

## **Welcome to this Website**

We set out below the terms and conditions of your use of, and access to, our products and/or services. Please read these terms and conditions carefully, as they impose rules, obligations and other responsibilities on you in respect of your use of MOBYPAY.

## **Parties to this Agreement**

This Terms of Service ("**this Agreement**") is a contract between you ("you", "your", "Customer") and Moby Money Sdn Bhd ("**Moby Money**", "we", "us", "our").

In this Agreement Moby Money and the Customer may also be referred to herein as a "**Party**" and collectively as the "**Parties**".

## **WHEREAS:-**

- A. You intend to utilise Moby Money's services;
- B. This Agreement sets out the terms and conditions of use of Moby Money's services and/or solution which shall hereinafter be known as **MOBYPAY**;
- C. MOBYPAY is a technology or solution that enables you to place an Order to purchase the goods and/or services from the Merchant.;
- D. At any time before you register yourself with Moby Money for the use of MOBYPAY, you are advised to read through this Agreement as well as Moby Money's Privacy Policy which is incorporated by reference into this Agreement in detail;
- E. By clicking "I Accept" and/or by signing this Agreement, you confirm that you have read the terms and conditions of this Agreement and that you understand them and you agree to be bound by them. Your ongoing use of MOBYPAY shall constitute your acceptance of this Agreement without limitation and qualification.
- F. If you do not wish to be bound by this Agreement, you must discontinue all access to this website and/or you must not make any purchase from Moby Money's authorised Merchants vide MOBYPAY.
- G. The Payment Schedule annexed herein shall constitute, and be construed as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

- H. You should print a copy of this Agreement, Payment Schedule and our Privacy Policy for your records.
- I. For the avoidance of doubt, this Agreement and MOBYPAY constitutes a factoring agreement and shall not constitute a lending or credit facility whereby Moby Money provides credit to you.

## **NOW IT IS HEREBY AGREED:-**

### **DEFINITIONS**

Terms defined elsewhere in this Agreement shall have the meanings respectively assigned to them and the followings shall have the meanings assigned to them hereunder namely:

**Account** means a MOBYPAY Account that is created to uniquely identify you and to enable you to use MOBYPAY.

**Affiliate or Affiliates** are companies that are direct or indirect subsidiaries of Moby Money, or are otherwise related to MOBYPAY or Moby Money through common ownership or control.

**Agreement** means this Terms of Service and the Payment Schedule annexed herein, together with any policies and documents incorporated by reference.

**Contractor** means anyone appointed by Moby Money to carry out work on our behalf.

**Credit Checks** means the credit checks carried out by us on you, either itself or through a third party.

**Deferred Payables** means the repayment of the Order Value which shall be made by you to Moby Money in accordance with MOBYPAY's instalment feature.

**Government Authority** means the Government of Malaysia and any other government (including quasi government) ministry, agency, institution, local authority or department having jurisdiction over the Parties and/or the subject matter herein.

**Information** means any confidential and/or personally identifiable information or other information related to an Account, Merchant or Customer, including but not limited to the following: name, email address, date of birth, tax identification number, billing/shipping address, phone number and financial information.

**Instalment Payment** means each instalment of the Deferred Payables, which shall be payable by you to Moby Money in accordance with MOBYPAY's instalment feature, until the Deferred Payables is fully repaid.

**Intellectual Property Rights** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

**Administrative Fees** mean the additional fees imposed by us as set out in this Agreement or the Payment Schedule.

**Merchant** means E-Commerce merchants and/or offline retailers who has a merchant agreement with Moby Money and whose goods and/or services may be purchased by you via MOBYPAY.

**MOBYPAY** is a payment system which allows you to make an Order from the Merchant and to pay for the goods and/or services purchased on a deferred basis such that you shall only be obliged to pay the Deferred Payables to Moby Money on a later date in accordance with the terms and conditions laid down herein.

**Order** means a request submitted by you to the Merchant vide MOBYPAY to pay for goods and/or services offered by a Merchant.

**Order Value** means the purchase price you are required to pay to the Merchant for the purchase of the goods and/or services, which shall first be paid by Moby Money to the Merchant on behalf of you.

