

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**Between**

**BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS SDN BHD**

**And**

**•**

**Agreement Ref: BELTS/EO/A/1002-2 (•)**

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**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“this Agreement”) is made on the day of of 20** .

**BETWEEN**

**BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS SDN BHD** **(Company No. AG/RC/2742)**, a company incorporated in Brunei Darussalam under the Companies Act (Cap. 39 of the laws of Brunei Darussalam), and having its registered address at Level 6, Setia Kenangan Office Block, Setia Kenangan Complex, Kampong Kiulap, Bandar Seri Begawan, BE1518, Brunei Darussalam (hereinafter referred to as “BELTS”)

AND

**• (Company No. •)** a company incorporated under the laws of **•**and having its registered address at **•**.

(hereinafter collectively referred to as the **“Parties”** and individually referred to as the **“Party”**).

**WHEREAS:**

1. For their mutual benefit, the Parties wish further to exchange certain Confidential Information for the purpose of Request for Proposal (RFP) regarding the provision of services to facilitate and execute the change management activities and deliverables (hereinafter referred to as the “Change Management External Support”) in BELTS.
2. The Parties further acknowledge that in the course of their discussions, the Parties may receive and/or otherwise gain access to Confidential Information (as defined below) of the other Party.
3. The Parties have entered into this Agreement for the purposes of preventing the unauthorized disclosure of Confidential Information as defined, and the Parties wish to define and set out their rights and obligations with respect to such information.

NOW IT IS AGREED as follows:

# DEFINITIONS AND INTERPRETATION

## In this Agreement, the following words and terms shall have the corresponding meanings prescribed below, unless the context otherwise requires:-

### “Agreement” means this Confidentiality and Non-Disclosure Agreement;

### “Confidential Information” means information or data disclosed as defined in **Clause 3**;

### “Disclosing Party” means the Party disclosing Confidential Information;

### “Personnel” means the employee, staff, officers, advisors and/or agents of either Party;

### “Receiving Party” means the Party receiving the Confidential Information;

## Clause and paragraph headings shall not affect the interpretation of this Agreement.

## A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## Reference to clauses are to the clauses of this Agreement.

## Headings to the Clauses are inserted for the purpose of reference only and shall not affect the interpretation or construction of this Agreement.

## This Agreement shall bind each other’s legal representatives, successors or assigns.

# ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any pre-existing or contemporaneous agreements and any oral or written communications between the Parties concerning the subject matter hereof.

# CONFIDENTIAL INFORMATION

## In this Agreement, “Confidential Information” means any information or data disclosed (whether in writing, orally, or by any other means) by the Disclosing Party to the Receiving Party under this Agreement, including but not limited to:

### any information ascertainable by inspection or analysis of any sample,

### any intellectual, commercial, operational, technical, financial or other information,

### any information in written form, identified or marked by the Disclosing Party as “Confidential” or “Proprietary”,

### any information in non-written form, identified as confidential at the time of disclosure and confirmed as such in writing by the Disclosing Party within fifteen (15) days of its being disclosed.

# USE OF CONFIDENTIAL INFORMATION

## The Disclosing Party may from time to time disclose to the Receiving Party Confidential Information regarding the business of the Disclosing Party.

## The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the Parties and not for any purpose other than as authorized by this Agreement.

## The Receiving Party acknowledges and agrees that it shall:

### receive, treat and maintain the Confidential Information in confidence in the same manner as it maintains its own confidential information of a similar nature, provided always that not less than a reasonable standard of care is used;

### use the Confidential Information only with the prior written approval of the Disclosing Party;

### not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party;

### not copy or reproduce Confidential Information of the Disclosing Party without the Disclosing Party’s Prior written consent.

## The Receiving Party may disclose a Disclosing Party’s Confidential Information to its Personnel(s) only on a need-to-know basis in connection with the purpose referred to in **Clause 4.2**.The Personnel(s) of the Receiving Party shall be included within the definition of the term Receiving Party for purposes of this Agreement and shall be bound by the terms and conditions of this Agreement.

## The Receiving Party shall be responsible for any breaches of this Agreement by any of its Personnel.

## The Receiving Party shall at its sole expense take all reasonable action (including injunctive proceedings if necessary) to restrain its Personnel(s) from prohibited or unauthorized disclosure or use of Confidential Information.

## Nothing in this Agreement entitles the Receiving Party to receive any Confidential Information and the Disclosing Party has the right not to make available any Confidential Information, whether generally or in any instance.

