

DATED THIS

DAY OF

2024

BETWEEN

PDC TELECOMMUNICATION SERVICES SDN BHD

[Company No: 197001000493 (9761-V)]

("PDC TELCO")

AND

[Company No:

]

("THE COMPANY")

MUTUAL NON – DISCLOSURE AGREEMENT (NDA)

THIS AGREEMENT is made on _____ day of _____ 2024.

BETWEEN

PDC Telecommunication Services Sdn Bhd (hereinafter referred to as “**PDC TELCO**”) is a company incorporated under the laws of Malaysia, having its business address at 1-12A-12, SUNTECH @ Penang Cybercity, Lintang Mayang Pasir 3, Bandar Bayan Baru, 11950 Bayan Lepas, Pulau Pinang and having its company registered number 197001000493 (9761-V).

AND

(hereinafter referred to as “**THE COMPANY**”) is a company incorporated under the laws of Malaysia, having _____ its _____ business _____ address _____ at

and having its company registered number _____.

(**PDC TELCO** and **THE COMPANY** together referred to as the “Parties” and each a “Party”).

WHEREAS

- A. The Parties wish to discuss the possibility of exploring and/or developing a business opportunity (“Preliminary Discussion”) with each other and the Parties may disclose information to each other for the purpose of determining their respective interest in establishing the business relationship between them.

- B. To facilitate such discussions, each of the Parties wishes to disclose to the other “**Confidential Information**”, being information, in any form or medium including oral, written or electronic, relating to the Disclosing Party that is sensitive, confidential (whether of a commercial, technical, scientific, operational, administrative, financial, marketing, business, intellectual property nature, data, formula, business plan, performance result, trade secrets, plans for

products or services, customer or supplier lists) and any other information that should reasonably be recognized as Confidential Information by the Disclosing Party or otherwise.

- C. The Parties are prepared to make Confidential Information available to each other subject to the terms set out in this Agreement.

IT IS AGREED that, in consideration of the disclosure of Confidential Information by one Party to the other Party:

- i. **"Receiving Party"** means a Party that receives or obtains directly or indirectly Confidential Information from the Disclosing Party pursuant to this Agreement or to whom the Confidential Information is given or disclosed.
- ii. **"Disclosing Party"** means Party which discloses or makes available directly or indirectly Confidential Information to the Receiving Party pursuant to this Agreement or from whom the Confidential Information originates and is disclosed to the Receiving Party.
- iii. **"Effective Date"** means the date stated at the beginning of this Agreement, which is the date of this Agreement becomes effective.
- iv. Each Party shall treat all Confidential Information as strictly private and confidential and shall take all commercially reasonable security precautions (including but not limited to, those required by this Agreement and those that it takes to protect its own sensitive and Confidential Information) to preserve such confidentiality.

1. OBLIGATIONS

- 1.1 Each Party shall use the Confidential Information solely for the purpose of determining their respective interest in establishing the business relationship with each other ("the Purpose") and not for any other purpose. Neither Party shall use any Confidential Information in any way which is directly or indirectly detrimental to, competitive to the other and third party.
- 1.2 Neither Party shall disclose any Confidential Information to any other person or body, other than as permitted by clause 1.3 below.

1.3 This Agreement shall not prohibit disclosure by either Party of Confidential Information:

- (a) to its “Representatives”, being its members (in the case of “The Company”), its directors or executive officers or management (in the case of the Company) and (in the case of both Parties) its employees, who need to know such Confidential Information to assist with the Purpose;
- (b) with the other Party’s prior written consent;
- (c) to the extent that such disclosure is required of a Party by law; and
- (d) to the extent that such disclosure is required of a Party by any judicial, governmental or regulatory authority with powers over the Party.

Where a disclosure is required as contemplated by clause 1.3 (c) or 1.3 (d) (a “Compelled Disclosure”), the Party compelled to disclose shall, where legally permissible, inform the other Party promptly.

1.4 Upon the request of either Disclosing Party, the Receiving Party shall return or destroy (and provide written confirmation of the same) all Confidential Information in its possession (to the fullest extent commercially and technically practical in the case of Confidential Information in electronic form), except:

- (a) where required for the purpose of a Compelled Disclosure; or
- (b) where a record of the Purpose is required to be kept by law or by the other Party’s internal rules, any such record remaining Confidential Information subject otherwise to this Agreement.

