

## MERCHANT SERVICES AGREEMENT

This Merchant Services Agreement is a legal and binding agreement between the Merchant and Smartpay (Singapore) Pte Ltd.

By applying for Smartpay's services through the signing of Smartpay's Application Form or by using Smartpay's Services as defined below, the Merchant acknowledges that the Merchant has read and agree to be bound by all of the terms and conditions of this Agreement and all documents incorporated by reference.

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### INTRODUCTION

1. In this Merchant Services Agreement, including the above recitals and the Application Form attached hereto (the "Agreement"), the following expressions shall have the respective meanings set out as follows (except to the extent that the context requires otherwise):

"Agreement" This Merchant Services Agreement, including the recitals, the Application Form, and the appendices attached hereto.

"Application Form" Smartpay's application form which is used by the Merchant to apply for Smartpay's Services. The application form shall include relevant information, including but not limited to, the Merchant's particulars, the Services requested, the fees payable to Smartpay, and the settlement information between Smartpay and the Merchant for each Transaction.

"Marks" The names, marks, designs, logos, signs, acronyms and other insignia (whether registered or unregistered) used or to be used by Smartpay in connection with the Services including all variations thereof and amendments thereto from time to time.

"Merchant" The party which has signed up through Smartpay's application form to use Smartpay's services as defined below.

"Regulatory Authority" Any ministry or department of the Government of Singapore and includes any statutory authority or body in Singapore established with powers to regulate banking, credit or financial services and/or electronic transactions or communications.

"Smartpay" Smartpay (Singapore) Pte Ltd (UEN No. 201511733H), a company incorporated in the Republic of Singapore and having its registered office at No. 8 Eu Tong Sen Street #13-95, The Central, Singapore 059818.

"Smartpay's Website" <http://www.smartpay.com.sg>

"Services" The range of services which the Merchant is authorised to use or to provide to the Merchant's users pursuant to this Agreement as may be authorised by Smartpay from time to time.

"Transaction" Transactions effected and Services obtained by the Merchant's users.

2. Clause headings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
3. This Agreement shall apply to any and all Services that the Merchant obtains from Smartpay. The Merchant agrees to abide by the additional terms and conditions set out in the Application Form and the appendices attached to the Agreement, which are incorporated into this Agreement by reference.

PROPRIETARY RIGHTS

4. Smartpay hereby grants to the Merchant, for the term of this Agreement, a personal non-assignable non-exclusive licence to use the Marks in connection only with its provision of the Services in accordance with such manner of use as may be stipulated or permitted by Smartpay from time to time and the Merchant agrees that it shall derive no title or interest in the Marks or any part thereof and shall not attain any goodwill in respect thereof.
5. The Merchant undertakes to put up and display such signs and to distribute such materials at its premises relating to the Services, whether or not such materials contain the Marks, as may be reasonably required by Smartpay from time to time but not to otherwise do so without the prior written consent of Smartpay.
6. The Merchant hereby authorises and consents to Smartpay making reference to, using and reproducing the Merchant's name, trade marks, logos, signs, acronyms and other insignia in any material or medium for the advertisement, publicity and promotion of the Services. Provided that Smartpay shall not thereby or otherwise derive any title, interest, claim, right or goodwill in the same.

UNDERTAKINGS OF THE MERCHANT

7. The Merchant agrees and undertakes throughout the term of this Agreement that the Merchant shall:
  - 7.1. provide the Services without imposition of any surcharge, special charge or taking any security from the Merchant's user(s) in relation to a Transaction;
  - 7.2. not require the Merchant's user(s) to pay any part of the fees which the Merchant may be liable to pay Smartpay hereunder whether through an increase in price or otherwise or to pay any contemporaneous finance charge in connection with a Transaction;
  - 7.3. not make any warranty or representation whatsoever in relation to the Services which may bind Smartpay or render Smartpay liable in any way whatsoever;
  - 7.4. at its own expense and before the time agreed for installation or activation of the Services, prepare and provide the necessary, compatible operational equipment, software and connection specified by Smartpay for the purposes of using the Services; and where necessary, prepare and provide such interface hardware and software to Smartpay;
  - 7.5. not alter, copy, modify or tamper with any hardware or software provided by Smartpay;

