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| Agreement No. | M001       |
| Version       | 3          |
| Revision date | 24/10/2020 |

## MERCHANT AGREEMENT

This **Merchant Agreement** is made on the day and year as stated hereto between:

- (A) **GKASH SDN. BHD. (Company No. 201201029846 /1014333-T)**, a private limited company incorporated under the laws of Malaysia with its place of business at B-2-10, Endah Promenade, No 5, Jalan 3/149E, Sri Petaling, 57100 Kuala Lumpur ("**GKASH**"); and
- (B) The party whose particulars are stipulated in **Schedule 1** herein ("**Merchant**").

### WHEREAS:

- (A) GKASH is a private limited company registered with BNM (as defined below) as an entity to provide merchant acquiring services. As part of its merchant acquiring business, it also provides internet payment services and other payment services (including payments via credit cards, charge cards, debit cards and mobile payment solutions) to merchants in its capacity as a third-party payment facilitator and master merchant, on behalf of other merchant acquirers or e-money issuers (banks and non-banks) approved by BNM.
- (B) In order to provide third-party merchant acquiring services, GKASH has been and will be appointed by each of the Acquirers as their third-party agent for merchant acquiring services or as may be referred to as a payment facilitator and master merchant, on terms and subject to conditions therein the TPAs (as defined below).
- (C) In view of the foregoing, GKASH will provide the Payment Schemes (as defined below) on behalf of the Acquirers and the Merchant is desirous to list as a merchant on-boarded by GKASH to accept the Payment Schemes as a mode of payment for Goods (as defined below) sold by the Merchant on terms and subject to the conditions of this Agreement.

## 1 DEFINITIONS AND GLOSSARY

### 1.1

#### Definitions

Unless the context otherwise requires, the following words and expressions have the following meanings:

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| "Acquirer(s)"              | means a bank or non-bank institution who has registered its merchant acquiring business with BNM and who has appointed and/or appoints GKASH as a third-party payment facilitator and master merchant, including an E-Money Issuer and/or an Operator's Acquirer pursuant to a TPA which terms are or will be incorporated as part of this Agreement.   |
| "Agreement"                | means this Merchant Agreement, the Welcome Letter, together with any terms and conditions, schedules, written instructions from GKASH (as may be issued from time to time) and any other documents or notices issued pursuant to this Agreement or executed as supplemental to this Agreement, which is expressly incorporated by reference as part of this Agreement.  |
| "AMLA"                     | means the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.   |
| "Applicable Laws"          | means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and terms and conditions of any grant of approval, permission, authority or license of any governmental authority, statutory body or self-regulatory authority within the jurisdiction of Malaysia, particularly if issued or required by BNM, Malaysian Anti-Corruption Commission and/or authority responsible for the protection of Personal Data. |
| "Business Day"             | means any day (except Saturdays, Sundays and public holidays) on which the banks in Malaysia are opened for business.   |
| "BNM"                      | means the Central Bank of Malaysia ( <i>Bank Negara Malaysia</i> ).   |
| "Confidential Information" | means any information which is by its nature confidential, secure, proprietary or the circumstances of disclosure indicate that is confidential, or which otherwise gives the party an advantage over its competitors, and includes without limitation, information about the Payment Schemes, financial information, statistics, business plans, product details, research and development material, marketing plans, strategies, Personal Data, data related to the operation and management of parties' business, information technology, intellectual property, know-how, processes and procedures, information belonging to the parties users, as well as all information          |

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| <p><b>“E-Money Issuer(s)”</b></p> <p><b>“FSA”</b></p> <p><b>“Force Majeure”</b></p><br><p><b>“Goods”</b></p> <p><b>“Intellectual Property Rights”</b></p><br><p><b>“Marks”</b></p><br><p><b>“Merchant”</b></p><br><p><b>“Merchant Account”</b></p><br><p><b>“Operator(s)”</b></p><br><p><b>“Operator’s Acquirer(s)”</b></p><br><p><b>“Party”</b></p><br><p><b>“PDPA”</b></p> <p><b>“Personal Data”</b></p><br><p><b>“TPA(s)”</b></p><br><p><b>“User(s)”</b></p> | <p>relating to the provisions of this Agreement and negotiations in connection with this Agreement, in whatever form held or provided, such as paper, electronically stored data, media film or orally.</p> <p>means any banks or financial institutions or other non-bank organisations or institutions approved by BNM as an e-money issuer to issue e-money.</p> <p>means the Financial Services Act, 2013.</p> <p>means any circumstances beyond the reasonable control of either Party including, without limitation, war, natural disaster, any strike, lock-out or other form of industrial action, riot or government regulations.</p> <p>means merchandise / goods or services sold by the Merchant to the Users.</p> <p>means, in relation to the Payment Schemes, Payment Transaction or the Goods supplied by the Merchant (as may be applicable), patents, rights to inventions, trade secrets, rights in unpatented know-how, confidential technical information, software, hardware, rights of confidence discovery, technology, processes, methods, techniques, registered and unregistered design rights, copyrights and related rights, database rights, layout design of integrated circuit, software rights, trademarks, service marks, trade names and domain names, moral rights and all other similar rights in any part of the world (whether registered, registrable, unregistered, pending registration or application) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any form whatsoever, which subsist or will subsist now or in the future in any part of the world.</p> <p>means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks, including but not limited to any one of the Payment Schemes’ brand mark and name mark, that any one of the Payment Schemes, its affiliates or subsidiaries own, manage, license, or otherwise control and make available for use by the Acquirers and/or the E-Money Issuers.</p> <p>means the merchant whose particulars are described in <b>Schedule 1</b> hereto and who is a retailer and/or provider of Goods at physical retail stores, online platforms or by way of such other modes of supply.</p> <p>means the designated account registered with GKASH in the company name of the Merchant enabling the Merchant to receive the Settlement Amount for the Goods sold to the Users upon payment by such Users, using the respective Payment Schemes, subject to deductions of the MDR and such other charges (if any).</p> <p>means any banks or financial institutions or other non-bank organisations or institutions approved by BNM as a payment system operator to issue a Payment Scheme.</p> <p>means a bank or non-bank institution who has registered its merchant acquiring business with BNM and who has been appointed by an Operator to carry out merchant acquiring services for card-based transactions that excludes e-money transactions.</p> <p>unless otherwise indicated to be construed as any party of the public at large, it means either GKASH or the Merchant and <b>“Parties”</b> shall mean GKASH and the Merchant collectively.</p> <p>means the Personal Data Protection Act 2010.</p> <p>means any information of any party obtained for purposes of the Payment Schemes, Payment Transaction, services rendered to the Users, data and information related to the Acquirers, GKASH, the Merchant and Users and any other data related to this Agreement which (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose; (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a such party, who is identified or identifiable from that information or from that and other information in the possession of the parties.</p> <p>means the third-party merchant acquiring services agreements entered or to be entered into between GKASH and an Acquirer at any time prior or after the execution of this Agreement.</p> <p>means any person who purchases the Goods offered by the Merchant and makes payment for such Goods in favour of the Merchant using any one of the Payment Schemes.</p> |
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1.2 **Glossary**

Unless the context otherwise requires, the following words and expressions have the following meanings in respect of the payment facilitator services provided by GKASH under this Agreement:

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| <p><b>“Account Data Compromise Event”</b></p><br><p><b>“Authorisation”</b></p><br><p><b>“Chargeback”</b></p> | <p>means an occurrence that results, directly or indirectly, in the unauthorized access to or disclosure of Users’ account data or the unauthorized manipulation of Users’ account data controls, such as account usage and spending limits.</p> <p>means the process of obtaining an authorisation code from an E-Money Issuer and/or Operator by GKASH and transmitting such authorisation code to the Merchant for completion of a Payment Transaction.</p> <p>means a reversal of a completed Payment Transaction previously credited to the Merchant Account, upon a claim for refund from GKASH, the Operator’ Acquirers and/or the Operators or pursuant to a demand by GKASH or the relevant Operator’s Acquirer involved in the respective</p> |
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Payment Schemes (as the case may be) requiring the Merchant to make good the amount of monies paid for a fraudulent or otherwise disputed transaction subject to and upon occurrence of the events in **Clause 6**.

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| <b>“Credit Vouchers”</b>                          | means the relevant slip, form, paper or document supplied by GKASH to the Merchant for the purpose of authorising the debit of the Merchant Account of an amount indicated in such voucher upon issuance of the voucher by the Merchant.   |
| <b>“Daily Terminal Limit” or “DTL”</b>            | means the amount of a Transaction Charges or series of Transaction Charges by one User in one day at any outlet operated by the Merchant subject to procurement of Authorisation from GKASH and/or the Operator’s Acquirers prior to completing the relevant Payment Transaction.  |
| <b>“e-money”</b>                                  | means electronic money which is exchanged electronically over a technical device such as a computer or mobile phone. E-money in circulation operates as a pre-paid bearer instrument.  |
| <b>“Merchant Discount Rate” or “MDR”</b>          | means a fee charged by GKASH to the Merchant for the utilisation of the Payment Schemes, which is auto-deducted from the Transaction Charges received from the Users and prior to release of the Settlement Amount to the Merchant. MDR are charged at the rates as will be specified in the Welcome Letter or such other rates as may be notified by GKASH to the Merchant from time to time;   |
| <b>“Merchant Identification Number” or “MID”</b>  | means the unique merchant identification number or code assigned by GKASH (as is provided by the Operator’s Acquirers) to the Merchant under the terms of this Agreement which will be stated in the Welcome Letter that serves as an identification of the Merchant for the processing and completion of the Payment Transaction subject to terms of this Agreement.  |
| <b>“NFC”</b>                                      | means near field communications that enables contactless payments.   |
| <b>“Payment Card”</b>                             | means a valid physical or virtual credit, debit, charge, prepaid card (including e-money) or such other designated payment instrument prescribed pursuant to the FSA that is issued by, associated with and/or bears the logo of an Operator for which the Acquirer (as the case may be) is authorised by such Operator to process a Payment Transaction.  |
| <b>“Payment Scheme(s)”</b>                        | means the payment networks linked to the Payment Cards and/or the e-money application (as the case may be) through the payment system or electronic wallet (as applicable) operated by each of the Operators, subject to the due diligence process and whose respective rules, technical standards and regulations the Merchant is obliged to comply, as may be notified to the Merchant with the Welcome Letter (as may be modified or amended from time to time by way of a notice from GKASH).  |
| <b>“Payment Transaction(s)”</b>                   | means any type of sales transaction effected through payment by the User using (i) Payment Card (whether or not the Payment Card, User and the Merchant are all physically present at the time of the transaction); (ii) electronic commerce transactions (conducted over the internet, mobile applications or other networks using electronic equipment to initiate the transactions); (iii) sale transactions without swiping or inserting a Payment Card into the POS Terminal or entering a PIN (including NFC transactions); (iv) QR Code or bar code scanning transactions; or (v) such transactions through any other forms of payment terminals. |
| <b>“PCI DSS”</b>                                  | means the set of security standards developed by the Payment Card Industry (PCI) Security Standards Council applicable to any organization which requires such organizations to accept, process, store, transmit and/or otherwise handle information in a secure environment and/or manner.  |
| <b>“PIN”</b>                                      | means a personal identification number issued to a User for the Payment Card or personally selected by a User for the purpose of effecting payment for a Payment Transaction at any POS Terminal with PIN verification capability.   |
| <b>“PIN Pad”</b>                                  | means a device that enables the User to enter his PIN at a POS Terminal.   |
| <b>“Point-of-Sale (POS)”</b>                      | means the point or location where a User executes payment for Goods offered by the Merchant by conducting and completing the Payment Transaction.  |
| <b>“Point-of-Sale Terminal” or “POS Terminal”</b> | means an electronic device, electronic data capture system or any other terminals which are provided by GKASH or the Operator’s Acquirers (as the case may be) to facilitate the processing of the Payment Transactions and allows the acceptance and processing of one or more Payment Cards to complete a Payment Transaction and perform the Settlement Function.   |
| <b>“QR Code”</b>                                  | means a quick response code.   |
| <b>“Settlement Amount”</b>                        | means the amount settled by GKASH into the Merchant Account, after deduction of the MDR and any other applicable charges, following a successful Payment Transaction by Users for the purchase of Goods from the Merchant.   |
| <b>“Settlement Function”</b>                      | means the transmission of payment request data carried out by the Merchant at the end of each day to initiate the process of clearance of the payment request made by a User for the provision of Goods by the Merchant enabling GKASH and/or the Acquirers to process such payment to the Merchant.   |
| <b>“Split Sale”</b>                               | means the process by which a Merchant uses two or more Payment Cards to complete one single transaction to circumvent the DTL imposed on the respective Payment Cards or where Authorisation was declined. In effect, a sales transaction is split when a Merchant divides the cost of a single transaction between two or more Payment Cards, using the same User’s account.  |
| <b>“Standards”</b>                                | means the organisational documents, operating rules, regulations, policies and procedures of the Payment Cards imposed by the respective Acquirers and Operators in relation to the utilisation of the Payment Cards, including but not limited to any manuals, guides or bulletins, as may be amended from time to time.  |

