

## **TERMS AND CONDITIONS FOR PANEL CONSULTANCY SERVICES (NON-CONSTRUCTION)**

Document No. (Contract): XXX

Document No. (Letter of Appointment): XXX

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this T&C (including the Annexures), the following words and expressions have the following meanings unless the context otherwise requires:-

**“Actual Milestone Date”** shall occur on the first day falling on the date the relevant Milestone set out in **Annexure 1** (Scope of Services) is achieved;

**“Affiliate”** means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with that person. For the purposes of this definition, “control” means direct or indirect possession of the power to direct or cause the direction of the management of that person whether through ownership of shares, voting securities or otherwise;

**“Application for Payment”** means the application for payment submitted by the Consultant in accordance with Clause 9 (Fee);

**“Approvals”** means all approvals, authorisations, clearances, concessions, consents, decisions, decrees, exemptions, filings, licences, notifications, permits, privileges, rulings, registrations and waivers required to be issued by or made with any Relevant Authority in connection with the provision of the Services. Where the Company is required to give “approval” or to “approve” any matter, this shall refer to a written approval, unless otherwise expressed;

**“Business Day”** means any day on which commercial banks are open for business in Selangor or Wilayah Persekutuan Kuala Lumpur (as the case may be), but excludes public holidays, Saturdays and Sundays;

**“Certification of Payment”** means the certification issued by the Company to the Consultant under Clause 9 of this Contract;

**“Claim”** means, as the context requires:-

- (a) any claim for an increase in the Fee, for payment of money, under, arising out of, or in any way in connection with this Contract or arising out of, or in any way in connection with the provision of the Services, the Consultant’s activities, the Services or either party’s conduct before this Contract; or
- (b) any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands and/or Losses by, on behalf of, or in favour of any third party;

**“Company”** or **“Purchaser”** has the meaning given to it in the Cover Page;

**“Company Background IP”** means Intellectual Property Rights owned or licensed by the Company, which are:-

- (a) already in existence at the commencement of the Service Period; or
- (b) brought into existence other than by virtue of the performance of this Contract,

including Intellectual Property Rights in the Data and Deliverables, but does not include Consultant Background IP or Project IP;

**“Confidential Information”** means:-

- (a) any and all commercial, technical knowhow and other information and data owned by the Company or in the possession or knowledge of the Company or its Personnel disclosed, made available to or obtained by the Consultant in connection with the Project in any form whatsoever, including this T&C; or
- (b) any new information produced at the request of the Consultant in the provision of the Services, including any information of that sort which is provided verbally to the Consultant and its Personnel by the Company or its Personnel which in each case is confidential in nature;

**“Consultant”** or **“Vendor”** has the meaning given to it in the Cover Page and shall include its successor in title and personal or legal representative;

**“Consultant’s Representative”** means the person named as such in **Annexure 2** (Representatives and Key Personnel) or any replacement therefor approved in accordance with this Contract;

**“Consultant Background IP”** means all Intellectual Property Rights, whether owned or licensed by the Consultant or the sub-consultants, which are:-

- (a) already in existence at the commencement of the Service Period; or
- (b) brought into existence other than by virtue of the performance of this Contract or any arrangement contemplated by this Contract or the Project,

but does not include Consultant Background IP or Project IP;

**“Contract”** means the consultancy services agreement comprising the Cover Page, this T&C and such other documents as notified or to be notified by the Company to the Consultant as amended from time to time and includes its appendices, supplement and addendum;

**“Contract Administrator”** means the contract administrator who shall be the [ @CONTRACT\_ADMINISTRATOR@ ] of the Company and/or his successors in office;

**“Cover Page”** means the cover page forming this Contract;

**“Data”** means and include, where applicable, any calculation, chart, design, detail, drawing, mock-up, model, pattern, sample, schedule, software, specification or other document or information prepared by, or on behalf of, the Consultant arising out of, or in connection with its provision of the Services under this Contract;

**“day”** means a calendar day of the Gregorian calendar;

**“Deliverables”** means deliverables which include Data, reports, or other documents, work or things whatsoever provided or to be provided by the Consultant in connection with the Services under this Contract including deliverables set out in **Annexure 1** (Scope of Services);

**“Dispute”** means any dispute, difference of opinion, controversy, claim or disagreement between the parties arising out of or in connection with the Works or this Contract including any question regarding its existence, validity, breach or termination;

**“Execution of the Services”** means the carrying out of the professional services by the Consultant as set out in **Annexure 1** (Scope of Services) as well as all other services ancillary to, or necessary for, the proper performance by the Consultant of its obligations under this Contract, and the terms “Execution” and “Executed” shall be construed accordingly;

**“Expiry Date”** has the meaning given to it in the Cover Page or as extended by the Company;

**“Extension of Time Notice”** has the meaning given to it in Clause 10.2(a);

**“Fee”** means the consultancy fees payable under this Contract set out in **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses) subject to any additions, adjustments or deductions payable by the Company to the Consultant in accordance with this Contract;

**“Force Majeure Event”** means an event, condition or circumstance or its effect which:-

- (a) is beyond the reasonable control of and occurs without fault or negligence on the part of the party claiming it as a Force Majeure Event;
- (b) causes a delay or disruption in the performance of any obligation under this Contract despite all reasonable efforts of the party claiming it as a Force Majeure Event to prevent or mitigate its effects; and
- (c) the party claiming a Force Majeure Event could not reasonably have been expected to have prevented, avoided or overcome the Force Majeure Event by exercising a standard of skill, care and diligence consistent with that of a prudent, competent and experienced person in the circumstances,

and such event, condition or circumstance includes the following:-

- (i) strikes or lockouts and/or other work stoppages or industrial action, other than those solely affecting the party claiming the same as a Force Majeure Event;

- (ii) acts of public enemies or terrorists or acts of war, whether or not war is declared, acts of force by a foreign nation or embargo;
- (iii) public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (iv) earthquakes, landslide, subsidence, sabotage and/or other natural calamities;
- (v) pandemic, epidemic or plague; and
- (vi) expropriation or compulsory acquisition by any Relevant Authority.

**“Good Industry Practices”** means the practices, methods, techniques, procedures and standards and that degree of skill, diligence, prudence and foresight, as upgraded from time to time, which are prescribed by the professional or other regulating body governing the Consultant, is generally followed by the industry in which the Consultant is to provide the Services, whether in Malaysia or in any other jurisdiction or which would reasonably or ordinarily be expected to be observed or adopted by a skilled and experienced consultant performing works or services of a similar nature, scope and complexity as those forming the subject matter of this Contract;

**“Indemnities”** has the meaning given to it in Clause 17 (Indemnities);

**“Intellectual Property Rights”** means all intellectual property and industrial property rights at any time recognised by Law or anywhere in the world, whether subsisting now or in the future, including:-

- (a) rights in patents, innovation patents, petty patents, utility models, designs, topography, copyright, semiconductor or circuit layouts, software, firmware, databases, inventions, trade secrets, Confidential Information, know-how, business processes and methods, trademarks (including logos and trade dress) and service marks, in each case whether registered or unregistered; and
- (b) any applications or the right to apply for registration of any of the above,

but not including moral rights;

**“Key Persons”** means the persons described in **Annexure 2** (Representatives and Key Personnel);

**“Law”** means any law, regulation or by law, or any order or directive issued by any public authority or public service company relating to the Services and such other laws as may be applicable to the Consultant, Services and this Contract;

**“Liquidated Damages”** means the liquidated damages payable by the Consultant to the Company in accordance with Clause 11 (Liquidated Damages);

**“Loss”** means any and all suits, actions, administrative or adjudicative proceedings, Claims, demands, losses, liabilities, damages, defects, costs and expenses of whatsoever nature, including legal fees and expenses;

**“MACC Act”** means the Malaysian Anti-Corruption Commission Act 2009 as amended from time to time;

**“Milestone”** means the milestones set out in **Annexure 1** (Scope of Services) in respect of which the Consultant is entitled to payment by the Company in accordance with Clause 9.2 (Milestone Payment for the Services);

**“Milestone Dates”** means the date to achieve each Milestone set out in **Annexure 1** (Scope of Services);

**“Milestone Payment”** means the payment for each Milestone set out in **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses);

**“month”** means the period calculated from any specific day up and including the day immediately before the day numerically corresponding to that specific day in the subsequent calendar month or if there shall be no such day in such subsequent calendar month, the last day of that calendar month, and “calendar month” shall be construed to mean the period commencing from the first day and ending on the last day of a Gregorian calendar month;

**“Movement Control Order”** means the regulations, orders and other subsidiary legislation promulgated under the Prevention and Control of Infectious Diseases Act 1988 and the guidelines, procedures and practices issued by the Relevant Authority which restricts or impose conditions on movement;

**“PDPA”** has the meaning given to it in Clause 4.7 (PDPA);

**“Personnel”** means:-

- (a) for the Company: the Contract Administrator and each of the Company’s directors, officers, employees, agents, representatives (other than the Consultant and its Personnel); and
- (b) for the Consultant: each of the Consultant’s directors, officers, employees, agents, representatives and sub-consultant;

**“Prohibited Act”** means:-

- (a) offering, giving or agreeing to give to any person employed by or on behalf of any Relevant Authority or any Company’s Personnel any gift or consideration of any kind as an inducement or reward:-
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other agreement or any contract relating to the Project; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any contract with any public body or Relevant Authority, or
- (b) entering into this Contract or any contract with the Company or any public body or Relevant Authority in connection with which commission has been paid or has been

agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless before this Contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed to the Company and any Relevant Authority; or

- (c) committing any offence:-
  - (i) under any Law, including the MACC Act, creating offences in respect of fraudulent acts, including money laundering and corruption;
  - (ii) at common law in respect of fraudulent acts in relation to the obtaining or performance of this Contract or any other agreement relating to the Works or the Project; or
  - (iii) defrauding or attempting to defraud or conspiring to defraud any Relevant Authority;

**“Program”** means the Consultant’s program prepared and submitted by the Consultant for the Services;

**“Project”** or **“Subject”** has the meaning given to it in the Cover Page;

**“Project Documents”** means the Consultancy Services Agreements and other documents to be provided or advised by the Company relating to the Project;

**“Project IP”** means all Intellectual Property Rights created or developed in connection with the Project, including Intellectual Property Rights in connection with the Services or provision of the Services under this Contract:-

- (a) the Deliverables;
- (b) the Data; and
- (c) any intellectual property created or developed in connection with the Project,

including the Intellectual Property Rights created by any of the Consultant or its Personnel in connection with the Services;

