

# User Agreement

## Effective 1 April 2021

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### INTRODUCTION

**PLEASE READ THIS USER AGREEMENT AND ALL OTHER AGREEMENTS AND POLICIES REFERENCED HEREIN COLLECTIVELY DEFINED BELOW AS THE "TERMS OF SERVICE" CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS.**

This User Agreement ( "**Agreement**") is a contract between you including the entity or agency that you represents, as the case may be, ("**you**" or "**User**") and TovBan Co., Ltd. ("**TovBan**," "**we**," or "**us**"). You must read, agree to, and accept all of the terms and conditions contained in this Agreement to be a User of our website located at [www.tovban.com](http://www.tovban.com) ("**Site**") or any part of the rest of the Site or the services provided by the Site ("**Site Services**").

Subject to the conditions set forth herein, TovBan may, in its sole discretion, amend this Agreement and the other Terms of Service at any time by posting a revised version on the Site. TovBan will provide reasonable advance notice of any amendment that includes a Substantial Change, by posting the updated Terms of Service on the Site. As the case may be and at TovBan's sole discretion, TovBan may provide notice on modifications of the Terms of Services on the Site, and/or sending you the notice by email. If the Substantial Change includes an increase to fees charged by TovBan ("**Fees**"), TovBan will provide at least 30 days' advance notice of the change, but may not provide any advance notice for changes resulting in a reduction in Fees or any temporary or promotional Fee change. Any revisions of the Terms of Service will take effect on the date of its publication on the Site ( "**Effective Date**"), which is located at the top of this Agreement

YOU UNDERSTAND THAT BY USING THE SITE OR SITE SERVICES AFTER THE EFFECTIVE DATE, YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE, INCLUDING THE DISPUTE RESOLUTION PROVISION IN SECTION 14 OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS OF SERVICE IN ITS ENTIRETY, YOU MUST NOT ACCESS OR USE THE SITE OR THE SITE SERVICES AFTER THE EFFECTIVE DATE EXCEPT AS PERMITTED BY THE SITE TERMS OF USE AS PROVIDED IN SECTION 1.

IF YOU AGREE TO THE TERMS OF SERVICE ON BEHALF OF AN ENTITY OR AGENCY, OR IN CONNECTION WITH PROVIDING OR RECEIVING SERVICES ON BEHALF OF AN ENTITY OR AGENCY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE FULL AUTHORITY TO BIND THAT ENTITY OR AGENCY TO THE TERMS OF SERVICE AND IN SUCH CASE YOU, THAT ENTITY OR AGENCY ARE BOUND TO THE TERMS OF SERVICE.

### 1. TERMS OF USE INTRODUCTION

The TovBan Site Terms of Use describe when and the conditions under which you are allowed to access or use the Site (defined in Section 5 below). Please read these Site Terms of Use carefully before visiting our Site. Some visitors to our Site simply visit the publicly available portions of our Site or use the **Public Site Services** (defined in Section 5 below). If you do not agree to these Site Terms of Use, you may not visit, use, or access the Site or Site Services, or otherwise and may not click to accept the Terms of Service when prompted on the Site.

## **2. LICENSES AND THIRD-PARTY CONTENT**

### **2.1 TOVBAN'S PROVISION OF THE SITE AND LIMITED SITE LICENSE**

*Section 2.1 discusses the rights we give to you to allow you to use the Site, as detailed below:*

As we describe in this Section 2.1, TovBan grants you a limited license to access the Site and Site Services. This license is subject to and conditioned on compliance with the Site Terms of Use and, to the extent applicable, the rest of the Terms of Service.

We try to keep our Site and the Site Services safe, secure, and functioning properly, but we cannot guarantee the continuous operation of or access to our Services at all time or on all hardware and devices. In fact, we might even stop providing certain or all features of the Site or Site Services completely without prior notice.

### **2.2 TERMINATION OF THE LIMITED SITE LICENSE**

*Section 2.2 explains that we can stop allowing you to use the Site, as detailed below:*

TovBan may terminate any license it has granted to any User to access the Site and Site Services without prior notice.

### **2.3 TOVBAN'S INTELLECTUAL PROPERTY**

*Section 2.3 explains that even though we let you use the Site, we still retain all our rights, as detailed below:*

TovBan, our licensors and Affiliates retain all rights including Intellectual Property Rights, title, and interest in and to all contents created TovBan, our licensors or Affiliates. The TovBan logos and names are trademarks of TovBan and are registered in the jurisdiction of the Kingdom of Cambodia. All other product names, company names, marks, logos, and symbols on the Site or Site Services may be the trademarks of their respective owners.

Nothing in the Terms of Service grants you any right to use any of TovBan's Intellectual Property . You must obtain our written consent to use, modify, create derivative works of, decompile or extract source code or content subject to our Intellectual Property Rights from us,

### **2.4 YOUR INTELLECTUAL PROPERTY**

#### **2.4.1 YOUR OBLIGATIONS AND YOUR INDEMNIFICATION OF TOVBAN**

*Section 2.4.1 explains that you are solely responsible for your use of the Site and any content you post on the Site, and that if someone makes a claim against TovBan because of your content that you will pay TovBan for our fees and expenses, as detailed below:*

When you post User Content on the Site or through the Site Services or provide TovBan with User Content, you understand and acknowledge that you are solely responsible for such User Content. Further, you represent and warrant that you have the right, power, and authority to (a) post that User Content without violating the rights of third parties, and (b) grant the licenses specified in Section 2.4.2 below.

You acknowledge and agree that the poster of User Content, and not TovBan, is responsible for any User Content including any harms caused to you, another User, or a third party by such User Content.

You will indemnify, defend, and hold harmless TovBan, our Affiliates, and our respective directors, officers, employees, representatives, and agents (each an “**Indemnified Party**”) from any and all claims, damages, liabilities, costs, losses, and expenses (including, but not limited to, reasonable attorneys’ fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by you or a third party or other User against an Indemnified Party relating to or arising out of any User Content you post.

#### **2.4.2 YOUR RIGHTS AND LICENSE TO TOVBAN AND OTHER SITE VISITORS**

*Section 2.4.2 explains that by posting content on the Site, you give others certain limited rights to that content, as detailed below:*

You retain all ownership rights in any User Content you post on TovBan. You grant TovBan and our successors, Affiliates and Users a royalty-free, sub-licensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media, or technology, whether now known or hereafter developed, for use in connection with the Site and businesses and Services of TovBan, our successors and Affiliates, including, without limitation, for promoting and redistributing parts or all of the Site (and derivative works thereof) in any media formats and through any media channels.

#### **2.4.3 YOUR COMMENTS AND IDEAS**

*Section 2.4.3 explains when you can and what happens if you send your ideas to TovBan, as detailed below:*

You may submit comments or ideas about the Site and Site Services, including without limitation about how to improve the Site or Site Services (collectively, “**Ideas**”). By submitting any Ideas, you agree that: (a) your disclosure is voluntary, gratuitous, unsolicited, and without restriction and will not place TovBan under any fiduciary or other obligation, (b) your Ideas do not contain any confidential or proprietary information of third parties, and (c) you grant us a perpetual, royalty-free, irrevocable, non-exclusive,

worldwide license to use the Ideas without any additional compensation to you and to disclose the Ideas on a non-confidential basis or otherwise to anyone. You further acknowledge and agree that, TovBan's acceptance to use your Ideas does not waive any rights to use similar, related or any other ideas, including those known or developed by TovBan or obtained from sources other than you.

## **2.5 THIRD-PARTY INTELLECTUAL PROPERTY**

*Section 2.5 explains that third parties, including other Users, are responsible for content posted or linked on the Site, as detailed below:*

Any information or content expressed or made available by a third party or any other User is that of the respective author(s) or distributor(s) and not of TovBan. TovBan neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information, or statement made on the Site by anyone other than TovBan's authorized agents acting in their official capacities.

The Site may contain links to third-party websites. The Site may also contain applications that allow you to access third-party websites via the Site. Such third-party websites or applications are owned and operated by the third parties and/or their licensors. The inclusion of any link or application on the Site does not imply that we endorse the linked site or application. You use the links and third-party websites at your own risk and agree that your use of an application or third-party website accessed via the Site is on an "as is" and "as available" basis without any warranty for any purpose.

## **2.6 COMPLAINTS ABOUT COPYRIGHTED CONTENT ON THE SITE**

*Section 2.6 explains what to do if you think content on the Site infringes your rights, as detailed below:*

TovBan is committed to complying with Cambodia's Law on Copyright and Related Rights and other laws and regulations relating to intellectual property rights. Therefore, we require all Users to comply with these laws. Accordingly, you may not use the Site to store any material or content, or disseminate any material or content, in any manner that constitutes an infringement of any third party's intellectual property rights.

## **3. PERMITTED SITE USES**

*Section 3 explains how you are allowed to use the Site, as detailed below:*

TovBan offers the Site and Site Services for your business, personal, household, or consumer use. TovBan makes the Site and Site Services available for Users to find one another, enter into service relationships, make and receive payments through Settlement Account, and receive and provide Freelancer Services. In addition, certain Public Site Services, such as the TovBan Blog provide, and may be used to obtain, general information and articles that we believe may be of interest to Users. While we try to ensure that any information we post is both timely and accurate, errors may appear from time to

time. We do not make any representations or warranties with respect to any information that is posted on the Site by us or anyone else. In no event should any content be relied on or construed as tax or legal advice or otherwise. You should independently verify the accuracy of any content with the qualified professionals.

## **4. PROHIBITED SITE USES**

*Section 4 explains uses of the Site that are not allowed, as detailed below:*

You may not use, or encourage, promote, facilitate, instruct or induce others to use, the Site or Site Services for any activities that violate any law, statute, ordinance or regulation; for any other illegal or fraudulent purpose or any purpose that is harmful to others; or to transmit, store, display, distribute or otherwise make available content that is illegal, fraudulent or harmful to others.

### **4.1 EXAMPLES OF PROHIBITED USES OF THE SITE**

The following are examples of uses that are prohibited on the Site or when using the Site Services:

- Seeking, offering, promoting, or endorsing and services, content, or activities that:
  - are unethical, defamatory, illegal, profane, vulgar, threatening, violent, unlawfully discriminatory, illegal, pornographic, obscene, or sexually explicit in nature;
  - would violate the intellectual property rights, such as and including copyrights, of another person, entity, service, product, or website;
  - would violate (a) TovBan's Terms of Service and Privacy Policy, (b) the terms of service of another website or any similar contractual obligations, or (c) the academic policies of any educational institution;
  - is regarded as the creation, publication, or distribution of "fake news", "hoax news", Deep Fake content or similar content, which is, in TovBan's sole discretion, determined to be intended to mislead recipients for personal, financial, political or other gain or advantage;
  - regard or promote in any way any escort services, prostitution, or sexual acts; or
  - are harassing toward another person based on the person's inclusion in a protected class as defined by Cambodian laws;
- Fraudulent or misleading uses or content, including:
  - fraudulently billing or attempting to fraudulently bill any Client, including by (i) falsifying or manipulating or attempting to falsify or manipulate the hours, keystrokes, or mouse clicks recorded in the TovBan App, (ii) reporting, recording, or otherwise billing Clients for time that was not actually worked, or (iii) reporting, recording, or otherwise billing hours worked by another person as hours worked by you in a way that is misleading or false;
  - misrepresenting your experience, skills, or information, including by representing another person's profile, or parts of another person's profile, as your own;

