

## AFS MERCHANT AGREEMENT

This AFS MERCHANT AGREEMENT as amended by AFS from time to time, is a contract between Arab Financial Services LLC (“**AFS**”) and the Merchant, containing terms and conditions that govern the supply of Services to the Merchant.

This AFS Merchant Agreement will be effective for all Merchants as of 15 October, 2024.

### 1. DEFINITION AND INTERPRETATIONS

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**1.1.** In this Agreement, the capitalized words or phrases below shall have the meanings shown next to them unless otherwise defined or the context otherwise requires.

- a) “**Acquirer**” means a person who supplies Acquiring Services to the Merchant under this Agreement where that person is AFS;
- b) “**Acquiring Services**” means the deployment of various modes of payment acceptance, including POS Terminal, and includes Card acquiring and acquiring payment based on quick response code (QR Code), Transaction Authorisation, processing of Settlement files related to Transactions, and processing of Chargebacks, Refunds, Representments, Retro-Charges as applicable and Settlement to the Merchants;
- c) “**Account(s)**” means any mobile digital wallet or any other QR Code based payment account, virtual card account, or a mobile payment account and any additional or other valid payment account issued by an Issuer, either as closed loop or under one of the Schemes as may be updated, modified, or replaced and notified by AFS to the Merchant in writing from time to time;
- d) “**AED**” means the lawful currency of the United Arab Emirates;
- e) “**AFS**” means Arab Financial Services LLC, a company incorporated under the laws of UAE and having its registered office at Office No.404 and 405, NextGen Robopark Investment LLC, Umm Hurair 2, Dubai, UAE, and includes its successors and permitted assigns;
- f) “**AFS’s Authorisation Center**” means the center administered by or on behalf of AFS and contactable 24 hours a day, seven (7) days a week, which the Merchant should contact by telephone at +971 4 312 4848 (or such other number as may be notified by AFS to the Merchant from time to time) to obtain authorization in the event of query or doubt as to the validity of any card or transaction;
- g) “**Affiliate**” means an entity or one owned or controlled by a Party or any entity controlled by, in control of, or under common control with the Party.
- h) “**Agreement**” means this AFS Merchant Agreement, the Schedules, Application Form, Schedule of Charges, Scheme Rules Operating Guide, Privacy Notice, and any additional terms and conditions, manuals, policies, procedures and documents that apply to the Merchant, in each case as may be amended, updated, or replaced from time to time;
- i) “**Application Form**” means the application form that the Merchant submits when applying for the provision of Services, setting out the Merchant’s selection of

Services and Charges for the Services, which are subject to change from time to time; the Application Form may carry a branding name of AFS bundled offers, such as “AFS GO APPLICATION FORM” or any other branded or bundled packages offered by AFS, from time to time;

- j) **“Authorisation”** means in case of the Acquiring Services, the confirmation at the time of a Transaction from the relevant Issuer that the Card used to pay for the Transaction has not been blocked for any reason or listed as lost or stolen or as having had its security compromised and that there are sufficient funds available for the relevant Transaction; and **“Authorise”** and **“Authorised”** shall be construed accordingly;
- k) **“Bank Account”** means the valid financial account held by the Merchant and designated by the Merchant to receive Settlement;
- l) **“Business Day”** means any day other than a Friday and a Saturday or a public holiday on which banks and other financial institutions are open for business in the United Arab Emirates;
- m) **“Card(s)”** means any valid payment card, including other valid payment mode in any card category (debit card, credit card, charge card, commercial card, or prepaid card) used by an Issuer under a Scheme whose payments AFS is able to process (as notified by AFS to the Merchants from time to time) and includes an Account. All references to Card in this Agreement shall include references to Accounts and all references to Cardholder shall include references to Account holder;
- n) **“Cardholder”** means any person who is entitled to use the Card or to whom the Card has been issued by the Issuer and who is a customer purchasing goods and/or services from the Merchant;
- o) **“Card-Not-Present Transaction”** or **“CNP Transaction”** means a Transaction by a Cardholder where the Cardholder is not physically present at the Merchant Outlet at the time of the Transaction and it comprises telephone order or mail order Transaction;
- p) **“CBUAE”** is a short form used for Central Bank of UAE
- q) **“Chargeback”** means any circumstances where Issuers, Schemes and/or other financial institutions either refuse to Settle a Transaction or demand payment from Acquirer in respect of a Transaction that has been Settled and/or in respect of which payment been made to the Merchant notwithstanding any Authorisation.
- r) **“Chargeback Fee”** means fee charged by AFS for processing a Chargeback, any reasonable cost or expenses or assessments incurred by AFS as a result of or in connection with a Chargeback;
- s) **“Chargeback-to-Sales Ratio”** means the specific Chargeback threshold for Transactions as may be varied the Schemes;
- t) **“Charges”** means all fees, charges or costs payable for the Services and any other charges or fees specified in the Application Form and Schedule of Charges, including but not limited to merchant services fees (MSF), transaction fees, Chargeback fees, Fall Below Fee etc.;

- u) **"Chip-and-PIN"** means all face-to-face Transactions processed in line with the Chip-and-PIN program;
- v) **"Confidential Information"** means this Agreement and information relating to it, information about AFS's business and any other information that would be regarded as confidential, privileged, private or sensitive information by a reasonable person, or which by its nature is clearly confidential, howsoever presented, whether in oral, physical, or electronic form, and which is disclosed by one Party to another hereunder, including (but not limited to) pricing and specifications relating to the Services, excluding Transaction Data;
- w) **"Control" or "Controlled"** means the exercise, or ability to exercise, or entitlement to acquire, direct or indirect control over a body corporate, and a **"Change of Control"** shall be deemed to have occurred if any person or persons who control(s) the body corporate at the Effective Date subsequently cease to control the body corporate;
- x) **"DCC"** means the dynamic currency conversion process whereby the Merchant accepts a Transaction either in the currency of the Cardholder's Card or the local currency;
- y) **"DCC Currency"** means the currency of the Foreign Cardholder's country of issue and/or billing **currency** and is denominated by the Card;
- z) **"ECR"** refers to Electronic Cash Register;
- aa) **"Effective date"** means the date the Merchant signs the Application Form and the date on which the Merchant has been notified by AFS (at our sole and absolute discretion) that the Merchant's application for provision of Services has been accepted;
- bb) **"Equipment"** means the POS Terminal and hardware equipment, software, and other electronic computer and telecommunications devices and equipment (including any Chip-and-PIN processing equipment) or any application (in the case of SoftPOS) provided by AFS to the Merchant to process any Transaction;
- cc) **"e-Channels"** means the online interface supported by the Merchant to connect Customers to AFS's Payment Gateway system, which may also include the use of mobile banking, Interactive Voice Response (IVR) and POS Terminals.
- dd) **"Fall Below Fee"** means Fee charged by AFS to Merchants who do not transact or transact below a set threshold based on the minimum value amount set by AFS in the Application Form;
- ee) **"Floor Limit"** means any monetary limit (of which we notify you from time to time) above which the Merchant must obtain AFS's Authorisation prior to completing a Transaction;
- ff) **"Foreign Cardholder(s)"** means a Cardholder of a Card where the currency of the Card's country of issue and/or billing currency is not AED and the Card Scheme uses DCC. **"Foreign Transaction"** shall mean the Transaction conducted by a Foreign Cardholder;
- gg) **"High Risk Merchant"** merchant with a merchant category code classified by the Scheme as a "High Risk Merchant".

- hh) **"Hospitality Industry"** means any category or field within the broad range of service-oriented industries, which includes hotels and lodgings, the food and beverage industry, event planning, theme parks, transportation, cruise lines, and other businesses in the tourism industry, car or vehicle rental services;
- ii) **"Intellectual Property Rights"** means any patents, inventions, know-how, trade secrets, and other Confidential Information, registered designs, copyrights, software, database rights, design rights, moral rights, trademarks, service marks, images, logos, domain names, business names, or trade names, and all other intellectual property and neighboring rights and similar rights in any part of the world (whether or not registered or capable of registration);
- jj) **"In-Application Payment"** means payment made within the application of an Account (for example, game currency, new levels, game items, bill payments, insurance etc.)
- kk) **"Issuer"** means the institution who issues Cards;
- ll) **"KYC Details"** means the know your customer information that is required to be furnished by the Merchant to AFS from time to time with regard to the Merchant's ownership, business, and operations in accordance with the CBUAE requirements and Scheme Rules;
- mm) **"Law"** means all laws or regulations (including the requirements of any Regulatory Authority) applicable to a Party (including a Party's rights or obligations) or to any Transaction or Refund for the time being in force in a jurisdiction;
- nn) **"Merchant"** means the person to whom AFS has authorised the use of the Services pursuant to the Application Form signed by the Merchant, and unless the context otherwise requires, includes the Merchant's directors, employees, staff, agents, subcontractors, or anyone acting on the Merchant's behalf, and the Merchant's heirs after the Merchant's death (this does not apply to companies) and the Merchant's successors and approved assignees. If two or more persons are referred to as "Merchants," each shall be liable individually as well as jointly;
- oo) **"Merchant ID"** means the unique alphanumeric/ numeric code for the Merchant's account with AFS.
- pp) **"Merchant Outlet"** means the physical retail outlet (or department) owned and operated by the Merchant in the United Arab Emirates ("UAE") and which is agreed with the Merchant and/or any other outlets (or departments) as may be agreed by AFS in writing;
- qq) **"Minimum Annual Transaction Volume"** means the expected Transaction volume agreed with the Merchant in the Application Form over a certain period of time, such as monthly, quarterly, or annually;
- rr) **"Network Outage"** means any time in which no traffic can pass in, out, or between AFS's Payment Gateway Equipment and/or the Merchant's web server hosting the e-Commerce website for more than fifteen (15) consecutive minutes;
- ss) **"Offline Transaction"** means a Transaction where an authorization is obtained manually through the AFS Authorisation Center and requires the signature of the Cardholder;

