



KIWANIS 4.0 SERVICE SUBSCRIPTION AGREEMENT

THIS SERVICE SUBSCRIPTION AGREEMENT ("Agreement") is made on

BETWEEN

KIWANIS MALAYSIA DISTRICT of No 34, Jalan BU 11/8, Bandar Utama 47800 Petaling Jaya, Selangor ("KMD") of the one part;

AND

The Kiwanis Club of (ROS Number -----) set forth on the applicable Service Order ("Subscriber") of the other part

WHEREAS

This Agreement sets forth the terms pursuant to which Subscriber will be permitted to use certain of KMD's web-based and professional services. The parties agree as follows:

1. DEFINITIONS

- 1.1. "Account" means a unique account created for Subscriber to access the Subscription Services.
- 1.2. "Add-On Services" means additional services that may be added to the Subscription Services.
- 1.3. "Affiliate" means an entity that controls, is controlled by or is under common control with a party, where "control" means ownership of 50% or more of the shares, equity interest or other securities entitled to vote for election of directors or other managing authority.
- 1.4. "Client" means a customer of Subscriber for whom Subscriber is purchasing and/or using the Services (if applicable).
- 1.5. "Effective Date" means the date the Service Order is executed by both parties.
- 1.6. "Group" means a unit of usage rights for the Subscription Services. Groups may be set for individual Clients, specific campaigns, etc.
- 1.7. "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world, in each case, for their full term and together with

any renewals or extensions.

1.8. "Mobile Application" means each copy of the KMD and/or KMD mobile application (as upgraded from time to time) downloaded by Subscriber's clients or users and installed on a mobile device approved by Subscriber for business use.

1.9. "Professional Services" means time-and-materials services provided to Subscriber, such as consulting services, onboarding support, etc.

1.10. "Scope Limitations" means the limitations on Subscriber's use of the Subscription Services specified in one or more applicable Service Orders. Scope Limitations may include limits on the volume of data processed by the Subscription Services, and/or a maximum number of users, social media profiles, brand keywords or such other limits as are set forth in the Service Order.

1.11. "Sensitive Information" means any passwords, credit card or debit card information, personal financial account information, personal health information, EPF, SOCSO, passport numbers, driver's license numbers, employment records, physical or mental health condition or information, student any information that would classify as "Special Categories of Information" under Malaysian Data protection laws, or any other information that would be subject to Health Insurance Portability and Accountability (HIPA) laws, the Payment Card Industry Data Security Standards (PCI DSS), or other laws, regulations, or industry standards designed to protect similar information.

1.12. "Services" means, collectively, Subscription Services, Add-On Services and Professional Services.

1.13. "Service Order" means a document setting out the specific details of one or more specific Services to be provided to Subscriber, which is agreed upon and signed by both parties.

1.14. "Sites" means <https://kiwanis.org.my/kiwanis> 4.0/ and any associated sites, as applicable.

1.15. "Subscriber Data" means the data inputted to the Sites by or on behalf of the Subscriber for the purpose of using the Services or facilitating Subscribers use of the Services.

1.16. "Subscription Services" means the subscription services provided by KMD to Subscriber, as identified in one or more Service Orders. The Subscription Services include the use of web-based applications, Mobile Applications (if applicable), technical support, and documentation such as user manuals and online help files.

1.17. "Subscription Term" means the subscription term set forth in the applicable Service Order for the Services.

2. SERVICE ORDERS

2.1. Once executed by both parties, each Service Order will be a unique agreement that incorporates the terms of this Agreement and stands alone with respect to all other Service Orders. If there is a conflict between the terms of this Agreement and the terms of a Service Order, the terms of this Agreement will control unless the Service Order states that a specific provision of this Agreement will be superseded by a specific provision of the Service Order.

KMD will provide, and Subscriber will pay for, all Services set out in each Service Order, subject to the terms of the Service Order and this Agreement.

The Service Order referred to will be set out in the Service Order Schedule attached to this Agreement.

3. USE OF THE SERVICES

3.1. Use of the Services;

Subject to the terms and conditions of this Agreement, KMD grants to Subscriber a limited, non-exclusive, non-transferable, non-sublicensable right during the term of each Service Order to use the Services set forth therein.

Subscriber's right to use the Services is subject to the Scope Limitations and contingent upon Subscriber's compliance with the Scope Limitations and the terms of the Service Order and this Agreement.

