

## GKASH BUSINESS TERMS OF USE

THIS BUSINESS TERMS OF USE ("AGREEMENT") IS A LEGAL AND BINDING AGREEMENT BETWEEN YOU ("MERCHANT") AND GKASH. **PLEASE READ IT CAREFULLY.**

BY SUBMITTING YOUR MERCHANT APPLICATION FORM, YOU ACKNOWLEDGE THAT YOU HAVE READ AND FULLY UNDERSTOOD AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE PRIVACY NOTICE AND ALL DOCUMENTS INCORPORATED BY REFERENCE UPON THE APPROVAL OF YOUR APPLICATION BY US, THE APPROVAL OF WHICH IS AT OUR SOLE AND ABSOLUTE DISCRETION.

THIS AGREEMENT IS MADE BETWEEN YOU AND GKASH.

**GKASH SDN BHD (Company No. 1014333-T)**, is a private limited company incorporated under the laws of Malaysia with its place of business at Penthouse, Level 11, Tower 3, Avenue 3, The Horizon Bangsar South, No 8 Jalan Kerinchi, 59200 Kuala Lumpur ("**GKASH**"); and

### WHEREAS:

- (A) GKASH is a private limited company in the internet business, primarily in the business of providing internet payment services and other online payment methods including credit cards, debit cards, online and mobile payment solutions to electronic commerce (e-commerce) merchants.
- (B) Pursuant to a conditional approval dated 31 May 2018 ("**Conditional Approval**") issued by Bank Negara Malaysia ("**BNM**"), GKASH has been granted the right to issue electronic money vide an online wallet and prepaid cards on terms and subject to conditions of the Conditional Approval.
- (C) In furtherance thereto, GKASH is desirous to issue electronic money vide an online wallet and to provide electronic wallet (e-wallet) services ("**GKASH E-wallet**") to its users which includes the Merchant. To participate in the GKASH E-wallet ecosystem, the Merchant is desirous to list as one of the merchants with GKASH by creating and maintaining a Merchant's account and by accepting GKASH E-wallet payment services (as defined below) as a mode of payment for goods sold and/or services offered by the Merchant on terms and subject to the conditions provided in this Agreement.

### 1 **DEFINITIONS**

1.1 In this Agreement, the following terms and expressions shall have the meaning assigned to them unless the context requires otherwise:

<b>"Agreement"</b>	means this Merchant Agreement, the Welcome Letter, together with any terms and conditions, schedules, written instructions from GKASH (as may be issued from time to time) and any other documents or notices issued pursuant to this Agreement or executed as supplemental to this Agreement, which is expressly incorporated by reference as part of this Agreement.
<b>"Applicable Laws"</b>	means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and terms and conditions of any grant of approval, permission, authority or license of any governmental authority, statutory body or self-regulatory authority within the jurisdiction of Malaysia, particularly if issued or required by BNM, Malaysian Anti-Corruption Commission and/or authority responsible for the protection of Personal Data.
<b>"Business Day"</b>	means any day (except Saturdays, Sundays and Public Holidays) on which the banks in Malaysia are opened for business.
<b>"BNM"</b>	means the Central Bank of Malaysia ( <i>Bank Negara Malaysia</i> ).
<b>"Confidential Information"</b>	means any information which is by its nature confidential, secure, proprietary or the circumstances of disclosure indicate that is confidential, or which otherwise gives the party an advantage over its competitors, and includes without limitation, financial information, statistics, business plans, product details, research and development material, marketing plans, strategies, Personal Data, data related to the operation and management of parties' business, information technology, intellectual property, know-how, processes and procedures, information belonging to the parties users, as well as all information relating to the provisions of this Agreement and negotiations in connection with this Agreement, in whatever form held or provided, such as paper, electronically stored data, media film or

	orally.
<b>“FSA”</b>	means Financial Services Act, 2013, as may be amended or re-enacted from time to time together with all subsidiary legislations, regulations, guidelines and other forms of statutory instruments thereunder.
<b>“Force Majeure”</b>	means any circumstances beyond the reasonable control of either party including, without limitation, war, natural disaster, any strike, lock-out or other form of industrial action, riot or government regulations.
<b>“GKASH E-wallet”</b>	means the stored value e-wallet services provided by GKASH enabling its Subscribers to make, receive and in any way transact e-money with fellow Subscribers and/or make payment to the Merchant Account as consideration for any sale of goods and/or provision of services provided by the Merchant.
<b>“Intellectual Property Rights”</b>	means, in relation to the GKASH E-wallet, GKASH E-wallet services, Payment Transaction or the goods supplied or services rendered by the Merchant (as may be applicable), patents, rights to inventions, trade secrets, rights in unpatented know-how, confidential technical information, software, hardware, rights of confidence discovery, technology, processes, methods, techniques, registered and unregistered design rights, copyrights and related rights, database rights, layout design of integrated circuit, software rights, trademarks, service marks, trade names and domain names, moral rights and all other similar rights in any part of the world (whether registered, registrable, unregistered, pending registration or application) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any form whatsoever, which subsist or will subsist now or in the future in any part of the world.
<b>“Merchant”</b>	means the party whose particulars are described in <b>Schedule 1</b> hereto and who is a retailer and/or provider of goods and/or services (including any physical retail stores, online platforms or other modes of supply).
<b>“Merchant Account”</b>	means the business account registered with GKASH under the company name of the Merchant enabling the Merchant to receive payment for the goods sold and/or services offered to its customers upon payment by such customers using the GKASH E-wallet (subject to deductions of the MDR and other charges (if any) as consideration towards the payment services provided by GKASH). The Merchant Account does not have any other services attached to it other than for receipt of payment from the Merchant’s customers (who are Subscribers of the GKASH E-wallet) and withdrawal of such monies by the Merchant to its designated bank account;
<b>“MDR”</b>	means the merchant discount rate, auto deducted from the payment received from Subscribers, chargeable by GKASH to the Merchant at the agreed rate indicated in the Welcome Letter or any other revised rate or rates as determined by GKASH and notified to the Merchant from time to time.
<b>“Party” or “party”</b>	unless otherwise indicated to be construed as any party of the public at large, it means either <b>GKASH</b> or the <b>Merchant</b> and <b>“Parties”</b> or <b>“parties”</b> shall means both <b>GKASH</b> and the <b>Merchant</b> collectively.
<b>“Payment Transaction(s)”</b>	means the transaction where payment is made by Subscribers to the Merchant by utilising the GKASH E-wallet platform as a mode of payment hosted either on web applications, mobile applications or other forms of virtual terminals as GKASH may decide from time to time.
<b>“Personal Data”</b>	means any information of any party obtained for purposes of the GKASH E-wallet services, Payment Transactions, services rendered to the Subscribers, data and information related to GKASH and the Merchant and any other data related to this Agreement which (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose; (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a such party, who is identified or identifiable from that information or from that and other information in the possession of the parties.
<b>“Settlement Amount”</b>	means the amount settled by GKASH into the Merchant Account and subsequently, subject to the terms of this Agreement, be remitted into the bank account as may be designated by the Merchant, after deduction of the MDR, following a successful Payment Transaction by Subscribers for the purchase of goods and/or services from the Merchant.
<b>“Subscriber(s)”</b>	means any person that subscribes to become a user of the GKASH E-wallet and owns a GKASH E-wallet account which is assigned to and/or registered under the name of such person.

1.2 Words importing the singular number include the plural number and vice versa.

1.3 Words importing the masculine gender include the feminine and neuter gender and vice versa.

1.4 Words applicable to natural persons include any persons, company, incorporation, firm or partnership, incorporated or unincorporated.

- 1.5 The headings to the clauses of this Agreement are for reference only and shall not affect the interpretation and/or enforcement of the provisions of this Agreement.
- 1.6 Any schedules, documents executed as supplemental to this Agreement, any written instructions issued by GKASH to the Merchant from time to time and any other documents and/or notices issued by GKASH from time to time shall through incorporation by reference, form and be construed as part of this Agreement.
- 1.7 Whenever this Agreement refers to a number of days, such reference shall be to calendar days unless Business Days are specified.
- 1.8 Any reference to “writing”, “written” or cognate expressions include a reference to any communication effected by facsimile transmission, electronic mail or other comparable means (excluding short or instant messaging service).

**2. ACTIVATION OF MERCHANT ACCOUNT**

**2.1 Due Diligence of Merchant**

- (a) Within seven (7) Business Days from the date of this Agreement, GKASH shall carry out a due diligence exercise on the business and other aspects of the Merchant. For this purpose, the Merchant hereby unconditionally agrees to give uninterrupted access to GKASH and its authorised representatives, the Merchant’s management records, books of account, contracts, properties and other documents as may be requested by GKASH in order to reach a satisfactory finding of the Merchant’s background and business standing and credibility.
- (b) After completion of the due diligence and where the findings thereof are satisfactory to GKASH, GKASH shall indicate the same to the Merchant and take the necessary steps to onboard the Merchant onto GKASH’s E-wallet system and activate the Merchant Account for the Merchant within three (3) Business Days from the date of GKASH’s notice to the Merchant. GKASH reserves the sole discretion to approve, reject, suspend, review and/or carry out continuing due diligence on the Merchant in the course of the activation and maintenance of the Merchant Account.
- (c) The Merchant shall, on a timely basis, provide all information and/or documents that are required and/or requested by GKASH in the course of its due diligence and onboarding process, failing which GKASH shall have the sole right to disapprove, reject and/or refuse to commission, register and activate the Merchant Account for the Merchant.
- (d) In the course of GKASH’s due diligence process on the Merchant, the Merchant acknowledges and hereby unconditionally agrees, on a timely basis, to provide the relevant consents and/or documentation as may be required by GKASH to carry out verifications and checks against the records and information systems of public available sources (including any statutory bodies, government authorities or agencies).

**(e) Rescission**

In the event where the findings of the due diligence exercise by GKASH is not satisfactory based on GKASH’s standards, GKASH shall reserve the right to unilaterally rescind this Agreement by providing notice of such rescission to the Merchant and any costs and/or losses incurred shall lie where it falls.

**2.2 Effective Date**

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

**2.3 Registration Process of Merchant Account**

- (a) Subject to a satisfactory due diligence pursuant to **Clause 2.1**, a new business account for the Merchant will be established within 24 hours from the time GKASH completes its due diligence exercise with notice to the Merchant.
- (b) Upon successful registration pursuant to **Clause 2.3(a)**, the Merchant will be provided with auto generated and temporary log-in details and password to access its Merchant Account. The Merchant may upon first time login, change the given log-in details and password into the Merchant’s preferred log-in details and password. The Merchant is solely responsible to ensure that all its log-in details, password and any other related biometrics details are stored and kept in a safe and secure manner. GKASH is not liable for any loss caused by the Merchant’s failure to secure its log-in details, password and any other related biometrics details.
- (c) The Merchant acknowledges that the Merchant Account can only be used to receive amount paid by its customers (which are Subscribers of the GKASH E-wallet) towards the sale of the Merchant’s goods and/or services subject to deduction of the MDR and other charges (if any) and to withdraw such amount to its

designated bank account. The Merchant is required to accept, and at all times during the use of the Merchant Account, comply with the general terms of use or any other standards of practice as indicated in GKASH's Welcome Letter, which terms and standards GKASH reserves the absolute right to modify, vary or amend at any time from time to time.

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

#### 2.4 Registration Fee & Other Transfer Fees

- (a) At the time of registration of the Merchant Account, if charged by GKASH, the Merchant shall make payment of a fee for the registration and establishment of the Merchant Account in the amount as indicated in the Welcome Letter.
- (b) Subject to **Clause 9.1**, each time the Merchant opts to withdraw money out of the Merchant Account into its designated bank account, standard bank / financial institutions rates for such withdrawals is applicable for the withdrawals, which is in addition to the MDR.

#### 2.5 Request for Collateral

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

#### 2.6 Change in Applicable Laws

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

### 3. PAYMENT TRANSACTION & SETTLEMENT AMOUNT

- 3.1 Upon and from the Effective Date, the Merchant (with assistance of GKASH, if required) shall integrate the GKASH E-wallet system onto its online platform or other forms of compatible software / hardware to enable Subscribers to utilise the GKASH E-wallet to make payment towards the provision of goods and/or services provided by the Merchant to such Subscribers.
- 3.2 Upon completion of a Payment Transaction by a relevant Subscriber, such amount of monies will be transferred from the relevant Subscriber's GKASH E-wallet into the Merchant Account and will be released by GKASH into the Merchant's designated bank account within two (2) Business Days after the auto deduction of the MDR and other charges (if any) from such amount paid by the said Subscriber, unless otherwise authorised by the Merchant to hold such amount in the Merchant Account on behalf of the Merchant until the Merchant effects a withdrawal of such monies.
- 3.3 GKASH reserves the right to review all Payment Transaction(s) particularly transactions which GKASH finds to be or is informed as being abnormal / unusual transactions or transactions involving individuals which are within the high-risk sphere pursuant to due diligence by GKASH or any related payment service providers connected to the GKASH E-wallet services. For purposes of such review, GKASH is entitled to request from the Merchant and the Merchant shall provide to GKASH invoices, contracts and other related documents to support the relevant transaction.
- 3.4 In the event that there is a request from either the Subscriber or Merchant for reversal and/or cancellation of a Payment Transaction, GKASH shall impose a processing fee payable by the Merchant on any such reversal or cancellation transaction that GKASH performs. GKASH will not refund to the Merchant the MDR and other charges (if any) or any part thereof that it had deducted from the earlier payment made to the Merchant.
- 3.5 All payments by GKASH to the Merchant towards settlement related to the Merchant Account shall be made in Ringgit Malaysia only, unless such other currency is specified in any written instructions issued by GKASH from time to time.

### 4. REFUSAL BY GKASH

- 4.1 The Merchant hereby acknowledges that GKASH reserves the right to refuse receipt of payment from a Subscriber's GKASH E-wallet, or make payment into the Merchant Account or the Merchant's designated bank

account following such Payment Transaction upon occurrence of any of the circumstances below:

- (a) if this Agreement is terminated by GKASH for any reason whatsoever or pursuant to **Clause 9** herein; or
- (b) the Payment Transaction was triggered and/or initiated by the Merchant using an incorrect or sham Merchant Account which differs from the Merchant Account registered for the Merchant pursuant to the terms of this Agreement; or
- (c) the Payment Transaction was (i) incomplete, (ii) incorrect log-in details and/or password was inserted, or (iii) has been discovered to be fraudulent, altered, ineligible or illegal; or
- (d) the value of the Payment Transaction exceeds the Subscriber's wallet size; or
- (e) the Payment Transaction is found to be a duplicate transaction; or
- (f) the Payment Transaction was not entered into and/or authorised by a Subscriber; or
- (g) the Subscriber does not have available or sufficient amount of e-money in its GKASH E-wallet; or
- (h) the Payment Transaction has been recorded in GKASH's system and payment has been made by GKASH; or
- (i) the Subscriber disputes the Payment Transaction for whatsoever reason; or
- (j) the Merchant fails to fulfill GKASH's request for transaction documents as stated in **Clause 7.1**; or
- (k) there is an investigation of the Payment Transaction by any governmental or regulatory authorities or police having jurisdiction over such matters; or
- (l) the Payment Transaction is or found to be in contravention of the Applicable Laws, particularly the FSA, Islamic Financial Services Act 2013, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**"), and any other application of anti-bribery laws, regulations and related framework and guidelines.

4.2 The payment of the Settlement Amount into the Merchant Account does not nor the subsequent remittance into the Merchant's designated bank account in any way constitute confirmation that the Payment Transaction is free of irregularities or any violation of the conditions and procedures stated herein or the Applicable Laws and such Payment Transaction remains subject to investigations by any governmental or regulatory authorities or police having jurisdiction over such matters or dispute as may be alleged by a Subscriber.

4.3 GKASH is an issuer of e-money and provider of the GKASH E-wallet and will carry out the Payment Transactions as indicated / required in this Agreement, the Conditional Approval and by Applicable Laws. However, GKASH is not a party to any disputes which may arise between the Subscribers and Merchants in respect of any completed Payment Transaction and is not required to effect any reversal or refund of completed Payment Transactions unless otherwise instructed by BNM or other authorized regulatory authorities pursuant to Applicable Laws.

## **5. SPECIAL CIRCUMSTANCES**

### **5.1 Disputed Transaction**

In the event that a Subscriber disputes a Payment Transaction, GKASH reserves the right to suspend, limit the usage or freeze the Merchant Account pursuant to **Clause 9.1** below.

### **5.2 Prohibited Provisions of Goods and/or Services**

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

- (a) Gambling goods or services;
- (b) Pornographic goods or services or prostitution;
- (c) Goods or services for which the provision thereof is illegal (e.g. drug trafficking);
- (d) Sales where the amounts charged do not correspond with the value of the goods or services purchased or rendered;
- (e) Sales made under a name which is different from the name of the Merchant;
- (f) Sales made by a third party e.g. not the Merchant;
- (g) Sales where the Merchant know or ought to know that the goods sold or services provided are counterfeit products and infringe any of the Intellectual Property Rights related thereto;
- (h) Sale transactions which do not represent a bona fide sale of goods or services at the Merchant; and
- (i) Triggering and/or initiating a Payment Transaction where the Merchant did not supply goods or services to a Subscriber;
- (j) Sales or Payment Transaction that GKASH prohibits in the Welcome Letter and/or in any future notice from GKASH.

## **6. MDR & OTHER CHARGES**

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

6.2 The Merchant hereby acknowledges and authorises GKASH to deduct or cause to be deducted the MDR and other

charges (if any) from the payment made by the Subscriber in favour of the Merchant prior to remittance of the Settlement Amount to the Merchant.

6.3 Save for the retail price of the goods and/or services and applicable Taxes, the Merchant shall not charge the Subscribers any additional processing fee and other forms of surcharge (unless imposed by any governmental authorities) for using the GKASH E-wallet services to make payment to the Merchant.

6.4 The Merchant shall provide a clear and fair refund policy of its goods and/or services as may be deemed suitable to its business and shall upon GKASH's request, provide GKASH with a copy of such refund policy.

#### 6.5 **Tax**

(a) Tax is defined as any present or future, tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by the Inland Revenue Board of Malaysia, the Customs and Excise Department of Malaysia and other revenue authority of Malaysia and any penalty or fines related thereto in respect of the supply of goods or services.

(b) All monies, fees and charges payable by the Merchant to GKASH under this Agreement shall be made in full exclusive of any Tax, and without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding of or in respect of any Tax.

(c) In the event the Merchant is required by law to make any additional payments, deduction or withholding from such monies, fees and charges payable to GKASH under this Agreement in respect of any Tax or otherwise, the sum payable by the Merchant in respect of which the deduction or withholding is required shall be increased so that the net monies, fees and charges received by GKASH is equal to that which GKASH would otherwise have received had there be no deduction or withholding that was required to be made.

(d) In the event GKASH is required by law to calculate and collect from the Merchant any amount paid or payable under this Agreement on account of any Tax, such amounts as calculated by GKASH and shall be paid by the Merchant as additional to and without any deduction or off-set from monies, fees and charges payable under this Agreement to GKASH.

(e) The Merchant is responsible to determine which, if any, Taxes apply to the payment received from the Subscribers and to report and remit such Taxes to the appropriate authorities on a timely basis. GKASH is not responsible to collect, report and submit any such Taxes on behalf of the Merchant.

### 7 **RECORDS**

#### 7.1 **Merchant's Records**

(a) The Merchant shall at its own costs, expense and capacity keep proper account and accurate copies of all documents relating to the Payment Transactions and/or contracts between the Merchant and the Subscriber and shall allow GKASH at any reasonable time to inspect and/or take copies of all such documents and shall preserve such documents and records for a period of at least seven (7) years from date of each transaction.

(b) The Merchant shall forward all the necessary information and/or documents as may be requested by GKASH immediately and in any event not later than 12 hours from the time and date of such request by GKASH.

(c) The Merchant is obliged to provide full cooperation towards any investigations or inquiries made by GKASH relating to any of the Payment Transactions.

### 8 **REPRESENTATIONS AND WARRANTIES**

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

- (a) it is a validly existing entity under the laws of Malaysia;
- (b) it has the power and authority to enter into, exercise its rights and perform and comply with its obligations under this Agreement and such act(s) shall not in any event violate any agreement or contract to which it is a party to or which is binding upon it;
- (c) it shall not engage in any unlawful, false, unethical or deceptive activities in the conduct of its business and shall at all times abide by the Applicable Laws;
- (d) it is not involved in any money laundering activity within the meaning of Section 4 of AMLA and neither the Merchant nor any of its directors or officers of the senior management has taken any action, directly or indirectly, that would result in a violation by such person of any applicable anti-bribery or anti-money laundering laws in Malaysia or in any other country that it operates in;
- (e) it is in compliance with and will continue to comply with all standards and requirements imposed by the Malaysian Anti-Corruption Commission and all other anti-money laundering and corruption legislations, regulations and guidelines; and
- (f) it has in place adequate skills, technology, facilities, personnel and other resources as may be required to carry out its business.

## **9 SUSPENSION, LIMITATION, FREEZING AND TERMINATION**

### **9.1 Suspension, Limitation or Freezing of Merchant Account**

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

9.2 Notwithstanding any other provision in this Agreement, either Party may give not less than one (1) month notice in writing in advance to the other Party to terminate this Agreement. **Clauses 9.4 to 9.7** below shall apply to parties upon termination of the Agreement hereunder.

9.3 GKASH may forthwith terminate this Agreement where any of the following events of default occurs, if the Merchant;

- (a) become insolvent or enters bankruptcy, is wound-up, in receivership or administration or make an assignment for the benefit of its creditors generally; and/ or
- (b) suffer an execution, attachment, repossession of or foreclosure on all or substantially all of its assets; and/ or
- (c) cease all or a substantial portion of its business or operations; and/ or
- (d) undergo a merger or substantial change in ownership or control; and/ or
- (e) any event occurs, or series of events occur, whether related or not, which in GKASH's opinion may affect the Merchant's ability or willingness to comply with any of the Merchant's obligations under this Agreement or to the Subscriber(s) in question; and/ or
- (f) any breach or default on the part of the Merchant under the terms of this Agreement and/or if GKASH has reason to believe or at its absolute discretion is of the view that the Merchant has presented a fraudulent or counterfeit form of goods and/or services and/or where the Subscriber denies/disputes such provision of goods and/or services; and/ or
- (g) fails to notify GKASH of any changes of business ownership, shareholding or change of business/company name; and/ or
- (h) fails to comply with any of its material obligations under this Agreement and such failure is not remedied within fourteen (14) days after a written notice is delivered to the Merchant by GKASH; and/ or
- (i) is or is found to be in contravention of any Applicable Laws particularly the FSA or the Islamic Financial Services Act 2013; and/ or
- (j) commits any act, directly or indirectly, resulting in a violation of any applicable anti-bribery or anti-money laundering laws in Malaysia or in any other country; and/ or
- (k) there are adverse findings against the Merchant pursuant to GKASH's due diligence process at any point during the subsistence of this Agreement,

then in any of such event(s) of default, GKASH may by a notice in writing ("**Default Notice**") notify the Merchant of the occurrence of the event of default and this Agreement shall be immediately terminated following the issuance of the Default Notice and all debts and obligations owed to GKASH shall be deemed immediately due and payable. GKASH shall be entitled to deduct from any Settlement Amount of the Merchant in the Merchant Account and/or take such other actions as GKASH may be entitled to under this Agreement or under the Applicable Laws or equity.

9.4 Upon termination of this Agreement, GKASH shall cease to process any further request for Payment Transactions or make payment of any unsettled Settlement Amount to the Merchant commencing from the date of the Default Notice.

9.5 Notwithstanding the aforesaid, GKASH rights and entitlement under this Agreement against the Merchant shall survive the termination of this Agreement for or relating to any Payment Transaction prior to the date of such termination.

9.6 Upon termination of this Agreement, GKASH shall have the absolute rights (which shall not be questioned or challenged by the Merchant) to withhold any amount of monies in the Merchant Account without assigning any reason to the Merchant for a duration of 180 days or any extended duration as may be required by BNM or other authorized regulatory authorities pursuant to the Applicable Laws.

9.7 Upon termination of this Agreement, within thirty (30) days from the date of the mutual written consent in **Clause 9.2** or the Default Notice in **Clause 9.3**, the Merchant and GKASH shall respectively return to one another or alternatively provide a proof of destruction of all the Personal Data, marketing and promotional materials, Confidential Information, Intellectual Property Rights – related items and other items that were exchanged between the parties hereto for purposes of this Agreement. The licence granted under **Clause 11.1** below shall immediately cease upon such termination.

## **10 LIMITATION OF LIABILITY**

10.1 The Merchant acknowledges and agrees that the GKASH E-wallet services operate solely as a payment intermediary and that GKASH shall (i) under no circumstances function as or represent the Merchant in respect of the Merchant's business or in the context of any goods or services being ordered, obtained or procured by any funds processed through GKASH E-wallet services; (ii) makes no representations or warranties and does not

ensure the quality, safety or legality of any goods or services purchased with funds received through the GKASH E-wallet services.

- 10.2 Without prejudice to any other provisions herein, GKASH shall not be liable to the Merchant or any third parties for damages, loss of profits or earnings, goodwill or any type of special/exemplary, incidental, direct or consequential loss or damage howsoever arising even if GKASH has been advised of the possibility of such loss or damage or claim by any third party.
- 10.3 Subject to the provisions herein, GKASH's sole and entire liability to the Merchant in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement or howsoever shall not exceed the MDR on the amount which gave rise to the claim or the direct damages sustained, whichever is the lower.
- 10.4 Notwithstanding anything to the contrary in this Agreement, in the event GKASH withholds payment and/or does not make a payment for transactions in any instances stated herein provided, GKASH shall not be liable to the Merchant for any losses, claims, demands, proceedings, damages, late payment charges penalties or expenses whatsoever incurred by the Merchant by reason of non-payment or late payment by GKASH or in relation to or arising from this Agreement.
- 10.5 The Merchant shall indemnify and hold harmless GKASH from and against any and all claims, damages or losses that GKASH may at any time and from time to time, sustain, incur or suffer arising directly or indirectly out of or in connection with any fraud and misuse of the Merchant's goods and services, and other matters related to the Merchant's business, the Merchant's negligent act or omission related thereto, any fraud, illegality or contravention of the Applicable Laws committed by the Merchant, its employees, agents or authorized representatives and for and against any loss or damage, penalties, costs and expenses including legal fees which GKASH may suffer by reason of or arising out of any breach of this Agreement or as it may incur in enforcing the terms of this Agreement against the Merchant. This clause shall survive the termination or expiration of this Agreement.
- 10.6 The Merchant acknowledges and agrees that any dispute regarding any goods and/or services purchased using the GKASH E-wallet services is at all times a transaction between the Merchant and the relevant Subscriber. GKASH is not a party to any resulting dispute including but not limited to disputes over performance and liability issues relating to the delivery, quality, quantity, legality or use of the goods and/or services offered by the Merchant.
- 10.7 The GKASH E-wallet is provided on an "as is" basis and in compliance to BNM requirements for such services and whilst GKASH will take all reasonable efforts to keep the GKASH E-Wallet available and operational at all times, GKASH does not guarantee that the GKASH E-wallet will be available and performed error-free or uninterrupted as the GKASH E-wallet operates on a web based platform and is a digital application that is subject to the standard disruptive factors relating to network facilities and internet connections (whether wireless or otherwise).

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Subject to **Clause 11.2** below, for the duration of this Agreement, parties grant to one another a non-exclusive, royalty free, non-transferable and worldwide licence to use and display any logo, trademark and/or other Intellectual Property Rights belonging to the other party strictly for purposes of the marketing and promotion of the GKASH E-wallet services and inclusion of the Merchant as part of the merchant's list of the GKASH E-wallet.
- 11.2 For purposes of **Clause 11.1** above, the use and display of any logo, trademark and/or other Intellectual Property Rights of GKASH shall be subject to the prior approval of GKASH. The Merchant shall not use and display any logo, trademark and/or other Intellectual Property Rights of GKASH unless such approval has been obtained and the use and display of such Intellectual Property Rights shall at all times be in accordance to the instructions of GKASH.
- 11.3 At GKASH's request, the Merchant shall provide GKASH with samples of its logo, brand name and/or other Intellectual Property components to facilitate the advertisement and promotional activities.
- 11.4 A party who has granted the licence under **Clause 11.1** is entitled to at any time, without assigning a reason, to revoke such licence and upon such revocation, the other party must cease any such use and display allowed under the licence.
- 11.5 GKASH is the legal and beneficial owner of the software, hardware, technology, trademark matters related to the "GKASH" logo and all other components that form a part of the GKASH E-wallet services and GKASH shall have and retain ownership, right, title and interest to all such components, technology and Intellectual Property Rights used for and related to the development, commissioning, operation and maintenance of the GKASH E-wallet including, but not limited to, the innovative processes, software, hardware and all other aspects of the GKASH E-wallet.

## **12 DISCLOSURE OF INFORMATION**

- 12.1 The Merchant hereby authorises GKASH and/or its officers to make use of, disclose, divulge or reveal any



information relating to the Merchant and its Merchant Account in such manner and to such extent as GKASH shall from time to time consider necessary to any consultant, agent or subcontractor or to any person for any purpose in connection with any matters related to the operation, maintenance and proper functioning of the GKASH E-wallet services or for any purpose in connection with the enforcement of any terms of this Agreement or pursuant to any Applicable Laws particularly under the authority or body established by BNM or any other competent authority or bodies having jurisdiction over GKASH.

- 12.2 The Merchant hereby authorises GKASH and/or its officers to make use of, disclose, divulge or reveal any information relating to its Merchant Account for purposes of or in connection with any action or proceeding taken by any governmental or regulatory authorities or police having jurisdiction over such matters pursuant to the Applicable Laws.
- 12.3 The Merchant hereby undertakes and covenants that it shall keep all information related to this Agreement and/or the GKASH E-wallet which comes into possession pursuant to or during the course of this Agreement strictly confidential and shall not disclose to any persons such information without obtaining prior written consent of GKASH. The Merchant shall ensure that its employees and/or agents who have access to such information comply with this confidentiality clause.

### 13 **CONFIDENTIALITY**

In addition to **Clause 12** above, the Confidential Information shall be kept confidential by the Merchant at all times for as long as this Agreement subsist, unless disclosure is required by law or unless the Merchant can reasonably demonstrate that it is or part of it is, in the public domain other than by a breach by the Merchant of its obligations under this **Clause 13**, whereupon, to the extent that it is public, this obligation shall cease. The Merchant shall take all steps necessary to prevent the transfer or disclosure of Confidential Information to any third party and shall not sell, copy, reproduce or store in any form the Confidential Information for any purpose whatsoever. For the avoidance of doubt, the obligations of this **Clause 13** shall survive the termination or expiration of this Agreement. The Merchant shall ensure that its directors, shareholders, employees or authorized agents furnished with such Confidential Information is also subjected to a similar confidentiality obligation as is indicated under this **Clause 13**.

### 14. **DISPUTE RESOLUTION**

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

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

Phone : 03 2272 2811

Fax : 03 2272 1577

Email : enquiry@ofs.org.my

### 15. **MISCELLANEOUS**

#### 15.1 **Force Majeure**

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

#### 15.2 **Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. The Parties hereby submit to the exclusive jurisdiction of the courts of Malaysia.

#### 15.3 **Costs**

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

#### 15.4 **Entire Agreement**

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

#### 15.5 **Variation**

The Merchant agrees that GKASH may from time to time by giving prior written notice to the Merchant vary add to or amend the terms and conditions herein set out. Any variation, addition and/or amendment shall become effective upon notification to the Merchant by any means GKASH deem fit.

#### 15.6 **Notice**

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

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

#### 15.7 **Waiver**

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

#### 15.8 **Severability**

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

#### 15.9 **Assignment**

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

#### 15.10 **Binding Effect**

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

#### 15.11 **Communication**

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

#### 15.12 **Changes related to the Merchant**

The Merchant undertakes to immediately inform GKASH of any change in the name, style, constitution or composition of the Merchant whether by retirement, expulsion, death or admission of any partner or parties, amalgamation, reconstruction or otherwise and the Merchant hereby agrees that this Agreement shall endure and be available for all intents and purposes as if the resulting firm, company or concern had been named in this

Agreement.

## SCHEDULE 2

### MERCHANT'S RESPONSIBILITY

The Merchant shall:

- (a) integrate the GKASH E-wallet services onto the Merchant's online platform or other compatible software / hardware;
- (b) subject to **Clause 11** above, display the logo and other such trademarks of GKASH E-wallet that may be mutually agreed at its outlet and/or online platform to inform its customers of the availability of the GKASH E-wallet services;
- (c) not utilise its Merchant Account or the GKASH E-wallet services for unlawful purposes or purposes other than the purpose intended herein;
- (d) not transfer or receive Settlement Amounts if, based on information available to the Merchant, the Merchant reasonably suspects that such monies are involved in activities of fraud, money laundering, terrorism financing or other illegal and/or criminal activities and immediately inform GKASH of such suspicions;
- (e) not use the Merchant Account in any way which may cause, directly or indirectly, the features of the Merchant Account or the GKASH E-wallet services to be interrupted, halted, impaired or damaged;
- (f) not use the Merchant Account in any manner which may breach the rights of, or be otherwise injurious to GKASH or any third party;
- (g) not use the Merchant Account in a manner which may, directly or indirectly, breach or be in violation of any of the Applicable Laws;
- (h) be solely responsible for all its customer service issues relating to the provisions of goods and/or services, including but not limited to order fulfilment, order returns, refunds, exchanges and adjustments, rebates, functionality and warranty, technical support and feedbacks and the Merchant shall bear any and all expenses and/or costs relating thereto;
- (i) at all times observe the terms and conditions provided hereunder as may be amended at any time from time to time by notice from GKASH;
- (j) include in the value of its goods and/or services any Taxes required to be collected and shall not collect it separately in cash;
- (k) where there is uncertainty or ambiguity in the terms of this Agreement or any future guidelines or requirements pertaining to the use of the Merchant Account, the Merchant shall check with GKASH for its construction and meaning and any response provided by GKASH shall be final and binding;
- (l) upon request from GKASH, it shall provide all documentations and required access to its goods and services to permit GKASH to conduct a due diligence on its business;
- (m) if it encounters or has come to know that its transaction with a Subscriber has elements of a suspicious transactions, immediately report to GKASH on its suspicions. "**Suspicious Transaction**" for the purpose of this Agreement is a transaction that (i) appears unusual; (ii) has no clear economic purpose; (iii) appears illegal; (iv) does not commensurate with the Subscriber's profile or business activities; (v) involves proceeds from an unlawful activity; or (vi) indicates that the Subscriber is involved in money laundering or terrorism financing activities. The Merchant is responsible to train and ensure that its employees, agents and/or representatives comply with the Applicable Laws and carry out their respective duties in accordance to the terms of this Agreement;
- (n) have the full right and/or authority to offer the applicable products and/or services for sale to the Subscribers and it has the necessary licenses and approvals from the government or any regulatory (as may be applicable);
- (o) cooperate with GKASH and/or the relevant regulatory and legislative bodies to investigate any matters related to activities of fraud, money laundering, terrorism financing or other illegal and/or criminal activities or any other disputed or suspicious Payment Transactions;
- (p) be responsible for the safety and security of its log-in details, password and any other related biometrics details connected to the Merchant Account;
- (q) comply with any written notifications, directions and instructions given by GKASH in relation to the use of the Merchant Account;
- (r) if the Merchant receives any Personal Data from GKASH or any other party or becomes exposed to such data pursuant to this Agreement, the Merchant shall at all times ensure compliance to the Personal Data Protection Act 2010;
- (s) notify GKASH in writing of any material changes to the Merchant's business structure or changes made to the types of goods and/or services offered by the Merchant to the Subscribers and in this respect, the Merchant is responsible to ensure all such changes are compliant to regulatory requirements and the Applicable Laws;
- (t) comply with any other roles, responsibilities and obligations as may be imposed by GKASH in the Welcome Letter and by way of notices to the Merchant.