

DATED THIS      DAY OF                      2021

BETWEEN

**WESTPORTS MALAYSIA SDN. BHD.**  
(REGISTRATION NO. 199001001164 (192725-V))

AND

\_\_\_\_\_  
(REGISTRATION NO. \_\_\_\_\_)

.....  
**NON-DISCLOSURE AGREEMENT**  
.....

**THIS NON-DISCLOSURE AGREEMENT** is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (“Agreement”)

**BETWEEN**

(1) **WESTPORTS MALAYSIA SDN. BHD.** (Registration No. 199001001164 (192725-V)) a company incorporated under the laws of Malaysia and having its principal office at P.O. Box 266, 42009 Port Klang, Selangor Darul Ehsan (hereinafter referred to as “**WMSB**”), of the one part;

**AND**

(2) \_\_\_\_\_ (Registration No.: \_\_\_\_\_) a company incorporated under the laws of Malaysia and having its principal office at \_\_\_\_\_, Malaysia (hereinafter referred to as “\_\_\_\_\_”), of the second part;

**WMSB** and \_\_\_\_\_ may hereinafter individually be referred to as a “Party” and collectively as “Parties”.

**RECITALS**

**WHEREAS:-**

- A. For the purposes of negotiations and discussions in connection with a proposed business arrangement between the Parties in relation to \_\_\_\_\_ (the “**Purpose**”), the Parties will disclose to each other valuable, proprietary and confidential information pertaining to its business, affairs and/or operations for their consideration.
- B. In consideration of and as a condition of the provision of the Confidential Information (as defined below), each Party therefore agrees to disclose to and receive from the other Party Confidential Information subject at all times to the terms and conditions of this Agreement.

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement, the following expressions shall, unless the context otherwise requires, have the following meanings:

Confidential Information shall have the meaning specified in Clause 1.2;

Control shall mean the right or power to control or direct, whether by contract, equity ownership or otherwise, directly or indirectly, the affairs of another person, including without limitation, (a) the power to direct the policies, affairs or management of a person, (b) the power to control the

composition of any board of directors or governing body of the person, (c) holds ownership of 50% or more issued shares of the said person, (d) holds 50% or more voting rights attached to the issued shares or other securities of the person, and "Controlled" shall be construed accordingly;

Disclosing Party	shall mean the Party to this Agreement that discloses Information, directly or indirectly to the Recipient under or in relation to this Agreement;
Information	shall include information provided directly or indirectly by the Disclosing Party to the Recipient in oral (where oral it is subsequently reduced into writing) or documentary form or by way of models or other tangible or intangible forms or by demonstrations and whether before, on or after the date of this Agreement;
Recipient	shall mean a Party to this Agreement that receives Information, directly or indirectly from the Disclosing Party;
WMSB Group	shall mean any entity existing now or in the future, whether directly or indirectly, owning or owned by or under common ownership with, or Controls, is Controlled by or under common Control with WMSB.

1.2 **"Confidential Information"** shall mean for the purposes of this Agreement:

- (a) Information or material of a confidential nature whether or not proprietary to the Disclosing Party which is provided or made available, directly or indirectly, to the Recipient by the Disclosing Party or otherwise acquired by the Recipient, from time to time during the term of this Agreement, in writing, orally, electronic form or any form whatsoever, in the course of any discussions, negotiations, site visits or communications relating to the Purpose, including but not limited to trade secrets, ideas, techniques, sketches, drawings, diagrams, models, inventions, designs, photographs, CCTV image, CCTV recording, video image, video recording, flowcharts, samples, products, technologies, techniques, know-how, analysis, processes, records, equipment, algorithms, computer software and programs, database and system structures, Information pertaining to the past, present, future, and proposed products and services (including improvements thereto) of the Disclosing Party in relation to the Purpose, particular Information concerning research, experimental work, design details and specifications, analysis, financial Information (statements, projections and budgets), price lists, inventories, processes and procedures, business operations, corporate information, statistics, formula, protocol, marketing strategies, development plans, purchasing, manufacturing, business forecasts, sales and retail, advertising plans, and other data and Information pertaining to its customers, clients, contractors employees, investors, shareholders, advisors or any other third parties; and any other business or technical Information or data relating to the Disclosing Party disclosed under this Agreement in relation to the Purpose whether or not owned or developed by the Disclosing Party.

