
FINEXUS CARDS MERCHANT GENERAL TERMS AND CONDITIONS

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Appendix I

General Terms and Conditions of Merchant Agreement

This Agreement shall take effect on the Commencement Date until terminated by either party upon written notice and made between:

FINEXUS CARDS SDN BHD (Company No.: 706720-U), a company incorporated in Malaysia with its registered address at FINEXUS Campus #1, Jalan Pangkor, Titiwangsa Sentral, 53000 Kuala Lumpur, Malaysia ("**FINEXUS**"); and

The person or entity whose name and address described in the Merchant Application Form ("**Merchant**").

FINEXUS and the Merchant shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

The Merchant acknowledges that the Merchant Agreement shall not be effective until accepted by FINEXUS signified by FINEXUS's issuance of the Letter of Acceptance, and that the signature of the Merchant's representative on the Merchant Application Form constitutes acknowledgment of the offer made by the Merchant's representative on the Merchant's behalf.

IN CONSIDERATION of the mutual obligations set out below, **IT IS AGREED** as follows: -

1. DEFINITION AND INTERPETATION

1.1. Merchant Agreement Documents

The following documents shall be deemed to form the Merchant Agreement ("Agreement") between FINEXUS and Merchant, and to be read and constructed as part of the Agreement:-

- (a) Merchant Application Form;
- (b) Letter of Acceptance;
- (c) Merchant General Terms & Conditions;
- (d) Merchant Guide;
- (e) Other documents listed in this Agreement;
- (f) Addenda issued after execution of this Agreement; and
- (g) DuitNow QR Terms and Conditions.

1.2. Merchant Agreement

The Agreement Documents form the Merchant Agreement. The Agreement represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.3. Definition

In the Agreement as hereafter defined, unless the contrary intention appears in writing, the following terms shall have the respective meaning assigned to them:-

"Account"	means an e-Money account offered by issuers of e-Money license and all types of banking accounts by banks, except for fixed deposit accounts. This shall include, but is not limited to, all types of conventional and/or Islamic investment accounts, Islamic deposit account, current accounts, and virtual internet accounts. Additionally, means all line of credit accounts tied to payment cards where transaction is made;
"Account Holder"	means the individual to whom a Card is issued and whose name is embossed (if applicable) on the Card and whose signatures appear thereon as an authorised user or Wallet has been issued;

“Agreement”	means it comprise of the following documents: Merchant Application Form, Letter of Acceptance, Merchant Guide and these Merchant General Terms and Conditions including its schedules, appendices or annexures and such other documents which are expressly incorporated as part of the Agreement;
“AMLA”	means Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001;
“Approval Code”	means a reference code in alphabetical or numerical format generated upon approval of a Transaction;
“Authorisation Centre”	means the authorisation centre of FINEXUS;
“Authorisation Code”	means the authorisation in code form given by the Authorisation Centre in respect of each Card Transaction electronically via the Payment Acceptance Solution or the authorisation in such other form(s) approved and stipulated by FINEXUS and given by the Authorisation Centre of FINEXUS in respect of each Card Transaction via such method(s) or mode(s) as approved by FINEXUS;
“Authorisation Form”	means any instruction given by an Account Holder, whether contained in a form or an electronic order form or document supplied by the Merchant and/or issuing Bank or otherwise, instructing or authorising the Merchant to charge to the Account Holder’s Card and the Card Account with the amount of any payments due and payable to the Merchant for Goods and/or Services provided or to be provided by the Merchant to the Account Holder or at the Account Holder’s request;
“BNM”	means Bank Negara Malaysia which was established on 26 January 1959, under the Central Bank of Malaysia Act 2009;
“Brand Guidelines”	means the brand guidelines provided by FINEXUS to the Merchant and as amended by FINEXUS from time to time;
“Business Day”	means a day (other than Saturday, Sunday and public holidays as announced by Bank Negara Malaysia), on which banks are licensed to carry on banking business under the provisions of Financial Services Act 2013, are open for business in their respective business locations in Malaysia. In States where the banks are closed for business on days other than Saturdays and Sundays and/or public holidays, ‘Business Day’ shall be construed and interpreted accordingly;
“Card”	means any validly issued and unexpired credit, debit or prepaid card, be it physical, digital or virtual, or any other payment instrument bearing the respective logo, symbols, programme mark and/or other relevant service marks licensed by them issued by any Payment Brands, bank, financial institution or corporation and where applicable, shall also be deemed to include the EMV Card, Contactless Card and the magnetic strip the Card Account number of the Account Holder imprinted or embossed on the Card, which Card pursuant to this Agreement may be used by the Account Holder to pay for the purchases of and charges relating to the Merchant’s goods and/or services provided and/or rendered;
“Card Account”	means the Card account stipulated by the Account Holder in the Authorisation Form;
“Certification Authority”	means the authority or entity authorised by Payment Brand or FINEXUS, as the case may be, to issue digital certificates;
“Chargeback”	means a claim for refund from FINEXUS or any refusal of any payment to FINEXUS by an Issuer in relation to a Transaction for whatever reason;
“Commencement Date”	means the commencement date of the Agreement as specified in the Letter of Acceptance;
“Confidential Information”	means information that: (a) is by its nature confidential;

- (b) is communicated by the Disclosing Party to the Receiving Party as confidential; or
- (c) the Receiving Party knows or ought to know is confidential; and
- (d) includes but is in no way limited to:
 - (i) materials including the financial, the corporate and the commercial information of any Party;
 - (ii) any material which relates to the affairs of a third party;
 - (iii) information relating to the strategies, practices and procedures of any Party and any information in the Merchant's possession relating to a Party; and
 - (iv) Personal Data / Any information relating to an identified or identifiable natural person;

but does not include anything which the confidant establishes:

- (I) was in the public domain at the time it was received by the Receiving Party;
- (II) that it entered the public domain after being received by the Receiving Party;
- (III) was lawfully obtained by the Receiving Party from third parties without any obligation by the Receiving Party to maintain the information proprietary or confidential;
- (IV) was or had at the time of use or disclosure become generally known to companies engaged in the same or similar business(es) as the Receiving Party on a non-confidential basis through no wrongful act of the party;
- (V) was independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information;
- (VI) that the Confidential Information was disclosed pursuant to the terms of the Agreement, unless it entered the public domain due to a breach of confidentiality by the Receiving Party;
- (VII) which the Receiving Party establishes was received by it from another person before or after it was received from FINEXUS, if the other person did not breach any law or agreement by giving it to the confidant; or
- (VIII) was required to disclose or divulge by any court, tribunal, governmental or authority with competent jurisdiction or by any statute, regulation or other legal requirement, takeover panel or other public or quasi-public body as required by law and where the Receiving Party is required by law to make such disclosure. The Receiving Party shall give notification as soon as practical prior to such disclosure being made;

"Contactless Payment"	means payments that are made without customers having to swipe/insert their Cards, enter personal identification (PIN) number or sign to authorize the Transaction by either scanning QR code or using their Cards at Payment Acceptance Solution which has contactless payment technology, such as Near Field Communication (NFC), embedded in it;
"Crediting Participant"	means FINEXUS Cards Sdn Bhd;
"Debiting Participant"	means banks and e-Money issuers participating in RPP where the Payer maintains account(s);

“Digital Certificate”	means a digital certificate issued by the Certification Authority to the Account Holder for the purpose of authenticating the Account Holder and the Merchant in electronic commerce transactions;
“DuitNow ID”	Means an identifier of an account holder such as a mobile number, NRIC, passport number, army number or police number (in the case of an individual) or business registration number (in the case of a corporate customer) or any other identifiers as may be introduced by the DuitNow Operator from time to time;
“DuitNow Operator”	means Payments Network Malaysia Sdn. Bhd. (Company No.: 200801035403 [836743-D]);
“DuitNow QR Brand”	means brand, icon, logo, trademark and service mark for the DuitNow QR;
“DuitNow QR Owner & Operator”	means Payments Network Malaysia Sdn. Bhd. (Company No.: 200801035403 [836743-D]);
“DuitNow Transfer”	means a service which allows customers to initiate and receive instant credit transfers using a Recipient’s account number or DuitNow ID;
“Excessive Chargeback Programme”	means a set of programme provided by the Payment Brands for acquirers to closely monitor, on an ongoing basis: <ul style="list-style-type: none"> (a) its chargeback performance at the Merchant level; and (b) to promptly determine when the Merchant has exceeded or is likely to exceed monthly chargeback thresholds;
“FINEXUS Brand”	means any trade mark, logo or name owned or used by FINEXUS including but not limited to, those specified in the Card Brand Guidelines;
“FINEXUS Property”	means property referred to in Clause 21 which shall include the FINEXUS Payment Acceptance Solution and FINEXUS System provided by FINEXUS;
“FINEXUS System”	means any FINEXUS’ electronic systems (Portal / App) which FINEXUS grants access to the Merchant for the purpose of the Service or that FINEXUS uses to issue notices to the Merchant;
“Force Majeure Event”	means any act, cause, circumstance or event not reasonably or beyond the reasonable control of the Party affected and claiming relief and which, by the exercise of reasonable diligence, such Party is unable to perform, prevent or overcome on time. A Force Majeure Event including but not limited to <ul style="list-style-type: none"> (i) act of Gods; (ii) civil war/civil unrest, industrial acts, labour disruptions, lockouts, military coup/disturbance, sabotages, strikes, blockades, riots; (iii) epidemics, pandemic, virus outbreak; (iv) act of government, governmental restrain; (v) damage to plant, equipment or facilities, power failure/outrage, transportation shortages, equipment shortages; (vi) natural events like drought, earthquakes, fires, floods, landslides, lightning, storms, tornadoes, washouts or other inclement weather; (vii) act of terrorism, explosions, insurrections, wars; and/or (viii) any other instances which cannot be foreseen, prevented or controlled including instances which are accepted as Force Majeure in general international commercial practice which wholly or partially hinders, prevents, interrupts or delays the performance of a Party’s obligations in this Agreement;

“FSA”	means Financial Services Act 2013;
“Goods and Services” or “Goods or Services” or “Goods and/or Services”	means merchandise sold and/or for services rendered by the Merchant to the Account Holders;
“Government Agency”	means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;
“Issuer”	means an entity that issue or provide Card or Wallet to an individual;
“Laws”	means all laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, practice directions, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions and judgments;
“Letter of Acceptance”	means the letter issued by FINEXUS on the acceptance of the Merchant's application to be FINEXUS's merchant;
“Online Marketplace Merchant”	means person, firm, or corporation that acts as an intermediary by connecting buyers and Suppliers through an online marketplace platform that has been registered with and approved by FINEXUS as specified in the Letter of Acceptance;
“Marks”	means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks, including but not limited to any one of the Payment Brands' brand mark and name mark, that any one of the Payment Brands or its affiliates or subsidiaries own, manage, license, or otherwise control and make available for use by FINEXUS and other authorised entities;
“Merchant”	means a person, firm, or corporation who has registered and approved by FINEXUS as specified in the Letter of Acceptance;
“Merchant Application Form”	means the form completed by the Merchant to apply to be FINEXUS's merchant;
“Merchant Discount”	means the fee that the Merchant pays to FINEXUS for the Services and is calculated in the manner and at the rate specified in the Letter of Acceptance or at such other rate as notified by FINEXUS to the Merchant from time to time;
“Merchant Guide”	means the guideline provided by FINEXUS containing the operational details relating to the Services including requirements set down under the Payment Brands rules and regulations, which shall form part of the Agreement;
“MID”	means a unique code for the Merchant's identification number assigned by FINEXUS;
“Monthly Report”	means monthly statement generated by FINEXUS at the beginning of every month which indicates the total Transaction Charges processed by FINEXUS during the previous month and Merchant Discount charged to the Merchant;
“mPOS”	means mobile Point-of-Sales which is a mobile device enabled to be used as a POS Terminal. mPOS includes the mobile payment application, payment processing services and hardware products and the application is only compatible with the smart card reader models assigned by FINEXUS;
“PAN”	means Primary Account Number and which information shall also include but not limited to Card Number and security information;
“PAR”	means Payment Account Reference and is a unique identifier associated with a specific cardholder PAN that can be used in place of sensitive consumer identification fields and transmitted across the payments system to facilitate consumer identification;
“Payer”	means individuals, companies, body corporates, businesses (including sole proprietors and partnerships), government agencies, statutory bodies, societies and

	other Customers who transfers funds via DuitNow Services such as DuitNow QR and DuitNow Transfer;
“Payment Acceptance Solution”	means any device or solution that accepts payment transactions, such as Electronic Device Capturing (EDC) Terminal, Point of Sale (POS) Terminal, mobile Point of Sale (mPOS) Terminal, e-Commerce Payment Gateway, Dynamic Quick Response (QR) Code, Static QR Code, QR Code Standee, etc.;
“Payment Application”	means the software payment application developed by FINEXUS goes by the name of “Kayaaku POS” or any other name and subsequent update to the payment application;
“Payment Application Data Security Standard” or “PA-DSS”	means a set of comprehensive security requirements developed by PCI SSC to encourage and enhance Account Holder data security and facilitate the broad adoption of consistent data security measures globally;
“Payment Brands”	means payment network operators (i.e. VISA, Mastercard, Union Pay, DuitNow, etc.) linked to Card or Wallet of which any eligible entity can become a member and with whose Payment Brand rules and regulations FINEXUS is obliged to comply;
“Payment Brands Programme”	means Payment Brands’ payment or merchant acquiring programme;
“Payment Card Industry Data Security Standard” or “PCI DSS”	means a set of comprehensive requirements containing security requirements developed by PCI SSC to encourage and enhance Account Holder data security and facilitate the broad adoption of consistent data security measures globally which are available at www.pcisecuritystandards.org ;
“Payment Card Industry Security Standards Council” or “PCI SSC”	means a council that is responsible for the development, management, education and awareness of the PCI security standards including PA-DSS and PCI-DSS;
“Payment Instructions”	means any instruction (whether written, verbal or electronic) given by an Account Holder to the Merchant, authorising the Merchant to charge the Account Holder’s Card for a transaction;
“PDPA”	means Personal Data Protection Act 2010;
“Personal Data”	means any information that relates directly or indirectly to an individual who can be identified from that information or from other information in the Merchant’s possession including but not limited to a Personnel of FINEXUS;
“Personnel”	means employees, secondees, agents, principals and contractors who are individuals;
“PIN”	means a Personal Identification Number issued to an Account Holder for a Card or Wallet, or personally selected by an Account Holder for the purpose of effecting payment for Transaction at any POS Terminal and mobile application with PIN verification capability;
“PIN Pad”	means a device used by the Cardholder to enter the PIN or other data as may be specified by FINEXUS pursuant to Card and/or EMV Card Transaction and/or MyDebit Transaction;
“Point of Sale Terminal” or “POS Terminal”	means a device electronically activated to read and record the data of each Transaction located at the Merchant’s outlet, approved by FINEXUS for the purposes of this Agreement which FINEXUS may replace or request for its return from the Merchant as FINEXUS may deem fit and where applicable, shall also be deemed to include the Contactless terminal and QR code reader save where the contrary is expressly provided for;
“Privacy Policy”	means FINEXUS policies and principles pertaining to the collection, use and storage of personal information of existing and prospective individuals and entities dealing with FINEXUS as may be amended from time to time and made available at

