

***Important Notice: Please read and understand the terms and conditions governing merchant services before you decide to apply for merchant services and if you do not understand any of the terms and conditions, you may clarify with the Bank.***

## **MERCHANT SERVICES TERMS AND CONDITIONS**

These terms and conditions govern your use of merchant services provided by us. By signing the CIMB Bank Merchant Application Form, you agree to accept payment for your goods and services through our merchant services upon these terms and conditions. You also agree to comply with Operating Policies and Procedures of PayNet which the Bank may notify you from time to time.

If you use our merchant services, you are deemed to have agreed to these terms and conditions. Reference to these terms and conditions shall mean the terms and conditions in the Merchant Application Form, the Approval Notification Letter, this Merchant Services Terms and Conditions, the relevant Appendices and the Operating Policies and Procedures of PayNet. If you do not agree to these terms and conditions, please notify us immediately and return all our materials to us and do not use our merchant services or submit charges to us for us to collect on your behalf.

### **1. DEFINITIONS**

Words used in these terms and conditions have the following meanings:-

“**Approval Code**” means the authorization code given by the Bank as a pre-condition for any Transaction and for the Bank to make payment to the Merchant. The issuance of the Approval Code however does not guarantee payment by the Bank.

“**Bank**”, “**our**” or “**us**” means CIMB Bank Berhad [197201001799 (13491-P)].

“**Banking Services**” means banking services provided by the Bank including the Bank’s internet banking services (CIMB Clicks and CIMB Clicks E-payment services), the Bank’s self-service terminals (such as ATMs (automated teller machines) and CDMs (cheque / cash deposit machines & kiosks)) and mobile banking services.

“**Business Day**” means a day (other than Saturday or Sunday) on which banks are open for business in Kuala Lumpur, Malaysia.

“**Calendar Day**” means a day in the Gregorian calendar.

“**Card**” means as the context may require, any validly issued and unexpired Credit Card, Debit Card, Prepaid Card and Charge Card.

“**Cardholder**” means the party who holds or has been issued with the Card.

“**Card Companies**” means:-

- (a) JCB International Co., Ltd;
- (b) MasterCard International Inc;

- (c) Visa International Worldwide Pte. Limited;
- (d) UnionPay International Co. Ltd.; and/or
- (e) American Express Travel Related Services Company;

as the case may be and such other entities which the Merchant and the Bank may agree to from time to time and includes their respective successors-in-title and assigns.

**“Charge Card”** means any currently Valid Card which is designated by its issuer as a charge card bearing the symbols, logos and marks of the relevant Card Companies.

**“CIMB Group”** means CIMB Group Holdings Berhad and all companies deemed related to it pursuant to Section 7 of the Companies Act 2016 and jointly controlled companies that provide financial and other regulated services, excluding companies, branches, offices and other forms of presence operating outside Malaysia, and solely for the purpose of clause 24.6 and clause 24.7, the use of the word “the Bank” is to be read as references to the CIMB Group.

**“Credit Card”** means any currently Valid Card which is designated by its issuer as a credit card bearing the symbols, logos and marks of the relevant Card Companies.

**“Credit Slip”** means a document in form and substance prescribed by the Bank to evidence the refund of a transaction.

**“Debit Card”** means any currently Valid Card which is designated by its issuer as a debit card bearing the symbols, logos and marks of PayNet and the relevant Card Companies and includes a Debit MasterCard, Visa Debit and MyDebit cards.

**“DuitNow National QR Code Standard”** means DuitNow National Quick Response Code Standard specification developed and managed by PayNet for domestic interoperable QR Code use cases.

**“DuitNow QR”** or **“DuitNow QR Services”** means a service offered by PayNet, which facilitates industry wide ubiquitous payments or credit transfers by scanning the QR Code, which complies with DuitNow National QR Code Standard.

**“eWallet”** means a virtual wallet in the form of a mobile device application used similarly to a real wallet to allow its registered users to purchase products and services using preloaded money or stored on the Card in the wallet.

**“eWallet Account”** means an account allocated to an eWallet User upon completion of registration at the respective eWallet Operator’s designated website or software application on a mobile device. Each eWallet Account is for payment and collection between the respective eWallet Operator and the applicable eWallet User.

**“eWallet Operator”** means the owner of an eWallet Platform.

**“eWallet Payment Service”** means enablement of the eWallet payment service to the Merchant for the purpose of accepting payment from eWallet Users for eWallet Transactions.

**“eWallet Platform”** means the payment processing system developed by the eWallet Operator in which an eWallet software application operates or resides.

**“eWallet Transaction”** means any payment transaction effected or to be effected through the eWallet Platform with the Merchant and includes payments made to the Merchant from the eWallet User’s eWallet Account;

**“eWallet User”** means an individual end-user who has an eWallet Account.

**“Fee”** means any fee agreed to be payable by the Merchant to the Bank.

**“FPX”** means the direct-to-bank internet payment gateway operated by PayNet, which facilitates internet payments and e-commerce purchases using savings and current accounts.

**“JomPAY”** means Malaysia’s national bill payment scheme operated by PayNet where customers can pay any registered biller from internet or mobile banking by drawing funds from their current, savings or credit card accounts.

**“Merchant”, “you” or “your”** means the person or entity who has applied for the use of the Bank’s merchant services.

**“Merchant’s Designated Account”** means the business current account maintained with the Bank or CIMB Islamic Bank Berhad or any other bank account approved by the Bank, as nominated by the Merchant into which the Bank may make payments by way of a direct credit.

**“Merchant Discount”** means the fee to be paid by the Merchant to the Bank at the agreed rate based on the percentage of the transaction amount processed by the Bank.

**“Merchant’s Website”** means the website or the webpage of the Merchant notified to Bank and consented to by the Bank.

**“MPOS”** means a mobile point of sale device, which includes Plug n Pay and/or Tap n Pay.

**“MyDebit”** means a domestic debit card scheme operated by PayNet that allows MyDebit Cardholders to make payments for goods/services in-store, online store or withdraw cash at participating Merchants by debiting directly from the MyDebit Cardholders’ nominated savings/ current account.

