 (*Settlement*) by the system operated by or on behalf of us. We provide no warranty that the system will be available at all times or will operate without disruption. We shall be authorized to interrupt, at our reasonable discretion, the operation of the system if we deem such an interruption to be necessary for urgent material reasons, for example system adjustments and updates, disruptions, and to mitigate the risk of misuse.
- b) We reserve the right at any time to make technical or organizational changes or additions to the system. If these require modifications to the infrastructure, the Merchant shall implement these changes in accordance with our instructions at its own cost. The Merchant shall accept and implement all system adjustments and updates, in particular for the purpose of increasing security standards, carried out by us and the system/ infrastructure suppliers or terminal manufacturers.

8.9 **Card obligations:** You shall:

- a) not disadvantage Cards in comparison with other means of payment, in particular not request a surcharge for payment with the Card;
- b) not debit the Card in return for cash payments or loans granted; cash payments (Cash Advance, Purchase with Cash Back) require (where available) a supplemental agreement;
- c) only accept the Card for services that cannot be provided immediately if the cardholder receives written information (also by e-mail) that the service will be provided subsequently;
- d) not change/correct any data on a receipt after it has been signed; if a correction is required, a new receipt must be issued; and

take the measures expected of a diligent merchant to prevent the misuse of cards and notify any suspicions of misuse to us immediately.

9. Other Types of Payment Transactions

Other types of Payment Transactions and the applicable additional terms and conditions are stated below:

9.1 Pre-Authorized Transactions:

- a) If Payment Transaction is not to be made at the time of contracting for your services, subject to the Card Scheme Rules, you shall request Pre-authorization to withhold the necessary funds on the Card to cover the anticipated provision of goods and/or services.
- b) For the purpose of Pre-Authorization, you shall estimate the value of the Payment Transaction which would be concluded for the entire services to be rendered on the basis of the following:
 - i. type and duration of the services as may be anticipated at the time of the Pre-Authorization; and
 - ii. the estimated price for such services during the intended period.
- c) You shall swipe the Card through the POS Terminal, in case of EMV Cards you may insert the Card into the POS Terminal and if prompted, you shall request the Cardholder to enter the PIN, to obtain the required Pre Authorization. For contactless transactions, the applicable security standard is managed via the POS Terminal. If the security parameters saved on the Card and/or POS Terminal allow, no authentication will be required (e.g. by entering the PIN).
- d) You shall inform the Cardholder of the amount for which the Pre-Authorization was obtained at the time of contracting for your services. You shall record the date, the amount and the Pre-Authorization approval code received or obtained on the POS Record or Manual Sale Draft as the case may be.
- e) In order for you to complete a Payment Transaction on the basis of the earlier Pre- Authorization, you shall process a Payment Transaction for value up to but not exceeding the Pre-Authorized Amount. The approval code entered by you for Payment Transaction shall be the same as the one obtained in the Pre-Authorization.
- f) You acknowledge and agree that a new Pre-Authorization shall be required if the value of your services to be rendered exceeds or would exceed the sum of the funds Pre-Authorized.
- g) No Transaction shall be made for any additional services that are requested by the Cardholder unless charges in relation to those additional services are previously agreed by the Cardholder. You shall obtain the Cardholders written acceptance to such additional charges at the time of completion of the additional services and you shall process the Payment Transactions in



accordance with the time frame required by the Issuer. The POS Record and/or Manual Sale Draft used as a result of Payment Transaction for additional services may not be accepted unless noted with statement advising Cardholder consent is obtained; such as "Signature on File" or otherwise.

9.2 Pre-Authorized Recurring Transaction:

If you accept a Pre-Authorized Recurring Transaction, you shall do so at your own sole risk and liability. You shall obtain from the Cardholder a prior written request or make an online acceptance for the Pre-Authorization for the sums due to you in respect of goods and/or services to be periodically charged to the Cardholder account. The Pre-Authorization must be dated and signed by the relevant Cardholder (or otherwise demonstrate a valid online acceptance) and must state the amount and frequency of the recurring charge to be made against that Cardholder, the approximate date within each period their account will be charged, and the duration of time during which the charges comprising that Pre-Authorized Recurring Transaction can be made. The written request or online approval record shall be maintained by you at all times and made available to us upon a request from us by e-mail. All annual billings of such Pre-Authorized Recurring Transactions must be reaffirmed at least once each year. You shall not deliver goods or perform services covered by a Pre-Authorization after receiving notification from the Cardholder that the Pre-Authorization is cancelled or from us that the Card covering the Pre-Authorization is not to be honored.

9.3 E-commerce or Online Transactions

- a) You shall install and maintain the software Payment Client Software that is provided, updated or otherwise revised by us. It is agreed that Payment Client Software shall be used in the manner and according to the terms of this Agreement and instructions communicated by us from time to time.
- b) You shall choose an acquiring mode for accepting online Payment Transactions as confirmed in the Application. If 3Party SSL+ is used as an acquiring mode for accepting online Payment Transaction then Card details will not be disclosed to you as we will store and maintain such data. However, if 2Party (MO/TO) is used, you accept full responsibility for storing and protecting the Card and the Cardholder Information. You shall provide Cardholders with a Transaction Receipt containing all of the following information:
 - i. Your name and online address;
 - ii. payment Transaction amount;
 - iii. payment Transaction currency;
 - iv. payment Transaction date and shipping date;



- v. unique Payment Transaction ID;
 - vi. authorization code;
 - vii. card expiry date; and/or
 - viii. description of services, products or merchandise
- c) You shall only use the format prescribed and approved by us for initiating online Payment Transactions. You shall include the order reference number on the Transaction Receipt for each Payment Transaction made online.
- d) You shall include in your website the following
- i. complete description of goods and/or services provided;
 - ii. refund or return policy your website shall communicate your refund policy to the Cardholder and require the Cardholder to select a "click-to-accept" or other affirmative button to acknowledge the policy. The terms and conditions of the purchase shall be displayed on the same screen view as the checkout screen that presents the total purchase amount, or within the sequence of website pages the Cardholder accesses during the checkout process and should not be in a separate hyper link;
 - iii. your registered address;
 - iv. contact details of your customer service including an electronic mail address;
 - v. transaction currency;
 - vi. export restrictions, as applicable;
 - vii. delivery mode and policy;
 - viii. country of your domicile;
 - ix. logos of Cards accepted in the format authorized by us;
 - x. other related tariffs and/or regulations; and
 - xi. security capabilities and policy for transmission of payment card details.
 - xii. your privacy policy.



- e) You shall promptly notify us in writing (including by email), of any modification to your website or banner which is linked with your website and or any actual or attempted attack or hacking of such website. Notification shall include but not limited to any recent modification, alteration, external attack or hacking to such website.
- f) You shall use or implement an internet payments service approved by us which adheres to minimum security measures required by us from time to time. You shall remain responsible for maintaining data integrity of any data received held or maintained or sent across the internet, you shall also remain responsible for managing the telecommunications link, and for payment of all associated cost of maintaining such link. You will provide capability for secure sockets layer encryption to the minimum standard required by us.
- g) You shall be responsible for regular reconciliation of Transactions and undertakes to investigate any errors reported to you within five (5) calendar days of intimation of the said errors.
- h) You shall comply with Applicable Law and ensure that the Payment Transaction is legal both in the Cardholder's and your jurisdiction.
- i) You undertakes to execute a quarterly Authorized Scanning Vendor (ASV) scan and an annual Web Application scan to ensure that your system(s) is safe and secure. You may request in writing, for us to perform these scans on your behalf and accordingly, we will provide reports and recommendations resulting from the scans. All costs of such scanning shall be borne by you.
- j) You shall only enter into any e-commerce or Online Transaction with a Merchant proposing to enable, manage or host third-party sellers on an online platform operated by the Merchant and to accept Cards as a payment method for such sales (herein, a "**Platform Merchant**"), where specified on your Application and approved by us. Where so approved, the Platform Merchant must:
 - i. implement policies and procedures that (i) include the collection of information about the third-party seller and each of its principal owners as necessary or appropriate for client identification and due diligence purposes; (ii) include verification that the information collected is true and accurate; and (iii) comply with all Applicable Laws and regulations relating to anti-money laundering, anti-terrorist financing, and sanction screening requirements.
 - ii. enter into a contract with each third-party seller before submitting Transactions on its behalf, which must specify that the third-party seller is prohibited from conducting a sale that it knows or should have known is fraudulent or not authorised by the consumer, and that a violation of this requirement will result in termination of the contract without notice.
 - iii. ensure third-party seller names visible on the point of sale do not belong to other legal entities, to prevent unlawful usage of existing business trademark, including impersonation



of these names to scam consumers. Where legally allowed, controls include matching third-party seller names with scam negative listing where they exist.

- iv. establish fraud loss control measures appropriate to the third-party seller's business, including but not limited to the detection of sales involving counterfeit goods or the infringement of intellectual property rights.
- v. review and monitor its point of sales and business activities to confirm and reconfirm regularly that all Transactions are conducted legally (based on the applicable laws in the locations of the Merchant, Cardholder, and third-party seller), in an ethical manner, and in compliance with the Card Scheme Rules.
- vi. understand its liability for all acts, omissions, and customer service issues and its responsibility to manage Cardholder disputes relating to Transactions arising from third-party sellers.

10. Equipment

10.1 Installation: The Equipment shall be installed at such points in your premises as instructed by ENBD or as otherwise agreed between you and ENBD.

10.2 Location of Terminals: You shall place all point of sale terminals in such a way that the Cardholder has direct access to the terminal (in particular the display, keypad and card reader) and cannot be observed in case a PIN entry is required.

10.3 Virtual Terminals: If virtual terminals are applicable, you shall, with the appropriate level of care, protect the infrastructure used to operate virtual terminals, in particular the computers (including all related network components) and the data carriers that contain card data (particularly card numbers, expiry dates or transaction data).

10.4 Operation of Equipment: You shall not move, alter, adjust or in any manner tamper with the Equipment. The Equipment shall at all times be operated solely by the authorized Representatives and in compliance with the user manual provided by us or such other manual or guidelines that may be provided by us in this respect from time to time. You agree that the installation, download, or implementation of any third-party application or software with or on the Equipment is strictly prohibited unless you obtain the prior explicit written consent of ENBD. You further agree that the use of a virtual private network (VPN) or any other application or technology that enables, facilitates or permits the transmission of data in relation to the Services, across a shared or public network, is strictly prohibited.

10.5 Condition of Equipment: You shall keep the Equipment in good working condition and shall be responsible for any loss of or damage to the Equipment, except for fair wear and tear as reasonably



determined by ENBD. In the event of any such loss or damage, you agree that ENBD may recover from you the full replacement or repair cost of the Equipment (up to its full value). You must reimburse ENBD for these costs within thirty (30) days of ENBD's written request. If you fail to make such payment within that period, ENBD may deduct the corresponding amount from any Sale Proceeds or other sums payable to you under this Agreement.

10.6 Responsibility for Connection: You shall maintain and pay for all power and telecommunication connections necessary to operate the Equipment. You shall not use or permit to be used the SIM card from any GPRS Equipment for any purpose other than the transmission and receipt of data in connection with the Services. If you are in breach of this clause, you shall be liable for all additional voice call and or data transmission charges incurred plus an administration charge to cover all costs incurred by us in recovering those additional charges from you.