	FINEXUS website respectively or in such manner as the FINEXUS deems appropriate from time to time;
“Prohibited Data”	means data that is not allowed to be stored by the Merchant and/or any of its associated service providers. This includes but not limited to CVV2/CVC2, PAN, PIN, PAR and magnetic strip data;
“QR Code”	means a quick response code represented as a type of 2D matrix barcode that is used to provide easy access to information through a smartphone or any compatible electronic device;
“Refund Form”	means a form provided by FINEXUS from time to time to the Merchant to issue credits in respect of a Transaction;
“RM”	means Ringgit Malaysia;
“RPP”	Means Real-Time Payments Platform, a shared payment infrastructure developed and established by PayNet, which facilitates instant and interoperable payments and collections;
“Sales Slip”	means a document in the physical or electronic form provided by FINEXUS or any Payment Brands from time to time to the Merchant for the purpose of recording, confirming and evidencing Goods purchased or for Services rendered to the Account Holder through the use of Card to be charged or debited to the Account Holder’s Card account;
“Services”	means payment processing services/channels as described in the Letter of Acceptance issued by FINEXUS to the Merchant for the processing of Transactions and for enabling acceptance of the Card and Wallet;
“Settlement Amount”	means the amount payable by FINEXUS to the Merchant under the Agreement for each successful Transaction based on the Transaction Charges less Merchant Discount;
“Settlement Function”	means the procedures required of and carried out by the Merchant via a POS Terminal/mPOS for purposes of transmitting data of Card Transactions to FINEXUS or the Vendor as the case may be enable FINEXUS to make settlement to the Merchant;
“Settlement Funds”	means an amount of funds to be deposited from transaction and to be pay to the Merchant upon execution of Settlement Function;
“Settlement Processing”	means the process carried out by the Merchant for purposes of transmitting data of Transaction Charges to FINEXUS to enable FINEXUS to remit the Settlement Amount to the Merchant;
“Split Sale”	means a Transaction where upon the authorisation was declined, the Merchant split the transaction into two (2) or more transactions using the same Card to obtain authorisation approvals from FINEXUS;
“Standards”	means any by-laws, directions, guidelines, rules, policies operating regulations and procedures of the Payment Brands and FINEXUS or any code of practice, guidelines or standards issued by relevant regulators or industry bodies, whether or not having the force of law, including but not limited to any manuals, guides, bulletins, standards issued by the PCI SSC and any other data security standards as may be issued or amended from time to time;
“Subsidiary”	has a meaning assigned to under Section 4 of the Companies Act 2016;
“Supplier”	means a vendor who sells goods or services using the Online Marketplace Merchant’s platform;
“Tax”	means: (a) any tax, levy, impost, duty, fee, deduction, compulsory loan or withholding; or

	(b) any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above;
“Term”	means the duration of the Agreement as specified in Clause 2;
“Terminal Fee”	means the service fees and any related cost payable by the Merchant to FINEXUS for the POS Terminal provided by FINEXUS;
“Terminal Receipt”	means a document to evidence a Transaction produced by a Payment Acceptance Solution in form and substance approved from time to time by FINEXUS for the purpose of this Agreement;
“Transaction”	means any type of sales transaction or payment transaction effected through the use of the Card (by use of Card, authenticated card-less/contactless payment solution, card present or card not present situation) or Wallet (whether or not Account Holder and the Merchant are all physically present at the time of the transaction) and includes:- <ul style="list-style-type: none"> (i) electronic commerce transactions (conducted over the website or mobile application that initiate such transactions between the Account Holder and the Merchant); or (ii) any other reference to any payment transaction effected by the Merchant requesting for payment by charging to the Account Holder’s Card and the Card Account for the payment to be made, as contemplated by the Payment Instructions;
“Transaction Charges”	means the amount charged to the Card or Wallet for Goods purchased by the Account Holder from the Merchant;
“Unrecoverable Loss”	Means the portion of funds transferred and credited to the wrong party due to erroneous, mistaken, unauthorised or fraudulent payments that cannot be retrieved after Participants have exhausted the recovery of funds process;
“Vendor”	means a licensed and/or appointed merchant acquiring institution authorised by FINEXUS to appoint and/or acquire merchants and who may supply Payment Acceptance Solution for the use of the Merchant for accepting Card and Transaction; and
“Wallet/e-Wallet”	means an internet-based electronic wallet incorporated within FINEXUS Cards that allows Account Holder to carry out electronic (cashless) fund transactions. It is an internet-based digital wallet that funded with Ringgit Malaysia currency, and can be used to purchase Goods and Services. The operation of the e-Wallet is licensed and regulated by Bank Negara Malaysia.

1.4. Interpretation

In the Agreement, unless the context requires otherwise:

- (a) the headings are for convenience only and do not affect the interpretation of the Agreement;
- (b) a reference to a clause is a reference to a clause of the Agreement;
- (c) a reference to any document (including this Agreement) include references to that document as amended, consolidated, supplemented, novated or replaced;
- (d) a reference or expression importing a person include reference to natural person, company, partnership, limited partnership, joint venture, association, corporation, organisation or other body corporate, trust entity, government agency and regulatory body;
- (e) a reference to anything (including, but not limited to, any right) includes any part of that thing, but nothing in this Clause implies that performance of part of an obligation constitutes performance of that obligation;

- (f) a reference to a right includes a power, authority, discretion, benefit or remedy conferred on a Party by the Agreement or any applicable law;
 - (g) a reference to a statute, regulation, proclamation, ordinance or by-Law includes all statutes, regulations, proclamations, ordinances or by-Laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (h) a reference to a Party to a document includes that Party's successors and permitted assigns;
 - (i) a reference to month is to a calendar month in accordance to the Gregorian Calendar;
 - (j) if more than one party is referred to as the Merchant, then their obligations and liabilities under the Agreement will be joint and several;
 - (k) no rule of construction applies to the disadvantage of a party solely because that Party was responsible for the preparation of the Agreement or any part of it.
- 1.5. This Merchant Agreement shall apply to Merchant participation in the Card payment acceptance services for all offices, outlets and locations of the Merchant described in the Merchant Application Form and such other offices, outlets and locations as may be agreed between FINEXUS and the Merchant from time to time.

2. STATUS OF MERCHANT

- 2.1. Except as expressly otherwise provided in the Agreement, the Merchant is not a partner or an agent of FINEXUS, and the Merchant shall not contract with any third party, make any representation or warranty or otherwise incur liability on behalf of FINEXUS.
- 2.2. The Merchant acknowledge and agree that the Merchant's appointment under the Agreement is **NON-EXCLUSIVE** and that FINEXUS may appoint other persons to conduct and may itself conduct activities under the Agreement.

3. ACCEPTANCE OF CARDS OR WALLETS BY MERCHANT

- 3.1. Subject to the terms and conditions of the Agreement and provided that the Card or Wallet is not declared invalid by FINEXUS or is deemed invalid pursuant to this Agreement, the Merchant shall accept all Cards or Wallet presented to it for purchase of Goods and Services under such business or at such premises or outlets of the Merchant as specified in the Merchant Application Form or at such other outlet(s) or location(s) of the Merchant as shall have been agreed between FINEXUS in writing from time to time.
- 3.2. The Merchant hereby agrees and undertakes that it shall honour without discriminations to the Cards or Wallet when properly presented to it and in the case of Electronic Commerce Transactions when properly authenticated as a means of payment from Account Holder seeking to make purchase of goods and/or services at the Merchant's premises or from the Merchant through the use of the Card or Wallet.
- 3.3. The Merchant shall refer to the Merchant Guide for detailed explanation on acceptance of Cards or Wallets and refusal of acceptance.

4. ACCEPTANCE OF CARDS OR WALLETS BY MERCHANT VIA INTERNET

- 4.1. The Parties acknowledge that the setting-up, maintenance, upgrade, security and integrity of the Merchant's computer system software and all costs thereof, and any other matters related thereto, shall be borne by the Merchant and are the Merchant's sole responsibility.
- 4.2. Notwithstanding **Clause 5.1** above, the Merchant and its agents shall at all times keep all systems and media containing any information or data (whether physical or electronics) relating to Account Holders, their Card Accounts and transactions in a secure manner in no less than the standards prescribed by PCI DSS, such as without limitation encrypting transmission of Account Holders' data and sensitive information across public network, to prevent access by or disclosure to anyone other than the authorized personnel of the Merchant or FINEXUS. However, in the event that any of the aforesaid information or transaction data stored in any part of the Merchant's system is lost, damaged, stolen, tampered or otherwise compromised, the Merchant shall report and give written notice of such loss,

damage, theft, tampering or compromise to FINEXUS immediately upon the Merchant having notice thereof.

- 4.3. Notwithstanding anything contained in **Clause 5.1**, if the Merchant upgrades or changes the version or type of its software and/or hardware or any other part of its system relating to Transaction, the Merchant must inform FINEXUS of such changes prior to its implementation and conduct testing with FINEXUS' system as soon as possible. FINEXUS shall not be liable for any loss or damage suffered by any party or for any incompatibility between the Merchant's system and FINEXUS system's due to such changes made by the Merchant.
- 4.4. The Merchant shall accept full responsibility, and FINEXUS shall not be liable in any way, for claims, liabilities, fees, fines, penalties, expenses, costs, losses or damages of whatever nature brought against, suffered or incurred by or caused to FINEXUS or any party whatsoever due to arising out of or in connection with this Agreement 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 Payment Brand), 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 Transaction by the Merchant and/or the Merchant's agents, servants, employees or contractors.
- 4.5. For detailed elaboration of Website Requirements and Website Disclosure, the Merchant is required to refer to the Merchant Guide.

5. ONLINE MARKETPLACE MERCHANT (IF APPLICABLE)

- 5.1. The Online Marketplace Merchant shall be allowed to onboard their Suppliers only onto their own online marketplace platform. However, FINEXUS shall have the right to view business agreements or documents between the Online Marketplace Merchant and the Suppliers to ensure the agreements are aligned with FINEXUS' guidelines.
- 5.2. The Online Marketplace Merchant shall be solely responsible for the entire process of onboarding and supporting of new Suppliers including but not limited to: conducting due diligence, performing settlements, and providing support for their Supplier. FINEXUS shall only advise the Online Marketplace Merchant for any issues pertaining to the Payment Acceptance Solution.
- 5.3. The Online Marketplace Merchant shall be solely responsible on handling and/or resolving any dispute arising from the sales between the Suppliers and their customers and/or complaints between Online Marketplace Merchant and the Suppliers.
- 5.4. FINEXUS shall perform the settlement directly to the Online Marketplace Merchant only. FINEXUS shall not be responsible for payment between the Online Marketplace Merchant and their Suppliers.
- 5.5. FINEXUS shall not be included, liable and responsible in any business agreement/arrangement between the Online Marketplace Merchant and their Suppliers unless explicitly agreed by FINEXUS in writing.
- 5.6. The Online Marketplace Merchant acknowledge that FINEXUS reserved its absolute discretion to suspend or terminate its Service to the Online Marketplace Merchant if FINEXUS has the reason to believe the Transaction involved a potential breach of the Laws and Standards. Any suspension or termination exercise pursuant to this Clause shall not constitute a breach of Agreement by FINEXUS and neither Parties shall have claim against each other.

6. MERCHANT'S DIGITAL CERTIFICATE

- 6.1. In relation to Electronic Commerce Transactions by the Merchant, where FINEXUS has in its discretion issued the Merchant with a Digital Certificate, FINEXUS reserves the right to levy a fee payable at such times as FINEXUS in its sole and absolute discretion determines for the Merchant's use of Digital Certificate.
- 6.2. The Merchant shall be responsible for ensuring that:-

- (a) all material representations made by the Merchant to FINEXUS or Certification Authority for the purpose of obtaining the Digital Certificate shall be true, accurate and complete; and
 - (b) FINEXUS and Certification Authority are to be immediately notified of any changes in the information previously provided for the purpose of obtaining the Digital Certificate or for listing in the Digital Certificate and that such information is updated forthwith.
- 6.3. FINEXUS shall be entitled to invalidate the Digital Certificate at any time without prior notice or liability to the Merchant.

7. SETTLEMENT PAYMENT FOR TRANSACTIONS

- 7.1. The obligation of FINEXUS to make any payment to the Merchant in the manner provided for in this Agreement shall be subject to the following conditions precedent:-

- (a) upon the execution via the Settlement Function; and
- (b) subject to any other conditions as FINEXUS may stipulate from time to time at its sole discretion.

Provided always FINEXUS has not received any notice requiring FINEXUS to withhold payment to the Merchant or has exercised its discretion to withhold payment to the Merchant pursuant to **Clause 8.2** and **Clause 8.3** hereof on account of such Sales Slip/Terminal Receipt and the Merchant shall have observed and performed all the obligations contained in this Agreement.

- 7.2. Where an obligation to make payment to the Merchant pursuant to this Clause is triggered and subject to the Merchant's due compliance of the terms of this Agreement, FINEXUS shall pay the Settlement Amount less any applicable Merchant Discount, Fees, Taxes to the Merchant within two (2) Business Days from the date of Settlement processing via:-

- (a) by way of direct credit to the Merchant's bank account;
- (b) telegraphic transfer to a specified bank account specified by the Merchant which maintained with any bank licensed by BNM in Malaysia; or
- (c) any other payment methods as FINEXUS deems fit and appropriate.

Provided always and notwithstanding any contrary to the provision of this Agreement, FINEXUS reserves the right to withhold payment and accumulate the payment to the Merchant if the total amount of payment to the Merchant (less the Merchant Discount and less the aggregate amounts of rebates and refunds granted to the Account Holder and less all other amounts due and payable to FINEXUS under this Agreement or otherwise) is less than Ringgit Malaysia One Hundred (RM100.00).

- 7.3. All payment made by FINEXUS shall not constitute as confirmation that the Sales Slip or the execution of the Settlement Function are accepted according to the conditions and procedures stated in this Agreement or are free of discrepancies, irregularity or any breach or violation.

- 7.4. The Merchant agrees that FINEXUS shall have the right to claim back from the Merchant any erroneous payments or extra payments made to Merchant and such sum of monies shall be repaid to FINEXUS on demand by FINEXUS exercising its Right of Set-Off (in accordance to **Clause 14**) or by raising a claim on the Merchant or by any other means as FINEXUS deems fit.

Foreign Currency

- 7.5. FINEXUS will notify the Merchant which foreign currencies (if any) are approved for Transactions.
- 7.6. If a Transaction is recorded in an approved foreign currency by FINEXUS, unless FINEXUS otherwise agrees, such Transaction will process in Ringgit Malaysia (using an exchange rate determined by FINEXUS) together with any event relating to the Transaction (such as paying for the original Transaction, making a Chargeback or refund in respect of the Transaction).
- 7.7. Charges imposed onto any exchange rate is determined by FINEXUS and may be effect at any time without prior notice given to the Merchant.

Dispute of Settlement Amount

- 7.8. In respect of any dispute between the Merchant and FINEXUS arising from the aforesaid settlement procedures or in respect of money owing and due to the Merchant, it shall be the obligation of the

Merchant to formally notify FINEXUS in writing within seven (7) calendar days from the date of such dispute or the discovery of such discrepancies or errors. Such failure of the Merchant to do so within the above-mentioned stipulated time, the Merchant shall be deemed to have waived its right to raise such dispute or such discrepancies or errors.

- 7.9. All figures are subject to final audit and checking by FINEXUS. Payment by FINEXUS to the Merchant does not constitute a confirmation that the Card Transactions are accepted free of irregularity or any violation and shall be subject to refusal or chargeback by FINEXUS under **Clause 13**.
- 7.10. Nothing in this Clause shall preclude FINEXUS from correcting any error or discrepancy in such amount paid by giving written notice to the Merchant or claim back from the Merchant. The Merchant further agrees that FINEXUS reserves the right to claim back from the Merchant any other payment due from the Merchant to FINEXUS and may be recovered on demand by any ways or methods stipulated in this Agreement or provided by law.
- 7.11. The Merchant shall not change or terminate its account without giving FINEXUS seven (7) Business Days prior notice and the change shall not take effect without first obtaining written consent for the change from FINEXUS. It is hereby agreed that FINEXUS shall not be liable for any losses or damages suffered by the Merchant arising as a consequence of late presentation of such notice of change or termination.

Non-Payment & Withhold of Payment to Merchant

- 7.12. FINEXUS may in its absolute discretion, decline to pay the settlement amount to the Merchant for any Disputed Transaction completed that falls within any of the events mentioned in the Merchant Guide (Non-Payment for Disputed Transaction).
- 7.13. FINEXUS may also withhold payment for any of the following Transaction until FINEXUS has examined and verified the affected Sales slip or Refund form (if any) issued by the Merchant together with the Merchant's copy of all other documents required by FINEXUS at its sole discretion, evidencing the Transactions:-
- (a) any irregularities in any Transaction;
 - (b) if FINEXUS has reasons to believe that the Transaction is fraudulent or illegal; or
 - (c) for any Transaction for Non-Payment as listed in Merchant Guide.
- 7.14. The Merchant agrees that FINEXUS shall not be liable or obliged to pay, refund or transfer any Card or Wallet Transaction amount to any lost, damaged or stolen POS Terminal/mPOS.
- 7.15. If FINEXUS is prevented by any circumstances beyond its reasonable control from paying the Merchant under this Agreement, FINEXUS shall as soon as reasonably practical, make payment to the Merchant but it shall not be liable for any losses, damages or costs suffered by the Merchant for such delay.

8. RESERVES AND FUNDING

- 8.1. FINEXUS is the only party solely responsible for providing settlement funds directly to the Merchant.
- 8.2. It is FINEXUS' responsibility to hold and control the fund reserves that derived from Merchant Transactions.
- 8.3. The Merchant allows FINEXUS to withhold or reserves any amount in the settlement funds for fraud and chargeback reserves or any other similar purpose allowed under this Agreement.

