

# MERCHANT AGREEMENT

## (For BDO miniPOS)



### KNOWN ALL MEN BY THESE PRESENTS:

This Merchant Agreement for BDO miniPOS (the "Agreement") is entered into by and between:

BDO UNIBANK, INC., a banking institution duly organized and existing under and by virtue of Philippine laws, with principal office address at BDO Corporate Center, 7899 Makati Avenue, Makati City, hereinafter referred to as "BDO",

- and -

, with principal office address at \_\_\_\_\_

hereinafter referred to as "MERCHANT",

WHEREAS, BDO is engaged in the business of processing payments such as but not limited to those coming from credit and debit cards, digital wallet and active deposit accounts and mobile payments, (hereinafter referred to as "Payment Transactions") and BDO desires to make available these payment transactions to MERCHANT for the sale of goods or products and/or to provide services to merchant's customers;

WHEREAS, MERCHANT is engaged in business of selling goods or products and/or providing services and desires to honor and accept the various payments in connection with its sale of goods, merchandise, and services; and

NOW, THEREFORE, for and in consideration of the foregoing premises and the terms and conditions contained in this Agreement, the Parties hereto agree to the following:

#### 1. DEFINITION OF TERMS – Unless the context otherwise requires, the following terms used in this Agreement shall have the following meaning:

- a. "Agreement" shall refer to this Merchant Agreement and Annexes thereto, as may be amended or supplemented from time to time.
- b. "Alipay" shall refer to the digital wallet of Alipay.com Co., Ltd.
- c. "American Express Card" as used herein shall mean an authorized and unexpired card or any other account bearing the American Express name or the American Express trademark, service mark or logo, as may be amended by American Express International from time to time, or in any such authorized designs, marks or logo, which from time to time shall be issued by (1) BDO or (2) other banks, business entity, corporation or any other form of organization with which BDO or American Express International has valid agreement with respect to the use of the trade/service marks and logo of American Express.
- d. "ATM/Debit Cards" as used herein shall mean a valid and unexpired ATM/Debit card including Prepaid cards issued by BDO and member banks of Bancnet and other ATM/Debit cards that may be issued by BDO in the future including ATM/Debit cards that were issued or will be issued by other banks, card companies or third parties whose ATM/Debit payment transactions are/will be acquired by BDO.
- e. "Authorization" refers to the approval required to be obtained by MERCHANT before a Card transaction may proceed in accordance with the provisions of Section 4(a). Authorization may be obtained via the BDO miniPOS, or in case the BDO miniPOS is not working, approval may be obtained by telephone from BDO's Authorization Center ("Voice Authorization"). The authorization contemplated herein shall take the form of a valid authorization code number obtained from the BDO miniPOS or BDO's Authorization Center by MERCHANT.
- f. "Banking Day" shall mean the day when banks are open for business in Metro Manila. Provided, however, that Saturday and Sunday shall at all times be considered as non-banking day for purposes of this Agreement and notwithstanding any declaration on the contrary.
- g. "Card/Account Holder" shall mean the person whose name is embossed or printed on the Card or owner of account used for payment transaction..
- h. "Card/Digital Brands" shall refer to any company that provides card, digital wallet and/or account used for payment transaction such as, but not limited to, BDO, Visa, Mastercard, JCB, American Express, UnionPay, Diners Club, Discover, Bancnet, WeChat, Alipay, Gcash, GrabPay and other brands.
- i. "Cards/Accounts" shall encompass all products, including credit cards, ATM/Debit cards digital wallets and active deposit accounts, authorized and issued by or bearing the mark of BDO, Visa, Mastercard, JCB, American Express, UnionPay, Diners Club, Discover, Bancnet, WeChat, Alipay, Gcash, GrabPay and other brands. Additional brands or mobile payments may be included without executing a separate agreement unless otherwise required.
- j. "Chargeback" shall mean the process by which BDO will charge to MERCHANT any amount which have been paid by BDO under such circumstances or situations as are provided under Section 9 of this Agreement or under dispute by Card/Account Holder.
- k. "Digital Wallet" is a convenient way to carry or store payment Card/Account information into a digital form on the Account Holder's Mobile Device.
- l. "Diners Club" as used herein shall mean an authorized and unexpired card or any other account bearing the Diners Club logo, name and world map, as may be amended by Diners Club International from time to time, or in any such authorized designs, marks or logo, which from time to time shall be issued by (1) BDO or (2) other banks, business entity, corporation or any other form of organization with which BDO or Diners Club International has valid agreement with respect to the use of the trade/service marks and logo of Diners Club.
- m. "Discover" as used herein shall mean an authorized and unexpired card or any other account bearing the word Discover or Discover Network, security hologram and the Discover Acceptance Mark which appears either on the front or back of the card as may be amended by Discover Financial Services from time to time, or in any such authorized designs, marks or logo, which from time to time shall be issued by (1) Discover or (2) other banks, business entity, corporation or any other form of organization with which Discover Financial Services has valid agreement with respect to the use of the trade/service marks and logo of Discover as notified by Diners Club International to BDO.
- n. "GCash" as used herein shall refer to the digital wallet of G-Xchange, Inc.
- o. "GrabPay" as used herein shall refer to the digital wallet of GPay Network Ph, Inc.
- p. "Issuer" shall mean the entity authorized to issue Cards/Accounts.
- q. "JCB Card" as used herein shall mean an authorized, unexpired card or any other account, valid in all respects, bearing the service marks, trademark(s) and or trade name of JCB and a design of blue, red and green bands or in such other design style as may, from time to time be determined by JCB (including amendments by JCB) which cards will be in the form, from time to time issued by (1) BDO or (2) other banks, business entity, corporation or any other form of organization with which BDO or JCB International has a valid agreement with respect to the use of either or both of the service marks of JCB.
- r. "Late Presentment" as used herein shall mean a transaction which was not processed and/or submitted by MERCHANT to BDO within the period prescribed by the Card/Digital brands rules.
- s. "MasterCard" as used herein shall mean an authorized, unexpired card or any other account bearing the service/trade mark, MasterCard, MasterCard II design, with distinctive interlocking circles design consisting of (i) a red circle overlapping a yellow ochre circle, (ii) two gold circles and a GLOBE design consisting of a GLOBE, and "M" and a "C" which marks and designs are owned by MasterCard International, as may be amended by MASTERCARD from time to time, and (iii) in such other marks and designs, as may be issued by (1) BDO or (2) any other banks, business entity, corporation or any other form of organization with which BDO or MASTERCARD International has a valid agreement with respect to the use of either or both of the service marks of MASTERCARD.
- t. "Merchant" shall mean a business establishment or individual engaged in selling of goods, products or services and is authorized by BDO to accept Cards/Accounts as defined herein, from their customers.
- u. "Merchant Online Reporting System" (MORS) refers to the secured web-based platform of BDO where Merchant can view reports such as Credit Notice and Prooflist of paid transactions to Merchants.
- v. "Merchant Operating Guide" refers to the set of guidelines and procedures, including its subsequent updates, issued by BDO to govern the payment acceptance.
- w. "Merchant Portal" shall refer to a secure web-based system for Merchants to access and monitor payment transactions via BDO miniPOS
- x. "Mobile Payment" refers to payment services whereby Card/Account holder uses his/her mobile device to transact and pay MERCHANT for the goods purchased or services rendered.
- y. "Multiple Purchases" shall mean two or more purchases made by a Card/Account Holder using the same card on the same day or consecutive days with or without Card/Account Holder's consent, with or without the required authorization from BDO.
- z. "Net Deposit of MERCHANT" shall refer to the amount which is required to be paid to MERCHANT by BDO in the manner provided under Section 6 which is equivalent to the total sales as indicated in the Settlement for electronically processed transactions less: (i) any credit/refunds or discounts granted to Card/Account Holders by MERCHANT, if any, (ii) the discount due to BDO equivalent to a percentage (%) of the total sales, (iii) applicable taxes, (iv) any chargeback under Section 9, (v) adjustments and/or reversals by BDO, (vi) penalties or any unpaid amounts of MERCHANT to BDO.
- aa. "Parties" shall mean BDO and MERCHANT including their respective successors-in-interest and permitted assigns.
- bb. "Settlement" shall mean the process of settling or summarizing the Payment Transactions for the day.
- cc. "Split Sales" refers to splitting a sales transaction by dividing the cost of a single transaction into two or more transactions, using a single Card/Account Holder account in an attempt by Merchant to circumvent authorization limits imposed in its merchant account agreement.
- dd. "Subsidy Rate" shall refer to the amount which is required to be paid by MERCHANT to BDO in the manner provided under Section 20.b on Installment Plan which varies for each specified payment term.
- ee. "Suspicious Purchases" shall mean purchases made by a Card/Account Holder with doubtful motive or under suspicious circumstances with respect to the amount, volume, nature and character of goods, merchandise and/or services purchased in relation to the person or business of the Card/Account Holder or making it appear that the purchases of goods and/or services was made when in actuality cash advance was applied, including but not limited to multiple purchases, a sudden increase or unusual amount of payment transactions by the same Card/Account Holder with the MERCHANT, or the natural features of the Card/Account Holder do not appear to match the name or evident nationality or citizenship of the person whose name appears on the card. Suspicious purchases made by the Card/Account Holder, including his/her extension Card/Account Holders, (if allowed by the MERCHANT) shall be considered fraudulent transactions and, therefore, constitute prima facie evidence of fraud and deceit on the part of MERCHANT for purposes of litigation without prejudice to prosecution under R.A. 8484 against responsible parties.

- ff. "UnionPay" as used herein shall mean an authorized, unexpired card or any account, valid in all respects including but not limited to debit cards, credit cards and dual-branded cards bearing the UnionPay logos, as may be amended by UnionPay International from time to time, and in such other marks and designs, as may be issued by (1) BDO or (2) any other banks, business entity, corporation or any other form of organization with which BDO or UnionPay International has a valid agreement with respect to the use of either or both of the service marks of UnionPay.
- gg. "VISA" as used herein shall mean an authorized, unexpired card or any account bearing the VISA brand mark as may be amended by VISA from time to time, and in such other marks and designs, as may be issued by (1) BDO or (2) any other banks, business entity, corporation or any other form of organization with which BDO or VISA International has a valid agreement with respect to the use of either or both of the service marks of VISA.
- hh. "WeChat" as used herein shall refer to the digital wallet of Tenpay Payment Technology Co., Ltd.

The headings in this Agreement are inserted for convenience of reference only and shall not limit or affect the interpretation of the provisions hereof.