**“Transaction Charges”** means the amount charged to the Payment Card of a User for Goods purchased by such User from the Merchant.

**“Transaction Slip (s)”** means the relevant slips, forms, notices or papers used to represent and evidence the execution and completion of a Payment Transaction at the POS Terminal or through an e-wallet account (as the case may be) thereby permitting GKASH, the Acquirers to charge the amount contained thereon to the User’s account with the E-Money Issuer, upon the Settlement Function by the Merchant.

**“Terminal Identification Number (TID)”** means as an identification number assigned to each Point of Sale device by GKASH (as is provided by the Operator’s Acquirers) to identify the source of a Payment Transaction.

**“Welcome Letter”** means the letter which will be issued by GKASH to the Merchant and shall be acknowledged as received by the Merchant upon a successful due diligence process and acceptance by GKASH of the Merchant’s application to be on-boarded, which will contain details such as the MDR, MID, TID, clauses related to risks, Chargebacks, customer service details, and other compliance and regulatory details and will be appended with the Standards of the Acquirers and Operators.

- 1.3 Words importing the singular number include the plural number and vice versa. Words importing the masculine gender include the feminine and neuter gender and vice versa.
- 1.4 Words applicable to persons include any natural persons, company, incorporation, firm or partnership, incorporated or unincorporated.
- 1.5 References to “Parties” or “Party” or such other persons in this Agreement includes their/its respective personal representatives, successors-in-title and assigns.
- 1.6 The headings to the clauses of this Agreement are for reference only and shall not affect the interpretation and/or enforcement of the provisions of this Agreement.
- 1.7 References to this Agreement includes any Recitals, Schedules, Appendices, Annexures to it and reference to Clauses, Recitals, Schedules, Appendices and Annexures are to the clauses and recitals of, and schedules, appendices, annexures to, this Agreement. References to paragraphs are to the paragraphs of the Schedules or Annexures as indicated.
- 1.8 Any schedules, the Welcome Letter, annexures, addendums, documents executed as supplemental to this Agreement, any written instructions issued by GKASH to the Merchant from time to time and any other documents and/or notices issued by GKASH from time to time shall through incorporation by reference, form and be construed as an integral part of this Agreement.
- 1.9 References to statutes or statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification) and all by-laws, regulation and statutory instruments (however described) issued under them.
- 1.10 Whenever this Agreement refers to a number of days, such reference shall be to calendar days unless Business Days are specified.
- 1.11 Any reference to “writing”, “written” or cognate expressions include a reference to any communication effected by facsimile transmission, electronic mail or other comparable means (excluding short or instant messaging service).

**IMPORTANT NOTICE:**

The ensuing clauses of this Agreement are to be read and construed as general terms of this Agreement and shall at all times be subject to the specific rules, regulations, procedures and terms (as will be set out in the Welcome Letter, Standards and subsequent notices from GKASH) in relation to each Acquirer whose Payment Cards are utilised in every Payment Transaction. The general terms in this Agreement are intended to complement and form the foundations of the terms that are specifically imposed by each Acquirer and shall not be construed to be in derogation of such specific terms in the Welcome Letter and Standards. In the event of any inconsistency between these general terms, the Welcome Letter and Standards, the terms provided in the Standards of the applicable Acquirer shall prevail to the extent that it is inconsistent.

**2. ON-BOARDING OF MERCHANT**

**2.1 Due Diligence of Merchant**

- (a) Within seven (7) Business Days from the date of this Agreement, GKASH shall carry out a due diligence exercise on the business and other aspects of the Merchant. For this purpose, the Merchant hereby unconditionally agrees to give uninterrupted access of the Merchant's management records, books of account, contracts, properties and other documents to GKASH and its authorised representatives as may be requested by GKASH in order to reach a satisfactory finding of the Merchant's background and business standing and credibility.
- (b) Subject to procurement of any approvals required by GKASH from the Acquirers on the on-boarding of the Merchant, after completion of the due diligence and where the findings thereof are satisfactory to GKASH, GKASH shall indicate the same to the Merchant, issue the Welcome Letter to the Merchant and take the necessary steps to onboard the Merchant onto GKASH's master merchant system within five (5) Business Days from the date of GKASH's notice to the Merchant. Upon completion of the on-boarding process by GKASH, GKASH shall notify the Merchant of such completion of process. GKASH reserves the sole discretion to approve, reject, suspend, review and/or carry out continuing due diligence on the Merchant for purposes of the Merchant's on-boarding process and listing with GKASH.
- (c) The Merchant shall, on a timely basis, provide all information and/or documents that are required and/or requested by GKASH in the course of its due diligence and on-boarding process and thereafter from time to time, failing which GKASH shall have the right to disapprove, reject and/or refuse to on-board the Merchant or continue the listing of the Merchant with GKASH.
- (d) In the course of GKASH's due diligence process on the Merchant, the Merchant acknowledges and hereby unconditionally agrees to provide, on a timely basis, the relevant consents and/or documentation as may be required by GKASH to carry out verifications and checks against the records and information systems of public available sources such as CTOS, Office of Foreign Assets Control, sanctions listings and any other source (including any statutory bodies, government authorities or agencies).
- (e) **Rescission**  
In the event where the findings of the due diligence exercise by GKASH is not satisfactory based on GKASH's standards or as may be instructed by the Acquirers, GKASH shall reserve the right to unilaterally rescind this Agreement by providing notice of such rescission to the Merchant and any costs and/or losses incurred shall lie where it falls.

**2.2 Effective Date**

Notwithstanding the date of this Agreement, this Agreement shall only take effect from the date GKASH receives the Welcome Letter duly executed by the Merchant ("**Effective Date**").

**2.3 Merchant Identification**

Subsequent to the on-boarding of the Merchant with GKASH, GKASH shall by way of the Welcome Letter assign to the Merchant its very own MID and TID (as is provided by the Operator's Acquirer) which shall represent the Merchant's identity to GKASH, the Operator's Acquirers and/or the Operators (as the case may be) for the processing activity of every Payment Transaction undertaken and Payment Schemes utilized by the Merchant and/or the Users at any POS Terminals or at each of the Merchant's outlet.

**2.4 Request for Collateral**

GKASH may, at its sole and absolute discretion, without assigning any reason request from a Merchant an amount of money to be determined by GKASH, as a collateral and/or condition precedent for the on-boarding of such Merchant. In the determination of such collateral, GKASH may choose to adopt and apply onto the Merchant such risk assessment standards as it deems fit and such standards may include the standards imposed by the Financial Task Force on Money Laundering and/or AMLA.

**2.5 Change in Applicable Laws**

If there are any changes in any Applicable Laws which come into effect after GKASH has on-boarded the Merchant, in such circumstances GKASH may request to be furnished and the Merchant shall accede to such request and furnish GKASH with any requested information and cooperate to ensure compliance to the amended Applicable Laws or any part thereof.

