

MERCHANT AGREEMENT

This **Merchant Agreement** (“the Agreement”) is made together with the application on the day of 20XX

BETWEEN

IPAY88 (THAILAND) CO., LTD. (Company No.: 0105557121551), a company incorporated in Thailand and having its principal place of business at Capital Tower, All Seasons Place, 87/1 Wireless Road, 10th Floor, Suite S10058, Pathumwan, Bangkok 10330 (hereinafter referred to as “iPay88”) of the one part;

AND

XXXXXX (Company No.:), a company incorporated in Thailand and having its principal place of business at XXXX (hereinafter referred to as "The Company") of the other part;

WHEREAS: -

- (A) iPay88 is involved in the business of operation of website, provision of e-commerce services and e-commerce trading platform to facilitate online payment processing (collectively referred to as “Service”). The provision of the Services is governed by the terms and conditions in the agreements executed or to be executed between iPay88 and the relevant financial institutions, including but not limited to the Standards (as hereinafter defined).
- (B) The Company is engaged in the operation of websites and provision of products and/or services as may be available on the Company Website (as hereinafter defined).
- (C) The Company is desirous of appointing iPay88 for the provision of the Service and other related products and services subject to and based on the terms and conditions as set out in this agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires the following terms shall have the following meanings:

“**ADC**” means Account Data Compromise event which would occur or likely to be occurred in accordance with the Standards;

“**ADC Event**” means and ADC event which would or is likely to occur in accordance with the Standards;

“**Agreement**” means this Agreement and all the schedules hereto;

“**AML**” means Anti-Money Laundering;

"**Bank**" means any participating financial institutions where iPay88 maintains its transaction processing via the bank gateway;

"**Banned and High Risk Industries**" means any banned and high risk industries as determined by Card Associations and/or the Banks from time to time. Please refer to Appendix B as attached for a non-exhaustive list of the banned and high risk industries;

“**BRAM**” means the document containing the Business Risk Assessment and Mitigation compliance programme developed by MasterCard details thereof available at mastercardonline.com;

"**Business Day**" means any day (excluding Saturdays, Sundays and public holidays) on which banks in Thailand are open for business;

"**Card Associations**" means VISA, MasterCard and/or any other card associations that the Banks may subscribe with from time to time;

"**Commencement Date**" means the date of this Agreement;

"**Company's Information**" means any information that the Company provides to iPay88 or other users in the registration, payment process, stores or other features of the Services or any other information provided by the Company in connection with the Service;

"**Company Website**" means the Company's websites as stated in Section E of iPay88 (Thailand) Gateway Application Form hereto or such other websites as may be notified from the Company to iPay88 from time to time;

“**Customer**” means the natural person or legal entity(s) who or which has/have purchased products and/or services from the Company;

“**Excessive Chargeback Program**” means a set of program provided by the Card Associations for the Bank to closely monitor, on an ongoing basis, its chargeback performance at iPay88 and the Company's level and to determine promptly when iPay88 or the Company has exceeded or is likely to exceed monthly chargeback thresholds;

"**Fees**" means the fees payable by the Company to iPay88 for the Service more particularly stated in Annexure 1 of the iPay88 (Thailand) Gateway Application Form hereto excluding the banking charges imposed on iPay88 and shall include any revised Fees which may be agreed by both Parties in writing from time to time.

"**Marks**" means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols and marks, including but not limited to any one of the Card Associations' brand mark and name mark, that any one

of the Card Associations and/or its affiliates or subsidiaries own, manage, license, or otherwise control and make available for use by the Banks and other authorized entities;

"MasterCard" means MasterCard International Incorporated, a company organized under the State of Delaware having its office and principal place of business at 2000 Purchase Street, Purchase, NY10577-2509, United States of America of which the Bank is a member institution;

"OFAC" means the U.S. Treasury Department's Office of Foreign Assets Control;

"Payment Card Industry-Data Security Standard (PCI-DSS)" means a set of comprehensive requirements for enhancing payment account data security which was developed by the founding payment brands of the Payment Card Industry Security Standards Council to protect account data;

"Personal Data" has the meaning ascribed to it in the Personal Data Protection Act, B.E. 2562 (2019) ("the Act") which means any information in respect of commercial transactions, which:

- (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,

that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data user, including any sensitive Personal Data and expression of opinion about the data subject;

"Standards" means any laws, bylaws, rules, policies and the operating regulations and the procedures of the Card Associations and the Bank, including but not limited to any manuals, guides or bulletins, as may be amended from time to time;

"VISA" means Visa International Service Association; a company organized under the State of Delaware with its principal office at 3125 Clearview Way, San Mateo, CA94402, United States of America of which the Bank is a member institution;

- 1.2 Words bearing the singular in this Agreement shall include the plural and vice versa.
- 1.3 Titles and headings in this Agreement are used for convenience and ease of reference only and in no way define, limit, extend or describe the scope and intent of this Agreement or of its provision.
- 1.4 All Recitals and Appendices hereto in this Agreement shall be read and construed as an essential part of this Agreement.

1.5 “Parties” shall mean iPay88 and the Company and “Party” shall mean any of them.