## 2. ACCEPTANCE OF CARDS/ACCOUNTS

- a. Upon the effectivity of this Agreement and during the term hereof, the MERCHANT shall honor without any discrimination, all valid and unexpired Cards/Accounts presented by bonafide Card/Account Holders in the purchase of goods and/or services. Unless required by BDO, there should be no minimum or maximum amount requirement for every Payment Transaction. MERCHANT shall neither require nor post signs indicating that there is a minimum or maximum amount for payment transactions or discriminate against particular type of Cards/Accounts.
- b. Cards/Accounts are non-transferable and must be presented only by bonafide Card/Account Holders.
- c. The MERCHANT shall honor the Card/Account only after it has determined and been satisfied that:
  - c.1. The bearer of the Card/Account is the Card/Account Holder to whom the Card/Account has been issued. In case of doubt, additional identification documents should be required from the Card/Account Holder to establish positive identification and determine the authenticity of the signature, as applicable.
  - c.2. The Card is not yet expired and is within valid dates.
  - c.3. As applicable, the signature affixed by the Card/Account Holder in the presence of the personnel of the MERCHANT is the same as the specimen signature appearing on the Signature Panel at the back of the Card.
  - c.4. The Card is not in any way mutilated, defaced nor bear any markings of alteration/tampering in the embossed/printed characters, numbers, signature panel or data on the magnetic stripe.
  - c.5. Completeness of the physical features of the Card and its design as described in the Merchant Operating Guide.
  - c.6. For ATM/Debit Card and UnionPay transactions, a Personal Identification Number ("PIN") has been properly entered by the Card/Account Holder in the BDO miniPOS to validate the transaction, except for some UnionPay Debit cards that does not require PIN entry by the Card/Account Holder.
- d. Each Payment Transaction shall be accomplished and generated strictly in accordance with the Merchant Operating Guide provided by BDO to Merchant.
- e. All Payment Transactions shall require authorization. However, transaction authorization shall refer only to the verification on the validity and expiry date of the Card and availability of the credit limit at the time of the payment transaction. MERCHANT acknowledges that a transaction approval does not warrant the authenticity of the transaction or the identity of the Card/Account Holder, the confirmation of which shall be the sole responsibility and accountability of MERCHANT.
- f. In case BDO miniPOS is down, MERCHANT shall secure approval for the Payment Transaction via Voice Authorization, or from such other approving authority as may be notified from time to time. This procedure is applicable to Card/Digital Brands except for ATM/Debit transaction which shall not proceed in case the BDO miniPOS is down.
- g. MERCHANT shall only present records of valid Payment Transactions to BDO from the sale of its goods and/or services. The MERCHANT shall not present records of Payment Transactions that it knows or should have known to be fraudulent or invalid or processed to obtain undue advantage to BDO or to obtain cash advance from BDO or not authorized by the Card/Account Holder, by the BDO miniPOS or Authorization, as the case maybe, and in this connection, MERCHANT shall be responsible for the actions of its employees/representatives. MERCHANT shall extend full cooperation in any investigation conducted by BDO in connection with fraudulent and/or unauthorized and/or invalid Payment Transactions.

## 3. SURCHARGING PROHIBITION

The selling price of goods and/or services sold/rendered by the MERCHANT to the Card/Account Holder shall be at the regular selling price to cash customers at the price indicated in the price tag for such goods and services, without adding-on any extra percentage of any kind to the Card/Account Holder transactions. However, with respect to items on "sale" during bargain/discount sale when the prices of goods and/or services are substantially reduced, the MERCHANT, except for ATM/Debit Payment transactions, has the option to (1) charge the regular price for such item/s or (2) provide the Card/Account Holder a different discount or (3) exclude the "sale" items from the credit facility. Provided however, that in exercising any of the enumerated options, it is agreed that the MERCHANT shall first disclose and explain the same to the Card/Account Holder. For ATM/Debit Payment transactions, MERCHANT shall give full discount for all purchases on sale items.

In the event that Card/Account Holder is able to pay surcharge, extra charge or additional charge imposed by the MERCHANT in violation of the foregoing paragraph, MERCHANT shall immediately pay back the surcharge, extra charge or additional charge paid by the Card/Account Holder to BDO or the Issuer, and the latter shall immediately credit said amount to Card/Account Holder's Statement of Account, or immediately reimburse the Card/Account Holder in case of ATM/Debit Payment Transaction.

## 4. COMPLETION OF A PAYMENT TRANSACTION

- a. Except otherwise provided in this Agreement, MERCHANT must always secure prior Authorization by whatever means applicable from BDO. MERCHANT represents and warrants to BDO that all Payment Transactions submitted to and accepted by BDO:
  - a.1. represent bonafide sales of merchandise and/or services in the usual course of business of MERCHANT as disclosed to BDO, and for the total price;
  - a.2. are not/will not be defective, illegal or otherwise impair the validity or enforceability of collection thereof from the Card/Account Holder who made the transaction; and
  - a.3. shall consistently be for the full amount of the transaction where there is full or complete delivery of goods and/or services and shall not be processed in parts constituting Split Sale unless the transaction is covered under the conditions stated in Section 4.(c.2).
- b. MERCHANT assumes full responsibility for any goods and/or services returned and/or questioned by Card/Account Holder as well as for the accuracy and correctness of any data or information. MERCHANT agrees to indemnify and hold the Issuer and/or BDO free and harmless from any claims made by way of defense, offset, counterclaim or affirmative action by the Card/Account Holder.
- c. MERCHANT shall not complete a transaction when only part of the amount due except under the following circumstances:
  - c.1. when the balance of the amount of sale is paid by the Card/Account Holder in cash, check or any of the various payments at the time of transaction;
  - c.2. in non-immediate delivery transaction whereby the goods and/or services is to be delivered or performed at a later date where payment transaction represents the "initial" or "down payment" and another payment transaction represents the "balance" or "final payment", the latter to be submitted by the MERCHANT to BDO upon delivery of goods and/or completion of service. The payment transaction representing the "balance" or "final payment" shall not be presented to BDO until the goods are delivered or services performed. Separate approval is required for "initial" or "down payment" and "balance" or "final payment". Payment transaction approval on the "initial" or "down payment" does not guarantee subsequent approval on the "balance" or "final payment" nor shall it bind or obligate BDO to thereafter authorize the "balance" or "final payment" of the payment transaction.

## 5. MERCHANT PORTAL and MERCHANT ONLINE REPORTING SYSTEM (MORS)

- a. The Merchant Portal is a web monitoring tool available to the MERCHANT that allows MERCHANT to monitor the transactions processed via the BDO miniPOS and access soft copies of the transaction receipts. The MERCHANT will be responsible for the security of information stored in the Merchant Portal, and for the users who are authorized by MERCHANT to access the Merchant Portal. The MERCHANT will be responsible in providing their clients with hard copies of transaction receipt when requested.
- b. The MERCHANT is required to enroll in the BDO Merchant Online Reporting System (MORS) to receive prooflist and credit notice regarding the Payment Transactions processed. Subject to the terms set forth below, all account monitoring will be done by the MERCHANT via MORS or other tools related to its accounts.
  - b.1. MERCHANT undertakes to disseminate these terms and conditions to each and every MORS User nominated to access the BDO MORS.
  - b.2. MERCHANT shall immediately change the default password/s upon receipt from BDO and maintain a new password/s, personally defined by the nominated users and kept in utmost secrecy and confidentiality.
  - b.3. MERCHANT and nominated MORS users shall be liable and/ or responsible for any unauthorized use thereof, and expressly waive the right for any exemption thereto.
  - b.4. The unique User ID and default password to use the BDO MORS shall be assigned to each nominated MORS user.

The MORS user/s must keep all information obtained from the BDO MORS confidential and assume/s full responsibility for unauthorized downloading and/ or information dissemination.

  - b.5. MERCHANT will advise BDO should there be problem(s) in changing the password(s). In the absence of any advice, it is assumed that change in my password(s) has been successful.
  - b.6. In case the user ID and/or initial password to be issued by BDO are not received after three (3) banking days from enrollment or request, MERCHANT will immediately inform BDO.
  - b.7. MERCHANT fully understands that the nominated MORS User will have full access to MERCHANT's transaction reports which may contain vital information of the business.
  - b.8. MERCHANT will inform BDO of any employee/s enrolled in the BDO MORS who may have resigned or is no longer connected with the MERCHANT for the deletion of his/ her access in the BDO MORS.
  - b.9. MERCHANT will inform BDO of any change in the users, and/ or any information related to MORS.
  - b.10. MERCHANT understands that BDO may conduct maintenance activities on the BDO MORS which may result in the inaccessibility of the BDO MORS for a period of time.
  - b.11. MERCHANT understands that the BDO MORS shall contain updated reports and information as it becomes available. The uploading of the reports and information in the BDO MORS is without prejudice to the right of BDO to effect correction and conduct reconciliation.
  - b.12. MERCHANT agrees that the website where the BDO MORS is maintained contains materials which are owned and licensed by BDO. These materials include, but not limited to, the BDO logo, design, layout and graphics. Reproduction or use of the said materials in any format, digital or otherwise, for purpose of promotion, publication, display or distribution outside

b.13. The design and content of the website where the BDO MORS is maintained is subject to change without prior notice.

## 6. MERCHANT DISCOUNT RATE / REIMBURSEMENT

- a. BDO undertakes to pay MERCHANT for all transactions validly generated in connection with Payment Transaction, at the discount rate determined by BDO and communicated to the MERCHANT ("Merchant Discount Rate"). MERCHANT shall be reimbursed net of the discount rate including applicable taxes in accordance with the mode of reimbursement specified by the MERCHANT in Section 21 hereof.
- b. In order to facilitate the transfer of payments, debits between the Parties hereto, including but not limited to the settlement by BDO of the Net Deposits of MERCHANT, MERCHANT can either request BDO to (i) deposit the full amount of the Net Deposit of MERCHANT to the current or savings account ("CA/SA") of the MERCHANT with BDO/BDO NETWORK BANK, or (ii) issue a Cash Card, where the Net Deposit of Merchant shall be credited, as indicated by MERCHANT in Section 21. The CA/SA and Cash Card, whichever is applicable, shall be referred to as the Designated Account of the MERCHANT.

If MERCHANT wishes to be reimbursed via credit to CA/SA, the MERCHANT shall, for this purpose, open and maintain with any BDO/BDO NETWORK BANK branch, a CA/SA to which the amount to be reimbursed net of stipulated discount rate including applicable taxes, refunds, chargeback, adjustments/reversals or penalties shall be credited. MERCHANT may however, use any existing CA/SA with BDO/BDO NETWORK BANK to serve as the Designated Account, by duly notifying BDO thereof. The opening, maintenance and operation of the Designated Account shall be subject to the applicable rules and regulations of BDO/BDO NETWORK BANK in so far as not inconsistent with the provisions of this Agreement.

Within five (5) Banking Days from receipt or credit of payment, MERCHANT should communicate to BDO if any discrepancy is noted in the amount credited to Designated Account against the batch totals of the end-of-day settlement report of the MERCHANT considering applicable discount rate and taxes, otherwise, the payment shall be deemed correct and final.

- c. MERCHANT shall settle all Payment Transactions daily, otherwise, any cost resulting from such failure will be borne by the MERCHANT. BDO shall not be obliged to reimburse transactions which have not been immediately settled or submitted to BDO or categorized by the Card/Digital brands as Late Presentment. Settlement shall be based on BDO system generated report and BDO auto-transfer report.

Reconciliation of accounts may be allowed by BDO on a case-to-case basis, subject to written request of MERCHANT. Any claim of MERCHANT for discrepancy between the amount credited to the Designated Account and the total sales generated at the BDO miniPOS on the other hand, shall be presented in writing by MERCHANT to BDO and substantiated by MERCHANT with proof satisfactory to BDO within five (5) Banking Days from receipt or credit of payment. Otherwise, the amount credited to the Designated Account of the MERCHANT as reflected in the abovementioned reports, shall be deemed conclusive upon MERCHANT. The same shall also be applied to claim of MERCHANT for unpaid transactions which are included in the Settlement but remain to be unpaid by BDO.

In case BDO needs to debit the Designated Account of the MERCHANT to adjust earlier credit, MERCHANT hereby irrevocably grants such authority to BDO with BDO providing written notice to MERCHANT of adjustment made.