10.7 Protection of Terminals: You shall be obliged to ensure through appropriate measures that no manipulation is possible, in particular no improper transactions, and that the terminals are protected against access by unauthorized third parties. You shall train your personnel in the correct handling and use of the infrastructure at adequate intervals, in particular upon its entry into operation. You shall also instruct your personnel about measures to be taken to prevent misuse and fraud, and you shall also ensure there are appropriate procedures and controls in place to ensure:

- a) the identity of any individual claiming to be an appointed repair or maintenance personnel is properly verified before they are allow any access to Equipment; and
- b) your employees are regularly trained to be made aware of suspicious behaviour in and around Equipment and to report suspicious behaviour and any indication of device tampering to appropriate personnel within your management team.

10.8 Fraudulent Transactions: You shall be liable for fraudulent Payment Transactions that are processed which could have been prevented if you had been compliant with Chip and Pin, 3 D Secure and/or any other requirements set forth in this Agreement.

10.9 Fraud Monitoring: Within the context of fraud monitoring, we are entitled at any time to issue instructions to the Merchant aimed at preventing fraud cases (e.g. obligation for Cardholders to provide ID). These instructions come into force as soon as the Merchant has been notified thereof and the Merchant is obliged to fully comply with them. In the event of reasonable suspicions of fraud, we are entitled to withhold the reimbursements to the Merchant until the suspicions have been clarified. In the event of an excessive number of fraud cases, we also reserve the right to terminate this Agreement with immediate effect.

10.10 Process of Payments: Except where otherwise allowed by Card Scheme Rules, you shall use the Equipment to process every Payment Transaction and shall request every Cardholder to insert the



Card through the Equipment. No Chip and PIN Payment Transaction shall be processed by you without the Cardholder being physically present.

10.11 Function of Equipment: If the Equipment does not function correctly you will follow the user manual or other back up procedures specified by us to you from time to time.

10.12 Liability for Equipment: You agree that we shall have no liability to you, the Representatives, the Cardholders or to any other person for any costs, losses, expenses, claims, damages whether caused directly or indirectly by the Equipment or by any system malfunction, failure in connection or communication links or error in the design or manufacture of any Equipment, and in the event of an error in the design of the Equipment, and all warranties, if any, with regard to the Equipment shall be as provided by the respective manufacturers of the said Equipment. Our obligation shall be limited to replacement of the Equipment at our own cost and expense. You agree to indemnify us for any losses, expenses, or damages that we may suffer as a result of any direct or indirect claim, legal proceeding, order or judgment made against us in connection to any failure or malfunction by any system, software or Equipment used by you in relation to the Services.

10.13 POS accessories:

- a) We shall provide POS accessories including POS Terminal Paper Rolls including delivery, terminal cables, batteries, adapters and connector that commensurate to your business ("Fair Use"). If you fail to abide by the Fair Use guidelines, we shall, at our sole discretion, have the right to deny the provision of any or all of the POS accessories to you.
- b) POS accessories provided under the Smart Bundle offer shall not cover:
 - i. repair of equipment or accessories damage caused by accident, abuse, misuse, flood, fire, earthquake or other external causes;
 - ii. damage caused by operating the POS accessories outside the permitted or intended uses as prescribed by us from time to time;
 - iii. deliberate mishandling of or damage to the POS accessories

10.14 Electronic POS Integration

Upon subscription to Electronic POS Integration services, we will provide you a solution to enable integration of your Electronic Cash Register (ECR) with your card payment terminal (POS). Each Party's responsibilities relating to Electronic POS Intergration are as follows:

Our Responsibilities:



- a) Provide you with the necessary software to facilitate POS integration which will run on the Electronic Cash Register maintained by you;
- b) Route authorization requests sent from the POS Terminal to corresponding Card Schemes or Issuers for authorization; and
- c) Ensure payments are transmitted and processed securely in accordance with PCI-DSS requirements.

Your Responsibilities:

- a) To ensure that ECR front-end application and the operating system, on which it is running is secure and updated with malware protection, patches, and integrity monitoring controls. Emirates NBD will not be responsible in case of vulnerability or compromise arising as result of failure of the controls in your environment;
- b) Ensure the networks where POS systems reside are properly segmented from non-payment network and are hardened in accordance with best practices;
- c) Implement logging and monitor logs for abnormal behaviour; and
- d) Ensure the integration of ECR is developed and maintained as per the specification and guidelines provided by us to you. You agree that ENBD shall not be responsible for such ECR integration and this responsibility will rest wholly with you.

11. Payment Gateway Services

The following terms apply for the Payment Gateway Services:

- 11.1 You shall accurately and validly complete the relevant enrolment form provided by us for the use of the Payment Gateway Services.
- 11.2 You shall ensure to provide us in writing, the URLs which are intended to be used for processing the online Transactions. Such URLs shall be used for processing payments once they have been reviewed and approved by us in writing.
- 11.3 Where you are not using the software provided by us for Payment Gateway Services and for the Transactions, you shall use the software that includes fraud screening of Authorization and Transactions. The software being designed specifically for the region or industry where you are doing business of your licensed activities to assist in keeping Chargeback and fraud rates below Chargeback and fraud limits of Card Scheme and updated from time to time and the same shall be applicable for all the Transactions and Services that you required from us pursuant to this Agreement.



11.4 You acknowledge and agree that except for the right of use expressly granted to you in this Agreement, we (or our licensors) shall retain all right, title and interest, including all Intellectual Property Rights, in and to the Payment Gateway Services and Licensed Materials; and, nothing contained in this Agreement shall be construed as conferring upon you and/or Cardholder by implication, operation of law, estoppel, or otherwise, any other license or right, including the right to resell. You must ensure that you do not:

- a) reverse engineer, decompile or disassemble the Licensed Materials without our prior written consent;
- b) separate or alter any of the Licensed Materials component parts;
- c) copy or otherwise reproduce or to use, distribute, lease, rent, loan, sell, mortgage, grant a sub-license of, transfer or reproduce the Licensed Materials or any related documentation we may provide (for the avoidance of doubt, unless otherwise expressly stated to the contrary in this Agreement, we are under no obligation to provide any documentation);
- d) harmfully use, cause or permit harmful use of the Licensed Materials or use the Licensed Materials in a way that creates an unreasonable or unwarranted interference with our Payment Gateway Services; and
- e) use the Licensed Material for the limited purpose permitted by us and in accordance with terms of this Agreement.

11.5 You may request us to make changes or customisations to the Payment Gateway Services from time to time. We will consider such request in good faith and you acknowledge that such change shall be subject to an additional fee, which we shall confirm you in advance.

Subject to the above and payment of applicable Transaction Fees, we grant you a personal, non-transferable, non-exclusive, royalty-free right to use the Licensed Material in the Territory provided to it by us for the term of this Agreement to make use of such element(s) of the Payment Gateway Services as may be specified by us. You understand the right of use of the Licensed Material shall not in any way be construed as a grant of license under this Agreement and your right to use is limited for the above stated purpose and subject to the terms and conditions of this Agreement.

12. Transaction Receipts

12.1 **Receipts:** You shall use a transaction receipt to document details of a Payment Transaction ('Transaction Receipt'). A Transaction Receipt may be generated electronically or manually.

12.2 **Generation:** A Transaction Receipt is invalid if it is not generated in accordance with the terms of this Agreement and/or Card Scheme Rules.



12.3 Copies: For Card Present Transactions, the original copy of the receipt printed out by the terminal is retained by the Merchant and you shall provide a complete and legible copy of the Transaction Receipt to the Cardholder at the time of the Payment Transaction. When using an mPOS terminal, the receipt is transmitted to the Cardholder via e-mail, if requested by you and further you acknowledge this can only be provided where the mPOS terminal is available. For Card Not Present Transactions, the Transaction Receipt shall be presented to the Cardholder in writing no later than seven (7) days following the completion of the Payment Transaction.

12.4 Retention: You shall retain and produce on demand, a copy of the Payment Transaction Receipt (being either the original paper receipts and copies of the electronic receipts, all transaction data and daily closing reports (including individual transaction data) as well as the related order data and documentation for at least five (5) years following the date of completion of the Payment Transaction or following delivery of the goods and/or services whichever is the later. All Transaction Receipts shall be kept in a secure manner (including in a secure location) in accordance with PCI DSS. You agree to provide all reasonable assistance to us and to provide all such documents as may be required by us and share the information with the Card Schemes and / or the Issuer to resolve any disputes raised by an Issuer and/or Cardholder. Failure to provide the requested documentation within timeframe specified will result in a Chargeback for which you will be liable. Any electronic data must be stored in an encrypted form and be protected against unauthorized access. In this respect, the Merchant is obliged to comply with the relevant instructions issued by us (pursuant to Clause 16 (*Merchant Industry Specific Terms*)).

12.5 Non-Compliance: You acknowledge that non-compliance with the obligations pursuant to this Clause 12 (*Transaction Receipts*) leads to a higher risk of Chargebacks pursuant to Clause 13 (*Chargebacks*).

13. Chargebacks

13.1 Chargebacks: The Cardholder and Issuer are entitled to dispute a transaction provided that the prerequisites for the opening of a Chargeback procedure, in particular the existence of a Chargeback reason, are fulfilled. A Chargeback may arise for any reason described in the Card Scheme Rules (as updated from time to time) and may include the following:

- a) a Payment Transaction recorded is illegal;
- b) an authorization for a Card Transaction is not obtained in accordance with the Agreement;
- c) payment Transaction data is issued or presented in violation of the procedures set out in the Agreement;
- d) the particulars inserted in the POS Record or Manual Sale Draft are not identical with the particulars inserted in the copy given to the Cardholder;



- e) the Card relating to Payment Transaction is not valid;
- f) the Payment Transaction is not authorized by the Issuer or by the Card Schemes;
- g) the POS Record or Manual Sale Draft is incomplete or illegible;
- h) you fail to produce to us within 7 days of our request information including, for example, the evidence of the Cardholder approval to process the Payment Transaction and /or copy of the signed POS Record or Manual Sale Draft and other supporting documents related to the Payment Transaction;
- i) the signature on the POS Record or Manual Sale Drafts is not reasonably similar to the signature on the Card or is a forged signature;
- j) payment Transaction is processed via multiple fraudulent Authorizations;
- k) you have processed a fictitious, suspicious, or counterfeit Payment Transaction or otherwise defrauded or attempted to defraud us or the Cardholder;
- l) a "charge back window" has been opened by the Card Schemes for excessive fraudulent or chargeback Payment Transactions;
- m) the sales transaction is not a valid sales Transaction;
- n) the Payment Transaction relates to goods, services not rendered in respect of which the Cardholder disputes liability for any reason and/or the Cardholder makes a claim for set-off, or a counterclaim;
- o) a Payment Transaction has been conducted on a compromised card used through online transaction "MOTO" without Cardholder authorization. In such cases, we shall not be under any obligation to investigate or challenge the validity of a Chargeback;
- p) Cardholder has initiated Chargeback with its Issuer or the Card Scheme;
- q) The amount of the Transaction was a Pre-Authorized Recurring Transaction or involved a Card but the Transaction was not authorized; and
- r) the Transaction is a Card Not Present Transaction or involves cashback and is disputed by the Cardholder and/or the Issuer.

