

TERMS OF USE

20200928

THE TERMS OF USE FOR DIGITAL MERCHANT ONBOARDING (THIS “**AGREEMENT**”) IS A LEGALLY BINDING CONTRACT BETWEEN YOU, THE END USER AND THE COMPANY THAT EMPLOYS YOU OR THAT YOU REPRESENT. THE AGREEMENT SHALL BE APPLICABLE BY (I) CLICKING “I ACCEPT”, OR (ii) UPON YOUR ACCESS AND/OR USE OF THE SERVICES. IN ADDITION TO THE TERMS OF USE, SPECIFIC TERMS MAY APPLY, DEPENDING HOW YOU ACCESS AND/OR USE THE SERVICES. IF AT ANY TIME YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT YOU MUST INFORM OUR CUSTOMER SUPPORT AND/OR TERMINATE ALL USE OF SERVICES IMMEDIATELY. UNLESS MENTIONED OTHERWISE, YOU ARE SOLELY REPOSIBLE FOR ALL COSTS AND EXPENSES (INCLUDING ONBOARDING AND PROCESSING FEE) OF THE SERVICES AND CONTENT.

1. OUR RIGHTS TO MAKE CHANGES

- 1.1 We can change any terms and conditions of the Agreement at any time and without notice provided to you. As such, you should review the relevant Agreement to you regularly for the latest updated terms. When changes are made, it will be effective immediately upon posting on the Website. You understand and agree that if you continue to access the Services after the date on which such terms have changed, we shall treat that you have accepted those changes in its entirety. The changes shall have a retrospective effect and shall apply from the date you register an Account with us, the date you access the Services, whichever earlier.
- 1.2 We are also constantly evolving in order to provide the best possible experience and information to you. As such, you acknowledge and agree that the form and nature of our Services may change from time to time without any prior notice to you. As part of this continuing process, we may stop (permanently or temporarily) providing any of the Services (or any features within the Services) to you without any prior notice. We shall not be liable for such change or discontinuance.

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 Definitions.
You can rely on the definitions provided in this Agreement unless we provide you with different definitions elsewhere in the Specific Terms. The following words are given the following definitions: -

“Account”	means an account opened by you with us to access and/or use of the Services.
“Affiliate”	means a person or an organisation controlling us, controlled by us, or under the common control of a person or an organisation controlling us. "Control" means the ownership of the equity shares carrying fifty percent (50%) or more of the votes exercisable at a general meeting (or its equivalent).
“Agreement”	collectively means the Terms of Use, Privacy Policy (separate document), the relevant Forms and the relevant Specific Terms, if applicable.

“Appropriate Authority”	means (i) the federal government of Malaysia, (iii) any state, province, regency, municipality or other political subdivision of Malaysia, (iv) any agency, authority or instrumentality of any of the foregoing, including any court, tribunal, department, bureau, commission or board, or (v) the relevant authority in a foreign country, if applicable.
“Content”	means the content either provided by us as part of the Services which includes without limitation the API document, sample codes, merchant ID, text, graphics, files, data, images, photographs, pictures, logos, video clips, news, and any information.
“Forms”	collectively means any forms, free demo forms, account activation form (including those issued by us, as may be set out in the Specific Terms).
“Intellectual Property Rights”	means all intellectual property rights both in Malaysia and throughout the world including: <ul style="list-style-type: none"> (a) any patents, copyright, industrial design, moral rights and similar rights of any type, trade secrets, registered and unregistered trademarks or service marks, trade names, brand names, indications of source or appellations of origin, registered designs and commercial names and designations; (b) any inventions, discoveries, trade secrets, know-how, computer software, software application, and scientific, technical and product information; and (c) any intellectual property rights existing now or in the future.
“Kiplepay” or “we” or “us” or “ours”	means Kiplepay Sdn Bhd (Company No. 510377-P/ 200001007771) and its Affiliate.
“Law”	means any law (whether domestic or international), statute, code, rule, guidelines, notices, ordinance, regulation, directive, order, judgment, writ, injunction or decree, and includes any changes in the application or interpretation thereof.
“PDPA”	means Personal Data Protection Act 2010.
“Personal Data”	shall have the same meaning ascribed to it in the PDPA.
“Post/Posted”	means to publish, display, submit and/or upload.
“Privacy Policy”	means a statement that discloses the ways we gather, use, disclose and manage your Personal Data and how you can opt-out, change, update and access your Personal Data.
“Services”	collectively means any Content, merchant digital onboarding services and payment solutions, free demo account, feature and/or functionality made available by us to you from time to time through our Website.

