

This Agreement is

between:

(1) **Mobile Money International Sdn Bhd (Company No: 670766-W)**, a company incorporated and registered under the laws of Malaysia and having its business address at Lot 22-23, 2nd Floor, IOI Business Park, 47100 Puchong, Selangor Darul Ehsan (hereinafter referred to as the "MM") of the one part;

AND

(2) **THE PARTY** named and described in Section A of the Form (hereinafter referred to as the "**Merchant**") of the other part.

Whereas:

A) MM develops, provides and manages the MM System (as defined herein).

B) At the request of the Merchant, MM agrees to appoint the Merchant as the authorised merchant to carry out the MM Transactions upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of these promises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Definitions

1.1 Definitions

In this Agreement, the following words and expression shall have the following meanings unless the context otherwise requires:

- "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Selangor Darul Ehsan and principal place of business of the Merchant;
- "**Commencement Date**" means the date set out in Section F of the Form;
- "**Customer**" means MM Members and MM Users or either one of them;
- "**Form**" means the merchant application form duly completed by the Merchant and vetted by MM in order to be registered as a merchant under the MM System and to which this Agreement is annexed to;
- "**Merchant Bank Account**" means the Merchant's account maintained with the Merchant Bank;
- "**Merchant Bank**" means the bank or financial institution licensed under the Banking and Financial Institutions Act 1989 in Malaysia where the Merchant Bank Account is held and maintained;
- "**Merchant Incentives**" means incentives, arrangements or benefits as MM may agree to provide to the Merchant in respect of such MM Transactions performed by the Merchant for Third Party Merchants;
- "**Merchant Account**" means the Merchant's account in the MM System in which the Merchant's electronic money is stored;
- "**MM Members**" means such persons who are registered with MM as members of the MM which entitle them to certain privileges and benefits as stipulated in their terms of membership with MM;
- "**MM System**" means the payment system designed and developed by MM facilitating the payment of the goods, products and services purchased by the Customers from the Merchants, including Third Party Merchant Transactions;
- "**MM Transaction**" means any transaction involving the use of the MM System by the Customer to purchase goods, products or services from the Merchant, including, without limitation, Third Party Merchant Transaction;
- "**MM Users**" means such persons purchasing goods, products and services using the MM System but who are not registered as members of MM;
- "**MM Website**" means the website of MM, www.mobile-money.com that is accessible by the Merchant and the Customers;
- "**Parties**" means collectively, MM and the Merchant and "Party" shall mean any one of them;
- "**Registration Fee**" means the fee stated in Section C of the Form;
- "**SMS**" means the short text message sent to and from mobile telephones which text comprises words or numbers or an alphanumeric combination in accordance with the prevailing standards prescribed by the GSM Association;
- "**Term**" means the period commencing the Commencement Date up to termination of this Agreement in accordance with Clause 16;
- "**Third Party Merchants**" means such third party merchants of MM or third party included by MM for which the Merchant is duly approved by MM to accept payments from the Customers towards the purchase of goods, products or services provided by such third party merchants;
- "**Third Party Merchant Transactions**" means any transaction involving the use of the MM System by the Customer to purchase goods, products or services of Third Party Merchants from the Merchant, as MM may at its absolute discretion approve and permit the Merchant to sell or perform at any time during the Term upon such terms and conditions as MM may determine;
- "**Transaction Fee**" means the rates stated in Section C of the Form or such other rate as may be fixed by MM from time to time and notified to the Merchant by any of the means of communication stated in Clause 18.2, and all payments by MM to the Merchant pursuant to the MM Transactions shall be less the amount of the Transaction Fee and MM shall not under any circumstances be liable to pay or reimburse the Merchant for the full value of each MM Transaction if such MM Transaction is subject to payment of the Transaction Fee by the Merchant to MM;
- "**This Agreement**" means this Agreement (and includes amendments, modifications and supplements hereto from time to time and any document which amends, modifies or supplements this Agreement as may be notified by MM to the Merchant by any of the means of communication stated in Clause 18.2); and
- "**Trustee Bank**" means the bank where MM has deposited:
(a) the monies remitted by the Customers in settlement of the MM Transactions; and
(b) the prepaid monies remitted by the Merchant remitted to MM for the purposes of the Merchant Account.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:-