**“MyDebit Cardholders”** means a person who holds a MyDebit card issued by a financial institution, authorized by Bank Negara Malaysia to issue MyDebit card, which maintains the savings / current accounts that could be accessed by such card.

**“Payment Channels”** means the payment channels referred to in Clause 2.1(a) to (h) below.

**“Payment Instructions”** means any instruction given to the Merchant by a Cardholder/eWallet User, whether contained in an electronic order form or otherwise, to charge his Card account or to debit his eWallet Account for payments due and payable to the Merchant.

**“PayNet”** means Payments Network Malaysia Sdn Bhd [200801035403 (836743-D)] (*formerly known as Malaysian Electronic Clearing Corporation Sdn Bhd (MyClear)*) the operator of JomPAY, FPX, DuitNow QR and MyDebit.

**“PCI-DSS”** means Payment Card Industry Data Security Standards which is a set of comprehensive requirements for enhancing payment account data security, developed by the founding payment brands of the PCI Security Standards Council, including but not limited to American Express Company, Discover Financial Services, JCB International, MasterCard Worldwide and Visa International.

“**Plug n Pay**” means a mobile point of sale device comprising of a card reader and/or reader/generator of QR Codes (“**Card Reader**”) provided by the Merchant to the Sales Reps and a mobile telecommunication / wireless device (such as a smart phone and/or a tablet) used to effect Transactions which the Bank may require the Merchant to replace or upgrade at its own cost from time to time.

“**Prepaid Card**” means any currently Valid Card which is designated by its issuer as a prepaid card having stored monetary value bearing the symbols, logos and marks of the relevant Card Companies.

“**Programs/Services**” means the programs and services referred to in Clause 2.2(a) to (i) below.

“**QR Code Transaction**” means any Transaction effected using QR Codes.

“**QR Code (Dynamic)**” refers to a unique and changeable code produced by the Merchant which has the Merchant’s account details and transaction information (including amount payable) embedded within the code. QR Codes (Dynamic) can only be scanned once. The Cardholder/eWallet User/customer does not need to enter the amount when making payments using QR Codes (Dynamic).

“**QR Code (Static)**” refers to a fixed and unchangeable code provided by the Bank to the Merchant which ONLY has the Merchant’s account details embedded within the code. QR Codes (Static) can be scanned repeatedly. The Cardholder/eWallet User/customer is required to enter the amount payable when making payments using QR Codes (Static).

“**QR Codes**” refers to Quick Response Code, a type of matrix barcode (or two-dimensional barcode) that contains information about an item to which it is attached. There are 2 types of QR codes i.e. QR Code (Static) and/or QR Code (Dynamic).

“**Tap n Pay**” means a secure payment mobile application that allows the Merchant to accept and manage electronic payments on selected NFC-enabled Android smartphone and accept contactless or wave-based payments.

“**Transaction**” means any payment transaction effected or to be effected to the Merchant through any of the Payment Channels and/or Programs/Services.

“**Valid Card**” means a Card which has not been cancelled, suspended or expired.

## **2. PAYMENT CHANNELS & PROGRAMS/SERVICES**

2.1 Where the Payment Channels are by way of:-

- (a) Terminals and / or MPOS, the terms and conditions contained in **Appendix A** shall also apply; and
- (b) Cards with payments authorised by Cardholders through the use of Mail Order Forms, the terms and conditions contained in **Appendix B** shall also apply; and
- (c) Cards with payments processed through the Merchant’s Website, the terms and conditions contained in **Appendix C** shall also apply; and
- (d) Cards issued by the Bank with payments processed through the Bank’s “CIMB Clicks” internet banking service, the terms and conditions contained in **Appendix D** shall also apply; and
- (e) payments made by customers of the Bank through the use of the Bank’s Banking Services, the terms and conditions contained in **Appendix E** shall also apply; and
- (f) payments made by customers via inter-bank online payments through the Financial Process Exchange, the terms and conditions contained in **Appendix F** shall also apply; and

- (g) payments made by customers and/or the Cardholders via Jompay, the terms and conditions contained in **Appendix G** shall also apply; and
- (h) QR Code Transactions, the terms and conditions contained in **Appendix H** shall also apply.

2.2 For participation in:

- (a) the CIMB Deals program, the terms and conditions contained in **Appendix I** shall also apply;
- (b) the MyDebit Services, the Additional Terms and Conditions for MyDebit Services set out in **Schedule 1 of Appendix A** shall also apply;
- (c) the MPOS, the Additional Terms and Conditions for MPOS set out in **Schedule 2 of Appendix A** shall also apply;
- (d) the Dynamic Currency Conversion program (“**DCC Program**”), the terms and conditions of DCC Program contained in **Schedule 4 of Appendix A** shall also apply;
- (e) the Pay with Points program (“**PWP**”), the terms and conditions of the PWP contained in **Schedule 5 of Appendix A** shall also apply;
- (f) the iTerminal Value Added Services (*with new features of TRM (transaction reconciliation management), instant discount & promozone*) (“**iTVAS1**”), the terms and conditions of iTVAS1 contained in **Schedule 6 of Appendix A** shall also apply;
- (g) the iTerminal Value Added Services (*provision of thirty party issuers’ easy pay plan (epp) via the Bank’s Terminals*) (“**iTVAS2**”), the terms and conditions of iTVAS2 contained in **Schedule 7 of Appendix A** shall also apply;
- (h) the Easy Pay Plan Program (“**EPP**”), the terms and conditions of EPP set out in Clause 10.2 of Appendix A and/or Clause 6.1 of Appendix C shall also apply; and
- (i) the DuitNow QR Services, the Additional Terms and Conditions for DuitNow QR Services set out in **Schedule 1 of Appendix H** shall also apply.

2.3 The Appendices referred to in Clauses 2.1 and 2.2 above are collectively referred to as the “**Appendices**”. If there is any inconsistency between this terms and conditions and the terms and conditions in the Appendices, the terms and conditions contained in the Appendices shall prevail in so far as it relates to the relevant Payment Channels or Programs/Services unless expressly stated otherwise in this terms and conditions.