- 7.6. install such measures as may be necessary to protect the security and integrity of related hardware or software, whether owned by the Merchant or Smartpay;
- 7.7. where required, comply with all security or encryption standards, rules and procedures imposed by Smartpay;
- 7.8. make connections to such other systems as Smartpay may require from time to time;
- 7.9. maintain at the Merchant's own expense adequate quantities of consumables for the hardware as may be required from time to time;
- 7.10. not sell, assign, license, transfer or permit the use of the Smartpay software or hardware by any party without the written permission of Smartpay;
- 7.11. prior to providing the Services, open and maintain at all times during the term of this Agreement, an account in its name with one of the local banks which shall be designated for purposes of clearing and settling Transactions handled by the Merchant;
- 7.12. inform Smartpay of any change in the particulars of the Merchant's designated bank account; and
- 7.13. maintain, throughout the term of this Agreement, adequate and competent personnel to operate the Services.

UNDERTAKINGS OF SMARTPAY

8. Smartpay agrees and undertakes that it shall:
  - 8.1. use its best endeavours to provide to the Merchant the Services for which the Merchant enrolls and pays the applicable fees;
  - 8.2. provide training on the use and operation of the hardware and/or software for the Services to the Merchant's personnel on such terms as the parties shall agree; and
  - 8.3. where required, at the Merchant's expense, install the hardware at the Merchant's premises on or by such installation date as the parties may agree.

9. Smartpay makes no representations or warranties of any kind with respect to the systems operated by Smartpay or any software and hardware provided, or any part thereof, express or implied, and shall not be liable to the Merchant for any loss or damage howsoever caused and regardless of the form of loss or damage which may be suffered or incurred by the Merchant or any third party in connection with this Agreement including (without prejudice to the generality of the foregoing) any loss of profit in consequence of a breakdown in providing the Services or part thereof.

#### PAYMENTS

10. All Transactions shall be made in Singapore Dollars.
11. The Merchant shall be liable to make payments due to Smartpay arising from this Agreement in accordance with the provisions herein:
  - 11.1. In consideration of using Smartpay's Services, the Merchant shall pay Smartpay the applicable transaction fees (the "Transaction Fees") and other charges at such time as may from time to time be stipulated by Smartpay as set forth in the Application Form or as otherwise provided by Smartpay in accordance with the terms of this Agreement.
  - 11.2. The Merchant shall allow Smartpay to first make deductions from the amounts paid by the Merchant's users as payment of Smartpay's Transaction Fees, before advancing the balance sums to the Merchant.
  - 11.3. Unless otherwise specified herein, the Services are for a one-year initial term and renewable thereafter for successive one-year periods. Any renewal of Smartpay's Services is subject to Smartpay's then-current terms and conditions, including, but not limited to, payment of all applicable fees at the time of renewal.
  - 11.4. Smartpay may revise its applicable fees and other charges from time to time and will notify the Merchant in writing (which period of notification shall be determined by Smartpay in its sole discretion) of the date (the "Effective Date") when the new fees or charges become payable. The Merchant shall confirm in writing to Smartpay its acceptance or non-acceptance of the new fees or charges on or before the Effective Date. If Smartpay does not receive the Merchant's written non-acceptance of the new fees or charges within the aforesaid period on or before the Effective Date, the Merchant shall be deemed to have accepted the new fees or charges and shall be bound to pay the new fees or charges from the Effective Date. If the Merchant notifies Smartpay in writing on or before the Effective Date that it does not accept the new fees or charges, this Agreement shall be deemed terminated on the Effective Date but without prejudice to the antecedent rights or liabilities of the parties hereto.
  - 11.5. The fees and charges payable by the Merchant under this Agreement are exclusive of any taxes, duties, fees or government levies which may be imposed now or hereafter in respect of the Transactions. Such taxes, duties, fees or governmental levies shall be for the Merchant's account.
  - 11.6. Prompt payment of Smartpay's fees and other charges shall be of the essence of this Agreement.
  - 11.7. All fees and charges paid by the Merchant under this Agreement shall not be refundable in the event of termination of this Agreement howsoever caused.
12. Upon the execution of this Agreement, the Merchant shall provide Smartpay with all necessary particulars of the account designated by the Merchant pursuant to Clause 7.11.
13. The Merchant agrees that Smartpay may, if and whenever instructed to do so by the bank with which the Merchant's said designated account is opened, limit or refuse any or all transactions from or to the Merchant's said account with that bank and no liability shall be imputed to Smartpay for acting on such instructions.
14. Smartpay shall be entitled and the Merchant hereby authorises Smartpay to debit directly without prior notice all fees and charges due from the Merchant to Smartpay under this Agreement from the aforesaid designated account.
15. The Merchant agrees that Smartpay will undertake payment or settlement procedures by the period stated on the Application Form, except on the following non-settlement days:

- 15.1. any day declared by the Association of Banks in Singapore or as being a holiday; and
- 15.2. Sundays and public holidays as gazetted and declared in Singapore;

in which case Transactions effected on such days shall be paid and settled on the immediately following day which is not any of the aforesaid non-settlement days.

#### DEPOSITS

16. Where required, upon the execution of this Agreement the Merchant shall pay Smartpay a deposit in the amount and within fourteen (14) days from the Merchant's signing of the Application Form or as otherwise provided by Smartpay.
17. The deposit shall be held by Smartpay as a security for the due performance and observance by the Merchant of the terms and conditions of this Agreement, and the fulfilment by the Merchant of its obligations hereunder.
18. Smartpay shall be entitled as its option at any time to off-set any fees or other charges due and owing by the Merchant to Smartpay under or in connection with this Agreement or any damages payable against the deposit. Smartpay's rights hereunder shall be in addition to and without prejudice to any other right of action or other remedy available to Smartpay for the recovery for any fees or charges (including damages) payable by the Merchant to Smartpay.
19. As soon as practicable after the termination of this Agreement, Smartpay shall refund the deposit without interest to the Merchant less such sum as Smartpay may be entitled to deduct hereunder.

#### RENTAL OF SOFTWARE AND HARDWARE

20. Where the Merchant is required to use software and/or hardware from third party vendors in order to utilize Smartpay's services, such software and/or hardware including but not limited to payment terminals, the Merchant shall:
  - 20.1. sign any relevant agreements with the relevant third party vendors so as to procure the use of the software and/or hardware;
  - 20.2. pay any and all deposits required with the relevant third party vendors; and
  - 20.3. not make any warranty or representation whatsoever in relation to the use of these relevant software and/or hardware which may bind Smartpay or render Smartpay liable in any way whatsoever.

#### PROHIBITED PRODUCTS AND SERVICES

21. The Merchant shall ensure that the products sold to the Merchant's users shall not contain articles which are prohibited or restricted under any and all applicable laws and regulations, including products listed by in the Appendix I below, which may be updated by Smartpay from time to time and can be found on Smartpay's Website.

#### DISPUTES

22. Smartpay shall not be involved in any dispute or claim that may arise between the Merchant's users and the Merchant, unless the said dispute or claim relates specifically to the use of the Services in which case the same shall be subject to the relevant terms and conditions governing the use of the Services prevailing from time to time and the dispute or claim was notified to Smartpay within fourteen (14) days of occurrence.
23. The parties hereto agree that in the event of a dispute or claim of whatever nature arising in respect of any Transaction, the records of the Transactions available from the Merchant and Smartpay shall be used as a reference and shall be the sole basis of settling the aforesaid dispute or claim. Where there are discrepancies between records of the Transactions recorded by Smartpay and the Merchant, the discrepancies shall be jointly investigated by Smartpay and the Merchant using information from both parties whenever appropriate, and proper adjustments (if any) shall be made accordingly.
24. The Merchant agrees that where multiple or excess payments have been effected by or on behalf of the Merchant's users in respect of any Transaction, whether through the Services or through any other existing system of payment, the Merchant shall refund or reimburse such users for such excess payments made and shall keep Smartpay harmless from and indemnified against any claim related to such excess payments.