If the Service Order permits usage by Clients, such Clients may use the Services in accordance with the terms of this Agreement.

Subscriber shall ensure that each of its Clients complies with the provisions of this Agreement and will be liable for all use of the Services by its Clients.

By adding any Client to Subscriber's account, Subscriber represents and warrants that Subscriber has obtained all necessary authorizations and consents from such Client to bind it to this Agreement.

Subscriber agrees that KMD can access its account information as necessary, in KMD's sole discretion, to provide Subscriber with the Services and any related support.

KMD will not disclose such data except if compelled by law, permitted by Subscriber, or pursuant to the terms of the KMD's Privacy Policy, which is available (the "Privacy Policy") and is incorporated into this Agreement.

3.2. Access and Users Groups;

Subscriber is responsible for managing access to its Account and for all information, data, text, messages or other materials that Subscribers users post or otherwise transmit via the Services.

Subscriber may permit its agents, contractors or service providers to access the Services through its Account, provided that such third party is using the Services on behalf of Subscriber, Subscriber ensures that any person or entity using its Account comply with the terms of this Agreement, and that Subscriber remains responsible for any action taken using its Account.

If the Scope Limitations include limits on the number of users, Subscriber will ensure that each user is issued its own credentials and that credentials are not shared by more than one user.

If Subscriber uses the Services on behalf of its Clients or if it grants access to the Services to its Clients, Subscriber will be responsible for ensuring that such Clients are not able to access confidential or proprietary information of another Client.

Subscriber may only assign one Client to a Group and may not grant access to one Client's Group to another Client or third party without the assigned Client's consent.

Subscriber hereby represents and warrants that any Subscriber Data has not been collected, stored, and transferred to KMD in violation of any law, regulation, or contractual obligation applicable to Subscriber.

Subscriber shall have sole responsibility for the accuracy, quality, and legality of the Subscriber Data and the means by which it acquired the Subscriber Data.

With respect to Subscriber's users and individuals that interact or engage with Subscriber's social media pages or profiles (including, fans, followers, and other social media audience members) (each, a "Social Media User," and collectively, "Social Media Users"), Subscriber shall cause each such individual to consent to the processing by KMD of Subscriber's user's data or Subscriber's Social Media User's data prior to the collection of data in a manner consistent with applicable law including, where required by applicable law, explicit consent for automated decision-making and other kinds of processing that might require explicit consent.

3.3. Use Restrictions;

Subscriber may use the Services solely for its own internal business operations or on behalf of Subscriber's Clients.

Except as otherwise explicitly provided in this Agreement and/or applicable Service Order, Subscriber will not, and will not permit or authorize third parties to:

- (a) license, sublicense, sell, rent, lease, or otherwise permit third parties to use the Services;
- (b) use the Services to provide services to third parties (e.g., as a service bureau);
- (c) circumvent or disable any security or other technological features or measures of the Services;
- (d) reverse engineer any element of the KMD Service, or use the Services or any of KMD's Confidential Information (as defined below) to compete with the Services;
- (e) modify, adapt or hack the Services to falsely imply any sponsorship or association with KMD, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks;
- (f) use the Services in any manner that interferes with or disrupts the integrity or performance of the Services or the components of the Services;
- (g) use the Services to knowingly post, upload, link to, send or store any content that is defamatory, libelous, fraudulent, derogatory, abusive, obscene, unlawful, hateful, harassing, violent, threatening, racist, or discriminatory, or that contains any viruses, malware, Trojan horses, time bombs, or any other similar harmful software;
- (h) attempt to use any method to gain unauthorized access to any paid features of the Sites;
- (i) use automated scripts to collect information from or otherwise interact with the Sites or the Services;
- (j) deep-link to the Sites for any purpose (other than KMD's home page), unless expressly authorized in writing by KMD;
- (k) impersonate any other user of the Services; or
- (l) use the Services in violation of any social media network acceptable use policy, terms of use (including, but not limited to, the Twitter Terms of Service located at www.twitter.com/tos and the YouTube Terms of Service located at <https://www.youtube.com/t/terms>) or any similar policy or terms.

