



AF Proxy Services Ltd

Affiliate Agreement

(hereinafter referred to as 'this/the Agreement')

(Version 001, November 2022)

1. Purpose

- 1.1. AF Proxy is an ICANN-accredited Registrar that would like to grow the .africa and three cities' domain name numbers by acting as a channel partner to people with an affinity for all things African.
- 1.2. A primary element of its growth strategy is to engage with Affiliates to drive this market seeking agenda to become the go to Registrar for domain name registrations and value-added services offered by AF Proxy.
- 1.3. Pursuant thereto, this Agreement seeks to formalise the business relationship between the Affiliate and AF Proxy in terms of which the Affiliate may earn commission for domain name transactions that are completed as a direct result of Referrals recorded via their Client Area on the AFP portal.
- 1.4. Accordingly, the parties agree to the terms and conditions as set out below.

2. Definitions

In this Agreement the words and expressions contained below shall bear the meanings assigned to them:

- 2.1. **"AF Proxy"** or **"AFP"** means AF Proxy Services Limited, a company registered in accordance with the company laws of the Republic of Mauritius and situated at Sir William Newton Street, Port-Louis, 1112-08, Mauritius. AFP is a Registrar accredited by Registry Africa Limited and ICANN with IANA number 3794 to provision domain names such as .africa; .joburg; .capetown and .durban.
- 2.2. **"AF Proxy website"** or **"AFP website"** means the official website of AFP which can be found at the following url: <https://www.afproxy.africa/>
- 2.3. **"Affiliate"** means an individual or business that will promote AFP's products by sharing a link to AFP's website, on an online platform i.e., social media platforms, websites, blogs, podcasts etc., that are specifically associated with the Affiliate.

- 2.4. **“Affiliate’s link” or “link”** means a unique referral hyperlink used by an Affiliate that, by way of cookies (text files with small pieces of data that are used to identify a computer as it uses a computer network), will allow AFP to associate and record that Affiliate with their Referral’s transactions. This link is automatically generated and available in the Affiliate’s Client Area when the Affiliate creates an Affiliate account through the AFP website.
- 2.5. **“Affiliate’s Reference Code” or “Reference Code”** means a unique code that is associated with an Affiliate, which will be used by the Referral at the time of their purchase of a product from the AFP website. This Reference Code is auto generated and available in the Affiliate’s Client Area once the Affiliate creates an Affiliate account through the AFP website.
- 2.6. **"Agreement"** means this document, as well as all Schedules and Annexures, which are deemed to form part of the Agreement as amended from time to time.
- 2.7. **“Branding”** means all of AFP’s intellectual property i.e., trademarks and trade names, service marks, trade logos and trade dress.
- 2.8. **“Business Day” or “Days”** means any day other than a Saturday, Sunday, or official public holiday in the Republic of Mauritius.
- 2.9. **“Client Area”** means the Affiliate’s or Reseller’s private secure Client Area, which can be accessed online through AFP’s website.
- 2.10. **“Domain Name”** means a unique alphanumeric address associating a familiar string of letters with an IP (Internet Protocol) address to find a given location on the Internet. A domain name creates a digital identity on the Internet, for association with a website or an email address using the Domain Name System (DNS).
- 2.11. **“ICANN Policies”** means and includes the Consensus Policies, Specifications (such as the Whois Accuracy Program Specification) referenced in the ICANN Registrar Accreditation Agreement, and any amendments, policies, procedures, or programs specifically contemplated by the ICANN Registrar Accreditation Agreement or authorised by ICANN’s Bylaws.