- d. MERCHANT hereby irrevocably authorizes BDO to put on hold and apply the Designated Account and the funds therein, the Net Deposit of MERCHANT, any check payments or any account, money, securities, value stored in the Cash Card and things of value which are now or may hereafter be in the hands of BDO or any of its subsidiaries, affiliates or parent company to the extent of the full amount of suspicious purchases and/or transactions, disputed transactions, fraudulent/unauthorized transactions, penalties imposed in violation of Card/Digital Brand rules, or other liabilities of MERCHANT to BDO arising from this Agreement, whether existing or anticipated, by way of security or payment. For the foregoing purposes, the MERCHANT hereby waives in favor of BDO his/her/its rights under R.A. No. 1405 (The Bank Secrecy Act of 1955), as amended, Section 55 of R.A. No. 8791 (The General Banking Law of 2000), as amended, R.A. No. 6426 (Foreign Currency Deposit Act of the Philippines of 1974), as amended, and other laws/regulations relative to the confidentiality or secrecy of bank deposits/accounts, placements, instruments and similar or related assets in the custody of BDO or any of its subsidiaries or affiliates or parent company.

This provision shall survive the termination of the Agreement.

## 7. TAXES

All taxes collected or levied, however designated, which may be imposed by the local or national government, due or incurred as an incident to or as a consequence in the execution and performance of this Agreement and payment of Net Deposit of MERCHANT hereunder shall be solely for the account of the MERCHANT.

As mandated by the Bureau of Internal Revenue (BIR), BDO shall withhold 0.5%, or such other withholding rate as may be imposed by the BIR from the total reimbursements of the MERCHANT. A Creditable Withholding Tax Certificate will be issued by BDO to the MERCHANT on a regular basis.

## 8. DISPUTED TRANSACTIONS

BDO shall refer all disputed Payment Transaction/s to the MERCHANT and the latter undertakes to resolve the issue with the Card/Account Holder within a period of five (5) Banking Days from receipt of receipt of advice from BDO or the Card/Account Holder dispute or chargeback as the case may be.

Simultaneously with MERCHANT's coordination with Card/Account Holder regarding a particular dispute, MERCHANT shall furnish BDO copies of its communications with the Card/Account Holder Holder and such other necessary documents as determined by BDO, e.g. order forms, to enable BDO to properly document its case file on the Card/Account Holder with respect to the disputed transaction/s.

BDO agrees to entertain complaints provided that such complaint/s was/were received within thirty (30) calendar days from transaction date. BDO reserves the right to change the period with prior written notice to the MERCHANT.

## 9. CHARGEBACK

- a. MERCHANT agrees that BDO shall have the right to Chargeback any amount which has already been paid for by BDO in any of the following instances:
  - a.1. In case of MERCHANT's failure to comply with any of its obligations under this Agreement,
  - a.2. In case of any Card/Account Holder dispute with respect to the transaction which is not resolved within five (5) banking days period referred to in Section 8,
  - a.3. MERCHANT refuses to pay any outstanding obligation to BDO such as, but not limited to, obligation arising from imposition of penalties or damaged/lost BDO miniPOS, or
  - a.4. Failure of MERCHANT to state accurate transaction details on the merchant initiated refund request which resulted to financial losses to BDO.

BDO shall issue the corresponding Chargeback advice to MERCHANT, and MERCHANT agrees to receive said Chargeback which BDO shall deduct against future payments of billings, if any, or otherwise billed to MERCHANT in accordance with paragraph b. below.

- b. Upon issuance of the Chargeback advice, BDO will deduct the Chargeback amount from the Net Deposit of the MERCHANT. If there is no Net Deposit due to the MERCHANT, MERCHANT irrevocably authorizes BDO to deduct/offset the Chargeback amount due without need of demand or notice or any further act or deed, against the Designated Account, if any, check payments or any account, money, securities, value stored in the Cash Card and things of value which are now or may hereafter be in the hands of BDO or any of its subsidiaries or affiliates or parent company, without prejudice to BDO's right to pursue collection of the Chargeback amount from MERCHANT by other legal means in case deductions/offsetting is not possible. For the foregoing purposes, the MERCHANT hereby waives in favor of BDO his/her/its rights under R.A. No. 1405 (The Bank Secrecy Act of 1955), as amended, Section 55 of R.A. No. 8791 (The General Banking Law of 2000), as amended, R.A. No. 6426 (Foreign Currency Deposit Act of the Philippines of 1974), as amended, and other laws/regulations relative to the confidentiality or secrecy of bank deposits/accounts, placements, instruments and similar or related assets in the custody of BDO or any of its subsidiaries or affiliates or parent company.

- c. If MERCHANT fails to make timely payment of the Chargeback, thereby resulting in Card/Account Holder's billing dispute, inquiry or imposition of finance charge and/or late payment charge which would not have been imposed otherwise, MERCHANT shall reimburse BDO for any expense and charges thereby incurred, including but not limited to the amount of any such refund.
- d. Failure of MERCHANT to settle all transactions daily resulting in chargeback will be for the full account of the MERCHANT. Any Chargeback amount not paid or settled when due shall be subject to penalty interest at the prevailing market rate at the time the Chargeback amount is due, as determined by BDO.
- e. For closed or inactive merchants who opt to pay the outstanding Chargeback, the Chargeback amount should be inclusive of the tax previously deducted by BDO.

The provision on Chargeback shall survive the termination of this Agreement.

## 10. THIRD PARTY SERVICES

The MERCHANT may, upon prior written consent of BDO, which consent shall not be unreasonably withheld, use special services by a third party to assist them in processing transactions, including but not limited to sales, settlements, accounting functions or provide screening services for the MERCHANT. If MERCHANT elects to use a third party, it undertakes that said third party shall comply with the terms of this Agreement. MERCHANT shall assume full responsibility and liability and hold BDO free and harmless against any loss, injury or damage which may be suffered by the latter or any other third party for any failure of that third party to comply with the provisions of this Agreement. BDO will not be responsible for any losses or additional fees incurred by the MERCHANT as a result of disaffiliation due to non-compliance of their third party agent with the provisions of this Agreement.

If MERCHANT elects to use a third party, it undertakes that said third party shall comply with the terms of this Agreement, rules and regulations of BDO, Card/Digital brands, Payment Card Industry Data Security Standard (PCI DSS) and Payment Application Data Security Standard (PA DSS), government rules and regulations, whether provided for in this Agreement or should have been known to the MERCHANT.

## 11. MERCHANT SUPPLIES/MATERIALS

- a. BDO shall, at its own expense, provide the MERCHANT upon request with supplies and marketing/promotional materials, which shall be used exclusively in connection with the card purchases, as applicable, contemplated under this Agreement.
- b. The MERCHANT will prominently display BDO signages, marketing/promotional materials provided by BDO to inform the public that Cards/Accounts will be honored and accepted at the MERCHANT's place/s of business, and when the BDO miniPOS is defective or down due to network issues. Such displayed Card mark or logotype must be at least of the dimension of and as prominent as any other card program mark or logotype displayed. The cost of these materials will be shouldered by BDO.

## 12. BDO miniPOS

Subject to the payment of the cost of BDO miniPOS unit/s, the MERCHANT shall receive the BDO miniPOS unit/s and corresponding Manual for use from BDO which shall be used by the MERCHANT to process Payment Transactions. All transactions processed thru the BDO miniPOS shall be governed by the rules and regulations of the Card/Digital Brands. Additional cards/digital brands may be accepted without executing a separate agreement unless otherwise required.

The MERCHANT shall have the sole and exclusive responsibility to protect and secure the BDO miniPOS together with all its peripherals. Merchant, at its own cost and expense, shall be solely

responsible for reprogramming and maintaining the working condition of the BDO miniPOS. The MERCHANT shall make sure that only its authorized representative, supplier of the BDO miniPOS, authorized personnel of BDO or its service providers will have access to the BDO miniPOS. If needed, the MERCHANT will coordinate all repairs, replacement/s and technical concerns directly with the supplier of the BDO miniPOS as indicated in the Manual or Merchant Operating Guide. Warranty period for the BDO miniPOS is six (6) months from delivery of the Terminal.

MERCHANT shall be responsible for any loss or damage arising from the unauthorized access to the Terminals.

The MERCHANT shall be bound by the acts or omissions of persons or individuals who carry and use the BDO miniPOS within and/or outside the premises of the MERCHANT. For this purpose, it is conclusively presumed that whoever caused use of the BDO miniPOS is authorized by the MERCHANT. Thus, in case a Card/Account Holder disputes a transaction carried out in this manner, the MERCHANT shall be liable for the Chargeback.

### 13. INSTALLMENT PLAN

MERCHANT hereby agrees to honor purchase of goods / services under the Installment Plan of BDO and to be bound by the rules governing the Installment Plan as specified herein which may be modified and amended by BDO from time to time, to wit:

- a. MERCHANT shall allow Card/Account Holders to purchase merchandise/service under the BDO Installment Payment Plan.
- b. MERCHANT shall observe all the standard and required procedures for payment acceptance as provided under the Agreement.
- c. Minimum amount per transaction is P 3,000.00 or such other amount as may be required by BDO and notified in writing to MERCHANT.
- d. MERCHANT shall secure prior approval from BDO for the amount being charged, the payment terms selected by the Card/Account Holder, the applicable factor rate to be used, and the monthly amortization to be paid by the Card/Account Holder. Approval must be secured via the BDO MiniBDO miniPOS or when the terminal is down, thru Voice Authorization.
- e. BDO shall pay the MERCHANT in full or net of discount rate, whichever is applicable and subject to applicable taxes, within the agreed payment period for all valid and approved purchases made by the Card/Account Holder from the MERCHANT under the BDO Installment Payment Plan.
- f. BDO shall have the sole and exclusive option to reject any Installment payment transaction presented by MERCHANT under any of the following circumstances:
  - f.1. If the purchase was made outside the validity indicated on the Card.
  - f.2. If the signature of Card/Account Holder differs from the specimen signature on the Card.
  - f.3. If purchased goods and/or services were not completely/fully delivered except mentioned in Section 4.(c.2).
- g. All rights of MERCHANT arising from the sale of the goods/services contracted are hereby assigned to BDO.
- h. MERCHANT shall be automatically included in the yearly BDO Buy Now Pay Later Installment Promotions. BDO shall send a written notice to the MERCHANT to advise MERCHANT of the promotional period and rate/s (as applicable) for the said promotion from time to time. MERCHANT may opt not to participate in the BDO Buy Now Pay Later Installment Promotions by giving written notice to BDO.

The foregoing conditions in this Section 13 shall govern only the BDO Installment Payment Plan and shall not apply to the other transactions and purchases not made on installment basis.

### 14. DISCONTINUANCE OF MERCHANT'S BUSINESS

- a. In case MERCHANT decides to dispose of or discontinue its business, MERCHANT shall give at least thirty (30) calendar days prior written notice thereof to BDO. BDO hereby reserves the right, at any time, to terminate this Agreement for this reason.
- b. In the event that the MERCHANT cannot operate its business due to reasons such as, but not limited to, renovation or relocation, suspension of business, MERCHANT shall immediately notify BDO in writing of such fact. Any loss or damage arising from failure of MERCHANT (for whatever reason) to advise BDO shall be borne by MERCHANT.

