

## Terms and Conditions for Vircle Merchants

Last updated: 27<sup>th</sup> December 2019

**Important** - Please read the following terms and conditions carefully. By submitting your Merchant application form to the Partner (as defined below) and/or by using the Services (as defined below) by Debit Circles Sdn. Bhd. (“**Partner**”), in collaboration with Fass Payment Sdn. Bhd. (“**Fasspay**”) as principal license holder of the E-wallet functionality operated by Partner, you agree that you have read, understood, accepted and agreed with the Terms and Conditions herein. You further agree to the representations made by you, below. If you do not agree to or do not fall within the Terms and Conditions of the Services and wish to discontinue using the Services, please do not use the Application (as defined below) or the Services.

The Terms and Conditions stated herein (collectively, the “**Terms of Use**”) constitute a legally binding agreement between you (the “**Merchant**”), the Partner and Fasspay (“**Agreement**”). The Partner and Fasspay shall be referred to collectively in this Terms of Use as the “**Service-Providers**”.

By submitting the Merchant application form to the Partner and/or by using the Vircle Merchant Application supplied to you by Partner (“**Merchant App**” or “**Merchant Application**”), and/or downloading, installing or using any associated software supplied by Partner (“**Software**”) and/or using Vircle physical static Quick Response (“**QR**”) code which purpose is to enable merchants to receive payments from persons with a Vircle account, and/or using Vircle, and/or using the Services, you hereby expressly acknowledge and agree to be bound by the Terms of Use. You are aware and agree that Service-Providers may, at its sole discretion, update or revise the Terms of Use from time to time and published at <https://www.vircle.com/merchant-terms-and-conditions> or through the Merchant Application. Your continued use of the Services shall be deemed to be your express acceptance of any revised Terms of Use. You should check this page from time to time to see the changes.

### 1. DEFINITIONS

In this Terms of Use, unless otherwise specifically defined herein, all terms shall bear the following meanings:

“**Business Day**” means a day (excluding Saturdays, Sundays and public holidays) on which commercial banks in Malaysia are open for business;

“**Charge Back**” means, where relevant, the process whereby Partner deducts any amount from the Settlement, pursuant to any disputed transactions between the Merchant and the User arising from payments made by the User to the Merchant through the Services;

“**Confidential Information**” means any documents, knowledge, data, or information of whatsoever nature disclosed to or acquired by the Merchant, directly or indirectly from Service-Providers in connection with this Terms of Use, or otherwise including, but not limited to the following:

- (a) financial information;

- (b) technical information, including but not limited to research, development, procedures, data, designs, and technical know-how;
- (c) business information, including but not limited to operations, planning, marketing interests, and services disclosed by Service-Providers to the government or any regulatory body;
- (d) personal information or personal data of any Users; and
- (e) all confidential or proprietary concepts, documentation, reports, lists, files, data, specifications, software, source code, object code, flow charts, databases, data files, inventions, information, know-how and trade secrets, whether or not patentable or copyrightable;

“**Viracle**” means the electronic wallet platform and a Designated Payment Instrument issued through Faspay (in collaboration with the Partner) under the Financial Services Act 2013 and regulated by Bank Negara Malaysia (“**BNM**”) which allows the Users of Viracle to make in-application digital payments to merchants lawfully accepting payments through the Viracle application and/Or Service;

“**Intellectual Property Rights**” means all intellectual and industrial property rights of whatever nature, anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner, or otherwise, including patents, trademarks, registered designs (including applications for any of the same), copyright, design rights, database and software rights, trade secrets, know-how, business process, trade names, brand names, domain names and all other legal rights anywhere in the world protecting such intangible property;

“**RM**” means Ringgit Malaysia, the legal currency of Malaysia;

“**Services**” means the Merchant Application, the Software and Viracle including the physical static QR code;

“**Settlement**” means the funds transfer (of the transacted amount between the Merchant and the Users) by Service-Providers to the Merchant; and

“**User(s)**” means any person with a valid Viracle account and/or lawfully using the Viracle to make payments for products and/or service provided by the Merchant.

## 1.2 INTERPRETATION

- (a) References to any enactment (including without limitation any statute or statutory provision of Malaysia or elsewhere and any subordinate legislation made under any such statute or statutory provision) shall be construed as references to:
  - (i) any enactment which that enactment has directly or indirectly replaced (whether with or without notification), and
  - (ii) that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date hereof.

- (b) The headings in this Terms of Use are for convenience only.
- (c) References to any document (including this Terms of Use) are references to such document as varied, novated, ratified or replaced from time to time.
- (d) Words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender.
- (e) Except where otherwise expressly provided, where under this Terms of Use the day on which any act, matter or thing is to be done is a day other than a Business Day, such act matter or thing shall be done on the immediately succeeding Business Day.

## **2. SCOPE AND TERM OF SERVICES**

### **2.1 Scope of Services**

- (a) Service-Providers will provide and facilitate the Services.
- (b) Service-Providers will be responsible for the collection and/or handling of any payments made by the Users to the Merchant using the Vircle Application.
- (c) Service-Providers will provide the Merchant with all the necessary hardware and/or software to be used for accepting in-app digital payments through the Services.

