BNPK (8.15)4/13-4 Jd. 5(4)

KEMENTERIAN KEWANGAN

PEKELILING PERBENDAHARAAN BIL. 3 TAHUN 2006

Semua Ketua Setiausaha Kementerian
Semua Ketua Jabatan Persekutuan
Semua Setiausaha Kerajaan Negeri
Semua Ketua Eksekutif Badan Berkanun Persekutuan
Semua Pihak Berkuasa Tempatan

KAEDAH PUNGUTAN HASIL SECARA *e-PAYMENT* BERKAITAN URUSAN KERAJAAN

TUJUAN

Pekeliling Perbendaharaan ini bertujuan untuk menerangkan peraturan mengenai kaedah pungutan hasil Kerajaan secara *e-Payment*.

LATAR BELAKANG

2. Hasil Kerajaan pada masa ini dipungut secara tunai, cek, kiriman wang, wang pos dan bank draf. Sebagai satu cara untuk menambahbaik sistem penyampaian perkhidmatan awam kepada orang ramai, Kerajaan telah memutuskan untuk menerima hasil di kaunter secara *e-Payment*. Di samping memberi perkhidmatan yang terbaik kepada orang ramai, keputusan Kerajaan untuk menerima pungutan hasil secara *e-Payment* dapat juga menangani masalah pengurusan pungutan hasil. Kaedah *e-Payment* ini akan dilaksanakan secara *Point of Sales* dengan menggunakan Kad Kredit iaitu MasterCard dan Visa serta Kad Debit

dan MEPS Cash. Pembayaran maksimum yang dibenarkan bagi setiap transaksi adalah sebanyak RM2000.

PENETAPAN KADAR KOMISYEN BAGI KAD KREDIT, KAD DEBIT DAN MEPS CASH

3. Bagi melaksanakan kaedah ini, Kerajaan telah menetapkan komisyen tidak melebihi kadar 1.1% atas nilai transaksi yang dibayar, bagi pungutan hasil yang menggunakan Kad Kredit iaitu MasterCard atau Visa. Bagi Kad Debit pula, kadar komisyen yang telah ditetapkan adalah tidak melebihi 0.8%. Manakala kadar komisyen bagi MEPS Cash telah ditetapkan tidak melebihi 1.0%.

4. Kadar komisyen ini juga termasuk pembekalan, penyelenggaraan serta peningkatan perisian terminal yang akan disediakan oleh bank berkenaan secara percuma. Walau bagaimanapun, caj bagi talian telefon perlu dibiayai oleh Kementerian/Jabatan/Agensi Kerajaan yang terlibat.

BANK-BANK YANG DILULUSKAN

5. Urusan pungutan hasil Kerajaan secara *e-Payment* boleh dikendalikan melalui salah satu daripada dua belas (12) bank yang telah diluluskan oleh Perbendaharaan. Senarai bank tersebut adalah seperti **Lampiran A**.

6. Bagi melaksanakan pungutan hasil secara *e-Payment*, satu perjanjian antara Kementerian/Jabatan/Agensi Kerajaan dan pihak bank yang dilantik oleh Kementerian/Jabatan/Agensi Kerajaan berkenaan perlulah ditandatangani. Format perjanjian yang perlu diguna pakai antara Kementerian/Jabatan/Agensi Kerajaan dan pihak bank adalah seperti **Lampiran B**.

7. Sekiranya Kementerian/Jabatan/Agensi Kerajaan telah mempunyai perjanjian di mana kadar komisyen adalah melebihi kadar yang telah ditetapkan seperti tersebut di atas, perbincangan semula dengan pihak bank berkenaan perlu diadakan untuk mengurangkan kadar komisyen tersebut.

GARIS PANDUAN BAGI PELAKSANAAN SISTEM PUNGUTAN HASIL SECARA KAD KREDIT, KAD DEBIT DAN MEPS CASH

8. Bank-bank yang dilantik untuk mengendalikan pungutan melalui kaedah *e-Payment* boleh menolak komisyen pada kadar yang telah ditetapkan daripada amaun kasar yang dipungut dan menyerahkan amaun bersih kepada Kerajaan. Walau bagaimanapun, Kementerian/Jabatan/Agensi Kerajaan perlu mengakaunkan amaun kasar yang dipungut sebagai hasil dan jumlah komisyen yang telah ditolak oleh bank sebagai perbelanjaan. Garis Panduan berkenaan perakaunan pungutan

hasil tersebut terkandung dalam Surat Pekeliling Akauntan Negara Malaysia Bil. 1 Tahun 2006 bertajuk *Pindaan Kepada Surat Pekeliling Akauntan Negara Malaysia Bil. 1 Tahun 2005 Yang Bertajuk "Garis Panduan Penggunaan MEPS Cash dan Kad Elektronik di Jabatan Persekutuan dan Negeri"*.

