

## MERCHANT SERVICES AGREEMENT

This Agreement is made between **NTT DATA Cardpay Sdn Bhd (formerly known as GHL Cardpay Sdn Bhd) (Company No.: 200201019018 [586681-A])**, a licensed merchants acquiring institution incorporated under the laws of Malaysia whose business address is at C-G-15, Block C, Jalan Dataran SD1, Dataran SD, PJU 9, Bandar Sri Damansara, 52200 Kuala Lumpur, Malaysia (hereinafter referred to as **"Cardpay"**, which expression shall include its personal representatives, successors in title and permitted assigns) of the one part and the merchant whose name and particulars as set out in Item 2 of Schedule 1 (hereinafter referred to as **"Merchant"**, which expression shall include its personal representatives, successors in title and permitted assigns) of the other part. Cardpay and Merchant shall collectively be referred to as **"Parties"** and individually as **"Party"**.

### WHEREAS:

- (A) Merchant is desirous of subscribing and using Services as stated below and Cardpay has, at the request of Merchant, agreed to provide the said Services to Merchant in accordance with the terms and conditions of this Agreement.
- (B) The acquirer as set out in Item 3 of Schedule 1 (**"Acquirer"**) is a member of Visa International, Inc. (**"Visa"**), MasterCard International, Inc. (**"MasterCard"**), Union Pay International (**"UPI"**), and any other card associations or schemes as may be specified by Cardpay from time to time (collectively, **"Card Associations"**).
- (C) The Acquirer has relationships with the Card Associations, which enable it to appoint Cardpay to acquire and offer Merchant a suite of credit cards payment and acceptance services subject to the terms and conditions of this Agreement.
- (D) In respect of the provision of MyDebit and FPX as well as any other payment and acceptance services in relation to PayNet, Cardpay is licensed by PayNet to sign up Merchants to participate in MyDebit, FPX, DuitNow QR and any other payment acceptance services and includes any other Paynet products which maybe from time to time offered by Cardpay. Cardpay has, at the request of Merchant, approved Merchant to participate in one or more of the said products subject to the terms and conditions of this Agreement as well as the Paynet Rules and Regulations which shall be communicated to the Merchants by Cardpay from time to time.
- (E) In respect of the provision of e-wallets payment and other acceptance services, Cardpay has relationship with various e-wallet issuers (**"e-wallet Issuers"**), which enable Cardpay to offer a variety of e-wallets payment solutions to Merchant subject to the terms and conditions of this Agreement and this may involve certain relevant rules and regulations from the Central Bank of the Countries that must be adhere to by the Merchants.
- (F) In respect of the provision of BNPL schemes as provided by the relevant BNPL provider in which Cardpay partnered and will partner from time to time (hereinafter referred to as **"BNPL Provider"**), the Merchant agrees to also accept such BNPL schemes and be bound by the necessary additional terms and conditions which shall be imposed by the BNPL Provider which Cardpay shall communicate those terms and conditions to the Merchant from time to time.

- (G) Merchant and Cardpay has agreed to enter into this Agreement to define and regulate their mutually agreed roles, obligations, rights, duties and liabilities subject to the terms and upon the conditions set forth herein and the Merchant hereby irrevocably and unconditionally agreed to be bound by all the terms and conditions stated herein including but not limited to all the rules regulations policies audit requirements imposed by the Card Associations, e-wallet issuers, BNPL provider that maybe from time to time required to be comply by the Merchants.

## **NOW IT IS HEREBY AGREED AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following words shall have the following meanings, unless the context shall indicate otherwise:

<b>“Agreement”</b>	means this Merchant Services Agreement, including the attachments, schedules, appendices, annexes and any amendments and variations made in accordance with this Agreement;
<b>“Business Day”</b>	means a day (excluding Saturdays, Sundays and public holidays) on which banks in Kuala Lumpur and Selangor are open for general banking business;
<b>“Confidential Information”</b>	means any information which is disclosed by a Party to the other Party for the purpose of this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such);
<b>“Customers”</b>	means Merchant’s customers who makes the payment of goods and/or services to Merchant through Services;
<b>“Services”</b>	means credit card payments, debit card payments, online banking, e-wallets, BNPL and such other payment channels that may emerge and relevant and applicable to payment solutions as shall be furnished by Cardpay to Merchant from time to time, as further specified in Item 4 of Schedule 1;
<b>“Cardpay Affiliates”</b>	means all related corporations and companies under the NTT DATA Payment Services Sdn Bhd (formerly known as GH System Sdn Bhd) group of companies which can be found in its website i.e.: <a href="https://www.nttdatapay.com/en">https://www.nttdatapay.com/en</a> ;
<b>“Intellectual Properties”</b>	means any patents, trademarks and service marks, registered designs, design rights and copyright, rights in databases and

other protectable lists of information, rights in confidential information, trade secrets, inventions and know-how, trade and business names, domain names, and logos in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

<b>“MDR”</b>	means the fee chargeable to Merchant at the agreed rate in percentage of each Transaction Value as set forth in Schedule 2;
<b>“Merchant’s Account”</b>	means the relevant bank account of Merchant provided by Merchant under Item 6 of Schedule 1;
<b>“Merchant’s Passwords”</b>	means the personal identification number used by Merchant when accessing Cardpay’s portal or dashboard to view transactions processed through Services;
<b>“Payments”</b>	means the payment representing the relevant Transaction Value made or to be made by a Customer for the purpose of completing the relevant Transaction;
<b>“Transaction”</b>	means the sale and purchase transaction of product(s) and/or service(s) between a Customer and Merchant through Services;
<b>“Transaction Draft”</b>	Means the drafts generated by the Merchant’s POS terminal as proof of consummation of a sale or service transaction done through the use of a Card.
<b>“Settlement Funds”</b>	mean the aggregate amount of Payments processed or collected by Cardpay with respect to all Transactions;
<b>“Settlement Day”</b>	means the period of days from the date of each Transaction List on which Cardpay remits the Net Settlement Amount of each Transaction List to Merchant, as set forth in Item 7 of Schedule 1;

**“Settlement Period”** means the 24-hour period (a period starting from, and including, 00:00 UTC+8 on the previous transaction day and ending at, but excluding, 00:00 UTC+8 on the next transaction day) in which Transactions are processed; and

**“Settlement Currency”** means any currency in which Cardpay remits the Net Settlement Amount to Merchant, as specified in Item 8 of Schedule 1.

1.2 In this Agreement, unless context otherwise requires:

- (a) words denoting the singular number include the plural number and vice-versa;
- (b) references to any legislation or to any provision of legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations and statutory instruments issued under such legislation or provision;
- (c) headings to the Clauses, Schedules, Appendices and Annexure of this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- (d) all Schedules, Appendices and Annexure to this Agreement and its recitals shall form part of this Agreement;
- (e) where a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to date and time is a reference to date or time in Malaysia;
- (g) the expressions “*Ringgit Malaysia*”, “*RM*” and “*Sen*” mean the lawful currency of Malaysia;
- (h) any reference to “*writing*”, or cognate expressions, includes a reference to any communication effected by facsimile transmission, electronic transmission or other comparable means;
- (i) if any time period specified in this Agreement ends on a day which is not a Business Day in Kuala Lumpur and Selangor then that time period is to be deemed to only expire on the next Business Day; and
- (j) any reference to a day, week, or month or year is to that day, week, month or year in accordance with the Gregorian calendar.

## 2. AGREEMENT

2.1 Merchant is desirous of applying, subscribing and using Services and Cardpay, at the request of Merchant, hereby agrees to provide Services to Merchant in accordance with the terms and conditions of this Agreement.

