

# Samples Distribution Agreement

**Created by:**

PANDORABOX TECHNOLOGY SDN BHD

# 1. APPLICATION

- 1.1 These terms and conditions ("Terms") are applicable to the Services you have engaged us to provide via or in connection with PANDORABOX, which is operated by PANDORABOX TECHNOLOGY SDN BHD.

# 2. DEFINITIONS

- 2.1 In these Terms unless the context requires otherwise,

"EDM" refers to electronic direct mailer.

"Fees" means the amounts payable by you for the Services.

"Go-Live Date" means the date indicated on a Service Order Form for Advertising Services.

"Management Start Date" means the date indicated on a Service Order Form for Facebook Newsfeed Management Services.

"our website" refers to our website at [pandorabox.com.my](http://pandorabox.com.my) where the PANDORABOX content is uploaded and/or published.

"Product Review" refers to a written review of a product authored by a reviewer

"Sample" refers to a product to be provided by you to us for distribution or review pursuant to the Services set out in a Service Order Form accepted by us.

"Service" refers to the services we provide from time to time and, more particularly, set out in Clause 3.1 below. "Service Order Form" refers to the standard form we use where you may request for Services you require.

"Subscriber" refers to end customers who are registered on our database.

"we", "us" and "our" refer to PANDORABOX TECHNOLOGY SDN BHD, a Malaysia company located at Kampar, Perak.

2.2 Date and time mentioned is using Malaysia's Time (MYT)

### 3. SERVICES

3.1 The Services that we currently provide are as set out below:-

#### **Distribution of Samples**

(a) Distributing your Samples to our Subscribers;

#### **Review Service**

(b) Appointing selected reviewers to review your product and publishing their reviews on our website at your request. You may only select reviewers from a list provided by us;

#### **Advertising Service**

(c) Advertising Services including but not limited to sending EDMs to Subscribers, setting up Google advertisements and advertising banners on our website and/or any other advertising machineries, forum, platform or mode which shall include but not limited to facebook advertisement, Instagram Advertisement, You Tube Advertisement, and any other paid services which requires the service of Marketing Influencer, KOL (Key Opinion Leader) or any live platform such as but not limited to Tik Tok, YouTube Advertisement and bigo

(d) Advertising services shall also be extended to marketplace advertisement which so far applicable and deem to be practical such as but not limited to Shopee and Lazada E-Commerce Market Platforms.

- (e) Notwithstanding with the above clauses, the marketing platforms shall be solely decided by us. You may propose any platform which deem suitable and such proposal will be considered by us.

### **Facebook application and/or page**

- (f) Setting up a Facebook application and/or page for you; and Facebook newsfeed management Service
- (g) Managing your Facebook page in so far as it relates to the Samples you have requested us to distribute.

Our Services will also include such or any other services that we may provide to you from time to time as agreed between us.

- 3.2 You may commission us to perform any or all of the Services subject at all times to these Terms, your execution of a Service Order Form and your payment of any Fees required.
- 3.3 The Services shall be provided from and end on the relevant dates specified on a Service Order Form.

## **4. SPECIFIC TERMS**

### **Distribution of Samples**

- 4.1 You shall:-

- (a) Provide us with Samples by the date specified in the Service Order Form. In the event that the Samples are damaged on delivery to us, we shall be entitled to replacement Samples which shall be delivered to us within fourteen (14) working days upon notification by us to you of the damaged Samples. In the event that replacement Samples are not delivered to us within the above said period, each damaged Sample may be considered a Sample delivered for the purposes of fulfilment of our distribution Services;

- (b) Ensure that the expiry date of the Samples is at least 6 months from the date of delivery of the Samples to us, failing which we shall be entitled to reject such Samples and request for replacement Samples;
- (c) Provide us with clear storage instructions with respect to the Samples. If no storage instructions are provided, we shall be entitled to assume that the Samples do not require special storage; and
- (d) Provide us with specific and clear instructions with respect to the distribution of the Samples. Notwithstanding the foregoing, we may refuse to distribute the Samples according to your instructions at our reasonable discretion. If no instructions with respect to distribution of the Samples are provided to us, we shall be entitled to distribute the Samples as per our standard procedure with regards to that particular product. Once we have confirmed your instructions, we reserve the right to accept or reject any requests for changes to the instructions at our absolute discretion. In the event we accept changes to your instructions, additional fees may apply.

