

## SWITTLE TERMS & CONDITION

This document outlines the terms and condition (“**User Agreement**”) that governs the Merchant’s use of using Swittle’s application software and/or relevant services (“**Swittle Services**”) thus must be read prior to registering a Swittle Account (as defined herein). By registering with Swittle or opening a Swittle Account and utilizing its services, the Merchant understands and agrees to be bound by the User Agreement, Swittle’s privacy and cookie policy. If at any time that the Merchant disagrees with the terms and conditions in this User Agreement, the Merchant should cease continuing the registration of Swittle Account or immediately cease any use of Swittle Services.

### 1. DEFINITIONS

Throughout this Agreement, the following terms and expressions or Capitalized words used shall have the following meaning:

<b>Account Activity</b>	means the Merchant’s activity in utilizing Swittle. This means all activities done on Swittle Services including but not limited to Software login, transactions, and instructions;
<b>Authorized Users</b>	means the verified users who have gone through Swittle KYC process and considered as the owner or administrator of a Swittle Account;
<b>Bill Type</b>	means the Merchant is free to create a number of bill types under their Swittle Account. Each bill type will represent a type of collection, with different descriptive text and media, different payment rules and other configurations. Swittle can assign different fee schemes and different limits for each bill type, based on expected volumes and billing values;
<b>Business Day</b>	means any day and business hours on which commercial banks are open for business in Wilayah Persekutuan Kuala Lumpur, Putrajaya and Selangor Darul Ehsan are open for business (this will exclude weekends, federal holidays, and special holidays where Swittle declares its office closed);
<b>Calendar Day</b>	means any day shown on the calendar beginning at 00:00 and ending at 23:59, including Saturdays, Sundays, federal holidays, and special holidays;
<b>COB</b>	means the closing of business day. Typically it will be at 5pm at every business day;
<b>Confidential Information</b>	means information of whatever nature marked in Clause 12 herein, including but not limited to, facts, data, personal

information and reports that was disclosed by both Parties in this Agreement in any shape and form be it tangible or intangible that was not publicly known or any information that was generated by the relationship of both parties entering into this Agreement;

**Customer** means any entity that engages the Merchant to receive the Merchant's goods or services, or give out donations to the Merchant's organization and authorizes payment for the said action;

**Fees** means any fees payable by the Merchant to Swittle including but not limited to, Transaction Processing Fee, Service Fee, short message services (SMS) fees and email notification fees;

**Financial Institution** means any institutions licensed and regulated by Bank Negara Malaysia that is engaged by the relevant Party for the fulfilment of Swittle;

**Financial Process Exchange (FPX)** means an online payment gateway operated by Payments Network Malaysia Sdn. Bhd. (Registration No: 200801035403 / 836743-D) that facilitates interbank transfer of funds ie online banking;

**Force Majeure** means any of the following events or circumstances (provided such events or circumstances are not the result of an inability to make payment nor includes the inability or failure to make payment) that are beyond the reasonable control of the affected Party, to the extent that such events or circumstances delay or make impossible the performance by such Party of any of its duties and obligations or cause a Party to breach a representation, warranty or obligation under this Agreement: (a) any acts, orders, decisions or decrees of any government entities which materially affect such Party's ability to perform its obligations under this Agreement; (b) enactments of or changes in any laws (after the date of this Agreement) that materially affect such Party's ability to perform its obligations under this Agreement; (c) Acts of God, including, without limitation, drought, volcanic activity, tornadoes, hurricanes, floods, sinkholes, landslides, earthquakes and tsunamis; (d) major explosions and accidents; (e) acts of war, terrorism, effects of nuclear radiation, insurrections, riots, the combined action of workers, political unrest and other acts of third parties and circumstances beyond a Party's reasonable control and; (f) any action or failure to act without justifiable cause by any duly authorised authority including the denial of, or delay in,

without justifiable cause the granting of any permits, waivers, exemptions, registrations, approvals, authorisations or licences upon due application therefore and diligent effort by applicant to obtain, the failure without justifiable cause of any such permits, waivers, exemptions, registrations, approvals, authorisations or licences once granted to remain in full force and effect or to be renewed on substantially similar terms; provided that a "Force Majeure" shall not include any delays or failures of a Party caused by the following: (i) the acts of the other Party(ies); or (ii) the failure by the other Party(ies) to perform any acts required by this Agreement or any other relevant agreement between the Parties;

<b>Information</b>	means any information that the Merchant provides to Swittle, including but not limited to personal information, financial information, or other information related to the Merchant's Swittle Account;
<b>Marks</b>	means any trademarks and service marks (whether registered or not, or at common law), trade names, organization names, logos, symbols, and internet domain names;
<b>Merchant</b>	means any individual, organization and/or business using Swittle that is verified by Swittle;
<b>Party</b>	means either Swittle or Merchant;
<b>Parties</b>	means Swittle and Merchant collectively;
<b>Payment Methods</b>	means any type of payment method made available to the Merchant within Swittle (subject to Financial Institution engaged by Swittle);
<b>Platform</b>	means Swittle's proprietary platform (whether in staging or production environment), system, and/or other application platforms;
<b>Service Fee</b>	means the fee chargeable to the Merchant by Swittle for value added services consumed on the Swittle Platform. The Merchant must agree to grant a permission for the fees to be charged and debited directly from the Merchant's registered account to Swittle, where Swittle, shall provide a summarized bill of the service fee at the end of the business day prior to the debit transaction;
<b>Settlement</b>	means the act of the Financial Institution to release payments made to the Merchant via Merchant's business account that

was provided to Swittle during the registration of the Swittle Account at each COB;