2.2 Merchant hereby acknowledges and agrees that by entering into this Agreement with Cardpay, Merchant has undertaken the necessary risk assessment to mitigate any potential risks that may emerge in relation to this Agreement and agrees to be bound by this Agreement as may be modified or amended from time to time with or without prior written notice to Merchant.

- 2.3 Merchant further agrees that it will comply with any terms and conditions including but not limited to any laws, rules, regulations, policies and any legal requirements as and when required, that may apply to the Merchant as imposed by the respective Acquirer, the Card Associations, PayNet, e-wallet Issuers, the respective Central Banks of the respective Countries e.g.: Bank Negara Malaysia, from time to time as maybe notified by Cardpay to Merchant.
- 2.4 In the event Merchant's cumulative sales volume reaches an aggregate amount of US Dollars One Million (USD1,000,000.00) the Merchant agrees that they shall execute a tripartite agreement with the Acquirer and Cardpay.

### 3. SERVICES FEE

- 3.1 In consideration of Cardpay agreeing to provide Services to Merchant, Merchant hereby irrevocably agrees and undertake to pay to Cardpay:
- (a) the MDR;
  - (b) the fees, charges and expenses as specified in Item 5 of Schedule 1;
  - (c) chargebacks, reversals, cancellations, refunds, adjustments, liabilities and claims under or arising out of or in connection with this Agreement; and
  - (d) such other fees, charges, payments, amounts and monies due and payable by Merchant to Cardpay,

which shall be entitled to be deducted by Cardpay from the Settlement Funds before the Settlement Day.

- 3.2 The MDR shall be determined by Cardpay from time to time and shall be subject to review at the sole and absolute discretion of Cardpay and any changes in respect of the MDR shall be effective on the day specified by Cardpay in the notice to Merchant.
- 3.3 Merchant hereby irrevocably agrees and acknowledges that in the event a Customer duly requests a refund in accordance with Merchant's after sale policy and Merchant instructs Cardpay to make such refund to Merchant, Cardpay will still be entitled to charge and retain the MDR in respect of such Transaction.
- 3.4 All fees and charges pursuant to this Agreement, including those as specified under this Clause 3, are exclusive of any applicable and payable taxes. Where any tax is applicable to any supplies made or provided by Cardpay to Merchant under this Agreement, Cardpay is entitled to charge the applicable tax on the payments made which shall be fully borne solely by the Merchant.
- 3.5 In the event the Settlement Funds are insufficient to pay any outstanding sum due and owing by Merchant to Cardpay on any Settlement Day, Cardpay shall be entitled to:
- (a) set off and deduct the outstanding amount in whole or in part from any payment due from Cardpay to Merchant on the next Settlement Day and this shall include setting off any monies which is held by any of Cardpay's affiliates; and/or
  - (b) deduct the outstanding amount in whole or in part from subsequent credits to Merchant's Account(s); and/or

- (c) debit the outstanding amount in whole or in part from Merchant's Account (or any other Merchant's bank accounts held with Cardpay); and/or
- (d) claim from Merchant the outstanding amount in whole or in part; and/or
- (e) claim from Merchant by any other means as Cardpay shall deem fit.

3.6 Merchant hereby irrevocably agrees that Cardpay reserves the right at its sole and absolute discretion to claim back from Merchant:

- (a) any payments or extra payments made to Merchant; and
- (b) any extra charges including all fees, fines, penalties, claims, arbitration fees charged by and payable to the Acquirer, the Card Associations, PayNet, e-wallet Issuers and the respective Central Banks of the Countries e.g.: Bank Negara Malaysia;

and any such sum mentioned above shall be refunded, recovered or repaid to Cardpay on demand either by debiting Merchant's Account(s) or by exercising Cardpay's right to set-off or by raising a claim on the Merchant or by any other means, as Cardpay shall deem fit in accordance with Clause 3.5 above.

3.7 Merchant's failure to pay amounts due and owing to Cardpay or to Cardpay's affiliates shall constitute a material breach and Merchant will be liable for any costs to Cardpay or Cardpay's affiliates incurred during collection of the said monies in addition to the amounts Merchant owes to Cardpay. Collection costs may include, legal fees and expenses, costs of any arbitration or court proceeding, collection agency fees, any applicable interest, and any other related cost all of which shall be borne solely by the Merchant.

3.8 Merchant hereby agrees and acknowledges that payment by Cardpay to Merchant does not constitute confirmation that the Transactions are accepted according to the conditions and procedures stated herein or free of discrepancies, irregularity or any violation. Merchant further represents and warrants that payment by Cardpay shall be without prejudice to any claims or rights which Cardpay may have against Merchant and shall not constitute any admission by Cardpay as to the performance by Merchant of its obligations under this Agreement and the amount payable by Cardpay to Merchant.

#### 4. SETTLEMENT

4.1 Cardpay will make available for download a list of the recorded Transactions for which Payments have been received during that Settlement Period ("**Transaction List**"). The Transaction List shall form the basis for calculation of Net Settlement Amount.

4.2 For the purpose of this Agreement, "**Net Settlement Amount**" means the net aggregate amount payable by Cardpay to Merchant for each Settlement Period, determined by taking into account:

- (a) the total aggregate amount of the available Settlement Funds;
- (b) less the total aggregate amount of the MDR applicable on each Transaction;
- (c) less the total aggregate amount of all chargebacks, reversals, cancellations, refunds, adjustments;

- (d) less the total aggregate amount of all assessment costs, penalties and fines;
  - (e) less any other applicable fees and charges as charged by and payable to the Acquirer, the Card Associations, PayNet and e-wallet Issuers and the respective Central Banks of the Countries e.g.: Bank Negara Malaysia from time to time; and
  - (f) less any other applicable fees and charges as determined by Cardpay from time to time.
- 4.3 All foreign currencies shall be converted to the Settlement Currency if such a conversion is required. The commercial bank's mark-up rate on the prevailing bank exchange rate shall be borne solely by the Merchant. The selection of sender bank, if any, is subject to recipient bank's nature, i.e. location as well as available currency, and shall be mutually agreed between Cardpay and Merchant.
- 4.4 Merchant hereby agrees and undertakes to conduct reconciliation of its daily transaction records against the Transaction List. Any errors or omissions shall be informed and addressed by Merchant to Cardpay promptly.
- 4.5 All figures are subject to the final audit and check by Cardpay and all payment by Cardpay in respect of the Net Settlement Amount of each Transaction List shall be made in the Settlement Currency and will be remitted directly by Cardpay into Merchant's Account on the Settlement Day.
- 4.6 Merchant shall ensure that all Merchant's Account is accurate and valid for the purposes of Cardpay making payment of the Net Settlement Amount under this Agreement to Merchant. In the event of any bank-related penalties due to inaccurate and/or invalid Merchant's Account information, such penalties shall be solely borne by Merchant.
- 4.7 Transaction Drafts generated by POS terminals shall be distributed as follows: one (1) copy goes to the Merchant and one (1) copy is given to the Customer. Merchant is required to maintain a copy of the Transaction Draft for eighteen (18) months. In case of dispute, Merchant should present its copy to Cardpay once requested within three (3) business days from the date of such request. Failure to present said copy will result in an outright chargeback.
- 4.8 Merchant should settle transactions on a daily basis. Transactions that are settled beyond seven (7) calendar days will be subject to a holding period of at least one hundred eighty (180) calendar days due to possible chargeback for late presentment.

## 5. RESERVES

- 5.1 In certain circumstances, Cardpay may require Merchant to place funds in reserve or to impose conditions on the release of Net Settlement Funds (each a "**Reserve**") based on Cardpay's continuous assessment and understanding of the risks associated with Merchant's use of Services. Cardpay may impose a Reserve on Merchant for any reason if Cardpay determines that the risk of loss to Cardpay, Customers, or others associated with Merchant's use of Services is higher than normal. For example, Cardpay may hold a Reserve if:
- (a) Merchant's activities increase the risk of loss to Cardpay or to Merchant's Customers;
  - (b) Merchant has violated or is likely to violate this Agreement; or

(c) Merchant has an elevated or abnormally high number of Disputes.

