

RAZER TOP UP AND BILLS SERVICE MERCHANT AGREEMENT

READ THIS TOP UP AND BILLS SERVICE MERCHANT AGREEMENT ("AGREEMENT") CAREFULLY. BY CLICKING "ACCEPT" BELOW YOU AGREE TO BECOME A PARTY TO , AND TO BE BOUND BY, THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK "DECLINE" BELOW. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT AND ITS TERMS AND CONDITIONS.

THIS AGREEMENT is made

BETWEEN:-

- (1) RMS RELOADS SDN BHD (Formerly known as Razer Pay Reloads (M) Sdn Bhd) 201801041252 (1303284-D), a company incorporated in Malaysia with its place of business at Level 6, UOA Corporate Tower, Lobby B, Avenue 10, The Vertical Bangsar South City, No. 8, Jalan Kerinchi, 59200 Kuala Lumpur, Malaysia ("RAZER" or "Distributor"); and
- (2) The Party named and described in Section I of the Merchant Service Application Form ("Retailer").

(hereinafter collectively, the "Parties" and each a "Party")

WHEREAS

- (A) The Distributor wishes to appoint the Retailer to act as its agent for the purposes of selling Vouchers to the Customers and/or collecting Bill Payment from the Customers, and the Retailer consents to act in such capacity; and
- (B) Subject to the terms and conditions of this Agreement, the Distributor has agreed to make available to the Retailer one or more Terminals (i) to download PINs to such Terminals to enable Retailer to produce Vouchers for sale on Distributor's behalf; and/or (ii) to collect Bill Payment from the Customers on Distributor's behalf.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

1.1 The following words shall have the following meanings, unless the context clearly indicates otherwise:-

"Air-Time"	means air time for use on a telephone network operated by a Network;
"Authorized Location"	means the address(es) of the location(s) at which the Retailer is authorized to sell Vouchers and/or collect Bill Payment, or such other location(s) as the Distributor may from time to time approve in writing;
"Bill"	means any bill issued by any of the Biller indicating the amount which is due and payable to the Biller by the Customer(s);
"Bill Payment"	means payment made by the Customer of any Bill;
"Biller"	means any entity that issues Bill and appoints the Distributor as its collection agent as notified by the Distributor to the Retailer from time to time;
"Commencement Date"	means the date of the Merchant Service Application Form;
"Commission Rate"	means the rate of commission on sale of Vouchers and/or collection of Bill Payment as set out on Clause 7 of this Agreement;
"Customer"	means any person who purchases or has purchased a Voucher, or who makes Bill Payment or has made Bill Payment;
"Daytime Exposure Limit"	means the total value of Vouchers which can be produced and/or total amount of Bill Payment which can be processed by a Terminal before it reports to the Distributor's central computer, which limit shall be notified to the Retailer by the Distributor;
"Intellectual Property Rights"	means all patents, trademarks and service marks, registered designs, design rights and copyright, rights in databases and other protectable lists of information, rights in confidential information, trade secrets, inventions and know-how, trade and business names, domain names, and logos in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;
"Invoice Period"	means the period specified from time to time by the Distributor and notified to the Retailer for the purposes of preparing a Retailer Invoice;
"Network"	means the telephone network operator(s) who appoints the Distributor as its collection agent as notified by the Distributor to the Retailer from time to time;
"Normal Business Hours"	means the usual business hours of the Retailer;
"Paper Stock"	means rolls or pack of paper (as supplied by the Distributor to the Retailer) prior of them being processed through a Terminal to become Vouchers;
"PIN"	means an electronic code which may be processed by a Terminal into Voucher to enable access to Air-Time;
"Retailer Account"	means the account maintaining Retailer's account balance;
"Retailer Invoice"	means an invoice prepared and delivered by the Distributor in relation to an Invoice Period in accordance with the provisions of Clause 10 of this Agreement;
"Terminal"	means the device supplied by the Distributor to the Retailer which allows Vouchers to be printed and/or processes the Bill Payment; and
"Touch 'n Go Reloads"	means the function which enables the Customer to deposit monies into the Touch 'n Go card via the Terminal; and
"Voucher"	means top up vouchers printed by a Terminal on Paper Stock bearing a PIN which may be used by the holder to obtain pre-paid Air-Time.