**Payment Method** means any payment method accepted by from time to time to pay a transaction.

**Payment Schedule** means, in relation to an Order, a list of Instalment Payment amounts that Moby Money is entitled to receive from you, and the relevant due dates of each payment.

**Upfront Fee** means any initial payment made by you for the Order which may or may not be part of the Payment Instalment based on the Payment Schedule annexed herein.

## **DESCRIPTION OF MOBYPAY**

By accepting the terms and conditions of this Agreement, Moby Money allows you to purchase goods and/or services offered by the Merchant through MOBYPAY.

You are granted access to MOBYPAY which allows you to make an Order from the Merchant to purchase goods and/or services at the Order Value. By placing an Order with a Merchant via MOBYPAY and upon confirmation of the Merchant and/or approval from Moby Money, you hereby acknowledge and agree to provide unconditional and irrevocable consent that the Order Value is assigned to Moby Money and provide a direction to pay (or procure Moby Money's Affiliate to pay) the Order Value to Moby Money to the Merchant on behalf of you vide MOBYPAY.

Upon payment of the Order Value by Moby Money to the Merchant, you shall make payment of the Deferred Payables to Moby Money on a deferred basis, via MOBYPAY's instalment feature and in accordance with this Agreement, wherein the Instalment Payments may include but are not limited to:

- (a) the processing fee;
- (b) any applicable taxes, duties and/or
- (c) any other related amounts charged by the Merchant and on the dates specified in your Payment Schedule.

You hereby acknowledge that Moby Money shall not in any event have any form of control over, and shall not be responsible and liable for the goods and/or services purchased by you from the Merchant by using MOBYPAY.

#### **MOBYPAY INSTALMENT FEATURE**

MOBYPAY's instalment feature allows you to pay Moby Money your Deferred Payables for up to three (3) instalments without interest payable on the dates specified in your Payment Schedule as annexed herein. In some cases however, you may be required to make payment at the time of purchase.

##### Annexure 1

Transaction Amount RM375.00 on 23.03.2021		
Installment Date	Installment No	Installment Amount
23.03.2021	1	125.00
23.04.2021	2	125.00
23.05.2021	3	125.00

Moby Money shall collect the Instalment Payment (including taxes and/or any related charges imposed by the Government or the Merchant) by Direct Debit/charging your selected Payment Method according to the Payment Schedule annexed herein.

#### **MOBYPAY ACCOUNT**

You are requested to register your MOBYPAY Account with Moby Money in any of the following manner:

- (a) by visiting and following the process as set forth in Moby Money's website at <https://www.mobypay.my> ("**the said Website**"); or
- (b) you may be automatically directed to the registration page upon typing MOBYPAY; or
- (c) when you place your first Order with any of the Merchants.

Once your Account has been created, you will be prompted to choose and to enter a secure password. You may subsequently access your Account, by using your secure password, through the said Website.

You shall be responsible for maintaining the security of your Account details. Moby Money shall not be liable or responsible for any unauthorised access and/or use of your Account unless Moby Money has failed to take reasonable steps to prevent such unauthorised access and/or use, or such unauthorised access and/or use arises as a direct result of any negligence, fraud or wilful default on the part of Moby Money.

You shall contact Moby Money as soon as you notice any unauthorised access and/or use of your Account. Moby Money shall not seek to recover any repayments from you should Moby Money consider that there has been an unauthorised access and/or use of your Account.

Notwithstanding the abovesaid, you shall be deemed responsible and held accountable for any repayments due in the event that you:

- have used your Account fraudulently (including where you have knowingly allowed a third party to use your Account fraudulently);
- have been grossly negligent and/or reckless, thereby enabling a third party to access and to use your Account;
- have allowed, whether knowingly or negligently, a third party to use your Account, including where a third party has been allowed to access a mobile phone or other device(s) in which your Account has been registered.