2.4 Unless otherwise agreed, monies due to the Merchant may be paid by way of direct credit to the Merchant’s Designated Account. The Merchant shall not change or close the Merchant’s Designated Account without the Bank’s prior written consent. If the Merchant’s Designated Account is changed or closed by the Merchant without the Bank’s prior written consent or where the Merchant’s Designated Account is closed for any reasons whatsoever in accordance with the terms and conditions governing the Merchant’s Designated Account, the Bank may terminate the availability / use of the Payment Channels and/or Programs/Services by giving written notice to the Merchant.

### **3. MERCHANT DISCOUNT/FEEES AND OTHER SUMS OF MONEY (IF ANY) OWED**

3.1 The Merchant shall pay the Merchant Discount and/or a Fee on transactions at the rate notified by the Bank and agreed to by the Merchant from time to time.

3.2 The Bank is expressly authorised to deduct the relevant Merchant Discount, Fee and/or other sums of money (if any) owed to it, arising from the merchant services, from the Merchant's sales proceeds before paying over monies which are due to the Merchant.

3.3 In addition to the Bank's rights under Clause 3.2, and where the Merchant's sales proceeds are insufficient, the Merchant also expressly authorises the Bank to debit or cause to be debited from the Merchant's Designated Account all the relevant Merchant Discount, Fees and other sums of money (if any) due to it, arising from the merchant services. The Bank does not have to obtain the Merchant's prior approval (written or otherwise) before the debit is made but will notify the Merchant of the debit made.

#### **4. CHARGEBACKS AND REFUSAL OF PAYMENT**

4.1 Notwithstanding anything contained in the Appendices, the Bank may by giving notice to the Merchant to refuse payment to the Merchant for the amount of such transaction; and where payment has been made by the Bank to the Merchant, deduct such payment from any of the Merchant's sales proceeds and/or raise a debit against the Merchant for the amount of such transaction and debit or cause to be debited the same from the Merchant's Designated Account if:

- (a) any Cardholder, eWallet User, customer, Card Companies, PayNet or eWallet Operator disputes the validity of any transaction or if any transaction is invalid, or
- (b) the Merchant performed late settlement transaction(s) of more than seven (7) calendar days from the date of transaction or late submission of transaction slips to the Bank for manual posting payment, or
- (c) the Merchant breaches any of its warranties, representations, undertakings or obligations, or
- (d) the Bank is otherwise allowed by law or under any rules and regulations issued by any of the Card Companies or PayNet or eWallet Operators, or
- (e) the documents, information, statement or declaration furnished to the Bank by the Merchant are incorrect or inaccurate at any time, or
- (f) suspicious or abnormal settlement transactions are detected or the Bank has reason to believe that there is fraud.

Under the above circumstances, the Bank reserves the right to withhold payment and refuse any payment to the Merchant unless the Bank receives all relevant supporting documents and has completed investigation (if applicable) to the Bank's satisfaction. Authorisation of any transaction does not guarantee payment by the Bank.

4.2 The Bank will notify the Merchant if chargebacks in any particular category has or is in threat of exceeding any threshold set by the Bank or any of the Card Companies or eWallet Operators. The Merchant must take immediate action to rectify the failures in its processes which resulted in the excessive chargebacks. Failure to resolve the cause of the problem may result in "Excessive Chargebacks fines" being imposed by the Card Companies and/or eWallet Operators, which the Merchant will have to indemnify the Bank for.

#### **5. REFUNDS AND REBATES FOR CERTAIN TRANSACTIONS**

5.1 If the Merchant wants to make any refund or grant any rebate in respect of any Transaction, the Merchant shall credit the refund or rebates to the relevant account from which the payment originated. The Merchant **MUST NOT** make any cash refund to the Cardholder/eWallet User/customer. If the Bank suffers any loss due to the Merchant's breach of this term, the Merchant shall pay to the Bank the amount of the cash refund or rebate.

## **6. STATEMENT OF ACCOUNT**

6.1 The statement of accounts incorporating details of the Transactions will be made available to the Merchant for retrieval on CIMB Merchant Electronic Online Portal (e-Access) or web portal specified by the Bank. The Bank may also send such statement of accounts to the Merchant. Such statement of accounts shall be treated as an invoice for the Merchant Discount and/or Fee and other sums charged by the Bank.

6.2 If the statement of accounts:-

- (a) is posted on the CIMB Merchant Electronic Online Portal (e-Access) with the Bank, it is deemed retrieved by the Merchant on the date it is posted onto the said portal; and
- (b) is sent to the Merchant via post, it is deemed received seven (7) Calendar Days from the date it is sent.

6.3 Any dispute by the Merchant as to the correctness of the statement shall be notified in writing by the Merchant to the Bank within fourteen (14) Calendar Days from the date of retrieval or receipt or deemed retrieval or receipt. TAKE NOTICE THAT IF THE MERCHANT DOES NOT WITHIN THE AFORESAID FOURTEEN (14) CALENDAR DAYS DISPUTE THE CORRECTNESS OF THE STATEMENT AND NOTIFY THE BANK IN WRITING OF ANY ERROR, DISCREPANCY OR INACCURACY OF ANY ENTRY THE MERCHANT IS DEEMED TO HAVE ACCEPTED THE ENTRIES IN THE STATEMENT AS CORRECT (INCLUDING ANY INDEBTEDNESS) AND FINAL AND CONCLUSIVE EVIDENCE AS AGAINST THE MERCHANT AND BINDING ON THE MERCHANT AND THE MERCHANT MAY NOT BE ALLOWED TO CLAIM THAT THE STATEMENT CONTAINS ANY ERROR, DISCREPANCY OR INACCURACY.

