

## **APPENDIX 1 - GENERAL TERMS AND CONDITIONS.**

### **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1. Unless the context otherwise requires, in this document, the following words and expressions shall have the following meanings: -

“Affiliate”	Affiliate” means any entity that controls, is controlled by, or is under common control with, another entity. An entity is deemed to “control” another if it owns directly or indirectly a sufficient voting interest to elect a majority of the directors or managing authority or to otherwise direct the affairs or management of the other entity. The term Affiliate includes, among other entities, subsidiaries.
“Contract”	means the written agreement, including these General Terms and Conditions and any addendum to them (“Addendum”) together with relevant LOAs, made between Purchaser and Supplier for the Deliverables.
“COBC”	means the Code of Business Conduct which governs all Cahya Mata Sarawak Berhad group of companies including Purchaser.
“Purchaser Personal Data”	means Personal Data received by Supplier from or on behalf of Purchaser in connection with Supplier’s performance of its obligations under the LOA as more particularly described in this Contract.
“Deliverables”	means the goods whatsoever to be supplied by the Supplier and as described in the specification in Appendix 3 (collectively “Goods”), and/or services (“Services”) and/or Software, each supplied or licensed by Supplier to Purchaser, specified in Appendix 3, under a LOA which the Supplier is required to provide to the Purchaser, its group of companies and associate companies under this Contract.
“Cahya Mata”	means Cahya Mata Sarawak Berhad or its Affiliate that issues the LOA as the Purchaser.
“Party”	means Purchaser or Supplier; and “Parties” means both.
“Software”	means software (in any form, including as a service) and firmware provided by Supplier, and all related documentation, data files, modules, libraries, and elements. Software includes any updates, upgrades, error corrections, changes or revisions delivered by Supplier to Purchaser under the Contract or a separate agreement.
‘Delivery Date’	means the date(s) as specified in the LOA when the Deliverables

	or part thereof are to be delivered or such other date(s) as may be agreed in writing by the Purchaser.
‘Delivery Point’	means the place(s) as specified in the LOA by the Purchaser where the Deliverables or part thereof are to be delivered or such other place(s) of delivery as may be agreed in writing by the Purchaser.
“Delivery Term”	means the current Incoterm 2020 specified delivery term or any subsequent amendment thereafter, as stated in the LOA.
‘Force Majeure’	means any event beyond the reasonable control of or which could not have been reasonably foreseen and/or avoided by the party affected and which occurs without the fault or negligence of that party despite all reasonable efforts of that party to prevent it or to mitigate its effect and shall include but not be limited to acts of God, regulations or measures or directions of any Government authorities, mobilization, war, requisitioning, quarantine measures, epidemics, prohibitions or restrictions, injunctions, strikes, labor disturbances, occupation, blockade, lockouts, sabotage, riots, insurrection, civil disorder, disruption in the supply of water or power.
‘Goods’	means the goods, products, material, equipment or items which the Purchaser agrees to buy from the Supplier (as stipulated in the LOA.) and which is in accordance with the Specification and the warranties stipulated in Appendix 3.
“LOA’	means the ‘Letter of Award’ or “Purchase Order” as the case may be, (to which this document forms a part of) issued by the Purchaser to the Supplier detailing all relevant information for the supply and delivery of the Deliverables, including any amendment thereto which has been agreed upon by the Purchaser, to which these General Terms and Conditions are attached or are incorporated by reference and govern.
‘Purchaser’	means means the company as stated in the LOA who procures the Deliverables from Supplier and shall include its legal successors in title and assigns.
“Purchaser Group”	means Purchaser, its and their Affiliates, directors, officers and employees.
‘Purchase Price’	means the respective prices for the Deliverables, which has been agreed upon by the Purchaser and as described in the LOA either as unit price multiplied by the respective quantities or lumpsum value of the Deliverables accepted by the Purchaser in accordance with Clause 7.1, subject to the Purchaser’s terms and conditions of purchase.

‘Supplier’	means the party named in the LOA or to which the LOA is addressed to, for receiving the order placed by Purchaser and shall include its legal successors in title and assigns.
“Supplier Proposal”	means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Supplier relating to the supply of the Deliverables to Purchaser including any delivered in connection with a request for quotations, request for proposal or similar process initiated by Purchaser.
“Specifications”	means the requirements, attributes and specifications for the Deliverables that are set out in the applicable LOA. Specifications also include: (a) documentation published by Supplier relating to the Deliverables; (b) operational and technical features and functionality of the Deliverables; (c) standards or levels of service performance for Services; and (d) Purchaser business requirements that are expressly set out in a LOA.
“Taxes”	means all applicable taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges.
“Warranty Period”	means in respect of any Deliverables, the longer of: (i) the express written warranty period provided by Supplier for the Deliverables; and (ii) the period commencing on the date of Acceptance of such Goods and/or Services and ending on the date stated in Section 9 of the LOA.

