



MERCHANT AGREEMENT  
(MOBILE PAYMENT)

## MERCHANT AGREEMENT

This Merchant Agreement is made between (1) TNGD and (2) the Merchant (hereinafter individually referred to as the “**Party**” or collectively as the “**Parties**”) on the date the Merchant is registered and approved by TNGD.

Upon your execution (electronic or otherwise) of this Agreement, you and TNGD shall be bound by the terms and conditions set forth herewith.

### WHEREAS:

- A. TNGD is an electronic payment system operator in the business of *inter alia* providing payment solutions to facilitate payments from a customer to a merchant through the use of TNGD Mobile Payment Service.
- B. The Merchant is desirous of appointing TNGD to provide the TNGD Mobile Payment Service via the QR Code in order to facilitate payment from the Merchant’s customers and clients to the Merchant in respect of goods and/or services provided by the Merchant.
- C. TNGD accepts the said appointment and the Parties agree to regulate their relationship in accordance with the terms and conditions herein contained.

**NOW THEREFORE**, in consideration of the premises, mutual covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. DEFINITIONS & INTERPRETATION

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

“ <b>Agreement</b> ”	means this Merchant Agreement, any cover pages hereto, any schedules, appendices, exhibits and annexes hereto, and any other terms and conditions incorporated by reference;
“ <b>Business Day(s)</b> ”	means any day not being Saturday, Sunday or a public or bank holiday in Kuala Lumpur;
“ <b>Cleared Funds</b> ”	means the sum of monies collected from the User in respect of a Transaction less the MDR and/or any other TNGD Fees (as may be applicable);
“ <b>Confidential Information</b> ”	means any information or material which is: (i) marked as “Confidential”, “Proprietary”, or “Restricted”; (ii) not generally known outside of the Parties (including their subsidiaries and affiliates) or otherwise not available to the general public at the time of the disclosure; and/or (iii) under the circumstances surrounding disclosure, ought to be treated as confidential; and  without derogating from the generality of the foregoing, the terms of this Agreement, business plans, models, methods, and strategies, client and customer lists, client and customer data, technical specifications, drawings and documents, and trade secrets shall be deemed confidential;
“ <b>Government Authority</b> ”	means Bank Negara Malaysia and any other government (including quasi-government) ministry, agency, institution, local authority or department having jurisdiction over the Parties and/or the subject matter herein;

<b>“Laws”</b>	means the applicable law as stated in <b>Clause 19.10</b> (and if no country is specified, then the applicable shall be deemed to be the laws of Malaysia) which shall include, without limitation, any regulation, enactment, and direction of any Government Authority;
<b>“Merchant”</b>	means the merchant as named and more particularly described in the Merchant Registration Form/Page and/or in the Merchant Dashboard in the Touch ‘n Go eWallet and/or as saved and registered in TNGD’s system;
<b>“Merchant Bank Account”</b>	means a Ringgit Malaysia account held by, in the name of, and maintained by the Merchant at a licensed financial institution or bank in Malaysia and recognised and acceptable to TNGD;
<b>“Merchant Dashboard”</b>	means the dual feature in the TNG eWallet which allows merchants to track sale transactions and history records and to further allow selected staff to access such information;
<b>“MDR” or “Commission Profile”</b>	means the merchant discount rate being the fee deductible by and payable to TNGD in consideration for the TNGD Mobile Payment Service at the rate of Zero Percent (0%) for SME Category A Merchants and Zero Point Five Percent (0.5%) for SME Category B Merchants;
<b>“QR Code”</b>	means a “Quick-Response” code consisting of black and white squares storing information readable either by (i) the camera of a mobile device containing the TNGD mobile wallet app; and (ii) a QR Code scanner or terminal for the purposes of facilitating the TNGD Mobile Payment Service.
<b>“RM” or “Ringgit Malaysia”</b>	means the lawful currency of Malaysia;
<b>“Settlement of Cleared Funds”</b>	means the settlement and transfer of the Cleared Funds into the Merchant Bank Account in accordance with <b>Clause 4.1</b> ;
<b>“Settlement Period”</b>	means one (1) Business Day or three (3) Business Days in the event of any system error which shall not be inclusive of the day the Transaction was made;
<b>“SME Category A Merchants”</b>	means Merchants with less than 5 outlets, or without a credit card/ewallet terminal, or as shall be assigned by TNGD in its sole discretion;
<b>“SME Category B Merchants”</b>	means Merchants with 5 outlets and above, or with a credit card/ewallet terminal except for non-profit organizations (charity organizations, churches, mosque, temples, and etc), or as shall be assigned by TNGD in its sole discretion
<b>“Term”</b>	means the duration of one (1) year from the date of this Agreement and including any renewals thereto;
<b>“TNGD”</b>	means <b>TNG Digital Sdn Bhd Registration No. 201701042478 (1256651-M)</b> with its operational office at Level 3A, Tower 6, Avenue 5, Bangsar South, No. 8, Jalan Kerinchi, 59200 Kuala Lumpur;
<b>“TNGD Mobile Payment App” or “TNG eWallet”</b>	means a software application on a mobile device through which the TNGD Mobile Payment Service is provided;
<b>“TNGD Mobile Payment Service”</b>	means TNGD’s mobile payment service wherein: (i) a Merchant subscribing to this service, having a Merchant Bank Account; and (ii) a User subscribing to and/or having a TNGD mobile wallet account;

	may send funds and/or payments for transactions between them regardless of whether the same is done directly, facilitated by the Merchant's platform, through the use of a payment gateway (integrated into the Merchant's website otherwise), and/or through other means;
<b>"TNGD Fees"</b>	means collectively the MDR together with any fee chargeable to the Merchant as provided under this Agreement generally which shall be exclusive of taxes;
<b>"Transaction(s)"</b>	means typically a payment from a User to the Merchant in respect of a sale of goods or provision of services from the Merchant to the User unless the context dictates otherwise or unless specified otherwise in this Agreement;
<b>"Transaction Amount(s)"</b>	means the full value of a Transaction between the User and the Merchant without any deduction of the MDR or otherwise the actual amount paid by the User to the Merchant in respect of a Transaction; and
<b>"User"</b>	means an individual or legal person subscribing and using the TNG eWallet.