2. Appointment

The Company hereby appoints iPay88 for the provision of the Service in accordance with the terms of this Agreement for the duration of the term as defined in Clause 20.1 below and iPay88 hereby agrees to accept the appointment for the provision of the Service to the Company.

3. Relationship

3.1 In providing the Service, the Parties agree that:-

- (a) iPay88 shall act as a facilitator to help the Company accept payments from the Customer;
- (b) iPay88 will act in accordance with written instructions of the Company’s authorized representatives provided that such instructions are within the scope of the Service to be provided by iPay88; and
- (c) iPay88 acts solely as an online payment switching service provider by creating, hosting, maintaining and providing its Service to the Company via the Internet. iPay88 does not have any control over the products or services that are transacted by the Company. Accordingly, iPay88 does not have any onus or liability whatsoever to ensure that the buyers or sellers that transacts with the Company will actually complete the transaction.

3.2 Notwithstanding the provision of the Service by iPay88 and any of the terms of this Agreement to the contrary, the Company acknowledges that:

- (a) iPay88 is not a bank and the Service as provided by iPay88 is an online payment switching service rather than a banking service, and
- (b) iPay88 does not act in the capacity of a trustee, fiduciary party or escrow agent in respect of the Company’s funds, but it acts as a custodian only. The Company agrees that it shall not receive interest or other earnings on the funds handled or processed by iPay88 on behalf of the Company and that iPay88 shall be entitled to the interest accrued on such funds (if any).

3.3 The Company shall at its own cost and expense register with the Bank and/or Card Associations and to obtain a merchant account prior to the provision of the Service by iPay88 to the Company.

3.4 The Company hereby agrees that: -

- (a) The Card Associations may at any time, immediately and without advance notice, prohibit the Company from using any of the Card Associations' Marks for any reason whatsoever;
- (b) The Card Associations shall be entitled to enforce any provision of the Standards and to prohibit the Company from engaging in any conduct that the Card Associations deem that the said conduct will damage or create a risk of damage to the Card Associations, including but not limited to any damage to its reputation, or conduct that could adversely affect the integrity of the Card Associations' systems;
- (c) The Company will not take any action against iPay88 or the Card Associations or the Bank to injunct and interfere with the Card Associations' right as mentioned in Clause 3.4 (a) and (b) hereof.

4. Requirements of Company Website

The Company hereby agrees that the Company Website must contain the following information or feature(s):

- (a) Marks in full colour to indicate that payment can be made by way of credit card (hereinafter referred to as "Card Acceptance");
- (b) Complete description of the products and/or services offered by the Company;
- (c) Indicate if there is any guarantees and/or warranties granted by the supplier and/or manufacturer for such products and/or services;
- (d) Specify or indicate the return / refund policy and terms and conditions of sale and purchase of the products and/or services, which must be acknowledged by the Customers;
- (e) Provide the particulars of the customer service contact including the Company's address, email address & contact number;
- (f) Specify that the transaction currency, cost of products and/or services and the delivery and/or shipping charges shall be in the currency of Thailand, Thai Baht (THB);
- (g) Export restriction (if known);
- (h) Delivery policy;
- (i) Customer's Personal Data privacy policy in accordance with the Act;
- (j) Security capabilities & policy for transmission of payment transaction details;
- (k) Legal restriction (if known);

- (l) Indicate that the Company uses the Services as provided by iPay88 in which iPay88's name and/or logo shall appear on the Company Website.

5. Remittance of payments by iPay88

- 5.1 The Company hereby irrevocably authorizes iPay88 to cause all funds received on behalf of the Company by iPay88 in connection with the Service to be deposited on its behalf in the iPay88's banking accounts. iPay88 shall thereafter remit all such funds received by iPay88 free of interest less any Fees payable to iPay88 to the Company either via cheque to the Company or Internet online fund transfer (if applicable) or telegraphic transfer to the bank account(s) maintained by the Company on the 5th day of each and every succeeding week.
- 5.2 The frequency of payment and date of payment as set out in Clause 5.1 above may be varied in writing by the Parties.
- 5.3 The Company hereby agrees that iPay88 and/or the Bank has absolute discretion not to remit all such funds received by iPay88 and/or the Bank to the Company if iPay88 and/or the Bank reasonably believe that any of the following events has or might have occurred:-
 - (a) Product is returned by the Customer or service is not rendered by the Company for any reason whatsoever;
 - (b) Dispute, chargeback, fraud, forgery and/or suspicious transactions;
 - (c) The Company is unable to furnish any document or record related to the transaction upon request of the Bank and/or iPay88;
 - (d) There has been a breach of this Agreement by the Company or the Company is suspected, expected, assumed or believed to be in breach of any of its obligations under this Agreement, or of any security measures or guidelines issued by the Bank;
 - (e) Non-compliance by the Company with regards to the transaction that may damage the goodwill of the Card Associations or reflect negatively on the Cards Associations' Marks;
 - (f) If this Agreement is terminated by iPay88 for any reason whatsoever.

6. Identity Authentication

- 6.1 The Company acknowledges that iPay88 uses various techniques to identify its Customer/users when they register on its site. Verification of the Customer/users is one of the various techniques to verify the authenticity of the Customer's/user's identity. The Company authorizes iPay88, either directly or through third parties, to

make any such inquiries as iPay88 considers necessary to validate the identity of Customer/users. This may include ordering a credit report and performing other credit checks or verifying the information provided by the Company.

