



## **MERCHANT SERVICE AGREEMENT (SWIFPAY MERCHANT SERVICE TERMS AND CONDITIONS)**

### **BETWEEN**

**SWIF FINTECH SDN BHD (Company No. (1355554-T)**, a company incorporated in Malaysia and having its principle of business at The Vertical Business Suite, Tower B, Level 17, Unit 5, Jalan Kerinchi, Bangsar South, 59200 Kuala Lumpur (hereinafter referred to as “**Company**”) of the one part;

### **AND**

The Merchant whose name and particulars are as stated in the SwiFPay Merchant Service Application Form (hereinafter referred to as “**Merchant**”) of the other part;

## **1. Definitions and Interpretations**

### **1.1 Definitions**

“**Affiliates**” means any person directly or indirectly controlling, controlled by, or under common control with that person. For purposes of this definition, "control," "controlling," and "controlled" mean having the right to elect a majority of the board of directors or other comparable body responsible for management and direction of a person by contract, by virtue of share ownership or otherwise.

“**Bank**” means any participating financial institutions where Company maintains its Transaction processing via the Bank gateway.

“**Business Days**” means a day (excluding Saturdays, Sundays and public holidays) on which government departments and banks are open for business in Kuala Lumpur;

“**Card Associations**” means VISA, Mastercard, and any other card associations that the Bank may subscribe with from time to time.

“**Chargeback**” means the return of funds to the customer, initiated by Company under the instruction of the customer due to errors, Fraud or any other reason which entitles the customer's payment service provider to stop or reverse a payment or that obliges Company to return funds.

“**Company**” means SwiF Fintech Sdn Bhd (1355554-T) (Formerly known as Acepayz Sdn Bhd) with its place of business at The Vertical Business Suites, Tower B, Level 17 Unit 05, Jalan Kerinchi, Bangsar South, 59200 Kuala Lumpur, Malaysia.

“**E-wallet Issuer**” means any participating e-wallet institutions where Company maintains its Transaction processing via the E-wallet.

“**Force Majeure Event**” means an event that is not foreseeable, the consequence of which cannot be prevented or avoided and beyond the reasonable control of the affected Party other than due to its fault or negligence, which includes, without limitation to, acts of god, fire, computer virus, defect in design of instrumental software, attack by hacker, change in laws or policies, major outages of a telecommunication carrier's network connections, interface incidents of partner banks and financial institutions, gateway incidents of mobile carriers, unexpected incidents resulting from changes in customer' systems, unexpectedly large increases in traffic volume as a direct result of any orders of a governmental authority, and governmental authority intervention that results in the seizure or confiscation of Party's systems, in each case to the extent used in or necessary for the provision of the services and only to the extent such event(s) are beyond the control of the affected Party and



only for as long as such event(s) persist.

**"FPX"** means the Financial Process Exchange. A common internet based online payment gateway system to facilitate payment for commercial trade transactions pursuant to the FPX Services offered by PayNet.

**"FPX Services"** means the online payment processing or online banking services offered by PayNet i.e. the centralized clearing and settlement for the Transaction through FPX.

**"Fraud"** means unauthorized use of a card or unauthorized use of a Payment Method as alleged by the customer.

**"Inactive Merchant"** means Merchant with no Transaction in a single calendar month or more.

**"Intellectual Property Rights"** means all patents, trademarks, trade names, service marks, brand names, corporate names, logos and designs, copyright, rights in databases and other protectable lists of information, rights in confidential information, trade secrets, inventions and know-how, and domain names, in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.

**"Merchant Discount Rate"** means the discount on sales of Products as settlement for that Transaction, expressed as a fixed fee or percentage of the Transaction Value.

**"Merchant's Platform"** means the virtual platform operated by Merchant.

**"Net Settlement Amount"** shall mean the difference between the Transaction Value less the Merchant Discount Rate less any Chargebacks less any Refunds less any other associated costs payable by Merchant.