By holding an Account with Moby Money, you hereby agree that you shall:

- Not provide Moby Money with any information that is false, inaccurate and/or misleading;
- Ensure that any information about you, including your contact details, is true, current and complete. In the event of any change of information, you shall update such information through your Account vide our Website;
- Not use your Account or MOBYPAY for any unlawful, illegal, fraudulent or improper activity;
- Grant full cooperation to Moby Money to investigate any suspected unlawful, illegal, fraudulent or improper activity on your Account;
- Not permit others to use your Account, or to have or use your Account password details;

- Not use any form of technology, including but not limited to any form of device, software or hardware to damage, intercept and/or interfere with MOBYPAY; and
- Not open and/or use more than one Account.

## **ELIGIBILITY / ASSESSMENT / CHECKS**

You must be 18 years and above, a Malaysian citizen with a valid local and/or residential mailing address and capable of entering into a legally binding contract before you are eligible to register and apply for MOBYPAY.

You are also required to provide Moby Money with a valid and verifiable email address and a Malaysian telephone number, in which you can be contacted and/or reached as well as a valid mailing address.

Your registration and/or application for the utilisation of MOBYPAY is subject to approval at the sole discretion of Moby Money and a credit check in relation to you shall be conducted before your registration and/or application is approved.

You must have an acceptable credit record, as determined by Moby Money at the sole discretion of Moby Money.

You agree to provide any necessary information and/or documentation reasonably required by Moby Money, among others, to verify your identity during the registration, to assist with Moby Money's determination of your credit record and/or in connection with your purchase.

Please note that at any time before or during subsistence of your contractual agreement with Moby Money, Moby Money reserves the right to conduct and/or arrange a third party or their service provider to conduct a background check on you covering areas including but not limited to criminal records, references, credit checks and relevant publicly available records including financial regulatory checks, anti-money laundering or counter-terrorism funding laws.

You hereby agree that Moby Money may run a credit check through a third-party background screening company or their service provider to assess your capability to make Instalment Payment to Moby Money.

Moby Money shall be further authorised to make, either directly or through a third-party, any enquiries Moby Money considers necessary to verify your identity and to assess your capability to make payments according to the Payment Schedule annexed herein in relation to all your Orders. This may include but is not limited to ordering a credit report, accessing your Employees Provident Fund (EPF) I-Account, performing other repayment capability checks and verifying information you provide against third party databases.

As part of the approval process and Moby Money's assessment as to whether or not you have the means to fulfil your obligation according to the Payment Schedule

annexed herein, Moby Money hereby reserves the right to conduct a pre-authorization of your nominated Payment Method. This may involve placing funds in the account linked to your nominated Payment Method on hold each time you make an online purchase, obtain a barcode for an in-store purchase and/or add a new card to your Account.

Moby Money agrees not to share, disclose and/or transfer your credit record with a third party or their service provider except for the fulfilment of the above purposes and for the performance of this Agreement.

Your credit report shall only be disclosed and/or transferred to the following third parties who may be located within or outside Malaysia, namely:

- Moby Money's Affiliates;
- service providers or third parties, for legitimate business reasons; and/or
- Any person or entity as required by legal or regulatory requirements.

Moby Money shall not retain your credit report longer than necessary in the event that your Application is rejected. Notwithstanding the aforesaid, you hereby agree that your credit report may be retained by Moby Money for a period of up to 18 months after issuance to enable Moby Money to re-determine your eligibility to MOBYPAY.

All information that Moby Money collects about you in relation to this Agreement, shall only be collected, processed, used and stored in accordance with Moby Money's Privacy Policy.

Please refer to Moby Money's Privacy Policy which can be found at <https://www.mobypay.my/> for further information on the purpose and extent of data collection and processing by Moby Money.

## **PAYMENT METHOD**

You must be the authorised holder of an eligible Savings/Current Account/Credit Card which shall be used as your Payment Method to gain access to MOBYPAY upon registration.

It is your sole responsibility to ensure that you have sufficient funds *vide* your Payment Method to make Instalment Payments on the dates specified in the Payment Schedule annexed herein.

You are allowed to make repayments to Moby Money at any time before the due date, failing which Moby Money shall automatically process Instalment Payments on the scheduled dates from your card.

## **REPAYMENTS**

You shall pay the Instalment Payments and all other amounts required to be paid by you under this Agreement to Moby Money on or before the specified due dates.