### 15. REVIEW OF USAGE

- a. The usage of Cards at MERCHANT's establishment/s shall be subject to review by BDO, at any time, in terms of volume. BDO reserves the right to impose a required minimum volume of Card usage and/or adjust the Merchant Discount Rate based on the actual volume of Card usage at MERCHANT, and MERCHANT agrees to promptly comply with such requirement/adjustment.
- b. BDO reserves the right to deactivate any Merchant IDs with no activity or not meeting the required volume imposed by BDO for any period as may be solely determined by BDO. BDO shall send written notice to the MERCHANT either before or after the disaffiliation of the Merchant IDs.

### 16. MERCHANT CAMPAIGNS

Throughout the term of this Agreement, MERCHANT may create campaigns, subject to BDO's prior written approval, to boost usage of Cards/Accounts. To support this undertaking, BDO may share certain information of BDO Card/Account Holders, to the extent permitted by law, to MERCHANT for purposes of offering the products or services of the MERCHANT.

Whenever MERCHANT rolls out campaigns to offer its products or services pursuant to this provision, MERCHANT shall provide BDO the details of the campaign which shall include, among others, the following: name of the campaign and product/service description, campaign execution and accredited third party service providers required to support the campaigns, and the campaign period. The details of the campaign shall be in a separate document which shall, upon execution by the Parties, form part of this Agreement.

BDO and MERCHANT agree that the sales transactions, net of applicable Merchant Discount Rate, subsidy, taxes or fees to be agreed upon by BDO and MERCHANT on a per program basis, generated from the campaigns shall be reimbursed to the MERCHANT in accordance with the payment instruction stipulated in the separate document as part of the campaign details.

BDO shall not be liable in case of failure of MERCHANT to fulfill its obligations under its campaigns.

### 17. ACCOUNT DATA SECURITY

Should storage of Card/Account Holder information be required by the MERCHANT for business, legal and/or regulatory purposes, the MERCHANT shall only store such specific information as is expressly required and should establish a data retention security and disposal policy and procedure.

The MERCHANT shall securely safekeep the record of transactions and other similar documents, and limit access only to its authorized personnel.

Under no circumstances shall the MERCHANT store sensitive Card authentication data prior to, during, or subsequent to Authorization, even if such sensitive Card authentication data is encrypted. Sensitive Card authentication data shall include but not limited to:

- a. any data from the magnetic stripe or chip of the Card;
- b. the Card validation code which is the three-digit code found at the back of the Card such as but not limited to the CVV2, CVC2 and CVN2; and
- c. the Personal Identification Number (PIN)

The MERCHANT must comply with PCI-DSS (Payment Card Industry Data Security Standard) and PA-DSS (Payment Application Data Security Standard) at its own cost.

### 18. PROHIBITIONS / RESTRICTED SERVICES

- a. The following products and services and other products and services that constitute, relate to or are ancillary to such products and services, in whole or in part, are not allowed to be offered and sold, and are defined by BDO as "Restricted Service":
  - a.1. Pornographic or illicit material or activities of any type;
  - a.2. Adult-toy materials that BDO may deem inappropriate;
  - a.3. Sex toys and the like;
  - a.4. Prescription drugs and medicines;
  - a.5. Escort services;
  - a.6. Gambling operations, including "virtual casinos", "gaming transactions" and "online casinos";
  - a.7. Firearms, ammunitions, and explosives;
  - a.8. Merchant engages in "receipt of payment in advance" operation module;
  - a.9. Pyramid selling or multi-levels commission earning structure;
  - a.10. Timeshares and other investment schemes;
  - a.11. Payment and money transfer portals;
  - a.12. Inbound or outbound telemarketing;
  - a.13. Goods, products, services or distributions prohibited by applicable law or the rules, regulations or directive of the Card/Digital brands or
  - a.14. Goods, products, services or distributions of any class or type, whether or not similar to those specified above, which upon notice by BDO to MERCHANT, are identified by BDO (in its sole discretion) to be Restricted Service;
  - a.15. Goods or services which are similar to or compete with any of the goods or services offered by BDO;
  - a.16. Such other products or services which BDO may inform MERCHANT in writing.

- b. The products/services offered should not deviate from the list of products/services originally approved by BDO.
- c. Should the MERCHANT, for marketing considerations, desire to increase / diversify their product/service, MERCHANT should seek approval from BDO prior to offering the products or services.
- d. BDO reserves the right to approve or disapprove the products/services that MERCHANT wants to include and reject any product/service that BDO may identify as being against its policy to offer to Card/Account Holders or is considered a high risk product/service or is otherwise a Restricted Service.
- e. MERCHANT acknowledges and represents in favor of BDO that it is aware that UnionPay International has certain prohibited Merchant categories as enumerated below and MERCHANT further acknowledges that UnionPay International may amend the list from time to time. In the event that such China UnionPay prohibited merchant categories are amended by Union Pay, for any reason whatsoever, such as, due to the promulgation of new laws, regulations or rules of amendment of existing ones in People's Republic of China and/or the Philippines, BDO has the sole absolute option to immediately terminate, as applicable, the services relating to UnionPay International without need of notice to MERCHANT.

#### Merchant Categories Prohibited by UnionPay International

- e.1. Agricultural cooperatives;
- e.2. Wire transfers and money orders;
- e.3. Financial institutions – merchandise and services;
- e.4. Non-financial institutions - foreign currency, money orders, (not wire transfer), scrip and traveler's checks;
- e.5. Securities – brokers & dealers; and
- e.6. Betting, including lottery tickets, casino gaming chips, off track betting, and wagers at race tracks

#### 19. COMPLIANCE WITH BRANDS REPORTING AND RULES

- a. Brands Reporting
  - a.1. MERCHANT acknowledges that BDO is required to report and will report and provide information to the Card/Digital Brands regarding the MERCHANT, including but not limited to business name and its principals, during the term of this Agreement and when this Agreement is terminated by BDO for reasons specified in this Agreement. MERCHANT hereby expressly consents to such disclosure of MERCHANT information to the Card/Digital Brands and agrees to hold BDO free and harmless from and to reimburse BDO for any claims, suits, action, damages or loss may be suffered by BDO arising out of BDO's disclosure of such MERCHANT information.
  - a.2. Further, MERCHANT consents to such reporting by BDO to Card/Digital Brands, any card associations and networks which may require such reporting. MERCHANT waives and will hold BDO harmless from claims that MERCHANT may raise as a result of such reporting.
- b. Rules
  - b.1. MERCHANT undertakes to maintain continuous compliance with the provisions of this Agreement, and rules and regulations of BDO, Visa International, MasterCard International, American Express International, JCB International, UnionPay International, Diners Club International, Discover, WeChat, Alipay, Gcash, GrabPay, Bancnet and any other card/digital brand to be added in the future, PCI DSS and PA DSS, whether provided for in this Agreement or issued or made known to the MERCHANT from time to time during the effectiveness of this Agreement.
  - b.2. In case of violation of any of the provision of this Agreement, BDO is authorized to impose and collect a penalty equivalent to whichever is the highest of: (a) the penalty imposed by the Card/Digital brands plus fifteen percent (15%) of the Card/Digital Brand penalty, (b) the transaction involved plus fifteen percent (15%) of the amount of the transaction; or (c) US Dollars: One Hundred Thousand (\$100,000.00).

#### 20. RATES

##### a. Merchant Discount Rate/Other Rates

Upon effectiveness of this Agreement, BDO shall notify the MERCHANT in writing the applicable Merchant Discount Rates (MDR). The MERCHANT shall strictly keep the MDR confidential and shall not disclose the same to any third party. The MDR shall be applied throughout the term of this Agreement unless amended or changed by BDO.

MERCHANT acknowledges that the Merchant Discount Rate to be imposed on Payment transactions shall depend on the type of Card recognized and on the manner processed by BDO.

##### b. Card/Account Installment Rates/Terms

The following Subsidy and Regular Installment Rates are applicable to BDO Installment Payment Plan.

Type	Rates	Term						
		3 months	6 months	9 months	12 months	18 months	24 months	36 months
Regular Installment	Factor Rate	0.353338	0.184669	0.128814	0.100838	0.075561	0.063170	0.050281
	Add-on Rate	2.00%	1.80%	1.77%	1.75%	2.00%	2.15%	2.25%
Zero Percent Installment	Subsidy Rate	3.00%	5.50%	9.00%	11.00%	16.00%	20.00%	34.00%

#### 21. MODE OF REIMBURSEMENT (Please mark appropriate item)

- Credit to BDO CA/SA No. \_\_\_\_\_ at \_\_\_\_\_ branch
- Credit to BDO NETWORK BANK CA/SA No. \_\_\_\_\_ at \_\_\_\_\_ branch

To credit Net Deposit of Merchant to a BDO NETWORK BANK CA/SA, MERCHANT acknowledges that he/she/it has read and agrees to the terms of the Authorization and Waiver Form herein attached as Annex A and made an integral part of this Agreement.

- Issuance of a BDO Cash Card.

To receive Net Deposit of Merchant via BDO Cash Card, MERCHANT authorizes BDO to open a BDO Cash Card on its behalf. The BDO Cash Card shall be delivered to the designated address of the MERCHANT and the Net Deposit of the Merchant shall thereafter be credited to the BDO Cash Card account of the MERCHANT. MERCHANT acknowledges that he/she/it has read and agrees to the Terms and Conditions Governing the Issuance and Use of BDO Cash Card attached as Annex B and made an integral part of this Agreement.

Mode of reimbursement is subject to change upon request of MERCHANT.

#### 22. CONFIDENTIALITY

MERCHANT shall keep strictly confidential the terms of the Agreement, as well as any information pertaining to Card/Account Holder and/or his transactions, and/or relating to BDO's Card business, and shall not disclose the same to any third party without the prior written consent of BDO.

All information or materials obtained by the MERCHANT connected to, or related with the preparation, perfection and performance of this Agreement shall be deemed confidential information and shall be treated as such by the MERCHANT. MERCHANT shall not use such information or materials for purposes or in a manner not otherwise germane to the purpose of this Agreement.

BDO reserves the right to share information pertaining to the MERCHANT for purposes germane to this Agreement or for purposes of offering bank products or launching programs with third parties or for any other purpose similar to the foregoing.

These provisions shall survive the termination of this Agreement.

#### 23. DATA PRIVACY PROVISIONS

In compliance with the requirements of the Data Privacy Act (DPA), MERCHANT acknowledges that he/she/it has read and agrees to the terms set forth in the BDO's Data Sharing Agreement herein attached as Annex C and made an integral part of this Agreement.