**"Payment Gateway"** shall mean the Company's Payment Gateway comprises of software and hardware system enabling the acceptance of customer payment for Merchant's Products via multiple Payment Methods.

**"Payment Method"** shall mean the payment options sourced and provided by Company that Company shall offer to customers enabling them to pay for the Products through the Payment Gateway, set forth in Schedule 1 of this Agreement and other Payment Method as notified by the Company to Merchant from time to time.

**"PayNet"** means Payment Networks Malaysia Sdn. Bhd., a company incorporated in Malaysia with its principal office at Tower 2A, Avenue 5, Bangsar South, 8 Jalan Kerinchi, 59200 Kuala Lumpur of which the Bank or the Company is a member institution.

**"Personal Information"** means personal information or data, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or data, collected by either Party during the operation, management or administration of the Services.

**"Product"** shall mean the goods and services made available by the Merchant for sale on Merchant's Platform.

**"Refund"** shall mean return of previously collected funds to customer upon customer's request due to issues relating to Merchant, including but not limited to, claims of unsatisfactory quality of Merchant's Products; or because such Products were purchased, but returned; or because of

Merchant's failure to perform its obligations in connection with the provision of the Products.

**"Standards"** means any laws, bylaws, rules, policies and the operating regulations and the procedures of the Card Associations, PayNet, the Bank, the E-wallet Issuer, including but not limited to any manuals, guides or bulletins, as may be amended from time to time.

**"Transaction"** means the sale and purchase transaction of a Product by customer on Merchant's Platform and processed by Payment Gateway.

**"Transaction Value"** shall mean, with respect to each Transaction, the amount of the purchase price of the relevant Product.

## 1.1 Interpretations

- (a) recitals and headings are used for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any corporation or other body corporate, partnership, association, Public Authority, two or more persons having a joint or common interest, or any other legal or commercial entity or undertaking;
- (e) a reference to a party to a document includes that party's successors and permitted assigns;
- (f) where a word or phrase is given a defined meaning in this Agreement any other part of speech or grammatical form of a word or phrase defined in this Agreement has a corresponding meaning;
- (g) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and includes all by-laws, instruments, orders rules and regulations made under it;
- (h) any reference to "this Agreement" is a reference to this Agreement (including the schedules and appendices) and any written amendments, supplements or novation of this Agreement from time to time, and includes a reference to any documents which amends, waives, is supplemental to or novates the terms of this Agreement;
- (i) any reference to a date or time is a reference to that date or time in Malaysia;
- (j) where the day on or by which any act is to be done is a Sunday or a public holiday in the place in which that act is to be done, then that act must be done on the next Business Day;
- (k) any agreement, notice, consent, approval, disclosure or communication under or pursuant to this Agreement must be in writing;
- (l) words denoting an obligation on a party to do an act, matter or thing includes an obligation to procure that it be done or words placing a party under a restriction include an obligation not to permit an infringement of the restriction;
- (m) a reference to "RM" shall mean Ringgit Malaysia;
- (n) a reference to "days" shall mean Gregorian calendar days;
- (o) the expression "including" or "include" means "including without limitation" (with related words being construed accordingly); and
- (p) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## 2. Purpose

Merchant desires to use Company's Payment Gateway service for receiving payment of Products from customers and for its convenience making payment through available Payment Methods provided by the Company ("**Services**").

### 3. Company Obligations

Company shall operate and maintain the Services, and shall be entitled to determine any and all of the features, operations and processes for the Services including providing and implementing all security arrangements and features Company deems necessary or appropriate for the secure operation of the Services.