- 2.12. **“ICANN Registrar Accreditation Agreement”** means the Agreement between the Registrar (AFP) and ICANN in terms of which AFP is accredited by ICANN to provide the Registrar Services.
- 2.13. **“Intellectual Property Rights”** means and includes:
- 2.13.1. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, Software, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; and
- 2.13.2. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world.
- 2.14. **“MARC”** means the Arbitration and Mediation Centre of the Mauritius Chamber of Commerce and Industry.
- 2.15. **“Party”** means either of the signatories to this Agreement and **“Parties”** means both of them collectively and will be deemed to mean and include their respective successors and permitted assigns.
- 2.16. **“Payment date”** means the business day on which AFP will pay the commission amount subject to clause 5.6, to the Affiliate, provided that the Affiliate’s withdrawal request is valid and has been received by AFP at least **10 (ten) days** before the payment is due and payable.
- 2.17. **“Products”** means the products and services offered by AFP as displayed on the AFP website and updated from time to time.
- 2.18. **“Referral”** means an end user who was directed to the AFP website through a link shared or provided by the Affiliate, alternatively who used the Affiliate Reference Code at checkout, and who subsequently completed a Transaction through the AFP website.

- 2.19. **“Registrant”** means the person or business that is listed in the Registry as the holder of a domain name. A Referral could be a Registrant.
- 2.20. **“Accredited Registrar”** means an entity that is accredited by ICANN and receives an IANA number; and is further accredited by a Registry to provision domain names in a certain domain namespace.
- 2.21. **“Reseller”** means a person or business that sells AFP’s products through the AFP’s Reseller Client Area.
- 2.22. **“Software”** means any computer programme (whether source or object code), as well as any database structure or content, artistic work, screen layout, cinematograph film, sound recording, preparatory material, user or technical documentation or any other work created in connection therewith and any modifications, enhancements, or upgrades thereto.
- 2.23. **“Transaction”** means the Referral’s purchase of any products and/or services offered on AFP’s website completed in a single browser session, which was the result of the Referral clicking on an Affiliate’s link or providing an Affiliate Reference Code at checkout.

3. Obligations of AF Proxy

- 3.1 AFP may provide the Affiliate with the following via the Client Area:
- 3.1.1 The Affiliate’s link with one or more cookies (or similar internet tracking software packages); and/ or
- 3.1.2 The Affiliate’s Reference Code; and/ or
- 3.1.3 Digital AFP-branded collateral that the Affiliate can use on its own online platform/s; and/ or
- 3.1.4 Training material.

- 3.2 AFP will ensure that the information displayed in the Client Area is complete and accurate as far as is reasonably possible.
- 3.3 AFP will ensure to the best of its ability, that the Affiliate's link and Reference Code are always operational so that the Referral can use it to complete Transactions and ensure that the Affiliate's Reference Code and/or Link correlate with the completed Transaction.
- 3.4 AFP undertakes to pay commissions due and payable to the Affiliate for completed Transactions in terms of the policy and processes recorded in section 5 of this Agreement.
- 3.5 AFP reserves the right to accept or reject any Affiliate's application or suspend the Affiliate's account, if s/he is not or no longer eligible, due to any violent, defamatory, pornographic, or other unlawful activity that poses a threat to AFP's security and/ or its image and brand.
- 3.6 AFP may at any time, without notice to the Affiliate:
 - 3.6.1 Change the name of or the content on the AFP website.
 - 3.6.2 Change AFP's Intellectual Property portfolio and guidelines.

4. Obligations of the Affiliate

- 4.1 By submitting an application, the Affiliate warrants that the information provided therein is complete and accurate and that any changes thereto will be done as soon as is reasonably possible within the Affiliate's Client Area.
- 4.2 The link and Reference Code is unique to each Affiliate that has concluded this Agreement with AFP and the Affiliate undertakes not to publicly share this information with any third party.
- 4.3 The Affiliate is responsible for monitoring the commission earned via the Client Area and must notify AFP as soon as is reasonably possible of any discrepancies that the Affiliate finds in the Client Area so that AFP may investigate and remedy depending on its findings.