2.2 Partner will provide the Merchant with the Vircle Merchant App. A login name and password will be generated for the Vircle Merchant App to enable the Merchant to accept in-app digital payments for the products and/or services sold and/or provided by the Merchant to the Users through Vircle.

2.3 The Merchant accepts and agrees that Fasspay acts as an intermediary between the Merchant, the Users and the Partner. The Merchant accepts and agrees that any payment made by the Users to the Merchant using the Vircle shall be inclusive of all taxes and miscellaneous charges (if applicable). The Merchant accepts and agrees that all payments and/or transactions through the Vircle shall be conducted in Ringgit Malaysia only.

2.4 Service-Providers may in its sole and absolute discretion, with or without notice to the Merchant, undertake scheduled update, maintenance and/or emergency maintenance on the Services from time to time and at any time. Service-Providers, will endeavour to notify the Merchant of the same within reasonable time. The Merchant agrees and accepts that Service-Providers shall not be liable for any losses incurred by the Merchant as a result of such schedule update, maintenance and/or emergency maintenance in this Clause 2.4.

## 2.5 No Warranties of Merchantability and Fitness of Use

Service-Providers disclaims all warranties, express or implied, written or oral, including but not limited to warranties:-

- (a) regarding the merchantability of the Services merchantability and/or the fitness for a particular purpose of the Services; and
- (b) that Services will be available at all times and that the provision of Services by Service-Providers to the Merchant would be uninterrupted and virus and/or malware and/or error free.

## 3. RESPONSIBILITIES

### 3.1 Merchant's Responsibilities

The Merchant agrees and accepts that:

- (a) For any sales, marketing and promotional activities the Merchant shall not misrepresent its goods and services, nor will it infringe any laws, regulations or other person rights and entitlements;
- (b) the Merchant shall be solely responsible for all claims, disputes and any issues, which may arise in relation to all its goods and services, which are being sold, marketed and/or distributed through the Services. In the event of a dispute between a User and the Merchant, the Partner will attempt to help resolve the issue in question and arbitrate between the User and Merchant. The Merchant shall accept the Partner's decision with regards to the disposition of the dispute as final and binding. Any money determined by the Service-Providers, to be due and payable by the Merchant to the User, shall be paid by the Merchant to the Service-Providers within fifteen (15) days of a written notice by Service-Providers. If applicable, Service-Providers will handle the settlement and refund the money in dispute, back to the User after such money has been received by the Service-Providers from the Merchant. In the event where the Merchant fails to abide by the Service-Provider's decision with regards to the resolution of the dispute and to refund the money within the period specified above, Service-Providers shall at its sole discretion deduct any such amount from any monies owed by Fasspay to the Merchant from the sale of the Merchant's goods and/or services through the Services. Notwithstanding the above, Service-Providers may pursue any legal means at Service-Providers disposal to recover the money owed by the Merchant, including without limitation, any legal fees and penalties.
- (c) the Merchant shall complete the Merchant application form and/or all other processes required in the Merchant App, to enable Service-Providers to process payments through the Services, before accepting any payment for the Merchant's goods and/or services, through the Services;
- (d) the Merchant will comply with all applicable laws and regulations. The Merchant will ensure that all necessary tax or regulatory filings regarding the Merchant are completed as required.

### 3.2 Service-Provider's Responsibilities

Service-Providers shall have the following responsibilities in relation to the Services:

- (a) Service-Providers shall be responsible to maintain the Services and ensure that Service-Providers will be able to render the Services;
- (b) Service-Providers shall advise the Merchant of the various requirements that are required of the Merchant to manage and/or use the Merchant App and/or the Services in connection with the Users. The Merchant undertakes to comply with the foregoing requirements;
- (c) Service-Providers shall provide the Merchant with such reasonable technical and necessary assistance in connection with the Services. The Merchant undertakes to comply with any directions and/or guidelines by Service-Providers in connection with and/or regarding the Services;
- (d) Service-Providers may from time to time, in its absolute discretion, provide upgrades to the Services and/or offer additional services. The Merchant's continued use of the Services shall be deemed to be the Merchant's acceptance of such upgrades, additional services, and the terms and conditions governing such usage, including without limitation, this Terms of Use, as revised or amended from time to time; and
- (e) Service-Providers shall give the Merchant at least 21 days prior notice through email or through the Services before any variation of this Terms of Use.

3.3 The Merchant may use the Services to accept payments from the Users of Vircle only where Vircle is lawfully operated and/or accepted.

3.4 By using and/or by your continuous use of the Services or any product and/or services provided by the Service-Providers, you are deemed to have agreed to all relevant and applicable terms and conditions including without limitation this Terms of Use, the Privacy Policy and the Personal Data Protection Policy.

## 4. PAYMENT OF SETTLEMENT

### 4.1 Settlement

- (a) Service-Providers shall remit the Settlement to the Merchant on the Settlement time period ("**Settlement Date**") as set forth in the Merchant application form or otherwise agreed by Service-Providers. For the avoidance of doubt, Service-Providers shall remit the Settlement on the Settlement Date, but Service-Providers makes no guarantee regarding the actual date of receipt of such Settlement by the Merchant. Service-Providers may together with each Settlement to the Merchant provide a report ("**Settlement Report**") containing a breakdown of Settlement for the relevant transactions.