Subscriber shall not use the Services for surveillance purposes or gathering intelligence, including but not limited to:

(i) investigating or tracking individual social media users or their content, or to obtain information on social media users or their content, in a manner that would require a subpoena, court order, or other valid legal process;

(ii) tracking, alerting, or other monitoring of sensitive events (including but not limited to protests, rallies, or community organizing meetings);

(iii) conducting or providing surveillance, analyses or research that isolates a group of individuals or any single individual for any unlawful or discriminatory purpose or in a manner that would be inconsistent with the individual social media users' reasonable expectations of privacy;

(iv) to violate the Universal Declaration of Human Rights (located at <http://www.un.org/en/documents/udhr>), including, without limitation, Articles 12, 18, or 19; or

(v) targeting, segmenting, or profiling individuals based on health (including pregnancy), negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law.

KMD shall have the right to terminate this Agreement and any Service Order immediately, if KMD reasonably suspects that Subscriber has violated any of the restrictions in this Section 3.

3.4. Compliance with Laws;

Subscriber will use the Services in compliance with all applicable laws and regulations and in a manner that does not infringe on the rights of any third party or violate any third party's privacy rights.

3.5. Prohibition on Sensitive Information;

Subscriber represents and warrants that neither Subscriber nor Subscriber's users will transmit, upload, collect, manage, or otherwise process any Sensitive Information through the Services.

Subscriber acknowledges and agrees that KMD will not be liable for any damages that may result from Subscriber's use of the Services in transmitting, uploading, collecting, managing, or otherwise processing any Sensitive Information.

3.6. Protection Against Unauthorized Use;

Subscriber will use reasonable efforts to prevent any unauthorized use of the Services and immediately notify KMD in writing of any unauthorized use that comes to Subscriber's attention.

If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Subscriber, Subscriber will take all steps reasonably necessary to terminate the unauthorized use.

Subscriber will cooperate and assist with any actions taken by KMD to prevent or terminate unauthorized use of the Services.

3.7. Right to Suspend Services;

KMD may suspend Subscriber's or any Client's use of the Services if KMD reasonably and in good faith believes such suspension is necessary to prevent unauthorized use of the Services or to prevent an ongoing violation of any applicable laws or regulations.

KMD will use commercially reasonable efforts to notify Subscriber prior to any such suspension and will only suspend the Services to the extent necessary to prevent such unauthorized use or violation.

In addition, if Subscriber fails to timely pay any fees in accordance with the terms of this Agreement and/or any Service Order, KMD may, without limitation to any of its other rights or remedies, suspend performance of the Services until it receives all amounts due.

3.8. Reservation of Rights;

KMD grants to Subscriber a limited right to use the Services under this Agreement.

Subscriber will not have any rights to the Services except as expressly granted in this Agreement.

KMD reserves to itself and its licensors all rights to the Services not expressly granted to Subscriber in accordance with this Agreement.

KMD and its licensors retain all Intellectual Property Rights in and to the Services.

3.9. Statistical Data;

Subscriber acknowledges and agrees that KMD shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Subscriber identifiable data or information resulting from Subscriber's use of the Services ("Statistical Data").

Statistical Data may be collected by KMD for any lawful business purpose without a duty of accounting to Subscriber, provided that the Statistical Data is used only in an anonymized, aggregated form, without specifically identifying the source of the Statistical Data.

On creation, KMD Social shall own all Intellectual Property Rights in the Statistical Data.

3.10. Feedback;

KMD shall have a royalty free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback KMD receives from Subscriber.

4. THIRD PARTY SERVICES

4.1. External Sites;

The Services may contain links to, or otherwise may allow Subscriber to connect to and use certain third party products, service or software under separate terms and conditions (collectively, "Third-party Service") in conjunction with the Services, including certain social media networks and other integration partners.

If Subscriber decides to access and use such Third-party Service, Subscriber acknowledges that its use of said Third-party Service is governed solely by the terms and conditions of such Third-party Service (including, but not limited to, the Twitter Terms of Service located at www.twitter.com/tos and the YouTube Terms of Service located at <https://www.youtube.com/t/terms>), and KMD does not endorse, is

not responsible for, and makes no representations as to such Third party Service, its content or the manner in which such Third-party Service handles Subscribers data.

KMD is not liable for any damage or loss caused or alleged to be caused by or in connection with Subscriber's access or use of any such Third-party Service, or Subscriber's reliance on the privacy practices or other policies of such Third-party Service.

Subscriber acknowledges that KMD does not control the features and functionality of any Third-party Service and that such Third-party Service may change its features and functionality without any notice to KMD.

