

MOBILE MONEY GUYANA INC.
Participating Merchant Service Payment Agreement

This Participating Merchant Agreement (including all schedules, attachments and exhibits, together the “Agreement”) is made and entered into this ____ day of _____, _____ (the “Effective Date”),

BETWEEN

Mobile Money Guyana Inc., a corporation incorporated under the Companies Act of Guyana, having an office at 79 Brickdam, Georgetown, Guyana (hereinafter referred to as “MMG”),

AND

_____, a Business registered at the Office of Registrar of Business Names, Georgetown, having its office at _____ (hereinafter referred to as “Merchant”).

MMG and the Merchant are sometimes hereinafter referred to as “Parties” and individually as a “Party”.

WHEREAS:

- (A) MMG provides mobile money transfer and payment services whereby Customers may use their mobile device to, among other things, make payments for goods, products and services using their mobile wallet account;
- (B) Merchant wishes to permit Customers to make payments for services using their mobile wallet account; and
- (C) MMG and Merchant agree and acknowledge that the Mobile Money Services will be beneficial to Customers and the Parties.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

Capitalized terms not otherwise defined in the main body of this Agreement are defined as follows:

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday).

“**Customer**” means a party to whom MMG has agreed to provide the Mobile Money Services.

“**Merchant Bank Account**” means the Merchant’s account maintained with a Commercial Bank in Guyana.

“**Merchant MMG Account**” means the Merchant’s account in the Mobile Money System in which the Merchant’s electronic money may be stored.

“**Mobile Money Services**” are the services provided to Customers pursuant to a MMG Customer Agreement.

“**Mobile Money System**” means the payment system designed, developed or managed by MMG which facilitates Mobile Money Services.

“**Mobile Money Transaction**” means any transaction involving the use of the Mobile Money Services or the Mobile Money System by the Customer.

MMG	MERCHANT
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2. MERCHANT

2.1. Appointment

- 2.1.1. For the Term of this Agreement, and upon the fulfillment of the Merchant registration requirements, MMG appoints the Merchant on a non-exclusive basis as a beneficiary of Mobile Money Transactions.
- 2.1.2. As between the Merchant and MMG, MMG is providing a payment processing service. The Merchant acknowledges and agrees that MMG is acting only as a payment gateway system provider and its Mobile Money System permits the Merchant to receive payments for the Merchant’s service.
- 2.1.3. The Merchant agrees to comply with the rules and regulations of which MMG may notify the Merchant regarding the operation of the Mobile Money Transaction and the Mobile Money System from time to time.
- 2.1.4. The Merchant authorizes MMG where necessary to disclose any information pertaining to transactions through Mobile Money System to: (a) the Merchant’s Commercial Bank; (b) competent regulatory agencies; (c) pursuant to an order of court; or (d) law enforcement agencies for the prevention or investigation of a crime.

2.2. Merchant’s Obligations

- 2.2.1. The Merchant shall permit all Customers, to utilize the Mobile Money System to pay for the Merchant’s service or goods through Mobile Money Transactions without prior payment in cash or by cheque. The Merchant shall display prominently, MMG’s brand name, logo and all other marketing and/or publicity material that may be provided by MMG, on or about the Merchant’s premises and/or website.
- 2.2.2. The Merchant shall resolve directly with the Customer, any claims or complaints made by the Customer in respect of any service or goods payment made by way of a Mobile Money Transaction. The Merchant shall have no right of recourse against MMG in the event the Customer disputes the underlying contract of sale for any reason whatsoever, including without limitation, the quality or price of the service in question. The Merchant agrees with MMG that the Merchant shall: (i) not incorporate a transaction fee into the selling price of the service; (ii) not use the Mobile Money System to promote and conduct any fraudulent, immoral, illegal activities or such activities that may infringe the intellectual property rights of third parties; and (iii) comply with and observe his duties, obligations, covenants and undertakings in this Agreement.