- tt) **“Operating Guide”** means any operating guides (including but not limited to any instructions, guides or manuals) which AFS makes available to the Merchant as amended, updated, or replaced from time to time;
- uu) **“Pay-by-Link”** means a payment method that allows Merchants to send a unique, secure link to its customers, enabling them to complete transactions online;
- vv) **“Party”** means each AFS and the Merchant, and **“Parties”** means AFS and the Merchant together;
- ww) **“PCI DSS”** means the Payment Card Industry Data Security Standards which apply as amended, updated or replaced from time to time, including 3-D Secure to improve the security of CNP Transactions. Details can be found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) or any other location that the Merchant may be notified of from time to time;
- xx) **“Payment Link”** means the application allows sending customers electronic invoices (via email, SMS, copy link to post on other social media) with a “Pay Now” button to seamlessly pay;
- yy) **“Payment Gateway Services”** means the gateway services offered by AFS in accordance with the Schedule 1 to this Agreement, which provide the Merchant with the software and connectivity to allow real-time secure payment data transmission for processing of Card payments on the Merchant’s website or mobile application;
- zz) **“Payment Gateway Transaction”** means the Transaction made using Payment Gateway Services;
- aaa) **“PAN”** means the Cardholder’s primary account number displayed on the Card;
- bbb) **“Personal Data”** means any information relating to any individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that individual and includes Transaction Data and Security Code;
- ccc) **“PIN”** means the Cardholder’s personal identification number on the Card;
- ddd) **“POS Terminal”** means the authorised point of sale machines and associated equipment or devices owned and operated by AFS to receive Card payments and record Transaction Data, which includes SoftPOS;
- eee) **“POS Record”** or **“Receipt”** means the printed receipt of any Transaction (approved, referral, or declined Transaction);
- fff) **“Privacy Notice”** means AFS’s privacy statement as updated from time to time by AFS and which is made available at [www.afs.com.bh](http://www.afs.com.bh);
- ggg) **“QR Code”** means a machine-readable code consisting of an array of black and white squares, typically used for storing URLs or other information for reading by the camera on a smartphone;
- hhh) **“Recurring Transaction”** means a repetitive periodic Transaction for which the Merchant charges the Card or Account (e.g., subscriptions or instalments);

- iii) **"Refund"** means a refund given to the Cardholder or the Account Holder by the Merchant of a payment for credit to that Cardholder's or Account Holder's account;
- jjj) **"Representation"** means a Transaction to reverse a Chargeback by the re-execution of the original Transaction, where the Merchant has successfully challenged the Chargeback;
- kkk) **"Regulatory Authority"** means any governmental or regulatory authority, and/or any self-regulatory authority, governmental department, agency, commission, board, tribunal, crown corporation, or court, or other law, rule, or regulation-making entity with jurisdiction over any of the Parties and/or their businesses or any part or subdivision thereof in any territory in which the Services are made available or any local authority, district or other subdivision thereof (including, in respect of UAE, the Central Bank of UAE (**CBUAE**), Ministry of Industry and Commerce, and any other body which succeeds or replaces any of the foregoing);
- lll) **"Retro-Charge"** means a Transaction initiated by the Merchant to reverse a Refund to which the Cardholder or Account Holder was not entitled;
- mmm) **"Sale Proceeds"** refers to funds resulting from the Transaction;
- nnn) **"Scheme(s)"** means payment networks linked to payment cards, facilitating electronic funds transfers and governing the issue and use of the scheme branded Cards, as may be approved and notified by AFS to the Merchant in writing from time to time, such as Visa Inc; MasterCard; Amex, UPI etc.
- ooo) **"Settlement"** means any payment of Sale Proceeds AFS makes to the Merchant under this Agreement in the course of Acquiring Services or any Value-Added Services (and **"Settle"** and **"Settled"** will be construed accordingly), net of applicable deductions or set-off as per the terms of this Agreement;
- ppp) **"Settlement Date"** means the Business Day (notified to the Merchant by AFS from time to time) on which the Settlement occurs;
- qqq) **"Scheme Rules"** means the collective set of bylaws, rules, regulations, operating regulations, policies, procedures, guidelines, and manuals issued by (or in relation to) AFS and/or any Scheme and/or any other Scheme, as may be amended, updated, or replaced from time to time, and which shall form an integral part of this Agreement as if annexed to or set out in the body of this Agreement in full;
- rrr) **"Schedule of Charges"** means the document(s) outlining charges payable by the Merchant to AFS in connection with the Services, whether attached to or included within the Application Form, and/or otherwise provided by AFS to the Merchant from time to time;
- sss) **"Security Code"** means security related information used to authenticate Cardholders and Transactions and includes any of the following contained in a Card: the contents of the magnetic stripe; the Card verification value in the magnetic stripe or in a chip; the Card security code; and the PIN verification value contained in the magnetic stripe;
- ttt) **"Services"** means any or all of the Acquiring Services, the Value-add Services and/or the POS Terminal hire services that are provided to the Merchant by AFS under this Agreement;

- uuu) **"SoftPOS"** means the payment software application provided by AFS to the Merchant to accept Transactions using a Card and/or Payment Links on the Merchant's mobile device;
- vvv) **"Surcharge"** means any additional charge or payment added by the Merchant to the Cardholder making a Card payment, and which is prohibited by law;
- www) **"Term"** means the duration for which this Agreement shall be valid for each Merchant. The Term of this Agreement shall commence on the Effective Date and continue for 3 (three) years, and auto-renews for consecutive terms of 3 (three) years each;
- xxx) **"Transaction"** means any payment howsoever accepted, whether through Payment Gateway Services, CNP, POS Terminal, SoftPOS, Pay-by-Link, In-Application Payments and any other mode of acceptance provided under the Services to the Merchant, which payment can be made using either: (a) a Card, a Card number, or otherwise to debit or credit the applicable Card account; or (b) a payment through an Account; in each case, in accordance with the terms of this Agreement and in relation to which AFS supplies any of the Services to Merchant, or a reversal of the same. Unless the context requires otherwise, a reference to "Transaction" shall include a reference to a Refund, a Representment, a Retro-Charge, a Recurring Transaction, and a series of connected Transactions;
- yyy) **"Transaction Data"** means Personal Data comprised in a particular Transaction and any other data relating to the Transaction, including the value of the Transaction and the Card information;
- zzz) **"Tax"** means all forms of tax and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable, and any penalty, fine, surcharge, interest, charges or costs relating to it and includes VAT;
- aaaa) **"Turnover"** means the total volume of the Transactions in monetary terms measured over a period of time;
- bbbb) **"UAE"** is a short form used for United Arab Emirates;
- cccc) **"Value-add Services"** means (i) Payment Gateway Services; (ii) DCC Services; as well as (iii) any other services as AFS may specify from time to time in the Application Form, in each case excluding Acquiring Services, as more particularly described in the Schedule 1 to the Agreement.
- dddd) **"VAT"** means value-added tax and any other similar tax or duty;

**1.2. In this Agreement:**

- a) Any reference to the singular includes the plural and vice versa.
- b) Words denoting the masculine will include the feminine and vice versa.
- c) Words denoting natural persons will include companies and vice versa.
- d) Reference to date shall be in accordance with the Gregorian calendar.

- e) References to clauses and Annexures means the clauses and Annexures of this Agreement.
- f) Words like “includes”, “including”, “in particular” and “other” will mean by way of example, emphasis, or illustration only and will not limit the interpretation of any words that may come before them or that may follow.
- g) Any obligation to do or not to do something includes an obligation to arrange for it to be done or not done, as appropriate.
- h) Reference to any law, statute, or statutory provision will include any amendment, addition, or replacement to it and any legislation made under it.
- i) Reference to any document means that document as it is in force for the time being, and as amended, updated or replaced from time to time.
- j) Clause headings in this Agreement are for convenience only and are not intended to define, construe, limit, expand, or describe the scope or intent of this Agreement.

## 2. APPLICATION FORM

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- 2.1. In order to receive Services, Merchant shall complete Application Form with complete information on its business and its selection of Services, Offers etc. and its key personnel contact information including its authorised representatives and signatory(ies), who shall be the focal point of contact for any communications, representation, accepting or giving instructions or consents in connection with day-to-day management of the Services and in connection with discharging its rights and obligations under this Agreement.
- 2.2. By signing the Application Form, the Merchant confirms that it is not acting on behalf of any third party and that the Merchant is the sole beneficiary of the Services.
- 2.3. The Application Form shall be signed electronically by authorised signatory(ies) designated by the Merchant in the Application Form. Any electronic acceptance or electronic signature by and on behalf of the Merchant transmitted by electronic mail (e-mail) or through the AFS portal is to be treated as an original signature and is to be considered to have the same binding effect as an original signature or original document.
- 2.4. AFS shall not be responsible to verify the accuracy of the email address or whether or not it belongs to the Merchant’s authorised signatories or not. Merchant shall be liable indemnify and hold harmless AFS and , its Affiliates, directors, officers, employees, and/or agents from and against any and all fines, penalties, liabilities, obligations, losses, damages, suits and expenses incurred by or asserted against AFS resulting from any incorrect or inaccurate information provided by and on behalf of the Merchant or from electronic acceptance of Application Form by and on behalf of the Merchant by reason of which AFS accepted or acted upon the application, including any damages that AFS may incur due to any claims alleging invalidity of the Agreement.
- 2.5. AFS reserves the right to utilize third-party systems, software, or resources ("**Third-Party Resources**") in the provision of Services to the Merchant under this Agreement. The Merchant acknowledges that AFS is not liable for any disruptions or issues arising from the use of Third-Party Resources.
- 2.6. Notwithstanding the sign-off of the Application Form by both Parties, AFS, its Affiliates and/ or its third-party solution / services providers may, at its discretion refuse to provide any

Service, in whole or in part, by providing reasonable explanation to the Merchant.

### **3. AUTHORIZATION OF CARD PAYMENTS**

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- 3.1. The Merchant agrees to accept and honor all valid Cards presented by Cardholders for the payment for all goods and/or services provided by the Merchant at any of the Merchant Outlets (as agreed with the Merchant or otherwise agreed in writing by AFS from time to time).
- 3.2. The Merchant shall not discriminate against or treat cash purchases any differently than Card purchases, including charging a different price, surcharging Cardholders, or setting any minimum limit or maximum limit on payment values, which may discourage or prevent customers from making a Card payment or otherwise disfavor Card purchases. The Merchant shall not discriminate between different types of Cards.
- 3.3. For all Card Payments, the Merchant must ensure the following:
  - a) The Merchant obtains Authorisation for the Transaction by swiping, inserting, scanning, or tapping the Card or device on the POS Terminal, SoftPOS, Pay-By-Link, Payment Gateway or any other prevailing means of payment permitted by AFS in line with the applicable Operating Guide, Scheme Rules and any written or verbal instructions by AFS.
  - b) The Merchant must not authorize the Transaction without the Security Code if it is supported by the Scheme for the relevant Card. The Merchant shall not extract, store, or reveal any Security Code for any purpose other than processing of Transaction Data.
  - c) The Cardholder is present.
  - d) The Card is current (not expired) and valid.
  - e) The Card Number (PAN), the Cardholder Name, the expiry date of the Card and any other Card details printed on the Receipt match the details on the Card.
  - f) If applicable, the Cardholder's signature on the Receipt matches the signature on the back of the Card.
  - g) The logo or mark on the Card matches the logo or mark under the relevant Scheme.
  - h) The Card is not visibly mutilated, damaged or altered.
  - i) The payment is genuine and for the legal purchase of goods and/or services provided by the Merchant in the normal course of business.
  - j) The Card is not listed on a Card Recovery Bulletin by the relevant Scheme or notified by AFS to the Merchant as recoverable from the Cardholder because it is stolen, past-due, over-limit, counterfeit, forged, or otherwise problematic or unlawful. If the Card is recoverable, the Merchant must immediately inform AFS.
- 3.4. If the Merchant is uncertain in respect of the nature of any Card, its validity, or the identity of the Cardholder, the Merchant shall immediately contact the Authorisation Center for verification and shall comply with the Authorisation Center's instructions. Should the Authorisation Center ask the Merchant to retain the Card, the Merchant shall do so in accordance with the Law.