5.2 Cardpay may fund the Reserve with Settlement Funds processed through Merchant's use of Services, by debiting the settlement account or another bank account associated with Merchant, or by requesting funds directly from Merchant.

## 6. **VALIDATION, UNDERWRITING AND CREDIT CHECKS**

6.1 At any time during the term of this Agreement and Merchant's use of Services, Cardpay may require additional information from Merchant to verify beneficial ownership or control of the business, validate information provided by Merchant and assess the risk associated with Merchant's business. Cardpay may also request Merchant to provide copies of financial statements or records pertaining to any transactions performed under this Agreement, or require Merchant to provide a personal or company guarantee. Merchant's failure to provide this information or any such material may result in suspension or termination of Merchant's use of Services.

6.2 Merchant hereby irrevocably authorises Cardpay to retrieve any information from other service providers and any other third parties, including credit reporting agencies and information bureaus and directs the third parties to compile and provide to Cardpay the information requested by Cardpay.

6.3 Merchant acknowledges that the information requested may include its name, addresses, credit history, and other data about it or its directors, shareholders and representatives. Merchant also acknowledges that Cardpay may use its information to verify any other information provided by Merchant to Cardpay, and that any information Cardpay collects may affect its assessment of Merchant's overall risk to Cardpay's business. Cardpay may periodically update this information as part of its underwriting criteria and risk analysis procedures.

6.4 In certain circumstances and at any material times, Cardpay may require a corporate or personal guarantee (each, "**Guarantee**") from Merchant's parent company, directors, business owners, partners or other guarantors as so determined by Cardpay and should the Merchant fail or refuse to provide such a Guarantee, the Merchant will not be permitted to use Services.

## 7. **CHANGE OF BUSINESS**

7.1 Merchant hereby irrevocably agrees and undertakes to provide Cardpay a thirty (30) days' prior written notice of its intent to:

- (a) transfer or sell all or any substantial part (10% or more) of its total stock or assets; or
- (b) make any material change in the management of Merchant; or
- (c) make any change in Merchant's legal status (such as from sole proprietorship to partnership or limited company or vice versa);
- (d) remove or relocate any shops, outlets, premises, stores or offices;
- (e) liquidate or file for bankruptcy;
- (f) cease business or change the basic nature of its business; and/or



- (g) make any change in any other material particulars relating to Merchant which have been supplied to Cardpay in connection with this Agreement.

## 8. **CONSENT AND AUTHORISATION FOR DISCLOSURE**

### 8.1 Merchant hereby irrevocably agrees to authorise Cardpay and Cardpay Affiliates:

- (a) to retrieve information about Merchant from service providers, credit reporting agencies and information bureaus and other third parties, including but not limited to Central Credit Reference Information System (CCRIS), CTOS Data Systems Sdn Bhd (CTOS), Experian Information Services (EXPERIAN), Credit Bureau Malaysia (CBM) and any similar regulatory bodies or relevant authorities (“**Credit Bureaus**”), and Merchant hereby authorises and directs those third parties to compile and provide to Cardpay the information requested by Cardpay;
- (b) to disclose or forward now and at any future time any data and information of Merchant’s business entity, authorised signatories, directors, partners, owners and key personnel of Merchant to the Credit Bureaus for credit checks and credit listings, which may include trade reference listing, opening of account, credit evaluation, credit/account review, credit/account monitoring, debt recovery purposes, legal actions and/or scoring solutions;
- (c) to disclose Merchant’s information to the Acquirer, the Card Associations, PayNet and e-wallet Issuers and the respective Central Banks of the Countries e.g.: Bank Negara Malaysia, as may be reasonably required for the purpose of and in connection with providing Services without any liability whatsoever to Merchant;
- (d) to obtain financial information about Merchant from any depository institution and Merchant hereby authorises and directs such depository institution to release any financial information concerning Merchant and its accounts to Cardpay;
- (e) to hold, receive, and disburse Settlement Funds on Merchant’s behalf, and to instruct the banks as to how and when Settlement Funds are transferred to Merchant; and
- (f) to designate which banks may hold Settlement Funds, on deposit and in trust, pending transfer of funds to Merchant in accordance with the terms of this Agreement.

## 9. **TRANSACTIONS**

### 9.1 Merchant hereby irrevocably agrees and acknowledges that:

- (a) Cardpay shall not be held responsible nor be liable to Merchant for any authorised and completed Transactions that are later the subject of any disputes, refunds, or reversals, are submitted without authorization or in error, or violate any applicable laws or regulations.
- (b) Cardpay shall also not be liable for all losses it incurs for any lost or stolen payment credentials or accounts used to purchase goods and/or services from the Merchant for whatsoever reasons including but not limited to fraud or forgery or misrepresentation under whatever circumstances.

### 9.2 The Merchant shall not process a Card Transaction that it knows or ought to have known to be fraudulent or not authorized by the Cardholder nor present payment any record in respect of

any such transaction. The Merchant shall be responsible for the action of its employees while acting in its employ or of its agents while acting on its behalf. The Merchant, including the owners and their personnel will not process their own personal card transactions on Cardpay's terminal/s for their own gain and without the actual exchange of goods and/or services.

## 10. PROHIBITED ACTIVITIES

10.1 Merchant shall not submit any Transaction which involves the following goods and/or services without the prior written consent of Cardpay:

- firearms/weapons;
- ammunition;
- fireworks and hazardous materials;
- human remains and body parts;
- drugs, drug paraphernalia and drug test circumvention aids;
- drug stores and pharmacies (applicable to online Merchants only);
- miracle cures;
- local and foreign currencies;
- cryptocurrency;
- investment in gold bars;
- pornography and adult content;
- dating and escort services;
- sexually oriented materials or services and sexual enhancement products;
- tobacco, vape and any related devices and accessories (applicable to in-store Merchants only);
- cigar, pipe, smoke and tobacco stores, vape and any related devices and accessories (applicable to online Merchants only);
- items that promote hatred, racism, religious persecution or contain offensive content;
- items that encourage illegal activity;
- pyramid or Ponzi schemes, matrix programs and other "get-rich-quick" schemes;
- unlicensed multi-level marketing;
- direct marketing insurance services;
- associated with purchases of annuities or lottery contracts, off-shore banking or transactions to finance or refinance debts funded by a credit card;
- payment aggregator;
- associated with the sale of traveler's cheques, money transfer or money orders;
- check cashing businesses;
- provision of certain credit repair or debt settlement services, credit transactions or insurance activities;
- brokers and/or dealers dealing in securities, including, but not limited to financial trading platforms;
- stolen goods;
- counterfeit and replica goods;
- items or downloads which infringe or violate copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction;
- sales of goods and/or services identified by government agencies to have a high likelihood of being fraudulent;

- telemarketing;
- telecommunication services involving phone calls placed via key-entry using a central access number;
- computer network, information services and internet service providers, internet payment facilitators, website management and maintenance;
- prewritten software downloaded through a hosted server or website;
- file sharing services;
- digital games or platforms for in-app purchases within games;
- DVD and/or video tape rental stores;
- travel agencies, tour operators or any travel related arrangement services;
- time-sharing;
- gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to casino games, sports betting, horse or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery) and sweepstakes; and
- such other goods and/or services which shall be notified to Merchant from time to time by Cardpay.

