

**MEMORANDUM OF AGREEMENT
FOR KONSTRUKECOMMERCE SYSTEM**

This Memorandum of Agreement for **KONSTRUK ECOMMERCE SYSTEM** (this "Agreement"), is entered into by and between the parties named below who agree on the following terms and conditions:

A. PLATFORM OWNER

KonstrukTech Corp., Block8, Lot 5 Silcas, Barangay San Francisco (Halang), City of Binan, Laguna, Region IV-A (CALABARZON), 4024

B. MERCHANT

_____, a sole proprietorship () /corporation () organized and existing under Philippine laws, with office at _____, hereinafter referred to as "MERCHANT".

C. SERVICE DESCRIPTION

PLATFORM OWNER shall provide **MERCHANT** with the **KONSTRUK ECOMMERCE SYSTEM (KES)** system which enables **MERCHANT** to sell online to customers who use the **KONSTRUK PLATFORM**.

D. ECOMMERCE PLATFORM FEE

PLATFORM OWNER shall collect an Ecommerce Platform Fee (EPF) on all successful, approved and paid transactions made to **MERCHANT** through the **KONSTRUK WEB PLATFORM**. The EPF is applicable on goods, services and delivery fees. **MERCHANT** shall price their items to **PLATFORM OWNER** net of their usual Sales &Marketing Budget Allocation and then add on the agreed EPF of 8% in the App Pricing formula since the EPF pays for the Sales, Marketing & Operational activities of KONSTRUK for its web platform.

E. APP USER PAYMENT TRANSACTION FEES

MERCHANT shall add to their transfer price an agreed upon % to cover the Merchant Discount Rate or Payment Transaction Fees. The **PLATFORM OWNER** will use this 8% to cover the Merchant Discount Rates and Payment Transaction Fees applied to purchases of App Users.

F. DELIVERY RECEIPT/ SALES INVOICE

MERCHANT shall provide the App User/ Buyer a Delivery Receipt and Sales Invoice for all items delivered that will accurately reflect the MERCHANT'S price on the app which will include the Ecommerce Platform Fee (EPF), the Merchant Discount Rate (MDR) or Payment Transaction Fees (fees from credit cards, debit cards, e-wallet transactions, etc.) and applicable taxes. The **PLATFORM OWNER** will program the same amount on the app. The MERCHANT is responsible for the issuance of Sales Invoices since the **PLATFORM OWNER** is just a consignee facilitating transactions.

G. TERM

This Agreement shall be binding between the **MERCHANT** and **PLATFORM OWNER** for a term of THREE (3) YEARS commencing from date of signing, subject to auto-renewal for successive term of ONE (1) YEAR each, unless or until terminated by either **PLATFORM OWNER** or **MERCHANT**.

H. CONTACT PERSONS

<i>For PLATFORM OWNER:</i>	<i>For MERCHANT:</i>
Account Manager:	Representative:
Address:	Address:
Contact Number/s:	Contact Number/s:
E-mail Address/es:	E-mail Address/es:

I. DOCUMENTS FORMING PART OF THIS AGREEMENT

This Agreement shall consist of these first two pages and the following Annexes as applicable to the Service Description selected:

- ANNEX 1 General Terms and Conditions of the KONSTRUK ECOMMERCE SYSTEM Service
- ANNEX 1-A Pre-Onboarding Requirements
- ANNEX 2 Sites
- ANNEX 3 Applicable EPF and Settlement Facilities
- ANNEX 4 Reversals and Refunds for KONSTRUK ECOMMERCE SYSTEM

which shall constitute one comprehensive document that both parties have read, understood, and agreed to, without prejudice to any supplement or amendment that the Parties may execute subsequent or pursuant to this Agreement.

IN WITNESS WHEREOF, the parties sign this Agreement on [DATE] in [City].

PLATFORM OWNER

[MERCHANT NAME]

By:

By:

Rommel T. Bulalacao
Managing Director

[Authorized Signatory]
[Position]

CONSULTANT/AGENT/SUB-AGENT

By:

[Name]
Consultant/Agent/Sub-Agent

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)S.S.
_____)

BEFORE ME, a Notary Public in and for _____, Philippines, this _____ day of _____, 20__ personally appeared:

Name	TIN #
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all known to me and to me known to be the same persons who executed the foregoing Articles of Incorporation and they acknowledged to me that the same is their free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place first above written.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 20 _____.

ANNEX 1
GENERAL TERMS AND CONDITIONS OF THE KONSTRUK ECOMMERCE SYSTEM SERVICE

1. PRE-SERVICE

1.1 Pre-Onboarding Requirements

Notwithstanding any proposal, term sheet, or application signed by the **MERCHANT**, **PLATFORM OWNER** reserves the right to cancel, delay, defer, or suspend service of the **KONSTRUK ECOMMERCE SYSTEM** if the necessary pre-onboarding requirements (as communicated to **MERCHANT**) are not submitted on time or as requested. Pre-onboarding requirements include basic national and local government registrations, basic corporate or legal documentation, and other relevant documents as may be required by **PLATFORM OWNER**. Complete list of pre-onboarding requirements as required in this provision is enumerated in ANNEX 1-A.