Receiving Party shall make its Representatives aware of this Agreement and shall procure their compliance with this Agreement.

1.5 Upon request of the Disclosing Party, Recipient need to provide the list or up-to-date list of its directors, executive officers, management and representatives who may have access to the Confidential Information.

- 1.6 Receiving Party shall cooperate with the Disclosing Party to enable it to monitor its compliance with the obligations set out in this Agreement and, upon reasonable notice being given, permit the access of the Disclosing Party's representatives to any premise where the Confidential Information are being processed in order to ascertain compliance with this Agreement.
- 1.7 Receiving Party shall not transfer any Confidential Information to any third party other than to the Disclosing Party in any circumstances save and except with the written consent of the Disclosing Party or to comply with a legal obligation imposed on the Recipient;
- 1.8 Receiving Party must take reasonable steps to ensure the reliability of their directors, executive officers, management and who may have access to the Confidential Information and use all reasonable endeavors to ensure that such persons have sufficient skills and training in the handling of Confidential Information and compliance with all privacy and data protection laws of Malaysia.
- 1.9 Receiving Party must promptly notify the Disclosing Party by telephone or any other reasonable manner and follow up in writing if it becomes aware of any actual, suspected or alleged unauthorized use of, disclosure of, or access to Confidential Information by itself or others, including notification of loss or suspected loss of data whether or not such data has been encrypted. The Recipient shall cooperate with the Disclosing Party in the manner reasonably requested by the Disclosing Party and in accordance with law, including but not limited to conduct the investigation; cooperating with authorities; notifying at the Recipient's sole expense affected persons, credit bureaus, other persons or entities deemed appropriate by the Disclosing Party; and issuing press releases. Such cooperation will include without limitation: -
 - (a) providing all relevant data and reports to the Disclosing Party; and
 - (b) obtaining prior advance approval from the Disclosing Party on any notifications to impacted individuals or press releases.

2. EXCEPTIONS

2.1 This Agreement shall not apply to Confidential Information which Receiving Party wishing to exclude from this Agreement can demonstrate:

(a) is already in the public domain when disclosed by the Disclosing Party pursuant to this Agreement;

(b) enters the public domain after disclosure otherwise than as a result of a breach of this Agreement;

(c) was already in the Receiving Party's possession prior to the time of disclosure as shown by the Receiving Party's record;

(d) is approved by the Disclosing Party in writing for release;

(e) was received by the Party from third parties who are not subject to any confidentiality obligations in respect thereof; or

(f) is independently developed by the Party without reference to or use of Confidential Information disclosed by the other Party pursuant to this Agreement.

2.2 Notwithstanding the above, the obligation imposed upon Receiving Party herein shall not apply in the event where the disclosure is required by law, an order from court of competent jurisdiction, tribunal or regulatory body of competent jurisdiction to disclose all or any part of the Confidential Information, but only to the extent so ordered or required.

3. DURATION OF AGREEMENT

3.1 This Agreement shall continue for **2 years (2) from the date of this Agreement** unless extended or terminated in writing by the Parties.

3.2 The Confidential Information shall not form the basis of any contract between the Parties.

- 3.3 Notwithstanding the end of the Agreement or termination of this Agreement, the obligations on confidentiality shall continue in full force and effect for the period of three (3) years therefrom.
- 3.4 Both Parties warrant that they are acting as principal and not as agents or brokers for any person or body. Nothing in this Agreement is intended to, or shall be deemed to, or shall, establish any partnership or joint venture between the Parties, nor authorize either Party to make or enter into any commitments for or on behalf of the other.

4. WAIVER

- 4.1 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right, power or privilege.
- 4.2 No proprietary or any other rights of either Party in any Confidential Information disclosed shall be released or waived and disclosure by either Party of Confidential Information shall not confer upon the other Party any rights therein.
- 4.3 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the Confidential Information and the Purpose, unless and until after the date of this Agreement any other agreement relating to the Purpose is made in writing by the Parties. This Agreement supersedes and relieves the Parties from liability (if any) that might otherwise arise for any prior agreement, understanding, arrangement or representation (whether oral or written – unless made fraudulently) by or between the Parties with respect to their Confidential Information and the Purpose. This Agreement can only be changed by a written document, in a form agreed by the Parties and signed by their duly authorized Representatives.
- 4.4 If at any time any provision of this Agreement is found to be illegal, unenforceable or invalid in whole or in part then the remaining portions of such provisions and other provisions of this Agreement shall continue to be binding and in full force and effect.
- 4.5 The Parties agree that no public statement shall be made on this Agreement, the Purpose of this Agreement, or in relation to any processes or inventions developed during the negotiation and/or business process unless unanimously approved by the Parties.