#### Interpretation

- 1.2 The headings used are for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.3 all references to statutes, and provisions of statutes include such statutes and provisions as modified, re-certified or re-enacted.
- 1.4 Unless the contrary intention is evinced, words in the singular include the plural and vice-versa; words importing the masculine gender include the feminine and neuter and vice-versa; references to persons include bodies corporate, unincorporated associations, partnerships or an authority.
- 1.5 The words "included", "including", "in particular" or any similar expression shall be construed to as illustrative and not limit the sense of the words preceding them.
- 1.6 The words "hereof", "hereto", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and references to any clauses, articles, sections, schedules and exhibits are references to the clauses, articles, sections, schedules and exhibits of this Agreement unless otherwise specified. Schedules, appendices, annexes, addendums, attachments and exhibits attached hereto are an integral part of this Agreement.
- 1.7 A reference to any Party or any party to any other agreement or document shall include the successors and/or permitted assigns of such Party or party.
- 1.8 This Agreement has been negotiated by the Parties and their respective counsel(s) (or otherwise the Parties have received independent advice from their counsels or other consultants) and shall be fairly interpreted in accordance with its terms and without any strict construction in favour of or against either Party.
- 1.9 In the event of conflict between the provisions of this Agreement, the conflict shall be resolved in the following order of precedence:
- (i) the main terms and conditions; then
  - (ii) any other document referred to in this Agreement or attached to this Agreement.

## 2. SCOPE

- 2.1 This Agreement shall encapsulate the terms for the provision of the TNGD Mobile Payment Service via QR Code as described herein (including, for the avoidance of doubt, schedules, appendices, annexes, addendums, attachments and exhibits and other documents attached hereto) between TNGD and the Merchant and such other services as may be agreed between the Parties from time to time.
- 2.2 This Agreement and the provision of the TNGD Mobile Payment Service shall not encompass any form of foreign currency exchange or conversion and all transfer of monies, e-money or legal tender hereunder between the Parties shall only be in RM. Unless indicated otherwise, all fees and other monetary amounts are quoted in RM.

## 3. DURATION

- 3.1 This Agreement shall come into full force commencing from the date of this Agreement, and shall continue to be valid for the Term or until otherwise sooner terminated in accordance with the terms herein. This Agreement shall be automatically renewed for a period of one (1) year upon expiry of the Term or expiry of any extended term unless either Party elects to terminate this Agreement by issuing a written notice to the effect no less than thirty (30) days before expiry of the Term or any extended term.

## 4. DESCRIPTION OF SERVICES

- 4.1 The TNGD Mobile Payment Service facilitates the transfer of funds typically (and unless otherwise specified) in respect of payment from a User to a Merchant to complete a Transaction wherein TNGD shall clear and transfer the Cleared Funds to the Merchant Bank Account within the Settlement Period (hereinafter referred to as the “**Settlement of Cleared Funds**”). Such settlement of Cleared Funds shall be subject to settlement guidelines which may be issued by TNGD from time to time.
- 4.2 The Settlement of Cleared Funds shall be based on the daily Transaction record of TNGD. In the event of any inconsistency between TNGD’s daily Transaction record and Merchant’s daily Transaction record, the Merchant shall raise such inconsistency within thirty (30) days from the settlement date. The Parties shall thereafter mutually resolve such inconsistency within fourteen (14) Business Days including any refund or payment. In the event the Parties are unable to agree on the inconsistency, the Parties shall refer the matter in accordance to the Dispute Resolution process herein.
- 4.3 Receipt of any monies into the Merchant Bank Account shall not, in and of itself, amount to clean and unconditional receipt of the Cleared Funds and the same shall be subject to other terms herein.
- 4.4 The Merchant may be granted access to the Merchant Dashboard in the TNG eWallet which allows the Merchant to keep track on the sales at each outlet. The usage of the Merchant Dashboard shall be for the Merchant’s reference purposes only. Any dispute with regards to the sales shall be referred back to the terms and conditions herein. The Merchant shall be solely responsible to ensure that only the relevant personnel is granted access to the staff account and TNGD shall not be responsible of any misuse of the Merchant Dashboard in any way what so ever. The usage of the Merchant Dashboard shall be further subject to any guidelines or directives as may be issued by TNGD from time to time.
- 4.5 Reversal and Refund of Payments: For the avoidance of doubt, the provision of the TNGD Mobile Payment Service shall not be subject to any refund, “money-back guarantee”, warranties, merchantability, suitability for use or other such policy that the Merchant may provide to the User (or its customers generally) in respect of the Transaction. Any such policy shall be between the Merchant and the User and the provision of the TNGD Mobile Payment

Service and the Merchant's obligation to be liable for the MDR (and other TNGD Fees, if applicable) shall not in any way be contingent upon such policy or other business practices of the Merchant.

#### Role of TNGD

- 4.6 The Merchant acknowledges that TNGD acts solely as a payment intermediary and nothing in this Agreement shall be construed to expand TNGD's role herein as something other than as aforesaid and the Merchant shall not in any way represent to the User, its customers and/or any third party that:
- (i) TNGD acts in any other capacity, including, but not limited to, as a vendor, purchaser, agent, representative, middleperson, distributor, broker, manufacturer, dealer, another merchant or otherwise as a party to the Transaction; and
  - (ii) TNGD makes any warranties and/or representations whatsoever in respect of the goods or services being the subject matter of Transaction including, but not limited to, the quality, merchantability, safety or legality thereof.
- 4.7 The Transaction shall at all times be between the Merchant and the User and in no event shall TNGD 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. If in any event TNGD shall incur any liability to any third party as result of or in connection with the foregoing, then the Merchant shall indemnify TNGD for any losses incurred thereby (including any legal or professional costs). It shall be the sole responsibility of the Merchant to resolve directly with the User, any claims or complaints made by the User in respect of any purchase of goods, products or services made by the way of TNGD Mobile Payment Service and TNGD shall not in any way be involved and responsible.
- 4.8 In connection with the foregoing, in no event shall TNGD be liable or responsible for unauthorised or fraudulent transactions made by the User and/or any third party (unless the same shall be due to a fault in the TNGD Mobile Payment Service). The Merchant shall be solely responsible and shall indemnify and/or reimburse TNGD for any refunds or reimbursements made by TNGD thereto to the User.

