

MERCHANT PAYMENT GATEWAY

Terms of Use

As updated on 11th August 2020

FOR USE OF MPAYMENT PAYMENT GATEWAY SERVICE

USER ADVISORY – MPAYMENT Payment Gateway Services is NOT a ‘Designated System’ and does not require the approval of the Monetary Authority of Singapore. Users are advised to read the terms and conditions carefully.

1. Interpretation and Construction

1.1 The following words shall have the respective meanings set out hereunder unless the context otherwise requires:

1.1.1 “**Agreement**” means these Terms and Conditions together with the Merchant Application Form.

1.1.2 “**Applicable Tax**” means any relevant taxes chargeable to the Merchant including without limitation Goods and Services Tax.

1.1.3 “**Associated Company**” means any company, which is in relation to any other company, its parent or subsidiary or a subsidiary of its parent company or any other person controlled by or under the same control direct or indirect;

1.1.4 “**Authorisation**” means the authorisation of a Transaction in accordance with this Agreement and subject to the Payment Card Scheme Rules.

1.1.5 “**Authorisation Request**” means an electronic or mobile device request of an Authorisation for a Transaction generated at the point of sale evidencing the purchase/refund of goods or services by a Cardholder from the Merchant and/or the Nominated Content Provider.

1.1.6 “**Bank**” means the card issuing or transaction acquiring financial institution which is involved in the processing of the transactions from the Merchant Payment Gateway.

1.1.7 “**Banking Day**” means the day on which banks are open for business in Singapore, excluding Saturdays, Sundays and public holidays.

1.1.8 “**Cardholder**” means the person to whom a Card has been issued and in relation to any Card means the person to whom the Card is issued and whose name is imprinted on the Card.

1.1.9 “**Charge-Back**” means any enforced direction or instruction effected on or through any computer, electronic or telecommunications equipment, medium or network (whether on the Internet or otherwise) to reverse any Card Transaction in response to a fraudulent Card Transaction or a Card Transaction dispute raised by the Cardholder.

1.1.10 “**Commencement Date**” means the date of acceptance by the Merchant of these Terms of user or such date mutually agreed between the Parties for commencement of the Payment Gateway Services.

1.1.11 “**Customer**” means any customer of the Merchant and/or the Nominated Content Provider using the Payment Gateway Services.

- 1.1.12 “Fees”** means the fees and mPayment Transaction Charges as set out in Schedule payable by Merchant to mPayment in accordance with Clause 5 for the provision of the Payment Gateway Services.
- 1.1.13 “Intellectual Property”** means all and any intellectual property rights including without limitation patents, trademarks, service marks, trade names, rights in designs, copyrights, trade secrets and Know-how, whether or not registered, whether or not in existence on the date of this Agreement and including applications for any such right, matter or thing or registration thereof together with any related goodwill.
- 1.1.14 “Interface”** means the Software interface which may be amended or altered by mPayment from time to time. The purpose of such interface being the linking of the Payment Gateway Services to the Merchant’s website or the mobile phone device in order to facilitate the processing of the Transactions.
- 1.1.15 “Know-How”** means such skills, knowledge, experience, technical information or techniques of whatsoever nature utilised by mPayment in the performance of this Agreement.
- 1.1.16 “Merchant”** means any company, partnership, individual or any other entity that contracts with mPayment for the provision of the Payment Gateway Services.
- 1.1.17 “Merchant Application Form”** means either an online or paper based application for the provision by mPayment of Payment Gateway Services which refer to these Terms of Use to be completed by the Merchant prior to any Payment Gateway Services being provided.
- 1.1.18 “mPayment”** refers to **MPAYMENT PTE LTD**, a company incorporated in Singapore and having its registered office at Paya Lebar Square, Lobby 1, 60 Paya Lebar Road, #07-23, Singapore 409051.
- 1.1.19 “Nominated Content Provider”** means any merchant supplying content to the Merchant and nominated by the Merchant as notified by the Merchant to mPayment and approved by mPayment in writing.
- 1.1.20 “Payment Card”** means a credit card, charge card, debit or prepaid card which mPayment may process from time to time.
- 1.1.21 “Payment Card Agreement”** means a valid and existing agreement between the Merchant and a Bank or card scheme provider (in the case AMEX, Visa and MasterCard) that provides credit card, or charge card facilities authorizing the Merchant to process credit card, or charge card payments.
- 1.1.22 “Payment Card Schemes”** means any card scheme as notified to the Merchant by mPayment from time to time.
- 1.1.23 “Payment Card Scheme Rules”** means the industry standard rules relating to the use of Payment Cards.
- 1.1.24 “Payment Gateway Services”** means the secured end-to-end Transaction processing services provided by mPayment between the Merchant, the Nominated Content Provider or the Customer and the Bank via the suite of applications that reside on distributed server-network.

