

## **SWAN CITY PAY BUSINESS TERMS & CONDITION**

“SWAN CITY PAY” or “we” or “us” or “our” means RED DRAGON TECHNOLOGY SDN BHD (Company No. 1250780-V) Thank you for downloading the SWAN CITY PAY Application. The SWAN CITY PAY application is an application service as referred to in these Terms and Conditions. When you download the Application, you acknowledge and agree that you have read carefully, understand, accept and agree to all Terms and Conditions that will apply as an agreement between you and SWAN CITY, along with SWAN CITY partners who are members of this Application Service. PLEASE READ AND UNDERSTAND OUR TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING THE APPLICATION OR USING OUR SERVICES FOR THE FIRST TIME. The services available to you on the SWAN CITY PAY Application are very diverse, so we must include or apply additional Terms and Conditions for certain services, where these additional requirements are part of our Services and will be subject to and bound by these Terms and Conditions. We reserve the right to change, add, reduce, change, adjust and / or modify the Terms and Conditions (whether in part or in full, for that you are required to read the Terms and Conditions from the website above or through the Application from time to time).

### **DEFINITION**

1. “Agreement” means this Merchant Terms and Conditions including the Privacy Policy and the SWAN CITY PAY Merchant Application Form submitted by you or on your behalf.
2. "SWAN CITY PAY" is this application that you download so that you enter this page or these Terms and Conditions, which are currently known by the brand, name, logo and / or sign known as "SWAN CITY PAY" or brand, name, logos and / or other marks.
3. "Account" or "Your Account" means specific identification made in SWAN CITY PAY based on your registration request.
4. “SWAN CITY PAY Services” means the wallet payment solution and/or platform provided to the Merchant, which is developed by Red Dragon Technology Sdn Bhd for the purposes of enabling payment transactions by the Customers to the Merchant. SWAN CITY PAY Services shall include, but not limiting to, the collection of Customer Charges from the Customers and the remittance of Settlement to the Merchant
5. "Data" means any data, information and / or information in any form from time to time (including when you download (download the Application) you submit to Us / Service Provider or that you specify or submit in, on or through Application.
6. “SWAN CITY PAY” or “we” or “us” or “our” means RED DRAGON TECHNOLOGY SDN BHD (Company No. 1250780-V)
7. "Services" means any services, programs, services, products, features, systems, facilities and / or services provided and / or offered in or through the Application.
8. "Customer Service (SWAN CITY PAY Whatsapp/WeChat/e-mail)" is the function of the customer service centre for customers who can be contacted via text message and / or email.
9. "SWAN CITY PAY App" is an electronic system (platform) developed by Red Dragon Technology Sdn Bhd.
10. "SWAN CITY PAY users" are users of SWAN CITY PAY Application.
11. "Terms and Conditions" means these Terms and Conditions and any changes, additions, changes, adjustments and / or modifications made from time to time.
12. "Transaction" means all transactions, activities, activities and / or actions carried out in or through the Application, Account and / or Security Code including the use of the Service or certain features in the Service or Application.

## **BRIEF GUIDE**

The SWAN CITY PAY application is a software application where all the instructions you do will come from a mobile application or online.

You will be asked to authorize instructions by using different types of security information (eg Security Code, user name, password) if needed.

After authorizing, SWAN CITY PAY will carry out the instructions according to your orders, you are required to ensure that you do not share your security information with other parties.

SWAN CITY PAY ensures that the confidentiality and security of the personal information you provide is well maintained. We will use your data in accordance with applicable regulations.

You can contact us for any information through our email [info@SCPAY.com](mailto:info@SCPAY.com)

## **1. SWAN CITY PAY SERVICES**

### **1.1 SWAN CITY PAY MERCHANT**

In consideration of the mutual promises and undertakings, SWAN CITY agrees to provide SWAN CITY PAY Services to the Merchant in accordance with this Agreement from the Commencement Date.

Upon the request of a Merchant's SWAN CITY PAY wallet by the Merchant, SWAN CITY shall make available to the Merchant the SWAN CITY PAY App and upgrade its status in order to enable the Merchant to: accept payments for the Products and/or Services sold and/or provided by the Merchant by using the SWAN CITY PAY Services.