- (a) the Recitals and clause headings contained in this Agreement are 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) any part of speech or grammatical form of a word or phrase defined in this Agreement has a corresponding meaning;
- (g) a warranty, representation, undertaking, indemnity, covenant or agreement on the part of two or more persons binds them jointly and severally;
- (h) any reference to "writing" or cognate expressions includes a reference to facsimile transmission or comparable means of communications and includes such notice or communication given in accordance with clause 18 hereof;
- (i) reference to clauses, schedules, paragraphs, annexures or appendices are references to the clauses or schedules in or paragraphs, annexures or appendices to this Agreement;
- (j) any agreement, notice, consent, approval, disclosure or communication under or pursuant to this Agreement shall be in writing;
- (k) words denoting an obligation on a party to do an act, matter or thing includes an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit an infringement of the restriction;
- (l) the words "hereto", "herein", "hereinafter", "hereinbefore", "hereof", "hereunder" and other words of similar import shall refer to this Agreement as a whole and not to any particular provision;
- (m) reference to a document shall include references to any sort of document whether paper or paperless and expressed, described or transcribed on any substance either with alphabets, figures, symbols and/or marks;
- (n) no rule for the construction or interpretation of contracts shall apply to the disadvantage of either party for the reason that that party was responsible for the preparation of this Agreement or any part of it;
- (o) any reference to the provisions of any legislation made hereunder includes any statutory modification, amendment, revision, replacement or re-enactment thereof;
- (p) any reference to a date or time is a reference to that date or time at Malaysia; and
- (q) where the day on or by which anything is to be done is a Saturday or Sunday or a public holiday in the place in which that thing is to be done, then that thing shall be done on the next succeeding Business Day.

2. Appointment of Merchant

2.1 Appointment

At the request of the Merchant and in consideration of the payment of the Registration Fee by the Merchant to MM (the receipt of which MM hereby acknowledges), MM hereby agrees to appoint the Merchant and the Merchant hereby accepts the appointment as authorised merchant of MM to carry out the MM Transactions.

2.2 Term
The appointment hereby made shall be for the Term.

2.3 Payment gateway system provider

The Merchant acknowledges and confirms that MM is merely acting as a payment gateway system provider by assisting the Merchant to accept payment through the MM System in respect of the MM Transactions.

2.4 Third Party Merchant Transactions

In the event of any issues pertaining to Third Party Merchants Transactions, MM agrees that the Merchant shall escalate to MM, any issues that the Merchant may have with the Customers. MM shall resolve such Third Party Merchant Transactions issues with the relevant Third Party Merchant.

2.5 No fiduciary duty

As between the Merchant and MM, MM is providing a payment processing service. MM shall not in any manner whatsoever be construed, at law or otherwise, to owe a fiduciary duty to the Merchant in respect of the payments made by the Customers through the MM System.

2.6 Rules and regulations

The Merchant confirms and agrees that it shall observe and comply with the rules and regulations that MM may notify the Merchant by any of the means of communication stated in Clause 18.2 in relation to and in connection with the operation of the MM Transaction and the MM System.

2A. Special Terms And Conditions

In addition to and not in derogation of other provisions of this Agreement, the Merchant hereby further agrees to the special terms and conditions (if any) stipulated in Schedule 1, and hereby agrees and undertakes in terms as set out in or otherwise to perform and observe and be bound by the provisions of Schedule 1.

3. Registration Requirements

3.1 Upon execution of this Agreement, the Merchant shall comply and fulfil with all registration requirements as MM may in its absolute discretion determine.

3.2 Upon receipt of MM's written notification on the successful registration of the Merchant as an authorised Merchant of MM, the Merchant may then commence to carry out the MM Transactions.