- 6.2 The Company agrees and acknowledges that iPay88 does not guarantee any of the authentication of any of the Customer's/user's identity nor shall iPay88 be held liable in any way whatsoever to the Company or any third party for any fraud in connection with any of the user's identity.

7. Release

- 7.1 The Parties hereby agree that iPay88 shall not be held liable in any manner whatsoever in the event there is a dispute between the Company and any of the Customer, unless it can be reasonably proven by the Company that such dispute arose, directly or indirectly, from the negligence, fraudulent act, default, breach and/or omissions committed by iPay88 in the provision of the Service under this Agreement.

8. No Warranty

- 8.1 iPay88 shall use its best efforts to ensure that requests for electronic debits and credits involving bank accounts, credit cards, and check issuances are processed in a timely manner. Notwithstanding the foregoing, iPay88 makes no representations or warranties, whether expressed or implied, regarding the length of time required to complete the process of such transactions because the Service is largely dependent upon many factors beyond its control including but not limited to delays in the banking system or the local or international mail service.

9. Disclaimer and Limitation of Liability

- 9.1 The Company shall not hold iPay88 and its holding company, affiliates, subsidiaries, employees and its suppliers liable in any way for any losses or liabilities and shall indemnify iPay88 against any claims brought by Card Associations, Bank, any regulatory body, any governmental or non-governmental authorities or any third party for matters caused by, directly or indirectly, the Company or any third parties related to the Company in connection with the use of or access to the Service. The Company shall forthwith reimburse iPay88 for any fine imposed and all costs (legal or otherwise) and/or damages incurred by iPay88.
- 9.2 The Parties shall under no circumstances be liable to each other, its holding company, subsidiaries, employees and its suppliers for:
- (a) any online services offered by third parties and accessible from the iPay88 or the Company Website;

- (b) any exposure of users of the Service to third party online services providing prohibited material or other undesired experiences through the use of the iPay88 or the Company Website; or
- (c) any act or omission on the part of any third parties not within the control of either Party.

10. Indemnification

10.1 Subject to Clauses 7 and 9 herein, the defaulting Party hereto agrees to indemnify and hold the non-defaulting Party, its holding company, subsidiaries, affiliates, officers, directors and employees harmless from any claim or demand made or incurred by any third party due to or arising out of the defaulting Party's breach of any of the terms of this Agreement or the violation of any provisions of law in connection with the transactions contemplated under this Agreement.

11. Violations by the Company

If the Company engages in any of the following, iPay88 shall be entitled, at its sole discretion, to limit the Service provided to the Company or immediately terminate the Service and this Agreement by notice in writing to the Company:

- (a) Using the Service to receive payments for any sexually oriented or obscene materials or services in violation of iPay88's policy;
- (b) Using the Service to receive payments for any narcotics, other controlled or illegal substances, steroids or prescription drugs in violation of any laws;
- (c) Using the Service to receive payments for wagers, gambling debts or gambling winnings, regardless of the location or type of gambling activity;
- (d) Using the Service to receive payments for any replica Products;
- (e) Using the Service to receive payments for any firearms, ammunition, high capacity magazines, tasers, air guns;
- (f) Using the Service to receive payments for any fireworks or pyrotechnic devices or supplies;
- (g) Attempts to tamper, hack, modify or otherwise corrupt the security or functionality of Service;
- (h) Using the Service for money laundering activities;
- (i) Using the Service for pyramid scheme program;

- (j) Using the Service for any illegal or immoral activities, including but not limited to the violation of the applicable country's laws, and/or Bank and Card Associations rules;
- (k) Damage the goodwill or reflect negatively on the Card Associations brand, including but not limited to violate the BRAM compliance program;
- (l) Deal with any person or group of persons as announced by relevant authorities, such as but not limited to, the United Nations Security Council, as being a person or group of persons involved in terrorism or terrorism-related activities;
- (m) Deal with any persons or group of persons contained within the Specially Designated Nationals and Blocked Persons List (the "SDN List") issued by the OFAC;
- (n) Conduct any business or activities in a country subject to OFAC sanctions programs that impact payment services, or with the government of such a country; and/or
- (o) Being involved in any of the Banned and High Risk Industries, which shall be updated from time to time as stated in Appendix B.

The Company and iPay88 agree that the damages that iPay88 will sustain as a result of the above behaviour by the Company will be substantial, including (without limitation) fines and other related expenses from its payment processors and service providers and damage to its reputation, but may be extremely difficult and impracticable to ascertain and that damages may not be an adequate remedy for such breach by the Company. The Company further acknowledges that iPay88 shall be entitled to all equitable relief, including but not limited to injunctions and specific performance, in the event of any such breach or threatened breach by the Company.

12. Fees

- 12.1 The Company shall pay iPay88 the Fees as set forth in the Fee Schedule (Annexure 1) of the iPay88 (Thailand) Gateway Application Form. iPay88 shall be entitled to deduct all Fees payable to it from the funds received by iPay88 on behalf of the Company as set out in Clause 5.1 above.
- 12.2 All Fees will be assessed in the currency of the payment. The Company's account and all transactions are made and displayed in Thai Baht unless otherwise specified and may be subject to exchange rates.