- using a profile photo that misrepresents your identity or represents you as someone else;
- impersonating any person or entity, including, but not limited to, an TovBan representative, forum leader, or falsely stating or otherwise misrepresenting your affiliation with a person or entity;
- falsely stating or implying a relationship with another User;
- falsely attributing statements to any TovBan representative, forum leader, guide or host;
- falsely stating or implying a relationship with TovBan or with another company with whom you do not have a relationship;
- allowing another person to use your account, which is misleading to other Users; or
- falsely stating that one Freelancer will perform the work on a job when another will in fact perform the work, including submitting a proposal on behalf of a Freelancer that is unable, unwilling, or unavailable to do the work;
- Expressing an unlawful preference in a job post or proposal or otherwise unlawfully discriminating on a protected basis;
- Posting personally identifiable information concerning another person in breach of his/her privacy;
- Spamming other Users with proposals or invitations, including by making unsolicited contact of Users off the TovBan platform, or by posting the same job multiple times so that more than one version remains active at a given time;
- Making or demanding bribes or other payments without the intention of providing services in exchange for the payment;
- Requesting or demanding free services, including requesting Freelancers to submit work as part of the proposal process for very little or no money or posting contests in which Freelancers submit work with no or very little pay, and only the winning submission is paid the full amount;
- Requesting a fee before allowing a User to submit a proposal;
- Attempting to or actually manipulating or misusing the feedback system, including by:
  - withholding payment or Work Product or engaging in any other conduct for the purpose of obtaining positive feedback from another User;
  - attempting to coerce another User by threatening to give negative feedback;
  - expressing views unrelated to the work, such as political, religious, or social commentary, in the feedback system;
  - providing anything of value to any person (including to a third-party who provides assistance in obtaining feedback) or using any service of any type in order to obtain feedback; or
  - offering services for the sole purpose of obtaining positive feedback of any kind;
- Duplicating or sharing accounts registered with TovBan;
- Selling, trading, or giving an account of TovBan to another person without TovBan's consent;

- Sharing or soliciting Means of Direct Contact with or from another User either directly through messages or by including Means of Direct Contact in a job post, profile, proposal or other User Content prior to entering into a Service Contract with such User;
- Directly or indirectly, advertising or promoting another website, product, or service or soliciting other Users for other websites, products, or services, including advertising on TovBan to recruit Freelancers and/or Clients to join an Agency or another website or company;
- Interfering or attempting to interfere with the proper operation of the Site or Site Services or any activities conducted on the Site, including by:
  - bypassing any measures we may use to prevent or restrict access to the Site or any subparts of the Site, including, without limitation, features that prevent or restrict use or copying of any content or enforce limitations on use of the Site or the content therein;
  - attempting to interfere with or compromise the system integrity or security or decipher any transmissions to or from the servers running the Site;
  - using any robot, spider, scraper, or other automated means to access the Site for any purpose without our express written permission;
  - attempting to or interfering with or compromising the system integrity or security or deciphering any transmissions to or from the servers running the Site;
  - collecting or harvesting any personally identifiable information, including account names, from the Site;
  - attempting to or imposing an unreasonable or disproportionately large load (as determined in TovBan's sole discretion) on the Site's infrastructure; introducing any invalid data, virus, worm, or other harmful or malicious software code, agent, hidden procedure, routine, or mechanism through or to the Site that is designed to or known to cause to cease functioning, disrupt, disable, harm, or otherwise impair in any manner, including aesthetic disruptions or distortions, the operation of (or to allow you or any other person to access or damage or corrupt data, storage media, programs, equipment, or communications or otherwise interfere with operations of or on) the Site or any software, firmware, hardware, computer system, or network of TovBan or any third party;
  - accessing or attempting to access the Site or Site Services by any means or technology other than the interface provided; or
  - framing or linking to the Site or Site Services except as permitted in writing by TovBan.
- Conducts or actions that could jeopardize the integrity of or circumvent the Site, Site Services or TovBan's proprietary information, including:
  - attempting to or actually reverse engineering, modifying, adapting, translating, preparing derivative works from, decompiling, interfering with the operation of, or otherwise attempting to derive source code from any part of the Site or Site Services unless expressly permitted by Cambodian laws or TovBan; or
  - accessing or using the Site or Site Services to build a similar service or application, identifying or soliciting TovBan Users, or publishing any performance or any benchmark test or analysis relating to the Site.

## 4.2 ENFORCEMENT

We reserve the right, but do not assume the obligation, to investigate any potential violation of this Section 4 or any other potential violation of these Site Terms of Use and to remove, disable access to, or modify any content on the Site. We do not guarantee we will take an action against all breaches of these Terms of Use or the User Agreement. Therefore, our failure to act with respect to a breach by you or others does not waive our right to act with respect to the said breaches.

## 4.3 REPORTING AND CORRECTING VIOLATIONS

If you become aware of any violation of these Site Terms or Use, you must immediately report it to our Customer Service. You agree to assist us with any investigation we undertake and to take any remedial steps we require in order to correct a violation of these Site Terms of Use.

## 5. DEFINITIONS

*Section 5 gives you some definitions of capitalized terms that appear in the Site Terms of Use but other capitalized terms are defined above or in this Agreement, which you can tell because the term is put in quotation marks and bold font.*

Capitalized terms not defined below have the meanings described in the Terms of Service.

“**Affiliate**” means any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with TovBan.

“**Agency**” means a person or entity providing a business, service or acting on behalf of another person or entity.

“**Client**” means any authorized User utilizing the Site to seek and/or obtain Freelancer Services from another User.

“**Customer Service**” means offline and online services provided by TovBan to answer Client’s questions regarding the Services including but not limited to payment, use of TovBan platform, technical assistance, or other administrative and commercial issues arising out of or in relation to the Services.

“**Deep Fake**” means media that is altered in order to replace a person in an existing image or video with someone else’s likeness in a realistic manner without permission or authorization of the person whose likeness is used.

“**Freelancer**” means any authorized User utilizing the Site to advertise and/or provide Freelancer Services to Clients. A Freelancer is a customer of TovBan with respect to use of the Site and Site services.

“**Freelancer Services**” means any services provided by Freelancers.



**“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

**“Means of Direct Contract”** has the meaning set forth in Section 7.2 of this Agreement.

**“Privacy Policy”** means the privacy policy, that may be amended from time to time, as posted on TovBan Site.

**“Public Site Services”** means, collectively, all services, applications and products that are accessible by any Site User regardless of whether or not such Site User has registered with or been using the Services of TovBan.

**“Site”** means, collectively, our website located at [www.tovban.com](http://www.tovban.com), all affiliated websites and applications, including mobile websites and TovBan Mobile Applications, owned and operated by us, our predecessors or successors in interest, or our Affiliates.

**“Site Services”** means, collectively, all services (except the Freelancer Services defined herein), applications and products that are accessible through the Site, including the Public Site Services, and all TovBan Mobile Applications.

**“Settlement Account”** means an account created by TovBan for settlement of payment upon the conclusion of the Service Contract.

**“TovBan Mobile Applications”** means all mobile applications published by TovBan or our Affiliates for access to or use of the Site or any Site Services.

**“User”** means both Clients, Freelancers, or any public users of the Site.

**“User Content”** means any comments, remarks, data, feedback, content, text, photographs, images, video, music, or other information that you or any User post to any part of the Site or provide to TovBan, including such information that is posted as a result of questions.

**“Work Product”** has the meaning set forth in Section 11 of the Service Contract.

## **1. TOVBAN ACCOUNTS**

*Section 1 discusses what you must agree to before using the Site or Site Services and the different types of accounts that can be created on the Site, as detailed below.*

### **1.1 REGISTRATION AND ACCEPTANCE**

By registering for an account to use the Site or Site Services (“**Account**”), by using the Site or Site Services after the Effective Date if you already had an Account, or by clicking to accept the Terms of Service when prompted on the Site, you agree to abide by this Agreement and the Terms of Service therein.

To access and use certain portions of the Site and the Site Services, you must register for an Account. Subject to the Site Terms of Use, certain portions of the Site are available to public Site Users. TovBan reserves the right to decline a registration to join TovBan or to add an Account of any type (i.e., as a Client or Freelancer), for any legitimate reason, including supply and demand, cost to maintain data, or other business considerations.

Your privacy is important to TovBan and your information will be handled in accordance with our Privacy Policy

## **1.2 ACCOUNT ELIGIBILITY**

TovBan offers the Site and Site Services for your business purposes, personal, household, and consumer use. By registering for an Account to use the Site and Site Services, you must, and hereby warrant that you

: (a) are an employee or agent of and authorized to act for and bind an independent business (whether it be a self-employed individual/sole proprietor or a corporation, limited liability company, or any other entity); (b) will use the Site and Site Services for lawful business purposes only; (c) will comply with any licensing, registration, or other requirements with respect to your business, or the business for which you are acting, and the provision of Freelancer Services; (d) have the legal capacity to enter into this Agreement including the Terms of Service; and (e) have not been prohibited from using the Services.

## **1.3 ACCOUNT PROFILE**

To register for an Account to join the Site, you must complete a User profile (“**Profile**”), which you consent to be shown to other Users and, unless you change your privacy settings, to be shown to the public. You agree to provide true, accurate, and complete information on your Profile and all registration and other forms you access on the Site or provide to us and to update your information to maintain its truthfulness, accuracy, and completeness. You agree not to provide any false or misleading information about your identity or location, your business, your skills, or the services your business provides and to correct any such information that is or becomes false or misleading.

## **1.4 ACCOUNT TYPES**

As described in this Section, there are a number of different Account types. Once you register for one Account type, you can add other Account types under the same username and password. For example, if you already have a Freelancer Account, you can add a Client Account as a separate account type in settings without re-registration. You agree not to have or register for more than one Account without written permission from us. We reserve the right to revoke the privileges of the Account or access to or use of the Site or Site Services, and those of any and all linked Accounts without warning if, in our sole discretion, false or misleading information has been provided in creating, marketing, or maintaining your Profile or Account.

### **1.4.1 CLIENT ACCOUNT**

You can register for an Account or add an Account type to use the Site and Site Services as a Client (a “**Client Account**”).

## **1.4.2 FREELANCER ACCOUNT**

You can register for an Account or add an Account type to use the Site and Site Services as a Freelancer (a “**Freelancer Account**”).

## **1.5 ACCOUNT PERMISSIONS**

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorized employee or agent may create an Account on behalf of your business. By granting other Users permissions under your Account, you represent and warrant that: (a) such User is authorized to act on your behalf; and (b) you are fully responsible and liable for the User’s acts and omissions, including for obligations and liabilities relating to making payments and entering into Service Contracts and the Terms of Service. If any such User violates the Terms of Service, it may affect your ability to use the Site and Site Services. Upon closure of an Account, TovBan may close any or all related Accounts.

## **1.6 IDENTITY AND LOCATION VERIFICATION**

When you register for a Freelancer Account, you will be required to provide official legal documentation certifying your identity (National Identity Card or Passport). From time to time thereafter, your Account will be subject to verification, including, but not limited to, validation against third-party databases or the verification of one or more official government or legal documents that confirm your identity, your location, and your ability to act on behalf of your business on TovBan. You authorize TovBan, directly or through third parties, to make any inquiries necessary to validate your identity, your location, and confirm your ownership of your email address or financial accounts, subject to Cambodian laws. When requested, you must timely provide us with complete information about yourself and your business, which includes, but is not limited to, providing official government or legal documents. During verification some Account features may be temporarily limited. When a verification is successfully completed, Account features will be restored.

## **1.7 USERNAMES AND PASSWORDS**

Each person who uses the Site must register for his/her own Account. You are responsible for all activities that arise under your Account.

When you register for an Account, you will be asked to choose a username and password for the Account. You are entirely responsible for safeguarding and maintaining the confidentiality of your username and password. You agree not to share your username or password with any person. You authorize TovBan to assume that any person using the Site with your username and password, either is you or is authorized to act for you. You agree to notify us immediately if you suspect or become aware of any unauthorized use of your Account or any unauthorized access to the password for any of your Accounts. You further agree not to use the Account or log in with the username and password of another User of the Site if (a) you have not obtained necessary authorization or (b) the use would violate the Terms of Service.