4. Merchant's Obligations

4.1 Subject to the provisions of this Agreement, the Merchant shall permit all Customers, without discrimination, to effect the MM Transactions without prior payment in cash or by cheque. The Merchant shall display prominently, the brand name and logo of MM and all other marketing or publicity materials that may be provided by MM, on or about the premises or website of the Merchant.

4.2 When carrying out each MM Transaction, the Merchant shall comply with and observe the applicable rules and procedures determined by MM which are in force at any time during the Term.

4.3 If the Merchant fails or refuses to observe and comply with such applicable rules and procedures pursuant to Clause 4.2, the Merchant shall not be entitled to claim against MM for payment of such purported MM Transaction.

4.4 The Merchant shall resolve directly with the Customer, any claims or complaints made by the Customer in respect of any purchase of goods, products or services made by way of MM Transaction. Save for Third Party Merchant Transactions, the Merchant shall have no right of recourse against MM in the event the Customer disputes the underlying contract of sale for such MM Transaction for any reasons whatsoever, including, without limitation, the quality or overcharging of that good, product or service.

4.5 The Merchant hereby irrevocably and unconditionally agrees, covenants and undertakes with MM that the Merchant shall:

- 4.5.1 not incorporate the Transaction Fee into the selling price of the goods, products and services;
- 4.5.2 not use the MM System to promote and conduct any fraudulent, immoral, illegal activities or such activities that may infringe the intellectual property rights of third parties;
- 4.5.3 comply with and observe the procedures in connection with and in relation to the MM Transactions, as may be notified by MM from time to time during the Term; and
- 4.5.4 comply with and observe its duties, obligations, covenants and undertakings in this Agreement in its transactions with the Customers.

4.6 Unless otherwise mutually agreed between MM and the Merchant in respect of the Third Party Merchant Transactions, the Merchant shall not overcharge the Customers in any manner whatsoever in respect of the purchase of goods, products or services forming the subject-matter of the respective MM Transactions. The Merchant must refund the monies overcharged to the respective Customers. If the Merchant request MM to effect such refund of monies, MM shall be entitled to charge a fee, at such rate as MM shall in its absolute discretion determine at any time during the Term, for effecting such refunds.

5. Procedure In Carrying Out MM Transaction

The Merchant shall comply with and observe all procedures (including, without limitation, security procedures) as may be determined and notified by MM to the Merchant in relation to the carrying out of MM Transactions. If the Merchant fails or refuses to comply with and observe the procedures imposed by MM, MM shall not be liable or responsible for such attempted MM Transactions carried out by the Merchant.

6. Payment To And From Merchant

6.1 Subject to Clauses 6.3 and 9, MM shall credit the Merchant Account (after deducting the Transaction Fee) the value of each completed MM Transaction on T, where payment is due from MM to the Merchant, and the Merchant Incentives.

For the purposes of this Clause 6.1:

- (a) "Customer Transaction Day" means the period from 11.01 p.m. to 11.00 p.m. of the following day; and
 (b) "T" means 10.00 p.m. at the end of the Customer Transaction Day.

6.2 The Merchant may instruct MM (through such mode of communication as MM shall in its absolute discretion determine at any time during the Term) to remit the moneys (or part thereof) standing to the credit in the Merchant Account to the Merchant Bank Account. MM shall remit the payment within two (2) Business Days after MM's receipt of the notification, in such form as MM may require, from the Merchant.

6.3 Notwithstanding Clause 6.1, MM reserves the right to withhold payment if MM is of the opinion that there is dispute, fraud, irregularity or, suspicious circumstances surrounding any MM Transaction. MM shall have the right to withhold payment until MM has examined and verified acceptable supporting documentation. The Merchant shall have no claim against MM for any interest, loss or damages, directly or indirectly arising out of or in connection with such payment withheld by MM.

6.4 Subject to Clause 9, MM agrees that pending the remittance of the relevant payments to the Merchant in accordance with Clause 6.2, all payments received by MM pursuant to the MM Transactions are held by the Trustee Bank in trust for the benefit of the Merchant.