**“Reimbursable Expenses”** means the items set out in **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses) in respect of which the Consultant is entitled to reimbursement by the Company in accordance with Clause 9.3 (Reimbursable Expenses);

**“Related Services”** means the services related to the Services or Project falling outside of **Annexure 1** (Scope of Services), to be provided or undertaken by any other persons, if any;

**“Relevant Authority”** means any and all bodies including national, federal, state or local government and any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department (whether governmental, semi-governmental, administrative, statutory, fiscal or judicial),

commission, authority, tribunal, municipalities, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether federal, state, national, territorial, provincial or municipal) or any court, each having jurisdiction over the matter in question;

**“Representatives”** has the meaning given to it in Clause 23.1(a)(v);

**“RM”** means Ringgit Malaysia;

**“Schedule of Payment for Professional Services”** means the milestone payment schedule set out in **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses);

**“Services”** means the professional services to be provided by the Consultant set out in **Annexure 1** (Scope of Services), as well as all other services ancillary to, or necessary for, the proper performance by the Consultant of its obligations under this Contract;

**“Service Period”** means the period commencing from the commencement date as stipulated in the Cover Page and shall expire on the Expiry Date, or as may be extended by the Company;

**“Site”** means the land and other places on, under, in or through which the Works that are the subject of the Project are to be executed;

**“SST”** means sale and services tax or any other similar indirect taxes as imposed by any Relevant Authority;

**“Taxes”** means all taxes under any Law (whether currently in force or coming into force on or after the commencement of the Service Period), including all customs duties, sales taxes, SST, indirect taxes, excise and storage taxes, payroll and employment taxes, levies, imposts, deductions, charges, import duties, import taxes, corporate income tax, withholding taxes and duties (including stamp and transaction duties), together with any related interest, penalties, additional tax, fines and other statutory charges imposed by a Relevant Authority;

**“T&C”** means this terms and conditions, including its annexures, and attachments, if any;

**“Use”** means in relation to any Intellectual Property Rights, the accessing, possessing, using, storing, copying, translating, adapting, customising or enhancing of that right or material, and includes the incorporation of that Intellectual Property Rights with other materials and the creation of new versions of and derivatives from those Intellectual Property Rights; and

**“Works”** means all the works to be executed by the contractors involved in the construction works relating to the Project.

## 1.2 Interpretation

In this T&C, unless the contrary intention appears:-

- (a) a reference to this Contract, this T&C or other instruments includes any variation or replacement of either of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and must include any modification, re-enactment or extension of it for the time being in force;
- (c) the singular includes the plural and vice versa;
- (d) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (e) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later;
- (f) if a day on which any act, matter or thing is to be done under this Contract is a Saturday, a Sunday or a public holiday in Selangor or Wilayah Persekutuan Kuala Lumpur (as the case may be), the act, matter or thing must be done on the next day which is not a Saturday, a Sunday or a public holiday in Selangor or Wilayah Persekutuan Kuala Lumpur (as the case may be);
- (g) references to Clauses and Annexures are to the clauses of and annexures to this T&C;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (i) where any word is defined within the context of any particular clause in this Contract, that word, unless it is clear from the clause in question that it has limited application only to the relevant clause, has the meaning given to it for all purposes in this T&C, notwithstanding that that word has not been defined in Clause 1.1 (Definitions);
- (j) words defined in this T&C have the same meanings in the annexures unless the annexures contain their own definitions of such words;
- (k) headings are for reference only and do not form part of this Contract;
- (l) the words 'including' and 'include' are a reference to 'including, but not limited to';
- (m) words denoting individuals or persons include natural persons, companies, close corporations, partnerships, joint ventures, unincorporated associations or Authorities or any other corporate entity or association of persons and vice versa;
- (n) words denoting any gender include all genders;
- (o) where an obligation or liability is imposed on the Consultant under this Contract, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Contract unless expressly stated;



- (p) references to the Company's "approval" or "consent" or where the Company is required to "approve" shall at all times means a written consent, unless expressly provided for otherwise;
- (q) where a right or remedy is conferred on the Company under this Contract, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Company under this Contract or otherwise according to Law;
- (r) if more than one requirement imposed on the Consultant, whether under this Contract or otherwise, applies regarding any part of the Services, then all requirements must be satisfied. If there are requirements which are mutually exclusive, then the requirement which delivers the greatest level of service, or is of the highest standard, is to apply;
- (s) the term 'may' when used in the context of a power or right exercisable by the Company means that the Company can exercise that right or power in its absolute and unfettered discretion and the Company has no obligation to the Consultant to do so and the Company is not required to exercise its discretion for the benefit of the Consultant;
- (t) subject to this T&C, where under this Contract, the Company or the Contract Administrator may (or it is otherwise contemplated that the Company or the Contract Administrator can) give or withhold its approval, the Company and the Contract Administrator have an absolute and unfettered discretion as to whether it gives, conditionally or unconditionally, or withholds that approval and neither the Company or the Contract Administrator is required to exercise its discretion for the benefit of the Consultant;
- (u) references to the word parties means the Company and the Consultant and the word party means one of them; and
- (v) no rule of construction applies to the disadvantage of one party on the basis that it prepared or put forward this Contract or any part of it.

## **2. CONSULTANT'S APPOINTMENT**

### **2.1 Appointment**

The Company appoints the Consultant to provide the Services and the Consultant accepts the appointment subject to this T&C.

### **2.2 Service Period**

The Consultant must undertake the Services during the Service Period. The Company may extend the Service Period at its sole discretion.

### **3. THE SERVICES**

#### **3.1 Provision of Services**

- (a) The Consultant must provide the Services in accordance with and subject to this T&C.
- (b) The Services to be provided by the Consultant includes other ancillary services not expressly indicated in this Contract, but which are necessary for the proper performance of the Consultant's obligations under this Contract and reasonably inferable therefrom, or consistent with generally accepted industry practices in Malaysia. To the extent that such Services are not otherwise covered elsewhere in this Contract, the Consultant must provide such Services without any additional Fee.

#### **3.2 Performance of Services in Stages**

If the Services are divided into stages or phases, then the Consultant must obtain the Company's approval prior to the commencement of any Services in any given stage or phase. For the avoidance of doubt, the Company shall not be liable for, and must not be obliged to entertain, any Claims for payment in respect of Services provided by the Consultant in the absence of such prior approval.

#### **3.3 Sub-consultancy**

- (a) The Consultant must not subcontract any of the Services or part thereof without the Company's approval.
- (b) Neither subcontracting nor approval of the Company of any sub-consultancy shall relieve the Consultant from any of its warranties, liabilities or obligations under this Contract. The Consultant is liable to the Company for the acts and omissions of each sub-consultant as if they were acts or omissions of the Consultant. In particular, the Consultant shall ensure that any sub-consultant be made aware of and comply with all the obligations imposed herein in relation to confidentiality, PDPA and anti-bribery.
- (c) The Company has no responsibility or obligation to any sub-consultants. Nothing contained in this Contract shall render the Company in any way liable to any sub-consultants, and the Consultant must indemnify the Company against any and all Losses incurred or suffered by the Company in relation to any sub-consultancy.

### **4. CONSULTANT'S OBLIGATIONS**

#### **4.1 Site**

The Consultant must obtain all necessary information regarding the existing conditions of the Site that will be the subject of the Project and/or the Services.

#### **4.2 Duty of Care**

The Consultant warrants that:-

- (a) it has examined and shall continue to examine each of the various documents provided by the Company for the provision of Services, including the Approvals and the Project Documents and that it has full knowledge of and understands all of their provisions of the Project Documents;
- (b) all information and/or documents including the Project Documents made available are made available "as-is", such that the Company gives no warranties or representations, and assumes and accepts no liabilities of any kind, with respect to the accuracy, correctness, quality, quantity, completeness, integrity and/or suitability of such information and/or document, including with respect to fitness for purpose and/or non-infringement of third party rights;
- (c) it has observed, performed and complied and must continue to observe, perform and comply with the provisions of the Project Documents which may include obligations that the Company may have with the contractor involved in the construction works on the part of the Company to be observed, performed and complied with insofar as they relate to and apply to the Services, and are not repugnant to or inconsistent with the express provisions of this Contract, as if all the same were severally set out in this Contract. In particular, and without prejudice to its other obligations under this Contract, the Consultant must conduct itself in a manner so as to avoid placing the Company in breach of any of its obligations under the Project Documents or Approvals, and provide the Services so as to enable the contractor involved in the construction works to discharge their obligations under the Project Documents in so far as they relate and apply to the Services, in accordance with this Contract and to the satisfaction of the Company;
- (d) if applicable, any Data involving an element of design that it prepares or develops for use in connection with the Works or Services (or any part thereof) must be fit in all respects for the Company's intended purpose, and must be capable of being implemented within the time allotted by the Company (or such part thereof);
- (e) it has not and shall not, without the Company's prior approval, do or permit to be done anything that may increase the cost of the Services, the Project or prolong the duration of the Project;
- (f) it has examined and shall continue to examine all information and documents made available by the Company relating to the Project and it is satisfied of the accuracy and sufficiency of such information and documents set out in the Project Documents for the purpose of satisfying its obligations under this Contract;
- (g) it possesses the financial capability, skills and expertise (technical and professional) necessary to provide the Services;
- (h) it possesses sufficient resources and Personnel and will ensure sufficient resources and Personnel to provide the Services; and
- (i) it has exercised and must continue to exercise in the performance of its duties and the provision of the Services with the reasonable skill, care and diligence to be expected of a consultant who is properly qualified, competent and experienced in carrying out duties and services of the nature described in this Contract for projects of a similar size, type, scope, and complexity to the Project.

#### 4.3 Review of Project Documents

- (a) For the purpose of carrying out the Services, the Consultant must diligently and regularly review the Project Documents and all other documents provided to it in connection with the Project by the Company, any Relevant Authority, or any other person involved in the Projects which require the Consultant's input.
- (b) In respect of such documents set out in Clause 4.3(a), the Consultant must assess the effect that their contents may have impact on the Project and/or Services and must determine in particular whether any ambiguities, discrepancies, inconsistencies, divergences, or omissions exist in or between such documents. The Consultant must forthwith notify the Company of such effect which those documents may have, together with details of the measures the Consultant has adopted, or proposes to adopt, to deal with the same.

#### 4.4 Site Visits

- (a) The Consultant must make regular visits to the Site and surrounding areas potentially affected by the Project for the purposes of data/information gathering and must determine if the same is proceeding in accordance with the Project Documents and Data.
- (b) During such visits, the Consultant must use its best endeavours to identify and describe the elements of the community and environment likely to be affected by the Project including both the natural and man-made environment within and surrounding the Site.

#### 4.5 Compliance with Laws and Standards

The Consultant warrants that it, its Personnel and any sub-consultant engaged by the Consultant:-

- (a) are duly qualified to provide the Services under the Laws and are registered and shall continue to be registered with the official body regulating the practice of its profession;
- (b) have obtained, and at all times maintain in full force and effect throughout the Service Period, all necessary Approvals from any Relevant Authority in relation to the Services and comply with any requirements of the Approvals or any part thereof;
- (c) have complied and shall continue to comply with:-
  - (i) all applicable Laws and professional standards, in so far as they are applicable to the Services being provided;
  - (ii) Good Industry Practices and/or as otherwise required by the Laws so as to avoid causing any inconvenience nuisance hazard or danger to any person which renders or might render the Company liable for any Loss;

- (iii) all safety policies, rules and other requirements provided by the Company governing the conduct of work on the Site insofar as any of them affect or relate to the Services provided or to be provided by the Consultant; and
- (iv) its obligations under this Contract in a prompt, proper and efficient manner.

#### 4.6 Anti-Bribery

- (a) The Consultant represents and warrants to the Company that the Consultant, its Affiliates or its Personnel has not committed any Prohibited Act in connection with its entry into this Contract and covenants that it will not commit any Prohibited Act in connection with this Contract.
- (b) The Consultant acknowledges that:-
  - (i) without prejudice to any other rights of the Company, the commission of any Prohibited Act entitles the Company to immediately terminate this Contract under Clause 20.4 (Termination for Consultant's Acts of Prohibition);
  - (ii) the following may be an offence under the MACC Act:-
    - (A) any Prohibited Act;
    - (B) any failure to lodge a report on any Prohibited Act at the Relevant Authority; and
    - (C) any claim for payment in relation to any act although no Service has been provided; and
  - (iii) without prejudice to any other rights of the Company, the Company may take disciplinary action against any Consultant's Personnel and blacklist any Consultant's Personnel including sub-consultants if any Prohibited Act has been committed.
- (c) If the Consultant or its Personnel commits any Prohibited Act to any of the Company's Personnel, such Personnel must, at the earliest opportunity, lodge a report at the nearest office of the Malaysian Anti-Corruption Commission or police station.
- (d) In the event the Company is informed or is made aware of any Prohibited Act committed by the Consultant, its Affiliates or its Personnel in relation to this Contract, the Company shall notify the Consultant without the necessity of conducting its own investigation or specifying the source of the information.
- (e) The Consultant must, within seven (7) days from the date of receipt of such notice, provide the Company with an explanation setting out why this Contract should not be terminated on grounds of the said Prohibited Act to the satisfaction of the Company. Failing which, the Company may in its absolute discretion immediately terminate this Contract under Clause 20.4 (Termination for Consultant's Acts of Prohibition).

#### 4.7 PDPA

- (a) The parties acknowledge that personal data may be collected or received in relation to the Services and/or this Contract. In this connection, the parties shall take all necessary steps and actions to comply with the provisions of the Personal Data Protection Act 2010 (“**PDPA**”) and all other applicable Laws in relation to data protection and data privacy. The parties shall only process, use or disclose personal data strictly for the purposes of fulfilling their obligations in relation to the Services and/or this Contract.
- (b) The parties shall implement and maintain all necessary administrative, technical and physical safeguards to protect such personal data which a party may receive from the other party against unauthorised access to or disclosure or use of such personal data, and to protect against accidental or unlawful destruction or accidental loss or alteration of such personal data. For avoidance of doubt, a party may by notice to the other party request access to its personal data to correct and/or alter its own personal data as and when necessary.

#### 4.8 Preparation and Submission of Deliverables

- (a) Unless otherwise stated in this Contract, where the Consultant is required to prepare and submit Deliverables to the Company for its approval under this Contract, the Consultant must do so in a form and substance acceptable to the Company.
- (b) The Consultant acknowledges and accepts full responsibility for any discrepancies, errors or omissions in the Data and Deliverables it prepares for the Project in the provision of its Services. The Consultant must promptly and at its own cost rectify any discrepancy, error or omission in its Services or discovered in the Data and Deliverables at any time by amending, replacing or supplementing the defective Services, Data and Deliverables.
- (c) All Data, Deliverables and other written communications submitted by the Consultant in the provision of its Services must specify the Project name and location, Project number (as designated by the Company), contract number and location number.

#### 4.9 Consultant’s Authority

Unless otherwise provided for in this Contract, the Consultant must not:-

- (a) receive or act on instructions from any third party;
- (b) have authority to bind the Company to any agreement and/or arrangement with any third party;
- (c) issue any instruction, give any approval or do any other thing which would or might cause the cost of the Services and/or Project to increase or the completion of the Services and/or Project be extended; or
- (d) enter into any contractual or other commitment on behalf of the Company,

without the Company’s prior approval.

#### 4.10 Program

The Program to be provided by the Consultant which must show the intended sequence, method and timing of the Services to ensure that the Services is completed on or before the Expiry Date. Changes to the Program shall only be made with the approval of the Company. The Program or any revised Program so approved by the Company does not relieve the Consultant of any of its obligations under this Contract.

#### 4.11 Reports

- (a) The Consultant must submit the reports as stipulated in **Annexure 1** (Scope of Services) ("**Reports**") in a form and substance acceptable to the Company, within the period set out in **Annexure 1** (Scope of Services).
- (b) The Consultant must make sure that the Reports shall be comprehensive and adequate for the purposes of submission to the Relevant Authority.
- (c) The submission of the Reports under Clause 4.11 (Reports) shall be a condition precedent to any payment under Clause 9.1 (Payment of Fee). In the event that the Consultant fails to comply with the requirement of Clause 4.11 (Reports), the Company at its sole discretion is entitled to withhold payments that the Consultant would otherwise be entitled under this Contract.
- (d) The submission of the Reports to the Company pursuant to Clause 4.11 (Reports) does not in any way absolve the Consultant of any of its duties, obligations or liabilities under this Contract.

#### 4.12 Delay to the Services and/or the Project

- (a) If the Consultant knows or ought to know the occurrence of any event which may delay the Services, the Consultant must notify the Company as soon as possible of such event (but in any event, no later than seven (7) days after the occurrence of such event).
- (b) The Consultant must as soon as practicable, but in any event no later than fourteen (14) days upon giving notice under Clause 4.12(a), notify the Company of the cause and actual or anticipated extent of the delay to the Execution of the Services and/or the completion of the Services, together with details of the measures the Consultant has adopted, or proposes to adopt, to mitigate the delaying effects of such event.

#### 4.13 Failure to Discharge Obligations

Notwithstanding anything in this Contract to the contrary, if at any time during the Service Period if in the Company's opinion, the Consultant fails to discharge its obligations in accordance with this Contract or performance of the Services is not to the Company's satisfaction, then the Consultant must, within seven (7) days of receipt of a notice to such effect from the Company, make all arrangements to discharge such obligations in accordance with this Contract and/or perform the Services, to the Company's satisfaction and at no additional cost to the Company and the Company at its sole discretion is entitled to withhold payments that the Consultant would otherwise be entitled under this Contract.

The Consultant agrees that it has no Claim against the Company under this Clause 4.13 (Failure to Discharge Obligations).

#### 4.14 Records

The Consultant must:-

- (a) maintain and retain all records accurately and in complete and proper form including all records relating to the provision of the Services six (6) years after the expiry of the Service Period and/or early termination of this Contract. The Consultant must make all such records available at all times for inspection by the Company. The records must be delivered free of charge to the Company when directed by the Company. To the extent that any documents or other records of the Consultant are to be created and/or maintained on a computer or other electronic storage device, the Consultant must comply with the procedure notified to it by the Company for backup and for copies of such, documents and other records to be stored at a place other than its project office; and
- (b) upon the expiry of the Service Period or early termination of this Contract, deliver to the Company all Data, Deliverables (to the extent not delivered) documentation, computer data and all other records relating to the Services and the Project.

### 5. **CONSULTANT PERSONNEL**

#### 5.1 Consultant's Representative

- (a) The Consultant must appoint the Consultant's Representative prior to commencing any Services to direct and control the overall provision by the Consultant of the Services.
- (b) The Consultant's Representative shall have full authority to act on behalf of the Consultant on all matters in connection with this Contract. Any approval, communication, consent, direction, instruction, notice or rejection given to or received by the Consultant's Representative in accordance with this Contract is deemed to have been given to or received by the Consultant.

#### 5.2 Key Persons

- (a) The Consultant must ensure that each of the persons identified in **Annexure 2** (Representatives and Key Personnel) as Key Persons in connection with the provision of the Services is approved by the Company.
- (b) The Consultant warrants that each Key Person (including the Consultant's Representative) shall be fully and professionally skilled and experienced having regard to the tasks which they are required to provide for the Services under this Contract.
- (c) The Consultant further warrants that, at all times during the Service Period, the Consultant's Representative and each Key Person shall be duly qualified to provide the Services under the Laws, shall be registered with the official body regulating the



practice of his/her profession and has in force a valid practising certificate authorising him/her to engage in the provision of the Services.

### 5.3 Engagement and Removal of Consultant Personnel

- (a) The Consultant must not remove and/or replace the Consultant's Representative or any Key Person without first obtaining the Company's prior approval, which approval shall not be unreasonably withheld. If the Consultant's Representative or any Key Person gives notice of resignation of his/her employment with the Consultant, the Consultant must within seven (7) days notify the Company, and within one (1) month from the notice, the Consultant must submit to the Company, details of person who (must be equally qualified if not better qualified) the Consultant proposes to replace the Consultant's Representative and/or any Key Person (as the case may be) for the Company's approval.
- (b) The Company is entitled to instruct:-
- (i) the removal and/or replacement of the Consultant's Representative or as any Key Person, if in the Company's sole opinion, the efficiency, competence, performance and/or conduct of such person is unsatisfactory; and
  - (ii) to remove and/or replace any of the Consultant's Personnel who, in the Company's reasonable opinion (and after consultation with the Consultant), is no longer required for the provision of the Services,
- and the Consultant shall forthwith and at its own cost comply with such instructions.
- (c) If the Consultant fails to comply with its obligations under this Clause 5.1 (Consultant's Representative), the Company is entitled to:-
- (i) at its sole discretion, omit any part of the Services as the Company, and correspondingly reduce the Fee, in which event the Consultant agrees that it has no Claim of whatsoever nature arising from such omission of the Services and reduction of the Fee;
  - (ii) appoint any person to provide the Services (whether the same has been omitted pursuant to Clause 5.3(c)(i) or otherwise), in which event the Consultant shall be liable for all reasonable costs and expenses in appointing and employing such person; and/or
  - (iii) terminate the Consultant's appointment in accordance with the provisions of Clause 20 (Termination).
- (d) The Consultant must afford to any such person employed by the Company pursuant to Clause 5.3(c)(ii) all assistance as may be necessary for such person to provide such part of the services.
- (e) In the event the number of the Key Persons and/or the Consultant's Personnel as specified in this Contract is reduced without the prior written approval of the Company, the Company shall have the right to deduct the Fee.