You acknowledge that all such payments shall be effected through the agreed Payment Method referred to in this Agreement.

Subject to this Agreement as well as the Payment Schedule annexed herein, you hereby expressly authorize Moby Money to automatically deduct the Instalment Payments on the specified due dates from the Savings/Current account nominated by you as your Payment Method.

You may, at any time, update or change the details of your nominated Savings/Current account in your Account.

You shall ensure that you have sufficient funds available on the nominated Savings/Current account in order to make the Instalment Payments.

You shall be held liable and accountable for any fees and/or charges imposed by your account provider except to the extent that they are imposed as a result of Moby Money's error or system failure.

In the event that the automatic payment process fails at any time and for any reason whatsoever (for example because of insufficient balance in your Savings/Current account), such failure shall automatically amount to a default in repayment as defined in this Agreement.

You hereby acknowledge that you authorise Moby Money to collect or to reverse variable payment amounts to or from your nominated Payment Method, in accordance with your Payment Schedule annexed herein and the terms of this Agreement.

You hereby further authorise Moby Money to debit from your Savings/Current account at a later date or time to satisfy any liability due and owing to Moby Money.

## **DEFAULT IN REPAYMENT**

In the event that you fail to make any Instalment Payment(s) on or before the specified due dates and your account is in default, Moby Money shall have the right to do the following as described herein: -

- Moby Money may suspend your MOBYPAY account with immediate effect without any prior notice being given to you;
- Moby Money may grant a period of seven (7) days to you to regularise your MOBYPAY account; and/or if no payment is received within twenty-one (21)



days from the specified due dates as specified in the Payment Schedule annexed herein, your account may be terminated

In the event of termination or annulment of this Agreement, take note that Moby Money may commence legal proceedings without further reference to you in order to recover the balance of the outstanding Instalment Payment or any part thereof and any other fees from you.

In the event of default in repayment of any Instalment Payment(s) or any part thereof to Moby Money under this Agreement, Moby Money shall be entitled to charge late payment charge on such unpaid instalment(s) or any part thereof until full payment has been received. The late payment charges are as per the table below:-

Late Pmt Charges	
Transaction Value	
1-500	15.00
501-1000	25.00
1001-2000	35.00
2001-5000	50.00
5001-10000	75.00
10001and above	100.00

Moby Money may, at their sole discretion, impose or waive wholly or partly, any late payment charge on you for any default in repayment.

#### **ORDER CONFIRMATION/CANCELLATION OF ORDER**

All Orders that you have placed with Moby Money shall be subject to Moby Money's approval at their sole discretion.

Moby Money retains the discretion to refuse approval of your Order or to refuse to provide MOBYPAY to you, or may cancel an approved Order before the goods and/or services are delivered or supplied on any of the following grounds:

- To protect the integrity of Moby Money's systems or MOBYPAY;
- To prevent fraud;
- To limit the risk of money laundering and/or terrorism financing;
- To otherwise protect Moby Money against legal, regulatory or non-payment risks; If you do not pass Moby Money's assessment or checks;
- If an Order is made with an unauthorised merchant of Moby Money in a different jurisdiction;
- If you have breached this Agreement; or

- If Moby Money reasonably considers the activity associated with your Account to be suspicious.

In the event of cancellation of an approved Order by the Moby Money:-

- (i) Moby Money shall fully refund any amount that you have paid to your nominated Payment Method or (in the event that it is not possible) to any other payment method that you have provided Moby Money with details of, and shall cancel any future payments related to that Order;
- (ii) Payment shall not be refunded if the approved Order has been cancelled due to a chargeback being incurred by Moby Money in relation to a payment for the approved Order. Any return of funds in the event aforesaid shall be between you and your issuing bank. The Merchant shall not be obliged to deliver the goods and/or provide the services save and except as required by law;
- (iii) You shall have no obligation to make any further payments to Moby Money, or have any other ongoing relationship with Moby Money with respect to that Order; and
- (iv) If you wish to proceed with the purchase from the Merchant, the Merchant may accept an alternative payment method at its discretion, or if required by law.

Upon approval of your Order, you will receive an email from Moby Money with confirmation of receipt of your Order and a Payment Schedule.

