

## PLATFORM SERVICES AGREEMENT

This Platform Services Agreement (the “**Agreement**”), along with the Data Processing Agreement and Fee Schedule, form a legal agreement between the MontyPay entity (“**MontyPay**”) and the Merchant’s entity (“**Merchant**”) whose names, legal description and addresses are set forth in the Fee Schedule. MontyPay and Merchant shall be jointly referred to as “**Parties**” or individually as a “**Party**”.

### BACKGROUND

A. MontyPay (a) operates a platform (“**Platform**”) that connects online merchants to PSPs to allow merchants to accept online payments from their customers and (b) provides merchants using the Platform access to a reporting dashboard (“**Dashboard**”) accessible through a web portal (“**Web Portal**”) and a mobile application (“**Mobile App**”) to easily manage, track and monitor their Customers’ online payments.

B. The Merchant desires to utilize the Platform, Web Portal, Mobile App and related services, in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATIONS

1.1 Unless otherwise defined herein, capitalized words and phrases used in this Agreement shall have the following meanings:

**“Affiliate”** means, in regard to MontyPay, any company that is directly or indirectly owned or controlled by MontyPay, or that is under common control with MontyPay;

**“Applicable Law(s)”** means all applicable laws, statutes, orders, rules, provisions, regulations, directives and guidelines which have legal effect, whether local, national, international or otherwise, existing from time to time, including all rules of any regulatory authority, Payment Scheme, requirements, standards, guidelines, codes of practice and recommendations; “applicable” meaning as applicable to the Services, to either Party or other relevant person or to the relevant rights or obligations under this Agreement;

**“Business Day”** means a day other than a Saturday, Sunday, or public holiday when banks in the Territory are open for business;

**“Chargebacks”** means the reversal of a Transaction or request for repayment in respect of a Transaction previously settled that comes from , an Issuer, or Payment Scheme;

**“Confidential Information”** means all information relating to the Disclosing Party which is obtained, whether in writing, pictorially, in machine readable form or orally or by observation in connection with this Agreement, including but without limitation, financial information, know-how, processes, ideas, intellectual property (irrespective of its registrability or patentability status), schematics, trade secrets, technology, customer list (potential or actual) and other customer-related information, sales statistics, market, market intelligence, marketing and other business strategies and other commercial information of a confidential nature but does not include information which is known to the Receiving Party without any limitation or restriction on use or disclosure before receipt of such information from or on behalf of the Disclosing Party or becomes publicly available, other than as a breach of

this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction or any information required to be disclosed under any relevant law or any binding judgment or order of court or arbitration tribunal or any stock exchange regulations or under direction from any relevant regulatory authority;

**“Customer(s)”** means buyer(s) or consumer(s) of the Merchant whose online payment Transactions are channeled through the Platform;

**“Data Processing Agreement”** means the data processing agreement located at <https://montypay.com/data-processing-agreement/>;

**“Effective Date”** means the date of commencement of this Agreement as mentioned in the Fee Schedule;

**“Fee Schedule”** means the Platform Services Fee Schedule signed by both MontyPay and the Merchant;

**“Fees”** means the fees mentioned in the Fee Schedule;

**“Force Majeure Event”** means an event beyond the control of MontyPay or its Affiliates, including but not limited to: (a) strike or other labor dispute, labor shortage, stoppage, or slowdown, supply chain disruption, embargo or blockade, telecommunication breakdown, power outage or shortage, inadequate transportation service, inability or delay in obtaining adequate supplies; (b) subcontractor, service provider or supplier default; (c) failure in subcontractor, service provider or supplier systems or services; or (d) weather, earthquake, fire, flood, act of God, riot, civil disorder, civil or government calamity, epidemic, pandemic, state or national health crisis, war, invasion, hostility (whether war is declared or not), terrorism threat or act, law, or act of a governmental authority;

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, trademarks including Merchant Trademarks and MontyPay Trademarks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Issuer”** means the bank or financial institution that issues the card used by a Customer to make a purchase on the Merchant Portal.

**“Merchant Bank Account”** means the bank account where funds due to the Merchant will be settled by a MontyPay Partner;

**"Merchant Credentials"** means usernames, passwords, Merchant ID ("MID") or any other codes that are issued to the Merchant by MontyPay to access the Web Portal and Mobile App;

**"Merchant Information"** means any information and/or documents submitted by the Merchant to MontyPay following MontyPay's request or MontyPay Partner's request upon the onboarding of the Merchant and at any other time after the Effective Date. The Merchant Information includes but is not limited to an application form filled by the Merchant, Merchant's legal documents, Merchant Bank Account information and Merchant's trademarks.