- 1.2 The Contract consists only of: (a) these General Terms and Conditions; (b) the applicable LOA; and (c) any Specifications or other documents expressly referenced in the LOA.
- 1.3 Any reference in the LOA to any Supplier Proposal is solely for the purpose of incorporating the descriptions and specifications of the Goods and/or Services contained in the Proposal, and only to the extent that the terms of the Supplier Proposal do not conflict with the descriptions and Specifications set out in the Order.
- 1.4 Purchaser’s acceptance of, or payment for, Goods and/or Services will not constitute Purchaser’s acceptance of any additional or different terms in any Supplier Proposal, unless otherwise accepted in writing by Purchaser.
- 1.5 If there is any conflict or inconsistency between the documents constituting the Contract, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with Section 2 of the LOA.
- 1.6 The terms “approved”, “endorsed” and “directed” wherever used in the Contract means approved, endorsed or directed in writing by the Purchaser and “approval”, “endorsement” or “direction” means approval, endorsement and direction in writing by the Purchaser.
- 1.7 Words importing the masculine gender include the feminine and the neuter gender.
- 1.8 Words importing the singular also include the plural and vice versa where the context requires.

- 1.9 Words referring to or denoting a person or persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.10 The headings or notes in this General Terms and Conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of the Contract.
- 1.11 Supplier and Purchaser are individually referred to as “Party” and collectively will be referred to as “Parties”.
- 1.12 All reference to sections or clauses unless otherwise stated, means the clauses in this General Terms and Conditions.
- 1.13 A document includes any variation, amendment or replacement of it and any annexure, schedule or exhibit attached to it or incorporated into it by reference.
- 1.14 An article or sub-article is a reference to an article or sub-article of the Contract.
- 1.15 The word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government and each of their successors and permitted assigns.
- 1.16 “days” means “consecutive calendar days”, it being understood that all dates and time periods referred to in the Contract relate to Gregorian calendar.
- 1.17 “require”, “request”, “submit”, “answer”, “notify”, “instruct”, “state”, “inform”, “agree”, “approve”, “advise” and the like shall be deemed to be completed by the expression “in writing”.
- 1.18 the words “include”, “including”, “included”, “for example”, “such as” and the like are deemed to be completed by the expression “but not limited to”.; and
- 1.19 any particular law, statute, order, decree, rule or regulation of any government authority includes any consolidation, re-enactment, amendment or replacement of it for the time being in force.

## **2. SCOPE OF CONTRACT.**

- 2.1. The Supplier shall carry out and complete the Deliverables in accordance with the requirements and specifications detailed in the Specifications to the reasonable satisfaction of the Purchaser.
- 2.2. The Purchaser may at any time by notice in writing to the Supplier, vary, modify, amend or add to the LOA. Purchaser may, with prior written notice to Supplier, incorporate changes to Deliverables, or reject the delivery and/or performance in part or full, for Deliverables that do not alter form, fit, or function as per agreed Specification. Supplier will inform Purchaser if the change will cause an increase in Supplier costs or time required to perform.
- 2.3. Supplier may request changes to the scope of this Contract and/or LOA subject to written acceptance by Purchaser.
- 2.4. The change will be effective and Supplier may begin performance, upon signature of a change order by authorized representatives of both Parties.
- 2.5. In the event of failure by the Supplier to deliver the Deliverable under the Contract in a timely manner as per agreed Delivery Date of such extended time as may be granted by the Purchaser, then the Purchaser shall have the right to cancel any such Contract without compensation and obtain such Deliverables from other sources and all additional costs or expenses thereby incurred shall be deducted from any monies due or to become due to the Supplier under the Contract or shall be recoverable as a liquidated demand in money.
- 2.6. If the Supplier persistently fails to perform the Deliverables under Contract, then the Purchaser shall have the right to determine this Contract.

### **3. DURATION**

- 3.1 The Contract shall be for the duration referred to in the LOA including any extension thereafter subject to prior determination as herein provided.

### **4. PAYMENT TERMS**

- 4.1. The Purchaser shall pay the amount due to the Supplier as stipulated in the LOA, provided that the amount claimed therein is verified by the Purchaser and confirmed as accurate and that the Deliverables delivered by the Supplier have been accepted by the Purchaser in accordance with the provision herein.
- 4.2. The Supplier shall submit an invoice to the Purchaser, together with such information as the Parties mutually agree is necessary to substantiate the invoice.
- 4.3. Notwithstanding sub-clause 4.1, any payment made shall not be considered as evidence of the quality of any of the Deliverables to which such payment relates nor shall it relieve the Supplier from his responsibilities under the Contract.
- 4.4. All taxes or surcharges or levies (if any) due on the fees payable to the Supplier under this Contract shall be borne by the Supplier. Notwithstanding anything else herein to the contrary, the Purchaser may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable to the Supplier under or pursuant to this Contract such national, provincial, local or any other income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.
- 4.5. Payment due to the Supplier may be withheld by Purchaser on account of unsatisfactory performance of the Supplier until such unsatisfactory work has been rectified by the Supplier to the satisfaction of the Purchaser.
- 4.6. In the events as stipulated in Clause 2.2, the value of varied delivery shall be adjusted in accordance with the rate as stipulated in Schedule 2.
- 4.7. The Purchaser reserves the right, at any time and from time to time, at its absolute discretion, to withhold, to set off and/or transfer any sum payable to the Supplier or otherwise standing to the credit of the Supplier in or towards the satisfaction of any of the Supplier's liabilities under the Contract or under any agreement with the Purchaser or any of its Related Companies or any subsidiary of Cahya Mata. For the purposes of this Clause, ""Related Companies" mean related corporation(s) as defined in section (7) of the Companies Act 2016.