## 2. PURPOSE OF TOVBAN

*Section 2 discusses what TovBan does and does not do when providing the Site and Site Services and some of your responsibilities when using the Site to find or enter into a Service Contract with a Freelancer or Client, as detailed below.*

The Site is a marketplace where Clients and Freelancers can identify each other and advertise, buy, and sell Freelancer Services online. Subject to the Terms of Service, TovBan provides the Site Services to Users, including hosting and maintaining the Site, facilitating the formation of Service Contracts, and assisting Users in resolving disputes which may arise from or in connection with those Service Contracts. When a User enters a Service Contract, the User uses the Site to invoice and pay any amount owed under the Service Contract.

### 2.1 RELATIONSHIP WITH TOVBAN

TovBan merely makes the Site and Site Services available to enable Freelancers and Clients to find and transact directly with each other. TovBan may does not introduce recommend Freelancers to Clients, find Projects for Freelancers, or find Freelancers for Clients. Through the Site and Site Services, Freelancers may be notified of Clients that may be seeking the services they offer, and Clients may be notified of Freelancers that may offer the services they seek; at all times, however, Users are responsible for evaluating and determining the suitability of any Project, Client or Freelancer on their own. If Users decide to enter into a Service Contract, the Service Contract is directly concluded between the Users, and TovBan shall not become a party to that Service Contract.

You acknowledge, agree, and understand that TovBan is not a party to the relationship or any dealings between Client and Freelancer. Without limitation, Users are solely responsible for:

- (a) ensuring the accuracy and legality of any User Content;
- (b) determining the suitability of other Users for a Service Contract (such as any interviews, vetting, background checks, or similar actions);
- (c) negotiating, agreeing to, and executing any terms or conditions of Service Contracts;
- (d) performing Freelancer Services; and/or
- (e) paying for Freelancer Services.

You further acknowledge, agree, and understand that you are solely responsible for assessing whether to enter into a Service Contract with another User and for verifying any information about another User. TovBan does not:

- (a) make any representations about or guarantee the truth or accuracy of any Freelancer's or Client's listings or other User Content on the Site;
- (b) verify any feedback or information provided by Users about Freelancers or Clients; and
- (c) perform background checks on or guarantee the work of Freelancers or payment by Clients.

You acknowledge, agree, and understand that TovBan does not, in any way, supervise, direct, control, or evaluate Freelancers or their work and is not responsible for any Project, Project terms or Work Product.

TovBan makes no representation about and does not guarantee, and you agree not to hold TovBan responsible for:

- (a) the quality, safety, or legality of Freelancer Services;
- (b) the qualifications, background, or identities of Users;
- (c) the ability and qualifications of Freelancers to deliver Freelancer Services;
- (d) the ability of Clients to pay for Freelancer Services;
- (e) User Content and statements or posts made by Users;
- (f) the ability or willingness of a Client or Freelancer to actually complete a transaction; or
- (g) any breach or dispute arising from or in connection with Service Contracts.

While TovBan may provide certain indicators such as badges, reviews and ratings, on Freelancer or Client profiles, such indicators are not a guarantee or warranty of quality or ability or willingness of the Freelancer or Client to complete a Service Contract and is not a guarantee of any kind, including, the quality of Freelancer Services or Client Project.

You also acknowledge, agree, and understand that Freelancers are solely responsible for determining, and have the sole right and power to determine, which Projects to accept; the time, place, manner, and means of providing any Freelancer Services; the type of services they provide; and the price they charge for their services or how that pricing is determined or set.

You further acknowledge, agree, and understand that:

- (a) you are not an employee, partner, agent or legal representative of TovBan;
- (b) TovBan will not have any liability or obligations under or related to Service Contracts, Freelancer Services, or any acts or omissions committed by you or other Users;
- (c) TovBan does not, in any way, supervise, direct, or control any Freelancer or Freelancer Services; does not impose quality standards or a deadline for completion of any Freelancer Services; and does not dictate the performance, methods or process Freelancer uses to perform services;
- (d) Freelancer is free to determine when and if to perform Freelancer Services, including the days worked and time periods of work, and TovBan does not set or have any control over Freelancer's pricing, work hours, work schedules, or work location, nor is TovBan involved in any other way in determining the nature and amount of any compensation that may be charged by or paid to Freelancer for a Project;
- (e) Freelancer will be paid at such times and amounts as agreed with a Client in a given Service Contract, and TovBan does not, in any way, provide or guarantee Freelancer a regular salary or any minimum, regular payment;
- (f) TovBan does not provide Freelancers with training or any equipment, labor, tools, or materials related to any Service Contract;
- (g) TovBan does not provide the premises at which Freelancers will perform the work. Freelancers are free to use subcontractors or employees to perform Freelancer Services and may delegate work on fixed-price contracts for Freelancer's subcontractor(s) or employee(s) in accordance with the terms of the Service Contracts; and
- (h) TovBan does not provide shipping services for any physical Work Product.

If a Freelancer uses subcontractors or employees, Freelancer further agrees and acknowledges that this Section applies to TovBan's relationship, if any, with Freelancer's subcontractors and employees as well and Freelancer is solely responsible for all activities of Freelancer's subcontractors and employees.

Nothing in this Agreement is intended to prohibit or discourage (nor should be construed as prohibiting or discouraging) any User from engaging in any other business activities or providing any services through any other channels they choose, provided, if applicable, Users comply with the Opt Out provisions described in Section 7 of this Agreement. Users are free at all times to engage in such other business activities and services and are encouraged to do so.

## 2.2 TAXES AND LIABILITIES

Freelancer acknowledges and agrees that Freelancer is solely responsible (a) for all tax liability associated with payments received from Freelancer's Clients and through TovBan including but not limited to Value Added Tax (VAT), Withholding Tax (WHT), and Tax on Income (TOI), and that TovBan will not withhold any taxes from payments to Freelancer; (b) for all expenses incurred under or in connection with the performance and delivery of the Services under this Service Contract; (c) to obtain at Freelancer's own costs any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by Cambodian laws or the competent law of the jurisdiction where Freelancer provides the Services; (d) for issuing any particular invoices required by Client or Cambodian laws. In the event of an audit of TovBan, Freelancer agrees to promptly cooperate with TovBan and provide copies of Freelancer's tax returns and other documents as may be reasonably requested for purposes of such audit, including but not limited to records showing Freelancer's engagement as an independent business.

## 2.3 MARKETPLACE FEEDBACK AND USER CONTENT

**You hereby acknowledge and agree that Users publish and request TovBan to publish on their behalf information on the Site about the User, such as feedback, composite feedback, geographical location, or verification of identity or credentials. However, such information is based solely on unverified data that Freelancers or Clients voluntarily submit to TovBan and does not constitute and will not be construed as an introduction, endorsement, or recommendation by TovBan. TovBan provides such information solely for the convenience of Users.**

You acknowledge and agree that User feedback benefits the marketplace, all Users, and the efficiency of the Site and you specifically request that TovBan post composite or compiled feedback about Users, including yourself, on User Profiles and elsewhere on the Site. You acknowledge and agree that feedback results for you, wherever referenced, and other User Content highlighted by TovBan on the Site or otherwise ("**Composite Information**"), if any, may include User comments, User ratings, indicators of User satisfaction, and other feedback left exclusively by other Users. You further acknowledge and agree that TovBan will make Composite Information available to other Users, including composite or compiled feedback. TovBan provides its feedback system as a means through which Users can share their opinions of other Users publicly, and TovBan does not monitor, influence, contribute to or censor these opinions. You acknowledge and agree that posted composite or compiled feedback and any other Composite Information relates only to the business advertised in the Profile and not to any individual person. You agree not to use the Composite Information to make any employment, credit, credit valuation, underwriting, or other similar decision about any other User.

TovBan does not generally investigate any remarks posted by Users or other User Content for accuracy or reliability and does not guarantee that User Content is accurate. You are solely responsible for your User Content, including the accuracy of any User Content, and are solely responsible for any legal action that may be instituted by other Users or third parties as a result of or in connection with your User Content. TovBan is not legally responsible for any feedback or comments posted or made available on the Site by any Users or third parties, even if that information is defamatory or otherwise legally actionable. In order to protect the integrity of the feedback system and protect Users from abuse, TovBan reserves the right (but is under no obligation) to remove posted feedback or information that, in TovBan's sole judgment, violates the Terms of Service or negatively affects our marketplace, diminishes the integrity of the feedback system or otherwise is inconsistent with the business interests of TovBan. You acknowledge and agree that you will notify TovBan of any error or inaccurate statement in your feedback results, and that if you do not do so, TovBan may rely on the accuracy of such information.

# 3. CONTRACTUAL RELATIONSHIP BETWEEN CLIENT AND FREELANCER

Section 3 discusses the relationship you may decide to enter into with another User, including Service Contracts between Users, as detailed below.

## 3.1 SERVICE CONTRACTS

If a Client and Freelancer decide to enter into a Service Contract, the Service Contract is a contractual relationship directly between the Client and Freelancer. Client and Freelancer have complete discretion both with regard to whether to enter into a Service Contract with each other and with regard to the terms of any Service Contract. You acknowledge, agree, and understand that TovBan is not a party to any Service Contract, that the formation of a Service Contract between Users will not, under any circumstance, create an employment or other legal relationship between TovBan and any User or a partnership or joint venture between TovBan and any User. The Service Contract is conceived of and is enforced under the laws of the Kingdom of Cambodia.

The Service Contract provided by TovBan is a generalized template only, in which highly specific terms and conditions of various industries may not be covered. Should additional terms and conditions be required, such terms and conditions can be added within the editable Annex A – Work Scope of a Service Contract. With respect to any Service Contract, Clients and Freelancers may enter into any written agreements that they deem appropriate (e.g., confidentiality agreements, invention assignment agreements, assignment of rights, etc.) provided that any such agreements do not conflict with, narrow, or expand TovBan’s rights and obligations under the Terms of Service, including this Agreement and the applicable Transaction Instructions. TovBan therefore expressly disclaims any and all liability with respect to actions or omissions based on any Service Contract, additional written agreements and terms and conditions added within Annex A – Work Scope. Any written agreement must be uploaded to TovBan.

Should an amendment to the Service Contract be required, the parties to the Service shall upload such amendment to the Service Contract to TovBan.

## 3.2 SERVICE CONTRACT TEMPLATE

The following Service Contract shall be used to underpin each Project:

Contract No. TB00000001

### **SERVICE CONTRACT**

---

This Service Contract is made on this \_\_\_\_\_, (the “Effective Date”) by and between

\_\_\_\_\_ (“Client”), [if Company, “represented by”], holding Cambodian National ID Card/Passport No. \_\_\_\_\_, residing at \_\_\_\_\_

and

\_\_\_\_\_ (“**Freelancer**”), holding Cambodian National ID Card/Passport No. \_\_\_\_\_, residing at \_\_\_\_\_. Client and Freelancer will respectively be referred to in this Agreement as a “**Party**”, and collectively the “**Parties**.”

**1. Services.** Freelancer shall provide the following services to Client (the “Services”): \_\_\_\_\_.

Freelancer shall perform duties and tasks to provide the Services to Client, in accordance with **Clause 3 - Milestones Schedule**, which will detail exactly what duties and tasks shall be delivered by when, and for what payment. In addition, should other duties and tasks be required to be performed by Freelancer for Client, the Parties shall mutually agree in a written Amendment to the Service Contract, in accordance with **Clause 19 – Amendment**.

## **2. Payment**

In consideration for Freelancer’s performance of the Services, Client shall pay Freelancer as below:

Total Services Invoice (“**Invoice**”): USD \_\_\_\_\_ (  XX United States Dollars)

The Invoice shall be paid out in accordance to the below **Milestones Schedule** agreed upon in this Service Contract, after each milestone is completed and approved by Client.

## **3. Milestones Schedule**

The Milestones Schedule states exactly what the Services will be provided during the process, and what payment is required for each step. The step at which payment is required and a certain amount of Services is provided is defined as a **Milestone**.

## **4. Payment Process**

Payment between the Parties will be facilitated by TovBan’s transaction Settlement payment system.

Transaction Settlement Account No. \_\_\_\_\_ (“**Transaction Settlement Account**”) will be opened for this Service Contract, for a Client to deposit payment in accordance to the Milestones Schedule.