1.2 In this Agreement, unless the context clearly indicates otherwise:-

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- (a) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) the singular includes the plural and vice versa;
- (c) references to persons include individuals, partnerships, associations and bodies corporate;
- (d) references to a gender include references to any other gender as the context requires;
- (e) a reference to a Clause, Annex or Schedule is a reference to a Clause, Annex or Schedule of this Agreement;
- (f) "in writing" means any communication in any written form or means, including e-mail, facsimile transmission and traditional paper form;
- (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. DURATION OF APPOINTMENT

- 2.1 This Agreement shall be effective from the Commencement Date, and shall remain in force for one (1) year from the Commencement Date, after which this Agreement shall be deemed to have renewed automatically ("Term")

3. THE DISTRIBUTOR'S OBLIGATIONS

- 3.1 The Distributor hereby undertakes and agrees with the Retailer that it will at all times during the continuance of this Agreement:-
 - (a) provide the Retailer with necessary assistance and support to facilitate the sales of the Vouchers and/or collection of Bill Payment at Authorized Location;
 - (b) at its own expense supply the Retailer with such amount of pamphlets, catalogues and advertising materials as it considers reasonably sufficient with a view to promoting sales of the Vouchers and/or collection of Bill Payment; and
 - (c) provide dedicated support personnel to attend to matters arising from the usage of the Terminals in accordance with the Distributor's operating hours.

4. THE RETAILER'S OBLIGATIONS

- 4.1 The Retailer hereby undertakes and agrees with the Distributor that it will at all times during the continuance of this Agreement:-
 - (a) display RAZER branding at the point of sale in compliance with RAZER's guidelines, and cooperate to have the Retailer's sales staff be trained to promote and extend the sales of the Vouchers and/or collection of Bill Payment to all potential Customers.
 - (b) in all matters relating to the sales of the Vouchers and/or collection of Bill Payment act loyally and faithfully to the Distributor and obey its order and instructions, and in relation to any particular matter will act in such manner as it reasonably consider to be most beneficial to the Distributor's interest; and
 - (c) as soon as it becomes aware bring to the notice of the Distributor of any information received by it which is likely to be of use or beneficial to the Distributor in marketing the Vouchers and/or collection of Bill Payment.

5. PRE-PAID SUM

- 5.1 On the Commencement Date, the Retailer shall credit a minimum amount of monies amounting to Ringgit Malaysia Five Hundred (RM500.00) to the Retailer Account as pre-payment top-up for credit facility ("Pre-Paid Sum"). The Pre-Paid Sum shall be deducted accordingly by RAZER based on the sales of Vouchers and/or the collected Bill Payment by the Retailer. For the avoidance of doubt and notwithstanding any other provision of this Agreement, the Retailer shall not be entitled to perform the sales of Vouchers and/or collection of Bill Payment in the event that the Pre-Paid Sum is insufficient to be deducted by RAZER, and Terminals placed at Authorized Location shall be locked and prohibited to generate any further Voucher and/or to process any Bill Payment.

6. SALES OF VOUCHERS AND/OR COLLECTION OF BILL PAYMENT

- 6.1 The Retailer shall sell Vouchers and/or collect the Bill Payment only by way of the physical sale and delivery thereof to Customers at the Authorized Location.
- 6.2 The Retailer shall notify the Distributor in writing at least Sixty (60) days prior to any change of Authorized Location.
- 6.3 The Retailer undertakes and covenants that except for Authorized Location, it shall not sell Vouchers and/or collect the Bill Payment at any other location without obtaining the Distributor's prior written approval, of which such approval shall not unreasonably be withheld.
- 6.4 The Retailer shall not sell Vouchers and/or collect Bill Payment in any manner, or at any place, other than that instructed by or agreed with the Distributor.
- 6.5 The Retailer shall not sell any Voucher at a price other than that notified by the Distributor to the Retailer from time to time.
- 6.6 The Retailer shall not issue a Voucher to and/or collect any Bill Payment from any Customer unless the same has been paid for in full, and all Vouchers shall be sold and/or Bill Payment shall be collected in accordance to the terms and conditions of the relevant Network and/or Biller which are referred to on the Voucher or Bill, as appropriate.
- 6.7 The Retailer shall advertise and market Vouchers and/or collection of Bill Payment only in accordance with the prior written agreement of both Distributor and the relevant Network or Biller.
- 6.8 The Retailer shall make Vouchers and/or collection of Bill Payment conveniently and readily available to the public during Normal Business Hours.
- 6.9 The Retailer shall ensure that a sufficient number of his employees are properly trained by the Distributor to sell Vouchers and/or collect Bill Payment.

7. COMMISSION

- 7.1 The Retailer shall be entitled to receive commission on the sales of Vouchers and/or collection of Bill Payment at the Commission Rate based on the formula as set forth in Schedule 1 of this Agreement. Notwithstanding the foregoing and anything contained in this Agreement, the Retailer agrees that the Distributor shall be entitled to revise the Commission Rate from time to time subject that the Distributor provides a written notice to the Retailer on the matter concerned.

viii. RISK AND TITLE

- 8.1 Risk and title in the PINs shall pass from the Distributor to the Retailer at the moment the corresponding Voucher is printed completely.

ix. OWNERSHIP OF PAPER STOCK

- 9.1 All Paper Stock shall remain the property of the Distributor until sold to the Customers in the form of Vouchers.
- 9.2 No other Paper Stock should be used by the Retailer except those supplied by the Distributor.
- 9.3 Excessive wastage of paper over the standard ordering cycle will be charged.