### 4. Merchant Obligations

#### 4.1 Merchant undertakes to:

- (a) pay to Company the all the applicable fees and charges, and Merchant Discount Rate listed in Schedule 1.
- (b) honor all Transactions authorized by Company.
- (c) agree that the Card Associations, PayNet, the Bank and the E-wallet Issuer may at any time, immediately and without advance notice, prohibit Merchant from using any of the Card Associations', PayNet's the Banks' and/or the E-wallet Issuers' Marks for any reason whatsoever.
- (d) agree that the Card Associations, PayNet, the Banks and the E-wallet Issuer shall be entitled to enforce any provision of the Standards and to prohibit Merchant from engaging in any conduct that the Card Associations, PayNet, the Banks and the E-wallet Issuers deem that the said conduct will damage or create a risk of damage to the Card Associations, PayNet, the Banks and the E-wallet Issuers including but not limited to any damage to its reputation, or conduct that could adversely affect the integrity of the Card Associations', PayNet's, the Banks' and the E-wallet Issuers' systems.
- (e) agree and acknowledge that Company must not provide the Services with respect to any Transaction which is prohibited by applicable laws or which will result in Company being considered to have breached any applicable laws. Merchant will provide information about the Products requested by Company from time to time. Merchant will not sell any Products to customer through Payment Gateway that contain articles prohibited or restricted from being sold to customer under the applicable laws, including the non-exhaustive list of Products listed in Appendix 1 hereto ("**List of Prohibited Products**"). Merchant will ensure that no Transaction being submitted for Company's processing involves or relates to any Prohibited Products ("**Prohibited Transaction**"). Company will have the right to refuse to provide any Services with respect to any Prohibited Transaction, and Merchant will indemnify Company for any damages, losses, and liabilities that Company may suffer arising from or in connection with such Prohibited Transaction.
- (f) ensure that the Products sold to customer on Merchant's Platform will not infringe upon any third party's rights and interests, including without limitation, intellectual property rights and proprietary rights.
- (g) display at all times Payment Methods in all Merchant's Platform in accordance with the guidelines or instruction issued by Company.
- (h) only use the Services for its own account, for its own business purpose and will not make use of the payment interface provided by Company in connection with this Agreement for performing any commercial or non-commercial services for any other third parties, Merchant will use the Services only for the Products in connection with Merchant's principal business as notified by Merchant to Company in accordance with this Agreement.
- (i) maintain the proofs/records for each Transaction to justify its authenticity within seven (7) years after the completion of the Transaction and Company shall be entitled to review or otherwise access such proofs/records. Subject to any legal restrictions under applicable laws, Merchant will ensure that Company, the relevant service providers of Company and/or regulatory or governmental authorities having jurisdiction over Company be provided with or

- granted access to, the relevant Transaction information, within five (5) Business Days upon Company's request.
- (j) be solely liable for the complaints, goods rejections, and disputes arising out of the illegal, false, outdated or incomplete Transaction information and defects and poor quality of Products sold by the Merchant.
  - (k) agree and acknowledge that upon reasonable written notice to Merchant, Company shall have the right to temporarily interrupt the provision of Services for routine or emergency maintenance purposes whenever it is the commercially reasonable judgment of Company that such action is desirable or necessary. If maintenance is non-scheduled, with respect to Services provided by Company, Company shall notify Merchant as far in advance as reasonably practicable under the circumstances that maintenance is required. Notwithstanding the foregoing, Merchant acknowledges and agrees that there may be some circumstances in which advance notice is not practicable, such as in the case of emergency or unanticipated failure. In such case, Company shall be relieved of its obligations to provide Services only for the period of time that the relevant facilities or systems are so shut down and shall not be liable for any loss or damages that Merchant may suffer arising thereof.
  - (l) agree and acknowledge that Company shall be entitled to impose inactive merchant fee as provided in Schedule 1 if Merchant becomes an Inactive Merchant.
  - (m) agree and acknowledge that Company shall be entitled to revise the Merchant Discount Rate in equal ratio or terms to the adjustment made by the service provider of Payment Method ("**Service Provider**"), and such revision of the Merchant Discount Rate shall take effect upon Company's written notice to Merchant.

