

# AMS Terms and Conditions

Last update: December 21, 2023

## 1. STRUCTURE

(a) These AMS Terms and Conditions (these “**AMS Terms**”) consist of the main body of these AMS Terms and the following schedules:

- i. Payment Method Terms of Use;
- ii. Prohibited and Restricted Products List; and
- iii. AMS Terms Definitions,

as each may be amended or supplemented from time to time in accordance with the terms hereof.

## 2. COMPLIANCE MATTERS

(a) Compliance with Relevant Laws and Scheme Requirements

- i. The Merchant shall take all such steps and provide such assistance and information and records as required by AUS for AUS to comply with Relevant Laws (including AML Laws) and Scheme Requirements.
- ii. The Merchant shall, and shall procure that each of its Representatives will:
  - (A) comply with all Relevant Laws (including AML Laws and consumer protection and other laws relating to online or distance sales agreements);
  - (B) comply with applicable Scheme Requirements and ensure that the acts or omissions of itself and its Representatives in connection with AMS do not cause AUS to breach any applicable Scheme Requirements;
  - (C) comply with its contractual obligations relating to the sale and/or supply of goods and/or services to the User;
  - (D) ensure that the goods and/or services that it provides do not infringe any intellectual property rights;
  - (E) not request a surcharge from Users for any Payment Methods, if such surcharge is explicitly prohibited by Scheme Requirements applicable to the Payment Method (including as stated in the Payment Method Specific Terms of Use) and/or Relevant Law; and
  - (F) have implemented comprehensive customer support service with documented complaints and escalation procedures and will respond to customer complaints in a timely manner.

## 3. REPRESENTATIONS AND WARRANTIES

(a) Each Party represents and warrants to the other Party:

- i. it has the financial viability to fulfil its obligations under the Agreement;
- ii. it is an independent corporation duly organised, validly existing and in good standing under the laws of the country where it is established;
- iii. it has all the licences, registrations, regulatory approvals and permits required to (in the case of AUS) provide AMS or (in the case of Merchant) use AMS and operate the business in relation to which it uses AMS;
- iv. it has the corporate power, authority and legal right to execute and perform the Agreement and to carry out the transactions and its obligations under the Agreement;
- v. the individual who executes the Agreement is duly authorized and once the Agreement is executed, it is a valid and binding obligation of it, enforceable in accordance with its terms. Except as otherwise stated in the Agreement, no approval or consent of any person or Government

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- Agency is legally or contractually required to be obtained by it to enter into the Agreement and perform its obligations hereunder;
- vi. neither (a) the execution of the Agreement by it, nor (b) the consummation by it of the Agreement will (i) conflict with its certificate of incorporation or by-laws or any other corporate or constitutional document of it; (ii) breach any obligations of it under any contract to which it is a party; or (iii) violate Relevant Laws; and
  - vii. there is no litigation, proceeding or investigation of any nature pending or, to its knowledge, threatened against or affecting it or any of its Affiliates, which would reasonably be expected to have a material adverse effect on its ability to perform its obligations under the Agreement.
- (b) The Merchant represents and warrants to AUS on the date of the Agreement and on each date on which it uses the AMS Services:
- i. it does not and will not use the AMS Services to carry out any illegal or fraudulent activities;
  - ii. all information provided by it in connection with the Agreement is true, accurate, up to date and complete (including any information the Merchant has provided AUS as part of onboarding and periodic due diligence and KYC);
  - iii. none of the Merchant's directors, shareholders or other beneficial owners are subject to any Sanctions;
  - iv. the Merchant does not and will not resell the AMS Services, in whole or in part, or otherwise allow the use of the AMS Services by any third parties when such use has not been specifically approved in writing by AUS;
  - v. the Merchant's products or services sold are compliant with all Scheme Requirements and Relevant Laws in its country of incorporation and in the countries where Users are based;
  - vi. the Merchant owns and/or have the necessary licences to operate and have full control, responsibility and authority regarding the operation and content of the Merchant's websites or applications (if any) as indicated to AUS;
  - vii. the Merchant is not: (i) experiencing excessive Chargebacks (according to the limits determined by the Payment Systems); nor (ii) subject to any Payment System's monitoring program(s), except as disclosed in writing to AUS;
  - viii. the Merchant has never: (i) committed fraud; or (ii) been terminated by an acquirer;
  - ix. the Merchant only uses and will only use the AMS Services for payment of products or services sold on platforms (such as, websites or mobile applications) disclosed to and approved by AUS from time to time;
  - x. the Merchant does not use the AMS Services for the payment of products or services prohibited or, unless approved by AUS in advance in writing, restricted under Prohibited and Restricted Products List or as notified to the Merchant by AUS from time to time); and
  - xi. the Merchant complies and will comply with all Relevant Laws when using the AMS services.

## 4. RISK MANAGEMENT

### (a) General

The Merchant shall maintain and implement risk management policies and procedures to detect prohibited goods/services, fraud and its non-compliance with Relevant Laws, Scheme Requirements and this Agreement. The Merchant shall reasonably assist with any Investigation requested by AUS. The Merchant shall inform AUS within 30 calendar days of any material change to the Merchant's risk management policies or procedures or any other event which may adversely affect the Merchant's compliance with Relevant Laws or its risk management policies and procedures.

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- (b) Risk remediation
  - i. Excessive levels of fraud, Escalations, Chargebacks and Refunds are indications of the Merchant's inability to provide its goods and services within Users' expectations and create additional work and costs for all parties involved in the Payment System. AUS will monitor Chargebacks, Escalations, fraud and Refunds levels of the Merchants and notify the Merchant if the Merchant meets or exceeds the relevant fraud, risk or chargeback thresholds or otherwise fails to satisfy the requirements in compliance programmes set and enforced from time to time in accordance with applicable Scheme Requirements.
  - ii. If the Merchant receives a notification from AUS pursuant to Clause 4(b)i) of the AMS Terms or has any illegal content on its website or mobile application and AUS reasonably requests that the Merchant implement risk remediation or control measures to limit exposure to unauthorized, fraudulent or illegal transactions, the Merchant must do so. AUS may suspend all or part of the AMS Service whilst the Merchant puts in place these measures.