4.2 This Service will also include us setting up a product page on our website in our standard format. We will not accept any requests for changes to this standard format.

4.3 The Samples will be distributed via ordinary mail only.

### **Review Service**

4.4 You acknowledge that a reviewer requires time to write and provide us with a Product Review and you shall provide us with all relevant instructions and Samples at least fifteen (15) working days before the date you require the Product Review to be provided to you.

4.5 Each Product Review represents the relevant reviewer's views and opinions of your Sample and that we will not be responsible for any negative Product Reviews. If you do not want the review to be published, you may instruct us not to do so prior to the scheduled publication date. For the avoidance of doubt, the

Fees for this Service will still be payable in the event you decide not to use or publish the Product Review.

- 4.6 In the event you require us to purchase one or more additional items (a "seeder's kit") on your behalf to accompany a Sample for distribution to a Reviewer, you shall provide us clear and specific instructions with respect to such purchase. In the absence of clear and specific instructions from you, we shall be entitled to make such purchases of the additional items in any manner we deem fit.

### **Advertising Service**

- 4.7 You shall, at least fourteen (14) working days before the starting date for the Service, provide all information, advertising, marketing and promotional material and any other artwork or write-up, that you wish to incorporate in the EDMs, website banners, posters or other advertising material in such form, format or medium as requested by us. We may, in our discretion, refuse to run any advertisement which we deem to be unsuitable. In such an event, your sole remedy and our sole liability is to refund to you the Fees paid by you for the advertisement.
- 4.8 We will revise an advertisement at your request up to a maximum of 3 times. In the event we accept any additional revision requests, additional Fees (to be charged at our prevailing rates) may apply. We will not be responsible for any error or inaccuracy in any materials which have been confirmed by you for use.
- 4.9 You warrant and represent that the content of all advertisements that you provide to us do not infringe a third party's intellectual property rights and complies with all relevant laws and regulations of Malaysia.

### **Setting up Facebook Application and/or Page**

- 4.10 You shall provide us with all necessary information and materials that we require to set up the application or page, including but not limited to the design and mechanics of the application or page, at least five (5) working days before the Go-Live Date. The information and materials that we require will be set out in the Service Order Form. We will inform you, from time to time, in the event any further information or materials are needed and you will provide us with such

information or materials. The design and details of the application or page will be set out in detail in the relevant Service Order Form.

- 4.11 All content will be in English. If you require the content to be uploaded in other languages, additional Fees may apply. All images provided by you for upload on the application or page shall be of high resolution (at least 91 DPI) and in either JPG or PSD format.
- 4.12 Special conditions may apply to this Service as production coding and requirements may vary from application to application. Any special conditions will be set out in further detail in the relevant Service Order Form and may be subject to additional Fees.
- 4.13 Additional costs (to be charged at our prevailing standard rates) may apply in the event you require further changes to be made to the design and/or details of an application or page after the relevant Service Order Form has been executed by you.

#### **Facebook Newsfeed Management Service**

- 4.14 We will start managing your Facebook newsfeed from the Management Start Date set out in the relevant Service Order Form. This includes posting comments, managing contents relating to distribution of Samples and the Facebook application set up by us for you (if applicable), replying to comments posted by third parties and moderating the newsfeed content. We will provide this Service on working days (excluding weekends and public holidays) from 9 a.m. to 6 p.m.
- 4.15 For the avoidance of doubt, this Service does not apply to content or queries that relate to the use of the Sample or customer service and we may request for your assistance in this respect.
- 4.16 When you have appointed us to manage the Facebook newsfeed, you will not upload any comments or replies directly on the newsfeed. If you require any comments or replies to be uploaded on the newsfeed, you will inform us and we will upload the same on your behalf.