- 3.5. The Merchant shall not complete a Transaction in excess of the Floor Limit without prior written approval of AFS (to be given at AFS's sole and absolute discretion). For the purposes of this clause 3.5, AFS may give such written approval via an electronic authorisation that the Merchant may not be able to store. Such Floor Limit shall continue to apply unless AFS notifies the Merchant otherwise in writing.
- 3.6. Floor Limit shall be zero unless otherwise agreed by AFS or notified by AFS in accordance with clause 3.5.
- 3.7. If Authorisation of a Transaction is refused and a message such as "decline," "pick up," or "referral" is generated, the Merchant shall contact the Authorisation Center for Authorisation and shall comply with the Authorisation Center's instructions. Should the Authorisation Center approve the Transaction, the Merchant shall use the Authorisation code given to the Merchant by the Authorisation Center to complete the Transaction.
- 3.8. If the Authorisation is refused, the Merchant shall not complete the Card payment and shall request another form of payment. The Merchant shall not resubmit a Card payment for authorization after Authorisation has been refused. If the Merchant does so and relies on any subsequent authorization, the Merchant shall do so at its absolute, entire, and sole risk, and shall be liable for any Chargeback or other losses in relation to that Transaction.
- 3.9. The Merchant shall not process any Offline Transaction using a dummy, fake or replica Authorisation code, which had not been obtained from AFS. Upon giving reasonable prior notice to the Merchant, to be determined at AFS's sole discretion, AFS shall have the right to deduct the amount of any Transaction not authorized by AFS from the Settlement.
- 3.10. The Merchant shall not double swipe a Card at the Merchant's POS Terminal or all the electronic cash register to capture or store Cardholder and Security Code, after the Merchant received the required Card payment Authorisation response. The Merchant asserts its full compliance with the obligation set forth in this clause and understands that any breach of this clause will expose the Merchant to mandatory contractual and/or legal disciplinary actions by AFS and/or any Regulatory Authority.
- 3.11. For the avoidance of doubt, Authorisation of a Transaction only indicates the availability of credit at the time the Authorisation is requested. The Authorisation of a Transaction is not a guarantee of payment, and it does not prevent AFS from recovering a Chargeback or other amount in relation to the Transaction in accordance with this Agreement.
- 3.12. There shall be no Floor limit applicable to any SoftPOS Transactions.
- 3.13. In case of payment by Pay-by-Link the Merchant is responsible for generating and sending payment links to customers, ensuring that all transaction details are accurate. AFS is not liable for any unauthorized use of the payment link or for any transactions not completed due to technical issues outside of its control.

#### **4. EQUIPMENT**

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- 4.1. The Merchant shall not use any equipment or materials that AFS has not provided or authorized (including the paper rolls). If the Merchant is authorized to accept Card-Not-Present Transactions, the Merchant shall comply with AFS's instructions for sending the Transaction Data.
- 4.2. For the avoidance of doubt, AFS shall have the right to decline any Transaction processed using a third party's equipment, point-of-sale terminal, or accessories.
- 4.3. The Merchant shall not use the Equipment for any illegal purposes or for any business other

than the business agreed upon and specified in this Agreement.

- 4.4. The Merchant shall not alter, modify, replace, substitute, repair, service, or tamper with the Equipment or any part of it in any way. The Merchant shall not move, remove, or relocate the Equipment or any part of it from the Merchant's Outlet(s) as set out in this Agreement, unless otherwise agreed by AFS in writing. AFS shall have the right to conduct spot-checks at any time at the Merchant Outlet to ensure that these requirements are adhered to.
- 4.5. The Merchant shall ensure that the Equipment is operated only by those directors, employees, staff, or others on behalf of the Merchant who are authorized by the Merchant and trained in accordance with AFS's requirements, the Operating Guide, the Scheme Rules, or any other instructions or operating guides or manual(s) as may be provided by AFS or the Scheme. AFS may, at its absolute and sole discretion, refuse to authorize any person who is not capable or competent to operate the Equipment on behalf of the Merchant. The Merchant shall immediately notify AFS of any unauthorized use of the Equipment.
- 4.6. The Merchant shall never leave the Equipment unattended during trading hours and shall always ensure the physical safety and security of the Equipment.
- 4.7. The Merchant shall be liable for the cost of repairing or replacing of any Equipment that has been damaged by any person (other than normal wear and tear), lost or stolen. The Merchant must notify AFS immediately of any such damage, unauthorized use, loss, or theft of the Equipment.
- 4.8. AFS may need to provide maintenance and software updates to the Equipment. The Merchant shall at all times maintain a telephone link to the POS Equipment and shall make sure all maintenance and software updates are successfully installed. The Merchant shall be responsible for paying any and all charges from its network operator.
- 4.9. The Merchant agrees to allow AFS and its agents and subcontractors to enter the Merchant Outlet(s) on reasonable notice at any time to examine, install, inspect, maintain and/or repair the Equipment and/or any associated hardware and software, equipment and stationery supplied by AFS under this Agreement, or for or any other reason as AFS may reasonably require.
- 4.10. Equipment has been provided to the Merchant solely for its use in connection with the use of AFS Services. The Merchant shall not transfer, sublet the Equipment or assign or subcontract the use of any Equipment to any third party without AFS's prior written consent.
- 4.11. AFS does not make any representations or warranties, express or implied, of the merchantability or fitness for a particular purpose of the Equipment, including the POS Terminal. AFS shall not be liable for any Equipment defect, failure, or malfunction. As such, AFS specifically excludes any liability for any losses, damages, or claims incurred or suffered by the Merchant from the use of the Equipment.
- 4.12. Upon Merchant's request and at additional Charge including any developmental cost, AFS shall undertake ECR integration between the POS Terminal and Merchant's ECR system.

## **5. PAYMENT TRANSACTIONS**

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- 5.1. The Merchant shall not accept a Transaction except for the legitimate purchases of goods and/or services provided by the Merchant during the Merchant's ordinary business, trade, and activities. This includes:

- a) a Transaction that is made by a director, employee, member of staff, agent, subcontractor, or any other representative of the Merchant (or other individual closely connected with the Merchant's business) except for the legitimate purchases of goods and/ or services provided by the Merchant;
  - b) refinancing a debt of the Merchant or a Cardholder;
  - c) debiting any additional charges, Surcharges, bank charges, or any other charge which is not related to or considered as additional commission in connection to accepting Cards as a payment method;
  - d) goods which are not sold or for services which are not rendered for the Cardholder or at his/her request; and/or
  - e) acting for and on behalf of any another merchant or a seller of goods and/or services.
- 5.2. The Merchant shall not provide purchase with cash back or advance cash to any Cardholder.
- 5.3. A Transaction is valid only when it is Authorised by AFS and is in accordance with clause 3 of this Agreement.
- 5.4. The Merchant shall send AFS (or any third party as may be approved by AFS) accurate and complete Transaction Data for Transactions by Cardholders to the Merchant in line with the requirements set out in the Operating Guide and at any time upon request, within a maximum of three (3) Business Days from the date of the request.
- 5.5. Time is of the essence, and should the Merchant fail to provide AFS with the requested information, documents, or any part within the prescribed period, the Merchant shall be liable for the Transaction amount.
- 5.6. The Merchant shall not disclose encryption certificates, Card information, or other security features to any third party and shall comply with AFS's instructions for sending any Transaction Data.

## **6. REFUNDS**

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- 6.1. The Merchant shall make any Refund on the same Card used for the original Transaction through the "Refund" function on the POS Terminal. If the POS Terminal does not accept Refund, the Merchant shall arrange with AFS to Refund the Cardholder via the backend system.
- 6.2. The Merchant shall not issue any cash Refund if the original Purchase Transaction was made using a Card.

## **7. INTELLECTUAL PROPERTY RIGHTS**

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- 7.1. The Merchant shall not use any of AFS's Intellectual Property Rights for any purpose without obtaining AFS's prior written agreement.
- 7.2. Ownership, title, and interest in AFS's Intellectual Property Rights (including the Equipment and POS Terminals) shall remain with AFS and its licensors (as the case may be) at all times.
- 7.3. The Agreement does not transfer, and is not intended to transfer, to any Party any Intellectual Property Rights that any other Party owns at the Effective Date, or any

Intellectual Property Rights that are created, acquired, or developed during the term of the Agreement.

- 7.4. If AFS provides any promotional material or literature, on termination of the Agreement, Merchant shall remove all promotional materials or literature, or any references to AFS in any agreements or on any websites.
- 7.5. **Use of Merchant Logo and Intellectual Property:** The Merchant hereby grants AFS a non-exclusive, royalty-free, worldwide license to use the Merchant's logo, trademarks, and other intellectual property ("**Merchant IP**") for the purpose of promoting and marketing the services provided under this Agreement. AFS may use the Merchant IP in promotional materials, advertisements, and on its website to identify the Merchant as a client of AFS. The Merchant retains all rights, title, and interest in and to Merchant IP. Nothing in this Agreement shall confer any rights to AFS beyond those expressly granted herein.

## **8. CHARGEBACK OR FRAUD**

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- 8.1. AFS or the Issuer will have the right in some circumstances under the Scheme Rules to refuse to settle a Transaction or to obtain a reimbursement for a Transaction that has already been settled. The circumstances include without limitation:
  - a) The Transaction was not genuine or for an illegal purpose, or if the Transaction did not in some way constitute a payment.
  - b) Transaction was not authorized by the relevant Issuer, the Card Scheme, or in accordance with this Agreement.
  - c) The Merchant fails to give AFS evidence that the genuine Cardholder has authorized the Transaction, or if the evidence given does not meet the requirements set out in the Operating Guide, the Scheme Rules, or the instructions or requirements by AFS from time to time.
  - d) The Transaction was for a payment to another person (not the Merchant) or for a purchase with cashback given to the Cardholder.
  - e) The Transaction or the way in which it was carried out, or if the Transaction Data or the way in which it has been sent to AFS has breached this Agreement.
  - f) The Cardholder denies authorizing a Card-Not-Present Transaction.
  - g) The Issuer or the Cardholder makes a claim in connection with the Transaction or any goods and/or services which the Merchant has provided that the goods and/or services were not received, were faulty, or were not as described and canceled the Transaction.
  - h) The POS Record is incomplete or illegible or the information in the POS Record is not identical with the information in the Receipt given to the Cardholder.
  - i) The Card used in the Transaction is not valid.
  - j) If the Merchant has to manually key enter a Transaction into the POS Terminal because the Card cannot be read and the Merchant does not get an imprint of the Card on a Receipt, together with the signature of the Cardholder (which matches the signature on the back of the Card) in a face-to-face Payment Transaction.