#### INDEMNITY

25. The Merchant hereby agrees and undertakes to fully indemnify and keep Smartpay harmless from and against all actions, claims, costs (including legal costs on a full indemnity basis), losses, charges, expenses and damages which Smartpay may suffer or incur as a result of:
  - 25.1. the occurrence of any event under Clause 41;

- 25.2. any fraud, dishonesty or misconduct (criminal or otherwise) relating to the Transactions perpetrated by the Merchant, its servant, agent, employee or contractor or the fraud, dishonesty or misconduct (criminal or otherwise) perpetrated by a third party as a result of the negligence or default of the Merchant, its servant, agent, employee or contractor; and
- 25.3. any loss caused by or to or damage to any of Smartpay's equipment arising out of the act or omission whether negligent or otherwise of the Merchant, its servant, agent, employee or contractor or out of any failure of the Merchant, its servant, agent, employee or contractor to operate the equipment in accordance with the procedures prescribed by Smartpay.
- 25.4. The Merchant shall not hold Smartpay liable or responsible for any action, claim, cost, expense, damage and loss, including consequential loss or damage or loss of profit, which the Merchant may suffer or incur as a result of a breakdown in the provision of the Services or when the Services are not available for any reason whatsoever.
- 25.5. Smartpay shall indemnify the Merchant against direct losses not exceeding the sum of Singapore Dollars One Hundred (S\$100) suffered by the Merchant as a result of any fraud, negligence, dishonesty or misconduct (criminal or otherwise) relating to any Transaction by any servant, agent, employee or contractor of Smartpay.

#### DISCLOSURE

26. The Merchant hereby agrees and consents to the disclosure and release by Smartpay of any information in the possession of Smartpay relating to the Merchant, the particulars of the Transactions or any designated account relating to the Transactions for the purpose of investigating any claim or dispute arising out of this Agreement or in connection with the Transactions under the provision of the Services which consent shall survive both the suspension of rights hereunder and the termination of this Agreement.

#### NOTICES

27. Unless otherwise provided herein or agreed to in writing by the parties hereto, all notices or other communications to or upon the Merchant and Smartpay shall be sufficiently served if delivered at or sent by registered post by either party to the other at the address above stated or the address of the registered office recorded with the Accounting and Corporate Regulatory Authority, Singapore and shall be deemed to have been served in the case of a notice delivered by hand on the day of the delivery, in the case of a notice served by registered post on the day following that on which notice was posted and in the case of a notice served by facsimile on the day of the facsimile.

#### ASSIGNMENT

28. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and legal Representatives and shall not be construed so as to confer any benefit upon any other person except as expressly provided herein.
29. The Merchant shall have no right to assign or transfer the Merchant's rights and obligations in this Agreement and shall remain fully liable for all of the Merchant's respective duties, liabilities and obligations hereunder.
30. Smartpay shall be entitled to assign its rights and benefits and transfer its obligations under this Agreement at any time by giving the Merchant written notice thereof in which event the said assignment and transfer shall ipso facto take effect.

#### LIABILITY TO CONTINUE

31. Unless this Agreement is terminated in accordance with Clause 11.4, Clause 36 or Clause 39, the liability of the Merchant under this Agreement shall continue notwithstanding any change in its constitution and in the case of a firm, any change in its constitution whether by withdrawal, retirement, expulsion, death or admission of any partner, amalgamation, dissolution or otherwise; in the case of a body of corporate, the winding-up whether voluntary or compulsory or any amalgamation, reconstruction or otherwise; and in the case of a statutory body, the amalgamation, merger, reconstruction, privatisation, dissolution or otherwise and this Agreement shall continue in full force and be binding on the entity formed or the party appointed to carry on the Merchant's business.

#### RELATIONSHIP OF THE PARTIES

32. The parties hereto shall not by virtue of this Agreement be deemed to be a partner or agent of each other nor shall anything herein contained be construed as creating a partnership, joint association or trust it being agreed that each party will be responsible only for its obligations under this Agreement and neither party shall be authorised to represent or bind the other to third parties.