- (b) Service-Providers will remit all Settlement to the Merchant's designated bank account in Ringgit Malaysia by wire transfer or such other method in Service-Providers absolute discretion.
- (c) Service-Providers may hold back from the Settlement, any amount of money, required to cover potential or expected Refunds and/or Charge Back (if applicable).
- (d) With respect to each Settlement made, the Merchant shall reconcile the Merchant's sales report against the Settlement Report, provided by Service-Providers. If the Merchant discovers any discrepancy in the Settlement by Service-Providers, the Merchant shall within fourteen (14) days from the Settlement Date notify Service-Providers of such discrepancy together with the relevant supporting documents evidencing the discrepancy, failing which the Merchant waives the Merchant's rights to raise any dispute and in such an event, the Merchant is deemed to have accepted the Settlement made by Service-Providers as correct and conclusive. Where the Merchant notifies Service-Providers of a discrepancy within the timeline stated herein, Service-Providers shall resolve the discrepancies in good faith as soon as practicable.
- (e) In the event of any dispute regarding the Settlement or any payment between the Merchant and Service-Providers, Service-Providers shall only remit the undisputed amount or part thereof to the Merchant prior to the resolution of such dispute.

#### 4.2 Disputed Transaction

- (a) The Merchant shall only provide the Merchant's products and/or services to the Users, upon confirmation by Service-Providers, through the Services, that the payment using Vircle for any particular transaction is successful. Service-Providers shall not be responsible for the payment of any transactions through Vircle, that have not been confirmed by Service-Providers.
- (b) All disputed transaction shall be the sole liability of the Merchant. Service-Providers are not under any obligation or responsibility to investigate any disputed transaction. In the event the Service-Providers are notified of any invalid or disputed transaction, Service-Providers will notify the Merchant of the same by email or letter and where possible accompanied by an explanation of the reason for it. Service-Providers will classify such transaction as disputed and Charge Back to Merchant. For the avoidance of doubt, the Merchant agrees and accepts that Service-Providers may in its sole and absolute discretion deem a transaction through the Services and/or under this Terms and Conditions a disputed transaction and/or an invalid transaction.
- (c) The Merchant undertakes to investigate any disputed transaction and take all reasonable steps to resolve any dispute with any Users within fourteen (14) days, in accordance with the procedures for handling disputed transactions, as advised by Service-Providers to the Merchant, from time to time. Service-Providers shall have the right to suspend the processing of a disputed transaction or withhold the Settlement to the Merchant of the amount of such disputed transaction until the satisfactory completion of any investigation.
- (d) Service-Providers may deem any transaction through the Services as invalid if:

- (i) the transaction was declined for any reason but the same was processed by the Merchant;
- (ii) the transaction was incomplete, unlawful and unenforceable for any reason; or
- (iii) the transaction found to be a duplicate transaction;

The Merchant shall resolve any disputes, claims or complaints which the Merchant have received from the Users in respect of any transaction through the Services. Service-Providers shall not be held liable in any manner whatsoever in the event there is a dispute between the Merchant and the Users regarding any transaction made through the Services, including but not limited to the quality of the Merchant's product and/or services, overcharging or late delivery by the Merchant.

#### 4.3 Refund

- (a) Where the Users have made payment through the Vircle and thereafter request for a refund, in the event the Merchant agrees to such refund:-
  - (i) on the same day when the relevant transaction took place (the "**Transaction Day**"), the Merchant shall take necessary steps to void and/or cancel the transaction through the relevant feature available on the Merchant App and make sure that such cancellation is relayed to Service-Providers on the same day; and
  - (ii) after the Transaction Day, the Merchant shall manually refund the Users using cash or such other method as may be determined by Service-Providers. For the avoidance of doubt, Service-Providers is entitled to retain any relevant and/or applicable charges for the Services and any bank charges. If the Merchant manually refunds the Users using cash, the Merchant shall notify the Service-Providers in writing of such refunds within 21 days of such refunds.
- (b) Service-Providers shall not be held responsible in any manner whatsoever, for any losses, claims, damages, costs and/or expenses incurred by the Users and/or the Merchant arising from the Refund in this Clause 4.3.
- (c) Service-Providers shall not be held responsible for any abuse or misuse of the "void/cancel" function made available to the Merchant on the Merchant App. The Merchant shall indemnify and keep Service-Providers fully indemnified from all liability, losses, damages, cost and expenses incurred by Service-Providers arising out of or in connection with the misuse of the Merchant App.

## 5. UNDERTAKINGS

### 5.1 Intellectual Property Ownership

- (a) The Merchant agrees and accepts that:

- (i) all intellectual property rights in the Services (where such component of the Services are designed, developed, customised, created and/or built by Service-Providers) are and will remain the exclusive property of Service-Providers; and
  - (ii) all use of any content or function in the Services (including without limitation any intellectual property rights in the Services) shall inure solely to the benefit of Service-Providers. The Merchant shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Service-Providers in and to the Services.
- (b) Nothing in this Terms of Use grants, nor shall the Merchant acquire hereby, any right, title or interest in or to the Services or any underlying or third party intellectual property rights inherent therein, or any goodwill associated therewith, other than those rights expressly granted hereunder. This Terms of Use shall not affect Service-Providers right to enjoin or obtain relief against any acts by third parties or trademark infringement or unfair competition, or any other action that Service-Providers may take to protect Service-Providers intellectual property rights in any country.
- (c) Service-Providers and Service-Providers' affiliates, where applicable, shall own all the rights, title and interest, including all related intellectual property rights, in and to the Services, as well as all the rights, title and interest, including all related intellectual property rights in connection with any suggestions, ideas, enhancement requests, feedback, recommendations and/or other information provided by the Merchant regarding the Services.
- (d) This Terms of use do not constitute a sale agreement and do not convey to the Merchant any rights of ownership in or related to the Service, or any other intellectual property rights owned by Service-Providers and/or Service-Providers' affiliates.
- (e) Service-Providers name, Service-Providers logo and the Services are trademarks of Service-Providers or it's affiliates, and no right or license is granted to use them.
- (f) For the avoidance of doubt, the term the Services herein shall include all its respective components, processes and/or design in its entirety.

## 5.2 Confidentiality

- (a) All Confidential Information disclosed or communicated by Service-Providers to the Merchant or obtained by the Merchant from Service-Providers in connection with this Terms of Use, including but not limited to the business and operations of Service-Providers and the provisions of this Terms of Use shall be treated as confidential information by the Merchant unless the information:
  - (i) is or becomes publicly available through no fault of the Merchant;
  - (ii) which the Merchant can prove was in the Merchant's possession or known to the Merchant prior to its receipt from Service-Providers;



- (iii) was rightfully received by the Merchant from a third party without a duty of confidentiality being owed by the Merchant to the third party, except where the Merchant has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to Service-Providers; or
  - (iv) was independently developed by the Merchant without the use of the Confidential Information.
- (b) The Confidential Information shall be held in strict confidence by the Merchant, using no lesser security measures and degree of care as it uses to protect the Merchant's own confidential information. In any event, the security measures and the degree of care the Merchant uses shall, as a minimum, comply with the standards imposed by the applicable laws including the Personal Data Protection Act 2010 ("PDPA"). The Merchant shall further ensure that the Confidential Information is secured from any unauthorized access, from internal and external parties and that all Confidential Information used, stored and/or processed shall be free from virus, malware or other malicious codes.
- (c) The Confidential Information shall only be used, copied, reproduced, distributed or disclosed by the Merchant strictly for the purposes contemplated under this Terms of Use only. The Confidential Information may, however, be disclosed:
  - (i) to the Merchant's employees or the Merchant's legal and/or financial advisers, on a strict need to know basis, to implement or perform this Terms of Use only provided its employees and advisers are subject to and maintain the confidentiality obligation under this Terms of Use and the Merchant shall indemnify Service-Providers for any damages, losses, cost and expenses suffered or incurred by Service-Providers arising out of or in connection with any breaches thereof by its employees and advisers; and/or
  - (ii) if its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange or is for the purposes of court proceedings.
- (d) In the event the Merchant is required to disclose any Confidential Information pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings, the Merchant:
  - (i) shall where practicable and lawful give twenty-four (24) hours' notice to Service-Providers that it is required to disclose the Confidential Information so that Service-Providers has an opportunity to protect the confidentiality of its Confidential Information; and
  - (ii) provides Service-Providers with a copy of the Confidential Information that the Merchant is to disclose.
- (e) Upon the expiry or termination of this Terms of Use, the Merchant shall promptly return to Service-Providers or, where by Service-Providers, destroy all such

Confidential Information and immediately cease using all Confidential Information. Where required by Service-Providers, the Merchant shall provide to Service-Providers a written undertaking confirming that it has fully complied with the requirements of this Clause 5.2 and that the Merchant is not in possession or control of any Confidential Information.

- (f) The Merchant shall ensure that each of the Merchant's personnel complies strictly with the obligations under this Clause 5.2. Service-Providers accept and agree that Service-Providers shall be entitled to obtain injunctive relief, or any other restraining or any other appropriate order against the Merchant in the event of any threat or disclosure of Confidential Information. The obligations of the Merchant in this Clause 5.2 shall survive for a period of five (5) years after the termination or expiry of this Terms of Use.

### 5.3 Violation by the Merchant

The Merchant shall not engage and/or attempt to do any of the following:

- (a) Tamper, hack, reverse-engineer, modify or otherwise corrupt the Services or the Merchant App (including without limitation the security and functionality of the Services or the Merchant App);
- (b) Use the Services for money laundering activities;
- (c) Use the Services for any unlawful, illegal and/or immoral activities and/or purposes, including but not limited to violation of the laws of Malaysia and/or BNM policy documents, rules and/or guidelines; and
- (d) manipulate, exploit or tamper with the Services and/or Merchant App and/or Customer App (where applicable) in anyway which Service-Providers may in its absolute discretion deem improper, irregular and/or dishonest.

## 6. REPRESENTATIONS AND WARRANTIES; LIMITATIONS

6.1 By using the Services, you represent and warrant that you have the full right, authority, power, approvals and capacity to use the Service and to enter, execute, perform and adhere to this Terms of Use, which constitutes valid and binding obligations of between Service-Providers.

