

**AFFIN BANK / AFFIN ISLAMIC BANK MERCHANT SERVICES TERMS & CONDITIONS****BACKGROUND**

- A. At the Merchant's request, the Bank had agreed to allow the Merchant's participation in the Bank's VISA Card and/or MasterCard and/or MyDebit programme on these Merchant Services Terms & Conditions ("Terms & Conditions")
- B. The Bank is similarly willing to provide the Merchant with the card acceptance materials and equipment (the "Materials and Equipment") and the card acceptance service (the "Services") (the Materials and Equipment and the Services shall collectively be referred to as the "Materials, Equipment and Services").
- C. The Bank has experience in dealing with the provision of the Services and able to provide the Materials, Equipment and Services.
- D. The Bank is licensed to operate the card acceptance programme in respect of the Cards described below and the Merchant's acceptance of the programme described in this Terms & Conditions.
- E. The Bank is desirous of providing the Materials, Equipment and Services to the Merchant who or which is desirous of appointing and/or nominating the Bank to provide the Materials, Equipment and Services for the Acceptance Programme upon the terms and subject to the Terms & Conditions.

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this Terms & Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- (1) "Acceptance Programme" means the acceptance of the Cards described under 'Cards' below.
- (2) "Acquirer" means a registered operator of a payment system that provides merchant acquiring services for credit card, debit card and / or prepaid card transactions registered under Section 17 of the FSA
- (3) "Bank" means Affin Bank Berhad [**Registration No. 197501003274 (25046-T)**] or Affin Islamic Bank Berhad [**Registration No. 200501027372 (709506-V)**], a licensed bank incorporated in and under the laws of Malaysia and having its registered office at Level 17, No.80, Jalan Raja Chulan, 50200 Kuala Lumpur and includes persons deriving title and its successors-in-title and assigns and any branch of the Bank throughout Malaysia. The expression 'the Bank' includes an 'Issuer'.
- (4) "BRAM" means the document containing the Business Risk Assessment and Mitigation compliance programme developed by MasterCard Worldwide details available at [mastercardonline.com](http://mastercardonline.com).
- (5) "Card" means:-
  - (i) an authorized and unexpired VISA Credit Card by the Bank bearing magnetic stripe features and/or embedded with the EMV compliant chip or any other payment card duly issued by an Issuer who is a member of VISA, valid in all aspects, bearing such service marks, designs and styles as may from time to time be determined and issued by the Bank or any other bank, corporation, organization, business entity or body whether incorporated or unincorporated authorized by VISA International to issue credit cards bearing the abovementioned service marks, designs and styles; and/or
  - (ii) "VISA Card Program Marks" means:-
    - (a) the Marks composed of:
      - (i) the Blue, White and Gold Bands Design Mark with the VISA Mark;
      - (ii) the Dove Hologram and (iii) the Product Identifier area; or
    - (b) the Mark Area which is designated block on the front of the Card composed of (i) the Blue, White and Gold Bands Design Mark with the VISA mark and (ii) the VISA Dove Hologram; or
    - (c) any such other marks as may from time to time be authorized by VISA International for use in connection with Visa Card program; and
  - (iii) an authorized and unexpired MasterCard Credit Card by the Bank bearing magnetic strip features and/or embedded with the EMV compliant chip or any other payment card duly issued by an Issuer who is a member of MasterCard Credit Card, valid in all aspects, bearing such service marks, designs and styles as may from time to time be determined and issued by the Bank or any other bank, corporation, organization, business entity or body whether incorporated or unincorporated authorized by MasterCard International to issue credit cards bearing the abovementioned service marks, designs and styles; and / or
  - (iv) "MasterCard Marks" means:
    - (a) the words "MasterCard International Card", "MasterCard International", "MasterCharge", "MasterCard" and "MasterCard II"; and
    - (b) the distinctive interlocking circles designs consisting of:-
      - (i) a red circle overlapping an ochre circle; and/or
      - (ii) two gold circles, a globe design consisting of a globe, an "M" and a "C"; and/or
      - (iii) the words "MasterCard International" with a solid circle interlocking with a striped circle; and/or
      - (iv) the word "MasterCard" across an interlocking red circle and yellow circle; and/or
      - (v) any such other mark as may from time to time be authorized by MasterCard International for use in connection with the MasterCard program;

- (6) "Card Acceptance Materials" comprise of:-
  - (i) all Sales Drafts, EDC Slips and Credit Vouchers and all other relevant forms supplied or approved by the Bank for the purpose of evidencing payment of sales transactions consummated or services rendered or credits to be charged or credited to the Card account of a Cardholder or debited from the savings/current account of the Cardholder as the case maybe; and
  - (ii) all deposit summary and other relevant documents and forms supplied or approved by the Bank and which must accompany all Sales Drafts or EDC Slips or Credit Vouchers presented to the Bank for payment pursuant to this Terms & Conditions.
- (7) "Card Acceptance Equipment" comprise of all equipment comprising of electronic or mechanical equipment such as electronic funds transfer at point of sales terminals (EFTPOS Terminal) which include credit authorization terminals (CAT Terminal) and electronic draft capture terminals (EDC Terminal), electronic draft capture printers (EDC Printers) or card imprinters (Card Imprinters) supplied or approved by the Bank for the purpose of printing Cardholders' data and transactions data onto the Sales Draft or EDC Slip or Credit Voucher.
- (8) "Card Account" means the Card account stipulated by the Cardholder in the Authorization Form to which all sums due and owing under the Mail Order/Telephone Order Transaction and/or Recurring Payment Transaction will be charged.
- (9) "Cardholder's Certificate" means the digital certificate issued by the Certification Authority to the Cardholder for the purposes of authenticating the Cardholder in Electronic Commerce Transaction.
- (10) "Card Pin" means a password numbers or personal identification numbers which function as a key for the Cardholder to enable and authorize a MyDebit transaction.
- (11) "Card Imprinter" means a device used to imprint the details of the Credit Card on Sales Drafts;
- (12) "Cardholder" means the person who has applied and to whom the Card is issued and whose name is embossed on the Card and whose signatures appear thereon as an authorized user and where the context so permits, shall include a Supplementary Cardholder.
- (13) "Card Present Transaction" means a transaction where the Credit Card, the Cardholder and the Merchant are present at the time the transaction is performed using Electronic Terminals and card Imprinter;
- (14) "Card Not Present Transaction" means a transaction performed via Mail Order or Telephone Order or other modes of payment instruction;
- (15) "Charges" means any amount charged to the Card by the Cardholder or such amounts to be debited directly from the Cardholder's nominated savings and/or current account, for purchases of goods and/or services at any Merchant's offices and/or outlets and/or locations and/or establishments wheresoever situate which accepts the Card.
- (16) "co-badging" means the act of issuing a payment card with two or more unaffiliated payment card network applications or brands.
- (17) "co-badged debit card" means a debit card with two or more unaffiliated payment card network.
- (18) "Credit Vouchers" means a document in the form from time to time provided by the Bank to the Merchant to enable the Merchant to issue credits in respect of the Charges.
- (19) "Deposits" means the deposits payable by the Merchant to the Bank pursuant to this Terms & Conditions;
- (20) "Debit Card" means the Visa/Mastercard Debit Card issued by the Bank
- (21) "Discount Rate" means the amount chargeable by the Bank to the Merchant as the agreed rate in percentage of the value of the transactions on the Sales Drafts and notified by the Bank to the Merchant in writing and shall include any other rate or rates which may be agreed between the parties from time to time.
- (22) "Domestic Debit Card" means a debit card issued in Malaysia by an issuer approved under the FSA or the IFSA under a debit card network operated by an operator of a domestic payment card network such as the Malaysian Electronic Clearing Corporation Sdn Bhd (PayNet), and any reference to "domestic debit card" shall include a reference to both consumer and commercial cards.
- (23) "EDC Slip" means a document in the form from time to time provided by the Bank or any other bank, corporation, organization or business entity authorized by VISA International and/or MasterCard International to enable the Merchant by means of a EDC Printer to record the Charges and to evidence a transaction between the Merchant and the Cardholder by the use of the Card.
- (24) "EFTPOS Terminal" means an electronic payment system involving electronic fund transfer based on the use of payment cards, such as debit or credit cards, at payment terminals located at points of sale or the "EDC terminal" electronic draft capture terminals and printers supplied by the BANK for the purpose of printing Cardholders' data and transactions data on the EDC Slip.
- (25) "Electronic Commerce Transactions" means any and all purchases, sales and payments made through the Internet between the Cardholder, the Merchant and the Bank, as the case may be.
- (26) "EMV" stands for Europay, MasterCard and Visa, a global standard for inter-operation of integrated circuit cards and card capable point of sale terminals and automated teller machines, for authentication credit and debit card transactions.
- (27) "EMV Card" means the Card with Visa or MasterCard compliant chip
- (28) "Fees" means the fees payable by the Merchant to the Bank;
- (29) "Floor Limit" means such sums of a Charge or a series of Charges as the Bank shall notify to the Merchant from time to time as the maximum value of goods and/or services that the Merchant may supply to a Cardholder on any one single day at any one of the Merchant's offices and/or outlets and/or locations and/or establishments wheresoever situate without the Bank's specific authorization.
- (30) "FSA" refers to the Financial Services Act 2013
- (31) "Issuer" means a bank, corporation, organization, business entity or body whether incorporated or unincorporated authorized by Bank Negara Malaysia that is issuing the Cards described in this Terms & Conditions. The expression, 'the Issuer' may in most context of this Terms & Conditions include or mean 'the Bank'.
- (32) "IFSA" means the Islamic Financial Services Act 2013.

- (33) “International Prepaid Card” means a prepaid card issued in Malaysia by an issuer approved under the FSA or the IFSA under a prepaid card network operated by an operator of an international payment card network and any reference to “international prepaid card” shall include a reference to both consumer and commercial cards.
- (34) “Mail Order or Telephone Order (MOTO)” means a payment transaction initiated by mail order communicated via electronic mail, facsimile or other electronic means or by telephone and payment charged to the Cardholder’s Credit Card;
- (35) “MasterCard” means:-
- (i) MasterCard International Inc., 2000 Purchase Street, Purchase, NY10577-2509 United States of America and includes its successors—in-title and assigns;
  - (ii) “MasterCard” may also mean any and all the rights, title and interest in and to trademarks, trade names, logotypes and Marks service marks owned and/or used by MasterCard International.
- (36) “Materials, Equipment and Services” means collectively the materials and equipment and the services and shall where the context so permits include such other card acceptance materials and equipment and services from time to time mutually agreed upon between the parties and provided by the Bank for the Acceptance Programme.
- (37) “Merchant” means the party registered name, including its employees, servants or agents identified and nominated by the Merchant and approved by the Bank that contracts with the Bank and who accepts the Card or cause its offices and/or outlets and/or locations and/or establishments wheresoever situate to accept the Card as a form of payment for goods and services.
- (38) “Merchant’s Account” means the account or accounts of the Merchant maintained with the Bank and shall include such other account or accounts as may be opened from time to time;
- (39) “Merchant Discount” means the merchant discount rate calculated and fixed by the Bank at its discretion at any time and from time to time payable by the Merchant to the Bank pursuant to the provisions of this Terms & Conditions and which sums the Bank shall be entitled to deduct from the amount of Charges presented to the Bank before payment to the Merchant of the balance of such Charges.
- (40) “Merchant’s Website” means the website or the webpage set up, owned and maintained by the Merchant and its service providers, where applicable, on the Internet;
- (41) “MEPS” means Malaysian Electronic Payment System (1997) Sdn. Bhd (412829-K).
- (42) “PayNet” means the Payments Network Malaysia Sdn Bhd (formerly known as Malaysian Electronic Clearing Corporation Sdn Bhd) which is wholly owned subsidiary of Bank Negara Malaysia (the Central Bank of Malaysia), the operator of MyDebit Card MyDebit Scheme.
- (43) “MyDebit” means a payment system that allows the Cardholder to purchase good and / or services at the Merchant’s outlets by debiting directly from the Cardholder’s nominated savings and / or current account.
- (44) “MyDebit Card” means:
- (i) a validly issued and unexpired chip-based smart card, with multiple payment applications including MyDebit, bearing distinctive service marks, designs and styles as may from time to time be determined and issued by the authorized bank, corporation, organization, business entity or body whether incorporated or unincorporated as the case may be, and shall where the context so permits include any one or more or all of the aforesaid cards; and / or
  - (ii) an authorized and unexpired MEPS Debit Card, bearing such service marks, designs and styles as may from time to time - be determined and issued by the BANK or any other bank, corporation, organization or business entity authorized by MEPS/PayNet to issue debit cards bearing the abovementioned service marks, designs and styles; and / or
  - (iii) an authorized and unexpired MEPS Cash Card bearing such service marks, designs and styles as may from time to time be determined and issued by the BANK or any other bank, corporation, organization or business entity authorized by MEPS/PayNet to issue cash cards bearing the above-mentioned service marks, designs and styles; and / or
  - (iv) any other cards bearing such service marks, designs and styles as may from time to time be determined and issued by the Bank or any other bank, corporation, or business entity; and / or
  - (v) an authorized and unexpired MyDebit Card.
- (45) “New Card” means any or all validly issued and unexpired cards issued by the Bank bearing magnetic stripe features and/or embedded with the EMV compliant chip pursuant to any Terms & Conditions entered into by the Bank with other and various organizations or institutions for the issue of credit cards or debit cards other than VISA International or MasterCard International.
- (46) “Operator” is an operator of a payment card network of an approved payment system under Section 11 of the FSA or Section 11 of the IFSA that provides a payment card network operation which enables payment to be made through the use of credit cards, debit cards and / or prepaid cards.
- (47) “Payment Card Network” means an electronic payment system or an Islamic electronic payment system based on Shariah principles, whether in or outside Malaysia which accepts, transmits or processes information on payment transactions resulting from the use of payment cards for purposes of facilitating authorization, clearing and settlement among issuers, acquirers, merchants and cardholders.
- (48) “PCIDSS” means Payment Card Industry Data Security Standard Compliance under Visa and MasterCard Security International Requirements.
- (49) “Risk Alert Notice” means the following risk alert notices (RAN) which are supplied by the Bank to the Merchant:-
- (i) the Card Recovery Bulletin (CRB) which is a notice supplied from time to time containing particulars of the Cards which are, lost, stolen, blocked, cancelled or invalid; and/or
  - (ii) the Hot Card Notice (HCN) which is a notice supplied from time to time containing particulars of the Cards which are being improperly used.