<b>Software</b>	means Swittle’s proprietary platform (whether in staging or production environment), system, and/or application software that is specifically licensed to the Merchant under this Agreement;
<b>Swittle</b>	means Techarm Resources Sdn Bhd (Registration No: 202101001643 / 1401941-U);
<b>Swittle Account</b>	means a registered account of the Merchant that is verified by Swittle;
<b>Swittle Services</b>	means all or any of Swittle’s services that are published for the public use including application programming interfaces (APIs), payment, billing presentment and forms and any other features, functionalities and/or programs that are be made available as Swittle’s offering on Swittle Website or through any other mass marketing means;
<b>Swittle Website</b>	means my.swittle.com, and its subdomains;
<b>Transaction Processing Fees</b>	means the fees chargeable to the Merchant by any Financial Institution for applicable transactions including but not limited to, FPX and merchant discount rate (MDR), that arise from the Merchant’s usage of Swittle. The Transaction processing fee shall be deducted by the Financial Institution from the Merchant’s respective payment method’s total payout based on the Financial Institution’s payout schedule.

## 1.2 General

- (a) The Merchant must be at least 18 years of age and have the legal authority to enter into this User Agreement to use our services. By using Swittle Services, the Merchant represents and warrant that the Merchant is at least 18 years of age and have the legal authority to enter into this User Agreement.
- (b) Words denoting the singular include the plural number and vice versa. Words importing any gender include all genders. Words denoting natural persons include companies, corporations and any other legal entity and vice versa.
- (c) The headings and each of the clauses, sub-clauses, paragraphs, sections, schedules and appendices are inserted for convenience only and will be ignored for the purpose of interpretation. Each of the Schedules (if any) forms an integral part of this User Agreement.

- (d) Unless the context otherwise requires, reference to any Clause is to a clause of this User Agreement. Save where the contrary is indicated, any reference to this User Agreement or any other agreement or document shall be construed as a reference to this User Agreement or, as the case may be, such other agreement or document as the same may have been or may from time to time be amended, varied, novated or supplemented.
- (e) No rule of construction shall apply to the disadvantage of a Party merely because the said Party was responsible for the preparation of this User Agreement, or any part of it.
- (f) Clauses are divided into paragraphs; and any reference to a paragraph is, unless otherwise stated, a reference to a paragraph of the clause in which the reference appears.
- (g) References to persons include their successors and any permitted transferees and assigns.
- (h) References to the words "include" or "including" are deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import.
- (i) In carrying out its obligations and duties under this Agreement, the Parties have an implied obligation of good faith.
- (j) Unless otherwise stated, "we", "us" or "our" will refer collectively to Techarm Resources Sdn Bhd (Registration No: 202101001643 / 1401941-U).

## **2. SOLE DISCRETION**

- 2.1 The registration of a Swittle Account with Swittle deems that the Merchant has agreed to appoint Swittle as the facilitator for the collection and disbursement activities by means of several Payment Methods provided to the Merchant by Swittle as described in this Agreement.
- 2.2 Swittle reserves the right to amend, modify, add or remove any terms under this Agreement at any time, at Swittle's sole discretion without prior notice to the Merchant. All changes shall become effective immediately upon publishing or uploading to the Swittle Website by Swittle. The Merchant's acceptance of the prevailing Agreement including any term which may have been amended is marked by the Merchant's continued use of the Swittle Account. It is the Merchant's responsibility to check the Agreement for updates or amendments regularly.
- 2.3 The Merchant is aware that Swittle is not a Financial Institution and Swittle has never identified as one thus Swittle shall have no control over any of the Financial Institution's uptime and availability in fulfilling Swittle Services' settlements at the end of each Business Day.

- 2.4 The Merchant hereby agrees with Swittle's appointment of any of the Financial Institution to process settlements following the terms of this Agreement. A clearing account for settlements will be maintained by the Financial Institution of Swittle's designation. Swittle shall have the discretion to add, remove, or change the Financial Institution designated as Swittle's clearing account at any time. The Merchant's consent and agreement to such additions, removals, and changes is marked by the Merchant's continued use of Swittle Account and/or Swittle Services.
- 2.5 Swittle reserves the right to amend and change Swittle's schemes periodically which may or may not affect the schemes that the Merchant are already on. Swittle shall, at the very best of Swittle's abilities, provide notification at a reasonable time and in a reasonable manner to the Merchant in the event Swittle perceives that the Merchant is affected by the changes. Any and all changes shall become effective immediately upon notification by Swittle to the Merchant via the Merchant's registered login email or other contact method the Merchant provides to Swittle. The Merchant's continued use of Swittle Account and/or Swittle Services shall constitute the Merchant's acceptance of the latest changes.
- 2.6 Swittle shall have the right to monitor the Merchant's use and transactions performed on the Swittle Account in order to review the Fees made payable to the Merchant based on the information provided to Swittle on the transactions that the Merchant will perform on Swittle Services. Swittle hold the sole right to review and amend charges based on the review.