5. ASSIGNMENT

5.1 Except as provided otherwise, neither Party shall be entitled to assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other Party. Receiving Party shall not through operations of succession or otherwise place Confidential Information in the hands of a competitor of Disclosing Party.

6. PATENT OR COPYRIGHT INFRINGEMENT

6.1 Nothing in this Agreement will grant any intellectual property right and any right in or to the Disclosing Party's Confidential Information to the Receiving Party.

6.2 The Parties hereby agree that Confidential Information needs not to be novel, unique, patentable, copyrightable or constitutes a trade secret in order to be designated Confidential Information and therefore protected.

7. GOVERNING LAW

7.1 This Agreement shall in all respects be subject to and governed by and construed in accordance with Malaysian Law and any dispute arising on any basis from or under this Agreement shall be subject to the exclusive jurisdiction of the Malaysian Courts.

8. SIGNING AUTHORITY

8.1 The parties to this agreement represent and warrant to each other that they have the requisite corporate authority to enter into this Agreement and that the persons executing this Agreement on their behalf are duly authorized to do the same.

9. ENTIRE AGREEMENT

9.1 This Agreement may be executed in two counterparts, each of which when executed shall constitute an original and both of which together shall evidence the same agreement. This Agreement shall not come into effect until each Party has executed at least one counterpart.

9.2 No variation to this Agreement shall be binding or effective unless and until made in writing and executed by the authorized representatives of the parties.

10. SUCCESSORS BOUND

10.1 This Agreement will be binding upon and ensure to the benefit of the successors-in-title and permitted assigns of the parties.

11. INDEMNITY

11.1 The Recipient Party shall be liable for and shall indemnify (and keep the Disclosing Party indemnified) the Disclosing Party against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor client basis) and demands incurred by the Disclosing Party which arise directly or in connection with the Recipient Party's data processing activities under this Agreement, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non-compliance with any part of this Agreement by the Recipient Party.

12. STAMP DUTY

12.1 The stamp duty of this Agreement shall be borne by PDC TELCO.

13. NOTICES

13.1 Any notice, communication or demand required to be served by either party hereto on the other under the provisions of this Agreement shall be in writing and shall be sent by email, fax, post, courier or registered post. Any communication sent by email or fax shall be deemed received on the date of transmission, provided that the sender receives confirmation of receipt. Any communication sent by post, courier or registered post shall be deemed received on the third business day following the date of mailing.

14. ADVERTISEMENT

14.1 No advertisement in respect of this Agreement and the Purpose shall be published without the prior written approval of PDC TELCO.

15. TERMINATION

15.1 Either party may terminate this Agreement by virtue of mutual termination upon giving fourteen (14) working days' notice in writing.

15.2 Without limiting the generality of any other Clause in this Agreement, either Party may terminate this Agreement immediately by giving the other Party, fourteen (14) days' written notice if the other Party:

(a) is in breach of the terms and conditions of this Agreement and such breach is not remedied within fourteen (14) days of a written notification from the non-defaulting Party requiring the breach to be remedied;

(b) becomes threatens or resolves to become or is in danger of becoming subject to any form of insolvency proceedings whatsoever;

(c) ceases or threatens to cease conducting its business in the normal manner or appears to be at risk doing so.

15.3 Upon the end of this Agreement or termination of this Agreement, the Receiving Party or its directors, executive officers, management and representatives and all individuals associated with the Receiving Party, shall return or destroy the Confidential Information. The Parties' obligations under this agreement shall continue to apply after the end of this Agreement or termination of this Agreement.

16. MISCELLANEOUS

16.1 This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof and constitutes the entire agreement between the Parties with respect to the subject matter hereof.

16.2 The Parties understand that nothing herein requires either Party to proceed with any proposed transaction or relationship in connection with which Confidential Information may be disclosed. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.

16.3 The Disclosing Party is not under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose.

- 16.4 Neither Party shall have the right to assign nor novate all or part of its right, interest or obligations under this Agreement at any time to another third party. Save as aforesaid, any transfer or assignment or novation of either Party's right and obligations herein shall be subject to the other Party's written consent.

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