Pre-Payment for Milestone: Payment must be made to and cleared in the project’s Transaction Settlement Account before a Milestone can begin, but will not be released from the Transaction Settlement Account to Freelancer until the Milestone’s completion is explicitly approved by Client on the platform.

Approval of Milestone Completion: Once a Milestone is approved by Client, the payment will be released to Freelancer. Payment for the next Milestone in the Milestone Schedule must be made to and cleared in the Transaction Settlement Account before work and the Milestone Deadline begins for the next Milestone.

*Should a dispute arise from the Payment Process, and a refund of payment to Client or a release of payment to Freelancer be demanded by either Party, the Parties shall notify TovBan of the dispute in accordance with Clause XX - Disputes below.*



#### 4. Expenses

All costs and expenses incurred by Freelancer in connection with the performance of the Services shall be the sole responsibility of and paid by Freelancer.

#### 5. Term of Service Contract

Freelancer's engagement with Client under this Agreement shall commence on \_\_\_\_\_ (“**Work Commencement Date**”). The Parties agree and acknowledge that this Service Contract and Freelancer's engagement with Client under this Agreement shall terminate at the completion of the final milestone as detailed in the **Milestone Schedule**, unless the Service Contract is prematurely terminated by either or both Parties in accordance with their termination rights under **Clause 6 – Termination**.

#### 6. Termination

Both Freelancer and Client maintain their individual rights to terminate this Service Contract. Payment refund to Client or payment release to Freelancer shall be determined by TovBan in accordance with the termination circumstances below:

Payment is refunded back to Client if:

- Freelancer terminates for any reason whatsoever.

Payment is released to Freelancer if:

- Client terminates 24 hours

#### 7. Relationship between Parties

The Parties agree and acknowledge that when they enter a Service Contract, it is a contractual relationship between the two parties for the sole purpose of providing, and receiving the Services defined in this Service Contract. Freelancer is a Freelancer and is not, for any purpose, an employee of Client. Freelancer does not have any authority to enter into agreements or contracts on behalf of Client, and shall not represent that it possesses any such authority. Freelancer shall not be entitled to any of Client's benefits, including, but not limited to, coverage under medical, dental, retirement or other plans. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of a partnership, a joint venture or any other fiduciary relationship.

#### 8. Taxes

In connection with the performances of the Services under this Service Contract, Freelancer acknowledges and agrees that Freelancer is solely responsible (a) for all tax liability associated with payments received from Client and through TovBan including but not limited to Value Added Tax (VAT), Withholding Tax (WHT), and Tax on Income (TOI), and that neither Client nor TovBan will not withhold any taxes from payments to Freelancer; (b) to obtain from Client, any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by law, and that Freelancer is not covered by or eligible for any insurance from TovBan; (c) for determining whether Freelancer is required by Cambodian law to issue any particular invoices for the Freelancer Fees and for issuing any invoices so required; (d) for determining whether Freelancer is required by Cambodian law to remit to the appropriate authorities any VAT or any other taxes or similar charges applicable to the Freelancer Fees and remitting any such taxes or charges to the appropriate authorities, as appropriate.

## 9. Confidentiality

**a. Confidential and Proprietary Information.** In the course of performing the Services, Freelancer will be exposed to confidential and proprietary information of Client. “Confidential Information” shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to development and plans, marketing strategies, finance, operations, systems, proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, data, databases, inventions, know-how, trade secrets, customer lists, customer relationships, customer profiles, supplier lists, supplier relationships, supplier profiles, pricing, sales estimates, business plans and internal performance results relating to the past, present or future business activities, technical information, designs, processes, procedures, formulas or improvements, which Client considers confidential and proprietary. Freelancer acknowledges and agrees that the Confidential Information is valuable property of Client, developed over a long period of time at substantial expense and that it is worthy of protection.

**b. Confidentiality Obligations.** Except as otherwise expressly permitted in this Agreement, Freelancer shall not disclose or use in any manner, directly or indirectly, any Confidential Information either during the term of this Agreement or at any time thereafter, except as required to perform the Services or with Client’s prior written consent.

**c. Rights in Confidential Information.** All Confidential Information disclosed to Freelancer by Client (i) is and shall remain the sole and exclusive property of Client, and (ii) is disclosed or permitted to be acquired by Freelancer solely in reliance on Freelancer’s agreement to maintain the Confidential Information in confidence and not to use or disclose the Confidential Information to any other person. Except as expressly provided herein, this Agreement does not confer any right, license, ownership or other interest in or title to the Confidential Information to Freelancer.

**d. Irreparable Harm.** Freelancer acknowledges that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies which may be available at law or in equity, Client shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of Confidential Information. Client shall be entitled to pursue any other legally permissible remedy available as a result of such breach, including but not limited to, damages, both direct and consequential. In any action brought by Client under this Section, Client shall be entitled to recover its attorney’s fees and costs from Freelancer.

**10. Ownership of Work Product.** The Parties agree that all work product, information or other materials created and developed by Freelancer in connection with the performance of the Services under this Agreement and any resulting intellectual property rights (collectively, the “Work Product”) are the sole and exclusive property of Client. The Parties acknowledge that the Work Product shall, to the extent permitted by law, be considered a “work made for hire” within the definition of Section 101 of the Copyright Act of 1976, as amended, (the “Copyright Act”) and that Client is deemed to be the author and is the owner of all copyright and all other rights therein. If the work product is not deemed to be a “work made for hire” under the Copyright Act, then Freelancer hereby assigns to Client all of Freelancer’s rights, title and interest in and to the Work Product, including but not limited to all copyrights, publishing rights and rights to use, reproduce and otherwise exploit the Work Product in any and all formats, media, or all channels, whether now known or hereafter created.

## 11. Relationship with TovBan

TovBan does not introduce Clients to Freelancers and does not help Freelancers secure Projects. TovBan merely makes the Site and Site Services available to enable Freelancers to do so themselves and may from time to time highlight Projects that may be of interest. You therefore acknowledge, agree, and understand that TovBan is not a party to this Service Contract, that the formation of the Service Contract between the Parties will not, under any circumstance, create an employment or other service relationship between TovBan and any Party or a partnership or joint venture between TovBan and any Parties.

## **12. Non-Compete**

Freelancer agrees and covenants that during the term of this Agreement, and for a period of \_\_\_\_\_ (days/months) following the termination of this Agreement, Freelancer will not, directly or indirectly, perform or engage in the same or similar activities as were performed for Client for any business that is directly or indirectly in completion with Client.

## **13. Non-Solicit**

Freelancer agrees and covenants that for a period of \_\_\_\_\_ months following the termination of this Agreement, Freelancer will not, directly or indirectly, solicit any officer, director or employee, or any customer, client, supplier or vendor of Client for the purpose of inducing such party to terminate its relationship with Client in favor of Freelancer or another business directly or indirectly in competition with Client.

## **14. Mutual Representations and Warranties**

Both Client and Freelancer represent and warrant that each Party has full power, authority and right to execute and deliver this Agreement, has full power and authority to perform its obligations under this Agreement, and has taken all necessary action to authorize the execution and delivery of this Agreement. No other consents are necessary to enter into or perform this Agreement.

## **15. Freelancer Representation and Warranties**

Freelancer represents and warrants that it has all the necessary licenses, permits and registrations, if any, required to perform the Services under this Agreement in accordance with applicable federal, state and local laws, rules and regulations and that it will perform the Services according to the Client's guidelines and specifications and with the standard of care prevailing in the industry.

## **16. Indemnification**

The Freelancer shall indemnify and hold harmless Client from any damages, claims, liabilities, loss and expenses, including reasonable attorney's fees, arising out of any act or omission of Freelancer in performing the Services or the breach of any provision of this Agreement by Freelancer.

## **17. Governing Law**

The terms of this Agreement and the rights of the Parties hereto shall be governed exclusively by the laws of the Kingdom of Cambodia, without regarding its conflicts of law provisions.

## **18. Disputes**

Any dispute arising from this Agreement shall be resolved independently between the Parties. If the dispute cannot be resolved between the Parties, then the dispute will be resolved through a mutual non-binding arbitration through TovBan's Dispute Resolution Process. The Parties shall inform TovBan, at which time TovBan will open an investigation to assess the Project and see which Party is at fault.

PLEASE BEAR IN MIND THAT THE **MILESTONES SCHEDULE** AND A MILESTONE'S DESCRIPTION WILL BE HEAVILY REFERRED TO WHEN ASSESSING WHETHER FREELANCER HAS PERFORMED THEIR SERVICES. DUE TO THE POTENTIAL SUBJECTIVITY OF SERVICES, THE PARTIES SHALL, TO THE BEST OF THEIR EFFORTS, ENSURE AVOIDANCE OF ANY DOUBT BY BEING AS DETAILED AS POSSIBLE WHEN DESCRIBING WHAT EXACTLY CONSTITUTES A MILESTONE. SHOULD A MILESTONE BE AS MUCH AS POSSIBLE DELIVERED, AND THE QUALITY OF THE DELIVERED MILESTONE IS CHALLENGED BY CLIENT, TOVBAN WILL ADJUDICATE UPON THE DISPUTE BY ASSESSING:

- WHETHER THE DELIVERED MILESTONE MATCHES OR DOES NOT MATCH THE IMMEDIATE MILESTONE DESCRIPTION;
- WHETHER IT IS REASONABLE THAT FREELANCER HAS EXPENDED SUFFICIENT OR INSUFFICIENT EFFORT TO PRODUCING THE DELIVERED MILESTONE; AND
- WHETHER THE POINTS OF CLIENT DISSATISFACTION IS REASONABLY OR UNREASONABLY OBVIOUS, SUCH THAT A RATIONAL FREELANCER CAN OR CANNOT ANTICIPATE SUCH CLIENT DISSATISFACTION.

IF THE DELIVERED MILESTONE MATCHES THE IMMEDIATE MILESTONE DESCRIPTION, AND IT IS REASONABLE TO ASSUME THAT FREELANCER HAS PERFORMED THE WORK TO THE UTMOST OF THEIR ABILITY, THEN PAYMENT BY CLIENT WILL BE RELEASED TO FREELANCER.

IF THE DELIVERED MILESTONE DOES NOT MATCH THE IMMEDIATE MILESTONE DESCRIPTION, AND IT IS REASONABLE TO ASSUME THAT FREELANCER HAS FAILED IN THEIR DELIVERANCE, PAYMENT BY CLIENT WILL BE REFUNDED TO CLIENT.

TovBan's immediate responsibility in the dispute shall cease at the conclusion of payment release or refund. Should the dispute continue to be unresolved, TovBan will offer itself in offering information to the competent courts or judicial institutions of the Kingdom of Cambodia to further adjudicate.

## **19. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

## **20. Assignment**

The interests of Freelancer are personal to Freelancer and cannot be assigned, transferred or sold without the prior written consent of Client.

## **21. Entire Agreement**

his Agreement constitutes the entire agreement between the Parties hereto with respect the subject matter hereof, and supersedes all prior negotiations, understandings and agreements of the Parties.

## **22. Amendments**

No supplement, modification or amendment of this Agreement will be binding unless executed in writing by both of the Parties.

## **23. Notices**

Any notice or other communication given or made to either Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice, and shall be deemed given on the date of delivery.

**24. Waiver.** Neither Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.

## **25. Further Assurances**

At the request of one Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

## **26. Severability**

If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.

## **3.3 DISPUTES AMONG USERS**

For disputes arising between Clients and Freelancers, you agree to abide by the dispute process that is explained in the **Dispute Resolution Process** that apply to your particular Service Contract. If the dispute process does not resolve your dispute, you may pursue your dispute independently, but you acknowledge and agree that TovBan will not and is not obligated to provide any dispute assistance beyond what is provided in the **Dispute Resolution Process**.