9. Kementerian/Jabatan/Agensi Kerajaan perlu memastikan peruntukan kewangan mencukupi bagi menampung jumlah komisyen yang dikenakan oleh bank yang dilantik.

TARIKH KUAT KUASA

10. Pekeliling Perbendaharaan ini berkuat kuasa dengan serta-merta.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(Tan Sri Izzuddin bin Dali)
Ketua Setiausaha Perbendaharaan

7 Jun 2006

s.k. Ketua Setiausaha Negara
Ketua Audit Negara
Akauntan Negara Malaysia
Semua Pegawai Kewangan Negeri

Pekeliling3/EPAYMENT/Pind2/SAR

Lampiran A

Senarai Bank Yang Diluluskan

1. Affin Bank Berhad
2. Alliance Bank Malaysia Berhad
3. AmBank Berhad
4. Bank Islam Malaysia Berhad
5. Bank Muamalat Malaysia Berhad
6. Bumiputera-Commerce Bank Berhad
7. EON Bank Berhad
8. Hong Leong Bank Berhad
9. Malayan Banking Berhad
10. Public Bank Berhad
11. RHB Bank Berhad
12. Southern Bank Berhad

Lampiran B

eCARD ACCEPTANCE AGREEMENT

THIS AGREEMENT is made on the day **of** (Month/Year)

BETWEEN

THE GOVERNMENT OF MALAYSIA, who for the purpose of this Agreement is represented by ..... having its office at .....(herein after referred to as "the Government") of the one part;

AND

(Name of Bank) , a bank registered in Malaysia and having its registered address at (Address of Bank) , (herein after referred to as "the Bank") of the other part,

(both herein after singularly referred to as "the Party" and collectively as "the Parties").

WHEREAS:

(a) The Bank is a licensed financial institution duly authorised pursuant to various agreements with Visa International, owner of the Visa Card Programs Marks and MasterCard International, owner of the MasterCard Marks to issue and acquire Visa and MasterCard Credit Card and any other new Credit Card/Debit Card/MEPS Cash (depending on the cards issuance company).

(b) The Government is desirous to implement the eCard acceptance programme at counters identified by the Government and the Bank agrees to provide the Facility for the Services subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED AS FOLLOWS :

ARTICLE 1 : DEFINITION AND INTERPRETATION

1.1 In this Agreement, unless there is something in the subject or context inconsistent with such expression or unless it is otherwise expressly provided, the following definition shall apply :

"Authorisation"	means the obtaining of an authorisation for a transaction which is usually identified with an alpha numeric/numeric code from the Bank prior to completion of the transaction in which an eCard is being utilised;
"Bank Card"	means a chip-based multi application card issued by the banking institutions which contain the Auto Teller Machine ("ATM"), eDebit and MEPS Cash applications;
"Business Day"	means any day on which the Bank is opened for business in Kuala Lumpur;
"Cardholder"	means any person authorised by any Issuer to enjoy the facilities whose name shall be embossed on the eCard and where applicable, whose signature appears thereon as the authorised user;

"Commission"	means the amount chargeable by the Bank to the Government at the agreed rate in percentum of the value of the eCards' transaction as stipulated under Article 6.2;
"Credit Card"	means a validly issued and unexpired Credit Card of Visa/Mastercard bearing the Visa Card Program Marks or Mastercard Program Marks and may include new credit card duly authorised by the Bank;
"Debit Card"	means a validly issued debit card of ....., validly issued by the Bank and may include new debit card duly authorised by the Bank;
"eCard"	means any cards to be accepted under this Agreement as stipulated under Article 4;
"eDebit"	means a payment system that allows the Cardholder of a Bank Card to purchase goods and/or services at the participating Government counter by debiting directly from the Cardholder's nominated bank account;
"Electronic Data Capture ("EDC") Transaction Acceptance"	means a transaction performed through the use of eCard at the EDC Terminal;