## **COMPLAINTS**

The delivery and/or quality of goods shall be the responsibility of the Merchant from whom you made the purchase.

Should you have a complaint arising out of the delivery and/or quality of the goods that you have purchased, you should contact the Merchant directly by using the details posted on the Merchant's website.

It is hereby acknowledged that Moby Money does not have any form of control whatsoever over the goods and/or services that are transacted between you and the Merchant.

If you wish to raise any complaints regarding MOBYPAY, you should do so by contacting Moby Money using the details as listed herein. Any complaint that arises for determination by Moby Money should be raised within a reasonable time period. If Moby Money considers that the complaints were not raised within a reasonable time, Moby Money shall reserve the right to reject or not to determine the complaint.

Email: [customercare@mobypay.my](mailto:customercare@mobypay.my)

Address: Level 23, 1 Mont Kiara, 1 Jalan Kiara, Mont Kiara, 50480 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur

Moby Money may request for additional documentation from you to assist them in resolving any complaints and/or disputes, and you shall endeavour to take all actions and to do all things necessary to provide assistance to Moby Money to facilitate them in resolving any complaints and/or disputes.

In the event that the Moby Money is unable to resolve your complaint within 21 Business days from the date it was made, you shall be notified of the reason for the delay as well as given an indication as to when the complaint is expected to be resolved.

Whilst Moby Money endeavours to accommodate and/or facilitate communication between you and the Merchant or in respect of your complaint regarding MOBYPAY:-

- Take note that this does not act as a guarantee that the complaint can be resolved; and
- The outcome of your dispute with the Merchants or in respect of your complaint shall not affect the rights and remedies of Moby Money under this Agreement.

## **REFUNDS**

In the event that you decide to return goods to a Merchant, which have been purchased by using MOBYPAY, and request a refund, or a return and refund have been accepted by the Merchant or otherwise permitted by law, you shall directly arrange the return with the Merchant, and ensure that the goods are returned according to the Merchant's return policy and/or regulations and/or other instructions or your rights in law.

It is your sole responsibility to notify the Merchant if you intend to return any goods. The return shall be completed within the period specified and in the manner required by the Merchant's return policy and/or regulations or as otherwise permitted by the Merchant.

Save and except where Moby Money has been notified by a Merchant that a return and refund is in progress and approved, Moby Money shall continue to process any automatic payments in accordance with the dates as set forth in your Payment Schedule annexed herein.

Until and unless the Merchant has confirmed the return of the goods and has issued a refund to Moby Money for the said goods, you shall remain liable to Moby Money for the full payment of the goods, in accordance with your Payment Schedule as annexed herein.

Upon the Merchant issuing a full refund to Moby Money for the said goods, Moby Money shall issue a refund to your nominated Payment Method (or, if that is not possible, to any other card that you have provided details of) and/or adjust your Payment Schedule appropriately (including to reduce or to cancel any future payments, if necessary).

Do take note that in the event of partial refunds, refund amounts are to be first taken off the last payment(s). If the refund is processed to your expired or cancelled card, you will have to obtain the refunded amount by contacting your respective financial institution. The aforesaid situation shall be illustrated as follows:

If you make a RM600 purchase by using MOBYPAY and the Merchant approves a RM300 refund, Moby Money shall cancel your 3<sup>rd</sup> instalment of RM200, and amend your 2<sup>nd</sup> instalment to RM100. Your new Payment Schedule will become 2 payments (instead of 3) of RM200 & RM100. If you had already paid 2 instalments of RM200 each, a refund of RM100 would be applied to your card and the remaining 1 instalment would be cancelled.

## **TERMINATION / SUSPENSION**

Moby Money reserves all rights to terminate or to suspend your Account at any time by giving notice to you if Moby Money reasonably believes that you have failed to comply with the terms of this Agreement, Payment Schedule or you have not used MOBYPAY for its intended purpose.

The terms of this Agreement shall survive the termination and/or suspension of your Account , in particular the terms contained herein in respect of any outstanding Instalment Payment and any late fee or Interest (if applicable) at the time the termination or suspension takes effect.