PLEASE BEAR IN MIND THAT THE **MILESTONES SCHEDULE** AND A MILESTONE'S DESCRIPTION OF A SERVICE CONTRACT WILL BE HEAVILY REFERRED TO WHEN ASSESSING WHETHER FREELANCER HAS PERFORMED THEIR SERVICES. DUE TO THE POTENTIAL SUBJECTIVITY OF SERVICES, THE PARTIES SHALL, TO THE BEST OF THEIR EFFORTS, ENSURE AVOIDANCE OF ANY DOUBT BY BEING AS DETAILED AS POSSIBLE WHEN DESCRIBING WHAT EXACTLY CONSTITUTES A MILESTONE. SHOULD A MILESTONE BE AS MUCH AS POSSIBLE DELIVERED,

AND THE QUALITY OF THE DELIVERED MILESTONE IS CHALLENGED BY CLIENT, TOVBAN WILL ADJUDICATE UPON THE DISPUTE BY ASSESSING:

- WHETHER THE DELIVERED MILESTONE MATCHES OR DOES NOT MATCH THE IMMEDIATE MILESTONE DESCRIPTION;
- WHETHER IT IS REASONABLE THAT FREELANCER HAS EXPENDED SUFFICIENT OR INSUFFICIENT EFFORT TO PRODUCING THE DELIVERED MILESTONE; AND
- WHETHER THE POINTS OF CLIENT DISSATISFACTION IS REASONABLY OR UNREASONABLY OBVIOUS, SUCH THAT A RATIONAL FREELANCER CAN OR CANNOT ANTICIPATE SUCH CLIENT DISSATISFACTION.

IF THE DELIVERED MILESTONE MATCHES THE IMMEDIATE MILESTONE DESCRIPTION, AND IT IS REASONABLE TO ASSUME THAT FREELANCER HAS PERFORMED THE WORK TO THE UTMOST OF THEIR ABILITY, THEN PAYMENT BY CLIENT WILL BE RELEASED TO FREELANCER.

IF THE DELIVERED MILESTONE DOES NOT MATCH THE IMMEDIATE MILESTONE DESCRIPTION, AND IT IS REASONABLE TO ASSUME THAT FREELANCER HAS FAILED IN THEIR DELIVERANCE, PAYMENT BY CLIENT WILL BE REFUNDED TO CLIENT.

TovBan's immediate responsibility in the dispute resolution assistance shall cease at the conclusion of payment release or refund. Should the dispute continue to be unresolved, TovBan is not obligated but may offer itself in offering information to the competent courts or adjudicative institutions of the Kingdom of Cambodia if requested.

If Freelancer or Client intends to obtain an order from any arbitrator or any court that might direct TovBan, TovBan Transaction Trust, or our Affiliates to take or refrain from taking any action with respect to an Transaction Settlement Account, that party will (a) give us at least five business days' prior notice of the hearing; (b) include in any such order a provision that, as a precondition to obligation affecting TovBan or TovBan Settlement Account, we be paid in full for any amounts to which we would otherwise be entitled; and (c) be paid for the reasonable value of the services to be rendered pursuant to such order.

### **3.4 CONFIDENTIAL INFORMATION**

Users may agree to any terms they deem appropriate with respect to confidentiality. If and to the extent that the Users do not articulate any different agreement with regard to confidentiality, then they agree that this Section 3.4 on Confidential Information applies.

To the extent a User provides Confidential Information to the other, the recipient will protect the secrecy of the discloser's Confidential Information with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than due care, subject to Cambodia's regulatory requirements and the parties' agreement (as the case may be). On a User's written request, the party that received Confidential Information will promptly destroy or return the disclosing party's Confidential Information and any copies thereof contained in or on its premises, systems, or any other equipment otherwise under its control.

A User should indicate clearly any information that is considered as Confidential Information before transferring such information to another User.

### **4. WORKER CLASSIFICATION**

Section 4 discusses what you agree to concerning whether a Freelancer is an employee or independent contractor.

## 4.1 WORKER CLASSIFICATION

Nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, franchisor/franchisee or employer-employee relationship, principal-agent relationship or legal representation between TovBan and a User. TovBan does not direct or control your Services, and you acknowledge that you have complete rights and power whether or when to provide the Services, including the price and conditions thereof.

Client is solely responsible for and has complete discretion with regard to selection of any Freelancer for any Project. Client is solely responsible for and assumes all liability for determining whether Freelancers should be engaged as independent contractors or employees of Client and engaging them accordingly. Client warrants its decisions regarding classification are correct and its manner of engaging Freelancers complies with Cambodian laws, regulations, and rules. TovBan will have no input into, or involvement in, worker classification as between Client and Freelancer and Users agree that TovBan has no involvement in and will have no liability arising from or relating to the classification of a Freelancer generally or with regard to a particular Project.

## 5. TOVBAN FEES

*Section 5 describes what fees you agree to pay to TovBan in exchange for TovBan providing the Site and Site Services to you and what taxes TovBan may collect, as detailed below.*

### 5.1 FEES FOR FREELANCERS

**Service Fees.** Freelancers will pay TovBan a service fee for the use of the Site Services as set forth in the Charges and Fees, for using the Site Services, including but not limited to, communication, invoicing, reporting, dispute resolution and payment services, and adjudication facilitation services, as described in the applicable Transaction Instructions (the “**Service Fees**”). The Service Fees (to use the Site Services) are paid solely by Freelancer. When a Client pays a Freelancer for a Project or when funds related to a Project are otherwise released to a Freelancer as required by the applicable Transaction Instructions (See Section 6.1.1), TovBan Transaction Trust will credit the Freelancer Transaction Settlement Account for the full amount paid or released by the Client, and then subtract and disburse to TovBan the Service Fees. Freelancer hereby irrevocably authorizes and instructs TovBan to deduct the Service Fee from the Freelancer Transaction Settlement Account and pay TovBan on Freelancer’s behalf. In the event the Freelancer chooses to withdraw funds in a currency other than U.S. dollars, there may also be a foreign currency conversion charge imposed by TovBan or an affiliate and the rate may differ from rates that are in effect on the date of the payment. In this case, you acknowledge that you may be able to obtain a better conversion rate from your bank or financial institution.

**Disbursement Fees.** Freelancers will pay TovBan a disbursement fee for remitting payments to their preferred payment method (“**Disbursement Fee**”). The Disbursement Fee is paid to TovBan in consideration of costs incurred and administration of disbursements via the disbursement method requested by Freelancer and varies by disbursement method. The Disbursement Fee for each disbursement method is listed under Fees and Schedules on the Site as revised from time to time.

In addition to fees charged by TovBan, your disbursement method may also be charged for activation, maintenance, or other account fees.

### 5.3 TAXES

Users are responsible for tax obligations to report, remit, collect, file or include any applicable taxes in the Service Fees.

TovBan may be required by Cambodian laws to collect taxes or levies including, without limitation, withholding tax, VAT or other taxes in accordance with the tax regulations of the Kingdom of Cambodia ("**Taxes**"). In such instances, any amounts TovBan is required to collect or withhold for the payment of any such Taxes shall be collected in addition to the fees owed to TovBan under the Terms of Service.

TovBan reserves all rights to cease the collection and remittance of any Taxes at its sole discretion, with or without reasons, subject to prior notification to the affected Freelancers.

## **5.4 NO FEE FOR INTRODUCING OR FOR FINDING PROJECTS**

TovBan does not introduce Clients to Freelancers and does not help Freelancers secure Projects. TovBan merely makes the Site and Site Services available to enable Freelancers to do so themselves and may from time to time highlight Projects that may be of interest. Therefore, TovBan does not charge a fee when a Freelancer finds a suitable Client or finds a Project. In addition, TovBan does not charge any fee or dues for posting public feedback and composite or compiled feedback, including Composite Information.

# **6. PAYMENT TERMS AND SERVICES**

*Section 6 discusses your agreement to pay Freelancer Service Fees on Service Contracts, and describes how TovBan's Transaction Services work, what happens if a Client doesn't pay, and related topics, as detailed below.*

## **6.1 PAYMENT SERVICES**

TovBan, , provides payment services to Users to deliver, hold, and/or receive payment for a Project, and to pay fees to TovBan ("**Transaction Services**"), which is exclusively operated and managed by TovBan. By using TovBan Transaction Services, the relevant policies including but not limited to terms of service and privacy policy of TovBan will apply to you.

Payments made by Clients and release of payments to Freelancers may require a third party to process such payments. Therefore, you may be directed to a third party's websites or resources when making any payment or requesting release of payments. The third party's websites contain a separate and distinct terms of service and privacy policy, which Users should review them. TovBan shall not be held responsible or liable for such use of the third party's websites or resources.

TovBan is not responsible for any loss resulting from incorrect Payment Method provided by you.

### **6.1.1 TRANSACTION INSTRUCTIONS**

TovBan will use and release funds deposited in a Transaction Settlement Account only in accordance with this Agreement and the applicable Transaction Instructions. You acknowledge and agree that TovBan acts merely as an Internet Transaction agent. TovBan has fully delivered the Transaction Services to you if TovBan provides the Transaction Trust Services described in this Agreement and the applicable Transaction Trust Instructions. TovBan Transaction Trust is only obligated to perform those duties expressly described in this Agreement and any applicable Transaction Trust Instructions. If you authorize or instruct TovBan Transaction Trust to release or make a payment of funds from a Transaction Settlement Account associated with you, TovBan Transaction Trust may release or pay those funds as instructed in reliance on your authorization, this Agreement, and the applicable Transaction Trust Instructions or as required by Cambodian laws.



## **6.1.2 TRANSACTION SETTLEMENT ACCOUNTS**

TovBan will use and release funds deposited in a Transaction Settlement Account only in accordance with this Agreement and the Project's Service Contract conditions.

TovBan Transaction Trust will use and release funds deposited in a Transaction Settlement Account only in accordance with this Agreement and the applicable Transaction Trust Instructions. Depending on your needs and the applicable Transaction Trust Instructions, TovBan Transaction Trust will establish and maintain one Transaction Settlement Account:

Transaction Settlement Account. When you enter into a Service Contract, TovBan Transaction Trust will establish and maintain a "Transaction Settlement Account" to receive, hold, and release payments pursuant to the Transaction Trust Instructions for the Project that is the subject of that Service Contract.

You hereby authorize and instruct TovBan to perform necessary actions in connection with the Transaction Settlement Accounts and the payment, holding, and receipt of funds for each Project and other specified purposes in accordance with the Terms of Service and the applicable Transaction Trust Instructions. Client and Freelancer may access real-time information regarding the status of a Transaction Settlement Account on the Site.

## **6.1.3 TITLE TO FUNDS**

TovBan, TovBan Transaction Trust and our Affiliates are not financial institutions or trustee. TovBan Transaction Trust deposits and maintains all Transaction Settlement Account funds in a Transaction Trust account exclusively operated and managed by Advanced Bank of Asia Limited (Cambodia). The Transaction Trust account is separated from the operating accounts of TovBan and each of our Affiliates. TovBan Transaction Trust will not voluntarily make funds deposited in the Transaction Trust account available to its creditors, or the creditors of its Affiliates, in the event of a bankruptcy, or for any other purpose.