## **11. CHARGEBACKS, DISPUTES, REVERSALS, CANCELLATIONS AND REFUNDS**

- 11.1 In the event that there is a chargeback, dispute, reversal, cancellation or refund, Cardpay reserves the right at its sole and absolute discretion to deduct the chargeback, disputed, reversed, cancelled or refunded amounts from the Settlement Funds and/or Merchant's Accounts without the requirement of Merchant's consent. Should Merchant be no longer reachable or no longer in business, Cardpay reserves the right to hold back the remaining funds of Merchant's Account to facilitate any chargebacks, disputes, reversals, cancellations or refunds that may occur.
- 11.2 If any such amount is uncollectible through withholding from any payments due hereunder or through charging the Merchant's Account or the Reserve, Merchant shall, upon demand by Cardpay, pay Cardpay the full amount of the chargeback, dispute, reversal, cancellation or refund within fifteen (15) days from the date of such demand. If all and any of such amount shall remain unpaid by the Merchant at the expiration of the said payment terms, Cardpay shall be entitled to charge Merchant an interest at the rate of eight per centum (8%) per annum on the said outstanding sum from the date of expiry of the payment terms until the full amount is paid.

## **12. IRREGULAR TRANSACTIONS AND SUSPENSIONS**

- 12.1 In the event Cardpay suspects, believes or knows that any Transaction processed through Services are suspicious or Merchant have used Services for or is engaging in unauthorized, prohibited, fraudulent or illegal business category or activity, Cardpay shall have the sole and absolute discretion to suspend Services and/or be entitled to withhold or retain an appropriate amount of the Settlement Funds which it deems necessary, until Cardpay has examined or verified the validity of such Transaction including examination of all acceptable supporting documentation. Cardpay may also share any information related to such activity with the appropriate financial institution, regulatory authority, or law enforcement agency.

12.2 In addition to and without derogating the foregoing, Cardpay may at its sole and absolute discretion at any time to suspend the operation of this Agreement by serving a written suspension notice to Merchant and if the suspension is not revoked by Cardpay within seven (7) Business Days from the date of the suspension notice, this Agreement shall be deemed to be terminated immediately.

12.3 Cardpay shall not be bound to give Merchant any reason whatsoever for the suspension nor shall it be liable to compensate or indemnify Merchant for any loss or damage arising out of the operations of this Agreement.

### 13. **MERCHANT'S RELATIONSHIP WITH CUSTOMERS**

13.1 Merchant hereby irrevocably agrees and acknowledges that:

- (a) Merchant will only use Services for legitimate Transactions with the Customers;
- (b) Cardpay is not responsible for the goods and/or services Merchant publicises or sells, or that the Customers purchase using Services;
- (c) Merchant is solely responsible for the nature and quality of the goods and/or services it provides, and for delivery, support, refunds, returns, and for any other ancillary services Merchant provides to the Customers;
- (d) Merchant is solely responsible for providing confirmation or receipts to Customers for each Transaction;
- (e) Merchant is solely responsible for notifying the Customers that the description which will be printed on the credit card statement for the charges incurred which may be different from Merchant's trading name.
- (f) Merchant is solely responsible for knowing whether a Transaction initiated by a Customer is erroneous (such as the Customer purchasing one item when they meant to order another) or suspicious (such as unusual or large purchases, or a request for delivery to a foreign country where this typically does not occur);
- (g) Merchant is solely responsible for any losses it incurs due to erroneous or fraudulent Transactions in connection with its use of Services;
- (h) Merchant shall accurately communicate, and not misrepresent, the nature and amount of the Transaction.
- (i) Merchant shall provide a receipt that accurately describes each Transaction to Customers.
- (j) Merchant shall not use Services to sell goods and/or services in a manner that is unfair or deceptive, exposes Customers to unreasonable risks, or does not disclose material terms of a purchase in advance.
- (k) Merchant shall maintain a fair return, refund, cancellation, or adjustment policy, and clearly explain the process by which Customers can receive a refund.
- (l) Merchant is solely responsible for providing support to Customers regarding good or service delivery, support, returns, refunds, and any other issues related to its goods and/or services and business activities.

### 14. **MERCHANT'S UNDERTAKINGS**

**14.1 Merchant hereby irrevocably agrees and undertakes with Cardpay that:**

- (a) Merchant shall not set a minimum amount purchase limit and shall not impose any surcharge on a Transaction made.
- (b) Merchant shall ensure the confidentiality and security of the Personal Identification Number ("PIN") entered at the EDC terminal.
- (c) Merchant shall not misuse or tamper with the Terminal in any way and shall be liable for any claims, damages, and expenses arising out of or caused to arise from misuse or unauthorised usage of the EDC terminal.
- (d) Merchant shall maintain and use the EDC terminals only in its own shops, outlets, premises, stores.
- (e) Merchant is prohibited from retaining any credit or debit cards belonging to Customers at any point in time unless the Transaction appears to be suspicious or the Customers exhibit suspicious behaviour or the security features on the credit or debit cards are missing or altered or any such other circumstances raising Merchant's suspicion in whatsoever manner, Merchant shall deny the Transaction shall immediately call and report to Cardpay of the said Suspicious Transaction.
- (f) Merchant shall not export any of the product(s) and/or service(s) without the appropriate approval from the relevant authorities and foreign governmental licenses.
- (g) Merchant shall comply with all applicable laws of whatever jurisdictions, including without limitation, restrictions on the export of encryption software and the export or import of product(s) and/or service(s) to and from any country.
- (h) Merchant shall ensure that the setting up, operation and maintenance of its software, hardware, system records, procedures and/or any part of its system or any other matter related thereto will not adversely affect the security and integrity of Services.
- (i) Merchant shall use the Live Account(s) and Dashboard provided by Cardpay in the manner communicated by Cardpay to Merchant from time to time.
- (j) Merchant shall not receive any cash payment from a Customer with respect to charges for goods and/or services included in a Transaction.
- (k) Merchant shall not engage in acceptance practices or procedures that discriminate against or discourage the use of a card of a card type selected to be accepted by it hereunder in favour of any other competing card brand, and shall not promote any other means of payment more actively than promoting payment with a card of such card type.
- (l) Merchant agrees to inform Cardpay as soon as Merchant becomes aware of any major or multiple product defects or logistics problems which could give rise to chargeback or refund.
- (m) Merchant must not disclose the Merchant's Password to any unauthorized persons at all times failing which the Merchant shall full responsibility and liability arising thereto.
- (n) Merchant must not make any warranties or representations in respect of goods and/or services supplied which may bind Cardpay, the Acquirer, the Card Associations, PayNet and e-wallet Issuers.
- (o) Merchant is prohibited to acquire any other sub-merchants to use Services.
- (p) Merchant shall not process any transaction for any other merchant through the EDC terminals and/or Services.

**15. MERCHANT'S WARRANTIES AND REPRESENTATIONS**

15.1 Merchant hereby irrevocably undertakes, warrants and represents to Cardpay that:

- (a) Each Transaction submitted hereunder will represent a bona fide sale to a Customer for the amount shown on the related Transaction record as the total sale and constitutes the binding obligation of Customer, free from any claim, demand, defence, set-off or other adverse claim whatsoever.
- (b) Each Transaction record or other evidence of a Transaction will accurately describe the goods and/or services which have been sold and delivered to a Customer.
- (c) Merchant will comply fully with all laws, rules and regulations (including their subsidiary legislations and guidelines) and not violates any laws of Malaysia as well as any applicable laws of any countries in which Merchants carries out its businesses, including but not limited to law, rules and regulations regarding e-money, money laundering and financing of terrorism, privacy and protection of personal data, record keeping, suspicious transaction reporting and currency controls during the term of this Agreement.
- (d) Each of the representations and warranties above are and will remain true and accurate and shall be deemed to be repeated immediately for every successful Transaction.