### **3. REGISTRATION AND SIGNING UP**

#### **3.1 Signing up and verification**

- (a) Signing up with Swittle requires the Merchant to register for a Swittle Account, where the authorized user (the Merchant or applicant) is required to provide Swittle Merchant Onboarding with the Merchant's organization name, email address, phone number, bank account details, industry sector, nature of business and other information that are deemed necessary for linking the Merchant's banking account to the Swittle Account. The applied Swittle Account shall be reviewed and verified by Swittle Merchant Onboarding before the registration is completed and shall not be usable by the Merchant until all the required information are verified. Swittle Merchant Onboarding may share the Merchant's information that the Merchant has provided with Financial Institution to verify the Merchant's eligibility to use Swittle's payment settlement functions.
- (b) The Merchant is solely responsible for maintaining the confidentiality and security of the Merchant's login name, account and password. The Merchant hereby agrees to accept liability for all activities that occur under the Swittle Account, whether or not authorized by the Merchant.
- (c) The Merchant shall ensure that the data provided to Swittle Merchant Onboarding for registration and opening the Swittle Account are accurate and complete.

#### **3.2 Scheme Subscription**

- (a) The Merchant may choose schemes to suit the Merchant's style of business at any point in time. Any changes can be made on the settings on the Merchant's Swittle Account. Fees may be charged for the changes in schemes on the Merchant's Swittle Account and the schedule for the Fees may be changed from time to time. It is the Merchant's responsibility to check on the changes that may occur in the schedule that is posted on Swittle Website regularly.
- (b) Swittle does not accept liability for any loss due to the Merchant's decision to change the Merchant's Swittle Account schemes.

### **3.3 Payment Method**

- (a) Swittle offers various Payment Methods as part of Swittle Services including but not limited to:

- i. FPX

FPX enables the Merchant to accept FPX payment transaction from the Merchant's customer to the Merchant's registered bank account. The FPX Transaction Processing Fees charged by the Financial Institution will apply to the Merchant upon consuming this service.

- ii. DuitNow (DNOB)

DuitNow enables the Merchant to accept DuitNow payment transaction from the Merchant's customer to the Merchant's registered bank account. The DuitNow Transaction Processing Fees charged by the Financial Institution will apply to the Merchant upon consuming this service.

Other Payment Methods will be updated on Swittle Website.

- (b) Swittle reserves the right to add or remove the Payment Methods and/or Financial Institution that is involved with Swittle Services at any time. A notification may be issued via email or any other methods to the Merchant at a considerable amount of time prior to the changes and it is the Merchant's responsibility to check on the any notification and notices provided to the Merchant regularly.

### **3.4 Support**

- (a) Solution and support on general issues for the Swittle Account and Swittle Services will be provided by Swittle. The support that will be provided are as below:

- i. Swittle will provide technical support on complaints and/or enquiries received from the Merchant and/or customers in respect of the Swittle Account and/or Swittle Services until the issues are either cancelled, rejected or resolved;

- ii. Refund request will be reviewed and evaluated until the issue is settled to either cancelled, rejected or executed;
  - iii. Swittle reconciliation and settlement shall be done at each COB day and reconciliation log and settlement report shall be produced for the customer.
- (b) Swittle shall not be responsible for support that the Merchant has promised to the Merchant's customer for the fulfilment and services that the Merchant provides. The Merchant hereby undertakes to settle any issues raised by the Merchant's customer in respect thereof in a timely manner.
- (c) Swittle shall make reasonable efforts to ensure availability and access to Swittle Services, however Swittle makes no warranties or representations that the Merchant's use of the Swittle Services will be uninterrupted, timely, secure and error-free. The Merchant acknowledges that access to the Swittle Services may also be suspended or restricted at times to allow for repairs, maintenance, or the introduction of new facilities or services and Swittle shall give prior notification to the Merchant in the event of any such suspension or restriction to access the Swittle Services.
- (d) Swittle and its affiliates, subsidiaries, employees and suppliers provide the Swittle Services on an "as is where is" basis and without any warranty or condition, express, implied or statutory. Swittle shall make reasonable efforts to ensure that requests for electronic debits from bank accounts are processed in a timely manner, but Swittle makes no representations or warranties regarding the amount of time needed to complete processing because the Swittle Services are largely dependent upon many factors outside of Swittle's control, such as delays in the banking system and the internet services.

## **4. FEES**

### **4.1 Fees Schedule and Currency**

- (a) All Fees and payments shall be conducted in Malaysian Ringgit (MYR) and Swittle will not be accepting any other currency when the business is conducted within Malaysia.
- (b) The Fees schedule can be viewed on Swittle Website.
- (c) In respect of paragraph 4.2 of this Agreement, Swittle shall not bear any responsibility to notify the Merchant on changes made and the Merchant hereby undertakes to check on the Fees schedule on Swittle Website for any changes regularly.

### **4.2 Swittle Pricing Term Sheet**

- (a) The Fees schedule published on the Swittle Website will represent indicative or approximate values of the Fees payable by the Merchant to Swittle.
- (b) Swittle hereby assigns an existing pricing scheme or customer-scheme to each merchant upon onboarding and upon approval of each Bill Type on Swittle. The approval



of a scheme and associated fees model will be determined based on expected volume and values of monthly billing given by the Merchant to Swittle. Swittle reserves the right to change the Fees model at the end of each month should the forecast volumes or values be largely different than the actual ones recorded by Swittle each month.

#### **4.3 Swittle Service Fee claims**

- (a) The Transaction Processing Fees will be deducted by the Financial Institution before the settlement is carried out at COB. The Fees charged to the Merchant for consuming Swittle Services will require the Merchant to give a permission for Swittle for a direct debit payment. The Merchant hereby undertakes to ensure that the account balance in the Merchant's banking account registered with Swittle is adequate for the Fees to be deducted. This Service Fee is a different fee to be paid and is not included in the Merchant's terms if the Merchant are hosted on an additional platform other than Swittle.
- (b) In the event the Merchant fails to provide Swittle with the Fees charged on the first try due to inadequate account balance, Swittle shall have the rights to charge the Merchant the unpaid balance on the next settlement.
- (c) Notwithstanding the foregoing, in the event the Merchant fails to provide Swittle with the fees charged on the second try, Swittle shall have the right to suspend the Swittle Account and any Swittle Services made available to the Merchant through Swittle Account will be revoked until remedied or terminated. A fee for late payment may be invoiced to the Merchant for a second failure due to inadequate balance. Please refer to Invoiced Payments and Termination below.