1.2 Grounds for Non-Delivery of the KONSTRUK ECOMMERCE SYSTEM Service

Even if Pre-Onboarding Requirements have been provided to **PLATFORM OWNER** and/or a proposal, term sheet, or an application has been signed by **MERCHANT**, **PLATFORM OWNER** reserves the right not to proceed with delivering the **KONSTRUK ECOMMERCE SYSTEM Service** (or, if already rendered, terminate or suspend the **KONSTRUK ECOMMERCE SYSTEM Service**), on the following grounds, among others:

- (a) if it is confirmed that the **MERCHANT** has made a material misrepresentation or has concealed any material information in its Pre-Onboarding Requirements or in the proposal, term sheet, or application form;
- (b) if the Site to be covered is outside of service coverage of internet and telecommunication providers (“Net & Telco Providers”) or is otherwise unavailable due to causes not attributable to Net & Telco Providers; or
- (c) if **MERCHANT** is later found to be ineligible for the **KONSTRUK ECOMMERCE SYSTEM Service** under **PLATFORM OWNER**’s policies (such as when the **MERCHANT** is blacklisted due to poor credit standing or has history of fraudulent acts or practices).

2. SCOPE OF SERVICE

2.1 KONSTRUK ECOMMERCE SYSTEM Service

PLATFORM OWNER shall provide the **KONSTRUK ECOMMERCE SYSTEM Service** at each of the **MERCHANT**’s Sites. The **MERCHANT**’s Sites are stores or branches owned or operated by **MERCHANT** where the **KONSTRUK ECOMMERCE SYSTEM** will be installed and/or deployed (the “**KONSTRUK ECOMMERCE SYSTEM Sites**”), enumerated in **ANNEX 2**.

Once enabled, the **MERCHANT** shall be able to accept **KONSTRUK ECOMMERCE Mobile APP & WEB PLATFORM** orders from customers who use the mobile app on their phones and/or computers to order for Home Improvement & Construction Supplies and Professional Services.

For each **KONSTRUK ECOMMERCE SYSTEM Site**, **PLATFORM OWNER** shall provide **MERCHANT** with the following:

- o Advertising & Promotions
- o Email notifications for each completed transaction
- o Daily/Weekly/Monthly Transaction Reports
- o One-time Basic usage and Troubleshooting training
- o **MERCHANT** Support Hotline

PLATFORM OWNER may modify the implementation of the **KONSTRUK ECOMMERCE SYSTEM** at any time, subject to timely notice of changes to the **MERCHANT**.

2.2 KONSTRUK ECOMMERCE SYSTEM Tools

The KONSTRUK ECOMMERCE SYSTEM Service shall be provided to **MERCHANT** through the following tools which **PLATFORM OWNER** shall issue, install, and/or maintain at each of the **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Sites:

- Cloud-based access to KONSTRUK ECOMMERCE DASHBOARD in such number as stated in **ANNEX 2**
- Instructional Materials containing step-by-step instructions

The KONSTRUK ECOMMERCE DASHBOARD shall feature the **MERCHANT** Logo & Site Name unique to each KONSTRUK ECOMMERCE SYSTEM Site. The content, inventory and pricing might be different for each site, among others.

Instructional Materials shall contain detailed step-by-step instructions on how to operate the KONSTRUK ECOMMERCE SYSTEM, as well as other useful information (such as customer's hotline).

To use the KONSTRUK ECOMMERCE SYSTEM, the **MERCHANT** shall equip itself with the following tools which **MERCHANT** shall provide, install, and/or maintain at each of the **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Sites:

- Desktop PC or Laptop with the required specifications in such number as the number of sites and users
- WIFI Connection

Multiple KONSTRUK ECOMMERCE SYSTEM tools may be required depending on the commercial activity for the site.

The **MERCHANT** will nominate a dedicated mobile phone that can receive possible transaction notifications and call the **PLATFORM OWNER** Hotline.

2.3 Promotional Merchandise

PLATFORM OWNER shall issue promotional merchandise (such as, but not limited to, acrylic standee, flyers, door stickers or hangers) which shall feature the KONSTRUK logo, in order to convey that the **MERCHANT**, at a particular KONSTRUK ECOMMERCE SYSTEM Site, accepts online transactions as a KONSTRUK ECOMMERCE SYSTEM MERCHANT.

PLATFORM OWNER may vary the design and execution of the promotional materials from time to time. **MERCHANT** may also request for or use customized promotional materials, subject to **PLATFORM OWNER**'s approval.

2.4 Transaction Notifications and Transaction Reports

MERCHANT shall receive two kinds of reports via the KONSTRUK ECOMMERCE SYSTEM Service: (a) _____, which are sent real time per transaction, per KONSTRUK ECOMMERCE SYSTEM Site, or in-app receipt's on the customer's app that appear immediately after a successful KONSTRUK ECOMMERCE MOBILE APP & PLATFORM transaction and (b) Transaction Reports, which are spreadsheets prepared by **PLATFORM OWNER** on a daily basis and transmitted to **MERCHANT** on a daily, weekly, or monthly basis, depending on the **MERCHANT**'s preference (by default, Transaction Reports are generated and sent to **MERCHANT** daily). The transaction notifications and transaction reports shall be considered official and final as far as **PLATFORM OWNER** is concerned and shall be used for accounts reconciliation under section 3.3 of this Annex.

2.5 Basic usage and troubleshooting training

Assigned personnel (e.g., cashier, sales representative, supervisor) at each of **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Sites shall receive one-time training on the use of the KONSTRUK ECOMMERCE SYSTEM and on basic troubleshooting.