#### Campaign Terms and Conditions

- 4.9 The Parties herein agree that TNGD may run campaign(s) from time to time for the purposes of promoting the TNGD Mobile Payment Service and/or to reward the User(s) and/or the Merchant. Pursuant thereto, TNGD shall set out the terms and conditions of each campaign on TNGD's website. By participating in the campaign, the Merchant agrees and undertakes to be bound by the terms and conditions of the campaign as set out by TNGD.

### **5. RIGHTS & OBLIGATIONS OF THE PARTIES**

#### Rights & Obligations of TNGD

- 5.1 TNGD shall provide and make available the TNGD Mobile Payment Service in accordance with the terms herein and any other guidelines as shall be determined by TNGD from time to time.
- 5.2 TNGD reserves the right to suspend, limit certain functionalities and/or terminate (depending on the severity and at the discretion of TNGD) the TNGD Mobile Payment Service and take such action as may be expedient or necessary (for compliance with the Laws or otherwise to mitigate its losses) due to the breach of any terms and conditions herein and/or in any event that TNGD may deem it necessary and TNGD shall not be responsible for any loss, cost and/or damages arising out of such suspension, limitation and/or termination.

- 5.3 The acceptance of a Transactions shall not in any way be binding on TNGD as to the validity of any Transaction or Transaction receipts. TNGD shall not honour any Transactions which in the opinion of TNGD is not genuine. TNGD reserves the right to refuse to honour payment requests that TNGD believes or suspects are fraudulent or erroneous. The Merchant accepts that TNGD shall exercise this right in TNGD's sole discretion. For avoidance of doubts, the Merchant shall not in any case rely upon TNGD to discover or prevent loss as a result of a fraud or erroneous payment.
- 5.4 The Merchant permits, consents and hereby authorises TNGD to obtain credit and financial information relating to the Merchant from third parties including, but not limited to, third party credit rating agencies and/or to undertake credit and financial reviews on the Merchant.

#### Outstanding Sums due to TNGD

- 5.5 In the event that the Merchant shall have any outstanding TNGD Fees or other amounts generally due and payable to TNGD under this Agreement, TNGD reserves the right at its discretion to:
- (i) if within **seven (7) days** from a notice of demand from TNGD, the Merchant shall fail to settle any outstanding amounts, impose interest on such outstanding amounts at the rate of **eight percent (8%) per annum** or **four percent (4%) above the base lending rate** of CIMB Bank (whichever shall be higher) calculated on a daily rest until the same shall be fully settled; and/or
  - (ii) deduct such outstanding TNGD Fees from future payments of Cleared Funds or other amounts payable to the Merchant.

For the avoidance of doubt, this provision shall not prejudice TNGD's right to terminate this Agreement if the TNGD Fees (or otherwise any amounts due and payable to TNGD) shall have remained outstanding for **thirty (30) days** or more from the date of the notice of demand from TNGD in which case TNGD shall be entitled to terminate this Agreement at any time thereafter at its sole discretion.

#### Rights & Obligations of the Merchant

- 5.6 The Merchant shall make available the TNGD Mobile Payment Service to the User and/or its customers as the payment method (or one of the payment methods, as the case may be) for the purposes of completing any Transactions at no additional cost, surcharge, processing fee or mark-up whatsoever to the User or its customers generally; i.e. the cost to the User shall be same as or equal to all other payment methods accepted by the Merchant including cash. TNGD reserves the right to claim back the surcharge amount upon receipt of sufficient documentary proof that a surcharge has been levied.
- 5.7 The Merchant shall NOT use the TNGD Mobile Payment Service for payment in respect of any Transactions for goods and/or services provided by any other party other than that provided by the Merchant.
- 5.8 The Merchant shall only use the TNGD Mobile Payment Service for the nature of business it has informed TNGD. In the event the Merchant intend to use the TNGD Mobile Payment Service for any other types of business or transaction, or if the Merchant has changed it nature of business, the Merchant shall inform TNGD in writing and obtain TNGD's consent prior to using the TNGD Mobile Payment Service for such nature of business or transactions.
- 5.9 The Merchant shall prominently display at its premises the TNGD Mobile Payment Service and any QR Code standees as provided by TNGD to promote and enable the use of the TNGD Mobile Payment Service. The Merchant shall further comply with any promotional and marketing guidelines as shall be issued by TNGD from time to time. For the avoidance of doubt, this shall include, but shall not be limited to display prominently the brand name and logo of TNGD in accordance to the said guidelines as well as other marketing materials as may be provided by TNGD.

- 5.10 The Merchant shall ensure that the final price of the goods and/or services are clearly displayed during the checkout and payment process and would not in any way mislead the User(s).
- 5.11 The Merchant hereby undertakes that in the event any Transaction shall subsequently be unsuccessful due to any reason whatsoever, the Merchant undertakes to transfer the Cleared Funds immediately back to TNGD or TNGD shall be entitled to deduct the said sum from the next Settlement of Cleared Funds.
- 5.12 The Merchant shall indemnify and hold harmless TNGD from and against any third party demands, claims, proceedings or arbitration awards and all costs, damages, expenses (including the reasonable fees and expenses of legal and accounting advisors) and/or loss (collectively, "Losses") suffered by TNGD arising solely from the provision of the terms and conditions herein. This indemnity shall not apply to the extent of any Losses arising from or attributable to the gross negligence, wilful default or fraud by TNGD.
- 5.13 The Merchant shall ensure that the QR Code standee or any other similar items are not tampered with, damaged, modified or changed in any way whatsoever. The Merchant shall further be solely responsible to ensure the QR Code standee or any other similar items are kept safe and well taken care. The Merchant shall not share the QR Code standee with any other businesses without the prior consent of TNGD in writing. TNGD shall not be liable in anyway whatsoever for any losses or damages that may arise or suffered by the Merchant due to the failure of the Merchant to comply with the terms of this clause.
- 5.14 The Merchant shall duly and diligently comply with any and all guideline(s), training(s), information material(s), manual(s) and any other similar documents as may be issued from time to time by TNGD.
- 5.15 Fraud, Risk, and Errors
- (i) If a User claims, or it has been brought to TNGD's attention, or TNGD otherwise suspects that a Transaction (or Transactions) was made without the authorisation of the User, made fraudulently, is suspicious, or otherwise made in error then TNGD and the Merchant shall cooperate to investigate and seek to determine the root cause of the problem and mutually agree to resolve the same. In this regard, the Merchant shall:
    - a. upon request, provide TNGD with the relevant details of the Transaction(s), all the necessary documentation and/or information in its possession within **fourteen (14) days** from the date of such request; and
    - b. shall in good faith conduct the necessary investigation together with TNGD and seek to find a mutually acceptable resolution to the Transaction(s) in question and take such other steps in order to prevent similar occurrences in the future.
  - (ii) If TNGD does not receive the cooperation of the Merchant within the time frames stipulated herein, TNGD shall be entitled to assume that the Merchant is the cause of the unauthorised, fraudulent, suspicious, or erroneous Transaction(s) and the Merchant shall bear the cost of any refund of the Transaction Amount(s) to the User together with any other related cost. TNGD shall be entitled to deduct the said sum from the next Settlement of Cleared Funds or pursuant to Clause 5.5.
  - (iii) Based on the outcome of the investigation, the Parties agree that if the cause of the unauthorised, fraudulent, suspicious, or erroneous Transaction(s) is due to negligence or default of the Merchant, the Merchant shall bear the cost of refunding any Transaction Amount(s) or such other refunded sums to the User, and other costs directly related thereto. In the event it is neither Party's fault and was made purely in error, the Merchant shall refund the Transaction sum to the User.