“Social Media”	means social media account such as Facebook, Google, Twitter, Instagram, or any other social media account.
“Specific Terms”	means the additional terms and conditions which may be applicable to Subscriber or User, either the Consumer Terms & Conditions, Subscriber Terms & Conditions, and any other relevant specific terms and conditions applicable to the Subscriber and/or User, as may be set out in the Website.
“Subscriber”	means an entity in the form of any structure which may but not limited to sole proprietor, partnership, body corporate or government body and agency who acquire the Services for use in the ordinary course of business and/or to allow its User to access and/or use the Services.
“User”	means an end user, who is accessing and/or using our Content and/or Services.
“User Generated Content”	means any uploaded material, data shared, or contribution made such as text, links, photographs, graphics, video, audio, other data or information posted by you in the Website and/or Form.
“Website”	means the website owned and/or managed by us (as amended from time to time) currently accessible at https://kiplebiz.com/ , excluding any external website to which the website points by way of hyperlink or otherwise.
“you” or “yours”	collectively means Subscriber and/or User.

2.2 Interpretations

Unless there is something in the subject or context, the following words are given the following interpretations: -

- (a) the singular includes the plural and vice versa and references to any gender includes a reference to all other genders;
- (b) a reference to any law includes references to such laws and regulations as they may be amended from time to time, supplemented or re-enacted;
- (c) titles and headings of the Terms of Use is merely inserted for convenience for reference only and cannot have any effect on the interpretation or construction of the Terms of Use; and
- (d) just because we are responsible for the preparation of the Terms of Use, or any part of it, the rule of construction shall not apply to our disadvantage.

3. THIRD PARTY PROVIDER

- 3.1 The Services may contain certain content, promotion, goods and/or services supplied by a third party. It may also contain certain hyperlinks to other websites which are neither maintained nor controlled by us (“Third-Party Service”). Such Third-Party Service is provided to you as a matter of convenience only.

- 3.2 Any dealings with such third party are solely between you and such third party. We encourage you to read their terms and conditions carefully, including their privacy policy. We are not responsible and we shall not be liable for any transaction entered into with such third party.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 We are and shall remain the exclusive owner of all Intellectual Property Rights subsisting in or used in connection with the Services, including any documentation and/or manuals relating thereto.
- 4.2 We grant you a personal, royalty free, non-exclusive, non-transferable, revocable licence to access and/or use the Services, and our Content in accordance with this Agreement and during the term of this Agreement. This license grant applies to the software and all updates, upgrades, new versions and replacement software and applicable Content.
- 4.3 Unless you have received prior written authorisation from us, you must not: -
- (a) access or use the Services and/or any of our Content through any technology or other means other than those provided by through the Website, or through other explicitly authorized means we may designate;
 - (b) copy, translate, modify, or make derivative works of the Services or any part thereof;
 - (c) use, reverse engineer, decompile or otherwise attempt to extract the source code of the Services or any part thereof, unless this is expressly permitted or required by applicable law; or
 - (d) sublicense (or attempt to sublicense), distribute any of the Content, in whole or in part, to any third-parties and that shall be in violation of the applicable laws or regulations.
- 4.4 Any other Intellectual Property Rights appearing in Services may contain Intellectual Property Rights of third parties that are not affiliated with us. We do not own such third-party's Intellectual Property Rights and the use of such Intellectual Property Rights may be subject to the terms and conditions of such third-party.

5. INVOICING AND PAYMENT TERMS

- 5.1 Unless stated otherwise, we reserve the right to invoice one time upfront processing fees and charges and/or Service charges on an annual basis for the Services we've provided to you. Invoices for the Services shall be made and delivered to you by e-mail through our E-Invoicing or Recurring Payments solution.
- 5.2 You shall make such payments for the invoices electronically from Your designated settlement account and collection shall be made pursuant to the date of the invoice or the next business day, if collection day falls on a public holiday.
- 5.3 All invoices, charges and/or fees for the Services shall be made in Malaysian Ringgit (MYR), unless specified otherwise.