#### 24. AUTHORITIES GRANTED / INDEMNIFICATION

- a. The authorities granted by MERCHANT to BDO under this Agreement are coupled with interest and shall remain irrevocable until all obligations of MERCHANT to BDO under this Agreement are fully settled.
- b. MERCHANT agrees to indemnify and hold BDO, its stockholders, directors, subsidiaries, affiliates, officers and employees, free and harmless from any and all losses, damages or liabilities, of whatever kind and nature, which BDO may suffer in connection with this Agreement for causes attributable to the fault or negligence of the MERCHANT and/or its agents or employees including third party service providers of MERCHANT, such as, but not limited to non-compliance with PCI DSS, PA DSS and Card/Digital Brand rules.
- c. MERCHANT hereby agrees to indemnify and render BDO, its directors, officers, employees and agents and assigns free and harmless from and against any claim, cause of action, suit, liability, loss or damage of whatever nature which may arise as a result of, or in connection with the use and availment, by the MERCHANT of the services/facilities of BDO, and the implementation of the facilities, and specifically, in the following instances:
  - c.1. Disruption, failure, error or delay relating to or in connection with the Cards/Accounts, the implementation of transactions, transmission and/or receipt of messages, communications, materials, correspondences and/or information via the POS which is due to circumstances beyond the control of BDO, fortuitous events such as but not limited to prolonged power outages, breakdown in computers and communication facilities, computer-related errors, problems related to computer hardware and/or software (including bugs and viruses), typhoons, floods, public disturbances and calamities and other similar or related cases, and/or which are attributable to the services provided by any service provider or information service provider;
  - c.2. Fraudulent access or utilization of the BDO miniPOS and/or fraudulent or unauthorized Cards/Accounts transactions, due to theft or unauthorized disclosure of PIN, Cards skimming,

or violation or non-compliance with other security requirements as set forth in this Agreement, with or without the MERCHANT's participation, knowledge or consent;

- c.3. Inaccurate, incomplete or delayed information received by the MERCHANT due to disruption or failure of any communication facilities used for the POS ;
- c.4. Delay and/or failure to implement or carry out transactions on the MERCHANT Designated Account and/or the Debit Card accounts of the Card/Account Holders due to garnishment, execution, hold-out and similar restrictions on the said Account/s; and
- c.5. The MERCHANT's inability, delay and/or failure to comply with this Agreement.

The above provisions shall survive the termination or expiration of this Agreement.

## 25. OWNERSHIP

BDO retains exclusive rights and ownership over the business model, trademarks, associated logos, business applications and processes, revenue of the Cards and any and all materials or supplies which may be provided to MERCHANT pursuant to this Agreement. MERCHANT shall take all reasonable measures to protect BDO's said rights/ownership. This provision shall survive the termination of this Agreement.

## 26. RELATIONSHIP

No relationship of principal and agent is established by this Agreement between BDO and MERCHANT. MERCHANT shall conduct its activities under this Agreement as its own principal and not as agent of BDO. Neither shall this Agreement be construed to create a relationship of partnership or joint venture between BDO and MERCHANT.

As such, in the event that MERCHANT cannot fulfill its obligations to third person/s under this Agreement, MERCHANT shall hold BDO free and harmless from any and all liabilities, suits or actions of whatever nature, which said third person/s may pursue against MERCHANT, unless the same is caused or due to the willful misconduct or gross negligence of BDO.

## 27. CLOSURE/GARNISHMENT OF THE DESIGNATED ACCOUNT

In case of closure of the Designated Account for any reason whatsoever, the total sales amount for settlement shall be settled via BDO Manager's Check or Cashier's Check in favor of MERCHANT, or by any other means as may be lawfully requested by MERCHANT.

In the event the outstanding value of the Designated Account become/s subject of a notice of garnishment/hold-out, BDO shall comply with such notice without incurring any liability thereof, unless it is prevented from doing so by a court order or legal process.

## 28. EFFECTIVITY AND TERMINATION

This Agreement shall be effective upon affiliation of the MERCHANT and will remain to be effective unless otherwise terminated by either party in accordance with the terms of this Agreement, or by mutual consent of the Parties in writing.

- a. BDO may terminate the Merchant Agreement effective immediately upon written notice to MERCHANT, in the event that MERCHANT:

- a.1. enters into a merger, consolidation with another entity and MERCHANT is not the surviving entity,
- a.2. becomes insolvent or bankrupt, discontinues business or adopts a resolution providing for dissolution or liquidation.
- b. BDO may terminate this Agreement effective immediately without need for prior written notice to MERCHANT, in case MERCHANT fails to comply/meet the BDO required minimum volume of Card/Account usage at MERCHANT's establishments based on BDO's review, and/or in case in BDO's determination, there exists other reasonable ground/s to do so which warrants the immediate termination of the Agreement such as, but not limited to:
  - b.1. excessive chargeback, penalties,
  - b.2. disputed Card/Account Holder transactions, fraud or counterfeit Payment transactions,
  - b.3. non-compliance by MERCHANT with rules of Card/Digital brands, Payment Card Industry's Data Security Standards (PCI DSS), and Payment Application Data Security Standards (PADSS);
  - b.4. when mandated by Visa, MasterCard International, JCB International, American Express, UnionPay International, Diners Club, Discover, Bancnet, WeChat, Alipay, GCash, GrabPay or other Card/Digital brands; or
  - b.5. breach of the Merchant Agreement by MERCHANT.
  - b.6. non-compliance with the Manual and Merchant Operating Guide, rules and regulations of BDO and lawful mandates of BDO.
  - b.7. non-compliance with Philippine laws and regulations which relate to the performance of the services under this Agreement.
- c. Either party may terminate this Agreement without cause by giving the other party written notice of at least fifteen (15) calendar days prior to intended date of termination.

## 29. EFFECTS OF TERMINATION

Immediately upon termination or expiration of this Agreement: (i) MERCHANT shall return to BDO all materials, unused supplies; (ii) MERCHANT shall return to BDO or shall destroy in accordance with BDO's instruction, all materials pertaining to the Card/Account program, including but not limited to advertising materials and all copies of confidential information supplied to MERCHANT or to which MERCHANT may have gained access to under the terms of this Agreement. As applicable, MERCHANT shall remove all decals and signs from the premises immediately.

Upon termination or expiration of this Agreement or upon receipt of notice to terminate by either BDO or MERCHANT, BDO shall have the right to put on hold and apply the Designated Account and the funds therein, the Net Deposit of the MERCHANT, check payments or any account, money, securities and things of value which are now or may hereafter be in the hands of BDO or any of its subsidiaries, affiliates or parent company to the extent of the full amount of suspicious purchases or transactions, disputed transactions, fraudulent/unauthorized transactions, penalties imposed in violation of brand rules, or other liabilities of MERCHANT to BDO arising from this Agreement, whether existing or anticipated, as payment to BDO. The Designated Account and the funds therein, the Net Deposit of the MERCHANT, check payments or any account, money, securities and things of value which are now or may hereafter be in the hands of BDO or any of its subsidiaries, affiliates or parent company shall be put on hold until MERCHANT is cleared with its obligations with BDO. For the foregoing purposes, the MERCHANT hereby waives in favor of BDO his/her/its rights under R.A. No. 1405 (The Bank Secrecy Act of 1955), as amended, Section 55 of R.A. No. 8791 (The General Banking Law of 2000), as amended, R.A. No. 6426 (Foreign Currency Deposit Act of the Philippines of 1974), as amended, and other laws/regulations relative to the confidentiality or secrecy of bank deposits/accounts, placements, instruments and similar or related assets in the custody of BDO or any of its subsidiaries or affiliates or parent company.

All obligations incurred or existing including but not limited to all fees, fines and penalties that may be imposed by BDO against the MERCHANT as the case may be, and all rights vested or accrued under this Agreement shall survive the termination of this Agreement.

In case BDO is compelled to engage the services of counsel for the protection of its interests or enforcement of its rights under this Agreement, MERCHANT shall compensate the former attorney's fees equivalent to twenty five percent (25%) of the amount involved or claimed, aside from costs of collection and, in the proper case, costs of suit. The payment of Attorney's fees shall be in addition to the recovery of actual and other damages suffered by BDO.

## 30. SUSPENSION AND EFFECTS OF SUSPENSION

BDO may, at its sole discretion without immediately resorting to termination of the Agreement, suspend the performance of its services under this Agreement effective immediately upon written notice to the MERCHANT in the event there exists reasonable grounds, such as, but not limited to:

- a. MERCHANT processed or allowed processing of suspicious purchases or transactions;
- b. Increase in the volume of disputed or fraudulent/unauthorized transactions;
- c. MERCHANT is non-compliant with the Manual and Merchant Operating Guide, rules and regulations of BDO, Card/Digital brands, PCI DSS, or PA DSS;
- d. MERCHANT is non-compliant with the lawful mandates of BDO;
- e. MERCHANT is non-compliant with Philippine laws and regulations which relate to the performance of the services under this Agreement.
- f. When suspension is mandated by Visa, MasterCard International, JCB International, American Express, UnionPay International, Diners Club, Discover, Bancnet, WeChat, Alipay, GCash, GrabPay or other Card/Digital Brands;

The suspension may be lifted by BDO when it has gathered sufficient basis to continue with the arrangement with MERCHANT or when MERCHANT has cured its lapses resulting to the suspension.

Simultaneous with the suspension of performance of service or suspension of the Merchant ID(s), BDO is hereby irrevocably authorized by MERCHANT to hold the Designated Account and the funds therein, the Net Deposit of MERCHANT, any check payments and or any account, money, securities and things of value which are now or may hereafter be in the hands of BDO or any of its subsidiaries, affiliates or parent company until the lifting of the suspension. In the event that the Agreement is eventually terminated, BDO shall exercise the rights set forth in Section 29 above.

## 31. UNDERTAKINGS AND WARRANTIES

- a. Each of the Parties represents and warrants to the other that its signatory/ies has/have all the necessary power and corporate authority to execute, deliver and perform this Agreement and other related documents, and that such execution, delivery and performance will not and shall not contravene any provision of its Articles of Incorporation and By-Laws, any agreement or instrument to which it is a party, any law, rule or regulation of any government authority.
- b. MERCHANT undertakes that it shall comply with the provisions of the Anti-Graft and Corrupt Practices Act, the Code of Conduct for Government Officials and all other applicable anti-bribery laws, the Consumer Act of the Philippines and its Implementing Rules and Regulations, the Anti Money Laundering Act (AMLA), and all other laws, government rules and regulations applicable to MERCHANT. Accordingly, without limiting the generality of this Clause, MERCHANT hereby represents, warrants and covenants that, in connection with, or in the performance of this Agreement, neither MERCHANT nor its employees, agents or subcontractors, or their employees or agents, shall make any payment or give anything of value to any official of any government or public international organization (including any officer or employee of any government department, agency or instrumentality) to influence his or its decision, or to gain any advantage for itself in connection with the performance of this Agreement. MERCHANT shall hold BDO harmless for all losses and expenses arising out of such violation. In the event of any violation of this clause, BDO may, at its sole option, terminate this Agreement at any time and notwithstanding any other provision of this Agreement, pay no compensation or reimbursement to MERCHANT

whatsoever for any claim after the date of such violation.

- c. MERCHANT shall only use the propriety names and symbols associated with BDO, Visa, Mastercard, JCB, American Express, UnionPay, Diners Club, Discover, Bancnet, WeChat, Alipay, Gcash, GrabPay and other brands to indicate that such cards/digital wallets are accepted for payment at its establishment. MERCHANT shall not use any promotional materials or marks associated with BDO, Visa, Mastercard, JCB, American Express, UnionPay, Diners Club, Discover, Bancnet, WeChat, Alipay, Gcash, GrabPay and other brands in any way that implies, directly or indirectly, that any of these Card/Digital Brands endorses MERCHANT's products or services.
- d. MERCHANT undertakes to advise BDO in a timely manner of any changes that will affect maintenance of their account such as but not limited to change of address, contact details, email address, contact person/s, signatories, closure, change of ownership and other similar circumstances. Any loss or damage arising from failure of MERCHANT (for whatever reason) to advise BDO shall be borne by MERCHANT.