### **1.2 SWAN CITY PAY PAYMENT**

Merchant acknowledges that SWAN CITY acts as an intermediary and enables the Customers to make payment, by using the SWAN CITY PAY wallet. Customer Charges to be charged by Merchant shall be inclusive of all taxes and miscellaneous charges and shall be uniform to all Customers.

### **1.3 SWAN CITY PAY MERCHANT SETTLEMENT**

Merchant has the option to choose their settlement method. This can be access and utilise with the SWAN CITY PAY application for the merchant usage. For more information refer to **clause 2**.

### **1.4 SWAN CITY PAY MAINTENANCE**

SWAN CITY may undertake scheduled maintenance and/or emergency maintenance of the SWAN CITY PAY App from time to time and SWAN CITY will use reasonable endeavour to notify the Merchant of the same. SWAN CITY shall not be liable for any losses incurred by the Merchant arising from SWAN CITY's performance of maintenance under this **Clause 1.3**.

### **1.5 NO WARRANTIES OF MERCHANTABILITY AND FITNESS OF USE**

SWAN CITY disclaims all warranties, express or implied, written or oral, including but not limited to warranties:-

(a) of merchantability and/or fitness for a particular purpose; and

(b) that SWAN CITY PAY Service and SWAN CITY PAY Apps will be available at all times and that it would be uninterrupted and virus/malware/error free.

## **1.6 SWAN CITY PAY RIGHTS**

(a) SWAN CITY PAY reserves the right to make any alteration or changes to the Service, or any part thereof, or suspend or terminate the Service or any part thereof without prior notice and SWAN CITY PAY shall not be liable for any loss or inconvenience to you resulting therefrom.

(b) SWAN CITY PAY reserves the right at its absolute discretion, from time to time, to vary, add to or otherwise amend these Terms and Conditions.

(c) Unless otherwise notified by you, you agree that SWAN CITY PAY may send you notifications relating to promotional and marketing activities from time to time. You may opt out from receiving any promotional or marketing messages from SWAN CITY PAY by unsubscribing via email or contacting customer service.

(d) SWAN CITY PAY may extract any details or personal information or any other data from you which is required to be used as evidence in court and/or when necessary in the event of a suspected and or proven misuse of the Service.

(e) SWAN CITY PAY may run campaigns/contest or promotions in relation to the Service as may be notified to you from time to time. You agree that your participation in such campaign/contest/promotion shall be subject to the specific terms conditions of such campaign/contest/promotion.

(f) You agree that by using the Services, you are giving consent to SWAN CITY PAY that the information collected by SWAN CITY PAY from you ("Personal Information") will be used and/or disclosed in accordance to our Privacy Policy as posted on our website and Personal Data Protection Act 2010. You are advised to read our Privacy Policy to understand your rights with regards to your Personal Information.

(g) SWAN CITY PAY may request for additional information or documentation at any time and for any reason, including but not limited to confirming your identity, age and/or to confirm your bank details or debit, credit, prepaid facilities, for example, cards which you have registered with SWAN CITY PAY. You agree that you will provide such information and/or documentation promptly to SWAN CITY PAY upon request. If you do not provide such information and/or documentation promptly, SWAN CITY PAY may, without any liability to you, either limit your use of the Services or suspend or close your Account.

## **1.7 CHARGES**

(a) SWAN CITY PAY reserves the right to impose any charges, fees or subscriptions for the use of certain Services, if such Charges are required. Some Services may be chargeable as indicated on the App and in any accompanying Terms and Conditions.

(b) SWAN CITY PAY will charge a fee to SWAN CITY PAY customers depending on the nature of transaction.

(c) The Charges will be paid by deducting from your account.

(d) If any supply made under these Terms and Conditions is a taxable supply to which the applicable tax would apply, then SWAN CITY PAY reserves the right to levy the Applicable Tax at the prescribed rate and you agree to pay the amount of the Applicable Tax.

(e) In accessing and using the App and/or Services, you shall be fully responsible and liable for all charges and payment due to your communications services provider to access the App and the Services including but not limited to telephone charges and internet/data charges

(f) We are not liable for any fees raised by third parties including, but not limited to, card issuers or banks, for the usage of our Services. We reserve the right to decline acceptance of payment instruments, such as credit cards, debit cards or bank accounts, as funding methods at our sole discretion. 9

## **2. TRANSACTIONS WITH DISPUTE**

**2.1** The Merchant shall provide the Products and/or Services to the Customer only upon confirmation of the Transaction by SWAN CITY.