- 4.17 You shall provide us with all necessary information, assistance and materials that we require to provide this Service. Such information and materials will be set out in the relevant Service Order Form or requested by us from time to time.
- 4.18 All content we upload will be in English. If you require the content to be uploaded in other languages, additional Fees may apply. All images provided by you for upload shall be of high resolution (at least 91 DPI) and in either JPG or PSD format.

## 5. PAYMENT, FEES AND INVOICES

- 5.1 Our Fees for the Services are as set out in the Service Order Form.
- 5.2 Our Fees reflect not only time spent but also such factors as complexity, urgency, inherent risks, use of techniques, know-how and research together with the level of skills and expertise required of the personnel needed to perform and review these Services. For the avoidance of doubt, these Fees are exclusive of all applicable taxes, duties and other charges. Such taxes, duties and other charges will be borne by you.
- 5.3 You shall pay all undisputed Fees on the payment due date set out in the Service Order Form, failing which you shall pay us interest on the late Fees at the rate of 12% per annum until such time the Fees have been fully paid.
- 5.4 In the event of a dispute with an invoice, you will provide us with all supporting documentation as required by us to substantiate your dispute within thirty (30) days of the date of the invoice. Both of us will use our best efforts to resolve such dispute in good faith.
- 5.5 In the event we are required to make any purchases on your behalf e.g. putting together a seeder's kit or purchasing rights to use a logo owned by a third party, you shall pay us 50% of the cost of such purchases before we make such purchases.



- 5.6 If you are in default of payment of any sum due under these Terms, then in addition and without prejudice to any other remedies we may have available, we may, in our discretion, suspend any and/ or all Services under these Terms.

## 6. GENERAL RESPONSIBILITIES

- 6.1 You shall provide (or cause others to provide) to us promptly, the Samples, advertisements, materials and assistance that we reasonably require to perform the Services. To the best of your knowledge, all information and/or materials provided by you or on your behalf will be accurate and complete in all material respects.
- 6.2 You agree that you will obtain all required licenses and/or approvals from the relevant government authorities with respect to the product's documentation and shall at all time make such documentations available upon request.
- 6.3 We hereby agree that we have all the required licensed and necessary documentation to distribute your samples to our subscriber.

## 7. INTELLECTUAL PROPERTY RIGHTS AND DELIVERABLES

- 7.1 You shall retain ownership of all information, data and materials, and the intellectual property rights in that information, data and materials provided to us. We and/or our affiliates shall retain ownership of all the intellectual property rights in the deliverables we provide to you, and the skills, know-how and methodologies used or acquired by us during the course of providing any Services (including any improvements or knowledge developed by us while performing the Services. We shall use and retain ownership of our own tools, equipment, software and employees, or shall obtain the same from third party licensors and subcontractors, for our performance of the Services.

## 8. CONFIDENTIALITY AND DATA PRIVACY

- 8.1 Both parties shall use all commercially reasonable steps to ensure that any information marked as confidential or proprietary to either party or any other information where the circumstances of disclosure indicates that the information so disclosed is confidential or proprietary (collectively "Confidential Information") shall not be disclosed to third parties without the prior written consent of the other party.
- 8.2 The restrictions on disclosure of Confidential Information described in this clause do not extend to any information that (i) already exists in the public domain at the time of its disclosure or subsequently becomes publicly available; (ii) is already in the receiving party's possession before the application of these Terms; (iii) is lawfully obtained from third parties or (iv) is required to be disclosed pursuant to law or regulation or at the direction of any statutory or regulatory authority or stock exchange.
- 8.3 Each party hereby agrees that it shall not use any Confidential Information for any purpose other than the purposes for which it is intended, pursuant to and in accordance with these Terms.
- 8.4 The Privacy Policy set out on our website applies to personal data collected by us and the manner in which we may use or disclose such data.

## 9. DISCLAIMER AND LIMITATION OF LIABILITY

- 9.1 If our Services do not conform to the requirements set out in a Service Order Form accepted by us, we shall re-perform any non-conforming Services at no additional charge or refund the portion of the Fees paid with respect to such Services.