- 4.4 The Affiliate shall not act in any way that is or may be perceived to be an exploitation of AFP's business, including but not limited to, opening multiple Affiliate accounts to receive more commission.
- 4.5 The Affiliate agrees to promote AFP's products and services in a positive way and to always act in accordance with all applicable business principles, laws, regulations, policies, and procedures. For example, Affiliate's link and Reference Code cannot be used for unlawful purposes including but not limited to gain unlawful access to the Affiliate's Client Area or any other part of AFP's domain name management system(s), disseminating massive unsolicited messages or violation of AFP's and any other third party's intellectual property rights. AFP reserves the right to monitor the Affiliate's conduct from time to time to ensure compliance with the terms and conditions embodied within this Agreement.
- 4.6 The Affiliate shall not be involved in any activity that involves the acquisition or accumulation of domain names, for the purposes of removing them from the availability of others, transferring them for a direct or indirect, immediate, or deferred gain or profit or for any other reason which can be considered to be done in bad faith, where such acts are performed by a third party for the Affiliate's benefit. AFP reserves the right to monitor the Affiliate's conduct from time to time to ensure compliance with the terms and conditions embodied within this Agreement.
- 4.7 The Affiliate must notify AFP immediately, if the Affiliate becomes aware or has reason to believe that a particular Registrant or Referral is in breach of, or a particular domain name has breached, any policy, law or regulation mentioned above.
- 4.8 Within **5 (five) days** of becoming aware, the Affiliate must notify AFP of any impending claims, litigation, insolvency proceedings or material disputes against the Affiliate, by any person or authority relating directly or indirectly, to its position as an Affiliate of AFP including arbitration and administrative or governmental investigation, so that AFP may assess the Affiliate's continued participation.

5. Commission

- 5.1 An Affiliate earns commission through a Transaction completed by their Referral via the AFP website, evidenced by the Referral clicking on an Affiliate's link or providing an Affiliate Reference Code at checkout. The commission structure is enclosed as "**Annexure A: Pricing**" below.
- 5.2 A cookie in the Affiliate's link or Reference Code will be placed onto the Referral's device and be valid for **30 (thirty) days**. Any order made by the Referral via the AFP website through this device will be recorded on AFP's system as having been introduced by the Affiliate. In the case of visits from different Affiliates during the period of validity of the cookie, only the most recent visit will be taken into account by AFP's system according to the "last cookie wins" method.
- 5.3 The accumulated amount of commission earned by an Affiliate up to the Payment Date will be displayed in the Client Area.
- 5.4 A successful Transaction materialises when payment of the Referral's order is received by AFP, at which point the Affiliate earns a commission amount that is calculated based on the number of the product(s) purchased and/or value-added services that are procured.
- 5.5 Commission will not be paid in the following cases:
- 5.5.1 If the Referral cancels the registration of the Domain Name that the Referral purchased within **7 (seven) days** from the date of purchase of the Domain Name (i.e., Grace Period Delete).
 - 5.5.2 Payment of the corresponding Referral's order is outstanding or fraudulent.
 - 5.5.3 Commission is obtained for the account of the Affiliate.
 - 5.5.4 A coupon or promo code is applied to the Referral's order.
 - 5.5.5 Commission was earned fraudulently by evading the operation of the Affiliate programme.

- 5.6 The Affiliate will only be able to request a withdrawal of a portion of or the total commission amount via their Client Area, once a **minimum of \$200.00 (Two Hundred US Dollars)** in commission has already been accumulated.
- 5.7 AFP will pay the commission amount per valid withdrawal request to the Affiliate, after it has deducted administrative fees, which may include but are not limited to bank charges and VAT ('net commission') where applicable.
- 5.8 Net commission based on a valid withdrawal request will be processed and paid to the Affiliate within **10 (ten) business days** from the date on which the withdrawal request is received by AFP.
- 5.9 Net commission will only be paid into the Affiliate's lawfully held bank account and to this end, the Affiliate will be required to provide a bank confirmation letter to the satisfaction of AFP within **30 (thirty) days** of the signature of this Agreement.
- 5.10 AFP reserves the sole right to change the commission structure at any time, with **30 (thirty) days' written** notice to the Affiliate via AFP's website and/ or Client Area.