2.6 **MERCHANT Hotline**

A **MERCHANT** Hotline shall be made available to **MERCHANT**, subject to operating hours (8:00AM to 7:00PM) every day, including weekends and holidays. **MERCHANT** may also course its concerns through the **PLATFORM OWNER**'s Account Manager assigned to it as indicated in the Agreement.

3. **STANDARD COMMERCIAL TERMS**

3.1 No fee for deployment. **PLATFORM OWNER** shall provide the KONSTRUK ECOMMERCE SYSTEM Service, and issue, install, and/or deploy the KONSTRUK ECOMMERCE SYSTEM Tools free of charge. In exchange, no fee, cost, or expense shall be charged to **PLATFORM OWNER** for the space used or occupied by the KONSTRUK ECOMMERCE MOBILE APP & WEB PLATFORM Promotional Tools.

3.2 Ecommerce Platform Fee. The Ecommerce Platform Fee or EPF stated in **ANNEX 3** shall be reviewed by **PLATFORM OWNER** and the **MERCHANT** at the end of each Term, and any change in the EPF shall be implemented at the start of the subsequent year of the Term.

3.3 Settlement Procedure. KONSTRUK ECOMMERCE SYSTEM made to **MERCHANT** shall be settled according to the following procedures:

a. **PLATFORM OWNER** shall credit payments to the **MERCHANT** for each KONSTRUK ECOMMERCE SYSTEM Transaction successfully processed and fulfilled. This will be done seven (7) days after the payment service provider and/or acquiring bank credits the App User's payment successfully to the **PLATFORM OWNER**. The agreed EPF due to **PLATFORM OWNER**, if any, as well as the applicable withholding taxes (including value-added tax), will be withheld upon transaction processing. The TOTAL TRANSACTION AMOUNT for each successful KONSTRUK ECOMMERCE SYSTEM shall be the basis for the EPF. **PLATFORM OWNER** shall issue official receipts covering the EPF it collected and shall issue a withholding tax certificate on a monthly basis.

MERCHANT's nominated bank account/s for purposes of the Settlement Procedure outlined above is/are indicated in **ANNEX 3**.

b. **PLATFORM OWNER** shall allow access to a "Real Time Transaction Report" that would reflect all successful transactions recorded under the **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Sites within a day and the EPF collected and withheld by **PLATFORM OWNER**.

Upon **MERCHANT**'s request, **PLATFORM OWNER** shall send consolidated Daily Transaction Reports to **MERCHANT** depending on **MERCHANT**'s indicated frequency (e.g., weekly, biweekly, or monthly). Such consolidated Daily Transaction Reports shall be sent via e-mail to the address indicated in the Agreement.

c. **MERCHANT** shall reconcile the Daily Transaction Reports with its own sales records and shall immediately send a written notice to **PLATFORM OWNER** of any discrepancy within FIVE (5) business days from receipt of each Transaction Report. Absent any such notice of discrepancy, the Transaction Reports issued by **PLATFORM OWNER**, as well as **PLATFORM OWNER**'s implementation of the above-outlined procedure, shall be considered correct and final.

In case of discrepancy between **PLATFORM OWNER**'s Transaction Reports and the **MERCHANT**'s own sales records, **PLATFORM OWNER** and **MERCHANT** shall exert honest

and earnest efforts to reconcile the discrepancy. If reconciliation of records cannot be reached, **PLATFORM OWNER** and **MERCHANT** shall seek remedy pursuant to arbitration laws of the Philippines.

- e. Other reporting mechanisms apart from the Real Time Transaction Reports may be made available to **MERCHANT**, such “on-demand” reports may be accessed by a designated officer of **MERCHANT**.
- 3.5 Official Receipts/ Sales Invoices. **MERCHANT** shall, as soon as payment is successfully completed, shall prepare all items for delivery and accompany it with the appropriate delivery reports, sales invoices or official receipts to customers who pay for their purchases through the KONSTRUK ECOMMERCE MOBILE APP & WEB PLATFORM.
- 3.6 Taxes and other fees. **PLATFORM OWNER** and **MERCHANT** shall each be responsible for the administration and settlement of the applicable taxes and fees on their respective accounts.
- 3.7 Other procedures. **PLATFORM OWNER** and **MERCHANT** may discuss and implement any policy and settlement procedure for order cancellations, erroneous KONSTRUK ECOMMERCE SYSTEM, and similar scenarios, which will be documented in writing.

4. **USE OF THE SERVICE**

4.1 Intended purposes. **MERCHANT** shall use the KONSTRUK ECOMMERCE SYSTEM Service and System Tools only for the intended purposes. The Konstruk ECOMMERCE SYSTEM Service shall at all times be made available to the public.

4.2 Prominent display.

(a) **MERCHANT** shall always process and honor KONSTRUK ECOMMERCE SYSTEM purchases at KONSTRUK ECOMMERCE SYSTEM Sites. **MERCHANT** shall, at all times, prominently display the KONSTRUK ECOMMERCE Promotional Tools at the KONSTRUK ECOMMERCE SYSTEM Sites in such a way that it is obvious to guests or clients at the KONSTRUK ECOMMERCE SYSTEM Sites that it is an accepted ordering method option for goods and services provided by **MERCHANT**.