### 5. DISPUTE RESOLUTION

- (a) The Merchant acknowledges that Payment System Operators allow Users and Payment Method Providers to raise Disputes and that Payments may be subject to Chargebacks. AUS will notify the Merchant promptly of the details of any Dispute (including Chargeback) relating to the Payments of the Merchant and the Merchant will co-operate with AUS to resolve Disputes. In no event will AUS be liable to compensate the Merchant or any other person for any Loss suffered in connection with any Disputes (including Chargeback).
- (b) Unless otherwise provided in the Terms of Use, for Payment Methods that provide for Chargebacks, the Merchant shall review the information provided in connection with a Chargeback as soon as practicable, and, if it wishes to challenge the Chargeback, send the response with the required information and documentation to AUS within the timeframe specified by AUS stating the reasons for challenge. AUS will assist the Merchant to defend any Chargeback upon Merchant's request if challenging such Chargeback is possible under the relevant Scheme Requirements. The Merchant agrees that any decision of the relevant Payment System or Payment System Operator as to the validity and extent of any Chargeback shall be final and binding. The Merchant agrees it is liable for any Chargeback payable by AUS arising due to its failure to supply such response with the required information or documents within the required timeframe. If the Chargeback is determined by the relevant Payment System or Payment System Operator to be valid, the Chargeback will be deducted in determining the Net Settlement Amount that AUS will settle to the Merchant under the Agreement.
- (c) For Alipay + Payment Methods and Alipay China Wallet, when a Dispute is raised, the Merchant shall review the Retrieval Request and Escalation and send the response with the required information and documentation to AUS within the timeframe specified by AUS. If the Merchant agrees to refund, the Merchants shall initiate the refund within 5 calendar days from the date it submits the Escalation response. The Merchant agrees that any decision of the relevant Payment System or Payment System Operator as to the validity and extent of any Dispute shall be final and binding.

### 6. ANTI-MONEY LAUNDERING (AML), SANCTIONS AND ABC REQUIREMENTS

- (a) AML and Sanctions Requirements

The Merchant shall comply with all applicable AML Laws and Economic and Trade Sanctions Laws and local AML Laws.
- (b) ABC Requirements

The Merchant shall comply with all applicable ABC Laws.
- (c) AML, Sanctions and ABC Law Non-Compliance

If AUS determines that the Merchant has failed to comply with any of the requirements specified in Clauses 6(a) or 6(b) of the AMS Terms, AUS may, subject to Relevant Laws, impose conditions on, or

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require additional actions of, the Merchant to prevent or detect potential violations of AML, Sanctions and ABC Laws. Such actions may include:

- i. implementation of additional policies, procedures or controls;
- ii. termination of a third party agreement; or
- iii. such other actions that AUS may, in its absolute discretion, determine to take with respect to the Merchant.

### 7. INTERMEDIARIES

If the Merchant engages an intermediary or service provider in connection with AMS, the Merchant must ensure that each of its intermediaries or service providers holds all licenses, permits, approvals, authorizations and registrations required under Relevant Laws for it to provide such services to the Merchant.

### 8. ONLINE MERCHANT REQUIREMENTS

If the Merchant makes its goods/services available for online purchase, the Merchant shall provide the following information to Users on its Online Store: (a) complete description of goods/services offered; (b) policy for returning merchandise and refunds (which must comply with Relevant Laws); (c) complaint procedures and customer service contact (including email address and/or telephone number); (d) address; (e) delivery policy; (f) User data protection policy; and all other information required to be provided to consumers under Relevant Laws. The Merchant shall also (i) not sell counterfeit products or other products that infringe IP Rights; (ii) prevent any upload, storage, download, or dissemination of content that violates Relevant Laws or infringes IP Rights; (iii) not engage in any conduct which is misleading, deceptive or abusive to Users or is otherwise unethical or illegal; (iv) ensure that its business scope is consistent with its assigned MCC; (v) use reasonable efforts in good faith to investigate and remedy complaints of Users or the holders of IP Rights; (vi) not begin to accept Payment in advance of the shipment of goods or fulfilment of services, or materially increase the amount of time between acceptance of Payment and the anticipated delivery or shipment of goods or fulfilment of services; and (vii) protect the User Accounts from unauthorized access and promptly notify AUS of any unauthorized access to User Accounts.

If the Merchant operates an online platform where goods or services of sub-merchants are offered for sale to Users, the Merchant shall (a) monitor the content of the platform for compliance with Relevant Laws and with requirements under the Agreement and these AMS Terms in relation to prohibited goods and services, including the Prohibited and Restricted Products List; (b) conduct KYC Checks on such sub-merchants; and (c) if virtual assets/currencies are made available to Users on the platform, restrict the monetization of such virtual assets/currencies and ensure that the virtual assets/currency cannot be used to purchase services or products outside of the Merchant's platform.

In the event of any change or addition to the service, product, website and/or application of the Merchant after the initial onboarding of the Merchant that would materially impact or change the products or services the Merchant offers, the Merchant shall provide prior notice of such change to AUS in writing.

### 9. SETTLEMENT

#### (a) Settlement amount

In determining a Net Settlement Amount, AUS's records and data, as evidenced by a Settlement Report, will (in the absence of manifest error) be definitive and prevail over any records or data record on the Merchant's Systems for the purpose of making settlement on a Settlement Day. The Transaction Day for a transaction shall be determined based on AUS's records of the transaction.

#### (b) Force Majeure

Notwithstanding any other provision of the Agreement, if a Force Majeure Event occurs, AUS may, without limitation to any other rights it may have under the Agreement or Relevant Laws, postpone the respective obligations of AUS and the Merchant to the first succeeding Settlement Day on which the Force Majeure Event ceases to exist.

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AUS shall not otherwise be liable for any losses, damages, or costs the Merchant suffers, or delays in AUS's performance or non-performance, to the extent caused by a Force Majeure Event.

(c) Incidental Fee for Fund Transfer

For any transfer of a Net Settlement Amount to the Merchant under the Agreement, AUS is responsible for bank charges (if any) imposed by either a bank through which AUS initiates such transfer or an intermediary bank where AUS's Affiliate has a bank account through which Net Settlement Amount will be routed on behalf of AUS. The Merchant is responsible for any fees or charges imposed by any of its beneficiary banks.