"EDC Terminal"	means any electronic terminal and wireless terminal which is capable of reading magnetic stripe or chips embedded in the eCard;
"Facility"	means the EDC Transaction Acceptance facility granted by the Bank to the Government under the terms of this Agreement as stipulated under Article 3;
"Issuer"	means any bank or financial institution who are members of Mastercard International, Visa International or other organization or institution who are authorised to issue Credit Card to which the Bank is a member;
"Location"	means the premises, at which the EDC Terminal is installed by the Bank as agreed by the Parties under the terms of this Agreement;
"MEPS Cash"	means an e-purse application where, the money is stored in a chip embedded in a Bank Card and handled electronically and the amount payable by a Cardholder shall be deducted directly upon usage of the Bank Card, from the monetary value stored in the chip;
"PIN"	means in relation to a Cardholder, the Personal Identification Number which an Issuer has issued to the Cardholder which is

	to be used by the Cardholder to authorise any transaction;
"Point Of Sales (POS) Transaction Acceptance"	means a transaction performed at point-of-sales consisting of EDC Transaction Acceptance through the use of eCard;
"Sales Slip"	means the relevant charge slip generated electronically after the completion of each transaction arising from the use of EDC Terminal evidencing the payment made by the Cardholder through the use of the eCard to be charged to the Cardholder's account;
"Settlement Function"	means the procedures required for and carried out by the Government via the EDC Terminal for the purpose of transmitting data of charges to the Bank to enable the Bank to make payment to the Government;
"Services"	means ..... (agencies to describe their own) or other services to be determined by the Government.

1.2 Words importing the masculine gender include the feminine and neuter gender.

1.3 Words importing the singular number shall include the plural and vice-versa.

ARTICLE 2 : CONTRACT PERIOD

This Agreement shall be for a period of twenty four (24) months commencing from ..... (hereinafter referred to as the "Effective Date") to .....
(hereinafter referred to as the "Expiry Date"). Either Party may notify in writing not less than three (3) months prior to the Expiry Date if it intends to extend the Contract Period for a future period. The Parties may as soon as reasonably practicable after the receipt of such notification, negotiate the term and conditions of such extension not later than one (1) month prior to the Expiry Date.

ARTICLE 3 : FACILITY

3.1 The Parties hereby agree that the Bank shall provide the Facility to the Government which would allow the Government to accept any payments to the Government made by the Cardholder through the use of eCard for the Services at the various counters of the Government.

3.2 In providing the Facility, the Bank shall supply, deliver, install, test and commission the EDC Terminal at the Location. The Location of the EDC Terminals to be installed by the Bank shall be mutually agreed upon by the Parties prior to the installation. The supply, delivery, installation, testing and commissioning of the EDC Terminal shall include the supply of papers and other related stationeries required for the operating of the EDC Terminal, at no additional cost to the Government.

3.3 In the event that the Government requires additional EDC Terminal, the Bank shall agree to consider to such request.

3.4 The Bank shall also bear the costs of relocating EDC Terminal at such other site excluding the costs on internal telephone cabling and other

internal power points in the event such request is made by the Government.

3.5 The Government hereby agrees and confirms with the Bank that it shall honour without any discrimination the eCard when properly presented to it as a mean of payment from the Cardholder and shall maintain a policy that the Government shall not discriminate among Cardholders seeking to make payment to the Government.

3.6 The Bank shall at its own cost provide support services on the EDC Terminal and carry out necessary maintenance on the EDC Terminal at all Location.

3.7 The Government shall keep the EDC Terminal in good condition at all times. In the event of any fault or defect to the EDC Terminal, the Bank shall at its own cost carry out such repair in order to restore the EDC Terminal. Such restoration shall be carried out within twenty four (24) hours in the Klang Valley and within three (3) Business Days outside the Klang Valley from the time of receiving the report made by the Government. In the event repair cannot be carried out for any reasons, the faulty or defective EDC Terminal shall be replaced by the Bank at its own costs. The Government hereby undertakes to ensure that each EDC Terminal is operated appropriately at all times and shall promptly report any malfunction or breakdown of the EDC Terminal to the Bank.

3.8 The Parties shall work together on the promotion and publicity of the Facility for the purpose of payment of the Services offered by the Government.

ARTICLE 4 : eCARD

4.1 Under the terms of this Agreement, the Government shall accept the Credit Card, Debit Card, MEPS Cash Card and any other new credit card/debit card/MEPS Cash card ("eCard") as may agreed by the Parties from time to time presented by any Cardholder.

4.2 The Bank shall provide the relevant training on the eCard acceptance procedures and shall not charge the Government for the training.