- (b) Without limiting the foregoing, where it relates to computer software, it shall include but not be limited to source codes, object codes, user manuals, programming manuals, modification manuals, flow charts, drawings, software listings, models, drafts and diagrams relating to the software;
- (c) Terms of any negotiation or agreement between the Parties relating to the Purpose or proposed transaction relating thereto, including the identity of the Parties, the identity of individuals, and the existence and contents of this Agreement;
- (d) Any reference to WMSB's Confidential Information in this Agreement shall, where relevant, include the Confidential Information of WMSB Group, including but not limited to subsidiary companies, associate companies, related companies, parent company and/or holding company.

1.3 Unless the context requires otherwise:

- (a) words importing the singular number shall include the plural and vice versa;
- (b) words importing any particular gender shall include all other genders; and
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated and incorporated associations of persons.

1.4 Any reference to any statute or statutory provision shall be a reference to that statute or statutory provision as amended, modified, extended, re-enacted or replaced from time to time and including all subordinate legislation made under it from time to time.

1.5 Headings contained in this Agreement are for reference purposes only and shall not be incorporated into this Agreement and do not form part of or affect the interpretation of this Agreement.

1.6 Reference to this "Agreement" or any other agreement or instrument herein shall be construed to include this Agreement or such agreement or instrument as amended, supplemented, novated and/or replaced from time to time.

1.7 Unless stated otherwise, the term clause as used in this Agreement shall refer to the clauses in this Agreement.

1.8 The Recipient agrees that the failure of the Disclosing Party in marking or labelling any Information to be confidential shall not affect its status as Confidential Information.

## **2. EXCEPTIONS**

2.1 The obligations of confidentiality in this Agreement shall not apply to any Information that:

- (a) is or becomes publicly available or public knowledge other than as a result of a breach of this Agreement by the Recipient;
- (b) is known to or available the Recipient before the date the Information is provided to the Recipient by the Disclosing Party;

- (c) is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to disclose to the Recipient without such restriction;
- (d) has been independently developed without reference or use of any Confidential Information imparted by the Disclosing Party; or
- (e) is disclosed with the prior written consent of the Disclosing Party;
- (f) the communication or disclosure was in response to a valid order by a court or other regulatory or governmental body, was otherwise required by law, or was necessary to establish the rights of any Party under this Agreement. In the event the Recipient is requested by any governmental body or authority to disclose any of the Confidential Information, to the extent permitted by law, the Recipient shall promptly notify the Disclosing Party prior to its disclosure so as to enable the Disclosing Party to apply for any appropriate remedy to protect its rights under this Agreement.

2.2 The Recipient intending to rely on the exclusions in **Clause 2.1** above shall bear the burden of showing that any of the foregoing exclusions apply to any Confidential Information or materials.

### **3. DURATION**

3.1 The term of this Agreement shall apply for a period of two (2) years from the date of this Agreement. Notwithstanding the expiry or early termination of this Agreement, the confidentiality obligations herein shall survive for another two (2) years from the date of expiry or termination of this Agreement.

### **4. UNDERTAKINGS OF THE RECIPIENT**

4.1 Subject to **Clause 2.1**, the Recipient shall maintain the Confidential Information in strict confidence and shall not disclose it to any other person except as provided in **Clause 4.4** and **Clause 6** below.

4.2 The Recipient shall not use the Confidential Information in whole or in part for any purpose other than the Purpose.

4.3 The Recipient undertakes not to, directly or indirectly discloses, reveal and/or divulge, imply, implicate, suggest and/or insinuate for its own benefit or the benefit of any third party, or misuse or use, the Confidential Information to the detriment of the Disclosing Party or in such a way that the Recipient may at any time obtain commercial advantage over the Disclosing Party.