- (f) Notwithstanding Clause 5.3(b), the Company may at any time request the Consultant to reduce the number of the Key Persons and/or the Consultant's Personnel according to the progress of the Works.

#### 5.4 Prohibition to Engagement

During the Service Period, the Consultant and its Affiliates must not:-

- (a) engage (or seek to engage) the Company's Personnel; and
- (b) accept (or seek to accept) any appointment in the capacity of a consultant or advisor for the contractor involved in the construction works or the said contractor's affiliates in relation to the Project.

### 6. **LIAISON, CO-ORDINATION AND RELATED SERVICES**

#### 6.1 Liaison and Co-Ordination

- (a) The Consultant must in accordance with **Annexure 1** (Scope of Services) or as otherwise instructed by the Company, convene and/or attend all meetings in connection with the provision of the Services and/or the execution of the Works and/or the Project (including any meeting with any Relevant Authority having an interest in the Project) and must advise and assist the Company on all matters arising from such meetings.
- (b) The Consultant must, where applicable, liaise with and extend its fullest co-operation to the contractor involved in the construction works relating to the Project, any Relevant Authority, as well as any other persons involved in the Works with whom the Company may from time to time require the Consultant to liaise or co-operate with. The Consultant must consider all inputs from such parties and the effect that such inputs may have impact on the Execution of the Services and/or the Works and/or the Project. The Consultant must forthwith notify (in any event not later than seven (7) days) the Company of its findings together with details of the measures the Consultant has adopted, or proposes to adopt, to deal with such inputs for the Company's consideration and approval.

#### 6.2 Related Services

The Consultant acknowledges and agrees that the Related Services will be provided concurrently and/or sequentially with the Services, and undertakes to ensure that the Services are properly co-ordinated and integrated with the Related Services. The Consultant further undertakes to ensure that any information and/or documents required to be provided by it for the purposes of the Related Services must be provided in sufficient time so as not to impede the proper performance of the obligations under this Contract. .

#### 6.3 Advance Notice

The Consultant must give timely and proper advance notice to the Company of any information and assistance as may reasonably be required by the Consultant from the Company for the purpose of performing its obligations under this Clause 6 (Liaison, Co-

Ordination and Related Services) and the Company shall use reasonable endeavours to provide such information and assistance.

## 7. PREPARATION AND SUBMISSION OF DATA

- (a) Unless otherwise stated in this Contract, if the Consultant is required to prepare and submit Data or Deliverables to the Company for its approval, the Consultant must do so in accordance with the matters set out in **Annexure 1** (Scope of Services).
- (b) If the Company disapproves of the Data or Deliverables submitted by the Consultant, the Consultant must make such modifications at no additional costs to the Company and must re-submit the modified Data and Deliverables to the Company until the Company approves the Data and Deliverables.

## 8. THE COMPANY'S OBLIGATIONS

### 8.1 Provision of Information

Other than the Project Documents, the Company may, but shall not be obliged to, make available to the Consultant such information in its possession as the Consultant may request as being reasonably necessary for the provision of the Services. Any information so made available by the Company to the Consultant does not relieve the Consultant of its obligations under this Contract, and the Company does not warrant the accuracy, suitability or sufficiency of such information or as to how the same should be interpreted, and the Consultant must use and interpret the same entirely at its own risk.

### 8.2 Contract Administrator

- (a) The Company may, at any time during the Service Period, authorise a person to act on its behalf for any purpose in connection with this Contract ("**Contract Administrator**"). As soon as reasonably practicable after such event, the Company shall notify the Consultant of the identity of this person and the scope of his/her authority. The Company may appoint such further or other persons to supplement and/or replace the Contract Administrator and shall notify the Consultant as soon as reasonably practicable in such event of the identity of such further or other persons and the scope of their authority. The Contract Administrator is entitled to delegate part or all of its authority, duties or functions under this Contract to any person as it may in its absolute discretion deem fit.
- (b) Any approval, communication, consent, direction, instruction, notice or rejection given to or received by the Contract Administrator in accordance with this Contract is deemed to have been given to or received by the Company.

### 8.3 Instruction and Direction

The Consultant must only accept instructions (oral instructions in case of emergency shall be confirmed in writing within seven (7) days) in respect of the Services from the Company or (where such instructions fall within the Contract Administrator's scope of authority) the Contract Administrator. If any instruction appears to be in conflict with prior instruction of the Company or the Contract Administrator, the Consultant must not act upon such

instruction without first referring such conflict to the attention of the Company for clarification.

#### 8.4 The Company's Approval

- (a) No review, approval, comment or consent from the Company in connection with the Services or the Project shall in any way relieve, alter, dilute, or diminish the Consultant of its obligations under this Contract or at Law.
- (b) The Company shall endeavour to assist and support the Consultant to obtain necessary Approvals relating to the Consultant's Services.

### 9. **FEE**

#### 9.1 Payment of Fee

- (a) In consideration of the Consultant providing the Services, the Company shall pay to the Consultant the Fee and the Reimbursable Expenses properly incurred by the Consultant in accordance with **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses). The Fee and Reimbursable Expenses shall represent the Consultant's total entitlement to payment (inclusive of all applicable taxes that may be payable by the Company) in respect of its obligations under this Contract, and for all profit as well as all costs, expenses and overheads incurred by the Consultant in connection with this Contract. The Consultant agrees that it has no Claims arising out or in connection with this Contract except where alteration to the Services is instructed pursuant to Clause 12 (Review and Alteration to Services).
- (b) The Fee and any other amounts to be paid to the Consultant in connection with this Contract shall be paid in RM to bank accounts to be designated by the Consultant.

#### 9.2 Milestone Payment for the Services

- (a) In relation to each Milestone Payment, within fourteen (14) days from achieving each Milestone set out in **Annexure 1** (Scope of Services), the Consultant must serve on the Company the Application for Payment for that Milestone Payment. The Application for Payment for the Milestone Payment must be made in the forms specified in **Annexure 4** (Forms for Claims and Payment) and must be supported by such documentation as required by the Company to verify that the amounts claimed are properly due to the Consultant, and must include information on:-
  - (i) the breakdown of the Services actually provided up to that Milestone;
  - (ii) the amount of Fee due to the Consultant for such Services provided, by reference to the Milestone;
  - (iii) the total amount of Fee previously paid to the Consultant under this Contract; and
  - (iv) the balance of the Fee due to the Consultant after giving credit for the total amount of Fee previously paid to the Consultant under this Contract.

- (b) Each Application for Payment for the Milestone Payment must be accompanied by a certificate, in a form approved by the Company and executed by the Consultant, pursuant to which the Consultant confirms that:-
  - (i) it waives any lien rights in respect of any Deliverable or Data provided under the Milestone and agrees that it has no legal rights or Claims on the Deliverables, Data or otherwise; and
  - (ii) as at the date of the certificate, it has fully paid all the sub-consultants or its Personnel their fee relating to the previous Application for Payment (if applicable).
- (c) Upon receiving the Application for Payment for the Milestone Payment, the Company shall evaluate the same and shall within thirty (30) days of the date of receipt of the Application for Payment for the Milestone Payment or the supporting documents to verify the amounts claimed (whichever is the later), issue the Certification of Payment.
- (d) The Company shall pay the amount of Fee to which, in the Company's reasonable opinion, the Consultant is entitled in respect of the Services performed for that Milestone Payment, less any amounts which the Company may be entitled to deduct, set-off or withhold from the Consultant in accordance with this Contract within sixty (60) days from the date of the Certification of Payment.
- (e) If the Consultant fails to serve on the Company the Application for Payment for the Milestone Payment within three (3) months from achieving the relevant Milestone, the Application for Payment in respect of that Milestone will not be considered by the Company and the Consultant agrees that it will not be entitled to any payment in respect of that Milestone.
- (f) The Consultant agrees that it is not entitled to, and must not, make any Application for Payment for the Milestone Payment before the relevant Milestone is achieved. In the event that, an Application for Payment is submitted by the Consultant before the Milestone, the Application for Payment in respect of that Milestone shall be treated by the Company as having been received on achieving the relevant Milestone.

### 9.3 Reimbursable Expenses

- (a) On the seventh (7<sup>th</sup>) day of each month during the Service Period, unless agreed otherwise, the Consultant must submit to the Company an Application for Payment for the Reimbursable Expenses properly incurred in the preceding month. The Application for Payment for the Reimbursable Expenses must be made in the forms specified in **Annexure 4** (Forms for Claims and Payment) and must be supported by such documentation as the Company may reasonably require to verify that the amounts claimed are properly due to the Consultant, and must include information on:-
  - (i) the breakdown of the Reimbursable Expenses actually incurred in the preceding month;

- (ii) the Reimbursable Expenses due in that month by reference to **Annexure 3** (Schedule of Payment for Professional Services, Fee and Reimbursable Expenses); and
  - (iii) the total amount of Reimbursable Expenses previously paid to the Consultant under this Contract by the Company.
- (b) Upon receiving the Application for Payment for the Reimbursable Expenses, the Company shall evaluate the same and shall within thirty (30) days of the date of receipt of the Application for Payment for the Reimbursable Expenses or the supporting documents to verify the amounts claimed (whichever is the later), issue the Certification of Payment.
- (c) The Company shall pay to the Consultant the amount of Reimbursable Expenses to which, in the Company's reasonable opinion, the Consultant is entitled in respect of that month, less any amounts which the Company may be entitled to deduct, set-off or withhold from the Consultant in accordance with this Contract within sixty (60) days from the date of the Certification of Payment.
- (d) If the Consultant fails to submit to the Company an Application for Payment for the Reimbursable Expenses properly incurred in the preceding month within three (3) months from such preceding month, the Application for Payment in respect of that Reimbursable Cost will not be considered by the Company and the Consultant agrees that it will not be entitled to any payment in respect of that Reimbursable Cost.