- k) The Transaction involves using the Card or Account by a person other than the Cardholder or the Account Holder.
  - l) The signature on the POS Record is not reasonably similar to the signature on the Card or is a forged signature.
  - m) AFS or any Scheme believes the Merchant has exceeded or will exceed the Chargeback-to-Sales Ratio and has become or is becoming an excessive Chargeback merchant or an excessive fraud merchant.
  - n) Charging payment back to the Merchant is otherwise in accordance with this Agreement or any Operating Guide or Scheme Rules.
- 8.2. The Merchant shall be liable to immediately pay AFS for any Chargeback, and AFS may, without prior notice, deduct the relevant amount and any applicable Chargeback, charge, or fee from the Settlement.
- 8.3. For the avoidance of doubt, in the event of any Chargeback, AFS shall not have no responsibility to deal with the Cardholder or attempt to obtain payment from them or the Issuer.
- 8.4. The Merchant shall not dispute the validity of any Chargeback. Should the Merchant dispute the validity of any Chargeback, the Merchant must so notify AFS in writing within ten (10) calendar days from the date of receipt of the relevant statement. Time is of the essence, and should the Merchant fail to notify AFS within the prescribed period, the statement by AFS shall be deemed to be accepted, conclusive, final, and undisputed as to all matters of fact to which it refers (except for manifest error).
- 8.5. The Chargeback-to-Sales Ratio shall not exceed one percent (1%) of total sales in any given month. This limit may be varied by AFS or the Scheme and notified in writing to the Merchant from time to time.
- 8.6. AFS may at any time request the Merchant to provide Transaction Data and information and a detailed explanation for any number of individual Chargebacks or incidents of fraud in relation to any Transactions (to which chargeback or fraud applies), and the Merchant shall immediately provide AFS with the requested documents and information, no later than a maximum of three (3) Business Days. Time is of the essence.
- 8.7. The Merchant shall use its best endeavors to assist AFS in preventing or detecting fraud and shall immediately notify AFS if the Merchant suspects or becomes aware of any incident of fraud that has taken place or is taking place by the Merchant (or any of its directors, employees, staff, agents, or subcontractors) in relation to a Card or suspects or becomes aware of any such activities which, in the opinion of the Merchant, involve fraud, misrepresentation, or other illegal activities in relation to a Card.
- 8.8. AFS shall have the right to conduct, necessary and reasonable due diligence in dealing with the Merchant including obtaining KYC Details, performing credit searches, and other fraud-prevention enquiries about the Merchant, prior to commencing Services and from time to time. Merchant shall fully cooperate with AFS to meet these requirements. Any record of these searches and enquiries may be used by AFS and others to make credit and insurance decisions about the Merchant or to prevent fraud and money laundering. Should the Merchant give AFS false or inaccurate information, or if AFS suspects fraud, AFS may provide a record of these searches and enquiries to any Regulatory Authority or to any competent authorities or intelligence agencies.
- 8.9. The Merchant authorizes AFS, directly or through third parties, to make inquiries or take

any actions as AFS may consider necessary to validate a Cardholder's identity, creditworthiness, and verify information that the Merchant has provided AFS with. The Merchant authorizes AFS to obtain financial and credit information from a credit bureau.

## **9. HOSPITALITY INDUSTRY**

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9.1. Merchants engaging in the business, trade and activities of car or vehicle rental shall:

- a) retain the signed vehicle lease agreement, the POS Record, and the related traffic fines issued during the term of this Agreement for five (5) years from the date of the Transaction or for any other period as may be required under the law;
- b) unless agreed by the Cardholder in writing, the Merchant shall not include deductible insurance premiums or other charges to cover potential damages when insurance coverage is waived at the time of renting the vehicle, traffic fines, taxes, maintenance cost or fuel, compensation or other similar charges;
- c) settle the Transaction or obtain a new and up-to-date authorization if a pre-authorization exceeds the fourteen (14) calendar days; and
- d) submit a Foreign Transaction to AFS within twenty-four (24) hours of a Foreign Cardholder's checkout.

9.2. Merchants engaging in the business of hotel and accommodation shall:

- a) retain the guest registration forms signed by the Cardholder, the Receipt, the POS Record and all related documents issued during the term of this Agreement for five (5) years from the date of the Transaction or for any other period as may be required under the law;
- b) in the event the Cardholder does not "check-in" to initiate a Transaction, the Merchant shall charge the Card with the cancellation charges in accordance with the Merchant's no-show policy as disclosed to the Cardholder at the time of reservation. Any losses incurred by AFS shall be debited against any amounts payable to the Merchant under this Agreement or otherwise; and
- c) charge the Cardholder for any loss(es) incurred by the Merchant in connection with the services provided to the Cardholder separately, such as food or beverage charges, room service fees, and tax duties.

## **10. CARD-NOT-PRESENT TRANSACTIONS**

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10.1. If the Merchant is authorized to accept Card-Not-Present (CNP) Transactions, AFS shall provide the Merchant a key entry facility.

10.2. If the Merchant is authorized to accept Card-Not-Present (CNP) Transactions:

10.2.1 The Merchant shall be responsible for understanding and complying with the Operating Guide, the Scheme Rules, and all applicable laws, bylaws, rules, regulations, operating regulations, policies, procedures, guidelines, manuals, and instructions issued by AFS and/or any Card Scheme in relation to CNP Transactions (as may be amended, updated, or replaced from time to time).

10.2.2 The Merchant shall ensure protection, safety, and security by keeping its credentials and its assigned password used to authenticate the Merchant's

identity safely, securely, and in strict confidence at all times. Should the confidentiality, safety or security of the access credentials, password, be compromised (or be suspected of being compromised), the Merchant shall notify AFS immediately.

10.3. For telephone or mail orders, the Merchant shall first obtain authorization from the Authorisation Center.

10.4. The Merchant shall provide the Cardholder a Receipt that includes the following:

- a) the Merchant's name and address (including website address where applicable);
- b) the amount of the CNP Transaction and the currency;
- c) the Cardholder's name;
- d) the Cardholder's contact number, e-mail address, billing and delivery address (where applicable);
- e) the date of the CNP Transaction;
- f) the unique Transaction ID;
- g) the authorization code;
- h) the Card's expiration date;
- i) a description of the purchased goods and/or services; and
- j) the delivery date and method.

10.5. For the avoidance of doubt, Authorisation (by Authorisation code, approval code, or other) is not a guarantee of payment or a guarantee that the Cardholder authorized the CNP Transaction and does not prevent AFS from recovering a Chargeback or other amount in relation to the CNP Transaction in accordance with this Agreement. The Merchant understands and agrees that any Transaction disputed by the Cardholder shall be subject to immediate Chargeback in accordance with this Agreement.

10.6. The Merchant accepts the increased risks of processing CNP Transactions, where neither the Card nor the Cardholder is physically present at the Merchant Outlet. The Merchant understands and agrees that AFS and/or the Card Scheme shall not be liable for any fraudulent CNP Transactions, even if the Merchant has complied with its obligations under this Agreement.

10.7. The Merchant shall submit the CNP Transaction for payment to AFS immediately after any Transaction has been successfully completed (including the dispatch of goods and/or services that the Merchant has agreed to provide, where appropriate). The Merchant shall add an order reference number for each CNP Transaction, which will be used by AFS and the Merchant in any communications relating to that CNP Transaction.

## **11. PRE-AUTHORIZED AND RECURRING PAYMENT TRANSACTIONS**

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11.1. The Merchant may request pre-authorization from AFS to block, freeze, or hold a specified amount on a Card or complete a Transaction for pre-authorized or recurring Transactions where the Merchant charges a Cardholder for goods and/ or services on a pre-agreed schedule for the purchase of goods and/or services repeatedly and regularly for a duration not exceeding one (1) year (such as payment in installments, membership, subscription, or recurring shipment of goods).

- 11.2. The Merchant shall use the Card to obtain a pre-authorization approval code through the POS Terminal for the amount agreed with the Cardholder. The Merchant shall record the date, the agreed amount, and the pre-authorization approval code on the POS Record.
- 11.3. The Merchant shall not process any pre-authorized or recurring Transaction without a valid written request or consent from the Cardholder (for first unique recurring Transaction). The request or consent shall include the amount of the Transaction and whether the amount is fixed or variable, the date of the Transaction and whether the date is fixed or variable, and the agreed method of communication. The Merchant shall furnish AFS with a valid written consent at any time upon AFS's request.
- 11.4. The Merchant shall always comply with the requirements outlined in the Operating Guide, the Scheme Rules, or any instructions or requirements issued or notified by AFS from time to time relating specifically to pre-authorized and recurring Transactions.

## **12. SURCHARGES**

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- 12.1. It is prohibited for the Merchant to impose any Surcharge or additional sum, fee, or payment on any Cardholder who opts to use a Card in any Transaction using the POS Terminal in accordance with the Law.

## **13. DATA PROTECTION**

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- 13.1. AFS shall employ industry practice in connection with the protection of non-public personal information and Data of any Cardholders and of the Merchant; and collect, store, copy, transfer, and use Transaction Data only for purposes of this Agreement, in accordance with all applicable laws, rules, and regulations relating to privacy and data protection.
- 13.2. The Merchant shall be responsible for maintaining confidentiality and security of any Transaction Data and Confidential Information in its possession, custody or control, and shall ensure that it complies with applicable data privacy and security requirements under the PCI DSS in its use, access, and storage of any non-public Cardholder personal information, as well as its obligations under any applicable law or regulation as may be in effect regarding the confidentiality, use, and disclosure of Cardholder information.
- 13.3. Subject to the requirements of PCI DSS and/or AFS and the applicable law, the Merchant shall keep the Card and Cardholder's information (other than the CVV or CVC Code and expiry date of the Card, which information must be captured but not kept for any reason) and all Transaction Data (whether in paper or electronic form) safe and secure in a way that prevents unauthorized access, loss, theft, or disclosure to any unauthorized person.
- 13.4. The Merchant shall not request or store any additional personal information or data other than the Transaction Data captured in the Transaction and shall not use the Transaction Data for any purpose other than those specified in this Agreement. The Merchant shall fully comply with the applicable data protection laws in UAE and any applicable regulations, orders, codes, ordinances or legislation. In the event of any actual or threatened of any Personal Data by Merchant, it is understood and agreed that money damages may be an insufficient remedy, and therefore, without prejudice to the rights and remedies otherwise available to AFS, AFS shall be entitled to seek the remedies of injunction, specific performance or other equitable relief. For the purposes of this clause, "Merchant" includes the Merchant's directors, employees, staff, approved agents, subcontractors, or anyone acting on the Merchant's behalf.
- 13.5. The Merchant acknowledges and warrants that it has read and understood the PCI DSS and shall at all times ensure compliance with PCI DSS (against the current version of the PCI DSS published on the PCI Security Standard Council's website) and implement risk

management controls.