#### SEVERABILITY

33. If any provision herein is deemed by any tribunal or court of competent jurisdiction to be illegal, invalid or unenforceable under any applicable law or otherwise, it shall, to the extent required by such law and subject to the agreement of Smartpay, be severed from this Agreement and rendered ineffective so far as is possible without affecting the legality, validity and enforceability of the remaining provisions of this Agreement.

#### INDULGENCE

34. The liability of the Merchant hereunder shall not be impaired or discharged by reason of any time or grace or other indulgence being granted by or with the consent of Smartpay or any forbearance by Smartpay to insist upon its strict rights hereunder. No right under this Agreement shall be deemed to have been waived except in writing signed by the parties hereto and waiver of any particular right in a particular instance shall not constitute or be deemed a waiver of any other right.

#### FORCE MAJEURE

35. No failure or omission by any party to carry out its obligations or observe any of the stipulations or conditions of this Agreement shall give rise to any claims against the party in question or be deemed a breach of this Agreement if such failure or omission arises from a cause of force majeure, such as acts of God, war or warlike hostilities, civil commotion, riots, blockades, embargoes, sabotage, strikes, lockouts, shortage of material or labour, delay in deliveries from sub-contractors or machine failure caused by force majeure, or any other event outside the control of the party in question.

#### SUSPENSION OF RIGHTS

36. Without prejudice to any of Smartpay's rights at law and under this Agreement, in the event of a breach by the Merchant of any of the terms and conditions of this Agreement, Smartpay may at its sole discretion give immediate notice in writing to the Merchant to remedy the breach within one (1) month of the said notice and may during the notice period, suspend all rights of the Merchant under this Agreement, save for those rights necessary to enable the Merchant to remedy the breach. If the Merchant shall fail to remedy the breach within the aforesaid notice period, Smartpay shall have the right but not the obligation to extend the notice period (with or without suspension) or forthwith terminate this Agreement in accordance with Clause 41.

#### CHANGE IN CONSTITUTION

37. Where the Merchant is a sole-proprietor or partnership, the Merchant shall notify Smartpay in writing of any admission, retirement or death of any proprietor or partner.
38. Where the Merchant is a society or corporation, the Merchant shall notify Smartpay in writing promptly upon any change in the Merchant's organisation (including the composition of the shareholders of the Merchant), or corporate or business structure or in any of its particulars furnished to Smartpay.

#### TERMINATION OF AGREEMENT

39. This Agreement shall become effective when signed by the parties hereto and shall remain in force and effect until terminated in accordance with the terms of this Agreement.
40. Either party to this Agreement may elect to terminate this Agreement by giving one (1) month's prior notice in writing to the other party of its intention to do so.
41. Notwithstanding Clause 39 and Clause 40, Smartpay shall have the right (but not the obligation) at anytime to give immediate notice in writing to the Merchant to terminate this Agreement forthwith upon the happening of any one or more of the following events of default, whether or not such event is of a continuing nature:
- 41.1. if in the sole opinion of Smartpay, the Merchant has breached any of the terms and conditions of this Agreement;
  - 41.2. if the Merchant enters into liquidation, receivership, judicial management or otherwise compounds with its creditors or takes or suffers any similar action or occurrence in any jurisdiction;