ARTICLE 5 : EDC TRANSACTION ACCEPTANCE PROCEDURES

5.1 Credit Card Acceptance Procedures

5.1.1 When a Credit Card is presented to the Government for payment, in accepting and honouring the Credit Card, the Government shall follow the relevant transaction instructions notified in writing by the Bank to the Government from time to time.

5.2.1 The Government shall comply with the acceptance procedures as follows:

(a) examine the Credit Card marks and security or distinctive features as specified by the Bank;

(b) ensure that the Credit Card so presented has not been mutilated;

(c) all transactions shall be drawn in Ringgit Malaysia only;

(d) obtain the signature of the Cardholder at the appropriate place on the Sales Slips and shall always compare to ascertain that such signature appears to be identical to that appearing on the Cardholder's Credit Card and if there is any uncertainty or in the event the signature differs or the Government believes that there is a discrepancy in the signature, the Government shall contact the Bank for further instructions;

(e) ensure that all entries and signatures on the Sales Slip shall be legible on all copies thereof and the Government shall, at the time of the performance of payment of the Services, give a true and completed copy thereof to the Cardholder and retain one (1) copy of the same with the Government;

(f) process all transaction irrespective of the amount through the use of EDC Terminal and in accordance with the procedures set out herein or provided by the Bank to the Government in writing from time to time;

(g) ensure that the Credit Card so presented for the transaction be inserted into the EDC Terminal where an Authorisation shall be granted or declined electronically by the Bank or Issuer. Only transaction provided with an Authorisation shall be accepted by the Government; and

(h) ensure that all completed Sales Slips bear an electronic imprint which includes:

(i) the names, validity/expiry date of the Credit Card and the account number of the Cardholder;

(ii) the date of the transaction(s);

(iii) the Authorisation code,

(iv) total value of the transaction; and

(v) the name and address of the Location.

5.1 **Debit Card Acceptance Procedures**

5.1.1 When a Debit Card is presented to the Government, in accepting and honouring the Debit Card, the Government shall follow the relevant transaction instructions notified in writing by the Bank to the Government from time to time.

5.1.2 The Government shall comply with the acceptance procedures as follows:

(a) all transactions shall be drawn in Ringgit Malaysia only;

(b) all Debit Cards' transaction irrespective of the amount shall only be performed through the use of EDC Terminal;

(c) request the Cardholder to key-in PIN to authorise the completion of the transaction;

(d) where applicable, to obtain the signature of the Cardholder in the appropriate place on the Sales Slips and shall always compare to ascertain that such signature shall appear to be identical to that appearing on the Cardholder's Debit Card and if there is any uncertainty or in the event the signature

differs or in the event the Government believes that there is a discrepancy in the signature, the Government shall contact the Bank for instructions; and

(e) upon completion of each successful transaction, give a true and completed copy thereof to the Cardholder and retain one (1) copy of the same with the Government.

5.2 MEPS Cash Acceptance Procedures

5.2.1 When a Bank Card with MEPS Cash application is presented to the Government, the Government shall follow the relevant transaction instructions notified in writing by the Bank to the Government from time to time .

5.2.2 The Government shall comply with the acceptance procedures as follows:

(a) all transactions shall be drawn in Ringgit Malaysia only;

(b) all transaction information printed on the transaction receipt shall be legible and identical on both the Cardholders' and the Government's copy; and

(c) upon completion of each successful transaction, give a true and completed copy thereof to the Cardholder and retain one (1) copy of the same with the Government.

ARTICLE 6 : REMITTANCE OF FUNDS

6.1 Settlement

The Government shall carry out or perform a Settlement Function on a daily basis to enable the Bank to capture all the transaction using EDC Terminal so as to allow the Bank to make payment to the Government as stipulated in Article 6.3.

6.2 Commission Rate

6.2.1 As agreed between the Parties, the Bank shall be entitled to charge the Commission for processing of eCard transactions and the Commission agreed are as follows :

(a) a percentum of one point one **(1.1%)** on the value of each Credit Card transaction;

(b) a percentum of zero point eight **(0.8%)** on the value of each Debit Card transaction; and

(c) a percentum of one point **(1.0%)** on the value of each MEPS Cash Card transaction.

6.2.2 The Parties further agree that the Commission rate may be revised at any time and any revised Commission rate shall only be implemented by the Bank with prior written approval of the Government.

6.3 Payment By the Bank

6.3.1 Upon completion of a Settlement Function or the receipt of the transaction slips by the Bank (whichever is applicable), the Bank

shall pay to the Government the value of each successful eCard's transaction less the Commission at the agreed Commission.