#### **4.4 Settlement and Reconciliation**

- (a) The daily collection settlement and reconciliation processing for FPX and DNOB will be done at every COB and will be deposited to the Merchant's banking account on the next Business Day (UTC+08:00 Kuala Lumpur) anytime between 06:00 – 16:59 excluding Friday, Saturday, Sunday, Public Holidays and Special Holidays. All settlement to the Merchant's account will only be done on business days for example Friday, Saturday and Sunday collection will only be deposited to the Merchant's account on Monday.
- (b) Swittle will not be held liable from any delays due to the Financial Institution policy or unforeseen problems at the Financial Institution stage.
- (c) The Merchant hereby agrees to ensure that the Merchant's banking details remain accurate. If there is a failure of settlement for a period of time due to incorrect information of the banking details provided by the Merchant, the Merchant agrees that Swittle is entitled to hold all payments made to the Merchant and charge fees for remedying the situation.

#### **4.5 Invoiced payments**

- (a) If there should be any invoices issued to the Merchant for any services that the Merchant have consumed additional to the services provided to the Merchant in the Merchant's

subscribed scheme, the Merchant agrees to settle such payment within fifteen (15) days from the date of the invoice. Delinquency of such payment will revoke services provided to the Merchant by Swittle and the Swittle Account shall be suspended. Complaints concerning invoices that were issued must be made ten (10) days from the date of the invoice. All complaints must be made electronically unless requested by the Merchant otherwise of which such issuance may be charged. Any late payments may be subjected to any cost of collection and the Merchant will bear penalties at the maximum rate of one percent (1%) per month (prorated for partial period).

## **5. TAX**

- 5.1 Any and all fees are exclusive of all taxes, levies or duties imposed by tax authorities, and the Merchant shall be responsible for payment of all such taxes, levies or duties.
- 5.2 The Merchant shall reimburse Swittle, protect and indemnify Swittle safe and harmless from any and all claims, demands and cause of action in respect of taxes, levies, duties and penalties made against Swittle by the Customs Authority including but not limited to awards and judgments, court and arbitration costs, legal fees and other reasonable expenses associated with such claims.

## **6. TERMINATION AND SUSPENSION**

### **6.1 Termination**

- (a) The Merchant agrees to be bound by this Agreement from the date the Merchant are verified and have access to the Swittle Account until terminated by the Merchant or Swittle. The Merchant may terminate this Agreement by closing the Merchant's Swittle Account at any time by emailing to Swittle on their aforesaid intention. This Agreement is considered to be terminated by the Merchant once all payments due to Swittle have been paid in full.

### **6.2 Suspension, closure and blocking of payments made to the Merchant's Swittle Account without cause**

- (a) Notwithstanding the above, Swittle may remove any data or content transmitted via the Platform without liability, suspend, close or block payments the Merchant's Swittle Account and/or access to Swittle and/or any license created hereunder may be limited by Swittle. No refunds will be made to the Merchant for any losses due to the aforementioned actions.
- (b) For the avoidance of doubt, no refunds shall be made for the termination related to misconducts, that Swittle determines, violates this Agreement or any applicable law, involves fraud or misuse, money laundering or is harmful to Swittle's interests or another Merchant.

### **6.3 Suspension, closure and blocking of payments made to the Merchant's Swittle Account with a cause**

- (a) Swittle shall have the sole discretion to remove any data or content transmitted via the Platform without liability, suspend, close or block payments the Merchant's Swittle Account and/or access to Swittle and/or any license created hereunder may be limited by Swittle in the event the Merchant:
- i. Breach any provisions within this Agreement or fail to remedy within a period of fourteen (14) days any obligation made to the Merchant due to the breach from the date of notice issued to the Merchant from Swittle;
  - ii. Filed a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commence an action providing for relief under bankruptcy laws, file for the appointment of a receiver, or is adjudicated a bankrupt;
  - iii. Are required by law enforcement or governing agency to comply with applicable law, of which Swittle shall use reasonable effort to notify the Merchant of such action prior to suspension of Swittle Services to the Merchant under this Agreement;
  - iv. Fail to make payments invoiced to the Merchant within fifteen (15) days;
  - v. Intentionally utilized Swittle to provide services and/or products such as the following:
    - Sexually oriented services or materials that is against Swittle's Service Policy;
    - Narcotics or controlled substances unless specified by governing bodies that enables the Merchant to do so;
    - Illegal substances and paraphernalia related to such abuse;
    - Wagers, gambling and distribution of gambling winnings, regardless of the gambling location;
    - Counterfeit products;
    - Weapons including firearms, ammunitions and other related paraphernalia that is deemed to be illegal unless specified to have legal licenses to trade in such items;
    - Explosive, fireworks and pyrotechnic devices unless specified to have legal licences to trade such items;
    - Money laundering activities;
  - vi. Attempt to hack, tamper, modify or otherwise breach the security or corrupt the functionality of Swittle;
  - vii. Are utilizing Swittle to manage an unregulated digital exchange platforms;
  - viii. Are involved in immoral or illegal activities that violates the laws of Malaysia.
- (b) In the event the Merchant commits and/or engages in the conduct and/or activities specified in Clause 6.3 hereof, any information and services rendered to the Merchant on Swittle's server shall be rendered inaccessible to the Merchant and the Swittle Account shall be suspended, terminated or all payments made to the Merchant shall be blocked. Swittle shall use reasonable endeavours to try giving the Merchant notice of such suspension, termination, or payment block at its sole discretion.