- 13.6. Subject to the requirements of PCI DSS and the applicable law, the Merchant shall maintain the proper facilities, equipment, inventory, books, and records and shall retain all POS Records and related sale invoices/Receipts related to Transactions for a minimum period of eighteen (18) months from the date of each Transaction (or such other period as may be prescribed by the CBUAE) from the date of the relevant Transaction.
- 13.7. The Merchant consents, on its own behalf and on behalf of any third-party individuals (e.g. directors, partners, office holders, officers, employees, authorised agents, shareholders and beneficial owners) to the collection, use, processing, and disclosure of any Personal Data.
- 13.8. The Merchant acknowledges that AFS will use its Personal Data or share its Personal Data with any third party where AFS has the Merchant's consent or when AFS has another lawful reason, such as:
  - a) The need to process the Personal Data to provide Services and perform its obligations under this Agreement;
  - b) The need to pursue AFS's own legitimate interests or meet any regulatory or compliance requirements;
  - c) The need to process the Personal Data to comply with a legal obligation (e.g. compliance with regulatory obligations under any applicable regimes, including without limitation, sanctions due diligence checks, or to comply with Tax regulations that require AFS to report the Tax status of its customers or counterparties);
  - d) The need to establish, exercise or defend its legal rights or those of a member of its group or a third party employed by AFS;
  - e) When AFS believes that the use of Merchant's Personal Data is in the public interest.
- 13.9. Where the Merchant provides any Personal Data relating to its customers or third-party individuals to AFS, Merchant represents and warrants that the Merchant has:
  - a) informed such customers or third-party individuals that Personal Data relating to them has been or will be disclosed to AFS;
  - b) informed such customer or third-party individuals that such Personal Data will be collected, used, processed, and/or disclosed by AFS and its third party service providers in the manner and for the purposes as described in this Agreement; and
  - c) obtained the consent of such customer or third-party individuals for the foregoing.
- 13.10. Upon reasonable request from AFS, the Merchant agrees to provide AFS with a copy of the document(s) containing such consent or evidence that the relevant third-party individual has given such consent. The Merchant agrees to indemnify and keep indemnified AFS, its Affiliates, directors, officers, employees, and/or agents from and against any and all fines, penalties, liabilities, obligations, losses, damages, suits and expenses incurred by or asserted against AFS as a result of breach of this warranty, other than those resulting from the negligence, willful default or fraud on the part of AFS or that of its Affiliates, directors, officers, employees, and/or agents.
- 13.11. The Merchant acknowledges that AFS may store client data in servers outside its domicile for operational reasons.
- 13.12. AFS does not sell Personal Data to any third party, and AFS shall remain fully compliant of

any duty or obligation of confidentiality imposed on AFS by the applicable agreement(s) and/or terms and conditions that govern our relationship with Merchants, AFS customers, or any Law.

- 13.13. The terms and conditions for the processing of Personal Data are defined in a separate "Privacy Notice". This Privacy Notice, and all changes thereto, are posted on the corporate website of AFS (<https://www.afs.com.bh>). Merchant agrees to the terms of this Privacy Notice and the consents stated therein and shall ensure that all individuals in respect of whom Merchant has disclosed Personal Data to AFS receive a copy of such Privacy Notice and acknowledge the terms thereof. The Merchant may contact AFS to obtain a copy of the Privacy Notice.
- 13.14. Notwithstanding anything to the contrary contained in this Agreement, AFS reserves the right to use, access, store, reproduce, publish, distribute, modify, aggregate with other information, analyze, transmit, sell, license, distribute and disclose anonymized data (means all Transaction Data without any Personal Data or data subject to PCI DSS) to provide Services, improve, develop and provide, any new products and/or services to its existing or new clients .

#### **14. COMPLIANCE**

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- 14.1. The Merchant agrees to comply with the applicable Scheme Rules and laws regarding payment acceptance, the sale of goods and services, and business practices. This includes compliance with local and international data protection laws, sanctions, anti-money laundering (AML) regulations, payment card industry (PCI) standards, data security standards (DSS), and requirements for business risk assessment and mitigation (BRAM).

#### **15. CHARGES**

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- 15.1. The Merchant agrees to pay AFS, all Charges (plus any VAT that may apply) for the Services. All applicable Charges payable to AFS under this Agreement are immediately due and payable on provision of the relevant Service to Merchant.
- 15.2. Unless stated otherwise, all Charges, and other payments to be made by the Merchant under this Agreement are exclusive of VAT and any other applicable Taxes under any applicable Law or governmental decree, for which the Merchant shall also be liable. Any Tax payable in connection with the Services provided, or payments made under this Agreement (other than Tax payable on our net income, profits or gains) shall be paid by the Merchant.
- 15.3. AFS may from time to time introduce bundled offers or package deals ("**Offers**") to its merchants through its written communications or through its Application Forms for a continuing duration or for a limited period. AFS does not guarantee continuity of the Offers for any period of time. AFS shall, at its sole discretion, cancel or withdraw such Offers at any time and replace them with Charges applicable separately for individual Services.
- 15.4. 15.4. In accordance with clause 36.1, AFS reserves the right to modify the Charges. This includes introducing new Charges, increasing existing Charges, altering the rate or basis of any Charges, introducing new packaged or bundled deals, amending or withdrawing current packaged or bundled deals, and updating the existing Schedule of Charges or issuing a new Schedule of Charges. AFS will provide the Merchant with at least 15 (fifteen) days' prior written notice of any changes, except in cases where, changes result from regulatory requirements, interchange adjustments, Card Scheme modifications, or other factors beyond AFS's reasonable control. In such cases, changes may take effect immediately or after a shorter notice period, as applicable. The Merchant may terminate this Agreement per clause 36.2. If the Merchant does not terminate the Agreement within the 15-day notice period, the Merchant will be deemed to have accepted the changes.

- 15.5. The Merchant hereby authorizes the deduction of Charges due to AFS from the Settlement or other amounts payable by AFS to the Merchant pursuant to this Agreement or otherwise.
- 15.6. The Merchant must pay any amounts owed under this Agreement immediately when due. Interest may be charged on any amounts the Merchant has not paid, and AFS shall have the right to charge interest at the rate of 2% per month and to add the interest to the amounts the Merchant owes at the end of each month.
- 15.7. If the Merchant is a High-Risk Merchant, Merchant will be charged the registration fees or other charges incurred by AFS to the Scheme.
- 15.8. In addition to the Charges, the Merchant shall be liable to pay AFS a Fall Below Fee upon failure to meet the relevant Minimum Annual Transaction Volume.
- 15.9. Charges are non-refundable to the Merchant under any circumstances, unless received in error by AFS.

## **16. SET-OFF AND RIGHT TO WITHHOLD MONEY**

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- 16.1. The Merchant irrevocably authorizes AFS to set-off, withhold and deduct, any Charges, Chargebacks, Refunds, claims, Taxes or any potential liabilities, liquidated damages, or any other amounts that the Merchant owes to AFS, from any Settlement to the Merchant under this Agreement.
- 16.2. For the avoidance of doubt, AFS may suspend Transactions, Settlement, or Services if the Merchant breaches, or is reasonably suspected by AFS to have breached this Agreement or any part of it, or if AFS has reason to believe that the Transaction may be fraudulent or involve any criminal activity, until the satisfactory completion of our investigation and/or that of any Scheme, Regulatory Authority, Issuer, or any other third party.
- 16.3. Merchant shall not have any right to set-off in respect of any of AFS's liabilities under this Agreement or any other Agreement (whether such liabilities are present, future, actual, contingent or potential) against any amounts due to AFS.

## **17. SETTLEMENT**

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- 17.1. On completion of a Payment Transaction, the Merchant shall electronically transmit the POS Records to AFS at the end of each day and, in any event, no later than three (3) calendar days from the date of the Transaction. Time is of the essence, and should the Merchant fail to provide AFS with an accurate and complete POS Record in accordance with this Agreement within the prescribed period for any Transaction, AFS shall be under no obligation to accept that Transaction, and the Transaction may be subject to a Chargeback.
- 17.2. Subject to the terms and conditions of this Agreement and the Scheme Rules, subsequent to the deduction under 16 and clause 17.4, AFS shall make Settlement to the Merchant.
- 17.3. Payments shall be made in AED, unless otherwise determined by AFS. Where a currency conversion is applied, AFS may use its prevailing exchange rate of the day which is applied on: (a) the date of Settlement in the case of Point-of-Sale Transactions (including mail order/telephone order Transactions and CNP Transactions); and (b) the date on which the Transaction is sent to the Acquirer in the case of Payment Gateway Transactions.
- 17.4. For the avoidance of doubt, Settlement to the Merchant is provisional and is subject to verification and audit by or on behalf of AFS. The Merchant authorizes AFS to deduct from Settlement, or if the Settlement has already been made, the Merchant shall repay to AFS the full amount of:

- a) any Chargebacks,
  - b) any Refunds;
  - c) any assessment, fine, liquidated damages, fee, cost, expenses or charge of any nature which a Card Scheme, Issuer, other Acquirer or any other third-party levies on Merchant or us at any time, directly or indirectly, in relation to a Service, Transaction or any other aspect of our or such third party's relationship with the Merchant;
  - d) any additional payment made by AFS as a result of any failure or error in the system;
  - e) any amounts incurred by AFS in any action, proceeding, claim, demand or assessment, fine or similar charge whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise; and
  - f) any Charges.
- 17.5. AFS shall at its sole discretion, provide or make available to the Merchant (either by email or through AFS portal from which it can be accessed and/or downloaded) an invoice for any or all such sums, which invoice shall be payable in accordance with its terms.
- 17.6. AFS shall not be liable for delays in receipt of funds or errors in debit or credit entries caused by third parties, including the Card Scheme or the Merchant, or caused by any other event or occurrence beyond AFS's reasonable knowledge or control.
- 17.7. Any Settlement made, at the Merchant's direction, by AFS to the Bank Account in the name of a person other than the Merchant will constitute good receipt by the Merchant of the sum due and owing by AFS to the Merchant in relation to AFS's liability to the Merchant under this Agreement.
- 17.8. In the event Merchant procures any financial solutions including a loan or any cash advance from a bank or financial institution ("**Lender**") that is secured against Merchant's future Sale Proceed receivables then AFS may upon Merchant's written request, at its sole and absolute discretion, mark a lien on all or a part of the Sale Proceeds in favor of the Lender. If the Merchant takes an advance from the Lender against its future Sale Proceeds receivables, AFS shall after it has marked a lien on Merchant's Sale Proceeds in favor of the Lender and till such time that the Lender has advised us in writing that the lien be released:

- a. deposit the Sales Proceeds to the Bank Account designated by Merchant; and/or
- b. deposit all or a proportion of the Sale Proceeds to Merchant's designated Bank Account with the Lender; and
- c. that such payment to the Merchant's Bank Account designated with the Lender (as the case may be) shall be full and final settlement of AFS's Settlement obligations under this Agreement.

