

1. **THIS AGREEMENT FOR RETAIL SERVICES ("THE AGREEMENT") IS MADE ON [DATE] "THE EFFECTIVE DATE" BY AND BETWEEN THE PARTIES Identified IN THE SIGNATURE COLUMN BELOW:**

The parties are entering into this Agreement in order to set out the terms and conditions relating to access to and use of 99 RStreet Service Software/ Platform by the Retailer within the territory of Sri Lanka.

2. **DEFINITIONS**

**"Activation Date"** means the date on which the Retailer first accesses the **99 RStreet Services** or **"Retail Service"** through the Device provided to the Retailer

**"Agreement"** means this Agreement with all Annexes, Addenda and Exhibits, whether attached or incorporated by reference.

**"Device"** means the point of sale device designed for use in a retail sales environment leased by the Retailer from the 99 RStreet through which the 99 RStreet Service is accessed. .

3. **"Confidential Information"** means, with respect to 99 RStreet, all information which 99 RStreet protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Document and other materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies.

**"Documentation"** means standard manual(s) pertaining to the 99 RStreet Services in any medium including electronic form.

**"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secrets or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued or acquired;

**"99 RStreet Services"** of **"Retail Service"** means the subscription service provided by 99 RStreet that connects the Device to the 99 RStreet Network through which data can be sent or received by the Device.

**"99 RStreet Materials"** means any software, programs, tools, systems, data or other materials made available by **99 RStreet** or by its partners to Retailer in the course of the performance under this Agreement including, but not limited to, the software and documentation, as well as any information, materials or feedback provided by Retailer to **99 RStreet** relating to the software and documentation or the Retail Service.

**"Use"** means to directly or indirectly load, execute, access, employ, utilise, 99 RStreet Services.

4.

1. **GRANT OF RIGHTS**

- 1.1 99 RStreet Services License. Subject to Retailer's compliance with all the terms and conditions of this Agreement, 99 RStreet grants to Retailer a non-exclusive subscription-based license to access 99 RStreet Services to input Retailer data and receive messages from 99 RStreet and other third party participants as determined by 99 RStreet in the Device within the territory of Sri Lanka.
- 1.2 Electronic Messages. Retailer hereby authorizes 99 RStreet to send messages to Retailer through the 99 RStreet Service and the Device and Retailer hereby consents to the receipt of such messages.
- 1.3 Updates. 99 RStreet may make updates and patches to Services, however 99 RStreet reserves the right to charge a Fee upon reasonable advance notice to Retailer.

## **1A LEASE OF DEEVICE & MAINTENANCE & USAGE**

- 1A.1 The Device will be provided to the Retailer by 99RStreet. During the Term hereof the Device will be the property of 99RStreet.
- 1A.2 During the Term of this Agreement all necessary maintenance and repairs to the Device shall be carried out by 99RStreet at its own cost and expense.
- 1A.3 Device Return: In the event this Agreement is terminated for any reason whatsoever the Retailer shall return the Device to 99RStreet in good working condition (normal wear and tear accepted) within fourteen (14) days of such termination. In the event the Device is not so returned within 14 days of termination or if the Device is returned in damaged condition, 99RStreet will charge Retailer for the entire value of the Device which shall be equal to total MRC payable for entire 48 month period.
- 1A.4 Device Additions: Device can be added to Annexure A at any time by 99RStreet at the request of Retailer. All additional Device is subject to these terms and conditions. The forty-eight (48) month lease term commences on the Activation Date of Device that is added to
- 1A.5 Retailer shall keep the Device free and clear of any liens or other encumbrances, and shall not permit any act where 99RStreet's title or rights may be negatively affected. Retailer shall be responsible for complying with and conforming to all laws and regulations relating to the possession, use or maintenance of the Device. Furthermore, Retailer shall promptly pay all taxes, fees, licenses and governmental charges, together with any penalties or interest thereon relating to the possession, use or maintenance of the Device, if applicable.
- 1A.6 Forbidden Activities: Service to a Device(s) may be suspended if there is a reasonable suspicion of fraudulent use. Retailer agrees to make good faith efforts to minimize abuse or fraudulent use, to promptly report to 99RStreet any such abuse or fraudulent use of which Retailer becomes aware, and to cooperate in any investigation or prosecution initiated by 99RStreet.

## **2. FEES, PAYMENT AND TAXES**

- 2.1 Invoices and payment: 99RStreet shall submit an invoice to Retailer on a monthly basis in advance for use of each of the Device(s) for a particular Calendar month (the "Monthly Fee"). Retailer shall pay all undisputed amounts on such invoices within 30 days from the date of the invoice. In the event that payment is not made within such 30 day period, 99RStreet reserves the right to charge a late fee equal to ten (10%) percent annually from the due date until paid. 99RStreet reserves the right to interrupt or terminate Service in the event Retailer fails to pay undisputed charges within 30 days after a proper notice of non-payment

- 2.2 In the event the Activation Date does not fall on the first day of the Calendar month, the retailer will be charged the Monthly fee for such month on a prorated basis.

### **2.3 Fees:**

- (a) Device Rental Fee – the Retailer shall be liable to pay 99RStreet a charge the retailer a rental fee for the Device or Devices leased to the Retailer commencing from the Activation Date.
- (b) Subscription Fees. Initial subscription Fees for the 99 RStreet Services are included in the rental for the Device to be paid by Retailer to 99 RStreeter or its nominees. At this point, there is no separate fee for the 99 RStreet Services and 99RStreet retains the right to charge subscription fees after the initial subscription period set out in Exhibit A to **Annexure A.**

- 2.4 Advertising Incentive: 99 RStreet agrees to pay the Retailer the advertising Incentive agreed as per the Annexure A to this Agreement

- 2.5 The Retailer agrees to the deduction of the monthly Device rental fee being deducted from the Advertising Incentive Payable to the Retailer in terms of 2.4 above If the Advertising Amounts payable in a month are not sufficient to deduct of the monthly Device rental fee, 99RStreet can adjust the same against the Advertising Amount Payable in the following month (s).

- 2.6 Taxes: Fees and other charges described in this Agreement do not include any local taxes now or hereafter levied, all of which shall be for Retailer's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to 99 RStreet prior to the execution of this Agreement. Retailer will reimburse 99RStreet for any such Taxes paid by 99RStreet on Retailer's behalf within ten (10) days of written demand along with proof of payment.

## **TERM AND TERMINATION OF THE AGREEMENT**

- 5. 3.1 Term. This Agreement and the licenses granted hereunder shall become effective as at the Activation Date and shall be effective for an initial period of forty-eight (48) months after which the Agreement will automatically renew for consecutive one (1) year terms, unless terminated by either party with thirty (30) days written notice to the other party.
- 3.2 Notwithstanding the foregoing provisions, the Retailer shall not be permitted to terminate this Agreement until the completion of 24 months from Activation Date (Minimum Period). If the Retailer terminates this Agreement prior to the completion of the Minimum Period, the Retailer shall be liable to pay an amount **LKR 25375 to 99RStreet.**

6. Subject to compliance with Section 3.2, the Retailer shall be entitled to terminate this Agreement only if all fees then due and owing to 99RStreet have been paid.

7. 3.3 Termination for Cause. Notwithstanding the foregoing, a party may terminate this Agreement upon forty five (45) days written notice to the other party of such other party's material breach of any provision of this Agreement unless the breaching party has cured such breach during such forty five (45) day period.

8. 3.3 Suspension. Notwithstanding 99 RStreet's right to terminate as set forth in this Agreement, 99 RStreet may, in its reasonable determination, deactivate Retailer's user name(s) and password(s) and/or temporarily suspend access to the 99 RStreet Services or a portion thereof.

9. 3.4 End of Term Duties/Rights. Upon the effective date of termination, Retailer's access to the 99 RStreet services will be terminated. After the termination or expiration of this Agreement, Retailer will not be able to access or download data entered by it into the 99 RStreet Services systems/software, except to view reports made available via the 99 RStreet Services during the term. In the event of any termination hereunder, Retailer shall not be entitled to any refund of any payments made by the Retailer.

3.5 Remedies: Regardless of cause for termination, shall be without prejudice to any other rights or remedies of the parties and shall be without liability for any loss or damage occasioned thereby, subject to the other terms herein. Termination of this Annexure or this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party hereto or which thereafter may accrue in respect of any act or omission prior to termination.

10.

#### **INTELLECTUAL PROPERTY RIGHTS**

4.1 Reservation of Rights. All Intellectual Property of any nature whatsoever in the 99 RStreet Materials, Retail Services and Confidential Property, shall be the sole and exclusive property of 99 RStreet or its or their licensors.

4.2 Protection of Rights (Software). Retailer shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the software in any manner. Reverse engineering of the software and other 99 RStreet Materials is prohibited. Retailer must not change or remove 99RStreet copyright and authorship notices.

#### **5. LIMITATIONS OF WARRANTIES AND LIABILITY**

5.1 99 RStreet warrants that the 99 RStreet Services will substantially conform to the specifications stated in the Documentation. The foregoing

warranty shall not apply to the extent: (i) the Service is not being used in accordance with this Agreement and/or any documentation; or (ii) any non-conformity is caused by third party products, content or service; Subject to Article 6, Retailer's sole and exclusive remedy, and 99 RStreet's entire liability for breach of the limited warranty in this Article 5.1, shall be correction of the warranted non-conformity or, if 99 RStreet fails to correct the warranted non-conformity after using reasonable commercial efforts, the Parties agree to terminate this agreement.

5.2 Retailer acknowledges that the Device is manufactured by third parties and that use and possession of the Device by the Retailer shall be subject to and controlled by the terms of any manufacturer's/ supplier's warranty. 99RStreet agrees to use commercially reasonable efforts to enforce all warranties made by any manufacturer or supplier with respect to the Device. In the event of any mechanical or service failure of the Device that cannot be resolved within thirty (30) days after the Retailer has notified 99RStreet, 99RStreet may, at its sole election and as sole remedy of the Retailer, either (i) replace the Device; or (ii) terminate this Agreement and the Hardware Services described herein immediately upon written notice to Customer.

5.2 Express Disclaimer. 99RStreet AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

#### **11. 6. LIMITATION OF LIABILITY**

12. 6.1 Exclusion of Damages; Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL 99 RSTREET OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF FEES PAID FOR THE SERVICES OR THE LICENSES GRANTED UNDER THIS AGREEMENT OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.

#### **7. RETAILER DATA**

7.1 Retailer Duties. Retailer shall be responsible for entering its data into the Device, and Retailer shall be responsible for the data entered by it. Retailer shall not introduce any virus or comparable/similar elements which could harm

the system or the Services operated by 99Retail. Retailer agrees to collect, maintain and handle all data in compliance with all applicable data privacy and protection laws, rules and regulations.

- 7.2 License. Retailer hereby grants 99 RStreet Lanka Private Limited a perpetual, worldwide non-exclusive license to (a) use the Retailer data in the performance of its obligations under this Agreement and for the operation of the 99 RStreet network (b) grant sublicenses to its affiliated entities to utilize the Retailer data to perform obligations under this Agreement and for the operation of the 99 RStreet Services and (c) grant sublicenses to other users of the 99 RStreet Services (including, without limitation, original equipment manufacturers, product distributors, banks, consumer products companies, telecommunications providers and others) to upload, compile, review, copy, analyze and further distribute such Retailer data for purposes of utilizing and participating in the 99 RStreet Services network.

- 7.3 Retailer Indemnification. Retailer shall defend (at its sole expense) 99 RStreet and its affiliates and licensors against claims brought against 99 RStreet by any third party arising from or related to (i) any use by the Retailer of the 99 RStreet Services in violation of any applicable law or regulation or the terms of this Agreement.; or (ii).

## **8. CONFIDENTIALITY.**

13. 8.1 Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any such reproduction of any Confidential Information of the other shall remain the property of the disclosing party. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its directors, officers, consultants or employees who need to access such information for the for the purposes of exercising its rights and obligations under this Agreement. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.
14. 8.2 Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential

Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

## **15. 9.**

### **MISCELLANEOUS**

- 9.1 Severability. If any provision (or part thereof) of this Agreement is held to be a violation of any applicable law, the same shall be deemed to be deleted from this Agreement. The remainder of this Agreement shall remain in full force and effect as if such provision (or part thereof) had not originally been contained in this Agreement.
- 9.2 No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 9.3 Regulatory Matters. The Software, Documentation, Retail Connect service and 99RStreet Materials are subject to the export control laws of various countries. Retailer agrees it will not export the Software, Documentation and 99RStreet Materials to countries, persons or entities prohibited by such laws.
- 9.4 Governing Law: This Agreement shall be governed by and construed in accordance with English Law without reference to the conflicts of law principles.
- 9.5 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 9.6 Assignment of Rights. Retailer may not, without 99 RStreet's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation.
- 9.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between 99RStreet and the Retailer, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties.



## Annexure A

- During the Initial Subscription Period of 48 months, Retailer will not be charged any subscription fee for 99RStreet Services.
- The Retailer has to pay an amount of LKR 550 per month per machine inclusive of taxes for using the machine for a period of 48 months. Subject to The Retailer being current on its payment obligations, 99 RStreet Solutions would replace the device free of cost if it exists in the business in Sri Lanka.
- The Device would consist of the a scanner, POS machines with two 14 inch screen, printer and UPS system (power backups)
- The Retailer is not required to pay any connectivity charges for the 48 months.
- 99 RStreet will bear the maintenance cost for the Devices for the 48 months under warranty. The warranty would exclude any physical damage to the device. 99 RStreet may in its sole discretion consider free replacements (with a new or refurbished unit) except when the Device is subject physical damage.
- 99 RStreet will also provide the following
  - Credit card/Debit card machine which is NFC compliant.
  - Facilitate enablement of acceptance of m-Cash wallets and in future other wallets.
  - Facilitate acceptance of utilities payment at the outlets.
- Master Data maintenance would be the responsibility of 99 RStreet.
- 99 RStreet would bear the merchant fees upto 50 K LKR per month for 4 years for the use of mCash. The mCash would charge upfront to the retailer which would be settled monthly by the 99RStreet on the usage. This settlement would happen on 20<sup>th</sup> of every month.
- 99 RStreet would bear the credit/debit card charges upto 50 K LKR per month for 4 years the use of credit and debit cards.
- Retailer will be paid (**Advertising Amounts**) based on the number of Ads done at the store on the per store basis and not per Device basis.
- Main Advertisement, Context Sensitive 1 and 2. – The base amount is 200 LKR per Ads per month for 4 years. However there would be additional benefits on the media that would be communicated to the retailer through the machine.
- Ad – Logo and Ticker – The base amount is 100 LKR per ticker or per logo (one only) per month.
- Retailer would be able to place a ticker himself. In case of retailer advertising for the ticker the retailer would pay 99 RStreet 500 LKR per Ads per month and rest would be retained by the retailer.
- 99RStreet may from time to time introduce other commercial offers and schemes. The terms and conditions applicable for such off offers will be communicated via the Device.