6.3.2 The Bank shall pay to the Government's collection account as specified by the Government by 11.00 am of the following Business Day from the transaction date.

6.3.3 The Bank shall provide supporting reports free of charge either in the form of hardcopy or softcopy to the Government for all the transactions paid to the Government the following Business Day from the transaction date. The report shall contain the following minimum information:

(i) Government identification number;
(ii) EDC Terminal identification number;
(iii) eCard number;
(iv) approval code;
(v) amount of the transaction;
(vi) date of transaction;
(vii) gross total amount ;
(viii) Commission amount; and
(ix) net total amount.

6.4 Penalty

The Government may impose interest to the Bank based on interbank rate for any unjustified late remittance of funds under clause 6.3.2. The mode of payment and the penalty amount shall be mutually agreed upon by both Parties.

6.5 **Reconciliation**

The Government shall reconcile its records against the reports provided by the Bank and if there are any discrepancies or non-receipt of payment on any of the transaction items are detected, the Bank is to be notified of the same. Such notification is to be submitted by the Government to the Bank within a period of fourteen (14) days following the date of the transaction.

ARTICLE 7 : CLAIMS FOR DISPUTED TRANSACTIONS

7.1 The Bank shall write to the Government on any transaction disputed by a Cardholder or where the Bank have reason to believe of any fraudulent transactions reported to the Bank or discovered by the Bank and in the event where payment has been made by the Bank to the Government.

7.2 Upon receiving the report by the Bank under clause 7.1, the Government shall investigate within fourteen (14) days and make good the amount within thirty (30) days upon the occurrence of any of the following:

(i) the Cardholder disputes or denies the completion of the eCard's transaction that he/she entered into with the Government and the Government is unable to confirm otherwise;

(ii) no Authorisation code has been granted to the Government by the Bank;

(iii) the Government fails to furnish to the Bank with a copy of transaction details referred under clause 8.1. hereof within fourteen (14) days from the date of such request;

(iv) the transaction is found to be a duplicated transaction;

(v) the transaction is a cash disbursement, cash refund or cash payment; and

(vi) the transaction was processed more than fourteen (14) days from the date of authorisation where settlement processes were not performed accordingly by the Government.

ARTICLE 8 : SPECIAL CIRCUMSTANCES

8.1 The Government's Records

8.1.1 The Government shall at its own cost and capacity keep proper account and correct copies of all receipts resulting from the use of the eCard, and may at the request of the Bank, at any reasonable time, allow the Bank to inspect and/or take copies of all such documents, accounts and all Sales Slips and for the purpose of this Agreement, shall preserve such documents and records for a period of at least one (1) year from the transaction date.

8.1.2 The Government shall provide a copy of the transaction record or any related documents upon request made by the Bank for the purpose of Article 7 hereof.

8.1.3 The Parties shall be obliged to provide full cooperation towards any investigations or inquiries made by the Bank or the Government relating to any of the transaction within the period of one (1) year from the transaction date including furnishing and delivering of transaction documents to the relevant Party.

8.2 **Prohibition against Cash Payment, Cash Disbursement and Cash Refund**

The Government shall not allow the Cardholder to transact for any cash payment, cash disbursement or cash refund under any circumstances resulting from the use of eCard.

ARTICLE 9 : COVENANTS BY THE GOVERNMENT

9.1 The Government hereby covenants as follows:

(a) it shall at all times observe the guidelines and procedures on the acceptance of eCard as required by the Bank;

(b) unless otherwise provided by any written law for the time being in force, it shall not impose or require a Cardholder to pay any surcharge, commission, discount whether through any increase in price or otherwise, or any other term or condition whatsoever on any Cardholder desirous of using the eCard;

(c) it shall not require a minimum transaction amount below which it shall refuse to honour otherwise a valid eCard;

(f) it shall not reveal, sell, purchase, provide or exchange any eCard account number or/and PIN (where applicable) and other information in any form obtained by reason of eCard transaction to any third party;

(g) it shall collaborate with the Bank in writing prior to any publication or advertisement of promotional material relating to the new eCard;

(h) it may display any distinctive feature of any eCard on promotional materials provided by the Bank to inform the public that the eCard shall be honoured at the Locations;

(i) it shall, at all times maintain in good order and keep in safe custody all Sales Slips, and EDC Terminal supplied by the Bank which shall remain the Bank's property and to return all such Sales Slips, and EDC Terminal forthwith to the Bank upon demand and/or upon termination of this Agreement under Article 22;