The balance of any outstanding Instalment Payment or all accrued interest (if any) and other sums payable under this Agreement (if any) shall be immediately due and payable after expiry of proper notice.

## **CHANGES IN CONDITIONS/VARIATION**

Moby Money reserves all rights to amend this Agreement at any time for any reason whatsoever including but not limited to change of functionality of MOBYPAY, introduction of new services, or as required by law. The amended Agreement shall be posted on the said Website. Each time you place an Order you will be asked to agree to the current terms of this Agreement, as amended and/or updated. You are advised to read this Agreement in detail each time you agree to its terms when placing an Order.

There will not be any change in terms and conditions for an existing Order that has been duly accepted by Moby Money.

Notwithstanding anything to the contrary in this Agreement, the terms and conditions that were agreed to at the time you made the Order shall apply to an accepted Order (and any steps taken in relation to such Order, e.g., cancellation, refunds, etc.)

## **NO WARRANTY**

Moby Money does not undertake to give any express warranty or guarantee as to the suitability, reliability and/or availability of MOBYPAY or of the content on the said Website or the goods and/or services purchased from the Merchant.

Save and except as required by law, Moby Money does not guarantee continuous, uninterrupted and/or secure access to MOBYPAY, and Moby Money makes no representations and/or warranties regarding the amount of time needed to complete processing of Orders or payment transactions.

## **ASSIGNMENT**

No rights or interest in this Agreement shall be assigned without prior written consent of Moby Money.

Moby Money may transfer or assign this Agreement, and any rights hereunder, to a third party without prior notice being given to you or without your consent, save and except where the transfer or assignment shall detrimentally affect your rights under this Agreement (in which Moby Money shall seek your consent prior to transfer or assignment, wherein consent shall not be unreasonably withheld).

You agree that Moby Money may appoint third party collections agencies to collect any amounts due and owing to Moby Money under this Agreement without your consent. For the avoidance of doubt, you hereby acknowledge that no assignment by Moby Money to a third party of any amount due and owing from you to Moby Money shall require your consent or prior notice being given to you.

## **CLOSING YOUR ACCOUNT**

You may close your Account by contacting Moby Money directly or in the alternative, choose to follow the process as set out in the said Website subject to the following conditions:-

- all amounts due and owing by you to Moby Money (including any Late Payment Charges, if applicable) have been paid in full to Moby Money;
- No disputes and/or refunds are in progress; and
- You are prohibited from evading investigations of any nature.

To avoid your Account from being accidentally closed or to avoid a third party from attempting to close your Account, you may be required to prove your identity and intent.

Moby Money may also immediately limit your access to your Account or to MOBYPAY or suspend or immediately close your Account where Moby Money has reasonable cause to do so, on the following grounds which includes but are not limited to:

- Protecting the integrity of Moby Money's systems and/or MOBYPAY;
- Preventing fraud;
- Limit the risk of money laundering and/or terrorism financing;
- Protecting Moby Money against legal, regulatory or non-payment risks;
- You failing to pass Moby Money's assessment and/or checks;
- If Moby Money reasonably considers the activity associated with your Account to be suspicious; or
- If you have breached this Agreement.

Moby Money endeavours to exert their best efforts to provide to you a written notice before closing of your Account, save and except where such conduct by the Moby Money may compromise any investigation related to your breach of this Agreement or any unlawful and/or improper conduct.

In the event that your Account has been closed for any reason whatsoever, this Agreement shall be deemed terminated, and all amounts owed by you to Moby Money shall immediately fall due and become payable.

All covenants and undertakings made by you herein shall survive the lawful termination of this Agreement and shall continue to be binding upon the defaulting party, and shall remain in full force and effect for the benefit of the non-defaulting party notwithstanding any lawful termination of this Agreement by the same as a result of any breach by the defaulting party of any of the provisions of this Agreement.

#### **NO SET OFF**

Notwithstanding anything to the contrary, you shall make all Instalment Payments in accordance with the Payment Schedule and pay all other amounts in full to Moby Money without any form of set-off, withholding and/or reduction for any reason whatsoever, including any existing or future act, omission and/or default by Moby Money.