**2.2** SWAN CITY shall not be responsible for any Transactions that have not been confirmed by SWAN CITY.

**2.3** All disputed Transaction shall be the sole liability of the Merchant.

**2.4** SWAN CITY shall not under any obligation or responsibility to investigate any disputed Transaction.

**2.5** Where SWAN CITY is notified of any invalid or disputed Transactions, SWAN CITY will notify the Merchant of the same by email, letter or any sort of modern chat applications and where possible accompanied by an explanation of the reason for it. SWAN CITY will classify the Transaction as disputed and debit it back to Merchant.

**2.6** The Merchant agrees to investigate disputed Transactions and take all reasonable steps to resolve disputes with Customers within fourteen (14) days and follow the procedures for handling disputed Transactions which SWAN CITY advises from time to time. SWAN CITY shall have the right to suspend the processing of such Transaction or withhold the Settlement to the Merchant of the amount of such Transaction until the satisfactory completion of any investigation.

**2.7** A Transaction may be regarded as invalid by SWAN CITY if:

- (a) the Transaction was declined for any reason but the same was processed by the Merchant;
- (b) it is for any reason incomplete unlawful and unenforceable;
- (c) the Transaction found to be a duplicate transaction; or
- (d) it is not processed as per the SWAN CITY PAY's operating guide.

**2.8** The Merchant shall resolve any dispute, claims or complaints the Merchant may have received from the Customer in respect of any Transaction using SWAN CITY PAY. SWAN CITY shall not be held liable in any manner whatsoever in the event there is a dispute between the Merchant and the Customer in relation to the Transaction including but not limited to the quality of the Product and/or Services, overcharging or late delivery unless it can be reasonably shown by the Merchant that such dispute arose, directly or indirectly, from the gross negligence, fraudulent act, material default or breach, material errors and/or omissions by SWAN CITY in the provision of SWAN CITY PAY Service under this Agreement.

## **3. REFUND POLICY**

**3.1** Where the Customer made payment via the SWAN CITY PAY App and thereafter request for a refund. If the Merchant agrees to such refund:-

- (a) on the same day when the relevant Transaction took place, the Merchant shall take necessary steps to void/ cancel the Transaction through the relevant feature available on

SWAN CITY PAY App and make sure that such cancellation is relayed to SWAN CITY on the same day. The Merchant shall then be responsible for the refund to such Customer;  
(b) after the Transaction Day, the Merchant shall manually refund the Customer via cash or voucher or such other way as may be determined by SWAN CITY. For the avoidance of doubt, SWAN CITY is entitled to retain the relevant SWAN CITY PAY Service Charges and Bank Charges.

**3.2** SWAN CITY shall not be responsible in any manner whatsoever for any losses, claims, damages, costs and expenses incurred by the Customer and/or the Merchant arising from the Refund.

**3.3** SWAN CITY shall not be responsible for any abuse or misuse of the “void/cancel” function made available to the Merchant on SWAN CITY PAY App. The Merchant shall keep SWAN CITY fully indemnified from all liability, losses, damages, cost and expense incurred by SWAN CITY arising out of or in connection with the misuse of the same.

#### **4. PROMOTIONAL CAMPAIGN**

**4.1** SWAN CITY may initiate Promotional Campaigns from time to time which are to be taken part by the Merchants. The payment terms under these Campaigns shall be agreed by the Parties from time to time. SWAN CITY reserves the right to charge back should SWAN CITY is of the opinion that SWAN CITY has overpaid the Merchant for any reason whatsoever.

#### **5. LIABILITY EXCLUSION**

**5.1** Otherwise as expressly stated in this Agreement, in no event shall either Party be liable to the other Party or any other third party for loss of profits, loss of business, exemplary, incidental, indirect, special, punitive or consequential damages of any kind arising out of this Agreement.

**5.2** SWAN CITY shall not be liable to the Merchant in contract, tort or otherwise howsoever arising out of or in connection with this Agreement save and except for the Settlement which is due and payable to the Merchant in accordance with this Agreement.

**5.3** No terms or condition of this Agreement shall benefit or create any right or cause of action in or on behalf of any person or entity other than SWAN CITY and the Merchant. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense or losses whether in contract, statute, tort (including, without limitation, negligence), or otherwise.