6.5 In addition to and not in derogation of Clause 6.3, the Merchant agrees that MM shall not be held liable in any manner whatsoever for any delay in remitting the payment of the completed MM Transaction if such delay is due to circumstances beyond the control of MM, including, without limitation, technical breakdown of the MM System.

6.6 In respect of MM Transactions performed by the Merchant, where money is due and payable to Third Party Merchants or MM, arising from such MM Transactions, the Merchant hereby irrevocably authorise and instruct MM to debit the relevant sums from the Merchant Account as and when such MM Transactions are duly completed.

7. Registration Fee

7.1 The Merchant shall pay to MM, the Registration Fee, immediately upon the MM's acceptance of the Merchant's application to be and the appointment of the Merchant as an authorised merchant of MM in accordance with this Agreement.

8. Transaction Fee

8.1 The Merchant irrevocably and unconditionally agrees and confirms that in consideration of MM facilitating the MM Transaction under the MM System, MM shall be entitled to impose the Transaction Fee on each MM Transaction and deduct the same from the payment made by the Customer in respect of each MM Transaction.

9. Disputed MM Transactions

9.1 MM shall not be responsible and liable to:

- 9.1.1 the Customers in any manner whatsoever for any goods, products or services purchased from the Merchant; and
 9.1.2 the Merchant in the event a Customer disputes a MM Transaction.

9.2 Save for fraudulent MM Transactions alleged by a Customer and Third Party Merchant Transactions, MM shall not be under any obligation or responsibility to investigate any disputes on the MM Transactions between the Merchant and a Customer.

9.3 Save for fraudulent MM Transactions alleged by a Customer and Third Party Merchant Transactions, all disputes on a MM Transaction shall be resolved between the Merchant and the Customer.

9.4 If MM receives a notification from the Customer in respect of an alleged fraudulent MM Transaction before 10.00p.m. on the same day of that alleged fraudulent MM Transaction, MM shall withhold the payment in respect of that MM Transaction pending investigation of the alleged fraudulent MM Transaction by MM. Any notification from the Customer received by MM after 10.00p.m. shall be dealt with in accordance with this Clause 9 on the next Business Day. For the avoidance of doubt, the Customer must notify MM of an alleged fraudulent MM Transaction within twenty four (24) hours of its occurrence.

9.5 Within seven (7) days (or such other duration as MM may determine from time to time or at any time during the Term) from the Customer's notification of an alleged fraudulent MM Transaction to MM, the Customer shall furnish MM with all requisite supporting documents and information in relation to and in connection with the alleged fraudulent MM Transaction and complete such other forms and documents as MM may require. If the Customer fails or refuses to comply with Clause 9.5, MM shall proceed to release to the Merchant the payment withheld in respect of that alleged fraudulent MM Transaction at the expiry of the seven (7) day period stated in Clause 9.5 or such other duration as MM may determine from time to time or at any time during the Term.

9.6 MM shall investigate the alleged fraudulent MM Transaction, including obtaining the written representation from the Merchant.

9.7 MM shall notify the Customer and the Merchant of the outcome of such investigation within thirty (30) days (or such other duration as MM may determine from time to time or at any time during the Term) from MM's receipt of all the documents and information stated in Clause 9.5.

9.8 The decision made by MM pursuant to the investigation shall be final, binding and conclusive, save for manifest errors.

9.9 Where the outcome of the investigation by MM:

- 9.10.1 shows that such MM Transaction is fraudulent, MM shall refund to the Customer the amount of the MM Transaction by crediting such amount into that Customer's account; or
 9.10.2 shows that such MM Transaction is not fraudulent, the Customer shall be notified accordingly.

9.11 If, pursuant to the outcome of the investigation by MM, MM is required to make a refund to the Customer, MM shall utilize such monies of the Merchant standing to a credit balance with MM to make good such refund, failing which, MM shall advance the refund on behalf of the Merchant and such advances shall be a debt due and owing by the Merchant to MM.

9.12 In the event of any dispute with the Customers, the Merchant shall release MM, its agents, employees or licensees from any and all claims, demands and damages (actual or consequential) for every kind or nature arising out of or in any way connected with such disputes.