### **5. DELIVERY.**

- 5.1. Deliverables shall be delivered as per the delivery date and delivery term as stipulated in the LOA.
- 5.2. The time of delivery shall be of the essence. In the case that the Supplier cannot meet the date specified in the LOA, the Supplier shall notify the Purchaser and arrange an alternative delivery date for the Purchaser to agree upon.
- 5.3. Partial shipments will be invoiced as they are delivered or shipped. Supplier is not required to provide a hard copy of the invoice. Supplier may not vary cost or quantity or any agreed-on Specification without the prior written consent from Purchaser.
- 5.4. In the event the Supplier delays in delivering the Deliverables due to Force Majeure, the Supplier shall immediately give written notice thereof to the Purchaser but shall nevertheless use its best endeavors to prevent the delay and expedite the completion of such delivery. In such an event, at the Purchaser option, shall be entitled to make a fair and

- reasonable extension of time for the completion of such deliver.
- 5.5. The provisions of the Contract shall remain in full force with regard to any Deliverables not affected by the Force Majeure.
- 6. FAILURE OR DELAY IN DELIVERY.**
- 6.1 In the event the Supplier delays in delivering the Deliverables in accordance with Clause 5.1 due to Force Majeure, the Supplier shall immediately give written notice thereof to the Purchaser but shall nevertheless use its best endeavors to prevent the delay and expedite the completion of such delivery. In such an event, the Purchaser shall be entitled to –
- (a) make a fair and reasonable extension of time for the completion of such delivery; or
  - (b) cancel the LOA without compensation and to purchase such Deliverables from other suppliers.
- 6.2 In the event of failure by the Supplier to deliver in accordance with Clause 5.1 save and except for the circumstances provided for in Clause 6.1, the Purchaser shall have the right to cancel the LOA without compensation and to purchase said Deliverables from other suppliers and in such an event, the Supplier shall fully compensate and indemnify the Purchaser in respect of any loss, damage, cost and expense incurred or sustained by the Purchaser (including but not limited to the difference in price) in obtaining supply of the Deliverables from other supplier(s) and/or to charge liquidated and ascertained damages (“LAD”) for the delay shall be as stipulated in the LOA.
- 7. ACCEPTANCE, REJECTION AND REPLACEMENT OF THE DELIVERABLES.**
- 7.1 The Purchaser shall not be deemed to have accepted the Deliverables or any part thereof until after the Purchaser or its nominee(s) has/have actually inspected and tested the Deliverables and ascertained that the Deliverables are in accordance with the LOA and the provisions herein.
- 7.2 The Purchaser may by notice to the Supplier prior to acceptance reject any Deliverables which are defective and/or not in accordance with the LOA and/or the provisions herein (“the Defective Deliverables”). Upon receipt of such notice, the Purchaser shall collect the Defective Deliverables and replace them with Deliverables; which are in accordance with the LOA and the provisions herein at its own costs and expense, such replacement Deliverables to be delivered to the Delivery Point at or within the time stipulated in the said notice (or such other time as may be agreed upon by the Purchaser). Unless the Defective Deliverables are collected and replaced as aforesaid, the Purchaser may-
- (a) purchase replacement thereof from other suppliers and in such an event the Supplier shall fully compensate and indemnify the Purchaser in respect of any loss, damage, cost and expense incurred or sustained by the Purchaser (including but not limited to the difference in price) in obtaining supply of the Deliverables from other supplier(s); and/or
  - (b) dispose of the Defective Deliverables as the Purchaser shall think fit in which event the Purchaser shall not be accountable to the Supplier for any proceeds of sale arising from such disposal.
- 7.3 Notwithstanding acceptance of the Deliverables in accordance with Clause 7.1 or otherwise and notwithstanding that title and risk may have passed to the Purchaser in accordance

with Clause 8.1, the Supplier shall, on written notification from the Purchaser, collect and replace any of the Deliverables found with manufacturing defects and/or which is not in accordance with the Warranties in Clause 9 within six (6) months from the date of delivery thereof, with Deliverables which are free from such defects and/or which complies with the said Clause at the earliest possible date after receipt of the said notification from the Purchaser. In case of failure by the Contractor to replace any such Goods within twenty-one (21) days, the Purchaser shall be entitled to the remedies stipulated in Clauses 7.2(a) and (b).