13.2 Documentation: In the event of a Chargeback procedure being opened, the Merchant shall, following our request, submit to us within 10 days and by registered mail, copies of all receipts and documentation (pursuant to Clause 12 (*Transaction Receipts*)) suitable to refute the Chargeback reason. If the Chargeback reason cannot be refuted by means of the receipts submitted by the



Merchant or if the receipts requested are not submitted in due time, we are entitled to reclaim transactions already reimbursed or to offset them with reimbursements to be credited to the Merchant. This also applies to cases in which goods and/or services are not directly delivered/ rendered by the Merchant but by third parties, particularly if the Merchant acts as intermediary or agent of such third parties.

13.3 Disputed Chargebacks: If the Merchant, following the opening of a chargeback procedure, wishes to execute a credit in favour of the Card used in the disputed transaction, it shall inform us about its intention. If the Merchant fails to inform us in accordance with this Clause 13.3, ENDB shall proceed with executing the credit to the Cardholder and debit the same amount from the Merchant's settlement account as mentioned in the Application.

13.4 Legal Action: During the Chargeback procedure, the Merchant shall refrain from taking any legal action against the Cardholder.

13.5 Evidence: Where you wish to dispute a Chargeback, you shall prove to our satisfaction that the Payment Transaction was authorized by the Cardholder in accordance with this Agreement and promptly provide us with any additional credible evidence that we or the Card Schemes may require. We shall not be under any obligation to investigate or challenge the validity of a Chargeback.

13.6 Recovery: You agree that we shall be entitled to recover from you Chargebacks and/or Refunds that are raised in relation to Payment Transactions acquired during the Term of this Agreement even after termination of this Agreement for any reason. You acknowledge and agree that such recovery can be made by us either from the settlement account or from the proceeds of the Payment Transaction, or from another related account as determined by us in our sole discretion.

13.7 Excessive Chargebacks: Where your Chargeback levels exceed the Excessive Chargeback threshold, in any month from you, we may impose additional conditions on you to assist you to reduce the level of Chargebacks, alternatively we may suspend your right to accept Payment Transactions and/or the Services in accordance with provisions of this Agreement. We are entitled to pass on any penalty and/or Fines and Levies imposed by the Card Schemes to the Merchant, to defer the reimbursement of the Transactions in accordance with Clause 5.8 (*Retention*) and to terminate this Agreement with immediate effect

14. Refunds

14.1 Return Policy: You shall disclose to Cardholders at the time a Payment Transaction is processed a fair policy for the return of goods or cancellation of services including any restrictions. The terms and conditions of the purchase shall be clearly communicated to the Cardholder, this includes but is not limited to displaying on the same screen view as the checkout screen that presents the



total purchase amount, or within the sequence of website pages the Cardholder accesses during the checkout process and should not be in a separate hyper link.

- 14.2 **Refund receipt:** To evidence a Refund, you shall issue a Refund receipt and provide the Cardholder with a copy.
- 14.3 **Value:** The value of a Refund shall not exceed the amount of the original Payment Transaction and you may only process a Refund to the same Card which was used for the original Payment Transaction.
- 14.4 **Exchange:** You will be liable for the exchange difference incurred in a Chargeback or a refund Transaction made in error by you.
- 14.5 **Repayment:** The amount of each Chargeback and / or Refund represents a debit immediately due and payable to us irrespective of whether a demand for this same is made and we may debit the Bank Account the amounts due or withhold Sales Proceeds to cover the value of Chargebacks, Refunds and Fees associated with their processing.

15. Value Added Services:

15.1 ENBD Pay Dashboard Service

- a) The Services include access to the Portal and allows you to access various dashboards which enables you to access data, trends and insights relating to the Services, Transaction analyses, initiation void and refund functionalities, generate links for pay by link, as well as analysing your own business performance, ("Dashboard Service").
- b) Your access and use of the Portal and Dashboard Services shall be governed by this Agreement as well as Emirates NBD's Portal Terms of Use and privacy policy. Emirates NBD's Portal Terms of Use and privacy policy can both be accessed via the Portal. You acknowledge and agree that by using the Portal, you confirm your acceptance with the terms and conditions of Emirates NBD's Portal Terms of Use and privacy policy.
- c) Emirates NBD grants you a limited, nonexclusive, non-transferable, revocable license to access and use (but not modify) the Portal for your internal use only. You acknowledge that all other terms governing your use of the Portal are further described in the Portal Terms of Use.
- d) You acknowledge and agree that:
 - i. connecting to the Portal is at your sole risk and Emirates NBD will not be responsible for any loss, damage or disruption caused by your connection, access or use of the Portal.



- ii. the Portal has been developed and is powered by a third party and is provided to you on an “AS IS” basis without any representations or warranties whatsoever (whether expressed or implied by law). By using the Portal, you acknowledge and agree that you are entering a third-party environment. As such, ENBD disclaims to the fullest extent permitted by law all express, implied and statutory warranties, including without limitation, the warranties as to functionality, operability, accessibility, accuracy, correctness, reliability, timeliness, satisfactory quality, merchantability, fitness for a particular purpose, and non-infringement of proprietary rights. Without limiting the foregoing, ENBD does not warrant that the Portal or any products or results from the use thereof will meet your or any other persons requirements, operate without interruption, achieve any intended result, be compatible or work with any of your or any third party’s software, system or other services or be secure, accurate, complete, free of harmful code, or error-free or that any errors or defaults can or will be corrected. You acknowledge there are certain security, corruption, transmission error and availability risks associated with using the Portal and agree, to the maximum extent permitted under Applicable Law, to assume such risks.

15.2 DCC Payment Transactions

- a) You shall not accept DCC Transactions without obtaining our and the Cardholder’s prior written consent. Consent will be deemed to have been given by us where the Application specifies the rebates payable to you. Where consent is provided you shall comply with the requirements set out below in respect of DCC transactions.
- b) The Program enables DCC Cardholders to present a DCC Currency enabled Card for a DCC Transaction.
 - i. You shall ensure that the Cardholder can in all cases independently select whether to carry out the transaction in the DCC Currency or in the local currency.
 - ii. You acknowledge and agree that a DCC Transaction will be converted to the DCC Currency in which the Card is denominated based upon an exchange rate in effect at the time of Authorization along with a markup fee and that the DCC Transaction, as converted, will be cleared through Card Schemes, in the DCC Currency. Additionally, the Program may not apply to Refunds, or any Payment Transactions that are referred to us for authorization or otherwise authorized by you via telephone. We reserve the right to add, delete or suspend any currency to or from the Program, as the case may be, at any time without notice to you, revise your rebate upwards or downwards, as the case may be, by giving a fourteen (14) days written notice to you. Further, we may terminate or suspend the Program for any reason upon notice to you.
- c) Program Requirements



You will comply with all reasonable instructions provided by us pertaining to your participation in the Program. Without limiting the foregoing, you agree to comply with the following specific Program requirements:

- i. Program Disclosure: you agree to comply with all instructions and specifications applicable to the Program as provided by us from time to time. Without limiting the generality of the foregoing, you shall follow Program procedures, as may be amended by us from time-to-time;
- ii. Cardholder Choice: you shall always provide choice to Cardholders to pay in either "card currency" or "UAE Dirhams", as prompted on the Point of Sale device. You shall never choose on behalf of Cardholders, and you understand and accept that if you select the currency on behalf of the Cardholder by pressing a button on the Point of Sale Device, you shall be liable for a Chargeback and/or levy of Fines and Penalties in case the Cardholder disputes the Transaction. If a particular Cardholder elects not to choose DCC Currency, it is understood that we will process that Cardholder's Transaction in UAE Dirham;
- iii. Timely Presentment of DCC Transactions: you acknowledge that the timely presentment of DCC Transactions is necessary for participation in the Program. For the avoidance of doubt, DCC Transactions shall be presented within twenty-four (24) hours of the completion of the DCC Transaction.

Notwithstanding the foregoing, DCC Transactions submitted by you involved in the hotel, lodging and cruise industries shall be submitted within twenty-four (24) hours of a Cardholder's checkout from your premises/establishment. You acknowledge that on your failure to present a DCC Transaction within the specified timeframe, we may reduce the amount of the Program Participation Payment;

- iv. Refunds: Unless you use point-of-sale technology that is not capable of processing Refunds in the Program Currency and in the manner required by us, a Refund in respect of a DCC Transaction to a Cardholder's account, reflecting either the partial or complete return or reimbursement of a DCC Transaction, will be converted to AED using the exchange rate applicable on the date of presentment of the Refund amount by you, and that Refund amount, as converted, will be cleared through the applicable Card Scheme in the DCC Currency in which the Card is denominated, and if such support is not in place, then the Refund will be processed in AED, subject always to applicable Card Scheme Rules. You acknowledge and agree that the original amount of the Refund amount will likely differ from the original settlement amount received by you for the DCC Transaction in AED and that you may incur losses as a result of the credit or returns. Notwithstanding anything contained to the contrary in this Agreement, you acknowledge that it will be the full amount of the Refund under the terms of the Agreement;



- v. Chargebacks: A Chargeback incurred in connection with a DCC Transaction will be transmitted to us by the applicable Card Scheme in the DCC Currency and converted by such Card Scheme into UAE Dirham at the Card Scheme's designated foreign exchange rate. Given the potential variances in exchange rates applied to the underlying DCC Transaction and Chargeback, you acknowledge and agree that the original amount of the Chargeback will likely differ from the original settlement amount received by you for the DCC Transaction in UAE Dirham and that you may incur losses as a result of the Chargeback. Notwithstanding anything contained to the contrary in this Agreement, you acknowledge that you will be responsible for the full amount of the Chargeback in accordance with the terms of the Agreement;
- vi. You agree to bear the applicable commission for participation in the Program and the current charges shall be applicable on the purchase amount under DCC Program, as applicable;
- vii. The Program will apply only for currencies approved by us from time to time;
- viii. You agree that that you will display marketing collaterals as may be deemed necessary by us in order to create necessary awareness & offer an option to the Cardholder;
- ix. You agree that we will offer DCC Transaction acceptance service to you during the provision of DCC services or expiry of the Agreement, whichever is earlier. In the event you decide to use any other service provider, you shall reimburse all the Program Participation Payment, rebates or other amounts earned in relation to the Program in previous twelve (12) calendar months under this Program.

d) Program Participation Payment

- i. In consideration for your participation in the Program, we will pay you at a mutually agreed rebate based on the amount of DCC Transactions settled on your behalf under the Program, calculated in AED prior to any conversion of the DCC Transaction amount under the Program (the "Program Participation Payment");
- ii. Your share shall be denominated and paid in AED. Net Payment shall be made by the end of the calendar month following the month in which the Program Participation Payment was earned;
- iii. The Program is initially valid only for approved Card Schemes but may be extended to other Card Schemes as and when new Card Schemes are added.

15.3 Multi-Currency Conversion / Multi Currency Processing

- a) If you submit Transactions for which you have offered to the Cardholder the goods and/or services in a currency that differs from your chosen settlement currency ("**Multi-Currency Conversion**"), then, in addition to the other processing fees payable for a Transaction, we shall



apply a conversion rate calculated daily by us for each Multi-Currency Conversion. The conversion rate will be shown in the Gateway.