6. Maintenance and Upgrades

- 6.1 Scheduled Maintenance: AFP may be required to suspend access to the Client Area to carry out routine maintenance and/ or upgrades, provided that such suspensions will:
- 6.1.1 be subject to **24 (twenty-four) hours** prior written notice to the Affiliate on AFP's website.
- 6.1.2 if possible be conducted only between the hours of 08h00 and 09h00 or outside of Business Hours.
- 6.1.3 be undertaken to keep downtime to a minimum.

6.2 Emergency maintenance: Notwithstanding the above, AFP may suspend access to the Client Area without notice should maintenance be necessary in an emergency, in such instance AFP will provide the Affiliate with notice as soon as reasonably possible after becoming aware that such maintenance is required.

7. Duration and Termination

7.1. This Agreement will commence on the date that the Affiliate account is activated by AFP and will remain in force indefinitely, unless terminated by either Party on **30 (thirty) days' written** notice to the other or otherwise in accordance with the terms of this Agreement.

7.2. If the Affiliate would like to become a Reseller at AFP, this Agreement must be terminated, and a Reseller Agreement shall be concluded between AFP and the Affiliate.

7.3. Once the Affiliate's account is closed by AFP, the remaining net commission due to the Affiliate will be transferred by AFP within **10 (ten) business days** into the newly created Reseller account, unless AFP receives a contrary written instruction from the Affiliate to reimburse him/her directly.

7.4. If the Affiliate's account does not generate any revenue for a continuous period of **12 (twelve) months**, AFP reserves the right to close this account by means of a notice sent to the Affiliate's recorded email address at least **30 (thirty) days** prior to taking this action.

7.5. AFP reserves the right to suspend the Affiliate's account and/ or freeze or cancel any commission due, without notice to the Affiliate, in clear cases of domain name abuse; where commissions were fraudulently obtained or where AFP is ordered to do so by a court order.

7.6. Should either Party:

7.6.1 fail to comply with any of its obligations or commit a breach of this Agreement and fail to remedy such default or breach within **20 (twenty) Business Days** after having received a written notice to do so.

7.6.2 be placed in provisional or final liquidation or sequestration, or judicial management.

- 7.6.3 enter into any compromise arrangements with its creditors.
- 7.6.4 resolve to begin business rescue proceedings.
- 7.6.5 fail to satisfy any judgment to the value of more than \$50,000 (Fifty Thousand US Dollars), taken against it within **90 (ninety) Business Days**; or
- 7.6.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that Party.

the other Party shall be entitled to either:

- 7.6.7 to demand specific performance; or
 - 7.6.8 to cancel the Agreement.
- 7.7 Without derogating from the provisions of clause 7.6, if the Affiliate repeatedly breaches any of the terms of this Agreement, and in particular the provisions of clause 4 (Obligations of the Affiliate), and does so in such manner as to justify AFP in holding that the Affiliate does not have the intention or ability to carry out the terms of this Agreement, then AFP may terminate this Agreement on **30 (thirty) days'** written notice to the Affiliate.
- 7.8 The provisions of this clause will not affect the rights of the Parties to seek legal redress including a claim of damages in respect of a breach of any of the provisions of this Agreement.

8 Intellectual Property Rights

- 8.1 Licence to use AFP's Branding: AFP hereby grants the Affiliate a non-exclusive, non-transferable, royalty-free licence to use and display applicable branding solely in connection with and solely to the extent that it is reasonably necessary for the marketing and promotion of AFP's products in accordance with the terms and conditions of this Agreement and any branding and trademark policies of AFP that have been provided to the Affiliate in writing. The Affiliate may not register, apply for registration as a trademark or trade name or use the branding or any word, symbol, or design confusingly similar thereto, as part of its corporate name, or as part of the name of any product of the Affiliate.