2.3. Mobile Money Transaction Fee and Payment

The Merchant agrees that in consideration of MMG facilitating mobile payments utilizing the Mobile Money System, MMG shall be entitled to impose a transaction fee on each Mobile Money Transaction and to deduct that fee from the payment made by the Customer in respect of each Mobile Money Transaction (the “Mobile Money Transaction Fee”) which is set out and defined in **Schedule I** to this Agreement

- 2.4. Subject to Sections 2.6 and 3, where payment is due from MMG to the Merchant, MMG shall credit the Merchant Account (after deducting the Mobile Money Transaction Fee) to the value of each completed Mobile Money Transaction.
- 2.5. The Merchant may instruct MMG (in writing or as otherwise agreed between the Parties) to remit the moneys (or part thereof) standing to the Merchant’s credit to the Merchant Bank Account or the Merchant MMG Account. MMG shall remit the payment within two (2) Business Days after MMG’s receipt of these remittance instructions.
- 2.6. Notwithstanding the generality of Section 2.4, MMG reserves the right to withhold payment if there is dispute, fraud, irregularity or, suspicious circumstances surrounding any Mobile Money Transaction. MMG shall withhold payment until MMG has examined and verified available information or documentation. The Merchant shall not claim any

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interest, loss or damages, directly or indirectly arising out of or in connection with such payment withheld by MMG.

- 2.7. In addition to Section 2.6, the Merchant agrees that MMG shall not be held liable for any loss arising from delay in remitting the payment of the completed Mobile Money Transaction where this is due to circumstances beyond the control of MMG, including, without limitation, technical breakdown of the Mobile Money System.

3. DISPUTED MOBILE MONEY TRANSACTIONS

- 3.1. MMG shall not be liable to: (i) the Customer in any manner whatsoever for any service purchased from the Merchant; and (ii) the Merchant, in the event a Customer disputes a Mobile Money Transaction.
- 3.2. Except for fraudulent Mobile Money Transactions alleged by a Customer all disputes on a Mobile Money Transaction shall be resolved between the Merchant and the Customer.
- 3.3. If MMG receives a notification from the Customer in respect of an alleged fraudulent Mobile Money Transaction on the same day of that alleged fraudulent transaction, MMG shall withhold the payment in respect of that transaction pending investigation of the alleged fraud by MMG. Any notification from the Customer received by MMG too late to withhold payment shall be dealt with in accordance with this Section 3 on the next Business Day.
- 3.4. In any investigation of an alleged fraudulent Mobile Money Transaction, MMG may obtain written information from the Customer and the Merchant or from other sources.
- 3.5. MMG shall notify the Customer and the Merchant of the outcome of such investigation within thirty (30) days (or such other duration as MMG may determine from time to time or at any time during the Term) from MMG’s receipt of all the documents and information stated in Section 3.4.
- 3.6. Where the outcome of the investigation by MMG: (i) shows that the Mobile Money Transaction in question is indeed fraudulent, MMG shall refund to the Customer the amount of the Mobile Money Transaction by crediting such amount into that Customer’s Mobile Money account; or (ii) shows that such Mobile Money Transaction is not fraudulent, the Customer shall be notified accordingly.
- 3.7. If, pursuant to the outcome of the investigation by MMG, MMG is required to make a refund to the Customer, MMG shall utilize such balances standing to the Merchant’s credit with MMG to make good such refund, failing which, MMG shall advance the refund on behalf of the Merchant and such advances shall be a debt due and owing by the Merchant to MMG.
- 3.8. In the event of any dispute with the Customer, the Merchant shall release MMG, its agents, employees or licensees from any and all claims, demands and damages (actual or consequential) of every kind or nature arising out of or in any way connected with such disputes.

4. MERCHANT’S COVENANTS, REPRESENTATIONS AND WARRANTIES

- 4.1. The Merchant hereby agrees and undertakes that:
 - 4.1.1. the information furnished by the Merchant in connection with this Agreement are true and accurate and does not omit any facts that would make the information misleading;
 - 4.1.2. the Merchant shall notify MMG immediately in writing of any change in the Merchant’s business or business structure or any change in any of the information furnished pursuant to this Agreement;
 - 4.1.3. the Merchant shall promote use of the Mobile Money System and recommend the Mobile Money System to its customers as a method of payment for its service;
 - 4.1.4. the Merchant shall not levy any surcharge on the Customer that results in the Customer reimbursing the Merchant (directly or indirectly) for the Mobile Money Transaction Fee;

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- 4.1.5. the Merchant shall not use any intellectual property belonging to MMG or MMG’s third party vendors, including, without limitation, trademarks, trade names, without the prior written consent of MMG, other than such usage permitted under this Agreement; and
- 4.1.6. the Merchant shall not at any time represent MMG to any third party as an agent of the Merchant.