#### 9.4 Payment Does Not Indicate Satisfactory Performance

- (a) No payment by the Company shall be deemed to indicate satisfactory provision of the Services nor shall any expression or implication of satisfaction or acceptance nor any confirmation, consent, approval or notice by the Company or the Contract Administrator restrict, debar, exclude or waive any claims or actions whatsoever by the Company for any breach of any obligation under this Contract by the Consultant nor relieve the Consultant from its responsibilities under this Contract.
- (b) Any payment made by the Company prior to the expiry of the Service Period or termination is on account only. At any time and from time to time the Company may correct any error which has been discovered relating to payment of Fee or Reimbursable Expenses.

#### 9.5 Withholding Tax

- (a) The Company is not liable to the Consultant for and the Consultant has no Claim against the Company regarding any sum which would otherwise be payable to the Consultant under this Contract:-
  - (i) which the Company has withheld from payment under any tax law or other Law, until it is released from or relieved of all liability under the relevant Law regarding the amount so withheld and is lawfully entitled to pay the sum to the Consultant;
  - or

- (ii) which the Company has paid under the provisions of any tax law or other Law to the person or authority legally entitled to accept payment.
- (b) The Consultant acknowledges and agrees that if:-
- (i) any payment to the Consultant does not include a withholding amount; and
  - (ii) an amount is subsequently determined by any Relevant Authority to be required to be withheld and paid under any tax law or other Law in respect of that payment,

then the Consultant will be liable to the Company and must indemnify the Company in respect of any and all such amount required to be paid as determined by any Relevant Authority. Such amount will be a debt due and immediately payable on demand from the Consultant to the Company.

## 9.6 Set-off

- (a) Without prejudice to its other rights and remedies (whether contractual, statutory, legal, equitable or otherwise), the Company may deduct, set-off or withhold from any monies due or becoming due from the Company to the Consultant pursuant to any term of this Contract at any time during the Service Period:-
- (i) any sum which the Consultant is, or may be, liable to pay to the Company arising out of, or in connection with this T&C (whether in relation to an indemnification, breach of contract, negligence, omission, breach of duty or otherwise);
  - (ii) any sum which the Consultant is, or may be, liable to pay to the Company to satisfy any obligations or liabilities owed by the Consultant to the Company arising out of, or in connection with any other agreement to which the Consultant and the Company are parties; and
  - (iii) any sum which the Consultant is, or may be, liable to pay to any Relevant Authority in accordance with the Law to satisfy any obligation or liability owed by the Consultant arising out of, or in connection with this Contract.
- (b) No interest charges or other penalties for late payment shall be payable for any amounts withheld by the Company.

## 10. **EXTENSION OF TIME**

### 10.1 Notice of Event Affecting Progress

Within five (5) days when the Consultant becomes aware of an incident or an event of whatsoever nature affecting or likely to affect the achievement of any Milestone set out in **Annexure 1** (Scope of Services), the Consultant must give the Company a notice to that effect.

## 10.2 Extension of Time Notice

- (a) Within five (5) days of it becoming reasonably evident that any Milestone is delayed or is likely to be delayed beyond the relevant Milestone Date, the Consultant must give notice to the Company expressed as an “Extension of Time Notice” and setting out full details of the cause of the delay of the relevant Milestone with supporting documents and stating a reasonable period by which the Consultant believes such Milestone Date should be extended.
- (b) Where the cause of delay has a continuing effect, the Consultant must submit to the Company further written particulars every five (5) days after the further notice until the end of the cause of delay.
- (c) Subject to the other provisions of this Clause 10 (Extension of Time), the Consultant is only entitled to an extension of time to the relevant Milestone Date where a delay to that Milestone Date is caused by any of the following events, whether occurring before, on or after that Milestone Date:-
  - (i) any act, omission or breach by the Company or its Personnel;
  - (ii) an Event of Force Majeure; or
  - (iii) a suspension under Clause 19 (Suspension), except where that suspension is caused by the Consultant’s act, omission or breach.
- (d) As soon as practicable after receipt of the notice in Clause 10.2(a) or 10.2(b) (as the case may be), the Company will reasonably assess the Consultant’s application for extension of time to the relevant Milestone Date and notify the Consultant of the period, if any, by which that Milestone Date will be extended.
- (e) Despite any other provisions of this Clause 10 (Extension of Time), the Company may, in its absolute discretion and at any time, make an extension to the relevant Milestone Date. The Company has no obligation to grant or to consider whether the Company should grant an extension of time to the relevant Milestone Date and the Company is not required to exercise this discretion for the Consultant’s benefit.
- (f) Where more than one (1) event causes concurrent delays and the cause of at least one of those events, but not all of them, is not an event which entitles the Consultant to an extension of time, then to the extent that the delays are concurrent, the Consultant is not entitled to an extension of time to the relevant Milestone Date.
- (g) It is a condition precedent to the Consultant’s entitlement to an extension of time under Clause 10 (Extension of Time) that the Consultant submits the notice strictly within the time and as required under Clause 10.2 (Extension of Time Notice).
- (h) Any principle of law or equity (including those which might otherwise entitle the Consultant to relief and “the prevention principle”) which might otherwise cause the relevant Milestone Date to be set at large and render the Liquidated Damages unenforceable, will not apply.



- (i) A delay by the Company or the failure by the Company to grant a reasonable extension of time or to grant an extension of time will not cause the relevant Milestone Date to be set at large.
- (j) An extension of time granted under this Clause 10 (Extension of Time) is the Consultant's sole entitlement to compensation for delay to achieve any Milestone set out in of **Annexure 1** (Scope of Services).
- (k) An extension of time granted under this Clause 10 (Extension of Time) is the sole and exclusive remedy for any delay caused by the Company or otherwise and the Consultant agrees that it has no entitlement to bring any Claim against the Company in respect of any costs, Losses or damages in relation to the delay to achieve any Milestone set out in of **Annexure 1** (Scope of Services).

## **11. LIQUIDATED DAMAGES**

- 11.1 The Consultant must achieve each Milestone on or before its respective Milestone Date set out in of **Annexure 1** (Scope of Services).
- 11.2 Subject to Force Majeure Event, the Consultant agrees that if it fails to achieve any Milestone on or before the relevant Milestone Date as set out in of **Annexure 1** (Scope of Services), the Consultant must pay the Company the Liquidated Damages in an amount of [ @LAD\_SUM@ ] for each day after the relevant Milestone Date up to and including the relevant Actual Milestone Date or the date this Contract is terminated, whichever occurs first, payable as a debt on demand.
- 11.3 Without limiting any other rights, the Company may have under this Contract, the Company may deduct any Liquidated Damages from any amounts payable by the Company to the Consultant under this Contract.

## **12. REVIEW AND ALTERATION TO SERVICES**

### **12.1 Review of Services**

- (a) The Consultant must, upon reasonable notice being given by the Company to such effect, provide the Company with all assistance as the Company may from time to time require to enable it to undertake a review of the provision of the Services. For this purpose, the Consultant must be obliged to make available to the Company access to Key Persons or other personnel within its control, as well as all Deliverables, Data, files, site records, printouts and other documents in its possession. The Consultant must ensure that, in any agreement entered into with any sub-consultant that such sub-consultant must be obliged to afford like assistance to the Company.
- (b) For the avoidance of doubt, all assistance provided by the Consultant in accordance with Clause 12.1 (Review of Services) must not be an alteration to the Services and the Consultant is not entitled to additional Fee or Claims for compliance thereof.

## 12.2 The Company May Alter Services

- (a) The Company is entitled to instruct, by way of addition, modification, omission, or change of duration, any alteration to the Services.
- (b) The Consultant must notify the Company within seven (7) days after receipt of any instruction under Clause 12.2(a) if the Consultant is of the view that the Fee should be adjusted to comply with the instruction and furnish all details requested by the Company to assist the Company in determining the sum, if any, which, in the Company's opinion, should be adjusted to the Fee as a result of such instruction.
- (c) If the Company issues any instruction or order pursuant to Clause 12.2(a) the Consultant must forthwith implement the same notwithstanding any disagreement between the Consultant and the Company as to any sum determined or to be determined by the Company pursuant to Clause 12.2(b) and, save as expressly excluded, the provisions of this Contract shall apply to all Services the subject of the instruction.

## 12.3 No Additional Fee

No addition to the Fee under this Clause 12.2 (The Company May Alter Services) shall be made in respect of an instruction or order issued by the Company to modify or revise the Services where the modification or revision required by the Company arose through any act or omission of the Consultant in carrying out the Services.

## 13. **CONSULTANT'S WARRANTIES**

The Consultant represents and warrants to the Company as follows:-

- (a) it has all requisite power, approvals and authority to conduct its business and to execute, deliver and perform its obligations under this Contract or any other documents in connection with this Contract;
- (b) if as a corporation, it has taken all necessary corporate action to authorise the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract;
- (c) this Contract constitutes a legal, valid and binding obligation and is enforceable in accordance with this T&C;
- (d) there is no provision of any existing Law, rule, loan agreement, mortgage, debenture, contract, financing statement, agreement or resolution binding on it that would conflict with or in any way prevent, or which would be breached by, the execution, delivery or performance of this T&C or any other document or agreement referred to in this Contract; and
- (e) there is no litigation, arbitration, tax claim, winding-up, bankruptcy, Dispute or administrative proceeding which is presently current or pending or, to the best of its knowledge, threatened, for the liquidation of the Consultant, or that could materially adversely affect its ability to perform its obligations under this Contract.

## **14. INTELLECTUAL PROPERTY RIGHTS**

### **14.1 Consultant to Obtain all Necessary Rights**

The Consultant must, at its own cost, ensure that it has all Intellectual Property Rights necessary to provide the Services, achieve the Milestones and grant the rights to the Company in accordance with this Contract.

### **14.2 Company Background IP**

The Company, or its relevant licensors, is and shall remain the owner of all Company Background IP. The Consultant does not have (by virtue of this Contract or otherwise) any Claim on, entitlement to, or rights in relation to any of the Company's Background IP, except to the extent provided in Clause 14.4 (License of the Company Background IP and Project IP).

### **14.3 Project IP**

- (a) The ownership of all Project IP vests in the Company at the time of its creation and at each stage of its development.
- (b) In the event that, notwithstanding Clause 14.3(a), ownership of any Project IP vests in the Consultant (other than as approved by the Company), the Consultant assigns all rights, title and interest in and to such Project IP to the Company from its creation.
- (c) To the extent that an assignment of such Project IP is not possible, the Consultant grants the Company a perpetual, irrevocable, non-exclusive, transferable, worldwide licence free of any licence fee or royalty (including the right to grant sub-licences through multiple tiers of sub licensees) to such non-assignable Project IP.
- (d) The Consultant must not enter into any agreement or arrangement with a third party in connection with this Contract which is inconsistent with Clause 14.3(a).