13. Receiving Payments

- 13.1 Credit Card Funded Payments

By accepting a credit card payment, the Company agrees that if a reversal occurs on a credit card funded payment made to its account, iPay88 will reverse the payment and debit the Company's account balance that is maintained with iPay88 to pay for the reversal. The Company shall not take any legal action against iPay88 due to non-payment as caused by this reversal. If there are insufficient funds in the Company's account balance, the Company agrees to reimburse iPay88 through other means within fourteen (14) days from the date of receipt of the notification in writing.

13.2 Refused Payments

Any payments sent through iPay88 that are denied or unclaimed by a recipient will be returned to the Company (a) on the date of such denial in respect of denied payments, or (b) thirty (30) days after the date the payment is sent in respect of unclaimed payments.

14. Warranties with respect of Company's Information

14.1 The Company is solely responsible for the Company's Information and the Company acknowledges that iPay88 acts solely as a passive conduit for the online distribution and publication of the Company's Information. Notwithstanding the foregoing, iPay88 shall not use any of the Company's Information for any other purpose which is not related to the provision of the Service pursuant to the terms of this Agreement without the consent of the Company.

14.2 The Company shall use its best endeavour to ensure that the Company's Information and the Company's activities (including its payments and receipt of payments) that are transacted through the iPay88 Service shall not:

- (a) be false, inaccurate or misleading;
- (b) be fraudulent or involve the sale of counterfeit or stolen items;
- (c) be related in any way to gambling and/or gaming activities, including but not limited to payment or the acceptance of payments for wagers, gambling debts or gambling winnings, regardless of the location or type of gambling activity (including online and offline casinos, sports wagering and office pools);
- (d) violate this agreement as defined under Clause 11 herein;
- (e) infringe any third party's copyright, patent, trademark, trade secret or other property rights or rights of publicity or privacy;
- (f) violate any law, statute, ordinance, contract or regulation (including, but not limited to, those governing financial services, consumer protection, unfair competition, antidiscrimination, or false advertising);
- (g) be defamatory, trade libellous, unlawfully threatening or unlawfully harassing;

- (h) be obscene or contain child pornography;
- (i) contain any viruses, trojan horses, worms, time bombs cancelbots, easter eggs, cryptolocker or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or other personal information; or
- (j) jeopardize any reputation or liability for iPay88 or cause iPay88 to lose (in whole or in part) the services of iPay88's ISP or other suppliers.

15. Representations, Undertakings and Covenants of the Company

15.1 The Company hereby undertakes and covenants as follow:

- (a) To obtain at its own cost and expense necessary license or permit and own proper facility, equipment, inventory, agreement, personnel and other capabilities to conduct business;
- (b) Shall have legal or legitimate rights to sell and market such products or perform such services as offered and posted in the Company Website;
- (c) Shall not offer any products and/or services at a price, and/or use promotional tactics which contravene any applicable anti-competition laws;
- (d) Shall not impose or require Customer to pay any surcharge, commission, transaction cost, or any other contemporaneous finance charge in connection with the credit card transaction whether through any increase in price or otherwise, or any other term and condition imposed on any of the Customer desirous of using the credit card as opposed to any other method of payment in making payment to the Company;
- (e) The Bank reserves the rights to participate from time to time, in promotions with any vendors or suppliers featured on the Company Website;
- (f) To be responsible and financially liable for all transactions and liable for all acts, omissions, Customer's disputes and/or chargebacks, fraud or suspicious transactions, and other customer service-related issues caused by the Company;
- (g) Not to transfer and/or attempt to transfer any of the Company's financial liability by way of asking or requiring Customers to waive their dispute rights;
- (h) To provide the Bank, Card Associations and/or iPay88 with the necessary information, documents and records of the transaction and Customer;
- (i) To comply with the Standards and all relevant laws and regulations including, but not limited to, all applicable laws and regulations with regards to AML activities;

- (j) To participate and give full co-operation in an audit with regards to the program / Standards in relation to fraud control upon request by the Bank, Card Associations and/or iPay88;
- (k) Shall not deal directly with the Bank and/or Card Associations in relation to the Services;
- (l) In the event that the products and/or services are categorized as "high risk business" such as Digital item (IDD card, mobile reload card, digital music, video, information, software, instant downloadable item and eBook), Event (one-time seminar, conference, expo and online ticket) and Fast Moving Consumer Goods (pharmaceuticals, consumer electronics, packaged food products and drinks), the Company shall perform credit card verification with the Customer and to submit the relevant verification documents to iPay88 within three (3) business days after the card transaction date, failing which, the Company shall reverse the card transaction and perform secret key verification in the Company's online shopping cart for all instant downloadable items or activation of services;
- (m) Shall forthwith resolve any claims or complaints made by the Customer in respect of any purchase of the products and/or services from the Company directly with the Customer;
- (n) Shall not export or re-export any of the products and/or services stated in the Company Website without the appropriate approval from the relevant authorities and foreign government licenses;
- (o) Shall comply with all applicable export or import laws of whatever jurisdictions, including without limitation, restrictions on the export of encryption software and the export or import of products and/or services to and from embargoed countries.

