

TERMS AND CONDITION FOR THE UNIFI REWARDS MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement (“Agreement”), the Parties (“hereinafter defined”) agree as follows:

1. DEFINITIONS

The following terms are defined for use in this Agreement, unless the context otherwise requires:

“Agreement”

Means this agreement, as amended from time to time in accordance with the provisions contained herein;

“Customer”

means any person or organization making a purchase or desiring to make a purchase of the Merchant’s Product;

“Force Majeure”

means any cause beyond a party’s reasonable control affecting the performance by the affected party of its obligations hereunder including, but not limited to, acts of God, riots or civil disorder, war or military operations, national or local emergency, acts or omissions of government, industrial disputes of any kind (not involving the affected party’s own employees), fire, flood, lightning, explosion, subsidence, inclement weather and acts or omissions of persons or bodies beyond the reasonable control of the said party;

“Intellectual Property”

means the rights in and to trade secrets, copyright, Trade Mark, service marks, confidential information, patents, designs, know-how as well as moral rights and

similar rights of any type under the law of any governmental

authority, domestic or foreign, or such similar rights;

“Merchant”

means the party named in the Merchant Assessment Form which details has been provided pursuant to this Agreement;

“Product”

means the item display or sold, including any services attached to the Product (if any) by the Merchant to the Customer;

“Tax”

means sales tax or any other similar tax or duty imposed by any jurisdiction; and

“TM”

means Telekom Malaysia Berhad;

“unifi Rewards Members”

means TM customer that is a member to unifi Rewards loyalty program

TM and Merchant shall collectively be referred to as the “Parties” and individually as the “Party”.

2. COLLABORATION TERM

It has been agreed between parties that;

i. this Agreement shall be valid for a period as specified in Item 9 of the Merchant Details Form.

ii. for each exclusive promotional period, the Merchant is responsible to fill in the Merchant Prerequisite Assessment form and is subject to TM’s approval from time to time.

3. REPRESENTATIONS AND WARRANTIES

Each party hereby represents and warrants to the other that at the time of execution of this Agreement;

i. it is a company duly incorporated and validly existing under the laws of Malaysia and has full power and authority to enter into this Agreement and undertakes its obligations under this Agreement;

ii. there are no material or substantial facts or circumstances relating to its affairs which in any way affect its capacity in law or in contract to discharge its duties and obligations under this Agreement which have not been disclosed to the other party in writing prior to the execution of this Agreement and which might if disclosed be reasonably expected to effect the other party's decision to enter into this Agreement;

iii. it recognises the goodwill attached to, and will not knowingly or negligently take any action that would be detrimental to the goodwill associated with the other party and the other party's trademarks;

4. TM'S OBLIGATION

TM is responsible to promote, market and advertise the Product in unifi Rewards communication channel, inter alia shall include but not limited to eDM, SMS, online banners, portal and social media.

5. THE MERCHANT'S OBLIGATIONS

Merchant shall be responsible to;

i. Provide exclusive offers for unifi Rewards Members as made specified in the offering;

ii. To ensure the offerings are exclusive for TM during that specified time period within Malaysia's telecommunication industry;

iii. The Merchant shall ensure that the Product supplied by the Merchant to the Customer are in good condition and of merchantable quality;

iv. To develop and obtain approval from TM on any artwork and webpage

developed for TM which includes placement of unifi Rewards/TM logo and ensure all terms and conditions for each offer are in place to mitigate any query or dispute;

v. To be responsible for any bookings, orders, delivery, exchange, return or warranty in relation to offers made to unifi Rewards Members. TM hereby disclaims all responsibility or liability for the same;

vi. The Merchant shall resolve any Customers disputes or potential disputes (if any) related to its Product;

vii. The Merchant shall provide full support for the Merchant's own Product under any customer care system owned, maintained or licensed by the Merchant;

viii. The Merchant shall respond to TM's request on take-up of offers during the promotion period;

ix. The Merchant shall joint promote and increase awareness with TM on unifi Rewards loyalty program.