### **14.4 License of the Company Background IP and Project IP**

- (a) The Company:-
  - (i) may make available to the Consultant the Company Background IP and Project IP, to the extent necessary for the Consultant to provide the Services and its other obligations under this Contract in accordance with this Contract;
  - (ii) grants to the Consultant a non-exclusive and non-transferable licence, free of any license fee or royalty, to use the Company Background IP and Project IP solely to the extent necessary to provide the Services under this Contract in accordance with this T&C only. The licence will endure until the earlier of the termination of the Consultant's appointment or the end of the Service Period; and
  - (iii) may, at its sole discretion and by giving notice to the Consultant, impose restrictions (in addition to those restrictions already imposed) on the Consultant's rights granted under Clause 14.4(a)(ii), provided that such

restrictions must not cause the Consultant to be unable to provide its Services under this Contract.

- (b) The Consultant may not grant any sub-licence of the Company Background IP or the Project IP to a third party without prior approval of the Company.
- (c) The Consultant may not Use, copy, or reproduce the Company Background IP or the Project IP for any other purpose other than for the provision of the Services.

#### 14.5 Licence of Consultant Background IP

- (a) To the extent that the Company needs to Use or sub-licence any Consultant Background IP:-
  - (i) to receive the benefit of the Services or any part thereof;
  - (ii) to exercise rights under this Contract; or
  - (iii) for any purpose associated with the Project,

the Consultant must grant to the Company a perpetual, irrevocable, non-exclusive, transferable licence free of any licence fee or royalty (including the right to grant sub-licences) to Use the Consultant Background IP for any purpose contemplated by this Clause 14.5(a).

- (b) The Consultant must ensure that none of the Consultant Background IP is assigned, transferred, sold or made subject to an exclusive licence to Use for the benefit of a third party, unless it preserves for the Company the rights granted under Clause 14.5 (Licence of Consultant Background IP).

#### 14.6 Indemnity for Infringement of Intellectual Property Rights

To the extent permitted by Law, the Consultant must indemnify the Company against all Loss suffered or incurred by the Company arising out of or in connection with the infringement or alleged infringement of any Intellectual Property Rights by the Consultant in connection or arising out of the Services or this Contract and/or the Data and Deliverables when used in connection with the Services.

### 15. **INSURANCE**

#### 15.1 Employees and Agents

Without limiting any liabilities of the Consultant under this Contract, the Consultant must effect and maintain, and cause to be effected and maintained, insurance against any liability which may arise at common law or by virtue of the Workmen's Compensation Act 1952, in respect of any person employed or engaged by the Consultant in connection with the Services.

## 15.2 Professional Indemnity

Without limiting any liabilities of the Consultant under this Contract, the Consultant must effect and maintain professional indemnity insurance in an amount of [ @INSURANCE\_SUM\_FOR\_PROFESSIONAL\_INDEMNITY@ ] within thirty (30) days from the commencement of the Service Period in respect of all legal liability arising from a breach of professional duty or negligence whether that duty is owed in contract or otherwise by reason of any act error or omission by the Consultant or its Personnel.

## 15.3 Nature, Validity and Evidence of Insurance

Subject to Clause 15.2, the Consultant must:-

- (a) ensure all insurances are effected with a reputable insurer, the identity of whom has been approved by the Company; and
- (b) provide the Company, before commencing the Services and whenever requested thereafter, with certified copy evidence to prove the terms and currency of the Insurances.

## 16. **LIMITATION OF LIABILITY**

16.1 Notwithstanding any provision contained in this Contract, the Company shall not be liable to the Consultant under this Contract, any applicable Law, at law, in tort (including negligence), statute, in equity, restitution or otherwise for any economic loss and loss of interest, profits, contracts, business, revenue, opportunity or any consequential, indirect, incidental, special, punitive and/or exemplary damages suffered by the Consultant arising out of or in relation to this Contract.

16.2 The total liability of the Company under or in connection with this Contract, whether based on breach of contract, indemnity or otherwise, shall be limited to the Fee or actual loss, whichever is lower.

16.3 Nothing in this Contract shall limit the Consultant's liability in relation to:-

- (a) death or personal injury arising from the Consultant's negligence, act or omission;
- (b) damage of any kind to any property, real or personal, arising from the Consultant's negligence, act or omission;
- (c) the Consultant committing a fraudulent or negligent, act or omission;
- (d) the Consultant defaulting in performing its obligations under this Contract;
- (e) infringement of Intellectual Property Rights; and
- (f) breach of confidentiality.

16.4 The Consultant must indemnify the Company from all and any Claim of the nature set out in Clause 16.3.

## **17. INDEMNITIES**

- 17.1 To the extent permitted by Law, the Consultant must indemnify the Company and its Personnel (collectively, the “**Indemnities**”) from and against all Loss, resulting from any act, default or omission of the Consultant or its Personnel arising out of or in connection with the Services or this Contract, save and to the extent attributable to any wilful default or in breach of any applicable Law by the Company.
- 17.2 The Consultant acknowledges that any breach by the Consultant of this Contract may result in the Company committing breaches of or becoming liable in damages under the Project Documents and the consequences of such breaches and all such damages are within the contemplation of the parties as being probable results of any such breach by the Consultant.

## **18. FORCE MAJEURE**

### **18.1 No Responsibility**

- (a) Neither party is responsible for any failure to perform its obligations under this Contract, to the extent it is prevented or delayed in performing those obligations by a Force Majeure Event.
- (b) The Consultant acknowledges that the Services must be carried out taking into account pandemics, any Law including the Movement Control Order, border closures or restrictions and any situation arising therefrom which could reasonably be anticipated by an experienced consultant.

### **18.2 Effect of Force Majeure Event**

- (a) If either party is, or will be, prevented or delayed in the performance of any of its obligations under this Contract by a Force Majeure Event, it must within seven (7) days after its occurrence, give notice to the other party specifying the Force Majeure Event, make available such evidence as it can reasonably provide in relation to the same, and estimate the duration for which the performance of its obligations under this Contract will be prevented or delayed.
- (b) If it reasonably appears to the other party from such notice that the affected party is, or will be, prevented or delayed in the performance of any of its obligations under this Contract, then the other party must by notice to the affected party, excuse it from the performance or punctual performance as the case may be of such obligations for the duration of the Force Majeure Event and neither party shall be liable to the other party for loss or damage sustained by the other arising from the same. Provided always that if the Consultant is unable to meet any of its obligations under this Contract by reason of a Force Majeure Event for a continuous period of one hundred eighty (180) days, then the Company may terminate the Consultant’s appointment by notice, such termination shall take immediate effect from the date of its notice.
- (c) Notwithstanding anything in this Contract to the contrary, the party who is unable to perform its obligations by reason of a Force Majeure Event must take all necessary measures to mitigate or overcome the effects of the same, and the remaining provisions of this Contract shall continue in full force and effect.

### 18.3 No Liability for Loss

The Consultant has no entitlement and the Company has no liability for any Claims or Loss, incurred by the Consultant or Fee (or any part thereof) unless already due and payable during a Force Majeure Event.

## 19. **SUSPENSION**

### 19.1 Suspension of Services by the Company

- (a) The Consultant acknowledges and accepts that the Company may at any time suspend the Consultant's provision of all or any part of the Services by issuing the Consultant a notice to that effect.
- (b) Upon receiving a suspension notice in accordance with Clause 19.1(a), the Consultant must cease provision of those Services as set out in such notice in an orderly and economical manner compatible with a possible order to restart.
- (c) In the event of such suspension, the Company is obliged to pay to the Consultant a fair and reasonable amount on account of Fee due under Clause 9 (Fee) commensurate with the Services properly provided up to the date of suspension together with any Reimbursable Expenses, and the Consultant agrees that it has no other Claim against the Company arising out of or in connection with the suspension.
- (d) The Company may give notice to the Consultant at any time to resume the provision of the whole or part of the Services (as the case may be) so suspended. Upon receiving such a notice to resume provision, the Consultant must as soon as reasonably practicable resume provision of the whole or part of the Services (as the case may be) so suspended.

### 19.2 Termination for Suspension

If the suspension of the provision of all or any part of the Services exceeds three (3) months in aggregate, either party may terminate this Contract by giving the other fourteen (14) days' notice.

## 20. **TERMINATION**

### 20.1 Termination Due to Consultant's Default

In the event the Consultant:-

- (i) suspends the implementation of the Services;
- (ii) fails to proceed regularly and diligently with the performance of its obligations under this Contract;
- (iii) fails to execute the Services in accordance with this Contract;
- (iv) persistently neglects to carry out its obligations under this Contract;

- (v) defaults in performing the duties under this Contract; or
- (vi) breaches by any of its obligations or fails to comply with any other terms and conditions of this Contract,

(“**Consultant’s Default**”) then the Company shall give notice in writing (“**Default Notice**”) to the Consultant specifying the default and requiring the Consultant to remedy such defaults within 14 days from the date of issuance of the Default Notice (“**Remedy Period**”). If the Consultant fails to remedy the relevant default within the Remedy Period or such other period as may be determined by the Company, the Company shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect to the Consultant.

## 20.2 Termination Due to Consultant’s Events of Default

If at any time during the Service Period: -

- (i) the Consultant goes into liquidation or compounds with or enter into an arrangement or compositions with its creditors;
- (ii) an order is made or resolution is effectively passed for winding up of the Consultant (except for the purpose of restructuring or amalgamation with the written consent of the Company);
- (iii) a provisional liquidator, receiver or manager of its business or undertaking is appointed, or possession taken by or on behalf of the creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge over the assets of the Consultant;
- (iv) execution is levied against a substantial portion of the Consultant’s assets;
- (v) the Consultant assigns the whole or any part of this Contract;
- (vi) the Consultant did not obtain prior written approval from the Company for any sale or transfer of company’s equity throughout the Service Period;
- (vii) any of the Consultant’s director is prosecuted for any offences; or
- (viii) any other condition which has arisen, which in the opinion of the Company, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Contract,

then the Company shall have the right to terminate this Contract forthwith by giving notice to that effect.



### 20.3 Termination for Convenience

The Company may terminate this Contract for any reasons whatsoever, at any time at its convenience subject to providing notice to the Consultant.

### 20.4 Termination for Consultant's Acts of Prohibition

Without prejudice to any other rights or remedies of the Company provided by Law or in equity, the Company may forthwith terminate the appointment of the Consultant by giving notice if the Consultant commits any Prohibited Acts.

