

# NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is dated [\*] (the "Agreement").

## Parties

1. [\*] ([\*]), a limited liability company incorporated in Malaysia and having its business office at [\*] (the "Disclosing Party")
2. [\*] ([\*]), a limited liability company incorporated in Malaysia and having its business office at [\*] (the "Recipient").

## Background

For the purposes of entering into a business relationship, the Disclosing Party wishes to disclose to the Recipient and wishes to ensure that the Recipient maintains the confidentiality of the Disclosing Party's Confidential Information. In consideration of the parties' benefits of disclosing and receiving the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

## Agreed Terms

### 1

#### Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement.
  - 1.1.1 Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Kuala Lumpur, Malaysia, are open for business.
  - 1.1.2 Confidential Information: all confidential information which include but not limited to all information, technical, financial, and other details including but not limited to working plans of [\*], for development of [\*] which list is illustrative only and not exhaustive, whether stored or conveyed in writing or verbally or magnetic media or other media, clouds, servers, notebook or other computers, however recorded or preserved, and disclosed or made available, directly or indirectly, by the Disclosing Party or its employees, officers, representatives or advisers to the Recipient and its Representatives including but not limited to:
    - a. the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
    - b. the existence and terms of this Agreement;
    - c. any information or analysis derived from Confidential Information;
    - d. but not including any information that:
    - e. is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
    - f. was lawfully in the Recipient's possession before the information was disclosed to it by the Disclosing Party as evidenced by written records; or
    - g. the parties agree in writing is not confidential or may be disclosed.
  - 1.1.3 Purpose: For the purposes of entering into a business relationship

- 1.1.4 Representative: individual, employees, directors, agents, officers, advisers and other representatives of the Recipient, as the case may be.
- 1.2 Clause, paragraph and schedule headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular.
- 1.4 A reference to writing or written includes fax and e-mail.
- 1.5 Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## **2 Obligations of confidentiality**

- 2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:
  - a. not use or exploit the Confidential Information in any way except for the Purpose;
  - b. not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
  - c. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
  - d. not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
  - e. keep separate the Confidential Information from all documents and other records of the Recipient;
  - f. apply the same security measures, and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;
  - g. keep a written record of any document or other Confidential Information received from the other intangible form; any copy made of the Confidential Information; and
  - h. ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow to be removed such document or records from its premises.
- 2.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:
  - a. it informs its Representatives of the confidential nature of the Confidential Information before disclosure;
  - b. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this Agreement as if they were the Recipient and, if the Disclosing Party so requests, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this Agreement; and
  - c. it keeps a written record of these Representatives,

and it shall at all times be liable for the failure of any Representative to comply with the terms of this Agreement.

- 2.3 The Recipient may disclose Confidential Information only to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent, it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
- 2.4 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 2.5 No party shall make, or permit any person to make, any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. No party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **3 Term**

- 3.1 This Agreement shall remain in effect for a [\*]-year term (subject to a [\*]-year extension if the parties are still discussing and considering the Transaction at the end of the second year).
- 3.2 Notwithstanding the foregoing, the Receiving Party's duty to hold in confidence Confidential Information disclosed during term shall remain in effect indefinitely.

### **4 Return of information**

- 4.1 At the request of the Disclosing Party, the Recipient shall:
  - a. destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
  - b. erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
  - c. certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient.
- 4.2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

## **5 Reservation of rights and acknowledgement**

- 5.1 The Disclosing Party reserves all rights in its Confidential Information. No rights in respect of the Disclosing Party's Confidential Information are granted to the Recipient, and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement. In particular, nothing in this Agreement shall be construed or implied as obliging the Disclosing Party to disclose any specific type of information under this Agreement, whether Confidential Information or not.
- 5.2 Except as expressly stated in this Agreement, the Disclosing Party does not make any express or implied warranty or representation concerning its Confidential Information or the accuracy or completeness of the Confidential Information.
- 5.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement.

## **6 Warranty and indemnity**

- 6.1 The Recipient shall indemnify and keep fully indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other costs and expenses suffered or incurred by the Disclosing Party) arising from any breach of this Agreement by the Recipient and the actions or omissions of any Representative.

## **7 Term and termination**

- 7.1 If either party decides not to become or continue to be involved in the Purpose with the other party, it shall notify the other party in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of [\*] from the termination of this Agreement.
- 7.2 Termination of this Agreement shall not affect any accrued rights or remedies to which either party is entitled.

## **8 Entire Agreement**

- 8.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 8.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

## **9 Variation**

- 9.1 No variation of this Agreement shall be effective unless it is written and signed by the parties (or their authorised representatives).

## **10 Waiver**

- 10.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 10.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## **11 Assignment and other dealings**

- 11.1 This Agreement is personal to the parties, and neither party shall without the prior written consent of the other party (whose consent cannot be unreasonably withheld) assign, transfer, mortgage, charge, subcontract, declare a trust over, or deal in any other manner with any of its rights and obligations under this Agreement.
- 11.2 All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

## **12 Notices**

- 12.1 All notices required or permitted by this Agreement shall be in writing and the English language and shall be sent to the Recipient at its address set out above or as otherwise directed by the Recipient by notice given in accordance with this clause.
- 12.2 Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addresses as may be furnished by a party in accordance with this paragraph).
- 12.3 All such notices or communications shall be deemed to have been given and received.
- a. in the case of personal delivery or electronic mail, on the date of such delivery,
  - b. in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and
  - c. in the case of mailing, on the seventh business day following such mailing

**13 No partnership or agency**

- 13.1 Nothing in this Agreement is intended to or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 13.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**14 Third Party Rights**

- 14.1 Except as provided in this Clause 14, this Agreement is made for the parties' benefits and their successors and permitted assigns. It is not intended to benefit or be enforceable by anyone else.
- 14.2 This Agreement is made for the benefit of the Disclosing Party and its Group from time to time, and any entity in the Disclosing Party's Group may enforce this Agreement as if they were the Disclosing Party and a party to this Agreement.

**15 Inadequacy of damages**

- 15.1 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

**16 Counterparts**

- 16.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

**17 Governing law**

- 17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed according to Malaysia's laws.

IN WITNESS WHEREOF the respective authorized signatories of the Disclosing Party and the Recipient hereto have hereunto set their hands the day and year first above-written.

Signed by [\*] )  
for and on behalf of the Disclosing )  
Party in the presence of:- )  
 )  
 ) .....  
 ) Name: [\*]  
NRIC No. [\*]

Signed by the Recipient )  
in the presence of:- )  
 )  
 ) .....  
 ) Name: [\*]  
 ) NRIC No. [\*]