(d) Refunds

- i. Unless specified otherwise in any Terms of Use, the Merchant may initiate Refunds within 365 days after the Transaction Day. The value of any Refund shall not exceed the amount of the original Payment in the Transaction Currency accounting for any prior Refunds for the same original Payment. The Merchant shall not initiate Refunds if the original Payment was successfully cancelled. The Merchant is liable for any misuse of its facility or AMS to process Refunds.
- ii. All Refunds must be made to the same payment instrument used for the original transaction (unless required by Relevant Laws). The Merchant must not give cash (or cash equivalent) Refunds to a User in connection with a prior Transaction.
- iii. AUS may refuse to execute a Refund if it: (a) is not allowed by Relevant Laws; (b) does not comply with Scheme Requirements; or (c) does not comply with this Agreement, and will use reasonable efforts to notify the Merchant with reason(s) and the procedure for rectifying any factual errors that may have led to the refusal, unless to do so would reduce the Merchant's or AUS's security or it would be unlawful to do so. If details relating to the Refund provided by the Merchant are incorrect, AUS is not liable for the non-execution or defective execution of the Refund, provided that, upon Merchant's request, AUS will use reasonable efforts to recover the funds involved but may charge the Merchant for any such efforts.

(e) Reserve Amount

- i. The Merchant may request that AUS prefunds Refunds and Chargebacks arising from time to time on its behalf when there is insufficient amount received from Payment Method Providers in relation to the Merchant's Transactions in the relevant Settlement Cycle to set off the Refunds or Chargebacks against. Such request shall be subject to the approval of AUS and, if AUS agrees to do so, AUS may require a reserve amount to be held back from the Net Settlement Amount as collateral for such prefunding ("**Reserve Amount**"). The Merchant may request for increase of the Reserve Amount in order to reduce Refund or Chargeback failure rate, or decrease of the Reserve Amount if the amount withheld is excessive (and such excessive amount will be released and settled to the Merchant), subject to such limits that AUS may impose from time to time. When AUS prefunds a Refund or Chargeback for a Merchant, AUS may, without further consent from or notification to the Merchant, set off such Refund or Chargeback amount against the Reserve Amount. The Merchant authorizes AUS to top up the Reserve Amount with funds held back from Net Settlement Amount when the Reserve Amount falls below the agreed Reserve Amount for any reason.
- ii. The Merchant agrees that: (i) the Reserve Amount is deemed as funds held for the sole purposes of, and strictly in connection with, the AMS Services provided by AUS to the Merchant, (ii) where there is insufficient Reserve Amount to cover AUS's prefunding of Refunds or Chargebacks, AUS may refuse to prefund the Refunds or Chargebacks and the Refund or Chargeback may fail, (iii) the Reserve Amount may be comingled, (iv) the Merchant is not entitled to any interest on the Reserve Amount, and (v) the Merchant has no right to direct the Reserve Amount including to assign or grant any security interest over or otherwise allow any encumbrance on the Reserve Amount.
- iii. The Merchant grants to AUS a lien upon all funds at any time in the Reserve Amount, to secure all of the Merchant's obligations for Refunds and Chargebacks. This security interest survives

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termination of this Agreement for as long as any liability for Refunds and Chargebacks is outstanding. The Merchant represents and warrants that no other person or entity has a security interest in the funds in the Reserve Amount. The Merchant agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) that AUS reasonably asks and considers necessary for the purposes of: (1) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; (2) enabling AUS to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority that AUS requires; or (3) enabling AUS to exercise its rights.

- (f) Transaction Data and Transaction Documents; Bank Account Details
  - i. The Merchant shall ensure the authenticity, accuracy, consistency and traceability of Transaction Data for all transactions processed by it or its Representatives and all other Transaction documents for each Transaction such as Transaction receipt, proof of delivery and such other information as is reasonably required by AUS from time to time. In providing such information, the Merchant must ensure it has all rights under Relevant Laws and applicable privacy policies and agreements to provide such information to AUS and agrees that AUS may, to the extent required, forward such information to applicable Payment Method Provider or settlement banks.
  - ii. The Merchant shall ensure that the MCC is correct and corresponds to the Merchant's products and services and the Merchant shall notify AUS of any changes to the Merchant's MCC before submitting any Transaction to AUS for the Merchant's products/services.
  - III. The Merchant will bear all Losses arising from any inaccuracy or omission in its banking details provided to AUS.
- (g) Transaction Payment Processing
  - i. The Merchant must submit a Payment request only for a Payment and include the correct Merchant name, Merchant ID, MCC and Merchant address in any Payment request. The Merchant name should be the Merchant Display Name of the Merchant.
  - ii. If a Payment request is "authorized", this means the Payment is likely to be successful. However, a Payment may still be cancelled or subject to Chargeback (where Chargeback is possible under the relevant Payment Method). The likelihood of an authorized Payment being cancelled or subject to Chargeback depends on the Payment Method which was used.
  - iii. The Merchant can obtain a payment status by sending a payment inquiry to AUS regarding such status or rely on payment notification from AUS (where a Payment Method Provider notifies AUS or the relevant Payment System Operator and AUS then notifies the Merchant that an original Payment has been successful or failed).
- (h) Transaction Data Retention
  - i. The Merchant shall comply with all applicable data retention laws and retain all data stored, processed or created by or on behalf of the Merchant in the course of the performance of obligations under the Agreement, including Transaction Data or documents for at least five (5) years after the relevant Transaction Day (or such longer period as may be required under Relevant Laws).
  - ii. The Merchant is responsible for maintaining its own records relating to AMS and transactions, and for reconciling these with its own bank account data and other accounting records.

## 10. TECHNICAL SUPPORT FUNCTIONALITY AND AVAILABILITY

- (a) AUS's Systems
  - i. AUS provides AUS's Systems to enable the Merchant to use AMS and AUS uses reasonable endeavours to ensure that AMS are available to accept Payments. AUS shall be entitled to change or amend AUS's Systems at any time and/or to change the functionalities and characteristics

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thereof, and to require the Merchant to install or update any software to continue using AMS by providing prior notification to the Merchant of not less than 30 calendar days.