### 3. **ACTIVATION**

#### **Activation of POS Terminal (Applicable to POS Terminal Merchants Only)**

- 3.1 Subject to clearance pursuant to **Clause 2**, GKASH shall or shall procure for a third party to install and activate the POS Terminal (with PIN Pad, as applicable) at the Merchant's place of business and/or other outlets registered with GKASH within three (3) Business Days from the Effective Date and such POS Terminal shall be equipped with the technology, hardware and software to execute and complete the Payment Transaction involving all the Operator's Acquirers.
- 3.2 The Merchant shall pay to GKASH, the Operator's Acquirer or to a third party identified by GKASH in the Welcome Letter commencing from the execution of this Agreement the following fees as may be applicable and will be set out in detail in the Welcome Letter:
- (a) Deposit ;
  - (b) Rental;
  - (c) Any other charges; and
  - (d) Any applicable taxes (if any).
- 3.3 GKASH reserves the right to revise the fees / amount identified in **Clause 3.2** above or any other fees applicable to the POS Terminal from time to time by giving written notice to the Merchant. Such change shall take effect from the date stated in the notice and if no date is stated in the notice, on the date any such payment related to the POS Terminal is due and payable in the ordinary course of events.
- 3.4 In addition to the MDR and related charges pursuant to **Clause 7** and the Welcome Letter, the Merchant authorises GKASH to deduct or cause to be deducted by the relevant Operator's Acquirers (as the case may be) any of the fees / amount identified in **Clause 3.2** above or any other charges due from the Merchant to GKASH from the payment received vide the Payment Transactions prior to remittance of any Settlement Amount to the Merchant. GKASH shall notify the Merchant prior to any such deductions.
- 3.5 In addition to the payment in **Clause 3.2** above, GKASH is entitled to charge the Merchant a one-time only POS Terminal setup fee and such other reimbursement for costs incurred during the conduct of the due diligence exercise by GKASH. Such payment shall be made at the time that the Merchant's application is confirmed by GKASH. Notwithstanding this **Clause 3**, GKASH (upon instructions from the relevant Operator's Acquirers) may at any time at its absolute discretion impose any other forms of service fee or processing fee or such other charges as GKASH may indicate from time to time to the Merchant by way of a prior written notification.
- 3.6 In relation to the Merchant's use of the POS Terminal, the Merchant shall:
- (a) keep the POS Terminal and its ancillary equipment in good condition and carry out maintenance and repair works (if required) on the POS Terminal and its ancillary equipment at the Merchant's own costs;
  - (b) not use the POS Terminal to process Payment Transactions for any third parties;
  - (c) use the POS Terminal with care and in accordance with the relevant equipment user guide;
  - (d) bear the cost of any repair or replacement of the POS Terminal arising out of the Merchant's negligence, abuse or misuse of the POS Terminal;
  - (e) ensure physical security of the POS Terminal and related equipment;
  - (f) nor tamper, modify or otherwise alter the POS Terminal and related equipment;
  - (g) not part possession, loan, sell, pledge, mortgage and/or in any way dispose the POS Terminal and related equipment;
  - (h) allow GKASH or its authorised agents or sub-contractors to access the Merchant's premises to install, repair, service, swap or retrieve the POS Terminal; and
  - (i) process all Payment Transactions through the POS Terminal in accordance with the Standards and operating instructions supplied by GKASH from time to time.
- 3.7 Title and ownership of the POS Terminal and equipment related thereto including any enhancement and modification to the same shall remain with GKASH, the Operator's Acquirer or to a third party identified by GKASH in the Welcome Letter. The Merchant shall fully indemnify GKASH for all liabilities, losses, damages, costs and/or expenses incurred by GKASH as a result of the Merchant's use of the POS Terminal and related equipment.
- 3.8 GKASH may replace or cause to be replaced or request the POS Terminal to be returned at any time for any reason as GKASH deems fit.
- 3.9 GKASH may arrange for training of the Merchants' personnel, in charge of the operation of the POS Terminal, and shall at GKASH's discretion provide each Merchant, the POS Terminal instruction manual and specifications as GKASH may deem necessary for its efficient operation.

3.10 The provisions in this **Clause 3** apply to any device that produces / generates data of each Payment Transaction manually or otherwise which may be provided by GKASH, the Operator's Acquirer or to a third party identified by GKASH in the Welcome Letter to the Merchant.

**Activation of Merchant Account (Applicable to e-money Merchants Only)**

3.11 Subject to clearance pursuant to **Clause 2.1**, the Merchant will be provided with an auto generated and temporary log-in details and password to access its Merchant Account with the respective E-Money Issuers. The Merchant will also be provided with a static QR code to enable the Merchant to receive money from e-money transactions. The Merchant may upon first time login, change the given log-in details and password into the Merchant's preferred log-in details and password. The Merchant is solely responsible to ensure that all its log-in details, password and any other related biometrics details are stored and kept in a safe and secure manner. GKASH is not liable for any loss caused by the Merchant's failure to secure its log-in details, password and any other related biometrics details.

3.12 The Merchant shall immediately notify GKASH if its log-in details, password and any other related biometrics details have been lost, stolen, misappropriated or otherwise compromised. GKASH is not liable for any losses or damages incurred upon the Merchant as a result of the Merchant's delay in informing GKASH of any such compromise to the security and safety of its log-in details, password and any other related biometrics details.

3.13 Each time the Merchant opts to withdraw money out of the e-wallet Merchant Account into its designated bank accounts, standard bank / financial institutions rates for such withdrawals will be applicable for the withdrawals in addition to the MDR.

3.14 Upon activation of the Merchant's Merchant Account, any Payment Transaction conducted in relation to such Merchant will be processed using your Merchant Account and electronic commerce facilities connected to your Merchant Account.

3.15 Upon a request made by GKASH, the Merchant unconditionally agrees to provide GKASH with details and/or documents related to its web hosting provider, shopping cart system, its TLS "Transport Layer Security" V1.2 or higher specifications used, expiration date of such TLS certificate and any other elements of its operation as GKASH may indicate. The Merchant must also disclose details of all service providers that the Merchant engages with to enable the acceptance of respective Payment Schemes and ensure that the service providers are PCI DSS compliant. The Merchant must also ensure that all service providers which the Merchant engage shall at all times hold at least a valid TLS certification that meets GKASH's requirements.

**Subsequent Activation**

3.16 For each and every subsequent new Acquirer engaged with GKASH after the signing of this Agreement, GKASH will notify the Merchant of such new addition by way of an email or any other mode of communication as GKASH may deem practical and such notification shall represent sufficient notice to the Merchant. Simultaneously, GKASH may utilise its back-end technology to remotely activate the payment channel for the new Operator's Acquirer on the Merchant's POS Terminal or the applicable activation process for the Merchant Account under this **Clause 3** shall take place accordingly and the Merchant shall unconditionally accommodate all such requests or instructions as may be given by GKASH in respect of the respective activation.

**3.17 Compliance to Standards**

The provision of the Standards by GKASH to the Merchant (together with the Welcome Letter) and subsequent notification of any amendments or modifications to such Standards, by way of an e-mail or any other mode of communication as GKASH may adopt, shall represent as proper notice to the Merchant and upon such notice the Merchant is bound to comply to such Standards, failing which, the Merchant shall be in breach of the terms of this Agreement and the provisions of **Clause 10** shall apply. The Merchant acknowledges and will not take any action that would interfere with the right of GKASH and the respective Acquirers and/or Operators to enforce any provisions of the Standards and to prohibit the Merchant from engaging in any conduct that GKASH and the respective Acquirers and/or Operators deem could injure or could create a risk of injury to GKASH and the respective Acquirers and/or Operators, including injury to reputation, or that could adversely affect the integrity of its systems and confidential information as defined hereunder and/or in the Standards.

**4. PAYMENT TRANSACTION**

4.1 At all times during the subsistence of this Agreement and subject to compliance to the terms and conditions stated in this Agreement, the Merchant agrees to accept the Payment Cards and undertakes that it shall honor without discrimination any Payment Card when properly presented by a User for any Payment Transaction as a mean of payment under the Payment Schemes upon terms of this Agreement or as may be described in any written instructions issued by GKASH to the Merchant from time to time. The Merchant shall practise and maintain a policy which disallows any discrimination against Users seeking to make purchases of Goods from the Merchant through the use of a Payment Card and is strictly prohibited to favour and/or promote the use of one Payment Card over the other.

4.2 In consideration of the Merchant observing and complying with the terms of this Agreement, GKASH shall during the term of this Agreement, acquire from the Merchant, as a third party agent of the Acquirers, all Payment Transactions presented by the Merchant to GKASH in the manner herein provided, for the value appearing on each of the Payment Transactions less the MDR and other fees and charges (if any) as is indicated in the Welcome Letter, upon the terms and conditions of this Agreement.

4.3 Subject to the terms of this Agreement, GKASH shall provide and allow the Merchant to utilise the Payment Schemes in accordance with the terms of this Agreement and the Welcome Letter (particularly the procedural steps and conditions related to each Payment Scheme) as is required by the respective Acquirer and/or Operators (as applicable) pursuant to the respective Standards of such Acquirer and/or Operators.

**4.4 Daily Terminal Limit (DTL)**

- (a) DTL is a limit assigned to the MIDs of the Merchant. This limit dictates the total amount and/or value of sales transactions that can be approved for and in favour of the Merchant each day. The DTL may be varied by GKASH from time to time by way of notice to the Merchant. GKASH may, designate a DTL by way of a written notice for every Payment Transaction conducted at outlets operated by the Merchant. In the absence of any such notice, the DTL shall be set at RM1.00.
- (b) The Merchant shall ensure that:
  - (i) the Transaction Charges for any Payment Transaction by any User shall not exceed the DTL; and
  - (ii) the Merchant shall not perform any Split Sales for any Payment Transaction performed by a User to circumvent the DTL.
- (c) If a User wishes to make a Payment Transaction for which the Transaction Charges exceed the DTL, the Merchant shall ensure that the Merchant:
  - (i) obtains GKASH's prior written approval manually or electronically before accepting the Payment Transaction; and
  - (ii) print legibly the Authorisation code evidencing the Transaction Slip before completing the Payment Transaction.
- (d) At any given time during the subsistence of this Agreement, if the Merchant requires a temporary increase of DTL, the Merchant shall seek the written approval from GKASH and provide valid supporting documentations upon request from GKASH. Any temporary DTL assigned shall be subject to GKASH's discretion or as may be instructed and approved by the relevant Operator's Acquirer or Operator (as the case may be), with regard to duration, purpose and limit.
- (e) If the Merchant requires a permanent increase of the DTL, the Merchant shall first obtain a written approval from GKASH and provide the valid supporting documentations upon request from GKASH. Any permanent revision to the DTL shall be subject to GKASH's discretion or as may be instructed and approved by the relevant Operator's Acquirer or Operator (as the case may be) with additional terms and conditions to be imposed on the Merchant if GKASH so requires.
- (f) The Merchant hereby unconditionally agrees to enter into a separate merchant agreement directly with the relevant Operator's Acquirer or Operator (as the case may be) in the event that the value of Payment Transaction(s) connected to the Merchant at any given time reaches a minimum threshold value set by such Operator's Acquirer or Operator. For instance, in respect of Mastercard and Maestro (a Mastercard debit card) transactions, the annual Payment Transaction volume is capped at USD1 million.

**4.5 Disputed Payment Transaction**

In the event that a User disputes a Payment Transaction or seeks to cancel such Payment Transaction, the Merchant shall immediately forward to GKASH (for onward transmission to the relevant Acquirer, where applicable) the necessary documents that reflect details of the Payment Transaction. Upon completion of verification of such User's dispute and/or cancellation, GKASH and/or the Acquirer (as applicable) will effect refund of the amount related to the Payment Transaction to the User within three (3) Business Days or such extended period as may be notified by the relevant Acquirer or Operator (as the case may be).

**4.6 Prohibited Provisions of Goods**

The provision of Goods by the Merchant must at all times be in compliance with the Applicable Laws and/or laws of any other country particularly in respect of the money laundering laws of such countries. The Merchant's Goods shall not relate to any of the following businesses:

- (a) Gambling goods or services;
- (b) Pornographic goods or services or prostitution;
- (c) Goods or services for which the provision thereof is illegal (e.g. drug trafficking);
- (d) Sales where the amounts charged do not correspond with the value of the Goods purchased;
- (e) Sales made under a name which is different from the name of the Merchant;
- (f) Sales made by a third party (e.g. not the Merchant);
- (g) Sales where the Merchant know or ought to know that the Goods sold are counterfeit products and infringe any of the Intellectual Property Rights related thereto;
- (h) Sale transactions which do not represent a bona fide sale of goods or services at the Merchant;



- (i) Triggering and/or initiating a Payment Transaction where the Merchant did not supply any Goods to a User;
- (j) Sales or Payment Transaction that GKASH prohibits in the Welcome Letter and/or in any future notice from GKash.