- (50) "Recurring Payment Transaction" means the periodic provision and/or of goods and/or services by the Merchant to the Cardholder where payment for the goods and services will be made to the Merchant from time to time pursuant to the Recurring Payment Authorization.
- (51) "Sales Draft" means a document in the form from time to time provided by the Bank or any other bank, corporation, organization or business entity authorized by VISA International and/or MasterCard International to enable the Merchant by means of a Card imprinter to record the Charges and to evidence a transaction between the Merchant and the Cardholder by the use of the Card.
- (52) "Settlement Function" means a pre-programmed function in the POS Terminal which when activated automatically transmits the financial totals of the day's transactions to the Bank for reconciliation and payment to the Merchant.
- (53) "Split Sale" means a transaction where in an attempt to avoid authorization, the Merchant splits a single day's transaction into two or more Sales Drafts bearing the same date or different dates, each of which is below the Authorized Floor Limit but when added together exceeds the Authorized Floor Limit;
- (54) "VISA" means:
- (i) Visa International Inc., 900 Metro Center Boulevard, Foster City, State of California, United States of America 94404-2172 and includes its successors-in-title and assigns;
  - (ii) "VISA" may also mean any and all the rights, title and interest in and to trademarks, trade names, logotypes and Marks service marks owned and/or used by VISA International Inc.
- 1.2 In this Terms & Conditions, unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided:-
- 1.2.1 words denoting one gender include all other genders and words denoting the singular include the plural and the same applies in reverse;
  - 1.2.2 words denoting persons include corporations, and the same applies in reverse, and also include their respective heirs, personal representatives, successors in title or permitted assigns, as the case may be;
  - 1.2.3 where a word or phrase is given a defined meaning in this Terms & Conditions any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
  - 1.2.4 any reference to a sub-paragraph, paragraph, sub-clause, clause, schedule or party is to the relevant sub-paragraph, paragraph, sub-clause, clause, schedule or party of and to this Terms & Conditions and any reference to this Terms & Conditions or any of the provisions of this Terms & Conditions includes all amendments made to this Terms & Conditions from time to time in force;
  - 1.2.5 any reference to a statutory provision includes any modification, consolidation or re-enactment for the time being in force, and any statutory instruments or orders made pursuant to it;
  - 1.2.6 any reference to "pay", or cognate expressions, include payments made in cash or by way of bank drafts (drawn on a bank licensed to carry on banking business under the provisions of the Financial Services Act 2013 or effected through inter-bank transfers to the account of the payee, giving the payee immediate access to available funds and the word "Ringgit Malaysia", the word "Ringgit" and the abbreviation "RM" means the lawful currency of Malaysia;
  - 1.2.7 any reference to "writing", or cognate expressions, include any communication effected by telex, email, cable, facsimile transmission or other comparable means;
  - 1.2.8 if any period of time is specified from a given day, or the day of a given act or event, it is to be calculated inclusive of that day.
  - 1.2.9 any reference to 'business day' is with reference to the Bank's business and means a day in which the Bank is open for business other than Saturdays, Sundays or other public holidays in the Federal Territory or in Kuala Lumpur. If any payment is required to be made or other action is required to be taken pursuant to this Terms & Conditions on a day which is not a Business Day, then such payment or action shall be made or taken to be on the next Business Day.
  - 1.2.10 any reference to a 'business day' in connection with the Cards Business means a day in which business is conducted within the State. If any payment is required to be made or other action is required to be taken pursuant to this Terms & Conditions on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
  - 1.2.11 any reference to 'business day' in connection with a MyDebit Card means a day on which the Bank is open for business in the Federal Territory in Kuala Lumpur. If any payment is required to be made or other action is required to be taken pursuant to this Terms & Conditions on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- 1.3 The Recitals to this Terms & Conditions shall have effect and be construed as an integral part of this Terms & Conditions, but in the event of any conflict or discrepancy between the provisions of this Terms & Conditions and the Recitals, such conflict or discrepancy shall, for the purposes of the interpretation and enforcement of this Terms & Conditions, be resolved by giving the provisions contained in the clauses of this Terms & Conditions priority and precedence over the provisions contained in the Recitals.
- 1.4 The headings in this Terms & Conditions are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provision contained in this Terms & Conditions.
- 1.5 This Terms & Conditions shall be governed by and construed in accordance with the laws of Malaysia.
- 1.6 Subject to the necessary changes the contents of this Terms & Conditions shall apply to the Merchant supplied with a Card Imprinter and/or the Merchant supplied, with a POS Terminal and in so far as certain provisions apply exclusively to the use of the POS Terminal they shall not apply to the use of the Card Imprinter and the same applies in reverse.

2. **PROVISION OF MATERIALS, EQUIPMENT AND SERVICES**

- 2.1 The Bank agrees to provide the materials, equipment and services and the Merchant nominates the Bank to provide the above under the Acceptance Programme and subject to this Terms & Conditions.

3. **DELIVERY OF MATERIALS AND EQUIPMENT**

- 3.1 The Bank shall deliver and install any materials and equipment on the dates advised by the Merchant.
- 3.2 The Bank shall as soon as reasonably practicable after the installation of the materials and equipment submit the same to installation tests in accordance with procedures established by the Bank to demonstrate to the Merchant that it is in proper working order.
- 3.3 Upon delivery, risk in the whole or any part of the materials and equipment shall at all times remain with the Merchant and the Bank shall not be liable to the Merchant for any loss or damage of any nature caused to any delivered materials and equipment save and except for losses attributable to the Bank's negligence, default or fraud.

4. **HONOURING CARDS**

- 4.1 Subject to the provisions of this Terms & Conditions, the Merchant shall permit Cardholders to charge to their Card account or MyDebit their current or savings account through the use of the Card, of the Card also can be used for Electronic Commerce, as payment for purchases of goods and/or services supplied by the Merchant without prior payment in cash or by cheque at the Merchant's cubes and/or outlets and/or locations and/or establishments at the address state above, or at such addresses which may be updated from time to time as agreed in writing by the parties.
- 4.2 The Merchant shall not accept the Card as payment for purchases of goods and/or services and submit to the Bank the Sales Draft or EDC Slip for payment in respect of any transaction for goods and/or services provided by any other parties other than that sold or provided by the Merchant at the address stated above.
- 4.3 Without limiting the generality and in addition to the above provisions, the Merchant shall not accept payment of any debt incurred by the Cardholder with the Merchant from a loan or financing raised by the Cardholder through the use of the Card unless such debt have been incurred by the Cardholder pursuant to an underlying trade transaction connected with the Merchant's business in the event a cheque issued by the Cardholder to settle a debt incurred pursuant to any underlying transaction is dishonored, the Merchant shall not accept payment of the same debt from the Cardholder if the Cardholder uses the Card to make the payment.

5. **MERCHANT'S DUTY**

- 5.1 The Merchant's business, modus operandi, merchandise and premises involved are not against Malaysian laws.
- 5.2 The Merchant shall only process the Card transaction through the use of the Card Acceptance Equipment provided or approved by the Bank only and not any other mode and manner.
- 5.3 The Merchant is under a duty to seek verification from the Issuer before proceeding to complete a Card transaction under any of the circumstances seen in Clause 5.2 above.
- 5.4 The Merchant shall indemnify and keep the Bank fully indemnified against any liabilities, claims, losses, expenses, costs, including the solicitors and clients' costs on a full indemnity basis as a result of any refusal or acceptance of any Card by the Merchant in the course of carrying out its obligations in this Terms & Conditions. This indemnity will not apply if the Bank is directly responsible as a result of its default, negligence or fraud.
- 5.5 The Merchant shall adequately display appropriate Card trademarks, logos, names and other promotional materials provided by the Bank and/or MEPS/PayNet at the Merchant's premises and/or outlets and/or establishments.
- 5.6 The Merchant shall not use any of the Cards' trademarks, logos, names and other intellectual property rights owned by or licensed to the Bank and/or MEPS/PayNet for the Merchant's advertising and promotional campaign without prior written approval from the Bank.
- 5.7 The Merchant shall not make any statement, cause or permit to be done anything that may damage any of the Cards' trademarks, logos, names and other intellectual property rights owned by or licensed to the Bank and any other financial institutions.
- 5.8 The Merchant shall not use the Card Acceptance Equipment for other than its intended purposes.
- 5.9 The Merchant shall assist the Bank and/or the Bank's alliance partner and/or MEPS/PayNet and/or the Issuer with any inquiry and investigation undertaken in respect of misuse of the scheme.
- 5.10 The Merchant shall notify the Bank and/or the Bank's alliance partner of any changes to the Card Acceptance Equipment operating system and application software for purpose of re-certification by the Bank and/or the Bank's alliance partner or any other certification organizations authorized by the Bank and/or the Bank's alliance partner and/or MEPS/PayNet.
- 5.11 The Merchant shall accept and honor all the Cards when presented by their Cardholders at any Card Acceptance Equipment and provide the goods and services on the same terms and conditions as those under which it supplies goods and services to persons purchasing goods or services by means other than by the Card.
- 5.12 The Merchant shall indemnify and compensate the Bank and/or the Bank's alliance partner and/or the Issuer adequately against and for any loss and/or theft and/or damage to the SAM (Security Access Module) chip or microchip save and except for any loss or damage attributed to the Bank's negligence, default or fraud.

- 5.13 The Merchant shall make a police report in the event of any loss and/or theft of any SAM chip or microchip from the Merchant's premises.
- 5.14 The Merchant shall comply with all directives and/or guidelines issued by the Bank and/or MEPS/PayNet (including such variations and amendments, if any, by the Bank and/or MEPS/PayNet from time to time) in relation to the Cards Acceptance Programme.
- 5.15 The Merchant shall not make any statements or representations concerning the Cards' scheme which may be misleading or possibly incorrect or inaccurate.
- 5.16 The Bank shall have the right to include the Merchant's name and addresses in any advertising and promotional campaigns the Bank, MEPS/PayNet and other financial institutions undertaken in respect of the Card Acceptance Programme scheme.
- 5.17 The Merchant shall notify the Bank on any change made to the product or services, sales model or channel, change of business entity/management/ownership and any other events related to the Merchant's business. This is to enable the Bank to reassess the Merchant's business against the original assessment prior to onboarding or any on-going assessment conducted by the Bank prior to the business change being notified. The Bank reserves the right to terminate or penalize or seek compensation from the Merchant in the event such change was not notified to the Bank and with the intention to conceal the fact and that may adversely affect the Bank's interest or rights under the Terms & Conditions. The Bank shall not be liable for any violation whether directly or indirectly against the law and/or Visa and MasterCard prescribed compliance standards that may arise due to the change made in the business by the Merchant as stated herein. The Merchant shall be fully liable for any negative repercussion as stated and provided under the clause 5.21.
- 5.18 The Merchant shall allow the Bank and its agents to enter any of the Merchant's premises with or without any prior written notice to the Merchant to inspect and have full access to the Merchant's software, hardware and/or any other part of its system with a view in ascertaining whether the setting up, operation, maintenance, security and integrity thereof or any other related matter thereto is in compliance with the Bank's policies and the standards prescribed by PCI-DSS, Visa and MasterCard.
- 5.19 The Merchant shall take considerable measure and diligence to ensure not to submit for payment any transaction that is illegal or that will damage the goodwill and reflect negatively on the Bank and Card brands which is Visa and MasterCard.
- 5.20 The Merchant shall not accept the Card nor participate in any way in the transaction for purpose other than bona fide purchases by Cardholders of goods and/or services rendered by the Merchant. This means, by way of example and not limitation, that the Merchant shall not accept the Card for any of the following:
- (a) pornographic goods or services or prostitution;
  - (b) goods or services for which the provision thereof is illegal (example: drug trafficking);
  - (c) sales where the amounts charged do not correspond with the value of the goods or services purchased or rendered;
  - (d) sales made under a name which is different from the name of the Merchant;
  - (e) sales made by a third party i.e. not the Merchant
  - (f) fake or counterfeit goods or goods which infringed the intellectual property right of another;
  - (g) cash;
- 5.21 Merchant shall accept full responsibility and the Bank shall not be liable in any way for any claims, liabilities, fees, fines, penalties or compensation charges, expenses, costs, losses or damages of whatever nature brought against, suffered or incurred by or caused to the Bank or any party whatsoever due to or arising out of or in connection with the Terms & Conditions or any breach or compromise of the security or integrity (including but not limited to any breach or compromise of the standards prescribed by Visa, MasterCard, PCI-DSS and BRAM) or malfunction of system or due to any error, negligence or fraud relating to a card transaction by the Merchant and/or the Merchant's agents, servants, employees or contractors.

## 6. MERCHANT'S DUTY IN RESPECT OF UNACCEPTABLE CARDS

- 6.1 A Card shall be deemed invalid and the Merchant is under a duty and agrees and undertakes to refuse acceptance and shall refuse acceptance of such Card if any of the following matters or circumstance shall occur:-
- (a) The expiry date of the Card has passed;
  - (b) The validity of the Card is post - dated;
  - (c) The Card has been declared by the Bank or its agent or by any other bank, corporation, organization or business entity authorized by VISA International or MasterCard International or MEPS/PayNet or the Issuer as lost or stolen or is listed in the Risk Alert Notice (RAN);
  - (d) The signature of the Cardholder on the Sales Draft or EDC Slip does not resemble the signature on the Card;
  - (e) Any material particular relating to the Cardholder has been omitted from the Card;
  - (f) The Bank or its agent or any other bank, corporation, organization or business entity authorized by VISA International or MasterCard International or MEPS/PayNet or the Issuer has declared the Card invalid on account of any reason;
  - (g) The Card has been altered, damaged, defaced, re-printed or re-embossed on the face of it in any manner;
  - (h) The first four digits of the account number embossed on the face of the Card are not identical to the pre-printed four (4) digits appearing immediately above the aforesaid four (4) digits of the account number for all VISA or MasterCard Cards or MEPS/PayNet or MyDebit Card;
  - (i) The Card presented is a plain white plastic Card, not bearing any VISA and/or MasterCard and/or MEPS/PayNet and/or the Issuer's trademarks that has the Cardholder's information embossed or encoded;
  - (j) The Card does not bear such genuine distinctive hologram of VISA and/or MasterCard and/or MEPS/PayNet or the Issuer;

- (k) Where verification of the identity of the person presenting the Card is required by the Bank, the required identification papers could not be produced or the identity could not be verified correctly;
  - (l) Where the Card contains a photograph of the Cardholder, the person presenting the Card does not appear to be the same person as shown in the photograph on the Card; or
  - (m) Where the Card number appearing on the POS Terminal does not match the 16 embossed digits on the Card.
- 6.2 The Merchant shall seek verification and obtain specific directions from the Bank before proceeding to complete a Card transaction if any of the following situations shall arise: -
- (a) the signature on the Sales Draft differs from the specimen on the Card; or
  - (b) the Merchant has reason to believe that the Card may be a counterfeit or stolen; or
  - (c) there are suspicious circumstances when the Card was presented for the proposed transaction.
- 6.3 In the event that the Merchant is unable to determine the validity of the Card presented to it, the Merchant shall seek approval from the Bank by telephone or through any other platform of communication provided by telephonic service providers and acceptable to the Bank. Unless there is positive verification by the Bank, such a Card shall not be honored by the Merchant and where such a Card has been verified by the Bank to be valid, the Merchant shall record on the Sales Draft or EDC Slip the Bank's authorization code and such other particulars of the issuer's details as confirmatory evidence of such authorization.
- 6.4 In the event that the Merchant is presented with a Card which has been declared invalid, cancelled, reported lost or otherwise deemed unacceptable by the Bank, the Merchant shall attempt to retain the custody of such Card and return to the Bank the invalidated Card by cutting across it the account number. And the Merchant agrees that It shall not hold the Bank liable and the Merchant shall indemnify the Bank against any liabilities, claims, proceedings, expenses or losses of any nature in respect of damage to any real personal property or injuries to any persons caused by the Merchant and/or its servants. However, the Bank will be responsible for damages directly caused by its fault, negligence or fraud.