- b) For the avoidance of doubt, if the Transaction currency and settlement currency are the same, no Multi-Currency Conversion shall be required and no conversion rate shall be applied to such Transaction.
- c) If you offer MCP Transaction to Cardholders you are solely required to apply to this Transaction a foreign currency conversion or MCP rate obtained from us. The foreign currency conversion rate is dynamic and validity of a particular rate may not be longer than 24 hours. Change of the foreign currency conversion rate does not constitute change of the Agreement.
- d) Application of the foreign currency conversion rate after its period of its validity has expired, as explained above, does not guarantee the settlement with use of this rate – we may apply a different foreign currency conversion rate applicable for a given date. We do not bear any liability for the difference between the foreign currency conversion rates in the circumstance presented in this subsection d).
- e) We shall apply a MCP mark up to the foreign currency conversion rate for each MCP Transaction.
- f) The MCP mark up and any foreign currency conversion rate used for the MCP Transaction as well any other fees added will be show in the Gateway.

16 Merchant Industry Specific Terms

Based on your industry type including car rental, hotel accommodation, the additional terms and conditions may apply as below:

16.1 Car Rental

If you are engaging in vehicle or car rental services, you shall:

- a) retain for five (5) years each of the signed vehicle lease agreement, the POS Record or the Manual Sale Draft and the related traffic fines issued during the services;
- b) not, unless agreed by the Cardholder, include charges representing vehicle insurance deductible or premium, sum to cover potential damages when insurance coverage is waived at the time of renting the vehicle, traffic fines, maintenance cost, fuel compensation or other similar charges;
- c) provide us with copy of your insurance policy, if the Cardholder pays an insurance deductible for damage;



- d) if cost of repairing damages to be charged to the Card, provide us with copy of an official accident report, estimate by competent repair workshop and such other documents evidencing Cardholder consent to assume such charges.

16.2 Hotel Accommodation

- i. If you are engaging in hotel or accommodation services, you shall:
 - a) retain for five (5) years each of the guest registration forms signed by the Cardholder, the POS Record or the Manual Sale Draft and all related documents issued during the services;
 - b) where Cardholder does not check in, to initiate a Payment Transaction for the cost of one night only. If as a result of such Payment Transaction any losses or expenses are incurred by us the same shall be debited to the future Sales Proceeds, or shall be adjusted though debit to the Bank Account;
 - c) not charge for loss, damages or theft which is inconsistent with other charges such as room cost, food or beverage charges or tax duties.
- ii. If you are engaging in restaurant or catering services you shall not alter the amount of tip approved by the Cardholder as recorded on the Transaction Receipt.

16.3 Marketplace

The below terms and conditions are applicable to you in the event you are classified as a marketplace on the basis of your trade license issued by a regulatory authority and/or under the Card Scheme Rules. You agree that:

- a) you shall comply with all requirements of the Card Schemes relating to a marketplace including those notified in writing by us from time to time.
- b) you shall ensure that you and your retailers or sub-merchants at all times, comply at all times with the Card Scheme Rules, as amended from time to time, including without limitation, the respective Card Schemes: requirements in relation to its Intellectual Property and Marks; acceptance and risk management processes; transaction processing; and products, programs or services in which you are required or choose to participate in.
- c) you shall enter into a contract with each retailer or sub-merchant before you deposit Transactions on retailer's or sub-merchant's behalf.
- d) we shall have the right to prohibit individual retailer or sub-merchant from participating in the Card Scheme and to immediately stop depositing Transactions for any individual retailer or sub-merchant for a good cause (reasonably determined at our discretion) or upon Card



Scheme request. You shall forthwith comply with any instructions received from us in this regard.

- e) you hereby unconditionally and irrevocably, undertake, represent and warrant that:
 - i. you are permitted to process Transactions for retailers or sub-merchant located in a different country to the marketplace, and shall ensure that Transactions are legal in the country of the marketplace and of the retailer or sub-merchant;
 - ii. you shall be liable for all acts, omissions, Cardholder disputes, and other Cardholder customer service-related issues caused by your retailers or sub-merchants;
 - iii. you shall be responsible and financially liable for each Transaction processed on behalf of a retailer or sub-merchant;
 - iv. you shall not transfer or attempt to transfer, or permit the retailer to transfer or attempt to transfer, your financial liability by asking or requiring Cardholders to waive their dispute rights;
 - v. you shall deposit Transactions only on behalf of retailers or sub-merchants of goods and services that use your website or application;
 - vi. you shall not knowingly contract with a retailer whose contract to accept Transactions was terminated at our direction, Card Scheme or a government agency.
- f) you undertake to be solely liable for settlement of funds or Sale Proceeds to your retailers or sub-merchants in compliance with the Card Scheme Rules and all Applicable Laws or regulations.
- g) you hereby unconditionally and irrevocably undertake to indemnify us harmless against all acts, omissions, and other adverse conditions caused by you and/or your retailers or sub-merchants including but not limited to:
 - i. related legal costs;
 - ii. settlement of funds to the retailers or sub-merchants;
- h) any act and/or omission of a retailer or sub-merchant will be treated as those of you, and you shall be fully liable for any claims, losses, damages, Fines and Levies to us, Card Scheme, or other stakeholders caused by you and/or your retailers or sub-merchants.
- i) you shall upon request within ninety (90) days of notification from us and each quarter thereafter, report to us the following:



- i. your total Transaction value; and
 - ii. total Transaction value generated by retailers or sub-merchants in the same country as you.
- j) in addition, you shall recertify annually that information provided to us to obtain Card Scheme approvals remains materially unchanged and immediately inform us in writing if there is a material change in the information provided to obtain approval from Card Scheme to treat you as a marketplace. You shall be solely liable if the approval is withdrawn by the Card Scheme for failure to comply with the aforementioned requirements.

16.4 Gambling Merchants:

- a) If you propose to engage in gambling Transactions conducted over the internet, you must post a notice on any of your websites (in a position such that the notice will be displayed before any account information is requested, such as a click-through notice) stating that assertions have been made that internet gambling may not be lawful in some jurisdictions, including the United States, and suggesting that the Cardholder check whether internet gambling is lawful under applicable law.
- b) You must not sell chips or other value that can be used, directly or indirectly, to gamble at locations other than those that you wholly own.
- c) You must not use a refund Transaction to credit winnings or value usable for gambling or gaming to a Cardholder's account. For the avoidance of doubt, a refund Transaction conducted to return funds not used for gambling or gaming (for example, a Cardholder changed his or her mind prior to gambling or gaming) or in response to a Cardholder claim of fraud is not considered the crediting of winnings or value usable for gambling or gaming to a Cardholder's account.
- d) All non-face-to-face gambling Transactions effected with a Cardholder's account must include at least one of the following in the Authorization Request message:
 - a. The CVC 2 value in DE 48 (Additional Data—Private Use), sub element 92 (CVC 2)
 - b. A valid Accountholder Authentication Value (AAV) in DE 48, sub element 43 (Universal Cardholder Authentication Field [UCAF]) resulting from an EMV 3DS authentication; or
 - c. In the case of a recurring payment Transaction, Identity Check Insights (previously known as Data Only)



16.5 In the event you are classified as a marketplace in accordance with your trade license issued by a regulatory authority and/or under Card Scheme Rules, you agree to comply with provisions of the Card Scheme Rules applicable specifically to marketplace.

17 Use of third parties by you

17.1 Where you use a third-party service provider, you shall:

- a) immediately notify us if the said third-party service provider will have any access to and/or use of the Services;
- b) be responsible for the fee and other liabilities that may arise due to or towards the said third party service provider;
- c) validate the third-party service providers are certified and are compliant with the PCI DSS or a similarly established data security standard to our satisfaction;
- d) provide us with information on any other third-party service providers you use or intend to use now or in future.

18 Data, Privacy Security and Confidentiality

18.1 **Data Protection Laws:** You shall, in relation to receipt of the Services, comply with applicable Data Protection Laws and regulations. You are solely liable for the lawful collection, transmission, obtaining consents and use of all your customer data.

18.2 **Confidentiality:** Subject to Clause 18.3 (*Permitted Disclosure*) below, you agree to keep in strict confidence and not to disclose to any person any information in relation to the Agreement, the Cards, any Payment Transaction except as directed by us and to use such information solely for the purpose of initiating legitimate Payment Transactions.

18.3 **Permitted Disclosure:** Subject to the provisions of this Agreement, we and you shall keep in strict confidence all technical and business information including but not limited to the information which may be disclosed or confided to it by the other party or which it may obtain from the other party during the course of performance of the Agreement, and shall not disclose the same to any third party unless if so required by a court order, government or competent authority.

18.4 **Processing of Data:** Notwithstanding Clause 18.3 (*Permitted Disclosure*) of the Agreement, we or any third party authorized by us (including Card Schemes) may use, access, store, reproduce, publish, distribute, modify, aggregate with other information, analyse, transmit, license and otherwise process information, data including Transaction data and/or Personal Data and, may



disclose such data including Transaction data and/or Personal Data provided by you which we process in connection with provision of Services or other purposes set forth under this Agreement to our Affiliates and/or third parties, whether inside or outside the Territory, for the following purposes:

- a) to provide Products and Services under this Agreement;
- b) to comply with the Card Scheme Rules;
- c) where required for the purposes of detection of fraud, anti-money laundering or counter terrorism financing;
- d) where we may assign or subcontract or transfer our rights and obligations under this Agreement;
- e) to monitor and analyse our operations;
- f) to investors or potential investors, stock exchanges or otherwise in the event of sale, merger, amalgamation or transfer of our business or for the purposes of obtaining finance for our business;
- g) to any third party involved in referring your business to us;
- h) to evaluate, develop and/or deliver Products and/or Services; and
- i) to include you as a customer of us in corporate, marketing and similar publications made available to third parties;
- j) to comply with the Applicable Laws;
- k) to obtain advice from professional advisors where needed in relation to this Agreement;
- l) to conduct identity checks on you or your principals and where we are required or permitted to do so by the Applicable Laws or the Card Scheme Rules;
- m) where necessary we may assign, subcontract or transfer rights and obligations under the Agreement;
- n) to your referral partners in response to the requests from them, relating to your relationship with the referral partner, and which has a connection with the Services under this Agreement;



- o) for the purposes set forth in Clause 18.6 below; and
- p) to enable any third party to provide products and services to you.

18.5 **Sharing Data:** You hereby authorize us to share your information and contact data with our partners for participation in partners schemes and programs from time to time, and with the Card Schemes. You acknowledge and agree that for our due-diligence purposes, ENBD may exercise web crawling on your website which will involve ENBD sharing your URL with a third-party.

18.6 **Detection of Fraudulent Transactions:** We reserve the right from time to time, to access such customer data and information to detect fraudulent transactions where our Services have been used. We shall own all right, title and interest (including any Intellectual Property rights) in any data generated under this Agreement whether obtained or generated prior to, during, or after the term of the Agreement.

18.7 **Applicable Laws:** You will comply with the Applicable Laws for collecting or processing the data, including Personal Data.

18.8 **Privacy Policy:** You shall comply throughout the Term of this Agreement with all Applicable Laws, including all relevant Data Protection Laws in your performance of this Agreement, including the transfer of Personal Data to us. We shall provide you with our privacy policy (as updated from time to time at Emirates NBD Pay) with respect to how we process your Personal Data.