#### **HIGHER UPFRONT PAYMENT**

Where the Order Value exceeds your approved credit limit with Moby Pay, you may be offered the option to pay a higher upfront fee, and such offer will be at the sole discretion of Moby Money.

If this section applies to you, the "Higher Upfront Payment" option will be displayed and/or offered to you, subject to the clause mentioned above, prior to you confirming your Order. For the avoidance of doubt, your obligations with respect to your Payment Schedule (regardless of the applicability of this section) shall continue to apply in accordance with this Agreement,

#### **TAXES**

You shall pay all taxes including but not limited to withholding tax, duties and charges assessed against it in connection with MOBYPAY rendered under this Agreement and you hereby agree to protect and to indemnify Moby Money from any and all other claims and/or liability for income, excess profit, royalty or other taxes assessed or levied by the Government Authority against Moby Money (if any) for an account of any payment made to or earned by you under this Agreement.

## **INTELLECTUAL PROPERTY**

All information on the said Website is solely for informative purposes and is subject to change without notice.

The said Website and all contents contained therein shall at all times remain the sole and exclusive property of Moby Money.

Take notice that you shall not copy, imitate, modify, alter, amend and/or use, or attempt to copy, imitate, modify, alter and/or use, without prior written consent of Moby Money:-

- (a) any URLs representing the said Website;
- (b) any content, logos, graphics, icons belonging to Moby Money;
- (c) any other content published on the said Website; or
- (d) any other content published in Moby Money's printed media.

Neither Party shall gain, by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks, and/or other Intellectual Property Rights legally owned by the other.

## **WAIVER**

No provision of this Agreement shall be modified, waived or discharged unless such modification, waiver or discharge is agreed to in writing by Moby Money.

A waiver by Moby Money shall not prejudice or limit its rights in respect of any subsequent breach of this Agreement by you.

Neither the failure by Moby Money to enforce any provision of this Agreement or any forbearance, delay and/or indulgence granted by Moby Money shall be construed as a waiver of the rights of Moby Money under this Agreement.

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof.

## **FORCE MAJEURE**

In the event either Party is prevented by any cause beyond its control (including but not limited to acts of God, war, fire, embargo, riot or disorder, major disruptions to

the telecommunications and other networks upon which MOBYPAY are reliant, suspension by Government Authority, the spread of global pandemic or any other event constituting a Force Majeure) from performing its obligations hereunder, the said Party shall not be under any liability for any loss and/or damages suffered by the other Party as a result of the consequence of the non-performance of the obligations herein and the affected Party shall notify the other Party in writing immediately upon the occurrence of the force majeure event.

Notwithstanding the above, in the event of such occurrence, each Party agrees to make effort to perform its obligations hereunder in good faith.

The performance of any obligation suspended while Force Majeure is operative shall be resumed as soon as such Force Majeure event ceases. Any loss, damage and/or delays in, or failure of performance by either Party shall not constitute default hereunder or give rise to any claims for damages or loss of anticipated profits, if and to the extent that such loss, damage, delay and/or failure is caused by Force Majeure.

In the event that Force Majeure circumstances occur which substantially affect the performance of this Agreement and such circumstances have continued for a period of fourteen (14) days from the date of notice served, Moby Money reserves all rights to terminate this Agreement at any time by giving written notice to you.

## **NOTICES**

All notices shall be given in writing and may be sent by way of registered or certified post (postage prepaid and return receipt requested), by hand or messenger delivery, by overnight delivery service, by facsimile with receipt confirmed, or by electronic mail, to the respective addresses provided in this Agreement.

Save as otherwise explicitly stated, any notices to Moby Money shall be given by mail or electronic mail to the address or email address provided herein:

Address: Level 23, 1 Mont Kiara, 1 Jalan Kiara, Mont Kiara, 50480 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur  
Email: [customercare@mobympay.my](mailto:customercare@mobympay.my)

In computing the period of time under this Agreement, any notice or report given in accordance with this clause shall be deemed delivered on the date of actual delivery; unless such notice or report is given or due on a Saturday, Sunday or public holiday, in which event it shall be deemed given or due on the next business day.