(j) it shall allow the Bank, its contractors, agents or representatives at any time, subject to prior notice being given to the Government, to inspect, maintain or repair each EDC Terminal with the view of ensuring that the same is operating at all times and in a proper manner;

(k) it shall preserve the following conditions in safeguarding the security of the EDC Terminal:

(i) it shall not at all times allow any unauthorised person to make any alteration or/and tamper or/and programme on the EDC Terminal;

(ii) it shall not remove, dislocate or change the position of the EDC Terminal without the prior written consent of the Bank; and

(iii) it shall not by its own, agents or servants, repair or rectify or attempt to repair or rectify any such faults or breakdown on any of the EDC Terminal,

(l) where there is uncertainty or ambiguity in the terms of this Agreement or any guidelines or requirements pertaining to the use of the eCard marks or any security or distinctive features of the new eCard, the Government shall reconfirm with the Bank for its construction and meaning and the same when given by the Bank shall be final and binding; and

(m) it shall use its best endeavour to promote the use of eCard and to render its cooperation to the Bank and Cardholders in connection with the use of the eCard.

ARTICLE 10 : WARRANTIES BY THE GOVERNMENT AS TO SALES SLIPS

10.1 The Parties agree that the presentation of each Sales Slip by the Government to the Bank shall be a warranty by the Government that at the time of the presentation of the Sales Slips to the Bank:

(a) the Sales Slips are authorised by the Cardholder and/or not obtained by any fraudulent means;

(b) the value stated in the Sales Slips evidence a bona fide sum due and owing from the Cardholder;

(c) the Cardholder concerned shall not have acquired any right of set-off or counterclaim available against the Government in respect of the value of the Sales Slips; and

(d) the Government has complied with the provisions set out in Article 5 of this Agreement.

ARTICLE 11: CONDITIONS CONCERNING THE USE OF EDC TERMINAL

11.1 **Property of EDC Terminal**

(a) Each EDC Terminal supplied by the Bank shall remain the property of the Bank, free from any claims or right by any third party and shall be surrendered to Bank with all the connecting equipment in good order upon demand made by the Bank.

(b) The Bank shall provide written notice to the Government prior to retrieving any EDC Terminal from the Location.

(c) In the event of termination under Article 22 of this Agreement, the Government shall return, to the Bank, the EDC Terminal, Sales Slips and other material belonging to the Bank in connection to this Agreement.

(d) The Government shall bear the cost and expenses directly incurred or suffered by the Bank due to damage or loss of any of the EDC Terminal, Sales Slips and other materials belonging to the Bank, which is solely caused by the negligence of the Government.

11.2 **Installation**

(a) The Government shall provide the Bank with the suitable Location for the purpose of installation and operation of the EDC Terminal.

(b) The Government shall be responsible for the cost and expenses incurred for the necessary conduits, electrical connections outlets

and electricity power required for the installation and operation of the EDC Terminal.

ARTICLE 12 : FORCE MAJEURE EVENTS

12.1 Neither the Government nor the Bank shall be in breach of its obligations under this Agreement if it is unable to perform its obligations under this Agreement (or any part of them), other than the payment obligations as a result of the occurrence of an Event of Force Majeure. An "Event of Force Majeure" shall mean:

(a) war (wheather declared or not), hostilities, invasion, act of foreign enemies;

(b) insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;

(c) natural catastrophes including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;

(d) nuclear explosion, radioactive or chemical contamination or radiation;

(e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and

(f) riot, commotion or disorder, unless solely restricted to the Bank, its personnel, servants or agents.

12.2 If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligations under this Agreement (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that Event of Force Majeure with full particulars thereof and the consequences thereof.

12.3 If either Party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Agreement, then the Parties may agree that this Agreement may be terminated upon mutual agreement of the Parties.

12.4 If this Agreement is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the Parties under this Agreement shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.

12.5 Neither Party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an Event of Force Majeure has not occurred.

12.6 For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

ARTICLE 13 : INDEMNITY

13.1 **The Bank agrees with the Government that:**

(a) the Bank shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, the Government and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from the carrying out of this Agreement and the Government shall have no responsibility or liability whatsoever in relation to such accident, damage injury or death;

(b) the Bank shall indemnify and keep indemnified the Government from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from:

(i) the negligent use, misuse or abuse by the Bank or its personnel, servants, agents or employees appointed by the Bank;

(ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed by the Bank to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or

(iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Facility to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Bank, its personnel, servants, agents or employees; and

(c) The obligations under this Article shall continue after the expiry or earlier termination after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

13.2 The Bank shall indemnify, protect and defend at its own cost and expense the Government and its agents and servants from and against all actions, claims and liabilities arising out of acts done by the Bank in the performance of this Agreement including the use or violation of any copyright works or literary property or patented invention, article or appliances.