## 16. MAINTENANCE OF RECORDS

16.1 Merchant shall keep and maintain complete and accurate books, statements and records of all the operations, payments and expenses in connection with this Agreement, in such form and adopting such practice as may be notified in writing by Cardpay and in line with applicable law. Merchant shall, upon five (5) working days written notice (in case of a regulatory audit) and upon fourteen (14) working days in case of Cardpay's internal audit and during reasonable business hours, allow Cardpay, its officials, management, auditors, regulators and all other persons authorized in writing by Cardpay to supervise, inspect, examine, audit and take copies (to the extent permissible by law) of Merchant's books, statements and records, which are directly relevant to or connected with this Agreement or Services or Merchant's obligations. Cardpay shall co-operate with such persons to ensure a prompt and accurate verification and audit. Such audits or reviews shall be at the expense of Cardpay. However, if the audit discovers discrepancies or overcharges, then upon completion of such audit or review, Merchant shall reimburse Cardpay for the discrepancies or overcharges and for such additional cost of the audit, and Merchant shall use its best endeavours to make such rectification as required by the auditor or Cardpay.

## 17. ACCOUNT DATA COMPROMISE ("ADC")

- 17.1 Merchant must keep the credit and debit cards information confidential and comply with the ADC procedures as determined by the Card Associations, PayNet and the respective Central Banks of the respective Countries e.g.: Bank Negara Malaysia from time to time, and must immediately inform Cardpay upon becoming aware that an actual or suspected ADC or breach of confidential credit and debit card Information has occurred.
- 17.2 Immediately upon suspected or known breaches on Merchant's system, or any of Merchant's service providers who has access to, stores or transmits credit card payment details, Merchant must follow and perform the Data Breach Procedures as follows:

- (a) identify the cause of event and immediately notify Cardpay;
- (b) isolate or unplug any affected system from all networks involved in the event;
- (c) cease installing or making any changes to software relating to the event;
- (d) tighten security controls pertaining to all networks involved in the event;
- (e) implement and follow the Disaster Recovery Plan;
- (f) hire PCI-DSS investigators to investigate the event;
- (g) maintain a rigorous audit trail of all action taken to isolate and rectify the event; and
- (h) commence calculating the gross potential exposure that may arise from such an event and notify Cardpay in writing of the results of such calculations as soon as possible, but within a 24-hour period.

17.3 Merchant shall provide Cardpay and its agents full access to Merchant's systems and databases to facilitate a forensic analysis to ascertain:

- (a) whether card data that has been compromised;
- (b) vulnerability of the systems that permits the unauthorised access to the database; and
- (c) card data that was created, deleted, altered, copied or manipulated in any manner.

17.4 Merchant also hereby agrees to confer upon Cardpay the enduring right to contact all Merchant's service providers for:

- (a) determining the extent of a data compromise;
- (b) evaluating remedies to threat data compromise; and
- (c) assessing Merchant's level of compliance with PCI-DSS.

17.5 Merchant shall also allow Cardpay to recover from Merchant all assessments, recovery costs, administer compensation and any expenses in connection with the ADC events and/or potential ADC events.

## 18. **PCI COMPLIANCE**

18.1 In providing Services to accept Transactions through credit cards and debit cards, Cardpay shall take reasonable measures to provide a secure payment system and shall comply with the Payment Card Industry Data Security Standards ("**PCI-DSS**") and the Payment Application Data Security Standards ("**PA-DSS**") (collectively, the "**PCI Standards**"). Cardpay hereby acknowledges that it is responsible for the security of cardholder data that it possesses or otherwise stores, processes, or transmits on behalf of the Merchant, or to the extent that it could impact the security of the Merchant's cardholder data environment, in accordance with the PCI Standards.

18.2 Upon Merchant's written request, Cardpay shall provide detailed information regarding its PCI-DSS compliance status, including a breakdown of responsibilities between the Parties, within fourteen (14) days.

18.3 Merchant shall also ensure that it complies with the PCI-DSS and if applicable to Merchant's business, the PA-DSS. Merchant must promptly provide Cardpay with documentation demonstrating its compliance with the PCI Standards upon Cardpay's request. If Merchant



elects to store, hold and maintain "Account Data", as defined by the PCI Standards (including Customer card account number or expiration date), Merchant further agrees that Merchant will either maintain a PCI-compliant system or use a compliant service provider to store or transmit such Account Data. Merchant also agrees to never store any "Sensitive Authentication Data", as defined by the PCI Standards (including CVC or CVV2), data at any time.

- 18.4 Merchant is also bound to complete the PCI-DSS accreditation program within three (3) months upon Merchant being on-boarded by Cardpay or within three (3) months of notification by Cardpay to Merchant to comply with these requirements. Should Merchant be unable to comply with the PCI-DSS accreditation program in accordance with the timeframe as stipulated hereunder, the facility status will be placed in the non-compliant category. This invites the "non-compliance fines" from the Card Associations which Cardpay will pass on to Merchant. In the event that Merchant suffers a card data compromise incident and Merchant has not complied with the PCI-DSS accreditation program, the Card Associations will levy heavy penalties and Merchant agrees that Cardpay will pass on the penalties to them. Merchant agrees to bear all costs involved to complete the PCI-DSS accreditation program.

## 19. **EDC TERMINALS**

- 19.1 All EDC terminals provided, leased or rented by Cardpay to Merchant are for the Merchant's exclusive use and will not become Merchant's property. Merchant will protect the EDC terminals from loss, theft, damage or any legal encumbrance and will allow Cardpay and its designated representatives reasonable access to Merchant's shops, outlets, premises and stores for their repair, servicing, replacement, removal, modification, installation and relocation.
- 19.2 Merchant shall not obtain title, copyrights or any other proprietary right to any software pertaining to the EDC Terminals ("**Software**"). At all times, Cardpay or its suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorised by Cardpay. Cardpay's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to such suppliers' ownership rights and such suppliers have the right to rely on and directly enforce such terms against Merchant.
- 19.3 The operating instructions will instruct Merchant in the proper use of the terminals, and Merchant shall use and operate the terminals only in such manner and at the location where they are initially installed. Merchant will promptly notify Cardpay of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon Cardpay will make the necessary arrangements to obtain required maintenance subject to payment of agreed costs (if any) by Merchant. Merchant shall cooperate with Cardpay in its attempt to diagnose any problem with the terminal. In the event the EDC terminal requires additional Software, Merchant is obligated to cooperate and participate in a download procedure.



- 19.4 Merchant will be liable to Cardpay in the event that any leased or rented EDC terminals are lost, destroyed, stolen or rendered inoperative.

## 20. INTELLECTUAL PROPERTY

- 20.1 Cardpay owns all right, title and interest in and to Services, including the rights to all Intellectual Properties thereto.
- 20.2 Subject to the terms of this Agreement, the Merchant is authorised to use Cardpay Intellectual Properties solely for the limited purpose of Services in accordance with this Agreement. Such authorization to use Cardpay's Intellectual Properties granted in favour of Merchant shall be non-exclusive and non-transferrable, and may be modified or revoked by Cardpay in writing at any time during the Term without assigning any whatsoever reasons.
- 20.3 Merchant agrees that the use of Cardpay's Intellectual Properties under this Agreement shall not confer any proprietary right thereto in any manner, and Merchant agrees to take reasonable care to protect Cardpay's Intellectual Properties from infringement or damage and cease all use of such Intellectual Properties immediately upon termination of this Agreement.