#### **4.2 Merchant undertakes not to:**

- (a) take any action against Company or the Card Associations, PayNet, the Bank and the E-money Issuer to interfere with their rights provided herein.
- (b) restrict customer in any way from using any Payment Gateway at any of the sales channel, including establishing or changing a minimum or maximum purchase amount for customer to make purchase of Products using Payment Gateway.
- (c) charge any additional /ancillary service fees to any customer for using Payment Gateway to make purchase of Product.

## **5. Settlement and Remittance**

### **5.1 Settlement Report**

After 12.00PM (Malaysia time) of each Business Day, Company will provide Merchant, in an electronic format (email or secured online logon), a settlement report containing the details of any and all Transactions with Merchant, including the Transaction amount, the date and time of the Transaction, the Merchant Discount Rate, and the total amounts owed to Merchant in connection with such Transactions of such preceding day(s) ("**Settlement Report**").

Such Settlement Report shall be the definitive evidence of all sales of Products made to customers and shall form the final basis on which all payments hereunder are made.

### **5.2 Remittance by Company**

Company will remit the Net Settlement Amount to Merchant in accordance with the payment terms set forth in Schedule 1.

Outgoing tele-graphic transfer service fees and remittance fee imposed by the remittance bank shall be paid for by Company. Any intermediate bank charges and recipient bank charges shall be borne



by Merchant.

### 5.3 Right to withhold

Merchant agrees that Company may, at its discretion, withhold all or part of the settlement value in Merchant's account balance that is maintained with Company for a period up to 180 days if Company has reasonable grounds to believe that:

- (a) merchant has breached, or may breach, any provisions of this Agreement;
- (b) merchant's action or omission could undermine the integrity, security, reliability, stability and/or reputation of the Services; or
- (c) a Transaction concerned will be subject to Chargeback or flagged as suspicious Transactions.

In the event that Company exercises its discretion to withhold all or part of the settlement value in Merchant's account balance that is maintained with Company, Company will notify Merchant within Two (2) Business Day from the exercise of its discretion, and shall provide update to Merchant from time to time as long as all or part of the settlement value in Merchant's account balance that is maintained with Company is withheld by Company.

### 5.4 Chargebacks

Merchant agrees that if there is any Chargeback occurs which Merchant is unable to furnish evidence to refute Chargeback within the timeframe specified below or the evidence does not conclusively refute Chargeback, Company will reverse the payment and debit Merchant's account balance that is maintained with Company to pay for the Chargeback.

Merchant may furnish concrete evidence to contest such Chargeback which may include proof of delivery, certification from suppliers on the authenticity of goods, or other documentation to demonstrate Merchant's performance of its obligations within Two (2) Business Days from Company's notification via e-mail.

Merchant agrees that customer may submit such Chargeback to the Merchant after payment has been made, including but not limited, for the following reasons:

- (a) goods or services purchased were not provided or rendered due to the Merchant's non-performance or insolvency;
- (b) customer's bank account was erroneously debited multiple times for a single purchase or charged with an incorrect amount by the Merchant.

Merchant shall be liable to pay Company a fee for each Chargeback ("**Chargeback Fee**") as imposed by Company's service provider from time to time. All decisions rendered by Company in response to Chargeback shall be binding on the Merchant.

Company shall not be liable to Merchant due to non-payment as caused by this Chargeback. If there are insufficient funds in the Merchant's account balance, Merchant agrees to reimburse Company through other means within seven (7) days from the date of receipt of the notification in writing.

### 5.5 Refunds

If a customer duly requests a Refund in accordance with Merchant's after-sale policy or a Refund is required by the applicable laws, Company will make such Refund to the customer. Merchant shall be liable to pay Company a fee for each Refund ("**Refund Fee**") as imposed by Company's service provider from time to time.





Merchant hereby agrees to reimburse Company for each such Refund and for that purpose authorizes to deduct the amount of each Refund from the Merchant's account balance and return such Refund to the relevant customer.