9. MERCHANT DISCOUNT

- 9.1. Unless otherwise agreed to by FINEXUS in writing, the Merchant shall pay to FINEXUS a Merchant Discount rate on the amount due from FINEXUS to the Merchant in accordance to the rate set out in the Appendix 1 of the Letter of Acceptance.
- 9.2. The relevant Merchant Discount rate and other chargeable sums of money (if any) owing by the Merchant to FINEXUS shall be deducted by FINEXUS accordingly before the Merchant is paid on each occasion in accordance with the provisions herein.

9.3. FINEXUS reserves the right to its absolute to review and vary the Merchant Discount rate from time to time and any changes thereto shall be effective on the date specified by FINEXUS in such notification to the Merchant.

9.4. The review of Merchant Discount rate, if any, would be notified to the Merchant via electronic mail and/or letter and/or fax and/or any other means or methods determined by FINEXUS and still serve as a valid mode of communication to inform the Merchant of such revision.

10. INDEMNITY

10.1. Without prejudice to any liability (if any), the Merchant shall indemnify FINEXUS and/or Payment Brands on a full indemnity basis against any claims, damages, fines, penalties, costs (including legal costs) and expenses which FINEXUS or Payment Brand pays, suffers, incurs as a result of the occurrence of any one of the following:-

- (a) Any claim or dispute (whether in contract or in tort or howsoever arising) being made against FINEXUS by or on behalf of an Account Holder (which for the purpose of this Clause includes a person who has ceased to be an Account Holder) or by any other party in respect of goods sold and/or services delivered by the Merchant to an Account Holder or arising out of any negligence, default or omission of the Merchant in the course of such supply or the negotiations leading thereto or as a result of the Merchant's breach or failure to comply with its obligations contained in this Agreement.
- (b) The Merchant's Personnel's act or omission, including but not limited to the use of the Marks and the FINEXUS Brands, any breach of contract or negligence of these Terms;
- (c) the Merchant's infringement of the intellectual property rights of any third party;
- (d) The Merchant fails to take all the necessary steps to maintain the security and confidentiality of the Payment Acceptance Solution, the Account Holder and FINEXUS;
- (e) Any event relating to a Transaction in a foreign currency;
- (f) Any breach of any provisions of this Agreement by the Merchant;
- (g) Exercise of FINEXUS' rights under this Agreement; and
- (h) Any other matters arising out of or in connection with this Agreement.

10.2. The Merchant indemnifies FINEXUS against any claim or action made or brought by the Merchant's Personnel and any damage, loss, liability, cost, charge, expense, outgoing or payment which FINEXUS pays, suffers, incurs or is liable for in connection with any such claim or action.

10.3. If any losses or liabilities incurred by FINEXUS under the Agreement in a foreign currency amount, FINEXUS may convert that amount into RM at such rate of exchange as determined by FINEXUS at its absolute discretion.

11. EXCLUSION OF LIABILITY

11.1. FINEXUS shall not be liable in any way to the Merchant for any claims, liabilities, expenses, costs (including legal costs), losses or damages of whatever nature brought against, suffered or incurred by or caused to the Merchant due to or arising out of or in connection with this Agreement, regardless of whether a claim is based on contract, tort or otherwise or whether FINEXUS has been advised of the possibility of such claim, liability, loss or damage.

11.2. In addition to the provision herein, FINEXUS and/or Payment Brands shall not be responsible or held liable in any way whatsoever for any loss, damage, inconvenience or embarrassment suffered by the Merchant by reason of any delay in the performance or non-performance of any of the obligations of FINEXUS herein due to any causes beyond the reasonable control of FINEXUS including but not limited to causes such as:-

- (a) the suspension or withdrawal by Bank Negara Malaysia, the Payment Brands or any other relevant authority of the license required for carrying on any part of FINEXUS' business, alterations to conditions of such license, or the imposition of new conditions on such license, force majeure, industrial disputes, strikes, power failure, failure or malfunction contributed to the computer systems and application employed by FINEXUS or circumstances beyond the

reasonable control of FINEXUS, its employees, agents or sub-contractors however caused, computer, electronic or electrical system failure, malfunction or breakdown or the interruption, non-supply of electrical or power for any length of time.

- (b) Special, direct, indirect or consequential loss or damage;
 - (c) Any erroneous transfer of funds by the Merchant, including any transfer of funds to the wrong DuitNow ID, wrong Recipient, wrong amount, wrong date or wrong third party;
 - (d) The suspension, termination or discontinuance of the DuitNow Transfer services;
 - (e) Economic loss including loss of profit, loss of revenue, loss of goodwill:
 - (i) arising out of or connected in any way with the Agreement;
 - (ii) arising from the supply of use of the Services or any FINEXUS property or from any act or omission (including negligence) of FINEXUS; or
 - (iii) by reason of FINEXUS' exercise of its duties under the laws including without limitation, FINEXUS' obligations and duties under AMLA.
- 11.3. FINEXUS shall have the absolute discretion subject to prior written notice being given to the Merchant to use such independent agents, contractors or correspondents to carry out or procure any of the matters under or contemplated in this Agreement and FINEXUS shall not be liable to the Merchant for any act, omission, neglect or wilful default on the part of such independent agents, contractors and/or correspondents.
- 11.4. All representation contained in any advertisement or printed matter relating to the goods and/or services offered by the Merchant shall be deemed to have been made by the Merchant and FINEXUS shall not in any way be liable for any claim whatsoever arising therefrom.
- 11.5. FINEXUS shall also not be responsible to the Account Holder in any way or manner for any goods and/or services supplied by the Merchant, which shall in this instance be the sole responsibility of the Merchant. The Merchant shall comply with all legal requirements imposed on it in regard to this Agreement. Any legitimate disputes between the Merchant and the Account Holder shall obligate the Merchant to resolve such disputes amicably and promptly with the Account Holder.
- 11.6. FINEXUS shall not be liable against and Merchant shall not claim for any losses provided that:
- (a) Merchant payment application is either be revoked or no longer made available in the third party application platform; or
 - (b) Merchant payment application is retired due to compatibility issue, security concern issue, out of date system support, product sunset life cycle or change of business direction; and
 - (c) FINEXUS has exercise reasonable effort to give prior notice in notifying the Merchant.
- 11.7. Subject to the provisions herein, FINEXUS' sole and entire liability to the Merchant in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement or howsoever shall not exceed the amount of the transaction which gave rise to the claim or the direct damages sustained, whichever is lower.
- 11.8. Each of the provisions under this Clause shall be construed as a separate limitation applying and surviving even if for any reason one or the other provisions is inapplicable or held unreasonable in any circumstances and shall remain in force notwithstanding the termination of this Agreement.
- 12. RIGHT TO RAISE DEBIT ON DISPUTE, FRAUD, ERRONEOUS TRANSACTION AND CHARGEBACK AGAINST THE MERCHANT**
- 12.1. Notwithstanding any provisions of this Agreement and without derogation of any of FINEXUS' rights as provided herein, the Merchant agrees that FINEXUS may without prior notice and at any time, to refuse or reject any payment to the Merchant or reject any Sales Slip, Terminal Receipt or Transaction presented by the Merchant for payment.
- 12.2. Notwithstanding anything contained in **Clause 13.1** above, if payment has been paid by FINEXUS to the Merchant via the Settlement Function, FINEXUS shall raise a debit against the Merchant:-

- (a) for settlement of the full Transaction amount and of any liability incurred to FINEXUS by the Merchant; and/or
 - (b) for any claim demands made against FINEXUS by the Account Holder or any other persons arising and as provided under any provision of this Agreement, rules and regulations issued by Payment Brand or by operation of written laws; and
 - (c) for any other claims arise due to events mentioned under the Merchant Guide.
- 12.3. The Merchant shall reimburse FINEXUS for any payment made in relation to any Dispute, Fraud or Chargeback Claim arising out of any breach or violation by the Merchant according to the terms and conditions of this Agreement, the Merchant Guide or the laws.
- 12.4. The Merchant acknowledges and gives consent to FINEXUS to withhold any amounts payable to the Merchant for any Dispute, Fraud or Chargeback reserves or similar purposes allowed under the laws or this Agreement / Merchant Guide.
- 12.5. To enable FINEXUS to cause settlement by the Merchant of any liabilities or claims or monies which FINEXUS may incur according to **Clause 11 & Clause 13** (indemnity & right to raise chargeback), the Merchant hereby agrees, give consent and empower FINEXUS may without giving any prior notice to the Merchant to effect a debit on any account(s) of the Merchant which is maintained by the Merchant with FINEXUS. Alternatively, FINEXUS may also without giving any prior notice to the Merchant recover from the Merchant by way of Set-Off (under **Clause 14**) against any sum which would otherwise be due to the Merchant or raised a claim to the Merchant for the Merchant's immediate settlement thereafter.
- 12.6. A computer-generated statement or certificate signed by a Manager or Officer of FINEXUS as to the monies for the time being due and owing to FINEXUS, except for manifest errors, it shall be conclusive evidence of indebtedness.
- 12.7. It is also hereby agreed that such statement or certificate shall be deemed to have been received within five (5) Business Days for Merchant based in West Malaysia or within seven (7) Business Days for Merchant based in East Malaysia from the date of despatch of such statement/certificate.
- 12.8. Any disputes by the Merchant to the correctness of the statement / certificate shall be notified in writing by the Merchant to FINEXUS within seven (7) calendar days from the date of receipt of such statement/certificate.
- 12.9. If the Merchant for any reason whatsoever does not within the aforesaid time period raised dispute on the correctness of the statement/certificate. The Merchant shall then be deemed to have accepted the indebtedness therein as the correct, final and conclusive evidence of the indebtedness and the statement/certificate shall be considered as conclusive against and binding on the Merchant. The Merchant shall thereafter be precluded from making any claims against FINEXUS by alleging that the statement/certificate contains any error, discrepancy or inaccuracy.
- 12.10. Without prejudice to other FINEXUS' rights and remedies, if the Merchant does not settle in full for payment due to FINEXUS under this Agreement by the due date as required under this Agreement, FINEXUS shall be entitled to charge daily interest on such overdue from the due date until the date of payment in full or until the date of judgment with an interest rate of two per centum (2%) per month. FINEXUS may by written notice given to Merchant to vary the amount and/or rate of any interest or charge payable by the Merchant under this Agreement and such variation shall take effect on the date set forth in the notice.
- 12.11. FINEXUS shall, on an ongoing basis, closely monitor the Dispute, Fraud and Chargeback performance by the Merchant according to the Standards including but not limited to the Dispute Monitoring Programme, Fraud Monitoring Programme and Excessive Chargeback Programme.
- 12.12. If either the Merchant's Disputes or Fraud ratio to the total sales Transaction count is higher than one per centum (1%) on a monthly basis or is deemed generate an excessive level involving disputes or fraud by the Payment Brands Monitoring Program or FINEXUS, the Merchant shall be subject to termination by FINEXUS in accordance with **Clause 36 (Suspension and Termination)**.

DuitNow Transfer Services

- 12.13. If the Merchant has made an erroneous DuitNow Transfer transaction, the Merchant may request for recovery of the funds within ten (10) Business Days from the date of the erroneous DuitNow Transfer transaction was made and FINEXUS will work with the affected Recipient's bank/e-Money issuer to return the said funds to the Merchant within seven (7) Business Days provided the following conditions are met:
- (a) The funds were wrongly credited into the affected Recipient's account; and
 - (b) If funds have been wrongly credited, whether the balances in the affected Recipient's account is sufficient to cover the funds' recovery amount;
 - (i) If the balances are sufficient to cover the recovery amount, the erroneously credited funds may be recoverable; and
 - (ii) If the balances are not sufficient to cover the recovery amount, the erroneously credited funds may not be fully recoverable and the Recipient's bank/e-Money issuer may partially remit the recoverable fund back to the Merchant.
- 12.14. Request for recovery of funds is between eleven (11) Business Days and seven (7) months from the date of the erroneous DuitNow Transfer transaction was made:
- (a) The affected Crediting Participant is fully satisfied that funds were erroneously credited to the affected Recipient;
 - (b) Deliver notifications to the affected Recipients in writing regarding the funds recovery requests whereby the erroneously credited funds would be recovered through debiting the affected Recipients' accounts within ten (10) Business Days of the notifications unless the affected Recipient provides reasonable evidences that the affected Recipient is entitled to the funds in question . After fifteen (15) Business Days, if the affected Recipients fail to establish their entitlement to the funds, the affected Recipient's bank/e-Money issuer shall debit the affected Recipients' account and remit the funds back to the Merchant.
- 12.15. Request to recover funds after seven (7) months from the date of the erroneous DuitNow Transfer transaction:
- (a) The affected Recipient's bank/e-Money issuer is fully satisfied that the funds were erroneously credited to the affected Recipient;
 - (b) The affected Recipient's bank/e-Money issuer shall obtain from the affected Recipient the decision on whether to grant consent within ten (10) BUSINESS Days; and
 - (c) Once consent is obtained, the affected Recipient's bank/e-Money issuer shall debit the affected Recipient's account and remit the funds back to the Merchant within one (1) Business Day.
- 12.16. For DuitNow Transfer transaction which were not originated and/or authorised by the Merchant or which are fraudulent, FINEXUS will, upon receiving a report from the Merchant alleging that an unauthorised or fraudulent DuitNow Transfer transaction was made, remit the fund back to the Merchant provided the following conditions are met:
- (a) FINEXUS shall conduct an investigation and determine, within fourteen (14) calendar days, if an unauthorised or fraudulent payment did occur; and
 - (b) If FINEXUS is satisfied that the unauthorised or fraudulent payment instruction did occur and was not caused by the Merchant, FINEXUS shall initiate a reversal process whereby all debit posted to the Merchant's account arising from the unauthorised or fraudulent payment instruction would be reversed.
- 13. RIGHT TO SET OFF**
- 13.1. Any fees, charges or other damages, losses, and expenses which are recoverable by FINEXUS from the Merchant, may be deducted from any money which would otherwise be due to the Merchant under the Agreement either by FINEXUS earmarking or deducting the Merchant's account maintained with FINEXUS. If the money is insufficient for that purpose, the balance remaining unpaid shall be a debt due from the Merchant to FINEXUS and may be recovered from the Merchant by FINEXUS in any court of competent jurisdiction.

- 13.2. Without derogation to **Clause 14.1** above, where the Merchant has incurred any liability to FINEXUS whether under this Agreement or by operation of law and the Merchant has not settled such liability to the satisfaction of FINEXUS, FINEXUS shall be at liberty to recover from the Merchant by way of set off the amount of such liability against any sum which would otherwise be due to the Merchant.
- 13.3. In addition, the Merchant agrees that FINEXUS may, at its sole and absolute discretion and at any time with or without notice immediately combine and consolidate all or any account of the Merchant (whether is current deposit or any other nature whatsoever whether subject to notice or not and in whatever currency) wheresoever situate to set off or transfer any monies standing to the credit of the Merchant's account with FINEXUS for the purpose of chargeback or towards the deduction or discharge of any sum of monies due to the Merchant under this Agreement. Where such combination, consolidation, set off or transfer requires or involves the conversion of one or more currency into another such conversation shall be calculated at FINEXUS' prevailing exchange rate which shall be solely determined by FINEXUS.

14. NON-RESPONSIBILITY OF FINEXUS

- 14.1. FINEXUS shall not be responsible to held liable in any way whatsoever to the Merchant for any loss, damage, inconvenience or embarrassment suffered by the Merchant by reason of any delay in the performance or non-performance of any of the obligations of FINEXUS herein to any causes beyond the reasonable control of FINEXUS including but not limited to causes such as:-
- (a) the suspension or withdrawal by Bank Negara Malaysia, the Payment Brand or any relevant authority of the licence required for carrying on any part of FINEXUS' business, alterations to conditions of such licence, or the imposition of new conditions on such licence;
 - (b) Force Majeure events;
 - (c) failure or malfunction of any POS Payment Acceptance Solution or PIN pad error contributed to the computer systems and applications employed by FINEXUS; or
 - (d) other circumstances that are beyond the reasonable control of FINEXUS, its employees, agents or sub-contractors, computer, electronic or electrical system failure, malfunction or breakdown or the interruption, non-supply of electricity or power for any length of time.
- 14.2. Notwithstanding any other provisions contained in the Agreement, FINEXUS shall not be responsible to the Account Holder in any way or manner whatsoever for any goods and/or services supplied by the Merchant, which shall in this instance be the sole responsibility of the Merchant.

15. TAX, COSTS AND EXPENSES

- 15.1. The fees and charges payable by the Merchant to FINEXUS under this Agreement are exclusive of taxes, fees or other government levies or charges which may be imposed on or in respect of any goods or services provided
- 15.2. The Merchant agrees to bear and pay any applicable tax, duties, fees or charges payable in respect of the execution, delivery, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise of the Agreement.
- 15.3. The Merchant also agrees to bear and pay any applicable tax, duties, fees or charges imposed on Transaction amount paid or payable to Merchant under the Agreement.
- 15.4. The Merchant must pay any fine, penalty or other cost imposed on the Merchant in respect of a failure to pay any tax payable to the government authority.
- 15.5. Failure by the Merchant to observe the provision in this Clause entitles FINEXUS to exercise the right to claim back from the Merchant any payments or extra payments made to the Merchant.

16. STATEMENT OF ACCOUNT

- 16.1. FINEXUS shall, based on the data captured in FINEXUS' computer system as and when the Merchant executes the Settlement Function, whichever the case maybe, during the preceding calendar month, or by the first week of each ensuring calendar month or such other period interval as determined by FINEXUS or as and when payments are made to the Merchant for any Card Transaction and/or Contactless Transaction, send a statement of account setting out the amounts credited or debited and specify the relevant Merchant Discount rate or other sums owing by the Merchants to FINEXUS.

16.2. Such statement of account issued by FINEXUS shall be deemed or treated as an invoice for the Merchant Discount rate and other sums (if any) owed by the Merchant to FINEXUS.

16.3. Notwithstanding the existence of such Sales Slip or Terminal Receipt, such statement of account shall be binding on the Merchant and treated as final and conclusive evidence of the respective Card Transaction performed.

17. RETENTION OF RECORDS

17.1. The Merchant shall furnish to FINEXUS forthwith upon request from time to time, the original copy, softcopy and/or photocopies or printouts (as required by FINEXUS) of the Payment Instructions, Sales Slip, statements, bills or invoices, or other records (hereinafter referred to as “**records**”) of the Merchant pertaining to all Card Transaction.

17.2. The Merchant shall retain all such records for a period of at least twenty-four (24) months from the relevant Transaction Date or such other time frame as may be specified by FINEXUS and the Payment Brand.

17.3. The Merchant is required to provide the records for FINEXUS’ inspection within seven (7) Business Days from the date of FINEXUS’ request.

17.4. FINEXUS shall be allowed to enter any of the Merchant’s premises with reasonable prior written notice, to do inspection of the Merchant’s records relating to the Payment Transaction or which relate to the purpose of this Agreement and/or with a view to ascertain whether the Merchant or its officers, employees and/or agents are involved in any fraudulent, unlawful or wrongful activities which may adversely affect FINEXUS’ rights under the Agreement.

18. ADVERTISING AND PROMOTION MATERIALS

18.1. The Merchant shall obtain FINEXUS prior written approval prior to publication of any advertising or promotional material containing the service marks, colours or design of FINEXUS Card programme or Payment Brands Programme.

18.2. The Merchant shall comply and follow the directions or guidelines issued under the Merchant guide in relation to all advertising and promotion activities conducted by the Merchant.

18.3. Under no circumstances shall the use of FINEXUS Brand imply that FINEXUS endorses, sponsors, certifies, or in any way guarantees the Goods and/or Services.

18.4. The Merchant shall provide reasonable assistance to FINEXUS to participate in any promotional activities organised by any other vendors or suppliers featured on the Merchant’s website (including social media).

19. INTELLECTUAL PROPERTY RIGHTS

FINEXUS’ consent required

19.1. The Merchant shall not use any FINEXUS Brand except as expressly permitted by the Merchant Guide or unless otherwise by FINEXUS in writing.

Restrictions on use

19.2. The Merchant shall comply with:-

- (a) The Brand Guidelines and Merchant Guide; and
- (b) Any other instructions of FINEXUS relating to the use of FINEXUS Brands.

19.3. The Merchant shall not use any of the FINEXUS Brands as part of any corporate, trade or business name.

19.4. The Merchant shall not use any trade mark or name which is deceptively similar to the FINEXUS Brands.

19.5. FINEXUS may, if required by FINEXUS, require the Merchant to immediately cease use of any FINEXUS Brand.

Ownership and protection of FINEXUS Brands and Payment Brands

19.6. The Merchant acknowledges and agrees that:-

- (a) the Marks (including but not limited to logo, logotype, logomark) shall be the property belonging to the relevant Payment Brands and FINEXUS respectively;
- (b) nothing in the Agreement grants any interest or right in the Marks to the Merchant; and
- (c) any goodwill arising out of the use of the Marks by the Merchant vests in the relevant Payment Brands.

19.7. The Merchant shall not in any way:-

- (a) take any steps to register any rights relating to the Marks or any trade mark or name which is deceptively similar to any of the Marks; or
- (b) do anything, which would in any way, infringe, call in question or lessen the validity of any Marks or the goodwill attaching to any Marks.

19.8. Rectification of Breach

19.9. If the Merchant fails to comply with this Clause, FINEXUS, Payment Brands and their representatives may do all things necessary to rectify the breach, including but not limited to, by entering any premises occupied by the Merchant and removing or modifying signs or other materials that do not meet the requirements of this Clause, seeking injunctive relief from any court of competent jurisdiction and the Merchant shall indemnify FINEXUS against any claim, action, damage, loss, liability, cost, expense, outgoing or payment which FINEXUS or any of their representatives incur, suffer or is liable for in respect of FINEXUS' exercise of its rights under this Clause.

20. FINEXUS' PROPERTY (IF APPLICABLE)

20.1. Title to any FINEXUS signs, equipment, fittings, furniture or other property provided for use by the Merchant in connection with the Agreement remains with FINEXUS.

20.2. Without prejudice to any other rights of FINEXUS:

- (a) the Merchant shall not sell or part with possession of FINEXUS Property;
- (b) the Merchant shall keep FINEXUS Property:
 - (i) free of any encumbrance;
 - (ii) separate from goods and marked so as to clearly indicate that the FINEXUS Property belongs to FINEXUS; and
 - (iii) clean and in good condition.
- (c) the Merchant possess FINEXUS Property as bailee or sub-bailee only, and must account to FINEXUS as fiduciary in relation to the FINEXUS Property.

20.3. FINEXUS may require the Merchant to insure FINEXUS Property at the Merchant's expense against loss or damage from the time that FINEXUS Property leaves FINEXUS's premises for delivery to the Merchant until the FINEXUS Property is returned to FINEXUS.

20.4. The Merchant shall bear the cost of repairs and replacement of spare parts of FINEXUS Property arising from any negligent damage, unauthorised use, abuse or misuse of the FINEXUS Property by the Merchant.

Payment Acceptance Solution Supplied to Merchant

20.5. Each and every type of Payment Acceptance Solution [such as Electronic Device Capturing (EDC) Terminal] supplied to the Merchant or any of the Merchant's offices and/or outlets and/or locations and/or establishments wherever situate by FINEXUS under this Agreement including the intellectual property rights to any software, hardware, system and the architecture, shall remain the property of FINEXUS or such other person as may be specified by FINEXUS at all times.

20.6. The Merchant agrees and undertakes to pay such Terminal Fee and shall bear all related costs, expenses, fees (including installation fees) and service tax that may be charged by FINEXUS or such vendor appointed or nominated by FINEXUS for the setting up and activation use of the Payment Acceptance Solution.

- 20.7. In addition to **Clause 21.6**, the Merchant also agrees to be responsible for all such installation fees for any telecommunication facilities and/or any other requirements (if applicable), including but limited to the costs and charges for providing the facilities, electrical power points and telephone lines and any other operating charges exclusively for the installation and operation of the Payment Acceptance Solution.
- 20.8. The Merchant agrees to take all necessary precautions to prevent and shall immediately notify FINEXUS of any theft, loss, negligent damage, unauthorised use, abuse or misuse of the Payment Acceptance Solution.
- 20.9. The Merchant shall allow FINEXUS' authorised personnel or agents to enter their premises to install, inspect, repair, service or remove the Payment Acceptance Solution at any reasonable time. Upon completion of installation, repair or service of the Payment Acceptance Solution, the Merchant must acknowledge acceptance of the installation, repair or service in writing. The Merchant hereby agrees to cooperate in all inspection and repairs. FINEXUS shall not be liable for any loss and/or damage or delay caused to the Merchant due to the delay in repairing the Payment Acceptance Solution.
- 20.10. The Merchant shall notify FINEXUS of the Payment Acceptance Solution failure within one (1) Business Day after becoming aware of the Payment Acceptance Solution failure. FINEXUS shall not be liable for any loss or damage suffered by the Merchant as a result of the failure.
- 20.11. The Merchant shall not move or transfer the Payment Acceptance Solution to a different office and/or outlet and/or location and/or establishment other than that stated in Merchant Application Form without first obtaining FINEXUS' prior written consent.
- 20.12. The Payment Acceptance Solution is to be for the exclusive use of the Merchant and the Merchant shall not allow any unauthorised person(s) to have access to the Payment Acceptance Solution or to benefit from the Payment Acceptance Solution at any time.
- 20.13. The Merchant is under a duty to prevent tampering of the Payment Acceptance Solution, which includes interference, manipulation, illegal modification or reverse engineering to the Payment Acceptance Solution and/or its related software programme, or remove, conceal or alter any markings attached to the Payment Acceptance Solution, which indicate the ownership of the Payment Acceptance Solution. The Merchant agrees that it shall notify FINEXUS and/or its agent immediately and liable for any damage, loss and costs arising as a consequence of such action.
- 20.14. The Merchant must not install any unauthorised, third party software or module that could hinder the normal usage or in any way affect the performance of the Payment Acceptance Solution.
- 20.15. The Merchant must not sell, assign or sub-lease the Payment Acceptance Solution or allow third party to acquire rights in or over the Payment Acceptance Solution by way of encumbrance or otherwise without prior consent from FINEXUS. The Merchant agrees that FINEXUS shall impose an immediate penalty payable to FINEXUS and/or terminate this Agreement as a consequence of such actions.
- 20.16. The Merchant must only operate the Payment Acceptance Solution to process Transaction in accordance with this Agreement and FINEXUS' directives, guidelines and/or instructions as set out or established by FINEXUS from time to time.
- 20.17. FINEXUS shall not be liable for any negligence or wilful conduct on the part of the Merchant in operating the Payment Acceptance Solution or for non-compliance of whatever terms set out in this Agreement. In addition, FINEXUS and/or its authorised vendor, its employees, servants and agents shall have no obligation or liability of any kind (whether direct or indirect) to or through the Merchant with respect to its access or use of the result obtained from the equipment or any part of them provided by or through FINEXUS and/or its authorised vendor and nothing in this Clause shall exclude, restrict or modify the rights of FINEXUS herein and render the conditions of this Clause void.
- 20.18. FINEXUS and/or its authorised vendor shall not be liable for any incidental or consequential damage arising from the use of the Payment Acceptance Solution. FINEXUS and/or its authorised vendor shall not be liable to the Merchant for any wrong transmission or divulging of information of the Merchant's customers. FINEXUS and/or its authorised vendor shall not be liable to the Merchant for any loss or damage to the Merchant or any person wither directly or indirectly arising out of the performance of this Agreement.

- 20.19. The Merchant hereby agrees to indemnify and keep FINEXUS and/or its authorised vendor indemnified against all losses (including but not limited to the costs of replacement of each equipment lost or stolen), claim and damages arising from a breach of the terms and conditions herein by the Merchant and/or its employees, servants or agents.
- 20.20. Mobile Point of Sales (mPOS) & Electronic Device Capturing (EDC) Terminal
- a) In order to use the mPOS or EDC terminal, the Merchant must be registered with and by FINEXUS to use the Services and shall comply with the registration and activation procedures prescribed by FINEXUS.
 - b) The mPOS terminal will only be available with the smart card reader model assigned by FINEXUS and is to be used for mobile devices and data connections which meet the required specifications and configurations as may be specified by FINEXUS from time to time.
 - c) The Merchant agrees to procure and maintain a mobile phone and data connection which meet these requirements at the Merchant's own expenses. The mPOS service also requires a mobile device with location services (GPRS) enabled. Failure to meet the specification will result in limitation to the access, functions and operations of the mPOS terminal.
 - d) The Merchant's account permits the Merchant to accept Payment Instructions on Transactions, and to account for, settle or void those transactions on registered mobile devices with FINEXUS. Any devices modified contrary to the manufacturer's software or hardware guidelines, including but not limited to those with disabled hardware or software controls, sometimes referred to as "jailbroken" are not compatible mobile devices. The use of a modified device to use the Services is expressly prohibited, constitutes a violation of the terms of this Agreement and is a ground for termination of the Merchant's account. FINEXUS does not warrant that the Services will be compatible with the Merchant's mobile device or carrier.
 - e) User guidance on the operation of the mPOS & EDC terminal will be made available to the Merchant and the Merchant must adhere to the user guidance whenever the Merchant accesses or operates the mPOS & EDC terminal.
 - f) Both mPOS & EDC terminal are intended to be available 7 days a week, 24 hours a day with one year warranty of system malfunction and hardware defection, but it does not include damage due to negligence. FINEXUS shall be entitled to any of FINEXUS' sole discretion and without prior notice to temporarily suspend the operation of the mPOS & EDC terminal for updating, maintenance, upgrading purposes and/or any other purpose whatsoever that FINEXUS deems fit and necessary, and in such event FINEXUS shall not be liable for any loss, liability or damage which may be incurred as a result. FINEXUS may also in its sole and absolute discretion, without notice and from time to time, add to, alter, modify, suspend, remove or vary any part of all of the mPOS & EDC terminal or any function or feature, without giving any reason and without incurring and liability.
 - g) The Merchant agrees that all Payment Instructions transmitted by the Merchant's mobile device, EDC terminal or otherwise issued by the Merchant, though in electronic form:-
 - i. are written documents and the Merchant agreed not to dispute or challenge the validity or enforceability of any Payment Instructions on the grounds that it is not a written document and the Merchant hereby waives any such right that the Merchant may have at law;
 - ii. are original documents and the Merchant agreed not to challenge the admissibility of any Payment Instructions on the grounds that it is made in electronic form; and
 - iii. The Merchant acknowledges and agrees that FINEXUS' records and any records of the Merchant's Payment Instructions made or performed, processed or effected through the

mPOS or EDC terminal by the Merchant or any person purporting to be the Merchant, or any record of transactions relating to the mPOS or EDC terminal and any record of any transactions maintained or by any relevant person authorised by FINEXUS relating to or connected with the mPOS or EDC terminal, whether stored in electronic or printed form, shall be binding and conclusive on the Merchant for all purposes whatsoever and shall be conclusive evidence of the Payment Instructions and Transaction and the Merchant's liability to FINEXUS. The Merchant hereby acknowledges and agrees that all such records are admissible as evidence and that the Merchant shall not challenge or dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records merely on the basis that such records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system, and hereby waive any of the Merchant's rights (if any) to so object.

- h) Security codes (PIN, User Login ID) will be issued by FINEXUS for access to the mPOS & EDC terminal. The Merchant must secure the mPOS & EDC software and security codes installed in the mobile device or terminal with a password which must be kept strictly confidential. In the event the Merchant loses or replaces or parts with the possession or control of the card reader or EDC terminal or mobile device or if the Merchant has reason to believe that someone has accessed or has compromised the Merchant's mPOS or EDC account(s), the Merchant must immediately notify and instruct FINEXUS and begin the application for a replacement card reader.
- i) Until and unless the Merchant notifies FINEXUS in accordance with **Clause 21.20(h)**, all Payment Instructions received by FINEXUS which are associated with the Merchant's mPOS or EDC account shall be deemed to have come from the Merchant and FINEXUS shall be entitled to reply on such Payment Instructions, regardless of whether they actually originated from the Merchant or not. The Merchant acknowledges that FINEXUS may not be able to reverse or annul any Transaction executed based on the Payment Instructions received prior to receipt of the Merchant's notice to FINEXUS.
- j) Upon completion of the prescribed registration and activation procedures of mPOS terminal, the Merchant will be permitted to download the mPOS software for installation into the Merchant's mobile device and be granted the non-exclusive, non-transferable right to use the software, but based upon and subject always to the Merchant's agreement to the following conditions:
 - i. The Merchant will not use the software for any purpose other than to access the Merchant's own account(s) via the mPOS terminal on the Merchant's own mobile device;
 - ii. The Merchant will not download or install the software into a mobile device which is not owned by the Merchant or which the Merchant does not have exclusive control over the device;
 - iii. The Merchant will not permit or enable any such person to access the software, or leave the mobile device and card reader unattended in such a manner as to enable a person to access the software;
 - iv. The Merchant will not reproduce, alter, modify, remove or reverse engineer the software or permit another person to do so;
 - v. The Merchant will not permit any person to access the Merchant's security codes or activation codes or otherwise enable him to download a copy of the software; and
 - vi. The software is made available to the Merchant strictly on and 'as is' basis and no warranty is made in relation to the software, including any warranty in relation to its merchantability, fitness for purpose, satisfactory quality or compliance with description and all warranties which may be implied by law or custom are hereby excluded.

- k) Upon completion of the prescribed registration and activation procedures of EDC terminal, the Merchant will be permitted to use the software pre-installed in the EDC terminal and be granted the non-exclusive, non-transferable right to use the software, but based upon and subject always to the Merchant's agreement to the following conditions:
- vii. The Merchant will not use the software for any purpose other than to access the Merchant's own account(s) via the EDC terminal;
 - viii. The Merchant will not download or install the software into the EDC terminal which is not owned by the Merchant or which the Merchant does not have exclusive control over the device;
 - ix. The Merchant will not permit or enable any such person to access the software, or leave the EDC terminal unattended in such a manner as to enable a person to access the software;
 - x. The Merchant will not reproduce, alter, modify, remove or reverse engineer the software or permit another person to do so;
 - xi. The Merchant will not permit any person to access the Merchant's security codes or activation codes or otherwise enable him to download a copy of the software; and
 - xii. The software is made available to the Merchant strictly on and 'as is' basis and no warranty is made in relation to the software, including any warranty in relation to its merchantability, fitness for purpose, satisfactory quality or compliance with description and all warranties which may be implied by law or custom are hereby excluded.
- l) FINEXUS has implemented necessary measures designed to secure the Merchant's personal information and that of the Merchant's Account Holder from accidental loss and from unauthorised access, alteration, or disclosure. The Merchant agrees that FINEXUS cannot guarantee that unauthorised third parties will be able to defeat those measures or use the Merchant's personal information for improper purposes. The Merchant acknowledges that its conducts at providing the Merchant's personal information and that of its Account Holder are done as at the Merchant's own risk.

21. ACCESS TO FINEXUS SYSTEM

FINEXUS may grant access

- 21.1. FINEXUS will, to the extent that is necessary for the Merchant to fulfil the Merchant's obligations under the Agreement, grant access to the applicable FINEXUS system.

Compliance with access guidelines

- 21.2. The Merchant agree to comply and follow all guidelines issued and all directions issued by FINEXUS from time to time in relation to access and use of FINEXUS system, including interface protocols security procedures.

Required equipment, software and services

- 21.3. The Merchant shall obtain and maintain all equipment, software and services necessary to access and use FINEXUS system, as specified by FINEXUS from time to time.
- 21.4. If, for any reason, the Merchant is unable to access or use FINEXUS system, the Merchant shall use other means approved by FINEXUS to perform the relevant business process.

Passwords

- 21.5. If FINEXUS issues login ID(s) and password(s) for the Merchant to use gain access to FINEXUS system, the Merchant shall:-
- (a) ensure that each of the login ID and password is only accessible by the Merchant's authorised Personnel; and

- (b) notify FINEXUS immediately if the Merchant becomes aware that its login ID and/or password have become or may become known by unauthorised person.

FINEXUS may withdraw Merchant's right to access

- 21.6. FINEXUS may, at its absolute discretion, require the Merchant to cease its access to FINEXUS System immediately.

22. PCI DSS/PA DSS COMPLIANCE

- 22.1. The Merchant shall abide by and cause any of its associated service providers to abide by the PCI DSS and/or PA DSS guidelines issued by PCI DSS council or Payment Brand Operator. The Merchant must ensure and cause any of its associated service providers to ensure that at all times, there is non-storage of Prohibited Data and to be PCI DSS and/or PA DSS compliant at all times.
- 22.2. If the Merchant intends to appoint or employ any service provider involving in storage and handling of data, the Merchant shall prior to the appointment, must first inform and register the service provider with FINEXUS by furnishing certified reports to demonstrate to FINEXUS' satisfaction that the service provider is compliant with PCI DSS standards and/or PA DSS guidelines.
- 22.3. The Merchant and any of its associated service providers who have access to Account Holder and Transaction data are mandatory to provide its PCI DSS compliance report to FINEXUS. The Merchant and its associated service providers also require to ensure compliance on the latest and all subsequent updates determined by PCI DSS. FINEXUS hereby reserves the right to suspend or terminate part or all of its services to the Merchant if FINEXUS is of the opinion that the Merchant and/or its associated service providers failed to comply with PCI DSS compliance requirements. Upon satisfaction of the credibility and qualification of such service provider, FINEXUS will register the Merchant's service provider with the respective Payment Brands.
- 22.4. Any compliance exercise (including but not limited to self-assessment questionnaires, onsite reviews by qualified security assessor, or network scans by approved scanning vendor, and compliance status reports) as and when deemed necessary for the Merchant and any of its associated service providers by the PCI DSS council or Payment Brands will be undertaken accordingly and fully paid by the Merchant.
- 22.5. The Merchant shall be fully liable and indemnify FINEXUS on demand against any and all legal action, losses, fines, disputes, costs (including legal costs), fees, penalties, damages and expenses resulting from the non-compliance of this Clause. The Merchant shall fully bear all financial and legal charges thereto.
- 22.6. The Merchant agrees that it is the Merchant's obligation to ensure compliance of this Clause by any of its associated service providers and the Merchant shall be responsible for any breach thereof by its associated service providers and undertake to indemnify FINEXUS for any legal action, financial and legal charges resulting thereto.
- 22.7. The Merchant may only allow to store the following information:
- (a) Account Holder's name; and
 - (b) Card expiry date
- 22.8. If the Merchant decides to store the Card number, it is the Merchant's obligation to ensure security and protection by using encryption or other methodologies that precludes unauthorised individuals from deciphering the Card number.
- 22.9. Under no circumstances may the Merchant and/or any of its associated service providers store the Prohibited Data as defined under **Clause 1**.
- 22.10. The Merchant shall ensure that its' business, and any service provider who participates in the processing, transmission or storage of card payment details on behalf of the Merchant's business, are fully complies with the PCI DSS and complete the validation requirements compatible with their level. Upon request, the Merchant must disclose details of any service providers who facilitate transactions on the Merchant's behalf to FINEXUS.
- 22.11. Upon suspected or known compromise on the Merchant system, or that any service provider who has access to, processes, transmits or stores card payment details, the Merchant must immediately:-

- (a) identify the cause of the event and immediately notify FINEXUS;
 - (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 data compromise response procedures;
 - (f) maintain a rigorous audit trail of all actions taken to isolate and rectify the event; and
 - (g) commence calculating the gross potential exposure that may arise from such event and notify FINEXUS in writing of the results of such calculations as soon as possible, but within a twenty-four (24) hour period.
- 22.12. The Merchant must ensure that any software or hardware that the Merchant purchases, creates or otherwise utilises for the purpose of selling goods and/or services online or via Internet does not retain its original password before employing it for the acceptance of Cards. The Merchant must also ensure that all passwords are changed on a regular basis.
- 22.13. The Merchant will indemnify FINEXUS on demand against all losses, expenses and damages that FINEXUS may suffer (including but not limited to):
- (a) as a result of the Merchant's failure to observe the Merchant's obligations under this Agreement including any procedures as may be notified from time to time;
 - (b) as a result of the Payment Brands or other authorities imposing fees, fines or penalties on FINEXUS as a direct or indirect result of the Merchant's failure to observe its obligations under the Agreement including and procedures as may be notified from time to time;
 - (c) arising out of any dispute between the Merchant and an Account Holder;
 - (d) as a result of any error, negligence or fraud relating to a transaction by the Merchant, the Merchant's servant, agents, employees or contractors;
 - (e) arising out of any damage to or loss of the terminals FINEXUS supply due to the Merchant's or the Merchant's employees' neglect or misuse;
 - (f) arising out of any dispute between the Merchant and the terminal supplier;
 - (g) as a result of any fees, fines or penalties that FINEXUS is required to pay pursuant to the rules, by-laws or regulations of any Payment Brands that FINEXUS 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 systems used in providing the Services.
- 22.14. If the Merchant has suffered a data compromise, the Merchant will have to give FINEXUS, its agents and Personnel full access to the Merchant's systems and databases to facilitate a forensic analysis to ascertain:
- (a) what Card data has been compromised;
 - (b) what are the weaknesses in the system that permitted the unauthorised access to the database; and
 - (c) whether any Card data was created, deleted, altered, copies or manipulated in any manner.
- 22.15. If the Merchant uses/engages the services of an external service provider, the Merchant will have to ensure that FINEXUS, its agents, Personnel and Payment Brands are given full access to all necessary outsourced components such as databases, web hosting systems, etc.
- 22.16. All costs of the forensic analysis will be passed onto the Merchant. The Merchant and any of its associated service providers shall provide full and impartial cooperation with FINEXUS and/or Payment Brands in the forensic analysis and investigation at all time.
- 22.17. In order to continue processing Transactions, the Merchant will have to undergo a full PCI DSS validation process. All costs involved in the validation exercise shall be borne by the Merchant.

PCI DSS validation program

- 22.18. The Merchant is required to complete the PCI DSS validation program within one (1) month of being granted the Merchant facility or within one (1) month of FINEXUS' notification to the Merchant to comply with the requirement (whichever take place earlier will apply).
- 22.19. Non completion of the PCI DSS validation program will place the Merchant facility in the non-compliant status. This non-compliant status will attract non-compliance fines from the Payment Brands which will be passed on the Merchant. The Merchant shall be solely responsible to pay all of the amount imposed.
- 22.20. In the event that the Merchant's organisation suffers a Card data compromise incident and the Merchant has not complied with PCI DSS validation programme, any penalties levied by the card association will be solely borne by the Merchant.
- 22.21. All costs in relation to completion of the PCI DSS validation programme will be fully borne by the Merchant.

23. COMPLIANCE

- 23.1. The Merchant shall fully comply and cause any of its associated service providers to fully comply with any compliance to the laws, circular, directions, directives, guidelines, order, judgment, by-laws, rules and regulations required by the Payment Brands (including but not limited to the Payment Brands), Malaysian governing authorities (including but not limited to Bank Negara Malaysia and Malaysian Communications and Multimedia Commission) as well as global governing bodies (including but not limited to Payment Card Industry Security Standard Council).
- 23.2. The Merchant shall also fully comply and cause any of its associated service providers to fully comply with other applicable provision of laws including but not limited to Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Personal Data Protection Act 2010 and its regulations, by-law, codes of practice, practice directions or requirements including but not limited to the processing and management of the personal data of the Account Holder that may be issued from time to time by the relevant governmental or regulatory authority.
- 23.3. Any compliance exercise deemed necessary by the payment card association (including but not limited to the Payment Brands), Malaysian governing authorities (including but not limited to Bank Negara Malaysia and Malaysian Communications and Multimedia Commission) as well as global governing bodies (including but not limited to payment Card Industry Security Standard Council) shall be undertaken accordingly and fully paid and borne by the Merchant.
- 23.4. The Merchant shall be fully liable for and to indemnify FINEXUS on demand against any and all legal action, losses, fines, disputes, fees, penalties, damages and expenses resulting from the non-compliance of **Clause 24.1, 24.2 and 24.3** above. The Merchant shall fully bear all financial and legal charges thereto.
- 23.5. The Merchant further agrees that it is the Merchant's obligation to ensure compliance of this Clause by any of its associated service providers and the Merchant shall be responsible for any breach thereof by its associated service providers and undertake to indemnify FINEXUS for any legal action, financial and legal charges resulting thereto.

24. CONSENT TO FINEXUS AND PAYMENT BRANDS

- 24.1. The Merchant hereby authorize FINEXUS and Payment Brands to conduct any form of research into its background including not limited to business, company and credit background, banking and financial history, for the purpose of confirmation and verification of the validity of information provided by the Merchant under the Agreement.
- 24.2. The Merchant agrees to give consent to FINEXUS in disclosing and sharing details of a suspected and/or confirmed data compromise to law enforcement agencies, Payment Brand and other parties at FINEXUS' discretion. Such consent is irrevocable, enduring and shall survive upon termination of the Agreement.
- 24.3. FINEXUS is obliged to report any data compromise events to Payment Brands, law enforcement agencies and/or other government authorities/regulators. The Merchant acknowledge and understand

that this obligation for FINEXUS and grants irrevocable and enduring consent for FINEXUS to release details of the compromised to the aforementioned bodies.

- 24.4. The Merchant shall grant FINEXUS enduring right and consent to contact all service providers that enabled the Merchant to acquire any Transactions. For avoidance of doubt, this Clause is limited to the purpose of determining the extent of a data compromise, evaluate the remedies to that data compromise and assessing the Merchant's compliance level with PCI DSS.
- 24.5. The Merchant shall be responsible in ensuring that its service providers (if any) are to be fully cooperate with FINEXUS at all time.
- 24.6. Notwithstanding anything contained in this Clause, the Merchant also authorise and give necessary consent to FINEXUS and Payment Brands to conduct any form of research into its background (including but not limited to business, company and credit background, banking and financial history) from any valid source including government authorities for the purpose screening process and verification to the validity of information provided by the Merchant under this Agreement. All information accessed and obtained by FINEXUS based on the consent given will strictly limited for the intended purpose.

25. REPRESENTATIONS AND WARRANTIES

- 25.1. The Merchant represents and warrants, and it is an essential term of the Agreement, that:
- (a) any information provided by the Merchant to FINEXUS is complete, updated, true and accurate and not misleading in any material respect;
 - (b) the individual signing the Merchant Application Form is duly authorised on the Merchant's behalf to sign and bind the Merchant to the provisions of the Agreement;
 - (c) the Merchant is entitled to enter into the Agreement and perform the Merchant's obligations under the Agreement;
 - (d) the Agreement constitutes the Merchant's legal, valid and binding obligation enforceable in accordance with its terms by appropriate legal remedy;
 - (e) the Merchant is responsible and will maintain all licences, authorisations, consents, approvals and permits required by applicable Laws in order to perform the Merchant's obligations under the Agreement.

No Express Representations or Warranties by FINEXUS

- 25.2. The Merchant represents and warrants that no representations or warranties were made or given to the Merchant by FINEXUS or any other person in relation to the Agreement.

Implied Representations and Warranties

- 25.3. In relation to the services supplied by FINEXUS to the Merchant under the Agreement, no condition or warranty is implied in the Agreement other than a condition or warranty implied by statute which may not be excluded by private agreement.

Warranties Separate

- 25.4. Each of the representations and warranties contemplated by the Agreement is to be construed independently of the others and is not limited by reference to any other representation or warranty.

26. CONFIDENTIALITY

- 26.1. Except to the extent necessary to comply with any statutory requirements relating to the disclosure of Confidential Information as defined under **Clause 1** and subject to **Clause 27.4** and **Clause 27.5** below, neither Party shall make public, disclose or use any Confidential information of the other Party except in accordance with the Agreement, unless the other Party gives its prior written consent.
- 26.2. Each Party may disclose the Confidential Information of the other Party to its Personnel on a need-to-know basis where the disclosure is essential to carrying out their duties for the purpose of the Agreement.
- 26.3. Each Party shall ensure the Confidential Information of the other Party is solely use in connection with or for the purposes of fulfilling its obligations under the Agreement.
- 26.4. Despite anything to the contrary in the Agreement, FINEXUS may disclose:-

- (a) information about the Merchant's history and relevant information in the following circumstances:
 - i. to FINEXUS's contractors and to any Payment Scheme for any purpose related to the operation of those Payment Schemes;
 - ii. card fraud detection agencies (including information about termination or suspension of the Agreement and reason(s) for such termination or suspension); and
 - iii. where the Law requires or permits FINEXUS to do so; and
 - (b) the Agreement to its investor or potential investor, financier or potential financier and their advisors in relation to:
 - i. an investment or potential investment in FINEXUS or its related corporation as defined in the Companies Act 2016;
 - ii. funding or potential funding for FINEXUS or its related corporation; or
 - iii. an initial public offering of FINEXUS's shares or the shares of its related corporation.
- 26.5. Notwithstanding anything contained under this Clause, the Merchant **SHALL NOT:-**
- (a) sell, purchase, provide, disclose or exchange information regarding any particulars of the Account Holders, the Card account number(s) of the Account Holder and the Transactions whether in the form of Sales Slip, Terminal Receipt and/or Authorisation Forms (or carbon copies of the same), mailing lists, tapes or other media obtained by reason of transactions with the Account Holders and/or FINEXUS.
 - (b) publish or disclose any information concerning this Agreement and the business and any affairs related of FINEXUS which has obtained as a result of the discussion leading up to or entering into the Agreement to any other person without the PRIOR written consent of FINEXUS.
 - (c) copy, request or use any information regarding the Account Holder, the Card and the Transactions for any purpose that the Merchant knows or is reasonable expected to know to be fraudulent or for any purpose other than for the legitimate purpose as authorised by the Account Holder.
- 26.6. The Merchant shall:-
- (a) be responsible to keep the confidentiality and security of the PIN and shall keep strictly confidential any information it obtains under the Agreement regardless of whether it is related to FINEXUS, the Account Holder or any other party.
 - (b) be accountable and indemnify FINEXUS for any damages caused in relation to the use or release of information contrary to the provisions herein.
 - (c) keep all system, media and material containing particulars of the Account Holders, Account numbers, Card numbers of the Account Holders and Transaction, whether physical or electronic, in a secure manner so as to prevent access by or disclosure to any unauthorised persons.
- 26.7. The Merchant also prohibited from storing any data containing Account Holders' information for any other use. The Merchant shall immediately notify FINEXUS if the Account Holders information and/or Transaction data are accessed or retrieved by any authorised or unauthorised persons.
- 26.8. The Merchant undertakes to take all steps as shall from time to time be necessary to ensure compliance with the provisions contained under this Clause by its employees, agents and sub-contractors and shall give full co-operation to FINEXUS in order to procure its employees and agents to co-operate on any fraud investigations. The Merchant's obligations under this Clause shall survive the termination of this Agreement.
- 26.9. The effect contained under this Clause shall survive the termination or expiry of the Agreement.
- 27. DATA PRIVACY AND PERSONAL DATA PROTECTION**
- 27.1. The Merchant shall (and shall also ensure the Merchant's Personnel) duly comply with:-
- (a) any applicable privacy or data protection laws including PDPA; and

- (b) any privacy procedures or policies which form part of FINEXUS' guidelines, directions or policies.
- 27.2. The Merchant shall, upon FINEXUS' request, provide a separate written undertaking (in such form as may be required by BNM) to FINEXUS for the purpose of complying with the secrecy provision under Section 133 of FSA.
- 27.3. The Merchant:-
- (a) shall take all reasonable steps to ensure that any Personal Data received is protected against misuse and loss and from unauthorised access, modification or disclosure at its best abilities;
 - (b) shall consent to the collection, use, and disclosure of the Merchant's Personal Data by FINEXUS and Payment Brands as required for the purposes of the Payment Brands' Services.
 - (c) shall deploy technical and organisational measures to ensure compliance with all applicable privacy and data protection laws and immediately inform FINEXUS upon discovery any of the measures are breached or been compromised;
 - (d) shall allow FINEXUS to conduct an audit of the technical and organisational measures if requested by FINEXUS or Payment Brands;
 - (e) shall not and ensure the Merchant's Personnel must not, directly or indirectly use the Personal Data except to the extent necessary to perform its obligations under the Agreement;
 - (f) shall not modify, exchange, sell the Personal Data directly or indirectly to any person or third party under whatsoever circumstances;
 - (g) shall not disclose the Personal Data whether directly or indirectly to any person without the prior written consent of FINEXUS;
 - (h) shall ensure that the Merchant's internal operating systems only permit or allowed proper and duly authorised Personnel to have access on the Personal Data;
 - (i) shall not do anything or omit to do anything that will cause FINEXUS to be in breach of any laws; and
 - (j) shall not transfer Personal Data outside of Malaysia without FINEXUS' prior written consent.
- 27.4. On termination or expiry of the Agreement, the Merchant shall promptly return to FINEXUS or, if requested by FINEXUS, destroy all copies of the Personal Data, in which case any right to use, copy or disclose that Personal Data ceases.
- 27.5. By providing or furnishing Personal Data of the Merchant's Personnel, sub-contractors or any individuals, the Merchant hereby confirms and warrants that the Merchant has provided notices and obtained all necessary consents for FINEXUS to collect, record, hold, store, use and disclose that Personal Data in connection with the Agreement. The Merchant shall indemnify FINEXUS for or against any loss or damage which may arise, directly, indirectly, as a result of the Merchant's breach of this Clause.
- 27.6. The provisions under this Clause shall survive and continue in effect after the expiration or termination of the Agreement.
- 28. ANTI-MONEY LAUNDERING**
- 28.1. The Merchant's conducts and activities shall comply and adhere to Anti-Money Laundering Act and Counter Financing Terrorism Act (AMLA) 2001 at all time.
- 28.2. The Merchant shall:
- (a) ensure that all monies involved in any Transactions and in the Agreement shall come from a lawful source of activity and not derived from unlawful activities as defined under AMLA;
 - (b) provide notice to FINEXUS if any Transaction was made on behalf of the Account Holder;
 - (c) upon receipt of FINEXUS's request, provide documents substantiating the Merchant's verification of the identity of the Account Holder and such other information as FINEXUS may require including but not limited to certified true copies of any authorisation to act or documents that may be required for the purpose of verifying the information provided by the Merchant. Copies of any

information or document provided by the Merchant pursuant to this **Clause 29.1** may be retained by FINEXUS;

- (d) declare and certify that the necessary “Know-Your-Customer” checks have been conducted including but not limited to the identity, existence, address and nature of the business of the beneficiary and that the monies, funds or collateral are from a lawful source of activity and not unlawful activity as defined under AMLA;
- (e) disclose and furnish to FINEXUS any information required or deemed necessary and to the satisfaction of FINEXUS within the period specified by FINEXUS in its request, whether or not for purposes of complying with the Merchant Guide and the Standards; and
- (f) not use the payment made via Transactions for money laundering or violate any laws relating to money laundering as defined under AMLA.

29. MERCHANT’S OBLIGATIONS

29.1. The Merchant must perform and comply with the following in accordance with the terms of the Agreement:-

29.2. The Merchant shall promptly provide FINEXUS with:

- (a) the Merchant’s current address, phone number and email address of each of the Merchant’s outlet;
- (b) all Doing Business As names/ Trading Name used by the Merchant;
- (c) complete description of the Goods and/or Services;
- (d) any change in the Merchant’s name, style, constitution or composition whether by retirement, expulsion, death or admission of any director, partner or parties, amalgamation, reconstruction or otherwise; or
- (e) any other information as may be required by FINEXUS from time to time;
- (f) at all times observe the Merchant Guide, other guidelines and procedures on the acceptance of the Card or Wallet as provided by FINEXUS and those from the Payment Brands at all time;
- (g) accept all Payment Cards or Wallet under the Services as stipulated on the Letter of Acceptance as a payment method for the Account Holder’s purchase of the Goods;
- (h) not require any Account Holder to pay any part of the Merchant Discount whether through an increase in price or otherwise or to pay any other charge or to require any security from or otherwise impose any condition on an Account Holder in connection with any Transactions;
- (i) submit to FINEXUS records of all Transactions performed by the Merchant;
- (j) observe and perform all obligations under the Merchant’s contract with the Account Holders including but not limit to the nature, quality and delivery of Goods sold and/or Services provided to the Account Holders;
- (h) provide the full description of the Goods available to the Account Holder including the cost of the Goods and the delivery or shipping charges in RM and the equivalent in such other foreign currency or currencies acceptable by FINEXUS and description of any guarantees and warranties granted by the supplier or manufacturer for such Goods; and
- (i) ensure that the Goods and/or Services comply with all Laws applicable to the Merchant, FINEXUS, the Payment Schemes, the Account Holder, the Payment Cards, the Merchant Guide and the Standards.

29.3. Merchant must not install any unauthorised third party software application into the device supplied without the written consent from FINEXUS.

29.4. Merchant are obliged to assist FINEXUS in a forensic investigation involving the merchant and/or its employees until the investigations are over.

29.5. Merchant are responsible for its employees’ actions and any possible damages, losses, accidents, etc. that may arise, the Merchant will bear the cost and FINEXUS will not indemnify the Merchant.

DuitNow QR Service

- 29.6. The Merchant shall refer to the **Appendix I** at the end of these Terms for the DuitNow QR Merchant's Terms and Conditions ("DuitNow QR Terms") which the Merchant must abide to.
- 29.7. The DuitNow QR Terms is strictly for DuitNow QR Service only and will not replace any of the clauses in these Terms. In the event that there is a conflict between a clause in these Terms and a clause in the DuitNow QR Terms, the clause in the DuitNow QR Terms shall prevail **only** in the context of DuitNow QR Service.

DuitNow Transfer Services

- 29.8. Merchant who wishes to send funds via DuitNow Transfer must ensure that the Recipient's DuitNow ID inserted is accurate before initiating the payment in Payment Acceptance Solution. FINEXUS shall not be liable or responsible for any mistake or typo that the Merchant made during and after the DuitNow Transfer transaction,
- 29.9. FINEXUS will notify the Merchant on the status of each successful, failed or rejected DuitNow Transfer transaction via a notice as stipulated in **Clause 34 (Notices)**.
- 29.10. Merchant acknowledged and agreed that FINEXUS shall have no duty to and shall not be required to take any steps to verify or seek any other confirmation from any party as to whether such registered Recipient is the intended Recipient, and FINEXUS shall not be liable for transferring the funds to such registered Recipient even if such person is not the intended Recipient.
- 29.11. Pursuant to **Clause 30.8** above, the Merchant agree that once a DuitNow Transfer transaction has been confirmed, it will be deemed irrevocable and the Merchant will not be able to cancel, stop or perform any changes to the DuitNow transaction.
- 29.12. For multiple "Name Enquiry Requests", Merchant is advised not to submit multiple "Name Enquiry Requests" without a confirmed DuitNow Transfer transaction. FINEXUS shall not display the results of the "Name Enquiry Requests" upon five (5) consecutive "Name Enquiry Requests" that are not followed with a confirmed DuitNow Transfer transaction.
- 29.13. Without prejudice to any of FINEXUS' rights and remedies, FINEXUS reserve the right to terminate or suspend FINEXUS' access to and use of the DuitNow Transfer service where in FINEXUS' sole discretion that inappropriate, fraudulent or suspicious use is being made of the DuitNow Transfer services, such as where multiple "Name Enquiry Requests: are submitted without a confirmed DuitNow Transfer transaction. The Merchant is advised to contact FINEXUS if the Merchant encounters any issues relating to this foregoing.
- 29.14. The Merchant have rights in relation to the investigation and recovery of, erroneous payments, unauthorised and/or fraudulent DuitNow Transfer transactions made from the Merchant's account.

30. FINEXUS' OBLIGATIONS

- 30.1. FINEXUS shall comply and perform the following terms under the Agreement:-
- (a) Any information obtained or Transaction data received from the Merchant shall be stored in a secure environment and only be use for the intended purpose only;
 - (b) All personal and confidential information related to the Merchant and received under the Agreement will be destroy and dispose accordingly upon termination of the Agreement. FINEXUS will only retain one (1) copy of the information for archive purpose which should only be produce upon the request of BNM, Payment Brands or other authorities;
 - (c) Update the Merchant with any latest information issued by BNM and Payment Brands in relation to Merchant's obligations or activities from time to time;
 - (d) Perform fraud monitoring against all Transaction; and
 - (e) Promptly inform the Merchant if there are any changes that could adversely affect the Merchant in performing its obligations under the Agreement.

31. DISPUTES BETWEEN ACCOUNT HOLDER AND MERCHANT

- 31.1. The Merchant agrees that FINEXUS shall not in any way be responsible to the Account Holders in any way or manner whatsoever for any goods sold and/or services supplied by the Merchant.
- 31.2. The Merchant acknowledges that it shall be the obligation of the Merchant to resolve any disputes between the Merchant (or any of the Merchant's offices and/or outlets and/or locations and/or establishments wherever situate) and the Account Holder amicably and promptly.
- 31.3. The Merchant must respond to each Account Holder inquiry no later than by the end of the next Business Day following the day of the Account Holder inquiry is delivered to the Merchant and the Merchant may conduct subsequent communication with the Account Holder by telephone, mail, facsimile, in-person call or other means. The Merchant acknowledges FINEXUS has absolute discretion to either terminate or suspend the Agreement if the Merchant fails to respond to any Account Holder inquiries within the given time frame under the Agreement.
- 31.4. Where any Transaction is disputed for any reason whatsoever, the loss shall be solely borne by the Merchant (unless proven that it was FINEXUS has committed any wrongdoing or omission that cause or lead to the disputed Transaction) and FINEXUS shall be relieved from all liability to pay Merchant for such disputed Card Transaction or Contactless Payment Transaction. The Merchant shall become immediately liable to refund FINEXUS the full amount of any payment received by it or on its behalf relating to such disputed Transactions from FINEXUS. Further, where FINEXUS has paid the Merchant the amount of a disputed Card Transaction or Contactless Payment Transactions, FINEXUS may immediately set off such amount paid against any amount payable to the Merchant upon FINEXUS becoming aware of this dispute.

DuitNow Service Disputes

- 31.5. FINEXUS shall not be held responsible and liable for any DuitNow dispute between the Account Holder and the Merchant. The settlement of dispute shall be solely between the Account Holder and the Merchant.
- 31.6. If FINEXUS is fully satisfied that an incident of misdirected, duplicated or incorrect DuitNow QR/Transfer Payment have occurred with evidences provided by Account Holder and/or Merchant, FINEXUS shall debit the disputed amount within seven (7) Business Days. The Merchant has to bear all the costs and fees incurred due to the debiting of the disputed amount into the Merchant's account.

32. DISPUTES BETWEEN FINEXUS AND MERCHANT

- 32.1. FINEXUS and the Merchant agree in good faith, attempt to settle any disputes or conflicts arising from this Agreement in an amicable manner.
- 32.2. In the event the dispute is not resolved by the Parties within fourteen (14) Business Days from the date of dispute raised upon, either party may service a notice of arbitration on the other party.
- 32.3. The Parties agree that the seat of arbitration shall take place in Kuala Lumpur, Malaysia with the appointment of one arbitrator by the Director of AIAC.
- 32.4. The arbitration shall conduct in English language and in accordance with Arbitration Act 2005 and the Rules of Arbitration of the AIAC.
- 32.5. The arbitration proceeding may be dispensed with if the parties agree that the dispute to be referred to a court of competent jurisdiction in Malaysia for resolving the dispute.
- 32.6. For the avoidance of doubt, this Clause shall not preclude the party from making an application to any Court of competent jurisdiction for any claim for injunctive relief and specific performance.

33. NOTICES

- 33.1. Any notice or other correspondence and communication including, but not limited to, a demand, request, approval, authority, consent, acceptance or directions, to or by a party under the Agreement shall be in legible writing and in English language.
- 33.2. All the notice and correspondence shall be regarded as being given by sender and deemed to have been received by the addressee:-
- (a) if delivered by hand, at the time of delivery;

- (b) if by ordinary post or prepaid registered mail, five (5) Business Days after posting;
- (c) if by facsimile transmission, on the day of transmission if a transmission report states that it was sent in full and without error, but if the delivery receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time), it is regarded as received at 9.00 am on the following Business Day. A facsimile is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received and informs the sender that it is not legible;
- (d) if by email, on the date the email is sent provided the fact that the sender does not receive any indication of failure in delivery, it is to be regarded delivered on the same date if it was sent out before 4.00pm on a Business Day, otherwise, the email is to be regarded as received at 9.00am on the following Business Day, and such e-mail shall be followed-up with a copy of the notice via registered mail or received an email acknowledge receipt from the addressee; or
- (e) at the election of FINEXUS, the Merchant by signing the Merchant Application Form and enter into the Agreement have mutually agreed that all court documents to be served on the Merchant within and outside the jurisdiction of the Court of Malaysia may be effectively served on the Merchant by registered post.

33.3. If the notice or correspondence is sent to FINEXUS, it shall be sent to the following address or such other address or facsimile number as FINEXUS may specify in writing from time to time:-

Attention:	Head of Business Operations
Address:	FINEXUS Campus, #1 Jalan Pangkor, Titiwangsa Sentral, 53000, Kuala Lumpur Copy to: Head of Compliance FINEXUS Campus, #1 Jalan Pangkor, Titiwangsa Sentral, 53000, Kuala Lumpur
Telephone Number:	+603 4051 9921
Facsimile Number:	+603 4052 9922
E-mail Address:	merchant@finexuscards.com

- 33.4. If notice or correspondence sent to the Merchant, it shall be marked to the attention of the person nominated in the Merchant Application form unless sent via FINEXUS system.
- 33.5. All notices and correspondence of whatever nature to FINEXUS by the Merchant shall be signed by the Merchant or only by those nominated by the Merchant (the 'Nominated Signatories') for the purposes of the Agreement. Such Nominated Signatories shall upon execution of this Agreement be notified in writing to FCSB and upon the Nominated Signatories or any of them ceasing for any reason to be authorised by the Merchant to be Nominated Signatories, FCSB shall be notified in writing forthwith of the same. Any notice despatched by the Merchant to FINEXUS shall not be deemed to have been received unless it is actually received by FINEXUS.
- 33.6. Any failure on the part of the Merchant in notifying any change of address resulting in the delay or failure of delivery of any notice, correspondence or court documents shall not prejudice FINEXUS' rights and entitlement under this Agreement.

34. FORCE MAJEURE

- 34.1. Notwithstanding anything to the contrary contained herein, except with respect to payment obligations under the Agreement, neither Party shall be liable nor deemed defaulted or breached the Agreement for any delays or failures in its performance resulting from Force Majeure events.
- 34.2. Whenever a Party is excused from performing its obligations, the time for performance of its obligation shall be extended for a period equal to the time lost by reason of the delay.
- 34.3. A Party who is claiming or seeking relief from this Clause shall, as soon as reasonably practicable after the occurrence of Force Majeure Event to:-
- (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and
 - (b) use commercially reasonable efforts to remove any such cases and resume performance as soon as reasonably practicable.
- 34.4. If the Merchant is prevented by the Force Majeure Event from performing its obligations under the Agreement for thirty (30) days or such other period as the Parties agree in writing, FINEXUS may in its sole discretion immediately terminate the Agreement by giving fourteen (14) days' notice in writing of termination to the Merchant.
- 34.5. If the Force Majeure Event has continued uninterrupted for two (2) months and the Merchant's performance of obligations are adversely affected by such event, the Merchant may terminate the Agreement by giving fourteen (14) days' notice in writing of termination to FINEXUS.

35. SUSPENSION AND TERMINATION

Suspension Notice

- 35.1. Unless the Agreement is terminated earlier by FINEXUS pursuant to the provision herein, FINEXUS may, by way of a written notice to the Merchant ("Suspension Notice"), at its sole and absolute discretion and with or without reason or at the request of Payment Brand, at any time suspend:-
- (a) partly or all the operations of the Agreement; or
 - (b) the Merchant's MID where all card activities will be suspended for any period of time specified in the notice.
- 35.2. Upon notification of the Suspension Notice, the Merchant shall immediately cease to accept any Card for any Transaction until further notice or instruction given by FINEXUS.
- 35.3. Should the Suspension Notice be not revoked by FINEXUS within fourteen (14) Business Days from the date of Suspension Notice, a termination of the Agreement shall follow upon the expiration of fourteen (14) Business Days without further notice from FINEXUS.
- 35.4. FINEXUS shall not be bound nor required to give the Merchant any reason for the service of the aforesaid Suspension Notice nor shall FINEXUS be liable to indemnify the Merchant for any losses, costs incurred or damage which may be suffered by the Merchant arising from the service of the Suspension Notice.

Suspension or Termination

- 35.5. Without prejudice to the rights contained in the Agreement, FINEXUS may, in its absolute discretion and without affecting the accrued rights and obligations of the Parties as at the date of suspension or termination (as the case may be), suspend or terminate the Agreement immediately by giving notice to the Merchant on the occurrence of any of the following events:
- (a) in the event that suspension of the Agreement is necessitated by any directive or regulation from any Payment Brands or BNM or any authority having jurisdiction over the matters under the Agreement or due to any adverse findings by such authorities;
 - (b) the Merchant breach any material respect any of its obligations under the Agreement;
 - (c) the Merchant has been in breach of the Agreement (other than by a breach in any material respect of any of the Merchant's obligations under the Agreement) and, in FINEXUS's reasonable opinion, the breach:

- (d) cannot be rectified; or
 - (e) is capable of being rectified and shall remain unrectified by the Merchant for a period of thirty (30) days after being notified to do so;
 - (f) a judgment in any amount is obtained against the Merchant, or any distress, attachment, execution or other process of a Government Agency is issued against, levied or enforced on any of the Merchant's asset;
 - (g) the Merchant suspend payment of the Merchant's debts generally, or is or becomes unable to pay its debts when they are due, or is or becomes unable to pay the Merchant's debts;
 - (h) the Merchant enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, the Merchant's creditors or any class of them;
 - (i) the Merchant cease, or threatens to cease, to carry on business;
 - (j) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Merchant's assets or undertakings, an application or order is made for the Merchant's winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the Merchant's winding up or dissolution, except for the purpose of an amalgamation or reconstruction which has FINEXUS's prior consent;
 - (k) the Merchant becomes a Subsidiary of another corporation other than with the prior written approval of FINEXUS;
 - (l) the Merchant is convicted of a criminal offence;
 - (m) the Merchant is fraudulent in connection with the Agreement;
 - (n) there have been material misrepresentations by or concerning the Merchant or any of the information provided by the Merchant in the Merchant Application Form or otherwise to FINEXUS is or becomes incorrect, or false or misleading in a material respect;
 - (o) the Merchant's details and other information disclosed in the Merchant Application Form materially changes, including, but not limited to, a change to the nature and type of business conducted by the Merchant;
 - (p) the Merchant, in the reasonable opinion of FINEXUS, brought FINEXUS into disrepute;
 - (q) the Merchant's monthly Disputes or Fraud ratio to the total sales Transaction count is higher than one per centum (1%) or is deemed generate an excessive level involving disputes or fraud by the Payment Brands Monitoring Program or FINEXUS;
 - (r) the Merchant or the Merchant's Personnel have acted fraudulently or have otherwise misused the Service offered by FINEXUS;
 - (s) the Merchant is known or suspected to be involved in any fraudulent or any unlawful activity whether or not related to the Merchant's business;
 - (t) upon receipt of a written request from the Payment Brand that any of the Merchant's activity is deemed to be in violation of the Standards; or
 - (u) if the Merchant fails to remit the applicable fees within the timelines prescribed by FINEXUS.
- 35.6. FINEXUS is not liable to provide any reason whatsoever to the Merchant in respect of such suspension.
- 35.7. Upon receipt of notice of termination under this Clause, the Merchant must immediately submit all claims for payment for processing by FINEXUS.
- 35.8. FINEXUS shall not be liable for any loss or damage suffered by the Merchant due to any termination or suspension under this Clause. Any termination under this Clause shall not affect any rights and obligations incurred, or arising out of circumstance which existed, prior to termination taking effect.
- 36. TERMINATION TRANSITION PLAN**
- 36.1. When the Agreement expires, or if the Agreement is terminated by either Party:-

- (a) the Merchant shall immediately cease use of the Confidential Information and deliver to FINEXUS all Confidential Information in the Merchant's possession or control;
- (b) the Merchant shall immediately cease use of the FINEXUS Brands or the Marks or hold the Merchant out as connected in any way with FINEXUS or the Payment Brands, as the case may be;
- (c) the Merchant shall co-operate with FINEXUS to ensure an orderly wind down of operations; and
- (d) all items supplied to the Merchant by FINEXUS for use in connection with the Payment Schemes Programme, including but not limited to FINEXUS's Property, terminals, Sales Slips, Refund Form, QR Code standee or sticker and advertising or promotional material shall be returned to FINEXUS.

37. AUDITGeneral Audit Rights

37.1. FINEXUS and the Payment Brands shall have the right and the Merchant hereby agrees to give FINEXUS, the Payment Brands and their respective Personnel (including FINEXUS's internal and external auditors and advisors) full and unhindered access at all reasonable times and upon prior reasonable notice to:

- (a) the Merchant's Personnel for the purposes of obtaining information in relation to the Agreement; and
- (b) the Merchant's premises, systems, database, accounts, documents and records relating to the Merchant's operating practices and procedures to the extent relevant to the Agreement including in the supply of the Goods and Services by the Merchant; and

37.2. In cases of audits initiated by any Government Agencies or entities having authority over FINEXUS (e.g. BNM and the Payment Brands), the Merchant must give FINEXUS and such Government Agencies and their respective Personnel (including internal and external auditors and advisors) full, unhindered and timely access to relevant accounts, documents, system logs and records in order to allow FINEXUS to meet the deadlines set by such authorities or entities.

Merchant's Assistance

37.3. For the purposes of complying with the terms of the Agreement, the Merchant must promptly and efficiently give FINEXUS and the Payment Scheme and their respective Personnel (including FINEXUS's internal and external auditors and advisors), any assistance which are reasonably required and shall also assist FINEXUS to meet FINEXUS's internal and external audit and compliance requirements which may be more stringent than the regulatory requirements. The internal and external auditors shall have the right to copy and retain copies of any relevant records solely for the purposes of conducting the audit.

37.4. FINEXUS may disclose the results of any audit and investigation (including any remedial action) undertaken under this Clause.

Cost

37.5. The Merchant shall be responsible for all costs incurred in relation to any audit and investigation (including any remedial action) undertaken under this Clause.

37.6. If the audit establishes any deficiencies, the Merchant shall:

- (a) promptly take any remedial action as required by FINEXUS or the Payment Brands to rectify any particular problems or weaknesses arising out of the findings of the audit; and
- (b) provide to FINEXUS or the Payment Brands all documentation related to resolution of such deficiencies and the corrective actions implemented to prevent reoccurrence of the deficiencies.

Notification to FINEXUS

37.7. If any of the Payment Brands requests for an audit to be conducted against the Merchant under this Clause, the Merchant shall promptly notify FINEXUS in writing at the moment of it receiving such

notification and provide FINEXUS with copies of any audit reports or findings including those relating to any remedial action undertaken by the Merchant which are furnished to the Payment Brands.

38. VARIATION / AMENDMENT

- 38.1. FINEXUS may, at any time in its sole and absolute discretion and upon a thirty (30) days' written notice to the Merchant, to add, delete, modify or vary these Terms and notify the Merchant in such manner as it may deem fit of such changes and the effective date of such changes and the Merchant shall be bound by such changes from such date.

39. SEVERANCE

- 39.1. Each of the provisions of the Agreement is severable and distinct from one another and if any one or more of the provisions of the Agreement or any part thereof is or becomes invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provision of the Agreement shall not thereby be affected or impaired in any way.

40. AMALGAMATION AND RECONSTRUCTION

- 40.1. The liabilities and/or obligations created by this Agreement shall continue to be valid and binding on the personal representatives, heirs, successors-in-title of the Merchant and the successors-in-title and assigns of FINEXUS.
- 40.2. The Merchant undertakes to immediately notify FINEXUS by notice in writing within fourteen (14) Business Days of any changes in the ownership, name, style, constitution or composition of the Merchant whether by retirement, expulsion, death or admission of any partner or parties, amalgamation, reconstruction or otherwise and the Merchant hereby agrees that this Agreement shall ensure for all intents and purposes as if the resulting form, company or concern had been named in this Agreement.

41. ASSIGNMENT AND NOVATION

- 41.1. The merchant shall not transfer, assign, mortgage, charge or pledge this Agreement or its rights there under or any part thereof without first obtaining the consent of FINEXUS in writing and complying with such conditions as may be imposed by FINEXUS. Any assignment or transfer of such rights by the Merchant without the prior written approval of FINEXUS shall be null and of no effect.
- 41.2. FINEXUS shall be at liberty at any time, without the concurrence of the Merchant, to assign or transfer all or any of its rights entitlements and benefits of this Agreement 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 entitlements and benefits comprised in this Agreement as if the assignee or transferee had been a party to this Agreement in place of FINEXUS.

42. NO SUB-CONTRACT

- 42.1. The Merchant is prohibited/not allowed to sub-contract or delegate any conducts of its activities or any other obligations under the Agreement to any person, except as expressly permitted under the Agreement or with FINEXUS' prior written consent.

43. NO PARTNERSHIP OR AGENCY

- 43.1. Nothing in the Agreement shall create or be deemed to create a partnership or a relationship of employer and employee between FINEXUS and the Merchant.

44. CONFLICT IN INTERPRETATION

- 44.1. In the event of any conflict in the interpretation of this Agreement and any translation of it in any language, the English version of this Agreement shall prevail.

45. PRECEDENCE

- 45.1. Unless expressly stated otherwise, the order of precedence between the documents comprising, or referred to in, the Agreement is as follows:
- (a) these Merchant General Terms and Conditions;
 - (b) any Schedules to these Merchant General Terms and Conditions;
 - (c) the Merchant Guide;

- (d) Letter of Acceptance; and
 - (e) Merchant Application Form.
- 45.2. If there is any inconsistency between the terms and conditions or provisions of any of the documents referred to in this Clause, the terms and conditions set out in the document listed in **Clause 46.1** shall prevail.
- 46. TIME**
- 46.1. Time whenever mentioned shall be of the essence of the Agreement.
- 47. GOVERNING LAW AND JURISDICTION**
- 47.1. This Agreement shall be governed by and construed in accordance with the laws of Malaysia no matter where the transaction takes place and the Merchant hereby irrevocably submits to the jurisdiction of the Malaysian courts and waives any objection to proceeding instituted in any other courts by FINEXUS on the ground of venue or that such proceedings have been in an inconvenient forum.
- 48. WAIVER**
- 48.1. Waiver of any right under the Agreement must be in writing and executed by the Party granting the waiver.
- 48.2. A failure to exercise or delay in exercising, or partial exercise of a right under the Agreement does not result in or deemed as a waiver of that right.
- 49. RIGHTS TO MAKE CHANGES**
- 49.1. The Merchant acknowledge and agree that the form and nature of FINEXUS's Services under the Agreement may change and/or evolve from time to time. As part of this progressive process, FINEXUS and/or Payment Brands may (permanently or temporarily) discontinue, change, restrict, vary, suspend, terminate or modify any of the Services (either partly or the whole process) at any time to the Merchant. Any changes to FINEXUS' Services provided will be duly notify to the Merchant with a thirty (30) days' notice in writing prior to such changes taking place. For clarity, under the circumstances where such changes involve costs are optional and/or not mandatory changes from the Payment Brands, BNM or under the applicable laws, these changes will be effective upon consent in writing by the Merchant.
- 50. SUCCESSORS IN TITLE**
- 50.1. The Agreement shall be binding upon the heirs, personal representatives, permitted assigns and successors-in-title of the Merchant and on the successors-in-title and assigns of FINEXUS.
- 51. CUMULATIVE RIGHTS**
- 51.1. FINEXUS' rights arising under the Agreement are cumulative and do not exclude any of FINEXUS' other rights exist under the applicable laws.
- 52. FURTHER ASSURANCES**
- 52.1. Each Party must do all things and execute all further documents necessary to give full effect to the Agreement.

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Appendix I

DuitNow QR Merchant's Terms and Conditions

1. Introduction

- 1.1. FINEXUS is the Crediting Participant and the Merchant listed in the Offer Letter is a registered Merchant under the DuitNow QR Services.
- 1.2. In consideration of the fees paid to the Crediting Participant, the Crediting participant agrees to facilitate the participation of the Merchant in DuitNow QR Services in accordance with these Terms & Conditions ("Terms").
- 1.3. By registering for DuitNow QR Services, the Merchant agrees to observe all DuitNow QR operating procedures issued by the DuitNow QR & Operator which is applicable to the Merchant, as reflected in these Terms including any future revisions communicated by the Crediting Participant to the Merchant.

2. Obligation of Merchant

- 2.1. If the Merchant wishes to receive funds via DuitNow QR, the Merchant:
 - 2.1.1. Shall not impose any fees for POS Payments made by Payers using DuitNow QR Service; and
 - 2.1.2. Shall not deduct any RPP fees from the Cash Out withdrawal and ensure the Payer is paid in full amount.
- 2.2. The Merchant shall accept Payments or Cash Out that draw funds from e-Money account offered by issuers of e-Money and all types of deposit accounts offered by banks, except for fixed deposit accounts. This shall include, but is not limited to, all types of conventional and/or Islamic investment account Islamic deposit accounts, current accounts, virtual internet accounts and/or line of credit accounts tied to payment cards.
- 2.3. The Merchant must not make any warranty or representation in respect of goods or services supplied which may bind the Crediting Participant, DuitNow QR Owner & Operator, Debiting Participant or any other Participants in the service.
- 2.4. The Merchant must establish and maintain a fair policy for correction of errors and facilitate recovery of funds for erroneous or mistaken payments and/or unauthorised or fraudulent payments.
- 2.5. The Merchant shall consent and allow the Crediting Participant to disclose its information pertaining to the payment processes as the DuitNow QR Owner & Operator may reasonably require for DuitNow QR Services.
- 2.6. The Merchant who has been granted a non-transferable license to use the DuitNow QR Brand shall not license or assign the said right to use to any other third party. The Merchant shall comply with the DuitNow Brand Guidelines at all times.
- 2.7. For the purpose of **Clause 2.6**, the Merchant will be liable for any claims, damages and expenses arising out of or caused to arise from misuse or unauthorised usage of the DuitNow QR Brand. In the event of such breach, the Merchant sub-licensed rights of using the DuitNow QR Brand shall automatically be revoked and ceases immediately, whereupon this Agreement shall be terminated henceforth, without affecting accrued rights of parties. Upon termination, **Clause 2.8** shall apply accordingly.
- 2.8. This **Clause 2** shall survive termination of these Terms. Termination does not affect either party's rights accrued, and obligations incurred before termination.