### 32. BINDING EFFECT

This Agreement governs the relationship between BDO and any and all of the MERCHANT's outlets and branches accredited or which may or hereinafter be accredited under the terms and conditions hereof. It shall be binding upon and inure to the benefit of the Parties, their successors-in-interest and permitted assigns without need of a new agreement to be executed for this purpose. MERCHANT may not however assign or transfer its rights hereunder, without the prior written consent of BDO.

BDO may transfer or assign its rights and obligations under this Agreement without need of notice to or consent of MERCHANT. Moreover, in the fulfillment of its obligations under this Agreement, BDO may engage the services of third party service providers without need of notice to or consent of MERCHANT.

### 33. NON WAIVER OF RIGHTS AND SEPARABILITY CLAUSE

The failure of either party at any time or times to require performance by the other of any provision in this Agreement shall not affect, in any way, the right of such party to require performance of that or any other provision. Any waiver by any party of any breach of a provision in this Agreement shall not be construed as a waiver of the provisions itself, or a waiver of any other right/s under this Agreement.

If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

### 34. COUNTERPARTS

This Agreement may be executed in one or more counterparts and may be delivered by electronic mail in softcopy, all of which shall be considered one and the same agreement and each of which shall be deemed as original and duly executed by the Parties named below.

### 35. AMENDMENTS

- a. BDO reserves the right to amend or modify this Agreement upon notice to the MERCHANT.
- b. This Agreement and such other related documents amending the Agreement or as may be executed by the Parties contemporaneously herewith or subsequently pursuant hereto, constitute the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior expressions of intent by or agreement between the parties, oral or written, with respect to the same subject matter.

### 36. NOTICES

All notices, communications, correspondences hereunder shall be in writing, delivered by hand or by a courier service or by registered mail with postage prepaid, registry return receipt requested, sent by one Party to the other at their respective addresses and assigns above indicated or such other addresses as may be furnished or informed by one to the other in writing. Notices, communications, correspondences may also be sent by one Party to the other at their respective fax numbers and email addresses designated by the Party to receive notices or communication.

Such notice, claim or demand shall be deemed given and received: (1) in the case of delivery by hand, when delivery by hand addressed to the applicable party; (2) in the case of delivery by standard courier, upon the date of delivery indicated in the records of such courier; (3) in case of registered mail, after seven (7) days from date of mailing; (4) in the case of facsimile, when received by recipient in legible form and sender has received electronic confirmation of receipt of the transmission, provided, however, that such transmission or confirmation is received by 5:00 pm on a business day, otherwise, such transmission shall be deemed to have been received on the next business day; and (5) in the case of email, when sent on or before 5:00 pm on a Banking Day, otherwise, transmission shall be deemed to have been given on the next Banking Day.

### 37. GOVERNING LAW AND VENUE OF SUITS

This Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines. Any controversy arising out of or in connection with this Agreement shall be heard before the proper courts of Makati City.

IN WITNESS WHEREOF, the parties herein have hereunto signed these presents by their respective authorized representatives this \_\_\_\_\_

at \_\_\_\_\_ Philippines.

BDO UNIBANK, INC.

NAME OF MERCHANT

Printed Name and Signature of Authorized Representative

Printed Name and Signature of Authorized Representative

Title

Title

Printed Name and Signature of Authorized Representative

Printed Name and Signature of Authorized Representative

Title

Title

Signed in the presence of:

Printed Name and Signature

Printed Name and Signature

FOR MERCHANT:

### ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)

) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction, on this day of \_\_\_\_\_ at \_\_\_\_\_, personally appeared the following, exhibiting to following described Competent Evidence of Identity ("CEI").

Name

CEI

Date/Place of Issue

known to me and to me known to be the same person/s who executed the foregoing instrument, and acknowledged that he/she/they executed the same as his/her/their free act and deed and that of the corporation/s/firm/s he/she/they represent/s for the uses and purposes herein above set forth.

This instrument refers to a Merchant Agreement for BDO miniPOS consisting of \_\_\_\_\_ pages, including this page whereon the acknowledgement is written, and has been signed by the parties and witnesses on each and every page thereof.

WITNESS MY HAND AND NOTARIAL SEAL, at the place and on the date first above written.

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of \_\_\_\_\_;

Notary Public

## ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES

) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction, on this day of \_\_\_\_\_ at \_\_\_\_\_, personally appeared the following, exhibiting to following described Competent Evidence of Identity ("CEI").

Name	CEI	Date/Place of Issue
------	-----	---------------------

known to me and to me known to be the same person/s who executed the foregoing instrument, and acknowledged that he/she/they executed the same as his/her/their free act and deed and that of the corporation/s/firm/s he/she/they represent/s for the uses and purposes herein above set forth.

This instrument refers to a Merchant Agreement for BDO miniPOS consisting of \_\_\_\_\_ pages, including this page whereon the acknowledgement is written, and has been signed by the parties and witnesses on each and every page thereof.

WITNESS MY HAND AND NOTARIAL SEAL, at the place and on the date first above written.

Doc. No. \_\_\_\_\_;  
 Page No. \_\_\_\_\_;  
 Book No. \_\_\_\_\_;  
 Series of \_\_\_\_\_;  
 Notary Public

**ANNEX "A"**  
 Authorization and Waiver Form for BDO Network Bank Account Holders

Subject: BDO Network Bank CA/SA No. \_\_\_\_\_ "Designated Account"

This is to irrevocably authorize BDO to perform any or all of the following in relation to the above said Designated Account maintained with BDO Network Bank Inc. (A Rural Bank) "BDO Network Bank" - \_\_\_\_\_ Branch:

1. To inquire and obtain information about the Designated Account from BDO Network Bank or its assignee;
2. To instruct BDO Network Bank or its assignee, to put on hold and/or debit the Designated Account and the funds therein to the extent of the full amount of chargeback transaction, suspicious purchases / transactions, disputed transactions, fraudulent/unauthorized transactions, penalties or other liabilities of the Merchant to BDO arising from the Merchant Agreement; and
3. To receive the funds from BDO Network Bank or its assignee and apply the funds as settlement for the chargeback transaction, suspicious purchases/transactions, disputed transactions, fraudulent/unauthorized transactions, penalties or other liabilities of the Merchant to BDO arising from the Merchant Agreement.

For the foregoing purposes, I/we hereby waive my/our rights in favor of BDO under Republic Act No. 1405 (The Bank Secrecy Act of 1955), as amended, Section 55 of Republic Act No. 8791 (The General Banking Law of 2000), as amended, Republic Act No. 6426 (Foreign Currency Deposit Act of the Philippines of 1974), as amended, Republic Act No. 10173 (Data Privacy Act of 2012) and other laws/regulations, including all subsequent amendment or supplements thereto, relative to the confidentiality or secrecy of bank deposit and my/our personal information in the custody of BDO Network Bank. I/we shall hold BDO and/or BDO Network Bank, their directors, officers, employees, representatives and agents, free and harmless from any liability arising from BDO's and/or BDO Network Bank's exercise of their remedies and authorities hereunder, or from any action taken by BDO and/or BDO Network Bank on the basis of and within the framework of the foregoing appointment.

**ANNEX "B"**  
 Terms and Conditions Governing the Use and Issuance of Cash Card

1. **BDO Cash Card.** The BDO Unibank, Inc. (BDO) Cash Card (the "Cash Card") is an electronic value card, which can be used as a debit card for banking and other lawful transactions, local and international. The Cash Card shall be issued to corporate and retail clients Pre-Embossed [with no name embossed thereon]. Only one Cash Card shall be issued for each corporate or retail client using the same name. As used hereunder, "Card/Account Holder" shall refer to the authorized holder of the Cash Card. The Cash Card may only be redeemed at face value. It shall not earn interest nor rewards and other similar incentives convertible to cash, nor be purchased at a discount.
2. **Cash Card Load.** The Cash Card shall be activated by BDO after Merchant completes the required action using the BDO miniPOS. At no time shall the funds covered by the Cash Card be more than: (a) the maximum balance specified by BDO (as the same may be revised by BDO from time to time) and (b) the combined reload limit of the Card/Account Holder set by BSP per month.
3. **Cash Card Usage/Fees.** The Cash Card may be used to (i) purchase items/goods/services at accredited merchants; (ii) withdraw cash thru designated automated teller machines ("ATM"); (iii) balance inquiry; (iv) change Cash Card Personal Identification Number ("PIN") for ATM and POS use, thru ATM; (iv) pay bills; and (v) such other uses as may be allowed by BDO. BDO reserves the right to impose fee/s for Cash Card usage in such amount/s as it may reasonably determine. All Cash Card purchase and/or withdrawal transactions in US Dollars made outside of the Philippines, shall be converted into its Philippine Peso equivalent, while purchases and/or withdrawal transactions in third currency shall be converted into US Dollars prior to conversion into their Philippine Peso equivalent. All US Dollar and Philippine Peso conversions shall be based on the prevailing BDO Foreign Exchange Rate at the time of transaction which shall be deemed as valid and binding upon the Card/Account Holder. Applicable foreign exchange mark-up rate is also applied to cover service fee and assessment fees charged by Mastercard.
4. **Authentication Procedures.** The Card/Account Holder agrees to comply with the following authentication procedures:
  - 4.1. For ATM transactions, insert the Cash Card in the ATM card slot and enter Cash Card PIN for ATM.
  - 4.2. For Contactless transactions, Tap only or Tap and enter PIN/Sign (depending on amount)
  - 4.3. For POS transactions using Cash Card, swipe the Cash Card on the BDO miniPOS and enter Cash Card PIN for ATM and/or sign transaction slip.
  - 4.4. For Online Banking initial transactions, enroll Cash Card in Online Banking and enter User ID and Password; for subsequent transactions, enter User ID and Password.
  - 4.5. For Phone Banking initial transactions, enroll Cash Card in Online Banking, and enter telephone PIN ("TPIN"); for subsequent transactions, enter TPIN.
5. **Responsibility of the Cardholder/Account Holder.** The care and safety of the Cash Card is the sole responsibility of the Card/Account Holder. The Card/Account Holder hereby agrees to safeguard the Cash Card as if it were cash. The Card/Account Holder agrees to comply with the following minimum responsibilities, particularly in respect of the following products and usage:
  - 5.1. **Online Products and Services**
    - a. Secure Login ID and Password or PIN
      - Not to disclose Login ID and Password or PIN
      - Not to store Login ID and Password or PIN on the computer.
      - Regularly change password or PIN and avoid using easy-to-guess password such as names or birthdays. Password should be a combination of characters (uppercase and lowercase) and numbers and should be at least 7 digits in length.
    - b. Keep personal information private
      - Not to disclose personal information such as address, mother's maiden name, telephone number, social security number, bank account number or e-mail address unless the one collecting the information is reliable and trustworthy.
    - c. Observe internet security measures as follows:
      - Check for the right and secure website.
      - Before doing any online transactions or sending personal information, make sure that correct website has been accessed. Beware of bogus or "look alike" websites which are designed to deceive consumers.
      - Check if the website is "secure" by checking the Universal Resource Locators (URLs) which should begin with "https" and a closed padlock icon on the status bar in the browser is displayed.
      - To confirm authenticity of the site, double-click on the lock icon to display a security information of the site.
      - Not to send any personal information particularly password or PIN via ordinary email.
      - Not to open other browser windows while banking online.
      - Avoid using shared or public personal computers in conducting e-banking transactions.
      - Disable the "file and printer sharing" feature on the operating system if conducting banking transactions online.
      - Contact the banking institution to discuss security concerns and remedies to any online e-banking account issues.
  - 5.2. **Automated Teller Machine (ATM)**
    - a. Use ATMs that are familiar or that are in well-lit locations where one feels comfortable. If the machine is poorly lit or is in a hidden area, use another ATM.
    - b. Have Cash Card ready before approaching the ATM. Avoid having to go through the wallet or purse to find the card.
    - c. Not to use ATMs that appear to have been tampered with or otherwise altered. Report such condition to the bank which owns the ATM.
    - d. Memorize ATM personal identification number (PIN) and never disclose it to anyone. Do not keep those numbers or passwords in the wallet or purse. Never write them on the Cash Card itself. And avoid using easily available personal information like a birthday, nickname, mother's maiden name or consecutive numbers.
    - e. Be mindful of "shoulder surfers" when using ATMs. Stand close to the ATM and shield the keypad with hand when keying in the PIN and transaction amount.
    - f. If the ATM is not working correctly, cancel the transaction and use a different ATM. If possible, report the problem to the bank which owns the ATM.

g. Carefully secure Cash Card and cash in the wallet, handbag, or pocket before leaving the ATM.

h. Not to let other people use your card. If Cash Card is lost or stolen, report the incident immediately to BDO Call Center at (02) 8631-8000.