8.2 AFP's Software IPR Reservation: All Intellectual Property Rights in and to AFP's Software are and will remain the property of AFP and is protected by Mauritian copyright laws and international treaty provisions and all other applicable international laws. Moreover, the structure, organisation and code of AFP's Software are valuable trade secrets of AFP. Consequently, and without limiting the generality of the foregoing:

8.2.1 The Affiliate may not make reproductions of AFP's Software except as specifically provided for in this Agreement.

8.2.2 The Affiliate agrees not to adapt, modify, translate, create derivative works, include AFP's Software in other Software, or distribute AFP's Software with other Software. The Affiliate agrees that copyright in any adaptations, translations, or derivative works of AFP's Software vests in AFP. Should assignment be necessary to give effect to such right, the Affiliate agrees to sign any document necessary to effect assignment thereof to AFP.

8.2.3 The Affiliate is specifically prohibited from reverse engineering, disassembling, decompiling or otherwise using any method to discover the source code of AFP's Software or attempting to do so.

8.2.4 The Affiliate may not sell, let, hire, or offer for sale or hire, copies of AFP's Software.

8.3 General Reservation: Other than expressly stated in this Agreement, no Intellectual Property Rights held by AFP are licensed or assigned to the Affiliate or any third party.

8.4 IP Disputes:

8.4.1 AFP is not a party to, nor will it render assistance to the Affiliate, or any third party involved in a dispute concerning a domain name or any other Intellectual Property Right.

8.4.2 AFP will comply with any order or lawful instruction given to it by a court or tribunal with jurisdiction.

9 CONFIDENTIALITY

- 9.1 The Affiliate undertakes that for the duration of the Agreement and after the expiration or earlier termination of the Agreement for any reason, it will keep confidential any trade secrets and/or all information which AFP from time to time communicates to it or any of its employees or which comes to the knowledge of the Affiliate, as a consequence of the Affiliate programme and which is stated to be or by its nature is intended to be kept confidential.
- 9.2 If the Affiliate is uncertain about whether information is to be treated as confidential in terms of clause 9.1, it shall be obliged to treat it as such until clearance in writing is obtained from AFP.
- 9.3 The provisions of clause 9 shall survive the termination or cancellation of the Agreement for any reason whatsoever.

10 Warranties

10.1 AFP's Warranties: AFP warrants that:

- 10.1.1 there is nothing preventing AFP from entering into and complying with its obligations in terms of this Agreement.
- 10.1.2 it has the facilities, infrastructure, capacity, and capability to provide services as a Registrar.
- 10.1.3 the provision of AFP's Software does not and will not infringe the intellectual property rights of any third party and AFP indemnifies the Affiliate against all liabilities, costs, expenses, damages and losses suffered or incurred by the Affiliate subject to clause 16.3, that arises out of or in connection with any claim made against the Affiliate for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Client Area or AFP's Software, any new release, new version or documentation, or receipt of the benefit of thereof;

10.1.4 the services provided by AFP as a Registrar comply with all relevant Policies whether of the Registries or ICANN.

10.2 Limited Warranty: Other than as agreed and warranted herein and subject to applicable law, AFP provides its service as a Registrar and the Client Area on an “as is” and “as available” basis. Save as expressly set out in this Agreement and to the maximum extent permitted by law, AFP does not make any representations, nor does it give any warranties or guarantees of any nature whatsoever in respect of its service as a Registrar and the Client Area, and all warranties which are implied or residual at common law are hereby expressly excluded.

10.3 The Affiliate’s Warranties: The Affiliate warrants that:

10.3.1 the Affiliate has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement.

10.3.2 by entering into this Agreement it is not acting in breach of any agreement to which the Affiliate is a party.

10.4 Interpretation of Warranties:

10.4.1 Each warranty is a separate warranty and is in no way limited or restricted by inference from the terms of any other warranty.

10.4.2 Each warranty will continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement.

10.4.3 Each warranty is deemed to be material and to be a material representation inducing the Parties to enter into this Agreement.