If there are insufficient funds in the Merchant's account balance, Merchant agrees to reimburse Company through other means within seven (7) days from the date of receipt of the notification in writing.

For the avoidance of doubt, Company shall not be responsible for any claim or liability that the relevant customer may seek from the Merchant in the event of any delay in processing such Refund.

## 6.Tax

Merchant shall be solely responsible for all applicable value-added tax or any other tax similar in nature and other taxes associated with payments to Merchant resulting from the remittance of Net Settlement Amount, including any taxes required to be withheld from cross-border proceeds and remitted to the applicable taxing authority by Company or its third-party payment system provider.

## 7.New Payment Methods

When a new Payment Methods becomes available in the Payment Gateway, Company will notify Merchant via email with applicable details, including the applicable Merchant Discount Rate and other business terms and the scheduled commencement date of such Payment Methods.

The New Payment Methods will be automatically enabled for use by Merchant's customers as of such commencement date, and Merchant will be required to honor all Transactions completed using such Payment Methods in accordance with the terms of this agreement.

Merchant may opt out of any new Payment Methods at any time and for any reason, by notifying Company via email ("**Opt-Out Notice**"). Company will disable that Payment Methods within five (5) Business Days upon receipt such Opt-Out Notice.

Upon Merchant's discontinuation of any of the new Payment Methods(s), Company will cease to process Transactions related to that Payment Method(s). Termination of any of the new Payment Methods will not otherwise affect the agreement with Company, unless the agreement is terminated concurrently pursuant to the terms of this Agreement.

## 8.Term and Termination

This agreement will take effect on the Effective Date and will continue in force for a term of one (1) year after the Effective Date, and thereafter will continue for successive periods of one (1) year ("**Term**") until terminated by either Party.

Each Party may terminate this Agreement at any time without assigning any reason or cause whatsoever by issuing to another Party thirty (30) days written notice of its intention to terminate.

Notwithstanding the foregoing provisions, either Party may terminate this Agreement with immediate effect by notice in writing to the other upon the occurrence or threatened occurrence of any one or more of the following events:



- (a) if the other Party commits any material or continuing breach of any of the provisions of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving particulars of the breach and requiring it to be remedied;
- (b) if the other Party becomes insolvent, goes into receivership, administration or liquidation (other than on a bona fide restructuring on its business and the company resulting from such reorganization effectively agrees to be bound by and to assume all the obligations imposed on that other Party under this Agreement);
- (c) if a Force Majeure Event continues for more than two (months); or
- (d) if the other Party ceases to carry on business. The right to terminate this Agreement as outlined herein shall not prejudice any other right or remedy of either Party in respect of the breach concerned or any other breach.

Parties agree that Company may automatically terminate this Agreement without any prior notice to Merchant if Merchant does not have any Transaction for Six (6) calendar months consecutively (“**Inactive Merchant**”), and reserve the right to impose any inactive fee to Inactive Merchant.

## 9. Consequences of Termination

Upon termination of this Agreement all rights and obligations of Company and Merchant shall cease to have effect immediately, except that termination shall not affect:

- (a) the rights and obligations of the Parties accrued prior or at the date of termination; and
- (b) the continued existence and validity of the rights and obligations of the Parties under those provisions of this Agreement which are expressed to survive termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

On termination of this Agreement for any reason:

- (a) Company will cease its Services;
- (b) the Parties will discontinue all use of each other's Marks;
- (c) each Party will promptly return to the other Party (or destroy, if so instructed by the other Party) all materials, in whatever form, containing confidential information of the other Party; and
- (d) each Party will promptly pay the other Party all amounts owing to the other Party under this Agreement within thirty (30) of the date of termination.

## 10. Intellectual Property Rights

Each Party acknowledges that all Intellectual Property Rights owned by (or licensed to) the other Party shall remain the sole property of the other Party (or its licensor, as the case may be).

Each Party shall not dispute other Party's (or its licensors') ownership of such Intellectual Property Rights in any way.