(b) Upon **PLATFORM OWNER**'s demand, **MERCHANT** shall pay the **PLATFORM OWNER** a penalty of Php1,000.00 per KONSTRUK ECOMMERCE SYSTEM Site for every instance of any of the following:

- a. Refusal or failure to honor or accept KONSTRUK ECOMMERCE SYSTEM;
- b. Failure to display the KONSTRUK ECOMMERCE Promotional Tools at the display areas assigned by **PLATFORM OWNER**; or
- c. Other similar failures or omissions;

without prejudice to **PLATFORM OWNER**'s exercise of its right to terminate the Agreement in accordance with this Annex or to resort to other remedies that may be available under the law and/or regulations.

4.3 Care for the KONSTRUK ECOMMERCE SYSTEM Tools.

(a) **MERCHANT** shall have full responsibility over the care and security of the KONSTRUK ECOMMERCE SYSTEM Tools. **MERCHANT** shall provide the appropriate space within the KONSTRUK ECOMMERCE SYSTEM Sites for the installation of the necessary KONSTRUK ECOMMERCE Promotional Tools, subject to the design provided by **PLATFORM OWNER**. Also, **MERCHANT** shall, to the extent possible, keep the KONSTRUK ECOMMERCE Promotional Tools safe from theft, loss, destruction, tampering, vandalism, or unauthorized use at all times. **MERCHANT** shall promptly notify **PLATFORM OWNER** of any defect, malfunction, error, or

deterioration of/in the KONSTRUK ECOMMERCE SYSTEM Promotional Tools. In like manner, **MERCHANT** shall report to **PLATFORM OWNER**, within 24 hours from occurrence, the loss, destruction, theft, tampering, vandalism, or unauthorized access of any KONSTRUK ECOMMERCE SYSTEM Promotional Tools.

(b) **MERCHANT** shall accept full responsibility in case it allows other persons (other than its staff or authorized representatives) to use or operate any KONSTRUK ECOMMERCE SYSTEM Tools.

(c) Upon **PLATFORM OWNER**'s demand, **MERCHANT** shall pay **PLATFORM OWNER** a penalty of Php1,000.00 per KONSTRUK ECOMMERCE SYSTEM Site for the re-issuance of any KONSTRUK ECOMMERCE Promotional Tool previously issued to the KONSTRUK ECOMMERCE SYSTEM Site, if the cause for such re-issuance is not attributable to **PLATFORM OWNER**.

(d) Only the **PLATFORM OWNER** or its authorized representatives may install the necessary KONSTRUK ECOMMERCE SYSTEM and Promotional Tools or make the necessary repairs, replacements, or modifications thereto. To this end, **MERCHANT** shall provide **PLATFORM OWNER** or its representatives sufficient and timely access to the premises, so long as any equipment or hardware requires installation, repair, replacement, modification, or maintenance.

4.4 Frontline support and training.

(a) **MERCHANT** shall ensure that the frontline personnel (e.g., cashier, sales representative, supervisor) at each of **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Sites are amply trained on the use of the KONSTRUK ECOMMERCE DASHBOARD and on basic troubleshooting. **MERCHANT** shall also ensure that there are enough frontline personnel at any given time qualified or trained to operate the KONSTRUK ECOMMERCE DASHBOARD. Any transfer of know-how between or among frontline personnel is **MERCHANT**'s responsibility.

(b) To minimize the risk of fraud, **MERCHANT** shall ensure that the same frontline personnel diligently observe KONSTRUK ECOMMERCE SYSTEM processing and procedures such as verifying the correctness or success of transactions through the in-app receipt on the customer's app prior to releasing the purchased products and/or official receipt/s to the customer.

(c) **MERCHANT** shall ensure that any concern regarding use of the KONSTRUK ECOMMERCE SYSTEM Service or, where relevant, of other Services be immediately raised to **PLATFORM OWNER**. Secondary, technical support shall be provided by **PLATFORM OWNER**.

(d) **MERCHANT** shall update **PLATFORM OWNER** with any change in the details of its Contact Person/s named in the Agreement.

4.5 Seasonal promotions. If necessary, **PLATFORM OWNER** shall allow **MERCHANT** (or third parties authorized by **MERCHANT**) to implement seasonal promotional activities within the KONSTRUK ECOMMERCE MOBILE APP & PLATFORM.

4.6 Regularity of business. To enjoy continued use of the KONSTRUK ECOMMERCE SYSTEM Service, **MERCHANT** shall ensure that each KONSTRUK ECOMMERCE SYSTEM Site maintains updated legal and regulatory permits, approvals, or licenses.

4.7 Compliance with laws. **MERCHANT** shall, at all times, adhere to laws and regulations applicable to it and its industry. At the same time, **MERCHANT** shall observe or assist **PLATFORM OWNER** in observing laws and regulations applicable to **PLATFORM OWNER** or the KONSTRUK ECOMMERCE SYSTEM Service (such as those enforced by the Department of Trade & Industry, Department of Information and Communications Technology and the Anti-Money Laundering Council, among others).

5. **COMPLETION OF TRANSACTIONS; TRANSACTION REVERSALS**

- 5.1 Completion of Transactions. Each transaction successfully made using the KONSTRUK ECOMMERCE SYSTEM Service shall be covered by a transaction receipt generated on the mobile app and by the SMS (text) messages (or e-mail messages, as the case may be) received by both the customer and the **MERCHANT**. Independent of such transaction notifications, the **MERCHANT** shall release the purchased goods and/or services and/or the corresponding official receipts to the customer only after it is satisfied that:
- a. the customer payment transaction on the mobile and/or computer app for the goods and services is recognized as successful as proven by the Payment Service Provider and Acquiring Bank; and
 - b. the in-app transaction receipt is received on the customer's mobile and/or computer app

Unless a complaint or proper request for transaction reversal is made, **PLATFORM OWNER** shall assume that all transactions completed at the **MERCHANT**'s KONSTRUK ECOMMERCE SYSTEM Site were subjected to the performance of all these steps, and that by its continued use of the KONSTRUK ECOMMERCE SYSTEM Service, **MERCHANT** assumes all risks that are associated with a confirmed sale obtained through a failed, erroneous, incomplete, or fraudulent KONSTRUK ECOMMERCE SYSTEM transaction.