**4.7 Refund to User(s)**

Where an amount becomes owing by the Merchant to a User, whether for the return of Goods, performance of services no longer required or cancelled, and/or adjustments to price made to any Goods, the Merchant shall issue a Credit Voucher to GKASH specifying the amount of the credit with sufficient details to identify the corresponding Payment Transaction. Prior to the issuance of a Credit Voucher, such voucher shall be completed with the following information:

- (a) The Payment Card account number and name of the User;
- (b) The date of Payment Transaction(s);
- (c) The amount of credit in Ringgit Malaysia;
- (d) The Merchant's imprinted name, official stamp, address or place of business;
- (e) A description of the Goods so returned, services canceled or not performed, or adjustment of price made; and
- (f) Authorised signatory of the Merchant.

The Merchant shall deliver the completed Credit Vouchers to GKASH within two (2) Business Days from the date on which the Merchant has knowledge of the return of Goods, performance of services no longer required or cancelled, or decision made to provide adjustment to prices. The receipt of the completed Credit Vouchers from the Merchant is conclusive of the instructions to be carried out by GKASH pursuant thereto. GKASH reserves the right to request for more documents to support the request pursuant to the Credit Vouchers and it shall have the right to reject or refuse such request if the documentation provided is not sufficient to evidence the request.

**4.8 Undercharge**

Where a User has been undercharged for Goods sold or services rendered by the Merchant, the Merchant may raise a new and unsigned Transaction Slip (based on the relevant Payment Card or e-wallet account used in such transaction) for the additional amount and produce the same to GKASH for payment after performing the Settlement Function. Without prejudice to GKASH's right under **Clause 6**, GKASH may, at its discretion or as may be instructed and approved by the relevant Acquirer or Operator (as the case may be), make payment to the Merchant for the additional amount less the MDR, processing fees, sales tax or services tax (if any and as applicable), etc. as stated in **Clause 7** and the Welcome Letter.

**4.9 Succeeding Nature of Payment Transactions**

The Merchant acknowledges that as part of GKASH's role as a third party agent for merchant acquiring services / payment facilitator / master merchant for the Acquirers, GKASH is dependent upon the Acquirers' or Operators' (as applicable) performance and/or completion of certain processes that form part of the Payment Transactions and GKASH is and will be unable to process parts of or complete the Payment Transactions until and unless the Acquirers or Operators (as applicable) perform, complete and/or approve any such part of the Payment Transactions (as may be required).

**5. SETTLEMENT FUNCTION**

- 5.1 In respect of physical Payment Card Payment Transaction, the Merchant shall perform the Settlement Function at its POS Terminal(s) electronically or manually using the technology available on the POS Terminal and upon a request made by GKASH, forward a copy of the Transactions Slip and any other relevant documents.
- 5.2 In respect of e-money Payment Transaction, upon completion of a Payment Transaction by a User, such amount of monies will be transferred from the relevant User's e-wallet account into the e-money Merchant Account and will be released by GKASH into the Merchant's designated bank account within two (2) Business Days (subject to any usual glitches relating to hardware/software) after the auto deduction of the MDR and other charges (if any) from the amount paid by the said User, unless otherwise authorised by the Merchant to hold such amount in the e-money Merchant Account on behalf of the Merchant until the Merchant effects a withdrawal of such monies.
- 5.3 The terms and conditions governing the Settlement Function for each Acquirer will be set out in detail in the Welcome Letter and/or Standards of the respective Acquirers.
- 5.4 In arriving at the Settlement Amount, GKASH and/or the Acquirers shall be entitled to deduct from payments received from the Users for each Payment Transactions, the MDR, its processing fees, sales taxes or services tax (if any and as applicable) and all other relevant payments due to or may be levied on GKASH or the Acquirers or the Operators before the Settlement Amount is made to the Merchant Account.
- 5.5 The Merchant shall put in place a system to carry out daily Payment Transaction reconciliation process. If discrepancies or non-receipt of payment on any of the transaction item is detected or there is a mismatch of data, GKASH is to be notified of the same by 9:00 a.m. (Malaysian time) the next day failing which GKASH is entitled at its discretion or as may be instructed by the relevant Acquirer or Operator (as the case may be) to refuse any request from the Merchant to carry out any investigations on any discrepancies or inaccuracies referred to GKASH and/or make any adjustments. If GKASH decides to carry out any investigations on any discrepancies or

inaccuracies and/or make any adjustments, the Merchant must bear and pay any charges, costs and penalty interests for late settlement and/or adjustments that may be levied on or incurred by GKASH.

- 5.6 At all times, payment of the Settlement Amount to the Merchant does not constitute confirmation that the Payment Transaction is free of irregularities or any violation of the conditions and procedures stated in the Standards of the Acquirers and Operators (as the case may be) or the Applicable Laws and such Payment Transaction remains subject to any cancellation, rejection or withholding or refusal of payment pursuant to the terms of this Agreement.
- 5.7 If the Merchant applies for cancellation of any Payment Transaction, GKASH shall be entitled to impose a standard processing fee on such application of two percent (2%) of the value of such Payment Transaction and such fee shall be separate from the MDR and/or any prior fee charged by GKASH for the processing of the Payment Transaction.
- 5.8 All payments by GKASH and/or the Acquirer (as the case may be) to the Merchant in relation to e-commerce and retail transactions of any goods and/or services shall be made in Ringgit Malaysia, unless another currency is specified in any written instructions issued by GKASH from time to time.

## **6. CHARGEBACK PROVISIONS**

- 6.1 In addition to the events identified under the Welcome Letter and/or Standards for any one of the Operator's Acquirers or Operators, the Merchant hereby acknowledges that GKASH reserves the right to refuse receipt of payment from a User, make payment of the Settlement Amount or carry out a reversal of a Payment Transaction in favour of the Merchant upon occurrence of any of the circumstances below (as may be instructed by the Operator's Acquirer or Operator):
- (a) if this Agreement is terminated by GKASH for any reason whatsoever or pursuant to **Clause 10** herein; or
  - (b) the Merchant has failed to exercise or follow the rules, regulations, procedures and other terms of the relevant Operator's Acquirer or Operator set out in this Agreement, the Welcome Letter and/or the Standards; or
  - (c) the Merchant has refused, neglected and / or failed to comply to the Standards;
  - (d) the Payment Transaction has been performed by the Merchant using an incorrect MID (for card schemes) or Merchant account number (for e-money services) which differs from the MID granted to the Merchant by GKASH under the terms of this Agreement; or
  - (e) the Merchant did not process the Payment Transaction in compliance with the terms herein; or
  - (f) the Payment Transaction was incomplete and was or has been discovered to be fraudulent, altered, ineligible or illegal; or
  - (g) the value of the Transaction Slip exceeds the authorized DTL pursuant to **Clause 4.4** (unless otherwise authorised by GKASH) or if the transaction is found to be a Split Sale; or
  - (h) the Payment Transaction is found to be a duplicate transaction; or
  - (i) the User's signature on the Transaction Slip (if applicable) is missing or differs from the signature appearing on the User's Payment Card or has not been properly authenticated or has been tampered with; or
  - (j) the Payment Transaction is found to be one with a declined Authorisation, that is, where the Merchant has been previously notified by GKASH in response to an Authorisation request that the particular Payment Card is not to be honored; or
  - (k) the Transaction Slip does not bear an imprint of the Payment Card but is handwritten and/or where the User has refused payment to GKASH or where an authorised electronic terminal printer is present, the information in respect of the Payment Card including the User's name, expiry date and Payment Card number are not electronically printed but is hand written or the entries on the Transaction Slip are incomplete or illegible; or
  - (l) the transaction was not entered into and/or authorised by the User or the Payment Transaction involved a cash payment, cash disbursement or cash refund; or
  - (m) the Payment Card concerned is found to have expired or is invalid for any reason whatever; or
  - (n) the Payment Transaction has been presented by the Merchant once before and payment has been made by GKASH; or
  - (o) the User disputes the Payment Transaction for whatsoever reason; or
  - (p) the User denies liability in respect of any transaction initiated or concluded irrelevant of whether the Merchant has observed the terms and conditions of this Agreement or obtained an Authorization from the Operator through GKASH; or
  - (q) the credit or refund to a User has not been processed even though the Merchant has issued a Credit Voucher or credit note to the User for the return of Goods sold, services canceled, adjustments made, or otherwise; or
  - (r) in the case of e-money Payment Transaction, it was triggered and/or initiated by the Merchant using
  - (s) an incorrect or sham Merchant Account which differs from the Merchant Account registered for the Merchant pursuant to the terms of this Agreement;
  - (t) in the case of e-money Payment Transaction, the User does not have available or sufficient amount of e-money in its e-wallet;
  - (u) in the case of e-money Payment Transaction, the transaction was (i) incomplete, (ii) incorrect log-in details and/or password was inserted, or (iii) has been discovered to be fraudulent, altered, ineligible or illegal;
  - (v) in the case of a physical Payment Card Payment Transaction, the Merchant performs a Settlement

- (w) Function to GKASH and / or the Acquirer(s) (as the case may be) after three (3) Business Days from the date that such Payment Transaction was carried out at the Merchant's POS Terminal; or
- (x) the Merchant fails to fulfill GKASH's request for transaction documents within the duration required by GKASH pursuant to **Clause 8.2**; or
- (y) there is an investigation of the Payment Transaction by any governmental or regulatory authorities or police having jurisdiction over such matters; or
- (z) the Payment Transaction is or found to be in contravention of the Applicable Laws, particularly the FSA, Islamic Financial Services Act 2013, AMLA, and any other application of anti-bribery laws, regulations and related framework and guidelines; or
- (z) any other specific events as is indicated in the Welcome Letter and/or Standards.

6.2 Where payment of the Settlement Amount has been made by GKASH to the Merchant and any of the circumstances indicated in **Clause 6.1** above occurs, GKASH is entitled to deduct from the Settlement Amount by means of a Chargeback to the Merchant, the relevant amount so paid and/or withhold and/or off-set such amount against any payment due to the Merchant. The Merchant is also liable to bear the costs incurred by GKASH, the Acquirer(s) and/or Operator(s) for investigation and management matters related to a Chargeback event and/or other risks or actions that GKASH, the Acquirer(s) and/or Operator(s) had to take to address any such event.

6.3 Notwithstanding **Clause 6.1** and **Clause 6.2**, upon termination of this Agreement pursuant to **Clause 10** herein, GKASH has the right to refuse payment of the Settlement Amount related to such termination or where request for settlement is made after the termination of this Agreement. Where a Chargeback event occurs and the amounts related to such Chargeback has been paid to the Merchant, the Merchant shall repay on demand all such payments made as part of its Settlement Amount to GKASH and until full repayment by the Merchant of the said sum, such amount and all costs incurred in the enforcement of GKASH's rights under this Agreement (including solicitor costs) shall be a debt due from the Merchant to GKASH and interest shall accrue thereon at the rate of 1.5% per month on a monthly rests basis or such other rate or rates as GKASH shall determine at its absolute discretion from time to time from the date of demand to the date of full settlement of such amount.