10. Indemnity

10.1 The Merchant hereby indemnifies and shall keep MM indemnified in respect of its employees, and servants from and against all suits, actions, demands, damages, losses, liabilities (whether criminal or civil), expenses and cost whatsoever arising under any laws of Malaysia to which MM, its employees or servants may suffer due to, arising out of or in the course of or by reason of the carrying out of the terms of this Agreement or resulting from any breach of this Agreement by the Merchant, including, without limitation:

- 10.1.1 any act, neglect or default of the Merchant or its agents, employees, licensees or customers;
 10.1.2 any event of fraud committed by the Merchant or its agents, employees or licensees; or
 10.1.3 breaches resulting in any successful claim by any third party alleging libel or slander in respect of any matter arising from the Merchant carrying out the MM Transactions.

11. Confidentiality

11.1 The Merchant shall not at any time during or after the Term divulge or allow to be divulged to any person any confidential information relating to MM, the MM System, the MM Transactions or the terms of this Agreement other than to persons who have signed a confidentiality undertaking in the form approved by MM.

11.2 Subject to Clause 13, MM shall not disclose or allow access to, the Merchant's personal information or the Merchant's customers, to third parties without the Merchant's prior written consent.

11.3 The Merchant shall not directly or indirectly, by any means whatsoever, obtain or attempt to obtain information of Customers of other Merchants.

11.4 If MM, in its absolute opinion, believe or suspect that the Merchant has breached the provisions in this Clause 11 (or any of them), MM shall be entitled to terminate this Agreement pursuant to Clause 16.1.

11.5 MM shall take reasonable measures to safeguard all information stored in the MM System.

11.6 Notwithstanding anything stated in this Agreement, the Merchant acknowledges and confirms that all information in relation to and in connection with the MM Transactions carried out by the Merchant's customers, including, without limitation, with other merchants of MM shall belong to MM and MM shall have the absolute discretion to deal with such information in such manner as it deems fit.