11 Use of AFP's Client Area and related services

- 11.1 Responsibility: Each party accepts that it is responsible for all the consequences of its own activities and those of its employees, officers, agents, independent contractors and all others under its control.
- 11.2 Technical Requirements: Unless otherwise agreed in writing, the Affiliate must have a stable and secure internet connection to access the Client Area and may be required to install software, to meet its rights and obligations under this Agreement.
- 11.3 Acceptable Use: The Affiliate and/or its lawfully designated representative, must use the Client Area, link, and Reference Code, in accordance with all relevant business principles, laws, regulations, policies and procedures.

12 Personal Information

12.1 Processing of Personal Information:

12.1.1 AFP and the Affiliate are each responsible for complying with their respective obligations under applicable laws governing the Registrant's Personal Information.

12.1.2 The Affiliate should ensure that the Referral or Registrant discloses their Personal Information to AFP directly. In the exceptional circumstances that the Affiliate collects the Registrant's Personal Information, with the intention of assisting the Referral or Registrant with purchasing a product or processing a domain name transaction (i.e., a domain name update, transfer, or deletion) through AFP, the Affiliate shall request the Referral's or Registrant's written consent to collect, store, process and/or transfer their Personal Information.

13 Relationship between the Parties

- 13.1 Independent Contractor: The Parties agree that the relationship between them is one of commissioner and independent contractor, and nothing in this Agreement will be construed as giving rise to a relationship of employer and employee, whether between the Parties or between either of the Parties and any officer, employee, or agent of the other Party.
- 13.2 No Agency: This Agreement does not give rise to a relationship of Principal and Agent. Neither Party shall be entitled to conclude any agreement on behalf of the other, nor to sign any document on behalf of the other, unless so specifically authorised in writing by the other.
- 13.3 Co-operation: Both parties to this Agreement (including the employees, officers and agents of such parties) undertake to use their best endeavours and exercise good faith in implementing the provisions of this Agreement according to its intent and purpose and they further undertake to pass such resolutions and do all such acts and deeds as may be necessary to this end.
- 13.4 Non-Exclusivity: The relationship between the parties will not be an exclusive one and AFP will be free to conclude similar Agreements with other third parties.

14 Assignment, Subcontracting and Reselling

- 14.1 General Restriction: The Affiliate will not be entitled to cede, assign, delegate, sub-license, sub-contract, encumber or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of AFP, which consent may not be unreasonably withheld or delayed.
- 14.2 Permitted sub-contracting: AFP may nonetheless subcontract its obligations in terms of this Agreement to a third party, provided that:
- 14.2.1 such sub-contracting shall not absolve AFP from the responsibility of complying with its obligations in terms of this Agreement; and
- 14.2.2 AFP shall at all times remain the sole point of contact for the Affiliate.

14.3 Assignment by the Registry to the Affiliate: It is expressly recorded that AFP will be entitled to cede and assign all rights and obligations in terms of this Agreement to its Affiliate or any successor of all or substantially all of the business or assets of AFP, provided that AFP notifies the Affiliate of such event within a reasonable time of it occurring.

15 Dispute Resolution

15.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties must try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to meet and attempt to resolve the dispute within **7 (seven) days** from date of written invitation.

15.2 If the dispute has not been resolved by such negotiation, either of the Parties may submit, by written notice to the other party, the dispute to the MARC for administered mediation, upon the terms set by the MARC Secretariat.

15.3 Failing such a resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of the MARC by an arbitrator or arbitrators appointed by the MARC.

15.4 This clause constitutes an irrevocable consent by the parties to any proceedings in terms hereof and neither of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.

15.5 The foregoing shall not restrict the right of either Party to apply to a competent court for relief of an urgent nature or should its intellectual property rights be violated or threatened, and the parties' consent to the jurisdiction of the Supreme Court of Mauritius for such purposes.

15.6 Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

15.7 This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

16 Limitation of Liability and Indemnity

16.1 Limitation. Save and except for liability in respect of claims by third parties regarding Intellectual Property Rights infringements and disclosure of Confidential Information, which liability will not be capped or excluded in any way, neither party will be liable to the other party or any third party in respect of any and all indirect, consequential or special damages, loss, claims or costs, of whatever nature, relating to or arising from this Agreement; the Client Area; link or Reference Code, suffered by the other party or a third party, whether through the act or omission of a party's employee, breach of contract, vicarious or strict liability or any other cause.