## 21. MARKETING

- 21.1 Merchant shall grant Cardpay, the Acquirer, the Card Associations, PayNet, e-wallet Issuers and the respective Central Banks of the respective Countries e.g.: Bank Negara Malaysia, a non-exclusive, worldwide, royalty-free, non-transferable licence to copy, use and display Merchant's name, trade name, logo, service mark and/or trademark ("**Merchant's Marks**") in all marketing, advertising, promotional or similar materials related to Services ("**Marketing Materials**"). Cardpay, the Acquirer, Card Associations, PayNet and e-wallet Issuers may refer Merchant as a user of Services and use Merchant's Mark in the Marketing Materials without prior written consent of Merchant.
- 21.2 Merchant shall adequately display and must adhere to the minimum standards and requirements for the display of any Marketing Materials provided by Cardpay.
- 21.3 Merchant shall not issue or dispatch any promotional materials which include any reference to Cardpay, the Acquirer, the Card Associations, PayNet, e-wallet Issuers the respective Central Banks of the respective Countries e.g.: Bank Negara Malaysia or their name, trade name, logo, service mark and/or trademark without Cardpay's prior written consent.

## 22. OFFER OF NEW PRODUCTS AND SERVICES

- 22.1 Cardpay may from time to time offer new products and services to Merchant in a written notification to Merchant together with any additional terms and conditions governing such new products and services and by displaying marketing materials relating to such new products and services. By signing this Agreement, the Merchant hereby irrevocably agrees and accepts all such offers for any such new products and services and agrees to be bound by all the applicable terms and conditions.

## 23. TERM AND TERMINATION

- 23.1 This Agreement shall become effective on the date when (i) Merchant signs this Agreement, or (ii) Merchant starts to use Services, whichever is earlier ("**Effective Date**") and shall remain in effect for a period of two (2) years from the Effective Date ("**Initial Term**"). Upon the expiry of the Initial Term or any then-current Renewal Term (as the case may be), this Agreement shall automatically renew for a period of one (1) year ("**Renewal Term**") unless Cardpay gives written notice to the Merchant of its intention to terminate this Agreement no later than thirty (30) days prior to the expiry of the Initial Term or any then-current Renewal Term (as the case may be). The Initial Term and the Renewal Term (where applicable) shall collectively be referred to as the "**Term**".
- 23.2 Notwithstanding the foregoing, Cardpay shall have the right at any time to give immediate notice in writing to Merchant to terminate this Agreement forthwith upon the occurrence of the following events:
- (a) If in sole opinion of Cardpay, Merchant is in breach of any of the terms and conditions of this Agreement or abandons or repudiates this Agreement;
  - (b) Merchant fails to comply or proceed with the execution of any of its undertakings, warranties, duties, roles and obligations under this Agreement;
  - (c) Merchant's representations and warranties under this Agreement are false and misleading;
  - (d) Merchant's business remains inactive for a period in excess of three (3) consecutive months;
  - (e) there has no Transaction being performed for a period in excess of three (3) consecutive months;
  - (f) 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;
  - (g) Merchant becomes insolvent or ceases or threatens to cease to carry on its business of its business;
  - (h) If any resolution is passed or steps taken against Merchant or any other person to apply for judicial composition proceedings with its creditors or an order is made to by any competent court for such proceedings or a receiver, judicial manager, administrator or other similar official is appointed in relation to Merchant or any part of the assets or undertakings of Merchant or a distress execution or any other enforcement process being levied or enforces upon or sued out against any part of the assets or undertakings of Merchant;
  - (i) If Merchant or any of its shareholders, partners, proprietors, officers, employees, agents or contractors is or is suspected by Cardpay to be involved in any fraudulent or unlawful activity whether or not relating to Merchant's business; or
  - (j) In the event Cardpay reasonably deems itself insecure in continuing this Agreement.

## 24. EFFECT OF TERMINATION

- 24.1 Termination does not immediately relieve Merchant of obligations incurred by Merchant under this Agreement. Upon termination, Merchant hereby irrevocably agrees to:

- (a) complete all pending Transactions;
- (b) stop accepting new Transactions through Services;
- (c) immediately settle all outstanding accounts, amounts or debts due and owing to Cardpay;
- (d) immediately return all EDC terminals and all other related supplies and equipment to Cardpay;
- (e) immediately remove all Cardpay or payment network logos from Merchant's shops, outlets, premises, stores, websites, apps, online marketplaces and any online platforms; and
- (f) promptly return to Cardpay or otherwise dispose of as Cardpay may instruct all pamphlets, catalogues, advertising material specifications and other material documents and papers whatsoever sent or provided to Merchant.

24.2 In addition, upon termination Merchant understands and agrees that:

- (a) all licences granted to Merchant by Cardpay under this Agreement, if any, will end;
- (b) Cardpay will not be liable to Merchant for compensation, reimbursement, or damages related to Merchant's use of Services, or any termination or suspension of Services;
- (c) Merchant is still liable to Cardpay for any fees or fines, or other financial obligations incurred by Merchant or through Merchant's use of Services prior to termination.

24.3 The termination or expiry of this Agreement, in whole or in part, does not operate as a waiver of any breach by a Party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Party which have accrued up to the date of termination or expiry including the right of indemnity.

24.4 In addition to and without derogating from any other rights of Cardpay under this Agreement and/or any law, Merchant hereby agrees to pay liquidated damages to Cardpay in an amount equal to:

- (a) Ringgit Malaysia One Thousand (RM1,000.00) if this Agreement is terminated before the first anniversary of the Effective Date for any reason whatsoever; or
- (b) Ringgit Malaysia Five Hundred (RM500.00) if this Agreement is terminated after the first anniversary of the Effective Date but before the expiry of the Initial Term for any reason whatsoever.

24.5 It is expressly agreed between the Parties that the liquidated damages payable under Clause 24.4 do not constitute a penalty and that the Parties, having negotiated in good faith for such specific liquidated damages and having agreed that the amount of such liquidated damages is reasonable in light of the anticipated harm caused by the termination of this Agreement and the difficulties of proof of loss and inconvenience or non-feasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such liquidated damages.

## 25. INDEMNIFICATION AND LIMITATION OF LIABILITY

25.1 In addition to and without prejudice to the rights, powers and remedies herein conferred upon Cardpay, Merchant hereby agrees to fully indemnify, hold harmless and keep Cardpay, its

shareholders, officers, directors, employees, representatives, personnel or agents indemnified against all losses, damages, compensations, offsets, counterclaims, actions, claims, demands, suits, costs, fees (including legal fees on a solicitor and client basis), expenses and liabilities caused to Cardpay:

- (a) arising directly or indirectly as a result of any breach of or non-performance of the Merchant's warranties, undertakings, roles and obligations under this Agreement;
- (b) as result of any fees, fines or penalties required to be paid by Cardpay due to or arising out of or in connection with Merchant's failure to observe its obligations under any operating regulations, guidelines, procedures, directions and rules by the Acquirer, the Card Associations, PayNet, e-wallet Issuers and the respective Central Banks of the respective Countries e.g.: Bank Negara Malaysia;
- (c) as a result of any actions, claim or demand of any third party which may arise as a consequence of any breach, negligence, omission, fraud or default of Merchant or its officers, directors, employees, personnel or agents under this Agreement
- (d) arising out of any dispute between Merchant and Customers;
- (e) as a result of any error, negligence or fraud relating to a Transaction by Merchant, Merchant's servants, agents, employees or contractors;
- (f) arising out of or in connection with any claim by any third party or any person relating to any breach (or alleged breach) of any Intellectual Properties;
- (g) as a result of Merchant's use or misuse of the EDC terminals; and/or
- (h) arising out of any damage to, or loss or destruction of the EDC terminals supplied by Cardpay to Merchant for any cause whatsoever.

25.2 To the extent permitted by any applicable laws, the liability of Cardpay for any loss arising out of or relating in any way to this Agreement, including but not limited to damages arising out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or malfunction of Services, personal injury, or property damage, shall, in the aggregate, be limited to actual, direct and general money damages in an amount not to exceed one (1) month's average charge paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of Cardpay's liability arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, wilful default, or otherwise and regardless of the form in which any legal or equitable action may be brought against Cardpay, whether in contract, tort or otherwise, and the foregoing shall constitute Cardpay's exclusive remedy.