**8. TITLES AND RISK**

- 8.1 Title and risk shall pass to the Purchasers either once Deliverables crosses the rails of the barge at port of loading; OR once it has been delivered to the Purchaser at the Delivery Point; OR Title to Goods passes to Purchaser when Supplier places Deliverables at Purchaser's facility as stipulated in the LOA.

**9. WARRANTIES**

- 9.1 The Supplier warrants that the quality of Goods and/or Services delivered and performed shall be
- a) of merchantable quality;
  - b) fit and sufficient for the purposes for which the Purchaser or the Purchaser's nominee intends to use;
  - c) in strict compliance to applicable requirements, Specifications or the descriptions furnished by the Purchaser or required under this Contract or in accordance with the LOA and/or Schedule; and
  - d) in compliance with all relevant laws or regulations.
- 9.2 Supplier warrants that at the time of delivery the Goods and/or performance of Services, comply with applicable and agreed Specifications and are free from material defects in workmanship and material.
- 9.3 The term of warranty period, if any, shall be as stipulated in the LOA. Third party warranties, if any, must be transferred to Purchaser.
- 9.4 Supplier shall maintain records that accurately document operating time, repair or maintenance performed, and the nature of the unsatisfactory Services and grant access to Purchaser to these audit and warranty claims.
- 9.5 The Supplier shall exercise all reasonable skill, care and diligence in the performance of the Deliverables and shall carry out its responsibilities in accordance with professional standards and industry practice.
- 9.6 The Supplier shall not have the benefit, whether directly or indirectly, of any royalty on or any gratuity or commission in respect of any patented or protected article or process used on or for the purposes of this Contract; unless mutually agreed in writing prior thereto.
- 9.7 The Supplier shall provide all expert advice and skills that are normally required for the class of Deliverables for which the Supplier is engaged. Where specialist advice or assistance is required beyond that committed under the scope of the Services herein contemplated, the Supplier may with the prior written approval of the Purchaser arrange for the provision of such Good or Services and upon the condition that the Supplier shall retain full and non-severable responsibility for the Deliverables; which he is committed to render under this Contract. Any and all such costs of engaging such services shall be prior agreed between the Supplier and the Purchaser.

- 9.8 The Supplier shall not have any direct or indirect interests in the subject matter for which the Services are intended without first divulging his interests to the Purchaser and obtaining the approval of the Purchaser.
- 9.9 Except as the Purchaser shall otherwise specifically agree in writing, the Supplier shall not engage in providing similar Services for any third party; which potentially may put the Supplier in conflict of interest with his appointment hereunder.
- 9.10 Any report and/or work product (if any) will be issued on the basis that it is for the sole use of the Parties to whom it is addressed and exclusively for the purposes set out herein. No party other than to whom it will be addressed may rely upon the report for any purpose whatsoever. The report and/or work products must not be made available or copied in whole or in part to any other party without the Supplier's prior express written consent. Supplier's consent shall not be unreasonably withheld, conditioned or delayed should the Purchaser needs to share the report with authorities such as the police, government officer, regulators and/or Purchaser's external lawyers and/or external advisors.
- 9.11 Notwithstanding any other provisions herein, all representations, statements or warranties made or given by the Supplier, its servants and/or agents (whether orally, in writing or in any of its brochures, catalogues, and/or advertisements) regarding the quality and fitness for purpose of the Deliverables shall be deemed to be express conditions herein.
- 9.12 The Supplier shall at all times comply with all applicable laws, rules and/or regulations for the Deliverables and the Supplier will comply or obtain all necessary licenses and permits relating the Deliverables, the processing, storing and/or testing of the Deliverables.

#### **10. COMPLIANCE WITH LABOUR ORDINANCE**

- 10.1 The Supplier shall, in the employment of workmen for the performance of the Contract, comply with all the requirements of the Employment (Restriction) Act 1968, Employee's Provident Fund Ordinance 1951, Employee's Social Security Act 1969, the Labour Ordinance (Chapter 76), the Industrial Relations Act 1967 and any other law relating to the employment of workmen, or any subsequent modification or re-enactment thereof.
- 10.2 The Supplier shall bear the sole responsibility in relation to the well-being and safety of the any personnel under the employment of the Supplier. In the event of any suit or claim by any of the Supplier's personnel, the Supplier shall defend and fully indemnify the Employer in respect of any loss, liability, claim or proceedings whatsoever arising in respect of such suit or claim.

#### **11. REMEDIES OF THE PURCHASER**

- 11.1 Notwithstanding any other rights of the Purchaser (whether stated herein or applicable by law), in the event of any breach by the Supplier of any provision of the Contract, the Supplier shall indemnify the Purchaser against all losses, damages or expenses incurred or sustained by the Purchaser and all claims by the customers of the Purchaser and/or any other third party arising as a result of such breach.
- 11.2 **Indemnity Against Patent and Copyright Infringement.** Supplier will defend Purchaser against any suit arising out of any actual or alleged any intellectual property rights including but not limited to trademark, patent or copyright infringement, due to the Deliverables by Supplier, and indemnify for any judgment assessed against Purchaser resulting from such suit. The Supplier shall be liable for any violation of legal provisions or the rights of third parties in respect any intellectual property rights introduced into the documents or any process or media prepared by the Supplier.