18.9 **Compliant Processing:** You shall implement appropriate technical and organizational measures to ensure, and to be able to demonstrate, that you only process Personal Data in accordance with Data Protection Laws and you shall not cause Emirates NBD to be in breach of Data Protection Laws. In particular, you must:

- a) maintain all technical and organizational measures to ensure the security of the Personal Data including protection against a Personal Data breach;
- b) take reasonable steps to ensure that the Personal Data is accurate, complete and current;
- c) only process Personal Data where you have a lawful basis as required by Data Protection Laws, including obtaining all relevant consents from Data Subjects in relation to the collection, processing, use, retention and transfer of Personal Data (including the sharing of such Personal Data with us);



- d) take reasonable steps to ensure that the Personal Data collected is adequate, relevant and limited to what is necessary in relation to this Agreement;
- e) notify us within three (3) business day of receipt of any notice of investigation or complaint from a Supervisory Authority regarding any processing of Personal Data in connection with this Agreement;
- f) implement measures to safeguard rights of Data Subjects; and
- g) train staff to understand their responsibilities under the Data Protection Laws.

18.10 Data Breach: You shall:

- a. inform us immediately upon becoming aware of the occurrence of any actual or suspected Personal Data Breach, (and in any case, no later than 24 hours of the occurrence of such actual or suspected Personal Data Breach), and shall cooperate with us in complying with our any reasonable requests, including requests for information and details about such Personal Data Breach. You must take all steps necessary to remedy any Personal Data Breach and mitigate its impact on Data Subjects and shall co-operate with us in respect of any communications or notifications to be issued by you to any Data Subjects and/or Supervisory Authorities in respect of the Personal Data Breach.
- b. Cooperate with Emirates NBD, at no additional cost to us;
- c. Assist us with any investigation;
- d. Provide Emirates NBD with physical access to any facilities and operations affected;
- e. Facilitate interviews with third parties and their employees, former employees, officers and directors; and
- f. Make available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Law or as otherwise reasonably required by Emirates NBD.

18.11 Use of Anonymized Data: Notwithstanding anything to the contrary contained in this Agreement, we may, during the Term, use, access, store, reproduce, publish, distribute, modify, aggregate with other information, analyze, transmit, sell, license, distribute and disclose Anonymized Data to provide Products, improve the Services, develop and provide, any new services to our existing or new clients.

18.12 Confidentiality of this Agreement: Each Party shall undertake to keep confidential the agreed commercial conditions as well as all information, documentation, data and processing



techniques – described or identifiable as being confidential and neither publicly nor generally accessible – that they become aware of in fulfilling this Agreement; they may only make these accessible to third parties with prior written consent from the other Party. This does not prevent either Party from disclosing confidential information insofar as it constitutes a performance of mandatory provisions of law.

19 Credit Check and PCI Compliance

- 19.1 **Credit Check:** You consent to permit us to conduct credit checks on you and / or your owners through credit bureau such as Etihad Credit Bureau, or such other checks that may be considered necessary by us from time to time, and where required to report your business name and the name of your principals to the Match and VMAS listings in accordance with Card Scheme Rules.
- 19.2 **Sharing Information:** You shall not sell, purchase, or otherwise disclose or share Card, Cardholder or Payment Transaction information to any third party. You may share or disclose Card, Cardholder and/or Payment Transaction information with your vendors involved in assisting you in fulfilling your obligations under this Agreement and only where you have obtained their vendors written consent to comply with the requirements of this Agreement and shall only use such information for the sole purposes of accepting Payment Transactions.
- 19.3 **Security of Data:** You shall store, and dispose all Cardholder information, including Card data in a secure manner to prevent access or disclosure or use by anyone other than your authorized employees. You are not permitted to retain or store magnetic stripe or CVV/CVV2/CVC2/iCVV/PVV data after obtaining an Authorization for any purpose. If you store Card data or any personal information relating to a Cardholder you shall do so in accordance with the Applicable Law and in accordance with the data security standards set out in Clause 19.4 below.
- 19.4 **Security Standards:** You shall at all times comply with the requirement of (a) PCI DSS as published by the PCI Security Standards Council at www.pcisecuritystandards.org including signing of any requisite forms such as SAQ-D form; (b) Visa Payment System Risk program) and (c) the MasterCard Site Data Protection Program as amended or updated from time to time or any other Card Scheme Rules.
- 19.5 **Secure Connection:** You shall ensure that whenever you are using a Wifi connection, that it is secure and you shall be responsible for any issue arising from such Wifi connection including use or misuse or non-secure Wifi connection.



20 Data Security Compromise

- 20.1 **Data Security Breach:** If you become aware or suspect any security breach of a Cardholder or Payment Transaction data by you or any third party vendor or your agent, you shall immediately notify us and take steps to resolve the cause of the security breach and act upon any reasonable instructions of us which may include the procurement at your cost and within timescales prescribed by us of a forensic report recommended by us or a Card Scheme and comply with all recommendations in any such report to improve your data security environment.
- 20.2 **Co-operation in the event of Data Security Breach:** You shall provide (and obtain waivers necessary to provide) us (and/or the Card Schemes) and our auditors, on request, full cooperation and access to conduct an audit of such data compromise incident subject to the provisions of Clause 25 (*Audit*). Any identified issues arising from the incident must be completely rectified by you in a period of time notified by us and you must provide (and obtain waivers necessary to provide) us (and/or the Card Schemes) and our auditors all relevant information to mitigate the possibility of any future incidents in a manner consistent with this Agreement and the applicable regulations. We may contact a third-party security assessor to begin investigation or site certification. All reasonable costs and expenses incurred by us for compliance with the provisions of this Clause 20.2 (*Co-operation in the event of Data Security Breach*) shall be borne by you. If an investigation reveals that the security standards in accordance with PCI DSS were not met at the time of the data incident, the costs incurred in producing the PCI audit report shall also be borne by you. We shall be entitled to pass on any claims for damages put forward by the Card Schemes to the Merchant and/or to terminate the Agreement with immediate effect if you do not comply with the PCI DSS or if you do not confirm, upon request, that you are complying with the PCI DSS. This shall also apply in the event of Card data being stolen or if it is suspected that Card data has been stolen.

21 Intellectual Property and Use of Marks

- 21.1 **Card Issuer and Card Scheme Marks:** You acknowledge that you are familiar with the names, logos, symbols and trademarks (collectively, the "Marks") as published by us and or the Card Issuer and agree to display Card Scheme's names and service marks of the Card types accepted by you at or near the POS terminals, mobile applications, and/or websites (as applicable). Your use of the Marks must at all times comply with the Card Scheme Rules and/or our policies including those communicated by us from time to time. You agree to prominently display standard decals, signs, service marks and other promotional materials as required by us and or the Card Scheme.
- 21.2 **Limited Use:** You shall ensure that any display or use of Card Schemes name, brand or logo shall be limited for the purpose of this Agreement to the extent permissible in accordance the guidelines and extent of use stated under the Card Scheme Rules and as may be communicated



by us from time to time. For the avoidance of doubt, any limited use of a Card Scheme's name, brand or logo by you under this Agreement shall not constitute grant of any license or rights of any nature whatsoever to you.

- 21.3 **Brand:** You shall ensure that any display and/or use of our name, brand or logo shall not be without prior our written consent (including any press releases or public announcements) and upon receiving such consent from us, the use of our name, brand or logo by you shall be limited for the purpose of this Agreement and to the extent permissible in accordance with our guidelines and extent of use that is communicated by us from time to time. For avoidance of doubt, any limited use of our name, brand or logo by you under this Agreement shall not constitute grant of any license or rights of any nature whatsoever to you.
- 21.4 **Infringement:** You warrant that you shall not infringe upon our mark or logo and/or the Card Schemes, nor otherwise use the mark or logo of Cards in such a manner as to create the impression that your goods or services are sponsored, produced, affiliated with, offered, or sold by us and /or any of the Card Schemes.
- 21.5 **Right to Use:** You hereby authorize and grant us the right to use your Intellectual Property for the limited purpose set forth in this Agreement including inclusion of your company name and logo in our reports, announcements and/or publications.

22 Security Collateral

- 22.1 **Security:** We may from time to time require you to provide security by way of a collateral deposit or a bank guarantee with a bank licensed by the UAE Central Bank in a form and over such assets as we reasonably require to secure your performance of obligations under this Agreement. All costs associated with procuring, entering and maintaining the security arrangements shall be incurred at your sole expense. The collateral shall be released to you upon expiry or earlier termination of the Agreement, and after expiry of the applicable Chargeback period of either 180 days or 540 days, as the case may be.
- 22.2 **Increase of Security:** The security maybe increased by us at our sole discretion, from time to time based on the risk assessment done by us on you.

23 Set Off

- 23.1 You irrevocably authorize us to set off any outstanding amounts owed by you to us, both before and after demand and whether such liabilities are actual or contingent, from any payments due pursuant to Clause 8 (*Authorization of Payment Transactions*) to you or any of your Affiliates. We shall notify you as soon as reasonably possible upon exercising our rights under this Clause 23.1 (*Set Off*).

24 Representations and Warranties

Each party represents throughout the Term of the Agreement the following:

- 24.1 it is duly organized and validly existing under the Applicable Law in their country of incorporation with power to enter into the Agreement and to exercise their rights and perform their obligations hereunder and all corporate and other actions required to authorize the execution of the Agreement and the performance of its obligations hereunder have been duly taken;
- 24.2 the execution and delivery of, the performance of their obligations under, and compliance with the provisions of, the Agreement will not (i) contravene any existing Applicable Law, to which it is subject, (ii) conflict with, or result in any breach of any terms of, or constitute a default under, any agreement or other instrument to which it is party or is subject or by which it or any of their property is bound or (iii) contravene or conflict with any provision of their constitution documents (where relevant);
- 24.3 it has not taken any corporate action and no legal proceedings or other steps have been started or threatened against it for their winding-up, dissolution, administration or reorganization or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any all of their assets or revenues;
- 24.4 it is and will at all times remain duly authorized or otherwise permitted under any relevant Applicable Laws to perform all of our Services hereunder and it has obtained and will maintain in force all requisite government and other regulatory consents, exemptions, licenses and approval related thereto;
- 24.5 You further represent and warrant that:
- a) You shall comply at all times with:
 - i. all Applicable Laws and regulations, as may be applicable from time to time;
 - ii. the requirements relating to all applicable local and international Data Protection Laws, Sanctions and Anti-Money Laundering (AML) laws and regulations;
 - iii. all Card Schemes Rules, payment card industry (PCI), data security standards (DSS) and business risk assessment & mitigation requirements (BRAM); and
 - iv. any of our policies that we may notify to you from time to time for;
 - b) the information provided to us in connection with the Agreement (including the Application) is true accurate and complete as of the date it was given and properly reflects



the nature of business, principal owners and or your officers and that all changes to such information have been or will be promptly notified to us;