Merchant agrees that marking of such lien as requested by the Merchant in writing, and transfer of Sales Proceeds to the Merchant's designated Bank Account(s) or other designated account with the Lender shall be at AFS's and sole discretion and remain subject to AFS' rights under this Agreement and Law and shall be without prejudice to rights of AFS to withhold, retain, deduct and/or apply the Sale Proceeds in accordance with this Agreement.

## **18. COLLATERAL**

18.1. At in its sole discretion AFS may require the Merchant to provide required collateral in favour of AFS, either in the form of standby letter of credit /bank guarantee from an A-rated bank in GCC, form of which shall be subject to AFS approval or a cash deposit with AFS, as determined by AFS from time to time ("**Collateral**"), in its sole discretion, to secure to our reasonable satisfaction the performance of your obligations (including contingent or potential obligations) from time to time under this Agreement. Where AFS requires the Merchant to provide the Collateral, following provisions apply:

- a) AFS shall have unilateral right to use to draw upon and set-off against the Collateral (directly and without requiring obtaining any consent from Merchant and notwithstanding any contestation or objection of kind or nature whatsoever from Merchant), any payment due from Merchant, upon any default of the Merchant.
- b) The threshold amount of such Collateral shall be as instructed by AFS. AFS shall have a unilateral right to change the amount of Collateral periodically (as per sub-section (d) below) and the Merchant must promptly provide additional Collateral as determined by AFS.
- c) After any draw from the Collateral, Merchant must reinstate the Collateral to the full amount.
- d) The amount of the Collateral provided is subject to review on periodic basis and in the event of increased risk or any other circumstances giving rise to increased financial exposure to AFS, Merchant shall increase the amount of Collateral to cover the incremental exposure to AFS, upon demand.
- e) Merchant must maintain and keep the Collateral valid to the full amount throughout the duration of the Agreement.

## **19. ADVERTISEMENTS AND PROMOTIONS**

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- 19.1. The Merchant agrees to display in a prominent place in the Merchant Outlet(s) any AFS related placards and any promotional material as may be provided by AFS and reasonably instructed by AFS.
- 19.2. The Merchant shall not use any marketing or promotional material that features AFS's name, brand, logo, trademark, or tradename, or that uses any other name associated with the Cards or Accounts for any other purpose, other than for what AFS has provided the Merchant such material, without the prior written approval of AFS.

- 19.3. AFS shall be under no obligation to the Merchant to provide any advertisement or promotion material or services, and any such services shall be separately agreed by and between the Parties in writing.

## **20. INFORMATION AND AUDIT**

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- 20.1. The Merchant acknowledges that signing the Application Form does not constitute approval. Acceptance by AFS is contingent upon the Merchant providing necessary financial and organizational information about the Merchant's business, including details about its owners, shareholders, signatories, financial accounts, audited statements, and any other documentation requested by AFS to comply with regulatory requirements related to money laundering and sanctions. This information must be submitted within 15 days of signing the Application Form. The Merchant understands that no Transactions will be processed through the POS Terminal until all required information is provided and the Merchant receives approval from AFS.
- 20.2. On an ongoing basis, Merchant shall comply promptly with all requests for information, in relation to the Merchant (including providing personal information about Merchant's directors and beneficial owners), that AFS may make for the purpose of meeting requirements of Laws regulating money laundering or sanctions.
- 20.3. In the event of any investigation by or on behalf of AFS and/or the Card Scheme with respect to Chargebacks, suspected fraud, or other requests for information, the Merchant shall fully co-operate in the auditing of its records.
- 20.4. The Merchant agrees to provide AFS, and its agents access to the Merchant's business premises including the Merchant's offices and Merchant Outlets so that AFS can audit or inspect the Merchant's facilities, equipment, inventory, records, data and system (including any computer system and software) relevant to this Agreement for the purposes of carrying out an inspection or audit at no cost to AFS or its agents. AFS shall give the Merchant reasonable prior notice (except in an emergency) and shall try and minimize any inconvenience caused to the Merchant. The Merchant shall be required to undertake any correctives steps to fix any actual or potential issues identified by AFS in the audit/inspection within a reasonable period given by AFS. Any inspection or audit under this clause shall not mean that AFS has approved or upheld the Merchant's security measures.

## **21. INDEMNITY**

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- 21.1. AFS shall have no relationship, whether contractual, statutory, or otherwise, with any of the Merchant's customers and shall not be liable to the Merchant's customers or any third party. Without limiting the generality of the foregoing, AFS expressly disclaims all warranties, including but not limited to implied warranties of merchantability, fitness for a particular purpose, and non-infringement, and does not warrant, endorse, guarantee, or assume responsibility for any goods and/or services advertised, offered, or sold by the Merchant at the Merchant's Outlet(s), and AFS shall not be a party to any Transaction. AFS does not endorse the Merchant's Outlet, Platform, or any third-party website or assume liability or responsibility for the accuracy of any material contained therein or any infringement of any third-party Intellectual Property Rights arising therefrom or any fraud or other crime. In no event shall AFS be liable for any act or omission of any third party, including but not limited to a Merchant's Cardholder.
- 21.2. The Merchant shall be liable and shall indemnify and hold harmless AFS (and any of AFS's directors, employees, staff, licensors, subcontractors, and representatives) and the Card Scheme from and against any and all claims, costs, damages, expenses, lawsuits, judgments, arbitral awards, fines, financial penalties, liabilities, and losses (including administrative, investigative, and legal costs) arising from or in connection with, including but not limited to:
- i. a Chargeback, Refund, over-payment, payment error or other incorrect or invalid payment or customers disputes or incorrect Transaction made by the Merchant, which requires giving credit to the Cardholder or Accountholder through a sale reversal;
  - ii. Refunds and Chargebacks, claims or disputes in relation to any and all DCC Services with Foreign Cardholders or any third party arising from or in relation to the DCC Services.
  - iii. third-party Intellectual Property Rights infringements;
  - iv. any error, negligence, misconduct, or fraud or other acts (or failures to act) by the Merchant and/or the Merchant's employees or representatives or the Cardholder/customer;
  - v. the Merchant's use of the Services;
  - vi. any Chargebacks or other charges, losses, claims or disputes arising from or in relation to CNP Transactions;
  - vii. any claim made by any Cardholder, Platform user, merchant, or any other person or third party regarding any Transaction or the use of the Services;
  - viii. the Merchant's breach of this Agreement or breach of any other agreement the Merchant enters into with third parties;
  - ix. the Merchant's breach of any applicable law, regulation, or the Scheme Rules and requirements; and/or
  - x. any claim made or defense raised against AFS or any of its subcontractors by any Card Scheme or other party arising from or in connection with the Merchant's Transactions.

## **22. LIMITATION ON LIABILITY**

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- 22.1. Under no circumstances shall either Party, its Affiliates and AFS's third party services/solutions providers be responsible or liable for any special, punitive, incidental, consequential, special, exemplary or indirect losses, damages or liability.
- 22.2. Without affecting any of the other clauses of this Agreement, the Merchant agrees and understands that AFS's, its Affiliates and its third party services/solutions providers entire liability, and the Merchant's exclusive remedy, in one or more claims, shall be solely limited to (and in no event shall exceed under any legal or other theory of recovery) in aggregate to the amount equivalent to Charges received by AFS from the Merchant during the twelve (12) month period preceding the date that such claim(s) is/are made.
- 22.3. Nothing in this Agreement will limit or exclude either Party's liability for death or personal injury arising from fraud or fraudulent misrepresentation, or any other liability which cannot be excluded or limited by law.

### **23. FORCE MAJEURE**

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- 23.1. AFS shall not be liable to the Merchant if AFS or any of its agents or subcontractors is prevented from or delayed in the partial or total performance of any of AFS's obligations under this Agreement for events that are unforeseen and/or are outside of AFS's reasonable control, including Network Outage, whether such events are public or apply generally or specifically to AFS. This includes, but is not limited to:
- a) any Equipment, or other machine, software, hardware, system, or transmission link error, malfunction, or failure (including due to design or manufacturing of the Equipment);
  - b) any action or inaction on the part of the relevant Issuer or Card Scheme;
  - c) any industrial or labor strike, lockout, or dispute;
  - d) any natural disaster, war, invasion of armed forces, civil unrest, insurrection, or other force majeure event;
  - e) any epidemic or pandemic; or
  - f) any other unforeseen event that is beyond the reasonable control of AFS (whether it has a general application or whether it applies to AFS or limited parties only).
- 23.2. If the event continues for more than sixty (60) calendar days, either Party may terminate the Agreement upon 30 (thirty) days written notice to the other Party.

### **24. TERM AND TERMINATION**

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- 24.1. This Agreement shall commence on the Effective Date and continue for the Term until AFS receives written non-renewal notice from the Merchant at least 3 (three) months prior to the end of the then current 3 (three) year Term, or until terminated in accordance with the provisions of this Agreement.
- 24.2. The Merchant may terminate this Agreement by giving written notice to AFS:
- a) at least 30 (thirty) days' advance under clause 36.2;
  - b) if AFS commits a material breach that is remediable and is not remedied within 20 (twenty) calendar days of services of a prior written notice by the Merchant, requiring such remedy;
  - c) if AFS is insolvent; and/or

- d) if AFS becomes the subject of a petition, order, or a resolution, or any step, in connection with the winding up.