- ii. The Merchant will comply with all reasonable directions and requests from AUS in relation to the security of AUS's Systems, including the directions and requirements contained in the Technical Specifications.
- iii. AUS will not commence any Planned Downtime unless it has notified the Merchant of such Planned Downtime in advance indicating the time thereof.

### (b) Use Restrictions

- i. The Merchant will not introduce or expose Harmful Codes into AUS's Systems and will monitor its use of and access to AUS's Systems to ensure no unauthorized access to AUS's Systems. The Merchant shall not attempt or take actions to gain unauthorized access to AUS's Systems or any server, computer or database connected to AUS's Systems.
- ii. Acceptance of the Merchant as a user of AMS is strictly personal and limited to the use by the Merchant of AMS for payment of the Merchant's products/services. The Merchant shall ensure that the Payment Methods are only used to pay for its products and services where there is a direct contractual relationship between the Merchant and the User and the products and services are provided on the Merchant's own account

### (c) Incident Handling

AUS and the Merchant will, in respect of Incidents, provide Support to one another through their respective Service Desks. AUS and the Merchant shall ensure that their respective Service Desks will:

- i. provide Support in English;
- ii. act as the single point of contact for AUS in all questions relating to disruptions to the Merchant's Systems or AMS, Planned Downtime and any other maintenance works performed by the Merchant;
- iii. facilitate and manage requests for Support; and
- iv. provide 24 hours 7 days Support in a reasonably timely, professional and workmanlike manner.

### (d) Resolution of Incidents

An Incident shall be deemed to be resolved when both AUS and the Merchant accept the resolution provided by AUS and agree that the Incident has been resolved. AUS will cease to have any obligations and duties with respect to the relevant Incident at the time that the Incident was resolved.

## 11. DATA SECURITY

- (a) The Merchant shall, and shall procure any third party service provider(s) it engages for accessing, storing, transmitting and processing data of Users to:
  - i. maintain security measures, including physical and electronic measures, in relation to the data in its possession or control, in accordance with all relevant data security standards, required by Relevant Laws and by the applicable Scheme Requirements;
  - ii. comply with (i) the latest Payment Card Industry Data Security Standard ("PCI DSS") if it stores, processes, or transmits Payment Card Information; and (ii) the latest SOC2 Type 2 Standard or ISO 27701 Standard if the Merchant stores, processes, or transmits personally identifiable information or AUS's Confidential Information. AUS may from time to time be required under applicable Scheme Requirements to verify or ensure Merchant's compliance, so the Merchant agrees to provide to AUS the PCI Attestation of Compliance/SOC2 Type 2 Report/ISO 27701 certificate at least annually or upon AUS's request and if the Merchant fails to prove such compliance or its certification becomes invalid, the Merchant shall immediately notify AUS. AUS may be required by applicable Scheme Requirements to suspend AMS until such requirements are fulfilled.

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- (b) If the Merchant or its Representative breaches any information security requirement under Relevant Laws or Scheme Requirements (including Cybersecurity Incidents), the Merchant shall notify AUS immediately upon becoming aware of such breach, identify impacted Transaction Data and provide to AUS within 3 calendar days, and complete and submit the Cybersecurity Incident Report to AUS within 5 calendar days. The Merchant shall cooperate with AUS regarding any investigation and comply with all reasonable directions of AUS in respect of such breach, including to take actions to suspend the use of AMS, to limit the traffic causing such breach or take remedial actions required under applicable Scheme Requirements.
- (c) Security of AUS's Systems  
The Merchant shall:
  - i. use its best endeavours to protect the confidentiality and security of the information and procedures used to authenticate communications and authorize transactions through AMS; and
  - ii. take all necessary and reasonable steps to prevent misuse and loss or any modification or disclosure of data (except to the extent permitted hereunder).

## 12. COLLATERAL, SET-OFF AND OTHER PROTECTIONS

- (a) Collateral
  - i. During the term of this Agreement, and thereafter in accordance with this Clause 12, AUS, in its reasonable discretion, may require an amount (the "**Exposure Amount**") to be held as collateral ("**Collateral**") in order to protect AUS from potential losses or other risk associated with Chargebacks (or anticipated Chargebacks), excessive Refunds, liens, garnishments, credit risk based on Merchant's processing history, or other indications of performance problems related to Merchant's acts or omissions, including but not limited to the following:
    - (A) there is a material adverse change in Merchant's financial condition or its payment record with creditors, or Merchant fails to provide the information as requested by AUS in accordance with this Agreement;
    - (B) Merchant begins accepting payment in advance of the shipment of goods or fulfilment of services, or materially increases the amount of time between Merchant's acceptance of payment and the anticipated shipment or delivery of goods or fulfilment of services;
    - (C) for Card related Transactions, Merchant receives a number of Chargebacks in excess of one percent (1%) of its total number of Transactions over a period of sixty (60) or more consecutive days, or AUS is notified by any Card Scheme Operator or acquirer of Merchant's inclusion in any chargeback monitoring or similar risk-based program, or of any card network liabilities to be assessed as a result of Merchant's Chargebacks;
    - (D) AUS has received notification from any Payment Scheme Operator or Payment Method Acquirer or has otherwise become aware of any material violation of the Scheme Requirements; or
    - (E) AUS reasonably suspects fraud or other illegal activity.
  - ii. The funds to be held by AUS as Collateral may be raised, reduced, or removed at any time by AUS, at its own reasonable discretion, based on Merchant's payment history, credit review, the amount of any arbitration award or court judgment against Merchant in AUS's favour, or otherwise as AUS may determine or require. If Merchant does not have sufficient funds held as Collateral, the Merchant will be advised by AUS on any requirement to place additional funds, whereupon Merchant must place the additional funds within five (5) Common Business Days or such other period notified by AUS. If the Merchant fails to place such additional funds, the Merchant authorizes AUS to fund the Collateral with any funds, including, but not limited to, funds (a) transferred by Merchant, (b) due to Merchant, or (c) available to the Merchant, or other payment instrument registered with AUS. The Merchant expressly acknowledges and agrees that the