Company shall not be liable to ensure that Merchant is the rightful or licensed owner of the Intellectual Property Rights for its products and services. Merchant shall:

- (a) defend or settle any action or suit brought against Company by a third party to the extent that it is based upon a claim that the Products of the Merchant for which Company performed the Services under this Agreement infringes or misappropriates the Intellectual Property Rights of any third party; and





- (b) pay all costs of such defence and any costs, damages and reasonable attorneys' fees attributable to such claim that are payable in settlement or are finally awarded against Company.

Merchant grants to Company and its subsidiaries/affiliates, non-exclusive, non-transferable and revocable licences to use the trademarks, trade names, service marks, logos and any other marks owned or controlled by the Merchant and solely for the purposes of marketing or promoting the Services and Merchant's Products.

## 11.Data Privacy

Each Party agrees to use any procedures required by law including the Personal Data Protection Act 2010 ("**PDPA**") in order to protect consumer privacy and consumer information, and shall use Personal Information only for the purpose of fulfilling its obligations under this agreement and for any other purposes permitted by law including the PDPA.

Each Party shall take all commercially reasonable steps to ensure that the Personal Information is protected against misuse and loss, or unauthorized access, modification or disclosure and shall promptly notify the other Party any loss of, or any unauthorized disclosure of or access to, the Personal Information.

Each Party may retain records of Transaction for complying with applicable laws and internal compliance requirements.

## 12.Compliance with Laws

Merchant shall comply with all applicable laws on anti-money laundering, counter-terrorism financing and sanctions (collectively "**AML**"). In accordance with its AML, anti-fraud, and other compliance and security policies and procedures, Company may impose reasonable limitations and control on Merchant's ability to utilize the Services.

Such limitations may include but are not limited to rejecting payments, or suspending/restricting any Services with respect to certain Transactions, or restricting particular individuals from using the Services. In order for Company to satisfy its obligations and to comply with the relevant requirements under applicable laws, Merchant shall, upon reasonable request by Company, share information (including transaction information) with Company from time to time.

Merchant authorizes Company to present the relevant information to regulatory authorities and cooperative banks for examination and verification as necessary.

Company may, for the purpose of complying with relevant suspicious transactions reporting and tipping-off requirements under the applicable laws, report suspicious transactions to the relevant authorities.

## 13.Anti-Bribery and Corruption

Merchant (including its respective directors, officers, managers, employees, independent contractors, representatives, agents, and other persons acting on its behalf) acknowledges that it has been made aware of Company's Anti-Bribery and Corruption Policy (hereinafter referred to as the "**ABC Policy**") which is made available at Company's website and shall comply with the ABC Policy, all other related policies, and procedures, and any applicable anti-bribery and anti-corruption laws of the

territory in which the Parties conduct their business activities including but not restricted to Malaysian Anti-Corruption Act 2009 (Act 694) (“**MACC Act**”) and shall use all reasonable endeavors to ensure that all other parties associated with Merchant involved in performing the works and/or services under this Agreement do the same.

Without limiting the foregoing, Merchant shall not make or receive any gratification as defined in the MACC Act or other improper payment or allow any such to be made or received on its behalf and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

## **14. Confidentiality**

Each Party will keep confidential and shall not use for any purpose (save for the proper performance of its obligations and exercise of its rights under agreement, or where disclosure is required by law, a court order or an order from an arbitral tribunal with jurisdiction) any and all information of a confidential nature concerning the business of the other Party.

Each Party shall keep all data or information obtained by, which is not publicly available, relating to the terms of this agreement strictly confidential and shall not use such data or information for any purpose other than performing its obligations under this agreement.

Each party will keep confidential and shall not use, transfer for any purpose (save for the proper performance of its obligations and exercise of its rights under this agreement) any and all personal data of the other party, without prior written consent of the other party.

## **15. Representations and Warranties**

### **15.1 Mutual representations and warranties**

Each Party represents warrants and undertakes to the other Party the following:

- (a) it is duly established and existing under the laws of the jurisdiction in which it is incorporated and has the power and authority to own its assets and conduct the business which it conducts and which it proposes to conduct under this Agreement;
- (b) it has the power to enter into, exercise his rights, perform and comply with its obligations under this Agreement;
- (c) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of all necessary consents) have been taken, fulfilled and done in order to enable it to lawfully enter into and exercise its rights and perform and comply with its obligations under this Agreement and that such obligations are legally binding and enforceable;
- (d) its entry into and exercise of its rights and/or performance of or compliance with its obligations under this Agreement do not and will not violate any restriction imposed by any applicable laws, rules or regulations in the Territory or, as the case may be, bylaws;
- (e) the information set out in this Agreement was, as of the Effective Date, true, complete and accurate and not misleading in any way; and
- (f) nothing contained in this Agreement or in the performance of this Agreement will place the party in breach of any other contract or obligation with any third party or agency.

### **15.2 Merchant Warranties**

Merchant represents and warrants that the offering, promotion, sale and delivery of Merchant's Products:

- (a) will not violate or infringe any Intellectual Property Rights of a third-party or the terms of this Agreement;
- (b) will comply with all applicable laws and regulations, including without limitation any such laws and regulations restricting or prohibiting the sale of goods or services based on the age of the consumer or laws specifically addressing money laundering;
- (c) in respect of each Transaction which is transmitted through the Services to Company, Merchant shall be deemed to have represented and warranted to Company at the time of such transmission:
  - (i) that all information and data transmitted to Company in respect of the Transaction is true, complete and accurate; and
  - (ii) that the Transaction relates to the payment for Products supplied or provided by the Merchant or the charges of the Merchant and that neither the contract nor the performance of the contract relating to the supply or provision of those Products or under which those charges were incurred is or shall be illegal invalid or unenforceable for any reason whatsoever in Malaysia and in the country where they are to be supplied or provided or incurred.

## 16.Disclaimer

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY WAIVES AND DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, ANY SERVICES OR THE ACTIVITIES CONTEMPLATED HEREBY, INCLUDING THE AVAILABILITY, ACCESSIBILITY, TIMELINESS AND UNINTERRUPTED USE OF THE SERVICES, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING ANY ECONOMIC OR OTHER BENEFIT THAT THE OTHER PARTY MIGHT OBTAIN THROUGH ITS PARTICIPATION IN OR PERFORMANCE UNDER THIS AGREEMENT.

## 17.Indemnification

Merchant agrees to, at its sole cost and expense, indemnify, defend and hold harmless Company and its Affiliates, officers, directors, shareholders, agents and employees against any and all cost, claims, suits, actions, demands, damages, liabilities, expenses (including reasonable fees and disbursements of counsel), judgments, settlements and penalties of every kind (collectively “Losses”) in connection with:

- (a) any breach by Merchant of any provision contained herein;
- (b) any failure of Merchant to comply with all applicable laws in connection with the Services provided hereunder;
- (c) any violation or claimed violation of a third party’s rights, including Intellectual Property Rights in connection with the Services; or
- (d) the negligent or intentionally wrongful acts or omissions of Merchant, its employees, agents, subcontractors or its other representatives.

Merchant hereby agrees and undertakes to fully indemnify and keep Company harmless from and against all actions, claims, proceedings, costs (including legal costs on an indemnity basis), losses,



charges, expenses which Company may suffer due to misconduct, dishonesty, fraud or negligence perpetrated by any third parties as a result of the negligence or wilful act or default of Merchant, its agents, employees or contractors.