- (iv) The Merchant agrees that, if TNGD reasonably believes that a number of Transactions are Prohibited Transactions, unauthorized payments or otherwise fraudulent Transactions, it will on reasonable prior written notice from TNGD, provide access to TNGD to the Merchant's premises during normal business hours for the purpose of TNGD conducting onsite reviews of the Merchant's risk management capabilities and the effectiveness of the Merchant (as applicable) in rejecting Prohibited Transactions, unauthorized payments, erroneous transactions or otherwise fraudulent Transactions.
- 5.16 The Merchant shall not use the TNGD Mobile Payment Service in a manner that may adversely affect the reputation of TNGD and the Mobile Payment Service in any way whatsoever.
- 5.17 The Merchant shall open and maintain a Merchant Bank Account and/or provide the relevant information (or verification if necessary) thereof to TNGD within **fourteen (14) days** from the date of this Agreement and any proposed changes thereto throughout the duration of this Agreement. TNGD shall not be liable for any losses the Merchant may suffer for any failure of the Merchant to notify TNGD of any proposed change in the Merchant Bank Account or of any other change as aforesaid.
- 5.18 The Merchant shall use the TNGD Mobile Payment Service only in accordance with the terms and conditions of this Agreement and as directed by TNGD only from time to time.
- 5.19 The Merchant shall promptly settle any TNGD Fees (insofar as the same is not automatically deducted).
- 5.20 The Merchant shall not permit to be transacted using the TNGD Mobile Payment Service any of the following transactions or transactions of the following nature, as the case may be: (i) pornographic material or any vulgar and other content prohibited by the Malaysian Communications and Multimedia Content Code; (ii) any sexual services; (iii) illegal downloads; (iv) illegal gambling or betting; (v) prescription drugs (unless the Merchant is duly licensed); (vi) any imitation/fake/replica goods or services or those otherwise infringing the intellectual property rights of others; and/or (vii) other goods or services the offering or provision of which is illegal under the Laws (collectively referred to as the "**Prohibited Transactions**").
- 5.21 For the purposes of compliance with the Laws, upon the commencement of this Agreement and from time to time upon request, the Merchant shall provide (or allow access, as the case may be) TNGD with such information and/or copies of documents relating to the Merchant's corporate structure and constitution, incorporation and statutory documents, nature of business, financial information, shareholders, directors, partners, members, key employees, and/or beneficiaries.
- 5.22 Without derogation to the generality of the foregoing clause, the Merchant agrees to provide TNGD upon reasonable request with information and/or copies of documents (or if requested, certified true copies) relating to the financial and/or operational status of the Merchant, including, but not limited to, financial statements, audited accounts, and management accounts.
- 5.23 Material Changes in the Condition of the Merchant: The Merchant shall inform TNGD without undue delay of any material change in the Merchant, including but not limited to changes in: (i) its nature of business, including its business model or the goods or services that it provides; (ii) its corporate structure, including constitution, shareholding, change in management or control; (iii) any licensing requirements to which the Merchant is subject including any changes or revocation of any license or approvals which it requires for its business or otherwise 's which may have an adverse impact on the Merchant and/or on TNGD's compliance with the Laws; and/or (iv) any other things that, on a reasonable and objective basis, shall be prejudicial or have an adverse effect on the provision of the TNGD Mobile Payment Service or to TNGD (hereinafter collectively referred to as "**Material Change(s)**").

- 5.24 The Merchant shall maintain the records for each Transaction for a period of seven (7) years after the completion of the Transaction and TNGD shall be entitled to review or otherwise access such records. Subject to any legal restrictions under applicable law, the Merchant will procure that TNGD and/or regulatory or governmental authorities having jurisdiction over TNGD be provided with or granted access to, the relevant Transaction information, services and products sold by the Merchant, and the amount, currency, time and counterparties to each Transaction (where applicable), within **three (3) Business Days** of TNGD's request.