#### **6.4 Termination Effect**

- (a) The termination of the Swittle Account shall render the Merchant inaccessible to Swittle and the Merchant shall therefore not circumvent all security mechanism contained therein. The Merchant shall withdraw forthwith any reference to Swittle in any form and usage of the Marks shall be prohibited to the Merchant in the Merchant's documents and/or website.
- (b) The Merchant will need to reregister for a new Swittle Account if the Merchant wishes to use Swittle after the termination.

## **6.5 Other Remedies**

- (a) Termination of this Agreement will not limit either Party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve the Merchant's obligation to pay all fees that have accrued or are otherwise owed by the Merchant under this Agreement.

## **7. WARRANTIES AND OBLIGATIONS**

- 7.1 The Merchant hereby acknowledges that the Merchant is only allowed one bank account for the purpose of Swittle Account registration and the bank account may be registered to any Financial Institution of the Merchant's choice and shall be the Merchant's own bank account that the Merchant utilize for the purpose of transaction via Swittle.
- 7.2 The sole responsibility of said bank account shall be the Merchant's own in regards to entry and maintenance and the Merchant hereby acknowledges that Swittle will only act as an online conduit to passively distribute the Merchant's bill and the facilitation of payments from the Merchant's customer to the Merchant's account. The Merchant's relationship with the Merchant's customer is entirely the Merchant's own and thus made responsible to the Merchant for Swittle holds no responsibility for any sale, purchase, donation, order or any other transaction performed by the Merchant's customer while using Swittle. The Merchant hereby agrees that Swittle shall not be held responsible for any losses incurred from fraudulent transactions.
- 7.3 The sole responsibility of understanding and complying to all and any laws and regulations for the Merchant's own jurisdiction and any that may apply to the Merchant while utilizing Swittle is entirely the Merchant's own. The authorized user of the Swittle Account shall be informed of the obligations, rules and regulation and rights within this Agreement by the Merchant. The Merchant shall be held liable for any violation of terms, obligations and rights within this Agreement by the Merchant's authorized user, customer or any other third parties when the Swittle Account is under the authorized user's control.
- 7.4 The Merchant's obligation to Swittle shall also consist of keeping the confidentiality of the login details, password, and/or API integration keys required for the use of the Platform. This applies to the Merchant's ability to keep safe and protect the confidentiality of said details to avoid any unauthorized access to any third party that would harm the Merchant, Swittle and the customers. It is the Merchant's responsibility to change the password at regular intervals to increase the security of the Swittle

Account. The use of state-of-the-art anti-virus, anti-malware and anti-spyware prior to entering the Merchant's personal data and information is the Merchant's own responsibility and is obliged to the Merchant.

- 7.5 The Merchant shall use the Merchant's best efforts to ensure all information, data and activities that includes, but not limited to, payments and receipt payment that are transacted through Swittle does not contain:
- (a) Fraudulent sale for the purpose of misleading purchase made;
  - (b) False and inaccurate information;
  - (c) Any involvement with gambling and wagers including but not limited to payments for wagers, debts and winning regardless of location where the gambling and wagers are taking or have taken place, online or otherwise;
  - (d) Infringements of any marks, patents, intellectual properties, rights to privacy and/or publicity and trade secrets;
  - (e) Violation of regulation and laws of Malaysia including defamatory and harassment remarks, libellous and pornography of any type;
  - (f) Any malware, worms, spyware, trojan horses, bots or any programming that may result in damage or interference and/or data theft including but not limited to personal information;
  - (g) Any remarks that is aimed at Swittle in any form that will jeopardize Swittle's reputation and/or making Swittle liable in any way.
- 7.6 By registering the Swittle Account, the Merchant agrees to keep the Merchant's personal information and banking account up-to-date. The Merchant shall also keep other information updated regarding the Swittle Account that is relating to the Merchant, the Merchant's business activities, the Merchant's authorized users and other information. Suspension or termination of the Swittle Account may take place if the Merchant fails to keep the Merchant's information up-to-date.

## **8. DISCLAIMERS**

- 8.1 Our Service and all content on Swittle is provided on an "as is" basis without warranty of any kind, whether express or implied.
- 8.2 Swittle specifically disclaims any and all warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement, and any warranties arising out of course of dealing or usage of trade.
- 8.3 The Merchant accept that we do not represent or warrant that the Platform and/or Swittle will be error-free at all times. The Merchant is also aware and acknowledges that the Platform and/or Swittle Account and/or Swittle Services rely on third-party technologies

and facilities including internet connectivity which are not within Swittle's control. The Merchant acknowledges the characteristics and limitations of digital and wireless networks and that data may be corrupted, delayed, or lost despite security and other measures taken by Swittle. The Merchant agrees not to hold Swittle liable for any failures as highlighted above.