6. **Inactive Cash Card.** A Pre-Embossed Cash Card shall automatically be placed in inactive status after a period of one hundred and eighty (180) days of financial inactivity from the date of its last transaction.

7. **Lost/Stolen/Damaged Cash Card.** Lost or stolen or damaged Cash Card shall be immediately reported by the Card/Account Holder to BDO Customer Contact Center (02) 8631-8000, subject to submission of Declaration of Loss, presentation of valid ID, and other requirements as may be prescribed by BDO. Thereafter, Card/Account Holder must open a BDO deposit account as no replacement card shall be issued. Pursuant to the sole responsibility of the Card/Account Holder for the care and safety of the Cash Card, all transactions generated by the use of the lost/stolen/damaged Cash Card shall be deemed conclusively binding upon the Card/Account Holder and BDO will not be liable for any loss or damage incurred by the Card/Account Holder. Any outstanding balance of the lost/stolen/damaged Cash Card shall be transferred to the newly opened BDO deposit account above stated after deducting any fee/s which may be due to BDO.

8. **Termination/Suspension of Card Use**

- 8.1. The Card/Account Holder may request BDO to terminate or suspend its use of the Cash Card by calling BDO Customer Contact Center, or by visiting the Branch of Account to make such request. BDO shall, on a best effort basis and to the extent practicable, immediately effect the requested cancellation or termination. The Card/Account Holder shall remain responsible for any transactions made using the Cash Card until the time of the said termination or suspension.
- 8.2. BDO may terminate or suspend the Card/Account Holder's use of the Cash Card at any time, without need of prior notice to the Card/Account Holder if:
  - a. The Merchant Agreement between Merchant and BDO has been terminated.
  - b. The Card/Account Holder has breached these Terms and Conditions;
  - c. BDO learns of the Card/Account Holder's bankruptcy, insolvency, liquidation, dissolution, death, incapacity, or other analogous circumstances, or that the Card/Account Holder committed an act of bankruptcy, insolvency, liquidation, dissolution or other analogous acts, or that a bankruptcy or insolvency or other analogous petition has been filed against the Card/Account Holder;
  - d. If in BDO's reasonable opinion, the Cash Card is being used for unlawful or illegal activity or transaction;
  - e. The Card/Account Holder is no longer eligible to avail or use of the Facility;
  - f. BDO considers that there exist other reasonable grounds to do so.
- 8.3. Any and all accrued but unpaid obligations of the Card/Account Holder to BDO prior to termination, and terms and conditions hereof which by express terms, shall survive the termination of the Card/Account Holder's right to use the Cash Card.

9. **Amendment.** BDO reserves the right to amend the Terms and Conditions and any such amendment shall be binding upon the Card/Account Holder upon notice (by publication, or other means of communication, electronic or otherwise).

10. **Undertaking.** In case of over credit, erroneous credit or misposting of any amount to Card/Account Holder's Cash Card as appearing in the records/books of BDO, and for whatever cause such as but not limited to systems error, error in communication facilities, Card/Account Holder hereby agrees and undertakes to immediately return to BDO the corresponding amount. For this purpose, Card/Account Holder irrevocably authorizes BDO/its representatives, without need of notice or demand upon the Card/Account Holder, to immediately freeze or put on hold the affected Account/s and/or effect the debiting of funds from the Cash Card to the extent of the overcredit, erroneous credit, misposted amount and without BDO/its representatives incurring any liability as a consequence thereof. This is without prejudice to the exercise by BDO of its right to enforce full recovery and collection of the overcredit, erroneous credit or misposted amount (plus interest at BDO's then prevailing interest rate on loans of similar amount and costs of collection) in case the Card/Account Holder's Cash Card cannot be debited for any reason such as but not limited to insufficient balance, as well as the exercise by BDO of other legal remedies to which BDO may be entitled to under the law and this Agreement, including but not limited to immediate cancellation or suspension of the relevant Cash Card, civil, criminal and/or administrative remedies. Pending full recovery or collection by BDO of the overcredit, erroneous credit or misposted amount, the Card/Account Holder shall hold the said amount in trust for BDO. Failure of Card/Account Holder to account for and return the overcredit, erroneous credit or misposted amount to BDO shall give rise to a prima facie presumption of misappropriation or conversion with intent to defraud, on the part of Card/Account Holder.

11. **Limitation of Liability.** Without prejudice to the provisions of Section 5 and Section 14 hereof, the Card/Account Holder agrees that BDO's liability for any loss or damage that the Card/Account Holder may incur under this Agreement or from the use of the Cash Card shall in no case exceed the amount of P10,000.00 or the actual damage, whichever is lower. Any claim or complaint relative to any Cash Card transaction under the provision of this paragraph, must be presented within ten (10) days from the date of such transaction, otherwise, it shall be deemed irrevocably waived. This provision shall survive the termination or suspension of the right to use the Cash Card.

12. **Non-Liability.** BDO shall not be liable for any loss or damage of whatever nature in connection with transactions involving the Card/Account Holder's use of the Cash Card, including but not limited to any of the following instances: (i) disruption, failure or delay relating to or in connection with Cash Payment transactions due to circumstances beyond the control of BDO, fortuitous events such as, but not limited to prolonged power outages, breakdown in computers, peripherals devices and communication facilities, typhoons, floods, public disturbances and calamities and other similar or related cases; (ii) loss or damage which the Card/Account Holder may suffer arising out of any fraudulent or unauthorized utilization of Cash Card due to theft or unauthorized disclosure of PIN/TPIN/Username/Password or violation of other security measures with or without the Card/Account Holder's participation and/or arising out of authorized or unauthorized use of the Cash Card, and/or loss or damage arising out of card skimming (i.e. illegal copying of information from the magnetic strip of a credit or debit card, like the Cash Card) and/or use of skinned Cash Card; (iii) inaccurate, incomplete or delayed information received due to disruption or failure of any communication facilities used for the Cash Card; (iv) mechanical defect in or malfunction of the electronic device on which the Cash Card is used (i.e., ATM, POS, Dongle, Reader, etc.); the Cash Card not being honored or being declined; any delay in the crediting of funds or debiting of payment from the Cash Card due to or by reason of failure and/or malfunction of any mechanical, electronic or other part, component system or network upon which the ATM/branch computer is critically dependent for normal and efficient operations; and/or (v) improper, unauthorized use of the Cash Card's facilities and electronic devices (i.e., ATM, POS, Dongle, Reader, etc.); or recklessness or accident in connection with the use thereof. Further, BDO shall not be liable for any indirect, incidental, or consequential loss, loss of profit or damage that the Card/Account Holder may suffer or has suffered by reason of the use or failure or inability to use the Cash Card under the terms of this Agreement. This provision shall survive the termination or suspension of the right to use the Cash Card.

13. **Agreement to the Terms and Conditions.** This Agreement shall be subject to existing policies and procedures of BDO relative to Cash Card which are deemed incorporated herein by way of reference, and as may be amended or supplemented by BDO from time to time. The Card/Account Holder hereby agrees that his/her signature on the Merchant Agreement and/or the use of the Cash Card, constitutes the Card/Account Holder's agreement to these terms and conditions as well as the acceptance of the corresponding risks associated with the use of the Cash Card.

14. **Cash Card Service.** If the Card/Account Holder is enrolled under a particular BDO Cash Card Service (i.e. payroll, remittance, etc.), and for as long as he/she is enrolled as such, the Card/Account Holder agrees to be bound by the terms and conditions of the existing Cash Card Service Agreement, in so far as may be applicable. In case of conflict between the provisions of this Terms and Conditions and the Cash Card Service Agreement, the latter shall prevail.

15. **Compliance with the Existing Laws.** The Card/Account Holder hereby warrants that his/her use of the Cash Card, specifically, the transfer and/or receipt of funds thru the use of the Cash Card, does not and will not violate the applicable provisions of the Anti-Money Laundering Law / its amendment, and other pertinent laws, government rules or regulations. The Card/Account Holder hereby renders BDO free and harmless from any liability whatsoever which may arise from the Card/Account Holder's violation of said laws, government rules or regulations.

16. **Disclosure of Information.** The Card/Account Holder expressly agrees to the disclosure by BDO or its related company, as it deems fit, of any and all information about the Card/Account Holder, his/her Cash Card, and/or his/her Cash Payment transactions, to other companies, financial institutions, any third party, and/or any government regulatory agency, without BDO or its related company, incurring liability as a consequence thereof.

17. **No PDIC Coverage.** The BDO Cash Card and the value stored therein is not a deposit account and is not insured by Philippine Deposit Insurance Corporation (PDIC).

18. **Governing Law.** These Terms and Conditions shall be governed and construed in all respects in accordance with the laws of the Republic of the Philippines but in enforcing these Terms and Conditions, BDO is at liberty to initiate and take actions or proceedings or otherwise against the Card/Account Holder in the Republic of Philippines or elsewhere as BDO may deem fit, and the Card/Account Holder hereby agrees that where any actions or proceedings are initiated or taken in the Republic of Philippines, the Card/Account Holder hereby submit to the jurisdiction of the courts of the Republic of Philippines in all matters connected with the obligations and liabilities under or arising out of these Terms and Conditions.

19. **Card/Account Holder Complaint.** For concerns, please go to your Branch of Account or call BDO Customer Contact Center at (02) 8631-8000. To learn more about Customer Assistance Mechanism, please visit [www.bdo.com.ph/consumer-assistance](http://www.bdo.com.ph/consumer-assistance). If BDO deems it necessary, BDO will conduct an investigation on the complaint for its prompt resolution and communicate its findings to the Card/Account Holder. The Card/Account Holder agrees to fully cooperate with any such investigation by providing the necessary or required data, information, and documents.

20. **BSP Circular No. 649.** To the extent applicable, these terms and conditions shall be subject to BSP Circular No. 649 Series of 2009 which is deemed incorporated herein by reference.

#### ANNEX "C"

##### DATA SHARING AGREEMENT BDO IS BOTH THE RECEIVING PARTY AND DISCLOSING PARTY

The Parties have adopted or will adopt, to the extent possible, the "Data Privacy Principles" as indicated in the Implementing Rules and Regulations of Republic Act 10173, otherwise known as the Data Privacy Act of 2012 ("Principles"), as may be modified from time to time, recognizing the importance of appropriate privacy protections for consumer data. The Parties, as personal information processors, agree that they (including their respective directors, officers, employees, subsidiaries, representatives, sub-contractors, or agents) will comply with the Principles. The Parties further warrant that they have implemented and currently adhere to privacy principles, policies, or practices that are fully compliant with the Principles and the Applicable Data Protection Law (as defined below).