## 6. CHANGE NOTICE

- 6.1 TNGD shall be entitled to change, vary or modify the terms and conditions herein from time to time and shall be made by issuance of an updated version of this Agreement either on the portal available to the Merchant, posted on TNGD's website, posted on the Merchant Dashboard, or by way of service of notice in accordance to the terms and conditions herein at least **twenty-one (21) days** before the said change, variation or modification comes into effect. The Merchant herein agrees and undertakes that any continued usage of the TNGD Mobile Payment Service shall constitute an agreement to such changes or modification.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 For the purposes hereof, the term "**Intellectual Property**" shall mean all intellectual property and proprietary rights, including all present and future rights conferred by statutes, common law or equity in or in relation to any copyright, trademark, trade name, trade logo, trade slogans, service mark, industrial design, patent, layout design of integrated circuit, business method, domain name, trade secret, promotional material, software, algorithms, mask works, branding and any other intellectual property rights in any field or industry.
- 7.2 The Parties hereby acknowledge that each party remains the sole owner of the Intellectual Property respectively owned by the Parties at the commencement of this Agreement. The Merchant shall hereby grant to TNGD a non-exclusive and non-transferable royalty free (except to the extent any third party licence fees are payable by the relevant licensor) licence to use the Intellectual Property in connection with the performance of the Parties' respective obligations hereunder during the Term. The Merchant shall obtain TNGD's written consent prior to usage of any materials that contain or may contain TNGD's Intellectual Property.
- 7.3 Neither party is permitted to transfer, assign or sub-license any of the rights in relation to the Intellectual Property of the other Party, to any person not a party to this Agreement. Neither Party may use the other Party's Intellectual Property rights except as authorised by this Agreement.
- 7.4 Pursuant to the above and for the avoidance of doubt, the Merchant hereby permits TNGD to use its name logo/image/trademark(s) for purposes of TNGD's marketing including promotions in the TNG eWallet, marketing materials or in any other channel of communication, without any royalty
- 7.5 All Intellectual Property developed in the course of this Agreement shall belong to TNGD.
- 7.6 Upon the termination of this Agreement, TNGD and the Merchant shall, and/or shall procure that its respective employees, servants and agents immediately cease use of the Intellectual Property; and within thirty (30) Business Days return to the other, or if the other requests in writing, destroy all copies of the Intellectual Property and any documentation provided by the other in its possession, custody or control.
- 7.7 The obligation with regards to the Intellectual Property herein shall continue notwithstanding the termination or expiry of this Agreement.

## **8. COOPERATION FOR COMPLIANCE WITH THE LAWS**

- 8.1 The Merchant acknowledges that TNGD is obliged to comply with various financial and other laws and the Merchant hereby permits TNGD to conduct checks, audits, or investigation into the history of the Transactions carried out by the Merchant (together with any other relevant records and information) as part of TNGD's compliance with, in particular, the Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Financial Services Act 2013 (Act 758), Guideline on Electronic Money (E-money) issued by Bank Negara Malaysia, and with the Laws and Government Authorities generally.
- 8.2 The Merchant agrees to provide all necessary cooperation to TNGD to ensure compliance with the Laws and to investigate any suspected illegal, fraudulent, suspicious, or improper activity.
- 8.3 In addition, the Parties undertake to comply with all other Laws as may be applicable.

### Anti-bribery

- 8.4 In performing the obligations under this Agreement, the Parties will also comply with all applicable anti-bribery and anti-corruption laws (and related regulations and guidance). In particular, each Party hereby acknowledges and agrees:
- (i) to comply with the Malaysian Anti-Corruption Commission Act 2009, and that it shall not act in such a way that is or could be construed as a violation of these laws and requirements, including but not limited to offering a bribe or making a facilitation payment to a public official or to any other Party;
  - (ii) that it will ensure that its activities in connection or relating to its obligations under the Agreement will not cause the other Party to be in breach of any anti-bribery and anti-corruption laws (and related regulation and guidance);
  - (iii) that it will ensure that it has appropriate internal procedures within its organisation to prevent bribery by its workforce and other people under its control; and
  - (iv) if a Party, in connection with or relating to its obligations under the Agreement, is asked to partake in any activity, that is in violation of any anti-bribery or anti-corruption laws, or becomes aware of any such conduct by its workforce or within its control and concerning or relating to the Agreement, such Party agrees to immediately report the details of this to the other Party.

## **9. TAXES**

- 9.1 All payments required by this Agreement are exclusive of any taxes (including, without limitation, country, federal, provincial, state, and local taxes), duties, levies, or assessments. The Merchant shall be solely responsible for the payment of such taxes, duties, levies, or assessments imposed upon TNGD or the Merchant in connection with this Agreement. The Merchant shall make payments to TNGD free and clear of, and without reduction for any withholding or other taxes. Any such taxes imposed on payments to TNGD shall be the Merchant's sole responsibility and the Merchant shall provide such evidence to establish that such taxes have been paid upon request by TNGD.

## **10. DEFAULT & TERMINATION**

### Termination of Convenience

- 10.1 Either Party may elect to terminate this Agreement without liability and without assigning any reason whatsoever by issuing to the other Party written notice in advance no less than forty-eight (48) hours, however, such termination shall not affect the rights and/or liabilities already accruing to either Party up to the date of termination. For the avoidance of doubt TNGD shall

not be liable for any cost, damages and/or liabilities incurred by the Merchant pursuant to any third party contracts entered into by the Merchant on or before the termination date in relation to the provision of the Services and such termination of convenience.

#### Events of Default

- 10.2 Without prejudice to other termination rights under this Agreement, the occurrence of any of the following events shall constitute a default (hereinafter referred to as “**Default**”) of this Agreement:
- (i) a Party commits a breach of any provisions of this Agreement and the breach is not remediable or fails to remedy such breach within **thirty (30) days** after receipt of written notice from the non-defaulting Party of such breach;
  - (ii) a Party becomes insolvent or is wound-up or files or has a petition filed against it for its insolvency or winding-up or becomes unable to pay its debts generally as they fall due or makes a general assignment or arrangement or scheme of compromise with or for the benefit of its creditors or a liquidator, receiver, judicial manager, trustee, administrator, agent or similar officer is appointed for the defaulting Party or over all or a material part of the assets of the defaulting Party; or
  - (iii) a Party is dissolved and goes into liquidation either compulsorily or voluntarily, which in the case of voluntary dissolution, an exception is made for reconstruction or amalgamation approved by the other Party (which approval shall not be unreasonably withheld);
  - (iv) a Party ceases or threatens to cease to carry on the whole or any substantial part of its business other than in the course of reconstruction or amalgamation approved by the other Party (which approval shall not be unreasonably withheld); or
  - (v) a Party violates, fails or refuses to comply with the Laws, direction of any Government Authority, or the order of a court or tribunal having competent jurisdiction over the defaulting Party and such default is not remediable or not remedied within **thirty (30) days** after receipt of written notice from the non-defaulting Party of such default.