- 9.2 We disclaim any and all implied warranties, including without limitation, implied warranties of the condition and/or quality, merchantability and fitness for purpose of the Services. In particular, we will not be responsible for any claims by third parties in connection with or arising out of (1) the condition, merchantability and/or fitness for a particular purpose of the Samples; or (2) the consequences of using any Samples including but not limited to physical reactions and allergies due to using such Samples. You shall indemnify and hold us harmless for any such third party claims.
- 9.3 We are not responsible for any third party infringement of your intellectual property rights including but not limited to reproduction of the copyrighted photos or images uploaded on your Facebook application or page.
- 9.4 Notwithstanding with Clause 9.3, we have a duty to inform you of any information which within our knowledge that such third party infringement has taken place provided always that such information is within our knowledge.
- 9.5 Our aggregate liability to you whether in contract (including indemnities), tort (including negligence) or otherwise for any losses arising from or in any way connected with our Services shall not exceed the Fees paid by you to us. In no event shall we or any of our related persons or related corporations be liable for any incidental, special, punitive, or consequential damages of any kind (including, without limitation, potential loss, loss of income, loss of profits or other pecuniary loss).

## 10. WARRANTY

10.1 You warrant that:-

- (a) You have the legal right and capacity to accept these Terms and the performance of your obligations under these Terms do not and will not constitute a breach of any obligation (whether legal, contractual or otherwise) which you have or which you may have to any third party;

- (b) You are not aware of any event, condition, requirement or circumstance which may adversely affect your ability to perform your obligations under these Terms;
- (c) All Samples, advertisements and and/or any other material provided by you hereunder do not infringe upon any intellectual property rights, including but not limited to trade mark, patent, copyright, trade secrets, confidential information or other proprietary right of any third party;
- (d) All Samples, advertisements and/or any other material provided by you hereunder shall be produced, furnished and in all respects provided in conformance with all applicable Malaysia codes, regulations and laws. For the avoidance of doubt, we may refuse to provide a Service where we deem the content or circumstances unsuitable, inappropriate or unlawful; and
- (e) That your personnel accepting these Terms is authorized and fully empowered to accept these Terms on your behalf.

## 11. INDEMNITY

11.1 You will indemnify and hold us, our affiliates and our respective officers, directors, employees and agents harmless with respect to any claims, actions and/or demands (including all costs, charges and expenses arising thereof) resulting from or in connection with:-

- (a) Our use or distribution of any Samples, advertisements, information and/or materials provided by you pursuant to these Terms; and
- (b) Your misuse of any of the content, information or material we provide or that is available on our website.

## 12. THIRD PARTIES

- 12.1 These Terms only create rights enforceable by you and do not create any rights enforceable by any other party. Save as specifically provided or conferred a benefit by these terms, a person who is not a party to these terms shall not be entitled to rely on these terms or claim any rights under the Contracts.

## 13. TERMINATION

- 13.1 We will provide you with a written notice in the event that you are late in paying Fees that are due and payable in accordance with these Terms. For late payment of Fees by the deadline stipulated in such notice, we may terminate any and/or all Services provided to you.
- 13.2 In the event of termination of any and/or all the Services, we shall be entitled to be paid for Services rendered up to the date of any such termination, and for expenses incurred. If advance payments have been made, we may refund the balance of any payments or deposits made after deducting any outstanding sums owing by you to us by reason of this clause.
- 13.3 Each party shall remain responsible for its obligations with respect to actions and events prior to the termination and/or suspension of the Services.
- 13.4 Notwithstanding to the above clause 13, we shall also reserve our right to terminate this agreement should there be a breach of obligations herein this agreement.

## 14. TERMS SUBJECT TO CHANGE

- 14.1 These Terms are subject to change from time to time and any changes will be uploaded onto our website. These changes shall take effect from the date of upload and will apply only to Service Order Forms signed by you after the date of upload. It is your responsibility to check our website for such changes from time to time.

14.2 You hereby agreed that we do not have any obligation to inform you for any updated terms and that you shall check our website from time to time.

## 15. DELIVERY TIME IS AN ESSENCE

15.1 Your compliance with deadlines for delivery is of the essence in these Terms. Our delivery of the Services is dependent on your timely delivery of the required Samples, advertising material and other information required from you and/or your performance of your obligations under these Terms. We will not be responsible for any loss and/or claims that result or arise from your delay in providing these items.