#### **6. MERCHANT VIOLATION GUIDE**

**6.1** The Merchant shall not engage in any of the following behaviour:

- (a) attempts to tamper, hack, reverse-engineer, modify or otherwise corrupt the security or functionality of SWAN CITY’s platform or the SWAN CITY PAY App;
- (b) using the SWAN CITY PAY Service for money laundering activities;

(c) using the SWAN CITY PAY Service for any unlawful, illegal and/or immoral activities and/or purposes.

(d) manipulate or exploit SWAN CITY's promotional campaigns/ activities or other SWAN CITY PAY Services/ SWAN CITY PAY App in anyway which SWAN CITY PAY may deem as improper, irregular or dishonest.

(e) manipulate or intentionally overcharge SWAN CITY PAY users from the actual price of the product or services provided.

## **7. ADVERTISING AND PROMOTION**

**7.1** The Merchant shall honour all the promotional/advertising schemes which may be introduced by SWAN CITY.

**7.2** Unless otherwise expressly specified by SWAN CITY in writing, the Merchant shall procure all marketing and promotional materials directly from SWAN CITY.

**7.3** In the event the Merchant decides to produce its own materials in promoting SWAN CITY PAY Services, all uses of SWAN CITY's Intellectual Property Rights, including without limitation its logo and brand name shall be subject to SWAN CITY's written approval. The Merchant shall send copies of all materials which contain uses of SWAN CITY's Intellectual Property Rights to SWAN CITY in advance of their use at the e-mail address indicated in this Agreement.

**7.4** Upon SWAN CITY's request, the Merchant shall display prominently at its premises, SWAN CITY's brochures and/or other publicity material provided to it by SWAN CITY.

**7.5** SWAN CITY or its agents shall at all reasonable times have the right to entry and inspect the retail outlet or trading premises of the Merchant (if applicable).

**7.6** The Merchant shall participate in initiatives that SWAN CITY may announce from time to time, such as new customer acquisition activities including those assisted by a promoter funded by SWAN CITY, in customer promotional campaigns, in Merchant-get-Merchant campaign and other forms of Merchant loyalty programs etc.

**7.7** The Merchant hereby agrees that SWAN CITY may from time to time, display the Merchant's logo, branding (including any marks and/or images available on public domains) on its platform without further approval from the Merchant and the Merchant shall indemnify SWAN CITY against all actions, proceedings, costs, claims, demands, loss, damages, liabilities and expenses howsoever incurred, suffered, paid or payable by SWAN CITY in anyway arising from such usage.

## **8. MERCHANT AGREEMENT AND WARRANTIES**

**8.1** Merchant hereby agrees, represents and warrants that:

(a) it has the full authority and power to enter into, execute and deliver this Agreement and to carry out and perform the services contemplated under this Agreement;

(b) the execution by Merchant of this Agreement constitutes legal, valid and binding obligations on the Merchant;

