

## CONFIDENTIALITY AGREEMENT

This Agreement is made on [Enter date] (“Effective Date”) by and between:

### PARTIES:

1. **Digital Nasional Berhad** (Registration No: 201701005338 (1219503-P)), a company incorporated in Malaysia and has its registered address at Level 12, Exchange 106, Lingkaran TRX, Tun Razak Exchange, 55188 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur, Malaysia. (“DNB”)
2. [Enter details]  
 (“Access Seeker”)

DNB and the Access Seeker shall for the purpose of this Agreement be referred to individually as a “Party” and collectively the “Parties” as the context may require.

### 1. PREAMBLE AND DEFINITIONS

- 1.1 DNB and the Access Seeker intend to engage in discussions for the exchange of business and/or technical information relating to the Proposed Engagement (as hereinafter defined). Accordingly, it may be necessary for either Party and/or its representatives to disclose to the other Party, certain confidential and proprietary information.
- 1.2 In this Agreement, the following words will, unless the context otherwise requires, have the following meanings:  
“Agreement” means this agreement as amended from time to time.
- 1.3 “Confidential Information” means all information of a confidential or proprietary nature in connection with the Proposed Engagement in whatever form that is or has been disclosed by or on behalf of one Party to the other Party whether or not marked as confidential which includes but is not limited to the discussions between DNB and the Access Seeker, correspondence, minutes, contracts, tenders, technical drawings, schematics, samples, working/ testing instructions, products, services, sales, performances, plans, strategies, customers, financial or human resources, processes, management, contracts, project documentation, software, hardware, technical data, trade secrets, know-how, ideas and inventions (whether patentable or not), which is disclosed by or on behalf of one Party to the other in any manner, whether orally, visually or in tangible form (including, without limitation, hardcopy documents, devices and computer readable media). For the avoidance of doubt, Confidential Information also includes (a) all information that relates to a current, former or prospective customer; and (b) Personal data as defined under the Malaysian Personal Data Protection Act 2010 (or other applicable Privacy Law) that is in the possession of the disclosing or receiving Party.

“Parties” means the contracting parties to this Agreement and a “Party” means either of the Parties.

“Proposed Engagement” means assessing an Access Request and negotiating the terms of the Access Agreement as contemplated by the Reference Access Offer.

“Recipients” means, in relation to a Party, its directors, officers, employees and professional advisers who need to receive and consider the Confidential Information for the purposes of the Proposed Engagement.

- 1.3 Capitalised words used but not defined in this Agreement have the meaning given to them in the Reference Access Offer published by DNB on its website.
- 1.4 References to a person include any company, limited liability partnership, partnership, business trust or unincorporated association (whether or not having a separate legal personality) and references to a company shall include any company, corporation or any body corporate, wherever incorporated.
- 1.5 Whenever the words “include”, “includes”, “including”, “in particular” or “such as” are used, they are deemed to be followed by the words “without limitation”.
- 1.6 References to one gender includes all genders and references to the singular include the plural and vice versa.

### 2. CONFIDENTIALITY OBLIGATIONS

- 2.1 Subject to clause 3, each Party undertakes to the other Party that in respect of Confidential Information of the other Party, it will:
  - i. treat the Confidential Information as confidential;
  - ii. not disclose, copy, reproduce, distribute or supply the Confidential Information to any person or third party (including, for the avoidance of doubt, subcontractors of the respective Party) other than its Recipients on a need-to-know basis to the extent necessary in performing their obligations in connection with the Proposed Engagement; and
  - iii. not directly or indirectly use or permit or cause to be used the Confidential Information for any purpose other than in relation to the Proposed Engagement.
- 2.2 Subject to clause 3, neither Party will disclose to any person: (i) the existence or content of this Agreement; (ii) the fact that negotiations are taking place between the Parties relating to the Proposed Engagement; or (iii) any content of the negotiations; except with the prior written consent of the other Party.

- 2.3 Each party will not without the prior written consent of the other party: (i) disclose the details of their relationship with the other party; (ii) engage in any advertising, marketing or promotion that discloses the existence of this Agreement or the relationship between the Parties; or (iii) use names, brands, logos, service or trademarks of the other party.
- 2.4 Each party will not discuss the Proposed Engagement with, or provide access to any Confidential Information to, any persons or third parties (including to the other party's employees, directors, officers, professional advisors or subcontractors) who have not been identified by the other party in writing as participating in the Proposed Engagement.