16.2 Specific Exclusions. Without limiting the provisions of clause 16.2 in any way, AFP will not be liable to the Affiliate for direct, indirect, consequential, or special damages arising from:

16.2.1 any act or omission of the Affiliate in breach of this Agreement.

16.2.2 any action taken by AFP in terms of this Agreement, provided that such action is taken in terms of the procedures in this Agreement.

16.2.3 any unauthorised access to the Client Area or data contained thereon due to the Affiliate's negligence; and/or

16.2.4 the processing or transfer of the Registrant's Personal Information provided that AFP is not negligent and such negligence gives rise to the damage and complies with applicable laws.

16.3 Quantum Limited: Without in any way limiting or derogating from the above provisions, the Parties agree that the total amount of each party's liability relating to or arising from this Agreement or the Client Area, whether in contract, delict, or otherwise, **will not exceed the balance of commission** in the Affiliate's account when the damage arose, immediately preceding the damage-causing event.

16.4 Indemnity: The Affiliate will indemnify, defend, and hold AFP and the Registry harmless from all third party demands and claims (including reasonable legal costs on the scale as between attorney and own client and any additional legal costs) relating to or arising directly or indirectly out of:

16.4.1 any act or omission of the Affiliate in breach of this Agreement.

16.4.2 a breach of the Affiliate's warranties as set out in clause 10.3.

16.4.3 breach of privacy rights, including infringement of any law (whether Mauritian or foreign) governing cross-border data flows where such breach is the fault of the Affiliate; or

16.4.4 the infringement by the Affiliate of any Intellectual Property Right, including any Domain Name dispute.

16.5 Procedure on Indemnity: In the event of any third-party claim contemplated in clause 16.4 claims against any Party ("the Innocent Party") such Innocent Party will promptly notify the other Party in writing of any claims covered by this indemnity. Promptly after receipt of such notice, the other Party will assume the defence of such claim with counsel reasonably satisfactory to the Innocent Party. If the other Party fails, within a reasonable time after receipt of such notice, to assume the defence with counsel reasonably satisfactory to the Innocent Party or, if in the reasonable judgment of the Innocent Party, a direct or indirect conflict of interest exists between the Parties with respect to the claim, the Innocent Party will have the right to undertake the defence, compromise and settlement of such claim for the account and at the expense of the other Party. Notwithstanding the foregoing, if the Innocent Party in its sole judgment so elects, the Innocent Party may also participate in the defence of such action by employing counsel at its expense, without waiving the other Party's obligation to indemnify and defend. The other Party will not compromise any claim (or portions thereof) or consent to the entry of any judgment without an unconditional release of all liability of the Innocent Party as to each claimant or plaintiff.

16.6 Precedence. In the case of ambiguity, this clause 16 will take precedence over any expression of the Parties' intention, whether expressed or implied, that may be contained elsewhere in this Agreement.

17 Force Majeure

17.1 Neither party will be liable for any delay in performing or any failure to perform any obligations under this Agreement due to any cause beyond their reasonable control, including but without being limited to any of the following: strikes, lock outs or other industrial action, sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, subsidence, epidemic, pandemic or other natural physical disaster, impossibility of the use of railways, shipping aircraft, motor transport or other means of public or private transport, interruption of electricity supply, any act or policy of any state or government or other authority having jurisdiction over either party, sanctions, boycott or embargo.

18 Domicillium & Notices

18.1 The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from or pursuant to this Agreement, as set out in the address field of their account at AFP, which shall be a physical and not a postal address.

18.2 Any Party shall be entitled from time to time by written notice to the other(s), to vary it's given address to any other address which is not a post office box or to vary its other domicillium contact details.

18.3 Any notice given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which: -

18.3.1 is delivered by hand shall be deemed to have been received by the addressee on the first business day after the date of delivery or transmission, as the case may be or

18.3.2 is transmitted by email shall be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee.