3. Obligations of Crediting Participant

- 3.1. The Crediting Participant shall immediately credit and make funds available in the Merchant's account, except for situations where the Merchant has specifically agreed for delayed or batched posting.
- 3.2. Any refunds by Crediting Participants must be made together with transaction fees to the Merchant if fees were incurred due to Payer's disputes that are not caused by the Merchant. However, if the Merchant opts to partially refund overpayments to Payers, the Merchant shall bear the transaction fees for executing such refund.

- 3.3. Crediting participant shall implement reasonable measures to detect, mitigate, resolve and prevent actual and suspected fraudulent or unauthorised acts.

4. Recovery of Funds

- 4.1. The Merchant shall:
- 4.1.1. Assist the Crediting Participant in any investigation of erroneous or mistaken payments as stated in **Clause 5**;
 - 4.1.2. Assist the Crediting Participant in any investigation on unauthorised or fraudulent payments as stated **Clause 6**; and
 - 4.1.3. Effect refund(s) to the Payers, Debiting Participants, as the case may be, if it is found that the Merchant is responsible for such erroneous, mistaken, unauthorised or fraudulent payment, as the case may be.
- 4.2. In the event erroneous or mistaken payment is caused by the Merchant, after verification and confirmation from the Merchant with respect to such erroneous or mistaken payment, the Crediting Participant shall immediately reverse out all credits erroneously posted to the Merchant's account regardless of whether funds have been recovered from other affected parties.

5. Erroneous or Mistaken DuitNow QR Transaction

- 5.1. The Crediting Participant shall inform the Merchant once the Crediting Participant receives a request to recover funds that is wrongly credited to the Merchant due to an erroneous or mistaken payment. The Merchant must facilitate the recovery of funds process stated in **Clause 5.2**.
- 5.2. Upon receiving a recovery of funds request for erroneous or mistaken payment, the Crediting Participant has the right to debit the Merchant's account to recover funds within five (5) Business Days provided the following conditions are met:
- 5.2.1. If the recovery of funds request is received within ten (10) Business Days from date of the erroneous/mistaken payment:
 - 5.2.1.1. The Crediting Participant is fully satisfied that funds were erroneously or mistakenly credited to the Merchant's account;
 - 5.2.1.2. The Crediting Participant has notified the Merchant regarding the proposed debiting of Merchant's account and the reason for the debiting; and
 - 5.2.1.3. There is sufficient balance in the Merchant's account to cover the recovery amount.
 - 5.2.2. If the recovery of funds request is received between eleven (11) Business Days and seven (7) months from date of erroneous/mistaken payment;
 - 5.2.2.1. The Crediting Participant is fully satisfied that funds were erroneously or mistakenly credited to the Merchant's account;
 - 5.2.2.2. Participant has provided written notification to the Merchant where the erroneous/mistaken payment will be recovered through debiting the Merchant's accounts within ten (10) Business Days of the notifications unless the Merchant provides reasonable evidence to substantiate ownership of the funds in question; and
 - 5.2.2.3. There is sufficient balance in the Merchant's account.
 - 5.2.3. If recovery of funds request is received after seven (7) months from the date of erroneous or mistaken payment:
 - 5.2.3.1. The Crediting Participant must seek the Merchant's prior written consent to debit the Merchant's account to recover funds, and the Merchant must give its consent to debit its account within ten (10) Business Days of recovering the request to debit from the Credit Participant.

- 5.3. When the Merchant receives a request for consent from Crediting Participant as described in **Clause 5.2.3.1**, Merchant shall not unreasonably withhold consent to debit its account when there is a legitimate recovery of funds request.

6. Unauthorised or Fraudulent DuitNow QR Transaction

- 6.1. The Crediting Participant shall inform the Merchant once the Crediting Participant receives a request to recover funds that was credited to the Merchant due to an unauthorised or fraudulent payment. The Merchant must facilitate the recovery of funds process stated in **Clause 6.2**.
- 6.2. If the Merchant receives unauthorised or fraudulent payment, the Merchant shall:
- 6.2.1. Immediately take all practicable measures to prevent or block further misuse, unauthorised or fraudulently transferred funds for the benefit of the Beneficiary of Fraud;
 - 6.2.2. Furnish to the Crediting Participant with information, including but not limited to the name, address, contact information and/or national identity card number/passport number to conclusively identify the Beneficiary of Fraud within seven (7) Business Days of detecting the unauthorised or fraudulent payment;
 - 6.2.3. Take all practicable measures to the extent permitted by law to recover funds from the unintended recipient of funds including but not limited to reversing out credits, drawing on deposits or other financial guarantees that the Beneficiary of Fraud placed/places with the Merchant, stopping delivery of goods, suspending services that the Beneficiary of Fraud has paid for, repossessing goods delivered to the Beneficiary of Fraud and/or taking legal action against the Beneficiary of Fraud; and
 - 6.2.4. Immediately provide such information required in **Clause 6.6.2** to the Crediting Participant to facilitate the Debiting Participant's investigation.
- 6.3. In the event that a Crediting Participant receives a payment request from a Merchant which the Crediting Participant believes to be an unauthorised or fraudulent payment, the Crediting Participant shall do the following (upon becoming aware of the suspected unauthorised payment/fraud):
- 6.3.1. The Crediting Participant shall conduct investigation to determine:
 - a. Whether the Merchant is implicated in the unauthorised payment/fraud; or
 - b. Whether there is sufficient grounds to conclude that the Merchant is involved, or has benefitted, directly or indirectly from the unauthorised payment/fraud; and

The Crediting Participant shall prevent or block withdrawal or and further use of the remaining funds in the Merchant's account with the Crediting Participant until there is satisfactory resolution of Unrecoverable Loss.
 - 6.3.2. The Merchant shall facilitate and cooperate with the Crediting Participant to complete the investigation
- 6.4. In the event the Merchant is responsible for unauthorised or fraudulent payment, **Clause 10** shall apply accordingly.

7. Dispute Resolution

- 7.1. Merchant shall, in good faith, attempt to settle all disputes or conflicts with Crediting Participant arising in connection with the DuitNow QR Service amicably and by mutual agreement.
- 7.2. However, Merchant shall have the right to lodge a complaint with the DuitNow QR Owner & Operator if there are allegations of Crediting Participant's non-compliance to the DuitNow QR rules as reflected in these Terms.
- 7.3. The DuitNow QR Owner & Operator shall review of such complaints and allegations in accordance with **Clause 7.4**.

- 7.4. Merchant shall have the right to refer their disputes to the DuitNow QR Owner & Operator if there is an allegation of Participant's non-compliance to the DuitNow QR rules. The DuitNow QR Owner & Operator will review such complaints and allegations, but such review will be confined to:
- 7.4.1. Determination whether there has been non-compliance;
 - 7.4.2. Stipulating remedies for Participant to correct or address the non-compliance; and
 - 7.4.3. Determination if penalties are applicable for the non-compliance.
- 7.5. All decisions rendered by the DuitNow QR Owner & Operator in response to complaints from Merchant shall be prima facie binding on the Crediting Participant.

8. Indemnity

- 8.1. Subject to the other's party compliance with **Clause 8.2**, each party ("Indemnifying Party") agrees to indemnify and hold the other party and its employees and agents harmless against any and all losses, expenses, claims, suits, demands, actions, and proceedings including all reasonable legal and other related fees or charges ("Liability") which the other party may suffer or incur or for which the other party may become liable as a result of:
- 8.1.1. Any negligence, misrepresentation or fraud on the part of the Indemnifying Party, its employees, and agents with respect to the performance of its obligations or the exercise of any of its rights under this agreement;
 - 8.1.2. Any claim by a Payer, Crediting Participant, Debiting Participant, DuitNow QR Owner & Operator or any other person for any breach by the Indemnifying Party of any applicable laws;
 - 8.1.3. The failure of the Indemnifying Party to observe any of its obligations under this agreement; or
 - 8.1.4. Any use of the DuitNow QR Brand by the Indemnifying Party other than as permitted by this agreement.
 - 8.1.5. Except to the extent that such liability arises or is incurred by the other party by reason of any act or omission on its part mentioned in **Clause 8.1.1** to **Clause 8.1.4**.
- 8.2. In the event a claim is made against a party in respect of which it is entitled to be indemnified pursuant to **Clause 8.1**, that party must:
- 8.2.1. Give notice of any such claim to the other party;
 - 8.2.2. Consult with the other party in relation to any such claim; and
 - 8.2.3. Not to settle any claim without obtaining the prior written consent of the other, such consent not to be reasonably withheld.
- 8.3. The Crediting Participant is not liable to the Merchant for any loss or damage suffered by the Merchant as result of:
- 8.3.1. A missing or erroneous payment; and
 - 8.3.2. The delay or disruption caused by any system failure beyond the Crediting Participant's reasonable control.

9. Suspension

- 9.1. The DuitNow QR Owner & Operator or the Crediting Participants, as the case may be, reserve the right to suspend the Merchant's access to the DuitNow QR service under the following circumstances, which includes, but not limited to:
- 9.1.1. The Merchant breached this agreement, applicable rules, guidelines, regulations, circular or laws related to DuitNow QR that was communicated to the Merchant by the Crediting Participant;

- 9.1.2. The Merchant has inadequate operational controls or insufficient risk management processes, resulting in potential threats to the stability, integrity, safety and efficiency of DuitNow QR and/or RPP; or
- 9.1.3. The Merchant is suspected on reasonable grounds that it has committed or will commit fraudulent act in connection with the DuitNow QR.
- 9.2. Upon suspension of the Merchant:
 - 9.2.1. The services provided to the Merchant under the DuitNow QR Services will be suspended immediately;
 - 9.2.2. The Merchant must cease all promotional and advertising that is related or can be perceived to be related to DuitNow QR;
 - 9.2.3. The Merchant shall remove all DuitNow QR Brand from the Merchant's marketing collaterals, channels and website; and
 - 9.2.4. The Merchant must take all reasonable steps to comply with any directions of the Crediting Participants to minimise the impact on Payers of the suspension or termination.

10. Termination

- 10.1. The DuitNow QR Owner & Operator or the Crediting Participant, as the case maybe, reserve the right to terminate the services provided under this agreement or DuitNow QR Service under the following circumstances, which includes, but not limited to:
 - 10.1.1. This agreement between the Merchant and the Crediting Participant is terminated or expired;
 - 10.1.2. The Merchant breached this agreement, applicable rules, guidelines, regulations, circulars or laws related to DuitNow QR that was communicated to the Merchant by the Crediting Participant;
 - 10.1.3. The Merchant fails to remedy or take adequate steps to remedy its default under this agreement to the satisfaction of the Crediting Participant or the DuitNow QR Owner & Operator, as the case maybe, within the timeframe specified by the Crediting Participant;
 - 10.1.4. The Merchant has inadequate operational controls or insufficient risk management processes resulting in potential threats to the stability, integrity, safety and efficiency of the DuitNow QR and/or RPP;
 - 10.1.5. Court order(s) affecting the Merchant or the Crediting Participant(s) membership and/or legal status;
 - 10.1.6. Directive(s) issued by regulatory or government authority affecting the Merchant or the Crediting Participant(s) membership and/or legal status;
 - 10.1.7. The Merchant's insolvency;
 - 10.1.8. The Crediting Participant's membership in DuitNow QR, RPP or RENTAS is terminated or suspended and the Merchant has not appointed a replacement Crediting Participant; or
 - 10.1.9. Such other detrimental circumstances or reasons that PayNet considers necessary to suspend or terminate such Merchant's access to DuitNow QR.
- 10.2. Upon termination of this agreement, the participation of Merchant in DuitNow QR is automatically terminated and the Merchant will no longer have access to DuitNow QR and the serviced provided under DuitNow QR.

11. Crediting to Merchant

- 11.1. Crediting Participants are required to credit Merchant's bank account with funds from incoming Payment Instructions and make the incoming funds available for the Merchant's unencumbered use immediately except for situations where the Merchant has specifically agreed for delayed or batched posting.

- 11.2. Crediting Participants must make payment in full to the Merchant and shall not deduct any fees from the payment proceeds due to a Merchant, except for situations where the Merchant has specifically agreed on writing that the fees can be deducted from Payments Instructions.

12. Voluntary Exit from DuitNow QR

- 12.1. Merchant has the option to terminate their access to the DuitNow QR by giving prior written notification to the Crediting Participant.

13. Provisions of Reconciliation Information

- 13.1. Crediting Participant shall make available to the following minimum information for the purpose of facilitating the Merchant's reconciliation processes and accounting payment of receipts and fees:

13.1.1. Reference No. or Business Message Identifier;

13.1.2. Payer's name;

13.1.3. Recipient Reference;

13.1.4. Other Payment Details, where applicable;

13.1.5. Transaction amount;

13.1.6. Transaction date and time;

13.1.7. Debiting Participant's name;

13.1.8. Account type;

13.1.9. Gross total transaction value;

13.1.10. Total transaction volume; and

13.1.11. Total fees/ commissions charged.

- 13.2. Crediting Participant shall deliver to the Merchant, the information described in **Clause 13.1**, at the minimum in the following manner:

13.2.1. Mobile application;

13.2.2. Internet banking;

13.2.3. Data files or electronic files;

13.2.4. Statements and/or e-statements; or

13.2.5. Reports, either electronic or in hardcopies.

14. Liability for Unrecoverable Loss

- 14.1. For erroneous, mistaken, unauthorised and/or fraudulent payment that cannot be fully or partially recovered, the amount that cannot be recovered will be deemed as Unrecoverable Loss and the party causing or who could have reasonably prevented the Unrecoverable Loss will be liable to bear that loss.

- 14.2. If, after completing its investigations, the Crediting Participant has reasonable grounds to believe that the Merchant caused could have reasonably prevented the Unrecoverable Loss, the Crediting Participant shall notify the Merchant and shall have the right to freeze funds in the Merchant's account until there is satisfactory resolution of Unrecoverable Loss. The amount frozen shall be no more than the amount of the Unrecoverable Loss.

- 14.3. The Merchant agrees to take all measures to recover the Unrecoverable Loss if the Unrecoverable Loss is due to its fault or negligence. Notwithstanding the aforesaid, the Crediting Participant shall not be prevented from taking legal action against the Merchant to make good the Unrecoverable Loss to the extent permitted by law.

- 14.4. The Crediting Participant shall fully refund DuitNow QR fees incurred for erroneous, mistaken, unauthorised and/or fraudulent payment, if the error was not due to the Merchant except in situation where the Merchant decides to partially refund an overpayment. If the Merchant opts to partially refund overpayments to the customer, the Merchant shall bear the transactions fees for executing the refund.

15. Representation and Warranty

- 15.1. The Merchant acknowledges and agrees that the obligation of confidentiality extends but limited to those specified in **Clause 27**, the disclosure of fees and charges contained in this Agreement and any technology or know-how related to the service or the performance of this agreement.
- 15.2. The Merchant agrees to comply with PDPA of which it is bounds and shall not do any act that will cause the Crediting Participant, Debiting Participant and the DuitNow QR Owner & Operator to breach any personal data protection laws.

16. Disclaimer

- 16.1. The DuitNow QR Owner & Operator and Crediting Participant shall not be liable for any claims, actions, demands, costs, expenses, losses, and damages (actual and consequential) including legal costs that are incurred or suffered by the Merchants arising out of or caused by the Crediting Participant in connection with the operations and services provided by the Crediting Participant in the service. The Merchant agrees that the Merchant will communicate and resolve any dispute in relation to the aforesaid matters with the Crediting Participant.

***** **END OF TERMS & CONDITIONS OF THE AGREEMENT** *****