16. Inspection at the Company's Premises

- 16.1 The Bank, Card Associations and/or iPay88 shall be entitled to enter any of the Company's premises with notice to audit and inspect the software, hardware, system records, procedures and/or any part of its system with a view to ascertaining whether the setting-up, operation, maintenance, security and integrity thereof or any other matter related thereto may adversely affect the Bank's, Card Associations' and/or iPay88's interests or iPay88's rights under this Agreement. All costs and expenses incurred thereon shall be borne by the Company and shall be debited into the Company's account. For the avoidance of doubt, such costs and expenses shall not be unreasonable.

17. Confidentiality and Intellectual Property Rights

- 17.1 All information that the Company may obtain from or through the iPay88 Website in connection with or in the course of its use of the Service, whether intended or by accident, shall be kept confidential and the Company shall not disclose such information or use the same other than disclosure to authorized third parties or as obviously contemplated under this Agreement or with iPay88's express written consent.
- 17.2 All information that iPay88 may obtain from or through the Company Website in connection with or in the course of the provision of the Service, whether intended or by accident, shall be kept confidential and iPay88 shall not disclose such information or use the same other than disclosure to authorized third parties or as obviously contemplated under this Agreement or with the Company's express written consent.
- 17.3 The Company acknowledges that the copyright, designs, trademarks and other intellectual property rights comprised in the information, text, graphics, scripts, software, technology, music, sound, photograph or any other materials or works used on, comprised or contained in the iPay88 Payment System, iPay88 software and the iPay88 Marks (collectively "the Materials") are the sole and exclusive property of iPay88 and/or its licensors.
- 17.4 The Company further agrees and undertakes that save as expressly permitted in this Agreement it shall not without iPay88 's prior written consent:
- (a) reproduce, copy, reverse compile, adapt, modify, distribute, commercially exploit, display, broadcast, hyperlink or transmit in any manner or by any means or store in an information retrieval system any part of the iPay88 Website or the Materials; or
 - (b) create or use derivative works from the Materials or create any hyperlink of any sort or manner to or from the iPay88 Website from or to any other website or use any part of the Materials contained at the iPay88 Website or any other server.
- 17.5 iPay88 acknowledges that the copyright, designs, trademarks and other intellectual property rights comprised in the information, text, graphics, scripts, software, technology, music, sound, photograph or any other materials or works used on, comprised or contained in the Company Website, the Company System and the Company Marks (collectively "the Company Materials") are the sole and exclusive property of the Company and/or its licensors.
- 17.6 iPay88 further agrees and undertakes that save as expressly permitted in this Agreement it shall not without the Company's prior written consent:
- (a) reproduce, copy, reverse compile, adapt, modify, distribute, commercially exploit, display, broadcast, hyperlink or transmit in any manner or by any means or store in an information retrieval system any part of the Company Website or the Company Materials; or

- (b) create or use derivative works from the Company Materials or create any hyperlink of any sort or manner to or from the Company Website from or to any other website or use any part of the Company Materials contained at the Company Website or any other server.

18. Access and Interference

- 18.1 iPay88 website contains robot exclusion headers and the Company agrees that it will not use any robot, spider, other automatic device, or manual process to monitor or copy iPay88 web pages or the content contained herein without iPay88 prior expressed written permission. The Company agrees that it will not use any device, software or routine to bypass our robot exclusion headers, or to interfere or attempt to interfere with the proper working of the iPay88 site or any activities conducted on its site. The Company agrees that it will not take any action that imposes an unreasonable or disproportionately large load on iPay88's infrastructure.
- 18.2 The Company acknowledges that much of the information on iPay88 site is proprietary or is licensed to iPay88 by its users or third parties. The Company agrees that it will not copy, reproduce, alter, modify, create derivative works, publicly display or frame any content (except for the Company's Information) from iPay88 website without the prior expressed written permission of iPay88 or the appropriate third party. If the Company uses, or attempts to use the Service for purposes other than sending and receiving payments and managing its account, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of Service, the Company's account will be terminated and the Company shall be liable to iPay88 damages and other penalties, including criminal prosecution.

19. Privacy and Security

- 19.1 iPay88 shall not sell or rent the Company's information to third parties for marketing purposes without the Company's expressed written consent and iPay88 shall only use the Company's Information in the manner as described in the Privacy Policy which may be viewed at <http://www.ipay88.co.th/privacy.html>. iPay88 views protection of users' privacy as a very important principle. iPay88 understands clearly that the Company and the Company's Information are one of iPay88 most important assets. iPay88 shall store and process the Company's Information on computers located in Thailand that are protected by physical as well as technological security devices. The Company shall only log in to their iPay88 account on a page which begins with <https://www.mobile88.com/>. All of iPay88 pages begin with <https://www.mobile88.com/> and therefore the Company should not use any other site that does not begin as such.

20. Term & Termination

- 20.1 The term of this Agreement shall commence on the Commencement Date and, unless earlier terminated or extended as provided below, shall end twenty-four (24) months

later (“Term”) provided that this Agreement shall be automatically renewed on a yearly basis upon expiry thereof unless either Party provides written notice of termination to the other Party at least thirty (30) days prior to the end of the then current Term.