5. TERM AND TERMINATION

- 5.1. This Agreement commences on its Effective Date and is for an initial period of one (1) year. Thereafter this Agreement renews automatically for successive one (1) year periods until terminated as provided for below.
- 5.2. Either party may terminate this Agreement by notice in writing to the other party if that other party commits a breach of any of the provision in this Agreement and fails to remedy such breach to the satisfaction of the terminating within seven (7) days of receipt of a written notice specifying the nature of the breach and requiring its remedy.
- 5.3. Notwithstanding Section 5.2, MMG may terminate this Agreement immediately, with or without cause, by written notice to the Merchant provided that MMG makes reasonable efforts to provide ten (10) days prior notice of such termination.
- 5.4. Notwithstanding Section 5.2, either Party may terminate this Agreement, with or without cause, by ninety (90) days prior written notice to other Party.
- 5.5. Upon termination of this Agreement for any reason:
 - i) all amounts owing by either Party to the other in terms of this or any other Agreement shall become immediately due and payable;
 - ii) the Merchant shall immediately cease to use or display any mark or logo, whether registered or unregistered, which is proprietary to MMG and shall make or cause to be made such changes to its advertising in all media, shop frontage, the interior of its premises, stationery and the like so as to distinguish its business, to the satisfaction of MMG, from one that is being carried on in association with MMG;
 - iii) the Merchant shall, upon MMG’s request in writing, return all and any of MMG’s property (terminal equipment, Mobile Money marketing materials etc.) in its possession to MMG at the Merchant’s own cost; and
 - iv) the Merchant shall return to MMG all documentation, shop fittings, and any other material of any nature whatsoever belonging, or that is proprietary, to MMG.

The foregoing Section 5.5 obligations survive any termination of this Agreement.

- 5.6. Termination of this Agreement, for any reason whatsoever, shall be without prejudice to any other claims or remedies accrued by either Party immediately prior to the date of termination.

6. AVAILABILITY OF SERVICES

MMG may at its discretion and without prior notice to the Merchant, discontinue the sale of any of its Mobile Money Services and the use of the Mobile Money System without incurring any liability to the Merchant. MMG will make commercially reasonable efforts to provide the Merchant with adequate notification of any such planned Mobile Money Services discontinuation.

7. DISCLAIMER OF WARRANTIES

The services are provided on an “as is” basis. MMG does not make, and hereby disclaims, any and all express or implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, non-infringement in title, and any warranties arising from a course of dealing, usage, or trade practice. MMG does not warrant that the mobile money services or the mobile money system will be uninterrupted, error free or completely secure. The limitations set forth in Section 9 below on MMG’s s shall survive any failure of purpose of this limitation on warranties.

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8. INDEMNITY

- 8.1. The Merchant agrees to indemnify, defend and hold MMG harmless from and against all loss, damage, and expense (including attorney’s fees) arising out of: (i) any material breach or default by the Merchant under the terms of this Agreement; (ii) any negligence or misconduct by the Merchant and/or the Merchant’s staff and employees; or (iii) any event of fraud committed by the Merchant or its agents, employees or licensees.
- 8.2. MMG agrees to indemnify, defend and hold the Merchant harmless from and against all loss, damage, and expense (including attorneys’ fees) arising out of: (i) any material breach or default by MMG under the terms of this Agreement; (ii) any gross negligence or willful misconduct by MMG; or (iii) any event of fraud committed by MMG.