6.2 The Merchant covenants, represents and warrants that:

- (a) the Merchant shall comply with all applicable consumer, personal data protection and other laws and regulations with respect to:
  - (i) the Merchant's use of the Services;
  - (ii) the Merchant's dealings with the Users; and
  - (iii) the Merchant's processing, use and disclosure of any Users personal data.

- (b) the Merchant shall ensure the safety and confidentiality of the login name and password of its Merchant App account and shall keep Service-Providers fully indemnified from all liability, losses, damages, costs and expenses incurred by Service-Providers arising out of or in connection with the misuse of the Merchant App. The Merchant shall immediately notify the Partner upon learning of any unauthorized use of its login name and/or password of its Merchant App account.
- (c) the Merchant shall observe and comply with the guidelines, procedures or such other updates as provided by Service-Providers from time to time during the term of this Terms of Use.
- (d) the Merchant shall promptly install any updates, fixes and patches whenever they are made available or notified of its availability by Service-Providers.
- (e) the Merchant has the full legal right and/or authority to offer and/or provide the applicable products and/or services and shall at its own cost obtain and maintain the necessary licenses and approvals from the government or any regulatory body for the provision of its products and/or services and for performance of its obligations under this Terms of Use.
- (f) the Merchant shall be solely responsible for all the issues regarding the Users in relation to the transaction, products and/or services sold by the Merchant, including but not limited to the charges imposed on the Users for the provision of the Merchant's products and/or services, order fulfilment, order returns, refunds, exchanges and adjustments, rebates, functionality and warranty, technical support, customer complaints and feedback concerning experiences with the Merchant's personnel, policies or processes and the Merchant shall bear any and all expenses and/or costs relating thereto.
- (g) the Merchant shall not conduct any unlawful or illegal transactions using the Services.
- (h) the Merchant shall immediately report to the Partner upon the discovery of any fraud, theft, loss, unauthorized usage or any other occurrence of unlawful or illegal acts in relation to the Services, Merchant App, Vircle and/or its respective use. The Merchant agrees to lodge a police report whenever instructed by the Service-Providers and to give the Service-Providers a certified copy of such report.
- (i) the Merchant shall cooperate with Service-Providers and provide all transaction related details required by any government or regulatory body.
- (j) the Merchant shall not charge the Users any additional fee or charges on top of the price of the goods and/or services provided by the Merchant, other than the sales and service tax imposed by law (if applicable).
- (k) the Merchant shall keep proper account and correct copies of all documents/records relating to the transactions made using the Services and Service-Providers shall be allowed at any reasonable time to inspect or take copies of all such documents and shall preserve such documents and records for a period of at least two years from the transaction date of any transaction made using the Services.

- (l) the Merchant shall not use the Services and/or the Merchant App in any manner and/or engage in any activities which is prejudicial to Service-Providers and/or in any manner which would bring disrepute to Service-Providers, all of which shall be determined by Service-Providers in its sole and absolute discretion.
- (m) the Merchant shall ensure that the account registered by the Merchant on the Merchant App remains personal to itself and it shall not register an account on behalf of any third party or in any way transfer or assign its Merchant account to any third party without the prior written consent from Service-Providers.
- (n) where relevant and/or applicable, the Merchant shall be solely responsible for the management of all its Merchant App accounts (whether or not such Merchant App accounts are used in one or more premises) and Service-Providers shall not be responsible for any consequences arising from the abuse or misuse of the Services;

6.3 Pursuant to the Credit Reporting Agencies Act 2010 (“**CRA**”), Central Bank of Malaysia Act 2009 (“**CBMA**”) and all other relevant laws and regulations, you hereby expressly give your consent to Service-Providers or any other third party appointed by Service-Providers (including without limitation, CTOS Data Systems Sdn. Bhd. (“**CTOS**”) or RAM Credit Information Sdn. Bhd. (“**RAMCI**”) or other registered credit reporting agencies under the CRA) to process your information and personal data (including without limitation your shareholders’, officers’ and/or employees’ personal data) (“**Data**”).

By giving this consent: -

- (a) You understand, agree and accept that Service-Providers may conduct background/business/credit/trade check, and CCRIS checks on you or your shareholders, officers and/or employees at any time for as long as we have a business/trade relationship with you, for any one or more of the following purposes:
  - (i) Pre-screening a prospective client/customer /supplier / contract
  - (ii) Opening of account
  - (iii) Credit / Account monitoring
  - (iv) Debt recovery Credit / Account evaluation
  - (v) Credit / Account review
  - (vi) Legal documentation consequent to a contract or facility granted
- (b) You also hereby expressly give your consent to CTOS, RAMCI and all other credit reference agencies under the CRA, to release your credit report/credit information to Service-Providers (including Service-Providers agents or Service-Providers affiliated companies) for the abovementioned purposes.
- (c) You hereby expressly give your consent to Service-Providers to process the Data pursuant to the PDPA.

### 6.3 Limitation of Liability

Except as otherwise specifically set forth in this Terms of Use, the Services provided by Service-Providers, is provided without any warranty, express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose. In no

event will Service-Providers be liable to the Merchant or any third party for any indirect, incidental, special, consequential or punitive damages resulting from the use by the Merchant of the Services or any services provided by Service-Providers under this Terms of Use, even if Service-Providers has been advised of the possibility of such damages. Notwithstanding anything to the contrary in this Terms of Use, in no event will Service-Providers aggregate liability to the Merchant exceed the total sum of any fees or commissions for the Services paid or payable by the Merchant to Service-Providers.