- 5.2 Transaction Reversals. **PLATFORM OWNER** shall rely on **MERCHANT** for the grounds and processes for handling returns, credits, refunds, and/or purchase cancellations. Any resulting transaction reversal can only be performed by **PLATFORM OWNER** if a request is made by the concerned customer accompanied by an endorsement from the **MERCHANT**'s assigned personnel. Detailed procedures in requesting for and effecting transaction reversals are stated in **ANNEX 4**. **PLATFORM OWNER** reserves the right to claim the full transaction amount from **MERCHANT** for **MERCHANT**'s failure to provide adjustments, charges, or penalties as demanded by **PLATFORM OWNER** or by customer.

- 5.3 (a) As the KONSTRUK ECOMMERCE SYSTEM provider, **PLATFORM OWNER** shall only be responsible for the KONSTRUK ECOMMERCE SYSTEM Service and, to a certain extent, the mobile app & web platform. Any liability arising purely from a customer's use of the KONSTRUK ECOMMERCE MOBILE APP & WEB PLATFORM shall be dealt with under the Terms of Service.

(b) **PLATFORM OWNER** shall not be liable (and will not accept any liability) for the quality of goods and/or services purchased by a customer from the **MERCHANT** using the KONSTRUK ECOMMERCE SYSTEM Service. **MERCHANT** assumes full responsibility for the quality of goods and/or services purchased, returned, exchanged, or questioned by a customer.

(c) Paragraph (b) above notwithstanding, **PLATFORM OWNER** shall cooperate with **MERCHANT** in investigating, reporting, and possibly prosecuting any fraudulent or deceptive scheme caused or perpetrated using the KONSTRUK ECOMMERCE SYSTEM Service.

- 5.4 (a) **PLATFORM OWNER** shall compensate **MERCHANT** for fraudulent or erroneous transactions if it is proven, after investigation, that the fraud or error is caused or assisted by **PLATFORM OWNER** or any of its representatives; provided, however, that **PLATFORM OWNER**'s liability under this paragraph shall only be limited to the FULL TRANSACTION PRICE of the transaction in question. In all other cases, **PLATFORM OWNER** shall not be liable. In any event, the provisions on Transaction Reversal under paragraph 5.2 above and in ANNEX 4 shall be applied.

(b) **PLATFORM OWNER** reserves the right to refuse liability for fraudulent or erroneous transactions if it is proven, after investigation, that the fraud or error is perpetrated by or aided by **MERCHANT** or its personnel or representatives. **MERCHANT** shall be responsible for the actions of its employees/representatives such that **MERCHANT** shall be directly liable for the FULL TRANSACTION PRICE for any fraudulent transaction done in connivance with the employee /representative of **MERCHANT**, without prejudice to any other remedy that **PLATFORM OWNER**

may take against **MERCHANT** and/or its personnel or representatives, and/or the customer concerned.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Intellectual Property Rights

There shall be no transfer of Intellectual Property Rights between the parties under the Agreement. **PLATFORM OWNER** shall exclusively maintain and manage the KONSTRUK ECOMMERCE SYSTEM Service and shall be solely responsible for its design, features, functionalities, and execution. The KONSTRUK ECOMMERCE SYSTEM Service (including related features such as the user portal shall only carry branding, logos, marks, images, content, and other such information (including the "" name, mark, and branding, where applicable) owned by, or registered or copyrighted to, **PLATFORM OWNER**.

Any content displayed or shown in the KONSTRUK ECOMMERCE SYSTEM Service that is registered in the name of or licensed to **MERCHANT** (as in the case of portal co-branding) shall remain the property and responsibility of **MERCHANT**, but for purposes of the Agreement shall be licensed (or sub-licensed) to **PLATFORM OWNER** without any royalty, fee, or charge.

Parties agree that license on use, display, and/or distribution of each other's Intellectual Property Rights are royalty-free. Parties also agree that they will use each other's Intellectual Property according to specified use of policies.

All rights relating to the KONSTRUK ECOMMERCE SYSTEM Service (including related features) which are not expressly granted in the Agreement are reserved to or by **PLATFORM OWNER**.

7. USER AND DATA PRIVACY

7.1 Information of or relating to users gathered through or on the KONSTRUK ECOMMERCE SYSTEM Service (including, without limitation, any information considered "personal information" or "sensitive personal information" under the *Data Privacy Act of 2012*) shall be the exclusive property of **PLATFORM OWNER** and will be dealt with in accordance with **PLATFORM OWNER**'s privacy and security policies, as well as the relevant laws and regulations. For the avoidance of doubt, information of individuals gathered for purposes of opening and/or maintaining accounts shall remain the property of **PLATFORM OWNER**, and subscribers' information relating to mobile accounts likewise remain the responsibility of **PLATFORM OWNER**. Such information will be dealt with in accordance with regulations issued by the Bangko Sentral ng Pilipinas (BSP) and the National Privacy Commission (NPC) and/or the Department of Information and Communications Technology (DICT).