KMD shall not be liable to Subscriber for any refunds or any damage or loss arising from or in connection with any changes made by a Third-party Service or any resulting changes to the Services.

4.2. Integration;

The Services may contain features that enable various Third-party Services (such as a social media service like Facebook and Twitter) to be directly integrated into Subscribers KMD account.

To take advantage of these features, Subscriber will be required to register for or log into such Third-party Service on their respective websites.

By accessing/enabling a Third-party Service within the Services, Subscriber is allowing KMD to pass Subscribers log-in information to the Third-party Service for this purpose.

5. FEES AND PAYMENT

5.1. Fees;

Subscriber will pay KMD the fees specified in each applicable Service Order.

If Subscriber orders additional Services or changes the Services it is receiving, the fees for such additional or changed services will be charged at the then-current pricing for such additional or changed services and commence on the activation date listed in the Service Order.

Any resulting change in fees shall be reflected in future invoices.

All amounts payable under this Agreement are denominated in RINGGIT MALAYSIA, and Subscriber will pay all such amounts in RINGGIT MALAYSIA.

Except as otherwise provided in this Agreement, fees are non-refundable.

Unless otherwise specified in the Service Order, there are no refunds or credits for partial months of Services, plan downgrades, or refunds for unused time if Subscriber closes its account before the end of the term of any Service Order.

Unless otherwise specified in the Service Order, the Services and any Add-On Services purchased by Subscriber during the Subscription Term, will automatically renew for additional periods equal to the length of the Subscription Term unless either party provides written notice to the other party at least 30 days prior to the expiration of the Subscription Term.

5.2. Payment Terms;

Unless otherwise specified in the applicable Service Order, Subscriber will pay all amounts due within thirty (30) days of the date of the applicable invoice, except for amounts subject to a good faith dispute, provided that:

(i) Subscriber notifies KMD of any such dispute in writing prior to the date such amounts would otherwise be due;

(ii) Subscriber pays any undisputed amounts in accordance with this Section; and

(iii) Subscriber cooperates with KMD in promptly resolving such dispute. Except for any amounts disputed by the Subscriber in good faith, any amount not paid when due could result in the subscription service being withdrawn.

Amounts due from Subscriber under this Agreement may not be withheld or offset by Subscriber against amounts due to Subscriber for any reason.

5.3. Taxes.

Other than net income taxes imposed on KMD, Subscriber will bear all sales and service tax, taxes, duties, and other governmental charges (collectively, "Taxes") resulting from its purchase or use of the Services.

Taxes will not be deducted from or set off against the fees set forth in the applicable Service Order or invoice.

6. TERM AND TERMINATION

6.1. Agreement Term;

This Agreement commences on the Effective Date and will remain in effect while any Service Orders are outstanding.

6.2. Service Order Term;

Each Service Order will be valid for the term specified on the such Service Order unless the Service Order is terminated earlier in accordance with the terms of this Agreement.

6.3. Termination for Cause;

Either party may terminate a Service Order or this Agreement:

(i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or

(ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

KMD shall have the right to terminate a Service Order or this Agreement if KMD determines that Subscriber is acting or has acted in a way that negatively impacts or reflects on KMD or its current or prospective partners or customers.

6.4. Post-Termination Obligations;

If this Agreement or a Service Order is terminated for any reason;

(a) Subscriber will pay to KMD any fees or other amounts that have accrued prior to the effective date of the termination,

(b) any and all liabilities accrued prior to the effective date of the termination will survive, and

(c) Subscriber will discontinue all use of the Services. Upon termination of this Agreement or any Service Order, KMD shall have the right to remove Subscriber's account information and account settings after thirty (30) days, Subscriber will not be able to recover this data or content (except that content stored/published to third-party websites, that data will remain on said third-party websites pursuant to those website's terms and conditions).

All provisions of this Agreement that, by their nature, are intended to survive termination (including those related to third party claims and limitations on liability) will remain in effect.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information;

For the purpose of this Agreement, "Confidential Information" means non-public information of KMD or Subscriber disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which;

(i) a reasonable person would consider confidential; or

(ii) is marked "confidential" or "proprietary" or some similar designation by the disclosing party.