# PROTECTION OF CONFIDENTIAL INFORMATION

## Each Party shall protect the confidentiality of the other Party’s Confidential Information from unauthorized use, access or disclosure in the same manner it protects the confidentiality of its own proprietary and Confidential Information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information.

## The Receiving Party shall take all reasonable care to ensure that all Confidential Information is securely kept by the Receiving Party and shall not disclose the Confidential Information of the Disclosing Party to any third party, without the prior written consent of the Disclosing Party.

## The Receiving Party shall take all the reasonable measures or steps to ensure that any disclosure of Confidential Information which results from the unauthorized interception by a third party of any physical or electronic message or file transfer be avoided.

# EXCEPTIONS

## The Receiving Party’s obligation under **Clause** **4** and **5** with respect to any Confidential Information of the Disclosing Party shall not apply if such information was:

### previously known to it without an obligation of confidence;

### independently developed for the Receiving Party without access to the other Party’s Confidential Information;

### acquired by it from a third party which is not, to the Receiving Party’s knowledge, under an obligation to the Disclosing Party not to disclose such information; or

### publicly available or becomes publicly available through no breach of this Agreement by the Receiving Party.

## Each Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. However, to the extent it is legally allowed to do so, it must give the Disclosing Party as much notice of that disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this **Clause 6.2**, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

# RETURN OF INFORMATION

## The Receiving Party shall return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control, and permanently erase all electronic copies of such Confidential Information promptly upon the following, whichever occurs first:

### the written request of the Disclosing Party; or

### the completion of the Agreement in accordance with **Clause 18.1**; or

### the earlier termination of the Agreement in accordance with **Clause 18.3**.

## The return of the Confidential Information to a Disclosing Party shall not relieve each Receiving Party from their respective obligations incurred during the term of this Agreement.

# RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

## The Parties agree that all Confidential Information disclosed hereunder shall, at all material times remain the property of the Disclosing Party. Neither the execution and delivery of this Agreement, nor the furnishing of any Confidential Information by the Disclosing Party shall be construed as granting to the Receiving Party whether expressly, or by implication, estoppel or otherwise, any license under any invention, patent, copyright, trade secret, industrial or intellectual property of any type, recognized under any law, now or hereafter owned, licensed, or controlled by the Disclosing Party. Nothing in this Agreement shall be deemed or construed to grant the Receiving Party a license to sell, develop, exploit or further develop any Confidential Information. In addition, provided the Parties comply with the confidentiality obligations contained herein, this Agreement shall not in any manner affect either Party’ present business activities in any nature, including business activities that may be competitive.

## Nothing contained in this Agreement shall be construed to grant either Party any rights in the other Party’s trademarks, service marks, good will, trade names, rights in packaging, trade dress, rights of publicity, merchandising rights, advertising rights, or any other similar right now known or existing in the future. Either Party shall not act so as to damage the reputation or goodwill of the other Party’s trademarks, service marks, good will, trade names, rights in packaging, trade dress, rights of publicity, merchandising rights, advertising rights, or any other similar right now known or existing in the future.

## No rights, including, but not limited to, intellectual property rights, in respect of a Party’s Confidential Information are granted to the other Parties except for the limited right to use such Confidential Information as expressly permitted by this Agreement, and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.

# WARRANTY AND INDEMNITY

## Each Disclosing Party warrants that it has the right to disclose its Confidential Information to each Receiving Party and to authorize each Receiving Party to use Confidential Information in accordance with this Agreement.

## The Receiving Party acknowledges and agrees that neither the Disclosing Party or any of its Personnel(s) makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information disclosed by such Disclosing Party and that neither the Disclosing Party or any of its affiliates nor any of their respective employees, officers, directors or advisors shall have any liability to the Receiving Party as a result of use of such Confidential Information.

## In the event the Receiving Party becomes aware of any misappropriation or misuse of any Confidential Information of the Disclosing Party by any person or entity, the Receiving Party shall immediately advise and notify, both orally and in writing, the Disclosing Party.

## The Receiving Party agrees to indemnify and keep fully indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs), expenses, damages and losses suffered by reason of such breach of this Agreement.

# ANNOUNCEMENTS

No announcements or publicity regarding this Agreement shall be issued unless with the prior written approval of both Parties.

# EQUITABLE RELIEF

Each Receiving Party acknowledges that damages alone would not be 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, each Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief or specific performance) concerning any threatened or actual breach of any of the provisions of this Agreement.