7.2 Under no circumstance shall **PLATFORM OWNER** volunteer, disclose, or share to **MERCHANT** any personal information or sensitive personal information pertaining to users, and in no event shall **PLATFORM OWNER** process such personal information or sensitive personal information on behalf of **MERCHANT**. **MERCHANT** shall exert its own efforts in obtaining any necessary personal information or sensitive personal information from customers who are users. The sharing or disclosure of customer's personal information between **PLATFORM OWNER** and **MERCHANT** in the course of investigations for fraud, error, or transaction reversals, shall be purely incidental to the underlying investigation and shall not be considered a breach of **PLATFORM OWNER**'s or **MERCHANT**'s responsibilities under this Annex.

- 7.3 Above paragraphs notwithstanding, upon **MERCHANT**'s request, **PLATFORM OWNER** may share usage data from the KONSTRUK ECOMMERCE SYSTEM Service that is aggregated and/or anonymized in such a way that individual users cannot be identified or ascertained, such as: (a) total number of customers who use KONSTRUK ECOMMERCE WEB PLATFORM, (b) average purchase amount for KONSTRUK ECOMMERCE WEB PLATFORM and (c) average volume of KONSTRUK ECOMMERCE WEB PLATFORM per month.

8. CONFIDENTIALITY

- 8.1 Each party (the "Receiving Party") agrees not to use or reveal any Confidential Information disclosed to it by the other party (the "Disclosing party"), and not to make any public announcement regarding the Agreement or its subject matter, for any purpose, except with the prior written consent. The Receiving Party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of any Confidential Information in order to prevent it from falling into the public domain or possession of unauthorized persons, which measures shall include at least a reasonable degree of care.
- 8.2 "Confidential Information" means either party's non-public proprietary information which includes, but is not limited to, proposals, negotiation discussions, concessions or 'ex-deals', technical data or know-how, research, plans, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, third party vendors, or other business or technical information which is treated by either party as confidential or is by nature sensitive information intended to be kept strictly between the parties; *BUT* does not include information that: (a) is in the possession of the Receiving Party at the time of the disclosure; (b) becomes part of the public knowledge or literature but not as a result of any breach hereof or inaction by the Receiving Party; (c) is approved by the Disclosing Party, in writing, for release to a third party or to the public; (d) becomes available to the Receiving Party from a third source not bound by any obligation of confidentiality with respect to such information; or (e) was independently developed or prepared by the Receiving Party.
- 8.3 No party shall be in breach of its confidentiality obligations if Confidential Information is disclosed pursuant to a judicial or governmental order or requirement; provided that the Receiving Party only makes such disclosure to the extent required and, prior to making such disclosure, takes all reasonable steps to provide prompt and sufficient notice to the Disclosing Party so that the Disclosing Party may contest and/or limit such disclosure.

9. LIABILITIES AND INDEMNIFICATION

- 9.1 Each party shall indemnify and hold harmless the other party (the "Indemnified Party") for any loss or damage (including any damage to or loss of the KONSTRUK ECOMMERCE SYSTEM Tools and/or KONSTRUK ECOMMERCE SYSTEM Service) arising from or caused by a party's (the "Indemnifying Party") fraud, gross negligence, acts or omissions, willful misconduct, bad faith, or breach of contract in performing (or failing to perform) its obligations under the Agreement, or for any loss or damage arising from the infringement of a third party's intellectual property rights, or for death of or any personal injury suffered by the Indemnified Party's representative in the course of fulfilling his/her principal's responsibilities under the Agreement.
- 9.2 The Indemnifying Party shall fully compensate the Indemnified Party for actual costs incurred by the Indemnified Party in rectifying the damage or loss which it has suffered, and/or in defending itself from any third party relating to such damage, loss, or injury. Apart from such actual costs, neither party shall be liable to the other for any special, incidental, indirect, exemplary, liquidated, moral, nominal, temperate, or consequential damages for whatever cause, including loss of profits or revenues or loss of prospective business advantage, regardless of whether the party had been advised of such damages or whether that liability arises in contract, tort, strict liability, breach of warranty, or otherwise.

- 9.3 Without prejudice to Section 5.3 above, both **PLATFORM OWNER** and the **MERCHANT** shall not be liable (and will not accept any liability) to any third party for any claim, suit, complaint, demand, or other similar situation arising from or occasioned by a customer's abusive, fraudulent, negligent, or improper use of the mobile app, Wallet, or any KONSTRUK ECOMMERCE SYSTEM Tools (including any **PLATFORM OWNER**-issued QR code), or of any product.

The above paragraph notwithstanding, **PLATFORM OWNER** shall cooperate with **MERCHANT** in investigating, reporting, and possibly prosecuting any fraudulent or deceptive scheme caused or perpetrated using the KONSTRUK ECOMMERCE SYSTEM Service.

10. FORCE MAJEURE

- 10.1 Both **PLATFORM OWNER** and **MERCHANT** acknowledge that the KONSTRUK ECOMMERCE SYSTEM Service and/or KONSTRUK ECOMMERCE MOBILE APP & PLATFORM may not be operational 100% of the time and may be interrupted due to various causes, including but not limited to Force Majeure, power and equipment failure, acts or omissions on the part of a third party, or from usage of the KONSTRUK ECOMMERCE SYSTEM Service beyond its known functionalities, limitations, and capabilities.