18.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties from another, including by way of email transmission, shall be adequate written notice or communication to such Party.

19 Applicable Law and Jurisdiction

19.1 This Agreement shall be governed by and construed in accordance with the laws of Mauritius, and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.

19.2 Where either party employs the services of attorneys or other debt-recovery agencies in respect of any outstanding debt or amount then the other party undertakes to pay on demand all reasonable legal costs incurred on a party and party fee tariff scale and including related costs such as reasonable collection commission and tracing fees.

20 Interpretation

20.1 Number, Gender and Status: In this Agreement, unless the context requires otherwise: - words importing any one gender will include the other gender; the singular will include the plural and vice versa.

20.2 Reference to Persons: A reference to natural persons will include created entities (corporate or unincorporate) and vice versa. Reference to any Party will be interpreted to include reference to their successors or permitted assigns unless the context indicates otherwise.

20.3 Local Definitions: Words and expressions defined in any clause will, for the purposes of that clause, bear the meanings assigned to such words and expressions in such clause. If it is clear from the context that the term so defined has application beyond the clause in which it was defined, it will bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in a definitions clause.

20.4 Substantive Provisions: If any provision is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in a definitions clause, effect will be given to it as if it were a substantive provision in the body of the Agreement.

- 20.5 Clause Headings: Clause and sub-clause headings have been inserted for convenience only and will not be used for nor assist or affect its interpretation.
- 20.6 Clause References: Unless otherwise stated herein, references to clauses, sub-clauses, schedules, or paragraphs are references to clauses, sub-clauses, schedules, or paragraphs of this Agreement, as the case may be.
- 20.7 Clause Numbers: Where a clause or subclause number is cited, such citation will be deemed to include reference to all sub-clauses of that numbered clause or sub-clause, as the case may be.
- 20.8 Contra Preferentum Excluded: The rule of construction that an agreement will be interpreted against the party responsible for its drafting or preparation (*contra preferentum*) will not apply.
- 20.9 References to this Agreement: Unless otherwise stated in this Agreement, references in this Agreement to this Agreement or to any other agreement are references to this Agreement or such other agreement as varied, supplemented, substituted, or replaced from time to time.
- 20.10 Enactments: References to any Law will be deemed to include references to such Law as re-enacted, amended or extended from time to time.
- 20.11 Date of Signature: Any reference in this Agreement to “date of signature” will be read as meaning a reference to the date of signature of the last party required to sign an agreement for it to come into existence.
- 20.12 Calculation of Days: When any number of days is prescribed in this Agreement, it will be reckoned excluding the first and including the last, unless the last day falls on a Saturday, Sunday, or public holiday in Mauritius, in which event the last day will be the next succeeding Business Day.
- 20.13 Counterparts: This Agreement may be executed in any number of counterparts (including faxed counterparts) and all such counterparts taken together will be deemed to constitute one and the same instrument.

21 General

- 21.1 Whole Agreement: This Agreement constitutes the whole of the agreement between the Parties hereto relating to the subject matter hereof and the Parties shall not be bound by any terms, conditions or representations whether written, oral or by conduct and whether express or tacit not recorded herein; no addition to, variation, consensual cancellation or novation of this Agreement, including this clause, shall be of any force or effect unless reduced to writing and signed by both parties or by their duly authorised representatives.
- 21.2 Capacity: The signatories hereto acting in representative capacities warrant that they are authorised to act in such capacities.
- 21.3 No Waiver: The failure by any Party to enforce any provision of this Agreement shall not affect in any way that Party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision.
- 21.4 Survival: For the avoidance of doubt, any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 21.5 Reading Down: If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid, or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.
- 21.6 Severability: If the whole or any part of a provision of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Agreement shall have full force and effect, provided such severance does not alter the nature of the Agreement between the Parties.

Annexure A: Commission Structure

The Affiliate's commission will be calculated and earned at 20% of the published retail purchase price of each product purchased by the Referral through the AFP website, upon completion of a successful transaction.

END