## **7. TAXES**

7.1 All fees and charges payable by the Merchant are stated exclusive of goods and services tax, service tax, value added tax or similar tax which may be imposed. The Bank may deduct such taxes from the Merchant's sales proceeds and/or debit or cause to be debited such taxes from the Merchant's Designated Account. The Bank does not have to obtain the Merchant's prior approval (written or otherwise) before the deduction and/or the debit is made but will notify the Merchant of the deduction and/or debit made.

## **8. SET-OFF**

8.1. The Bank may, by giving the Merchant seven (7) calendar days' prior notice, exercise any right of set off on any and all account(s) of the Merchant against any sums payable to the Bank from the Merchant. The right of set off can be applied between accounts even though the accounts may not be in the same currency (in this situation the Bank may carry out the set off with the necessary conversion of the foreign currency at the Bank's prevailing exchange rate). Before carrying out any set-off, the Bank may earmark any available funds in the Merchant's accounts against the Merchant's outstanding balance upon giving notice to the Merchant. Where the Merchant's accounts are not in the same currency, the Bank may earmark an amount which is equivalent to, or sufficient to satisfy the Merchant outstanding balance based on the Bank's prevailing exchange rates.

## **9. DISPUTE RESOLUTION AND PRODUCTION OF RECORDS**

9.1 To resolve disputes or to address complaints arising from any Transaction and/or Programs/Services, the Merchant must provide the Bank with the original copy or photocopies or printouts (as required by the Bank) of the Payment Instructions, Mail Order Forms, Credit Slips/Sales Slip/Terminal Slip,

statements, bills or invoices, sales or other information or records of the Merchant within fourteen (14) Calendar Days from the Bank's written request. All Transactions and Programs/Services records must be retained for at least eighteen (18) months from the relevant transaction and the Merchant must comply with the dispute resolution processes of the Bank and/or Card issuer and/or any of the Card Companies and/or PayNet and/or eWallet Operator.

## **10. TERMINATION**

10.1 Either Party may terminate the availability / use of all or any of the Payment Channels and/or Programs/Services individually without affecting any of the other Payment Channels and Programs/Services for convenience without cause by giving written notice to the other of at least thirty (30) Calendar Days before the intended date of termination. Additionally, either Party may terminate without cause the acceptance of any Card of any of the Card Companies by giving the other at least thirty (30) Calendar Days prior notice.

10.2 In addition to the Bank's rights under Clause 10.1, the Bank also reserves the right to immediately terminate the availability / use of all or any of the Payment Channels and/or Programs/Services and/or acceptance of any Card of any of the Card Companies by giving written notice to the Merchant if:-

- (a) the Merchant breaches any of these terms and conditions and does not remedy the breach within ten (10) Calendar Days after it is notified of the breach;
- (b) the Bank has reasonable grounds to suspect that the Merchant is involved in terrorism financing or business or business transactions and/or where monies are received from unlawful activities in breach of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (“**AMLATFA**”);
- (c) the Bank has reasonable grounds to believe that the Merchant accepted payment for a transaction even though it knew or ought to have known or had reasons to suspect or that it was a fraudulent or improper transaction;
- (d) the Merchant has taken steps to enter or receives an order for any voluntary arrangement, judicial management, scheme of compromise, arrangement, reorganization or composition with or for the benefit of its creditors or allows any judgement against it to remain unsatisfied for a period of fourteen (14) Calendar Days or has any distress or execution or other process of court of competent jurisdiction levied upon or issued against its property or assets and it is not satisfied by the Merchant within seven (7) Calendar Days from the date of such issuance of the distress or execution or other process, as the case may be;
- (e) the Merchant being a limited company, goes into liquidation (except a voluntary liquidation for the purpose of amalgamation or reconstruction on terms previously approved in writing by the Bank) or threatens or passes a resolution to wind-up or is in jeopardy of becoming subject to any form of insolvency proceedings. In the case of the Merchant being a proprietorship or partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving or where proceedings are commenced or a resolution is passed for the bankruptcy, winding up or dissolution of the Merchant or proceedings are commenced for the judicial management of the Merchant or a nominee, trustee, supervisor, manager, judicial manager, administrator, receiver, receiver and manager liquidator or similar officer is appointed over the Merchant or any of its assets or any part thereof of a meeting, whether formal or informal being called by the Merchant's creditors or any of them, or where the Merchant commits any act of bankruptcy;
- (f) the Merchant ceases or threatens to cease to carry on its business;



- (g) the Merchant defaults on any account or accounts or facilities it has with the Bank or any other financial institution;
- (h) the Merchant retires, goes insane or dies (if he is an individual) or there is a change in the principals of the Merchant or their major or controlling shareholders or partners (if it is a corporate or business entity);
- (i) the Bank has reasonable grounds to believe that the Merchant or any of its officers, employees and/or agents is involved in any irregularity or fraud or is suspected of irregularity or fraud by any of the Card Companies or any other issuer of any Card or PayNet and/or any eWallet Operator with regard to any Transaction and/or Programs/Services;
- (j) any information or any documents provided by the Merchant to the Bank is incorrect or misleading or inaccurate;
- (k) required by law; or
- (l) the Merchant has been charged or convicted of a criminal offence relating to fraudulent or illegal activity.

10.2 The termination of the availability of all or any of the Payment Channels and/or Programs/Services does not affect any rights, obligations and liabilities of either Party which arose before the termination and the Bank's rights to perform chargeback provisions shall survive such termination. The Bank will not carry out any payment transactions submitted to the Bank after the effective date of the termination or suspension.

10.3 Upon termination of the availability of the Payment Channels and/or Programs/Services, all sums owing by the Merchant to the Bank relating to that Payment Channel and/or Program/Service shall become immediately due and payable. The Merchant shall at its own costs and expense immediately return to the Bank all items relating to that Payment Channel and/or Program/Service provided by the Bank in good working order and condition (fair wear and tear accepted).

10.4 The Bank's rights and Merchant's obligations in Clauses 4, 8, 13, 16, 17 and 20 shall survive the termination of use of all or any of the Payment Channels and/or Programs/Services.