12. Merchant's Covenants, Warranties And Undertakings

12.1 The Merchant hereby irrevocably and unconditionally covenants, warrants and undertakes:

- 12.1.1 if the Merchant is a company or corporation, it is a company or corporation duly incorporated and validly existing under the laws of Malaysia and has full power and authority to enter into this Agreement and the execution, delivery and performance of this Agreement are within its corporate power, have been duly authorised by all necessary corporate action, do not contravene its memorandum and articles of association and do not violate any law or regulation or any judgement, order or decree of any governmental authority, or any contract or undertaking binding on or affecting it;
 12.1.2 If the Merchant is a natural person, he has full power and authority to enter into this Agreement;
 12.1.3 This Agreement constitutes the legal, valid and binding obligations of the Merchant in accordance with their respective terms;
 12.1.4 if the Merchant is a company or corporation, it is solvent and able to pay its debts as and when they fall due and no event has occurred and no circumstance exists which might result in it being deemed unable to pay its debts within the meaning of Section 218(2) of the Companies Act 1965 of Malaysia and no winding-up proceedings have been instituted and are subsisting or are threatened, pending or current against it nor has it commenced any action for its voluntary winding-up;
 12.1.5 if the Merchant is a natural person, he is solvent and able to pay his/their debts as and when they fall due and has not committed any act of bankruptcy and no bankruptcy petition has been presented against or is subsisting, threatened or pending against him nor has any bankruptcy notice been served on him.
 12.1.6 all acts, conditions, things, approvals, consents, authorisations and licences required to be done, fulfilled, performed or obtained in order for:
 (i) the Merchant to lawfully enter into, exercise its rights under and the obligations expressed to be assumed by it in this Agreement; and
 (ii) the obligations expressed to be assumed by the Merchant in this Agreement are legal, valid, binding and enforceable, have been done, fulfilled, performed or obtained;
 12.1.7 the Merchant is not in default under any agreement to which it is a party or by which it is bound and no litigation, arbitration or administrative proceedings are presently current or pending or threatened which default, litigation, arbitration or administrative proceedings, as the case may be, might materially affect the ability of the Merchant to enter into and/or to perform its obligations under this Agreement;
 12.1.8 all information furnished by the Merchant in connection with this Agreement, does not contain any untrue statement or omit to state any fact the omission of which makes any statements made therein in the light of the circumstances under which they are made, misleading, and are made on reasonable grounds after due and careful inquiry and the Merchant is not aware of any material facts or circumstances that have not been disclosed to MM which might, if disclosed, adversely affect the decision of a person considering whether or not to enter into this Agreement; and
 12.1.9 there is no violation or contravention of any laws, directives, court orders, judgments, arbitration awards and the like have been committed by the Merchant.
 12.1.10 to observe the guidelines, procedures of MM Transactions as set out in this Agreement or such other updates as provided by MM from time to time during the subsistence of this Agreement;
 12.1.11 upon request by MM, to furnish originals of bills or other supporting documents in relation to or in connection with the MM Transactions;
 12.1.12 to notify MM immediately in writing of any change in the organisation or corporate or business structure of the Merchant or in any of the information furnished to the Merchant Bank pursuant to this Agreement;
 12.1.13 at all times, to promote and recommend customers of the Merchant to purchase goods, products or services using the MM System;
 12.1.14 not to levy surcharge on the Customers resulting in the Customers reimbursing (directly or indirectly) the Merchant for the Transaction Fee;
 12.1.15 not to provide or disclose any information in relation to or in connection with the MM Transactions to any unauthorised third party;
 12.1.16 not to gain or attempt to gain, directly or indirectly unauthorised access to the MM System for, inter alia, the purpose of obtaining the customers information of other merchants of MM.
 12.1.17 not to use the MM System to conduct any fraudulent, immoral or illegal activities or such activities that may infringe the intellectual property rights of third parties;
 12.1.18 not to use the information of the Customers, including, without limitation, the mobile telephone number of the Customers, for any purposes or reasons other than to obtain the MM's confirmation to carry out the MM Transaction;
 12.1.19 not to use any intellectual property belonging to MM, including, without limitation, trade marks, trade names or patents, whether registered or not, without the prior written consent of MM other than such usage permitted under this Agreement; and
 12.1.20 that the Merchant shall not at any time represent to any third party as an agent of MM.

12.2 If, in the sole and absolute opinion of MM, the Merchant has breached its obligations, warranty, undertaking or covenant as stipulated in this Agreement, MM shall be entitled to suspend the Merchant from carrying any further MM Transactions or terminate this Agreement in accordance with the provisions of this Agreement.

13. Disclosure Of Information

13.1 MM shall be entitled and the Merchant irrevocably and unconditionally consents and authorises MM to the extent permitted by law, to disclose or release any information pertaining to the Merchant or the Merchant's transactions through MM System to such extent that MM may at its absolute discretion deem fit to:

- 13.1.1 the Merchant Bank;
 13.1.2 such other persons as MM may be required to disclose under the applicable law;
 13.1.3 such other persons or entity pursuant to any governmental directive or order of the court; or
 13.1.4 any other party whomsoever as MM may at its absolute discretion deems fit.