ARTICLE 14 : WAIVER

The waiver by any Party of any breach of any terms of this Agreement committed by the other Party shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

ARTICLE 15 : PROHIBITION OF ASSIGNMENT

Each Party shall not be entitled to assign or charge any right or assign any obligation under this Agreement.

ARTICLE 16 : DISCLOSURE OF INFORMATION

No Party shall without the prior written approval of the other Party, be entitled to disclose any information relating to this Agreement to any agent or subcontractor appointed or engaged by the Party or to any authorised person in connection with any eCard products and in the event such approval is obtained from the other Party, the Parties undertake to ensure that such disclosure is

reserved for the purpose intended and shall not be used to discriminatory disclose information.

ARTICLE 17: NOTICES

17.1 Any notices, demands, invoices, permissions, claims or consent required, authorised, permitted or contemplated to be served of given hereunder shall be in writing signed by or on behalf of the Party concerned and shall be deemed to have been sufficiently served or given if served by hand or mailed by registered mail or sent by facsimile to the below state addressee and intended recipient :

For the Government

Address :

Facsimile No. :

For the Bank

Address :

Facsimile No. :

17.2 Any change of address of the Parties as specified herein shall be duly notified to the other by giving one (1) month prior written notice.

17.3 Any notice sent by facsimile transaction shall be deemed served when despatched and any notice served by prepaid registered post shall be deemed served five (5) days after posting. In proving the service of any

notice, it will be sufficient to prove, in the case of a letter, that such letter was properly stamped, addressed and placed in the post or delivered personally or by courier.

ARTICLE 18 : SERVICE OF LEGAL PROCESS

18.1 The Parties hereby agree that the service of any Writ of Summons or any legal process in respect of any claim arising out of or connected with this Agreement may be effected by forwarding a copy of the same by hand or by prepaid registered or ordinary post to the respective addresses of the Parties herein before mentioned and such service shall be deemed to be duly served after the expiration of five (5) days from the date it is posted and, if delivered by hand, on the day it is delivered.

18.2 No change of address of either Party herein mentioned shall be effective or binding on either Party unless that Party has given to the other actual notice of the change of address and nothing done in reliance on sub-clause (1) above shall be affected or prejudiced by any subsequent change in the said address over which the other Party has no actual knowledge of at the time the act has done or carried out.

ARTICLE 19 : IMPLIED TERMS

This Agreement embodies the entire understanding of the Parties and there are no provisions, terms, conditions or obligations, oral or written, express or implied, other than those contained herein.

ARTICLE 20 : ENTIRE AGREEMENT

This Agreement constitutes all the terms and conditions agreed upon between the Parties hereto as to the subject matter of this Agreement and supersedes in

all respect all previous representations, warranties, agreements and undertakings, if any, made between the Parties hereto with respect to the subject matter herein prior to the execution of this Agreement.

ARTICLE 21 : CONFIDENTIALITY

The Parties hereby undertakes to ensure that this Agreement and all matters pertaining hereto including but not limited to, all information relating to Cardholders shall be treated as confidential in nature and shall not be disclosed to any third party unless the said disclosure is mandatory by law.

ARTICLE 22 : TERMINATION

22.1 **Termination by the Government**

22.1.1 **Default by the Bank**

In the event the Bank without reasonable cause:

(a) suspends and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;

(b) fails or persistently neglects to carry out its obligations under this Agreement;

(c) defaults in performing the duties under this Agreement; or

(d) breaches any of its obligations or fail to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the Bank specifying the default and requiring the Bank to remedy such default within thirty (30) days after the date of the notice. If the Bank fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

22.1.2 **General Default**

If at any time:

(a) an order is made or a resolution is passed for the winding-up of the Bank, except for the purpose of reconstruction or amalgamation not involving the realisation of assets in which the interest of creditors are protected;

(b) the Bank goes into liquidation or a receiver is appointed over the assets of the Bank or the Bank makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts; or

(c) execution is levied against a substantial portion of the Company's assets, unless it has instituted proceedings in good faith to set aside such execution, then the Government shall have right to

terminate this Agreement forthwith by giving notice to that effect.