## **11. SUSPENSION NOTICE**

11.1 If the Merchant fails to provide to the Bank any requested information or documents reasonably required by the Bank within seven (7) Business Days from the Bank's request, or if the Bank has reasonable grounds to suspect that the Merchant has breached or intends to breach any of these terms and conditions or suspicious or abnormal settlement transactions are detected or due to regulatory reasons, the Bank may (without terminating the availability of the Payment Channels and/or Programs/Services) immediately suspend the operation of all or any of the Payment Channels and/or Programs/Services individually without affecting any of the other Payment Channels and Programs/Services by service of notice on the Merchant ("**Suspension Notice**"). Following the Suspension Notice, the Bank may immediately terminate the Payment Channel and/or Program/Service that was suspended by giving the Merchant notice of the termination. The Bank will not be liable to the Merchant for any loss suffered by the Merchant for the suspension and/or the suspension and termination of the Payment Channel and/or Program/Service as aforesaid.

11.2 The Bank also reserves the right to serve the Suspension Notice referred to in Clause 11.1 on the Merchant if the Merchant fails to provide to the Bank within ninety (90) Calendar Days any requested PCI-DSS related document to ensure the Merchant is in compliance with the PCI-DSS and within fourteen (14) Calendar Days from the Bank's request for any other relevant PCI-DSS renewal documents.

## **12. CONCLUSIVENESS**

12.1 Any record obtained from any of the Card Companies, PayNet, any eWallet Operator or any other relevant third party's system, database or network shall be conclusive and binding on the Merchant save for obvious error.

12.2 Any document, computer generated statement or certificate (which does not require any signature) issued by the Bank and or certificate signed by any of its officers stating any amount due or owing by either Party to the other shall be conclusive evidence and binding on the Merchant save for obvious error. The Bank may however correct any error appearing in any statement or certificate by issuing a substituted document in its place.

## **13. CONFIDENTIALITY AND RIGHT OF DISCLOSURE OF INFORMATION**

13.1 The Merchant shall keep all information relating to the merchant services confidential and shall not disclose the same to any other person without the PRIOR written consent of the Bank. Confidential information subject to the restriction includes customers and/or Cardholders and/or eWallet Users information and transaction information, information received from the Bank that is not publicly available including, without limitation, Merchant Discount and Fees payable by the Merchant. The Merchant shall also not store, copy, or reproduce in any form any data containing Card, Cardholder, eWallet User and customers' information. The Merchant shall ensure that its personnel, directors and officers who have access to such information shall comply with the provisions of this term.

13.2 If the Merchant is required by law to disclose any confidential information, the Merchant shall promptly notify the Bank of the requirement to allow (but not oblige) the Bank a reasonable opportunity to obtain a protective order to protect the interests of the Bank.

13.3 The Merchant agrees, consents to and authorises the Bank to disclose any information related to the Merchant and the Merchant's affairs and/or any accounts maintained by the Merchant with the Bank, to facilitate any Transaction and/or Programs/Services and/or for purposes of chargeback under Clause 4 and/or towards the recovery of any moneys due and owing from the Merchant to the Bank and/or for facilitating business, operations, provision of the merchant services/facilities and performance of the contract, services of or granted or provided by the Bank and/or the Group Companies, to the following persons:-

- (a) any other bank or financial institution, PayNet or any of the Card Companies or any member institution of the Card Companies or any other card company or any eWallet Operator;
- (b) any of the Bank's agents, sub-contractors, service providers, auditors, legal counsel and/or professional advisors, in or outside Malaysia; and/or
- (c) the entities within the group of CIMB Group Holdings Berhad, the Bank's ultimate holding company ("**Group Companies**") whether such Group Companies are residing, situated, carrying on business, incorporated or constituted within or outside Malaysia.

13.4 The Bank may also disclose any information relating to the Merchant, the Merchant's affairs and/or any accounts maintained by the Merchant with the Bank to:

- (a) any tribunal, courts, governmental agencies or bodies or other relevant authorities to whom the Bank is required to make disclosures or have jurisdiction over the Bank whether in or outside Malaysia in order to comply with any order, demand, request or reporting requirement or for the purposes of litigation or potential litigation involving the Bank as and when required or requested to do so from time to time and at any time;
- (b) any third parties making enquiries with a view to entering into prospective transactions with the Bank;
- (c) any potential transferee or assignee with whom the Bank is negotiating the transfer, assignment and novation of the rights or obligations under these terms and conditions;
- (d) any company and/or organisation that assist or facilitate the processing and/or fulfilment of transactions or instructions that the Merchant requested and/or given to the Bank; and/or
- (e) such third parties and for the purpose(s) as identified in the CIMB Group Privacy Notice under the heading of 'Disclosure of Your Personal Information' and 'How We Use Your Personal Information' respectively.

The Merchant agrees that the consent given above cannot be withdrawn where such disclosure of the Merchant's information is necessary for the provision of the merchant services and/or related services or the performance of the contract with the Merchant to comply with contractual requirements or to comply with any legal requirements.

**13.5 Disclosure by the Bank to Group Companies (within Malaysia) may also be for cross selling purposes of the Bank and/or the Group Companies provided always that disclosure for cross selling purposes shall not be effected if such disclosure is objected to by the Merchant.**

The Bank may also disclose the Merchant's information such as name and contact details (excluding the Merchant's affairs or account) to third party business partners and strategic alliance partners for cross selling, marketing and promotional purposes if the consent from the Merchant has been obtained.

However, the Merchant may at any time revoke or withdraw the above mentioned consent to disclosure of information by the Bank to Group Companies (within Malaysia) and to third party business partners and strategic alliance partners for cross selling, marketing and promotional purposes by contacting the Bank at the following telephone number or address (which may be changed by the Bank from time to time by notice to the Merchant): Customer Resolution Unit, P.O. Box 10338 GPO Kuala Lumpur 50710 Wilayah Persekutuan; Call Centre No +603 6204 7788, e-mail: contactus@cimb.com.