### 20.5 Payment upon Termination

- (a) In the event the appointment of the Consultant under this Contract is terminated pursuant to Clauses 20.1 (Termination Due to Consultant's Default), 20.2 (Termination Due to Consultant's Events of Default), 20.3 (Termination for Convenience) and 19.2 (Termination for Suspension), the Consultant shall be paid for all Services completed up to and including the date of termination of the Consultant's appointment.
- (b) In the event of termination of the Consultant's appointment under Clause 20.4 (Termination for Consultant's Acts of Prohibition), all Fees and Reimbursable Expenses already paid by the Company shall become immediately repayable by the Consultant to the Company, and the Consultant agrees that it has no Claim or right to payment of any Fees or monies in respect of any Services provided up to and including the date of termination of the Consultant's appointment.
- (c) Save as expressly provided in Clause 20.5(a), the Consultant has no further Claim whatsoever against the Company (whether under this Contract or at Law), including loss of profits against the Company, arising out of or in connection with the termination of the appointment of the Consultant under this Contract. Any payment in Clause 20.5(a) shall be the Consultant's sole and exclusive remedy arising out of or in connection with the termination of this Contract.

### 20.6 Documents upon Termination

- (a) Upon the termination of the appointment of the Consultant under this Contract, the Consultant must forthwith deliver to the Company all original or copies of Deliverables, Data and/or other documents prepared or provided by the Consultant or by the Company to the Consultant for the Project or the provision of the Services notwithstanding any Dispute whatsoever between the Company and the Consultant arising out of or in connection with this Contract.
- (b) Without prejudice to the above, upon the termination of the appointment of the Consultant under this Contract, the Consultant gives its unconditional consent for the appointment by the Company of replacement professional consultant(s) for the Project or the provision of the Services.

## 20.7 Withdrawal Fee

Notwithstanding the provisions of this Contract, in the event the Consultant fails, abandons and/or withdraws in performing the Services after the execution of this Contract, the Consultant shall be liable to pay withdrawal fee at the rate and in the manner as described in **Annexure 5 ("Withdrawal Fee")**. The parties hereby acknowledge that the acceptance by the Company of such Withdrawal Fee shall be without prejudice to the rights and remedies which the Company may have against the Consultant for any antecedent breach of the terms of this Contract.

## 20.8 Rights and Obligations after Termination

- (a) Termination of the Consultant's appointment shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination.
- (b) Without prejudice to the Laws on the limitation of proceedings, the provisions of this Contract shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations.

## 21. **ASSIGNMENT**

### 21.1 No Assignment

The Consultant must not assign, charge or transfer any right or obligation under this Contract or in any way deal or part with its interest in this Contract or any part of it to any person without the prior approval of the Company.

### 21.2 Rights to Assign

The Company may by notice, without the approval of the Consultant, at any time assign, novate and transfer its interest, rights, obligations and/or the whole or any part of this Contract to another party by novating this Contract and substituting the Company with such other party. If the Company exercises its right to novate this Contract, the Consultant must execute any documents prepared by the Company to give effect to the novation.

## 22. **NOTICES AND ADDRESSES**

### 22.1 Notices to be in Writing

- (a) Unless otherwise stated in this Contract, all notices to be given under this Contract must be in writing, and sent by personal delivery, pre-paid recorded post, special courier, facsimile or electronic mail to the address of the relevant party provided that:-
  - (i) any notice sent by pre-paid recorded post or special courier is deemed (in the absence of evidence of earlier receipt), to have been delivered seven (7) days after dispatch and in proving the fact of dispatch it is sufficient to show that the envelope containing the notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission;

- (ii) any notice delivered personally is deemed to have been delivered on the date of its delivery and in the case of a facsimile, on the date shown in the transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;
  - (iii) if sent by electronic mail:-
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever is the earlier;
  - (iv) the electronic mail must include:-
    - (A) the full name of the sender; and
    - (B) must include the full designation of the sender;
  - (v) notices sent by electronic mail are taken to be signed by the named sender;
  - (vi) the following notices must not be sent by electronic mail:-
    - (A) Application for Payment under Clauses 9.2 (Milestone Payment for the Services) and 9.3 (Reimbursable Expenses); and
    - (B) any other notices to be advised by the Consultant.
- (b) If deemed receipt under Clauses 22.1(a)(i) or 22.1(a)(ii) occurs during non-business hours (meaning 9.00 a.m. to 6.00 p.m. on a Business Day), the notice shall be deemed to have been received when business next starts in the place of deemed receipt.

## 22.2 Meaning of "notices"

In this Contract, notices include any advice, approvals, directions, instructions, orders, requests, disclosures and certificates or other communication to be given under this Contract.

## 22.3 Addresses of the Parties

### The Company

Address: [ @COMPANY\_ADDRESS@ ]  
Facsimile No. [ @COMPANY\_FACSIMILE@ ]  
E-mail address: [ @COMPANY\_EMAIL\_ADDRESS@ ]  
Attention: [ @COMPANY\_ATTENTION\_TO@ ]

## The Consultant

Address: [ @CONSULTANT\_ADDRESS@ ]  
Facsimile No. [ @CONSULTANT\_FACSIMILE@ ]  
E-mail address: [ @CONSULTANT\_EMAIL\_ADDRESS@ ]  
Attention: [ @CONSULTANT\_ATTENTION\_TO@ ]

or at such other address, facsimile number or email address as the party to be served may have notified to the other party (in accordance with Clause 22 (Notices and Addresses)) for the purposes of this Contract.

### 22.4 Change of Addresses

Either party may by seven (7) days' notice to the other party change its postal address, email address, facsimile number or addressee for receipt of such notices.

## 23. **CONFIDENTIALITY**

### 23.1 Obligation to Maintain Confidentiality

- (a) The Consultant acknowledges that any Confidential Information furnished to it is confidential and undertakes to:-
- (i) use such Confidential Information solely for the purposes of this Contract, and/or the Project on a need to know basis;
  - (ii) keep the Confidential Information in strict confidence by applying the same standard of care which it treats its own confidential information but in any event to use not less than reasonable care;
  - (iii) use the same means it uses to protect its own confidential information but in any event to use not less than reasonable means to prevent the disclosure and protect the Confidential Information;
  - (iv) keep confidential and not disclose to any party or person the fact that the Confidential Information has been made available to it or the extent, nature or status of any inquiry which are taking place or have taken place in connection with this Contract and/or the Project;
  - (v) not, without the prior written consent of the Company, disclose any Confidential Information furnished to it to any party or person other than its Personnel, Affiliates and advisors ("**Representatives**"), who have a legitimate need to know such Confidential Information in order to perform their duties relating to this Contract and/or the Project;
  - (vi) ensure:-
    - (A) that its Representatives are aware of all the Consultant's obligations under this Contract, before disclosing any Confidential Information to such Representatives; and

- (B) compliance by its Representatives of the obligations imposed on the Consultant under this Contract, as if its Representatives were the Consultant;
- (vii) be liable for any breach by its Representatives of the obligations referred to in Clause 23.1(a)(vi)(B).
- (viii) ensure that as far as practically possible, to keep separate all Confidential Information from all its documents and other records;
- (ix) notify the Company of any unauthorised access to, possession or knowledge of, use or disclosure of the Confidential Information or any part of it promptly and in any event within seven (7) business days of such access, possession, knowledge, use or disclosure coming to or ought to have come to the knowledge of the Consultant and to take reasonable steps to regain possession of the Confidential Information and prevent such further unauthorised actions or other breach of this Contract;
- (x) comply with any direction of the Company issued during the Services Period, in relation to the protection of the Confidential Information;
- (xi) not permit access and disclose the Confidential Information to any party or person except in one or more of the following circumstances:-
  - (A) only to its Representatives who are required to have such Confidential Information for the purposes of this Contract and/or the Project, and having informed each of them of the confidential nature of that Confidential Information and of the Consultant's obligations under this Contract; or
  - (B) as permitted by Clause 23.2 (Exception);
- (xii) not use, copy or produce the Confidential Information for any purpose other than for this Contract and/or the Project;
- (xiii) not discuss the extent nor existence of any such Confidential Information with any Representative, any party or person without prior approval of the Company; and
- (xiv) not alter or remove any proprietary rights or copyright notice or other identification which indicates an ownership interest in any part of the Confidential Information.
- (b) The Consultant further acknowledges that any Confidential Information disclosed to its Representatives by or on behalf of the Company or the Contract Administrator is deemed to be disclosure of such Confidential Information to the Consultant for the purposes of this Contract and/or the Project.

## 23.2 Exceptions

- (a) The undertakings in Clause 23.1 (Obligation to Maintain Confidentiality) shall not apply to any Confidential Information which:-

- (i) at the time of disclosure to the Consultant or thereafter has become part of public knowledge or literature in printed publications (or otherwise) or in general circulation through no breach or default of any of the said undertakings by the Consultant;
  - (ii) the Consultant is able to show was in its possession at the time of disclosure under this Contract and was not acquired by it under an obligation of confidence;
  - (iii) the Consultant is able to show was received by it after the time of disclosure under this Contract from a third party (other than one disclosing on behalf of the Company or its Representatives) who could lawfully do so and who did not derive the Confidential Information from the Company or its Contract Administrator; or
  - (iv) is independently developed by the Consultant without use of or reference to the Confidential Information disclosed by the Company, as shown by documents or other evidence in the Consultant's possession.
- (b) The exceptions in Clause 23.2 (Exceptions) shall not apply to:-
- (i) specific information merely because it is embraced by or included with other information which falls within any one or more of such exceptions; or
  - (ii) any combination of information merely because specific information (but not the combination itself) fall within any one or more of such exceptions.
- (c) In the event that the Consultant or its Representative is required or requested by Law, to disclose any Confidential Information furnished to it, then the Consultant will, to the extent that it is lawful to do so, promptly inform the Company before such disclosure is made, so that an appropriate protective order and/or other action can be sought and/or other action can be taken if possible (and if it is not lawful to inform the Company prior to disclosure, the Consultant must inform the Company as soon as it becomes lawful to do so). In the event that a protective order or other action is not, or cannot be, obtained, then:-
- (i) the Consultant or its Representatives (as the case may be), may disclose to the appropriate body that portion of the Confidential Information which it is legally required to disclose and must use reasonable efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information; and
  - (ii) the Consultant shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure that was not permitted under this Contract.
- (d) To the extent that the Official Secrets Act 1972 ("**Act**") is applicable to the Confidential Information disclosed or made available under this Contract, the Consultant and its Representatives shall comply with the Act and execute such declaration and or forms as may be prescribed by the Act.

### 23.3 Disclosure to Third Parties

- (a) Except for any disclosure made under Clause 23.2(a), the Consultant must ensure that each person to whom it discloses the Confidential Information is informed of the confidential nature of the Confidential Information and subject to obligations of confidentiality no less onerous than this Contract. The Consultant will be responsible for any failure to comply with those obligations.
- (b) If the Consultant discloses the Confidential Information under Clause 23.2(c), the Consultant must:-
  - (i) first notify the Company of the requirement for disclosure and its intention to disclose the Confidential Information prior to disclosure (if lawful to do so) or as soon as reasonably practicable after the disclosure (if it is not lawful to give prior notice);
  - (ii) if requested, provide reasonable assistance to the Company to take lawful steps to resist (or if that is not possible, minimise) such disclosure; and
  - (iii) if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter and if requested by the Company, supply the Company with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed.

### 23.4 No Commitments or Warranties

- (a) The nature and extent of any Confidential Information disclosed under this Contract for the purpose of this Contract and/or the Project is at the sole discretion of the Company.
- (b) Nothing in this Contract shall be construed as granting the Consultant any rights in respect of Confidential Information other than the restricted use and disclosure rights implied in Clause 23 (Confidentiality).
- (c) No representation, warranty, assurance, or guarantee of any kind is given by the Company for the correctness, adequacy or sufficiency of any Confidential Information.

### 23.5 Return of the Confidential Information

- (a) Upon request at any time by the Company, the Consultant must promptly:-
  - (i) return or, at the option of the Company, destroy or erase all Confidential Information furnished to it that is in tangible form (including, without limitation, Confidential Information contained on computer disks or other electronic media), together with any copies or extracts thereof;
  - (ii) destroy all analyses, compilations, studies or other documents which have been prepared by the Consultant and which reflect or are based upon any Confidential Information disclosed to it under this Contract; and

- (iii) ensure that such data files and records are not in any manner retrievable by whatsoever methods or means,

save to the extent that the Consultant is required to retain any Confidential Information by any applicable Law, or to the extent that such Confidential Information is incorporated into organisational records which the Consultant is required to retain by Law or in accordance with internal policies regarding the keeping of records generally, in which case the Consultant will take appropriate measures to preserve its continuing confidentiality.

- (b) Notwithstanding the return of any Confidential Information, the Consultant will continue to be bound by the obligations imposed by this Contract.

## **24. DECLARATION**

24.1 The Consultant declares that neither the Consultant nor any of its Personnel and/or its Affiliates including its related companies is a person connected with any of the Company's Personnel and acknowledge that the validity of this Contract is based on this declaration.

24.2 The Consultant must immediately notify the Company if any of the relationship or connection set out in Clause 24.1 is established at any time in the future during the subsistence of this Contract, failing which the Company shall, without incurring any liability, be entitled to immediately terminate this Contract by serving a notice to that effect on the Consultant.

24.3 The Consultant must procure its Personnel and/or its Affiliates including its related companies set out in in Clause 24.1, to notify the Company in respect of any relation to or connection with the Company or its Personnel, failing which, the Company shall without incurring any liability, be entitled to immediately terminate this Contract by serving a notice to that effect on the Consultant.

24.4 For the purpose of this Clause 24 (Declaration):-

- (a) a person shall be deemed connected with another person if the relationship or connection falls within the definition and meaning provided under Section 197 of the Companies Act 2016; and
- (b) "related companies" shall mean a company that is related to another company within the definition and meaning provided under Section 7 of the Companies Act 2016.

## **25. MISCELLANEOUS**

### **25.1 Governing Law**

This Contract is governed and be construed in accordance with the Laws of Malaysia.

### **25.2 Change in Laws**

- (a) The Consultant must bring to the Company's attention any potential changes to any applicable Laws which are, or ought to be, reasonably foreseeable by an experienced person of the Consultant's discipline as being likely to come into force during the



Service Period, or within a period of one (1) year after the expiry of the Service Period.

- (b) The Company may instruct the Consultant to review and advise on such potential changes and, where in the Company's opinion they were, or ought to have been, reasonably foreseeable as at the date of this Contract, then there shall be no addition to the Fee on account of the Company instructing such review and advice.
- (c) In relation to the Services, unless the changes in Law in the reasonable opinion of the Company, are not foreseeable or expected by the Consultant in accordance with Clause 25.2(a), the Consultant is obliged to undertake modifications and alteration to the existing Services, without entitlement to additional Fee or other Claims.

### 25.3 Entire Agreement

This Contract embodies and sets forth the entire agreement and understanding of the parties in relation to its subject matter and supersedes all prior oral and written agreements, understandings or arrangements relating to the subject matter of this Contract. Neither party shall be entitled to rely on any agreement, understanding or arrangement (whether oral or written) which is not expressly set forth in this Contract. This Contract shall not be amended, modified, varied or supplemented except in writing and signed by the duly authorised representatives of the parties.

### 25.4 Severance

If any provision or term of this Contract or any part thereof shall become or be held or declared illegal, invalid or unenforceable for any reason whatsoever, including without limitation by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any court or other body or authority having jurisdiction over the parties or this Contract, such terms or provisions shall be divisible from this Contract and is deemed to be deleted from this Contract, provided always that if any such deletion substantially affects or alters the commercial basis of this Contract, the parties shall negotiate in good faith to amend and modify such provisions and this T&C as may be necessary or desirable in the circumstances.

### 25.5 Counterparts

This Contract may be executed and delivered in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Contract.

### 25.6 Remedies

The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by Law or in equity.

## 25.7 Waiver

- (a) No delay or omission on the part of either party in exercising any right, power or remedy provided under this Contract shall impair such right, power or remedy or operate as a waiver thereof.
- (b) The single or partial exercise of any right, power or remedy provided under this Contract shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

## 25.8 Amendment

This Contract may not be altered, modified, revoked or cancelled in any way unless such alteration, modification, revocation or cancellation is in writing signed by or on behalf of the parties.

## 25.9 Independent Consultant and No Partnership

The Consultant must provide all Services as an independent Consultant and not as an employee or agent of the Company. Nothing in this Contract shall create a partnership between the parties. No party shall by virtue of this Contract have the power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the other party as to any matter or thing to be done in relation to this Contract or its performance, save as may be expressly authorised in this Contract or agreed in writing between the parties from time to time.

## 25.10 Trade Names, Trademarks, Service Names or Service Marks

The Consultant and its Personnel must not use the Company's trade names, trademarks, service names or service marks without the prior approval of the Company.

## 25.11 Third Party Right

A person who is not a party to this Contract shall not have any rights to enforce any term of this Contract.

## 25.12 Costs

Each party must bear its own costs incurred in connection with the preparation, negotiation and entry into of this Contract. All stamp duty payable in respect of this Contract must be borne by the Consultant.

## 25.13 Announcements

Except as required by Law, the Consultant must not make any public disclosure of the execution of this Contract or of the terms hereof or concerning the subject matter of this Contract, without the prior approval of the Company. If any announcement becomes necessary, the Consultant must provide all necessary assistance to the Company in the issuance of any press release, announcements or other communication.

#### 25.14 Survival

- (a) The cancellation, expiration or earlier termination of this Contract shall not relieve the parties of their obligations under:-
- (i) Clause 1 (Definitions and Interpretation);
  - (ii) Clause 4.14 (Records);
  - (iii) Clause 13 (Consultant's Warranties);
  - (iv) Clause 14 (Intellectual Property Rights);
  - (v) Clause 15 (Insurance);
  - (vi) Clause 16 (Limitation of Liability);
  - (vii) Clause 17 (Indemnities);
  - (viii) Clause 20 (Termination);
  - (ix) Clause 22 (Notices and Addresses);
  - (x) Clause 23 (Confidentiality); and
  - (xi) Clause 25 (Miscellaneous).
- (b) The above provisions as well as all other provisions of this Contract which by their terms require performance by either party after the completion, cancellation, expiration or termination of this Contract shall survive any such completion, cancellation, expiration or termination.

#### 25.15 Taxes

The Consultant must pay all Taxes including SST or such other indirect taxes, income and corporation taxes payable by the Consultant in accordance with the Laws.

#### 25.16 Language

- (a) The language of this Contract shall be English and if there are versions of any part of this Contract or any documents in connection with this Contract which are written in more than one language, the version which is in English shall prevail.
- (b) The languages for written and oral communications under this Contract shall be English, save where required otherwise by any applicable Law. Where any document is produced in a language other than English, the party producing it must also provide a translation in English (and for the purposes of this Contract such English translation shall prevail).

25.17 Conflict of Interest

- (a) The Consultant covenants to the Company that it has disclosed to the Company any and all pecuniary interest related to the Services and warrants that it has no conflict of interest in this Contract. The Consultant must inform the Company immediately of any matter related to this Contract which could give rise to an actual or potential conflict of interest.
- (b) The Consultant shall not obtain pecuniary advantage from information gained in undertaking and/or in the performance of this Contract. For avoidance of doubt, all information obtained under this Contract shall only be used for the purpose of performing the Consultant's obligations under this Contract.

25.18 Successors and Assigns

This Contract shall be binding upon the respective successors and permitted assignees or transferees of the parties.

25.19 Retrospective Effect

Where the performance of the Services commenced prior to the date of this Contract, the provisions of this Contract shall apply retrospectively to the date of commencement of the Services.

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## **ANNEXURE 1**

### **Scope of Services**

Please see overleaf

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## **ANNEXURE 2**

### **Representatives and Key Personnel**

Please see overleaf

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## **ANNEXURE 3**

### **Schedule of Payment for Professional Services, Fee and Reimbursable Expenses**

#### **Part 1 – Schedule of Payment for Professional Services**

Please see overleaf

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## **ANNEXURE 3**

### **Schedule of Payment for Professional Services, Fee and Reimbursable Expenses**

#### **Part 2 – Fee and Reimbursable Expenses**

Please see overleaf

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## **ANNEXURE 4**

### **Forms of Claims and Payment**

#### **Part 1 – Submission of Claims and Payment Form**

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**ANNEXURE 4**

**Forms of Claims and Payment**

**Part 2 – Invoice Registration Unit (IRU) Form**

Please see overleaf

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## **ANNEXURE 5**

### **Withdrawal Fee**

The Withdrawal Fee shall be immediately payable upon the failure, abandonment and/or withdrawal by the Consultant in performing the Services and to be calculated as follows:-

- (a) any costs or expenditure incurred or to be incurred by the Company in completing the Services due to the withdrawal including on-cost charges at the rate of twenty per centum (20%); and
- (b) the amount of direct loss and/or damage caused to the Company due to the withdrawal including on-cost charges at the rate of twenty per centum (20%).

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