6.4 GKASH will notify the Merchant in circumstances where the Chargebacks attributable and/or connected to the Merchant exceeds the minimum threshold level imposed by the respective Acquirers and/or Operators under specific Payment Schemes. The Merchant shall take prompt action to address such notification from GKASH, failing which the Merchant may face penalties and/or fines from the respective Acquirers and/or Operators. Please refer to the Welcome Letter and references provided therein as a guide of the respective minimum Chargeback threshold imposed by the respective Acquirers and/or Operators.

**6.5 Withholding of Payment**

(a) GKASH and / or the Acquirer (s) (as the case may be) is entitled to withhold the Settlement Amount for all Payment Transactions carried out for a minimum period of 180 days after the Settlement Function or Payment Transaction is carried out by the Merchant to comply to any due diligence or Chargeback recourse requirements imposed by the Acquirers and/or the Operators and where prolonged investigation is warranted by the Acquirers and/or the Operators, legal or regulatory authorities in Malaysia, for any extended period beyond the 180 days.

(b) Without limiting the generality of **Clause 6.5(a)** above, in the specific event of a Chargeback by GKASH under **Clause 6** and/or any irregularities are detected in relation to the Payment Transaction or GKASH has reason to believe that the Transaction Slip(s) presented have not been issued for legitimate transactions or is fraudulent or unauthorised by the Users or is otherwise illegal, GKASH is entitled to withhold payment of the Settlement Amount until GKASH has examined and verified any supporting documentation and in the event that the Payment Transaction or the Transaction Slip are, in GKASH opinion, not valid, no payment shall be made by GKASH.

6.6 The terms in this **Clause 6** shall survive the termination of this Agreement.

**7. MERCHANT DISCOUNT**

7.1 The MDR percentages and other applicable charges in relation to Payment Transactions carried out using each Acquirer's Payment Scheme is set out in the Welcome Letter.

7.2 GKASH reserves the right to revise and adjust the MDR and/or any other fees related thereto or any other charges payable at any time and from time to time by giving written notice to the Merchant. Such change shall take effect from the date stated in the notice and if no date is stated in the notice, on the date that any such payment is due and payable in the ordinary course of events.

7.3 Save for the retail price of the Goods and applicable Taxes, the Merchant shall not charge the Users any additional processing fee and other forms of surcharge (unless imposed by any governmental authorities) for using the Payment Schemes and Payment Cards to make payment to the Merchant.

7.4 The Merchant shall provide a clear and fair refund policy on any such platform as may be deemed suitable to its business and shall upon GKASH's request, provide GKASH with a copy of such refund policy.

## 7.5 Tax

- (a) Tax is defined as any present or future, tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by the Inland Revenue Board of Malaysia, the Customs and Excise Department of Malaysia and other revenue authority of Malaysia and any penalty or fines related thereto in respect of the supply of Goods.
- (b) All monies, fees and charges payable by the Merchant to GKASH under this Agreement shall be made in full exclusive of any Tax, and without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding of or in respect of any Tax.
- (c) In the event the Merchant is required by law to make any additional payments, deduction or withholding from such monies, fees and charges payable to GKASH under this Agreement in respect of any Tax or otherwise, the sum payable by the Merchant in respect of which the deduction or withholding is required shall be increased so that the net monies, fees and charges received by GKASH is equal to that which GKASH would otherwise have received had there be no deduction or withholding that was required to be made.
- (d) In the event GKASH is required by law to calculate and collect from the Merchant any amount paid or payable under this Agreement on account of any Tax, such amounts as calculated by GKASH and shall be paid by the Merchant as additional to and without any deduction or off-set from monies, fees and charges payable under this Agreement to GKASH.
- (e) The Merchant is responsible to determine which, if any, Taxes apply to the payment received from the Users and to report and remit such Taxes to the appropriate authorities on a timely basis. GKASH is not responsible to collect, report and submit any such Taxes on behalf of the Merchant.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 The Merchant hereby undertakes, represents and warrants to GKASH that:

- (a) it is a validly existing entity under the laws of Malaysia;
- (b) it has the power and authority to enter into, exercise its rights and perform and comply with its obligations under this Agreement and such act(s) shall not in any event violate any agreement or contract to which it is a party to or which is binding upon it;
- (c) it shall not engage in any unlawful, false, unethical or deceptive activities in the conduct of its business and shall at all times abide by the Applicable Laws;
- (d) it is not involved in any money laundering activity within the meaning of Section 4 of AMLA and neither the Merchant nor any of its directors or officers of the senior management has taken any action, directly or indirectly, that would result in a violation by such person of any applicable anti-bribery or anti-money laundering laws in Malaysia or in any other country that it operates in;
- (e) it is in compliance with and will continue to comply with all standards and requirements imposed by the Malaysian Anti-Corruption Commission and all other anti-money laundering and corruption legislations, regulations and guidelines;
- (f) it has in place adequate skills, technology, facilities, personnel and other resources as may be required to carry out its business;
- (g) it shall not directly or indirectly engage in or facilitate any action that is illegal or that, in the opinion of GKASH, Acquirers and/or Operators and whether or not addressed elsewhere in the Standards, damages or may damage the goodwill or reputation of GKASH, Acquirers and/or Operators or of any Mark. Upon request of GKASH, Acquirers and/or Operators, the Merchant will promptly cease engaging in or facilitating any such action;
- (h) it will put into place and practice the standards and/or requirements contained in the Business Risk Assessment and Mitigation Program (BRAM) and upon suspected non-compliance, the Merchant shall cease to facilitate and engage in the suspected non-compliant activity pending investigations. The Merchant remains liable for any breach of the BRAM requirements;
- (i) it must not place or cause to be placed on any Payment Card or any POS Terminal or other acceptance device any image, information, application or product that would in any way, directly or indirectly, have or potentially have the effect of diminishing or devaluing the reputation or utility of the Marks, a Payment Card, or any of GKASH, Acquirers and/or Operators' products, programs, services, networks, or systems;
- (j) it must not submit to GKASH, Acquirers and/or Operators any Payment Transaction that is illegal, a Payment Transaction that the Merchant knows or should have known to be fraudulent or not authorized by the User, where the Merchant has colluded with the User to defraud, or in the sole discretion of GKASH, Acquirers and/or Operators, may damage the goodwill of GKASH, Acquirers and/or Operators or reflect negatively on the Marks. The Merchant acknowledges that the intellectual properties in respect of the Marks are exclusively owned by the respective Acquirers and/or Operators and the Merchant shall not at any point in time claim ownership and/or any rights in respect of such Marks. In this respect, the Merchant may refer to the Standards as a guidelines of such transactions;
- (k) it must not submit receipts of Payment Transactions until such transaction is complete (where the Goods have been shipped/rendered), in in the correct currency and within the correct time limit;

- (l) it will ensure that the Users understand that the Merchant is responsible for the Payment Transaction, which includes but is not limited to delivery or provision of the Goods which are the subject of the Payment Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Payment Transaction.

## 8.2 Merchant's Records

- (a) The Merchant shall at its own costs, expense and capacity keep proper account and accurate copies of all documents relating to the Payment Transactions and/or contracts between the Merchant and the Users and shall allow GKASH and/or the Acquirer at any reasonable time to inspect and/or take copies of all such documents and shall preserve such documents and records for a period of at least even (7) years from date of each transaction or such other period as may be imposed by each Acquirer or Operator (as the case may be) per the **Standards ("Record Retention Period")**. The keeping of such records are primarily intended to facilitate investigations into any Chargeback costs, fraud and/or money laundering investigations/suspicious.
- (b) The Merchant is obliged to provide full cooperation towards any investigations or inquiries made by GKASH and/or the Acquirer relating to any of the Payment Transactions and where the investigated transaction occurred within the Record Retention Period, the Merchant shall furnish and deliver the related documents to GKASH.

## 8.3 General Audit Rights

- (a) GKASH, the relevant Acquirers and Operator, and/or their internal and external auditors and advisers shall have the right to fully access, at all reasonable times and upon prior reasonable notice to the Merchant, to obtain information in relation to this Agreement which includes, but is not limited to, systems, database, accounts, documents and records relating to the Merchant's operating practices and procedures to the extent relevant to this Agreement. Upon GKASH's request, the Merchant shall also disclose and provide to GKASH details of any of its personnel, agents and/or third party service providers who utilise the Payment Schemes on the Merchant's behalf. The Merchant irrevocably consents and allows GKASH to disclose the results of any audit findings and/or information to the Acquirer(s), Operator(s) and/or any government agencies or entities.
- (b) In cases of audits initiated by any government agencies or entities (such as BNM) having authority over the subject matter of this Agreement or any Party hereto, the Merchant shall give such government agencies or entities and their respective personnel (including internal and external auditors and advisers) full and timely access to all relevant accounts, documents, system logs and records in order to allow GKASH and/or the Acquirer to meet the request and /or deadlines set by such authorities or entities.
- (c) The Merchant shall be responsible for all costs incurred in relation to any audit and investigation (including any remedial action) undertaken under this **Clause 8.3**.
- (d) If the audit establishes any deficiencies, the Merchant shall:
  - (i) promptly take any remedial action as required by GKASH, the Acquirer or Operator or as instructed by the government agencies or entities to rectify any particular problems or weaknesses arising out of the findings of the audit; and
  - (ii) provide to GKASH and/or the Acquirer all documentation related to resolution of such deficiencies and the corrective actions implemented to prevent reoccurrence of the deficiencies.
- (e) The Merchant acknowledges that GKASH, in its role as a third party merchant acquirer, is responsible to submit to the Acquirers and/or Operators (as the case may be) reports and information within a period of time as is indicated in the respective Standards, which relates to but is not limited to the Questionable Merchant Audit Program (QMAP), Global Merchant Audit Program (GMAP), Excessive Chargeback Programme (ECP), requirements imposed by the Office of Foreign Assets Control (OFAC) and any other programmes as the Acquirers and/or Operators may deem fit and applicable. In view of the preceding, the Merchant hereby unconditionally agrees to comply with the programs connected to the Standards and provide GKASH with the required information, furnish the relevant documentations and render all the assistance that GKASH may require to address the requests made by the Acquirers and/or Operators hereunder within the timeline as may be indicated by GKASH on a case to case basis. The Merchant is fully responsible and liable for any fines and/or penalties imposed by the Acquirers and/or Operators for any delay in this matter attributable to the Merchant.