## **6.1.4 NO INTEREST**

You agree that you will not receive interest or other earnings on the funds in relation to the Transaction Trust Services, TovBan Transaction Trust, or our Affiliates may charge or deduct fees, may receive a reduction in fees or expenses charged, and may receive other compensation in connection with the services they provide as provided in Section 6.5

## **6.1.5 TOVBAN ACCOUNT DUTIES**

We undertake to perform only such duties as are expressly set forth in this Agreement, the applicable Transaction Trust Instructions, and the other Terms of Service, and no other duties will be implied. We have no liability under, and no duty to inquire as to, the provisions of any agreement, other than the Terms of Service, including this Agreement and the applicable Transaction Trust Instructions. We will be under no duty to inquire about or investigate any agreement or communication between Client and Freelancer, even if posted to the Site . We have the right to rely upon, and will not be liable for acting or refraining from acting upon, any written notice, instruction, or request furnished to us by Client or Freelancer in accordance with this Agreement or the applicable Transaction Trust Instructions, even if we reasonably believe that such notice, instruction, or request is genuine and that it is signed or presented by the proper party or parties. We have no duty to inquire about or investigate the validity, accuracy, or content of any such notice, instruction, or request. We have no duty to solicit any payments or releases that may be due to or from any Transaction Settlement Account. We may execute any of our powers and perform any of our duties under this Agreement and the applicable Transaction Trust Instructions directly

or through agents or attorneys (and will be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants, and other skilled persons to be selected and retained by us. To the extent permitted by Cambodian laws, we will not be liable for anything done, suffered, or omitted in good faith by us in accordance with the advice or opinion of any such counsel, accountants, or other skilled persons. If we are uncertain as to our duties or rights hereunder or receive instructions, claims, or demands from any party hereto that, in our opinion, conflict with any of the provisions of this Agreement or the applicable Transaction Trust Instructions, we will be entitled to refrain from taking any action, and our sole obligation will be to keep safely all property held in the Transaction Settlement Account until we are directed otherwise in writing by Client and Freelancer or by a final order of an arbitrator or the competent court in Cambodia.

## **6.1.6 TOVBAN TRANSACTION TRUST SERVICES RIGHT**

. Any corporation or association which TovBan Transaction Trust Settlement Account may be merged or converted or consolidated with, or any corporation or association to which all or substantially all the Transaction Trust Settlement Account business of TovBan Transaction Trust may be transferred will succeed to all the rights and obligations of TovBan Transaction Trust Settlement Account as Transaction Trust Settlement Account holder and Transaction Trust Settlement Account agent under this Agreement and the applicable Transaction Trust Instructions without further act to the extent permitted by Cambodian laws.

## **6.2 CLIENT PAYMENTS ON SERVICE CONTRACTS**

Client becomes obligated to pay applicable amounts into the Transaction Settlement Account in accordance with the Milestones Schedule set forth in a project's Service Contract. Client becomes obligated to make payment (for the full amount or for the first milestone, if milestones are used) or upon activating any additional milestone. When Client authorizes the payment of the Freelancer Fees for a particular Service Contract on the Site, Client automatically and irrevocably authorizes and instructs TovBan or its Affiliates, to charge Client's Payment Method for the Freelancer Fees.

Client acknowledges and agrees that approval of a delivered Milestone by Freelancer shall result in an irrevocable release of payment in accordance to the Milestones Schedule.

If the circumstances require, TovBan may require you to prove the source of and other information relating to funds for making the payment in conformity with Cambodia's Law on Anti-Money Laundering and Financial Terrorism and its regulations.

## **6.3 DISBURSEMENTS TO FREELANCERS ON SERVICE CONTRACTS**

TovBan Transaction Trust disburses funds that are available in the applicable Freelancer Transaction Settlement Account and payable to a Freelancer in accordance with the Milestones Schedule of a particular Service contract and upon approval of a delivered Milestone by a Client. A Freelancer can request disbursement of payment should the Client fails to release the funds.

Service Contracts. Freelancer Fees become available to Freelancers following the expiration of the five-day security period after the funds are released as provided in the applicable Transaction Trust Instructions. The security period begins after Client accepts and approves the work submitted by Freelancer.

Notwithstanding any other provision of the Terms of Service or the Transaction Trust Instructions, TovBan Transaction Trust, in its sole discretion and except as prohibited by Cambodian laws, may refuse to

process, may hold the disbursement of the Freelancer Fees or any other amounts and offset amounts owed to us, or take such other actions with respect to the Transaction Settlement Account as we deem appropriate in our sole discretion if: (a) we require additional information, such as Freelancer's tax information, government-issued identification or other proof of identity, address, or date of birth; (b) we have a reason to believe that the Freelancer Fees may be subject to dispute or chargeback; (c) we suspect that a User has committed or attempted to commit fraud or other illicit acts on or through the Site; (d) we believe that there are reasonable grounds for insecurity with respect to the performance of obligations under this Agreement or other Terms of Service; or (e) we deem it necessary in connection with any investigation or required by Cambodian laws. If, after investigation, we determine that the hold on the disbursement of the Freelancer Fees is no longer necessary, TovBan Transaction Trust will release such hold as soon as practicable.

In addition, notwithstanding any other provision of the Terms of Service or the Transaction Trust Instructions and to the extent permitted by Cambodian laws, limits our right to seek reimbursement from you, and you will reimburse us, if we: (i) suspect fraud or criminal activity associated with your payment, withdrawal, or Project; (ii) discover erroneous or duplicate transactions; or (iii) have supplied our services in accordance with this Agreement but we have not received any chargeback from the Payment Method used by you, or used by your Client if you are a Freelancer. You agree that we have the right to obtain such reimbursement by instructing TovBan Transaction Trust to (and TovBan Transaction Trust will have the right to) charge the applicable Transaction Settlement Account, and any other accounts you hold with us, offsetting any amounts determined to be owing, deducting amounts from future payments or withdrawals, charging your Payment Method, or obtaining reimbursement from you by any other lawful means. If we are unable to obtain such reimbursement, we may, in addition to any other remedies available under Cambodian laws, temporarily or permanently revoke your access to the Site and Site Services and close your Account.

## 6.4 NON-PAYMENT

If Client is in “**default**”, meaning the Client fails to pay the Freelancer Fees or any other amounts when due under the Terms of Service, or a written agreement for payment terms incorporating the Terms of Service, TovBan will be entitled to the remedies described in this Section 6.4 in addition to such other remedies that may be available under Cambodian laws or in such written agreement. For the avoidance of doubt, Client will be deemed to be in default on the earliest occurrence of any of the following: (a) Client fails to pay the Freelancer Fees when due; (b) Client fails to pay a balance that is due or to bring, within a reasonable period of time but no more than 30 days after accrual of the charge, an account current after a credit or debit card is declined or expires; (c) Client fails to pay an invoice issued to the Client by TovBan within the time period agreed or, if no period is agreed, within 30 days; (d) Client initiates a chargeback with a bank or other financial institution resulting in a charge made by TovBan for Freelancer Fees or such other amount due being reversed to the Client; or (e) Client takes other actions or fails to take any action that results in a negative or past-due balance on the Client's account.

If Client is in default, we may, without notice, temporarily or permanently close Client's Account and revoke Client's access to the Site and Site Services, including Client's authority to use the Site to process any additional payments, enter into Service Contracts, or obtain any additional Freelancer Services from other Users through the Site. However, Client will remain responsible for any amounts that accrue on any open Projects at the time a limitation is put on the Client's Account as a result of the default. Without limiting other available remedies, Client must pay TovBan upon demand for any amounts owed, plus interest on the outstanding amount at the lesser of one and one-half percent (1.5%) per month or the maximum interest allowed by Cambodian laws, calculating from the default date, plus attorneys' fees and other costs of collection to the extent permitted by Cambodian laws.

At our discretion and to the extent permitted by Cambodian laws, TovBan or its Affiliates, TovBan Transaction Trust may, without notice, charge all or a portion of any amount that is owed on any Account

to TovBan or as Freelancer Fees or otherwise to any Payment Method on file on the Client's Account; set off amounts due against other amounts received from Client or held by for Client by TovBan, TovBan Transaction Trust or another Affiliate; make appropriate reports to credit reporting agencies and law enforcement authorities; and cooperate with credit reporting agencies and law enforcement authorities in any investigation or prosecution proceedings if the circumstances require.

TovBan does not guarantee that Client is able to pay or will pay Freelancer Fees and TovBan is not liable for Freelancer Fees if Client is in default. Freelancer may use the dispute process as described in the applicable Transaction Trust Instructions in order to recover funds from Client in the event of a default or may pursue such other remedies against Client as Freelancer deems appropriate. If TovBan recovers funds from a Client in default pursuant to this Section 6.4, TovBan will disburse any portion attributable to Freelancer Fees to the applicable Freelancer to the extent not already paid by Client or credited by TovBan through the Dispute Resolution program.

## **6.5 PAYMENT METHODS**

In order to use certain Site Services, Client must provide account information for at least one valid Payment Method.

Client hereby authorizes TovBan, as applicable, to run Payment Method authorizations on all Payment Methods provided by Client, to store Payment Method and banking or other financial details as Client's method of payment consistent with our Privacy Policy, and to charge Client's Payment Method for the Freelancer Fees and any other amounts owed under the Terms of Service. To the extent permitted by Cambodian laws and subject to our Privacy Policy, you acknowledge and agree that we may use certain third-party vendors and service providers to process payments and manage your Payment Method information.

By providing Payment Method information through the Site and authorizing payments with the Payment Method, Client represents, warrants, and covenants that: (a) Client is legally authorized to use and undertake necessary actions to use TovBan Payment Services; (b) the payments do not breach or circumvent any Cambodian laws or regulations, any agreements with third parties or third parties' rights, or this Agreement or any other applicable terms and conditions, (c) Client does not avoid, bypass, remove, deactivate, impair or circumvent any technological security measures implemented by TovBan, our Affiliates or third party providers, and (d) Client does not violate anyone's rights or cause harm or loss to anyone.

When Client authorizes a payment using a Payment Method via the Site, Client represents and warrants that there are sufficient funds or credit available to complete the payment using the designated Payment Method. To the extent that any amounts owed under this Agreement or the other Terms of Service cannot be collected from Client's Payment Method(s), Client is solely responsible for paying such amounts by other means.

TovBan is not liable to any User if TovBan does not complete a transaction as a result of any limit imposed by Cambodian laws or your financial institutions, or if a financial institution fails to honor any credit or debit to or from an account associated with such Payment Method. TovBan will make commercially reasonable efforts to work with any such affected Users to resolve such transactions in a manner consistent with this Agreement and any applicable Transaction Trust Instructions.

## **6.6 U.S. DOLLARS AND OTHER CURRENCY**

The Site and the Site Services operate in U.S. Dollars. Any payment made in other currencies is subject to conversion rate and other charges imposed by your financial institution or the Payment Method

provider at your own costs.

## 6.7 Payment Processing Errors

In the event that there is any payment processing error that comes to our knowledge, we will take necessary actions to ensure that you receive or pay the correct amount. To the extent you receive any fund in excess of the amount you should have received, you agree to immediately return such fund to TovBan upon our notification to you. TovBan will process the fund in excess paid by you and transfer such fund to you as soon as practicable upon your notification to us.

## 7. NON-CIRCUMVENTION

*Section 7 discusses your agreement to make and receive payments only through TovBan for two years from the date you first identify or meet your Client or Freelancer on the Site.-Any violation of this Section 7 is a serious breach and your Account may be permanently suspended, as detailed below.*

### 7.1 MAKING PAYMENTS THROUGH TOVBAN

You acknowledge and agree that a substantial portion of the compensation TovBan receives for making the Site available to you is collected through the Service Fee described in Section 5.1 and that in exchange a substantial value to you is the relationships you make with other Users when you identify or are identified by another person through the Site or Site Services (“TovBan Relationship”). TovBan only receives the Service Fee when a Client and a Freelancer pay and receive payment through the Site. Therefore, except as set out in Section 7.2, for 24 (twenty four) months from the start of TovBan Relationship ( “Non-Circumvention Period”), you agree to use the Site as your exclusive method to request, make, and receive all payments for work directly or indirectly with that person or arising out of your relationship with that person and not to circumvent the Payment Methods offered on the Site unless you pay a fee to take the relationship off of the Site (the “Conversion Fee”). For the avoidance of doubt, if you, or the business you represent, did not identify and were not identified by another person through the Site, such as if you and another User worked together before meeting on the Site, then the Non-Circumvention Period does not apply. If you use the Site as an employee, agent, or representative of another business, then the Non-Circumvention Period applies to you and other employees, agents, or representatives of the business or its successors when acting in that capacity with respect to other Users. By way of illustration and not in limitation of the foregoing, you agree not to:

- offer or solicit or accept any offer or solicitation from parties identified through the Site to contract, hire, invoice, pay, or receive payment in any manner other than through the Site;
- invoice or report on the Site or in a Conversion Fee request an invoice or payment amount lower than that actually agreed, made, or received between Users; or
- refer a User you identified on the Site to a third-party who is not a User of the Site for purposes of making or receiving payments other than through the Site.