6. PROHIBITION TO THE MERCHANT

6.1 The Merchant shall ensure that it does not perform any act that violates federal, state/provincial, or local law of Malaysia, as well as laws of any countries in which it does business;

6.2 The Merchant shall not to use any material referring to TM without TM's prior written approval and shall not display any brand name or logo of any other third party product or services without prior consent;

6.3 The Merchant shall not supply Product that are unlawful under the applicable laws and regulations including but not limited to items that are illegal, offensive, obscene, indecent, defamatory, seditious, abusive or hateful, false, racial or which may

harass, distress or cause inconvenience to any person, infringes any copyright, trade names or any intellectual property rights.

7. LIMITATION OF LIABILITY

Under no circumstances, including negligence, will TM or its employees, agents, servants, contractors or other for whom TM is responsible in law be liable for any indirect, incidental, special, exemplary, or consequential damages (including but not limited to loss of revenue, goodwill and or anticipated or lost profits) that result with regard to the Product sold by the Merchant, TM shall not be liable for the cost of procurement of substituted services, technology or data (if any). The Merchant acknowledges that this provision shall apply whether or not TM has been advised of the possibility of such damages.

8. INDEMNITY

8.1 The Merchant hereby agrees that it shall hold TM, its successors, and assigns harmless from any and all claims, actions, damages and liabilities including attorney's fees resulting from or arising out of (i) the Merchant's breach of any provision of this Agreement or its failure to perform any duty or obligation hereunder, or (ii) the nature of the Merchant's specific use or misuse of the Product, including but not limited to, claims of third parties arising out of or resulting from or in connection with the Merchant's product or services, messages, programs, caller contracts, promotions, advertising, infringement or any claim for libel or slander or for violation of copyright, trademark or other intellectual property rights and vice versa.

8.2 Where litigation is commenced against TM by unifi Rewards Members or any third party in respect of any matter involving any breach of the Merchant's obligation provided herein, TM shall, on leave being

granted, withdraw from the litigation and the Merchant shall, in its own name and expense, conduct the litigation.

8.3 The Merchant shall indemnify TM and keep TM indemnified at all times against any action, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred, paid or payable by TM in respect of the Product supplied, displayed and sold as a result of the Merchant's breach of the Agreement, acts or omission in connection herewith.

8.4 If a claim is brought against TM by a Merchant or other third party, TM will be entitled to settle or otherwise deal with it at TM sole discretion, including taking such steps as are reasonable to mitigate any potential loss that TM may incur.

9. SUSPENSION OF AGREEMENT

9.1 TM shall have the right to suspend this Agreement by giving the Merchant prior notice if the Merchant breaches any of its obligations under this Agreement and fails to rectify the breach within the time stipulated by TM.

9.2 Upon expiry of the suspension period, this Agreement shall:

- i. continue in effect subject to any additional requirements imposed by TM on the Merchant; or
- ii. be terminated in accordance with Clause 10 herein.

10. TERMINATION OF AGREEMENT

10.1 Without prejudice to any other rights or remedies of the parties under this Agreement or at law, either party may terminate this Agreement by giving the other party a thirty (30) days notice in writing, if the other:

i. breaches any term, condition, undertaking or warranty under this Agreement and such breach shall remain un-remedied for a period of fourteen (14) days after receipt of the written request to remedy the same;

ii. shall have become or threatens or resolves to become insolvent or compounds with or makes arrangements with its creditors or goes into liquidation whether voluntarily (save for the purpose of a bona fide amalgamation or reconstruction without insolvency) or compulsorily;

iii. has a provisional liquidator, receiver or manager or receiver or manager appointed in respect of its business or undertaking or possession of its property is taken by or on behalf of

creditors or debenture holders secured by a floating charge;

iv. ceases or threatens to cease to conduct its business in the normal manner;

v. has an order made or resolutions passed for its winding up, otherwise than for the purpose of a reconstruction or amalgamation;

vi. is unable to perform its obligations herein for a continuous period of sixty (60) days due to Force Majeure.