- 1.1.25 “Refund”** means the reimbursement of any sum due from the Merchant and/or a Nominated Content Provider to a Cardholder.
- 1.1.26 “Software”** means the computer programs, protocols and object codes, source codes and other forms of the same and or algorithms, logic, tools, formats, designs, methods and processes associated with such computer software provided by mPayment to the Merchant, the Nominated Content Provider and/or their Customers, which enables the Merchant, the Nominated Content Provider and/or their Customers to use the Payment Gateway Services.
- 1.1.27 “Transaction”** means a payment, pre-authorization of a payment, refund or reversal made by the Merchant, the Nominated Content Provider or their customer, conducted on the internet or via mobile devices, using a credit card, or charge card, or debit or prepaid card as applicable.
- 1.1.28 “Transaction Charge”** means the transaction charge as set out in Schedule A.
- 1.1.29 “Transaction Data”** means the transmission of authorization and settlement transaction messages between the Merchant, the Nominated Content Provider or their Customers and the Bank in a secure manner and in formats compatible with the Payment Gateway System.
- 1.1.30 “Validity Check”** means the checks on the Payment Cards carried out by the Bank from time to time to check whether a Payment Card is valid for Authorisation of a Transaction.
- 1.1.31 “Website”** means either the mPayment website owned, operated and maintained by mPayment or the Merchant Website owned, operated and maintained by the Merchant or by a third party on behalf of the Merchant.
- 1.2** Headings in the Agreement are only for convenience and shall not affect its construction.
- 1.3** All obligations given or entered into by more than one person are given to or entered into jointly and severally unless otherwise specified.
- 1.4** Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 2. Provision of Services**
- 2.1** In consideration of the Fees payable by the Merchant and subject to the Merchant complying in full with its obligations in this Agreement, mPayment agrees with effect from the Commencement Date to provide the Payment Gateway Services to the Merchant and the Nominated Content Provider(s) for the purpose of processing Transactions via the Payment Gateway System.
- 2.2** The Merchant shall accept payments through the Payment Gateway Services for goods or services provided by it and/or its Nominated Content Providers to any Cardholders or Customers who so wishes to effect such payment and shall indemnify and keep mPayment and the Bank indemnified from and against any liabilities, losses and other consequences arising from any such refusal.
- 2.3** The Merchant agrees that mPayment in providing the Services does not act as principal but acts as facilitator on behalf of the Merchant to enable the Merchant and/or its

Nominated Content Providers to enter into Transactions with its Customers. The Merchant further agrees to allow mPayment to act as facilitator on behalf of the Merchant for the purpose of processing Authorisation Requests. The Merchant waives any claims against mPayment, and fully indemnifies and keeps indemnified mPayment against any claims by its Nominated Content Providers which the Merchant and/or the Content Providers may have whether for the performance or non-performance of any Transaction entered into as a consequence of mPayment's acceptance of an Authorisation.

- 2.4** mPayment reserves its right to accept or reject any Merchant Application Form submitted by the Merchant. The Merchant shall also submit an online form to mPayment in the form and manner as determined and notified by mPayment to the Merchant ("Nominated Content Provider Application Form") in the event the Merchant is desirous of utilizing the Payment Gateway Services for any Nominated Content Provider. mPayment reserves its right to accept or reject any Nominated Content Provider Application Form submitted by the Merchant.
- 2.5** If the Merchant is using mPayment's merchant account, the Merchant will be required to place a deposit in the amount as solely and absolutely determined by mPayment. Any dates provided by mPayment for the provision of the Services will be approximate only and mPayment shall not be liable for any delay in completion of the Services howsoever caused.
- 2.6** Notwithstanding this Clause 2, mPayment does not make any representation, express or implied about the suitability of the Payment Gateway Services for the Merchant's and/or the Nominated Content Provider's business.