#### 6.4 Indemnity

The Merchant shall fully indemnify Service-Providers for all losses, damages, claims, cost and expenses in respect of or in connection with any and all actions, suits, claims, demands and/or proceedings brought against Service-Providers with respect to, in connection with or resulting from:

- (a) breach or non-performance by the Merchant of any of its undertakings, warranties, covenants, declarations or obligations under this Terms of Use; and
- (b) any claim brought by a User with respect to the products and/or services provided by the Merchant (including the refund regarding such products and/or services).

### 7. **PRIVACY POLICY & PERSONAL DATA PROTECTION POLICY**

7.1 You agree and consent to Service-Providers using and processing your Personal Data for the Purposes and in the manner as identified hereunder.

7.2 This Privacy Policy describes how Service-Providers collect your Personal Data, the use of the Personal Data, the disclosure of the Personal Data and how you can contact Service-Providers to request access to your Personal Data and seek correction of your Personal Data.

7.3 For the purposes of this Terms of Use, "**Personal Data**" means information about you, from which you are identifiable, including but not limited to your name, identification card number, birth certificate number, passport number, nationality, address, telephone number, credit or debit card details, race, gender, date of birth, postal address, email address, other contact details, identification details, payment details, IP Address, network information, device and user identifiers, financial account details and any information about you which you have provided to Service-Providers in registration forms, application forms or any other similar forms whether or not in the Vircle, the Services or the Application and/or any information about you that has been or may be collected, stored, used and processed by Service-Providers.

7.4 This Privacy Policy also serves as a Personal Data Protection Notice pursuant to the Malaysian Personal Data Protection Act 2010. You acknowledge and agree that Service-Providers has the absolute right and discretion to update and amend this Privacy Policy from time to time. We will notify you of any amendments to this Privacy Policy or our Personal Data Privacy Policy through announcements on our website, through Vircle, Software, Application or Service, or any other appropriate means.

7.5 The provision of your Personal Data to Service-Providers is voluntary. However, if you do not provide Service-Providers your Personal Data, your request for the Application may be incomplete and Service-Providers will not be able to process your Personal Data for the Purposes outlined below and may Service-Providers to be unable to allow you to use the Services.

7.6 Service-Providers may use and process your Personal Data for business and activities of Service-Providers which shall include, without limitation the following (“**Purposes**”):

- (a) to perform Service-Providers obligations in respect of any contract entered with you;
- (b) to provide you with any services pursuant to this Terms of Use;
- (c) to provide you or to send you information of any other products and/or services offered by Service-Providers and/Or their affiliates;
- (d) to process, manage or verify the Merchant’s application for the Services pursuant to this Terms of Use;
- (e) to validate and/or process payments pursuant to this Terms of Use;
- (f) to process any refunds, rebates and or charges pursuant to this Terms of Use;
- (g) to facilitate or enable any audit, investigation or checks as may be required pursuant to this Terms of Use;
- (h) to develop, enhance and provide the Services pursuant to this Terms of Use;
- (i) for internal administrative purposes, such as auditing, data analysis, database records or operational, planning, product or service development, troubleshooting and research requirements;
- (j) for purposes of detection, prevention and prosecution of crime including in relation to its obligations under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (“**AMLA**”) or any applicable law;
- (k) for Service-Providers to comply with its obligations under law or regulations (whether in Malaysia or overseas including disclosing such Personal Data to Malaysian and overseas law enforcement agencies or courts);
- (l) for any communications with you to ensure customer satisfaction, including without limitation to conduct surveys or to notify you of any changes to this Terms of Use;
- (m) to respond to questions, comments and feedback from you.

7.7 In addition to the above, Service-Providers may wish to communicate with you either by email, telephone or text message in relation to the following matters (“**Marketing Purposes**”):

- (a) to process your participation in any events, promotions, activities, focus groups, research studies, contests, promotions, polls, surveys or any productions and to communicate with you regarding your attendance thereto;
- (b) to send you alerts, newsletters, updates, mailers, promotional materials, special privileges, festive greetings from Service-Providers, its affiliates, partners, advertisers and or sponsors;
- (c) to notify and invite you to events or activities organized by Service-Providers, its affiliates, partners, advertisers, and or sponsors; and/or
- (d) to share your Personal Data amongst the companies within Service-Providers and with the Service-Providers Group's agents, third party providers, developers, advertisers, partners, event companies or sponsors who may communicate with you for any reasons whatsoever.

7.8 If you do not consent to Service-Providers processing your Personal Data for any of the Marketing Purposes, please immediately notify the Service-Providers through <https://www.vircle.com> or the Partner's Customer Service email address, [support@vircle.com](mailto:support@vircle.com) and/or Fasspay through [www.fasspay.com](http://www.fasspay.com) or through the Fasspay Customer Service telephone number, 03-7494 1222.