You agree to receive all communications from Moby Money in electronic form. Communications will be posted on the said Website (where permitted under this Agreement) and/or sent to your email address.

In addition to the above, you agree to receive all communications from Moby Money via other electronic methods of communication, including but not limited to text messages using the contact details listed in your Account.



Moby Money shall further be authorised to use the contact details that you have provided to:

- contact you on an ongoing basis for marketing purposes whether by email, SMS, phone or otherwise (unless you have notified Moby Money that you do not wish to receive such communication); or
- contact you in relation to your Account and/or MOBYPAY; or
- monitor or record telephone conversations or electronic communication for quality control and training purposes or for protection of Moby Money. There is no guarantee that any such monitoring or recording shall be retained or retrievable.

### **SYSTEM OUTAGES**

Access to the said Website or MOBYPAY may occasionally be unavailable or limited due to hardware or software failure or defects, overloading of system capacity, damage from natural events or disasters or disruptive human activity, interruption of power systems, labour shortages or stoppages, legal or regulatory restrictions as well as other causes outside of our control.

To the extent permitted by law and in accordance with the provisions of this Agreement, Moby Money shall not be liable for any loss and/or damage which you may incur as a result of unavailability of the said Website or MOBYPAY.

### **CONFIDENTIALITY/NON DISCLOSURE**

No business and/or corporate information, material or data which the Contractor has access to or acquires from Moby Money shall be disclosed by the Contractor to any third party or be used otherwise than for the purposes of this Agreement without first obtaining the prior approval in writing of Moby Money, save and except where required by a court order, in which the Contractor may disclose any such information.

The operation of this clause shall survive the expiry or termination of this Agreement, and shall remain in full force and effect.

### **GOVERNING LAW / JURISDICTION**

This Agreement shall in all respect, including all matters of construction, validity and performance be governed by, construed and enforced exclusively in accordance with the laws of Malaysia. The Parties hereby submit to the exclusive jurisdiction of the courts in Malaysia.

### **LIMITATION OF LIABILITY**

Moby Money's liability under this Agreement no matter how arising, and whether in contract, tort (including but not limited to negligence), or otherwise, shall not exceed the total contract value and/or Deferred Payables as provided herein.

Neither Party shall be liable to the other for any consequential, incidental, indirect, punitive or special damages, including commercial loss and lost profits, however caused which directly or indirectly arises under this Agreement.

To the extent permitted by law, a Party's liability to the other Party under or in connection with this Agreement (if any) is reduced to the extent, in which the other Party's acts or omissions cause or contribute to its own loss and/or damage.

The Parties hereby endeavour to take all reasonable steps to mitigate any loss and/or damage incurred by the Parties under this Agreement.

## **INDEMNITY**

You agree to fully indemnify, protect, defend and hold harmless, at your own expense, Moby Money, its officials, agents, servants and employees from and against any and all suits, claims, demands, litigation and/or liability of any nature or kind, including but not limited to the costs, expenses and legal fees arising out of, involving or in connection with your acts or omissions, in the performance of this Agreement.

## **SEVERABILITY**

In the event that any provision of this Agreement, or a portion thereof, shall for any reason be held invalid, illegal or unenforceable to any extent, the Parties shall negotiate in good faith, amendments to this Agreement to reflect as closely as possible the original intent of the Parties. Such invalid provision or portion thereof shall be severed from the remaining provisions, in which shall continue to be unimpaired, valid and enforceable to the fullest extent permitted by law.

## **ENTIRE AGREEMENT**

This Agreement together with the Payment Schedule annexed herein, including all documents and/or other material(s) incorporated by reference herein shall constitute and contain the complete, final and exclusive understanding and agreement between the Parties with respect to the subject matter hereof and shall supersede any prior or contemporaneous oral or written agreements, representations, understandings and/or communications. You hereby acknowledge and agree that Moby Money has not made any representations, warranties and/or agreements of any kind, save and except as expressly set forth herein.

## **TIME**

Time whenever and wherever mentioned shall be of the essence of this Agreement.

**SUCCESSOR BOUND**

This Agreement shall be binding on the successors in title of the Parties hereto and their permitted assigns.

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