**"Merchant Onboarding"** means the process of registering and enabling the Merchant to use the Platform. It includes gathering the Merchant Information, setting up the Platform and integration with the Merchant Portal and providing the Merchant with the Merchant Credentials;

**"Merchant Portal"** means the online portal of the Merchant where the Products are presented promoted and sold including but not limited to websites, social media pages, online catalogs, mobile applications and which the Merchant has specified and submitted in the Merchant Information;

**"Merchant Trademarks"** means Merchant's name and logo, and such other trademarks as Merchant may from time to time notify MontyPay in writing to be "Merchant Trademarks" within the meaning of this Agreement;

**"MontyPay Partner"** means a PSP with which MontyPay has concluded an agreement for the provision of acquiring, processing and/or gateway services. "MontyPay Partner" shall also include a partner of a MontyPay Partner;

**"MontyPay Trademarks"** means MontyPay's name and logo, and such other trademarks as MontyPay may from time to time notify the Merchant to be "MontyPay Trademarks" within the meaning of this Agreement;

**"MontyPay's Website"** means [www.montypay.com](http://www.montypay.com);

**"Payment Method"** means the different ways Customers can make payments through the Platform. It includes options such as credit cards, debit cards or any other payment methods supported by MontyPay and notified from time to time to Merchant;

**"Payment Scheme(s)"** means any scheme governing the issuance and use of electronic payment instruments including Visa Card, MasterCard, American Express, Discover® Global Network or any other card payment network (including any local schemes thereof);

**"Payment Scheme Rules"** means individually and collectively, any and all applicable rules, regulations, standards and operating guidelines issued by any Payment Scheme, as amended and restated from time to time;

**"Payment Services Provider" or "PSP"** means an entity licensed by a regulatory authority to provide acquiring, processing or payment gateway services;

**"PCI-DSS"** means the Payment Card Industry Data Security Standards;

**"Product(s)"** means the goods and/or services that the Merchant offers and sells on the Merchant Portal;

**"Refund"** means a return of a monetary amount to a Merchant or the reversal of any other payment pursuant to a request or instruction from Merchant to MontyPay;

**"Services"** means the services provided by MontyPay under this Agreement, including but not limited to the Platform, Web Portal and Mobile App;

**"Support"** means the initial assistance provided by MontyPay to the Merchant regarding the Services. Support shall be provided during a Business Day and shall be the first point of contact for the Merchant for any issues or concerns relating to the Services;

**"Territory"** means the geographical location where the Services are provided to the Merchant as specified in the Fee Schedule;

**"Trademarks"** means both the MontyPay Trademarks and the Merchant Trademarks as defined in this Agreement;

**"Transaction"** means to the process of exchanging funds or financial information between Customer and Merchant, typically facilitated through a payment gateway, resulting in the completion of a purchase or payment. A Transaction is considered complete once payment authorization is successfully obtained, and the funds are successfully transferred to the Merchant Bank Account.

1.2 This Agreement shall be interpreted according to the following rules of interpretation, unless the context otherwise requires:

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) The singular includes the plural and vice versa;
- (c) Words importing any gender include all genders;
- (d) "Including", "includes" or any derivation thereof shall mean "including (or includes) without limitation";
- (e) Reference to any document includes any amendment, modification, or supplement to such document;
- (f) References to "clauses", "paragraphs", and "schedules," are to clauses, paragraphs, and schedules to this Agreement;
- (g) A reference to any law or statute includes all regulations, rules, codes, and orders made under that law or statute, and all amendments or replacements of the same;
- (h) A reference to any time or date shall be construed as referring to that time or date in the Territory;
- (i) If there is any conflict between the body of this Agreement and the Fee Schedule, the terms of the Fee Schedule will prevail.

## 2. SCOPE OF THE SERVICES

2.1 Subject to the Merchant's compliance with the terms of this Agreement, Web Portal, Mobile App and the Merchant's agreement(s) with the MontyPay Partner(s), MontyPay shall:

- (a) make available the Platform to the Merchant;
- (b) grant a license to the Merchant to use the Web Portal and Mobile App enabling the Merchant to access the Dashboard;

(c) provide the Onboarding services to Merchant; and  
 (d) provide Support to Merchant.

2.2 Merchant understands that the Platform shall be made available to Merchant only with respect to the Payment Methods and currencies supported by MontyPay, which are subject to modification from time to time as MontyPay may determine.

### **3. OBLIGATIONS OF MERCHANT**

#### **3.1 Merchant Compliance with Applicable Laws**

3.1.1 Merchant will comply with all Applicable Laws, MontyPay's privacy policy <https://montypay.com/privacy-policy/>, MontyPay's Customer Acceptance Policy <https://montypay.com/customer-acceptance-policy/>, MontyPay's Web Portal terms and conditions <https://montypay.com/terms-and-conditions/>, MontyPay's Mobile App terms and conditions available on the Mobile App, and all relevant and applicable Card Scheme Rules, PCI DSS regulations, anti-money laundering rules as related to the Services herein, as amended from time to time.

3.1.2 Merchant will comply with all security or encryption standards, rules and procedures imposed by MontyPay.

#### **3.2 Merchant Information**

3.2.1 Merchant will provide MontyPay with accurate and complete Merchant Information.

3.2.2 Merchant will keep all Merchant Information provided to MontyPay current and up-to-date and notify MontyPay of any changes in such Merchant Information.

3.2.3 Merchant will inform MontyPay of any new or additional Product that the Merchant offers and that wasn't mentioned in the Merchant Information, especially any new merchandise or services that do not match the Merchant's legal activity.

3.2.4 Merchant understands and agrees that the MID provided to Merchant by MontyPay is intended for exclusive use, solely on the specific website or URL specified by the Merchant in the Merchant Information.

#### **3.3 Refunds and Chargebacks**

3.3.1 Merchant will implement and maintain a Refund policy for Customers with a clear and easy way to request Refunds.

3.3.2 Merchant will ensure that Products mentioned on the Merchant Portal are in stock to avoid Refunds.

3.3.3 In case of a Chargeback, Merchant will provide MontyPay with all necessary and requested information, documents and evidence related to the said Chargeback including but not limited to proof of delivery, proof of Customer's signature, proof of the Customer's agreement to the Merchant's terms and conditions. MontyPay's duty with respect to the Chargeback process will be strictly limited to channeling the information, documents and evidence received from the Merchant to the MontyPay Partners. MontyPay assumes no liability for any

delays or inaccuracies in the evidence, information and documents provided by the Merchant. The Merchant acknowledges that it is solely responsible for the accuracy and timeliness of the information, documents and evidence provided to MontyPay during the Chargeback process.

3.3.4 Merchant will be responsible for all Chargebacks and Refund requests related to Transactions that occurred through the Platform. Such responsibility may be associated to the full amount of the Transaction, and any Chargeback Fees imposed by MontyPay's Partner(s) or the Payment Schemes.

3.3.5 Merchant will use its best endeavors to maintain Chargeback rates below the thresholds set by the Payment Schemes.

3.3.6 Upon the request of MontyPay and within the time periods specified by MontyPay, Merchant will provide MontyPay, with all necessary information, documents and evidence related to any Chargeback or any suspicious or fraudulent Transaction.

3.3.7 Merchant understands and agrees that in case Merchant fails to provide MontyPay with the necessary information, documents and evidence related to a Chargeback or any suspicious or fraudulent transaction within the time periods specified by MontyPay, the Chargeback case will be accepted and the Transaction amount will be automatically refunded to the Customer.

3.3.8 Merchant understands and agrees that the result of Chargeback depends on the sole discretion of the Issuer, MontyPay Partner or the Payment Scheme, and that the submission by Merchant of the necessary information, documents and evidence related to a Chargeback, or any suspicious or fraudulent transaction does not guarantee the Merchant winning of the Chargeback case.

3.3.9 Merchant will retain in its possession (while complying with all security requirements) its books of account and records, including all Transaction information, vouchers and other information required under this Agreement for at least (12) twelve months following each Transaction unless a longer period is required by Applicable Laws.

#### **3.4 Merchant Credentials**

3.4.1 Merchant will maintain adequate security and control of all Merchant Credentials.

3.4.2 Merchant will immediately notify MontyPay in the event it comes to the Merchant knowledge that the Merchant Credentials have been compromised in any way.

#### **3.5 Merchant's Relationship with MontyPay and MontyPay Partners**

3.5.1 Merchant will not make any warranty or representation to any third party in relation to the Services which may bind MontyPay or make it liable in any way.

3.5.2 Merchant hereby authorizes MontyPay to transmit to the MontyPay Partner(s) the Merchant Information required by the MontyPay Partner(s). MontyPay will assume no liability whatsoever for any consequences arising from, or errors, omissions, or misunderstandings

that may occur with respect to such transmission. The Merchant holds full responsibility for the accuracy of all Merchant Information that MontyPay transmits to the MontyPay Partners.

3.5.3 Merchant understands and agrees that the commencement of Services delivery by MontyPay under this Agreement shall be contingent upon the Merchant's execution of a separate agreement with the MontyPay Partner(s) (the "**Partner Agreement**") within five (5) Business Days as of the Effective Date. The Merchant understands that: (a) the Partner Agreement constitutes a contractual relationship between the MontyPay Partner and the Merchant, which is separate from the relationship between MontyPay and the Merchant; and (b) MontyPay assumes no liability for any breach of the Partner Agreement by MontyPay Partner.

3.5.4 MontyPay Partner may request the Merchant to initiate the process of opening a bank account with the MontyPay Partner. Merchant understands and agrees that (a) this Agreement, takes effect as of the Effective Date, regardless of any potential delay in the bank account opening process and (b) MontyPay is not under the obligation to offer assistance in the bank account opening procedure.

## 4. OBLIGATIONS OF MONTYPAY

### 4.1 Merchant Onboarding

4.1.1 Prior to the Effective Date, MontyPay will collect the necessary Merchant Information from Merchant and submit it to the relevant MontyPay Partner. The MontyPay Partner, in accordance with its know your customer (KYC) procedures, will evaluate, and determine whether to accept or reject the Onboarding of the Merchant.

4.1.2 In the event the Merchant is approved for onboarding by MontyPay and MontyPay Partners, MontyPay will furnish the Merchant with Merchant Credentials enabling them to access the Dashboard via the Web Portal and the Mobile App

### 4.2 Platform Setup

MontyPay will, in accordance with this Agreement, setup and integrate the Platform with the Merchant Portal. This includes the provision of the plugins of the Platform to the Merchant and guidance on their installation process on the Merchant Portal.

### 4.3 Support

4.3.1 If the Merchant experiences problems with the Services, it may contact MontyPay via telephone to the number provided on MontyPay's Website, or via e-mail to [support@montypay.com](mailto:support@montypay.com), or via the "Contact Us" section on MontyPay's Website, or via the chat box available on the Dashboard, or via the "Report a problem" section on the Mobile App. MontyPay will investigate and notify the Merchant whether the problem is related to the Services, determine the severity of the problem, and use reasonable efforts to remedy the problem, if possible. MontyPay will notify the Merchant upon the resolution of any request.

4.3.2 The problems referred to in this clause 4.3 (Support) include but are not limited to, basic troubleshooting, problems in login, problems in Merchant Credentials, and general issues about the features

and functionality of the Platform, Web Portal, Mobile App and Dashboard.

## 5. PAYMENT TERMS

5.1 Merchant will pay in exchange of the Services, the Fees set out in the Fee Schedule.

5.2 MontyPay has the right to review and amend the Fees at any time provided it informs the Merchant of such modifications in writing.

5.3 Merchant must pay all taxes and any other charges imposed by any governmental authority or Applicable Laws including any value added tax (VAT) on the Services.

5.4 The Fees shall not be refundable in the event of termination of this Agreement howsoever caused.

## 6. CONFIDENTIALITY

### 6.1 Confidentiality Obligations

Merchant shall:

6.1.1 use the Confidential Information only for the purposes of this Agreement;

6.1.2 not disclose Confidential Information to any third party, unless legally required or specifically authorized under this Agreement, without the prior written consent of MontyPay;

6.1.3 only allow access to the Confidential Information to its employees, directors, officers, affiliates, and its third-party professional advisers on a need-to-know basis;

6.1.4 protect and safeguard Confidential Information against unauthorized disclosure and access to a standard that it applies to its own confidential information and in any case with reasonable skill and care;

6.1.5 only make such copies of the Confidential Information as is necessary for this Agreement;

6.1.6 promptly inform MontyPay, to the extent permitted by law, of any breach or suspected breach of any of the obligations hereunder; and

6.1.7 upon request in writing from MontyPay immediately deliver to MontyPay all copies of all or part of the Confidential Information (regardless of the form in which, or the medium on which, it is stored) or shall destroy such information and confirm in writing (which includes email) that all copies of such information have been so delivered or destroyed as requested.

### 6.2 Exceptions to Confidentiality obligations

Clause 6.1 shall not apply to information which:

6.2.1 Merchant knew or possessed before MontyPay disclosed it to Merchant;

6.2.2 is or becomes publicly known, other than as a result of a breach of the terms of this Agreement by Merchant;

6.2.3 Merchant obtains from a third party, and the third party was not under any obligation of confidentiality with respect to the Confidential Information;

6.2.4 is independently developed by Merchant; and

6.2.5 is required to be disclosed by order of a court, or other competent public body or authority, or under the Applicable Law.

### **6.3 Remedies**

The parties to this Agreement acknowledge that in the event of an actual or threatened breach of any term of this clause 6 (Confidentiality), damages may be an inadequate remedy and therefore, without limiting any other remedy available at law or in equity, an injunction, specific performance or other forms of equitable relief or monetary damages or any combination thereof shall be available to MontyPay.

### **6.4 Survival of Confidentiality Obligations**

The rights and obligations under clause 6 (Confidentiality) will survive the expiration or termination of this Agreement and shall stay in force for a period of five (5) years thereafter, or until such time as such information becomes public information through no fault of Merchant.

## **7. INTELLECTUAL PROPERTY**

### **7.1 Ownership of Intellectual Property Rights**

7.1.1 Nothing set forth in this Agreement shall constitute a transfer or assignment by one Party to the other of any Intellectual Property Rights owned or otherwise controlled by such Party, and each Party hereby retains all of its rights, title and interest in such Intellectual Property Rights.

7.1.2 All Intellectual Property Rights in or related to MontyPay, the Mobile App, the Web Portal or the Platform are and will remain the exclusive property of MontyPay, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Platform, the Mobile App and the Web Portal are used. The Merchant shall not take any action that jeopardizes MontyPay's proprietary rights.

### **7.2 MontyPay Trademarks License**

7.2.1 Subject to the provisions of this Agreement, MontyPay hereby grants to Merchant a limited, non-exclusive, non-transferable license (without the right to sub-license) to use, reproduce, publish and display the MontyPay Trademarks on the Merchant Portal in connection with Merchant's offering of Payment Methods to Customers.

7.2.2 The Merchant may on its website in the information related section refer to MontyPay as its platform provider. The Merchant may also include an Internet link to the website of [www.montypay.com](http://www.montypay.com) in such a context. The Merchant may not use MontyPay's logo anywhere else on its website, or otherwise, without the prior express written approval of MontyPay.

### **7.3 Merchant Trademarks License**

7.3.1 Subject to the provisions of this Agreement Terms, Merchant hereby grants MontyPay a limited, non-exclusive, non-transferable, royalty-free license (without the right to sub-license) to use, reproduce, publish and display the Merchant Trademarks as necessary in connection with the Services.

7.3.2 The Merchant agrees that its name and standard logo (as published by the Merchant) may be included by MontyPay on MontyPay's client list on MontyPay's website and its marketing materials. MontyPay shall be entitled to use the said list freely in its commercial efforts. The Merchant also agrees that its name and standard logo may be included by MontyPay in its communications with the Customer in relation to the Transaction. Any other use of Merchant's name, logo or information shall only occur with the Merchant's prior written consent which the Merchant shall not unreasonably withhold.

### **7.4 Use of Trademarks**

Each party will strictly comply with all standards with respect to the other party's Trademarks contained herein or which may be furnished by such party from time to time. Further, neither party shall create a combination mark consisting of one or more Trademarks of the other party. All uses of the other party's Trademarks shall inure to the benefit of the party owning such Trademark. Either party may update or change the list of Trademarks usable by the other party hereunder at any time by written notice to the other party.

### **7.5 Trademark Restrictions**

Merchant shall not (a) use the MontyPay Trademarks except as expressly authorized in this Agreement; (b) take any actions inconsistent with MontyPay's ownership of the MontyPay Trademarks and any associated registrations, or attack the validity of the MontyPay Trademarks, its ownership thereof, or any of the terms of this Agreement; (c) use the MontyPay Trademarks in any manner that would indicate Merchant is using such MontyPay Trademarks other than as a licensee of MontyPay; nor (d) assist any third party do any of the same.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 Merchant Representations and Warranties**

On the date hereof and during the Term, Merchant represents, warrants, and covenants that:

8.1.1 All representations and statements made by Merchant in this Agreement, or in any other relating document are true, accurate and complete in all material respects;

8.1.2 It is engaged in a lawful business and has all necessary rights and authorizations to sell and distribute its Products.

8.1.3 Merchant complies and will comply at its own expense with all Applicable Laws to Merchant's business and use of the Services and Payment Card Industry Data Security Standard (PCI DSS).

8.1.4 Merchant will fulfil all of its obligations to Customers and will resolve all disputes with them.

8.1.5 Merchant will abide with all material terms of the policies, procedures, and guidelines of MontyPay.

8.1.6 Merchant will not use the Services, directly or indirectly, for illegal or unauthorized transactions or services, any fraudulent or illegal undertaking, or in any manner that interferes with the normal operation of the Services.

## 8.2 Mutual Warranties

Each Party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, (d) the Party's obligations under this Agreement do not violate any law, policy or regulation or breach any other agreement to which such Party is bound; and (e) it has all right, title or interest, or valid license to use its respective Marks, and that its grant of rights associated therewith do not violate any intellectual property or other proprietary rights of any third party.

## 8.3 Services "As Is" Disclaimer

MONTYPAY PROVIDES THE SERVICES ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. MONTYPAY DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. MERCHANT MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS. MONTYPAY SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE TRANSACTION SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. MERCHANT UNDERSTANDS AND AGREES THAT MONTYPAY SHALL BEAR NO RISK WITH RESPECT TO MERCHANT'S SALE OF PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CARD FRAUD OR CHARGEBACKS.

## 9. INDEMNIFICATION

9.1 The Merchant shall indemnify, defend and hold harmless MontyPay, its Affiliates, and their respective officers, directors, employees, and permitted assigns (as applicable, a "**MontyPay Indemnified Party**") from and against any and all losses, damages, liabilities, deficiencies, claims, demands, actions, proceedings, regulatory investigations, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by a MontyPay Indemnified Party (collectively, "**Losses**") relating to, arising out of or resulting from any legal action, claim,

demand, proceeding, order, suit, or cause of action of a third party (including a MontyPay Partner(s) or a Payment Scheme) (collectively, any "**Claim**") in connection with: (i) Merchant's breach of any obligation, representation or warranty under this Agreement or Merchant's agreement(s) with MontyPay Partner(s); (ii) Merchant's breach of any Applicable Law or Payment Scheme Rules; (iii) Merchant's negligence, wilful misconduct, fraud or bad faith; or (iv) Merchant's infringement of any third party intellectual property.

9.2 If any Claim is asserted against a MontyPay Indemnified Party by any third party in respect of which the MontyPay Indemnified Party may be entitled to indemnification under the provisions of clause 9.1 above, the MontyPay Indemnified Party will promptly provide written notice of such Claim to the Merchant. The Merchant will have the right, by notifying the MontyPay Indemnified Party within thirty (30) days of its receipt of the notice of the Claim, to assume the entire control of the defense of the Claim, including the right to settle the Claim at the sole discretion of the Merchant, provided that such settlement: (i) does not impose any obligation on the MontyPay Indemnified Party, (ii) does not include an admission of liability by the MontyPay Indemnified Party, (iii) grants the MontyPay Indemnified Party a full and unconditional release from all liability with respect to the Claim, and (iv) does not otherwise adversely affect the MontyPay Indemnified Party. Merchant may not consent to the entry of any judgment with respect to a Claim without the written consent of the MontyPay Indemnified Party. Any counsel retained by the Merchant for such purposes will be reasonably acceptable to the MontyPay Indemnified Party. Merchant will institute and maintain any such defense diligently and reasonably and will keep the MontyPay Indemnified Party fully advised as to the status thereof. The MontyPay Indemnified Party will have the right to participate in the defense of any Claim, including through employing its own counsel, but the fees and expense of such counsel will be at the Merchant's expense.

## 10. TERM AND TERMINATION

10.1 This Agreement shall commence on the Effective Date and remain in force for the initial term set out in the Fee Schedule unless earlier terminated in accordance with the termination provisions herein contained.

10.2 Upon expiry of the Initial Term, this agreement shall automatically be renewed for successive equal periods unless earlier terminated in accordance with the termination provisions herein contained.

10.3 Either Party may terminate this Agreement by providing the other Party with at least (30) thirty days written notice of its intent to terminate this Agreement.

10.4 Without prejudice to any other rights or remedies and in addition to any other termination rights provided for elsewhere in this Agreement, MontyPay may terminate this Agreement immediately and without prior notice if:

10.4.1 Merchant materially changes the type of the Products without obtaining MontyPay's prior written permission to use the Services for the new or changed types of Products;

10.4.2 Merchant undertakes or has undertaken activities (such as merchant fraud, scams or other fraudulent activities) which in

MontyPay's opinion are detrimental to MontyPay brand, image, or reputation, or that of any Payment Schemes; or acts in a manner that, in MontyPay's opinion, may or does give rise to increased risk of losses or liabilities to MontyPay.

10.4.3 Merchant is, or is likely to become (i) insolvent or subject to any insolvency proceedings (whether voluntarily or involuntarily) and/or (ii) unable to provide a material part of the Products;

10.4.4 Merchant suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

10.4.5 Merchant is in breach of any of its obligations, representations, warranties, or any of the terms of this Agreement;

10.4.6 Merchant fails to pay the Fees in accordance with the Fee Schedule.

10.4.7 Merchant's agreement with MontyPay's Partner is not signed by Merchant and/or MontyPay's Partner within five (5) Business Days as of the Effective Date;

10.4.8 Merchant's agreement with MontyPay's Partner is terminated for any reason whatsoever;

10.4.9 Merchant uses the Services in a prohibited manner;

10.4.10 Any Applicable Law or Payment Schemes requires MontyPay to do so; or

10.4.11 MontyPay is required by a MontyPay Partner to terminate the Agreement.

## 11. EFFECT OF TERMINATION

11.1 Upon termination or expiration of this Agreement:

(a) Merchant will pay to MontyPay or make sure MontyPay receives in full any amounts due and owing from Merchant to MontyPay;

(b) each Party will return, upon the other Party's request, any and all property of the other Party (including, without limitation, any Confidential Information and other property of the other Party); and

(c) All rights and obligations of the parties under this Agreement shall be extinguished, except that the rights and obligations of the parties under:

(i) Clauses 05 (Payment terms), 06 (Confidentiality), 07 (Intellectual Property), 09 (Indemnification), 11 (Effect of termination), 12 (Liability); and

(ii) any Clauses or provisions of this Agreement which by their terms call for performance subsequent to termination or expiration or by their nature are intended to survive the termination or expiration;

shall survive the termination or expiration of this Agreement.

11.2 Without prejudice to the provisions of Clause 12 (Liability), upon termination, MontyPay shall be discharged from any liability for further performance of its obligations under this Agreement and shall be

entitled to be paid the accrued sum for any successful Transaction prior to such termination.

## 12. LIABILITY

12.1 MontyPay expressly disclaims any liability or loss, however occurring, which arises from or related to any unauthorized access to Merchant data or programs due to accident, illegal or fraudulent means or devices used by any third party, or other causes beyond MontyPay's reasonable control.

12.2 MontyPay expressly disclaims any liability or loss, however occurring, arising from or related to: (i) Merchant's failure to properly activate, integrate or secure its account using the Services; (ii) fraudulent Transactions through Merchant's account; (iii) disruption of Services, systems, server or website by any means, including without limitation, attacks, software viruses, trojan horses, worms, time bombs, or any other technology; (iv) acts, omissions, errors, misrepresentations, breach of warranties, any other breaches, negligence or misconduct of any third party, including without limitation, a third party service provider or a MontyPay Partner; or (v) unauthorized access to data, Customer data including but not limited to, credit card numbers and other personally identifiable information, transaction data or personal information belonging to Merchant or any third party.

12.3 MontyPay states that it will not be held liable for any issues related to the legitimacy of Transactions placed through its Services, or any losses or fraud that may occur as a result of using the Services. Additionally, MontyPay will not be held liable for any issues or limitations with the software, or equipment used for the operation of the Services, whether it is owned or licensed by MontyPay.

12.4 MontyPay is not liable for any losses, damages, or costs that Merchant or others may suffer arising out of or relating to hacking, tampering, or other unauthorized access or use of the Services, or Merchant's failure to use or implement anti-fraud or data security measures. Further, MontyPay is not liable for any losses, damages, or costs that Merchant or others may suffer arising out of or relating to (a) Merchant's access to, or use of, the Services in a way that is inconsistent with this Agreement; (b) unauthorized access to servers or infrastructure (c) Service interruptions or stoppages; (d) bugs, viruses, or other harmful code that may be transmitted to or through the Service; or (e) Merchant or another party's defamatory, offensive, fraudulent or illegal conduct.

## 13. MISCELLANEOUS

### 13.1 Relationship of the parties

This Agreement shall not in any way constitute a partnership or joint venture between the Parties or constitute either Party an agent or representative of the other. Neither Party shall have the authority to commit or bind the other or any of the other Party's Affiliates. This Agreement is not intended to confer on any person other than Merchant and MontyPay, any express or implied benefit or burden.

### 13.2 Force majeure

MontyPay and its Affiliates will not be liable for any losses, damages, or costs the Merchant suffers, or delays in MontyPay's or its Affiliates'

performance or non-performance, to the extent caused by a Force Majeure Event.

### **13.3 Assignment**

13.3.1 MontyPay shall be entitled, at any time, to assign, novate or otherwise transfer this Agreement or any of Merchant's rights and obligations under it to any third party without the prior consent of the Merchant by providing written notice to the Merchant of such transfer.

13.3.2 As the Agreement is specific to the Merchant, the Merchant may not assign it, novate it, or transfer it or any of its rights under it without MontyPay's written consent.

13.3.3 MontyPay may appoint at any time, and without prior notice to the Merchant, an agent or subcontractor to perform any of its obligations under the Agreement. The Merchant may only use an agent or sub-contractor for the performance of its obligations under the Agreement with MontyPay's prior written consent.

### **13.4 Changes to the Agreement**

13.4.1 MontyPay may revise this Agreement from time to time by giving two (2) months' written notice to the Merchant via email ("Change").

13.4.2 If the Merchant does not notify MontyPay of its objections to the Change within two (2) months of MontyPay's written notice of the Change, the Merchant will be deemed to have accepted the Change.

13.4.3 If the Merchant notifies MontyPay of its objection to the Change within a period of two (2) months of MontyPay's written notice of the Change, and MontyPay did not withdraw the change, the Merchant may terminate the Agreement immediately by giving MontyPay a written notice after the entry into force of the Change. However, if the Merchant does not object to the Change by terminating this Agreement within five (5) Business Days of the entry into force of the Change, it will be deemed to have accepted it.

13.4.4 The Merchant is not entitled to object to and shall not have the rights set out in this clause for any Change, which MontyPay implements in order to comply with Applicable Law or requirements by the relevant Payment Schemes or a MontyPay Partner. For such imposed changes shorter notice periods may be imposed.

### **13.5 Severability**

In the event that any provision of this Agreement is declared by any Applicable Law, judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or irrelevant, it shall to the extent required by such Applicable Law or authority, be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement.

### **13.6 Entire agreement**

This Agreement, along with the Data Processing Agreement and Fee Schedule, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreement between them in relation to the subject matter and the parties confirm that they have not entered into this Agreement

upon the basis of any representation that are not expressly incorporated herein.

### **13.7 Notices**

13.7.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and in the English language and addressed to that party at the addresses and contact information provided by that party in the Fee Schedule.

13.7.2 The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first-class post or other next working day delivery service.	9.00 am on the second Business Day after posting.
Courier	On the date of delivery as evidenced by the courier's delivery confirmation.
Email	At the time of transmission provided that no delivery failure notification or bounce-back email is received.

13.7.3 Merchant confirms that it has internet access and has an email account to receive notices, communications and information relating to the Services.

13.7.4 Merchant agrees to the receipt of electronic communications and notices by email. Such communications may pertain to the Services delivered by MontyPay, changes in Applicable Laws or rules impacting the Service or other reasons, such as amendment of this Agreement.

13.7.5 MontyPay reserves the right to terminate this Agreement if the Merchant withdraws its consent to receive electronic communications.

### **13.8 Governing Law**

This Agreement and any dispute or claim arising out of or in connection with this Agreement shall be governed by and construed in accordance with the law of England and Wales without giving effect to its conflict of law principles.

### **13.9 Jurisdiction**

13.9.1 For the benefit of MontyPay, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with this Agreement, including any question regarding its existence, validity, formation or termination. For these purposes, each party irrevocably submits to the jurisdiction of the England and Wales courts.

13.9.2 However, nothing in this Clause 13.9 limits the right of Monty-Pay to bring proceedings, including third party proceedings, against Merchant in any other court of competent jurisdiction, and the bringing or continuing of proceedings in any one or more jurisdictions shall not preclude the bringing of proceedings in any other jurisdiction, whether concurrently or not, if and to the extent permitted by applicable Law.

#### 13.10 **Waiver**

A failure or delay by a party to exercise any right or remedy provided under this Agreement or under the Applicable Laws shall not

constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or under the Applicable Laws shall prevent or restrict the further exercise of that or any other right or remedy.