- 8.4 The Merchant expressly agrees that the Merchant's use of the Platform and/or Swittle Account and/or Swittle Services is at the Merchant's sole risk and discretion and the Merchant will assume total responsibility. The Merchant will rely on the Merchant's review and evaluation of the Platform and/or Swittle Account and/or Swittle Services to assess its suitability for the Merchant's particular purpose. The Merchant's sole remedy against Swittle in the event of dissatisfaction is to cease using Swittle.
- 8.5 Swittle reserves all its rights to adjust and amend the contents of the Platform and/or Swittle Account (including the APIs) from time to time. If such adjustment or amendment leads to necessary changes in the Merchant's software, interfaces, or operating procedures, Swittle shall use reasonable endeavours to notify the Merchant within a reasonable period and the Merchant agrees to bear all the costs at the Merchant's end concerning such adjustment and amendment and in ensuring business as usual.
- 8.6 Swittle reserves all its rights to conduct test payments on the Swittle Account from time to time without prior notification to the Merchant. The Merchant acknowledges that the purpose of the test payments may be to verify/review/inspect the validity of the Merchant's bank account, integration efficiency, and the Platform improvement or upgrade. The Merchant expressly agrees that the Merchant will not be able to request an invoice from Swittle for any particular test payment conducted.

## **9. LIMITATION OF LIABILITY**

- 9.1 To the maximum extent permitted by law, Swittle shall not be liable for any indirect, incidental, special, consequential or punitive damages, or any loss of profits or revenues, whether incurred directly or indirectly, or any loss of data, use, goodwill, or other intangible losses, resulting from:
- (a) the Merchant's access to or use of or inability to access or use the service; or
  - (b) any conduct or content of any third party on the service, including without limitation, any defamatory, offensive or illegal conduct of other users or third parties; or
  - (c) unauthorized access, use or alteration of the Merchant's transmissions or content. in no event shall Swittle's aggregate liability for all claims relating to the service exceed Ringgit Malaysia One Hundred (RM100) only; or
  - (d) any relationship or transaction between the Merchant and third party provider, other merchants, advertiser or sponsor whose advertising appears on the website or is referred to by the service, the application and / or the software, even if Swittle

and / or its licensors have been previously advised of the possibility of such damages.

- 9.2 Swittle shall not be liable for any delay or failure in relation to the availability and access of the Swittle Services where such failure or delay is outside Swittle's reasonable control (including without limitation, failures or delay associated with electronic communication network faults).
- 9.3 Swittle does not warrant and represent that it assesses or monitors the suitability, legality, ability, movement or location of any merchant or third party providers including advertisers and / or sponsors and the Merchant expressly waives and releases Swittle from any and all liability, claims or damages arising from or in any way related to the third party providers including third party transaction providers, merchants, advertisers and/or sponsors.
- 9.4 Swittle will not be a party to disputes, or negotiations of disputes between the Merchant and third party providers including merchants, advertisers and / or sponsors. Unless the Merchant is a corporate customer with a current corporate account with Swittle, Swittle cannot and will not play any role in managing payments between the Merchant and the third party providers, including merchants, advertisers and/or sponsors. Responsibility for the decisions the Merchant makes regarding services and products offered via the service, the software and/or the application (with all its implications) rests solely with and on the Merchant. The Merchant expressly waives and releases Swittle from any and all liability, claims, causes of action, or damages arising from the Merchant's use of the Swittle, or in any way related to the third parties including third party transaction providers, merchants, advertisers and / or sponsors introduced to the Merchant by the Swittle.
- 9.5 The quality of the solutions scheduled through the use of the service is entirely the responsibility of the third party provider who ultimately provides such solution to the Merchant. the Merchant understand, therefore, that by using the service, the Merchant may be exposed to transactions that is potentially dangerous, offensive, harmful to minors, unsafe or otherwise objectionable, and that the Merchant use the service at the Merchant's own risk.
- 9.6 For the avoidance of doubt, the transaction shall at all times be between the Merchant and the customers and in no event shall Swittle be a party in any resulting dispute over any aspect thereof including but not limited to issues relating to merchantability, fitness for use, quality, quantity or delivery.
- 9.7 In the event of any fraudulent transaction alleged by a customer, Swittle shall not be under any obligation or responsibility to investigate any disputes on the transactions between the Merchant and a customer whereby all disputes on the transaction shall be resolved between the Merchant and the customer.

## **10. INDEMNITY**

- 10.1 The Merchant agrees to indemnify and hold harmless Swittle, their affiliates and their respective officers, directors, employees and agents, from and against any claims, suits, proceedings, disputes, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable legal and accounting fees (including costs of defence of claims, suits or proceedings brought by third parties), made by any third party due to the Merchant's access to or use of Swittle Services or the Merchant's breach of this Agreement.

## **11. INTELLECTUAL PROPERTY RIGHTS**

### **11.1 Swittle License Grant**

- (a) Swittle grants the Merchant a non-exclusive and non-transferable right subscription to access the Platform as hosted by Swittle and it is subjected to all limitations and restrictions contained in this Agreement. The Merchant irrevocably acknowledges that, the Merchant has no ownership interest in the Platform or Swittle materials provided to the Merchant and is subjected to the licenses granted herein. Swittle shall own all rights, title, and interest Swittle, subject to any limitations associated with the intellectual property rights of third parties. Swittle reserves all rights not specifically granted herein.
- (b) Swittle grants the Merchant a non-exclusive, non-transferable, and limited license to access its APIs and documentation only as necessary to develop, test, and support the integration of the Merchant's application with Swittle. Swittle's APIs may not be sold, rented, leased, sublicensed, redistributed or given syndicated access. Swittle owns and shall continue to own its APIs and documentation, including all related intellectual property rights therein.