### 3. EXCEPTIONS

- 3.1 Neither Party shall be liable for disclosure or use of any Confidential Information that it can demonstrate:
- i. was disclosed with the prior written consent of the other Party;
  - ii. is in the public domain other than as a result of being disclosed in breach of this Agreement;
  - iii. was lawfully known to it or in its possession before the date of this Agreement and that Party was not under any obligation of confidence in respect of the Confidential Information at that time;
  - iv. is developed independently by it without use or reliance on any Confidential Information disclosed by or on behalf of the disclosing Party; and
  - v. was received from a source not connected with the other Party at a time when that source, so far as the receiving Party was reasonably aware, was not under any obligation of confidence in respect of the Confidential Information.
- 3.2 A Party may disclose Confidential Information if and to the extent that it is required to do so by law or by any court or regulatory agency or authority, provided that, to the extent that it is permitted to do so, the disclosing Party:
- i. notifies the other Party as soon as possible upon becoming aware of any such requirements; and
  - ii. co-operates with the other Party (at the other Party's reasonable expense) to avoid or limit the content and extent of disclosure and to gain assurances as to confidentiality from the body to whom the information is to be disclosed.
- 3.3 A Party and any of its Recipients receiving from the other Party any other information of a confidential nature which is not in relation to the Proposed Engagement ("Non-Related Confidential Information" for the purposes of this clause) shall notify the other Party and shall not be liable for inadvertent disclosure of such Non-Related Confidential Information provided that:
- i. it uses the same degree of care in safeguarding such Non-Related Confidential Information as it reasonably uses for its own confidential information;
  - ii. it will return or destroy such Non-Related Confidential Information as requested by the other Party; and
- upon discovery of such inadvertent disclosure or use, it will endeavour to prevent any further inadvertent disclosure or use.

- 3.4 Notwithstanding anything in this Agreement, DNB may disclose the contents of this Agreement and related Confidential Information:
- i. to its shareholder, the Minister of Finance, Incorporated;
  - ii. to its third party service providers provided that such service providers are subject to confidentiality obligations in favour of DNB equivalent to those in this Agreement.

### 4. RETURNING CONFIDENTIAL INFORMATION

- 4.1 Subject to clause 4.2 and immediately following the earlier of: (i) the end of either Party's involvement with the Proposed Engagement; or (ii) receipt of a written request from the disclosing Party, the receiving Party will:
- i. at the election of the disclosing Party, return to the disclosing Party or destroy all documents and materials (including computer media) or such parts thereof that contain or reflect any Confidential Information together with any copies which are in the receiving Party's possession or control or are in the possession or control of any of its Recipients, provided that such information is in a form which is capable of delivery or destruction; and
  - ii. permanently erase all Confidential Information from any computer, word processor, mobile telecommunications device or similar device into which it was programmed or copied by or on behalf of that Party or by or on behalf of its Recipients.
- 4.2 Each Party may retain: (i) one copy of the Confidential Information for the purposes of and for so long as required by any law, court or regulatory agency or authority or its internal compliance procedures; and (ii) electronic files containing Confidential Information created pursuant to automatic archiving and back-up procedures.
- 4.3 Each Party acknowledges that neither the destruction, return nor deletion of any Confidential Information will release it from the obligations contained in this Agreement.
- 4.4 This Agreement shall not obligate either Party to enter into any other definitive agreement with each other in relation to the Proposed Engagement.

### 5. REPRESENTATIONS

- 5.1 Each Party will be responsible for making its own decisions in relation to the Confidential Information and acknowledges that neither the other Party nor any of its Recipients make any representation, warranty or undertaking, express or implied, as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.
- 5.2 Each Party understands that the furnishing of the Confidential Information will not constitute an offer of any nature whatsoever by any Party or Recipient, nor form the basis of any representation in relation to any contract. It is acknowledged by the Parties that this Agreement does not obligate either Party to enter into any further agreement or to proceed with or participate in any transaction or refrain from entering into any agreement or negotiations with any Party or constitute a commitment or any other obligation by either Party with respect to the

Proposed Engagement or any related transaction.

