

# AG· CYBER MERCHANT AGREEMENT

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DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_

AG·GENESIS SDN BHD  
(COMPANY NO. 627854-K)

AND

AG·CYBER MERCHANT

THIS AGREEMENT is made the

day of

2010

**BETWEEN**

**AG•Genesis Sdn Bhd** (Company No. 627854-K ) a company incorporated in Malaysia and having this business address at Unit No. 40-3, Jalan Metro Pudu, Fraser Business Park, Off Jalan Yew, 55200 Kuala Lumpur (hereinafter referred to as "the Company"), of the one part;-

AND

(2) (a) \_\_\_\_\_ NRIC no \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as the Subscriber')  
of the other part.

(b) \_\_\_\_\_ Registration no \_\_\_\_\_

(trading as \_\_\_\_\_ )

of \_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as the Subscriber')  
of the other part.

(c) \_\_\_\_\_ Company no. \_\_\_\_\_

a company incorporated in Malaysia and having its business address at \_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as the Subscriber')  
of the other part.

**WHEREAS**

A) The Company is involved :-

(a) in the distribution and marketing numerous AG•Cyber Services Products (as hereinafter defined)

(b) and the Company is also currently hosting and providing Multi-media Communication Solution Services Package and AG Genesis wide range of products (hereinafter collectively be referred to as "the Products")

to any individual or body corporate with a personalized login account in order to facilitate and assist the said individual or body corporate and its/his/her customers to buy sell and/or to conduct virtual e-commerce transactions in relation to the Products via the internet (hereinafter referred to as "the AG•Cyber Merchant Programme");

B) The Company has approved the application of the Subscriber to participate in the AG•Cyber Merchant Programme and both the parties herein have agreed to enter into this Agreement subject to the terms and conditions herein contained.

IT IS AGREED as follows:

### **AG•CYBER MERCHANT FEES**

In consideration of a non-refundable sum of Ringgit Malaysia \_\_\_\_\_ (RM \_\_\_\_\_) only (hereinafter referred to as "the AG•Cyber Merchant Fees"), the Company agreed to allow for subscription and the Subscriber subscribed to the AG•Cyber Merchant Programme.

1.2 The Company shall host and provide to the Subscriber with a personalized login account for a period of five (5) years commencing from the date hereof and within 5 years minimum quota of distributor price (DP) RM50,000.00 from the date the Subscriber pays the AG•Cyber Merchant Fees to the Company ("the Initial Period") in order to facilitate and assist the Subscriber and its/his/her customers to buy, sell and/or to conduct virtual e-commerce transactions in relation to the Products via the internet. During the Initial Period, the Company shall be entitled to review the Subscriber's subscription on upon expiry of 5<sup>th</sup> year of the subscription and to impose such terms, conditions and criteria as may be decided by the Company from time to time.

### **2. REBATE OF SALE**

2.1 The subscriber shall be entitled to the following rebates based on business value (BV) of the AG Genesis product :-

- (a) 500-1999BV which is 4% of the BV
- (b) 2000 and above which is 7% of the BV .

The Commission shall be paid on or before 20<sup>th</sup> day of the month provided that the Company shall have first received the all and whatsoever payment for the sales effected by the Subscriber in the proceeding calendar month ("Sales Report").

The Subscriber shall submit the Sales Report every first working day of the subsequent month.

### **3. CONTRACT OF SALE**

3.1 The contract of sale and purchase envisaged herein shall be an absolute contract of sale and purchase between the Company and the Subscriber. Notwithstanding anything herein, all the Products ordered via the Subscriber's personalized login account and paid for by the Subscriber cannot be returned to the Company and all monies paid therefore are non-refundable.

### **4. THE PRICE AND PROMOTIONS**

4.1 The prices of the Products are subject to changes without prior notice.

4.2 The Company shall from time to time offer to the Subscriber promotion and discounts in terms of prices and/or bonus Products.

### **5. MANNER OF PAYMENT FOR THE PRODUCTS**

5.1 The Subscriber shall pay for the Products simultaneously upon placing an order for the same either by the AG•Cyber Merchant Programme's credit card payment portal or by way of cash payment at the Company's premises.

5.2 Partial or staggered payment for the ordered Products is not allowed.

5.3 The payment for the Products ordered shall be deemed to be due and payable notwithstanding that the Subscriber may not have taken delivery of the Products.