You agree to notify TovBan immediately if a person suggests to you making or receiving payments other than through the Site in violation of this Section 7 or if you receive unsolicited contact outside of the Site. If you are aware of a breach or potential breach of this non-circumvention agreement, please submit a confidential report to TovBan hereat [info@tovban.com](mailto:info@tovban.com)

You acknowledge and agree that a violation of any provision in this Section 7.1 is a material breach of the Terms of Service. Your Account may be permanently suspended if you violate this Section 7.1.

## 7.2 COMMUNICATING THROUGH THE SITE; NOT SHARING CONTACT DETAILS

The provisions of this Section 7.2 apply to any interaction between Users where the Client has a Basic Account.

For Users subject to this Section 7.2, Users agree to use the communication services available on the Site to communicate with other Users prior to entering into a Service Contract. You agree that prior to entering into a Service Contract, you (a) will use TovBan as the sole manner to communicate with other Users; (b) will not provide your Means of Direct Contact to any other User or another person that you identified or were identified by through the Site; (c) will not use Means of Direct Contact of another user to attempt to or to communicate with, solicit, contact, or find the contact information of a User outside of TovBan; (d) will not ask for, provide, or attempt to identify through public means the contact information of another User; and (e) you will not include any Means of Direct Contact or means by which your contact information could be discovered in any profile, proposal, job posting, invitation, or pre-hire communication through the Site's communications services (including in each case in any attached file), except as otherwise provided on the Site.

For purposes of the Terms of Service "Means of Direct Contact" means any information that would allow another person to contact you directly, including, without limitation, phone number, email address, physical address, a link to a contact form or form requesting contact information, any link to an applicant management system or means to submit a proposal or application outside of the Site, or any information that would enable a user to contact you on social media or other website or platform or application that includes a communications tool, such as but without any limitation to Facebook, Telegram, LINE, Skype, Slack, Wechat, or Instagram. For the avoidance of doubt, information is a Means of Direct Contact if it would enable another user to identify any of the information above through other sources, such as going to a website that included an email address or identifying you on social media, such as through Facebook or LinkedIn. However, Means of Direct Contact does not include necessary information that is required by TovBan to be disclosed to other Users for the purpose of providing and/or receiving the Services such as but not limited to profile picture, name, qualifications or governmental issued identity cards.

You acknowledge and agree that a violation of any provision of this Section 7.2 is a material breach of the Terms of Service. Your Account may be permanently suspended if you violate this Section 7.2.

**PLEASE DON'T CIRCUMVENT. HELP US STAY IN BUSINESS SO WE CAN HELP YOU. 😊**

## 8. RECORDS OF COMPLIANCE

*Section 8 discusses your agreement to make and keep all required records, as detailed below.*

Users will each (a) create and maintain records to document satisfaction of their respective obligations under this Agreement, including, without limitation, their respective payment obligations and compliance with tax and employment regulatory requirements, and (b) provide copies of such records to TovBan upon request. Nothing in this subsection requires or will be construed as requiring TovBan to supervise or monitor a User's compliance with this Agreement, the other Terms of Service, or a Service Contract. You are solely responsible for creation, storage, and backup of your business records. This Agreement and any registration for or subsequent use of the Site will not be construed as creating any responsibility on TovBan's part to store, backup, retain, or grant access to any information or data for any period.

## 9. WARRANTY DISCLAIMER

*Section 9 discusses your agreement and understanding that the Site and Site Services may not always be available or work perfectly, as detailed below.*

YOU AGREE NOT TO RELY ON THE SITE, THE SITE SERVICES, ANY INFORMATION ON THE SITE OR THE CONTINUATION OF THE SITE. THE SITE AND THE SITE SERVICES ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. TOVBAN MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE SITE, THE SITE SERVICES, WORK PRODUCT, USER CONTENT, OR ANY ACTIVITIES OR ITEMS RELATED TO THIS AGREEMENT OR THE TERMS OF SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY CAMBODIAN LAWS, TOVBAN DISCLAIMS ALL EXPRESS AND IMPLIED CONDITIONS, REPRESENTATIONS ON, AND WARRANTIES FOR, INCLUDING, BUT NOT LIMITED TO, (A) EXISTENCE, CONDUCT, PERFORMANCE QUALITY, ACCURACY, FITNESS FOR ANY CLIENT, FREELANCER, USER OR THIRD PARTY, (B) NON-INTERRUPTION OR PERFORMANCE OF THE SITE, (C) THAT ANY VERIFICATION, IDENTITY OR BACKGROUND CHECKS CONDUCTED BY US ARE PURELY ADMINISTRATIVE PURPOSES AND DO NOT GUARANTEE PAST OR FUTURE MISCONDUCTS OF VERIFIED USERS, AND (D) LIABILITY FOR ACTS OR OMISSION OF ANY USER OR THIRD PARTY. SECTION 13 (AGREEMENT TERM AND TERMINATION) STATES USER’S SOLE AND EXCLUSIVE REMEDY AGAINST TOVBAN WITH RESPECT TO ANY DEFECTS, NON-CONFORMANCES, OR DISSATISFACTION.

## 10. LIMITATION OF LIABILITY

*Section 10 discusses your agreement that TovBan usually will not have to pay you damages relating to your use of the Site and Site Services and, if Cambodian laws require, we will pay you the maximum of USD 2,500, as detailed below.*

TovBan, its Affiliates, employees, licensors, or third party service providers shall not be liable for any direct or indirect, special, consequential, incidental, punitive, exemplary damages and other costs including but not limited to litigation costs, installation or removal costs, and/or loss of data, production, profit or business opportunities, arising out of or in connection with, including, but not limited to:

- the Agreement and the Terms of Service;
- your use of or your inability to use our Site or Site Services;
- delays or disruptions in our Site or Site Services;
- viruses or other malicious software obtained by accessing, or linking to, our Site or Site Services;
- glitches, bugs, errors, or inaccuracies of any kind in our Site or Site Services;
- damage to your hardware device from the use of the Site or Site Services;
- the content, actions, or inactions of third parties’ use of the Site or Site Services;
- a suspension or other action taken with respect to your Account;
- your reliance on the quality, accuracy, or reliability of job postings, Profiles, ratings, recommendations, and feedback (including their content, order, and display), Composite Information, or metrics found on, used on, or made available through the Site;
- any communication or interaction with any User; and
- your need to modify practices, content, or behavior or your loss of or inability to do business, as a result of changes to the Terms of Service.

IN ALL CIRCUMSTANCES, THE LIABILITY OF TOVBAN, OUR AFFILIATES, OUR LICENSORS, AND OUR THIRD-PARTY SERVICE PROVIDERS TO ANY USER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TERMS OF SERVICE SHALL NOT EXCEED THE LESSER AMOUNT OF: (A) USD 2,500; OR (B) ANY FEES RETAINED BY TOVBAN WITH RESPECT TO SERVICE CONTRACTS ON WHICH USER WAS INVOLVED AS CLIENT OR FREELANCER DURING THE SIX-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

This Limitation of Liability forms fundamental agreements between you and TovBan.

## 11. INDEMNIFICATION

*Section 11 discusses your agreement to pay for any costs or losses we have as a result of a claim brought against us related to your use of the Site or Site Services or your illegal or harmful conduct, as detailed below.*

You will indemnify, release, defend, and hold harmless TovBan, our Affiliates, and our respective directors, officers, employees, representatives, and agents (each an **"Indemnified Party"**) for all Indemnified Claims and Indemnified Liabilities relating to or arising out of: (a) improper or unlawful use of the Site and the Site Services by you or your agents, including any payment obligations or default incurred through use of the Site Services; (b) any Work Product or User Content developed, provided, or otherwise related to your use of the Site Services; (c) any Service Contract entered into by you or your agents; (d) failure to comply with the Terms of Service by you or your agents; (e) failure to comply with applicable laws or regulations or third party's rights such as intellectual property rights and privacy rights by you or your agents; (f) negligence, willful misconduct, immoral acts, illegal acts, or fraud by you or your agents; (g) your communication or interaction with other Users (h) your failure, or your direction that causes us to fail to collect, report, or remit taxes or submit required information to the relevant authorities. For purposes of this Section 11, your agents includes any person who has access to or use your account whether or not that person has been authorized by you and whether or not you are aware of such access or use.

**"Indemnified Claim"** means any and all claims, damages, liabilities, costs, losses, and expenses (including attorneys' fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by you or a third party or other User against an Indemnified Party.

**"Indemnified Liability"** means any and all claims, damages, liabilities, costs, losses, and expenses (including attorneys' fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by an Indemnified Party against you or a third party or other User.

## 12. AGREEMENT TERM AND TERMINATION

*Section 12 discusses your and TovBan's agreement about when and how long this Agreement will last, when and how either you or TovBan can end this Agreement, and what happens if either you or TovBan ends the Agreement, as detailed below.*

### 12.1 AGREEMENT TERM

This Agreement including its Terms of Service remains in effect unless you or TovBan terminates the Agreement in accordance with Clause 12.2 – Termination.

### 12.2 TERMINATION



You and TovBan may terminate this Agreement in the Party's sole discretion, at any time, without explanation, if:

- the terminating Party is the User; the Account has been deleted by Users or the Users has provided 14 days' written notice of such termination to Tovban through email at [info@tovban.com](mailto:info@tovban.com)
- the terminating Party is TovBan; 14 days' written notice of such termination is sent to your email or other contacts that you have provided to TovBan. However, TovBan may terminate this Agreement immediately and without any prior notice if:
  - o users have materially violated any provisions of this Agreement including other TovBan's policies;
  - o users have violated any applicable laws or regulations;
  - o such termination, at TovBan's discretion, is necessary to protect safety, security or functionality of the Site, the Site Services, TovBan and its businesses; or
  - o your Account has been inactive for 2 years.

Upon the termination of this Agreement, your right to use the Site and Site Services is automatically revoked, and your Account will be closed. Your fund in the Transaction Settlement Account will be returned back to you in accordance with the applicable provisions of Section 6 – Payment Terms and Trust Services.

TovBan is not a party to any Service Contract between Users. Consequently, User understands and acknowledges that termination of this Agreement does not automatically terminate or otherwise impact any Service Contract or Project entered into between Users. If you attempt to terminate this Agreement while having one or more open Projects, you agree (a) you hereby instruct TovBan to close any open contracts before exercising your right to terminate this Agreement; (b) you will continue to be bound by this Agreement and the other Terms of Service until all such Projects have closed on the Site; (c) TovBan will continue to perform those Site Services necessary to complete any open Project or related transaction between you and another User; and (d) you will continue to be obligated to pay any amounts accrued but unpaid as of the date of termination or as of the closure of any open Service Contracts, whichever is later, to TovBan for any Site Services or such other amounts owed under the Terms of Service and to any Freelancers for any Freelancer Services.

. If your Account is temporarily or permanently closed, you may not use the Site under the same Account or a different Account or reregister under a new Account without TovBan's prior written consent. If you attempt to use the Site under a different Account, we reserve the right to reclaim available funds in that Account and/or use an available Payment Method to pay for any amounts owed by you to the extent permitted by Cambodian laws.

Without limiting any other provisions of the Terms of Service, the termination of this Agreement for any reason will not release you or TovBan from any obligations incurred prior to termination of this Agreement or that thereafter may accrue in respect of any act or omission prior to such termination.