## 9. COVENANT BY MERCHANT

### 9.1 General Covenants

The Merchant hereby covenants with GKASH as follows:

- (a) It shall at all times observe the terms provided under this Agreement, which includes the terms, conditions, procedures and other matters provided under the Welcome Letter and/or Standards based on the Payment Scheme applicable for a Payment Transaction, as may be amended and/or supplemented at any time from time to time by notice from GKASH and other terms and conditions provided hereunder;

- (b) Unless otherwise provided by any written law for the time being in force, it shall not impose or require the User to pay any surcharge, commission, or incur any additional costs over and above the retail price of Goods, or impose any term or condition whatsoever in relation to the User's utilisation of a Payment Card;
- (c) It shall not impose a minimum Payment Transaction amount below on the Users and shall indiscriminately perform all Payment Transaction undertaken by the Users (notwithstanding the choice of Payment Cards by the Users);
- (d) It shall include in the value of the Transaction Slip any tax or carrier charges required to be collected and shall not collect it separately in cash;
- (e) It shall observe and perform all obligations under its Payment Card acceptance contract with the Users including but not limited to the Payment Transaction, nature, quality and delivery of Goods contracted to be sold and supplied to the Users;
- (f) It shall not reveal, sell, purchase, provide or exchange any Payment Card related information such account number or/and PIN (where applicable), password, log-in details, biometric information and other information in any form obtained from any Users to any third party;
- (g) Subject to the specified requirements provided by the respective Acquirers and/or Operators under the Welcome Letter and/or Standards, it shall obtain the approval from GKASH in writing prior to any publication or advertisement of promotional materials relating to the Payment Cards;
- (h) Subject to the specified requirements provided by the respective Acquirers and/or Operators under the Welcome Letter and/or Standards, it shall adequately display the brand and Marks of the relevant Operators and any distinctive features of the Payment Card and/or product names on promotional materials provided by GKASH to inform the public that the Payment Card will be honored at the Merchant's premises, place or business or its outlets and the Merchant must not indicate or imply that GKASH, the Acquirers and/or the Operators endorse any Goods offered by the Merchant;
- (i) It shall, at all times maintain in good order and keep in safe custody all Transaction Slips, Credit Vouchers, and/or POS Terminals supplied by GKASH and/or the Operator's Acquirers (as the case may be) which shall remain as GKASH's or the Operator's Acquirer's property (as the case may be), and to return all such Transaction Slips, Credit Vouchers, and/or POS Terminals forthwith to GKASH or the Operator's Acquirer (as the case may be) upon demand and/or upon termination of this Agreement under **Clause 10**;
- (j) Where there is uncertainty or ambiguity in the terms of this Agreement or any guidelines or requirements pertaining to the use of the Payment Cards and/or Payment Schemes or any security or distinctive features of any Payment Card, the Merchant shall check with GKASH for its construction and meaning and any response provided by GKASH shall be final and binding;
- (k) It shall use its best endeavor to promote the use of the Payment Cards and to render its cooperation to GKASH and the Users in connection with the use of the Payment Cards;
- (l) It shall operate the payment equipment and functions for all Payment Cards in the manner specified by GKASH;
- (m) Upon request from GKASH, it shall provide all documentations and required access to its Goods to permit GKASH to conduct a due diligence on its business;
- (n) Report to GKASH the occurrence of any suspicious transactions in relation to the Payment Transactions. **"Suspicious Transaction"** for the purpose of this Agreement is a transaction that (i) appears unusual; (ii) has no clear economic purpose; (iii) appears illegal; (iv) does not commensurate with the User's profile or business activities; (v) involves proceeds from an unlawful activity; or (vi) indicates that the User is involved in money laundering or terrorism financing activities. The Merchant shall be responsible to train and ensure that its employees, agents and/or representatives comply with the Applicable Laws and carry out their respective duties in accordance to the terms of this Agreement. The Merchant is responsible for the conduct of its employees, agents and/or representatives;
- (o) It shall not attempt to tamper, hack, modify or otherwise hack the security or functionality in respect of the Payment Schemes;
- (p) It shall at all times, in the handling of Personal Data, act in compliance of the PDPA and other related legislations and regulations, as may be applicable from time to time;
- (q) It shall at all times comply with the Standards applicable for respective Payment Cards as imposed by the Acquirers and/or Operators; and

- (r) If required by GKASH, Operator's Acquirer or Operator (as the case may be), the Merchant shall take the requisite actions to change and/or update its procedures, processing policies, websites and/or any other forum of information made available to the public to ensure compliance to the Standards and/or the Marks. The respective Acquirers and/or Operators have the sole discretion to, immediately and without any notice, revoke the Merchant's rights and/or licence in connection to the Marks and prohibit use of the Marks by the Merchant.

## 9.2 Personal Data

- (a) Unless otherwise notified by GKASH and subject to the provisions hereunder, the Merchant is only permitted to store in its records the following information in respect of the Users:
- (i) Payment Card number;
  - (ii) name;
  - (iii) expiry date of Payment Card; and
  - (iv) extended service code (used for certain types of payment instruments)
- (b) The Merchant is strictly prohibited from storing or keeping in its records the Card Validation Code 2 (CVC2), the Pin and/or any magnetic stripe data in relation to a User.
- (c) The Merchant is required to inform GKASH of all its 3<sup>rd</sup> party agents, representatives and/or relationships which are provided access to the Personal Data and such 3<sup>rd</sup> parties may be required to register separately with the relevant Acquirer(s) and/or Operator(s).
- (d) The Merchant acknowledges the secrecy and privacy attached to the information that is in its records and shall at all times ensure that the Merchant and/or its authorized representatives or agents are compliant and adhere to the standards of PCI DSS.
- (e) In circumstances where a breach of Personal Data or an Account Data Compromise Event occurs and the Merchant is found to be non-compliant to the PCI DSS standards, in addition to GKASH's right to terminate this Agreement pursuant to **Clause 10**, the Acquirers and/or Operators reserve the right to levy upon the Merchant fines and/or penalties in a punitive manner. For avoidance of doubt, any fines and/or penalties imposed by Acquirers and/or Operators onto GKASH as a result of the Merchant's breach of the provisions of this Agreement shall be fully borne by the Merchant.
- (f) Where the Merchant engages services of a third party service provider for any aspect of its business in relation to the Payment Schemes, the Merchant shall provide GKASH with complete access to such outsourced components such as data bases, web hosting systems, etc. The Merchant also irrevocably permits GKASH to contact its third party service providers for purposes of audit pursuant to **Clause 8.3** and/or other matters related to this Agreement.
- (g) In addition to the standards applicable in paragraph (c) above, if the Merchant does store or keep in its records the Primary Account Number or Payment Card account number of a User, the Merchant must ensure that the system storing such information is encrypted or secured using any other similar methodology and/or technology to safeguard the information.
- (h) The Merchant shall also ensure compliance to all procedures, policies, principles and regulations relating to the applicable privacy and data protection laws in Malaysia particularly the PDPA and the FSA. The Merchant shall upon request by GKASH provide a written undertaking as is required under section 133 of the FSA to comply with the secrecy provisions thereunder.
- (i) The Merchant shall take all reasonable steps to ensure that the Personal Data is protected against loss, misuse and unauthorized access or other forms of non-permitted disclosures and the Merchant shall put in place the technical and organizational measures and standards of procedure (SOP) to guard against any such events or circumstances.
- (j) The Merchant hereby agrees to allow GKASH access, subject to a reasonable notice, to its technical and operational systems and/or SOP to enable GKASH to review such systems and / or SOP.
- (k) On termination of this Agreement pursuant to **Clause 10**, the Merchant shall promptly return to GKASH or upon request from GKASH, destroy all copies of the Personal Data, in which case any right to use the Personal Data ceases immediately.
- (l) In relation to Personal Data provided by the Merchants to GKASH in connection with the Payment Schemes and/or this Agreement, the Merchant warrants and represents to GKASH that the Merchant has obtained or has procured sufficient informed consent from each relevant individual in order for GKASH, the respective Acquirers and their respective personnel and representatives, to collect, use, handle, store, disclose, transfer the Personal Data in accordance with this **Clause 9.2**.

### 9.3 PCI DSS

- (a) The Merchant is required to complete validation requirements applicable to the Merchant as set by PCI DSS and obtain the requisite accreditation from PCI DSS within three (3) months from the Effective Date, failing which the Merchant will be categorised as non-compliant, upon which GKASH reserves the right to terminate this Agreement pursuant to **Clause 10.3** and the Merchant risks facing fines and/or penalties from the relevant Acquirers and/or Operators.
- (b) All costs for the exercises undertaken with PCI DSS shall be fully borne by the Merchant.

### 9.4 Data Breach Procedure

- (a) In the event that an actual, probable or reasonably suspected breach of Personal Data or Account Data Compromise Event occurs to the Merchant, the Merchant and/or its authorized representatives or agents shall take steps including the following and such other reasonable steps as the circumstance may require to resolve the matter and deal with the consequence of such data breaches:
  - (i) Identify the cause of the event of breach and immediately notify GKASH of the same;
  - (ii) Disconnect and/or isolate any affected systems, platforms, gateways and/or portals from all networks used for purposes of the Payment Schemes;
  - (iii) Cease installation and/or not make any changes to software related to the equipment and/or tool used for the Payment Schemes;
  - (iv) Tighten security controls pertaining to all networks relating to the utilisation of the Payment Schemes by the Merchant;
  - (v) Implement and follow the disaster recovery plan, as is available on the public platform (online) in the rules issued by the respective Operators and/or Acquirers (as the case may be) (including such rules as indicated in the Welcome Letter;
  - (vi) Maintain a rigorous audit trail of all actions taken to isolate and rectify the event of breach;
  - (vii) Allow for all forensic investigations in respect of the data breach and/or Account Data Compromise Event, based on the Standards, and bear the cost for such investigations;
  - (viii) Commence calculation of the gross potential exposure that may arise from such event of breach and notify GKASH in writing of the results of such calculations as soon as possible, and in any event not later than a 24 hour period from the time that such event occurs.
- (b) The Merchant shall exercise care to ensure that the passwords, PIN and/or other biometrics elements in respect of a software and/or hardware utilised for the Payment Schemes is not retained and modified prior to commencing use of such software and/or hardware and subsequently the Merchant shall periodically modify the passwords, PIN and/or other biometrics elements of the same within expiry of a reasonable time period.
- (c) In addition to the preventive and/or rectification methods provided under **Clause 9.4 (a)** above, the Merchant is obliged to provide to GKASH, the Acquirer and/or Operator (as the case may be) with full and uninterrupted access to the Merchant's systems, databases, portals and/or other forms of gateway to work to assist GKASH in determining if:
  - (i) the Payment Card data has been compromised;
  - (ii) the weaknesses in the system which permitted the unauthorised access to the Personal Data base;
  - (iii) whether the Payment Card data was created, deleted, altered, copied or manipulated in any manner by whomsoever.All costs incurred by GKASH, the Acquirer and/or Operator (as the case may be) in the conduct of the investigation above shall be fully borne by the Merchant.

and

### 9.5 Anti-Money Laundering

The Merchant shall:

- (a) ensure that all monies involved in any Payment Transactions and in this Agreement shall come from a lawful source of activity and are not unlawful activities as defined under the AMLA;
- (b) provide notice to GKASH if any Payment Transaction is made by a third party on behalf of the User;
- (c) provide documents substantiating the Merchant's verification of the identity of the User and such other information as GKASH may require including but not limited to certified true copies of any authorisation to act or documents that may be required for the purpose of verifying the information provided by the Merchant. Copies of any information or document provided by the Merchant pursuant to this **Clause 9.5** may be retained by GKASH;
- (d) declare and certify that the necessary "know your customer" checks have been conducted including but not limited to the identity, existence, address and nature of the business of the User and that the monies, funds or collateral are from a lawful source of activity and not unlawful activity as defined under the AMLA;
- (e) disclose and furnish to GKASH any information required or deemed necessary and to the satisfaction of GKASH within the period specified by GKASH in its request, whether or not for purposes of complying with the Standards; and
- (f) not use the payment made via the Payment Transactions for money laundering or violate any laws relating to money laundering as defined under the AMLA.