- (c) the execution, delivery and performance of this Agreement will not violate any order, judgment or decree against or binding upon Merchant;
- (d) it shall comply with all applicable consumer, personal data protection and other laws and regulations with respect to:
- (i) its use of SWAN CITY PAY Service;
  - (ii) its dealings with the Customers; and
  - (iii) its processing, use and disclosure of the Customers' data;
- (e) it shall ensure the safety and confidentiality of its login name and password and shall keep SWAN CITY fully indemnified from all liability, losses, damages, cost and expense incurred by SWAN CITY arising out of or in connection with the misuse of the same. The Merchant shall immediately notify SWAN CITY upon learning of any unauthorized use of its login name and/or password;
- (f) it shall observe the guidelines, procedure or such other updates as provided by SWAN CITY from time to time during the term of this Agreement;
- (g) it shall install any updates, fixes and patches whenever they are made available or notified of its availability by SWAN CITY;
- (h) it has the full right and/or authority to offer the applicable Products and/or Services and shall at its own cost obtain and maintain the necessary licenses and approvals from the government or any regulatory body for the provision of such Products and/or Services and performance of its obligations under this Agreement;
- (i) it shall at all times, display the logo and other such trademarks of SWAN CITY that may be mutually agreed at the retail outlet or trading platform of the Merchant;
- (j) it shall provide SWAN CITY the information as required by SWAN CITY at the time it desires to become the Merchant of SWAN CITY;
- (k) the products and services as detailed as "**Prohibited Items**" and such other prohibited items which SWAN CITY may notify from time to time shall not be sold by the Merchant;
- (l) it shall be solely responsible for all Customer service issues relating to the Transaction, Products and Services sold by the Merchant, including but not limited to Customer Charge, order fulfilment, order returns, refunds, exchanges and adjustments, rebates, functionality and warranty, technical support, customer complaints and feedback concerning experiences with its personnel, policies or processes and the Merchant shall bear any and all expenses and/or costs relating thereto;
- (m) it shall not conduct any unlawful or illegal transactions using SWAN CITY PAY Services;
- (n) it shall immediately report to SWAN CITY upon the discovery of any fraud, theft, loss, unauthorized usage or any other occurrence of unlawful or illegal acts in relation SWAN CITY PAY Service, SWAN CITY PAY Business App/ SWAN CITY PAY Customer App and/or their respective use. The Merchant agrees to lodge a police report whenever instructed by SWAN CITY and to give SWAN CITY a certified copy of such report;
- (o) it shall cooperate with SWAN CITY and provide all Transaction related details required by any government or regulatory body;
- (p) other than the equipment and terminals provided by SWAN CITY, it shall be responsible for all other equipment (including upgrades and modifications required) necessary to use the SWAN CITY PAY Service and SWAN CITY PAY Business Apps and to carry out the Transactions, and also for the security and integrity of all information and data transmitted, disclosed and/or obtained through the use of the SWAN CITY PAY Service and/or SWAN CITY PAY Business Apps; it shall not:
- (i) discriminate the SWAN CITY PAY Business App against other modes of payment;

- (ii) discriminate Customers seeking to make payment using the SWAN CITY PAY Customer Apps against Customers using other modes of payment; and
- (iii) impose any restrictions and/or conditions on the use of SWAN CITY PAY Customer/Business App as a mode of payment other than that approved or prescribed by SWAN CITY;
- (q) it shall not charge the Customer any additional fee or charges in addition to the Customer Charges other than goods and service tax imposed by law;
- (r) it shall keep proper account and correct copies of all documents/records relating to the Transactions and SWAN CITY shall be allowed at any reasonable time to inspect or take copies of all such documents and shall preserve such documents and records for a period of at least two years from the transaction date;
- (s) it shall not use the SWAN CITY PAY Service and/or SWAN CITY PAY Business App in any manner and/or engage in any activities which is prejudicial to SWAN CITY and/or in any manner which would bring disrepute to SWAN CITY, all of which shall be determined based on SWAN CITY's opinion;
- (t) it shall ensure that the account registered by the Merchant on SWAN CITY PAY Business App remains personal to itself and it shall not register an account on behalf of any third party or in anyway transfer/assign the account to any third party without SWAN CITY's prior written consent;
- (u) it shall be solely responsible for the outlets and staffs' SWAN CITY PAY Business App account management and SWAN CITY shall not be responsible for any consequences arising from the abuse or misuse of the QR codes; and
- (v) it shall not use the SWAN CITY PAY Services and/or SWAN CITY PAY Business App in any manner dishonestly or in bad faith or with malicious intent, in SWAN CITY's opinion.

## **9. PRIVATE AND CONFIDENTIALITY**

**9.1** All Confidential Information disclosed or communicated by SWAN CITY to the Merchant or obtained by the Merchant from SWAN CITY in connection with this Agreement including but not limited to the business and operations of SWAN CITY and the terms of this Agreement shall be treated as Confidential Information unless the information:-

- (a) is or becomes publicly available through no fault of the Merchant;
- (b) which the Merchant can prove was in its possession or known to it prior to its receipt from SWAN CITY;
- (c) is or was rightfully received by the Merchant from a third party without a duty of confidentiality being owed by the Merchant to the third party, except where the Merchant has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to SWAN CITY; or
- (d) was independently developed by the Merchant without the use of the Confidential Information.

**9.2** The Confidential Information shall be held in strict confidence by the Merchant, using no lesser security measures and degree of care as it uses to protect its own Confidential Information. In any event, the security measures and the degree of care it uses shall, as a minimum, comply with the standards imposed by the applicable laws including the Personal Data Protection Act 2010. The Merchant shall further ensure that the Confidential Information is secured from unauthorised access from internal and external parties and that

all Confidential Information used, stored and/or processed shall be free from virus, malware or other malicious codes.