#### Consequences of Default

- 10.3 If the Default is not remediable or not remedied within the time frames specified in **Clause 10.2 above**, the non-defaulting Party shall be entitled to forthwith terminate this Agreement by issuing a written notice to that effect and the following consequences shall ensue:
- (i) all rights and obligations of the Parties shall cease to have any further effect and none of the Parties shall have any claims against the others for costs, damages, compensation or otherwise save in respect of any right of action already accrued to any of the Parties in respect of any breach, non-observance or non-performance or repudiation of any of the provisions of this Agreement by the other Party occurring prior to such termination or out of which such termination shall have arisen; and
  - (ii) immediately return to TNGD all QR Code standees and all promotional marketing material(s) supplied by TNGD.

## **11. DISPUTE RESOLUTION**

- 11.1 Any dispute shall in so far as it is possible be amicably settled, by mutual consultation and consent between the Parties and in this regard, the Parties shall be obliged to attempt a good faith resolution for a minimum period of **thirty (30) days** from the date of the first of such attempts (by the issuance of a notice from either Party to that effect) before resorting to resolution through any legally binding forum or other methods.

- 11.2 For the avoidance of doubt, **Clause 11.1 above** shall not prejudice either Party's right to terminate this Agreement as provided in any other provision herein and the obligation to attempt an amicable settlement shall not have the effect of suspending any time frames herein.

#### Disputed Invoices

- 11.3 If an invoiced Party, in good faith, disputes the accuracy of the amount invoiced, the invoiced Party shall issue a written notice to the invoicing Party at least **seven (7) days** prior to the date such invoice shall fall due for payment with details of the amount disputed and reasons why the amount is incorrect together with supporting documentation. The invoiced Party shall nevertheless, in good faith pay, any undisputed amounts as it falls due and the Parties shall attempt an amicable resolution within **thirty (30) days** from the date of the issuance of the aforementioned written notice *mutatis mutandis* in accordance with **Clause 11.1**.

#### Arbitration

- 11.4 Upon the expiry of the time frame in **Clause 11.1**, either Party may refer the dispute or difference to be settled by arbitration by the Asian International Arbitration Centre ("**AIAC**") previously known as Kuala Lumpur Regional Centre for Arbitration ("**KLRCA**") in accordance with the AIAC rules for the time being in force.
- 11.5 The reference shall be to a single arbitrator to be jointly appointed by both Parties. If the Parties do not concur in the appointment of the arbitrator, then the arbitrator shall be appointed by the director, for the time being, of the AIAC who shall have the like powers to act in the reference as if he had been appointed by consent of both Parties to this Agreement. The decision and award of the arbitrator shall be final and binding on both Parties.
- 11.6 The seat of the arbitration shall be Malaysia, the language to be used in the arbitral proceedings shall be English and the dispute submitted to arbitration shall be decided in accordance with the substantive laws of Malaysia. Save as provided above, the provisions of the Arbitrations Act 2005 of Malaysia or any statutory modification or re-enactment thereof for the being in force shall apply to such arbitration.
- 11.7 As far as practicable, both Parties shall continue to perform their obligations under this Agreement pending settlement of the dispute under this Article, without in any way affecting or prejudicing the right and remedies of the Parties under arbitration.
- 11.8 Nothing in the above shall preclude either Party from commencing legal proceedings before a court of competent jurisdiction to seek urgent equitable relief, preserve any legal right or remedy or protect any proprietary or trade secret or intellectual property rights.
- 11.9 Notwithstanding the above, if TNGD so elects by way of written notice to the Merchant specifying the dispute in question, that dispute shall be referred to and finally resolved by the exclusive jurisdiction of the courts of Malaysia. In the event the Merchant shall issue an arbitration notice (hereinafter referred to as the "**Arbitration Notice**") to TNGD, TNGD shall have **twenty-one (21) days** to elect by way of a written notice to the Merchant to refer the dispute to the exclusive jurisdiction of the courts of Malaysia whereupon the Merchant shall withdraw such Arbitration Notice immediately.

## **12. LIABILITY**

- 12.1 No Party shall be liable for any indirect, incidental, or consequential loss or damage of any kind, including damages for lost advantage, lost savings, loss of data or loss of profit, whether or not the responsible Party has been advised of the possibility of such damages or whether foreseeable or otherwise and regardless of the form of action whether in contract, warranty, strict liability, tort (including negligence of any kind), breach of statutory duty, or other forms of action.

- 12.2 Subject to the other provisions of this Agreement expressly excluding any limitation of liability, the aggregate liability of TNGD under this Agreement whether arising out of contract, tort, negligence or otherwise shall be limited to the lower of: (i) Ringgit Malaysia Ten Thousand (RM10,000.00) only; or (ii) the amount of fees received by TNGD in the preceding twelve (12) months.
- 12.3 Notwithstanding anything to the contrary under this Agreement, TNGD shall not be liable for: (i) any malfunction in any hardware, software or network that is not provided or maintained by TNGD; (ii) any lapse or malfunction in internet connection; (iii) any refusal by TNGD to provide the TNGD Mobile Payment Service for transactions or refusal to accept payment which TNGD reasonably believes is fraudulent, without authorisation, or otherwise infringes any Laws (iv) any payment or other instruction which contain incorrect or improperly formatted information; or (v) unforeseen events that prevents proper performance despite the reasonable precautions having been taken by TNGD.

### 13. CONFIDENTIALITY

- 13.1 The Parties irrevocably undertake and covenant with each other that it shall not during and after the subsistence of this Agreement divulge, replace, copy, duplicate, reverse engineer, modify, tamper, disclose, exploit and/or transmit to any person whosoever or otherwise make use of and to prevent the publication or disclosure of any Confidential Information unless prior written approval of the other has been obtained or where such disclosure is required by law.
- 13.2 On request from a Party (hereinafter referred to as the “**Disclosing Party**”), the other Party (hereinafter referred to as the “**Recipient Party**”) shall forthwith return to the Disclosing Party any Confidential Information which the Disclosing Party had previously supplied to the Recipient Party. Where such Confidential Information cannot for any reason be returned to the Disclosing Party, then the Recipient Party shall destroy such Confidential Information in such manner as the Disclosing Party shall prescribe.
- 13.3 The confidentiality obligations herein shall not apply to information that: (i) is or becomes public knowledge through no fault of the Recipient Party; (ii) is known to the Recipient Party without restriction prior to the receipt from the Disclosing Party in furtherance of this Agreement, from its own independent sources as evidenced by the Recipient Party’s written records, and which was not acquired, directly or indirectly, from the Disclosing Party; (iii) the Recipient Party receives from a third party known to have a right to transmit such information and under no obligation to keep such information confidential; or (iv) is independently developed by the Recipient Party’s employees, agents, or representatives provided that the Recipient Party is able to show that such employees, agents, or representatives had no access to Confidential Information.
- 13.4 The Receiving Party may disclose Confidential Information which is required to be disclosed by virtue of a court order or statutory obligation provided that prior written notice is given to the Disclosing Party to enable the Disclosing Party to take steps to protect its interests in the information.
- 13.5 The obligation of confidentiality herein shall continue notwithstanding the termination or expiry of this Agreement.