**11.3 Injury To Persons or Property.**

- 11.3.1 The Supplier shall take all reasonable precautions to prevent personal injury or death or injury or damage to any property arising out of or in the course of or caused by the execution of the Contract or in the performance of the terms and conditions herein and shall be solely liable and shall fully indemnify the Purchaser in respect of any loss, liability, claim or proceedings whatsoever arising in respect of such injury, death or damage, unless the same is due to the acts or neglect of the Purchaser.
- 11.3.2 The Supplier shall indemnify and hold harmless the Purchaser, its directors, its agents and employees from and against any and all losses, claims, damages, legal fees, expenses or costs (including those asserted by third parties) directly or indirectly related to the Deliverables provided that the Supplier shall not be liable for such losses, claims, damages, expenses that arise from the negligence of the Purchaser or its employees.
- 11.4 In no event will Purchaser be liable for any incidental consequential, special, punitive, statutory, or indirect damages, loss of profits, revenues, or use, or the loss or corruption of data, or loss of productivity, or loss of goodwill, even if informed of the possibility of these damages and notwithstanding the failure of the essential purpose of any limited remedy.
- 11.5 The indemnity in this Contract shall survive the expiration or termination of this Contract.

**12. LIENS AND CLAIMS.**

- 12.1 The Supplier shall indemnify the Purchaser against all liens, claims and encumbrances on the Goods arising as a result of the Supplier's actions. The Purchaser shall have the right to retain from any amount owing to the Supplier a sum sufficient to offset such lien, claim or encumbrance until such lien, claim or encumbrance is satisfied, discharged or settled.

**13. TAXES AND DUTIES.**

- 13.1 Unless otherwise agreed by the Purchaser, the Supplier shall pay for all Taxes payable in respect of Deliverables by him for the purpose of the Order.

**14. FORCE MAJEURE.**

- 14.1 Neither party shall be liable to the other for any breach of the terms and conditions herein arising as a result of Force Majeure.
- 14.2 If during the duration of the Contract, in which the Purchaser is involved in any Force Majeure event, and which has rendered the fulfilment of the Contract impossible, any question in respect of the continuance, suspension or termination of the Contract shall be settled by sole determination of the Purchaser.
- 14.3 Notwithstanding the foregoing, if the suspension due to force majeure continues for a period of thirty (30) days, the injured party may serve upon the party claiming to be affected by the force majeure event fourteen (14) days' notice in writing of its intention to terminate, and unless performance shall been resumed before the expiration of the said notice this Contract shall automatically terminate upon the expiration of such notice without prejudice to either party's right of action against the other for any antecedent breach of the terms of this Contract.
- 14.4 Neither party shall be held responsible for any failure to carry out or to observe any of the provisions of this Contract if such failure arises from any cause beyond the reasonable

control of that party. In the event either party being rendered unable wholly or in part by force majeure to carry out its obligations under this Contract other than to make payments of the amount due hereunder, it is agreed that such party shall give notice and full particulars of such force majeure in writing to the other party as soon as possible. Following such notice and for so long as the force majeure continues, those duties and/or obligations, which cannot be performed or carried out because of force majeure, shall be suspended.

14.5 Either party claiming to be affected by an event of force majeure and as a result of which is not able to carry out any of its obligations shall promptly notify the other by written notice of such a claim, giving full particulars thereof and statement of the steps and time estimated as necessary to remedy its inability to perform within seven (7) days of the occurrence thereof.

14.6 The other party affected by the force majeure shall immediately resume performance of its obligations upon cessation of the force majeure event.

## **15. CANCELLATION AND TERMINATION.**

15.1 **For Cause.** The Purchaser may cancel the Contract and/or the LOA upon serving not less than ten (10) business day notice in writing to the Supplier on the occurrence of any one or more of the following, but without prejudice to its rights to claim for any loss or damage arising as a result of any the following: -

- i) the Supplier fails to observe and/or perform the terms and conditions of the Contract or fail to observe and/or perform them to the satisfaction of the Purchaser after being given 14 days written notice to remedy the default,
- ii) fails or refuses to perform the Deliverables with due diligence or in a professional manner; or
- iii) is negligent in relation to its duties; or
- iv) has a petition for 'Winding up or bankruptcy made against the Supplier; or
- v) an encumbrance takes possession of or a receiver is appointed over any of the properties or assets of the Supplier or the Supplier is wound up or goes into liquidation/bankruptcy;
- vi) the Supplier threatens to cease or ceases business.; or
- vii) the Supplier engages in a behaviour that is dishonest, fraudulent or constitutes a conflict of interest with the Contractor's obligations herein or has acted in breach of CMS Code of Ethics and Business Conduct For Contractors, Suppliers and Consultants.