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x. SETTLEMENT AND INVOICING

- 10.1 The Distributor will provide Retailer Invoice in an Invoice Period which shall be delivered to the Retailer by hand, post, courier, fax or email, or such other method as the Distributor deems fit whenever necessary.
- 10.2 The Retailer Invoice will show a calculation of the sum of commission due to the Retailer by reference to the sales of Vouchers and collection of Bill Payment which have occurred within the Invoice Period and may include other details as agreed in writing between the Distributor and the Retailer. For the avoidance of doubt:
- (i) a Voucher shall be treated as sold as soon as the relevant PIN has been converted into a Voucher via a Terminal, which shall be conclusively determined by the Distributor by reference to its records (whether contained in its central computer systems or otherwise); and
 - (ii) Bill Payment shall be deemed collected as soon as the Terminal processes the Bill Payment, which shall be conclusively determined by the Distributor by reference to its records (whether contained in its central computer systems or otherwise).
- 10.3 The Distributor will settle all amounts due upon issuance of Retailer Invoice by cheque, or direct bank in to the Retailer Account within Fourteen (14) days from the date of the Retailer Invoice.
- 10.4 Retailer Account shall only be updated upon receipt of direct bank in slip or cheque.

xi. TERMINAL

- 11.1 The Retailer shall provide prominent and sufficient space at its premises for placement of the Terminal(s), and shall provide the Distributor with reasonable access and assistance to install and maintain the Terminal(s). The Terminal(s) shall be positioned only at a place agreed between the Distributor and the Retailer.
- 11.2 The Retailer acknowledges that the Terminal(s) and all parts thereof will remain the property of the Distributor at all times.
- 11.3 The Retailer shall :-
- (a) take proper care of the Terminal(s) and keep the same in good condition, and shall be liable for the replacement up to a maximum amount of Ringgit Malaysia Two Thousand (RM2,000.00) each (or cost of repair, as the case may be) of any Terminal(s) damaged by reason of the Retailer's failure or negligence to take proper care of the same;
 - (b) be liable for the cost of replacement of any stolen or lost Terminal(s) for whatever reason up to a maximum amount of Ringgit Malaysia Two Thousand (RM2,000.00) each, together with the cost of any Daytime Exposure Limit remaining on any Terminal(s) at the time it is stolen or lost for whatever reason which is fraudulently used to produce Vouchers; and
 - (c) take all reasonable steps to prevent any damage to or deterioration of the Terminal(s).

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Each Party acknowledges that all Intellectual Property Rights owned by (or licensed to) the other Party shall remain the sole property of the other Party (or its licensor, as the case may be). Each Party shall not dispute other Party's (or its licensors') ownership of such Intellectual Property Rights in any way.
- 12.2 RAZER shall not be liable to ensure that the Retailer is the rightful or licensed owner of the Intellectual Property Rights for its products and services. The Retailer shall:
- (a) defend or settle any action or suit brought against RAZER by a third party to the extent that it is based upon a claim that the products and services belonging to the Retailer for which RAZER performed the services under this Agreement infringes or misappropriates the Intellectual Property Rights of any third party; and
 - (b) pay all costs of such defence and any costs, damages and reasonable attorneys' fees attributable to such claim that are payable in settlement or are finally awarded against RAZER.
- 11.3 RAZER grants to the Retailer, non-exclusive, non-transferable and revocable licences to use the "RAZER" logo during the Term of this Agreement only and solely for the purposes of marketing or promoting RAZER as the collection agent for the Billers and Networks.

13. WARRANTIES AND LIABILITY

- 13.1 Each Party represents and warrants to the other that, as from the date hereof and at all times during the continuance of this Agreement:
- (a) it is a company duly constituted, properly incorporated and is validly existing under the laws of the country of incorporation;
 - (b) it has taken all corporate and other action required to authorize the execution, delivery and performance of this Agreement and the Agreement is binding upon and enforceable against it in accordance with its terms;
 - (c) it has obtained all approvals required from any government, tax, monetary or other authority to enable it to comply with the provisions of this Agreement and make payment as specified, and all approvals are in full force and effect;
 - (d) the compliance with the provisions of this Agreement will not violate any other agreement to which it is a party;
 - (e) it is not a subject of any actual, pending or threatened legal proceedings which has or may have a material adverse effect on its financial conditions; and
 - (f) it has taken no corporate action, nor has any other steps been taken or legal proceedings started or threatened against it for its winding up, dissolution or for the appointment of a receiver, administrator, trustee or similar officer of it or any or all of its assets and undertakings.
- 13.2 The Distributor shall use reasonable endeavours to rectify any system fault within Forty-Eight (48) hours of such fault occurring but the Distributor shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage, liability or expense suffered by the Retailer by reason of any interruption to sales of Vouchers and/or collection of Bill Payment due to failure of the Distributor's central computer system or of the communications links, irrespective of whether the failure is caused in whole or in part by any act or omission of the Distributor.
- 13.3 The Distributor shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage, liability or expense suffered by the Retailer by reason of the failure of any Terminal(s) to operate. The Distributor will use reasonable efforts to ensure that any malfunctioned Terminal(s) is rectified within Forty-Eight (48) hours of receiving notification of the failure from the Retailer.