7.9 You are responsible for ensuring that your Personal Data is accurate, true, complete and kept current. If any of the Personal Data that you have provided to us changes, for example, if you change your email address, telephone number, payment details or if you wish to cancel your Vircle account or withdraw your permission to receive communications for Marketing Purposes, please update your details by sending your request to the support contact details through [www.fasspay.com](http://www.fasspay.com) and/or the Partner through <https://www.vircle.com> or through the Partner's Customer Service email address, [support@vircle.com](mailto:support@vircle.com) and/or the Fasspay Customer Service telephone number, 03-7494 1222. Service-Providers, to the best of its abilities, effect such changes as requested within fourteen (14) working days of receipt of such notice of change.

7.10 Service-Providers reserves the right to transfer your Personal Data to its affiliates and outsources (whether in Malaysia or overseas) for the purpose of the use of such data in the operations of the Designated Payments Instrument that are provided to Service-Providers by such affiliates or outsources.

7.11 Service-Providers are committed to full compliance with the provisions of the PDPA. Should you wish to request access to your personal data, or if you have any inquiries or complaints in respect of our processing of your personal data, an officer may be communicated with in writing through <https://www.vircle.com> or the Partner's Customer Service email address, [support@vircle.com](mailto:support@vircle.com) and/or Fasspay through [www.fasspay.com](http://www.fasspay.com) or through the Fasspay Customer Service telephone number, 03-7494 1222.

7.12 You agree and accept that you shall strictly comply with the provisions of the PDPA, where relevant and/or application, governing your use of the Services.

## **7. MISCELLANEOUS**

### **8.1 Consent to Specific Performance**

The Merchant and Service-Providers hereto agree that it might be impossible to measure in money the damages which would accrue to the Merchant or Service-Providers by reason of failure to perform certain obligations hereunder. The Merchant, Service-Providers shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations and if any action should be brought in equity to enforce any of the provisions of this Terms of Use. The Merchant, the Service-Providers shall not raise the defense that damages are an adequate remedy in law.

### **8.2 Notices**

- (a) Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered or express mail, postage prepaid to the addresses stated at the beginning of this Terms of Use or to such other address as Service-Providers may designate by written notice. Any such communication shall be deemed duly given, in the case of personal delivery and courier service, upon delivery and receipt of written acknowledgement thereof.
- (b) In the case of registered mail, five days after posting, provided that if such day is not a Business Day or such time not a normal business hour then delivery shall be deemed to have occurred on the following Business Day. If sent by electronic mail, twenty-four (24) hours after e-mail is sent provided always a copy thereof is sent by post.

#### **To the Partner:**

Attention : Vircle Crew  
Address : Level 19, Boutique Office 1 (BO1-C), Menara 2, KL Eco City, No 3 Jalan  
Bangsar, Kampung Haji Abdullah Hukum, 59200, Kuala Lumpur.  
Email : support@vircle.com

#### **To Faspay:**

Attention : Faspay Wallet Team  
Address : Level 15, Unit 15-15, 2A, Q Sentral, Jalan Stesen Sentral 2, Kuala Lumpur  
Sentral, 50470 Wilayah Persekutuan, Wilayah Persekutuan Kuala Lumpur Email :  
wallet.support@faspay.com

### **8.3 Entire Agreement**

This Terms of Use constitutes the entire agreement between Service-Providers with respect to the subject matter contemplated hereunder and supersedes all prior oral and written



agreements, memoranda, understandings and undertakings between Service-Providers relating to the subject matter of this Terms of Use.

#### 8.4 Waivers and Amendments; Non-Contractual Remedies; Preservation of Remedies

- (a) Service-Providers may in its sole and absolute discretion, amend, revise, vary, modify or update this Terms of Use and suspend or cancel your Merchant App account or your eligibility to use the Services at any time. By your continuous use of the Merchant App and/or the Services, you are deemed to have read and agree to any such amendment, revision, variation, modification or update to this Terms of Use. You should check this page from time to time to see the changes.
- (b) No delay on the part of the Merchant or Service-Providers in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof of the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that the Merchant or Service-Providers may otherwise have at law or in equity.
- (c) Service-Providers shall give the Merchant at least 21 days prior notice through email or through the Services before any variation of this Terms of Use.

#### 8.5 Successors and Assigns

- (a) Service-Providers shall have the right to assign, novate or transfer all or any part of its interest in this Terms of Use with prior written/Email notification to the Merchant. Service-Providers shall be entitled to carry out its obligations under this Terms of Use through any representative or sub-contractors appointed by it in its sole and absolute discretion.
- (b) The Merchant shall not assign, novate, transfer or in any way sub-contract, assign, novate, transfer or make over this Terms of Use or its rights or obligations hereunder without the prior written consent from Service-Providers. Any purported sub-contract, assignment, novation, transfer or disposition of this Terms of Use or any part thereof without such prior written consent from Service-Providers, shall be void and of no effect. Subject to this Clause 8.5, this Terms of Use shall be binding upon and shall inure to the benefit of Service-Providers, the Merchant and their successors and permitted assigns.

#### 8.6 Severability

If any provision of this Terms of Use is held to be void, invalid or unenforceable, such provision shall be severed and the remaining provisions of this Terms of Use shall remain valid and shall be enforced to the fullest extent under law.