## 16. ENTIRE AGREEMENT AND PRECEDENCE

16.1 These Terms and the relevant Service Order Forms set out the entire agreement between you and us concerning the provision of the Services. Any modifications of or amendments to the Services must be in writing and agreed by you and us. Should any of these Terms be declared void, illegal or otherwise unenforceable, the remainder shall survive unaffected. In the event of any inconsistency between the provisions of these Terms and the Service Order Form, the Service Order Form shall take precedence.

## 17. DISPUTE RESOLUTION

17.1 In the event of any dispute or difference arising out of or in connection with or in relation to these Terms, including any question regarding the existence, validity, application or interpretation of these Terms or any of its provisions, both parties shall use their best endeavours to settle the dispute informally by agreement between the parties. Both parties shall always act in good faith and cooperate with each other to resolve any disputes.

- 17.2 Notwithstanding anything in these Terms, if the dispute is not settled in accordance with clause 17.1 herein, the parties shall use best endeavours to resolve the same through mediation. Any party may serve a notice of Mediation or notification to the corresponding party under this clause of 17.2 for the purposes of mediating and negotiating and/or settling any pending dispute. A party who receives a notice for mediation from the other party shall consent and participate in the mediation process in accordance with this clause. Failure to comply with this clause shall be deemed to be a breach of these Terms and that may subject to termination of this agreement.
- 17.3 Party who has receive the notice of mediation shall respond within seven (7) working days on proposal of time and date of such mediation, negotiation to take place or may accept the time and date proposed by party who has served the notice of mediation provided that always the said party has put in writing such proposal of time and date.
- 17.4 If the parties are unable to resolve the dispute in accordance with clauses 17.1 and 17.2, then subject to the right of either party to apply to a competent jurisdiction in which is Malaysia Jurisdiction.
- 17.5 Parties shall refer any dispute to mediation which is duly recognized under the Malaysian Jurisdiction and/or under the preview of Malaysian Mediation Centre. Parties shall agree that an independent Mediator will be appointed for the purposes of settling a dispute.
- 17.6 Parties hereby agree that such mediation (if so happen) may take place via virtual presence.

## 18. USE OF YOUR NAME

You grant us a non-exclusive license to use your name, trade names, trade marks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof for the purposes of providing the Services and in any of our marketing materials.

## 19. GOVERNING LAW

19.1 Any controversy, dispute or claim of any kind between the parties shall be governed by and interpreted in accordance with the laws of Malaysia.

## 20. FORCE MAJEURE

20.1 Neither party shall be liable for any loss, damage or penalty resulting from delays or failures in performance of their obligations under these Terms if the delay or failure results from events beyond the reasonable control of either party (a "Force Majeure Event").

20.2 For the purposes of these Terms, Force Majeure Events shall include, but are not limited to, acts of God, war, hostility, invasion, act of foreign enemies, rebellion, revolution, riots, civil war, disturbances, requisitioning or other acts of civil or military authority, laws, regulations, acts or orders of any governmental authority, body, agency or official, fires, inclement weather, rain or floods (however caused), strikes, lock-outs or other labour disputes, epidemics, outbreaks, embargoes or other catastrophes affecting the availability of materials or labour necessary for the performance of these Terms. For the avoidance of doubt, the failure to obtain the approval or the withdrawal of approval from the relevant government authorities or other governing bodies shall not be considered a Force Majeure Event and the provisions of this clause shall not apply to such an event.

20.3 Each party shall notify the other party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable.

20.4 If any Force Majeure Event shall continue for a period exceeding one hundred and twenty (120) days, then either party may at any time thereafter, upon giving written notice to the other, elect to terminate the Services.



20.5 In any of the events mentioned in Clause 20.2, the parties shall, for the duration of such event, be relieved of any obligation under these Terms as is affected by the event except that the provisions of these Terms shall remain in force with regard to all other obligations under these Terms which are not affected by the event. You shall not be under any obligation to pay for any Service which you did not receive during the continuation of the Force Majeure Event.

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