**9.3** The Confidential Information shall only be used, copied, reproduced, distributed or disclosed by the Merchant strictly for the purposes contemplated under this Agreement only. The Confidential Information may, however, be disclosed:

(a) to its employees or its legal and financial advisers strictly on a need to know basis to implement or perform this Agreement only provided its employees and advisers are subject to and maintain the confidentiality obligation under this Agreement and the Merchant shall indemnify SWAN CITY for any damages, losses, cost and expenses suffered or incurred by SWAN CITY arising out of or in connection with any breaches thereof by its employees and advisers; and/or

(b) if its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings.

**9.4** Where the Merchant is required to disclose any Confidential Information pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings, the Merchant:

(a) shall where practicable and lawful give twenty four (24) hours' notice to SWAN CITY that it is required to disclose the Confidential Information so that SWAN CITY has an opportunity to protect the confidentiality of its Confidential Information; and

(b) provides SWAN CITY with a copy of the Confidential Information that the Merchant is to disclose.

**9.5** Upon the expiry or termination of this Agreement, the Merchant shall promptly return to SWAN CITY or, where instructed, destroy Confidential Information of SWAN CITY and immediately cease using all Confidential Information. Where required by SWAN CITY, the Merchant shall provide to SWAN CITY a written undertaking confirming that it has fully complied with the requirements of this **Clause 9.5** and that it is not in possession or control of any of SWAN CITY's Confidential Information.

**9.6** The Merchant shall ensure that each of its personnel strictly complies with the obligations under this **Clause 9**

**9.7** All ownership and Intellectual Property Rights in SWAN CITY's Confidential Information shall remain vested in SWAN CITY.

**9.8** The Parties therefore agree that the SWAN CITY shall be entitled to obtain injunctive relief, or any other restraining or any other appropriate order against the Merchant in the event of any threat or disclosure of Confidential Information.

**9.9** The obligations of the Merchant in this **Clause 10** shall survive for a period of five (5) years after the termination or expiry of this Agreement.

## **10. SUSPENSION OF MERCHANT'S ACCOUNT**

**10.1** SWAN CITY shall be entitled, without any liability to the Merchant, to immediately suspend the SWAN CITY PAY Service (including withholding any Settlement to the Merchant) by written notice to the Merchant if, in the sole and absolute opinion of SWAN CITY that:

- (a) the Merchant has breached any warranty, terms and conditions of this Agreement; and
- (b) any of the events stipulated in **Clause 11.1(b)(i) to (iv)** and/or in **Clause 11.1(c)** occurs to or is committed by the Merchant.

**10.2** The issuance of such suspension notice shall not in any way prejudice or prevent SWAN CITY from exercising its rights to terminate this Agreement under **Clause 12** with respect to the same breach and/or event.

## **11. TERMINATION**

**11.1** Without prejudice to any other rights of the Parties under this Agreement or at law, this Agreement may be terminated:

- (a) immediately by either Party without any liability whatsoever to SWAN CITY where:
  - (i) the provision of the SWAN CITY PAY Services or any part thereof shall become unlawful under any laws or
  - (ii) SWAN CITY's license and/or approval under the relevant legislation which is necessary to provide the SWAN CITY PAY Service is suspended, revoked or terminated and another license of that type is not immediately granted or issued to SWAN CITY; or
- (b) by a Party by giving written notice where:
  - (i) the other Party is in material breach of any warranty, terms and conditions of this Agreement and such breach is incapable of being remedied or where capable of remedy, is not remedied within thirty (30) days of receipt of notice in writing by the non defaulting Party specifying the nature of the breach;
  - (ii) an order is made or an effective resolution is passed for the reconstruction, amalgamation of the other Party under Sections 366 – 368 the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution is not withdrawn, revoked or annulled within a period of ninety (90) days from the date of the order or resolution;
  - (iii) an order is made or an effective resolution is passed for winding up or dissolution of the other Party and the order or resolution is not withdrawn, revoked or annulled within a period of ninety (90) days from the date of the order or resolution;
  - (iv) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the other Party and such appointment is not withdrawn, revoked or annulled within a period of ninety (90) days from the date of such appointment;
  - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the other Party and such action is not withdrawn, invalidated or reversed within a period of ninety (90) days from the date of such appointment; or
  - (vi) the other Party ceases its business; or
- (c) by SWAN CITY by giving written notice where:
  - (i) the Merchant is unable to justify the occurrence of a downtime and not being able to resolve the problem within reasonable timeline stipulated by SWAN CITY;