- 41.3. if the Merchant becomes insolvent or stops payment or ceases or threatens to cease to carry on its business or any part of its business;
- 41.4. if any resolution is passed or steps taken by the Merchant or any other person to apply for judicial composition proceedings with its creditors or an order is made by any competent court for such proceedings or a receiver, judicial manager, administrator or other similar official is appointed in relation to the Merchant or any part of the assets or undertakings of the Merchant or encumbrancer taking possession of any part of the assets or undertakings of the Merchant or a distress or execution or other process is being levied or enforced upon or sued out against any part of the assets or undertakings of the Merchant;
- 41.5. if the Merchant is deceased or its partnership is dissolved;
- 41.6. if the Merchant or any of its shareholders, partners, proprietors, officers, employees, agents or contractors is or is suspected by Smartpay to be involved in any fraudulent or unlawful activity whether or not relating to the Merchant's business;
- 41.7. if the Merchant's business involves any trade or activity deemed undesirable by Smartpay, or Regulatory Authority; or
- 41.8. if there had been multiple complaints and disputes relating to the Merchant's goods or services by the Merchant's users.
42. In the event of termination of this Agreement for whatever reason:
- 42.1. the Merchant agrees and undertakes to return to Smartpay immediately all materials, books, records or otherwise pertaining to the provision of the Services, and shall not thereafter use the Marks or any part or derivatives thereof;
- 42.2. the Merchant agrees and undertakes to permit Smartpay, and Smartpay shall have the right of access to the Merchant's premises to disconnect, retrieve and remove any equipment relating to the provision of the Services which is not owned by the Merchant and any material bearing the Marks or derivatives thereof and at the request of Smartpay, the Merchant will at its own expense assist Smartpay to exercise its rights hereunder and shall fully cooperate to comply with the requirement of Smartpay in this respect; and
- 42.3. any antecedent right and liability of either party shall not be thereby prejudiced or impaired.
43. In the event that Smartpay terminates this Agreement in accordance with the terms hereof, the Merchant acknowledges and agrees that no reason whatsoever needs to be communicated to the Merchant for such termination and Smartpay shall not be liable in any way for any loss or damage incurred or suffered by any party due to such termination

#### CONSTRUCTION AND VARIATION

44. The Application Form and appendices shall be deemed to form part of this Agreement and shall be constructed to be a basis on which the parties have entered into this Agreement.
45. In the event that the provisions of this Agreement are inconsistent with or contradictory to the provisions in the Application Form and/or appendices, the terms contained in the Application Form shall prevail.
46. This Agreement constitutes the entire agreement between the parties hereto and all prior arrangements, representations and undertakings are hereby superseded.
47. No variation or amendment to any provision of this Agreement shall be made unless in writing and duly signed by authorised representatives of the parties hereto.

#### CONFIDENTIALITY

48. "Confidential Information" means any confidential, trade secret or proprietary information (which may be business, financial or technical information) disclosed by one party to the other under this Agreement that is marked confidential or if disclosed orally designated as confidential at the time of disclosure or that should be reasonably understood to be confidential.
49. Each party agrees that:
- 49.1. Each party shall not disclose to any third party or use any Confidential Information disclosed to the party by the other except as expressly permitted in this Agreement and for purposes of performing this Agreement, and

- 49.2. Shall take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each party further agrees to use the other party's Confidential Information only for the purpose of its performance under this Agreement.
- 49.3. In addition, the receiving party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody Confidential Information and which are provided to the receiving party hereunder.
50. The obligations set forth in Clause 49 above do not apply to information that
  - 50.1. is in or enters the public domain without breach of this Agreement;
  - 50.2. the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation;
  - 50.3. the receiving party knew prior to receiving such information from the disclosing party or develops independently without access or reference to the Confidential Information;
  - 50.4. is disclosed with the written approval of the disclosing party.
51. Notwithstanding the obligations set forth in Clause 49 above, each party may disclose Confidential Information of the other party:
  - 51.1. to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law but only after alerting the other party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other party a reasonable period of time within which to seek a protective order against the proposed disclosure, or
  - 51.2. on a "need-to-know" basis under an obligation of confidentiality substantially similar in all material respects to those confidentiality obligations to its legal counsel, accountants, contractors, consultants, banks and other financing sources.

#### RIGHTS OF THIRD PARTIES

52. Any person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act or any amendment thereto to enforce any term of this Agreement.

#### GOVERNING LAW AND COMPLIANCE

53. This Agreement shall be governed by and construed in all aspects in accordance with the laws of Singapore and the parties hereto irrevocably submit to the exclusive jurisdiction of the courts of Singapore.
54. The parties hereto each undertakes to comply with all laws and regulations as may be applicable to the performance of its obligations under this Agreement.