- 14. Limitation On Liability**
14.1 The Merchant agrees and confirms that it shall not hold MM, its employees, agents or licensees, liable for any special, incidental or consequential damages arising out of and in relation to the MM Transaction or this Agreement.
14.2 If at any event, MM, its employees, agents or licensees are found liable to the Merchant, such liability is limited to the actual amount of direct damages.
- 15. Reliability Of SMS And Internet**
15.1 The Merchant is aware that all transactions conducted by way of the MM System is through notification and confirmation sent by SMS to the MM System or through the internet.
15.2 The Merchant is fully aware that the Merchant's receipt of the notification from MM and vice versa may be delayed or prevented by factors affecting the relevant service providers and other relevant parties.
The Merchant accepts that MM cannot guarantee the prompt delivery of such notification or confirmation.
15.3 The Merchant acknowledges and confirms that the Merchant shall take all steps and measures to check and verify the transaction history of the Merchant on the MM Website.
- 16. Right Of Termination**
16.1 Termination due to the default of the Merchant
16.1.1 Upon the happening of any of the events set out below MM may, at its absolute discretion, forthwith, by giving notice in writing to the Merchant, terminate this Agreement without prejudice to any other remedy MM may have against the Merchant:
(a) if and whenever there shall be a breach of or non observance or non performance of any of the terms, covenants, warranties, undertakings or conditions contained herein and on the part of the Merchant and/or its employees to be observed and performed including failure to pay any of the fees and payment herein stipulated;
(b) Any judgement obtained against the Merchant remains unsatisfied for more than fourteen (14) days or the Merchant shall have its property seized under any distress or execution process, makes any arrangements with or assignment for the benefit of its creditors or becomes a bankrupt or is the subject of any winding up proceedings or makes any arrangements or composition with its creditors;
(c) The Merchant has a receiver or a receiver and manager appointed over the whole or in part of its property or undertake or has an official manager appointed pursuant to the provisions of the Companies Act 1965 or any other legislation in substitution thereof
(d) The Merchant defaults in performing or observing any terms, covenants or conditions to be observed or performed by it under any mortgage or other encumbrance over the assets of the Merchant and such default materially affects the ability of the Merchant to perform its obligations under this Agreement;
(e) The Merchant being a partnership changes its membership without the prior written approval of MM or is terminated or dissolved except in the event of death of a partner;
(f) Where the Merchant is a corporation, the control of the Merchant by the shareholders who are shareholders as at the date of this Agreement is passed by them to other persons or corporation without the prior written approval of MM first being had and obtained;
(g) The Merchant being a natural person becomes of unsound mind or infirm or becomes a drug addict or an alcoholic, meaning that he habitually uses drugs or intoxicating liquor to such an extent that he has lost the power of self control with respect to drugs or intoxicating liquor; or
(h) the Merchant is engaged in or suspected of engaging in fraudulent, illegal or immoral activities or the Merchant is conducting or suspected of conducting fraudulent, illegal, immoral or infringing third parties' intellectual property, transactions through MM System.
16.2 If the Merchant does not carry out any MM Transactions for a consecutive period of six (6) months, this Agreement shall terminate automatically unless otherwise agreed in writing by MM.
16.3 Upon termination of this Agreement, MM's obligation to pay the Merchant shall cease on the effective date of such termination and MM shall not be obliged or bound to make any payment on any MM Transaction completed after the date of termination.
16.4 Upon termination of this Agreement, the Merchant shall forthwith return to MM, at the Merchant's own cost and expenses, all documentation provided by MM pursuant to this Agreement.
- 17. Suspension**
17.1 MM shall not be liable or responsible to the Merchant in any manner whatsoever for any failure to perform any of its obligations contained in this Agreement if such failure is by reason of the introduction, imposition or variation of any law or any directive of any authority or any agency of any state or any change in the interpretation or application thereof, it is or will become unlawful, or contrary to any such directive, or impractical without breaching such law or directive, for MM to give effect to its obligations under this Agreement.
- 18. Notices**
18.1 All notices and documents required to be given by the Merchant under this Agreement to MM shall be sent to MM by way of ordinary post or registered post to the following address (or such other address as MM may notify at any time or from time to time):
Lot 23-24, 2nd Floor, IOI Business Park,
47100 Puchong, Selangor Darul Ehsan.
Any notice or document sent by the Merchant to MM shall be deemed served when such notice or document is received by MM.
18.2 All notices and documents required to be given by MM under this Agreement to the Merchant shall be sent to the Merchant by any one of the following methods:
18.2.1 ordinary or registered post to the Merchant's last known address according to MM's records;
18.2.2 by facsimile to the Merchant's last known facsimile number according to MM's records;
18.2.3 electronic mail to the Merchant's last known electronic mail address according to MM's records;
18.2.4 posting the notice or communication on MM Website;
18.2.5 notices placed with or in any of MM's written communications to the Merchant;
18.2.6 telephone call to the Merchant's last known telephone number according to MM's records;
18.2.7 notices placed through any media; or
18.2.8 any manner of notification as MM may at its absolute discretion determine.
18.3 Any notice or document or communication given by MM to the Merchant shall be deemed to be served and received by the Merchant:
18.3.1 if sent by ordinary or registered post, within three (3) days of posting; or
18.3.2 if sent by other methods stated in Clauses 18.2.2 to 18.2.8, the Business Day following the sending of such notice or document.
- 19. Waiver And Severance**
19.1 Any failure by MM to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
19.2 In the event that any provisions of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the Parties shall amend that provision in such reasonable manner as would achieve the intention of the Parties or at the discretion of MM it may be severed from this Agreement and the remaining provisions remain in full force and effect unless MM decides that the effect of such severance is to defeat the original intention of the Parties in which event MM shall be entitled to terminate this Agreement.
- 20. Acknowledgement Of Merchant**
20.1 The Merchant acknowledges that prior to having executed this Agreement it has carefully read the provisions of this Agreement and has understood them and has not relied upon any statement, representation or waiver made by MM or its servants, agents other than as set out herein.
- 21. Entire Agreement**
21.1 This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter of this Agreement and merges all prior discussion between them and neither of the Parties shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement other than as expressly provided in this Agreement duly set forth or subsequent to the date hereof in writing and signed by a proper and duly authorized representative of the Party to be bound thereby.
21.2 This Agreement supersedes any prior agreement between the Parties whether written or oral and any such prior agreement is cancelled as at the commencement date but without prejudice to any rights which have been accrued to any of the Parties.
- 22. Discretion**
22.1 No decision, exercise of discretion, judgement or opinion or approval of any matter mentioned in this agreement or arising from it shall be deemed to have been made by MM except if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.
- 23. Governing Law And Jurisdiction**
23.1 This Agreement shall be governed by Malaysian law in every particular including formation and interpretation.
23.2 Any proceedings arising out of or in connection with this Agreement may only be brought in a court of competent jurisdiction in Malaysia.
- 24. Time Of The Essence**
24.1 Time shall be of the essence wherever mentioned in this Agreement.
- 25. Variation**
25.1 This Agreement may be modified, added to, deleted or varied by MM by way of posting on MM Website or in any such other manner as MM may in its absolute discretion determine.
25.2 The Merchant shall access MM Website at regular intervals of time to view this Agreement and to ensure that the Merchant is kept up-to-date with any changes or variations to this Agreement.
25.3 The Merchant agrees that continued performance of MM Transactions shall constitute the Merchant's acceptance of this Agreement (as modified and varied from time to time).
- 26. Cost And Expenses**
26.1 The Merchant shall bear the stamp duty payable in respect of this Agreement.
26.2 Each Party shall bear its own solicitors' costs and expenses in respect of the preparation and execution of this Agreement and all ancillary documents.
- 27. Further Assurances**
27.1 Each Party must do all things necessary (including, but not limited to, executing all documents) to give effect to this Agreement.
- 28. Assignment**
28.1 The Merchant may not assign its rights under this Agreement without the prior written consent of MM.
28.2 MM shall be entitled to assign its rights under this Agreement to any of its related corporation without the prior written consent of the Merchant. For the purposes of this Agreement, "related corporation" shall have the meaning ascribed thereto in the Companies Act, 1965 of Malaysia.
- 29. Counterparts**
29.1 This Agreement may be executed in any number of counterparts:-
29.1.1 all of which, taken together, shall constitute one and the same instrument; and
29.1.2 the execution by a Party of any of which shall constitute execution by that Party of all such counterparts.
- 30. Binding Effect**
30.1 This Agreement shall be binding on the heirs, personal and legal representatives, estate, successors-in-title and permitted assigns (where applicable) of the Parties.
- 31. Rights Cumulative Waivers**
31.1 The rights of each Party under this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under any applicable law.
- 32. No Partnership**
32.1 Nothing contained in this Agreement shall constitute or to be deemed to constitute a partnership between the Parties and none of the Parties shall have any authority to bind or commit the other save as authorized by this Agreement.