



## **Noqodi Merchant Services Terms and Conditions**

Last Update: 22<sup>nd</sup> May 2023

This noqodi Merchant Agreement (the “Agreement”) is by and between: **Noqodi** (“We”, “Us”, “Our”, and/or the “Payment Service Provider”) and **you** (“You”, “Your”, and/or the “Merchant”) who registered to receive certain payment processing services, and other business services that may be offered by noqodi.

The Payment Service Provider and the Merchant are collectively referred to as the “Parties” and individually referred to as the “Party” where appropriate. This Agreement prescribes the terms and conditions that apply to Your use of the noqodi Merchant Services.

You must read, agree to, and accept all of the terms and conditions contained in this Agreement in order to use Merchant Services. You agree and understand that by clicking and accepting this Agreement You confirm to have read, understood, acknowledged, and accepted these terms and conditions to access and use Merchant Services. You may not access or use any Merchant Services unless you agree to abide by all of the terms and conditions in this Agreement. By accepting this Agreement, You also agree to accept the noqodi’s Privacy Policy and noqodi’s Services Agreement. Any violation of this Agreement may result in the suspension or termination of your account, the Merchant Services or such other action permitted in accordance with the Agreement.

If You need help in understanding any of the terms of this Agreement, please contact Us through the Mobile/Webpage Application by selecting “**Contact Us**” and opening a service desk ticket or log on to <https://www.noqodi.com/#/contact-Us>

This Agreement is system generated and does not require a physical or digital signature. Merchant agrees that Merchant’s electronic consent will have the same legal effect as a physical signature and shall constitute Merchant’s acceptance of and agreement to be bound by the Agreement. For the avoidance of doubt, Your use (and continued use) of the Merchant Services constitutes Your acceptance of this Agreement.

## **1. DEFINITIONS**

<b>Agreement</b>	shall mean this noqodi merchant agreement, declaration, and indemnity and any or all schedules, appendices, annexures, and exhibits attached to it or incorporated in it by reference. This Agreement if accepted by a company, the expression “the Merchant” shall include the person or persons from time to time carrying on the business of such organization and, if there are two or more signatories hereto, the expression “the Merchant” shall include all and each of them and their liabilities under this agreement shall be joint and several.
<b>Acquiring Bank</b>	shall mean a bank or financial institution registered by a Card Scheme, that accepts and processes credit or debit card transactions for a cardholder.
<b>Authorization</b>	shall mean the process hereunder by which the Issuing Bank/ Institution and/or the relevant Acquiring Banks/ Payment Instrument Provider, Card Schemes electronically or otherwise convey the approval of a charge on a Transaction being undertaken by a Customer on Site/ website/ app/ web link/ payment link.
<b>Applicable Law</b>	means any applicable statute, enactment, law, by-law, rule, regulation, order, ordinance, guideline, policy, judgements decree, or any similar form of decision of, or determination by, or any interpretation having the force of law, of any Governmental Authority having jurisdiction over the matter or a Party in question, whether in effect on the date of this Agreement or thereafter
<b>Card Schemes</b>	means any of the respective internationally recognized licensing companies such as Visa, MasterCard or others.
<b>Customer</b>	shall mean any person who desires to purchase Services or Products from the merchants and makes payment for the same over the Internet on Payment Service Provider Web site using a valid Credit Card/Debit Card/Net Banking Account/e-Cash Account or other Payment Instruments as applicable.
<b>Charge to Customer</b>	shall mean: (a) in respect to Product means the sale price of the Product purchased by the Customer plus the shipping charge (if any) and all other taxes, duties, costs, charges and expenses in respect of the Product that are to be charged to the Customer’s valid Payment Instrument. (b) In respect to Services means the sale price of the Services rendered to the Customer plus all other taxes, duties, costs, charges and expenses in respect of the Services that are to be charged to the Customer’s valid Payment Instrument.
<b>Chargeback</b>	shall mean any approved reversal of any online card Transaction made by the Customer of Merchant on account of (i) any alleged forgery of his card or other details (ii) duplicate processing of the Transaction; (iii) any amount required to be refunded due to, denial of Transaction by the Customer as wrongly charged payment/ extra payments and/or due to the fraudulent use/misuse of the personal and financial information of the Customer by any unauthorized person; (v) non-Delivery or deficiency in the Merchant’s Product or Service and/or any other reason as required/approved by the concerned banks, as the case may be.
<b>Custodian Bank</b>	shall mean a financial institution to safeguard the securities/currency of a firm or company and arrange for settlement of any purchase or sale of Products or Services of a merchant.
<b>Delivery</b>	shall mean, in respect of a Service, delivery/performance of the Service, proof of which shall be submitted by the Merchant to the Payment Service Provider electronically through their account to the satisfaction of the Payment Service Provider, the facility providers and/or the Acquiring Banks.
<b>“Direct Debit” or “Bank Transfer”</b>	shall mean a payment option for customer in which he/she directly makes a transfer of funds from his/her existing bank account to Merchant’s account for the Services availed.