24.3. Without prejudice to any other rights and remedies under this Agreement or the law, AFS may terminate this Agreement at any time by giving the Merchant immediate written notice in certain circumstances, including:

- a) if the Merchant becomes insolvent (or AFS reasonably believes it may happen), or if an order is made or a resolution is passed for the voluntary or involuntary liquidation or winding-up of the Merchant, or if an administrator, administrative receiver, receiver, or trustee is appointed in respect of the whole or any part of the Merchant's assets or its business, or if the Merchant makes any composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt;
- b) if AFS becomes aware (or AFS reasonably suspects) that the Merchant is committing fraud or submitting illegal Transactions;
- c) if the Merchant has become, or is becoming, an excessive chargeback merchant, or an excessive fraud merchant, or is involved in excessive Cardholder disputes;
- d) if the Merchant is selling or supplying illegal goods and/or services, or goods and/or services other than those supplied in the Merchant's ordinary business, trade, and activities which may otherwise damage AFS's goodwill or adversely affect AFS;
- e) if the Merchant fails to make any payment due under this Agreement or fails to comply with any of the terms of any other loan facility, security document, guarantee, or other arrangement that the Merchant may have with AFS, and fails to make payment within fifteen (15) calendar days of receiving written notice of non-payment from AFS;
- f) if the Merchant is in material breach or default of any of the terms and conditions of this Agreement and fails to remedy such breach or default within 20 (twenty) calendar days of receiving written notice from AFS describing the breach or default and requesting a remedy;
- g) if the Merchant is charged with any criminal offense(s) or acts in any illegal, dishonest, immoral, or other manner that, in the reasonable opinion of AFS, may damage AFS's goodwill or have an adverse effect on AFS;
- h) if the Merchant closes or discontinues its operations in the Merchant Outlets covered by this Agreement, or if the Merchant ceases, threatens to cease, or AFS reasonably believes the Merchant may cease to carry on the entirety or a substantial portion of its business;
- i) if the Merchant fails to meet the Minimum Annual Transaction Volume;
- j) if there is a material change in the nature of the Merchant's business or the good and/or services supplied by the Merchant;
- k) if a material positive or negative fluctuation month-on-month in the Merchant's Transaction volumes, or if the average value of the Merchant's Transactions, or the occurrences of such other events as may give rise in AFS's discretion, to a significant increase in our risk profile;
- l) if there is a material increase in the Merchant's Chargeback, Refunds, and/or

declined Transaction levels relative to expected volume;

- m) if a Change of Control in respect of the Merchant, or a sale or other disposal of any substantial division or party of the Merchant's business;
- n) if there is a material deterioration in profits or the financial or trading position of the Merchant;
- o) if the Merchant in breach of Floor Limit;
- p) if the Merchant is in breach of its obligations;
- q) if any Scheme or a Regulatory Authority requests the termination of the Agreement; or
- r) if the provision of the Services to Merchant is not profitable to AFS.

24.4. AFS's termination of this Agreement under clause 24.3 above shall be automatic and immediate upon written notice, without any need for a court judgment.

## **25. EFFECTS OF TERMINATION**

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- 25.1. If the Merchant intends or purports to terminate this Agreement in any way other than in accordance with the terms hereof, the Merchant shall be liable to pay AFS liquidated damages equal to the greater of (a) 10 basis points of Turnover in the last 12 (twelve) months preceding the date of termination by the Merchant or (b) Fall Below Fee.
- 25.2. Upon termination for any reason, the Merchant shall immediately stop using the Equipment, stop accepting new Transactions on the AFS POS Terminal, and stop transmitting any Transactions to AFS. If any Authorisation is obtained after the termination of this Agreement, the Merchant expressly acknowledges and agrees that the fact that such Authorisation was requested or obtained shall not operate to reinstate this Agreement.
- 25.3. Upon termination, the Merchant shall remove from the Merchant Outlet(s) any signage, decal, or other sign or material that mentions AFS or features AFS's brand, logo, trademark, or tradename, or of the Merchant's affiliation with AFS, and shall return (or destroy if so requested by AFS) any promotional material provided by AFS to the Merchant.
- 25.4. Upon termination, the Merchant shall immediately return to AFS all Equipment (including the POS Terminal) and other property of AFS, as may be in the Merchant's possession, in good condition and repair (other than normal wear and tear). Merchant shall not be permitted to exercise any lien over the Equipment or withhold Equipment, for any reason or claim whatsoever, whether or not arising from this Agreement.
- 25.5. The Merchant hereby agrees that AFS may continue to process any Chargeback(s) and adjustments for a period of twelve (12) months after the Agreement is terminated. Upon the termination of this Agreement for whatever reason, any right to use AFS's Intellectual Property Rights shall also immediately end on the same day.
- 25.6. Without prejudice to clause 25.1 above, AFS shall not be responsible or liable for any Transaction completed after the date of termination of this Agreement, regardless of whether authorization has been obtained. The Merchant agrees and understands that any post-termination Authorisation obtained shall not be construed as a reinstatement, renewal, or extension of this Agreement.
- 25.7. Subject to AFS's right to set-off and/or withhold payment under clause 16 and clause 17.4 of this Agreement, any undisputed amounts owed by a Party to the other Party upon the termination of the Agreement shall be paid within thirty (30) Business Days of the date of

termination.

25.8. Termination of this Agreement for whatever reason shall be without prejudice to the Parties' rights and remedies and accrued liabilities.

25.9. Clauses 4, 7, 8, 13, 14, 15, 16, 17.4, 20, 21, 22, 25, 27, 29 to 37 shall continue in force and survive the termination of this Agreement.

## **26. WARRANTIES AND REPRESENTATIONS**

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26.1. Each Party represents and warrants to the other Party that:

- (i) it is duly incorporated or established and validly existing under the law of UAE (or, if the Merchant is not registered in UAE, under the law of its jurisdiction of incorporation or in which it is established, as appropriate);
- (ii) it has the power to own its assets and carry on its business, trade, and activities, as well as that its business, trade, and activities are and will be carried on;
- (iii) the obligations under this Agreement are legal, valid, binding, and enforceable obligations;
- (iv) the entry into and performance by it of the services and transactions contemplated by this Agreement do not and will not conflict with its constitutional documents, the law of the UAE, or with any law or regulation applicable to it or binding on it;
- (v) it has the power to enter into, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of this Agreement;
- (vi) the person signing this Agreement on its behalf is fully authorized to sign, execute, and enter into this Agreement on its behalf;
- (vii) it has not taken any action and that no legal proceedings or other steps have been started or threatened against it for its liquidation, winding-up, dissolution, administration, or reorganization or for the appointment of a receiver, administrator, administrative receiver, trustee, or similar officer of it or of any or all of its assets or revenues. Nor is there any legal action or regulatory investigation pending or (to the best of the Party's knowledge) threatened against the Party that might affect the Party's ability to carry out any of its obligations under this Agreement; and
- (viii) its products and content do not violate any Laws and do not infringe on the Intellectual Property Rights of any third party.

- 26.2. The Merchant further represents and warrants to AFS that all information and documents provided to AFS by or on behalf of the Merchant during this Agreement (or otherwise in connection with this Agreement) is true, accurate and complete, and that the Merchant is not aware of any material facts, information, or circumstances that have not been disclosed to AFS and which might, if disclosed, adversely affect the decision of AFS whether or not to provide the services in accordance with the terms and subject to the conditions of this Agreement.
- 26.3. The Merchant shall provide AFS with any information or documents that AFS may reasonably require from time to time.
- 26.4. The Merchant shall immediately notify AFS of any change in its name, legal status, address, or business activities, including changes to the type of goods and/or services offered, as well as any potential sale, restructure, acquisition, transfer, merger, downsizing, insolvency, or any other material change in the nature or size of its business, or any other material change to the information or documents provided to AFS.
- 26.5. The Merchant further represents and warrants to AFS that each processed Transaction and any Receipt or POS Record presented to AFS is genuine, valid, and in accordance with this Agreement, and is the result of a bona fide Transaction for the purchase of goods and/or services by the Cardholder from the Merchant for the amount stated on the relevant Receipt or POS Record, and is not subject to any claim, dispute, set-off, and/or counterclaim.
- 26.6. MERCHANT ACKNOWLEDGES THAT AFS HAS NOT MADE ANY WARRANTIES HEREUNDER, AFS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## 27. CONFIDENTIALITY

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- 27.1. The Merchant shall treat the Confidential Information as confidential and shall not reveal or use any Transaction Data, Cardholder's Personal Data, Card or Account information or any other information in connection with this Agreement or AFS's business other than strictly to perform its obligations under this Agreement.
- 27.2. The above confidentiality obligation shall not apply to information that is:
  - (i) disclosed to the receiving Party by a third party who did not breach any confidence by making such disclosure;
  - (ii) public knowledge or becomes public knowledge other than through breach of the receiving Party; or
  - (iii) required to be disclosed by a legal duty.
- 27.3. Each Party agrees not to disclose the terms of this Agreement to any third party and not to prepare or release for distribution to the media any news release or other publicity pertaining to this Agreement without the prior written consent of the other Party.
- 27.4. The Merchant hereby grants AFS the right to share Merchant data, including but not limited to transaction details, performance metrics, and the Merchant's website URL ("**Merchant Data**"), with third parties for purposes related to web crawling, data analysis, and other legitimate business activities. AFS may share Merchant Data and Merchant IP to enhance service offerings, improve operational efficiencies, conduct market research, and support advertising and promotional activities.

## 28. EXCLUSIVITY

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- 28.1. For the duration of this Agreement, the Merchant agrees to use AFS as its exclusive and sole provider of the Services, and the Merchant agrees that it shall not directly or indirectly or through the agency of any person, enter into any agreement with or use the services of any other service provider or Acquirer, that are the same, similar to, or competitive with the Services, nor to use the same or competitive services of another one or more service providers or Acquirer.
- 28.2. Nothing in this Agreement shall prevent AFS from engaging with any other merchants or service providers to provide services that differ from, are the same as, are similar to, or are competitive with the services covered by this Agreement on the same or different terms and conditions.

## **29. COMMUNICATION AND NOTICES**

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- 29.1. Any notice, request, or communication to be given under or in connection with this Agreement shall be in writing (and for the purposes of this clause, an e-mail is in writing).
- 29.2. Notices to AFS shall be sent to the below email address or such other address as may be notified by AFS to the Merchant in writing from time to time.

### **AFS contact details:**

**MerchantHUB@afs.com.bh**

- 29.3. Notices to the Merchant shall be sent to the email address of the Merchant specified in the Application Form or communicated through the portal, access to which AFS grants to the representatives of the Merchant named in the Application Form.
- 29.4. The Merchant understands there are inherent security threats with the use of e-mails and agrees to indemnify and hold harmless AFS from all liabilities in connection therewith.
- 29.5. All electronic mail instructions from Merchant in relation to Services (such instructions are hereinafter referred to as the “**Email Instructions**”) shall be subject to following conditions:
  - 29.5.1 Merchant authorises AFS to accept the Email Instructions appearing to have been received from Merchant.
  - 29.5.2 AFS may in its absolute discretion and without incurring any liability whatsoever to Merchant, refuse to act on any Email Instruction if AFS has any doubt that the email is not from Merchant.
  - 29.5.3 Notwithstanding anything herein contained, AFS shall be under no obligation to enquire into, or confirm the authenticity of, the Email Instruction and shall be entitled to rely on such Email Instruction.
  - 29.5.4 Merchant shall indemnify AFS and hold AFS harmless from and against all costs, claims, damages, fees and proceedings that may arise or that AFS may suffer or incur by reason of having accepted and acted on any Email Instructions.