20.2 This Agreement may be terminated as follows:

- (a) If a Party (hereinafter referred to as “the Defaulting Party”):
 - (i) shall hereto commit or permit any material breach of any of the obligations herein contained and on its part to be performed or observed and shall not have remedied such breach (if capable of remedy) within fourteen (14) days after written notice shall have been given to it by any other Party requiring such remedy;
 - (ii) shall go into voluntary liquidation otherwise than for the purpose of reconstruction or amalgamation or an Order of Court is made for its compulsory liquidation or being an individual shall become bankrupt or have a receiving order made against any of his assets;
 - (iii) shall enter into any composition or arrangement with its creditors;
 - (iv) shall have a receiver appointed over the whole or any part of its undertaking or assets;
 - (v) shall suffer any encumbrances taking possession of or a receiver or trustee being appointed over the whole or any part of its undertaking, property or assets; or
 - (vi) shall have an order made against it or have a resolution passed for its winding-up, otherwise than for the purpose of a reconstruction or amalgamation previously approved by the other Party.

then and in any such event (hereinafter referred to as an “Event of Default”) the Party not in default (the “Non-Defaulting Party”) shall be entitled (but shall not be obliged) to give notice in writing to terminate this Agreement to the Defaulting Party within fourteen (14) days from the date of which the Non-Defaulting Party becomes aware of the occurrence of the Event of Default.

20.3 This Agreement shall be terminated automatically and immediately without any prior notice if any of the following events shall occur:

- (a) When the Company or any of its directors and/or business owners of the Company has been blacklisted by the Bank and/or Card Associations;
- (b) The Card Associations de-registers iPay88 or the Bank ceases to be a member of the Card Associations for any reason whatsoever;

- (c) The Company is involved in fraudulent, counterfeit, suspicious and/or wrongful activity;
- (d) The Company enters into another agreement under a new name with the intention to circumvent the provisions of the Standards;
- (e) The Company carries out activities that causes the Bank and/or iPay88 to violate the Standards; or
- (f) The Company performs any other activities that may result in undue economic hardship or damage to the goodwill of the system of the Card Associations;
- (g) Irregular transactions by the Company, excessive chargebacks as listed under the Excessive Chargeback Program, non-compliance with any applicable data security standards as determined by iPay88, Card Associations and/or the Bank, or any other circumstances which, in the discretion of iPay88, the Bank and/or Card Associations, may increase the risk exposure of such parties or otherwise present a direct or indirect financial or security risk to such parties;
- (h) A violation by the Company of any laws and/or Standards; or
- (i) The Company processes more than United State Dollars One Hundred Thousand (USD100,000.00) only annually (based upon the date its account is approved) for any cards and does not enter into a merchant agreement directly with the Bank.

20.4 Upon the termination of this Agreement, the following provisions shall apply:

- (a) The Company shall cease all use of the Services, any pending transactions to be performed under the Services will be cancelled, and the Company's account will be terminated.
- (b) The Company may not use closure of its account as a means of evading investigation - if an investigation is pending at the time the Company closes its account, iPay88 may continue to hold its funds for up to one hundred and eighty (180) days as appropriate to protect iPay88 against the risk of reversals. If the Company is later determined to be entitled to some or all of the funds in dispute, iPay88 will release those funds to the Company within thirty (30) days. The Company will remain liable for all obligations related to its account even after such account is closed.
- (c) Notwithstanding termination of this Agreement, the Company shall remain liable for any obligations accrued prior to the termination of this Agreement, including, but not limited to, any charged back and/or reversed transactions.

20.5 If the Company does not access its account for a period of three years, it will be terminated by iPay88 without further notice. After the date of termination, iPay88 will use the accounts and/or address information the Company provided to try to send the

Company any funds that iPay88 is holding in custody for the Company. If that information is not correct, and iPay88 is unable to complete the payment to the Company, its funds will be subject to the laws applicable to unclaimed property and monies.

21. Remedies and iPay88's Right to Collect from the Company

21.1 If any of the following events occur:

- (a) the Company commits a breach of any of the terms of this Agreement as provided herein;
- (b) iPay88 is unable to verify or authenticate any information provided by the Company to iPay88 and the Company refuses to co-operate or assist iPay88 to verify and authenticate such information;
- (c) iPay88 believes with reasonable cause that the Company's account or activities pose a significant credit or fraud risk to iPay88;
- (d) iPay88 believes with reasonable cause that the Company's actions may cause financial loss or legal liability for iPay88 or its users; or
- (e) The Company's use of the Company's iPay88 account is deemed by iPay88 or the relevant Card Associations to constitute abuse of the credit card system or a violation of credit card rules. For the avoidance of doubt, even if such transactions have been recorded as completed in the Recent Activity or History Transaction Log of the Company's account, transactions are not considered completed until the funds have been charged to the Customer's funding source (for payments) or posted to the customer's bank account (for withdrawals), then, without limiting other remedies.

iPay88 shall be entitled at its discretion to take any of the following actions and remedies: (i) to hold on the funds in the Company's account, (ii) to limit the funding sources and payments, (iii) to limit access to an account and any or all of the account's functions (including but not limited to the ability to send money or making withdrawals from the account), (iv) to limit withdrawals, (v) to indefinitely suspend or close its account and (vi) refuse to provide the Service to the Company.