## **18.Limitation of Liability**

UNDER NO CIRCUMSTANCES WILL COMPANY AND ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER MERCHANT OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, COMPANY'S CUMULATIVE LIABILITY, INCLUDING FOR CLAIMS, EXPENSES, DAMAGES OR INDEMNITY OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE, SHALL NOT EXCEED THE TOTAL MERCHANT DISCOUNT RATE PAYABLE BY COMPANY TO MERCHANT FOR SERVICES PROVIDED IN THE SIX (6) COMPLETE CALENDAR MONTHS PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM UPON WHICH LIABILITY IS BASED.

## **19.Dispute Resolution**

In the event of any claims, disputes or controversies arising under, out of or in connection with this Agreement ("**Dispute**"), the Parties agree to attempt to solve such Dispute by conducting good faith negotiations in the manner below.

The Company shall acknowledge receipt of the Dispute within Two (2) Business days from the date such Dispute is lodged and provide a written decision to Merchant within Thirty (30) Business Days. The Company shall inform the Merchant if a longer time is required to address the Dispute and provide appropriate rationale.

If the Parties are unable to settle the Dispute between themselves, the Dispute shall thereafter be resolved in accordance with Clause 20.

## **20.Governing Law and Jurisdiction**

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of Malaysia.

Each Party irrevocably submits to the exclusive jurisdiction of the courts of Malaysia, in connection with any action under this Agreement, or otherwise arising under or by reason of this Agreement.

## **21.General**

This Agreement is the entire agreement between the Parties and supersedes any and all prior or contemporaneous representations, agreements and promises, written or oral, between the Parties regarding the subject matter of this agreement.

This Agreement may be modified only by in writing signed by both Parties.



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If any term of this Agreement is deemed unenforceable, the remaining terms will remain in full force and effect.

No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other rights, power or privilege hereunder.

No Party shall assign, delegate or transfer, in whole or in part, any of its rights and/or obligations under this agreement to any third party without the prior written consent of the other Party which shall not be unreasonably withheld.

Execution and delivery of this agreement electronically is hereby deemed valid and effective, and a signed facsimile or electronic copy is hereby deemed an original for all purpose.

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**APPENDIX 1 (LIST OF PROHIBITED PRODUCTS)**  
**(NON-EXHAUSTIVE LIST)**

Illegal political audio-visual products and publications	Gold futures
Illegal reactionary cards and program channels	Counterfeit currency
State secret documentations and information, etc.	Sale of bank account or bank card in contravention with applicable laws
Pornographic and vulgar audio-visual products/publications	Stock
Pornographic and vulgar erotic services	Fund
Pornographic and vulgar cards and program channels	Periodical investment of gold
Gambling tools	Securities
Private lottery	Illegal fund-raising
Gambling	Foreign exchange services
Narcotics	Virtual currency in foreign accounts
Narcotic-taking tools	Bitcoin, Litecoin, YBcoin and other crypto currency transactions
Weapons of all types, (including military weapons/firearms and accessories), simulation weapons, ammunitions and explosive	Satellite antenna, etc.
Controlled instruments (such as dagger) which would potentially be used as an assaulting weapon	Archaeological and cultural relics
Illegally obtained proceeds or properties as a result of crime	Forged and fake food produce
Poisonous articles and hazardous chemicals	Fireworks and firecrackers
Anesthetic and psychotropic medicine	Crude oil
Any service or device which provide fetal gender analysis	Human organs
Adult drugs (aphrodisiac)	Surrogacy services
Credit card cashing service	Examination services (i.e. defraud by assuming another identity to participate in academic examination)
Foreign-related matchmaking service	National protected animals
Hacking-related	National protected plants
Malware	Smuggled articles
Certificate issuing and stamp carving	Any goods which are not officially endorsed by the event organizer or infringes third party intellectual properties
Crowd funding websites	Auction
ID card information and other information which infringed others' privacy	Pawn
Spying instruments	Lucky draw
Other personal privacy-harming articles or services	Any animals, plants or products which contain dangerous germs, pests or any other living creature
Pyramid selling	Any products, medicine or any other article originates from epidemic area of infectious disease which causes threat to health of human beings or animals
Lottery ticket	