## 10. **SUSPENSION AND TERMINATION**

### 10.1 **Suspension**

GKASH reserves the right at any time to indefinitely suspend the Merchant from its listing and utilisation of any or all the Payment Schemes, limit the usage or freeze the Merchant Account in its entirety or in parts related to certain functionalities, at its sole and absolute discretion, for any duration without assigning any reason whatsoever for such suspension of activities, limitation or blocking of the Merchant Account.

### 10.2 **Termination**

Notwithstanding any other provision in this Agreement, either Party may give not less than one (1) month notice in writing in advance ("**Default Notice**") to the other Party to terminate this Agreement. When this Agreement is terminated hereunder:

- (a) the Merchant must immediately cease the use of all Confidential Information and deliver to GKASH all Confidential Information in its possession or control;
- (b) the Merchant must immediately cease use of the Marks;
- (c) the Merchant must co-operate with GKASH to ensure an orderly wind down of operations; and
- (d) all items, equipment and user guides supplied to the Merchant by GKASH for use in connection with the Payment Schemes shall be returned to GKASH.

Upon termination of this Agreement, GKASH obligation to make payment to the Merchant of the Settlement Amount shall cease on the date of the Default Notice, and GKASH shall not be obliged or bound to make any payment on Transaction Slips presented thereafter.

10.3 GKASH shall have the right, at its discretion or at the direction of the Operator and/or Operator's Acquirer, to immediately terminate this Agreement by way of a written notice to the Merchant upon the occurrence of any of the following events:

- (a) the Merchant is found to be non-compliant to the PCI DSS and/or any other data protection and/or security standard requirements in this Agreement, as may be imposed from time to time; or
- (b) the Merchant is found to be involved in activities deemed fraudulent or otherwise wrongful by GKASH, the Operator and/or Operator's Acquirer and in breach of the Applicable Laws

10.3A Notwithstanding the termination clauses hereunder, this Agreement shall automatically and immediately terminate upon the occurrence of any of the following events:

- (a) the Operator deregisters the Operator's Acquirer;
- (b) the Operator's Acquirer ceases to be a customer of the Operator for any reason whatsoever; or
- (c) the Operator's Acquirer fails to procure and/or maintain a valid licence and/or approval from the Operator in respect of the use of any Marks.

10.4 In addition to **Clauses 10.2 and 10.3** above, GKASH may forthwith terminate this Agreement strictly and solely in respect of any one of the Acquirers upon occurrence of the termination events set out in the Welcome Letter and/or Standards for each Acquirer within the timeline stated therein. For the avoidance of doubt, notwithstanding the termination of the Payment Scheme of any specific Acquirer, this Agreement shall remain effective, valid and binding for the subsisting Payment Schemes and Acquirers, until and unless the Agreement is terminated by GKASH in respect of all the Acquirers.

10.5 The termination of this Agreement shall not release the Merchant from any liabilities that the Merchant incurred under this Agreement and/or which is attributable to the Merchant during the period prior to the termination of this Agreement and GKASH has the right to pursue and enforce any rights and/or remedies it may have under the law in respect of this Agreement in connection thereto.

10.6 GKASH's rights and entitlement under this Agreement (including its rights and entitlement of Chargeback under **Clause 6**) against the Merchant shall survive the termination of this Agreement for or relating to any Payment Transaction prior to the date of such termination.

10.7 In respect of the terminated Payment Scheme, upon termination of this Agreement specifically for such scheme, GKASH and/or the Acquirer shall have the absolute right (which shall not be questioned or challenged by the Merchant) to withhold any Settlement Amount not paid as yet for a duration of 180 days from the date of the termination of this Agreement or any such extended date as the authorities and/or Applicable Laws may require for the purpose of dealing with or attending to an event of Chargebacks or any other consequences of such termination.

10.8 GKASH reserves the right to include the Merchant into the Member Alert to Control High-Risk Merchants (MATCH) database in the event that the Merchant and/or its activities were found to be in breach and violation of the Agreement.

## 11. **LIMITATION OF LIABILITY**

11.1 The Merchant acknowledges and agrees that the Payment Schemes and Payment Cards operate solely as a

payment intermediary and that GKASH shall (i) under no circumstances function as or represent the Merchant in respect of the Merchant's business or in the context of any Goods being ordered, obtained or procured by any funds processed under the Payment Transactions; (ii) makes no representations or warranties and does not ensure the quality, safety or legality of any Goods purchased with funds processed under the Payment Transaction.

- 11.2 Without prejudice to any other provisions herein, GKASH and/or the Acquirer shall not be liable to the Merchant or any third parties for damages, loss of profits or earnings, goodwill or any type of special/exemplary, incidental, direct or consequential loss or damage howsoever arising even if GKASH and/or the Acquirer have been advised of the possibility of such loss or damage or claim by any third party.
- 11.3 Subject to the provisions herein, GKASH's sole and entire liability to the Merchant in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement or howsoever shall not exceed the MDR on the amount which gave rise to the claim or the direct damages sustained, whichever is the lower.
- 11.4 Notwithstanding anything to the contrary in this Agreement, in the event GKASH and/or the Acquirer withholds payment and/or does not make a payment for transactions in any instances stated herein provided, GKASH and/or the Acquirer shall not be liable to the Merchant for any losses, claims, demands, proceedings, damages, late payment charges penalties or expenses whatsoever incurred by the Merchant by reason of non-payment or late payment by GKASH and/or the Acquirer or in relation to or arising from this Agreement.
- 11.5 The Merchant shall indemnify and hold harmless GKASH from and against any and all claims, damages or losses that GKASH may at any time and from time to time, sustain, incur or suffer arising directly or indirectly out of or in connection with any of the following occurrences:
- (a) the Merchant's failure to observe its obligations, roles and responsibilities under this Agreement, the Welcome Letter, together with any terms and conditions, schedules, written instructions from GKASH (as may be issued from time to time) and any other documents or notices issued pursuant to this Agreement or executed as supplemental to this Agreement, which is expressly incorporated by reference as part of this Agreement;
  - (b) if GKASH is imposed with fees, fines or penalties by MasterCard, Visa, other Operators or other card schemes in accordance with their respective rules;
  - (c) any dispute between the Merchant and a User;
  - (d) non-compliance of the respective Standards, which relates to but is not limited to the Questionable Merchant Audit Program (QMAP), Global Merchant Audit Program (GMAP), Excessive Chargeback Programme (ECP), Business Risk Assessment and Mitigation Program (BRAM) requirements imposed by the Office of Foreign Assets Control (OFAC) and any other programmes as the Acquirers and/or Operators may deem fit and applicable;
  - (e) any error, negligence or fraud relating to a transaction by the Merchant and/or its authorized representatives and/or agents;
  - (f) any damage to, or loss of the POS Terminals which GKASH supplies attributable to the Merchant and/or its authorized representatives and/or agents, any neglect or misuse of the Payment Schemes and matters related thereto;
  - (g) any dispute between the Merchant and GKASH and/or the POS Terminal supplier;
  - (h) any fines or penalties that GKASH becomes liable to pay pursuant to the rules, by-laws or regulations of any Payment Cards and/or Payment Schemes that GKASH is a member of or participates in, as a direct or indirect result of the Merchant's failure to observe any of the procedures, requirements or obligations required to be complied with by the Merchant under any Payment Scheme.
- 11.6 The Merchant shall indemnify and hold harmless GKASH from and against any and all claims, damages or losses that GKASH may at any time and from time to time, sustain, incur or suffer arising directly or indirectly out of or in connection with any fraud and misuse of the Merchant's Goods, and other matters related to the Merchant's business, any claims for loss and / or damages made by the Acquirers against GKASH resulting from the Merchant's negligent act or omission, refusal or failure to act, any fraud, illegality or contravention of the Applicable Laws committed by the Merchant, its employees, agents or authorized representatives and for and against any loss or damage, penalties, costs and expenses including legal fees which GKASH may suffer by reason of or arising out of any breach of this Agreement or as it may incur in enforcing the terms of this Agreement against the Merchant. This clause shall survive the termination or expiration of this Agreement.
- 11.7 The Merchant acknowledges and agrees that any dispute regarding any Goods purchased using the Payment Cards is at all times a transaction between the Merchant and the relevant User. GKASH is not a party to any resulting dispute including but not limited to disputes over performance and liability issues relating to the delivery, quality, quantity, legality or use of the Goods offered by the Merchant.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Subject to specified terms relating to Intellectual Property Rights stipulated in the Welcome Letter and/or the Standards, all Intellectual Property Rights provided by a party to the other party shall remain vested in and be the absolute property of the first-mentioned party.

- 12.2 Subject to **Clause 12.3** below, for the duration of this Agreement, parties grant to one another a non-exclusive, royalty free, non-transferable and worldwide licence to use and display any logo, trademark and/or other Intellectual Property Rights belonging to the other party strictly for purposes of the marketing and promotion of the Payment Schemes and inclusion of the Merchant as part of the merchant's list for the Payment Schemes.
- 12.3 For purposes of **Clause 12.2** above, the use and display of any logo, trademark and/or other Intellectual Property Rights of GKASH, the Operator(s) and/or the Acquirer(s) shall be subject to a prior approval of such party. The Merchant shall not use and display any logo, trademark and/or other Intellectual Property Rights of GKASH, the Operator(s) and/or the Acquirer(s) unless such approval has been obtained and the use and display of such Intellectual Property Rights shall at all times be in accordance to the instructions of GKASH, the Operator(s) and/or the Acquirer(s) (as the case may be).
- 12.4 At GKASH's request, the Merchant shall provide GKASH with samples of its logo, brand name and/or other Intellectual Property components to facilitate the advertisement and promotional activities.
- 12.5 A party who has granted the licence under **Clause 12.2** is entitled to at any time, without assigning a reason, to revoke such licence and upon such revocation, the other party must cease any such use and display allowed under the licence.

**13. DISCLOSURE OF INFORMATION**

- 13.1 The Merchant hereby authorises GKASH, the Acquirer and/or their respective officers to make use of, disclose, divulge or reveal any information relating to the Merchant and its Merchant Account in such manner and to such extent as GKASH and/or the Acquirer shall from time to time consider necessary to any consultant, agent or subcontractor or to any person for any purpose in connection with any matters related to the operation, maintenance and proper functioning of the Payment Schemes or for any purpose in connection with the enforcement of any terms of this Agreement or pursuant to any Applicable Laws particularly under the authority or body established by BNM or any other competent authority or bodies having jurisdiction over GKASH and/or the Acquirer.
- 13.2 The Merchant hereby undertakes and covenants that it shall keep all information related to this Agreement and/or the Payment Schemes which comes into its possession pursuant to or during the course of this Agreement strictly confidential and shall not disclose to any persons such information without obtaining prior written consent of GKASH.

**14. CONFIDENTIALITY**

In addition to **Clause 13** above, the Confidential Information shall be kept confidential by the Merchant at all times for as long as this Agreement subsist, unless disclosure is required by law or unless the Merchant can reasonably demonstrate that it is or part of it is, in the public domain other than by a breach by the Merchant of its obligations under this **Clause 14**, whereupon, to the extent that it is public, this obligation shall cease. The Merchant shall take all steps necessary to prevent the transfer or disclosure of Confidential Information to any third party and shall not sell, copy, reproduce or store in any form the Confidential Information for any purpose whatsoever. For the avoidance of doubt, the obligations of this **Clause 14** shall survive the termination or expiration of this Agreement. The Merchant shall ensure that its directors, shareholders, employees or authorised agents furnished with such Confidential Information is also subjected to a similar confidentiality obligation as is indicated under this **Clause 14**.

**15. DISPUTE RESOLUTION**

In the event of any dispute, the Merchant can direct its dispute to the Financial Ombudsman Scheme introduced by BNM vide the contact details below or resort to the civil litigation resolutions provided by the courts of competent jurisdiction in Malaysia:

Address : Level 14, Main Block,  
Menara Takaful Malaysia,  
No. 4, Jalan Sultan Sulaiman,  
50000 Kuala Lumpur

Phone : 03 2272 2811

Fax : 03 2272 1577

Email : enquiry@ofs.org.my

**16. SUBSEQUENT ACQUIRERS**

- 16.1 The Merchant hereby acknowledges and agrees that GKASH will in its continuous effort engage with new Acquirers and that each and every subsequent Acquirer may at its absolute discretion impose terms and conditions in addition to the general terms set out in this Agreement. GKASH will, upon every successful engagement, notify the Merchant of such engagement. The Merchant further accepts and agrees that any schedules, annexures, addendums made in connection therewith as supplemental to this Agreement shall through incorporation by reference be construed as

an integral part of this Agreement and be binding on the Merchant.

- 16.2 Every subsequent schedule, annexure, addendum made in connection with new Acquirers shall take effect from the date of the notice in writing referred to in **Clause 16.1** above, upon which the schedules, annexures, addendums concerned shall be binding on the Merchant.
- 16.3 The Merchant shall use its best endeavours to ensure that it make all necessary modifications or adjustments (whether operationally or procedurally) to comply and accede to such terms and conditions as may be imposed by a new Acquirer in accordance with the applicable Standards and/or notice from GKASH.

## 17. **MISCELLANEOUS**

### 17.1 **Force Majeure**

- (a) If any party hereto ("**Affected Party**") is affected by Force Majeure, which affects or may affect the performance of any of its obligations under this Agreement it shall forthwith notify the other party ("**Non-Affected Party**") of its nature and extent.
- (b) An Affected Party shall not be deemed to be in breach of this Agreement, or otherwise be liable to the Non-Affected Party, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that the delay of non-performance is due to any Force Majeure event of which it has notified to the other Party, and the time for performance of that obligation shall be extended accordingly.
- (c) If the performance by the Affected Party is affected by Force Majeure for a continuous period in excess of three (3) months, the Parties shall enter into bona fide discussions to alleviate its effects, or to agree upon such possible alternative arrangements as may be fair and reasonable.

### 17.2 **Governing Law**

This Agreement shall be governed by, and construed in accordance with the Standards, regional laws and local laws of Malaysia. The Parties hereby submit to the exclusive jurisdiction of the courts of Malaysia. To the extent that there is any conflict between the applicable jurisdictions of laws, parties agree that the laws of Malaysia shall prevail.

### 17.3 **Costs**

The Merchant agrees to pay any legal fees (on a solicitor and client basis) and other costs and expenses incurred and/or suffered by GKASH and/or the Acquirer in connection with enforcement or incidental to this Agreement including the fees and stamp duty (if any) in connection with the preparation and execution of this Agreement.

### 17.4 **Certificate of Indebtedness**

A certificate signed by an authorized officer of GKASH and/or the Acquirer as to the monies for the time being due and owing to GKASH and/or the Acquirer (as the case may be) from the Merchant for Chargeback or otherwise shall be conclusive evidence or proof that the amount appearing therein is due and owing and payable by the Merchant to GKASH and/or the Acquirer.

### 17.5 **Entire Agreement**

This Agreement (including all schedules, Welcome Letter, Standards, addendums and other notices from GKASH) sets out the entire agreement and understanding between the GKASH and the Merchant with respect to the subject matter hereof and supersedes all prior negotiations, representations, warranties, undertakings and agreements, whether oral or written and has been induced by no representations, warranties or agreements other than those herein expressed.

### 17.6 **Variation**

The Merchant agrees that GKASH may from time to time by giving prior written notice to the Merchant vary add to or amend the terms and conditions herein set out. Any variation, addition and/or amendment shall become effective upon the respective authorized representative(s) of the parties signing and executing an addendum.

### 17.7 **Notice**

Save as it is otherwise expressly provided herein any notice or demand to be given under this Agreement shall be in any of the following ways:

- (a) by ordinary mail to the other party and such notice or demand shall be deemed to have been served on the recipient three (3) Business Days after posting notwithstanding that it may be undelivered an in proving such service it shall be sufficient that the notice or demand was properly addressed and posted; or
- (b) by despatch or courier to the other party and such notice or demand shall be deemed to be given upon acknowledgment; or
- (c) by facsimile to the other party and such notice or demand shall be deemed to be delivered on transmission upon confirmation of the transmitting machine indicating that the transmission has been successful; or
- (d) by e-mail to the Merchant's business e-mail address provided to GKASH for payment and other notification purposes.

**17.8 Waiver**

Time shall be the essence of this Agreement but no failure to exercise or any delay in exercising on the part of GKASH of any right power privilege or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right power privilege or remedy preclude any other or further exercise thereof or the exercise of any other right power privilege or remedy. The rights and remedies herein provided are cumulative and not exclusive of any right or remedy provided by law. Acceptance of payments by GKASH under this Agreement and/or any other indulgence given by GKASH shall not be deemed to operate as a waiver by GKASH of any right of action against the Merchant.

**17.9 Severability**

The invalidity or unenforceability of any of the provision herein shall not nullify the underlying intent of this Agreement and the invalid or unenforceable provision or portion thereof shall be severable and the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of other terms or provisions herein contained which shall remain in full force and effect.

**17.10 Assignment**

The Merchant shall not assign, subcontract or transfer this Agreement in whole or in part to any person or entity without GKASH's prior written consent. GKASH shall be entitled to assign or subcontract this Agreement in whole or in part to any of GKASH holding, subsidiaries or affiliate companies upon written notice to Merchant.

**17.11 Binding Effect**

This Agreement shall be binding on the Merchant's personal representatives, heirs, successor's in-title and legal assigns and on the successor's in-title and assigns of GKASH.

**17.12 Changes related to the Merchant**

The Merchant undertakes to immediately inform GKASH by way of a prior written notice of any change in the name, style, constitution or composition of the Merchant whether by retirement, expulsion, death or admission of any partner or parties, amalgamation, reconstruction or otherwise, and/or changes to the business and/or changes to the Goods sold/rendered by the Merchant and the Merchant hereby agrees that this Agreement shall endure and be available for all intents and purposes as if the resulting firm, company or concern had been named in this Agreement. No change in the aforesaid manner can be executed or carried out by the Merchant without the written approval of GKASH.

**17.13 Communication**

All communication between the Parties pertaining to this Agreement shall be in the Bahasa Malaysia or the English Language.

**17.14 Novation**

**GKASH may not novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so without the prior written consent of the Merchant which consent is not to be unreasonably withheld.**

*- The remaining of this page has been intentionally left blank. -*

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed.

For and on behalf of **MERCHANT**

WITNESS

BY EXECUTION OF THIS AGREEMENT, YOU AGREE AND CONSENT TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH SHALL INCLUDE THE CURRENT AND SUBSEQUENT SCHEDULES, ANNEXURES, ADDENDUMS, WELCOME LETTER, STANDARDS AND OTHER NOTICES FROM GKASH MADE IN CONNECTION WITH AND IN ACCORDANCE TO THIS AGREEMENT

\_\_\_\_\_  
Authorised Signatory and affix Company Stamp

Name :

NRIC No :

Designation :

\_\_\_\_\_  
Signature

Name :

NRIC No :

Designation :

IN CONSIDERATION OF THE MERCHANT'S ACCEPTANCE OF THIS AGREEMENT, GKASH HEREBY AGREE TO APPOINT THE PARTY NAMED ABOVE AS A MERCHANT UNDER THE TERMS AND CONDITIONS OF THIS AGREEMENT

For and on behalf of **GKASH SDN BHD**

WITNESS

\_\_\_\_\_  
Authorised Signatory and affix Company Stamp

Name : KOON YOKE CHUN

NRIC No : 650829-05-5498

Designation : OPERATION MANAGER

\_\_\_\_\_  
Signature

Name : HO TZIN YEE

NRIC No : 891207-12-6412

Designation : ASSISTANT OPERATION MANAGER

**Date of this Agreement (To be completed by GKASH):** \_\_\_\_\_

SCHEDULE 1

PARTICULARS OF THE MERCHANT

|  |  |
|--|--|
| <b>Merchant / Brand Name / Logo</b>  |  |
| <b>Entity Name (to provide all “<i>doing business as</i>” names used by Merchant and includes companies, sole proprietorships, associations, cooperatives, etc.)</b> |  |
| <b>Entity Identification No. (if any)</b>  |  |
| <b>Business Licence No. &amp; Authority</b>  |  |
| <b>Current Business Address of all of the Merchant’s offices</b>   |  |
| <b>Number of Outlets</b>   |  |
| <b>Business address of Outlets</b>   |  |
| <b>Contact Number</b>  |  |
| <b>Person in Charge &amp; Designation</b>  |  |
| <b>E-mail Address</b>  |  |
| <b>Types of Business</b>   |  |
| <b>Complete description of Goods</b>   |  |
| <b>Bank Name</b>   |  |
| <b>Bank Account No</b>   |  |
| <b>Bank Account Name</b>   |  |