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- Collateral is separate to and does not form part of the funds subject to AUS's safeguarding obligations (where applicable).
- iii. AUS may (but is not required to) apply funds in the Collateral toward the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement, or any other future agreement between the Merchant and AUS. The Merchant authorizes AUS to debit the Collateral, without prior notice to Merchant, to collect Merchant Liabilities, and such authorization survives termination of this Agreement and for the Collateral Period.
  - iv. In addition to the Exposure Amount, the Merchant agrees that an amount may be withheld by AUS from the Net Settlement Amount and held by AUS as additional collateral ("**Rolling Collateral**"), in accordance with the Rolling Collateral Rate, in order to be used to cover for Merchant Liabilities. Rolling Collateral may be converted to a fixed collateral amount after a set period of time, to be held as Collateral, as determined by AUS. The Rolling Collateral Rate(s) shall be as notified to the Merchant by AUS. AUS, at its sole discretion, may change the Rolling Collateral Rate(s) and/or the terms of the Collateral held based on the Merchant's payment processing history immediately upon a written notification to the Merchant.
  - v. Where AUS draws on the Collateral, AUS may (i) suspend release of the Rolling Collateral until the Collateral is restored to the Exposure Amount by the withheld funds from the Rolling Collateral or (ii) notify the Merchant and the Merchant must place additional cleared funds within five (5) Common Business Days to the Collateral to restore the amount to the Exposure Amount.
  - vi. The Merchant agrees that funds held as the Collateral may be comingled, that it is not entitled to any interest on the Collateral, that it has no right to direct the Collateral, and that it cannot and will not assign or grant any security interest in those funds, or allow any encumbrance upon those funds.
  - vii. Upon notice of termination of this Agreement, AUS may estimate the aggregate amount of anticipated Chargebacks, Refunds, fines, fees, penalties, or other risks and Merchant Liabilities that AUS reasonably anticipates subsequent to termination, and Merchant agrees to immediately place such amount towards the Collateral. AUS may, in its own discretion, withhold such amount from Net Settlement Amount to be placed as the Collateral pursuant to and governed by the terms and conditions of this Agreement.
  - viii. Upon (i) satisfaction of all Merchant Liabilities; (ii) Merchant's execution of documents reasonably requested by AUS in connection with the return of any Collateral funds; and (iii) expiry of a one hundred and eighty (180) day period following the termination of the Agreement (the "**Collateral Period**"), AUS will pay to the Merchant any funds then remaining in the Collateral.
  - ix. The Merchant agrees that until the expiry of the Collateral Period and subject to any additional Merchant Liabilities owed to AUS occurring beyond the Collateral Period: (1) the Merchant may not, without AUS's prior written consent, withdraw, transfer, mortgage, charge, assign or otherwise encumber or declare a trust in respect of the Collateral, unless expressly permitted pursuant to the terms of the Agreement, and (2) other than as contemplated in the Agreement, the Merchant acknowledges that its rights in relation to the Collateral are personal to it and any purported dealing by Merchant in relation to the Collateral (including by way of assignment, transfer, mortgage, charge, security interest, declaration of trust or otherwise) will not be effective to give anybody other than Merchant any interest in that account as against AUS.
  - x. All AUS's rights with respect to the Collateral shall survive the termination of this Agreement.
  - xi. Where the Merchant is insolvent, the funds held in the Collateral will be available for the purposes of the insolvency process only after the expiry of the Collateral Period and subject to any additional Merchant Liabilities owed to AUS occurring between the Merchant becoming Insolvent and the expiry of the Collateral Period.

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- (b) Lien.
- i. The Merchant grants to AUS a lien upon all funds at any time in the Collateral, regardless of the source of such funds and any amount which may be due to the Merchant under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement and the proceeds thereof (collectively, the “**Secured Assets**”) to secure all of the Merchant’s obligations to pay Merchant Liabilities. This security interest survives termination of this Agreement for as long as any Merchant Liability is outstanding. The Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets.
  - ii. The Merchant agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) that AUS reasonably asks and considers necessary for the purposes of: (1) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; (2) enabling AUS to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority that AUS requires; or (3) enabling AUS to exercise its rights.
- (c) Security.
- i. AUS may at any time require the Merchant to procure that a person or person satisfactory to AUS provides AUS with a guarantee and/or indemnity in respect of the Merchant’s obligations from time to time under this Agreement. In such case a separate document from this Agreement may need to be executed by the Merchant and/or such person.

### 13. PRIVACY AND DATA PROTECTION

(a) Disclosures and Uses of Personal Data

To the extent permitted by Relevant Laws, during and after the Term, AUS and the Merchant shall be permitted to process, use and/or disclose Personal Data as reasonably required in connection with the following disclosure and uses: (A) to comply with any Relevant Laws or Scheme Requirements; (B) to the extent reasonably necessary to exercise rights and perform obligations under the Agreement, provide or receive AMS, manage AML/fraud risk, or resolve any Disputes; and (C) to establish, exercise or defend legal claims, for the purposes of legal proceedings or for compliance, regulatory and investigative purposes.

(b) Compliance with privacy law requirements

When collecting, handling, storing, processing, using or disclosing Personal Data under the Agreement as permitted by Clause 13(a) of the AMS Terms, the Merchant must:

- i. comply with all Relevant Laws relating to privacy and data protection, including those which regulate the collection, storage, use or disclosure of Personal Data;
- ii. not do, or omit to do, anything that might cause AUS to be in breach of Relevant Laws relating to privacy and data protection; and
- iii. in the event of non-compliance with Clause 12(b)ii of the AMS Terms, take such steps as AUS reasonably requires to facilitate AUS's compliance with any Relevant Laws relating to privacy and data protection.

(c) Privacy Consents and Disclosures

The Merchant must:

- i. obtain all consents required under, or otherwise needed to comply with Relevant Laws relating to privacy and data protection and to enable AUS to lawfully process Personal Data, or as reasonably requested by AUS, where consent is necessary;
- ii. make and procure all disclosures are made to data subjects as required to comply with Relevant Laws; and

## AMS Terms and Conditions

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- iii. maintain a record of all consents, approvals or disclosures in connection with Clause 13(c)i and 13(c)ii of the AMS Terms.