- (ii) there is a change in the management, constitution, nature or control of the Merchant's business from that existing on the date of this Agreement; or
- (iii) the Merchant is in breach of any acts, statutes, laws, by-laws, rules and/or regulations imposed by any party, regulatory body, or government agency.

**11.2** Notwithstanding anything to the contrary, SWAN CITY may terminate this Agreement, without any liability whatsoever to the Merchant, and without assigning any reason whatsoever, by giving thirty (30) days written notice to the Merchant.

**11.3** 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.

**11.4** On termination or expiry of this Agreement by either Party for any reason:

(a) All amounts accrued and payable shall become immediately due and payable. SWAN CITY shall remit all monies in the Merchant's SWAN CITY PAY wallet less any monies, damages, cost and expenses due to SWAN CITY to Merchant's Designated Bank Account.

(b) The Merchant shall forthwith return to the SWAN CITY such equipment, originals and any copy of any software, books, documents, records, papers and materials of SWAN CITY in its possession.

(c) The Merchant shall immediately cease holding itself out as a Merchant to SWAN CITY and shall immediately cease using the SWAN CITY PAY Service, SWAN CITY's IPR and remove all signs, names, insignia, advertisements and/or any other material which identifies it as part of the network of SWAN CITY and shall return to SWAN CITY all literature and other material relating to SWAN CITY in its possession.

## **12. CHANGES IN SERVICES AND TERMS**

**12.1** With respect to any other changes to the Agreement, the Merchant agrees that SWAN CITY may revise, modify and/or change the same with prior written notice to the Merchant. Any such revision, modification or change will be binding and effective either, at SWAN CITY's sole discretion;

(a) immediately upon posting of the revised Agreement on the SWAN CITY PAY's website or upon electronic or written notification to the Merchant, where such revision or change is to comply with legal or regulatory requirements; or

(b) twenty one (21) days after posting of the revised Agreement on the SWAN CITY PAY's Website, or upon electronic or written notification to the Merchant, in other cases.

**12.2** The Merchant agrees to periodically review the SWAN CITY PAY's Website, including the current version of this Agreement available on the SWAN CITY PAY's Website, to be aware of any such revisions.

**12.3** If the Merchant does not agree with any revision to the Agreement, the Merchant may terminate this Agreement at any time by providing SWAN CITY with notice in writing.

**12.4** Such notice of termination will be effective on receipt and processing by SWAN CITY.

**12.5** Except as otherwise provided in this Agreement, in the event the Merchant terminates this Agreement, any fees paid by the Merchant are non-refundable.

**12.6** By continuing to use SWAN CITY PAY Services after any revision to this Agreement, the Merchant agrees to abide by and be bound by any such revisions or changes.

**12.7** SWAN CITY is not bound by nor should the Merchant rely on:

(a) any representation by any agent, representative or employee of any third party that you may use to apply for SWAN CITY PAY Services; or

(b) information posted on SWAN CITY PAY's Website of a general informational nature.

### **13. FORCE MAJEURE**

**13.1** Neither Party shall be liable for any cost or otherwise, for any delay and/or failure in the execution of their respective obligations if such delay or failure is due to Force Majeure.

**13.2** Force Majeure shall mean any factors or impediment that are beyond the Party's reasonable control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Agreement or to have avoided its consequences including but not limited to war, revolution, insurrection, riots, blockage or embargo, emergency, accident, fire, earthquake, flood, storm, industrial strikes, lockouts or other labour disputes not instigated or caused by the affected Party for the purposes of avoiding its obligations herein, pandemics and viral outbreak. Provided that an event of Force Majeure shall not include economic downturn, non-availability or insufficient funds, or lack of financing on the part of the affected Party to carry out its obligations under this Agreement.

**13.3** If either Party is prevented or delayed in the performance of any obligation under this Agreement by events of Force Majeure, the affected Party shall give written notice thereof to the other Party within seven (7) days of the happening of such event, specifying the details constituting Force Majeure and the anticipated period during which such prevention, interruption or delay may continue.