## **14. MERCHANT'S UNDERTAKINGS**

14.1 The Merchant undertakes to:-

- (a) ensure that its business, activities, products and services do not contravene any laws;
- (b) not sell or accept payment for goods and services which are prohibited or restricted or likely be prohibited or restricted under applicable laws, rules and regulations or which violates the Bank's,

the Card Companies or any member institution of the Card Companies or any other card company or any eWallet Operator's internal policy including such goods and services that is notified in writing to the Merchant from time to time;

- (c) comply with its contract with the Cardholder and/or eWallet User and/or customer including but not limited to the nature, quality and delivery of goods and services contracted to be sold and supplied;
- (d) not discriminate against any customer and/or Cardholder and/or eWallet Users wanting to make buy goods and/or services using the Card or eWallet;
- (e) not impose any surcharge or price increase and minimum transaction amount for any Transaction on any Cardholder and/or eWallet User and/or customer who wants to use the Payment Channels and/or Programs/Services to purchase goods and/or service, but the Merchant may give discounts to any person who elects to pay cash for purchases of goods and/or services;
- (f) ensure that all of the Merchant's representations and/or advertisements relating to merchandise and/or services offered by the Merchant are not illegal, do not damage the Bank's, PayNet or any of the Card Companies or any member institution of the Card Companies or any other card company or any eWallet Operator's reputation and the Merchant must not represent that the Bank, Card Companies, eWallet Operator provides any warranties or representations for any of the goods and services sold or supplied by the Merchant;
- (g) be solely responsible for resolving all disputes which may arise with the Cardholder and/or eWallet User and/or customer, amicably and promptly without involving the Bank in any way;
- (h) provide the Bank with a list containing the names and addresses of all its locations where the Payment Channels and/or Programs/Services are used and to provide an updated list within seven (7) days from the date changes are made;
- (i) comply with applicable security requirements and established security standards, and that its service providers (including those appointed by the Merchant for accessing, storing, transmitting and processing customer data) also comply with the same;
- (j) facilitate the Bank's investigation under the circumstances or scenarios stated in Clause 4.1;
- (k) to perform settlement transaction(s) on daily basis and to submit transaction slips for manual posting and payment within seven (7) calendar days from transaction date should there be any discrepancy in the settlement transactions record; and
- (l) to ensure all documents, information, statement and declaration furnished to the Bank are statements of facts within the actual knowledge of the Merchant and are correct and in order at all times.

## **15. RESTRICTION AGAINST CESSATION OF SUPPLY OF UTILITIES**

15.1 If the Merchant supplies utilities such as telecommunication services, internet, water, electricity, gas, or is a statutory body collecting quit rent or assessment and any customer or Cardholder or eWallet User has settled payment for such utilities or quit rent or assessment through any of the Payment Channels and/or Programs/Services but such Transaction for whatever reasons fails, the Merchant shall

not cease the supply of the utilities or enforce its statutory rights for such non-payment until the expiry of forty five (45) Calendar Days after the Merchant has first given written notice of such failure of the transaction to the Bank.

## **16. EXCLUSION AND LIMITATION OF LIABILITY**

16.1 The Bank shall not be responsible or held liable in any way whatsoever to the Merchant for any loss, damage, injury, inconvenience or embarrassment suffered by the Merchant for any acts of the Bank performed in relation to the provision of services relating to the Payment Channels and/or Programs/Services including not making available the Payment Channels and/or Programs/Services for extended periods of time unless caused by the wilful default and/or gross negligence of the Bank.

16.2 The Bank's sole and entire liability to the Merchant in contract and tort is limited to the amount of the transaction giving rise to the claim or the actual direct damages sustained by the Merchant, whichever is lower and the Bank will not be liable for any exemplary or punitive damages, indirect, consequential loss or damage, loss of profit or pure economic loss.

## **17. INDEMNITY**

17.1 The Merchant agrees to indemnify the Bank on a full indemnity basis against all claims, liabilities, penalties, expenses, costs, loss or damage of whatever nature (including legal costs on a full indemnity basis incurred by the Bank) suffered or incurred by the Bank arising directly or indirectly from any breach of these terms and conditions by, or from any act or omission of, the Merchant or its servants, agents, employees or contractors.

## **18. WAIVER**

18.1 Any delay or omission by the Bank in exercising any of its rights shall not be treated as a waiver of its rights.

## **19. AMENDMENT**

19.1 The Bank may amend these terms and conditions ("**Amendment**") by giving the Merchant at least twenty-one (21) days prior notice ("**Notification**") before the Amendment takes effect. If the Merchant does not agree to the Amendment, the Merchant shall immediately notify the Bank and the Merchant is deemed to have terminated its use of the Payment Channels and its participation in the Programs/Services. If the Merchant continues to use Payment Channels and/or Programs/Services after the Amendment takes effect, the Merchant shall be bound by the Amendment.

## **20. LATE PAYMENT INTEREST**

20.1 In addition to the Bank's other rights and remedies, the Bank may charge the Merchant interest on overdue amounts at such rates that have been notified to and agreed by the Merchant from time to time by the Merchant's continued use of the Bank's merchant services. Interest is payable from the due date or date of demand (as the case may be) until the date of payment in full.

## **21. COMMUNICATION, NOTICES AND SERVICE OF PROCESS**

21.1 The Bank may send notices to the Merchant in any of the following ways:-

- (a) personal delivery or courier or post by ordinary or registered post or facsimile transmission to the Merchant's address or facsimile number in the Bank's records and the notice is deemed served, if served:-
  - i. by personal delivery or courier, upon delivery thereof;
  - ii. by ordinary or registered post, seven (7) Calendar Days after the date of posting; or
  - iii. by facsimile transmission, upon completion of the transmission and the sender's receipt of a successful facsimile transmission report; and/or
- (b) posting the notice on the CIMB Merchant Electronic Online Portal (e-Access) with the Bank and the notice is deemed served immediately after the posting; and/or
- (c) posting the notice in the Statement of Account and the notice is deemed served when the Statement of Account is deemed retrieved or received under Clause 6.2; and/or
- (d) posting the notice in the Bank's premises and/or on the Bank's website and the notice is deemed served immediately after the posting; and/or
- (e) publication in one or more newspaper of the Bank's choice and the notice shall be deemed to be effectively served on the Merchant on the date of publication; and/or
- (f) by contacting and/or notifying the Merchant by telephone (*at the Merchant's telephone number in the Bank records*) of the notice and the notice shall be deemed served immediately after the telephone call; and/or
- (g) by sending the notice to the Merchant's e-mail address or mobile phone number by short messaging system (SMS) or voice mail (*to the Merchant's email address or mobile telephone number in the Bank records*), and the notice shall be deemed served upon completion of the transmission.