### 14. AUDIT RIGHTS

- (a) If required by Relevant Laws or Scheme Requirements, AUS, or an independent third-party auditor appointed by AUS, may inspect the Merchant's locations only to the extent directly related to Merchant's performance of obligations under this Agreement at mutually agreed times during normal working hours and in a manner designed to minimize any disruption of the Merchant's business activities and the Merchant agrees to provide reasonable access to allow AUS to:
  - i. to confirm that the Merchant complies with this Agreement and the Scheme Requirements; or
  - ii. to inspect, audit and make copies only to the extent required by the Relevant Laws or Scheme Requirements of your records and any files relating to any Transaction processed under this Agreement, provided that such records may be redacted to exclude trade secrets and other Confidential Information.

### 15. INTELLECTUAL PROPERTY RIGHTS

- (a) AUS Licence to the Merchant

Subject to the Merchant's ongoing compliance with the Agreement, AUS and its Affiliates grant to the Merchant during the Term and within the Business Territory, a limited, revocable, non-exclusive, non-transferable, non-sublicensable and royalty-free licence to use the IP Rights in the technology, infrastructure, documents and materials used to provide AMS, including source codes, the Alipay+ Code-Scanning Payment Standard, Payment Codes, Collection Codes, Code Issuer Identifiers, operational and technical infrastructure, and the Alipay+ Brand Mark, and where required under the Agreement, the Acceptance Marks to the extent necessary to use AMS and receive the benefit of AMS. AUS and its Affiliates reserve the right to revoke or modify the scope of this licence as they deem necessary.

- (b) Merchant Licence to AUS

The Merchant grants to AUS, AUS's Affiliates and/or the Payment Method Provider a non-exclusive, non-transferable, non-sublicensable, royalty-free licence to use the Merchant's Trade Marks (if any) (subject to any instructions or guidelines concerning use of Merchant's Trade Marks that have been communicated to AUS) during the Term for the sole purpose of performing AUS's obligations under the Agreement (including to use the Merchant's Trade Mark on AUS's Website, Wallet Application and AUS's or Payment Method Provider's marketing and promotional materials to identify the Merchant as a user of AMS) and to indicate the availability of a Merchant to Users or Merchants.

### 16. CONFIDENTIALITY

Each Party acknowledges that the Confidential Information of the other is valuable to it and agrees to treat as confidential all Confidential Information received from the other Party in connection with the Agreement. Neither Party will disclose such Confidential Information to any third party except (a) to its Representatives who have the need to access the Confidential Information for such Party to perform its obligations under the Agreement, and who are subject to confidentiality obligations with respect to such Confidential Information, or (b) as required by Relevant Law or government authorities, in which case, the disclosing Party will, to the extent permitted under Relevant Law, give the other Party prior notice of such disclosure. Upon termination of the Agreement or at the written request of the other Party, each Party will promptly return or destroy all material embodying Confidential Information of the other Party. Notwithstanding the foregoing, each Party may retain reasonable copies of the other Party's Confidential Information to comply with Relevant Law or to exercise its rights under the Agreement, provided that such retained Confidential Information will not be disclosed or used for any other purposes.

### 17. PUBLICITY

- (a) AUS may publicly identify the Merchant as a customer of AMS and disclose aggregate data in respect of AMS (which data is not specific to the Merchant) without the Merchant's consent, but shall otherwise

## AMS Terms and Conditions

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obtain the Merchant's consent before making any press release or public announcement about the Merchant.

- (b) The Merchant shall, and shall procure its Representatives to:
  - i. not make any press release or public announcement about AUS, Alipay+ Payment Methods or Alipay China Wallet, the Merchant's use of AMS, or its business relationship with AUS (including Transaction numbers or amounts, corridor performance, business growth or plans); and
  - ii. not give interviews providing or otherwise publicly disclose such information, without AUS's prior written consent.

### 18. TAXES

- (a) To the extent permitted by Relevant Laws, all Taxes (including value added tax or other similar tax, withholding tax and indirect tax) arising from or in connection with the Service Fee under the Agreement shall be for the account of and liability of the Merchant, unless agreed otherwise in writing by the Parties.
- (b) The Merchant that sells digital goods and services shall comply with Scheme Requirements and reporting requirements under Relevant Laws and pay the relevant Taxes under Relevant Laws in relation to such sale of digital goods and services.
- (c) Notwithstanding anything else in the Agreement, the Service Fee payable to AUS by the Merchant pursuant to the Agreement shall be made free and clear of withholding or deduction on account of any Taxes. If any Taxes are required to be withheld from any such amount payable by the Merchant under the Agreement, the Merchant shall:
  - i. pay an additional amount such that the net amount actually received by AUS will, after such withholding, be equal to the full amount of the payment then due;
  - ii. pay to the relevant taxation authority the full amount required to be withheld in accordance with Relevant Laws; and
  - iii. furnish to AUS as soon as practicable an official receipt evidencing payment of the withheld amount to the relevant taxation authority.
- (d) AUS and the Merchant shall co-operate and work together in good faith to mitigate any Taxes payable in relation to AMS (including by making any necessary filings, or applying for exemptions, authorizations or consents in accordance with Tax Laws), provided such measures are reasonably available under Relevant Laws.
- (e) The Merchant acknowledges that AUS may make necessary filings that contain Transaction or other information of the Merchant, where such filing is required under Tax Laws or requested by Tax authorities.

### 19. SURVIVAL

Without limiting or impacting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Agreement, Clauses 5 (Dispute Resolution), 9(h) (Transaction Data Retention), 16 (Confidentiality), 18 (Taxes), 20 (Liability), 21 (Indemnities) and 24 (General) of these AMS Terms, shall survive the termination of the Agreement.

### 20. LIABILITY

- (a) Disclaimer

AUS makes AMS available to the Merchant on an 'as is' basis and disclaims any warranty, representation, undertaking or condition of any kind, express, implied or statutory, including any implied warranty of title, accuracy, quality, completeness, timeliness, responsiveness, productivity, non-infringement, ability to license, merchantability, fitness for a particular purpose or that AMS will be defect or error free or operate without interruption.