Confidential Information will not, however, include any information that;

(i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party;

(ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party other than as a result of a violation of this Agreement by the receiving party;

(iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party, as shown by the receiving party's files and records;

(iv) is obtained by the receiving party from a third party without a breach of the third party's obligations of confidentiality; or

(v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

7.2. Protection of Confidential Information;

The receiving party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and the parties' respective rights therein, at all times exercising at least a reasonable level of care.

Each party agrees to restrict access to the Confidential Information of the other party to those employees, advisors, agents and other representatives who require access in order to perform its obligations hereunder and who agreed to be bound by these obligations of confidentiality and non-disclosure.

8. WARRANTIES AND DISCLAIMER

8.1. Mutual Warranties;

Each party represents and warrants to the other that:

(a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and

(b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

8.2. Disclaimer.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, KMD MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. KMD EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ON ITS BEHALF AND ON BEHALF OF ITS LICENSORS.

KMD RELIES ON THIRD PARTY DATA SOURCES FOR INFORMATION AND THEREFORE DOES NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES OR THIRD- PARTY DATA WILL ALWAYS BE AVAILABLE. KMD DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE, CONDITIONS OF THE SERVICES DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE PROVIDERS, TO THE SATURATION OF THE INTERNET NETWORK OR ANY OTHER ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY

IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS, PROBLEMS RELATED TO THE SERVICES OR ITS USE, LOSS OF PERSONAL CONTENT ON THE SITES NOT WITHIN KMD'S REASONABLE CONTROL.

9. INTELLECTUAL PROPERTY INFRINGEMENT

9.1. Defense and Indemnification.

KMD will, at its expense, either defend Subscriber and Subscriber's officers, directors, employees, agents, permitted successors and assigns from or settle any claim, proceeding, or suit ("Claim") brought by a third party against Subscriber alleging that Subscriber's use of the Services infringe or misappropriate any Intellectual Property Rights of any third party, and indemnify Subscriber from all damages, costs, and attorneys' fees finally awarded in any such Claim or paid to any third party to settle any such Claim.

KMD's obligation under this section is contingent on;

(a) Subscriber giving KMD prompt written notice of the Claim;

(b) Subscriber granting KMD full and complete control over the defense and settlement of the Claim; and

(c) Subscriber providing assistance in connection with the defense and settlement of the Claim as KMD may reasonably request, at KMD's cost.

Subscriber will not defend or settle any Claim eligible for indemnification under this section without KMD's prior written consent.

9.2. Infringement Remedy;

If Subscriber is enjoined or otherwise prohibited from using the Services or a portion thereof based on an allegation that the Services violate any third party intellectual property right (including a Claim), or if KMD reasonably determines that such prohibition is likely, then KMD will, at its sole expense and option:

(a) obtain for Subscriber the right to use the allegedly infringing portions of the Services;

(b) modify the allegedly infringing portions of the Services so as to render them non-infringing without substantially diminishing or impairing their functionality; or

(c) replace the allegedly infringing portions of the Services with non-infringing items of substantially similar functionality.

If KMD determines that the foregoing remedies are not commercially reasonable, then KMD may terminate the impacted Service Order, or portion thereof, and will promptly provide a pro-rated refund to Subscriber for any prepaid fees received by KMD for any Services that have not yet been performed at the time of termination.

9.3. Exclusions from Obligations;

KMD will have no obligation under this Section 9 for any infringement or misappropriation to the extent that it arises out of or is based upon;

(a) use of the Services in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination;

(b) any aspects of the Services that are provided to comply with designs, requirements, or specifications required by or provided by Subscriber, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications;

(c) use of the Services by Subscriber for purposes not intended or outside the scope of the license granted to Subscriber;

(d) Subscriber's failure to use the Services in accordance with written instructions provided by KMD, if the infringement or misappropriation would not have occurred but for such failure; or

(e) any modification of the Services not made or authorized in writing by KMD where such infringement or misappropriation would not have occurred absent such modification.

9.4. Limited Remedy;

This Section 9 states KMD's sole and exclusive liability, and Subscriber's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party Intellectual Property Right by the Services.

10. SUBSCRIBER INDEMNIFICATION

10.1. Subscriber will defend KMD and its officers, directors, employees, agents, successors and assigns from any actual or threatened third party Claim arising out of or based upon;

- (a) Subscriber's breach of any of its obligations under this Agreement,
- (b) Subscriber's use of a Third-party Service, or
- (c) any of the exclusions stated in Section 9.3, and indemnify KMD from all damages, costs, and attorneys' fees finally awarded in any such Claim or all amounts that Subscriber agrees to pay to any third party to settle any such Claim.