15.2 **For Convenience.** Notwithstanding clause 15.1, the Purchaser may by written notice to the Supplier at any time give prior notice of its intention to abandon the Contract and/or the LOA with or without reasons, in whole or in part, upon serving not less than ten (10) business day prior notice in writing on the Supplier or such shorter period as may be agreed by the parties. Upon receipt of such notice the Supplier shall take all necessary and immediate steps to bring the Supply of Goods to a close and to reduce expenditure to a minimum.

15.3 In the event that this Contract is cancelled under clause 15.1, the Purchaser shall not be liable to pay the Supplier for the Supply of Goods delivered before the effective day of termination.

- 15.4 In the event of terminate pursuant to clause 15.2, and subject to the obligation of the Supplier to reduce expenditure to a minimum as stated in clause 15.2, the Purchaser shall pay the Supplier for the Deliverables rendered before the effective day of terminate on a pro rata basis to the date of such termination and thereafter the Supplier shall have no further claim against the Purchaser in respect of this Contract.

**16. LAW AND SETTLEMENT OF DISPUTES.**

- 16.1 The terms and conditions herein shall be governed and construed in all respects in accordance with the laws of Sarawak and the parties hereto agree to submit to the jurisdiction of the Courts of Sarawak.
- 16.2 The law of this arbitration clause will be in accordance with the applicable law set forth in this Contract.
- 16.3 In the event of any dispute, controversy or claim arising out of or relating to this Contract or breach, termination or invalidity thereof, Parties shall endeavor to negotiate and settle the matter amicably. If Parties fail to settle the matter amicably, the matter shall be decided by arbitration in accordance with the Arbitration Rules of the Asian International Arbitration Centre and such arbitration is to be held in Malaysia.
- 16.4 The number of arbitrators shall be three (3) with each Party being entitled to appoint one (1) arbitrator. The appointing authority for the third (3rd) arbitrator shall be the Asian International Arbitration Centre in Kuala Lumpur.
- 16.5 The place of arbitration shall be the Kuala Lumpur Regional Arbitration Centre, Kuala Lumpur, Malaysia, and
- 16.6 The language to be used in the arbitration proceedings shall be English.

**17. NOTICES.**

- 17.1 Any notices served under or in connection with the LOA shall be in writing and addressed to the Purchaser or Supplier (whichever is applicable) at the addresses and facsimiles set forth in the LOA or such other addresses or facsimiles as each may substitute from time to time by notice in writing and shall be either delivered personally or sent by facsimile or by ordinary post and shall be deemed to have been made or given in the case of-
- (i) Personal delivery, on the day of delivery;
  - (ii) Facsimile, on the day of transmission and upon receipt of the sender of a transmission report generated by the dispatching terminal of the sender confirming that such facsimile has been duly transmitted; and (iii) Ordinary post, on the seventh (7<sup>th</sup>) day after posting.

**18. SPECIAL CONDITIONS.**

- 18.1 Where special conditions are stated in the Order, those conditions shall be deemed to be incorporated and apply together with the terms and conditions herein except that where any inconsistency arises between the terms and conditions herein and the special conditions, the special conditions shall prevail.

**19. TERMS AND CONDITIONS APPLICABLE.**

- 19.1 Subject to Clause 18.1, the terms and conditions herein shall apply to all Order(s) by the Purchaser from the Supplier to the exclusion of all other terms and conditions including any terms or conditions which the Supplier may purport to apply under any sales order, confirmation order, delivery order, invoice and/or other related document(s).

19.2 Delivery by the Supplier to the Purchaser or its nominee of the Deliverables in such quantity stipulated in the LOA or such other quantity as may be agreed or accepted by the Purchaser shall be deemed conclusive evidence of the Supplier's acceptance of the terms and conditions herein.

19.3 Any variation to the terms and conditions herein shall not be applicable unless agreed in writing by the Purchaser.

**20. HEALTH, SAFETY AND ENVIRONMENTAL (HSE).**

20.1 The Supplier shall comply fully with all the Purchaser's Health, Safety and Environmental (HSE) plan and policy, Cahya Mata Sarawak Berhad's Group Safety and Health Policy and all laws relating to health, safety and environment currently enforced in Malaysia including revision and amendments thereof.

**21. SAFETY AND HAZARDOUS MATERIALS.**

21.1 The Supplier must ensure that it and its personnel, including subcontractors observe at all times safe work practices when supplying the Goods or Services. The Supplier is responsible for ensuring that its personnel and subcontractors have undertaken any necessary hazard awareness training for the supply of Goods and Services and must supply suitable and appropriate safety clothing and equipment for undertaking any work relating to this Order.