14. TERMINATION AND EFFECT OF TERMINATION

- 14.1 Notwithstanding any other provision hereof, this Agreement may be terminated by immediately:
- (i) by the Distributor or the Retailer if there has been a material breach by the other Party of any term, condition or covenant of this Agreement, which in any case is not or cannot be cured within Thirty (30) days after written notice of such breach is delivered to the Party committing such breach;
 - (ii) by the Distributor if proven that the Retailer is guilty of any conduct which in the opinion of the Distributor is prejudicial to the Distributor's interest;

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(iii) by either Party if the other Party enters into liquidation whether compulsory or voluntarily (otherwise than for the purposes of amalgamation or reconstruction) or compound with its creditors or take or suffer any similar action in consequence of a debt.

14.2 Either Party may terminate this Agreement at any time by giving to the other Party One (1) month notice in writing sent by registered post or recorded delivery service to the Distributor or the Retailer, as the case may be.

14.3 Upon the termination of this Agreement from any cause or at any time, at the request of the Distributor, the Retailer shall promptly return the Terminal(s) to the Distributor, and dispose of (as the Distributor may instruct) all pamphlets, catalogues, advertising material specifications and other material documents and papers whatsoever relating to the business of the Distributor.

14.4 The Pre-Paid Sum (if any) shall be repayable to the Retailer (subject to deduction of any amounts due to the Distributor) upon termination of this Agreement pursuant to the terms and conditions of this Agreement.

15. CONFIDENTIALITY

15.1 All information disclosed by the Parties which could reasonably be regarded as confidential and/or proprietary in nature including the terms of this Agreement shall not, save with prior written consent, be disclosed to any third party or used for any other purpose other than that purpose for which it was disclosed, provided that disclosures of such confidential information may be disclosed (i) to each Party's respective officers, employees and advisors with a need to know as each Party deems necessary, and (ii) in accordance with the requirements under any applicable laws, regulations or rules of any regulatory authority, governmental body or stock exchange.

15.2 The foregoing obligations above shall not apply to any part of such confidential information which becomes generally available to the public through no act or default of the other Party or his employees or agents.

16. NOTICES

16.1 All notices, demands, requests or communications given pursuant to or in connection with this Agreement shall be given in the English language and sent via telefax, airmail or by hand to the addresses and telefax of the Parties as follows:

If to RAZER:

RMS RELOADS SDN BHD 201801041252 (1303284-D)
Level 6, UOA Corporate Tower, Lobby B,
Avenue 10, The Vertical Bangsar South City,
No. 8, Jalan Kerinchi,
59200 Kuala Lumpur, Malaysia.
Tel: +603 2779 0300
Fax: +603 2779 0301
Attention: Chief Executive Officer

If to Retailer:

The information of the Retailer set out in Section I and III of the Merchant Service Application Form.

16.2 All communications shall be effective on receipt, and shall be deemed to have been received, in the case of a registered letter, not later than Five (5) days after having been posted; if by hand, when receipt is signed by the recipient's representative; and in the case of a telefax, when it has been sent and a confirmation of receipt is obtained, except that the telefax is sent after normal office hours or on a day which is not a business day shall be deemed to have been received on the succeeding business day.

17. ASSIGNMENT

17.1 The Retailer shall not assign, novate, pledge, mortgage, sub-license or sub-contract any portion of this Agreement or any of its rights derived under this Agreement without the prior written consent of RAZER.

18. VARIATIONS

18.1 No variation, waiver or modification of any of the terms of this Agreement shall be valid unless reduced in writing and signed by or on behalf of the parties hereto by an authorized representative of each Party.

19. GOVERNING LAW

19.1 This Agreement and the documents to be entered into pursuant to it will be interpreted and construed in accordance with the laws of Malaysia. All disputes arising out of this Agreement and the documents to be entered into pursuant to it will be subject to the exclusive jurisdiction of the courts of Malaysia.

20. WAIVER

20.1 No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof. The rights and remedies in this Agreement are cumulative and not exclusive of any rights and remedies provided by the applicable laws, rules and regulations.

21. SEVERABILITY

21.1 Should a provision be declared illegal or unenforceable, it shall be eliminated or replaced to preserve, wherever possible, the Parties' intent; all other provisions shall remain in force.

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