#### **7. DISPLAY OF THE VISA AND/OR MASTERCARD AND/OR MEPS/PAYNET MARKS AND NAMES**

- 7.1 The Merchant shall adequately and prominently display the "VISA" and/or "MasterCard" and/or "MEPS/PayNet" or the Issuer of the Card's trademarks, service marks, names and designs and other promotional materials provided by the Bank in and outside the Merchant's offices and/or outlets and/or locations and/or establishments wheresoever situate to inform the Cardholder and the public that the respective Cards will be honored at the Merchant's offices and/or outlets and/or locations and/or establishments. The Merchant shall use only such materials as provided or approved in advance by the Bank. The Merchant may use the "VISA" and/or "MasterCard" and/or "MEPS/PayNet" or the Issuer of the MyDebit Card's trademarks, service marks, names and designs and other promotional materials on advertising, promotional, printed or broadcast materials only to indicate that the respective Cards are accepted in payment for goods and/or services and shall not indicate, directly or indirectly, any goods or services other than goods and services sold or supplied by the Merchant and the Merchant agrees to obtain the prior approval of the Bank in writing prior to the publication of any advertising, promotional, printed or broadcast materials containing such "VISA" and/or "MasterCard" and/or "MEPS/PayNet" and/or the Issuer of the Card's trademarks, service marks, names and designs.
- 7.2 The Merchant agrees to prominently display the Bank's "Take-One" display boxes containing the Card application forms and/or any other displays or promotional material provided/authorized by the Bank at the Merchant's offices and/or outlets and/or locations and/or establishments wheresoever situate.
- 7.3 The Bank and the Merchant may from time to time conduct joint marketing and promotional programme for mutual business benefits of the Bank and the Merchant and where deemed necessary for the Merchant to contribute payment in part or in whole towards the cost or expense of producing such marketing or promotional materials, the Merchant shall be consulted before the production of the same is authorized by the Bank.
- 7.4 The Merchant agrees to permit the Bank or any other bank, corporation, organization or business entity authorized by VISA International or MasterCard International or MEPS/PayNet or the Issuer of the MyDebit Card to include the names and addresses of all or any of the Merchant's offices and/or outlets and/or locations and/or establishments wheresoever situate in any directories, guides or other advertising, promotional, printed or broadcast materials used in connection with the Card Acceptance Programme.
- 7.5 The Merchant further undertakes to take all reasonable precautions to prevent any unauthorized use of any proprietary or other rights in or to the VISA, MasterCard, MEPS/PayNet and the Issuer's marks and names and other service marks, designs and styles and any other trademark or service marks of VISA International, MasterCard International, MEPS/PayNet, the Issuer and / or the Bank or any other bank, corporation, organization or business entity authorized to issue the Cards.
- 7.6 The Merchant shall indemnify the Bank against liability under any final judgment to proceedings brought by VISA International and /or MasterCard International and/or MEPS/PayNet, the Issuer and/or any other bank, corporation, organization or business entity authorized to issue the Cards and all damages, costs, claim or liability including legal fees as a result of any unauthorized use of any proprietary or other rights in or to the VISA, MasterCard and MEPS marks and names and other service marks, designs and styles and any other trademarks or service marks of VISA International, MEPS/PayNet and/or the Bank or any other bank, corporation, organization or business entity authorized to issue the Cards by the Merchant and/or its associated companies, corporate affiliates and any of their employees, agents and sub-contractors.

#### **8. COMPLETION OF MYDEBIT CARD MYDEBIT TRANSACTION**

- 8.1 Before performing a MyDebit Card MyDebit transaction, the Merchant shall verify the validity and the particulars of the MyDebit Card.
- 8.2 The Merchant must always ensure the Cardholder has the confidentiality and security to enter the Card Pin before performing any MyDebit Card MyDebit transaction and any multiple sales transactions that occurred without the re-entry of Card Pin are prohibited.
- 8.3 The printed EDC Slip is the evidence of a MyDebit Card MyDebit transaction between the Merchant and the Cardholder. After the EDC Slip is printed, the Merchant shall ensure the particulars of the MyDebit CARD and the particulars of the Merchant are legibly imprinted on the EDC Slip complete with date of transaction and particulars of the transaction before a copy of duly completed EDC Slip is handed over to the Cardholder.
- 8.4 Upon completion of each transaction as evidenced by the handing over of the completed EDC Slip to the Cardholder, Merchant shall not be permitted to make any alteration or amendment whatsoever in relation to the EDC Slip. In the event of any purported alteration or amendment to the completed EDC Slip, the Bank shall be entitled not to release payment to the Merchant for the Charges at its discretion. The decision of the Bank shall be accepted by the Merchant as final and conclusive.
- 8.5 All complete transactions shall be subjected to the Merchant Discount Rate and any other relevant deductions from the total Charges presented.
- 8.6 The Merchant shall ensure that all sales transactions are processed in accordance with the procedures as stipulated by the Bank from time to time and to the satisfaction of the Bank.

## 9. **MAINTENANCE**

- 9.1 The Merchant shall at its own cost and expense keep or ensure that the Materials and Equipment is/are properly stored and kept in good working order and shall be responsible for any maintenance, repairs or adjustments necessary for the purpose. The Merchant shall ensure that all maintenance, repairs or adjustments comply with any direction of the Bank as to the nature and place of repairs to the Materials and Equipment.
- 9.2 The Merchant shall notify the Bank immediately of any defects or malfunction in any Materials and Equipment or any factor causing or threatening damage or destruction of any Materials and Equipment.
- 9.3 The Merchant shall maintain a record of its maintenance of the Materials and Equipment in form and substance acceptable to the Bank and shall promptly upon a request by the Bank, provide a copy of the same.
- 9.4 Without limiting the generality of the foregoing provisions, the Merchant will at its own cost and expense provide maintenance with an authorized service provider for the Materials and Equipment comprising:-
  - (a) preventive maintenance which will be carried out where necessary at such intervals as the Bank shall in its discretion decide; and
  - (b) any and all repair work as and when required.
- 9.5 The Merchant assumes all risks of loss and/or theft and/or damage to any Materials and Equipment and the Merchant shall indemnify and compensate the Bank adequately against and for any loss and/or theft and/or damage to any Materials and Equipment save and except for losses and damages attributed to the Bank's negligence, default and fraud. The Merchant shall make a police report in the event of any loss and/or theft of any Materials and Equipment from the Merchant's premises.

## 10. **INSURANCE/TAKAFUL**

- 10.1 The Merchant shall at its own cost and expense for the duration of the TERM or the EXTENDED TERM take out and maintain insurance/takaful against all usual risks relating to loss of or damage to the materials and equipment for the full replacement cost. The Merchant shall produce and provide to the Bank on demand any policy relating to such insurance/takaful and a copy of the same.

## 11. **HOTEL SERVICE**

- 11.1 In the event that the Merchant is in the hospitality/hotel industry, the Merchant agrees to participate in any hotel reservation service ("the Hotel Reservation Service") forming a part of the VISA and/or MasterCard hotel service package to guarantee reservations made by the Cardholders. The Merchant's participation in the Hotel Reservation Service shall form part of this Terms & Conditions and subject to all provisions appearing in this Terms & Conditions.

## 12. **RISK ALERT NOTICES (RAN)**

- 12.1 The Merchant shall check the current Risk Alert Notice supplied by the Bank to the Merchant from time to time prior to the completion of any transaction and shall not accept any Card whose number is listed in the CRB or HCN.
- 12.2 Any Risk Alert Notices sent by prepaid ordinary post to the Merchant and directed to his address in this Terms & Conditions or to such other address as may be hereafter notified by the Merchant to the Bank in writing shall be deemed to be served on the Merchant three (3) days from the date of posting.



**13. FLOOR LIMIT**

- 13.1 Where the Merchant has been provided with a EFTPOS Terminal, the Floor Limit of the Merchant shall effectively be zero (0) in the absence of any specific authorization and/or written authorization from the Bank to the Merchant. In the event of any equipment - line failure, the Merchant shall on each occasion request and obtain from the Bank by telephone, the Bank's specific authorization and/or written authorization.
- 13.2 Where the Merchant has not been provided with a EFTPOS Terminal, the Floor Limit shall be such sum to be assigned by the Bank to the Merchant or to each at the Merchant's offices and/or outlets and/or locations and/or establishments from time to time at its discretion and notified in writing to the Merchant from time to time. In the event that the value of the goods and/or services required by any Cardholder is in excess or considered to be in excess of the Floor Limit, the Merchant shall on each occasion request and obtain from the Bank by telephone, its specific authorization.
- 13.3 However, if the transaction amount is below the assigned Floor Limit, the Merchant shall check the Card number against the Risk Alert Notice before accepting the Card. The Floor Limit may be varied at the discretion of the Bank by giving the Merchant written notice as aforesaid and such changes shall be effective immediately upon receipt by the Merchant of notification.

**14. AUTHORIZATION**

- 14.1 Approval codes from the Authorization Centre of the Bank shall be deemed necessary in order to complete a Card transaction under any of the following situations or circumstances: -
- (a) Where the Merchant's offices and/or outlets and/or locations and/or establishments have been equipped with a EFTPOS Terminal;
  - (b) Where the Card transaction would alone or with other transactions cumulatively exceeds the relevant Floor Limit applicable for the relevant Merchant's offices and/or outlets and/or locations and/or establishments;
  - (c) Where the EFTPOS Terminal is not functioning and transactions have to be conducted manually using a card imprinter.
- 14.2 Where the Merchant's offices and/or outlets and/or locations and/or establishments have been equipped with a EFTPOS Terminal, all requests for authorization shall be automatically dialed – up via the EFTPOS Terminal and the approval codes shall be granted on-line.
- 14.3 Where the Card transaction would alone or with other transactions cumulatively exceed the relevant Floor Limit applicable for the relevant Merchant's offices and/or outlets and/or locations and/or establishments and a request for an authorization is declined or refused, the Merchant shall not attempt to effect the same Card transaction by breaking down the unauthorized transaction amount into two or more Sales Drafts or accept the same Card on any other transaction up to or below the Floor limit.
- 14.4 The Bank shall not be obliged to make payment to the Merchant in respect of:-
- (i) any Charges for which an authorization code was required but was not obtained; and/or
  - (ii) where the authorization code on the Sales Draft does not correspond with the Bank's record of the relevant authorization code issued.
- 14.5 The Merchant agrees that Bank's record of each authorization code issued and of the amount authorized shall be deemed to be conclusive against the Merchant as to these matters. However, the requirement of authorization is solely for the protection of the Bank and the authorization of any Charges by the Bank shall not constitute any warranty or representation by, or give rise to any variation, waiver or estoppel whatsoever against the Bank, in relation to the Charges.

**15. COMPLETION OF THE SALES TRANSACTION**

- 15.1 On each occasion a Sales Draft or EDC Slip is drawn up to evidence a transaction between the Merchant and the Cardholder, the Merchant shall at the time of sale, verify the validity of the Card and have the particulars of the Card and the particulars of Merchant legibly imprinted on such Sales Draft or EDC Slip by means of the Card Imprinter or EDC Printer and have it completed to show the date and nature of the transaction, details and the prices of the goods and/or services. Where the EDC Printer is used, no Imprinting of any Sales Draft is required. Before a copy of the completed Sales Draft or EDC Slip is handed over to the Cardholder, the Merchant shall obtain and verify the Signature of the Cardholder on such Sales Draft or EDC Slip first before accepting the transaction.
- 15.2 The Merchant shall confine the use of the Sales Draft or EDC Slip to evidence sales against care and shall also complete such other documents in accordance with statutory requirements, if any.
- 15.3 It shall be the obligation of the Merchant prior to the completion of the transaction to ensure that the signature on each Sales Draft or EDC Slip affixed thereon shall be similar to that shown on the Card. In the event that the signature on the Card differs from the signature on the Sales Draft or EDC Slip the Bank shall be entitled to refuse to make payment to the Merchant for the amount shown on the Sales Draft or EDC Slip and the Merchant agrees with the Bank that the decision of the Bank on this matter shall be accepted by the Merchant as final and conclusive against the Merchant. Notwithstanding that the Bank may have inadvertently or on account of any other reason authorized payment to the Merchant in respect of any Sales Draft or EDC Slip which contains a discrepancy in the signature of the Cardholder, the Bank shall have the right to a restitution of such payment by way of debit to the Merchants current or banking account as stipulated in this Terms & Conditions or by any other means from the Merchant the Bank's discretion.

- 15.4 Upon completion of each transaction as evidenced by the handing over of the completed Sales Draft or EDC Slip to the Cardholder the Merchant shall not be permitted to make any alteration or amendment whatsoever in relation to the Sales Draft or EDC Slip. Any purported alteration or amendment to the completed Sales Draft or EDC Slip shall render the Sales Draft or EDC Slip invalid for presentation to the Bank for payment. Notwithstanding that the Bank may have inadvertently or on account of any other reason authorized payment to the Merchant in respect of and Sales Draft or EDC Slip which contains any alteration or amendment whatsoever, the Bank shall have the right to a restitution of such payment by way of debit of the Merchants current or banking account as stipulated in this Terms & Conditions or by any other means from the Merchant at the Bank's discretion.

**16. COMPLETION OF RECURRING PAYMENT TRANSACTION AND TRANSACTION VIA MAIL ORDER AND TELEPHONE ORDER**

- 16.1 When transaction is a Recurring Payment Transaction or a Mail Order Transaction, in accepting and honoring the Card, the Merchant shall ensure the following acceptance procedures are strictly observed and complied with:-
- (a) In the event of Mail Order Transaction to the exclusion of Telephone Order Transaction where Clause 16.1(b) is applicable, the Merchant shall ensure that the Authorization Form presented by the Cardholder is legibly completed with the following:-
- (i) the Cardholder's Card Account number, expiry date and security code;
  - (ii) the transaction amount (including applicable taxes);
  - (iii) the Cardholder's name, address and telephone number;
  - (iv) a description of the goods sold or services rendered in detail sufficient to identify the transaction; and
  - (v) the signature of the Cardholder.
- (b) In the event of Telephone Order Transaction, the Merchant shall, based on the information given directly from the Cardholder, complete the Authorization Form with the following:-
- (i) the Cardholder's Card Account number, expiry date and security code;
  - (ii) the transaction amount (including applicable taxes);
  - (iii) the Cardholder's name, address and telephone number; and
  - (iv) a description of goods sold or services rendered in detail sufficient to identify the transaction.
- (c) In the event of Recurring Payment Transaction, the Merchant shall ensure that the Authorization Form presented by the Cardholder is legibly completed with the following:-
- (i) the Cardholder's Card account number, expiry date and security code;
  - (ii) the transaction amount (including applicable taxes);
  - (iii) the Cardholder's name, address and telephone number;
  - (iv) a description of the goods sold or services rendered in detail sufficient to identify the transaction; and
  - (v) the signature of the Cardholder.
- 16.2 The Merchant shall only accept a Card that is within the validity period expressed by the Cardholder and unexpired.
- 16.3 In the event POS Terminal is provided to the Merchant in connection with a Mail Order Transaction and/or Telephone Order and/or Recurring Payment Transaction, the Merchant shall complete the authorization/approval and charge the Cardholder's Card account via the use of the POS Terminal. If no POS Terminal is provided to the Merchant in connection with the Mail Order Transaction and/or Telephone Order and/or Recurring Payment Transaction, the Merchant shall seek authorization/approval from the Bank and shall write, type or print legibly the authorization/approval code evidencing any authorization/approval so obtained on the Authorization Form with the designated Merchant Number before completing the transaction.
- 16.4 Every Authorization Form in connection with a Mail Order and/or Telephone Order Transaction shall be delivered directly by the Merchant to the Bank within three (3) Business Days from the date of the relevant transaction.
- 16.5 In the event billing file is provided to the Merchant in connection with Recurring Payment Transaction, the following acceptance procedures are strictly observed and complied with:-
- (a) the Merchant shall create and send an input billing file to Bank daily together with a softcopy report via File Transfer Protocol (FTP) and/or e-mail and/or other means determined by the Bank.
  - (b) Bank shall process the input billing file received from Merchant and subject to the success / approval of the transaction, Bank shall debit Cardholder's Card Account accordingly.
  - (c) Bank shall send to Merchant the status of the billing file (i.e. Output billing file) and softcopy reports (merchant daily journal) via FTP and/or e-mail and/or other means determined by the Bank the next Business days after receipt of the billing file from Merchant. The output payment file shall contain information on all successful transactions and unsuccessful transactions.
  - (d) For successful transactions, Merchant shall update its Cardholders' accounts accordingly within two (2) Business Days upon receiving the output billing file from Bank.
  - (e) In the event of a dispute between Merchant and the Cardholder in respect of payment made to Merchant through the Collection Service, Merchant shall accept the Cardholder's Card Account statement or Bank's reports in relation to the payment so effected by Bank or such other documents as may be agreed upon by the parties from time to time as evidence of payment.
  - (f) In the event that the billing file cannot be processed due to technical problem, Merchant or Bank upon being informed by each other as the case may be, shall take steps to rectify the problem and send the amended input or output billing file accordingly earliest possible.