- c) the authorized signatory signing the Agreement on behalf of you has the power to execute the Agreement and bind you to all provisions of the Agreement;
- d) you are not aware of any material facts or circumstances that have not been disclosed to us and which might, if disclosed, adversely affect the decision of a person considering whether or not to provide processing services pursuant to the terms of the Agreement;
- e) you are obtaining Services under the Agreement for legitimate business purposes and only to facilitate lawful Payment Transactions between you and Cardholders;
- f) the Bank Account into which debits and credits are made is only being used for lawful business purposes;
- g) as of the Effective Date no security breach in respect of any data processed by you or on your behalf has previously occurred;
- h) at any time throughout the Term (even before services are provided), you agree to provide any information as may be required by us for underwriting purposes including but not limited to: (i) audited financial statements; (ii) balance sheet and profit and loss statement for any fiscal year; (iii) any information required by us to comply with your obligations under Applicable Law or by order of any competent authority; and (iv) any information to identify you and your beneficial owners for anti-money laundering purposes;
- i) throughout the Term, you shall keep your know-your-customer (KYC) details, trade license information, shareholders information (including ultimate beneficial owner), updated with us, failing which we shall have a right to withhold settlements into your Bank Account;
- j) you shall notify us of any sale, restructuring, acquisition, merger or any other material change in nature or size of your business, or the nature of your business activities;
- k) except as expressly authorized by us in writing, neither you nor any Representative shall have any power to:
 - i. bind, make any commitment or give any instructions on our behalf;
 - ii. borrow on behalf of us or in any way pledge the Equipment;
 - iii. settle any claims, demands or actions against us; or
 - iv. contract on our behalf;



- l) to use only PCI-certified Qualified Integrator and Reseller (QJR) professionals from companies that are included on the PCI SSC's QJR Companies;
- m) not to use the Licensed Materials for unlawful or prohibited purposes or at any site located in any country designated by the United States(US) as a country with which it is prohibited to do business including, without limitation, any country on the Office of Foreign Assets Control of the US Department of Treasury List ("OFAC List") or any other country; or export, resell or otherwise transfer the Licensed Materials to any countries, entities or individuals designated by (i) the US as a country, entity or individual with which it is prohibited to do business including, without limitation, any country, entity or individual on the OFAC List or any entities or individuals which are owned or controlled by any countries, entities or individuals on the OFAC List, as amended from time to time; (ii) any other country which has imposed sanctions against such countries, entities or individuals; and
- n) You will be responsible for confirming that any of your customers, vendors, or agents are not designated as such an entity or individual (and is not owned or controlled by a prohibited country, entity or individual) and such you will not be doing business in any prohibited country and must ensure that any agreement with such client terminates immediately in the event such you become resident or commences to do business in any prohibited country or is listed on or becomes owned or controlled by a prohibited country, entity or individual.

25 Audit

- 25.1 You agree to provide us or our authorized agents (and/or the Card Schemes or their authorized agents) to perform an audit of your business (including onsite audit), which in our reasonable view is relevant to the fulfilment of your obligations under this Agreement. As part of an audit, you shall:
- a) give access to your business locations in order to examine records facilities, systems, data and stock and those of any business which we and / or the Card Scheme(s) reasonably believe(s) are connected to you;
 - b) provide copies of relevant records;
 - c) provide any reasonable assistance requested by us or our authorized agents (and/or the Card Schemes or their authorized agents); and
 - d) obtain and submit a copy of an audit report (at your sole expense) from a third party certified by Card Scheme(s) of the physical, operational, financial and information security aspects of your business if reasonably requested by us or the Card Schemes.



25.2 During the course of any forensic investigation, you shall fully cooperate with the investigation until completed.

26 Indemnity

You shall at all times indemnify us and shall keep us and our respective directors, officers, employees, agents and Affiliates indemnified against all losses, claims, damages, costs, expenses and liabilities arising out of or in connection with:

- a) any Payment Transaction, Chargeback, Refund or Reversals;
- b) the Payment Transactions including any secured, unsecured Transactions, M0/TO, Mobile Wallet Transactions such as Apple Pay and Samsung Pay;
- c) the use or malfunction of any of the Equipment in relation to any issue arising out of the presence of Equipment in your possession or in connection with maintenance or modification made to your Equipment, or due to inadequate security measures;
- d) marking of lien on Sale Proceeds and any other related bank accounts (as applicable);
- e) any failure by you to observe or abide by your obligations under the Agreement including breach of any Intellectual Property Rights;
- f) any security breach or loss of data or Transaction data held by you or any breach of PCI DSS by you or any of your appointed third-party vendors, subcontractors or agents;
- g) the Card Scheme Rules and Fines and Levies or any other fee or penalty of any nature levied by a third party against us in relation to the Payment Transaction;
- h) any failure by you or third parties involved by you for in fulfilling your obligations, notably in technical, organizational and administrative respects in accordance with this Agreement;
- i) any attempt to use the Equipment for purposes other than for which it is expressly designed, including but not limited to tampering, hacking, modifying or otherwise corrupting the security of functionality of Equipment; and
- j) breach of any Applicable Laws or regulations, including your non-compliance of the applicable Card Scheme Rules or Applicable Laws relating to the transfer of any Personal Data to us including our agents, sub-contractors, and Affiliates.

27 Liability

- 27.1 **Risk of Emails:** You agree to communicate with us through medium of emails at your own risk. You are aware that computer viruses can be transmitted via email. You shall ensure that the recipient of electronic messages shall check the message and any attachments for the presence of viruses. We and our Affiliates accept no liability for any damage caused by any virus transmitted by an electronic message. Further, the integrity and security of data or information communicated over internet, including through e-mail, cannot be guaranteed to be secure or error-free as information can be intercepted, corrupted, lost, destroyed, arrive late or contain viruses. We hereby disclaim any liability for the correct and complete transmission of information and data via internet either through e-mail or otherwise, or for any delay in its receipt. If verification of the content of any online or e-mail communication is required, you shall request for a printed version of the e-mail from the original sender.
- 27.2 **Exclusions of Loss:** We shall not be liable to you for any: (a) loss of profits, loss of revenue, loss of anticipated savings, loss of business opportunity, loss of goodwill, loss or corruption of data; or (b) indirect, special, incidental, punitive or consequential losses or damages of any kind arising from or in connection with this Agreement.
- 27.3 **Liability Limits:** Notwithstanding anything to the contrary contained in this Agreement, but subject to the terms of Clauses 27.1 (*Risk of Emails*), 27.2 (*Exclusions of Loss*) and 27.4 (*Uncapped Liability*), the total liability of Emirates NBD and its Representatives under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall not in aggregate in a calendar year exceed: a) the Fees and Charges earned from your Payment Transactions and paid to us during the immediately preceding six (6) calendar months, or b) the cost of reprocessing the related Transaction, whichever is lower.
- 27.4 **Uncapped Liability:** Nothing in this Agreement shall exclude or limit the liability of either party to the extent such limitation or exclusion is not permitted by Applicable Law.
- 27.5 **Liability for Third Parties:** You agree that subject to the terms of this Agreement, we shall only be liable for our own acts or omissions and not for the acts or omissions of any third parties, including the Card Schemes, the Payment Gateway Service provider(s) or the Issuer. Without prejudice to this Clause 27 (*Liability*), we shall not be liable for any events or activities originating outside our systems (such as infrastructure failure, internet disturbances or malfunctioning in third party systems), except where such events are caused by our wilful misconduct or gross negligence.
- 27.6 **Termination Survival:** The Parties agree that the provisions of Clause 26 (*Indemnity*) and this Clause 27 (*Liability*) shall survive termination of this Agreement.



28 Right to Amend

- 28.1 **Right to Amend:** We may upon giving thirty (30) days' prior written notice to you, amend the terms of the Agreement including Fees and Charges subject to such amendment being in compliance with Applicable Law or Card Scheme Rules. A shorter notice may be given if required by Applicable Law or Card Schemes to give effect to the change, and/or in accordance with Clause 22 (*Security Collateral*) or Clause 29 (*Termination*). The amendments and / or updated Agreement applicable from time to time or in case of shorter notice requirements stated above, shall be posted at our website, via email to you or via the Portal (as applicable).
- 28.2 **Notice of Change:** Notice of any changes may be given by sending an email to you in accordance with our records, or by placing the message on Merchant Portal, or through other reasonable means. You confirm that you have high speed internet access and the email id is a valid official email account to receive notices, communications and information relating to this Agreement.
- 28.3 **Notice by e-mail:** A notice sent by us to your e-mail provided by you, shall be deemed to have received by you upon its delivery to the email on record. You are obliged to inform us in writing of any changes to your e-mail address reasonably in advance, and you assume sole liability for your non-receipt of a notice of a change or amendment to the Agreement in the event that you have failed to inform us of a change in your e-mail address.
- 28.4 **Continued Use of Services:** Your continued use of the Services, API, or Data after a change or amendment or removal has taken effect, constitutes your acceptance of the amended Agreement unless you, acting prior to the date of change notified to you, inform us your concern on the amended terms or if you do not wish to be subject to the amended terms of the Agreement, in which case both Parties may amicably agree to resolve. Should no resolution be agreed upon between the Parties within 60 days of your first notification to us, and if the change either increases the Charges and Fees or has a material adverse effect on the Services, you shall have the right to terminate the Agreement by giving thirty (30) days advance written notice to us.

29 Termination

29.1 Suspension or Termination by us

- a) In the event Payment Transactions are not submitted for processing from the Effective Date and your account remains inactive for a period of six (6) months, we reserve the right to suspend the Services and charge the applicable Fees and Charges.
- b) Without prejudice to other rights set out in this Agreement, Card Scheme Rules or Applicable Law, we shall have the right to terminate the Agreement without the requirement of a court order:
 - i. for convenience by giving sixty (60) days written notice to you;



- ii. with immediate effect, if you are in material breach of the Agreement provided we first provide you with at least fifteen (15) days written notice of the alleged breach requiring it to be remedied, and such breach remains un-remedied for a period of fifteen(15) days.;
 - iii. with immediate effect, if you commit any act, which in our opinion is considered as an act of deception, scam, dishonesty, fraud, wilful misrepresentation or an act that would result in losses or damages to us;
 - iv. with immediate effect, if you are subject to an Insolvency Event;
 - v. with immediate effect, if you enter into any act of bankruptcy or compromise with your creditors or a petition or receiving order in bankruptcy is presented or made against you or a petition for an administration order is presented in relation to you or a resolution or petition to wind up such party is passed or presented (otherwise than for reconstruction or amalgamation) or a receiver or administrative receiver is appointed;
 - vi. with immediate effect, in the event that there is any negative market news about you or your stakeholders, or a material adverse change that could significantly impact our business, reputation, or financial condition. For the purposes of this clause, "negative market news" shall include, but not be limited to, significant adverse reports from credible news sources, unfavorable regulatory changes, or any event that may materially affect the perception of the market regarding your viability or performance;
 - vii. with immediate effect, if you fail to comply with data security standards; or
 - viii. pursuant to any event of Force Majeure as described in Clause 30.3 (*Force Majeure*) of this Agreement; or
 - ix. if the Card Scheme(s) exercises their right to limit or terminate our agreement with you for any reason (such right to be exercised at the Card Scheme(s) sole discretion); or
- c) If your account continues to be inactive for a period of twelve (12) months, the Agreement shall automatically terminate without the requirement to obtain a court order or any further notification from us and a Termination Fee set forth in Clause 29.2b) (*Termination Fee*) may be charged by us at our discretion.

29.2 Termination by you

- a) You shall have the right to terminate the Agreement, without the requirement of obtaining a court order, if we are in material breach of the Agreement provided you first provide us with at least thirty (30) days written notice of the alleged breach requiring it to be remedied, and such breach remains un-remedied for a period of thirty (30) days following receipt of such notice by us.