**22. CONFIDENTIALITY.**

22.1 "Confidential Information" means **any and all** Information of any kind which is **not** generally available to the public, whether in written, oral, visual, machine readable or otherwise, and whether or not labeled as "Confidential" or otherwise, which are disclosed, witnessed, submitted or how so ever made available, either directly or indirectly by or on behalf of the Purchaser to the Supplier or to the Supplier for the purpose of or in connection with the Order, all whatsoever Confidential Information relating to the Order, imparted prior to or after the signing of this LOA including but not limited to all information which by its nature the Supplier knew or should have reasonably known was or would be proprietary, confidential or secret, save and except those that falls under the exceptions in Clause 22.5; the Parties agree that Confidential Information also includes personal data as defined under the Personal Data Protection Act 2010 (Act 709);

22.2 Confidential information obtained, witnessed or received by the Supplier from the Purchaser in the course of performing the scope shall be treated as confidential and shall not be disclosed to any third party unless with the prior written approval of the Purchaser.

22.3 The Supplier agrees that it shall not for the Supplier's own or any third party's benefit make use of any Confidential Information acquired, witnessed or disclosed by Purchaser to Supplier solely for the purpose of this Order.

22.4 The Supplier shall ensure that the provisions of this Section 22 similarly bind all persons engaged by him to assist with providing the scope.

22.5 The obligations in this Section 22 shall not apply to information: -

- i. already in the public domain or becomes part of the public domain through no fault of the Consultant or other than as a result of a breach of this Order;
- ii. independently developed or conceived by the Supplier;

- iii. the Supplier is required to disclose by law or order of any court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority; and
  - iv. is explicitly approved for release by authorization of the Purchaser.
- 22.6. Notwithstanding Section 22.5.iii, the Supplier shall not be entitled to make any disclosure of the Confidential Information; unless Purchaser has provided prior written notice of at least seven working (7) days of such requisite disclosure and Supplier shall consult with the Purchaser prior to such disclosure and keep Purchaser apprised on the situation post disclosure. In the event any law or order of any court of competent jurisdiction or any rule, direction or regulation of any regulatory or governmental authority requires Confidential Information to be disclosed less than seven working (7) days, the Supplier shall immediately give such written notice and shall consult with the Purchaser prior to such disclosure within a practicable time frame at the extent permitted by such law, order, rule, direction or regulation. No prior notice or consultation with the Purchaser of such requisite disclosure is required in the event it is forbidden by any law, order, rule, direction or regulation.
- 22.7. The Supplier's obligations and undertakings under this LOA shall be **perpetual** and will continue in force indefinitely, without prejudice to the rights of the Supplier's to claim for any loss or damage incurred prior to the commencement of this Order. This clause shall survive after the completion of Scope under this Order.
- 22.8. Supplier acknowledges and agrees that if it breaches any obligations of this Confidentiality clause, the Purchaser may suffer immediate and irreparable harm for which monetary damages alone shall not be a sufficient remedy and that, in addition to all other remedies that the Purchaser may have, the Purchaser shall be entitled to: (i) seek injunctive relief, specific performance or any other form of relief in a court of competent jurisdiction, including, but not limited to, equitable relief, to remedy a breach or threatened breach hereof by the Supplier; and (ii) enforce this Confidentiality clause.
- 22.9. Except as otherwise expressly permitted herein or required by applicable law or Bursa or regulatory authority, all press releases and other public announcements by any of the Parties concerning this Contract or its subject matter or any matter ancillary hereto must be approved in writing by the Purchaser, such approval shall not to be unreasonably withheld, conditioned or delayed, prior to Supplier's release or publication.

**23. Code of Business Conduct.**

- 23.1 The Supplier are to abide by Cahya Mata Sarawak Berhad's Code of Business Conduct For Contractors, Suppliers and Consultants, which can be found by logging in at "www.cahyamata.com." through the links: "Doing Business With Us".
- 23.2 The Supplier must comply with the Purchaser's Code of Ethics and Anti-Bribery and Anti-Corruption Policy; which can be found at [www.cahyamata.com](http://www.cahyamata.com).
- 23.3 If the Supplier is found to have engaged or is engaging in any form of corruption or is in breach of any law or policy pertaining to anti-bribery and anti-corruption, this shall be a material breach of this appointment and this appointment shall be deemed terminated without any liability whatsoever on the Purchaser and without prejudice to any other right or remedy of the Purchaser in respect of the breach concerned or any other breach.

**24. SANCTIONS.**

- 24.1. Relating to the entry into and performance pursuant to this Contract, Supplier will comply with all Sanctions Laws, including but not limited to regulations administered

by the Malaysia, United States of America, the European Union and its Member States, the United Kingdom, and the United Nations (“Sanctions Laws”). Supplier will not buy, sell, export, re-export, divert, use or otherwise transfer, any Purchaser’s products, technology, software, or proprietary information: (i) to or for any sanctioned persons or sanctioned jurisdictions; or (ii) for purposes prohibited by any Sanctions Laws.

**25. ASSIGNMENT AND SUB CONTRACT.**

- 25.1 The Supplier shall not, without the written consent of the Purchaser assign or sub contract the performance of any part of this Contract.
- 25.2 The Purchaser may assign this Contract without the consent of the Supplier.