- 16.6 If the relevant Cardholder denies liability in respect of any transaction initiated or concluded by way of Mail Order and/or Telephone Order, the Bank shall be entitled, in addition to the rights contained in the Terms & Conditions, to full reimbursement of the amount paid to the Merchant. For the purpose of this Clause, it is irrelevant whether the Merchant has observed the Terms & Conditions or has obtained an authorization/approval code from the Bank.

**17. RESTRICTIONS REGARDING PROCESSING OF TRANSACTION**

- 17.1 The Merchant may only store the following information:
- (a) Cardholder number
  - (b) Cardholder name
  - (c) Card expiry date
  - (d) Extended service code (used for Smart Card processing)
- 17.2 if the Merchant decides to store the Card Account Number (often referred to as the Primary Account Number "PAN" or Cardholder Number), it is the Merchant's obligation to ensure security and protection by using encryption or other methodologies that precludes unauthorized individuals from deciphering the card number.
- 17.3 Under no circumstances may the Merchant store the CVC2 number, the PIN or the Magnetic stripe data.
- 17.4 The Merchant must ensure that the business, and any service provider who participates in the processing, transmission or storage of card payment details on behalf of the business, fully complies with the PCIDSS and completes the validation requirements compatible with their level.
- 17.5 The Merchant must ensure that the business and any service provider who, participates in the transmission, acceptance or storage of card payment details for the business on merchant behalf, fully complies with the PCI standard.
- 17.6 Upon request, the Merchant must disclose details of any service providers who facilitate transactions on merchant on behalf to the Bank.
- 17.7 The Merchant follow the Data Breach Procedures immediately upon suspected or known breaches on merchant system, or that of any service provider who has access to, stores or transmits credit card payment details. The Merchant must:
- (a) Identify the cause of the event and immediately notify the Bank
  - (b) Isolate or unplug any affected systems from all networks involved in the Services
  - (c) Cease installing or making any changes to software related to the Services
  - (d) Tighten security controls pertaining to all networks relating to the Services
  - (e) Implement and follow the Disaster Recovery Plan
  - (f) Maintain a rigorous audit trail of all actions taken to isolate and rectify the event
  - (g) Commence calculating the gross potential exposure that may arise from such event and notify the Bank in writing of the results of such calculations as soon as possible, but within a 24 hours period
- 17.8 The Merchant must ensure that any software or hardware purchase, create or otherwise utilize for the purpose of selling goods and/or services online does not retain its original password before employing it for the acceptance of credit cards. The Merchant must also ensure that all passwords are changed on a regular basis.
- 17.9 When approved for an e-Commerce merchant facility, any transactions received from cardholders relating to the internet business for which it was approved, must be processed using the Merchant's approved e-Commerce merchant facility including the registered URL and etc.

**18. MULTIPLE SALES DRAFTS**

- 18.1 The purchase of goods and/or services made by the Cardholder on anyone occasion from the Merchant regardless of their aggregate values shall constitute a single transaction. The Merchant shall not be permitted to regularize a single transaction with any Cardholder by means of employing two or more Sales Draft or EDC Slip to evidence a single transaction. A single transaction may only be split and recorded in two or more Sales Draft or EDC Slips when the goods and/or services are to be delivered or performed at a later date and one Sales Draft or EOC Slip is completed to evidence the payment of a deposit and a second Sales Draft or EDC Slip is completed to evidence the obligation of the Cardholder to pay for the balance.
- 18.2 In a case where a single transaction may be split, the Merchant shall prior to the completion of the transaction request and obtain from the Bank by telephone, the Bank's specific authorization from the source or sources nominated by the Bank or through other alternative means acceptable to the Bank, to approve such authorization and shall record on the Safes Draft or EDC Slip the authorization code, the date of the transaction, details and prices of the goods and/or services and well as the words "deposit" or "balance" as appropriate.
- 18.3 The Sales Draft or EDC Slip containing the description "balance" shall not be presented to the Bank for payment until the goods have been delivered or the services rendered.

**19. RETURNED MERCHANDISE AND ADJUSTMENTS**

- 19.1 If any goods and/or services are not received or are rejected by the Cardholder after receipt of is accepted for return or if any services are not performed or is cancelled or if the prices of any goods and/or services are disputed by the Cardholder or if there shall be any price adjustment to be made to the prices of any goods and/or services, the Merchant shall not make any cash refund but shall perform one of the following:-

- (a) Where the Merchant is provided with a EFTPOS Terminal and an EDC Printer and provided that the Merchant has not activated the Settlement Function the Merchant shall take steps to reverse or void the disputed amount already keyed in. In the event that the Settlement Function has already been activated or if the disputed amount has been paid by the Bank to the Merchant, the Merchant shall raise a Credit Voucher in the manner provided under Clause 14.1 (a) in respect of the disputed amount.

19.2 The Merchant agrees to pay the Bank forthwith the total amount shown on each Credit Voucher raised less Merchant Discount and/or any other sums or moneys which may have been charged to it. The Merchant further agrees that such sum of moneys may be refunded or repaid or paid to the Bank either by the Bank debiting the Merchant's current or banking account maintained with the Bank or by the Bank exercising its right of set-off (provided that prior notice of seven (7) days shall have been served unto the Merchant) or by the Bank raising a claim on the Merchant for the Merchant's immediate settlement.

## 20. SALES DRAFT AND EDC SLIPS

- 20.1 The Merchant agrees to submit all transactions to the use of the Card exclusively to the Bank and shall present to the Bank, all Sales Drafts duly completed in the manner required by this Terms & Conditions within seven (7) Business Days of their transaction dates and at such places as the Bank shall from time to time designate to the Merchant.
- 20.2 The Bank reserves the right not to accept any Sales Drafts presented beyond the said period of the seven (7) Business Days or any EDC Slips presented beyond the said period of three (3) Business Days.
- 20.3 The Merchant shall deliver together with such Sales Drafts and Credit Vouchers, a deposit summary listing out the total amount of the Sales Drafts and Credit Vouchers and the respective net totals and with such EDC Slips, a settlement listing which is printed after the initiation of the Settlement Function.

## 21. PAYMENT

- 21.1 In order for the Bank to effect payment to the Merchant, the Merchant is required to maintain a banking account with any branch of the Bank. The Merchant may by written notice request other forms of payment (other than by the mode stated in this Terms & Conditions) but this request shall be subject to the Bank's written approval. Subject to the provisions of this Terms & Conditions and provided that the terms and conditions of this Terms & Conditions are observed in relation to each Charge at the Merchant's offices and/or outlets and/or locations and/or establishments, the Bank agrees to pay to the Merchant an amount equal to the amount of each Charge made at the Merchant's offices and/or outlets and/or locations and/or establishments less the Merchant Discount and any other relevant deductions. **Any payments due from the Bank to the Merchant shall be credited directly to the Merchant's banking account maintained with the Bank within three (3) Business Days following the Business Day on which the Sales Draft or the EDC Slips and all other relevant documents are received by the Bank. Any payment due from the Merchant to the Bank may be recovered by the Bank by way of the methods stipulated in this Terms & Conditions. All figures are subject to the final audit and check by the Bank and the Merchant agrees that in the case of any inaccuracies or discrepancies, the Bank may alter or amend the deposit summary accordingly with prior notice of seven (7) days to the Merchant. The total amount shown on the Sales Draft (Including any applicable taxes, tips, and other relevant sums shall be subject to the Merchant Discount rate. All payment by the Bank in respect of the Charges shall be made In Ringgit Malaysia (RM).**
- 21.2 **Payment by the Bank does not constitute confirmation that the transactions are accepted according to the conditions and procedures stated in this Terms & Conditions or free of irregularity or any violation. The Merchant agrees that the Bank reserves the right at its discretion to claim back from the Merchant any payments made to the Merchant and that such sum of monies may be refunded or repaid or paid to the Bank on demand either by the Bank debiting 'the Merchant's current or banking account maintained with the Bank or by the Bank exercising its right of set-off (provided that prior notice of seven (7) days shall have been served unto the Merchant) or by the Bank raising a claim on the Merchant for the Merchant's immediate settlement. Right of set-off is with seven (7) days notice to the Merchant.**
- 21.3 The Merchant shall carry out reconciliation on the daily settlement report after the initiation of the Settlement Function and reconcile with the statement report from the Bank. In the event the Merchant fails to highlight any discrepancies by submitting a written request to the Bank within two (2) business days following the date of a transaction stated on the EDC Slip together with all other supporting documentation required by the Bank, the Bank shall not be liable for any loss or damage incurred or suffered by the Merchant and retention of payment to the Merchant for up to One Hundred and Eighty (180) days.
- 21.4 The Merchant shall not change or terminate the Merchant's current account without giving thirty (30) days prior written notice to the Bank and the change or termination shall not take effect without the written permission of the Bank first had and obtained. The decision to give the aforesaid permission is in the Bank's discretion.
- 21.5 The Merchant accepts that the Bank shall not be liable for any loss or damage incurred by the Merchant arising as a consequence of the Merchant giving incorrect details to the Bank.
- 21.6 The Bank shall not be liable or obliged to pay, refund or transfer the electronic money value stored in a Card for any loss, damage or stolen Card Acceptance Equipment.

**22. AFTER SALES ADJUSTMENTS FOR CARD MYDEBIT TRANSACTIONS**

- 22.1 In the event that after sales adjustment is needed for any disputes or rejection of goods and/or services by the Cardholders, the Merchant shall arrange a refund to the relevant Cardholder in such manner and conditions as may be agreed by those parties without any reference to or any involvement of the Bank.

**23. WITHHOLDING OF PAYMENT**

- 23.1 If any Sales Drafts or EDC Slips and all other relevant documents presented to the Bank for payment by the Merchant are determined by the Bank to contain transactions not accepted according to conditions and procedures stated in this Terms & Conditions or contain any irregularity in whatsoever description, whether such irregularity is attributed to any act or forgery or otherwise or the sale of any goods and/or the performance of any services or the use of the Card involves a violation of any law or the rules of any governmental agency, local or otherwise, the Bank is entitled to withhold payment. Payment will be withheld until the Bank has examined and verified acceptable supporting documentation and/or conducted investigations and is satisfied with such Sales Draft or EDC Slips and all other relevant documents. The Bank must also be satisfied that the sale of such goods and/or the performance of such services or the use of the Card do not involve a violation of any law or the rules of any such governmental agency. In the event that the Sales Drafts or EDC Slips and all other relevant documents or the sale of any goods and/or the performance of any services or the use of the Card are, in the Bank's opinion, not valid or involves a violation of any law or the rules of any governmental agency, local or otherwise, then no payment on the Sales Drafts or EDC Slips shall be made by the Bank.
- 23.2 Notwithstanding the foregoing, payment may at the discretion of the Bank be made by the Bank to the Merchant provided such irregularity or violation has been referred to and rectified by the relevant Cardholder and/or by the Merchant (and in writing where applicable) and provided the Merchant shall have reimbursed the Bank for any cost and expenses which has been incurred by the Bank or paid to the Bank any payment which the Bank is entitled to pursuant to the terms of this Terms & Conditions.

**24. COLLECTION ITEMS**

- 24.1 The Bank shall use its best endeavor to collect on behalf of the Merchant the amount due on any Sales Drafts which have not complied with the conditions and procedures stated in this Terms & Conditions, but the Bank shall be entitled to impose a collection fee for each Sales Draft successfully collected. The collection fee shall vary according to the transaction amount of the Sales Draft. The Bank shall not be obliged to pay the Merchant the amount of any Sales Draft presented on collection basis unless and until the said amount has been received by the Bank. The Merchant agrees that the Bank shall be entitled to deduct the Merchant Discount and the collection fee from such sums received by the Bank before remitting the balance sum to the Merchant.

**25. DISCOUNT RATE**

- 25.1 Unless otherwise agreed to by the Bank in writing, the Merchant shall pay to the Bank a Merchant Discount at the rate as stated letter offer on the total value of each Sales Draft or EDC Slip or MyDebit transactions presented to the Bank for payment in accordance with this Terms & Conditions. The Merchant Discount and other sum of moneys (if any) owing by the Merchant to the Bank shall be deducted by the Bank before the Merchant is paid on each occasion.
- 25.2 The Merchant Discount shall be subject to review at the discretion of the Bank and any changes in respect of the Merchant Discount shall be effective on the day falling one (1) month after notification to the Merchant of such changes.

**26. RETENTION OF RECORDS**

- 26.1 The Merchant shall preserve all records pertaining to Sales Draft, EDC Slips, Credit Vouchers and all other documents delivered to the Bank including but not limited to related Invoices, purchase orders, delivery orders and other documents on which the Charges are raised for a period of at least eighteen (18) months from the date the Sales Drafts, EDC Slips, Credit Vouchers and such other documents are delivered to the Bank. The Merchant shall permit the Bank, its employees and/or its agents at any time upon service of reasonable notice to examine any such documents. The Merchant shall within seven (7) Business Days of a request by the Bank produce their copy of the Sales Draft or EDC Slip to the Bank, failing which, the Bank reserves the right to a restitution of such payment by debiting the Merchant's current or banking account with the Bank or other means as the Bank shall considers/deem fit.
- 26.2 The Merchant shall submit the EDC Slips and Card Acceptance Materials exclusively to the Bank, not later than the next business day from the date of request. The Bank reserves the right not to entertain any EDC Slips and Card Acceptance Materials tendered beyond the given period, in which the Bank is not obliged to make payment to the Merchant and shall not be liable for any loss or damage suffered by the Merchant.
- 26.3 If there is any discrepancy of such records and reports between Merchant, the Bank, MEPS/PayNet and/or the Issuer, the statements and reports issued by the Bank and/or MEPS/PayNet and/or the Issuer would be final and conclusive against the Merchant. Nevertheless, in all instances the statements and report of the Bank shall prevail for all intent and purposes unless there are manifest error(s).

**27. CARD ACCEPTANCE MATERIALS AND EQUIPMENT**

- 27.1 Each card Imprinter, CAT Terminal, EFTPOS Terminal, EDC Terminal, EDC Printer and any other electronic or mechanical equipment and forms supplied to the Merchant or any of the Merchant's offices and/or outlets and/or locations and/or establishments wherever situated by the Bank under this Terms & Conditions shall at all times remain the property of the Bank. The Merchant agrees and undertakes to surrender or produce the surrender to the Bank upon demand or termination of this Terms & Conditions all such Card Imprinter, CAT Terminal, EFTPOS Terminal, EDC Terminal, EDC Printer and any other electronic or mechanical equipment and forms supplied by the Bank, save for reasonable wear and tear. The Merchant agrees and undertakes to bear the cost of repairs and replacement of spare parts arising from any negligent damage, unauthorized use, abuse or misuse of the aforesaid equipment.
- 27.2 The Merchant further agrees and undertake to bear all installation charges for any telephone line(s) installed at any of the Merchant's office and/or outlets and/or locations and/or establishments wherever situated which are required for the EFTPOS Terminal as well as the operating charges in respect of such telephone lines.
- 27.3 The Merchant shall notify the Bank of the Equipment failure within two (2) Business Day after becoming aware of the Equipment failure. The Bank shall not be liable for any loss or damage suffered by the Merchant as a result of the failure.

**28. SHARING OF EFTPOS TERMINALS**

- 28.1 The Merchant agrees that the Bank may at its discretion enter into an Terms & Conditions or arrangement with another Bank or company or party to share the use of its EFTPOS Terminal at any of the Merchant's offices and/or outlets and/or locations and/or establishments wherever situated. Upon written notification from the Bank of such Terms & Conditions or arrangements, the Merchant agrees that all the conditions and procedures related to Card acceptance using a EFTPOS Terminal stated in this Terms & Conditions shall also apply to such Terms & Conditions or arrangements.

**29. SURCHARGE AND PREFERENCE**

- 29.1 The Merchant shall only charge the Cardholder the displayed or listed price or the cost price of the provisions of goods and/or services and agrees and undertakes that it will not under any circumstances levy a surcharge on a Cardholder to pay any part of the Discount by any increase in price or otherwise by any other manner. The Bank reserves the right to claim back the surcharge amount upon receipt of sufficient documentary proof that a surcharge has been levied by debiting the Merchant's current or banking account with the Bank or by any other means as the Bank shall deem fit.
- 29.2 The Merchant shall not in any way indicate a greater preference for any method of setting the displayed or listed price or the cost price of the provision of goods and/or services other than by the use of the Card nor shall the Merchant sell or promote any such other method more actively than by the use of the card.

**30. CASH PAYMENTS AND CASH DISBURSEMENTS**

- 30.1 A Merchant shall not at any time subsequent to the completion of a sales transaction in which a Card has been accepted in payment for goods and /or services receive or procure the receipt of any cash or cheque payments from the relevant Cardholder in respect of any goods and/or services. Any refund or adjustments shall be subject to the provisions contained in this Terms & Conditions. The Merchant shall not under any circumstances make any cash advances to any Cardholders unless specifically authorized by the Bank in writing.

**31. COST EFFECTIVE PAYMENT CARD AND PRIORITY IN ROUTING DECISIONS**

- 31.1 (a) Nothing shall restrict or prevent a Merchant from steering a cardholder to use any payment card or any payment card network available on a payment card and for the purpose of this para the act of steering; includes the act of indicating preference or offering discount or offer benefit for the use of a payment card or a payment card network but excludes the act of imposing a surcharge on a payment card transaction.
- (b) Nothing shall restrict or prevent a Merchant from routing or setting priority routing to route a transaction made using a co – badged debit card to the payment card network of the Merchant's choice.
- (c) Nothing shall prevent the Merchant from restricting the number of payment card networks on which a payment card transaction may be routed or processed at the point – of – sale.
- (d) Nothing shall restrict or prevent a Merchant from giving equal prominence to a competing payment card network at the point – of – sale.
- 31.2 Where transactions are made using a co – badged debit card, the Merchant who decides to set priority routing at the EFTPOS terminals shall display a prominent notice at the point – of – sale to inform customers about the payment card network that is prioritized by the Merchant for routing purposes over payment card networks.

**32. CARDHOLDERS' COMPLAINTS**

- 32.1 The Bank is not and shall not be responsible to Cardholders in any way or manner whatsoever for any goods and/or services supplied by the Merchant. The Merchant agrees and undertakes that it shall comply or procure the compliance with all legal requirements imposed on it and any of its offices and/or outlets and/or locations and/or establishments wheresoever situate pursuant to this Terms & Conditions. Any legitimate disputes between the Merchant or any of the Merchant's offices and/or outlets and/or locations and/or establishments wherever situated with the Cardholder shall be the obligation of the Merchant to resolve such disputes amicably and promptly with the Cardholder.

**33. DISCLOSURE OF INFORMATION**

- 33.1 The Bank shall be entitled at its discretion to disclose any information concerning the Merchant and any of its offices and/or outlets and/or locations and/or establishments wherever situated to any agent or sub-contractor appointed or engaged by the Bank or to any other person for any purpose in connection with any Cards products. The Bank shall also be entitled at its discretion to disclose to any person or entity and/or any other interested party any information concerning the Merchant's current or banking account and any other Information which may be necessary to facilitate the use of the Card, the processing of any information effected through the use of the Card or for the purpose of recovering of any moneys due and owing from the Merchant to the Bank.
- 33.2 The Merchant shall not in any manner disclose or procure the disclosure of any information obtained from the Cardholder and/or the Bank by reason of the Merchant's participation in the Bank's Card Acceptance Programme to any person or company other than the Bank without the Cardholder's and/or the Bank's prior written consent. The Merchant agrees that this condition and restriction shall continue in force after the termination of this Terms & Conditions.
- 33.3 The Merchant confirms he or it has read, understood and agreed to be bound by the Privacy Notice of the Bank's Group and all those clauses in the Privacy Notice that relates to processing of personal information. For the avoidance of doubt, the Merchant agrees that the Privacy Notice mentioned above is regarded to be incorporated into this Terms & Conditions through reference to it.
- 33.4 In the event personal and/or financial information relating to the Merchant's third parties and the next – of – kin and dependents (where the Merchant is an individual) and / or information relating to the Merchant's directors, shareholders, officers, individual guarantors and security providers (where the Merchant is a corporation), for the purpose of opening or operating account(s)/facility(ies) with the Bank or otherwise subscribing to the Bank's products and services, the Merchant:-
- (a) confirms that it or he has obtained the Bank's consent and/or are otherwise entitled to provide this information to the Bank and for it to use the information in accordance with this Terms & Conditions; and
  - (b) ensure that the personal and financial information of the third parties is / are accurate; and
  - (c) will update the Bank in writing in the event of any material change to the personal and financial information above.
- 33.5 Where the Merchant instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to these cross-border transactions (including information relating to those involved in these transactions) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or its agents to enter into any cross-border transactions the Merchant unequivocally agrees to the above disclosures on the Merchant's behalf and those involved in such cross - border transactions.
- 33.6 Additionally, but always subject to any laws (including regulations, guidelines and/or obligations) applicable to the Bank (whether in or outside Malaysia), the Merchant agrees that the other companies in the Bank's Group, other merchants and / or the Bank's strategic partners may contact the Merchant about products, services and offers, which the Bank believes may be of interest and / or beneficially to the Merchant.
- The Bank may communicate with the Merchant through various channels, including telephone, computer or mail using the contact information provided to the Bank.
- The Merchant may advise the Bank at any time if it or he no longer wishes to receive marketing communications from the Bank and / or other members of the Bank's Group and/or its other merchants and strategic partners by writing in to the Bank's Branch Manager, Relationship Manager, Customer Relationship Executive, Customer Service Executive managing the Merchant's account.
- The Merchant acknowledges that certain communications such as statements of account and its websites contain standard information regarding the Bank's other products and services that cannot be removed without affecting the delivery/provision of the Bank's services and/or products, the operation of account(s) and/or facility(ies) with the Bank and/or additional cost to the Merchant.
- 33.7 The Bank may use a credit reference agency to help make decisions, for example when it needs to:-
- (a) check details on applications for credit and / or other credit-related or other facilities; and / or
  - (b) manage credit and credit-related accounts or facilities, including conducting reviews of portfolio(s); and/or
  - (c) recover debts.
- 33.8 The Merchant will be linked by credit reference agencies to any other names it or he use or had used, and any joint and several applicants. The Bank may also share information about the Merchant and how it or he manages its or his account(s)/facility(ies) with relevant credit reference agencies.

- 33.9 The Bank reserves the right to amend this clause from time to time by providing 21 calendar days prior notification to the Merchant in writing and place any such amendments on its websites and/or by placing notices at the banking halls or at prominent locations within its branches.
- 33.10 For the purposes of this Clause, the Bank's Group consists of Affin Bank Berhad and Affin Islamic Bank Berhad, and the use of the words "us", "we" and "our" are to be read as references to the Bank's Group.
- 33.11 This clause shall be without prejudice to any other clause in this Terms & Conditions or in the regulatory requirements of BNM which provides for the disclosure of information.

#### 34. **CONFIDENTIALITY**

- 34.1 The MERCHANT acknowledge:-
- (a) The confidential nature of the proprietary or other rights in or to the VISA, MasterCard and/or MEPS/PayNet marks and names and other service marks, designs and styles and any other trademark or service mark of VISA International, MasterCard International, MEPS/PayNet and/or the Bank or any other bank, corporation, organization or business entity authorized to issue the CARDS;
  - (b) The confidential nature of the contents, terms and conditions of this Terms & Conditions and information relating in any way to VISA International, MasterCard International, MEPS/PayNet and/or the Bank or any other bank, corporation, organization or business entity authorized to issue the Cards or their respective clientele;
  - (c) That in the course of or incidental to the performance of this Terms & Conditions, the Bank will provide and the Merchant will have access to the aforesaid confidential information and trade secrets. The MERCHANT undertakes that it shall not, without the Bank's prior written consent, copy or cause to be copied or disclosed any such confidential information or any details of such information to any third party.
- 34.2 In addition to the foregoing provisions, the parties acknowledge and confirm that it will be necessary to exchange confidential information in the performance of their respective obligations and duties pursuant to this Terms & Conditions and the parties each agree and covenant with each other:-
- (a) to refrain from using for their own use or commercial purposes (other than for the purposes of the provisions of the materials, equipment and services for the Acceptance Programme and in the performance of their respective obligations and duties pursuant to this Terms & Conditions);
  - (b) not to disclose to any person or permit to be disclosed to any person or use or exploit or permit the use or exploitation for any purpose whatever;
  - (c) any and all confidential information, recommendation, conclusions and other matters disclosed if revealed by the parties to each other or anyone acting on their behalf, related to or In connection with the business, operations, properties assets or financial affair of the parties or their related companies and any trade secrets or any financial or trading information relating to the other party which the relevant party may receive or obtain as a result of entering into this Terms & Conditions.
- 34.3 The obligations of the parties under this Clause shall additionally apply to all copies, excerpts, reproductions, compilations, summaries, notes and analysis or Information referred to in this Clause whether made by the parties or by any other person.
- 34.4 This Clause shall not apply to information which:-
- (a) is or becomes known to the public generally through no wrongful act or breach of this Terms & Conditions; or
  - (b) for release by written authorization of the relevant party; or
  - (c) is required to be produced in a court of law or in any court proceedings; or
  - (d) is required by any governmental or statutory authorities; or
  - (e) if disclosed with the protection of the Protection of the Whistleblowers Act 2010; or
  - (f) if the Bank is required to disclose under the Financial Services Act 2013 Or Islamic Financial Services Act 2013.
- 34.5 To the extent that any of the data/information involved in this Terms & Conditions, falls within the definition of "personal data" in the Personal Data Protection Act 2010, parties shall strictly adhere to the provisions of and regulations under the Act.
- 34.6 This Clause shall endure to the benefit of the parties and thus survive the termination and/or rescission of this Terms & Conditions.

#### 35. **MERCHANT'S ASSISTANCE WITH THE PREVENTION OF FRAUD**

- 35.1 The prevention of credit card fraud is not only the Bank's but all parties connected with the Bank through business or other forms of relationship. Therefore, the Bank shall be entitled to disclose any information concerning the Merchant to any agent or sub-contractor appointed or engaged by the Bank or to any other person for any purpose in connection with any credit card products.
- 35.2 In the event of any fraudulent transaction being brought to the attention of the Bank, it shall debit an equivalent amount from the Merchant's accounts, such amount will also be released upon completion of the investigation and provided the Merchant is found to have complied with all the procedural requirements in this Terms & Conditions laid out or extraneously imposed as part of the Bank's ongoing anti – fraud implementations. If the Merchant is found not to have complied with these procedures it shall pay these charges to the Bank and the Bank has the right to debit such charges from the Merchant's account. Furthermore, the Bank has the right to mandate collateral, chargeback reserves, or a depository requirement as additional protection against financial exposure in the event the merchant is found to be engaged in such fraudulent activities.



- 35.3 The Bank has the further right to mandate collateral, chargeback reserves, or a depository requirement as additional protection against financial exposure in the event merchant found to be engaged in the activities mentioned in 35.2 above.
- 35.4 In addition to the above procedural compliance by the Merchant it also has the obligation to implement system and activities to prevent and identify money laundering activities and shall immediately inform the Bank of such suspicious activities.

36. **CHARGEBACK**

- 36.1 The Merchant agrees that the Bank shall be entitled to refuse any payment to the Merchant and/or reject any Sales Draft presented by the Merchant for payment, and where payment has been made by the Bank, to debit from and chargeback to the Merchant's current or other account the relevant amount and/or withhold and/or set off (set-off is with the requisite notice) against any payment due to the Merchant in any of the following circumstances:-
- (a) the transaction was incomplete, was or has been discovered to be fraudulent, ineligible or illegal;
  - (b) the value of the Sales Draft exceeds the Authorized Floor Limit (unless otherwise authorized by the Bank) or if the transactions are found to be Split Sales;
  - (c) under Card Present Transaction, the Cardholder's signature on the Sales Draft is missing or differs from the signature appearing on the Cardholder's Credit Card or the Cardholder's Certificate has not been properly authenticated or tampered with;
  - (d) under Card Present Transaction, the copy of the Sales Draft presented to the Bank for payment differs from the Merchant's or Cardholder's copy;
  - (e) the entries on the Sales Drafts are incomplete or illegible
  - (f) the Credit Card concerned is found to have expired or is invalid for any reason whatsoever;
  - (g) the Credit Card concerned has been listed in the Cancellation List;
  - (h) the transaction is found to be one with a "Declined Authorized", that is, where the Merchant has been previously notified by the Bank in response to an authorization/approval request that the particular Credit Card is not to be honored;
  - (i) under Card Present Transaction, the Sales Draft does not bear an imprint of the embossed legends of the Credit Card but which is handwritten on and/or where the Cardholder has refused payment to the Bank or where an authorized electronic terminal printer is present, the information in respect of the Credit Card including the Cardholder's name, expiry date and Credit Card number are not electronically printed but hand written;
  - (j) the Sales Drafts were prepared by use of a forged or altered Credit Card or by other fraudulent means;
  - (k) the transaction was not entered into nor authorized by the Cardholder;
  - (l) the transaction involved is a Cash Payment, Cash Disbursement or Cash Refund;
  - (m) the Cardholder has repudiated or rescinded the contract with the Merchant and has declined payment on the Sales Draft for any reason whatsoever;
  - (n) the value of the Sales Draft presented to the Bank for payment exceeds the value of the transaction that is authorized by the Bank;
  - (o) if this Terms & Conditions is terminated by the Bank for any reason whatsoever; or
  - (p) if the transaction has been presented by the Merchant once before and payment has been made by the Bank;
  - (q) the Cardholder disputed the transaction because the goods were not received or did not fit the description or defective or the services were not performed or were inadequate; or
  - (r) the Merchant did not process the transaction in compliance with the terms in this Terms & Conditions or with any other operational instructions or procedures given by the Bank or breached any of the terms in this Terms & Conditions.
  - (s) If there is an investigation in the Credit Card transaction by any governmental or regulation authorities or police having jurisdiction over such matters; or
  - (t) the Sales Draft was not presented to the Bank within the stipulated time frame mentioned in Item 18.
- 36.2 The Bank reserves the right for full Chargeback to Card not present Transaction / Manual / MOTO transaction and the Merchant accept the Bank's right to debit the Merchant's account to offset the full dispute charges if:-
- (a) Authorization is not properly requested or obtained;
  - (b) Authorization requested was declined; or
  - (c) Cardholder or Issuer disputes or, does not honor the transaction and does not pay Bank even if a valid approval has been obtained.
- 36.3 In the event of a breach or violation by the Merchant of any of the terms of this Terms & Conditions, the Merchant agrees that the Bank is authorized at its discretion to forthwith to deduct from subsequent Sales Drafts or EDC Slips submitted to the Bank for payment and/or debit the Merchant's current or banking account maintained with the Bank for the total amount of the Sales Draft or EDC Slip that is in breach less the Merchant Discount. If the Merchant's current or banking account shall have insufficient funds available, the Bank reserves the right to debit the Merchant's current or banking account with a partial amount and/or deduct from subsequent Sales Drafts or EDC Slips submitted to the Bank for payment. The Bank shall have full recourse to recover any payment made to the Merchant for any Card transaction charged back in the event of any breach or violation by the Merchant of the terms and conditions of this Terms & Conditions.
- 36.4 Notwithstanding the sub – clause immediately above, in the event of a breach of any of the provisions in this Terms & Conditions, the Bank reserves the right to terminate this Terms & Conditions, refuse payment to the Merchant by rejecting all completed transaction presented by the Merchant for payment and the Merchant shall repay or pay on demand all payments whatsoever which have been made in furtherance to this Terms & Conditions. Until repayment or payment by the Merchant, the said sum

and all costs incurred in the enforcement of the Bank's rights under this Terms & Conditions (including solicitor and client costs) shall be a debt due to the Bank and interest or profit shall accrue thereon at the rate of 1.5 % per month with monthly rests from the date of demand to the date of full settlement and/or realization.

- 36.5 In the event the Bank inadvertently (arising from whatever reason) authorized payment to the Merchant in respect of any discrepancy in any EDC Slip, the Bank is entitled at its discretion to effect an immediate deduction from the Merchant's current or banking account for the total amount of the EDC Slip that is in breach and any other penalties or compensation charges or additional fees payable to the Bank. If the Merchant's banking account has insufficient funds, the Bank shall have full recourse to recover by exercising its right to set-off (provided that prior notice of seven (7) days shall have been served unto the Merchant) or by instituting a claim against the Merchant or by any other means, as the Bank shall deem fit.
- 36.6 The Bank will retain the Sales Draft (Bank's Copy) for a period of 18 months so that the transactions slips can be produced within the time frame required by the Bank pursuant to the credit card regulations. The Merchant's failure to do so will also result in Charge Back under the respective provisions in this Terms & Conditions and the Bank is entitled to withhold the Merchant's funds for a minimum of 6 months until it has examined and verified all supporting documentation and/or conducted the required investigations.

### 37. SUSPENSION

- 37.1 The Bank may at its discretion at any time suspend the operation of this Terms & Conditions by serving a suspension notice ("the Suspension Notice") on the Merchant. In the event that the Suspension Notice is not revoked by the Bank within seven (7) Business Days from the date of the Suspension Notice, this Terms & Conditions shall be deemed to be terminated immediately on the seventh (7) Business Day from the date of the Suspension Notice.

### 38. TERMINATION

- 38.1 This Terms & Conditions may be terminated by either party giving to the other party at least thirty (30) days prior notice in writing unless otherwise agreed between the parties in writing. Notwithstanding the aforesaid, the Bank shall be entitled to give notice to the Merchant to immediately terminate this Terms & Conditions if:
- (a) the Merchant:
    - (i) is in breach of any of the terms and conditions of this Terms & Conditions or abandons or repudiates this Terms & Conditions; or fails either –
    - (ii) to comply with any of its duties and obligations under this Terms & Conditions; or
    - (iii) to proceed with the execution of any of its duties and obligations in this Terms & Conditions; or
  - (b) the Merchant goes into liquidation or a provisional liquidation is appointed in respect of the Merchant (other than a voluntary liquidation for the purposes of amalgamation or reconstruction while solvent);
  - (c) an administrator or receiver or receiver and manager or judicial manager is appointed over any part of the assets or undertaking of the Merchant;
  - (d) the Merchant becomes Insolvent or is unable to pay its debts or admits in writing its inability to pay its debts as they fall due or enters into any composition or arrangement with its creditors or makes a general assignment for the benefit of its creditors;
  - (e) any execution or distress is levied or enforced against the property of the Merchant;
  - (f) the Merchant's activity remains inactive for a period in excess of six (6) consecutive months; or
  - (g) the Merchant is suspected to be involved in any fraudulent activities.
  - (h) the Merchant undergoes a material change of ownership of the Merchant's business
- 38.2 If this Terms & Conditions is terminated under any one of the provisions of this Terms & Conditions:
- (a) the Merchant shall immediately return or procure the return to the Bank all Card Acceptance Materials and Equipment supplied to the Merchant by the Bank under this Terms & Conditions and all confidential information, documents and copies and all other materials relating to the Card in the possession or custody or control of the Merchant or otherwise;
  - (b) the Merchant shall remain liable to pay to the Bank all sums agreed to be paid under this Terms & Conditions which have accrued and are due and owing to the Bank prior to such termination;
  - (c) If this Terms & Conditions is terminated under any of the provisions of this Terms & Conditions, the Bank has the right to immediately freeze a sufficient sum of money due to the Merchant by the Bank, which sum shall be determined by the Bank. The sum may be set-off from the Merchant's current or banking account or accounts maintained with the Bank for a period of six (6) months from the date of the termination of this Terms & Conditions by serving a written notice to such effect on the Merchant.
  - (d) subject to the provisions of this Terms & Conditions, both parties shall be discharged from any future liabilities.
- 38.3 The termination at this Terms & Conditions for any reason shall not affect the accrued rights of the parties arising in any way out of this Terms & Conditions as at the date of termination and in particular but without limitation to the right to recover damages against the other for any previous breach or breaches of any of the provisions which are expressed to survive this Terms & Conditions shall remain in force and effect.

**39. NEW CARDS**

- 39.1 The Bank reserves the right to enter into further Terms & Conditions to issue New Cards in conjunction with any new products which may from time to time be implemented by VISA International and/or MasterCard International.
- 39.2 Similarly, the Bank reserves the right to enter into Terms & Conditions with others and various organizations or institutions issuing New Cards other than VISA International and MasterCard International.
- 39.3 The Merchant agree that the Bank is authorized to issue New Cards to Cardholders without the consent of the Merchant first had and obtained. Subject to the foregoing, the Merchant agree and confirms that upon written notification and/or request in any manner or means the Bank deems fit, the Merchant shall honor without discrimination the New Cards when properly presented to it as a means of payment from the Cardholder for the purchase of goods and/or services. Notwithstanding the above, the Bank shall notify the Merchant two (2) months in advance before the new brand Card takes effect as a means of payment from Cardmember and the Merchant shall deemed that Cardmember agreed to it upon notification to Merchant
- 39.4 When the Merchant receives the notification mentioned in Clause 38.3 above, the terms and conditions of this Terms & Conditions shall apply similarly to the New Cards and shall be binding upon the Merchant for its full term and effect subject to any addition variation or waiver expressed by the Bank In the said notification.
- 39.5 The terms and conditions of this Terms & Conditions shall apply to the New cards issued or to be issued by the Bank from time to time. Such terms shall be binding upon the Merchant on the date specified in the written notice by the Bank advising the Merchant on the issue of the New Cards by the Bank if the Merchant does not notify the Bank in writing to the contrary within twenty one (21) calendar days from the date of the said written notification by the Bank or where the Merchant has accepted and honored the New Cards presented by the Cardholders.

**40. ASSIGNMENT**

- 40.1 The Merchant shall not assign, transfer, mortgage, charge or pledge this Terms & Conditions or any of its rights and interest under this Terms & Conditions without first obtaining the prior written approval of the Bank. Any such assignment or transfer or mortgage or charge or pledge of this Terms & Conditions or any of Its rights and interest under this Terms & Conditions or any part of this Terms & Conditions by the Merchant without the prior written approval of the Bank shall be null and void and be of no effect. The Bank need not recognize such purported assignment and the Merchant shall remain liable under these terms till discharged in the manner set out in this Terms & Conditions.
- 40.2 Save and except if the assignment and/or transfer is to the detriment of the Merchant, the Bank shall be at liberty upon notification to the Merchant without the concurrence of the Merchant to assign or transfer all or any of its rights entitlements obligations and benefits of this Terms & Conditions to such person or corporation at its own costs and expense and upon such assignment or transfer the assignee or transferee shall assume and be entitled to all the rights entitlement obligations comprised in this Terms & Conditions as if the assignee or transferee has been a party to this Terms & Conditions in place of the Bank.
- (i) For this purpose may disclose to a potential assignee or transferee or any other person who derives or may derive rights or obligations under or by reference to this Terms & Conditions such information about the Merchant as shall have been made available to the Bank; and
- (ii) where the Bank transfers its obligations (in whole or in part), the Merchant shall execute such documents as are reasonably necessary to release the Bank to the extent of the transfer and join the transferee as a party hereto.

**41. NON – WAIVER OF RIGHTS**

- 41.1 All the original rights, powers and remedies of both parties in this Terms & Conditions shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement of it and neither party shall be deemed to have waived any of its rights or any provision of the Terms & Conditions or any notice given in this Terms & Conditions unless such waiver is in writing.
- 41.2 The rights and remedies provided in this Terms & Conditions are cumulative and are not exclusive of any remedies of the parties provided at law and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy shall affect or impair any such right or remedy.

**42. FORCE MAJEURE**

- 42.1 If either party is prevented or delayed In the performance of any of Its obligations under this Terms & Conditions by FORCE MAJEURE, and If such party gives written notice to the other party specifying the matter or matters consisting or amounting to the FORCE MAJEURE (together with such evidence as reasonably can be provided) and the period for which It Is estimated that such FORCE MAJEURE will continue, then the party in question shall be excused the performance or the punctual performance, as the case may be of the obligations affected by the FORCE MAJEURE from the date of such notice (if accepted) and for so long as such FORCE MAJEURE continues.

**43. NOTICES AND COMMUNICATIONS**

- 43.1 Any notice or other document to be given under this Terms & Conditions and any other communications between the parties with respect to this Terms & Conditions shall be in writing and may be given or sent by:

- (a) hand; or
  - (b) registered post or ordinary post; or
  - (c) courier service; or
  - (d) facsimile; or
  - (e) other electronic media such as electronic mail; or
  - (f) card acceptance equipment electronic notice;
- to the other party at the address or facsimile transmission number or electronic mail address set out by the parties in this Terms & Conditions.

43.2 All such notice and documents shall be in the English language or the Malay language.

43.3 Any notice or other document shall be deemed to have been duly served by the Bank and received by the Merchant:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by registered post or ordinary post, within five (5) days of its posting unless documentary evidence of prior service is provided by the postal authority; or
- (c) if sent by courier, within three (3) days of the courier's collection of the notice or letter unless evidence of prior delivery is provided by the courier, in which case it will be regarded received on the date shown to have been received; or
- (d) if transmitted by way of facsimile transmission, then the day of transmission provided the transmission report states it was successfully sent; or
- (e) if transmitted by electronic means such as an e – mail, then the day it was sent, unless the sender receives a failure delivery message from its host server; or
- (f) if transmitted by Card Acceptance Equipment, at the time of transmission.

#### 44. **AMENDMENT**

44.1 The Bank reserves the right to vary the terms and conditions of this Terms & Conditions at any time and from time to time. Any such variations will become effective upon serving twenty one (21) calendar days prior notification in writing to the Merchant in accordance with the relevant provisions of this Terms & Conditions. In the event the Merchant is not agreeable to such variation, addition and/or amendment, the Merchant shall terminate this Terms & Conditions, within 21 days from the date of the notice by the Bank. Otherwise, the Merchant shall be deemed to have accepted such variation, addition and/or amendment.

#### 45. **MISCELLANEOUS**

45.1 Knowledge or acquiescence by any party of or in any breach of any of the provisions of this Terms & Conditions shall not operate as or be deemed to be a waiver of such provisions and notwithstanding such knowledge or acquiescence such party shall remain entitled to exercise its rights and remedies under this Terms & Conditions and at law, and to require strict performance of all of the provisions of this Terms & Conditions.

45.2 Time wherever mentioned shall be of the essence of this Terms & Conditions.

45.3 This Terms & Conditions shall be governed by and construed in accordance with the laws of Malaysia and the parties submit to the exclusive jurisdiction of the courts of Malaysia. The Parties waive any objection on the grounds of venue or any similar grounds and consent to service of process by mail or on other any manner permitted by the relevant law.

45.4 The parties agree that this Terms & Conditions shall come into force on the date of this Terms & Conditions irrespective of the diverse dates upon which the parties may have each executed this Terms & Conditions respectively.

45.5 The Merchant undertakes to inform the Bank of any change in the name, style, constitution or composition of the Merchant whether by retirement expulsion, death, admission or change in any partner or parties, amalgamation, reconstitution or otherwise. The Merchant agrees that this Terms & Conditions shall bind the new and/or re-constituted Merchant as if the resulting firm, company or concern had been named in this Terms & Conditions as a party.

45.6 The Merchant agrees to pay legal fees (on a solicitor and client basis) and other expenses incurred by the Bank in the enforcement of the Bank's rights and entitlement under this Terms & Conditions on a full indemnity basis.

45.7 The Bank shall not be responsible to the Cardholders in any way or manner whatsoever for any goods and/or services supplied by the Merchants.

45.8 The Bank is entitled to set-off (provided that prior notice of seven (7) days shall have been served unto the Merchant) any amount owed by the Merchant to the Bank with the amounts owed by the Bank to the Merchant.

45.9 The Bank reserves the right to review the facility irrespective of their Merchant discount rates/rental as and when necessary to determine the performance of the Merchant.

45.10 MEPS/PayNet, the Issuer, the Bank and the Bank's alliance partner shall not be liable to the Merchant for any loss or damage arising whether directly or indirectly by the failure and malfunction of any system and/or Card Acceptance Equipment including computing error.

45.11 MEPS/PayNet, the Issuer, the Bank nor the Bank's alliance partner shall not be liable to the Merchant for any loss or destruction of any sales transaction record or settlement record while in transit, or being communicated by electronic or other means from the Bank and/or the Bank's alliance partner and/or MEPS/PayNet to the Merchant and the same applies in reverse.

45.12 There shall be no relationship of master and servant, or principal and agent, or partnership between the Merchant and the Bank and / or the Issuer.

- 45.13 This Terms & Conditions shall be binding on the personal representatives, heirs, successors-in-title and legal assigns of the Bank and the Merchant.
- 45.14 The other monetary terms are in letter offer as additional terms imposed on the Merchant.

**46. CHARGES**

- 46.1 The Merchant shall pay to the Bank a monthly rental as notified by the Bank in writing from time to time for each EDC terminal.
- 46.2 The Bank is entitled, at its discretion to vary charges referred to in this Terms & Conditions and to include such further charges as it deems fit and proper without the prior mutual Terms & Conditions of the Merchant by the giving of at least one (1) month notice in writing to the Merchant.
- 46.3 All charges payment by the Merchant pursuant to the terms of this Terms & Conditions are exclusive of:-
- (a) all taxes, duties, fees or other government levies and charges;
  - (b) charges for any maintenance work done as a result of any causes including but not limited to fair wear and tear of any Materials and Equipment and any other causes beyond the control of the Merchant;
  - (c) charges for any maintenance work done caused by a failure or fluctuation of electrical power, air conditioning, humidity control or other environmental conditions;
  - (d) charges for the replenishment of any consumable items including but not limited to EDC Slips, printer ribbons, toner and other stationery;
  - (e) all overtime charges for any services carried out by the Bank outside normal office hours whether in response to a request from the Merchant or otherwise.

**47. CONSEQUENCES OF TERMINATION**

- 47.1 On expiration of the Term or early termination of this Terms & Conditions for whatsoever reason, the Bank shall cease to provide the Materials, Equipment and Services and the Merchant is required to surrender forthwith the Materials and Equipment to the Bank.
- 47.2 The expiration of the Term or the early termination of this Terms & Conditions shall be without prejudice to any other rights or remedies a party may be entitled to under this Terms & Conditions or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force on or after such termination.
- 47.3 Where any Act of Parliament implies in this Terms & Conditions any term, condition or warranty and / or the Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term or condition or warranty it shall be deemed to be included in this Terms & Conditions.

**48. REPRESENTATION AND WARRANTIES AND UNDERTAKINGS**

- 48.1 The Bank represents and warrants and undertakes to the Merchant that;
- (a) it is the owner or licensee of the material and equipment and that it has the right to provide the material and equipment for the acceptance programme;
  - (b) the material and equipment remain free from unauthorized access, use or other interference by any other party other than the Bank and/or the Merchant; and
  - (c) at the time of delivery to the merchant, the material and equipment are in good working order and condition.
- 48.2 The merchant represents and warrants and undertakes to the Bank that;
- (a) It shall keep the material and equipment properly and ensure that the materials and equipment are in good working order and repair, indemnify the Bank against loss resulting from or deterioration of or damage the material and equipment from whatever causes;
  - (b) It shall use the material and equipment only in the manner and circumstances for which they are designed and for which their use is permitted by law and shall adhere to any instructions as provided by the Bank from time to time.

**49. COVENANTS BY THE MERCHANT**

- 49.1 The Merchant covenants with the Bank as follows:-
- (a) It shall at all times observe the guidelines and procedures on the acceptance of the Credit Cards as instructed and required by the Bank;
  - (b) Unless otherwise provided by any written law for the time being in force, its shall not impose or require Cardholders to pay any surcharge, commission, discount whether through any increase in price or otherwise, or any other term or condition whatsoever where the Cardholder is desirous of using the Credit Card;
  - (c) It shall not require a minimum transaction amount below or above which the Merchant shall refuse to honor valid Credit Cards;
  - (d) It shall include in the value of the Sales Drafts any tax required to be collected and shall not collect it separately in cash;
  - (e) It shall observe and perform all obligations under its contract with the Cardholders including but not limited to the nature, quality and delivery of goods and services contracted to be sold and supplied to the Cardholders;

- (f) It shall not sell, purchase, provide or exchange Credit Card account number information in the form of imprinted Sales Drafts, carbon-copies of imprinted Sales Drafts, copy or reproduce in any way the Cardholder's Certificate obtained by reason of Credit Card transactions to any third party;
  - (g) It shall keep proper accounts and correct copies of all documents relating to the contracts including suitable receipts resulting from the use of the Credit Cards with the transaction dates and value of transactions between the Merchant and the Cardholders. The Merchant agree to allow the Bank, its employees or agents access into its premises or outlets at any reasonable time to inspect and/or take copies of all such documents, accounts and all Sales Drafts, Credit Vouchers and to preserve such documents and records for a period of at least eighteen (18) months from the date of the Sales Drafts/Credit Vouchers. In the event of any dispute and the Bank requires copies of the relevant Sales Draft or any other records, the Merchant shall produce and deliver to the Bank the same within three (3) Business Days from the Bank's request, failing which the Merchant shall bear the chargeback losses;
  - (h) it shall obtain approval from the Bank in writing prior to any publication or advertisement of promotional materials relating to the Credit Card, VISA Card Program Marks, the MasterCard Marks and/or any New credit/charge cards;
  - (i) It shall adequately display the VISA Card Program Marks the MasterCard Marks and any distinctive features of the New credit/charge cards and/or product names on promotional materials provided by the Bank to inform the public that the Credit Cards will be honored at the Merchant's premises, place of business, on the Merchant's Website or its outlets. The Merchant must not indicate or imply that the Bank, VISA International and/or MasterCard International endorses any goods or services offered by the Merchant;
  - (j) It shall, at all times, maintain in good order and keep in safe custody all unused Sales Drafts and Credit Vouchers, card Imprinters and /or Electronic Terminals supplied by the Bank which shall remain the Bank's property, and to return all such Sales Drafts, Credit Vouchers, card Imprinters and/or Electronic Terminals forthwith to the Bank within thirty (30) days from termination of this Terms & Conditions;
  - (k) Where there is uncertainty or ambiguity in the terms of this Terms & Conditions or any guidelines or requirements pertaining to the use of VISA Card Program Marks or MasterCard Marks or any security or distinctive features of the New credit/debit/charge cards the Merchant shall countercheck with the Bank for its construction and meaning and the same when given by the Bank shall be final and binding;
  - (l) It shall use its best endeavor to promote the use of the Credit/Debit Cards and to render its cooperation to the Bank and the Cardholders in connection with the use of the Credit/Debit Cards;
- 49.2 It shall maintain and take all necessary steps to maintain the security and confidentiality of the Merchant's Website, Merchant's POS, the Electronic Commerce Transactions, the Cardholders and the Bank.
- 49.3 It shall give full co-operation to the Bank and procure its employees and agents to co-operate on any fraud Investigations.
- 49.4 The Merchant shall not perform additional swipe of the customers' debit, credit card or payment card at their own Point-of-Sale (POS) system or at any other system for any whatsoever reason(s), before or after the transaction has been approved by the card issuer through a bank's EFTPOS terminal.

#### 50. **WARRANTIES BY THE MERCHANT AS TO SALES DRAFTS**

- 50.1 The presentation of each Sales Draft by the Merchant to the Bank shall be a warranty by the Merchant:-
- (a) that every contract entered into by the Merchant with the Cardholder under which a charge is made under the Credit/Debit Card shall fulfill all statutory or other requirements for its validity and enforceability and is a bona fide transaction for the purchase of goods or service by the Cardholder from the Merchant unless it is installed at bank's premise where the responsibility is solely by the bank rather than Merchant.
  - (b) that the Sales Draft is authorized by the Cardholder and was not obtained by any fraudulent means;
  - (c) that the value on the Sales Draft evidences a bona fide sum due and owing from the Cardholder;
  - (d) that the value of the Sales Draft has not been and will not be assigned or charged to any third party;
  - (e) that the Cardholder concerned has not and will not have sought to repudiate or rescind the contract;
  - (f) that the Cardholder has not and will not acquire any right of set-off or counterclaim available against the Merchant in respect of the value of the Sales Draft;
  - (g) that the Merchant has not and will not agree with the Cardholder for any extension of the contractual time for payment of the goods purchased and/or service rendered or for any waiver or modification of the terms of the contract;
  - (h) that the particulars included in the Sales Draft submitted to the Bank are correct;
  - (i) that the Sales Draft has been completed with the Credit Card produced by the Cardholder in person, completed after properly authenticating the Cardholder and the Credit Card;

#### 51. **TAX**

- 51.1 All monies, fees and charges payable by the Merchant to the Bank under this Terms & Conditions shall be made in full inclusive of all taxes 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.
- 51.2 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 the Bank under this Terms & Conditions 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 the Bank is equal to that which the Bank would otherwise have received had no deduction or withholding been required or made.

- 51.3 In the event the Bank is required by law to calculate and collect from the Merchant any amount paid or payable under this Terms & Conditions on account of any Tax, such amounts as calculated by the Bank and shall be paid by the Merchant as additional to and without any deduction or set-off from monies, fees and charges payable under this Terms & Conditions to Bank.
- 51.4 Tax is defined as any present or future, Malaysian or foreign tax, levy, impost, duty, charge, fee, deduction or withholding of any nature, and any interest or profit or penalties or compensation charges in respect.
- 51.5 Any sum set out in this Terms & Conditions or otherwise payable by any party to any other party shall be deemed to be exclusive of any Goods and Services Tax or tax of similar nature such as the Sales and Services Tax ("Tax") which is chargeable on the supply (or supplies) for which such sum is chargeable on the supply (or supplies) for which such sum is (the whole or part of) the consideration of Tax purposes.
- 51.6 If one party ("the Merchant") is required by the terms in this Terms & Conditions to make a supply to the other ("other party") such supply shall be made without any charge of Tax by the Merchant in respect of such supply unless such Tax is required by law to be paid by the Merchant in which case the other party shall on demand pay to the Merchant (in addition to the consideration for such supply) a sum equal to the amount of such Tax and the Merchant shall provide the other party with a valid Tax invoice.
- 51.7 Charges in this Terms & Conditions exclude tax that would be imposed in the future to replace existing taxes.

## 52. **PROHIBITION AGAINST CASH PAYMENT, CASH DISBURSEMENT AND CASH REFUND ETC.**

- 52.1 The Merchant shall not:-
- (a) allow the Cardholder to transact for any Cash Payment, Cash Disbursement or Cash Refund under any circumstances resulting from the use of the Credit Card;
  - (b) accept the Credit Card as payment for purchases of goods and/or services which are not sold or provided by the Merchant and submit the Sales Drafts to the Bank for payment;
  - (c) accept the Credit Card used as payment for any debt whatsoever and howsoever incurred by the Cardholder with the Merchant unless such debt incurred is pursuant to an underlying trade transaction with the Merchant's business or in substitution or subsequent to any cheques offered by the Cardholder to the Merchant which has been dishonored.
- 52.2 **Right to Set-Off and Consolidation**  
The Merchant agrees that the Bank may, at its discretion and provided that prior notice of seven (7) days shall have been served unto the Merchant, combine or consolidate all or any accounts of the Merchant (whether current, deposit, loan or financing or of any other nature and in whatever currency and wherever situate) and set-off or transfer any monies standing to the credit of the Merchant's account with the Bank for the purpose of charge back under Clause 35 or towards the reduction or discharge of any sum due to the Bank by the Merchant under this Terms & Conditions. Where such combination consolidation set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the Bank's prevailing exchange rate at the Bank's discretion.
- 52.3 **Collection items**  
The Bank may endeavor to collect on behalf of the Merchant the amount due on any Sales Draft which have not complied with the conditions in this Terms & Conditions, but the Bank shall be entitled to impose a collection fee for each Sales Draft successfully collected. The collection fee shall vary according to the transaction amount of the Sales Draft. The Bank shall not be obliged to pay the Merchant the amount of any Sales Draft on collection presented on a collection basis unless and until the said amount has been received by the Bank. The Merchant agrees that the Bank shall be entitled to deduct the Discount and any charges payable by the Merchant from such sums received by the Bank before remitting the balance sum to the Merchant.

## 53. **INDEMNITIES**

- 53.1 The Merchant will indemnify the Bank on demand against all losses, expenses and damages The Bank may suffer:
- (a) as a result of the Merchant's failure to observe the obligations under the Terms & Conditions including any procedures set out in the Manuals;
  - (b) as a result of MasterCard, Visa or other card schemes imposing fees, fines or penalties or compensation charges on us in accordance with the Rules as a direct or indirect result of the Merchant's failure to observe the obligations under the Terms & Conditions including any procedures set out in the Manuals;
  - (c) arising out of any dispute between the Merchant and a Cardholder;
  - (d) as a result of any error, negligence or fraud relating to a transaction by the Merchant, the Merchant's servants, agents, employees or contractors;
  - (e) arising out of any damage to, or loss of the terminals the Bank supplied due to the Merchant, or Merchant's employees, neglect or misuse; or
  - (f) arising out of any dispute between the Merchant and the Terminal Supplier;
  - (g) as a result of any fees, fines or penalties or compensation charges that the Bank is required to pay pursuant to the rules, by-laws or regulations of any Card Scheme that the Bank 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 Card Scheme used in providing the Banking Services.

- 53.2 If the Merchant has suffered a data compromise:
- (a) The Merchant will have to give the Bank and its agents full access to Merchant's systems and databases to facilitate a forensic analysis to ascertain:
  - (b) What card data has been compromised;
  - (c) What weaknesses in the system permitted the unauthorized access to the data base; and
  - (d) Whether card data was created, deleted, altered, copied or manipulated in any manner.
- 53.3 If the Merchant use the services of an external Service Provider, the Merchant will have to ensure that the Bank and its agents are given full access to necessary outsourced components such as data bases, web hosting systems, etc.
- 53.4 All costs of the forensic analysis will be passed on to the Merchant.
- 53.5 In order to continue processing card transactions, the Merchant will have to undergo a full PCIDSS accreditation. All costs of this accreditation exercise will be borne by the Merchant.
- 53.6 Excessive Chargebacks: The Bank will notify the Merchant if the chargebacks in any particular category has or is in threat of exceeding the threshold. The Merchant must take immediate action to rectify the situation. Failure to resolve the cause of the problem will result in "Excessive Chargebacks fines" imposed by the Card Schemes which will be passed on to the Merchant.
- 53.7 PCIDSS accreditation program
- (a) The Merchant are required to complete the PCIDSS accreditation program within 3 months of being granted the merchant facility, or within 3 months of the Bank's notification to the Merchant to comply with the requirement.
  - (b) Non-completion of the PCIDSS accreditation program will place the Merchant's facility in the non-compliant status. This non-compliant status will attract non-compliance fines from the Card Scheme which will be passed on to the Merchant.
  - (c) In the event that the Merchant suffers a card data compromise incident and the Merchant have not complied with the PCIDSS accreditation program the Card schemes will levy heavy penalties or compensation charges. The Bank will pass these penalties or compensation charges on to the Merchant.
  - (d) All costs in relation to completion of the PCIDSS accreditation program will be borne by the Merchant.
- 53.8 Consent to share information
- (a) Acceptance of these Terms and Conditions gives the Merchant's consent to the Bank sharing details of a suspected and/or confirmed data compromise to Law Enforcement Agencies, Card schemes and other parties at the Bank's discretion. This consent is irrevocable and enduring.
  - (b) The Bank is obliged to report all data compromise events to card schemes, law enforcement agencies and/or other government regulators. The Merchant's acceptance of these Terms and Conditions confirms that the Merchant understand this obligation and grant irrevocable and enduring consent for the Bank to release details of the compromise to the abovementioned bodies.
  - (c) The Merchant's acceptance of these Terms and Conditions irrevocably confers upon the Bank the enduring right to contact all services providers that enable the Merchant to acquire credit card transactions. This clause is limited to the purpose of determining the extent of a data compromise, evaluating remedies to that data compromise and assessing the Merchants level of compliance with PCIDSS.

#### 54. **DATA PROTECTION**

- 54.1 To the extent that any of the data/information extended to the Merchant by the Bank and/or collected/processed by the Merchant on behalf of the Bank consists of "Personal Data" as defined in the Personal Data Protection Act 2010 ("PDPA"), the Merchant agrees not to conduct itself, and to procure that its employees and sub-contractors shall not conduct themselves, in such a manner as to cause the Bank to be in breach of its obligations as a "data user" as stated in the PDPA.
- 54.2 The Merchant warrants to the Bank that it has sufficient technical and organizational security measures in place for the purpose of protecting access to the Bank's Personal Data or systems or databases containing the Bank's Personal Data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction. The Merchant agrees to provide the Bank with details of the said technical and organizational security measures upon receipt of the Bank's written request.
- 54.3 If any of the Bank's Personal Data that is held by the Merchant at its Vendor's premises or in the Merchant's systems, the Bank shall have the right to audit the Merchant for the purpose of ensuring that the Merchant is complying with its technical and organizational security measures.
- 54.4 The Merchant confirm that they will comply with the Bank's privacy notice contained in its websites, which are [www.affinbank.com.my](http://www.affinbank.com.my) and [www.affinislamic.com.my](http://www.affinislamic.com.my) respectively.

#### 55. **ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING**

- 55.1 The Merchant acknowledges that the Bank has entered into this Terms & Conditions in full reliance on the representations, warranties and undertaking by the Merchant, that the Merchant is not involved and shall not involve itself in any business or business transaction where monies used are received from unlawful activities as defined under the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA2001) or violate any laws relating to money-laundering as defined under AMLATFPUAA2001.
- 55.2 The Merchant shall immediately report to the Bank's Card Compliance Officer of any suspicious transaction or upon the Merchant's suspicion that any money laundering and or other illegal activities are taking place.
- 55.3 The Merchant shall disclose and furnish to the Bank any relevant information required upon request by the Bank and to the satisfaction of the Bank in a timely manner within the period specified by the Bank for the purposes of complying with the laws,



rules, regulations, directives and guidelines of Bank Negara Malaysia and/or other governing authorities in the event of any Transactions are found or suspected to violate any laws relating to money-laundering and terrorism financing as defined under AMLATFPUAA2001.

- 55.4 Pending receipt of such information by the Bank from the Merchant and until received and verified to the satisfaction of the Bank or the relevant authorities, the Bank shall not be obliged to proceed with any Transactions or (if applicable) accept any monies, funds or collateral (also referred to as "Assets") effected or implicated under AMLATFPUAA2001. In relation to Assets already in possession of the Bank, the Bank shall be entitled (and authorized) if required by the relevant authorities to retain the Assets for the time being. Any Assets requested to be returned to the Merchant shall be returned to the Merchant after the Bank receives satisfactory clearance from the relevant authorities.
- 55.5 The Merchant agrees that in no event shall the Bank be liable for any direct, indirect, consequential or any losses whatsoever or howsoever arising or by reason of the Bank exercise of its duties under AMLATFPUAA2001.

#### **56. COMPLIANCE WITH LAW**

- 56.1 The Merchant shall comply with all applicable laws in Malaysia including but not limited to AMLATFPUAA2001, and any obligations imposed on the Bank or Card Issuer regulatory requirements imposed by Bank Negara Malaysia in respect of merchant acquiring services and any service levels imposed by the Bank and codes of conduct applicable to the performance of the Merchant's obligations under this Terms & Conditions.

#### **57. LAW APPLICABLE**

- 57.1 This Terms & Conditions shall be governed by and construed in accordance with the laws of Malaysia and the parties agree that any action or proceedings in all matters connected with the obligations and liabilities of the parties is submitted to the exclusive jurisdiction of the courts of Malaysia.

#### **58. WHISTLE-BLOWING & BUSINESS ETHICS**

- 58.1 The Merchant shall as soon as reasonably possible, in writing or orally, inform any of the officer of the Bank involved in the Terms & Conditions, upon having knowledge of any director, officer or employee of the Bank, directly or indirectly, asking for or receiving from the Merchant or its Affiliates, any Gratification in relation to the this Terms & Conditions whether for his own personal benefit or advantage or of the benefit or advantage of any other person, in relation to the this Terms & Conditions, whether before, during or after the term of this Terms & Conditions, and the Merchant or its Affiliates knows that such Gratification is not for the benefit of the Bank. The full Whistle-blowing Policy is available on [www.affinOnline.com](http://www.affinOnline.com).
- 58.2 The Merchant undertakes that neither it nor its Affiliate nor anyone acting on its direction or authority shall, whether before, during or after the term of this Terms & Conditions, directly or indirectly, give or offer, or agree to give or offer, any Gratification in relation to this Terms & Conditions as an inducement or reward to any director, officer or employee of the Bank or any other person, for doing or forbearing from doing or for having done or forborne from doing any act, or for showing or for bearing from showing favour or disfavour to any person, in relation to this Terms & Conditions.
- 58.3 In the event there is evidence that the Merchant, its Affiliate or anyone acting under its direction or authority is in breach of clause in this Terms & Conditions, the Bank may terminate this Terms & Conditions (without prejudice to the Bank's other rights remedies under the law) by giving written notice to the Merchant. Upon such termination, the Bank shall be entitled to claim all losses, costs, damages and expenses including any incidental costs and expenses incurred by the Bank arising from such termination. the Merchant shall not be entitled to recover from the Bank any loss or termination.
- 58.4 Notwithstanding any other provision in this Terms & Conditions but subject to any written law and with the exception of written requests from the Merchant's internal auditors or lawyers for information required by any laws, the Bank shall keep confidential any information disclosed or received including the identity of the person giving the information and all the circumstances relating to the information.
- 58.5 The Merchant shall also whistle-blow in the event of any malpractice or wrongdoing by the Bank staff or employees toward them or their staff, agents or contractors: -
- (a) 'Affiliate' means in relation to the Merchant, any person or entity owned and controlled directly or indirectly by the Merchant, or any person or entity that controls directly or indirectly the Merchant in anyway whatsoever.
  - (b) 'Gratification' includes any gift, money, property or thing of value or any service, favour or other thing of value, or any service, favour or other intangible benefit or consideration of any kind, or any other similar advantage.
- 58.6 The Merchant shall demonstrate a high standard of ethical conduct and professionalism in order to safeguard the Bank's good name by taking all necessary safeguards and precautions to alert the commission of any unethical action including any appearance or impression to such effect.

#### **59. CONNECTED PARTY TRANSACTIONS**

In the event any of Merchant directors are connected (spouse, brother, sister, child) to any directors of the Bank, Merchant undertakes to inform the Bank.

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THE FIRST SCHEDULE REFERRED TO ABOVE

(Which is to be taken, read and construed as an essential part of this Terms & Conditions)

**ELECTRONIC COMMERCE ACCEPTANCE PROGRAMME**

**1. ELECTRONIC COMMERCE FACILITY REQUIREMENTS**

Minimum Requirements;

- 1.1 Merchant must be a locally registered company such as sole proprietor, partnership or public listed / Sdn Bhd.
- 1.2 The business must be at least 1 year in operation.
- 1.3 The merchant must have an appropriate office premises.
- 1.4 Operating from the personal home or residential area are not acceptable.
- 1.5 The website must be ready and comply with Affin Bank's website checklist requirements.
- 1.6 Merchant must open a current account with Affin Bank/Affin Islamic Bank branch for settlement payment.
- 1.7 Merchant is required to pledge a Fixed Deposit/Term Deposit-i with Affin Bank/Affin Islamic Bank branch for e-Commerce acceptance, the amount of Fixed Deposit/Term Deposit-i will be determined by Affin Bank/Affin Islamic Bank for assigning daily card acceptance limit.

**2. ELECTRONIC COMMERCE TRANSACTION VIA INTERNET**

- 2.1 The Merchant agrees and undertakes that it shall honor without discrimination, as a means of payment for Electronic Commerce Transaction, Cards properly authenticated.
- 2.2 For Electronic Commerce Transactions, the Merchant shall upon completion of a Card Transaction provide the Cardholder with a transaction receipt either through a separate email message or send a physical receipt by post. The transaction receipt must include the following:-
  - (a) Merchant's name;
  - (b) Merchant's online address;
  - (c) Card Transaction amount;
  - (d) Card Transaction currency;
  - (e) Card Transaction Date;
  - (f) Card Transaction identification number;
  - (g) Cardholder's name;
  - (h) Cardholder's Card Account number with the first (1st) twelve (12) digits truncated;
  - (i) Authorization code;
  - (j) Description of goods and/or services purchased; and
  - (k) Return/Refund policy.
- 2.3 The Merchant shall observe all reasonable security measures in accordance with standard industry practice whether or not prescribed by the Bank (which includes but not limited to such security measures prescribed by Visa International and MasterCard Worldwide) in respect of the acceptance of any Card for payment of any Card Transaction. The Merchant shall use its best endeavor to ensure validity of the Card Transactions. In addition, the Merchant undertakes not to effect any payment transaction requesting for payment in connection with any Card Transaction which is a Mail Order Transaction.
- 2.4 The Merchant shall seek authorization from the Bank for each and every Card Transaction and shall only complete a transaction after the Merchant has received the approval from the Bank.
- 2.5 The Merchant shall comply with all instructions whatsoever given to the Merchant by the Bank in response to a request by the Merchant for payment in connection with any Card Transaction carried out pursuant to the Payment Instructions.
- 2.6 All Card Transactions shall be in Ringgit Malaysia (RM) unless the Merchant requests in writing that the Bank accepts Card Transactions in some other currency and the Bank at its discretion so approves such request in writing and any approval, if given, may be on such terms and conditions to be determined by the Bank.
- 2.7 The Merchant shall accept full responsibility, and the Bank shall not be liable in any way, for any claims, liabilities, fees, fines, penalties, expenses, costs, losses or damages of whatever nature brought against, suffered or incurred by or caused to the Bank or any party whatsoever due to or arising out of or in connection with the Terms & Conditions or any breach or compromise of the security or integrity (including but not limited to any breach or compromise of the standards prescribed by PCI-DSS and BRAM), or malfunction, of any encryption and identification software, any electronic code keys, any equipment provided to any party or the Merchant's system or due to any error, negligence or fraud relating to a Card Transaction by the Merchant and/or the Merchant's agents, servants, employees or contractors.
- 2.8 The Bank and its agents shall be entitled to enter any of the Merchant's premises with or without any prior written notice to the Merchant to inspect and have full access to the Merchant's software, hardware and/or any other part of its system with a view to ascertaining whether the setting-up, operation, maintenance, security and integrity or any other matter related is in compliance with the standards prescribed by the PCI-DSS and BRAM and/or may adversely affect the Bank's interests or rights under the Terms & Conditions.

- 2.9 All representations contained in the Merchant's website as well as the web pages, or any advertisement or printed matter relating to the products or services offered are in compliance with the standards set out in BRAM and shall be deemed to have been made by the Merchant and the Merchant represents to and warrants and covenants with the Bank that the products and services offered by the Merchant and contained in the Merchant's website as well as the web pages are not illegal, do not damage MasterCard Worldwide's Visa International's, and do not contravene any regulatory and statutory prohibition or restriction (including but not limited to such prohibition against gaming, sale of pirated products and pornography) and all laws, rules and regulations which govern such products and services or regulate and/or restrict how such products and services are to be marketed and sold by the Merchant have been complied with. The Bank shall not in any way be liable for any claim whatsoever arising therefrom including but not limited to such penalty imposed by MasterCard Worldwide and/or Visa International on the Bank for a breach by the Merchant of the representations, warranties and covenants contained in this Terms & Conditions. The Merchant shall be liable to repay the Bank for such fines and penalty imposed on the Bank by MasterCard Worldwide, Visa International, and shall indemnify and keep the Bank fully indemnified against all losses, costs and expenses incurred by the Bank as a result of the Merchant's breach of the representations, warranties and covenants contained in this Terms & Conditions.

### **3. COMPLETION OF TRANSACTION**

- 3.1 On each occasion before the Verified-by-Visa and/or MASTERCARD Secure Code is accepted to evidence any Transaction between the Merchant and the Cardholder, the Merchant must at the time of sale, verify the validity of the Verified-by-Visa and/or MASTERCARD Secure Code and the identity and authority of the Cardholder of the Verified-by-Visa and/or MASTERCARD Secure Code in the use of the Verified-by-Visa and/or MASTERCARD Secure Code and complete such other documents in accordance with the requirements of the Bank and all other applicable statutory requirements and prior to the completion of any Transaction ensure that all Transactions are processed in accordance with all procedures and requirements as stipulated by the Bank from time to time including but not limited to the Settlement Procedures.
- 3.2 Upon completion of each Transaction, the Merchant is not permitted to make any alteration or amendment whatsoever in relation to the Transaction or to any Merchant Report. Any purported alteration or amendment in relation to any Transaction or to any Merchant Report renders the Merchant Report invalid for presentation to the Bank for payment.
- 3.3 If any Transaction is not processed in accordance with any provisions of this Terms & Conditions or any procedures and requirements as stipulated by the Bank from time to time including but not limited to the Settlement Procedures to the satisfaction of the Bank, the Bank is entitled at its discretion to refuse payment to the Merchant for such Transaction and the Merchant agrees with the Bank that the decision of the Bank on this matter shall be accepted by the Merchant as final and conclusive against the Merchant or if payment have been made by the Bank, and any payment by the Bank does not constitute confirmation that the Transactions have been accepted according to the provisions of this Terms & Conditions or any procedures and requirements as may be stipulated by the Bank from time to time including but not limited to the Settlement Procedures or are free of any discrepancy, irregularity or any violation.
- 3.4 Notwithstanding that the Bank may have inadvertently or on account of any other reason whatsoever authorized payment to the Merchant in respect of any Transaction which do not comply with any provisions of this Terms & Conditions or any procedures and requirements as may be stipulated by the Bank from time to time including but not limited to the Settlement Procedures or which contains any discrepancy, irregularity or violation whatsoever or in respect of any Merchant Report which contains any alteration or amendment whatsoever, the Bank has the right to a restitution of such payment by way of deduction from subsequent Charges submitted to the Bank for payment and/or debiting the Merchant's banking or other accounts maintained with the Bank and/or by the Bank exercising its right of set-off and/or by the Bank raising a claim on the Merchant for the Merchant's immediate settlement thereafter and/or by any other means as the Bank shall deem fit.
- 3.5 The Merchant undertakes to ensure that confidentiality and security of all information including but not limited to any user data, credit card numbers and passwords required to be entered by any Cardholder on the Merchant's Web Site is maintained at all times and that all Transactions including the entry of any information including any user data and passwords required to be entered by Cardholders on the Merchant's website meets the procedures and requirements as stipulated by the Bank from time to time relating to confidentiality and security.
- 3.6 The Merchant undertakes to ensure that the Merchant is able to deliver the goods and/or perform the services within the time specified (if any) on the Merchant's website before completing any Transaction and undertakes to in any event deliver all goods and/or perform all services purchased within seven (7) Business Days from the Transaction Date.

### **4. INDEMNITY**

- 4.1 The Merchant agrees to defend, indemnify and keep indemnified and to hold harmless the Bank, its officers, shareholders, employees, agents, and representative, and the successors, heirs and assigns of the foregoing, from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs and expenses (including but not limited to reasonable Solicitor's fees and costs incurred) arising out of or in connection with any obligation of the Merchant under this Terms & Conditions, or the use by the Merchant of the services of the Bank, including without limitation the provision by the Merchant of, or the use or possession by any customer or any person acquiring from any customer of, Merchant's Merchandise, or any act, error or omission of the Merchant in connection therewith:
- (a) Product liability claims;
  - (b) Claims arising from alleging inaccurate or incomplete information by the Merchant or that any such information infringes the intellectual property rights of any third party;
  - (c) Claims that any of the Merchant's Merchandise infringe any intellectual property rights of any third party;
  - (d) Damages arising from any violation by the Merchant of its export control obligations under this Terms & Conditions;
  - (e) Damages arising from any violation of any applicable law or regulation;
  - (f) any libel, invasion of privacy, or disparagement claims; and

- (g) any violation of rights of any third party.
- 4.2 The Merchant agrees to defend, indemnify and keep indemnified and to hold harmless the Bank, its officers, shareholders, employees, agents, and representative, and the successors, heirs and assigns of the foregoing, from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs and expenses (including but not limited to reasonable Solicitor's fees and costs incurred) arising from any violation of the Associations including but not limited to Visa International and MasterCard International in any manner by the Merchant.
- 4.3 However, the Bank shall be responsible for any claims or demand directly caused by its fault, fraud and negligence.