### **6. DELIVERY OF THE PRODUCTS**

6.1 Subject to Clauses 10 below, upon the receipt by the Company of the payment for the Products to the Company, the Subscriber shall have the option to collect and take delivery of all the Products from the Company to store and keep the Product for and on behalf of the Subscriber at the Company's premise or premises to be collected by the Subscriber in due course.

(b) The Products are deemed to have been delivered to the Subscriber upon payment thereof (hereinafter referred to as the Delivery Date) whether or not the Subscriber has physical possession of the Products.

## **7. DESCRIPTION**

7.1 Notwithstanding any description of the Products given by the Company, no sale of the Products shall constitute or to be construed to be a sale by description.

## **8. TIME IS OF ESSENCE**

8.1 Time wherever mentioned shall be of the essence of the contract of sale.

## **9. PASSING OF TITLE**

9.1 The property and title to the Products is deemed to have been transferred to the Subscriber upon the Subscriber making payment for the same to the Company and the Products are at the Subscriber risk whether or not delivery has been made.

## **10. DEFECTS**

10.1 The Subscriber shall inspect and/or shall be deemed to have inspected all the Products at the Delivery Date.

10.2 Any defects of the Products shall be notified in writing to the Company within three (3) working days from the Delivery Date, failing which the Company is not liable to replace any of the Products found to be defective after the said three (3) working days period and the Subscriber is deemed to be satisfied with the quality, state and condition of the Products.

10.3 The Subscriber shall return the defective Products to the Company at its own costs and expense for a replacement of the same.

## **11. FORCE MAJEURE**

11.1 The Company shall not be held responsible or liable in any way whatsoever for any losses or damages if the fulfillments of any terms or provisions hereof shall be delayed or prevented by revolutions or other disorders, wars, act of enemies, strikes, fires, floods, acts of God, or without limiting the foregoing, by any other causes not within the control of the Company and which by the exercise of reasonable diligence, the Company is unable to prevent, whether of the class of causes hereinbefore enumerated or not.

## **12. WEB SITE CHARGES**

12.1 After the expiry of the Initial Period, the Company reserves the right to charge the Subscriber and the Subscriber is liable to pay such charges to the Company for the Company to continue to provide and host the web site/homepage for the Subscriber and such charges are to be determined at the sole discretion of the Company and the Company may further impose terms and conditions on the Subscriber which the Subscriber is obliged to comply and adhere.

## **13. TERMINATION**

13.1 This Agreement shall continue so long as it is not terminated.

13.2 Either party herein may at any time give a fourteen (14) days' notice to the other party, notifying the other party of its/his/her intention to terminate this Agreement.

13.3 In event of the Subscriber terminating this Agreement, the Company shall have the right to impose an administrative charge on the Subscriber which the Subscriber shall immediately pay

to the Company and such administrative charge shall be determined by the Company at its sole discretion.

13.4 This Agreement shall terminate:

- (a) Conduct prejudicial  
if the Subscriber engages in any conduct prejudicial to the reputation, marketing and sales of the Products generally;
- (b) Fundamental breach  
the occurrence of any of the following events which are fundamental breaches of this Agreement:
  - (aa) If the Subscriber during the existence of this Agreement sells or distribute any products similar in nature or practically serving the same function and having the same characteristics effects or purpose to the Products supplied and sold by the Company for or with any other party (ies);
  - (bb) If an encumbrance takes possession or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the assets of that other party;
  - (cc) if that other party makes any voluntary arrangement with its creditor or becomes subject to an administration order;
  - (dd) if that party becomes a bankrupt or goes into liquidation, whether compulsory or voluntary.
  - (ee) for avoidance of doubt, in the event this Agreement is terminated, all monies paid by the Subscriber to the Company are not refundable and all the Products purchased by the Subscriber cannot be returned to the Company and the Subscriber must within seven (7) days after the termination of this Agreement, pay all outstanding sums due and owing by the Subscriber to the Company (if any), failing which the Subscriber shall be liable to pay late payment interest to the Company at the rate of 1.5% per month calculated on the total outstanding sum from the date of expiry of the said seven (7) days until the date of actual settlement of the same.

#### 14. WAIVER

14.1 No failure or delay by the Company in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, preclude any further exercise thereof or exercise of any other rights.