### **11.2 Merchant License Grant**

- (a) The Merchant agrees to grant Swittle a non-exclusive license to access, modify, use, reproduce, and distribute the Merchant's data or Information royalty-free that are deemed necessary or reasonable for Swittle to perform or provide the Platform for the Merchant's usage.

### **11.3 Use**

- (a) The Merchant is granted a limited right and license to use Swittle solely for its internal business purposes. The Platform shall only be used to perform the functions according to the schemes that was subscribed. Swittle does not permit a direct or indirect access to the Platform by any website that is not fully owned by the Merchant. Providing such access to any such website is considered as breaching of this contract.

### **11.4 License Type**

- (a) The type of license granted is as follows: each Swittle Account that a Merchant has shall be linked to only one bank account of the Merchant. A Merchant may designate different staff, officers, or employees with varying permissions set out above, rights, or limitations at any time without notice to Swittle. Swittle shall not accept liability including any loss,



fraud, or misuse of Swittle Account by Merchant or its officers, employees, or any third parties.

### **11.5 Additional Restrictions**

- (a) The Merchant shall use Swittle strictly in accordance with this Agreement. The Merchant shall not and shall not permit others to:
- i. Reverse engineer, decompile, disassemble, and attempt to derive the source code, or decrypt the Platform. This includes, without limitation:
    - a) Converting the Platform from a machine-readable form into a human-readable form;
    - b) Any Disassembly or decompiling the Platform by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof;
    - c) Examining the machine-readable object code that controls the Platform's operation and creating the source code or any approximation thereof by, for example, studying the Platform's behaviour in response to a variety of inputs; or
    - d) Performing any other activity related to the Swittle Account that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted under the written agreement, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement. The Merchant may use Swittle's Confidential Information solely in connection with the Platform and under the terms of this Agreement.
  - ii. Derive a clone of Swittle and/or Swittle Account or make any modification, adaptation, improvement, translation, or derivative work from the Platform;
  - iii. Obscuring, altering or removing any proprietary notice in connection with the Platform;
  - iv. Use the application for any revenue-generating endeavour, commercial enterprise, or other purposes for which it was not designed or intended;
  - v. Make use of the Platform to create services, products, or software which directly or indirectly competes or substitutes Swittle;
  - vi. Utilizing the Platform to send out spam or unsolicited emails; or

- vii. Use any of Swittle intellectual property or other proprietary information in the design, development, or distribution of any applications, accessories, or devices for use with Swittle.

## **11.6 Collaterals**

- (a) The Merchant should assume that all software and collaterals in connection with Swittle, and all graphics, text, photographs, artwork, logos, user interfaces, sounds, music, computer code, and other materials on Swittle Website or the Platform, including but not limited to Swittle's logos, the design, "look and feel", expression and arrangement of Swittle website and application, are owned, controlled by or licensed to Swittle and/or protected by copyright, trademark or other intellectual property rights. Save as expressly provided herein, no licence is granted to the Merchant by implication, estoppel, or otherwise with respect to Swittle's intellectual property, and the Merchant may not use, copy, reproduce, transmit or distribute any component or part of Swittle's intellectual property without Swittle's prior written consent.

## **11.7 Marks and Publicity**

- (a) All Marks for both the Merchant and Swittle are sole and exclusive property of each respective owning Party and neither Party grants to the other any title, interest or any other rights in any Marks except as provided in this clause.
- (b) Swittle may use the Merchant's name and/or logo and/or quote the Merchant's statements for:
  - i. Swittle product literature, social media and other marketing materials;
  - ii. Press releases;
  - iii. Included into customer list for general promotional purposes;

The use of the Merchant's Marks shall be done within accordance to Swittle's direction and shall be communicated to the Merchant in one form or another from time to time. Swittle shall use the Merchant's Marks in a manner that is consistent with the industry practice.

- (c) Swittle grants the Merchant the permission to use Swittle's name and/or logo on the Merchant's website or any off-line promotional material only to indicate that the Merchant make use of Swittle. The Merchant shall only use Swittle's Marks in accordance to the direction that is communicated to the Merchant in writing. The Merchant do not have the right to sub-license any of Swittle's Marks. Some limitation to the right to use Swittle's Marks can be changed under this clause at any time at Swittle's discretion. It is the Merchant's responsibility to regularly check this Clause within the Agreement for any changes.

## **12 CONFIDENTIALITY**

### **12.1 Confidentiality of Platform**

- (a) Any and all information marked as “Confidential” or the like encompasses any and all Confidential Information that is tangible or intangible that was orally disclosed, shall be designated as confidential at the time it was disclosed and shall be recorded within thirty (30) days from initial disclosure. Notwithstanding the foregoing, the Platform is deemed as Swittle’s Confidential Information with or without such marking or written confirmation.

### **12.2 Exceptions**

- (a) The Parties obligations to any material or information contained hereunder shall not be considered confidential when:
- i. It is a part or becomes part of public domain through no act or omission by the receiving Party;
  - ii. It is independently developed by the other Party without the use of the disclosing Party’s Confidential Information;
  - iii. It is rightfully obtained from a third party without any obligation of confidentiality;
  - iv. It is already known by the receiving Party without any obligation of confidentiality before obtaining the Confidential Information from the disclosing Party;
  - v. It is disclosed with the disclosing Party’s express written consent; or
  - vi. It is required to be disclosed by an order from a competent court of law by law, by any regulatory authority having jurisdiction over the receiving Party.