25.3 Without prejudice to the foregoing, under no circumstances Cardpay shall be liable to the Merchant for:

- (a) any indirect or consequential losses or damages (including any indirect loss of profits, revenue, business, savings or goodwill) or exemplary or punitive damages, whether caused by breach of contract (including this Agreement), negligence, breach of any statutory duty or arising in any other way, in every case even if Cardpay has been advised of the possibility of that type of loss; and

- (b) any claim, loss, billing error, damage or expense arising out of or relating in any way to this Agreement which is not reported in writing to Cardpay by Merchant within fifteen (15) days of such failure to perform or, in the event of a billing error, within fifteen (15) days of the date of the applicable statement and Merchant expressly waives any such claim that is not brought within the time periods stated herein.

25.4 Notwithstanding the above, Merchant agrees to be fully responsible and/or shall keep Cardpay fully indemnified against all disputes, refunds, reversals, returns, or fines actions, suits proceedings, prosecutions, claims, liabilities, losses, demands, damages, charges, penalty, costs and expenses (including but not limited to legal costs on a solicitor and client basis) and/or monies which is or may be instituted, brought or claimed or made against you by any person/s or party/parties and/or which is/are or maybe incurred or suffered by you in whatsoever manner whether directly or indirectly arising from or as a result/consequence of or in relation to you disclosing or releasing the information or the said Agreements to a Third Party for whatsoever reasons at all material times.

## 26. **DISCLAIMER OF WARRANTIES**

- 26.1 Services are provided by Cardpay to Merchant on an 'as is where is' basis. Cardpay does not make any representation or warranty of any kind, whether oral or written, whether express or implied, or arising by law, custom, course of dealing, course of trade, with respect to Services.
- 26.2 Cardpay makes no representation that the defect in operation or functionality of Services, if any, will be ratified. Cardpay disclaims any and all implied warranties on conditions of title, merchantability and fitness for a particular purpose and non-infringement.
- 26.3 Services may include services which are provided by 3<sup>rd</sup> Party Service Providers and Cardpay is not responsible for any downtime or outages.

## 27. **SERVICE LEVEL**

- 27.1 Cardpay does not guarantee and is not responsible for any minimum response time in connection with the on-line authorisation of payment from a processor (the financial institution to which Cardpay will route the Transactions for authorization, clearing and settlement purposes) or availability of specific payment methods.

## 28. **FORCE MAJEURE**

- 28.1 Cardpay shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to an event of force majeure, including but not limited to including but not limited to riots, acts of god, governmental movement control order, war, terrorism, earthquake, fire, storm, flood, global or local disruption of access to the Internet, widespread or massive power outages, telecommunications service interruptions, alteration, loss or destruction of the applications, data, programs, information, network or systems through accident, fraudulent means or any other method or any other analogous event ("**Force Majeure**").

- 28.2 The performance of Cardpay's obligations under this Agreement shall be suspended for the period of delay due to the Force Majeure and nothing in this Agreement shall render Cardpay liable for loss, damages, liability or delay suffered or incurred by Merchant if such loss, damages, liability or delay is due to Force Majeure.

## 29. **CONFIDENTIALITY**

- 29.1 Merchant hereby agrees that it shall not at any time during or after termination of this Agreement, disclose any Confidential Information, whether directly or indirectly, to any other party without Cardpay's prior written consent.
- 29.2 Merchant hereby agrees to indemnify Cardpay and hold Cardpay harmless from and against any demands, action or claim brought against Cardpay by a third party as a result of the failure on the part of Merchant or its officers, directors, employees, personnel and any third parties to comply with the requirements as to confidentiality herein.
- 29.3 Merchant hereby agrees and acknowledges that the remedies at law for breach of any covenant relating to the protection of Confidential Information may be inadequate and that Cardpay shall be entitled to seek injunctive relief for any breach of the provisions of this Agreement relating to the protection of its Confidential Information.

## 30. **PERSONAL DATA**

- 30.1 Merchant agrees that it shall not perform or caused to be performed any act which violates Personal Data Protection Act 2010 (including their subsidiary legislations and guidelines) ("**PDPA 2010**") or any applicable laws of any countries of similar nature in which Merchant carries out its businesses and shall exercise a reasonable degree of skill, due diligence, prudence and foresight to comply with all principles set out herein including, registering itself with the Personal Data Protection Commissioner as data user (if applicable), having in place adequate and reasonable procedures, protection and measures and continue to keep such procedures, protections and measures in place, in order to maintain the confidentiality and prevent unauthorized use and unauthorized disclosure of any personal data which came into possession of Merchant in the course of the Transactions and that it will not make any copies of the personal data or reproduce any of it in any form.
- 30.2 Merchant must strictly comply with Cardpay's privacy notice which is available at <https://my.nttdatapay.com/privacy-notice> ("**Privacy Notice**"). The Privacy Notice shall be read and construed as an essential part of this Agreement as if it has been incorporated herein.

## 31. **ANTI-BRIBERY AND CORRUPTION**

- 31.1 Merchant shall comply with, and shall ensure that its officers, directors, employees, personnel and any third parties engaged or instructed to act for or on behalf of them ("**Relevant Persons**") are aware of and comply with all anti-bribery and corruption laws applicable to this Agreement, including but not limited to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") and the Anti-Corruption Commission Act 2009 ("**MACCA**") ("**ABC Laws**").

- 31.2 The Relevant Persons shall not take any actions or make any omissions that would cause the Parties to be in violation of any applicable ABC Laws.
- 31.3 The Relevant Persons shall not, directly or indirectly, offer, pay, promise to pay or authorise any bribe, other undue financial or other advantage or make any facilitation payment to, or receive any bribe or other undue financial or other advantage from, a public official or a private party in connection with this Agreement or any transactions undertaken for or on behalf of the Parties.
- 31.4 Merchant must also strictly comply with Cardpay's Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Policy and Anti-Bribery and Corruption Policy which is available at <https://my.nttdatapay.com/corporate-governance> ("**Anti-Bribery and Corruption Policy**") by signing a Declaration of Integrity in such form and format as provided by Cardpay. The Anti-Bribery and Corruption Policy shall be read and construed as an essential part of this Agreement as if it has been incorporated herein.

## 32. **NOTICES**

- 32.1 Notices under this Agreement may be delivered by hand, by courier, by facsimile or by email to the address, fax numbers or email address specified in this Agreement or to any other addresses, fax numbers or email addresses as may be notified in writing by one party to the other from time to time.
- 32.2 Any notice required or permitted to be given hereunder shall be in writing and shall be deemed delivered:
- (a) in the case of delivery by hand, upon written acknowledgement of receipt by an officer or other duly authorized employee, agent or representative of the receiving Party; or
  - (b) in the case of courier, three days after dispatch; or
  - (c) in the case of email or facsimile, upon completion of such transmission.

## 33. **ENTIRE AGREEMENT**

- 33.1 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the matters dealt with in this Agreement and supersedes all proposals or prior agreements, letters, correspondence and all other communication (oral or written or expressed or implied) entered into prior to this Agreement between the Parties relating to the subject matter of this Agreement and was not entered into by the Parties in reliance of any agreement, understanding, warranty or representation of any Party not expressly contained or referred to in this Agreement.

## 34. **AMENDMENTS**

- 34.1 This Agreement may be modified, added to, deleted or varied by Cardpay by way of posting on Cardpay's website or in any such other manner as Cardpay may in its absolute discretion determine which includes notification to the Merchant via e-mail to the e-mail address provided by Merchant to Cardpay. By continuing to use the Services on the effective date of the



modification, addition to, deletion or variation of this Agreement, Merchant shall be deemed to have accepted the modification, addition to, deletion or variation by Cardpay.