# NOTICE

## Any notice, demand or other communications given or made by one Party to any other Party pursuant to this Agreement shall be in writing and delivered or sent by registered post or electronic mail or facsimile to the address or electronic mail address or facsimile number as specified below (or such address or electronic mail or facsimile number as the addressee has by prior written notice specified to the other Parties):

## The points of contact with respect to the transmission and control of Confidential Information exchanged between the Parties are designated by the respective Parties as follows:

|  |  |
| --- | --- |
| **•** | BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS: |
| Name: **•** | Name: **•** |
| Company: **•** | Company: Brunei Engineering, Logistics and Training Solutions |
| Address: **•** | Address:  Level 6, Setia Kenangan Complex, Kampong Kiulap, Bandar Seri Begawan, BE 1518, Brunei Darussalam |
| Phone No: **•** | Phone No: **•** |
| Fax No: **•** | Fax No: **•** |
| Email: **•** | Email: **•** |

## Either Party may change its point of contact upon written notice to the other Party.

## Any notice, demand or other communication shall be deemed to be duly served:

### if delivered by hand during the normal business hours of the addressee to the addressee’s address, at the time of delivery;

### if sent by fax during the normal business hours of the addressee, at the time of successful transmission; and

### if sent by registered post during the normal business hours of the addressee, on the seventh (7th) working day after posting; and

### if sent by electronic mail, at time of written reply for acknowledgement of receipt.

## A notice, demand or other communication shall be deemed to be effective from the time of service or the notice’s effective date, whichever is the later.

# NO PARTNERSHIP

Nothing in this Agreement shall grant to a Party the right to make commitments of any kind for, or on behalf of, the other Party. This Agreement is not intended to be, nor shall it be construed as, a joint venture, teaming relationship, partnership, or other formal business arrangement. For the avoidance of doubt, there are no exclusive discussion/dealing obligations in this Agreement and nothing in this Agreement restricts or prohibits a Party from discussing, negotiating or entering into any transaction whatsoever (whether similar to the transaction contemplated herein or otherwise) with another party or parties.

# COSTS

Each Party shall be responsible for its own costs in the preparation, negotiation and execution of this Agreement and shall perform its obligations hereunder without charge to the other Party.

# NO ASSIGNMENT

Neither Party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party.

# SEVERABILITY

The provisions of this Agreement will, where possible, be interpreted and enforced so as to sustain their legality and enforceability and enforced to the fullest extent permitted under applicable law. If any provision hereof is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, such provision will be deemed amended to the extent necessary to render such provision valid and enforceable and as close to the parties’ intent as is permissible. Such adjudication shall not affect or impair the validity of the remaining provisions.

# NO WAIVER

## No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

## No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

# MISCELLANEOUS

## This Agreement shall become effective upon the date of signing hereof and shall stay in force until **one (1) year** from such date, or the earlier termination in accordance with **Clause 18.3**, whichever shall be the earliest to occur.

## The Parties’ confidentiality obligations to each other shall survive the termination or expiry of this Agreement for a period of **five (5) years** thereafter.

## Either Party may terminate this Agreement at any time by giving not less than **thirty (30) days’** written notice to the other Party. Upon termination of this Agreement, the Receiving Party shall cease using Confidential Information disclosed by the Disclosing Party and, when requested by the Disclosing Party in writing, shall return or destroy all copies of the Confidential Information in accordance with **Clause 7**.

## Termination of this Agreement shall not affect any accrued rights or remedies to which the Parties are entitled.

## No amendment or variation to this Agreement shall be effective unless it is in writing and signed by both Parties (and their authorized representatives).

# GOVERNING LAW AND DISPUTE RESOLUTION

## 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 in accordance with the laws of Brunei Darussalam. For the avoidance of doubt, the Parties are not precluded from seeking injunctive relief from a court of competent jurisdiction in relation to any breach or threatened breach of this Agreement.

## The Parties irrevocably agree that the courts of Brunei Darussalam shall have the exclusive jurisdiction to settle any dispute or claim that arises out or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

# COUNTERPARTS

## This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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The foregoing record represents the understandings reached between BELTS and **•** upon the matters referred to therein.

SIGNED IN DUPLICATE at on this day in this year of in the English Language by the authorized signatories on behalf of the Parties.

Signed by )

**MUHAMMAD NOH BIN HAJI MADALI** )

Chief Executive Officer )

for and on behalf of )

**BRUNEI ENGINEERING, LOGISTICS AND TRAINING** )

**SOLUTIONS SDN BHD** ) [Signature]

)

in the presence of :

**• NAME**

**•** Designation

[Signature of Witness]

Signed by )

**• NAME** )

**•** Designation )

for and on behalf of )

**• COMPANY NAME** ) [Signature]

)

in the presence of :

**• NAME**

**•** Designation

[Signature of Witness]