### **12.3 Non-Disclosure**

- (a) Any and all Confidential Information hereby shall be agreed by each Party at all times, by all reasonable efforts, to protect Confidential Information belonging to the other Party. Each Party agrees to restrict access to the other Party’s Confidential Information only to those employees, sub-contractors or third parties who require access in the course of their assigned duties and responsibilities.

### **12.4 Suggestions/Improvements to Platform**

- (a) Notwithstanding this Clause, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections and other contributions provided by the Merchant regarding the Platform or other Swittle Account materials provided to the Merchant shall be owned by Swittle and the Merchant hereby agrees to assign any such rights to Swittle. Nothing in this Agreement shall preclude Swittle from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Swittle in the performance of services hereunder.

## **12.5 Obligation of Confidentiality**

- (a) During the Subscription Period and after the termination of this Agreement, the receiving Party shall:
- i. use the Confidential Information solely for the purpose of carrying out its functions herein;
  - ii. keep the Confidential Information undisclosed;
  - iii. not disclose the Confidential Information to any person save and except with the prior written consent of the disclosing party or in accordance with Clause 12.4 above; and
  - iv. not use the Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.

## **13. PRIVACY POLICY & DATA PROTECTION OBLIGATIONS**

13.1 The Merchant acknowledges that Swittle Privacy Policy which is incorporated herein by reference, is a necessary and integral part of this Agreement.

13.2 In accordance with Swittle's Privacy Policy, the Merchant hereby consents to Swittle's use of the Merchant's personal data. By using Swittle and creating a Swittle Account, the Merchant acknowledges that the Merchant has given Swittle permission to share and process the Merchant's personal information with third parties as necessary for Swittle to provide the Merchant with Swittle Services. In order for Swittle to confirm the Merchant's identity and/or comply with any legal or regulatory requirements pertaining to Swittle Services, the Merchant hereby grants Swittle permission to confirm the Merchant's personal data with other organizations or entities.

13.3 The Merchant acknowledges that Swittle may occasionally be required to update Swittle Privacy Policy. The Swittle Website will promptly notify all revisions. The Merchant's proceeded with utilization of Swittle Record and additionally Swittle will imply that the Merchant have concurred and agreed to Swittle Protection Strategy as re-examined.

## **14. THIRD PARTY TERMS AND WEBSITES**

### **14.1 Third Party Services and/or Platform**

- (a) Swittle may incorporate software or services from third parties that necessitate notices or additional terms and conditions. This Agreement is incorporated by reference into any and all third-party services, software notices, and additional terms and conditions that Swittle may request. The Merchant agrees to any additional terms and conditions that may be included in this Agreement.

### **14.2. Third-Party Websites**

- (a) Links on the Swittle Website and/or Platform to websites that are not under Swittle's control do not imply Swittle's approval of, agreement with, or support for the content, goods, or services of those applications or websites. The Swittle Website and/or Platform has no editorial control over the products, services, or content found on these websites. As a result, Swittle Website and/or Platform assumes no responsibility for the content found on these websites or for its use or inability to use it.

## **15. GENERAL PROVISIONS**

### **15.1 Severability**

- (a) Any provision of this Agreement that is determined by any applicable law to be invalid, void, or unenforceable and will be eliminated or deemed deleted to the extent necessary and replaced with a valid provision that best reflects the intent of this Agreement. The leftover arrangements thus will not be impacted and will keep on applying to the fullest extent.

### **15.2 Non-Waiver**

- (a) Any conduct between the Parties or any other party shall not be deemed to modify any provision of this Agreement, nor shall any failure by the Parties to enforce or insist on strict performance of any of its provisions be deemed to be a waiver of any such provision or right unless it is in writing.

### **15.3 Assignment**

- (a) The Merchant shall not assign this Agreement or any of its rights and obligations hereunder without the prior written consent of Swittle and any attempted assignment shall be null and void.
- (b) Swittle reserves the right to assign, novate or transfer all or any part of its interest in this Agreement to its affiliate with prior written notice to the Merchant.
- (c) Any rights or remedies to any third parties are not granted by any interpretation of this Agreement.
- (d) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns.

### **15.4 Survival**

- (a) Terms pertaining to representations, warranties, indemnities, limitation of liability, intellectual property rights, right to offset, unclaimed funds, and personal data are examples of terms that will remain in full force and effect and be binding on the Merchant even after the Merchant's Swittle Account is closed or the agreement between Swittle and the Merchant are terminated.

### **15.5 Force Majeure**

- (a) Swittle shall not be liable in any manner for failure to perform or delay in performing all or any part of this Agreement which is directly or indirectly due to any event of Force Majeure.

### **15.6 Injunctive Relief**

- (a) The Merchant acknowledges that a breach of Clauses 7 and 12 would cause Swittle imminent irreparable injury and that Swittle shall be entitled to, in addition to any other remedies available at law or equity, temporary, preliminary, and permanent injunctive relief in the event the Merchant do not fulfil the Merchant's obligations under Clauses 7 and 12.

### **15.7 Language**

- (a) In the event of a dispute between the English and non-English versions of this Agreement (if any), the English version shall be the prevailing and governing document.

### **15.8 Governing law and jurisdiction**

- (a) The Merchant agrees to submit to the exclusive jurisdiction of the courts in Malaysia in any legal proceedings arising out of or related to this Agreement. This Agreement shall be governed and construed in accordance with the laws of Malaysia.

### **15.9 Notice**

- (a) Any notice required by this Agreement must be in writing and shall be effective and valid once delivered to the party to whom it is addressed to. Unless otherwise specified in writing by the Parties, all notices must be sent to the address listed in the registration documents.

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