10.2 Without prejudice to any other rights or remedies of TM under this Agreement or at law, TM may terminate this Agreement with immediate effect in the following event:

i. event the Merchant breaches any material term, condition, undertaking or warranty under this Agreement and such breach is incapable of being remedied;

ii. TM has any reason to believe that the Merchant or any one employed by it or

acting on its behalf with the Merchant's knowledge engages in corrupt practice in connection with this Agreement;

10.3 Without prejudice to Clause 10.1, TM may at any time, terminate this Agreement by giving thirty (30) days written notice to the Merchant.

10.4 Neither parties shall be liable to the other by virtue of early termination of this Agreement including but not limited to any claim for loss of profits and/or revenue or prospective profits and vice versa.

10.5 The termination of this Agreement shall not prejudice the rights of either party to sue for damages or to obtain any other relief in respect of any antecedent breach of the terms of this Agreement prior to such termination.

10.6 In the event of termination, the Merchant shall;

i. The Merchant shall cease using TM's trademarks and/or its product's name;

ii. Both parties shall return to the other the confidential information supplied to each respective party hereto pursuant to this Agreement; and

iii. All payments or delivery of Product due and outstanding from one to the other shall be resolved immediately.

11. INTELLECTUAL PROPERTY

11.1 Nothing in this agreement shall be construed to have the effect of transferring or in any way divesting ownership in the trade marks or the TM brand to the Merchant.

11.2 The Parties hereby acknowledge and agree that any Intellectual Property Rights owned by one party shall continue to be owned by such party, or its third party licensors, as the case may be, and the execution of this Agreement, except as

specifically mentioned herein, shall not in any way be construed to have transferred all or any part of such rights to the other party.

11.3 Both parties acknowledge that the use of the other party's trademarks, tradenames and or product names under this Agreement will not directly or indirectly create in it or for it any right, title or interest therein. Neither party shall take any action that interferes with or diminishes the other party's right, title and/or interest in its trademarks, tradenames and/or product names.

12. CONFIDENTIALITY

12.1 Each party shall keep in strict confidence and not disclose, and shall procure that its employees, agents and contractors keep in strict confidence and shall not disclose, the contents of this Agreement and shall not use any information of a confidential nature including personal data as defined under the Personal Data Protection Act 2010 (together, the "Confidential Information") communicated to it by or acquired from the other party in connection with or pursuant to this Agreement, other than strictly for the purposes of this Agreement and its performance.

12.2 Notwithstanding the foregoing provisions of this Clause:-

(a) each party shall have the right to disclose the contents of this Agreement and any Confidential Information to any of its shareholders and professional advisers provided it shall first have obtained a confidentiality undertaking from the person to which such information is being disclosed to in terms substantially similar to those contained in this Clause; and

(b) each party shall be at liberty to disclose Confidential Information where and to the

extent that such disclosure is properly made pursuant to and in accordance with a relevant statutory obligation or properly required by a relevant governmental or regulatory authority.

13. FORCE MAJEURE

13.1 If either Party to this Agreement is temporarily unable by reason of Force Majeure or the laws or regulations of Malaysia to meet any of its obligations under this Agreement, and if such party gives to the other party written notice of the event within fourteen (14) days after such occurrence the obligations of the party as it is unable to perform by reason of the event shall be suspended for as long as the disabling situation continues. If Force Majeure event prevents either party from performing its obligations for a continuous period of thirty (30) days, either party may terminate this Agreement in accordance with Clause 13.1.

13.2 Neither party shall be liable to the other party for the loss or damages sustained by such other party arising from Force Majeure or delays arising from such event.

14. DISPUTE RESOLUTION AND GOVERNING LAW

14.1 Any and all disputes, controversies or conflict between the parties hereto in connection with this Agreement shall, so far as is possible, be settled amicably between the parties.

14.2 Failing such amicable settlement, any and all disputes, controversies and conflicts arising out of or in connection with this Agreement or its performance (including the validity of this Agreement) or the breach, termination or invalidity thereof, which cannot be settled by good faith negotiations between the parties be

settled under the exclusive jurisdiction of the courts of Malaysia.