- 10.2 "Force Majeure" means any event which: (a) could not have been foreseen or which were inevitable and beyond the control of the party invoking it, without any fault or negligence on the part of such party; (b) prevents or materially affects the ability of the invoking party to comply with any of its obligations under this Agreement; and (c) includes, but is not limited to, acts of God, laws, regulations or orders of any government or governmental entity, judgments or orders of any court of competent jurisdiction, acts of war or conditions arising out of or attributable to war (whether declared or undeclared), riots, acts of terrorism, insurrection or rebellion, fire, explosions, earthquake, super typhoon, massive flooding, volcanic eruption, global or local disruption of access to the Internet, widespread or massive power outages, criminal activity, telecommunications service interruptions, unauthorized access to or by theft, alteration, loss or destruction of **MERCHANT**'s applications, data, programs, information, network or systems through accident, fraudulent means or any other method by **MERCHANT**'s users and third parties, or any other analogous event.

- 10.3 A party may not claim the benefit of Force Majeure if the event claimed as Force Majeure occurs as a direct result of the affected party's own action(s) or inaction, or the action(s) or inaction of its affiliates, sub-contractors, or other persons under its control.

11. TERM AND TERMINATION

- 11.1 Term. The Agreement shall be binding between **PLATFORM OWNER** and **MERCHANT** for the Term stated in the Agreement, unless otherwise terminated by either party by sending to the other party written notice of termination at least 45 calendar days prior to the intended effective date. Any renewal, modification, or extension of the Term shall be upon mutual decision of the parties.

- 11.2 Termination. The Agreement may be terminated by either party for whatever reason by sending to the other party written notice of termination at least 45 calendar days prior to the intended effective date. Partial termination may also be agreed upon, where the Agreement will be terminated only with respect to certain KONSTRUK ECOMMERCE SYSTEM Sites (in which case ANNEX 2 shall be updated and re-confirmed by both parties).

- 11.3 Effects of Termination

In case the Agreement is terminated:

- (a) **PLATFORM OWNER** shall have the right to pull out the KONSTRUK ECOMMERCE SYSTEM Tools and/or to disable, block, or suspend the KONSTRUK ECOMMERCE SYSTEM Service and/or other related services (if any);

- (b) Both parties shall cease to use the branding, logos, marks, advertisements, images, content, or other information that are owned by or copyrighted or trademarked to the other party;
- (c) Both parties shall return to the other or destroy (or certify to the destruction) any Confidential Information that they have exchanged, transmitted, gathered, or retained throughout the duration of the Agreement;
- (d) Neither party shall make any negative or adverse public announcements, statements, or admissions with regard to the other party or to the KONSTRUK ECOMMERCE SYSTEM Services; and
- (e) **MERCHANT** shall be responsible for the safekeeping of the KONSTRUK ECOMMERCE SYSTEM Tools from the effective date of the termination until such time that **PLATFORM OWNER** actually collects the KONSTRUK ECOMMERCE SYSTEM Tools (For purposes of the uninstallation, **MERCHANT** shall provide **PLATFORM OWNER** or its representatives access to the premises in the same manner as provided in the section on *HARDHATASIA ECOMMERCE SYSTEM Tools* above).

12. RELATIONSHIP BETWEEN THE PARTIES

The Agreement acknowledges the relationship between **PLATFORM OWNER** and **MERCHANT** as being that of independent contractors to one another. Nothing in the Agreement shall be construed as creating a contract of joint venture, association, partnership, co-ownership, or agency between them. As such, neither party is granted any right or authority to bind, represent, or commit the other with regards to third parties. The Agreement also shall not give rise to any employer-employee relationship between the parties, or between or among their respective employees, agents, or representatives.

13. ASSIGNMENT

Any assignment, transfer, or other disposition of any right or interest under the Agreement (including this and all Annexes) to or in favor of any third party shall be allowed, so long as prior written notice is provided to the other party; and any purported assignment, transfer, or disposition without such prior written notice shall be voidable at the instance of the injured party.

14. APPLICABLE LAW AND DISPUTE RESOLUTION

- 14.1 The Agreement (including this and all Annexes) shall be governed by and construed in accordance with the laws of the Philippines.
- 14.2 The parties shall first attempt to resolve any dispute or issue amicably before resorting to legal action. In the event of any dispute, controversy, or claim arising out of or relating to the Agreement,

such dispute, controversy, or claim shall be settled by arbitration in accordance with the Philippine Dispute Resolution Center, Inc. (PDRCI) Arbitration Rules in force at the time of the commencement of the arbitration. There shall be one arbitrator, and the proceedings shall be conducted in English.

- 14.3 Any other cause of action the exclusive jurisdiction over which is conferred upon the regular courts shall be filed, prosecuted, or enforced exclusively with/through the appropriate court in Taguig City.