#### Compliance with the Personal Data Protection Act 2010

- 13.6 The Parties shall recognise that in the course of carrying out its obligations under this Agreement, a Party may have access to the Confidential Information belonging or pertaining to the Users, customers or employees of the Disclosing Party (hereinafter referred to as “**Personal Data**”) and in this respect, the Recipient Party hereby undertakes that:
- (i) it shall not, at any time, use or copy the Personal Data for any reason other than for the purposes of providing the TNGD Mobile Payment Service and carrying out the obligations under this Agreement; and

- (ii) it shall comply with all applicable laws pertaining to confidentiality and the privacy of Personal Data including the Personal Data Protection Act 2010 (Act 709).

The Recipient Party agrees to fully indemnify and hold the Disclosing Party harmless from and against any claim, loss or expense that the Disclosing Party may suffer as a result of the failure on the part of the Recipient Party or its personnel to comply with the requirements as to confidentiality herein.

This indemnity shall survive the termination of the Agreement. For the avoidance of doubt, entities within the Disclosing Party group shall have the full benefit of and protection under this Clause through the Disclosing Party and the definition of Confidential Information including customer information shall cover the entities within the Disclosing Party group, where applicable. The obligations herein shall survive expiration or termination of this Agreement.

- 13.7 For the avoidance of doubt, in respect of Personal Data received from the Merchant, TNGD shall be entitled to assume that the Merchant shall have duly procured all necessary consents from its customers or otherwise the individual to whom the Personal Data belongs to share the same with TNGD for the purposes hereunder.
- 13.8 Secrecy: The Merchant and its officers, employees, servants and/or agents shall at all times comply with the secrecy provision under Section 133 of the Financial Services Act 2013.

#### Advertisements, Publications and Circulars

- 13.9 Unless specifically authorized in writing by TNGD and subject to the terms of this Agreement, the Merchant shall not publish, advertise or circulate information and/or documents regarding TNGD or this Agreement. The Merchant shall not use TNGD's name or Intellectual Property in any advertising, promotional efforts or any publicity whatsoever without obtaining TNGD's prior consent in writing.
- 13.10 The Merchant shall indemnify and keep indemnified TNGD from and against all actions, demands, claims, damages, penalties and costs which may arise out of any unauthorized action, utterance, publication and or statement whatsoever by the Merchant and/or its servants and/or its agents howsoever.

#### Third Party Marketing

- 13.11 The Merchant hereby consents to receive third party marketing material from TNGD or directly from TNGD's partners. In the event the Merchant desires to stop receiving such third party marketing material, the Merchant shall send a written notice to TNGD of its desire to stop receiving such third party marketing.

## **14. REPRESENTATIONS AND WARRANTIES**

- 14.1 Each Party represents and warrants to and for the benefit of the other as follows:
  - (i) it is duly organized and validly existing under the laws of its jurisdiction of incorporation;
  - (ii) it has (and will maintain) the power, capacity, right, authorisation and has taken all necessary action (where applicable) to enter into, exercise its rights and perform and comply with its obligations under this Agreement;
  - (iii) this Agreement constitutes its legal, valid and binding obligations, enforceable in accordance with the terms hereof;

- (iv) its entry into, exercise of its rights and/or performance or compliance with its obligations under this Agreement do not and will not (a) violate or contravene its constitutive documents, (b) any agreement to which it is a Party to or is otherwise bound, (c) any law or regulation or (d) any court, arbitral or administrative judgment or order;
- (v) each signatory to this Agreement is duly authorized to sign this Agreement on behalf of the Party identified;
- (vi) it has (and will maintain) adequate facilities (including staff training, internal controls, and technical equipment) to: (a) comply with its data protection and confidentiality obligations hereunder; and (b) to fulfil its obligations hereunder generally, including, but not limited to, obligations that are technical in nature; and
- (vii) to co-operate and collaborate with each other in the all matters under this Agreement.

#### Merchant's Representations & Warranties

- 14.2 The Merchant warrants and represents that: (i) where the Merchant is a registered legal entity, the Merchant shall maintain at least one (1) director (in the case of a company) or one (1) principal (in the case of partnerships, enterprise and other registered business entities) that shall reside or be domiciled in Malaysia; (ii) it shall deliver its goods and services to the Users (and its customers generally) without delay and conduct its business in accordance with the prevailing or equivalent industry business and ethical standards; (iii) the goods and services offered by the Merchant complies with the Laws and the applicable laws in the jurisdiction in which the goods and services are offered; (iv) at all times it has and shall maintain all requisite licences, permits, and other approvals necessary to engage in the advertising and/or provision of its goods and services as envisaged hereunder; and (v) it does not and will not receive funds from any illegal, fraudulent, deceptive, and/or manipulative practice and it is not sending or receiving funds to or from an illegal source and/or be directly or indirectly involved in any other form of suspicious or wrongful activities.
- 14.3 Where the Merchant is an aggregator or otherwise is reselling any goods or services of any third parties, the Merchant represents and warrants that it has all the necessary authority, right, and/or licence to resell the same as envisaged in this Agreement. For the avoidance of doubt, the Merchant shall be deemed as the sole owner of the product and shall be responsible for all actions of the original supplier and/or manufacturer and shall be solely liable and responsible for all aspects of the goods and/or services.
- 14.4 The Merchant warrants that all information provided to TNGD in connection with the Merchant's application for the use of TNGD Mobile Payment Service is correct and that no information has been withheld which, if provided, could have materially affected TNGD's decision to enter into this Agreement.