**13.4** Where possible the Parties shall diligently mitigate or remove the effects of Force Majeure. Either Party upon receipt of the notice of Force Majeure shall confer promptly with the other and agree upon a course of action to remove or alleviate such effect and shall seek reasonable methods of resuming full performance of its obligations and achieving the objectives under this Agreement.

### **14. DISPUTE RESOLUTION**

**14.1** In the event that there is any dispute or claim arising out of or in connection with this Agreement or the interpretation of this Agreement, either party may issue a written notice to the other Party stating the nature of the Dispute and requesting that the authorised representatives of each Party resolve the Dispute. If the authorised representatives of the Parties are not able to resolve the Dispute after a period of thirty (30) days from the date the Dispute Notice or such other extended period as may be mutually agreed between the Parties, then the Parties will attempt to settle the Dispute by mediation which shall take place in

accordance with the Kuala Lumpur Regional Centre for Arbitration Mediation Rules for the time being in force. The mediation shall start not later than thirty (30) days after the appointment of the mediator. Provided that the right to issue proceedings is not prejudiced by a delay, no Party shall commence arbitration or court proceedings in relation to any Dispute until the following:

(a) it has attempted to settle the Dispute by mediation and no settlement is reached within sixty (60) days after the commencement of the mediation or such other extended period as may be agreed by the Parties; or

(b) the mediation is terminated or brought to an end without the Parties reaching a settlement on the Dispute.

Where mediation is not successful, then either Party may refer the Dispute to arbitration in accordance with the rules of the Arbitration Act 2005 for the time being in force.

**14.2** There shall be a single arbitrator to be mutually agreed in writing by the Parties and if the Parties fail to agree within thirty (30) days from the date the Dispute is referred to arbitration, the arbitrator shall be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration

**14.3** A Party shall not be prevented from seeking or obtaining an enjoining order, interim order or interim relief in the court prior to the arbitral tribunal being instituted.

**14.4** Recognition and enforcement of the arbitration award may be rendered in any court of competent jurisdiction, as the case may be.

**14.5** The Parties agree that the arbitration award shall be final and binding on the Parties.

**14.6** To the fullest extent permitted by law, each of the Parties hereby expressly waive any right under any relevant laws and regulations, decrees or policies having force of law that would otherwise give a right to appeal against the decision of the arbitral tribunal, and the Parties agree that no Party shall appeal to any court against the award or decision contained therein.

**14.7** No Party or person involved in any way in the creation, coordination or operation of the arbitration of any Dispute may disclose the existence, content or results of the Dispute or any arbitration conducted under this Agreement in relation to that Dispute unless the same is required by law or rules of any stock exchange.

**14.8** Notwithstanding the provision of this **Clause 14**, a Party may pursue remedies for breach of confidentiality under **Clause 9** and/or with respect to its Intellectual Property Rights in the courts.

#### **PROHIBITED ITEMS**

1. Adult goods and services which includes pornography and other sexually suggestive materials (including literature, imagery and other media); escort or prostitution services;
2. Body parts which includes organs or other body parts;
3. Child pornography which includes pornographic materials involving minors;

4. Copyright unlocking devices which includes Mod chips or other devices designed to circumvent copyright protection;
5. Drugs and drug paraphernalia which includes illegal drugs and drug accessories, including herbal drugs like salvia and magic mushrooms;
6. Drug test circumvention aids which includes drug cleansing shakes, urine test additives, and related items;
7. Hacking and cracking materials which includes manuals, how-to guides, information, or equipment enabling illegal access to software, servers, websites, or other protected property;
8. Illegal goods, which includes materials, products, or information promoting illegal goods or enabling illegal acts;
9. Offensive goods, which includes literature, products or other materials that: (a) Defame or slander any person or groups of people based on race, ethnicity, national origin, religion, sex, or other factors (b) Encourage or incite violent acts (c) Promote intolerance or hatred;
10. Offensive goods, crime that includes crime scene photos or items, such as personal belongings, associated with criminals;
11. Weapons which includes firearms, ammunition, knives, brass knuckles, gun parts, and other armaments;
12. Any product or service, which is not in compliance with all applicable laws and regulations

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#### **OTHER PROVISIONS**

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