- b) **Termination Fee:** In the event you appoint a third party service provider(s) to provide the same or similar services as being provided by us under this Agreement or any other document duly signed by the Parties; or terminate the Agreement prior to expiry of the Term, you shall pay us and/or you authorize us to debit and recover from your Bank Account the termination fee equal to Fees and Charges for the balance period of the Term, calculated on the basis of monthly Fee and Charges received or is receivable by us from you for a period of 12 months immediately preceding the date of the Trigger Event or a fixed termination fee of AED 25,000, whichever is greater (the "Termination Fee"), provided that the Termination Fee shall not be applicable in the following events:
- (i) the Agreement is terminated by us for convenience; or
 - (ii) the Agreement is terminated by you due to material breach of the Agreement by us in accordance with Clause 29.2a) above.

30 GENERAL

30.1 Miscellaneous

- a) **Valid and Enforceable:** The Agreement shall remain valid and enforceable notwithstanding any change in its constitution or ownership, merger or amalgamation of you or us.
- b) **Conflict or Inconsistency:** In the event of any conflict or inconsistency in the provisions of these terms and conditions, Application, Terms and Conditions, Schedules attached hereto, and/ or welcome kit, the following order of precedence shall apply:
 - 30.1.b.1 these Terms and Conditions;
 - 30.1.b.2 Application;
 - 30.1.b.3 Schedules; and
 - 30.1.b.4 welcome kit.
- c) **No Waiver:** No failure or delay or omission of us in exercising or enforcing (whether wholly or in part only) any right, power, privilege or remedy hereunder or no course of dealing with you, shall impair such our right or remedy and shall not be construed as a waiver of such right or remedy.
- d) **Severability:** The Parties intend for every provision of this Agreement to be severable. The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the validity or enforceability of the other provisions which shall continue to be valid and enforceable.



- e) **Headings:** The headings contained in these Terms and Conditions are for convenience of reference only and are not intended to define, construe, limit, expand or describe the scope or intent of the Agreement.
- f) **Conflict of Language:** In the event of a conflict between the English and Arabic text, the English text shall supersede.

30.2 Notices

- a) All notices, notifications, requests, demands, consents, approvals, agreements or other communications (Notices) to or by a party to this Agreement shall be in writing (including e-mails) addressed to the recipient at the address set out below or at such other address as such party may specify from time to time in writing:
- b) If to you, to your contact and address stated in the Application or to the e-mail address as updated from time to time on your Portal or to the e-mail address where we send the Transaction statements from time to time.
- c) If to us:

To: our contact and address stated in the Application or as otherwise communicated to you.
- d) Notices shall be deemed to be duly given or made:
 - (i) when delivered to the recipient at such address;
 - (ii) when sent to the e-mail of a Party;
 - (iii) on receipt by the sender of written confirmation of receipt by registered mail service.
- e) If such receipt is later than 3.00 p.m. (UAE time) on a day on which business is generally carried on in the place to which such Notice is sent, it shall be deemed to have been given or made at the commencement of business on the next day in that place.

30.3 Force Majeure

We shall not be liable for any failure or delay in performance or loss suffered by you due to circumstances beyond our control, including a technical failure, connectivity failure with Card Schemes, systems upgrades, industrial dispute, communications, water or power interruption



or failure, if government passes or imposes restriction orders within the country or on certain countries, act of God, epidemic, pandemic, or as a result of our obligations under any Applicable Law or rulings of administrative boards, government authorities.

30.4 Binding Agreement

- a) The Agreement as may be amended from time to time constitutes a single binding agreement and supersedes all prior representations understandings and agreements (whether written or oral) except for any security instrument entered into in favor of us which shall remain separate from the Agreement.
- b) The Parties agree that this Agreement is binding upon them, their heirs, successors and assigns and some of the services in connection with this Agreement may be provided by third Parties as and when notified by us to you in writing.

30.5 Assignment

- a) You may not assign or transfer any rights or obligations under this Agreement. You may with prior our written consent subcontract the performance obligations under this Agreement to an approved third party provided that you remain at all times responsible and liable for the performance and/or non-performance of any such third party including liability for fraud, Refunds and /or Chargebacks.
- b) We may transfer this Agreement and its rights and obligations in whole or in part in relation to this Agreement to any of our Affiliates and/ or any third party by notification to you and without obtaining any consent from you, and in particular but without limitation, thereafter any amounts owing by you hereunder will be owed to any such transferee, free from any rights of set-off or other defenses you may have, all of which you waive. You also authorize and agree that we may delegate duties in whole or in part hereunder to any subcontractors (whether based inside or outside of the Territory) without notice to you.

31 Governing Law, Dispute Resolution and Jurisdiction

- 31.1 **Governing Law:** This Agreement and its interpretation and any non-contractual obligations arising from or connected with this Agreement shall be governed by and construed in accordance with the Federal laws of the United Arab Emirates and those applicable in the Emirate of Dubai, UAE.
- 31.2 **Dispute Resolution and Jurisdiction:** All disputes related to or arising out of this Agreement shall be first settled through conciliation between senior management of the Parties, and where no mutually acceptable outcome is achieved within thirty (30) days of reference of the matter to the senior management of the Parties, each of the Parties agrees to irrevocably and unconditionally



submit their disputes to the exclusive jurisdiction of the Dubai courts, in Dubai, UAE irrespective of whether the location of you are within or outside of the UAE.

32 Electronic Signatures

The Parties agree that this Agreement may be signed and/or transmitted by electronic mail (which may include an original or scanned .pdf document) or electronic signature (e.g., DocuSign or similar electronic or digital signature technology) and thereafter maintained in an electronic form, and that such electronic record shall be valid and effective to bind the Party so signing as a paper copy bearing such Party's hand-written signature. The Parties further consent and agree that the electronic signatures appearing on this Agreement shall be treated, for purpose of validity, enforceability and admissibility, the same as hand-written signatures.

33 DEFINITIONS

In this Agreement the following words shall have the meaning ascribed to them:

"Affiliates" means in respect of any party, its subsidiary, holding company or a company which is a subsidiary or subsidiary undertaking of that holding company; provided that in all circumstance an Affiliate shall be controlled by the party or shall control the party or under common control of the party. For this purpose, the term `control' refers to the power of a person to take a binding decision for and on behalf of the controlled person.

"AED" means Emirati Dirham which is the official currency of the United Arab Emirates.

"Agreement" means the Application, these Terms and Conditions, schedules (as applicable), the direct debit mandate, Card Scheme Rules, user manuals, your welcome kit, any addendum, statement of work, any attachments to the schedules and any other document referencing this Agreement and signed by the Parties.

"Anonymized Data" means any data including Personal Data shared under this Agreement that has been stripped of all Personal Data and therefore the Data Subject is not or no longer constitutes identifiable. The term, "Anonymized Data" includes Transaction data and other bank transaction data, including but not limited to date and amount of a particular Transaction, that has been stripped of: (i) all Personal Data of the Data Subject; and (ii) information identifying you as the source.

"Application Programming Interface (API)" means a set of routines, protocols and tools developed by us to provide the services to you via a secure internet connection between your system and our system.

"Applicable Laws" means the federal laws and regulations, orders, decrees, rules, circulars, notices or guidelines (including the requirements of any Supervisory Authority) of United Arab Emirates as



amended and issued by a regulatory authority from time to time, including but not limited to anti-money laundering, anti-bribery, anti-terrorist financing, sanctions, tax, consumer protection laws (as applicable) and Data Protection Laws applicable in the Territory.

"Application" means the application form including the direct debit mandate signed by you forming part of and attached to the Agreement, under which you engage us to provide the Services.

"Authorized Representative" means the persons legally authorized to sign the Application and the Agreement for and on behalf of you.

"Authorization" means the electronic process by which a Payment Transaction is transmitted for approval, referral or decline by us Issuer or any Card Scheme.

"Bank Account" means the bank account opened and held by you as described in the Agreement.

"Business Day" means any day other than, in the location in which ENBD is headquartered, an official public holiday or a day on which the banks are obligated to close for business;

"Card" means a valid payment card issued by licensed Issuer which bears any of the international recognized logos of the Card Schemes or any of such other cards (including contactless and virtual cards) and/or Mobile Wallet as described in the Application.

"Card Scheme(s)" means any of the respective international recognized licensing companies such as Visa International, MasterCard International, Diners Club, Mercury, JCB, China Union Pay, American Express, AliPay, WeChat Pay, RuPay, CyberSource, MasterCard Payment Gateway, or any other Cards sponsorship organization or others supported by us and notified by us to you from time to time.

"Card Scheme Rules" means rules, regulations and guidelines of Card Scheme available on each of the Card Schemes official website and which contain necessary instructions, rules and regulations in connection to each Card Scheme and that may be updated from time to time.

"Cardholder" means an individual who is authorized to use the Card.

"Card Present Transaction" means a Transaction which is completed by a Cardholder in a physical presence by swiping, inserting (chip-enabled Cards) or tapping (contactless Cards) the Card at a point-of-sale (POS) location.

"Card Not Present Transaction" means a Transaction which is completed when neither the Cardholder nor the Card is present at your point of sale including but not limited to mail orders, telephone orders, online or e-commerce (Internet) orders, and/or a Pre-Authorized Recurring Transactions.



"Chargebacks" means a demand by a Card Scheme for you to make good the loss on a fraudulent or disputed Transaction.

"Commencement Date" means the date on which your Application has been accepted by us.

"Data Controller" means the person or entity which, alone or jointly with others, determines the purposes and the means of the Processing of Personal Data.

"Data Processor" means the person or entity which Processes Personal Data on behalf of a Data Controller.

"Data Protection Laws" means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation around the world relating to the processing, privacy, transfer and/or use of data, as applicable to the Parties, including (a) all applicable privacy and data protection laws in the Territory and any applicable national implementing laws, regulations and secondary legislation relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time; or (b) any current or future judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority, in each case, as in force and applicable, and as may be amended, supplemented, consolidated or replaced from time to time.

"Data Subject" means any identified or identifiable natural person whose Personal Data is processed in the context of this Agreement.

"DCC" or dynamic currency conversion is a service provided by us which enables you to offer eligible international Cardholders the ability to pay for goods or services in their Card currency.

"DCC Cardholder" means the Cardholder whose Card is configured with a DCC Currency.

"DCC Currency" means certain currencies, other than Emirati Dirhams, for which the Cards held by DCC Cardholders are configured.

"DCC Transaction" means a Transaction by a DCC Cardholder with his DCC Card by presenting his Card at your point-of-sale and to pay for a purchase in the DCC Currency, based upon a rate of exchange determined by us, while you receive settlement of the Transaction in United Arab Emirates Dirham.

"Effective Date" means the date when the Services has been activated for you irrespective whether the Services are being accessed or used.



"EMV Card" means a Card that carries an electronic chip for authenticating and processing Payment Transactions.

"Equipment" means Manual Imprinter, cash register, the POS Terminal, the PIN Pads, the software programs and all accessories, connections and peripherals provided by us to you.

"Excessive Chargeback" means the threshold based on such number of transactions in a month, or the percentage ratio of Chargeback to Sales in a month, as may be prescribed by the Card Schemes from time to time.

"Fees and Charges" means all fees, and other charges set out in the Fees and Charges and all costs incurred by us in processing Payment Transactions, Chargebacks and Refunds, Reversals, Fines and Levies and/or as otherwise stipulated in this Agreement.