You acknowledge and agree that the value, reputation, and goodwill of the Site depend on transparency of User's Account status to all Users, including both yourself and other Users who have entered into Service Contracts with you. You therefore agree as follows: **IF TOVBAN DECIDES TO TEMPORARILY OR PERMANENTLY CLOSE YOUR ACCOUNT, TOVBAN HAS THE RIGHT WHERE ALLOWED BY CAMBODIAN LAWS BUT NOT THE OBLIGATION TO: (A) NOTIFY OTHER USERS THAT HAVE ENTERED INTO SERVICE CONTRACTS WITH YOU TO INFORM THEM OF YOUR CLOSED ACCOUNT STATUS, AND (B) PROVIDE THOSE USERS WITH A SUMMARY OF THE REASONS FOR YOUR ACCOUNT CLOSURE. YOU AGREE THAT TOVBAN WILL HAVE NO LIABILITY ARISING FROM OR RELATING TO ANY NOTICE THAT IT MAY PROVIDE TO ANY USER REGARDING CLOSED ACCOUNT STATUS OR THE REASON(S) FOR THE CLOSURE.**

## 12.2 ACCOUNT DATA ON CLOSURE

Except as otherwise required by Cambodian laws, if your Account is closed for any reason, you will no longer have access to data, messages, files, or other material you keep on the Site and any closure of your Account may involve deletion of any content stored in your Account for which TovBan will have no liability whatsoever. TovBan, in its sole discretion and subject to Cambodian laws, may retain some or all of data in your Account or that you have provided to us.

## 12.3 SURVIVAL

After this Agreement terminates, the terms of this Agreement and the other Terms of Service that expressly or by their nature contemplate performance after this Agreement terminates or expires will survive and continue in full force and effect. For example, the provisions concerning dispute resolution, permitting audits, protecting intellectual property, requiring non-circumvention, indemnification, payment of fees, reimbursement and setting forth limitations of liability each, by their nature, contemplate performance or observance after this Agreement terminates.

## 13. DISPUTES BETWEEN YOU AND TOVBAN

*Section 14 discusses your agreement with TovBan and our agreement with you about how we will resolve any disputes, including that we will both first try to resolve any dispute amicably and, that we both agree to use arbitration instead of going to court if we cannot achieve amicable resolution, as detailed below.*

### 13.1 GENERAL

If a dispute arises between you and TovBan or our Affiliates, our goal is to resolve the dispute quickly and cost-effectively. Accordingly, you, TovBan, and our Affiliates agree to resolve any claim, dispute, or controversy that arises out of or relates to this Agreement, the other Terms of Service, your relationship with TovBan, applicability, breach, termination, validity, enforcement or interpretation thereof (each, a “**Claim**”) in accordance with this Section 14 (sometimes referred to as the “**Dispute Resolution Provision**”).

### 13.2 CHOICE OF LAW

The Site Terms of Use, the other Terms of Service, and any Claim will be governed by and construed exclusively in accordance with the laws of the Kingdom of Cambodia.

### 13.3 AMICABLE RESOLUTION

You and TovBan agree to first notify each other in writing of any Claim that may arise (“**Notice**”) in order to seek for amicable resolution.

Written notification to TovBan of a Claim shall be sent by email to info@tovban.com or shall be addressed to:

Attn: **Legal, TovBan,**  
**8<sup>th</sup> Floor, Than’s Building, No. 46,**  
**Mao Tse Toung Boulevard (245), Sangkat Boeung Trabek, Khan Chamkarmon,**  
**12305 Phnom Penh,**  
**Cambodia,**

TovBan agrees to provide to you a written notice to your email address on file or any other contact that we have obtained from you.

Both you and TovBan will have 60 days from the date of the receipt of the Notice to reach an amicable resolution regarding the Claim.

## **13.4 ARBITRATION**

If the you and TovBan cannot achieve an amicable resolution pursuant to Clause 14.3 – Amicable Resolution, either Party is entitled to submit the Claim to arbitration administered by the National Commercial Arbitration Centre (“**NCAC**”) in Cambodia pursuant to the Arbitration Rules of the National Commercial Arbitration Centre of Cambodia:

- The number of arbitrator shall be 01 (one) and shall be appointed by the President of the NCAC.
- The seat of arbitration shall be Cambodia, and the venue of arbitration shall be in Phnom Penh.
- The language to be used in the arbitral proceedings shall be English if one of the Parties does not speak Khmer. However, if both Parties speak Khmer, the language of arbitration shall be Khmer.
- The Parties agree that any arbitral award issued by the NCAC shall be final and binding. In the absence of fraud or manifest error, and the unsuccessful Party shall be liable for all reasonable costs incurred by the successful Party arising directly from and in relation to the arbitration proceedings.
- Invalidity, non-existence, illegality or termination of this Agreement shall not affect the validity, legality or existence of the Clause 14 – Dispute between You and TovBan.

## **14. GENERAL**

*Section 14 discusses additional terms of the agreement between you and TovBan, including that the Terms of Service contain our entire agreement, how the agreement will be interpreted and applied, and your agreement not to access the Site from certain locations, as detailed below.*

### **14.1 ENTIRE AGREEMENT**

This Agreement, together with the other Terms of Service, sets forth the entire agreement and understanding between you and TovBan relating to the subject matter hereof and thereof and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between you and us, written or oral, to the extent they relate in any way to the subject matter hereof and thereof.

### **14.2 MODIFICATIONS**

No modification or amendment to this Agreement will be binding upon TovBan unless they are agreed in a written instrument signed by a duly authorized representative of TovBan or posted on the Site by TovBan. The date of last revision of this Agreement is provided in the Effective Date section. If you

disagree with amendment to this Agreement, you may terminate this Agreement following Clause 13.2 – Termination. If you continue to use the Site or the Site Services after the Effective Date of the amended Agreement, it is deemed that you have accepted the amendment to this Agreement.

### **14.3 WAIVER**

We do not guarantee we will take action against all breaches of this Agreement. However, our failure to act with respect to a breach by you or others does not waive our right to act with respect to the said breach.

Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise permitted under Cambodian laws.

### **14.4 ASSIGNMENT**

User shall not assign any of its rights or obligations under this Agreement, without TovBan's prior written consent. TovBan may freely assign this Agreement and the other Terms of Service at its own discretion without User's consent and without any prior notice. Subject to the foregoing restrictions, the Agreement is binding upon and will inure to the benefit of the successors, heirs, and permitted assigns of the Parties.

### **14.5 SEVERABILITY**

If and to the extent that any provision of this Agreement or the other Terms of Service is held illegal, invalid, or unenforceable in whole or in part under Cambodian laws, such provision or such portion thereof shall be ineffective and shall not in any way affect the legality, validity, or enforceability of any other provisions.

### **14.6 INTERPRETATION**

The section headings in this Agreement are included for ease of reference only and have no binding effect. Even though TovBan drafted this, you represent that you had ample time to review and decide whether to agree to this Agreement. If an ambiguity or question of intent or interpretation of this Agreement arises, no presumption or burden of proof will arise favoring or disfavoring you or TovBan because of the authorship of any provision of this Agreement.

### **14.7 FORCE MAJEURE**

The Parties to this Agreement shall not be liable for any failure to perform, or any delay in performance of, any obligation hereunder due to civil disturbances, accidents, fires, floods, telecommunications or Internet failures, pandemics/epidemics, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by laws or any other conditions beyond the reasonable control of such Party.

### **14.8 PREVAILING LANGUAGE AND LOCATION**

The English language version of this Agreement will be controlling in all respects and will prevail in case of any inconsistencies with any version using a different language. The Site and the Site Services is controlled and operated from our facilities in the Kingdom of Cambodia.

## 14.9 ACCESS OF THE SITE OUTSIDE THE KINGDOM OF CAMBODIA

TovBan makes no representations that the Site is appropriate or available for use outside of the Kingdom of Cambodia. Those who access or use the Site from other jurisdictions do so at their own risk and are entirely responsible for compliance with all applicable Cambodian and their respective local laws and regulations.

## 14.10 CONSENT TO USE ELECTRONIC RECORDS

In connection with the Site Terms of Use, you may be entitled to receive, or we may otherwise provide, certain records from TovBan or our Affiliates, such as contracts, notices, and communications, in writing. To facilitate your use of the Site and the Site Services, you give us permission to provide these records to you electronically instead of in paper form.

## 15. DEFINITIONS

*Section 15 gives you some definitions of capitalized terms that appear in the Terms of Service but other capitalized terms are defined above, which you can tell because the term is put in quotation marks and bold font.*

Capitalized terms not defined below or above have the meanings described in the Site Terms of Use or elsewhere in the Terms of Service.

“**Client**” means any authorized User utilizing the Site or Site Services to seek and/or obtain Freelancer Services, including from another User.

“**Confidential Information**” means any data or information that is competitively sensitive, material and not generally known to the public, or confidential in nature, including, but not limited to, information relating to development and plans, marketing strategies, finance, operations, systems, intellectual property concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, data, databases, inventions, know-how, trade secrets, customer lists, customer relationships, customer profiles, supplier lists, supplier relationships, supplier profiles, pricing, sales estimates, business plans and internal performance results relating to the past, present or future business activities, technical information, designs, processes, procedures, formulas or improvements.

“**Effective Date**” means the date on which this Agreement or any modification of this Agreement, from time to time, is posted on the Site.

“**Transaction Settlement Account**” means Client Transaction Settlement Account, Freelancer Transaction Settlement Account, or Fixed-Price Transaction Settlement Account.

“**Transaction Trust Instructions**” means the Fixed-Price Transaction Trust Instructions or the Hourly, Bonus, and Expense Payment Agreement with Transaction Trust Instructions.

“**Fixed-Price Contract**” means a Service Contract for which Client is charged a fixed fee agreed between a Client and a Freelancer, prior to the commencement of a Service Contract, for the completion of all Freelancer Services contracted by Client for such Service Contract.

**“Freelancer”** means any authorized User utilizing the Site or Site Services, including Direct Contract Services, to advertise or provide Freelancer Services to Clients, including Freelancer Accounts that are Agency Accounts or, if applicable, Agency Members. A Freelancer is a customer of TovBan with respect to use of the Site and Site Services.

**“Freelancer Fees”** means: (a) for a Fixed-Price Contract, the fixed fee agreed between a Client and a Freelancer; and (b) any bonuses or other payments made by a Client to a Freelancer.

**“Fees and Schedules”** means the commission fee charged by TovBan on each transaction also subjected to any marketing promotions applied. This applies to both One-time and Milestone projects. ]

**“Freelancer Services”** means all services performed for or delivered to Clients by Freelancers.

The term **“including”** as used herein means including without limitation.

**“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, in each case, under the laws of any state, country, territory or other jurisdiction.

**“NCAC”** means National Commercial Arbitration Centre.

**“Payment Method”** means a valid credit card issued by a bank acceptable to TovBan, a bank account linked to your Account, a PayPal account, a debit card, or such other method of payment as TovBan may accept from time to time in our sole discretion.

**“Project”** means an engagement for Freelancer Services that a Freelancer provides to a Client under a Service Contract on the Site.

**“Staffing Employee”** means a Freelancer enrolled in TovBan Payroll, accepted for employment by a Staffing Provider, and assigned by the Staffing Provider to provide Freelancer Services to one or more Client(s).

**“Service Contract”** means, as applicable, (a) the contractual provisions between a Client and a Freelancer governing the Freelancer Services to be performed by a Freelancer for Client for a Project; (b) a Direct Contract as defined in the TovBan Direct Contract Terms; or (c) if you use TovBan Payroll, the contractual provisions between Freelancer and the Staffing Provider for the provision of services to Client, if any.

**“Substantial Change”** means a change to the terms of the Terms of Service that reduces substantially your rights or increases your responsibilities.

**“TovBan App”** means the online platform using TovBan’s downloaded application or other software that enables time tracking and invoicing, chat, and screenshot sharing with other Users.

**“User Content”** means any comments, remarks, data, feedback, content, text, photographs, images, video, music, or other content or information that you or any Site Visitor or User post to any part of the Site or provide to TovBan, including such content or information that is posted as a result of questions.

**“Work Product”** means any tangible or intangible results or deliverables that Freelancer agrees to create for, or actually delivers to, Client as a result of performing the Freelancer Services, including, but not limited to, configurations, computer programs, or other information, or customized hardware, and any intellectual property developed in connection therewith.