4.4 Without limiting **Clause 4.1** above, the Recipient undertakes not to disclose or reveal the Confidential Information except to its officers, directors, employees, representatives, agents, contractors, sub-contractors, advisors or to such other Parties as may be permitted expressly in writing by the Disclosing Party, and such disclosure shall be made in strict confidence, on a need to know basis and for the Purpose only.

4.5 The Recipient undertakes to immediately notify the Disclosing Party upon learning of any unauthorised use or disclosure of any Confidential Information.

4.6 The Recipient undertakes not to make copies, publish, reproduce or otherwise reduce into writing or into any other tangible or intangible form all or any part thereof of the Confidential Information save for the purposes contemplated in this Agreement.

- 4.7 The Recipient shall comply with all laws and regulations as may be applicable to the Confidential Information and this Agreement including but not limited to the **Personal Data Protection Act 2010** (as current and in effect at the applicable time).
- 4.8 The Recipient undertakes to use reasonable endeavours to exercise a degree of care and diligence and ensure the Confidential Information is protected with security measures no less than that which the Recipient applies to its own Confidential Information of a similar character.
- 4.9 The Recipient undertakes to be accountable for the compliance and performance of the undertakings enumerated in **Clauses 4.1 to 4.7** above on the part of the Recipient's officers, directors, employees, agents, representatives, contractors, subcontractors, advisors or any person having access to the Confidential Information pursuant to the terms herein.
- 4.10 The Recipient agrees that any breach of any of the confidentiality obligations in **Clauses 4.1 to 4.8** above by any of its officers, employees, directors, agents, representatives, contractors, subcontractors, advisors or any permitted person to whom the Confidential Information is disclosed shall constitute a breach of this Agreement by the Recipient.

## **5. WARRANTIES AND REPRESENTATIONS**

- 5.1 Each Party represents and warrants to the other that:
- (a) it has the necessary corporate authority to enter into and perform its obligations under this Agreement and its respective designated officers, as applicable, are duly authorized by their respective directors and shareholders to bind them by signing this Agreement;
  - (b) the execution and performance of this Agreement will not breach, and is not prohibited by the provisions of any law, regulations, agreement, indenture, undertaking, legal provision or other instruments binding upon them; and
  - (c) where it discloses any Confidential Information pursuant to or in relation to this Agreement, it warrants that it owns the said Confidential Information or otherwise has all necessary rights and licenses to the said Confidential Information and to share and disclose the same to the Recipient(s) for the purpose of the Purpose.
- 5.2 Any reliance placed by the Recipient or its representative(s) on the Confidential Information provided by the Disclosing Party is to be at the own risk of the Recipient or its representative(s). For the avoidance of doubt, the Disclosing Party shall not be obliged to enquire, analyse or conduct any investigation whatsoever into the accuracy, completeness or adequacy or freedom from defect of any kind of the Confidential Information or whether any liability to the Recipient or its representatives shall result from the use of it or any part thereof.

## **6. RETURN OF CONFIDENTIAL INFORMATION**

- 6.1 The Recipient shall at its own cost and to the extent reasonably practicable, return the Confidential Information and any copies thereof whether written, printed or in whatever form or media including Confidential Information stored within any computer or any other device, in its possession or under its custody or control, within seven (7) days of

the written request of the Disclosing Party at the termination of this Agreement, save to the extent the Recipient is required to retain such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory and/or regulatory body or stock exchange.

- 6.2 Notwithstanding the return of the documents and materials containing the Confidential Information, each Party shall continue to be bound by the undertakings and obligations in accordance with the terms of this Agreement.
- 6.3 and, if so requested by the Disclosing Party, the Recipient shall provide a certificate signed by a director or authorised officer of the Recipient confirming compliance with the obligations contained in aforementioned Clause 6.1.