**35. ASSIGNMENT AND SUCCESSION IN TITLE**

- 35.1 Merchant shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Cardpay.
- 35.2 Cardpay may assign, transfer, part with or sub-contract any of its rights, responsibilities and/or obligations under this Agreement (in whole or in part) without the prior consent of the Merchant.
- 35.3 This Agreement shall be binding upon each of the Parties and their respective successors in title and permitted assigns.

**36. SEVERABILITY**

- 36.1 If any provision of this Agreement shall for any reason, be held to be illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

**37. WAIVER**

- 37.1 The failure of either Party in any one or more instances to enforce any of the items of this Agreement shall not be construed as a waiver of future enforcement of that or any other term. No single waiver shall constitute a continuing or subsequent waiver.
- 37.2 The provision of or right under this Agreement may not be waived except in writing signed by the Party granting the waiver.

**38. KNOWLEDGE AND ACQUIESCENCE**

- 38.1 Knowledge or acquiescence by any Party of, or in, any breach of any of the provisions of this Agreement will not operate as, or be deemed to be, a waiver of such provisions and, notwithstanding such knowledge or acquiescence, such Party will remain entitled to exercise its rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

**39. RIGHTS AND REMEDIES**

- 39.1 The rights and remedies provided in this Agreement are cumulative, and are not exclusive of any rights or remedies of the Parties provided at law, and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy will affect or impair any such right or remedy.

**40. TIME IS OF THE ESSENCE**



40.1 Any date or period mentioned in this Agreement shall be of the essence of this Agreement.

#### **41. RELATIONSHIP OF THE PARTIES**

41.1 Nothing in this Agreement is intended to create or record any employment, partnership, joint venture, agency or other such relationship between Merchant and Cardpay.

#### **42. COSTS**

42.1 Each Party shall be responsible for its own solicitors' costs and expenses incurred in relation to the negotiation, preparation and completion of this Agreement. The stamp duty payable on this Agreement shall be borne and paid by Merchant.

#### **43. COUNTERPARTS AND EXECUTION**

43.1 This Agreement may be executed in any number of counterparts and by all Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, will be deemed to constitute an original copy of this Agreement, but the counterparts, taken together, shall constitute one and the same instrument.

43.2 A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (in PDF or such other uneditable and secure format) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. In addition, each Party expressly agrees to the use and acceptance of electronic signatures, whether digital or encrypted, and that the electronic signature of a Party shall have the same force and effect as a manual signature.

43.3 This Agreement may be signed by way of electronic signature in accordance with the Digital Signature Act 1997 and Electronic Commerce Act 2006.

#### **44. GOVERNING LAW**

44.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia.

#### **45. DISPUTE RESOLUTION**

45.1 Any controversy or claim between the Parties shall be settled first by negotiation between the Parties' respective representatives.

45.2 In the event the Parties' respective representatives are unable to resolve the dispute within fourteen (14) days or such other period as may mutually extended by the Parties, the Parties hereby agree to refer the dispute to their respective Chief Executive Officer or Chairman or any other senior management as authorised by the respective Party herein.

- 45.3 If, after fourteen (14) days or such other period as may mutually extended by the Parties, the Parties are still unable to resolve the dispute, the parties agree to settle the dispute by arbitration in accordance with the Arbitration Rules of the Asian International Arbitration Centre (“AIAC”), by one (1) arbitrator appointed by the director of the AIAC. The seat of the arbitration shall be in Kuala Lumpur, Malaysia and the language to be used in the arbitral proceedings shall be English.
- 45.4 The decision and award of the arbitrator shall be final and binding and the award so rendered may be entered in any court having jurisdiction thereof. The arbitrator will have no authority to award punitive or other non-compensatory damages to either party. Nothing herein contained shall bar the right of either party to obtain equitable relief from a court of law or equity with regard to a claim under confidentiality information or intellectual property rights.
- 45.5 The reference of any matter, dispute or claim to an arbitrator shall in no way operate as a waiver of the obligations of the parties to perform their other respective obligations under this Agreement.

*[The rest of this page is left blank intentionally.]*

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the Effective Date.

SIGNED by )  
INSERT NAME OF AUTHORISED SIGNATORY )  
(NRIC No.: INSERT IC NO.) )  
duly authorised for and on behalf of )  
NTT DATA CARDPAY SDN BHD )  
(FORMERLY KNOWN AS GHL CARDPAY SDN BHD) )  
(Company No.: 200201019018 [586681-A]) )  
in the presence of: ) .....  
**AUTHORISED SIGNATORY**

.....  
Witness  
**Name:**  
**NRIC No.:**

SIGNED by )  
INSERT NAME OF AUTHORISED SIGNATORY )  
(NRIC No.: INSERT IC NO.) )  
duly authorised for and on behalf of )  
INSERT MERCHANT NAME )  
(Company No.: INSERT NEW NO. [INSERT OLD NO.]) )  
in the presence of: ) .....  
**AUTHORISED SIGNATORY**

.....  
Witness  
**Name:**  
**NRIC No.:**

### SCHEDULE 1

<b>Item 1</b>		
<b>Date of this Agreement</b>		
<b>Item 2 Merchant</b>		
	Company Name:	
	Company Reg. No.:	
	Tax Identification No.	
	Sales and Service Tax No.	
	E-Invoicing Notification Email Address	
	Address:	
	Contact Person:	
	Phone No.:	
	Fax No.:	
	Email Address:	
<b>Item 3 Acquirer</b>		
	Company Name:	
	Company Reg. No.:	
	Address:	
<b>Item 4 Services</b>		
	Visa & MasterCard	
	MyDebit	
	UPI Card	
	JCB	
	NETS	
	Amex	
	EPP 6	
	EPP 12	
	EPP 18	
	EPP 24	
	Diners/Discover	
	GHL Instalment HSBC	
	Alipay+	
	Boost	
	TnG e-Wallet	
	Grab Pay	

	Maybank QRPay	
	MCash	
	Setel	
	SPay Global	
	UPI QR	
	Split	
	Atome	
	ShopeePay	
	FPX – B2B	
	FPX – B2C	
	Atome	
	Grab PayLater	
	Shopback	
	Duitnow QR	
	Others, please specify: _____	
<b>Item 5 Fees and Charges</b>	One-time setup fee:	
	Monthly Maintenance Fee:	
	Monthly Terminal Rental Fee:	
	Transaction Processing fee:	
	Refund Fee:	
	Chargeback Fee:	
	Additional New Channel/ Customization:	
<b>Item 6 Merchant's Account</b>	Bank:	
	Bank Branch & Address:	
	Bank Account Holder:	
	Bank Account No.:	
	Swift Code:	
<b>Item 7 Settlement Day</b>		

Item 8 Settlement Currency	

## SCHEDULE 2

CARD ACCEPTANCE	MDR
Visa/ MasterCard Credit (Local)	
Visa/ MasterCard Debit/ Prepaid (Local)	
Visa/ MasterCard Credit (Foreign)	
Visa/ MasterCard Debit/ Prepaid (Foreign)	
MyDebit	
AMEX Card	
NETS Card	
China Union Pay Card	
UPI Card	
JCB Card	
GHL Instalment HSBC	
EPP6	
EPP12	
EPP18	
EPP24	
Diners/Discover	

E-WALLET ACCEPTANCE	MDR
Touch n' Go e-Wallet	
Boost	
MCash	
GrabPay	
Maybank QRPay	
Alipay+	
ShopeePay	
WeChat Pay (Cross border)	

UPI QR	
Setel	
SPay Global	

ONLINE BANKING	MDR
FPX – B2B	
FPX – B2C	

BNPL	MDR
Atome	
Grab PayLater	

QR PAYMENT	MDR
Shopback	
Duitnow QR	