## 6. INTELLECTUAL PROPERTY

- 6.1 A Party and its Recipient shall not remove any confidential/proprietary rights legend from materials disclosing or embodying Confidential Information. A disclosing Party retains all rights in its Confidential Information. No license or conveyance of intellectual property right or any other right is granted to a Party or its Recipients or implied by the disclosure of the Confidential Information to a Party or its Recipients. The Parties acknowledge that the Confidential Information (including any intellectual property rights) disclosed shall remain the property of the owner or to the disclosing Party and no warranty as to its accuracy is given by the disclosing Party to the other Party or its Recipients.

## 7. GENERAL

- 7.1 Entire Agreement. This Agreement together with any documents referred to in it constitutes the entire agreement (and supersedes any previous written or oral agreement) between the Parties relating to the subject matter of this Agreement.
- 7.2 Notices. Any notices or communications required or permitted to be given under this Agreement may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other Party first indicated above (or such other addressee as may be furnished by the Party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (i) in the case of personal delivery or electronic-mail, on the date of such delivery, (ii) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (iii) in the case of mailing, on the seventh business day following such mailing.
- 7.3 Variation. This Agreement may not be varied or amended unless such variation or amendment has been expressly agreed to in writing by the parties.
- 7.4 Severability. If any provision of this Agreement shall be held illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way.
- 7.5 Indemnity. The receiving Party hereby indemnifies disclosing Party against all losses, damages, costs and expenses, which disclosing Party and/or its related entities may incur or sustain by reason of any breach by receiving Party of the terms and conditions of this Agreement.
- 7.6 Waiver. A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 7.7 Relief. The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law. Each Party

acknowledges that a right to damages at law may be inadequate to protect the other Party against any breach by them or by their Recipients of this Agreement. Without prejudice to any other rights and remedies otherwise available, each Party agrees that the other Party may seek injunctive relief against any breach of this Agreement and the Party against whom such injunctive relief is sought agrees not to oppose the granting of injunctive relief in favour of the other Party on the grounds of failure to prove actual damage.

- 7.8 No implied relationship. Nothing contained or implied in this Agreement creates a joint venture or partnership between the Parties or makes one Party the agent of legal representative of the other Party for any purpose.
- 7.9 Bribery, Corruption, Fraudulent Acts and Inducement. Each Party agrees and undertakes that it and its Recipients:
- i. shall comply with all ABAC Laws. For the purpose of this Agreement, "ABAC Laws" means laws and regulations relating to bribery and corruption including local laws such as the Malaysian Anti-Corruption Commission Act 2009, and foreign laws such as the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977;
  - ii. shall not, directly or indirectly give, make, offer or receive or agree to make or receive any payments, contributions, gifts, entertainment or other advantages for the purposes of obtaining or retaining business, of which a reasonable person would consider to be unethical, illegal or improper;
  - iii. shall not, offer, promise or pay a public official, either directly or through a third party, for the corrupt purpose of influencing any act or decision of any public official, inducing any public official to act in violation of a lawful duty, or inducing any public official to influence any act or decision of any governmental authority, to retain or direct business to, or obtain an advantage for any person, whether or not for the purpose of this Proposed Engagement; and
  - iv. shall comply with each Party's anti-corruption and anti-bribery policy and procedures as may be amended from time to time in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement.

7.10 Costs and Expenses. Each Party is to bear its own costs and expenses (if any) incurred in performing its obligations under this Agreement. The stamping costs of this Agreement (where applicable) shall be shared equally between the Parties.

- 7.11 Governing Law. This Agreement is governed by the laws of Malaysia. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration administered by the Asian International Arbitration Centre ("AIAC") in accordance with the AIAC Fast Track Arbitration Rules. In this regard, the seat of arbitration shall be Kuala Lumpur, Malaysia; the tribunal shall consist of one (1) arbitrator; and the language of the arbitration shall be English. Any decision by the arbitral tribunal shall be final and binding on the Parties.

The Parties have caused this Agreement to be EXECUTED by their duly authorized representatives.

Signed for and on behalf of **DNB**:

Signature: \_\_\_\_\_  
(Authorised Signatory 1)

Name: \_\_\_\_\_  
and date (Print Name) (Date of Signature)

Signature: \_\_\_\_\_  
(Authorised Signatory 2)

Name: \_\_\_\_\_  
and date (Print Name) (Date of Signature)

Signed for and on behalf of the **Access Seeker**:

Signature: \_\_\_\_\_  
(Authorised Signatory)

Name: \_\_\_\_\_  
and date (Print Name) (Date of Signature)