9. LIMITATION OF LIABILITY

- 9.1. Except for claims arising under Section 8 of this Agreement (“Indemnity”), Section 10 (Risk Management- Anti Money Laundering), and Section 11 (Compliance), neither party will be liable to the other party for lost profits, consequential damages, incidental damages, punitive damages, exemplary damages or other special damages. Without limiting the generality of the preceding sentence, neither party will be liable to the other for damages or any other compensation arising out of or related to the termination of this Agreement, including loss of prospective profits or anticipated sales, or damages resulting from expenditures, investments, or commitments made by a party.
- 9.2. Except for claims arising under Section 8 of this Agreement (“Indemnity”), Section 10 (Risk Management- Anti Money Laundering), and Section 11 (Compliance), each party’s maximum liability arising out of, relating to or in any way connected with this Agreement, its negotiation or termination, the relationship of the parties or the provision or non-provision of services hereunder, however caused and under any theory of liability, shall in no event exceed the total compensation paid to the Merchant under this Agreement in the three (3) month period preceding the occurrence of the liability. This limitation of liability represents a reasonable allocation of risk and shall apply notwithstanding any failure of essential purpose of any limited remedy.
- 9.3. MMG shall not be liable to the Merchant in any manner whatsoever for any failure to perform any of its obligations contained in this Agreement if such failure is by reason of the introduction, imposition or variation of any law or directive of any competent authority or any change in the interpretation or application thereof, or if it becomes unlawful or contrary to any such directive, or impractical without breaching any such law or directive, for MMG to give effect to its obligations under this Agreement.

10. RISK MANAGEMENT - ANTI MONEY LAUNDERING

- 10.1 The Merchant agrees that MMG may delay, block or refuse to process any transaction without incurring any liability if MMG subjectively suspects that: (i) the transaction may breach any law in Guyana or any other country; or (ii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.
- 10.2 The Merchant agrees to provide all information to MMG that MMG reasonably requires in order to manage money-laundering or terrorism financing risk or to comply with any laws in Guyana or any other country.
- 10.3 The Merchant further agrees that MMG may disclose any information concerning the Merchant, the Mobile Money Transactions, and the Merchant’s activity regarding the Mobile Money System and Mobile Money Transactions to the Bank in which the Merchant’s funds are deposited, any law enforcement, regulatory agency or court where required by any such law, in Guyana or elsewhere.
- 10.4 The Merchant represents and warrants to MMG that the Merchant is acting on the Merchant’s own behalf in utilizing or facilitating the Mobile Money Transactions and the Mobile Money Services, entering into this Agreement, and conducting any transactions.

11. COMPLIANCE

- 11.1 The Merchant shall, at its own expense, observe all applicable laws or regulations and comply with any directions made by any competent regulatory authority concerning its obligations under this Agreement.
- 11.2 The Merchant shall not act or omit to act in any way likely to injure or damage any person, property or the networks used to provide the Mobile Money Transactions or the Mobile Money System or

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cause the quality of the Mobile Money Services to be impaired or interrupted in any manner whatsoever.

11.3 The Merchant shall at its own expense comply with all directions issued by MMG insofar as they relate to compliance with the provisions of any applicable license or regulatory condition.

12. DISPUTES

In the event of any dispute between the Parties relating to this Agreement the Parties shall use their best efforts to settle such dispute between themselves. If the Parties fail to settle such dispute the same shall be referred to arbitration. For the purposes of this Section, "arbitration" is as defined in the Arbitration Act Chapter 7:03 of the Laws of Guyana (or any amendment, modification or substitution of the same). Where arbitration is pursued, the arbitration shall be conducted in Guyana by a single Arbitrator whose decision shall be final and binding on the respective Parties. This provision shall not limit the rights of the Parties to obtain execution of judgment or to seek any equitable remedy, including injunctive relief from a court of competent jurisdiction.

13. NOTICES

Any notice sent out or required to be delivered hereunder shall be in writing from and sent to the respective Party at the following addresses by Post, courier or facsimile transmission:

If to MMG:

Mark Singh

MMG Office, Pegasus Corporate Centre, 4th Floor, Kingston, Georgetown, Guyana.

Phone: 227-9283

E-mail: msingh@gtt.co.gy

If to the Merchant:

Name:

Address:

Phone:

E-Mail:

Every notice or communication so sent shall be considered to have been received upon actual receipt. Any Party may substitute or change its address and/or facsimile number or email address by written notice to the other Party.

14. VARIATION

This Agreement may be modified, added to, or otherwise varied by MMG upon notice to the Merchant. If Merchant does not agree with the modifications, Merchant may permissibly terminate this Agreement pursuant to Section 5 of this Agreement by providing MMG notice of termination not later than thirty (30) days after MMG's notice of modification. After such period, the Merchant's continued acceptance of payments for its service via the Mobile Money System shall constitute the Merchant's acceptance of this Agreement as modified and varied from time to time.