#### 8.7 Force Majeure

- (a) Neither Party shall be liable for any cost or otherwise, for any delay and/or failure in the execution of their respective obligations if such delay or failure is due to Force

Majeure. Force Majeure shall mean any factors or impediment that are beyond the Party's reasonable control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Terms of Use or to have avoided its consequences including but not limited to war, revolution, insurrection, riots, blockage or embargo, emergency, accident, fire, earthquake, flood, storm, industrial strikes, lockouts or other labour disputes not instigated or caused by the affected Party for the purposes of avoiding its obligations herein, pandemics and viral outbreak. Provided that an event of Force Majeure shall not include economic downturn, non-availability or insufficient funds, or lack of financing on the part of the affected Party to carry out its obligations under this Terms of Use.

- (b) If either Party is prevented or delayed in the performance of any obligation under this Terms of Use by events of Force Majeure, the affected Party shall give written notice thereof to the other Party within seven (7) days of the happening of such event, specifying the details constituting Force Majeure and the anticipated period during which such prevention, interruption or delay may continue.
- (c) Where possible Service-Providers shall diligently mitigate or remove the effects of Force Majeure. Either Party upon receipt of the notice of Force Majeure shall confer promptly with the other and agree upon a course of action to remove or alleviate such effect and shall seek reasonable methods of resuming full performance of its obligations and achieving the objectives under this Terms of Use.

#### 8.8 Governing Law and Jurisdiction

This Terms of Use shall be governed by, and construed, in accordance with, the laws of Malaysia and all disputes shall be submitted to the jurisdiction of the courts of Malaysia.

8.9 No joint venture, partnership, employment or relationship between a principal and agent exists between Service-Providers and the Merchant or any other third party merchant or provider as a result of this Terms of Use or the use of the Merchant App or the Services.

8.10 Service-Providers wish to highlight to the Merchant that the Merchant may use the BNM BNMLINK and BNM TELELINK services regarding issues surrounding the conduct and activities of BNM regulated entities, including the issuers of Designated Payment Instruments such as Faspay. Service-Providers are committed to giving its full cooperation with BNM and encourages the Merchant to make full use of the BNM BNMLINK and BNM TELELINK services if they wish to do so. The details of BNM BNMLINK and BNM TELELINK are set out below:

#### **BNMLINK**

*(Walk-in Customer Service Centre)*

Ground Floor, D Block,  
Jalan Dato' Onn  
50480 Kuala Lumpur  
Tel: +603-2698-8044 extension 8950 / 8958 (BNMLINK general line)

#### **BNMTELELINK**

Laman Informasi Nasihat dan Khidmat (LINK)

Bank Negara Malaysia  
P.O. Box 10922  
50929 Kuala Lumpur

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

8.11 Service-Providers wish to highlight to the Merchant that Service-Providers shall not in any manner, be liable to the Merchant for any loss incurred by the Merchant, including without limitation, any loss sustained by the Merchant, arising from the insolvency of Service-Providers; or resulting from lost or stolen e-money instruments, or fraudulent transactions whether or not through the use of the Services by the Merchant.

## 9. TERMINATION

9.1 This Terms of Use can only be terminated at the end of the Term or duration specified in the Merchant application form, or if:

- (a) the Merchant, the Partner or Faspay is in breach of any of its payment obligations under this Terms of Use and such breach is not rectified within thirty (30) Business Days from the date of receipt of a notice to rectify the same by the Merchant, the Partner or Faspay; or
- (b) the Merchant, the Partner or Faspay is in breach of any of its other obligations under this Terms of Use and such breach (if capable of being rectified) is not rectified within thirty (30) Business Days from the date of receipt of a notice to rectify the same by the Merchant, the Partner or Faspay; or
- (c) an order is made for the winding up or dissolution of the Merchant, the Partner or Faspay, other than for the purposes of reconstruction; or
- (d) a receiver, manager, administrator, trustee or similar official is appointed of all or part of the assets or undertaking of the Merchant, the Partner, or Faspay; or
- (e) the Merchant enters into, or resolves to enter into, any arrangement or composition or compromise with, or assignment for, the benefit of its members or creditors other than with the consent of Service-Providers; or
- (f) the Merchant, the Partner or Faspay ceases to carry on business: then such person is to be taken to have defaulted under this Terms of Use and the other non defaulting person, may, by notice to the defaulting person, terminate this Terms of Use and claim for all losses and damages suffered as a result of such default by the defaulting person. The date where the termination takes effect shall be referred to as "**Termination Date**".

9.2 Obligations of the Merchant upon Expiry or Termination of this Terms of Use

Upon the expiry or termination of this Terms of Use, the Merchant shall (without prejudice to other rights and remedies available to Service-Providers):

- (a) no longer represent itself as a Merchant affiliated with the Partner or with Fasspay;
- (b) without limiting Clause 9.2(a), terminate the development and implementation of any advertising or marketing programmes contemplated herein and remove all promotional materials of Service-Providers from the Merchant's website or at the Merchant's premises;
- (c) pay all outstanding fees to Fasspay or the Partner within seven (7) days of the receipt of the final invoice from Fasspay or the Partner;
- (d) return to Service-Providers, all device or hardware belonging to Service-Providers in its possession within fifteen (15) days of the Termination Date (where applicable). All device or hardware must be returned in proper working order (including without limitation any other accessories provided to the Merchant) to Service-Providers registered address at Merchant's expense. Failure to return said device or hardware and related accessories within the time specified shall allow Service-Providers to impose charges for such device or hardware.

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