15. AMENDMENT AND VARIATION OF AGREEMENT

Notwithstanding any of the other provisions and terms of this Agreement to the contrary, the provisions of this Agreement may at any time and from time to time be varied or amended in writing by mutual agreement of the parties. No additions to or modifications of any part this Agreement shall bind the parties unless made by a written amendment signed by a duly authorised representative of both parties.

16. WAIVER

Failure by TM to demand performance of any term or condition shall not be deemed a waiver of TM's right to demand performance at a later date.

17. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, arrangements, undertakings, negotiations and writings between the parties relating to the subject matter of this Agreement.

18. INVALIDITY AND SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, illegal and commercial

objectives of the invalid or unenforceable provision.

19. SURVIVAL

The provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration or termination of this Agreement. This clause and the following clauses will survive expiration or termination of this Agreement: Representation and Warranties, Confidentiality, Intellectual Property Rights and Indemnity.

20. SUCCESSORS BOUND

This Agreement shall be binding on and shall ensure for the benefit of the successors, personal representatives and permitted assigns of each of the parties hereto.

21. TIME IS OF THE ESSENCE

Any date or period mentioned in this Agreement may be extended by agreement between the Parties hereto failing which, as regards any such date or period, time shall be of the essence of this Agreement.

22. TAX

22.1 Each party agrees to report and pay its own tax imposed on its income by any jurisdiction such as state and federal income taxes.

22.2 The parties agree that tax in the nature of an excise or sales taxes are not currently imposed on the Product contemplated under this Agreement. Further, the parties agree that in the event that such taxes are imposed, the burden of such taxes shall be borne by the Merchant.

23. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to imply a partnership, joint venture, principal/agent or an employer/employee relationship between the parties and neither party shall have any right, power or authority to create any obligation, express or implied on behalf of the other.

24. ASSIGNMENT

24.1 The Merchant may not assign any of its rights or obligations under this Agreement to any other person whatsoever without prior written consent of TM.

24.2 Notwithstanding the above, TM/ TM subsidiary may assign or novate this Agreement or any part thereof at any time to any of its Affiliates by giving fourteen (14) days' written notice to the other Party.

25. PUBLICITY

The Merchant shall not make any press conferences or announcements without prior written consent from TM.

26. STAMP DUTY & COSTS

Where applicable, the stamp duty on this Agreement shall be borne by the Merchant. The Parties shall bear its own costs and expenses for preparing, approving and completing this Agreement.

27. BRIBERY, CORRUPTION, FRAUDULENT ACTS AND INDUCEMENT

27.1 Each Party hereby represents, warrants and undertakes that it shall comply, and shall procure that its directors, employees, agent in connection to this Agreement shall comply with the following:

i. comply with all applicable laws in Malaysia and, to the extent that it is

relevant, any other jurisdiction in respect of bribery, corruption and/or fraudulent acts in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement;

ii. put in place and implement its own anti-bribery and anti-corruption policies and procedures including adequate measures, controls and accurate records of transactions so as to ensure compliance with such applicable laws; and

iii. comply with each Party's anti-corruption policy and procedures in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement.

27.2 Notwithstanding any provision of this Agreement, either Party shall have the right to terminate this Agreement with immediate effect by written notice to the other Party if:

i. any representation or warranty or undertaking in Clause 27.1 above by the other Party is found and/or is known to be untrue or misleading;

ii. the other Party, its directors, employees, or a person who performs services on behalf of the organization in connection to this Agreement breach of any of the terms set out in this Clause 27; and/or

iii. the other Party, its directors, employees, or person who performs services on behalf of the Party in connection with this Agreement is found to have committed bribery, corruption and/or fraudulent acts prohibited under the applicable laws in Malaysia and, if applicable, any other jurisdiction in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement

and, the defaulting Party shall be liable for direct losses, damages, costs and expenses incurred by the other Party as a result of such breach under this Clause and/or termination of this Agreement (“Losses”). The defaulting Party shall indemnify and render the other Party harmless from such Losses and to the extent such Losses are actual damages.