21.2 In addition, thereto, iPay88 reserves the right to hold the funds beyond the normal distribution periods for transactions it reasonably deems suspicious or for accounts conducting high transaction volumes to ensure integrity of the funds.

21.3 If iPay88 closes the Company's account pursuant to this Clause 21, iPay88 will notify the Company by giving a written notice and pay to the Company all of the unrestricted funds held in its iPay88's account. In addition thereto, iPay88 shall have a lien over the Company's account and iPay88 shall set-off against the monies in such accounts held with iPay88 in respect of all sums due and owing to iPay88 pursuant to the terms of this Agreement.

22. Assignability

22.1 The Parties may not transfer any rights or obligations it may have under this Agreement without the prior written consent of the other Party. This agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, successors, and permitted assignees.

23. Credit Report

23.1 The Company agrees that iPay88 may order and review the Company's credit report with the sole purpose of assessing its fitness to hold a iPay88 account and/or its ability to use the Service or features thereof.

24. Representations

24.1 Each Party represents to the other that:

- (a) it has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- (b) it has the rights, licenses, permits and power to perform all obligations incurred by it under this Agreement;
- (c) the execution, delivery and performance of this Agreement are duly authorized;
- (d) this Agreement has been duly executed and delivered by it and is a valid and binding obligation of it; and
- (e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or violate its constituent documents, any other contract or agreement to which it is a party, any applicable laws or any order or judgment of any court or governmental authority.

25. Information, Data Security and Protection

25.1 Where either Party receives any Personal Data from the Customer, it shall ensure that it fully complies with the provisions of the Act and only deals with the data to fulfil its obligations under this Agreement.

25.2 Each Party shall indemnify to the other for any breach of the Act which renders the latter liable for any costs, fines, claims or expenses howsoever rising.

- 25.3 Each Party shall take all reasonable steps to ensure that all its partners, contractors, employees or agents comply with this clause and the provisions of the Act where they are processing any of the Personal Data of the Customer.
- 25.4 The Company must ensure the security and confidentiality of the Customer's information at all time and protect from any unauthorized access or the use of such confidential information that could result in substantial harm to the Customer and violation of the Standards, including without limitation, the PCI-DSS. The Company shall also ensure that it complies with PCI-DSS and the Payment Application Data Security Standard (PA-DSS).
- 25.5 In the event that the system or environment of the Company was compromised or vulnerable to compromise (at the time the ADC Event or Potential ADC Event occurred), the Company shall be fully responsible to resolve all outstanding issues and liabilities to the satisfaction of the Card Associations notwithstanding any subsequent change in the iPay88's and Bank's relationship with the Company after the occurrence of the ADC Event or Potential ADC Event.
- 25.6 The Company shall forthwith notify iPay88 when the Company becomes aware of an ADC Event or Potential ADC Event in or affecting any system or environment of the Bank, iPay88 or the Company. The Company is deemed to be aware of an ADC Event or Potential ADC Event when the Company first becomes aware of an ADC Event or Potential ADC Event. The Company is deemed to be aware of an ADC Event or Potential ADC Event under circumstances that include, but are not limited to, any of the following:
- (a) the Company is informed, through any source, of the installation or existence of any malware in any of its systems or environments, no matter where such malware is located or how it was introduced;
 - (b) the Company receives notification from the Card Associations or any other source that the Company has experienced an ADC Event or Potential ADC Event; or
 - (c) the Company discovers or, in the exercise of reasonable diligence, should have discovered a security breach or unauthorized penetration of its own system or environment.
- 25.7 When the Company becomes aware of an ADC Event or Potential ADC Event, the Company shall forthwith take the necessary actions to resolve the said event, unless otherwise directed in writing by the Card Associations.

26. Taxes

- 26.1 All taxes and other charges imposed or to be imposed by the governments or such other competent authorities in respect of the provision of Service or in connection with this Agreement shall be borne by the Company and the Company shall reimburse

- (c) if sent by facsimile machine, one hour after its transmission if such time is during business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding day in the place of its receipt, subject to its having in fact been received in legible form and with a copy thereof being sent by post;
- (d) If sent by electronic mail, twenty-four (24) hours after e-mail is sent.

28. Force Majeure

28.1 Neither Party shall be liable for any cost or otherwise, for any delay and/or failure in the execution of their respective obligations hereunder if such cost, delay or failure is due to Force Majeure, which for the purposes of this Agreement shall mean any unforeseeable event or cause not within the control of the Party affected which that Party is unable to prevent, avoid or remove.

28.2 The events falling within Force Majeure include but are not limited to:

- (a) war, armed conflicts, riots, and insurrections;
- (b) acts of terrorism, sabotage or criminal damage; or
- (c) natural catastrophes including but not limited to earthquakes, floods or exceptionally inclement weather

provided always that an event of Force Majeure shall not include economic downturn, unavailability or insufficiency of funds, or lack of financing on the part of the affected Party to carry out its obligations under this Agreement.

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

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

29. Waiver

29.1 Any waiver of any rights under this Agreement shall not be valid unless in writing and signed by a duly authorized representative of each Party.

29.2 Waiver by either Party of any breach of the terms and conditions of this Agreement to be performed by the other Party shall not be construed as waiver of any other breach of the same or any other terms or conditions.