3. Data Collection, Privacy and Security

- 3.1** The Merchant shall comply with all mPayment security protocols and security advisories in effect during the terms of this Agreement. The Merchant shall be solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by mPayment associated with the Merchant's account and verifying that all corresponding funds are accurately processed. The Merchant acknowledges and agrees that mPayment shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to the Merchant's account, data or Transaction Data. mPayment's liability for improperly processed or unauthorized Transactions solely attributable to the negligence of mPayment is limited pursuant to Clause 15.
- 3.2** The Merchant agrees that mPayment will collect, retain and disclose information and data collected from the Merchant and their customers for the purposes of providing the Payment Gateway Services. mPayment will use commercially reasonable efforts to safeguard data and Transaction Data transmitted while using the Payment Gateway Services.
- 3.3** The Merchant shall be solely responsible for compiling and retaining permanent records of all Transaction and data for the Merchant's own reference. Except as otherwise provided herein, at no time shall mPayment have an obligation to store, retain, report or otherwise provide any copies of or access to any records of Transactions or Data collected or processed by mPayment.

4. Confidentiality

mPayment will maintain the confidentiality of each Transaction and will not collect or otherwise deal in commercially sensitive information, except to the extent necessary for the purposes of this Agreement.

5. Fees

- 5.1** Save as otherwise expressly provided herein, the Merchant must pay to mPayment the Fees within 30 days of invoice date. The Transaction Charges and related fees laid out in Schedule A shall be paid at the following times and in the following manner:-
- 5.1.1** for transactions and fees by Merchant and Nominated Content Providers using mPayment's merchant account, a deduction of the Transaction Charges shall be made by mPayment from payment received and held in trust by mPayment, which the Merchant hereby irrevocably authorizes mPayment to deduct,
- 5.1.2** for any remaining charges and fees that after deducting from the Merchant's account with mPayment within 30 days of invoice date. mPayment is not obliged to refund any portion of the Fees in the event that the Merchant's business is terminated for any reason. For the avoidance of doubt, the Fees shall apply to each and every Transaction whether by the Merchant or the Nominated Content Provider.
- 5.2** The Merchant shall be responsible for the acts, defaults, neglect or omission of any of its Nominated Content Provider as fully as if they were the acts defaults neglects or omissions of the Merchant. The Merchant shall procure.
- 5.3** mPayment reserves the right to charge interest on all outstanding amounts owed to mPayment and not paid in accordance with this Agreement at a rate of 1.5% per month calculated on a daily basis, from the day after expiry of the date the payment is due till full settlement thereof, before and after any judgment. If the Merchant disputes any charge made it must inform mPayment in writing within 7 days of receipt of the relevant invoice. Interest shall accrue notwithstanding termination of this Agreement for whatever reason. The Merchant shall also be responsible for all reasonable legal fees and any other costs incurred by mPayment in connection with collecting or recovering amounts owed by the Merchant under this Agreement (save for any amounts which are subject of a bona fide dispute between the parties).
- 5.4** Payment of all sums due to mPayment by the Merchant shall be made without any set-off or deduction whatsoever.
- 5.5** mPayment reserves the right to suspend any of the Services in its sole and absolute discretion and without notice and/or terminate this Agreement in accordance with Clause 13 if the Merchant does not pay any of the amounts due to mPayment from time to time within the period specified in this Clause 5.
- 5.6** If your transaction involves a currency conversion, it will be completed at a foreign exchange rate which is determined by a Credit Card Issuing Bank. Please note that it is being adjusted regularly based on market conditions. The exchange rate may change without prior notice and may be applied immediately. In the event of any losses incurred due to whatever circumstances, mPayment will not be held responsible and/or liable to such dispute.

6. Refunds and Chargebacks

- 6.1** Merchant using mPayment's merchant account:

7.1.5 if the Merchant is suspected of not meeting security standards set out by the Bank or Payment Card Scheme providers; or

7.1.6 a service upon which the Payment Gateway Services System relies is unavailable.

8. Software License

8.1 mPayment hereby grants to the Merchant a non-exclusive non-transferable license to use the Software for the duration of this Agreement upon the terms and conditions set out in this Clause 8.

8.2 The licence granted hereunder shall be deemed to incorporate and include all Software, which is supplied from time to time to the Merchant or its Customers by mPayment. This Clause 8 is without prejudice to mPayment's right to charge the Merchant for the supply of any bespoke software.