The Party who has received or will receive Personal Data (the "Receiving Party") and the Party who has disclosed or will disclose Personal Data (the "Disclosing Party") in relation to or in connection with the provisions of the Agreement, as supplemented by this Supplement, shall strictly comply with the following obligations.

##### 1. Definitions

For purposes of this Supplement, the following definitions shall apply:

- a. "Personal Information", "Sensitive Personal Information", "Personal Data", "Data Subject", "Processing", "Personal Information Controller", and "Personal Information Processor", shall have the same meaning as set forth in the Implementing Rules and Regulations of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, as may be amended and supplemented from time to time;
- b. "Applicable Data Protection Law" means Republic Act No. 10173, also known as the Data Privacy Act of 2012, its Implementing Rules and Regulations, other relevant laws and issuances by the NPC, and any other legislation protecting the fundamental rights and freedoms of individuals, and in particular, their right to privacy with respect to control and processing of Personal Data, as well as foreign legislation and issuances protecting the right of individuals to privacy, if applicable;
- c. "Circular 16-03" means the Circular issued by the NPC on December 15, 2016 entitled "Personal Data Breach Management," as may be amended or supplemented from time to time;
- d. "NPC" means the National Privacy Commission;
- e. "Personal Data Breach" shall have the same meaning as set forth in Circular 16-03;
- f. "Services" means the acts and services required to be rendered or performed under the Agreement;
- g. "Technical, Physical, and Organizational Security Measures" means those measures aimed at protecting Personal Data transmitted, stored, or otherwise processed against improper, unauthorized, accidental or unlawful processing, destruction or loss, disposal, alteration, disclosure, or access, and against all other unauthorized and unlawful forms of processing.

## 2. Transfer of Personal Data

The term of this Supplement, the purposes of processing, the types of Personal Data being processed, the manner of processing, the location of processing, and the details of online access to Personal Data are specified in Appendix, which forms an integral part of this Supplement.

## 3. Obligations of The Receiving Party

The Receiving Party agrees and warrants the following:

- a. It will process the Personal Data only for purposes stated in the Agreement and in compliance with its documented instructions. If the Receiving Party cannot provide such compliance for whatever reason, it agrees to inform the Disclosing Party promptly of its inability to comply, in which case the Disclosing Party at its sole option is entitled to suspend the transfer of data and/or terminate the Agreement;
- b. Nothing prevents it from fulfilling the instructions received from the Disclosing Party and its obligations under the Agreement, and if it becomes aware of any event which is likely to have a substantial adverse effect on the warranties and obligations set forth in this Supplement, it will promptly notify the Disclosing Party of such event, in which case the Disclosing Party is entitled to either suspend the transfer of data and/or terminate the Agreement;
- c. It will ensure that an obligation of confidentiality is imposed on persons authorized to process the Personal Data and take reasonable steps to ensure the reliability and integrity of any its personnel who have access to the Personal Data. Further, the Receiving Party shall disclose Personal Data or permit access to such Personal Data only to those authorized personnel with a need to know basis, and shall only provide such Personal Data to enable its authorized personnel to provide the Services set forth in the Agreement;
- d. It has implemented and currently maintains the appropriate Technical, Physical and Organizational Security Measures which comply with the Applicable Data Protection Law prior to and throughout the duration of the processing of Personal Data transferred by the Disclosing Party;
- e. It will not share Personal Data with any party Disclosing Party; Provided, that if allowed by the Disclosing Party to engage another processor, the Receiving Party's agreement with the processor shall ensure that the same obligations for data protection under the Agreement and Applicable Data Protection Law are implemented, taking into account the nature of the processing;
- f. It will promptly notify the Disclosing Party about:
  - Any legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; and
  - Any requests received from Data Subjects, without responding to such requests, unless it has been authorized to do so by the Disclosing Party;
- g. It will assist the Disclosing Party in fulfilling its obligation to respond to requests by Data Subjects relative to the exercise of their rights under the Applicable Data Protection Law. To this extent, the Receiving Party agrees to assist the Disclosing Party in responding to requests from Data Subjects, including, but not limited to, their right to access, copy, correct, rectify, erase or remove their Personal Data;
- h. It will assist the Disclosing Party in ensuring compliance with the Applicable Data Protection Law, taking into account the nature of processing and the information available to the Receiving Party;
- i. After the end of the provision of Services relating to the processing, the Receiving Party shall ensure that the Personal Data are properly disposed of in such a way that would prevent further processing as well as improper, unauthorized, accidental or unlawful access;
- j. It will immediately inform the Disclosing Party if, in its opinion, any of its instruction infringes the Applicable Data Protection Law;
- k. It will not transfer any Personal Data, including transfer to another country or to a subcontractor in another country, without the express written consent of the Disclosing Party. If the Disclosing Party provides consent, the Receiving Party shall provide a written undertaking that the Personal Data transferred to another country will be protected at a standard that is comparable to that under the Applicable Data Protection Law;
- l. It will register itself and its relevant systems to comply with the provisions of the Applicable Data Protection Law;
- m. It will update its relevant systems and its Technical, Physical, and Organizational Security Measures as necessary to comply with the provisions of the Applicable Data Protection Law;
- n. It will immediately report any Personal Data Breach or any other violation of the Applicable Data Protection Law to the Disclosing Party and to the appropriate regulatory authority, as applicable. The report should contain detailed information about those matters required under Circular 16-03 and other Applicable Data Protection Law;
- o. In the event of Personal Data Breach, it will assist and cooperate with the Disclosing Party to investigate and remediate the breach, cooperate with any relevant regulatory authority or law enforcement official, and assist with any required notification to Data Subjects;
- p. It will strictly adhere to and adopt the guidelines and security measures in Rules II to IV of Circular 16-03 to prevent Personal Data Breach;
- q. It will update itself, on a regular basis, on the issuances of the NPC and relevant regulatory authorities in relation to Applicable Data Protection Laws and strictly adhere thereto;
- r. It will cooperate, upon the Disclosing Party's request, in any data protection impact assessment, audit or inspection or any inquiry or notice received from any relevant regulatory authority or law enforcement official.

## 4. Warranties of the Disclosing Party

- a. It has implemented and currently maintains the appropriate Technical, Physical and Organizational Security Measures which comply with the Applicable Data Protection Law prior to and throughout the duration of the processing of Personal Data transferred by the Disclosing Party;
- b. It has full capacity and authority to disclose the Personal Data to the Receiving Party;
- c. It has complied with the requirements of Applicable Data Protection Law and has obtained sufficient written consent from the data subjects to whom the Personal Data pertains, if necessary, to enable to the Receiving Party to perform the Services and its other obligations under the Agreement, and it will provide proof of such consent when requested by the Receiving Party.
- d. It will assist the Receiving Party in ensuring compliance with the Applicable Data Protection Law, taking into account the nature of processing and the information made available to the Receiving Party;
- e. In the event of Personal Data Breach, it will assist and cooperate with the Receiving Party to investigate and remediate the breach, cooperate with any relevant regulatory authority or law enforcement official, and assist with any required notification to Data Subjects;
- f. It will strictly adhere to and adopt the guidelines and security measures in Rules II to IV of Circular 16-03 to prevent Personal Data Breach;
- g. It will update itself, on a regular basis, on the issuances of the NPC and relevant regulatory authorities in relation to Applicable Data Protection Law and strictly adhere thereto;
- h. It will cooperate, upon the Receiving Party's request, in any data protection impact assessment, audit or inspection or any inquiry or notice received from any relevant regulatory authority or law enforcement official.

## 5. Subcontracting

- a. The Receiving Party shall not subcontract any of its processing operations without the prior written consent of the Disclosing Party. Where the Receiving Party subcontracts its obligations under this Supplement with the consent of the Disclosing Party, it shall do so only by way of a written agreement with the subcontractor, which imposes the same obligations on the subcontractor as are imposed on the Receiving Party under this Supplement.
- b. The Receiving Party shall maintain a list of subcontracting agreements concluded under this Supplement, which shall be updated at least once a year. Upon the Disclosing Party's request, the list and relevant agreements shall be made available to the Disclosing Party and/or to any relevant regulatory authority, if applicable.

## 6. Obligations After the Termination of the Agreement

The Parties agree that on the termination of the Agreement, the Receiving Party shall ensure that the Personal Data are properly disposed of in such a way that would prevent further processing as well as improper, unauthorized, accidental or unlawful access.

## 7. Liability and Indemnification

- a. The Parties agree that under the Applicable Data Protection Law, the Disclosing Party remains accountable for Personal Data under its control or custody, including Personal Data that have been transferred to the Receiving Party. To this extent, the Receiving Party therefore agrees to irrevocably and unconditionally indemnify and hold the Disclosing Party, its officers, employees, and agents, free and harmless from and against any and all claims, suits, actions or demands or losses, damages, costs and expenses including, without limiting the generality of the foregoing, attorney's fees and costs of suit that the Disclosing Party may face, suffer or incur by reason or in respect of:
  - The Receiving Party's breach of any of the warranties and obligations set forth in this Supplement, regardless of the cause of such breach; or
  - Any act, omission or negligence of the Receiving Party that causes or results in the Disclosing Party being in breach of its obligations under the Applicable Data Protection Law.
- b. This Supplement shall survive the termination or expiration of the Agreement.

## 8. Rights and Remedies of the Data Subjects

Data Subjects have the right to obtain a copy of this Supplement, and to access, update, or correct certain personal information, or withdraw consent to the use of any of their Personal Data as set out in this Supplement, and may file complaints with, and/or seek assistance from the NPC in case of violation of their rights. The Receiving Party shall promptly notify the Disclosing Party of any requests received from Data Subjects in connection with the foregoing rights without responding or acceding to such requests, unless it has been authorized to do so by the Disclosing Party. For questions, requests, and notifications, communications may be coursed through (a) \_\_\_\_\_ designated Data Protection Officer or his/her replacement or substitute, and data\_protection\_officer\_bdounibankinc@bdo.com.ph.

## APPENDIX

- Term of this Supplement - refers to duration of the arrangement/project
- Purpose of processing - refers to a description of why processing is performed
- Types of Personal Data being processed - refers to whether personal, sensitive personal or privileged information is processed
- Manner of processing - refers to a description on how information will be processed, i.e. details of manual, automated or combination processing
- Location of processing - refers to where information will be processed
- Policy on the return, retention, or disposal of records - refers to a description of how information will be returned, kept, and destroyed or removed
- Details of online access to Personal Data (if applicable)
  - Justification for allowing online access - refers to why online access should be provided
  - Parties that are granted online access - refers to specific individuals who will be given online access – If not known, the name of the recipient company and a general statement, i.e. its authorized representatives may be indicated
  - Types of personal data that are made accessible online - refers to the details of personal information and/or sensitive personal information that will be accessed online. A statement on whether personal, sensitive personal or privileged information shall be accessible may suffice
  - Estimated frequency and volume of the proposed access - how often information is accessed; please clarify volume - This refers to number of accessible records online
  - Program, middle-ware and encryption method that will be used - refers to the methods used to secure online access