21.2 Any notice dispatched by the Merchant to the Bank shall not be deemed to have been received unless it is actually received by the Bank.

21.3 Notwithstanding Clause 24.9.1, the Bank may (but is not obliged to) act on any instructions from the Merchant's officers, employees or agents, (whether orally or in writing) and to assume that these persons have been authorized by the Merchant to give the instructions.

21.4 The Bank may serve any legal process on the Merchant by ordinary or registered post to the Merchant's address provided to the Bank and such legal process is deemed served on the seventh (7th) Calendar Day (inclusive of the day of posting) from the date the legal process is posted even though the same is returned undelivered.

21.5 The Merchant's failure or delay in notifying the Bank of any change of its address, e-mail address or mobile phone number resulting in the delay or failure of delivery of any notice, correspondence or legal process shall not prejudice the Bank's rights.

## **22. ASSIGNMENT**

22.1 The Bank may at its own costs and expense assign all its rights and benefits to any person it deems fit but the Merchant shall not do so without the prior written approval of the Bank.

## **23. MARKETING AND PROMOTIONAL MATERIALS**

23.1 The Merchant shall publish and display marketing and promotional materials to inform the public of the Payment Channels and/or Programs/Services available or as otherwise reasonably directed by the Bank.

23.2 The Bank may include or withdraw the Merchant's name in any directory or promotional material for the purposes of marketing the goods and/or services connected with the Payment Channels and/or Programs/Services.

23.3 The Merchant shall not use any logo, name and/or emblem of the Bank, the Card Companies, PayNet or any eWallet Operator or any of the Cards or eWallet Platforms unless it has obtained the prior written approval of the Bank. Any consent shall be subject to guidelines prescribed by the Bank. The consent may be withdrawn, and all material must be removed upon the Bank's request. The Merchant must not make any statement or do anything that may damage the reputation or value of any of the Bank's trademarks, logos, names and other intellectual property rights owned by or licensed to the Bank.

23.4 The Merchant shall use its best efforts to promote the use of the Payment Channels and/or Programs/Services and upon being notified by the Bank of any promotion, the Merchant must try to participate in the promotional activities upon terms agreed upon with the Bank.

## **24. MISCELLANEOUS**

### **24.1 Governing law and jurisdiction**

These terms and conditions are governed by the laws of Malaysia no matter where the transaction takes place and the Merchant hereby irrevocably submits to the exclusive jurisdiction of the Malaysian courts.

### **24.2 Legal costs, other fees and administrative expenses**

The Merchant agrees to pay the Bank's legal fees (on a solicitor and client basis) and other expenses incurred by the Bank on a full indemnity basis in connection with or incidental to the merchant services and in relation to Bank's enforcement of its rights. The Bank may also charge the Merchant a reasonable service charge or administrative fee according to its customary rates (which have been approved by Bank Negara Malaysia) for services provided by the Bank in relation to any Transaction and/or Programs/Services.

### **24.3 Time**

Time shall be the essence.

### **24.4 Severability**

Each of the provisions of these terms and conditions is severable and distinct from one another and if any one or more of them or any part thereof is or becomes invalid, illegal or unenforceable the remaining provisions shall not be affected in any way.

### **24.5 Audit**

The Merchant must allow the Bank, to periodically conduct a site visits and inspections, due diligence and/or audit review of the financial and operational condition of the Merchant (during business hours)

upon the Bank's written request to do so (electronic or otherwise). The Merchant shall also allow Bank Negara Malaysia's authorized examiner appointed under the Financial Services Act, 2013 to have access to any relevant documents and information in the possession of the Merchant relating to the Payment Channels and/or Programs/Services for the purpose of conducting the said examination. The Merchant must use its best efforts to correct practices identified by the Bank or the authorized examiner as being deficient immediately upon being requested by the Bank to do so.

#### **24.6 Privacy Clause (For Natural Persons)**

**Where the Merchants are individuals (including but not limited to sole proprietor, partnerships, registered businesses and associations) this clause 24.6 shall apply.**

24.6.1 The Merchant hereby confirms that he has read, understood and agreed to be bound by the "CIMB Group Privacy Notice" (which is available at [www.cimb.com.my](http://www.cimb.com.my)) and the clauses herein, as may relate to the processing of the Merchant's personal information. For the avoidance of doubt, the Merchant agrees that the said Privacy Notice shall be deemed to be incorporated by reference into these terms and conditions.

24.6.2 If the Merchant provides personal and financial information relating to third parties, including information relating to the Merchant's next-of-kin and dependents, for the purpose of opening or operating the Merchant's account(s)/facility(ies) with the Bank or otherwise subscribing to the Bank's products and services, the Merchant (a) confirms that the Merchant has obtained their consent or are otherwise entitled to provide this information to the Bank and for the Bank to use it in accordance with these terms and conditions; (b) agree to ensure that the personal and financial information of the said third parties are accurate; (c) agree to update the Bank in writing in the event of any material change to the said personal and financial information; and (d) agree to the Bank's right to terminate the provision of service if such consent be withdrawn by any of the said third parties.

24.6.3 Where the Merchant instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including information relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on the Merchant's behalf, the Merchant agrees to the above said disclosures on behalf of the Merchant and others involved in the said cross-border transaction.