## **7. REMEDIES**

- 7.1 The Recipient agrees to indemnify and hold harmless the Disclosing Party against all costs, liability, losses and claims incurred by the Disclosing Party as a result of a breach of the confidentiality obligations under or pursuant to this Agreement by the said Recipient or such other parties it is accountable for pursuant to this Agreement.
- 7.2 The Recipient agrees that the obligations of the Recipient provided herein are necessary and reasonable in order to protect the Disclosing Party and its business, and the Recipient expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by any of the Recipient of its covenants and agreements set forth herein. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation may cause irreparable injury to the Disclosing Party and that damages may not be an adequate remedy, and that without prejudice to **Clause 8.1** and in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to seek and obtain equitable relief including, but not limited to, ex parte injunctions (interim and/or interlocutory) and specific performance to prohibit or restrain the Recipient or its employees or such other parties that may have access to the Confidential Information, from any breach or threatened breach of this Agreement. The prevailing Party in any litigation may be entitled to its cost and expenses, including legal expenses, in addition to any other relief to which such party may be entitled. This clause shall survive the termination of this Agreement.

## **8. TERMINATION**

- 8.1 This Agreement may be terminated: -
- (a) by either Party giving to the other Party a written notice of termination of no less than thirty (30) days; or
  - (b) by mutual agreement of the Parties in writing.
- 8.2 Notwithstanding the termination of this Agreement pursuant to **Clause 8.1**, the confidentiality obligations in this Agreement shall continue to bind the Recipient for two (2) years from the date of termination.

## **9. GRANT OF RIGHTS**

- 9.1 Nothing in this Agreement is intended to grant, express or implied, by estoppel or otherwise any rights, by license or otherwise, to either Party under any patent, copyright, trade secret, or other intellectual property right with respect to the

Confidential Information disclosed hereunder, nor shall this Agreement grant or imply to either Party any rights in or to the other Party's Confidential Information.

**10. ADVERTISING**

10.1 Neither Party shall use nor disclose the other Party's name in relation to the Purpose nor use the other Party's name in connection with any advertising or publicity materials or activities without the prior written consent of the other Party, who shall have absolute discretion to withhold such consent.

**11. NON-CONFLICTING ACTIVITIES**

11.1 Nothing contained in this Agreement shall be construed as creating an obligation to refrain either Party from entering into a business relationship or similar agreements with any third party.

**12. AGENCY, PARTNERSHIP AND JOINT VENTURE EXCLUDED**

12.1 Nothing contained in this Agreement shall be construed as creating agency, joint venture, partnership or employment relationship between the Parties, it being understood that the Parties are independent contractors vis-à-vis one another. Except as specified herein, no Party shall have the right, power or implied authority to bind the other Party in any contract or transaction whatsoever or to create any obligation or duty, express or implied, on behalf of any other Party thereto.

**13. NO OBLIGATION**

13.1 Nothing in this Agreement shall be construed to obligate either Party to procure from the other Party any products or services or to enter into any business or commercial arrangement or transaction with the other Party.

**14. ANTI-CORRUPTION AND BRIBERY**

14.1 In recognition of the principles enshrined in Malaysian Anti-Corruption Commission Act 2009 and amendment thereof, international and regional laws, regulations and conventions on combating corruption and bribery and to ensure compliance with the anti-corruption and bribery laws applicable to the activities contemplated under this Agreement and any other anti-corruption and bribery laws otherwise applicable to the Parties.

14.2 Each Party represents and warrants to the other Party that neither it, nor anyone on its behalf, will violate any anti-corruption and bribery rules and regulations of the applicable laws. Each Party agrees that it will not, directly or indirectly, receive, pay, promise to pay, or authorize the payment of any money or anything of value to:

- i) an officer, employee or representative of any government, including any person acting in an official capacity on behalf hereof; or
- ii) any other person or entity in order to assist either Party in the transactions contemplated under this Contract. Recording the payments in the paying Party's books must include disclosing the accurate purpose behind the payment with the reasonable amount of details to describe the payment purpose.



