

# Terms and Conditions for Merchant Services

OXPAY SG PTE. LTD. (“OXPAY”) is licensed to provide merchant acquisition services and regulated by the Monetary Authority of Singapore (“MAS”) pursuant to the Payment Services Act 2019.

OXPAY is engaged in the business of providing payment facilitator services through an online payment gateway and/or portable point-of-sale terminals to merchants to facilitate the sale of merchant goods and services to end users.

## Clause 1. Definitions

Unless otherwise indicated, the following expressions shall have the following meanings herein:

Acquirer	means the financial institution to which OXPAY routes Transaction data to process and relay the Transaction data on to the Issuer
Agreement	means the set of documents including the duly signed Merchant Application Form and these Terms and Conditions
Amendment Date	has the meaning set out at Clause 10.2(b) below
Amendment Notice	has the meaning set out at Clause 10.2(b) below
Authority	means any government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity, including any central bank or other fiscal, monetary or other authority
Authorisation	means the process through which a merchant obtains permission through a Card Scheme for payment. This involves assessing transaction risk and if approved, reserving the sales amount on the Cardholder’s account for the Transaction
Business Day	means a day on which banking institutions in Singapore are open (but excludes Saturdays, Sundays, and public holidays)
Card	means a credit card, debit card or charge card that OXPAY may accept for processing, including but not limited to those under VISA, Mastercard, UnionPay, Discover, Diners Club and AMEX
Card Scheme	means a payment network through which the Merchant’s Transactions are processed by OXPAY. This includes, but is not limited to, VISA, Mastercard, UnionPay, Discover, Diners Club and AMEX
Chargeback	means a demand by an Issuer or Card Scheme or Acquirer to be repaid a sum of money by OXPAY in respect of a Transaction which has been previously subject to Settlement and for which OXPAY has been paid by the relevant Card Scheme

Cardholder	means the person purchasing goods and/or services from the Merchant, and who chooses to pay through OXPAY's Payment Gateway
eWallet	means a payment solution, including but not limited to Alipay, WeChat Pay and GrabPay, where a Cardholder can store value and effect payment to the Merchant out of that stored value facility
Extended Term	means each successive term of two years upon renewal of the Agreement
Fees	means the fees payable by the Merchant to OXPAY at the Merchant Discount Rate and any other fees, costs, expenses, fines, penalties and payments which are due and payable from the Merchant to OXPAY, including but not limited to set-up fee, annual fee, refund fee, chargeback fee, administrative fee, maintenance fee and Security Deposit as set out in the Schedule(s)
Initial Term	means the initial term of two years
Issuer	means the institution that issues a Card under a Card Scheme and whose name appears on the Card or account statement as the Issuer or who enters into a contractual relationship with the Cardholder with respect to the Card Scheme
Merchant	means a merchant under the Agreement between OXPAY and the merchant, which results in a transfer of money to the merchant pursuant to the payment transaction, regardless whether OXPAY comes into possession of any money in respect of the payment transaction, in a case where —  (a) the merchant carries on business in Singapore, or is incorporated, formed or registered in Singapore; or  (b) the Agreement between OXPAY and the merchant is entered into in Singapore
Merchant Discount Rate ("MDR")	means the respective rate charged to the Merchant for each Payment Processing Service as set out in the Schedule(s), on debit and credit Transactions, expressed as a percentage of the Transaction amount
Party(ies)	each of OXPAY and the Merchant shall be referred to as a "Party" and both of them shall be collectively referred to as the "Parties".
Payment Gateway	means OXPAY's proprietary software for the processing of payments and whose primary function is to collect, encrypt and transmit Transaction data to an Acquirer to authorise a Transaction

Payment Method	means a method of enabling the Merchant to accept payments for goods or services, including but not limited to Cards and eWallets
Payment Processing Services	has the meaning set out at Clause 2 below
PDPA	means the Personal Data Protection Act 2012 of Singapore (as amended or supplemented from time to time)
Refund	means a demand by the Merchant to reverse a credit or debit made to the Cardholder's Card or eWallet for any given Transaction
Rolling Reserve	means the amounts determined as a percentage of successful Transactions which shall be set aside and retained by OXPAY in accordance with and for the purposes set out under Clause 4 below
Schedule(s)	means the document(s) and schedule(s) setting out the Services, the Fees and/or any other terms, whether attached to the Agreement or otherwise provided by OXPAY to the Merchant from time to time, which form part of the Agreement
Security Deposit	means any security deposit that the Merchant is liable to pay to OXPAY under the Agreement
Settlement	means the process following Authorisation of a Transaction, where the Settlement Funds accumulated within a relevant Settlement Cycle is paid by OXPAY to the Merchant
Settlement Funds	means the amount of funds due and payable to the Merchant at the end of every Settlement Cycle
Settlement Cycle	means the relevant length of time as set out in the Schedule(s) before each Settlement is made and which differs between each Payment Method
Services	means the services to be provided by OXPAY to the Merchant as set out in the Schedule(s)
Transaction(s)	means any payment request made by a Cardholder through each respective Payment Method to debit or credit the Cardholder's Card account or eWallet

## Clause 2. Provision of Services

OXPAY shall provide the Merchant with the ability to accept payments by employing the Services, including Payment Processing Services which cover Authorisation of a Transaction and making payment of Settlement Funds to the Merchant's bank account.

### 2.1 Authorisation

- (a) To accept payments through the Payment Processing Services provided by OXPAY under the Agreement, the Merchant shall send such information as OXPAY may specify (including

customer's name, credit card number and expiry date) to an Acquirer via OXPAY's Payment Gateway.

- (b) If an Issuer approves the Transaction, an encrypted message of approval shall be sent as an electronic confirmation to the Merchant. In the event of a successful Transaction, the Merchant's account with OXPAY will be credited and the Cardholder's account with his Issuer will be debited accordingly.
- (c) OXPAY shall not be responsible for any Transactions that fail to be authorised after being processed by the Acquirer or Issuer. OXPAY gives no assurance that any Transaction will be honoured or that the Acquirer, Issuer or Card Scheme will not issue a demand for Chargeback.

## 2.2 Payment of Settlement Funds

- (a) OXPAY will calculate the Settlement Funds by calculating the aggregate amount of successful Transactions for that period less:
  - i. fees charged to the Merchant based on the Merchant Discount Rate;
  - ii. any amount deducted by OXPAY to be paid towards the Security Deposit and/or the Rolling Reserve pursuant to the Agreement; and
  - iii. any Fees and other payments or charges due to OXPAY, and permitted deductions pursuant to the Agreement, including Chargebacks and tax.
- (b) OXPAY will initiate a transfer of the applicable Settlement Funds to the Merchant based on the Settlement Cycle set out in the Schedule(s) and to the Merchant's bank account identified in the Schedule(s).
- (c) The Merchant acknowledges and agrees that OXPAY shall be entitled to charge a penalty amount to the Merchant which may be deducted from the Settlement Funds as well as to retain or withhold any Settlement Funds payable to the Merchant, in the event of any breach by the Merchant of any term of the Agreement.
- (d) The Merchant shall advise OXPAY in writing immediately of any changes to its bank account details as set out in the Schedule(s). If OXPAY is unable to verify the Merchant's bank account for the purposes of effecting Settlement, OXPAY retains the right to immediately suspend acceptance or processing of the Merchant's Transactions and/or Settlement until OXPAY is able to effect a deposit into the Merchant's nominated bank account(s). In the event that OXPAY is required to hold any funds due to its inability to effect Settlement to the Merchant, OXPAY shall be entitled to impose an administrative fee. Any Settlement Funds that remain unclaimed after a period of six years may be dealt with in such manner as OXPAY deems fit in its absolute discretion and the Merchant shall have no claims whatsoever against OXPAY thereafter.
- (e) OXPAY shall have no obligations whatsoever to the Merchant and the Merchant shall have no claims against OXPAY, in the event that any funds relating to a Transaction are withheld by the Acquirer or otherwise not received by OXPAY for any reason whatsoever, including the insolvency of the Acquirer.
- (f) OXPAY shall be entitled, without any reference to the Merchant, to comply with the order or instructions of any Authority or court relating to or affecting the Settlement Funds or any other funds to be paid out to the Merchant, including withholding such funds and/or handing over such funds to the relevant Authority.

## 2.3 Point-of-Sale Terminals

- (a) To provide the rental of point-of-sale terminals that enable Merchants to process payments and log transactions.
- (b) Refer to Appendix A for the terms and conditions for the rental of point-of-sale terminals.

## Clause 3. Fees

### 3.1 Merchant Discount Rate

In consideration of the Services provided by OXPAY, the Merchant agrees that OXPAY shall be entitled to deduct the Fees based on the relevant MDR before paying out the Settlement Funds to the Merchant.

### 3.2 Service fees

In addition to the Fees per transaction at the MDR, the Merchant agrees to pay OXPAY the other Fees.

### 3.3 Late payment

Any sums due and remaining unpaid 30 days after the date of issue of an invoice from OXPAY shall bear interest at the rate of 15% per annum. In addition, OXPAY shall be entitled to impose an administrative fee.

### 3.4 Taxes

Fees and expenses payable under the Agreement do not include taxes or duties, including the prevailing goods and services tax. OXPAY shall be entitled to deduct from the Settlement Funds the amount of any taxes and duties chargeable on OXPAY's fees and expenses, including but not limited to withholding tax and the prevailing goods and services tax.

### 3.5 Fines, Penalties or Fees

Any fines, penalties or fees imposed by the Acquirer, the Card Scheme or the Issuer for any breach of any terms or rules shall be borne by the Merchant and OXPAY shall be entitled to deduct such amounts from the Settlement Funds.

### 3.6 Refund of Fees

- (a) The Merchant shall have the right to initiate a refund process by advising OXPAY either by such automated systems as OXPAY shall make available from the gateway, or by email or fax on the Merchant's letterhead.
- (b) OXPAY shall process refunds only to the extent of the anticipated aggregate value of prospective remittances based on Transactions actually processed after allowing for actual and prospective disputed Transactions.

### 3.7 Chargeback and Disputed Transactions

- (a) All Chargebacks and all costs and expenses arising from Chargebacks and disputed Transactions shall be borne by the Merchant.
- (b) In the event that OXPAY is notified of any Chargeback procedure filed by the Acquirer, Issuer or Card Scheme, OXPAY will be entitled to debit the Merchant's account with OXPAY or Settlement Funds in respect of the concerned Transaction (if not already debited as a disputed Transaction), or to recover from the Merchant by other means the amount paid by OXPAY in respect of the relevant Transaction.
- (c) Unless permitted in writing by OXPAY, the Merchant shall not have the right to dispute a decision to proceed with Chargeback from the Acquirer, Issuer or Card Scheme.
- (d) OXPAY will notify the Merchant once a Chargeback has been initiated by the Acquirer or Issuer by way of email or letter.

- (e) If the Acquirer or Issuer includes an explanation for the basis of the Chargeback, OXPAY shall provide that explanation in its notification to the Merchant.
- (f) OXPAY may debit the Merchant's account to recover any other costs and expenses OXPAY may have incurred as a result of or in connection with a Chargeback or disputed Transaction.
- (g) The Merchant must retain the documents and/or correspondences relating to the Chargeback decision, or reproducible records thereof, for twelve [12] months from the date of notification of a Chargeback.
- (h) The Merchant shall agree to investigate disputed Transactions and take all reasonable steps to resolve disputes with Cardholders in a timely manner.
- (i) The Merchant shall follow disputed Transaction procedures as OXPAY may advise from time to time.
- (j) OXPAY reserves the right to suspend the processing of any Transaction or withhold Settlement to the Merchant of the amount of the disputed Transaction pending resolution of the investigation process.
- (k) All fines and fees imposed by the Card Scheme regulations shall be borne by the Merchant and OXPAY shall be entitled to deduct such amounts from the Settlement Funds. In addition, OXPAY shall be entitled to charge an administrative fee and deduct such fee from the Settlement Funds.

## Clause 4. Security Deposit and Rolling Reserve

### 4.1 Obligation to place Security Deposit

The Merchant shall pay the Security Deposit to OXPAY as stated in the Schedule(s) upon the execution of the Agreement.

### 4.2 Amount and payment of Rolling Reserve

- (a) For each Service offered by OXPAY to the Merchant, the amount payable by the Merchant to OXPAY as the Rolling Reserve shall be computed (and adjusted from time to time) as a percentage, set out in the row titled "Rolling Reserve" in the tables titled "Service Fee / Pricing Schedule" in the Schedule(s), of every approved Transaction processed by OXPAY on the Merchant's account.
- (b) The Rolling Reserve is payable by way of deduction and set off against any amount that may be payable by OXPAY to the Merchant. For the purposes of the Rolling Reserve, the Merchant hereby authorises OXPAY to deduct and set off all such sums of the Rolling Reserve against any amount payable by OXPAY to the Merchant (including the Settlement Funds), provided always that if any amount to be deducted or set off by OXPAY are the proceeds from Transactions processed by OXPAY on the Merchant's account, OXPAY may only set off a maximum of 20% of the gross value of each relevant Transaction (i.e. the amount collected by OXPAY for each relevant Transaction before Fees).

### 4.3 Nature of Security Deposit and Rolling Reserve

Any payment by the Merchant to OXPAY of the Security Deposit and the Rolling Reserve, including by way of deduction or set off by OXPAY, shall be free from all encumbrances and with the intent that OXPAY shall be solely, legally, and beneficially entitled to the Security Deposit and the Rolling Reserve.

## 4.4 Usage of Security Deposit and Rolling Reserve

OXPAY may (but is not obliged to) apply the Security Deposit and/or the Rolling Reserve to meet any charges, fees, expenses or liabilities arising out of or in connection with OXPAY's processing of the Transactions on the Merchant's account, including but not limited to:

- (a) any charges, Fees, fines, penalties, Chargebacks and Refunds; and
- (b) any liabilities to any Acquirer, Issuer or Authority.

## 4.5 Refund of Security Deposit and Rolling Reserve

- (a) Subject to the Merchant's due observance and performance of the provisions of the Agreement, OXPAY shall on the last day of every 6-month period from the date of the Agreement (each a "Refund Date"), refund to the Merchant the aggregate amount previously retained as Rolling Reserve by OXPAY and which has been in OXPAY's retention for a period not less than 6 months prior to that Refund Date, less all proper deductions made pursuant to the Agreement.
- (b) Subject to the Merchant's due observance and performance of the provisions of the Agreement, OXPAY shall within one month after the termination or expiry of the Agreement refund to the Merchant the Security Deposit, less all proper deductions made pursuant to the Agreement.
- (c) For the avoidance of doubt, OXPAY's obligation under this Clause shall be subject to OXPAY's right to utilise the Security Deposit and the Rolling Reserve for, among other things, the purposes identified in the Agreement.

# Clause 5. Intellectual Property and Use of Information

## 5.1 Intellectual property

All rights, title and interests in the content, terminals, API, web interfaces, brand names, licenses, copyright, patents, trademarks and any other intellectual property used by the Merchant pursuant to OXPAY's performance of the Services, shall belong to and remain with OXPAY.

## 5.2 Confidentiality

- (a) Each Party shall keep data relating to card payments, Refunds and Chargeback secure.
- (b) Neither Party shall compile or use any lists of Cardholders or personal data relating to those Cardholders, save for the purpose of sending payment, Chargeback or Refund details to OXPAY or otherwise to fulfil its obligations under the Agreement. The Merchant shall not use or divulge any information relating to the Agreement for extraneous purposes or to any third party.
- (c) Neither Party may disclose Cardholders' data, card numbers or any information relating to the subject matter of the Agreement to any third party. This restriction does not apply to disclosures made to either Party's professional advisers or agents who have similar obligations of confidentiality.
- (d) The confidentiality clauses herein do not apply to information which are public knowledge, or to which either Party is compelled to disclose in any legal proceedings or due to any other legal obligation.

# Clause 6. Term of Service

The Agreement shall come into effect on the signed date of the Merchant Application Form and, unless the Agreement is terminated in accordance with the terms herein, shall continue for an Initial

Period of two years. Thereafter, the Agreement shall automatically renew for successive periods of two years, each an Extended Term, unless it is terminated in accordance with the terms herein.

## Clause 7. Termination

- (a) Either Party may terminate the Agreement by giving notice in writing to the other Party at least 30 days before the date of any automatic renewal.
- (b) Additionally, without prejudice to any other remedies to which OXPAY is entitled, whether under the Agreement or otherwise, OXPAY shall have the right to terminate the Agreement with immediate effect if:
  - i. either the Merchant becomes insolvent or enters into any arrangement or composition for the benefit of its creditors or has a winding up petition filed against it;
  - ii. the Merchant fails to pay any amounts to OXPAY by the due date;
  - iii. the Merchant breaches any representation or warranty set out in Clause 9 of these Terms and Conditions;
  - iv. the Merchant fails to notify OXPAY in advance of any change in the nature of the Merchant's business or the goods and/or services supplied; or
  - v. OXPAY is required by the Acquirer to do so.
- (c) Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry.

## Clause 8. Representations and Warranties by OXPAY

### 8.1 Representations and Warranties

OXPAY represents and warrants to the Merchant that the respective representations and warranties set out below are true and correct when made, and are true and correct to the best of its knowledge as of the date of the Agreement and during the Initial Term and/or the Extended Term (as the case may be):

- (a) OXPAY has full power to execute and deliver the Agreement and these Terms and Conditions, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The Agreement has been duly executed and delivered by OXPAY and constitutes valid and binding obligation of OXPAY enforceable against OXPAY in accordance with its terms; and
- (b) The Agreement and the transactions provided for herein will not conflict with or result in a breach of any agreement or instrument to which OXPAY is a party or by which OXPAY is bound or to which it is subjected or constitute a default under any such agreement or instrument.

### 8.2 No Representations and Warranties

OXPAY makes no representations or warranties of any kind with respect to the Payment Gateway or any other systems, software or hardware provided by OXPAY, or any part thereof, express or implied, and shall not be liable to the Merchant for any loss or damage howsoever caused and regardless of the form of loss or damage which may be suffered or incurred by the Merchant or any third party in connection with the Agreement, including (without prejudice to the generality of the foregoing) any loss of profit in consequence of a breakdown in providing the Services or part thereof.



## Clause 9. Representations and Warranties of the Merchant

The Merchant represents and warrants to OXPAY that the respective representations and warranties set out below are true and correct when made, and are true and correct as of the date of the Agreement and during the Initial Term and/or the Extended Term (as the case may be):

- (a) The Merchant is a corporation duly organized and validly existing under the laws of Singapore, and has full corporate power and authority to execute and deliver the Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The Agreement has been duly authorised and approved by all required corporate actions of the Merchant. The Agreement has been duly executed and delivered by the Merchant and constitutes valid and binding obligations of the Merchant enforceable against the Merchant in accordance with its terms;
- (b) The Agreement and the transactions provided for herein will not conflict with or result in a breach of the Merchant's constitution or bylaws, or any agreement or instrument to which the Merchant is a party or by which the Merchant is bound or to which it is subjected or constitute a default under any such agreement or instrument;
- (c) The Merchant warrants and undertakes that all information contained in any document or communication in writing which has been given or submitted by the Merchant to OXPAY for the purposes of due diligence and other checks carried out by OXPAY was when given true and accurate and shall remain true and correct, unless otherwise notified in writing by the Merchant to OXPAY, during the Initial Term and/or the Extended Term of the Agreement;
- (d) The Merchant acknowledges that OXPAY is a major payment institution licensed under the Payment Services Act 2019 and the Merchant undertakes that it shall not take or omit to take any action which might reasonably be expected to cause or result in the breach or non-compliance by OXPAY of the terms or conditions of its licences;
- (e) The Merchant warrants that it will perform verification checks, "know your customer" and anti-money laundering checks in accordance with all applicable laws and regulations, and will implement related screening, transaction monitoring and fraud/risk controls together with mutually agreed upon reports and processes, beginning on the date OXPAY first enables the Merchant to accept payments under the Agreement; and
- (f) The Merchant agrees and undertakes to procure all necessary consents in relation to the collection, use, disclosure and transmission of Cardholders' personal data routed through OXPAY's Payment Gateway pursuant to its obligations under the Agreement and/or otherwise required for the Services provided by OXPAY and/or the Acquirer and/or otherwise required under the PDPA, and to comply with the PDPA with regard to any and all such personal data.

## Clause 10. Miscellaneous

### 10.1 Notice

Subject to Clause 10.2 of these Terms and Conditions, any notice or other communication hereunder shall be in writing and shall be delivered by hand or sent by facsimile or electronic mail to each Party at their respective address, or to such addresses as either Party may subsequently notify the other of. Notice and other communications shall be effective upon receipt.

### 10.2 Amendment and waivers

- (a) Subject to Clause 10.2(b) of these Terms and Conditions, neither Party shall be bound by any modification or amendment of the Agreement or any waiver of any provision hereof unless such modification, amendment, or waiver is set forth in a written instrument signed by both Parties.

- (b) The Merchant acknowledges that OXPAY shall be entitled, by not less than fourteen [14] calendar days' prior notice to the Merchant in writing ("Amendment Notice"), to supplement, vary and/or modify the terms of the Agreement at any time, whether in the form of additional Schedule(s) or otherwise, and such supplement, variation and/or modification shall take effect from the date specified by OXPAY in the Amendment Notice ("Amendment Date").

Unless otherwise agreed in writing by OXPAY, if the Merchant does not agree to any such supplement, variation and/or modification:

- i. the Merchant shall notify OXPAY in writing within seven [7] calendar days of receiving the Amendment Notice, and cease utilising the Services provided by OXPAY within seven [7] calendar days of providing such written notification to OXPAY; and
- ii. the Agreement shall be terminated immediately preceding the Amendment Date.

If OXPAY does not receive the notice referred to in Clause 10.2(b)i. of these Terms and Conditions, the Merchant is deemed to have agreed without reservation to such supplement, variation and/or modification stated therein.

- (c) Except as otherwise provided in the Agreement, failure on the part of either Party to exercise any right hereunder, or to insist upon strict compliance by the other Party with any of the terms, covenants or conditions hereof, shall not be deemed a waiver of such a right, term, covenant or condition. No provision of the Agreement shall be construed to be a waiver by either Party of any rights or remedies such a Party may have against the other Party for failure to comply with the provisions of the Agreement.

### 10.3 Severability

If any term or condition of the Agreement is void, invalid, unlawful or unenforceable, the validity, legality and enforceability of all remaining terms of the Agreement shall not in any way be affected or impaired thereby and such remaining terms shall remain in full force and effect.

### 10.4 Further assurance

Each Party agrees that it shall execute and deliver such further documents and do such other acts and things as the other Party may reasonably request in order to give full effect to the purpose of the Agreement.

### 10.5 Change of name or in ownership

The Agreement shall remain valid and binding on the Parties notwithstanding any change of name or change in the ownership of either Party.

### 10.6 Rights of Third Parties

Any person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 2001 or any amendment thereto to enforce any term of the Agreement.

## Clause 11. Force Majeure

- (a) Force Majeure refers to an event that is unforeseeable, unavoidable, insurmountable and beyond the reasonable control of both Parties. If any event of Force Majeure affects the performance of the Agreement, the affected Party shall immediately give written notice to the other Party. Depending on the Force Majeure's impact on the performance of the Agreement, the Parties shall determine whether to release, exempt performance in part or delay performance of their obligations hereunder. In the event that a Party fails to perform its

obligation under the Agreement due to Force Majeure, it shall promptly take measures to prevent further loss, and promptly notify the other Party in writing to mitigate the loss that may be caused. Failure to give such notification by any affected Party shall impose an obligation to indemnify the other Party against any and all further losses.

- (b) Due to the special nature of the payment network, and provided the affected Party provides adequate written notification to the other Party, both Parties shall be released from their performance obligations under the Agreement and exempted from liability if any of the following circumstances affect the normal operation of the payment network:
- i. hacker attack, computer virus attack or inactivation, or security breach;
  - ii. computer systems being destroyed, paralysed or unable to operate under normal conditions;
  - iii. technological adjustment or breakdown in telecommunications infrastructure;
  - iv. temporary suspension of service or discontinuation of service of either Party as required by any Authority;
  - v. other reasons caused by intermediary banks or telecommunication service providers but not contributed by either Party; or
  - vi. adjustments made by either Party due to changes in laws and regulations.

## Clause 12. Limitation of Liability

To the fullest extent permitted by law, the liability of OXPAY for any and all losses arising out of or relating in any way to the Agreement, including but not limited to losses arising out of any malfunction of equipment or the failure of equipment to operate, the unavailability or malfunction of the Services, or property damage, shall, in the aggregate, be limited to actual, direct and general monetary damages in an amount not to exceed one [1] month's average Fee paid by the Merchant hereunder (exclusive of fees or costs that are imposed by a third party in connection with the Merchant's payment processing) for Services during the previous twelve [12] months or such fewer number of months as shall have elapsed subsequent to the effective date of the Agreement. The scope of the limitation of liability in this Clause 12 shall extend to alleged acts of negligence, breach of contract, wilful default and all other forms of legal or equitable action. OXPAY shall not be liable to the Merchant for any liquidated, indirect, consequential or incidental damages (including damages for loss of business profits or business interruption). For the avoidance of doubt, OXPAY shall only be liable for its own acts or omissions and not for acts or omissions of third parties, including but not limited to the Acquirer, the Issuer and the Card Scheme.

## Clause 13. Governing Law

The Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the Republic of Singapore.

## Clause 14. Dispute Resolution

### 14.1 Mediation

Any dispute arising out of or in connection with the Agreement must first be submitted for mediation at the Singapore Mediation Centre ("SMC") in accordance with SMC's Mediation Procedure in force for the time being. Either Party may submit a request to mediate to SMC upon which the other Party will be bound to participate in the mediation within forty-five [45] days thereof. Each Party to the mediation must be represented by a senior executive with authority to negotiate and settle the dispute. Unless otherwise agreed by the Parties, the Mediator(s) will be appointed by SMC. The mediation will take place in Singapore in the English language and the Parties agree to be bound by any settlement agreement reached.

## 14.2 Arbitration

In the event that the dispute cannot be resolved in mediation within the time agreed by the Parties, the Parties shall refer the dispute to arbitration at the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the SIAC for the time being in force, which rules are deemed to be incorporated by reference in this Clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator and the language of the arbitration shall be English.

## Appendix A: Terms and Conditions for the Rental of POS

### Terminals

Notwithstanding the Terms and Conditions for Merchant Services, these Terms and Conditions for the Rental of POS Terminals are also applicable to Merchants desiring to use portable point-of-sale ("POS") terminal(s) ("Terminal(s)") to facilitate the sale of merchant goods and services to end users.

#### Clause A1. Rental of POS Terminals

- 1.1 Upon signing the Merchant Application Form which constitutes the Rental Agreement, the Merchant shall make the appropriate payment by way of fund transfer payable to "OXPAY SG PTE. LTD." via Internet Banking. The payment term is "Immediate" unless otherwise agreed by OXPAY.
- 1.2 If payment is not received by OXPAY within the agreed period, OXPAY reserves the right to disable the Terminal(s) and to retrieve the Terminal(s) from the Merchant's premises. OXPAY shall not be under any liability to the Merchant for any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the disablement and retrieval of the Terminal(s).

#### Clause A2. Duration and Commencement of Rental

The rental duration shall be as stated in the Merchant Application Form and shall commence on the date when the Terminal(s) are received by the Merchant.

#### Clause A3. Deposit

The Merchant shall pay the deposit (amount as stated in the Merchant Application Form) for each Terminal rented to the Merchant by OXPAY. The deposit is refundable upon return of the Terminal(s) subject to the deductions of the following:

- a) Damage to Terminal(s) that is not due to fair wear and tear;
- b) Cost of repairs done to Terminal(s), which remains unpaid by the Merchant pursuant to this return;
- c) Any other sum, howsoever arising, owing from the Merchant to OXPAY.

#### Clause A4. Deployment

- 4.1. OXPAY or OXPAY's Service Agent shall deliver to the Merchant's premises the requisite number and model(s) of Terminal(s) specified on the Merchant Application Form.
- 4.2. Regardless of the number of card types readable by the Terminal(s), the Merchant shall pay a one-off Terminal programming fee (amount as stated in the Merchant Application Form) for each Terminal issued to the Merchant.
- 4.3. The Merchant shall keep the Terminal(s) at all times in his possession and control.

#### Clause A5. Operations

- 4.1. The Merchant shall operate the Terminal(s) only in accordance with such instructions set out in the Terminal Operation Manual and ensure that at all times only authorised and trained Merchant's staff are permitted to operate the Terminal(s).
- 4.2. The Merchant shall report promptly to OXPAY or OXPAY' Service Agent any fault or suspected fault in the Terminal(s).
- 4.3. The Merchant shall ensure that the Terminal(s) including all its accessories and software are not altered, adjusted, modified or otherwise interfered or tampered with unless the same has been approved by OXPAY.

4.4. The Merchant shall be solely responsible for all operating charges for the Terminal(s).

## Clause A6. Maintenance

- 6.1. The Merchant shall handle the Terminal(s) with reasonable care and maintain them in good working order. The Merchant shall allow OXPAY or OXPAY's Service Agent access to the Terminal(s) during regular business hours and at all other reasonable times for all necessary repairs resulting from fair wear and tear and replacements.
- 6.2. From time to time during regular business hours, OXPAY or OXPAY's Service Agent may enter the Merchant's premises to confirm the existence and condition of the Terminal(s) and to maintain the Terminal(s) and the programming of the Terminal System in good working order.