6. CONTENT AND SUBSCRIBER'S CONTENT

- 6.1 Our Content

- (a) The Content is provided to you on an “AS IS” basis for your information and personal use only. Except as we specifically agree in writing, the Content shall not be used, reproduced, transmitted, distributed or otherwise exploited in any way.
- (b) We reserve the right to limit and/or prohibit your access and/or use to any of the Content at our sole discretion and shall not be liable for any such limitation or prohibition.
- (c) You further acknowledge and understand that the Content provided in any part of our Services which may contain technical inaccuracies or typographical errors. You are responsible for your use of the Content and handling of the data and its outcomes. We also disclaim any liability for any Content or information that may become outdated since the last time that particular piece of information was updated. We can make changes and corrections to any parts to any part of the Content at any time without prior notice to you.

6.2 Your Content

We do not manage or have any control over Your Content. Therefore, we are not responsible for any Content, including its inaccuracies, incompleteness or typographical error.

7. USER GENERATED CONTENT

- 7.1 We do not claim ownership of the User Generated Content. When you post any User Generated Content you grant us and our Affiliate a non-exclusive, irrevocable, royalty-free, transferable, and worldwide license to use the User Generated Content and associated intellectual property and publicity rights to help us review, improve, operate and promote our current services, develop new ones and ensure compliance with this Agreement. We will not compensate you for any of the User Generated Content.
- 7.2 Further to the foregoing paragraph, by submitting your User Generated Content to us, you warrant that: -
 - (a) use of your User Generated Content will not infringe any intellectual property or publicity rights;
 - (b) you own or otherwise control all of the rights of the User Generated Content;
 - (c) during or after the term of this Agreement, you agree to waive your moral rights and promise not to assert, authorize, assist or encourage any third party to assert such rights against us and/or our Affiliate, customers, vendors, business partners in relation to the Services and/or any patent infringement claim regarding the Content and the functionality and/or other characteristics;
 - (d) your User Generated Content is not defamatory, threatening, injurious, insulting character, offensive, abusive, offensive on moral, menacing, religious or political grounds, impair your confidentiality obligations;
 - (e) your User Generated Content does not infringe the Law;
 - (f) use the User Generated Content without obtaining Your prior consent; and
 - (g) you shall be solely responsible for your own User Generated Content and the consequences of posting or publishing them;
- 7.3 We do not endorse any User Generated Content or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with User Generated Content. We do not permit activities which will infringe any intellectual property including copyright and we will remove all infringing contents and User Generated Content upon notification that such Content or User Generated Content infringes on another’s intellectual property. We further reserve the right to remove any User Generated Content without prior notice to you.

- 7.4 If you believe that your work has been copied and posted in our Website, without your permission or in any other way that constitutes copyright infringement or if you have any form of complaint or grievances in relation to the User Generated Content posted, please contact our Customer Service Support.
- 7.5 You are solely responsible for your interactions with another user. We reserve the right, although we have no obligation, to monitor disputes between you and other user, and to take any action that we feel may be appropriate in our sole discretion, consistent with this Agreement.

8. DISCLAIMER OF WARRANTIES

- 8.1 **The Services are provided to you on an ‘as is’ and ‘as available’ basis, with all faults. We do not make any representation or warranty of any kind, whether oral or written, whether express or implied, or arising by law, custom, course of dealing, course of trade, with respect to the Services. Your use of the Services is at your own risk.**
- 8.2 **We make no representation that the defect in operation or functionality of the Services, if any, will be corrected. We disclaim any and all implied warranties on conditions of title, merchantability, fitness for a particular purpose, and non-infringement.**
- 8.3 **No advice or information, whether oral or written, obtained by you from us, or from our Website and Services shall create any warranty of any type.**
- 8.4 **Any Content downloaded or otherwise obtained through the Website and/or Services is done at your own discretion and risk and that you will be solely responsible for any damage to your computer, mobile device, or loss of data that results from the download of any such Content.**
- 8.5 **You expressly acknowledge and agree that we do not control the transfer of data over communications facilities or networks, including the internet, mobile networks or other means of data transmission, and the Services may be subject to outages, limitations, delays, interruptions and other problems inherent in the use of such communications facilities. The availability of the Services may also be dependent on third party service providers used to render the Services to you, which the we have no control over, and the operation, maintenance and availability of such third-party services are governed, as the case may be, by their respective terms of service.**
- 8.6 **WITHOUT LIMITING THE FOREGOING AND FOR AVOIDANCE OF DOUBT, WE SHALL NOT BE LIABLE TO YOU AT ANY TIME FOR ALL MATTERS ARISING UNDER THIS CLAUSE 8 AND EXPRESSLY DISCLAIM ANY LIABILITIES AND WARRANTIES WITH RESPECT TO THE CONTENT.**