#### **15. TRANSPARENCY AND INTEGRITY**

- 15.1 It is the policy of TNGD to be honest and transparent to its users and to the public generally and TNGD will not tolerate any abuse, fraud, scams, misleading practices, or misrepresentation of facts by its Partner, affiliated entities, or other third parties using TNGD's name, assets, logo, trademark, brands, products, or other thing that may be perceived to be affiliated with TNGD or the TNG eWallet.
- 15.2 Any such practice or any practice that may disparage the reputation of TNGD by the other Party, its affiliates, and/or its front-facing personnel (e.g. informing customers that purchases cannot be made using the TNG eWallet because the "TNG eWallet system is down" if such statement is untrue), or using anything supplied by TNGD for purposes other than intended shall be deemed to be a material breach and grounds for immediate termination without

prejudice to any rights of TNGD to claim and to be indemnified for any losses or damages suffered thereby.

## 16. INDEMNITY

16.1 Without prejudice to the other rights and remedies available in this Agreement or at law but subject to **Clause 12 (Liability)**, each Party shall be liable for and agree to indemnify and keep the other Party fully indemnified always from and against all claims, actions proceedings, losses, cost and expenses (including legal fees) which the innocent Party may suffer or incur, arising from the defaulting Party's acts, errors, negligence, breach of representations and warranties, and/or omissions or actions otherwise related to this Agreement.

## 17. FORCE MAJEURE

17.1 If either party is prevented by any cause beyond its control (including but not limited to acts of God, war, fire, embargo, riot or disorder, major disruptions to the telecommunications and other networks upon which the TNGD Mobile Payment Service is reliant, suspension by Government Authority or any other event constituting a force majeure) from performing its obligations hereunder, the said Party shall not be under any liability for any loss suffered by the other party as a result of the consequence of the non-performance and the affected party shall notify the other party in writing immediately upon the occurrence of the force majeure event. The Parties may mutually terminate this agreement upon the expiry of six (6) months period from the notice and the terms and conditions in **Clause 10** shall apply mutatis mutandis.

17.2 PROVIDED THAT an Event of Force Majeure shall not include economic downturn unless such economic downturn renders this Agreement commercially unviable, non-availability or insufficient funds or lack of financing on the part of any party to perform its obligations under this Agreement.

17.3 If this Agreement is terminated pursuant to any Event of Force Majeure, all rights and obligations hereunder shall forthwith terminate and neither party shall have any claim against each other except for rights/claims subsisting prior to termination.

## 18. NOTICES

18.1 All notices, requests, demands and other communications required or permitted to be given or made under this Agreement or in connection therewith shall be given to TNGD and/or the Merchant following the details provided respectively and shall be deemed duly given: (i) if made in writing and delivered personally, on the date of delivery; (ii) if sent by prepaid registered post or a recognised "next-day" courier service, on the third (3<sup>rd</sup>) Business day; (iii) if by sent fax, when transmitted and provided receipt is confirmed; or (iv) if given by electronic mail, when such electronic mail is transmitted.

18.2 Either Party may notify the other Party in writing of a change to its name, address, addressee or facsimile number for the purpose of this Section provided that such notification shall only be effective on: (i) the date specified in the notification as the date on which the change is to take effect; or (ii) if no date is specified or the date specified is less than **seven (7) days** after the date on which notice is given, the date falling **seven (7) days** after notice of any such change has been given.

18.3 The Merchant may contact TNGD at (+603) 2714 8888 for any additional information, enquiries or complaints.

18.4 If the reply to your query or complaint is not satisfactory to you, you may contact the following bodies:

**Bank Negara Malaysia**

Laman Informasi Nasihat dan Khidmat (LINK)  
Ground Floor, D Block,  
Jalan Dato' Onn,  
50480 Kuala Lumpur

**Contact Centre (BNMTELELINK)**

Tel: 1-300-88-5465  
(Foreign: 603-2174-1717)  
Fax: 603-2174-1515  
Email: [bnmtelelink@bnm.gov.my](mailto:bnmtelelink@bnm.gov.my)

**Ombudsman for Financial Services (664393P)**

(formerly known as Financial Mediation Bureau)  
14th Floor, Main Block,  
Menara Takaful Malaysia,  
No. 4, Jalan Sultan Sulaiman,  
50000 Kuala Lumpur.

**19. OTHER PROVISIONS**

- 19.1 No Partnership: This Agreement shall not constitute a partnership or any agency between the Parties. No Party has the power or the right to bind, commit or pledge the credit or any other Party.
- 19.2 Costs: Each Party shall bear its own costs, legal fees and other expenses incurred in the preparation, negotiation and execution of this Agreement. Any stamp duty incurred shall be borne by TNGD.
- 19.3 No Waiver: No failure to exercise or delay in exercising on the part of any Party any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or any other right, power or privilege.
- 19.4 Assignment: None of the Parties may assign or transfer all or part of its rights, interests, powers, benefits and/or obligations under this Agreement without prior written consent of the other Party.
- 19.5 Severability: In the event that any of the provisions of this Agreement is declared by any judicial or other competent Authorities to be illegal, invalid, void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect and shall be read as close to possible as the original wording.
- 19.6 Entire Agreement: This Agreement supersedes any previous agreement between the Parties in relation to the matters dealt with herein and represents the entire understanding between the Parties in relation thereto.
- 19.7 Non-Solicitation: The Merchant undertakes that for the duration of this Agreement and for a period of **six (6) months** thereafter on its own behalf or on the behalf of any person directly or indirectly canvass, solicit or endeavour to entice away from TNGD or its associated companies any person who has at any time during the Term been employed or engaged by TNGD or its associated companies.

- 19.8 No Variation: Unless stated otherwise, this Agreement shall not be varied, modified or cancelled in any respect unless such variation, modification or cancellation shall be expressly agreed in writing by a duly authorized director or representative of each Party.
- 19.9 Counterparts: This Agreement may be signed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed shall be an original, but all counterparts shall together constitute one and the same document.
- 19.10 Governing Law and Jurisdiction: This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. Subject to the provisions of **Clause 11 (Dispute Resolution)**, the Parties shall submit unconditionally to the non-exclusive jurisdiction of the courts of Malaysia.
- 19.11 Time: Time wherever mentioned herein shall be of the essence.

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