## Clause A7. Additional Programming and/or Reprogramming

A per Terminal programming fee is chargeable for any future additional programming and/or reprogramming made on the Terminal. This programming fee shall be payable by the Merchant. OXPAY reserves the right to revise the programming fee from time to time as deemed necessary in the course of business.

## Clause A8. Ownership and Risk

- 8.1. The Terminal(s) and all its accessories and software shall remain the property of OXPAY and nothing contained in the Rental Agreement shall confer or be deemed to confer any interest in the Terminal(s) to the Merchant.
- 8.2. Notwithstanding Clause 10.1 herein, the Merchant shall bear all risk of loss or damage to any and all Terminal(s) issued to the Merchant by OXPAY.

## Clause A9. Indemnity

- 9.1. The Merchant shall indemnify and hold harmless against all actions, proceedings, costs, claims, demands, liabilities, losses, expenses (whether direct or consequential) arising out of or in connection with
  - a) Any failure or error in the Terminal(s) which is attributable, in any way, to the improper use thereof by the Merchant, its servants or agents or from a cause beyond the control of OXPAY.
  - b) Any damage or personal injury caused to or by the Terminal(s) that is attributable in any way to the negligent or wilful act or omission of the Merchant, its employees, agents or customers.
- 9.2. Such indemnities shall survive the termination of the Rental Agreement.

## Clause A10. Disclaimer

- 10.1. OXPAY shall be under no liability to the Merchant or any customer of the Merchant as to the accuracy or validity of any POS authorisation communicated by the Acquiring Bank in connection with these services and the Merchant shall indemnify OXPAY accordingly in the event of any claim arising therefrom.
- 10.2. Except as expressly provided to the contrary in the Rental Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether expressed, implied, statutory or otherwise relating in any way to the Terminal System or to the Rental Agreement, are excluded. Without limiting the generality of the preceding sentence, OXPAY shall not be under any liability to the Merchant for any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Terminal(s) or as a result of failure or error in the Terminal(s), the programs therein, the data or the Terminal System.
- 10.3. The disclaimers and indemnities herein shall survive the termination of the Rental Agreement.

## Clause A11. Assignment and Successors in Title

- 11.1. The benefit of the Rental Agreement shall not be dealt with in any way by the Merchant (whether by assignment or otherwise) without OXPAY's prior consent in writing.
- 11.2. The Rental Agreement shall bind the successors in title and legal personal representatives of the parties hereto. If the Merchant is a partnership firm, the Rental Agreement shall continue to be valid and binding for all purpose notwithstanding any change in its constitution whether by retirement, expulsion, death or admission of any partner or partners amalgamation or otherwise.

## Clause A12. Renewal and Renewal Fee

Not less than two [2] months prior to the expiry of the rental period, the rental for each successive 12-month period following shall be determined by OXPAY. The renewal fee shall be as stated in the Renewal-Acceptance Receipt. To renew the Rental Agreement, the Merchant must sign and return the Renewal-Acceptance Receipt together with payment by way of fund transfer made payable to "OXPAY SG PTE. LTD." via Internet Banking not less than forty-five [45] days before expiry of the existing rental period.

## Clause A13. Termination

- 13.1. OXPAY may terminate the Rental Agreement upon one [1] month's prior notice in writing to the Merchant and any outstanding full-month rental fees (if any) shall be refunded to the Merchant.
- 13.2. The Rental Agreement may be terminated by the Merchant should the company/business fails and wind up, whether voluntarily or involuntarily. There will be no refund of rental fees for early termination by the Merchant.
- 13.3. The Rental Agreement shall be automatically terminated forthwith upon termination of the Merchant Services Agreement between the Merchant and OXPAY. Any outstanding rental fees (if any) will not be refunded.
- 13.4. Upon termination, the Merchant shall forthwith, and at the Merchant's expenses, return to OXPAY the Terminal(s) and all its accessories and documentation relating thereto (including the Terminal Operation Manual).
- 13.5. Any of the clauses herein that are expressed to survive the termination shall continue in full force and effect after the termination of the Rental Agreement.

## Clause A14. Enforcement

The Rental Agreement shall be governed by and construed in accordance with the laws of Singapore. The Merchant hereby submits to the exclusive jurisdiction of the Courts of Singapore.