#### 15. WARRANTY OF POWER TO ENTER AGREEMENT

15.1 Each of the parties herein warrants its power to enter into this Agreement.

15.2 In the event, the Subscriber is a company incorporated under the Companies Act, 1965, the Subscriber shall simultaneously with the execution of this Agreement forward to the Company the following:

- (a) a certified true copy of the latest Memorandum and Articles of Association of the Subscriber;
- (b) a valid resolution of the board of directors and/or the shareholders of the Subscriber authorizing and approving The Subscriber's application to the Company to participate in the **AG Cyber Merchant** Programme and also to enter into this Agreement upon the terms and conditions herein contained and further authorizing any two (2) Directors of the Subscriber to execute this Agreement and that the authority be given for the common seal or rubber stamp to be affixed on this Agreement in accordance with the Articles of Association of the Subscriber; and

- (c) a certified true copy each of the Forms 24,44 and 49 of The Subscriber.
- (d) a copy of the business registration if it is a partnership or sole proprietorship.

## **16. WHOLE AGREEMENT**

- 16.1 This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and the parties confirm that They have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement
- 16.2 In the event of any discrepancy(les) between the terms and conditions contained in this Agreement and the terms and conditions attached to the application form executed by The Subscriber previously, the terms and conditions of this Agreement shall prevail.

## **17. GOVERNING LAW**

- 17.1 This Agreement shall be governed by the laws of Malaysia and its validity construction and performance shall be interpreted in accordance with Malaysian law. The parties hereto hereby agree to subject to the exclusive jurisdiction of the Malaysian courts for these purposes and for the determination of all actions and proceedings arising out of this Agreement.

## **18. NOTICES**

- 18.1 Any notice, consent or the like (in This clause referred to generally as 'notice') required or permitted to be given under this Agreement shall not be binding unless in writing.
- 18.2 Notice may be given personally or sent to the party to be notified by registered post, sent to its address or number as set out above,
- 18.3 Notice given personally shall be deemed given at the time of delivery.
- 18.4 Notice sent by registered post in accordance within clause shall be deemed given after the expiry of three (3) days following its posting.

## **19. DEFINITIONS**

- 19.1 The Subscriber' shall mean the individual or body corporate registered with the Company under AG•Cyber Merchant Programme;
- 19.2 "the AG•Cyber Merchant Programme" shall mean the web site/homepage programme hosted by the Company for the Subscriber and its/his/her customers to conduct virtual e-commerce transactions in relation to the Products via the internet;
- 19.3 "the Company" shall mean AG•Genesis Sdn Bhd (Company No.627854-K) a company incorporated in Malaysia and having its business address at Suite 1403, 14<sup>th</sup> Floor, Plaza Permata, No 6, Jalan Kampar, 50400 Kuala Lumpur;
- 19.4 "Products" shall mean all the products available for sale by the Company;
- 19.5 "working day" shall be construed as a day (excluding Sunday or public holidays).

## **20. SURVIVAL OF TERMS**

- 20.1 The warranties and/or indemnities contained in this Agreement and the provisions for payment of and accounting in respect of payments and other sums due to the Company under this Agreement shall survive the termination or expiry of this Agreement.

## **21. NO AGENCY**

- 21.1 The Subscriber is not entitled to act as the Company's agent and vice versa and the Company shall not be liable in respect of any representation act or omission of the Subscriber of whatever nature and the Subscriber hereby agree, undertake and covenant with The Company

that the Subscriber shall indemnify and keep the Company indemnified and to hold the Company harmless from and against all actions, claims, demands, proceedings or suits whatsoever instituted or made against, incurred, received, suffered or sustained by the Company and all losses, damages, costs, charges, fees (legal or otherwise) and expenses whatsoever and howsoever arising imposed against or incurred or sustained or suffered by the Company in respect of or arising directly or indirectly out of any representation, act or omission of The Subscriber of whatever nature,

**22. SEVERANCE**

22.1 In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, void able, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality and the remaining provisions of this Agreement shall remain in full force and effect.

**23. CHANGE OF ADDRESS**

23.1 Each of the parties shall give notice to the other of the change or acquisition of any address or telephone, facsimile or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

**24. COSTS**

24.1 The Company shall pay any costs and expenses incurred by it in connection with this Agreement including stamping fees.

**25. CHANGES**

25.1 The company reserves the right to make any changes deemed necessary for the success and well being of the subscriber and the company. All subscribers shall be bound by such future amendments and additions.

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**IN WITNESS WHEREOF** the parties hereto have hereunto set their hands and seals the day and year first above-written.

Signed by the Subscriber  
in the presence of:

: \_\_\_\_\_

(In the event the Subscriber is a company  
Signed, And delivered by the Subscriber)  
in the presence of:

: \_\_\_\_\_  
Director

Signed, and delivered by the Company  
Company in the presence of: **GOH BENG OOI**

: \_\_\_\_\_  
Director