8.3 The licence hereby granted and the Merchant's rights to use the Software are subject to the following restrictions:-

8.3.1 the Software shall be used only by the Merchant for the purposes of this Agreement and in relation to the Merchant's Website;

8.3.2 the Merchant shall not assign sub-license charge or otherwise dispose of or grant rights over the licence hereby granted or the Software and shall not attempt to do any such thing, without the prior written consent of mPayment;

8.3.3 the Merchant shall not attempt to ascertain or list the source programs or source code relating to the Software;

8.3.4 the Merchant shall not decompile or translate the Software into any other computer language or attempt to do so;

8.3.5 the Merchant undertakes that it shall not without the prior written consent of mPayment use the Software for any business purpose not approved by or acceptable to mPayment.

8.4 mPayment reserves its rights to make any improvements, substitutions or modifications in the specification of any element or part of the Software.

9. Authority

9.1 The Merchant authorizes mPayment, its Associated Company, partners, suppliers and/or their agents/contractors, the Bank and any other required party to:

9.1.1 discuss any matter that relates to the establishment of the Merchant Account, the provision of the Payment Gateway Services and the Merchant's Obligations,

9.1.2 complete and/ or correct any details in this Merchant Application, and

9.1.3 provide where necessary a copy of this Merchant Application as evidence of the granting of such authority.

10. Warranties and Undertaking of the Merchant

10.1 The Merchant warrants and undertakes that:

- 10.1.1** All representations and statements made by the Merchant in this Agreement or in any other document relating hereto is true, accurate and complete in all material respects;
- 10.1.2** It has the necessary authority to agree to these Terms of Use and is not by virtue in contravention of any provision of any contracts or its association or constitutional document;
- 10.1.3** It is in the legitimate business of supplying services and/or selling goods in the market for which it is entitled to receive payment or collect fees or other duties and are duly licensed to conduct such business under the laws of all jurisdictions in which it conducts business;
- 10.1.4** It will comply with all laws, policies, guidelines, regulations, ordinances or rules applicable to the Merchant, this Agreement the Merchant's business or the Transactions including without limitation:
 - (i) the Credit Card Association rules and regulations, expressly including the Payment Card Industry Data Security Standard;
 - (ii) any regulatory body or agency having jurisdiction over the subject matter hereof;
- 10.1.5** It has open and maintain at all times during the term of its services, an account in its name with one of the banks which participate in the clearing and settling of the payments arising from its use of this Payment Gateway Service;
- 10.1.6** It provides and will continue to provide, throughout its use of this Payment Gateway Services, an adequate level of service to users and cardholders.

11. Merchant's Obligations

11.1 Without limiting the Merchant's obligations under this Agreement, the Merchant will:

- 11.1.1** pay any and all Fees in accordance with Clause 5;
- 11.1.2** comply with all reasonable directions of mPayment relating to the Payment Gateway Services including only implementing an Interface exactly to the specification set by mPayment;
- 11.1.3** comply with all technical, security and privacy standards set out by the Bank and the Payment Card Scheme Rules and provide evidence of compliance to mPayment upon request;
- 11.1.4** immediately notify mPayment upon any malfunction or breakdown of any part of mPayment Payment Gateway System;
- 11.1.5** not make any warranty or representation whatsoever in relation to the Payment Gateway Services which may bind mPayment liable of any way whatsoever;

- 11.1.6** if applicable, display the mPayment logo and any associated text on its Website in which the Payment Gateway Services are used and further agrees and undertakes to incorporate a hypertext link to the appropriate mPayment Website in a form agreed between the parties. The Merchant further agrees and undertakes to amend the mPayment logo, any associated text, and hypertext link within seven (7) days of a written request from mPayment;
 - 11.1.7** provide mPayment with accurate information regarding the Merchant's designated bank account;
 - 11.1.8** not use the Payment Gateway Services in any manner whatsoever which constitutes a violation of any law or regulation or which may cause mPayment to be subject to any investigation, prosecution or legal action or for any type of business which in the opinion of mPayment is unacceptable;
 - 11.1.9** describe accurately on the Merchant's Website the procedure for entering into a Transaction by making clear what is being sold on the Merchant's Website, the price and the action, which must be taken in order to enter into a legally binding contract;
 - 11.1.10** immediately notify mPayment of any technical alterations made to the Merchant's Website or any other third party services and software that is/are required by the Merchant for the effective delivery of its business operation over the Internet. Under any of these circumstances, mPayment may reassess the Merchant and subject to such reassessment may charge an additional fee or terminate this Agreement with immediate effect.
- 11.2** For the avoidance of doubt, in the event of termination howsoever caused the Merchant agrees and undertakes to remove any such hypertext link and/or mPayment logo from its Website immediately.