<b>“eCash” or “eCash Account”</b>	shall mean a pre-paid account which is funded & is used for Merchant payments and other Services offered on Payment Service Provider site.
<b>Effective Date</b>	shall mean the date on which the Merchant accepts this Agreement.
<b>Issuing Bank</b>	shall mean, in respect of a Customer, means the bank which has issued the Valid Credit Card to the Customer with which Customer makes the payment for the Products/Services.
<b>Merchants Site</b>	shall mean the website with the domain name or Mobile Application established by the Merchant for the purposes of enabling its Customers to place orders for purchase of Products & Services through the Internet.
<b>Merchant Services</b>	means the services provided by the Payment Service Provider to the Merchant.
<b>Nominated Bank Account</b>	You must at all times during the term of this Agreement, maintain a Nominated Bank Account acceptable to Us for the purpose of enabling Us to credit payments due to You or otherwise, and to debit any sums payable by You to Us, either by Direct Debit or otherwise as required by Us. If You require more than one such account Our prior written agreement must be given. If You intend to change Your Nominated Bank Account You must give Us not less than <b>thirty (30) calendar days</b> ’ prior notice in writing and initiate a new payment instruction in relation to Your new Nominated Bank Account on the terms contained in this Agreement.
<b>Order</b>	shall mean an order for the purchase of Product(s)/Services placed by the Customer on the Merchants/Payment Service Provider’s website.
<b>Payment Mechanism</b>	shall mean the payment mechanism through the Internet utilizing the Net Banking facility of various acquiring banks and through such other modes and mechanisms of payment and delivery as may be notified by the Payment Service Provider from time to time.
<b>Payment Instrument</b>	means a valid Payment Instrument physical or virtual issued by an authorized Card Scheme, Financial Institute and any other Payment Instrument Providers that are authorized to issue valid card and/or any other Payment Instrument to the Customer which enables the Customer to initiate and complete an online Transaction to purchase/ avail Products and Services of Merchant.
<b>Payment Service Provider Site</b>	shall mean the website with the domain name “noqodi.com” and APIs (Application Programming Interface) established by noqodi for the purposes of enabling on-line or offline purchase of Services through instructions by the Customers on the Merchant Site to the Payment Service Provider site.
<b>Product</b>	shall mean a tangible product that is manufactured or distributed by the Merchants, and that is purchased by the Customer.
<b>Proof of Delivery</b>	shall mean: (a) In respect of Product, sufficient legitimate records evidencing Delivery of the Product to the Customer (i.e. charge slips bills etc.). All proof of delivery of Products shall be maintained by the Merchant for a period of at least eighteen (18) months or for any longer period as required under applicable laws, from the date of delivery by the Merchant and shall be open to inspection by Payment Service Provider and the Facility Providers at any time whatsoever. (b) In respect of Service, sufficient legitimate records evidencing receipt of the Service to the Customer (i.e. Invoice, bills, etc. All proof of delivery of Services shall be maintained by the Merchant for a period of at least eighteen (18) months or for any longer period as required under applicable laws, from the date of Delivery by the Merchant and shall be open to inspection by Payment Service Provider and the Facility Providers at any time whatsoever.
<b>Services</b>	shall mean any service that the Merchant offers to provide, and that is availed of by the Customer, the payment for which is to be made on the Customer’s Valid Credit Card/Debit Card/Bank Account/e-Cash account/Net Banking.

<b>Standards</b>	means the rules and regulations prescribed by Facility Providers.
<b>Transaction</b>	shall mean every order that results in the Delivery by the Merchant to the Customer of the Services in respect of which the Order was placed.
<b>Transaction Data</b>	shall mean all data relating to Transactions.
<b>Transaction Record</b>	means the particulars of a Transaction required by Us from You in order to process a Transaction in the form as prescribed by Us.
<b>Valid Credit Card</b>	shall mean a Visa or a MasterCard credit card or any other card acceptance facility provided by the Payment Service Provider's, the Facility Providers or the Acquiring Banks.
<b>Facility Provider</b>	shall mean various Acquiring Banks, Financial Institutions, Card Schemes, Issuing Banks / Institutions, Software providers as well as third party service providers who participate in Authorization/ Authentication/ facilitation of payments and who have signed agreement with the Payment Service Provider to provide information technology services including but not limited to Internet based electronic commerce, Internet payment gateway and electronic software distribution services.

## 2. USE OF NOQODI MERCHANT SERVICES

- 2.1 You shall only use the Merchant Services for the purposes specified in this Agreement. Any use of the Merchant Services for purposes other than those permitted by this Agreement will be regarded as a breach of this Agreement.
- 2.2 You acknowledge and agree that the Merchant Services provided by Us under this Agreement, including, without limitation, the Payment Service Provider Site, are provided on an "as-is" basis, and We shall have no obligation to modify and/or customize the Payment Service Provider Site during the Term of this Agreement.
- 2.3 You shall not perform or allow to be performed any actions detrimental to the security or performance of Our Merchant Services, or any actions which will result in the degradation of service for any other Payment Service Provider user.
- 2.4 You shall not perform or allow any actions to be performed that violate applicable hacking and/or cyber-crime laws.

## 3. TERM

- 3.1 **Term:** This Agreement shall become effective on the Effective Date and shall remain in full force until a notice of cancellation by the Payment Service Provider or the Merchant is given by advance **thirty (30) days** written notice, or until terminated under other provisions of this Agreement.
- 3.2 **Non-exclusive:** Nothing in this Agreement shall prohibit the Payment Service Provider from furnishing any Merchant Services similar to those provided under this Agreement to others, including competitors of the Merchant.

## 4. COVENANTS OF THE MERCHANT

In consideration of the Payment Service Provider performing the Merchant Services as mentioned above, the Merchant hereby declares, assures, undertakes and covenants as under:

- 4.1 The Merchant shall, prior to accepting any instructions from the Customer, ensure that appropriate agreements have been executed with the Customer in accordance with the requirements of applicable law and regulations, if required.
- 4.2 The Merchant assures and guarantees to the Payment Service Provider, the Facility Providers, and the Acquiring Banks the due performance of all Customer Orders for which the payment has been transferred through the Payment Mechanism.
- 4.3 The Merchant shall comply with all Applicable Laws, rules, regulations, ordinances, and instructions including but not limited to the Anti Money Laundering regulations of the United Arab Emirates. The Merchant shall comply with all rules and procedures governing this Agreement, and any other procedure or guidelines which may be supplied by the Payment Service Provider from time to time. The Merchant shall comply with all applicable Card Scheme operating regulations, instructions, manuals, and

guidelines.

- 4.4 The Merchant shall ensure that all licenses and registrations required by the Merchant are in full force and effect to enable the Merchant to carry on the business of sale of Product/Services.
- 4.5 The Merchant shall ensure the confidentiality of all information submitted by its Customers on the Merchant's Site.
- 4.6 The Merchant shall, at all times, ensure that it is acting in compliance with all guidelines set by Card Schemes/Net-Banking/Acquiring Banks and the Facility Providers.
- 4.7 The Merchant understands and agrees to comply with all applicable standards, including the rules set by the Card Schemes.
- 4.8 The Merchant shall provide the Payment Service Provider, the Facility Providers, and the Acquiring Banks with such information and/or assistance as is required by the Payment Service Provider, the Facility Providers, and the Acquiring Banks for the performance of the Merchant Services and/or any other obligations of the Payment Service Provider, the Facility Providers, and the Acquiring Banks under this Agreement.
- 4.9 We may, with or without notice, change processing or payment terms and/or with or without notice suspend credits or other payments of any and all funds, money and amounts now due or which subsequently become due to You pursuant to this Agreement if in good faith We suspect that:
  - 4.9.1 any Transaction is fraudulent or involves other criminal activity;
  - 4.9.2 that any Transaction was not in the ordinary course of Your Business;
  - 4.9.3 if the number and/or size of the Transaction(s) is significantly greater than expected;
  - 4.9.4 if any of the Termination Events has occurred; or
  - 4.9.5 if We suspect that any such Termination Event has, or is likely to occur (whether or not We have terminated this Agreement). All payments so suspended may be retained by Us until We have satisfied Ourselves, it is reasonably identified that such Transaction(s) is/are legitimate and no longer liable to be the subject of a Chargeback. No interest shall accrue in respect of any such amount that is so withheld.
- 4.10 In addition to any other rights or remedies We may have against You, We reserve the right to retain or withhold settlement of any sums due to You if:
  - 4.10.1 there is material breach of the terms of this Agreement by You, for the duration that the material breach is fully remedied and We do not in our reasonable view foresee any associated risks;
  - 4.10.2 Termination Event has occurred, for the duration of the chargeback period prescribed by the Card Schemes.
- 4.11 Upon a prior written notification by Us to You, You will instruct Your bank to pay upon presentation of supporting documents with valid reason by Us to You; all requests for payment of a debit initiated by Us in respect of amounts due and payable by You to Us, even after this Agreement has ended for any reason.
- 4.12 The Merchant must ensure that it shall not:
  - 4.12.1 undertake/allow Transactions for anything other than the genuine purchase of the Products and/or Services that the Merchant provides;
  - 4.12.2 impose any minimum or maximum Transaction values;
  - 4.12.3 discriminate against the use of any Card or Payment Instrument in any way;
  - 4.12.4 split a Transaction into two or more transactions;
  - 4.12.5 accept a Transaction or present Transaction Data for processing which was not undertaken directly between the Merchant and the Customer;
  - 4.12.6 accept or process Transactions in order to give Customers cash;
  - 4.12.7 accept any Transaction using any Card or Payment Instrument issued in the Merchant's name, or related to the Nominated Bank Account or of a partner in, or director or other officer of Merchant's Business or the Business of the Merchant, or of the spouse or any member of the immediate family or household of any such person;
  - 4.12.8 submit Transaction data which Merchant know or ought to have known is illegal;
  - 4.12.9 Refund Transactions to a Card/ Payment Instrument which was not originally used to make such Transactions, and Merchant must not, under any circumstances, accept money from a Customer in connection with processing a Refund to the Customer's Account.
- 4.13 When dispatching Products, it is Your absolute responsibility to ensure:
  - 4.13.1 that the Products are dispatched to the correct address;
  - 4.13.2 You do not raise a Transaction Record prior to the Products being dispatched; and
  - 4.13.3 to advise the Customer of the estimated time it will take to dispatch the Products and if, for any reason, You do not have the Products available for dispatch to the Customer within such advised time period, then the Customer must be notified of that fact and the order re-confirmed by the Customer.

- 4.14 Undertaking 'Card Not Present' Transactions shall be solely at Your entire risk and responsibility, and You shall be liable for any Losses which occur as a result of undertaking such Transactions. You acknowledge and agree that such Transactions are at Your own risk.
- 4.15 Against each Valid Credit Card usage there must be a Service and/or Product transacted. The Merchant must provide to the Payment Service Provider any proof which the Payment Service Provider requires from time to time in relation to the Products sold, receipts, invoices, Customer correspondence and all related documents relating to Transactions with a Customer.
- 4.16 The Merchant acknowledges that the Facility Providers and the Payment Service Provider have the right to enforce any provision of this Agreement and to prohibit any Merchant conducts that may injure or create a risk of injury to the Facility Providers and the Payment Service Provider including injury to reputation, or that may adversely affect the integrity of the Facility Providers and the Payment Service Provider's core payment systems, information or both. The Merchant agrees that it shall not take any action that might interfere with or prevent the exercise of this right by the Facility Providers and the Payment Service Provider.
- 4.17 The Payment Service Provider, the Facility Providers and/or the Acquiring Banks reserves the right to impose limits on the number of purchases which may be charged on an individual credit card account/e-cash account/bank account during any time period and reserves the right to refuse to make payments in respect of Orders exceeding such limit. The Payment Service Provider the Facility Providers and/or the Acquiring Banks also reserve the right to refuse to make payments in respect of Orders from Customers with a prior history of questionable charges.
- 4.18 The Card Schemes often maintain lists of merchants who have had their contracts terminated or Card acceptance rights terminated for cause. If this Agreement is terminated for cause under Clause 10 You acknowledge that We may, with a prior notification to you via e-mail to the extent practically possible for Us (and if required to report to the Card Schemes), provide details of Your business name and other information including, but not limited to, details of Your Nominated Bank Account, reasons for Your inclusion on such lists and You expressly agree and consent to such reporting. These details may also be notified to credit reference agencies.
- 4.19 The Merchant shall take all precautions as may be feasible or as may be directed by the Payment Service Provider and the Facility Providers to ensure that there is no breach of security and that the integrity of the link between the Merchant's Site, the Payment Service Provider's Site and the Payment Mechanism is maintained at all times during the term of this Agreement. In the event of any loss being caused as a result of the link being breached or as a consequence of the link being improper or being in violation of the provisions of this clause, the loss shall be to the account of the Merchant and the Merchant shall indemnify and keep indemnified the Payment Service Provider and the Facility Providers from any loss as may be caused in this regard.
- 4.20 The Merchant states that the individual accepting this Agreement is an authorized representative of the Merchant and is thereby fully authorized to bind the Merchant to contractual obligations and is authorized to provide the information and documentation submitted in connection with this Agreement are complete and correct in all material respects. Merchant authorizes Payment Service Provider to obtain and verify, and to continue to obtain and verify any information submitted by the Merchant in relation to any principals, partners, officers or other authorised representatives of the Merchant including the individual accepting the Agreement, and for Payment Service Provider to use such information as reasonably necessary during the course of providing the Merchant Services contemplated here under as well as for Payment Service Provider to share such information with its affiliates or as otherwise allowed by Applicable Law. The Service Provider reserves the right to conduct audits and periodic oversight reviews of Merchant determining compliance with this Agreement and byelaws and standards of Central Bank of UAE, the Facility Providers and Payment Service Provider.
- 4.21 The Merchant agrees and undertakes to immediately notify the Payment Service Provider of its change of ownership, control or legal status, any actual or impending change in trading terms, directors, other officers, members or partners, business or trading name, legal status, business or trading address or in any of other details that have been provided to Us , any insolvency event, location, nature of business or any other change in circumstances which may alter its relationship with Us, as it pertains to this Agreement in any way, or otherwise.
- 4.22 Subject to Clause 4.21, You shall perform/conduct Your business in accordance with the descriptions You have provided Us of your business during Your registration with Us. You shall not perform/deliver any Services and/or Products other than that which has been approved by Us and/or stated in your trade licence.
- 4.23 The Merchant agrees that We may run further checks on the Merchant's identity, creditworthiness, and background by contacting and consulting relevant registries and governmental authorities or any other relevant sources.

- 4.24 The Merchant shall provide at the time of applying for the service and whenever required during the duration of this Agreement, valid and genuine required information, and documentation.
- 4.25 The Merchant shall provide a commercially reasonable level of customer support to Customers. Such support shall include appropriate notice to Customers of:
- 4.25.1 a means of contacting Merchant in the event the Customer has questions regarding the nature or quality of the Products & Services that the Merchant offers for sale; and
- 4.25.2 procedures for resolving disputes. If the Payment Service Provider or any of the Facility Providers or any of the Acquiring Banks determines in good faith that Merchant's failure to comply with this paragraph is causing an unacceptable burden on its customer support facilities, the Payment Service Provider may suspend or terminate this Agreement as per Termination clause given below.
- 4.26 The Merchant acknowledges and understands that compliance of the procedures in this Section are for its own protection, and it acknowledges it shall be liable to the Payment Service Provider and/or other parties for any breach or non-compliance with any of the aforesaid procedures.
- 4.27 In the event of any inconsistency between any provision of this Agreement and the standards set out by Facility Providers, the standards shall govern.

## 5. CHARGEBACKS / DISPUTES

- 5.1 The Payment Service Provider and the Facility Providers shall not be a party to any disputes between the Customer and the Merchant. In the event of any dispute between the Merchant and the Customer, whether in relation to any deficient, improper, or incomplete Product or Service provided by the Merchant or otherwise, the Payment Service Provider and the Facility Providers shall not be made a party to any litigation, arbitration or other proceeding instituted in respect of such disputes.
- 5.2 In case of any disputes/query concerning any transaction, the Merchant must provide to the Payment Service Provider any documents required or requested by it from time to time. The Merchant shall be responsible and obliged to at all times to maintain and retain legible and clear copies of all documents required by the Payment Service Provider. In case any document is not legible and/or clear, the Merchant may lose the right of claim for such Transaction.
- 5.3 In the event of any Customer complaining of any deficiency in the Services, the Merchant shall take such measures as may be required to rectify the same. Where the Merchant fails to comply with the timeline of fulfilling the order, the Payment Service Provider has full right to refund the Customer after deducting Payment Service Provider charges, if any, due to any non-fulfilment of the Order and/or claim made by a Customer against the Merchant.
- 5.4 The Merchant undertakes to make timely payments of all the monies, charges, and Chargeback amounts, Refund amount duly payable to Payment Service Provider as and when demanded by Payment Service Provider. Merchant also undertakes to payback any amount received in excess or erroneously from Payment Service Provider within **seven (7) calendar days** of receipt of claim from Payment Service Provider without any delay, demur, or protest.
- 5.5 The Merchant agrees to be held responsible and liable for:
- 5.5.1 any and all Chargebacks; and
- 5.5.2 any assessment, fines, fees, charges or expenses of any nature which Card Schemes, Issuers, or Facility Providers, levy against Us at any time, directly or indirectly, in relation to any aspect of our relationship with the Merchant (all together defined herein as "Assessment"). Each Chargeback and Assessment represents a debt immediately due and payable to Us.
- 5.6 In the event of a Chargeback being raised, the Merchant shall provide the Proof of Delivery of Product/Service (as applicable), as requested by the Payment Service Provider within **five (5) calendar days** of the request being raised by the Payment Service Provider
- 5.7 The Merchant shall be liable for any Customer dispute and shall not hold the Payment Service Provider liable, including in any of the following circumstances:
- 5.7.1 the Products referred to in the Order has been returned or not received by the Customer, or claimed to have been returned or not received;
- 5.7.2 the Services referred to in the Order have been unsatisfactory to the Customer, unreceived, or unclaimed.
- 5.7.3 The Customer claims that the Transaction via. a Valid Credit Card, Direct Debit or Bank Transfer was not authorized/carried out by the Customer
- 5.8 Where a Chargeback or an Assessment occurs, We shall immediately be entitled to debit Your Nominated Bank Account or Settlement Account and/or make a deduction from any amount received by Us from the Payment Schemes, Acquiring Bank or the Facility Providers in accordance with this Agreement ('Settled Amount'), and/or invoice the Merchant to recover:

- 5.8.1 the full amount of the relevant Chargeback or Assessment; and
- 5.8.2 any other costs, expenses, including without limitation legal fees and other legal expenses, liabilities or fines which We may incur as a result of or in connection with such Chargeback or Assessment ("Chargeback and Assessment Costs").
- 5.9 Where the full amount of any Chargeback, Assessment and/or any Chargeback and Assessment Costs is not debited by Us from the Settlement Account and/or deducted from any Settled Amount and/or invoiced, then We shall be entitled to otherwise recover from the Merchant by any means the full amount of such Chargeback, Assessment or 'Chargeback and Assessment Cost'.
- 5.10 As Chargebacks and Assessments may arise a considerable period after the date of the relevant Transaction, the Merchant acknowledges and agrees that, notwithstanding any termination of the Agreement for any reason, We shall remain entitled to recover Chargebacks, Assessments and 'Chargeback and Assessments Costs' from the Merchant (and, where relevant, from any person who has provided Us with a guarantee or security relating to Merchant's obligations under the Agreement) in respect of all Chargebacks, Assessments and 'Chargeback and Assessment Costs' that occur in relation to Transactions effected during the term of the Agreement.
- 5.11 If the claim is valid, the Payment Service Provider shall adjust the value of the said claim with the Merchant after deducting the charges, if any, from the next settlement. If the Customer's claim is invalid, the Merchant shall invoice the Customer for any outstanding amounts, and the Merchant shall stop all Services for the Customer until the outstanding amounts have been fully paid.
- 5.12 Authorisation of a Transaction does not guarantee payment to you for a Transaction nor is it a guarantee that it will not be subject to a Chargeback or that you will not be subject to a debit in relation to that Transaction. Should a Customer deny having authorised and/or participated in a Transaction, We may, at our discretion, withhold or return in respect of 'card not present' Transactions the relevant transaction/transactions as unpaid.
- 5.13 We are not obliged to notify You of any defect in any Transaction Data, or other liability to Chargeback except where a Chargeback is in fact made or to procure, or assist You in procuring, payment from a Customer where the relevant Transaction has been charged back to You. In some cases, an Issuing Bank may request a copy of the Transaction Record prior to initiating a Chargeback. We will forward these requests to You and deliver Your response to the Issuing Bank. You understand that You must respond to these requests within the time frames and manner stated by Us to ensure meeting the timelines given by the Card Scheme. Due to the short time requirements imposed by the Card Schemes, Your failure to timely respond will be communicated to the Issuing Bank and may result in a Chargeback(s) as well as Card Scheme related costs or fees.
- 5.14 You shall, at Your own expense, provide Us with all reasonable assistance in resolving any dispute which may arise under any applicable Card Scheme Rules. We shall, as against You, have complete discretion to decide whether or not to resist or defend any claim made against Us by any Card Scheme or Customer, or whether to compromise any such claim, and Our decision shall be binding on You. You agree that We shall have discretion to accept, dispute, compromise or otherwise deal with any claim made against You and/or Us arising out of a Transaction accepted by You for loss or liability in respect thereof on Your behalf.

## **6. LIMITATION OF LIABILITY:**

- 6.1 The Payment Service Provider expressly disclaims any liability or loss arising from or related to the Payment Service Provider Site including without limitation liability or loss associated with unauthorized access to any server, merchant interfaces, websites, facilities, your data and/or your customer data (including credit card numbers and other personally identifiable information) due to accident or negligence, including hacking, or devices used by any third party, or other causes beyond Payment Service Provider's reasonable control.
- 6.2 The Merchant expressly agree that Payment Service Provider shall not be liable for any loss arising from infiltration of the Site by means of software viruses, trojans, worms, time bombs, or any other software programs, or technology designed or intended to disrupt, damage, intercept or expropriate data from the Payment Service Provider Site. As a condition of use of the Payment Service Provider Site, the Merchant agrees that neither the Payment Service Provider nor any of the Payment Service Provider's parents, subsidiaries, officers, affiliates, directors, shareholders, managers, agents, contractors, subcontractors, and/or employees ("Affiliates") will be liable to the Merchant or Customer or any third-party for any direct, indirect, incidental, special, punitive, or consequential loss of profits, loss of earnings, loss of business opportunities, damages, expenses, or costs resulting directly or indirectly from, or otherwise arising in connection with the Payment Service Provider Site.
- 6.3 The limitations set forth in this section apply to the acts, omissions, negligence, and gross negligence of



the Payment Service Provider and its Affiliates, which, but for this provision, would give rise to a course of action in contract, or any other legal doctrine. Except as otherwise limited, the total liability of the Payment Service Provider and its Affiliates to the Merchant, Customers or any third parties in any circumstances under these terms shall be limited to the Merchant in relation to any loss or damage directly or indirectly arising from the use of the Merchant Services in a Transaction shall be the value of each such transaction only.

## **7. INDEMNITY:**

- 7.1 The Merchant hereby undertakes and agrees to indemnify and hold the Payment Service Provider and its Affiliates harmless and keep the Payment Service Provider at all times fully indemnified and hold harmless from and against all actions, proceedings, claims, liabilities (including statutory liability), penalties, demands and costs (including without limitation, legal costs of the Payment Service Provider on a solicitor/attorney and own client basis), awards, damages, losses and/or expenses however arising directly or indirectly as a result of:
- 7.1.1 Any breach by the Merchant of this Agreement and/or non-performance by the Merchant of any of the Merchant's undertakings, warranties, covenants, declarations or obligations under this Agreement;
  - 7.1.2 Any claim or proceeding brought by a Customer or any other person or any third-party against the Payment Service Provider in respect of any Product/Services offered by the Merchant;
  - 7.1.3 Any act, neglect or default of the Merchant's agents, employees, licensees, sub/contractors or customers;
  - 7.1.4 Any loss or liability incurred by the Payment Service Provider in respect of any Product/Services offered by the Merchant;
  - 7.1.5 Any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third-party that the Services infringe any intellectual or industrial property rights of that third-party;
  - 7.1.6 Chargebacks, Assessments and Chargeback and Assessment costs, and any other losses, claims, fines or penalties arising out of or in connection with the foregoing;
  - 7.1.7 Any violation of any Applicable Laws, rules, regulations and guidance and Card Scheme rules (if applicable), by Merchant;
  - 7.1.8 Any claim by any other party against the Payment Service Provider arising from sub-clauses under Clause 7.1 above.
  - 7.1.9 The Merchant shall promptly reimburse the Payment Service Provider for any Assessments, fines, fees or penalties imposed by the Facility Providers / Card Scheme in connection with agreements that the Payment Service Provider uses in the Payment Mechanism, and which authorizes them to deduct any such sums from amounts to be cleared and settled by the Merchant. Merchant shall be responsible to reimburse the Payment Service Provider for all legal costs and fees incurred by it or the Facility Providers it uses in the Payment Mechanism for any lawsuit, claim or action or for any indemnifiable event related to and/or caused by Merchant's acceptance of cards.

## **8. WARRANTY**

- 8.1 The Payment Service Provider, the Acquiring Banks and the Facility Providers disclaim all warranties, express or implied, written, or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. The Merchant acknowledges that the Payment Service Provider, the Facility Providers, and the Acquiring Bank's services may not be uninterrupted or error free.
- 8.2 The Payment Service Provider's sole obligation and the Merchant's sole and exclusive remedy in the event of interruption to the Merchant Services or loss of use and/or access to the Payment Service Provider's Site, the Facility Providers facilities and the Acquiring Bank's Payment Mechanism and services, shall be to use all reasonable endeavours to restore the Merchant Services and/or access to the Payment Mechanism as soon as reasonably possible.
- 8.3 In the event a Customer raises a claim against the Payment Service Provider or the Facility Providers, the Merchant shall release the Payment Service Provider (and its officers, directors, employees, agents, and affiliates) from all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected, and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such claims or disputes.

## 9. INSPECTION AND AUDIT

- 9.1 Payment Service Provider shall have right to audit and/or inspect periodically the system and records of Merchant (including but not limited to Merchant's refund and return policy, infrastructure, Customer grievance policy, T&Cs, etc.) by its internal or external auditors or by its agents appointed to act on its behalf, in order to ensure Merchant's compliance with the obligations with respect to Merchant Services rendered under this Agreement and Applicable laws and to obtain copies of any audit or review reports and findings made on the Merchant in connections with the Merchant Services undertaken hereunder.
- 9.2 Merchant shall allow Card Schemes, Payment Service Provider, its management, its auditors and/or its regulators, the opportunity to inspect, examine and audit the Merchant's operations, systems and records which are directly relevant to the Merchant Services.
- 9.3 The Central Bank of UAE, Statutory Bodies, Regulatory Bodies, the Payment Service Provider or any authority vested with such rights shall be entitled to cause an inspection/audit to be made on the Merchant and its books and accounts by one or more of its officers or employees or other persons.
- 9.4 You shall provide Us or Our auditors, or auditors of the Card Scheme or a Regulators, reasonable access to Your facilities for the purpose of performing an inspection of Your books, records and/or systems, and to take copies of such books and records as We require.
- 9.5 Merchant shall keep complete and accurate records of all the orders and expenses in connection with its Services and/or Products. All said records shall be kept on file by Merchant for a period as required under Applicable laws from the date the record is made.
- 9.6 Payment Service Provider audit rights shall survive the expiration or termination of this Agreement for the period required under Applicable laws and regulations.

## 10. TERMINATION

- 10.1 The Agreement may be terminated by either party:
  - 10.1.1 In the event that the other Party is in material breach of this Agreement and such breach (if remediable) is not remedied within **fifteen (15) days** of written notice given to the breaching Party, identifying such breach and requiring it to be remedied;
  - 10.1.2 in the event that the other Party becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership or similar action for the benefit of creditors which is not revoked within **sixty (60) days**;
  - 10.1.3 by providing a **thirty (30) day** prior written notice to the other Party.
- 10.2 In addition to any other termination rights granted by this Agreement, the Payment Service Provider may with immediate effect suspend the Merchant Services and/or terminate this Agreement immediately without liability if:
  - 10.2.1 the Payment Service Provider's or the Facility Providers or the Acquiring Banks is notified or otherwise determines in good faith that the Merchant is using the Payment Service Provider's services and facilities in furtherance of any activity which violates any law, rule, or regulation, dealing in illegal or unethical Products and services;
  - 10.2.2 the Payment Service Provider determines in its sole discretion that Merchant is ineligible for the Merchant Services because of significant fraud or credit risk, or any other risks associated with the provision of the Merchant Services to Merchant;
  - 10.2.3 at any time for any reason (including, without limitation, for any activity that may create harm or loss to the goodwill of Payment Service Provider) by providing you with notice.
  - 10.2.4 there is any significant change, or We suspect a significant change is impending (as determined by Us), in the nature, level, scope or control of Your business activities or Your financial condition;
  - 10.2.5 We believe that Your compliance with the terms of this Agreement is at risk;
  - 10.2.6 We are required to do so by any regulator or Card Scheme, or the integrity or reputation of the Card Schemes or Ourselves is, or may be (as determined by Us) brought into disrepute by You;
  - 10.2.7 Your activities are, or are likely to have, in Our opinion, a material impact on Our business, commercial arrangements, reputation and/or goodwill;
  - 10.2.8 Your activities contravene any UAE, national or international laws and/or regulations, or any codes of practice that We may adopt from time to time, or which otherwise relate directly or indirectly to matters that We may view, from time to time, as being unlawful or otherwise objectionable in kind and nature;
  - 10.2.9 We consider the percentage, number or amount of fraudulent Transactions submitted by You under this Agreement, or the number of aggregate Chargebacks in relation to Your Business, to be excessive; or

- 10.2.10 at any time We believe that there has been a material adverse change in Your financial standing which, in Our opinion, has a material adverse impact on Your ability to comply with the terms of this Agreement;
- 10.2.11 We determine that You have conducted Yourself in violation of the Card Scheme Rules or otherwise, in such a manner that You have created a material and unacceptable reputational, financial or operational risk to Us and/or You are unable to process Transactions;
- 10.3 Upon termination of this Agreement:
  - 10.3.1 Payment Service Provider may immediately discontinue the operation of the Merchant Services for the Merchant; and
  - 10.3.2 the rights of each Party towards the other which may have accrued up to the date of such termination, and the provisions of this Agreement that are by their nature surviving termination, shall remain in force after the termination of this Agreement.

## 11. FORCE MAJEURE

- 11.1. Neither Party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to Acts of God, natural calamity, acts or omissions of government authorities, changes in laws, fire, floods, explosion, riots, civil strikes or industrial dispute, embargoes, pandemics, any governmental action, change in law or fuel, power, materials or labour shortages (a "Force Majeure Event").
- 11.2. Each Party agrees to give notice immediately to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Force Majeure Event.
- 11.3. The Party claiming a Force Majeure Event shall take all actions which are reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder.
- 11.4. If any default due to an Event of Force Majeure shall continue for more than **three (3) months**, then the Party not in default shall have the right to terminate this Agreement. Neither Party shall have liability to the other in respect of termination of the Agreement as a result of an Event of Force Majeure except to the payment obligation due and payable.

## 12. CONFIDENTIALITY

- 12.1. For the purpose of this Agreement "**Confidential Information**" means, in relation to either Party, information which is disclosed to that Party by or in respect of the other Party under or in connection with this Agreement, in particular all commercial, technical and operational information and know-how and any other information not generally known or reasonably ascertainable (whether orally or in writing or in any other medium, and irrespective of whether the information is expressly stated to be confidential or proprietary or marked as such). Confidential Information does not include information which:
  - 12.1.1 is in or comes into the public domain without breach of this Clause by the receiving Party;
  - 12.1.2 was in the possession of the receiving Party prior to receipt from the disclosing Party and was not acquired by the receiving Party from the disclosing Party under an obligation of confidentiality or non-use;
  - 12.1.3 is acquired by the receiving Party from a Third Party not under an obligation of confidentiality or non-use to the disclosing Party; or
  - 12.1.4 is independently developed by the receiving Party without use of any Confidential Information of the disclosing Party
- 12.2. Each Party undertakes that, except as provided by this Clause or as authorised in writing by the other Party, the receiving Party shall keep confidential all Confidential Information, and will not, apart from what is required by applicable law, or by any court or other authority of competent jurisdiction, use Confidential Information of the disclosing Party or disclose it to any Third Party, except for the purposes contemplated by this Agreement.
- 12.3. The receiving Party may disclose Confidential Information only to those of its employees, advisors or contractors who need to know such information for the purposes contemplated by this Agreement or as required by applicable law. In addition, prior to any disclosure of Confidential Information to any employee, adviser or contractor, such employee, adviser, or contractor shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the provisions of this Clause. In any event, the receiving Party is responsible for any breach of the provisions of this Clause by any of its employees, advisors, or contractors.
- 12.4. The receiving Party shall exercise at least the same degree of care to avoid disclosure of the disclosing

Party's Confidential Information as the receiving Party employs with respect to its own Confidential Information of like importance, but no less than a reasonable degree of care.

- 12.5. Upon termination of this Agreement for whatever reason, or upon the disclosing Party's earlier request, the receiving Party will deliver to the disclosing Party all Confidential Information in tangible form which the receiving Party may have in its possession or control. In addition, hereto, the receiving Party shall comply with the instructions of the disclosing Party in respect of deletion of any Confidential Information kept on any virtual or other electronic storage medium which the receiving Party has in its possession or control. Notwithstanding the above, in case an actual dispute has arisen between the Parties, the receiving Party is entitled to keep a copy of the said Confidential Information for the purpose of such dispute.
- 12.6. The restrictions contained in this Clause shall apply for the duration of this Agreement and for **one (1) year** after termination of the Agreement

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. All Intellectual Property Rights belonging to a Party to this Agreement prior to signing of this Agreement shall remain vested in that Party. Each Party agrees that it shall not seek to register any title, interest or ownership in the Intellectual Property Rights belonging to the other Party at any time with any registry or local or federal government authority in the United Arab Emirates or elsewhere in the world without obtaining the prior written consent of the other Party.
- 13.2. Any information, data, know-how, results, inventions, and any associated intellectual property, that is made, discovered, created, invented, or generated by Payment Service Provider or its affiliates in any activities or work under this Agreement shall be owned by Payment Service Provider.
- 13.3. Payment Service Provider hereby grants a non-exclusive, non-transferable and royalty free licence to the Merchant for the Term of this Agreement to use its Intellectual Property Rights to the extent required by the Merchant to comply with its obligations under this Agreement.

### **14. WAIVER**

- 14.1 Unless otherwise expressly agreed, no delay, act, or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

### **15. AMENDMENT**

- 15.1. Payment Service Provider has the right to change or add to the terms of this Agreement at any time, solely with prospective effect, and to change, delete, discontinue, or impose conditions on use of the Merchant Services by posting such changes on the Payment Service Provider Site or any other website the Payment Service Provider maintains or owns. Payment Service Provider will provide the Merchant with notice of any changes through email or other reasonable means. If Merchant is an existing Merchant, the changes will come into effect **seven (7) calendar days** after the Payment Service Provider posts the changes on the Payment Service Provider website, and the Merchant's continued use of the Merchant Services, after Payment Service Provider publishes any such changes on the website, shall constitute as the Merchant's acceptance of the terms of the modified Agreement. The Merchant may access a copy of the current terms of this Agreement on the Payment Service Provider's website at any time. If the Merchant does not accept a change to this Agreement, Merchant must terminate the Agreement by providing Payment Service Provider with a prior written notice before the change takes effect.

### **16. INDEPENDENT CONTRACTOR**

- 16.1 Neither Party shall, for any purpose, be deemed to be an agent of the other Party and the relationship between the Parties shall only be that of independent contractors. Neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

### **17. SEVERABILITY**

- 17.1 In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

## 18. ENTIRE UNDERSTANDING

- 18.1 This Agreement and any other documents referred to in this Agreement constitutes the entire understanding between the Parties in respect of the subject matter. The Parties have not relied upon, and shall have no remedy in respect of, any warranty, statement, representation, understanding or undertaking made by each Party (whether or not that Party is a Party to this Agreement) unless it is expressly set out in this Agreement.

## 19. GOVERNING LAWS

- 19.1 This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of Emirate of Dubai and the United Arab Emirates.
- 19.2 It is the firm intention of each party that all disputes and differences under this Agreement be settled amicably by consultation between the Parties. Any dispute or difference between the Parties in connection with this Agreement which either Party believes cannot be so settled shall be referred by that Party to the local courts of Dubai which shall have exclusive jurisdiction over such dispute or difference and to whose jurisdiction all the Parties hereby submit.

## 20. NOTICES

- 20.1 Any notices or requests to be given in connection with any of the terms or provisions of this Agreement shall be in writing and in the Arabic or English languages and served by receipted hand delivery or by registered e-mail and shall be addressed as follows.

In the Case of Merchant	In the case of the Payment Service Provider
As provided by Merchant from time to time	Noqodi, Dubai - UAE Legal@noqodi.com

- 20.2 All notices or requests shall be deemed to be affected and effective at the moment of delivery to the correct address.
- 20.3 Notice can be served by Us to You by e-mail to the email address advised by You, notification on a Statement, or by publishing on Our website. Notice given by post, Statement transmission or website, shall be deemed to have been received **seventy-two (72) hours** after the time of its posting, transmission or advice of availability. Notice given by e-mail shall be deemed to have been received **twenty-four (24) hours** after the time of transmission.

## 21. SCHEDULES WHICH FORM PART OF THIS AGREEMENT

- 21.1 API Agreement (If Applicable)
- 21.2 Commercial Terms