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### (b) Limitations of liability

#### i. General provisions

- (A) Subject to the provisions of this Clause 20(b)(i), the maximum aggregate liability of AUS under the Agreement shall not exceed the lower of (i) the total amount of Service Fees actually paid by the Merchant during the six (6) month period immediately preceding such breach irrespective of the Effective Date and (ii) USD 500,000.
- (B) The limitation on liability under clause 20(b)(i)(A) will not apply to:
  - (i) any liability to pay the Net Settlement Amount under the Agreement;
  - (ii) liability arising from the wilful misconduct, gross negligence, fraud or fraudulent misrepresentation of AUS; or
  - (iii) liability which may not otherwise be limited or excluded under Relevant Laws.
- (C) Neither Party has any liability under the Agreement for any Losses under law or equity for lost profits, lost business, loss of opportunity, damage to goodwill or reputation or other indirect, incidental, special, consequential, exemplary, incidental or punitive damages, even if advised of the possibility of these damages; provided that Losses arising from Third Party Claims are considered to be direct Losses hereunder.
- (D) Further, each Party shall have no liability to the other Party under the Agreement for any Loss caused, directly or indirectly, by:
  - (i) any third party (subject to the other Party's liability, if any, for its Representatives);
  - (ii) acts or omissions that were expressly authorized by the indemnified Party or its Representative; or
  - (iii) products (including any hardware or software) not provided by the indemnifying Party.

#### ii. No liability for facilities and software

- (A) AUS will not be liable for:
  - (i) the supply, development, installation, maintenance of, or any costs associated with facilities necessary for the Merchant to access or use any AMS, other than as expressly set out in the Agreement;
  - (ii) any deficiency, defect or degradation in the performance of AMS to the extent caused or contributed to by:
    - a. any software application, website or other interface of a third party or the Merchant, including the Merchant's Systems;
    - b. the Merchant or its Representatives accessing or using an AMS Service contrary to the Agreement or otherwise not complying with its obligations under the Agreement; or
    - c. a Force Majeure Event.

#### iii. No liability for goods or services of Merchant

AUS is not liable for any Losses arising in connection with the quality, merchantability, use, delivery or non-delivery of any products or services of the Merchant.

## 21. INDEMNITIES

- (a) Subject to Clause 20 (Liability) of the AMS Terms, the Merchant shall indemnify AUS, its Representatives and licensors against, any Losses arising out of:
    - i. any breach by the Merchant of the Agreement, Scheme Requirements, or Relevant Laws;
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- ii. any claims or liabilities arising from the Merchant's use of AMS, any Transactions, Refunds or Chargebacks;
  - iii. wilful misconduct, gross negligence, dishonesty, fraud or fraudulent misrepresentation by the Merchant or its Representatives;
  - iv. any unauthorized use or infringement by the Merchant or its Affiliates of the IP Rights of a third party; and
  - v. any claim by a third party asserted in a legal proceeding that the use by AUS and/or its Affiliates of the Merchant's Trade Mark in accordance with any licence granted to AUS, its Affiliates or the Payment Method Provider under Clause 15(b) of the AMS Terms or the use by AUS and/or its Affiliates of any materials made available by the Merchant in connection with AMS in accordance with the terms of the Agreement constitutes an unauthorized use or infringement of any IP Rights of that third party.
- (b) Subject to Clause 20 of the AMS Terms, AUS shall indemnify the Merchant and its Representatives against, any Losses arising out of:
- i. any breach by AUS of the Agreement or Relevant Laws;
  - ii. wilful misconduct, gross negligence, fraud or fraudulent misrepresentation by AUS or its Representatives; or
  - iii. any claim by a third party asserted in a legal proceeding that the use by the Merchant and/or its Affiliates of IP Rights of AUS in accordance with any licence granted under Clause 15(a) of the AMS Terms, or the use by the Merchant and/or its Affiliates of any materials made available by AUS in connection with AMS in accordance with the terms of the Agreement constitutes an unauthorized use or infringement of any IP Rights of any third party, but only to the extent that such IP Claim against the Merchant would not have arisen other than solely as a direct result of the Merchant's performance of its express obligations in accordance with the terms of the Agreement after the Effective Date.
- (c) If a third party makes an IP Claim or if the indemnifying Party considers that an IP Claim is reasonably likely, then, without limiting the indemnifying Party's obligations under this Clause 21 of the AMS Terms, the indemnifying Party may at its discretion:
- i. modify or replace the relevant materials that are the subject of the IP Claim to render the use of such materials under the relevant licence non-infringing while preserving or enhancing the utility, features and performance of the relevant materials; or
  - ii. obtain for the indemnified Party the right to continue using the relevant materials.
- (d) In the event that the Merchant chooses to communicate with AUS by email, including by communicating material instructions such as update or addition of Settlement Account(s), the Merchant acknowledges that (i) AUS is authorized to rely upon and act in accordance with communication, information or instruction which may from time to time be or purport to be given from an email address which is set out in the Service Application Form under "Merchant's Alipay ID" and treat such communication, information or instruction as being fully authorized and binding on the Merchant without the obligation to inquire on AUS's part as to the authority or identity of the person making or purporting to give such email instructions or communication and regardless of the circumstances prevailing at the time of such email instructions or communication, (ii) all risks of unauthorized instructions or fraud caused by such email communication lies with the Merchant and (iii) email communications are not secure and the Merchant accepts the risk of technical malfunction, unauthorized interference, misdelivery or delay of email messages and computer viruses. The Merchant undertakes to indemnify and hold AUS harmless against all Losses incurred or sustained by AUS out of or in connection with any such email instructions or communication or arising as a result of acting upon or carrying out of any such email instructions or communication or the taking of steps in connection with or in reliance upon any such email instructions

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or communication or resulting from the electronic transmission of any information from AUS to the Merchant.