"Fines and Levies" means any tax, assessment or fine, charges, fee and penalties of any nature which a Card Scheme or a regulatory authority may levy on us or you in relation to the Payment Transactions and / or Services provided to you under this Agreement.

"Floor Limit" means the maximum value permitted which you can accept for a single Payment Transaction without obtaining Authorization.

"Gateway" means our Transaction processing platform through which it provides services that enable you to connect with multiple users, third party processors, and payment networks in order to process Transactions. The Gateway includes the Payment Gateway Services and the Licensed Material.

"Gateway Documentation" means shall mean collectively, the operating instructions, user manuals, and help files, in written or electronic form, made available to the Merchants by download at Emirates NBD that are intended for use in connection with the Payment Gateway Services and incorporated into this Agreement by reference.

"Issuer" means a bank, financial institution or other company, which issued the Card to the Cardholder with the prior approval of the respective Card Scheme.

"Insolvency Event" means any of the following events or circumstances concerning the Merchant:

(a) the Merchant is unable to pay its debts as they fall due or is insolvent within the meaning of the insolvency legislation applicable to the Merchant;

(b) the appointment of a receiver, administrator, administrative receiver, liquidator, trustee, or similar officer in respect of the Merchant or any part of its business or assets;



- (c) the Merchant enters into or proposes any composition or arrangement with its creditors generally or any class of its creditors;
- (d) any resolution or petition to wind up the Merchant's business or affairs is passed or presented (otherwise than for the purpose of a bona fide reconstruction or amalgamation), or if a court of competent jurisdiction makes an order to that effect;
- (e) the Merchant ceases, or threatens to cease, to carry on business;
- (f) the Merchant is subject to any analogous event or proceeding in any applicable jurisdiction, including but not limited to bankruptcy, insolvency, liquidation, or adjustment of debt;
- (g) the Merchant's assets are subject to any form of seizure, attachment, distress, or execution to satisfy a debt or judgment;
- (h) any event occurs, or proceeding is taken, with respect to the Merchant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.

"Intellectual Property Rights" means and includes any interests or related rights whether or not any such interests or rights are registered in copyright, trademark, design, database, knowhow, confidential information, trade secrets, license interests, patents or any other rights or interests in any data including Personal Data, services, software or hardware provided by us.

"KYC Details" means the know your customer information that is required to be furnished by you to the schemes from time to time with regard to your ownership, business and operations.

"Lender" means a bank or other financial institution from which you have obtained a loan against security of the Sale Proceeds or has sold and/or assigned your future Sale Proceeds to such bank or other financial institution.

"Licensed Material" means all software and documentation provided by us to you hereunder, including the Gateway API, the Gateway Documentation, and all updates, updates, revisions and derivative works of all of the foregoing.

"Manual Imprinter" means the device supplied to you by us to produce an imprint of the embossed characters of the Card on all copies of the Manual Sale Draft.

"Manual Sale Draft" means a clear sale record (in the form provided by us) used to obtain the Card imprint from a Manual Imprinter.

"MCP" means the multicurrency processing. This is our foreign currency conversion service to you allowing you to offer Cardholders to make payment in currency that may be different settlement currency chosen by you or the currency in which the Card has been issued.



"MCP Transaction" means a sales Transaction using MCP.

"Merchant Transaction" means a Transaction made by you to complete a Payment Transaction following a Pre-Authorization.

"Mobile Wallet" means a digital wallet application which either has a method to link various funding sources or contains stored value which has been funded through a variety of funding sources and enables the Cardholder to make payment for goods and services;

"Payment Client Software" means software that connects you to payment gateway application through an information technology known as secure socket layer.

"Payment Gateway Services" means the provision of Gateway related services by us to you as specifically set forth in the Application.

"Payment Transaction" means an authorized Transaction made by a Cardholder using the Card to pay for the goods or services supplied by you, and includes Refunds, Chargebacks and Reversals.

"PCI DSS" means the Payment Card Industry Data Security Standard, an information security standard for organizations that handle Cards from the major Card Schemes.

"Personal Data" means any data that is considered as personal data under the Data Protection Laws, specifically information relating to an identified or identifiable natural person. For the purpose of this Agreement, an identifiable natural person is one who . can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. "Pre-Authorization" means an electronic or voice process used by you to block or freeze certain funds on the Card for a subsequent Payment Transactions.

"Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.

"Pre-Authorized Recurring Transactions" means a Transaction that has a Pre-Authorization by the Cardholder to be debited from the Cardholder account at the agreed intervals or on agreed dates and for goods and services that are to be delivered or performed by you in the future without you having to obtain approval from the Cardholder each time.

"Program" means our Dynamic Currency Conversion Service.

"Portal" means the online platform which is provided by ENBD to you as part of the Services and allows you to access specific features such as Dashboard Services (as defined under Clause 15.1).



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

"POS Terminal" means the point of sale machine supplied by us to you for the purpose of obtaining electronic Authorization, whether fixed, moveable, or mobile including but not limited to Soft POS, and smart mobile payment devices.

"Products" means products and payment solutions and/or consulting services (including but not limited to benchmarking), developed from time to time by us, our Affiliates or third parties for your benefit and our other clients (or potential clients) or to conduct market and investment research, data analytics, or statistical computation.

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

"Refund" means a payment made by you to a Cardholder and / or Card Issuer for the credit of a Cardholder's account to wholly or partially reverse a Payment Transaction.

"Representatives" means in relation to you, your officers, directors, employees or owners who are authorized to act for and your behalf.

"Reversal" means a reversal of a Payment Transaction, for any reason whatsoever.

"Sale Proceeds" means any and all funds resulting out from the Payment Transactions.

"Service(s)" means the Products and services provided by us to you as described in the Application, which includes the processing of Payment Transactions, settling Sale Proceeds, providing necessary Equipment, Payment Gateway Services, and other Value Added Services such as DCC services and Dashboard Services

"Supervisory Authority" means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

"Transaction" means the acceptance of a Card or information embossed on the Card, for payment of goods and services provided to the Cardholder by you on either a Card Present Transactions or a Card Not Present Transaction and includes all credits, refunds, errors, returns and adjustments.

"Territory" means the United Arab Emirates.

"Terms and Conditions" mean these terms and conditions being annexed to the Application or published at our website or updated on the Portal, as updated from time to time.



"Transaction Fee" means either the percentage fee per Payment Transaction including processing of Refunds, Reversals, payable by you to us, or the lump - sum fee per Payment Transaction payable by you to us, or both, as the context may require.

"Trigger Event" means the appointment by you of a third party service provider(s) to provide the same or similar services as being provided by us under this Agreement or any other document duly signed by the Parties; or termination of the Agreement for convenience by you prior to expiry of the Term.

"Value Added Services" means DCC services and/or other value-added services which relate to the Services provided by us to you from time to time, which may be requested by you, including requests via email.

"Volume Shortfall Fee" means the monthly additional fee as stated in the application form payable for not completing the minimum value of AED 20,000 of Payment Transactions in a month.

"UAE" means United Arab Emirates.



Annex A

This Annex A applies when the Merchant submits a request to modify its existing Service or request additional add-on services, as specified in the Application. These terms are supplementary to the Terms and Conditions above, as well as any other applicable terms under the Agreement and shall take effect upon notification from ENBD that the additional service request has been approved and implemented.

All capitalized terms not defined in this Annex A shall have the meaning ascribed under the Terms and Conditions.

1. Request for Transaction amount cap increase on Card Not Present Transactions

- a) Where the Merchant requests ENBD to increase the Transaction amount cap on Card Not Present Transactions to a limit specified in the Application, Merchant hereby acknowledges and agrees that such high value Transactions may be disputed by a Cardholder. The Merchant acknowledges that this may present increased risk to ENBD. In such event, if the Transaction is reported fraudulent or Chargeback is raised in accordance with the Card Scheme Rules, the Merchant agrees that ENBD has the right to recover all Fees and Charges (including Chargebacks) and Fines and Levies from Merchant's registered Bank Account in accordance with Clause 4.4 of the Terms and Conditions.
- b) Merchant shall indemnify and hold ENBD and its respective directors, officers, employees and agents, harmless against all losses, claims, damages, costs, expenses and liabilities arising out of or in connection with this Clause 1 of Annex A.

2. Request for mobile/digital payment modes

- a) With respect to the Services, if the Merchant requests ENBD to provide mobile and digital payment modes including but not limited to Apply Pay and Samsung Pay, the Merchant hereby agrees that ENBD shall deduct all Fees and Charges (including Chargebacks) and Fines and Levies applicable to such mobile and digital payment modes from the Merchant's registered Bank Account in accordance with Clause 4.4 of the Terms and Conditions.
- b) Merchant shall indemnify and hold ENBD and its respective directors, officers, employees and agents, harmless against all losses, claims, damages, costs, expenses and liabilities arising out of or in connection with this Clause 2 of Annex A.

3. Request for change in Bank Account information

- a) Where the Merchant requests ENBD to update its registered Bank Account details for the Merchant ID(s) specified in the Application, ENBD shall be entitled to credit and/or debit all Sales Proceeds from the new Bank Account in accordance with Clause 4.4 of the Terms and Conditions.
- b) The Merchant hereby unconditionally and irrevocably authorizes ENBD to:
 - I. Directly credit and/or debit the Merchant's new Bank Account for any and all Payment Transactions; and



- II. Credit the new Bank Account for reimbursements relating to any Fees and Charges, if applicable, in accordance with the Terms and Conditions.
- c) The Merchant acknowledges and agrees that: (i) ENBD may, at its sole discretion, determine the priority of payment for any amounts due, payable, or outstanding under the Agreement; (ii) this authorization is irrevocable and cannot be withdrawn without the prior written consent of ENBD; and (iii) all information and documents provided in connection with the request to update the Bank Account details are true, accurate, and complete.
4. **Request for Pre-Authorisation/Key-In/Refund**
- a) Merchant acknowledges and agrees that the pre-Authorization, Key-In and Refund facilities allow the Merchant to complete a Transaction in a Card Not Present environment and that these facilities entail higher risk and are susceptible to disputes, Chargebacks and fraud, even in 3D Secured Transactions. In such event, if the Transaction is reported fraudulent or a Chargeback is raised in accordance with the Card Scheme Rules, the Merchant agrees that ENBD has the right to recover all Fees and Charges (including Chargebacks) and Fines and Levies from Merchant's registered Bank Account in accordance with Clause 4.4 of the Terms and Conditions.
- b) The Merchant agrees to use the Key-In facility exclusively for its clients and only after obtaining its clients explicit written consent or Authorization.
- c) The Merchant shall comply with the Payment Card Industry Data Security Standards (PCI DSS), including secure handling, storage, and purging of Cardholder data.
- d) Failure by the Merchant to comply with the terms of this Clause 4 of Annex A may result in losses, penalties or fines being incurred by ENBD. As such, Merchant shall indemnify and hold ENBD and its respective directors, officers, employees and agents, harmless against all losses, claims, damages, costs, expenses and liabilities arising out of or in connection with this Clause 4 of Annex A.

"Key-In" refers to the manual entry of Card details by the Merchant into the payment system for processing a Transaction in the absence of physical cards. Merchant acknowledges Key-In is considered high risk due to the increased potential for fraudulent activities and Chargebacks.