24.6.4 The Bank may at any time and from time to time now and/or in the future carry out the necessary reference checks including but not limited to credit reporting/reference checks with credit reporting/reference agencies, including but not limited to CCRIS, FIS and/or any other agencies and/or from any financial institution to enable the Bank to ascertain the Merchant status as may be required to help make decisions, for example when the Bank needs to (a) check details on applications for credit and credit-related or other facilities; (b) manage credit and credit-related accounts or facilities, including conducting reviews of the Merchant's portfolio(s); recover debts; and/or any purpose related to or in connection with the account/facility under these terms and conditions. The Merchant will be linked by credit reporting/reference agencies to any other names the Merchant use or have used, and any joint and several applicants. The Bank may also share information about the Merchant and how the Merchant manage its account(s)/facility(ies) with relevant credit reporting/reference agencies, and for any of these credit reporting/reference agencies to disclose the Merchant's credit information to its subscribers for purposes of fraud detection and fraud prevention.



24.6.5 Even after the Merchant has provided the Bank with any information, the Merchant will have the option to withdraw the consent given earlier, except where such disclosure of the Merchant's information is necessary for the provision of the merchant services and/or related services or the performance of the contract with the Merchant to comply with contractual requirements or to comply with any legal requirements.

24.6.6 This clause shall be without prejudice to any other clause in these terms and conditions which provides for the disclosure of information.

#### **24.7. Privacy Clause (For Corporate Merchants)**

**Where the Merchant is a corporation (including but not limited to the entities falling within the definition of "Corporation" defined in Section 3 of the Companies Act 2016) this clause 24.7 shall apply.**

24.7.1 The Merchant hereby irrevocably consents and authorises, and confirms that it has duly obtained the consent and authority of its directors, shareholders, officers, guarantors, security providers, business partners, subsidiaries, associated companies and/or any other person, individual and/or entity related to or associated with the Merchant as the Bank may deem fit (hereinafter referred to either singularly or collectively as "Relevant Person"), for the Bank:-

- (a) to be provided information (inclusive of relevant personal information of the said Relevant Person) as may be required by the Bank for processing pursuant to the Personal Data Protection Act 2010 including for use in accordance with relevant terms and conditions and for the purpose of the grant and continued maintenance of the facility / account;
- (b) to carry out the necessary reference checks at any time and from time to time now and/or in the future including but not limited to credit reference/reporting checks with credit reference/reporting agencies, including but not limited to CCRIS, FIS and/or any other agencies and/or from any financial institution and to provide to such aforesaid party(s) with the required information requested to enable the Bank to ascertain the status of the Merchant and its Relevant Personas may be required by the Bank for the purposes of the grant and/or continued maintenance of the facility/account; recovery of debts owing under the facility/account; any purpose related to or in connection with facility/ account under these terms and conditions; and/or for any other purposes that is required or permitted by law, regulations, guidelines and/or relevant regulatory authorities; and
- (c) to disclose the said Relevant Person's personal information to the classes of parties described in the CIMB Group Privacy Notice (which is available at [www.cimb.com.my](http://www.cimb.com.my)),

at the Bank's sole discretion, without further reference to the Merchant, and/or its Relevant Person. The Merchant agrees to undertake the responsibility to update the Bank in writing should there be any change to the personal and financial, credit information relating to the said Relevant Person. Even after the Merchant has provided the Bank with any information, the Merchant will have the option to withdraw the consent given earlier, except where such disclosure of the Merchant's information is necessary for the provision of the merchant services and/or related services or the performance of the contract with the Merchant to comply with contractual requirements or to comply with any legal requirements. .

24.7.2 This clause shall be without prejudice to any other clause in these terms and conditions which provides for the disclosure of information.

## **24.8. Anti-Bribery and Corruption**

24.8.1 The Merchant undertakes that it shall not, and shall ensure that its personnel, officers, directors, agents shall not engage in any form of corruption, bribery or the giving or receiving of any benefit, gratification, gift, commission, financial advantage or advantage/consideration of any kind as an inducement or reward for doing or forbearance from doing any act howsoever related or intending to improperly influence decision making in relation to the merchant services, or any Payment Channels or Programs/Services or other services from the Bank or any other third party. A breach of this clause 24.8 may be considered by the Bank to be a material breach and the Bank may, in its discretion, terminate the merchant services, or any Payment Channels or Programs/Services, or other services or contract from the Bank without prejudice to any remedies available to it.

24.8.2 The Merchant acknowledges that the Bank is under a statutory obligation to report any offer or giving of benefit, gratification, gift, commission or consideration to the relevant regulatory authorities. The Merchant shall therefore promptly and in good faith report to the Bank in the event that any of the Bank's personnel, officer(s) or director(s):-

- (i) request(s) or demand(s) for or attempt(s) to request or demand for; and/or
- (ii) receive(s), take(s) or extort(s) or attempts to receive or take or extort

any benefit, gratification, gift, commission, financial advantage or advantage/ consideration of any kind as an inducement or reward for doing or forbearance from doing any act howsoever related or intending to improperly influence any decision to be made by the Bank whether in connection with the merchant services, any Payment Channels or Programs/Services, other services or contract from the Bank.

24.8.3 All reporting by the Merchant pursuant to Clause 24.8.2 above may be made in accordance with CIMB's Whistle Blowing Policy as set out in <https://www.cimb.com/en/who-weare/overview/corporate-governance/code-of-conduct/whistle-blowing.html>

24.8.4 The Merchant agrees to respond promptly to the Bank's enquiries and shall, co-operate and provide reasonable assistance during any investigation or audit by the Bank relating to any allegations of bribery or corruption.

## **24.9. Authorised signatory(ies) for the merchant services**

24.9.1 All instructions, requests and communications in relation to the merchant services given to the Bank shall be signed by the person(s) authorised to operate the Merchant's Designated Account (only applicable if it is a business current account with the Bank or CIMB Islamic Bank Berhad) ("**Authorised Signatory(ies)**"), unless specific written instruction is given to the Bank to allow designated alternate person(s). The signature of the Authorized Signatory(ies) on such instructions, requests and communications shall match the specimen signature in the record of the Bank or CIMB Islamic Bank Berhad, failing which the Bank has the discretion to decline acting on the same.

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