**26. INSURANCE.**

- 26.1 The Supplier, at its own expense, shall affect and maintain for the duration of this Contract the insurances that are as stipulated in the LOA.
- 26.2 Supplier, at its own expense, will carry and maintain in force from the effective date of the Contract through final completion of the Deliverables, the insurance coverage as required by the laws and regulations at the location/site in which the work is carried out.
- 26.3 Prior to the commencement of the Contract, Supplier must furnish evidence of said insurance coverage in the form of a Memorandum of Insurance or Certificates of Insurances.

**27. DELIVERY OF DOCUMENTS.**

- 27.1 In the event of a termination of this Contract by the Purchaser and upon payments of the sums due to the Supplier, the Supplier shall deliver to the Purchaser such reports, drawings, specifications and other similar documents relevant to the Deliverables as are in the possession of the Supplier.
- 27.2 The copyright in all drawings, reports and any other documents provided by the Supplier in connection with the Deliverables shall remain vested in the Purchaser.

**28. ANTI-BRIBERY AND ANTI-CORRUPTION.**

- 28.1. The Supplier must conduct himself in a legal and ethical manner, in compliance with all applicable laws, regulations and standards. The Supplier represents, warrants and undertakes to on a continuous basis that he has not made, offered or authorized or will not make, offer or authorize any payment, gift, promise or other advantage, whether directly or through any person or entity, to or for the use or benefit of any government or public official or any entity or any other person where such payment, gift, promise or other advantage would violate the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act”) or any other anti-bribery and anti-corruption law and regulation. The Supplier will also not accept any gratification as prohibited by the MACC Act.
- 28.2. If the Supplier is found to have engaged or is engaging in any form of corruption or is in breach of any law or policy pertaining to anti-bribery and anti-corruption, this shall be a material breach of this appointment and this appointment shall be deemed terminated without any liability whatsoever on the Purchaser and without prejudice to any other right or remedy of the Purchaser in respect of the breach concerned or any other breach.

**29. ANTI-MONEY LAUNDERING.**

- 29.1. The Parties herein agree to abide and comply with all relevant anti-money laundering laws and regulations without limitations to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

**30. INDEPENDENT SUPPLIER.**

- 30.1. The Supplier undertake and represent that he is an independent supplier and is not, in any way or manner whatsoever, conflicted nor is he connected to and/or related to any Purchaser Group, and is not considered a related party within the meaning of Chapter 10: Transaction of the Main Market Listing Requirements.

**31. MISCELLANEOUS.**

- 31.1 No waiver of any of the provisions of this Contract nor consent to any departure there from by either Party shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No delay on the part of either Party in exercising any rights hereunder shall operate or be construed as a waiver thereof or of any other right hereunder, nor shall a single or partial exercise thereof preclude any other right or further exercise thereof or the exercise of any other right hereunder.
- 31.2 This Contract may be executed in any number of counterparts in which case this Contract will be as effective as if all signatories on the counterparts were on a single copy of this Contract.
- 31.3 If any of the provisions of this Contract or part thereof is found by any competent authority to be void or unenforceable, such provision or part thereof shall be severed from this Contract and the remaining provision or provisions shall remain in full force and effect.
- 31.4 It is hereby expressly agreed that the provisions and terms of this Contract may at any time and from time to time be varied or amended by the Parties in writing and the relevant provisions of this Contract shall be deemed to have been amended or varied accordingly and shall be read and construed as if such amendments or variations had been incorporated in and had formed part of this Contract. No modification, amendment or waiver of any of the provisions of the Contract shall be effective unless made by mutual consent and made in writing by way of supplementary contract specifically, referring to the Contract and duly signed by the Purchaser and the Supplier.
- 31.5 If any provision of the Contract is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of the Contract, such provision shall be fully severable and the Contract shall be construed as if such illegal or invalid provision had never comprised as part of the Contract and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal or invalid provisions or by its severance from the Contract.
- 31.6 If any provision of the Contract is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of the Contract, such provision shall be fully severable and the Contract shall be construed as if such illegal or invalid provision had never comprised as part of the Contract and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal or invalid provisions or by its severance from the Contract.
- 31.7 Time wherever mentioned shall be of the essence of this Contract.

- 31.8 This Contract constitutes the entire Contract between the Parties with respect to the subject matters herein and supersedes all previous negotiations, commitments, representations and/or Contracts (whether oral or in writing) with respect to the said subject matters except to the extent that they are expressly incorporated in this Contract.
- 31.9 The stamp duty payable in respect of the stamping of this Contract shall be borne by the Supplier. Each party shall bear its own business advisor, legal and solicitor charges, costs and fees.
- 31.10 In the Contract, headings shall be for convenience only and do not affect interpretation.
- 31.11 No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it.
- 31.12 This Contract shall not create any agency, Purchaser-employee relationship, partnership or joint venture of any kind whatsoever between the Purchaser and the Supplier. The Supplier is at all times an independent contractor.
- 31.13 The Supplier shall not represent or hold himself out to any third party that it acts as agent, employee or partner of the Purchaser or has the power or authority to directly and indirectly to bind the Purchaser.
- 31.14 This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

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