12. Warranty

- 12.1** mPayment will use its reasonable skill and care in providing the Payment Gateway Services but will have no liability whatsoever for any and all direct, indirect or consequential loss arising from any delay or failure to provide all or any loss of data which may be sought from delays, failure to provide all or any loss of data which may be sought from delays, failure to deliver or service interruptions outside the control of mPayment including without limitation those arising from errors or omissions on the part of the Merchant or from levels of use which are unusually large and which have the effect of causing disruption or delays in the Payment Gateway Services.
- 12.2** The preceding warranty will not apply if:
- 12.2.1** any Payment Gateway Services or products provided hereunder are used in material variation with this Agreement or the applicable documentation
 - 12.2.2** any Payment Gateway Services or Software have been modified without the prior written consent of mPayment; or
 - 12.2.3** a defect in any Payment Gateway Services or Software has been caused by any of Merchant's malfunctioning equipment or software.
- 12.3** mPayment does not warrant that the Payment Gateway Services and/or Software are error free or will operate without interruption or are compatible with all equipment and software

configurations. SMOOVPAY gives no warranty whatsoever as to the quality of information received through the Services and/or Software.

- 12.4** mPayment shall use commercially reasonable efforts to remedy material interruptions and will provide adjustments, repairs and replacements, within its capacity, that are necessary to enable the Payment Gateway Services to perform their intended function in a reasonable manner. The foregoing shall constitute Merchant sole remedy, and mPayment sole liability in the event of interruption, outage or other delay occurrences in the Payment Gateway Services. mPayment does not warrant the services of any third party, including without limitation, the Merchant Service Provider, bank or any third party processor.
- 12.5** The warranty provisions under this Clause 12 shall be subject to the Merchant complying with its obligations under this Agreement and all other relevant agreements and to the Merchant having used the Payment Gateway Services strictly in accordance with the instructions of mPayment and in accordance with this Agreement.

13. Termination

13.1 Either party may terminate this Agreement by giving the other party not less than thirty (30) days' prior written notice thereof, in which event, this Agreement shall terminate on the date specified in the notice.

13.2 mPayment shall be entitled to terminate this Agreement forthwith by notice to the Merchant in any of the following events:

13.2.1 (where the Merchant is an individual or a firm) the Merchant or any of the partners comprising the Merchant dies or becomes mentally incapacitated, or proceedings are commenced for the bankruptcy of the Merchant or any of the partners comprising the Merchant or an interim order (within the meaning of the Bankruptcy Act, Chapter 20) is applied for or made in respect of the Merchant or any of the partners comprising the Merchant;

13.2.2 (where the Merchant is a society or corporation) proceedings are commenced or a resolution is passed for the winding up or dissolution of the Merchant or (where the Merchant is a corporation) proceedings are commenced for the judicial management of the Merchant or a receiver or receiver and manager is appointed over the Merchant or any of its assets;

13.2.3 distress or other execution is levied against the Merchant or any of its assets;

13.2.4 the Merchant enters into any composition or arrangement with its creditors;

13.2.5 the Merchant commits a breach of any of its warranties or obligations under this Agreement;

13.2.6 the Merchant or any of its shareholders, partners, officers, employees and or agents is or is suspected by mPayment or is notified to mPayment by Banks, AMEX, VISA, MasterCard or any Issuer to be involved or suspected to be involved in any fraudulent or unlawful activity whether or not relating to the Merchant's business.

13.3 Any termination of this Agreement shall not affect any accrued rights, obligations and liabilities of either party or the continued operation and application of the provisions of this Agreement in respect of any Card Transaction processed by mPayment prior to the termination of this Agreement and any payment made by mPayment to the Merchant in

respect thereof after the termination of this Agreement. Without prejudice to the generality of the foregoing, the termination of this Agreement shall not affect the continued operation of Clause **Error! Reference source not found.** and the rights conferred upon mPayment thereunder.

- 13.4** Upon termination of this Agreement, the Merchant shall forthwith return to mPayment all the software, equipment and unused documents, if any, provided by mPayment to the Merchant in connection with this Agreement.

14. Effects of Termination

- 14.1** Any termination of this Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

- 14.2** In respect of the period if any between the date that notice of termination is given and the effective date of termination (“the Termination Date”) the following provisions shall have effect:-

14.2.1 mPayment shall continue to provide the Payment Gateway Services until the Termination Date;

14.2.2 on the Termination Date mPayment shall cease to provide the Payment Gateway Services; and

14.2.3 the Merchant shall pay all Fees due in accordance with Clause 5 up to and including the Termination Date.

- 14.3** In the event of termination of this Agreement for whatever reason, the Merchant shall:

14.3.1 immediately return to mPayment all material, documentation or otherwise relating to the Payment Gateway Services; and shall not thereafter use the mPayment trademarks or derivatives thereof; and

14.3.2 permit mPayment access to the Merchant’s premises to remove all materials, documentation supplied by mPayment for the provision of the Payment Gateway Services.

15. Limitation of Liability and Disclaimer

15.1 Limitations:

To the fullest extent permitted by law, under no circumstances will mPayment or any of its associates (or any officers, directors employees or agents of the parties) be liable for any indirect, incidental, consequential, special or exemplary damages however or whenever arising, including, without limitation, damages for lost revenue, lost profits, reputation, cost of procurement of substituted services under any theory of liability or cause of action whether in tort (including negligence) contract or otherwise, regardless of whether it has been advised of the possibility of such damages. mPayment’s total liability to the merchant, whether arising in tort (including negligence) contract or otherwise, under this agreement or with regard to any mPayment products or services, shall not exceed the aggregate of Singapore dollars one hundred (SGD 100.00) in respect of any occurrence or series of occurrences arising out of any one event or series of connected events and shall not in

any event exceed the aggregate of Singapore dollars one thousand (SGD 1,000.00) in each calendar year.

15.2 Disclaimer:

Except as otherwise provided in this agreement, the merchant expressly agrees that mPayment shall not be liable for any loss (however occurring, including negligence) arising from or relating to:

15.2.1 the merchant's failure to properly activate, integrate or secure the merchant's account;

15.2.2 fraudulent transactions processed through your payment gateway account(s);

15.2.3 disruption of mPayment 's services, systems, server or website by any means, including without limitation software viruses, Trojan horses, worms, time bombs or any other technology;

15.2.4 actions or inactions by any third party, including without limitation, a merchant service provider or bank;

15.2.5 unauthorised access to

(i) data, customer data, transaction data or personal information belonging to mPayment, merchant or any third party; or

(ii) the payment gateway services or any system or programme associated therewith; or

15.2.6 the limitation of the functioning of any mPayment services or software, hardware or equipment associated therewith; or

15.2.7 rejection of payments or any dispute arising between the merchant and the cardholders or customers.

15.3 Third Party Products and Services:

mPayment makes no representations, warranty or guarantee whatsoever in relation to third party products or services. The use of third party products and services is at Merchant's own risk. mPayment assumes no responsibility and expressly disclaims any liability for claims of loss and/or fraud incurred resulting from the use of or conclusions drawn from any third party product or service, regardless of whether or not mPayment is a reseller or referral agent for such product or service.

16. Conditions Precedent

This Merchant Application is conditional upon the Merchant being granted a Payment Card Agreement as applicable, and mPayment 's written acceptance of the Merchant Application by a duly authorized representative.

17. Intellectual Property

The Merchant acknowledges and agrees that all Intellectual Property rights in and relating to the mPayment logo, mPayment trademarks and Software are owned by mPayment or

its affiliates. The Merchant may only use such Intellectual Property rights in accordance with mPayment 's written instructions from time to time.

18. Confidential Information

18.1 Both parties will keep confidential and will ensure that its employees and subcontractors keep confidential and will not use or disclose or attempt to use or disclose to any person any Confidential Information which comes to the knowledge of the Parties during this Agreement.

18.2 The term "Confidential Information" extends to all knowledge and information relating to the trade, business activities, operations, organization, finances, processes, dealings, specifications, methods, designs, formulae, computer software and technology of and specifically concerning any of the parties, customers or suppliers.

18.3 The restriction contained in Clause 18.1 shall apply both during and after the termination of this Agreement but shall cease to apply to information or knowledge which:

18.3.1 has in its entirety become public knowledge otherwise than through any unauthorized disclosure or other breach of such restriction;

18.3.2 has already come into the possession of either party or independent third party without breach of any obligation of confidentiality;

18.3.3 either party has consented in writing to it being disclosed; and

18.3.4 is or has been independently developed by either party without reference to or use of the Confidential Information.

18.4 All Confidential Information (howsoever stored) concerning either party supplied by either party or prepared by or on behalf of either party for the purposes of this Agreement and all copies and extracts of it made or acquired by or on behalf of either party shall be used only for the purposes of this Agreement and shall be the property of the party to whom such Confidential Information relates to and shall be returned to the party upon termination of this Agreement.

19. Non-Assignment

19.1 This Agreement is personal to the Merchant and the Merchant may not without the prior written consent of mPayment assign or dispose of it, part with any interest in it or grant any sub-license or delegate any of the rights conferred by it. mPayment shall be entitled to assign and/or sublicense this Agreement in whole or in part.

19.2 mPayment further reserves the right to fulfil any of its duties and powers under this Agreement by using agents and subcontractors.

20. Governing Law and Jurisdiction

The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by the laws and regulations of the Republic of Singapore. The parties hereby submit themselves to the exclusive jurisdiction of the courts of Singapore.

21. Disputes

- 21.1** The Merchant shall not involve mPayment in any dispute or claim that may arise between the Customers or Cardholders and the Merchant unless:
- 21.1.1** Such dispute or claim relates specifically to the use of the Payment Gateway Services; and
 - 21.1.2** Such dispute or claim is notified to mPayment within thirty (30) days of the date of occurrence of the dispute or claim; and
 - 21.1.3** Such dispute or claim arises from a Transaction through the Merchant's URL registered with mPayment for the use of the Payment Gateway Services; and
 - 21.1.4** The Merchant has furnished to mPayment all materials and information relating to the said dispute or claim which mPayment may reasonably request for the purpose of its investigations.
- 21.2** It shall be the sole responsibility of the Merchant to deal with all complaints made by the Customers or Cardholder in respect of the goods or services supplied under the Payment Gateway Services in like manner as if such goods or services had been supplied by the Merchant under other forms of payment acceptable to the Merchant.
- 21.3** In the event of a dispute or claim of whatever nature arising from payment through the Payment Gateway Services, the records of detailed transactions available from the Merchant and mPayment shall be used as a reference and shall be the sole basis of settling the aforesaid dispute or claim. In the event where there are discrepancies between the records of mPayment and of the Merchant, the discrepancies shall be jointly investigated by mPayment and the Merchant using information from both parties whenever appropriate, and proper adjustments (if necessary) shall be made accordingly but where the discrepancies cannot be reconciled, the records of mPayment shall prevail.
- 21.4** The Merchant agrees that where multiple payments have been effected by or on behalf of a Customer or Cardholder in respect of any transaction, whether through the Payment Gateway Services or through any other existing system of payment, the Merchant shall refund or reimburse such Customers or Cardholder for such excess payments made and shall fully indemnify and keep indemnified mPayment against any claim related to such excess payments.

22. Notices

Any notice or other communication required to be given hereunder shall be given by post or facsimile address to the parties at the address contained in this Agreement or such other addresses as shall have been notified to the other for the purposes of this Agreement. Any notice so given by post shall unless the contrary is proved, be deemed served at the expiry of three days after it is posted and in proving such posting it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted as a pre-paid letter. Any notice given by facsimile shall, unless the contrary is shown, be deemed to have been served when in the ordinary course of transmission it would first be received by the addressee in normal business hours.

23. Severability

If any terms or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to the extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

24. Amendment; Modifications

No amendment, modification or change to any provision of this Agreement, nor consent to any departure by either party therefrom, will in any event be effective unless the same shall be in writing and signed by the other party, and then such consent will be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, mPayment may amend this Agreement at any time upon written or electronic notice to the Merchant of not less than ten (10) days prior to the effective date of such amendment, provided that the addition or change of Fees will become effective upon at least thirty (30) days' notice. If the Merchant does not agree to such amendments, the Merchant's sole remedy is to immediately terminate this Agreement upon written notice to mPayment.

25. General

- 25.1** The Agreement represents the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any and all prior agreements, arrangements, statements and understandings, except for any fraud or fraudulent representation by either party.
- 25.2** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
- 25.3** No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.