Subscriber's obligation under this section is contingent on:

- (a) KMD giving Subscriber prompt written notice of the Claim;
- (b) KMD granting Subscriber full and complete control over the defense and settlement of the Claim, provided that Subscriber may not settle or defend any Claim unless Subscriber unconditionally releases KMD of all liability and such settlement does not affect KMD's business or Services; and
- (c) KMD providing assistance in connection with the defense and settlement of the Claim as Subscriber may reasonably request.

KMD will not defend or settle any Claim eligible for indemnification under this section without Subscriber's prior written consent.

11. LIMITATIONS OF LIABILITY

11.1. Exclusion of Consequential and Related Damages;

NEITHER PARTY OR ITS AFFILIATES WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, ENHANCED, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, REVENUE, BUSINESS, OR DATA; BUSINESS INTERRUPTION; OR LOSS OF GOODWILL OR REPUTATION, REGARDLESS OF WHETHER THE PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING OR ANY LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

11.2. Cap on Liability;

UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF KMD AND ITS RESPECTIVE AFFILIATES OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT, (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT PAID AND AMOUNTS ACCRUED BUT NOT YET PAID BY SUBSCRIBER TO KMD UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION) THE FOREGOING LIMITATIONS WILL NOT IN ANY WAY LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 5 ABOVE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE

11.3. Independent Allocations of Risk;

EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES.

THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY KMD TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

THE LIMITATIONS IN THIS SECTION 11 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. MOBILE TERMS

12.1. Additional Mobile Application Terms;

Use of a Mobile Application requires a mobile device that is compatible with the mobile service.

KMD does not warrant that the Mobile Applications will be compatible with any mobile device.

Subscriber acknowledges that KMD may from time to time issue upgraded versions of the Mobile Applications, and may automatically electronically upgrade the version of the Mobile Applications.

Subscriber consents to such automatic upgrading. Standard carrier data charges may apply to use of the Mobile Applications.

The additional terms and conditions set forth shall apply with respect to any Mobile Application that KMD provides for use.

13. GENERAL

13.1. Export Compliance and Anti-Corruption;

The Services may be subject to export laws and regulations of Malaysia and other jurisdictions.

Each party represents that it is not named on any Malaysia government denied-party list.

Subscriber shall not permit users to access or use the Services in a Malaysia country or in violation of any Malaysia export law or regulation.

Subscriber further represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value in connection with this Agreement (excluding any reasonable gifts and entertainment provided in the ordinary course of business).

13.2. Federal Government End Use Provisions;

If Subscriber is a Malaysia federal government end user, the Services is a "Commercial Item", as applicable, the Services are licensed to Subscriber with only those rights as provided under the terms and conditions of this Agreement.

13.3. Data Processing Addendum;

The parties agree to enter into the Data Processing Addendum (“DPA”) available here, which shall be deemed incorporated by reference into this Agreement.

13.4. Assignability;

Neither party may assign its right, duties, and obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of the assigning party's obligations under this Agreement.

13.5. Subcontractors;

KMD may utilize a subcontractor or other third party to perform its duties under this Agreement so long as KMD remains responsible for all of its obligations under this Agreement.

13.6. Notices;

Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by fax, e-mail, Pos Malaysia, or insured courier, return receipt requested, to the appropriate party at the address set forth on the signature page of this Agreement (or the applicable Service Order).

Either party may change its address for receipt of notice by notice to the other party in accordance with this Section.

Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier or sending an email or fax.

13.7. Force Majeure;

Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

13.8. Governing Law;

This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of MALAYSIA.

13.9. Waiver;

The waiver by either party of any breach of any provision of this Agreement does not waive any other breach.

The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

13.10. Severability;

If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Subscribers right to use the Services will immediately terminate.

13.11. Entire Agreement;

This Agreement, including the applicable Service Orders, is the final and complete expression of the agreement between these parties regarding Subscriber’s use of the Services.

This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement.

KMD may amend this Agreement from time to time, in which case the new Agreement will supersede prior versions.

KMD will notify (notice within the application to be deemed sufficient) Subscriber of material changes and direct Subscriber to the latest version of this Agreement.

KMD will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Subscriber in any receipt, invoice, acceptance, purchase order, confirmation, correspondence, or otherwise, regardless of KMD’s failure to object to such terms, provisions or conditions.

This Agreement may be executed in multiple counterparts, and may be signed electronically or via facsimile.

13.12. Survival;

The Laws of Malaysia will survive any termination of this Agreement.

.....The rest of this page is intentionally left blank

IN WITNESS WHEREOF the Subscription Services Provider (KMD) and the Subscriber (Kiwanis Club of) have hereunto set their hands the day and the year first abovewritten.

Signed on behalf of the said)

Subscription Services Provider (KMD) by)

Dr. Laurence Lim

Governor Kiwanis Malaysia District

in the presence of :-)

Dr. Mario del Castillo

Hon Secretary Kiwanis Malaysia District

Signed on behalf of the Board of Directors of the said)

Subscriber (The Kiwanis Club of)

Name:

President Kiwanis Club of.....)

in the presence of :-)

Name:

Hon Secretary Kiwanis Club of)

SERVICE ORDER SCHEDULE

[Clause 2.1 each Service Order will be a unique agreement that incorporates the terms of this Agreement and stands alone with respect to all other Service Orders. If there is a conflict between the terms of this Agreement and the terms of a Service Order, the terms of this Agreement will control unless the Service Order states that a specific provision of this Agreement will be superseded by a specific provision of the Service Order. KMD will provide, and Subscriber will pay for, all Services set out in each Service Order, subject to the terms of the Service Order and this Agreement which also includes the presentation documents attached.]

1. KMD: PERSATUAN KELAB KIWANIS MALAYSIA, No. Rujukan : PPM-001-10-04102002, Registered Address LOT 13490, JALAN JENJARUM (OFF JALAN SS 23/1, TAMAN SEA), 47400 PETALING JAYA SELANGOR
2. SUBSCRIBER: [Club Name, ROS registration number, Registered Address, Address For Notice]
3. UNIQUE ACCOUNT ID:
4. CLUB CONTACT: PRESIDENT [Name, Mobile, email] SECRETARY [Name, Mobile, email]
5. EFFECTIVE DATE: [Date of Execution]
6. POWER POINT PRESENTATION

SERVICES PROVIDED BY KMD

- i. New Club Website eg kiwan.is/klang or kiwanis.org.my/klang
- ii. Payment portal for raising funds through the internet. Service provided by 2C2P
- iii. Up to 3 accounts will be provided to each club
- iv. All transactions are secure and clubs will receive from 2C2P the details of every transaction. A monthly statement.
- v. KMD will create, upon request by the club, links to the donation page. This link can be sent to clubs supporters, corporates, donors, friends and other kiwanis clubs via WhatsApp, SMS, Email and have a presence on the webpage. If the project has a closing date the link will be disabled after the event
- vi. KMD will monitor all clubs transactions and if there are issues with the use of the portal – KMD reserves the right to disable it.
- vii. Each club will receive upon request a Kiwanis email address for the President, Secretary, Treasurer and webmaster
- viii. KMD will set up upon request an Instagram account to load up pictures of events and projects
- ix. KMD will be investing in the development of a Mobile App which will be ready in 2020.

UNDERTAKING BY THE SUBSCRIBING CLUB

- i. Fill out the application form for Kiwanis 4.0 services found on KMD website.
- ii. Provide all club data
- iii. Execute the KIWANIS 4.0 SERVICE SUBSCRIPTION AGREEMENT
- iv. The Club will nominate 3 competent persons to be trained on the use of the website and manage content
- v. Inform the District if the club has an existing website, Instagram and Facebook accounts
- vi. Each club must provide the following necessary information to enable KMD to design the clubs website
 - o Club Goals and Calendar
 - o Board of Directors

- Picture of the President and welcome message
 - List of projects undertaken by the club (Long term projects, SLP, Foundations,) with a short write up
 - Pictures of events for Instagram and Facebook accounts
 - Information of their Facebook and Instagram accounts
 - Upcoming events
- vii. Abide by the rules laid out in the Service Subscription Agreement
- viii. Agree to pay a sum of RM 1,500 to KMD for setting up of the website and payment portal. Each club will be invoiced when the project is completed. Additional charges may apply if specific customization is required.
- ix. Agree to pay an annual fee to KMD for continued technical support on an annual basis. The quantum of this amount will be mutually agreed when the scope of work is determined.