[End of Annex]

**ANNEX 1-A
PRE-ON BOARDING REQUIREMENTS**

1. REQUIREMENTS

1.1 For Single Proprietorships

- **MERCHANT** Memorandum of Agreement signed by Authorized Representative
- Copy of Government-Issued ID of Authorized Representative
- Copy of Certificate of Registration Issued by DTI
- Copy of Certificate of Registration Issued by BIR
- Copy of Business Permit Issued by Municipal/ City Hall

1.2 For Partnerships and Corporations

- **MERCHANT** Memorandum of Agreement signed by Authorized Representative
- Copy of Government-Issued ID of Authorized Representative
- Copy of Certificate of Registration Issued by SEC
- Copy of Certificate of Registration Issued by BIR
- Copy of Business Permit Issued by Municipal/ City Hall
- Copy of Partner's Resolution or Notarized Secretary's Certificate of Board Resolution (appointing a representative to sign the agreement with **PLATFORM OWNER**)
- Copy of Valid ID of Corporate Secretary (with Signature)

ANNEX 2
KONSTRUK ECOMMERCE SYSTEM SITES

The **KONSTRUK ECOMMERCE SYSTEM Service** shall run at the following branches/stores owned or operated by **MERCHANT**, without prejudice to any future addition or removal:

Branch / Store	Address

Updated as of [Date]

[End of Annex]

**ANNEX 3
APPLICABLE EPF and SETTLEMENT FACILITIES**

A. Applicable Ecommerce Platform Fee

KONSTRUK ECOMMERCE SYSTEM (HHA ECS)

Period	Applicable Ecommerce Platform Fee (EPF)
Original Term (Year 1 and 2)	50% OFF on standard 8% EPF = 4% of each SUCCESSFULLY TRANSACTED AMOUNT
Original Term (Year 3)	8% of each SUCCESSFULLY TRANSACTED AMOUNT
Succeeding Term beyond the Original Term (Year 4 onwards)	8% of each SUCCESSFULLY TRANSACTED AMOUNT, subject to review on the ninth month of each Term beyond the Original Term

B. Provision for Merchant Discount Rate and/or Payment Transaction Fees

Provision for MDR & Payment Transaction Fees
4.5%

C. Settlement Facilities

KONSTRUK ECOMMERCE SYSTEM transactions made to **MERCHANT** shall be credited to the **MERCHANT**'s bank accounts below:

Settlement Bank / Branch	
Deposit Account Name	
Deposit Account Number	

Updated as of [Date]

[End of Annex]

ANNEX 4 REVERSALS AND REFUNDS FOR KONSTRUK ECOMMERCE SYSTEM SERVICE

In the unlikely event that a reversal or a refund becomes necessary, the following protocols shall be applied.

1. **Reversal due to input error.** Should a customer make a mistake in inputting the amount due to the **MERCHANT**, the FULL AMOUNT shall be credited back to the customer. No partial refunds will be processed at any time for any reason. Customers will be advised to re-transact upon reversal of the transaction.
 - a. Upon onboarding to KONSTRUK ECOMMERCE SYSTEM, **MERCHANT** should nominate a point of contact(POC, for short) who will verify that the reversal request is legitimate. **MERCHANT** is responsible for sharing the POC details such as name and contact number to **PLATFORM OWNER**
 - b. To send a reversal request, **MERCHANT**'s nominated POC for reversals should email **PLATFORM OWNER** via merchantsupport@konstruktech.ph or call 09452161235.
 - c. Details that need to be included in the reversal request are as follows:
 - i. Date of incident
 - ii. Brand and branch name where incident occurred
 - iii. Number of customer
 - iv. Reference number of the transaction to be reversed
 - v. Amount to be reversed
 - vi. Reason for reversal
 - d. In the event that the customer reaches out to **PLATFORM OWNER** to request for a reversal, **PLATFORM OWNER**'s Support team will verify with the **MERCHANT**'s nominated POC for reversal before reversing the transaction.
 - e. Once approved by the nominated POC for reversals, **PLATFORM OWNER**'s Support team will document the approval via email and proceed with reversing the transaction.
 - f. In the event that one party disagrees with the reversal, i.e. customer does not agree or **MERCHANT** does not agree, **PLATFORM OWNER** will inform both of them and recommend that the two parties communicate directly each with other. **PLATFORM OWNER** will not mediate the agreement between the customer and the **MERCHANT**.
 - i. Should an appropriate government agency require the return of funds to the customer, **PLATFORM OWNER** will comply with all legal requirements. **MERCHANT** agrees to hold **PLATFORM OWNER** blameless and free from liability should this situation occur.
2. **Reversal due to technical error.** Should a transaction fail due to technical reasons, i.e. network disconnection, device malfunction, et cetera, **PLATFORM OWNER** will process the reversal of the FULL AMOUNT back to the customer. Customers will be advised to re-transact upon reversal of the transaction.
3. **Verification of identity.** The **MERCHANT** agrees that only specific mobile numbers and/or persons are authorized to request and/or approve reversal and refund requests. These mobile numbers and persons will be submitted to **PLATFORM OWNER** for whitelisting. Should the **MERCHANT** require modification of these persons, they will notify **PLATFORM OWNER** in writing or electronic correspondence, in a timely manner.
4. **PLATFORM OWNER** will adhere when possible to the **MERCHANT**'s refund policies. For example, if there are exceptions to the refund policy, deadlines for refunds, and the like, **PLATFORM OWNER** will honor the **MERCHANT**'s policy.

- a. The above notwithstanding, the conversation regarding what is an acceptable refund will be between the **MERCHANT** and the customer. **PLATFORM OWNER** will not serve as a mediator between the **MERCHANT** and customer.
5. Due to the time-sensitive nature of these transactions and reversals, the **MERCHANT** agrees that electronic channels (SMS, email, chat applications, pictures of hard copy) are acceptable forms of acceptance and agreement in the event of a reversal or refund request. Hardcopy is also acceptable.

Service Level Agreement. **PLATFORM OWNER** commits to process reversals and refunds within forty-eight (48) banking hours of approval by both customer and **MERCHANT**.