## **30. ASSIGNMENT**

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- 30.1. Unless it is first agreed by AFS in writing, the Merchant shall not be permitted to assign, replace, subcontract, or transfer any of its rights or obligations under this Agreement to any other person.
- 30.2. The Merchant shall remain liable for any actions or inactions of its approved agents or subcontractors or representatives.
- 30.3. The Merchant understands and agrees that AFS may assign or transfer all or any of its rights and obligations under this Agreement either to another appropriately authorized member of AFS group, or to an entity that it merges, consolidates or amalgamates with or to which it transfers all or part of its business or assets, or to another company which succeeds to its business, without the need to obtain the Merchant's prior approval.

### **31. NO PARTNERSHIP**

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- 31.1. This Agreement does not constitute or imply any partnership, joint venture, agency, sponsorship, fiduciary relationship, or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Except as expressly agreed by the Parties in writing, neither Party shall have, nor represent that it has, any authority to give any instruction or make any commitment or contract on the other Party's behalf or otherwise bind the other Party.

### **32. THIRD PARTY RIGHTS**

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This Agreement is not intended to and does not give any person who is not a party to it any rights to enforce any of its provisions.

### **33. WAIVER**

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- 33.1. Any right or remedy under, or in connection with, this Agreement may be waived only by a Party's written agreement to the waiver. No right or remedy shall be precluded, waived, or impaired by any failure to exercise it, or any delay in exercising it, or any single or partial exercise of it, or any earlier waiver of it (whether in whole or in part), in relation to any other right or remedy (whether of similar or different character).

### **34. SEVERABILITY**

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- 34.1. If any term or part of this Agreement is or becomes illegal, invalid, or unenforceable, it shall be treated as deleted from this Agreement and it shall not affect the legality, validity, or enforceability of any other terms or parts of this Agreement.

### **35. ENTIRE AGREEMENT**

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- 35.1. This Agreement sets out the full agreement and understanding between the Parties and replaces and supersedes any previous agreements and understandings and communications (whether written or verbal) relating to the subject matter.

### **36. AMENDMENTS**

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- 36.1. AFS has the absolute and exclusive right to modify, amend, update, or replace the terms and conditions of this Agreement, either in whole or in part. This includes the ability to change any Charges as outlined in clause 15.4, or to amend, suspend, or terminate any Services under this Agreement (in whole or in part). Such changes will take effect immediately after a written notice is provided to the Merchant at least fifteen (15) days in advance.
- 36.2. If the Merchant does not agree to any changes or amendments, they may terminate this Agreement by providing written notice to AFS at least fifteen (15) days after AFS has informed them of the changes. If the Merchant fails to provide such notice or AFS does not receive any written objection from the Merchant, the Merchant will be deemed to have accepted the changes, which will then become binding on the Merchant fifteen (15) days after receiving the notification.

### **37. GOVERNING LAW AND JURISDICTION**

- 37.1. This Agreement is governed by and construed in accordance with the laws of the UAE.
- 37.2. The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Dubai.

**Schedule 1****Value Add Services****DCC on Point-of-Sale**

**AFS provides DCC on POS Terminals on the following additional terms and conditions:**

1. Unless it is agreed otherwise, the Merchant shall participate in the DCC.
2. The Merchant shall inform Foreign Cardholders making an overseas Transaction that they have the option to choose DCC, i.e., to have their Transaction completed in their preferred currency, before an authorization request for the Transaction is submitted.
3. The Merchant shall make each of the following clear to the Foreign Cardholder: the Transaction amount in the local currency; the Transaction amount in the billing currency; and the currency conversion rate and the transaction markup to be applied (as determined by AFS) should the Transaction be completed in the Cardholder's billing currency.
4. Once the Cardholder has decided the currency in which they would like the Transaction to take place, the Merchant shall honor the Foreign Cardholder's choice.
5. Should the Merchant fail to offer a Foreign Cardholder the option to complete the Transaction in their billing currency in accordance with section 2 of this Schedule, or fail to honor the Foreign Cardholder's choice in accordance with section 4 above, the Transaction may be subject to Chargeback.
6. The Merchant shall at all times comply with the DCC Disclosures, Policies, and Procedures, the Operating Guide, the Scheme Rules, and any and all bylaws, rules, regulations, operating regulations, guidelines, manuals, and instructions issued by AFS on a regular basis and/or any Card Scheme in relation to the Merchant's participation in the DCC Services (as may be amended, updated, or replaced from time to time) in order to be in compliance with the applicable international and national legislation and the Scheme Rules in relation to the Merchant's participation in the DCC services and to instill Cardholder confidence in the services and promote the services. Merchant will allow the AFS team to train their users on a regular basis as required.
7. Where the Merchant's technology allows for it, the same currency conversion method shall be used in the case of Refunds. The applicable currency conversion rate on the date of the Refund Transaction by the Merchant (as determined by AFS) shall be used for the Refund. Where the Merchant technology does not allow for credit to be converted using the same currency conversion method, the Refund shall be processed in AED on the terms and subject to the conditions of the Scheme Rules.
8. DCC shall not apply to Payment Transactions referred to AFS for Authorisation in accordance with clause 3.5 the Agreement or otherwise authorized by AFS by telephone.
9. AFS may terminate or suspend the DCC Services for any reason upon sending a notice to the Merchant.
10. For the avoidance of doubt, the Merchant shall be responsible for all DCC-related Refunds and Chargebacks, claims or disputes with Foreign Cardholders or any third party arising from or in relation to the DCC Services.

11. AFS agrees to pay back to the Merchant in consideration of its use of the DCC Services, a rebate as mentioned in the Application Form, calculated in AED prior to any conversion of the Foreign Transaction amount under the DCC Services.

<b>Payment Gateway Services</b>
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**AFS provides Payment Gateway Services on the following additional terms and conditions:**

1. At its sole discretion, AFS may modify the content, relevant software and interfaces of the Payment Gateway Services (including the payment webpages, if applicable) to keep the Payment Gateway Services up to date with market requirements. If such adjustments require the Merchant to make necessary changes to its software, interfaces, or operating procedures, AFS will inform the Merchant as soon as reasonably practicable prior to the execution of such adjustments. The Merchant shall be responsible for its own costs with respect to such changes to its software, interfaces, or operating procedures.
2. Where the Merchant uses any third party developer or its own website to process Transactions, the Merchant acknowledges and agrees that: (a), merchant is responsible to comply with the regulations, and/or standards as required of the Merchant respectively, directly or indirectly, by applicable Scheme Rules making bodies; and (b) where the Merchant has customized the payment website by itself (or AFS has done so at its request), the Merchant is responsible for the content of the website and shall indemnify and hold AFS harmless from any claims regarding such content, including infringement claims from third parties.
3. The Merchant will:
  - (i) provide to AFS complete, accurate, and timely information relating to the Payment Gateway Services;
  - (ii) ensure that any third-party products arranged by the Merchant in connection with the Payment Gateway Services are delivered in a timely manner and comply with all Scheme Rules and Laws; and
  - (iii) ensure that appropriate licenses and clearances are obtained (and the correct license fees or royalties paid) for the use of all third party products used in connection with the Payment Gateway Services.
4. The Merchant shall be responsible for technical integration and shall ensure that its e-Channels are enabled for connection to AFS's Payment Gateway and for any and all authentication, acceptance and processing procedures approved by AFS in writing used to complete Transactions.
5. The Merchant shall comply with all technical, security and privacy directions, standards and specifications by AFS and/or the Card Scheme and Regulatory Authority.
6. The Merchant shall not attempt to assign, lease, sublicense, transfer, resell, or share with third parties (whether in its entirety or partially) the Merchant's website and/ or the Payment Gateway Services or the Merchant's access to the same.
7. The Merchant shall provide accurate and exact uniform resource locator (URL(s)) and details for completing the Payment Gateway Transactions. Merchant agrees that AFS will have the right to share Merchant's URLs, and other relevant merchant data to third parties.

8. Any alteration or modification to the existing URL(s) and/or addition of new URL(s) from time to time shall be subject to the prior written approval of AFS. The same obligations as applicable to existing URL(s) shall apply to any altered, modified or additional URL(s). The Merchant shall ensure that the Merchant's web site, URLs, Links etc. are under the sole control of the Merchant.
9. The Merchant shall include all the information as required by AFS clearly on its e-Channels.
10. The Merchant shall provide the Cardholder with an electronic receipt of the Transaction,
11. The Merchant shall ensure that its website does not contain any malware, malicious or harmful code, or other internal component (e.g. computer viruses, trojan horses, backdoors), which could damage, destroy or adversely affect AFS's hardware, software, or services or other third-party software, hardware, data systems, services, or networks. The Merchant shall immediately notify the Authorization Center of any external hacks or attacks or threats.
12. The Merchant shall maintain responsibility for the Merchant's services, including its technical support and functionality of its e-Channels and shall indemnify and hold AFS harmless against any and all errors, disruptions, or security breaches related to the Merchant's business or website. The Merchant shall ensure that its website is updated at the Merchant's expense within a reasonable time period to incorporate any new versions of AFS's Payment Gateway platform, which AFS may use from time to time.
13. Transactions processed by AFS shall be screened by AFS's fraud and risk monitoring tools, which perform a number of checks on the Transactions and flags transactions as potentially fraudulent. AFS's fraud and risk monitoring tools do not guarantee the prevention of fraudulent Transactions nor the prevention of resulting Chargebacks and/or Card Scheme fines. For the avoidance of doubt, regardless of the resulting fraud flags, Transactions may be fraudulent or non-fraudulent.
14. The Merchant shall be responsible for the confidentiality and security of any Merchant ID and password assigned to the Merchant by AFS. The Merchant shall inform AFS immediately should the confidentiality, safety or security of the Merchant ID, password, software, set-up or configuration details and/ or the security of its e-Channels be compromised (or be suspected of being compromised).
15. The Merchant acknowledges that the Payment Gateway Services are a computer network-based services which may be subject to Network Outages and delay occurrences or to inactivity or inoperability of website. As such, AFS does not guarantee continuous or uninterrupted access to the Payment Gateway Services. The Merchant further acknowledges that access to the Payment Gateway Services may be interrupted or restricted for maintenance. AFS shall make reasonable efforts to ensure that transactions are processed in a timely manner, however, AFS shall not be liable for any interruption, Network Outage or failure to provide the Payment Gateway Services, howsoever arising.