- 14.3 Each Party undertakes that no payment will be made to anyone for any reason on behalf of either Party which is not accurately recorded in the books and records of the paying Party.
- 14.4 Each Party shall cause its employees, subcontractors, agents, consultants or associated persons (if any) to comply with the obligations set forth in terms and conditions contained herein and to warrant the same under the terms of its agreements with any subcontractor's agents, consultants or associated persons, as the case may be.
- 14.5 Each of the Parties agrees to and shall adopt, implement and comply with all policies, procedures and guidelines designed to ensure ethical business practices, particularly for avoiding all types of illegal payments including bribery or facilitation payments.
- 14.6 Each Party shall provide all reasonable assistance, information and documentation to the other party during the course of the investigation by authorities, if any in relation to any suspected bribery or corruption.
- 14.7 The Party found to have breached the terms and conditions contained herein shall indemnify and hold harmless the other party against any liability or losses arising out of or in connection with the said breach.
- 14.8 Each Party reserves the right to terminate this agreement effective immediately if the other Party, or anyone acting on behalf of that Party, fails to comply with the terms and conditions of the Anti-Corruption and Bribery clause contained herein.

**15. ENTIRE AGREEMENT**

- 15.1 This Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.

**16. AMENDMENT AND VARIATION**

- 16.1 No amendment or variation of this Agreement shall bind either Party unless such amendment or variation is agreed to in writing and signed by a duly authorized representative of each Party.

**17. ASSIGNMENT**

- 17.1 Neither Party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder to any third party without the prior written consent of the other Party.

**18. WAIVER**

- 18.1 No waiver by either Party of any right or of a breach of any provision of this Agreement shall constitute a waiver of any other right or breach of any other provision, nor shall it be deemed to be a general waiver of such right or provision or to sanction any subsequent breach thereof.

**19. SEVERABILITY**

19.1 Any term or provision of this Agreement which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability only, without invalidating or rendering unenforceable the remaining provisions hereof.

**20. NOTICE**

20.1 All notices and communications under this Contract shall be delivered either by personal or courier service, by registered mail or by facsimile message to the following addresses or at such other address as either Party may disclose to the other for the purposes of this Contract: -

The Employer :       **WESTPORTS MALAYSIA SDN. BHD.**  
                              **(Registration No. 199301007920 (192725-V))**  
                              P.O. Box 266, Pulau Indah  
                              42009 Port Klang  
                              Selangor Darul Ehsan

Telephone No.         :       03 - 3169 4000  
Facsimile No.         :       03 - 3169 4100

The Contractor:       **XXX**  
                              **(REGISTRATION NO XXX (XXXX))**  
                              XXXX,  
                              XXXX,  
                              XXXXX,  
                              XXXXXX.

Telephone No.         :       \_\_\_\_\_

Facsimile No.         :       \_\_\_\_\_

The notice shall be deemed to be given: -

- (a) in the case of personal or courier service, upon the written acknowledgement of receipt by an officer or other duly authorized employee, agents or representatives of the receiving Party;
- (b) in the case of registered mail, in the event of absence of any evidence of receipt, the notice shall be deemed to be given upon forty eight (48) hours after the time of posting and the evidence of such notice being properly addressed and stamped shall be sufficient proof of the giving of such notice; and
- (c) in the case of facsimile message, upon completion of transmission and receipt of a transmission report showing successful transmission.

**“Business Day”** shall mean a day other than Saturday, Sunday or a public holiday in Selangor, Malaysia. If the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm on a Business Day, it is deemed to be given or delivered (as the case may be) at 9.00 am on the next Business Day.

**21. GOVERNING LAW AND DISPUTE RESOLUTION FORUM**

21.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and each Party agrees to submit to the exclusive jurisdiction of the courts of Malaysia.

**22. COUNTERPARTS**

- 22.1 This Agreement may be executed in counterparts but is not effective until each Party has executed at least one counterpart. Each counterpart shall be deemed to be an original, but the counterparts together shall constitute one and the same agreement.

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**IN WITNESS THEREOF**, the Parties have hereunto set their hands and seals as of the date first above written.

**SIGNED** by )  
for and on behalf of )  
**WESTPORTS MALAYSIA SDN. BHD.** )  
(Reg. No. 199001001164 (192725-V)) )

\_\_\_\_\_  
Name:  
Designation:

in the presence of: -

\_\_\_\_\_  
Witness:  
Designation:

**SIGNED** by )  
for and on behalf of )  
\_\_\_\_\_) )  
(Reg. No. \_\_\_\_\_) )

\_\_\_\_\_  
Name:  
Designation:

in the presence of: -

\_\_\_\_\_  
Witness:  
Designation: