

BEFORE CLICKING ON THE BUTTON AT THE END OF THIS DOCUMENT, OR BEFORE SIGNING THE APPLICATION FORM, PLEASE READ CAREFULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE "I AGREE" BUTTON OR BY SIGNING THE APPLICATION FORM OR OTHERWISE BY USING ALL OR ANY PORTION OF THE SERVICES (as hereinafter defined), THE CUSTOMER SIGNIFIES ITS ACCEPTANCE OF THIS AGREEMENT, WITHOUT LIMITATION OR QUALIFICATION, WHEREBY THE CUSTOMER HEREBY AGREE THAT IT HAS READ, UNDERSTOOD, CONSENTED AND AGREE TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT. IF THE CUSTOMER IS ACCEPTING THIS AGREEMENT ON BEHALF OF A CORPORATE BODY, THE CUSTOMER HEREBY AGREES AND REPRESENTS THAT IT IS AUTHORISED TO DO SO. IF THE CUSTOMER IS NOT SO AUTHORISED, NOR DEEMED IN LAW TO HAVE SUCH AUTHORITY, THE CUSTOMER HEREBY ASSUMES SOLE PERSONAL LIABILITY FOR THE OBLIGATIONS SET OUT IN THIS AGREEMENT. IF THE CUSTOMER DOES NOT WISH TO BE BOUND BY THIS AGREEMENT, PLEASE CLICK ON THE "NO" BUTTON AND DO NOT CONTINUE TO DOWNLOAD, INSTALL, COPY OR OTHERWISE USE ANY PART OF THE SERVICES. THE CUSTOMER HEREIN HEREBY AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY THE CUSTOMER.

These terms and conditions (hereinafter referred to as "this Agreement") is a legally binding agreement between the Customer (whether an individual or entity), and DEWAN BANDARAYA KOTA KINABALU. DEWAN BANDARAYA KOTA KINABALU reserves the right to change the terms and conditions of this Agreement at any time by posting changes online without prior notice. Notice of the amendment may be given by DEWAN BANDARAYA KOTA KINABALU to the Customer in such manner as DEWAN BANDARAYA KOTA KINABALU in its sole discretion deems appropriate. Please check this Agreement, which shall be posted online at DEWAN BANDARAYA KOTA KINABALU website periodically for changes. The Customer's continued Use (as hereinafter defined) of the Services following the posting of any changes to this Agreement constitute acceptance of those changes.

## **1. DEFINITIONS**

"Agreement" means these terms and conditions and subsequent unilateral amendments, variations, additions and deletions by DEWAN BANDARAYA KOTA KINABALU;

"Agreement Date" means the date the Customer agrees to all the terms and conditions contained herein;

"Charges" means the price of goods and/or services and/or costs of whatsoever nature, which is payable by the Customer to the Payee, using the Services as mechanism to affect Remittance;

"Customer" means the person who had Used the Services and whose particulars are stated in Payment.net and includes its successors and permitted assigns if an individual, and its authorized representatives, if a corporate body;

"Customer's Covered Entities" means its directors, officers, employees and subsidiaries, in the case of a corporate body;

"Intellectual Property Right(s)" means all rights in and to copyrights, trademarks, patent and other similar rights of any type under the laws of any relevant governmental authority, domestic or foreign including all application and registration to any of the foregoing;

"DEWAN BANDARAYA KOTA KINABALU 's website" means the Payment.net website maintained and controlled by DEWAN BANDARAYA KOTA KINABALU for purposes of Remittance;

"Law" means the laws of Malaysia;

"Payee" means recipient of Remittance made by the Customer using the Services, and may include but not limited to merchants, retailers, clubs, utility companies and/or local authority government bodies;

"Payee's website" means the website wherein the Customer purchases any item offered by the Payee and where the Customer has agreed therein to pay all Charges via the Services;

"Remittance" means online payment for the Charges using Payment.net from the Customer to the Payee only;

"RM" or "Ringgit Malaysia" means the lawful currency of Malaysia;

"Services" means the Payment.net value added service provisioned and maintained by DEWAN BANDARAYA KOTA KINABALU to affect Remittance;

"Use" means to access or otherwise benefit from the use of the Services in accordance with the terms and conditions of this Agreement;

In this Agreement, unless otherwise specified:

(a) words denoting the singular number shall include the plural and vice versa;

(b) where a word or phrase is defined, other parts of speech and grammatical forms of that word and phrase shall have corresponding meanings;

(c) references to Schedules, Annexures, Appendices, Attachments, Paragraphs or Clauses are references to the schedules, annexures, appendices, attachments,

paragraphs and clauses of this Agreement and references to Clauses shall be read as references to sub-Clauses where appropriate;

(d) references to a party are reference to a party to this Agreement and include the party's successors and permitted assigns;

(e) references to any agreement or instrument shall include references to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) references to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations and statutory instruments issued under, such legislation or provision;

(g) "includes" and "including" mean includes and including without limitations;

(h) headings are for convenience only and shall not affect interpretation; and

(i) any negative obligations imposed on any party shall be considered as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be considered as if it were also an obligation to procure that the act or thing in question be done.

## **2. SCOPE OF AGREEMENT**

At the Customer's request, DEWAN BANDARAYA KOTA KINABALU agrees to provide the Services, subject to the terms and conditions contained herein.

## **3. CHARGES AND PAYMENT**

The Customer agrees to pay the Charges to the Payee by using the Services wherein such Charges shall include all Charges imposed by the Payee as specified in the Payee's website which shall be the sole responsibility of the Customer.

## **4. CUSTOMER'S INFORMATION**

The Customer shall be solely responsible for providing DEWAN BANDARAYA KOTA KINABALU with accurate and current information on details required in the DEWAN BANDARAYA KOTA KINABALU's website to affect Remittance.

## **5. LIMITATIONS**

5.1 Unless otherwise provided in this Agreement, DEWAN BANDARAYA KOTA KINABALU makes no representations of the Services to the Customer. The Services is provided on an "as is" basis and the Use of the Services shall be at the Customer's own risk and DEWAN BANDARAYA KOTA KINABALU hereby disclaims all and any other express or implied warranties including but not limited to merchantability, fitness for a particular purpose, non-infringement and title, and any other warranties arising from course of dealing or usage or trade practice.

5.2 In no event shall DEWAN BANDARAYA KOTA KINABALU be liable to the Customer in connection with or pursuant to this Agreement for any loss or damage (whether direct, indirect, incidental, consequential, special or punitive damages, including, without limitation, damages for lost profits/revenue or economic damage or loss of technology, loss of data or injury to property or reputation, regardless of the form of action, whether in contract, indemnity, warranty, strict liability or tort and regardless of whether such party has reason to now or in fact knows of the possibility thereof), resulting from any delay or failure to perform or observe this Agreement, either in whole or in part. In addition, DEWAN BANDARAYA KOTA KINABALU shall not be liable for any harm or personal injury to the Customer or Customer's employees, representatives, its customers or agents or contractors or sub-contractors resulting from any cause, other than DEWAN BANDARAYA KOTA KINABALU's negligence or willful misconduct.

5.3 The Customer expressly acknowledges and agrees that DEWAN BANDARAYA KOTA KINABALU does not and cannot control the flow of data to or from the network (including the Services) and other portions of the Internet. The Customer further acknowledges and agrees that such flow depends on a variety of factors including the performance of Internet services provided or controlled by third parties which, may result in situations where the Customer's connections to the Internet (or portions thereof) gets impaired or disrupted. DEWAN BANDARAYA KOTA KINABALU cannot guarantee that such situations will not occur and, accordingly, DEWAN BANDARAYA KOTA KINABALU disclaims any and all liability resulting from or related to such events including any other factors, which are beyond DEWAN BANDARAYA KOTA KINABALU 's control.

## **6. CUSTOMER's COVENANTS**

6.1 The Customer shall not Use the Services in any way, which may contravene, infringe, or violate any applicable laws, rules and/or regulations. The Customer shall at all times, fully comply and observe with DEWAN BANDARAYA KOTA KINABALU 's Services Regulations and other rules, regulations, procedures, directives or memorandum or terms and conditions that is applicable to the provision of and/or Use of the Services, which are issued by DEWAN BANDARAYA KOTA KINABALU from time to time.

6.2 In the event that the Customer's Use of the Services or interaction with the Internet or third parties is causing harm or threatens to harm DEWAN BANDARAYA KOTA

KINABALU's network or its operations, DEWAN BANDARAYA KOTA KINABALU shall have the right to refuse the Services with immediate effect.

6.3 The Customer undertakes, covenants and warrants:-

(a) that if it is a corporate body, it has the corporate power to enter into and perform its obligations under this Agreement and has taken all necessary corporate actions to authorize the entry into and performance of this Agreement;

(b) to comply with all notices and instructions issued, given or notified by DEWAN BANDARAYA KOTA KINABALU, from time to time in respect of the Use of the Services;

(c) to comply with the rules of any network through which the Customer gains access to the Service;

(d) to be solely responsible for all information and/or data retrieved, stored or transmitted by the Customer through the Use of the Services;

(e) to ensure that in Using the Service, all applicable laws, rules and regulations for the use of any communications systems, service or equipment shall be complied with at all times; and

(f) to fully co-operate at all times in any investigation on the wrongful Use of the Services. In the event of failure by the Customer to co-operate, DEWAN BANDARAYA KOTA KINABALU shall have the right to refuse further Use of the Services to the Customer.

## **7. USE OF THE SERVICES**

The Services shall not be Used in any other manner except for the Customer's own Use. Any other Use requires the prior written permission of DEWAN BANDARAYA KOTA KINABALU. The Customer herein hereby agrees to Use the Services only for lawful purposes, and in a manner which does not infringe the rights of, or restrict or inhibit the Use and enjoyment of the Services by any other third party. Such restriction or inhibition includes, without limitation, conduct which is unlawful, or which may harass or cause distress or inconvenience to any person. The Customer shall be responsible for and shall indemnify and hold harmless DEWAN BANDARAYA KOTA KINABALU, its related and affiliated corporations, and their respective agents and representatives against any claim arising from any unlawful Use of the Services by the Customer.

## **8. CUSTOMER's OBLIGATIONS AND RESTRICTIONS**

8.1 The Customer shall be solely responsible for:-

(a) the installation, setting-up, suitability and configuration of its equipment (including hardware and software) for access to the Services;

(b) obtaining, at its own cost, all licences, permits, consents, approvals and rights (including without limitation intellectual property rights) as may be required to Use the Services);

(c) obtaining at its own cost, a credit card necessary for Use of the Services;

(d) if the Customer is a company, corporate body, or society, the Customer shall be responsible in obtaining any further (if any) licence, permits, consents and approvals for such Customer to use the Service; and

(e) to register with the individual Payee(s) before the Services for that particular Payee can be used by the Customer.

#### 8.2 The Customer SHALL NOT Use the Services:-

(a) for any unlawful purpose including and without limitation, any criminal purpose;

(b) to infringe or facilitate infringement of any intellectual property rights of any person;

(c) to introduce, assist or attempt to introduce any computer virus or any other harmful component to DEWAN BANDARAYA KOTA KINABALU's and/or the Payee's system;  
And

(d) for purposes other than that as specified within this terms and conditions.

8.3 The Customer shall not assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written approval of DEWAN BANDARAYA KOTA KINABALU's and shall also not sub-let, share, rent, lease, offer and/or in any manner whatsoever transfer the Use of the Services to any other person without the prior written approval of DEWAN BANDARAYA KOTA KINABALU. The Services shall be for the SOLE USE OF THE CUSTOMER ONLY.

8.4 The Customer shall be solely responsible for protecting the secrecy of all information related to the Use of the Services and shall not reveal the same to any other person. The Customer shall be solely liable for all Use which emanates from the Customer which shall be deemed to have been undertaken by the Customer in all situations, unless it can be conclusively shown by the Customer to have been a result of unauthorized intrusion. The Customer shall notify DEWAN BANDARAYA KOTA KINABALU immediately if the Customer believes that any of its information has been, or is being compromised.

8.5 The Customer hereby acknowledges and agrees that DEWAN BANDARAYA KOTA KINABALU makes no representations or warranties, express or implied, as to the completeness, feasibility, reliability or effectiveness of the Service, or that the Service shall be uninterrupted or error free, or that defects have been or will be corrected. The use of any content or information received by the Customer from the utilization of the Service is at the Customer's sole and absolute risk. DEWAN BANDARAYA KOTA KINABALU is not in any way responsible for the completeness, accuracy or quality of information obtained through the Services provided herein.

8.6 The Customer hereby expressly agrees and understands that the Customer shall be absolutely liable for all Charges imposed by the Payee.

## **9. BASIS OF AGREEMENT**

The express consent, agreement and understanding of the Customer to the terms and conditions herein contained shall form the basis upon which DEWAN BANDARAYA KOTA KINABALU has agreed to provide the Services to the Customer.

## **10. REFUSAL OF SERVICES BY DEWAN BANDARAYA KOTA KINABALU**

10.1 DEWAN BANDARAYA KOTA KINABALU shall have the absolute and unfettered right to refuse the Services to the Customer for whatsoever reason and DEWAN BANDARAYA KOTA KINABALU may delete or retain as it considers appropriate all data or other information related to Remittance made by the Customer.

10.2 In addition to the above, DEWAN BANDARAYA KOTA KINABALU may, at its sole discretion refuse the Services to the Customer, or any part thereof, at any one time without prior notice to the Customer, if:-

- (a) the Customer breaches or fails to comply with any of the terms and conditions of this Agreement;
- (b) the Customer fails to effect Remittance within the period specified by the Payee and DEWAN BANDARAYA KOTA KINABALU is instructed by the Payee to refuse the Services;
- (c) the Customer has provided false information to DEWAN BANDARAYA KOTA KINABALU;
- (d) in DEWAN BANDARAYA KOTA KINABALU's opinion, it is not in the public interest to provide the Services to the Customer for any reason;
- (e) in DEWAN BANDARAYA KOTA KINABALU's sole opinion, the Customer's Use of the Services has or is likely to be the cause of failures, interruptions, errors or defects in DEWAN BANDARAYA KOTA KINABALU's or any other person's system;

(f) in DEWAN BANDARAYA KOTA KINABALU's sole opinion, such action are required for the purposes of maintenance or repair work on DEWAN BANDARAYA KOTA KINABALU's system; or

(g) the Customer is declared bankrupt or the Customer becomes insolvent or enters into voluntary or compulsory liquidation or passes effective resolution for winding up or makes an arrangement or composition with its creditors or upon the appointment of a receiver, manager or special administrator over the whole or substantially the whole of its undertakings or if any distress or execution shall be threatened or levied upon any of its equipment and/or other property.

10.3 In addition to and not in derogation to the aforementioned, DEWAN BANDARAYA KOTA KINABALU may, in its sole discretion take such actions as necessary to correct, rectify, minimize or remove the breach or lack of compliance, with minimal disruption to the Customer's Use of the Services.

## **11. INDEMNITY AND EXCLUSION OF LIABILITY**

11.1 The Customer undertakes and agrees to indemnify, save and hold harmless DEWAN BANDARAYA KOTA KINABALU, its servants, agents and subcontractors at all times against all actions, claims, proceedings, costs, losses and/or damages whatsoever, including but not limited to libel, slander, infringement of intellectual property, death, bodily injury or property damage howsoever arising which DEWAN BANDARAYA KOTA KINABALU, its servants, agents and subcontractors may sustain, incur or pay, or as the case may be, which may be brought or established against DEWAN BANDARAYA KOTA KINABALU, its servants, agents and subcontractors by any person arising out of or in connection with or by reason of the operation, provision or Use of the Services and/or equipment under, by reason of or pursuant to this Agreement and which are attributable to the act, omission or neglect of the Customers, his servants, agents or subcontractors.

11.2 In no event shall DEWAN BANDARAYA KOTA KINABALU be liable to the Customer or any other persons for any loss or damage including any loss of business opportunity, consequential, indirect, special or incidental damages arising out of or in connection with or by reason of the operation, provision or Use of the Services and/or for any refusal, failure, disruption, downtime, interruption, miscalculation, incorrect linkage, delay in activation or access, inaccuracy or other non-performance of the Services or for any loss of information or otherwise. For the avoidance of doubt, DEWAN BANDARAYA KOTA KINABALU shall not be liable for any loss or corruption of the data and for any loss or damage sustained by the Customer due to any deletion, theft, transmission delay, error, omission, inaccuracies or otherwise with respect to any data.

11.3 Without limiting anything else herein contained, DEWAN BANDARAYA KOTA KINABALU shall not be liable to the Customer for the following:-



(a) For any errors in the connectivity, accuracy of information transmitted/received vis-à-vis the MEPS infrastructure, the credit card company and the Payee.

(b) If there is any disputed transaction between the Customer, Payee and the credit card company in a situation where the Customer had Used the Service (in his name or otherwise) on behalf of a third party (which the Customer is expressly prohibited from doing under the terms and conditions of this Service).

(c) In any dispute between the Customer, Payee and the credit card company, which may or may not lead to a chargeback situation, it is the Customer's responsibility to deal directly with those parties. DEWAN BANDARAYA KOTA KINABALU shall not be liable to involve itself or assist in such dispute.

## **12. VARIATION OF TERMS**

DEWAN BANDARAYA KOTA KINABALU reserves the right to amend, vary, add to or delete the terms and conditions herein contained at any time and the Customers shall be bound by the terms and conditions as amended, varied, added to or deleted. Notice of the amendment or variation may be given by DEWAN BANDARAYA KOTA KINABALU to the Customer in the manner provided herein.

## **13. ASSIGNMENT**

DEWAN BANDARAYA KOTA KINABALU, but not the Customer, shall have the right to assign all its right and obligations hereunder.

## **14. WAIVER**

No failure by DEWAN BANDARAYA KOTA KINABALU to insist upon the strict performance of any terms and conditions herein contained in this Agreement nor any failure by DEWAN BANDARAYA KOTA KINABALU to exercise any right or remedy consequent upon any such breach of any such term or conditions shall constitute a waiver by DEWAN BANDARAYA KOTA KINABALU of any such right or remedy. No such forbearance by DEWAN BANDARAYA KOTA KINABALU shall affect or alter this Agreement. Each and every term and condition of this Agreement shall have full force and effect.

## **15. FORCE MAJEURE**

DEWAN BANDARAYA KOTA KINABALU shall not be liable for any breach of this

Agreement arising from causes beyond its control including but not limited to acts of God, insurrection, civil disorder, failure of third parties to provide services as contracted,

war or military operations, national or local emergency, acts or omissions of government or other governmental authorities, industrial disputes of any kind (whether or not involving any of DEWAN BANDARAYA KOTA KINABALU's employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom DEWAN BANDARAYA KOTA KINABALU is not responsible or any other cause whether similar or dissimilar outside DEWAN BANDARAYA KOTA KINABALU's control.

## **16. GOVERNING LAW**

This Agreement shall be governed by the laws of Malaysia whose courts thereof shall be the courts of competent jurisdiction.

## **17. SEVERABILITY**

To the full extent possible, each provision of this Agreement shall be constructed separately, independently and in such a fashion as to be effective and valid under applicable law. If any provision is declared void, illegal or unenforceable by a court of competent jurisdiction with respect to the Agreement or any particular circumstances, such provisions shall remain in full force and effect in all other circumstances. If any provision is declared entirely void, illegal or entirely unenforceable by a court of competent jurisdiction, all other provisions of these terms and conditions shall remain in full force and effect.

## **18. COSTS AND EXPENSES**

In the event that DEWAN BANDARAYA KOTA KINABALU is required to recover any sum whatsoever from the Customer by way of litigation proceedings, the Customer shall be liable to indemnify DEWAN BANDARAYA KOTA KINABALU in respect of all costs and expenses incurred by DEWAN BANDARAYA KOTA KINABALU in the recovery of such sums.

## **19. PERSONAL INFORMATION**

The Customer is aware that all information provided by the Customer to DEWAN BANDARAYA KOTA KINABALU is stored by DEWAN BANDARAYA KOTA KINABALU in its database systems for use by DEWAN BANDARAYA KOTA KINABALU in a number of ways in the furtherance of DEWAN BANDARAYA KOTA KINABALU's business activities. This use may for example include (but may not be limited to), the administration of the Services provided hereunder, or the development of new services, and the Customer hereby consents to the said compilation of information.

## **20. CONCLUSIVE EVIDENCE**

A certificate issued and signed by any officer for the time being of DEWAN BANDARAYA KOTA KINABALU shall, save for manifest error, be binding upon the Customer as to amounts owed by Customer to the Payee, and shall in the event of court proceedings be deemed to be conclusive evidence as to amounts owed by the Customer to DEWAN BANDARAYA KOTA KINABALU.

## **21. PRIVACY STATEMENT**

21.1 DEWAN BANDARAYA KOTA KINABALU recognizes that the Customers are unique with its own distinct preferences. DEWAN BANDARAYA KOTA KINABALU's aim is to provide the Customers with information and services which are most relevant to the Customers. In order to achieve this, DEWAN BANDARAYA KOTA KINABALU needs to collect information to understand what differentiates one Customer from another.

21.2 Any information provided to DEWAN BANDARAYA KOTA KINABALU when registering for the Services is maintained and accessible only by DEWAN BANDARAYA KOTA KINABALU and its related or affiliated corporations. DEWAN BANDARAYA KOTA KINABALU may use this information to offer the Customers opportunity to receive notices regarding other DEWAN BANDARAYA KOTA KINABALU's product and services. DEWAN BANDARAYA KOTA KINABALU may also use this information to send material to you for marketing purposes, but DEWAN BANDARAYA KOTA KINABALU shall take commercially reasonable steps to safeguard the information from unauthorized access, and unless DEWAN BANDARAYA KOTA KINABALU specifically disclose to the Customer, DEWAN BANDARAYA KOTA KINABALU shall not make the Customer specific information that is gathered available to unaffiliated organizations for commercial purposes unrelated to the business of DEWAN BANDARAYA KOTA KINABALU and its related or affiliated corporations.

21.3 The individually identifiable information that is provided by the Customer shall be used extensively within DEWAN BANDARAYA KOTA KINABALU and its related and affiliated corporations to provide the Customers with personalized experience. Except as described within this privacy statement, DEWAN BANDARAYA KOTA KINABALU shall not willfully disclose individually identifiable information about the Customers to anyone outside DEWAN BANDARAYA KOTA KINABALU and its related and affiliated corporations without first receiving the Customer's consent, preventing this information from appearing in unauthorized mailings and other solicitations.