(e) Obligations in respect of Third Party Claims

- i. The indemnified Party will notify the indemnifying Party in writing promptly after becoming aware of any claim of any third party in respect of which the indemnified Party may seek indemnity under this Clause 21 of the AMS Terms (“**Third Party Claim**”) with details reasonably necessary to inform the indemnifying Party of the nature and scope of the Third Party Claim; provided that delay or failure to notify shall not prejudice the indemnified Party’s right to indemnity hereunder.
- ii. The indemnifying Party may by providing written notice to the indemnified Party within 30 calendar days of receiving the notice in Clause 21(e)i of the AMS Terms, conduct the defence of the Third Party Claim, at the indemnifying Party’s expense.
- iii. The indemnified Party shall, to the extent required under Relevant Laws, take all reasonable steps to mitigate the amount of any Losses in connection with the Third Party Claim.
- iv. If the indemnifying Party elects to take control of the defence of the Third Party Claim in accordance with Clause 21(e)ii of the AMS Terms, the indemnified Party shall, at the indemnifying Party’s expense, promptly provide the indemnifying Party with reasonable assistance in conducting the defence of the Third Party Claim.
- v. If the indemnifying Party elects to take control of the defence of the Third Party Claim in accordance with Clause 21(e)ii of the AMS Terms, the indemnifying Party shall:
  - (A) keep the indemnified Party reasonably informed of material developments relating to the Third Party Claim;
  - (B) consider in good faith the indemnified Party’s reasonable requests relating to the defence or negotiations for settlement of the Third Party Claim; and
  - (C) obtain the indemnified Party’s prior written consent before making, accepting or publicizing (unless restricted by Relevant Laws) any offer of settlement in respect of the Third Party Claim.

(f) Reduction of indemnified amount

Any amount claimed by an indemnified Party pursuant to an indemnity under this Clause 21(f) of the AMS Terms will be reduced proportionally to the extent that any Loss is directly caused, or contributed to, by the negligence of the indemnified Party.

## 22. INJUNCTIVE RELIEF

Each Party agrees that damages may not be a sufficient remedy for the other Party for any breach of the Agreement or the Alipay+ Brand Guidelines. A Party may seek specific performance or injunctive or other relief (as appropriate) as a remedy for any breach or threatened breach of the Agreement or the Alipay+ Brand Guidelines by the other Party in addition to other rights and remedies available at law or in equity.

## 23. VARIATIONS

The Merchant agrees that AUS may vary, amend or supplement the terms of these AMS Terms (including any schedule) (“**Variations**”) by posting such changes on the AMS Webpage. Such Variations will come into effect 10 calendar days after such Variations are posted to the AMS Webpage, and the Merchant’s use of the AMS Services more than 10 days after such Variations are so posted, constitutes acceptance of the terms of the modified AMS Terms and/or schedule by the Merchant. A current copy of the current these AMS Terms (including the schedules thereto) may be accessed on the AMS Webpage.

## 24. GENERAL

(a) Notices

- i. All notices and other communications under the Agreement will be in writing and shall be sent by express courier or email.
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## AMS Terms and Conditions

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- ii. Notices will be effective upon receipt. A rebuttable presumption of receipt of notices or other communication will be created:
    - (A) if the notice is sent by express courier, by the courier's record of delivery; or
    - (B) if sent by email to an email address nominated by the recipient under the Agreement, when the email is sent to the receiving Party at that email address, unless the sending Party receives a notification of delivery failure within 24 hours of the email being sent.
  - iii. Each Party shall provide at least three (3) Common Business Days' notice to the other Party before changing its designated email address for notices and other communication.
  - iv. Notwithstanding anything to the contrary herein, notices in connection with (i) termination of this Agreement, (ii) any breach of this Agreement, in whole or in part, by the other party, and (iii) dispute or legal proceedings arising out of or in connection with this Agreement shall be sent by express courier only. Email notices in connection with the foregoing subject matters shall not constitute effective notice.
- (b) No Agency
- Other than the limited agency of AUS to receive and hold funds on behalf of the Merchant as set forth in Clause 5 of this Agreement, each Party is entering into the Agreement in its own capacity for its own account and is not acting as a nominee or agent of the other Party or any third party.
- (c) Third Parties
- A person who is not a Party shall have no right to enforce any of their terms under the Agreement; provided that AUS's Representatives, Affiliates and licensors are entitled to enforce the relevant indemnities in Clause 21 (Indemnities) of the AMS Terms.
- (d) Implied waiver
- As between AUS and the Merchant, the waiver by AUS or the Merchant of a breach or default by the other Party of any provision of the Agreement, or the failure on the part of either Party to exercise any right or privilege, shall not be construed as a waiver of any subsequent breach or default by the other Party, or as a waiver of any such provision, right or privilege.
- (e) Entire understanding
- As between the Parties, the Agreement contains the entire understanding between them with respect to the subject matter set out therein.
- (f) Delegation and Assignment
- i. The rights and obligations of the Merchant under the Agreement may not be assigned, by operation of law or otherwise. AUS may assign any of its rights or obligations under the Agreement to any of its Affiliates without the Merchant's consent.
  - ii. AUS may delegate or sub-contract any or all of its obligations under the Agreement to any of its Affiliates, agents or service providers, provided that AUS remains responsible to the Merchant for the performance of its obligations under the Agreement.
- (g) Severability
- If any provision of the Agreement is determined to be unenforceable, the Parties intend that the Agreement be enforced as if the unenforceable provisions were not present and that the remaining provisions be enforced to the extent that they are enforceable. The unenforceable provisions should be replaced with a provision approaching, insofar as possible, the economic objective of the unenforceable provision.
- (h) Interpretation
- In the Agreement, unless a contrary intention is expressed:
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- i. headings and italicised, highlighted or bold type are for reference only and do not affect the interpretation of the Agreement;
- ii. the singular includes the plural and the plural includes the singular;
- iii. a reference to a person includes any individual, firm, Merchant, partnership, joint venture, unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- iv. except where the contrary intention appears, all references to time in the Agreement are to GMT-7;
- v. a reference to a document (including the Agreement) or legislation includes all amendments or supplements to, or replacements or novations of, that document or legislation and, in the case of legislation, all delegated legislation made under it;
- vi. a reference to a party to any document includes that party's successors and permitted assigns;
- vii. a reference to a body, other than AUS or the Merchant (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- viii. the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in the Agreement do not limit what else is included and shall be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- ix. a reference to USD, \$ or dollars is a reference to the lawful currency of the United States of America; and
- x. any reference in these AMS Terms to a schedule refers to a schedule to these AMS Terms, unless otherwise stated. Any reference in the Agreement to a clause or paragraph refers to the relevant clause or paragraph in the Agreement.