22.1.3 **Consequences of Termination By the Government**

Upon termination of this Agreement under Article 22.1.1 or 22.1.2,

(a) the Bank shall at its own cost and expenses, remove all the EDC Terminal from the Location; and

(b) the Government shall claim against the Bank for any losses and damages suffered as a result of the termination of this Agreement, provided that the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement.

22.2 **Termination by the Bank**

22.2.1 **Default by the Government**

If the Government without reasonable cause fails to perform or fulfill any of its obligations which adversely affects the Bank's obligation under this Agreement, then the Bank may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within thirty (30) days after receipt of such notice or such other extended period as agreed by the Parties.

If the Government fails to remedy the relevant default within such period as agreed by the Parties, the Bank shall be entitled to terminate this Agreement at any time by giving notice to that effect.

22.2.2 **Consequences of Termination by the Bank**

Upon such termination, the Bank shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

(a) the Government shall pay the Bank all monies due and payable to the Bank as at the date termination of the Agreement and which have not been paid provided that the Government shall be entitled to deduct such sum due to the Government from the Bank under this Agreement; and

(b) the Bank shall at its own cost and expenses, remove all the EDC Terminal from the Location.

22.3 **Termination on national interest**

22.3.1 Notwithstanding any provision of this Agreement, the Government may terminate this Agreement by giving not less than thirty (30) days notice to that effect to the Bank (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.

22.3.2 For the purposes of this Article, what constitutes "national interest", "interest of national security", "Government policy" and "public policy" shall be solely made and determined by the Government and such determination shall for all intent and purposes be final and conclusive and shall not be open to any challenge whatsoever.

22.4 **Termination by the Government**

22.4.1 Notwithstanding Article 22.1, 22.2 and 22.3, the Government, after giving 90 days written notice shall have the right to terminate this Agreement.

22.4.2 Upon such termination, the Bank shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

(a) the Government shall pay the Bank all monies due and payable to the Bank as at the date termination of the Agreement and which have not been paid provided that the Government shall be entitled to deduct such sum due to the Government from the Bank under this Agreement; and

(b) the Bank shall at its own cost and expense, remove all the EDC Terminal from the location.

ARTICLE 23 : ARBITRATION

23.1 If any matter, dispute or claim arising out of or relating to the Agreement or the breach or termination hereof which cannot be agreed upon by the Parties or which cannot be settled amicably by the Parties, the matter, dispute or claim shall be referred to an arbitration to be agreed between the Parties, and failing such agreement, to be nominated on the application of either party by the Director General of the Regional Centre for Arbitration in Kuala Lumpur and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2005. The decision of the arbitrator shall be final and binding on each of the Parties.

23.2 Any such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration using the facilities and systems available at the center.

23.3 The reference of any matter, dispute or claim to arbitration pursuant to this Article and / or the continuance of any arbitration proceedings consequent thereof shall in no way operate as a waiver of the obligations of the Parties to perform their respective obligations under this Agreement.

ARTICLE 24 : MISCELLANEOUS

24.1 This Agreement shall be governed and construed in accordance with the laws of Malaysia and the Parties hereby agree to submit to the exclusive jurisdiction of the courts of Malaysia.

24.2 Each Party agrees to pay legal fees (on a Solicitor and Client basis) and other cost and expenses incurred or suffered by the other Party in the enforcement of each other's right and entitlement under this Agreement.

24.3 The Bank shall not, without the Government's prior written consent, assign or transfer to a third party all or any of the benefits or obligations of this Agreement.

24.4 This Agreement shall be binding on the Parties' personal representatives, heirs, successors in-title and permitted assigns.

24.5 No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing by way of a supplementary agreement specifically referring to this Agreement and duly signed by the Parties.

24.6 The invalidity or unenforceability of any of the provisions herein shall not substantially nullify the underlying intent of this Agreement and the invalidity or unenforceability provisions shall be severed from this Agreement to the extent of such invalidity or unenforceability without affecting the remaining terms and conditions of this Agreement.

24.7 The captions and headings to the clauses of this Agreement are for reference only and do not affect the interpretation and/or enforcement of the provisions of this Agreement.

24.8 All communication between the Parties pertaining to this Agreement shall be in Bahasa Malaysia or English Language.

24.9 Time whenever mentioned shall be of the essence of this Agreement.

IN WITNESS whereof the Parties to this Agreement have caused this Agreement to be duly executed on the day and year first above written.

Signed for and on behalf)
THE GOVERNMENT OF MALAYSIA)
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In the presence of :)
)
)
.....
)

Signed for and on behalf)
(Name of Bank))
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)
.....)

In the presence of :)
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