30. Governing Law and Jurisdiction

This Agreement is governed by, and shall be construed in accordance with, the laws of Thailand, and the Parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of Thailand.

31. Time

Time is of the essence of this Agreement.

32. Costs

Each Party shall bear their own solicitors' costs in respect of this Agreement and the stamp duty incidental to this Agreement shall be borne by the Company.

33. Entirety

This Agreement sets forth and shall constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and shall supersede any and all promises, representations, warranties or other statements whether written or oral made by or on behalf of one Party to the other of any nature whatsoever or contained in any leaflet, brochure or other document given by one party to the other concerning such subject matter. The terms in this Agreement may be amended from time to time and any amendments or changes made shall be posted and published in the agreement link of the iPay88 (Thailand) Gateway Application Form.

34. Severance

If any provisions of this Agreement or any part thereof is rendered void, illegal or unenforceable in any respect under any law, the Parties shall, in goodwill and to its best efforts, negotiate and agree to a replacement of any such unenforceable provision to allow for the Agreement to be carried out in accordance to the Parties' original intentions. Notwithstanding this, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

35. Inconsistency

Unless expressly provided otherwise, in the event of any inconsistency between any provisions in this Agreement and the Standards, the Standards shall prevail unless such other agreement provides explicitly to the contrary.

36. Survival

The following clauses of this Agreement will survive any expiration or termination of this Agreement: 9 (Disclaimer and Limitation of Liability), 10 (Indemnification), 13 (Receiving Payments), 16 (Inspection at the Company's Premises), 17 (Confidentiality and Intellectual Property Right), 21 (Remedies and iPay88's Right to Collect from the Company), 25 (Information, Data Security and Protection) and 30 (Governing Law and Jurisdiction).

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IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement the day and year first above written.

SIGNED for and on behalf of)
IPAY88 (THAILAND) CO., LTD.)
in the presence of:-)

.....
Name: LIM KOK HING
Designation: Executive Director

.....
Name: CHAN KOK LONG
Designation: Executive Director

SIGNED for and on behalf of)
XXXX)
in the presence of)

.....
Name:
Designation:

.....
Name:
Designation:

Appendix A

iPay88 (Thailand) Gateway Application Form

Appendix B

Non-Exhaustive List of Banned and High Risk Industries

1. Direct Marketing - Travel-Related Arrangement Services
2. Direct Marketing - Outbound Telemarketing Merchants
3. Outbound telemarketers
4. Direct Marketing - Continuity / Subscription Merchants
5. Direct Marketing - Other Direct Marketers - not elsewhere classified
6. Direct Marketing - Inbound Telemarketing Merchants
7. Multi-level marketing businesses, Unlicensed Multi-level marketing
8. Rebate-based business and up-selling merchants
9. Pyramid or ponzi scheme, matrix program and other "get rich quick" schemes
10. Telemarketing
11. Time sharing
12. Gold bar
13. Investment scheme
14. Buyers Club / Membership clubs
15. Key-entry Telecom Merchant providing single local and long-distance phone calls using a central access number in a non-face-to-face environment using key entry
16. Telecommunication Services including but not limited to prepaid phone services and recurring phone services
17. File sharing services
18. Illegal downloads of movies, music, computer and video games or software
19. Items or downloads infringe or violate copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction
20. Counterfeit designer/luxury goods
21. Stolen goods including digital and virtual goods
22. Used / Pre-loved Products
23. Precious Stones and Metals, Jewel, Gem
24. Drugs, Drug Proprietors, and Druggists Sundries
25. Drug Stores, Pharmacies
26. Drugs, drug paraphernalia and drug test circumvention aids
27. Miracle Cures
28. Internet pharmacies / Internet pharmacy referral site
29. Counterfeit pharmaceutical products
30. Cigar Stores and Stands
31. Tobacco / Cigar / Electronic Cigarette / Nicotine content products
32. Counterfeit tobacco products (e.g. cigarettes, cigars)
33. Alcohol
34. Video Entertainment Rental Stores
35. Gambling transaction, gaming and/or any other activity with an entry fee and a prize, includes casino games, sports betting, horse, dog or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery), sweepstakes and non-sports intrastate internet
36. Credit Counselling / Credit repair services
37. Credit repair or debt settlement services, credit transactions or insurance activities
38. Credit protection / Identity thief protection

39. Associated with purchases of annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card
40. Associated with the sale of traveller's checks or money orders
41. Check cashing businesses
42. Currency and forex
43. Firearms / weapons
44. Fireworks and hazardous materials
45. Pornography and adult content
46. Sexually oriented materials or services
47. Items that are considered obscene
48. Human remains and body parts
49. Sale of a good or service, including an image, which is patently offensive and lacks serious artistic value (such as images of non-consensual sexual behaviour, sexual exploitation of a minor, non-consensual mutilation of a person or body part, and bestiality)
50. Payment aggregator
51. Prepayment business
52. Marketplace
53. Auction business including Penny Auction and/or bidding
54. Real Estate Agency / Brokers
55. Items promote hatred, racism, religious persecution or contain offensive content
56. Items encouraging illegal activity
57. Involve the sales of products or services identified by government agencies to have a high likelihood of being fraudulent