9. GENERAL PROVISIONS

- 9.1 Notice.
You can generally contact our Customer Service Support. However, if you wish to lodge a complaint, raise a dispute about the Services, or serve us a demand letter, legal process, or other communication relating to that (collectively known as “Formal Notice”), you should address a copy of the Formal Notice

to our legal department. The Formal Notice can be delivered by hand, courier and/or prepaid registered post to the following address: -

Head of Legal
Kiplepay Sdn Bhd
The Ascent, Paradigm
B-23A-3, No 1 Jalan SS7/26A
47301 Petaling Jaya, Malaysia

We can serve a Formal Notice or other communication to you by electronic email, delivered by hand, courier, prepaid ordinary post, registered post (not being AR Registered), and/or facsimile to the address you provided to us. We can also serve you a Formal Notice, or other communication to your last known address in our record.

Formal Notice or other communication shall be deemed effective: -

- (a) if by electronic email or hand deliver, on the day of delivery;
- (b) if by prepaid registered post, five (5) days after it was duly posted;
- (c) if by courier, 1 day after dispatch; or
- (d) if by facsimile, on the day of transmission provided that the transmission report from the sender's facsimile machine confirms that transmission is in full and without error.

You agree that in the event that any action is begun in the courts in Malaysia in respect of your use of the Services, the legal process and other documents may be served by posting the documents to you by registered post (not being AR Registered Post) at the address you provided to us or to your last known address in our records and such service shall on the fifth (5) day after posting, be deemed to be good and sufficient services of such legal process or documents.

9.2 No Partnership.

You and we are independent contractors and the use the Services will not establish any relationship of partnership, joint venture, employment, franchise or agency between you and us. You do not have the power to bind us or incur obligations on our behalf without our prior written consent, except we expressly said so.

9.3 When do we waive a right under the Agreement?

If you breach the terms and conditions of the Agreement and we do not exercise a right that we have because of your breach, we do not necessarily waive our entitlement to exercise that right because of your breach at any later time.

9.4 When can you and we transfer, assign or novate the Agreement?

You are not allowed to transfer, assign or novate your Agreement with us (or any part thereof) to any third -party unless we give you written consent to do so. We may, however, transfer, assign or novate the Services and/or the Agreement (or any part thereof) to our Affiliate or any third-party with or without notice to you. This Agreement shall inure to the benefit of your permitted assigns and successors and our permitted assigns and successors.

9.5 Severability.

In the event any provision of the Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired.

9.6 Which laws and courts govern the Agreement?

The Agreement is governed by the laws of Malaysia without regard to principles of conflicts of law. You and we submit to the exclusive jurisdiction of the courts of Malaysia, and you waive any objections on the ground of venue or forum non-conveniens or any similar grounds.

- 9.7 **Language.**
If the Agreement is translated into any other languages and there is a conflict between this English version and any foreign language version of the Agreement, the English version shall prevail.
- 9.8 **Entire Agreement**
The Agreement and the additional terms and conditions forming part of the Services set out the entire agreement between you and us and supersedes any prior arrangements or agreements that we may have with each other, whether it is oral or in writing.
- 9.9 **What happens if you have a dispute with us?**
- (a) For all disputes, whether pursued in court or with the relevant regulatory body, you must first give us an opportunity to resolve your claim by sending a written description of your claim addressed to us in the manner set out in this Clause 9.1.
 - (b) Upon receipt of the written notice, we will use our reasonable endeavour to resolve the dispute. We may, as and when we deem fit, conduct any investigation regarding the disputed amount. The result of the findings is deemed to be final and conclusive and binding on you and shall not be questioned by you on any account.
 - (c) You agree that any cause of action arising out of or related to the access and/or use of the Services must commence within twelve (12) months after the cause of action arose; otherwise, such cause of action is permanently barred.

Should you have any questions concerning the Agreement, the Services, or any terms and conditions found within Website, please contact our Customer Service Support.

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