15. MISCELLANEOUS PROVISIONS

15.1 Nature of the Relationship. The Merchant and its employees are not employees, franchisees or legal representatives of MMG for any purpose.

15.2 Entire Agreement. This Agreement supersedes all previous agreements between the Parties in relation to the subject matter hereto. This Agreement, including all of the attached schedules, exhibits and attachments, is intended by the Parties as the final expression of their agreement and a complete and exclusive statement of its terms and conditions. No course of prior dealings between the Parties and no usage of trade may be used in any way to explain or vary any of the terms of this Agreement. Except as otherwise provided in Section 14 of this Agreement, no alterations, consensual cancellation, variation of or addition hereto shall be of any force or effect unless committed to writing and signed by the duly authorized representatives of both Parties.

15.3 Assignment. The Merchant shall not, without the written consent of MMG, cede, transfer, assigned or sub-license all or any of its rights and obligations under this Agreement.

15.4 Waiver. Failure of either Party at any time to require performance by the other Party of any provision is not deemed to be a continuing waiver of that provision, or a waiver of its rights under any other provision of this Agreement, regardless of whether such provision is of the same or a similar nature.

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15.5 Offset. MMG may at any time offset any indebtedness that MMG owes to Merchant against any indebtedness owed by the Merchant to MMG.

15.6 Force Majeure. A Party shall not be liable for any loss suffered by the other Party arising out of any delay in or prevention from performance of such Party's obligations under this Agreement due to any cause, the adverse effects of which the Party could not and cannot reasonably and practically avoid in the ordinary conduct of the Party's business.

15.7 Claim Limitation. The Merchant agrees that it will not file any claim with respect to this Agreement or the relationship between the Parties after the expiration of one (1) year following termination of this Agreement.

15.8 Trademarks. The Merchant acknowledges that MMG may allow Merchant to utilize certain MMG trade names, trademarks and service marks and that of the wireless network provider, including the "CELLINK" and "CPOINT" trade names, (collectively the "Trademarks"). The Merchant acknowledges that it is not granted any rights in or to these Trademarks, except that the Merchant is granted a limited right and license to use the Trademarks to promote sales of the Service, Equipment and accessories during the term of this Agreement. The Merchant agrees it will maintain the quality standards that MMG may from time to time prescribe. The Merchant agrees to provide samples of all advertisements or other materials incorporating one or more of the Trademarks to MMG for approval prior to any use of the Trademarks. Upon termination of this Agreement, the Merchant agrees it will immediately discontinue use of the Trademarks. All use of the Trademarks will inure solely to the benefit of MMG and its affiliates.

15.9 Severability. If any provision of this Agreement is determined to be void, illegal or otherwise unenforceable, the remaining provisions will not be affected by such determination.

15.10 Survival. The termination of this Agreement does not affect any of the provisions of this Agreement which by their nature are intended to survive and continue in effect after termination.

15.11 Costs. In the event of MMG having to instruct its attorney to take steps to enforce any of MMG's rights under this Agreement, the Merchant shall pay to MMG on demand all collection charges and legal costs incurred by MMG as a result thereof, irrespective of whether or not legal proceedings were instituted.

15.12 No Third Party Beneficiaries. This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.

15.13 Counterparts; Electronic Signature. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, and a facsimile transmission or electronic delivery of a manual signature (*e.g.*, .pdf) shall be deemed to be an original signature.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer as of the Effective Date.

MMG

MERCHANT

Name: _____

Name: _____

Title: _____

Title: _____

Signature

Signature

Name:

Title:

Signature

WITNESS:

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WITNESS:

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Merchant

	Transaction Fees			Customer Pays	Merchant Pays
Transaction value	\$1 to \$500	\$501 to \$70,000	\$70,001 & above		
Transaction fee	\$50	\$120	0.175%	X	
	Collection Service Fee			Customer Pays	Merchant Pays
Transaction value	\$1 to \$14,999	\$15,000 & above			
Service fee	0	0.75%			X

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