

## Bursa Malaysia Depository Services General Terms and Conditions

### 1 Scope

- 1.1 These General Terms and Conditions ("**Terms and Conditions**") govern your ("**Customer**") receipt of the services by Bursa Malaysia Depository Sdn Bhd (198701006854 (165570-W)) ("**BM**") prescribed in:
- (a) the relevant service schedules ("**Service Schedule**");
  - (b) the relevant annexures to the Service Schedule ("**Service Annexure**"); and
  - (c) the service request form duly completed by the Customer ("**Service Form**"),
- (collectively, the "**Service**").
- 1.2 In the event of conflict, the order precedence in descending order is: Service Form, Service Annexure, Service Schedule and these Terms and Conditions.
- 1.3 The Service is subject to the Customer fulfilling its obligations as prescribed in the Service Schedule.
- 1.4 The Customer shall ensure the accuracy and currency of the details contained in the Service Form.

### 2 Fees

- 2.1 The Customer will pay the prescribed fees ("**Service Fee**") for the Service and any other applicable fees, in the amount and in the manner prescribed in the applicable Service Annexure.
- 2.2 The Customer is responsible for all taxes, levies and duties imposed by the government of Malaysia in relation to the receipt of the Service, including but not limited to service tax ("**Taxes**").
- 2.3 The Service Fee and Taxes will be paid without deduction or withholding within the period prescribed in the invoice issued by BM. If no period is prescribed, the payment term is thirty (30) days from the invoice date. BM reserves the right to impose a late payment interest of eight percent (8%) per annum on any sums that are not paid by the due date.
- 2.4 No refunds will be given if the Service is terminated before the end of the period to which the Service Fee relate.
- 2.5 Any stamp duty, including any penalty, payable for entering into the Service will be borne by the Customer.

### 3 Confidentiality

- 3.1 Each party ("**receiving party**") shall:
- (a) treat all information indicated in writing as confidential by the other party ("**disclosing party**") as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the confidential information contained in those materials);
  - (b) not disclose any or all of the confidential information to any other person except as expressly set out in these Terms and Conditions or without obtaining the disclosing party's prior written consent;

- (c) not use or exploit any or all of the confidential information in any way except for the purposes anticipated under the Service; and
  - (d) immediately notify the disclosing party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any or all of the confidential information.
- 3.2 If the receiving party is required by law to make a disclosure of any of the confidential information, the receiving party shall as soon as reasonably practicable and to the extent permitted by law notify the disclosing party of the full circumstances of the required disclosure including the relevant law and/or regulatory body requiring such disclosure and the confidential information to which such disclosure would apply.
- 3.3 The receiving party will only disclose the confidential information on a confidential basis to its personnel, affiliates, sub-contractors and/or advisors who are directly involved in the Service and need to know the confidential information to enable performance of the receiving party's obligations under these Terms and Conditions. The receiving party remains responsible at all times for compliance with the confidentiality obligations set out in these Terms and Conditions by the persons to whom disclosure has been made.
- 3.4 This clause does not apply to information that is:
- (a) is publicly available;
  - (b) already in the receiving party's possession without confidentiality obligations;
  - (c) obtained by the receiving party from a legitimate source without confidentiality obligations; or
  - (d) independently developed by the receiving party.

#### **4 Personal Data Protection**

- 4.1 For the purpose of this clause, "**Personal Data Protection Laws**" means the Personal Data Protection Act 2010 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice registered or issued by the Personal Data Protection Commissioner.
- 4.2 Each party shall at all times comply with the Personal Data Protection Laws and shall not perform its obligations under these Terms and Conditions in such a way as to cause the other party to breach any of its applicable obligations under the Personal Data Protection Laws.
- 4.3 Each party shall implement adequate technical and organisational security measures to protect the personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.

#### **5 Electronic Communication**

BM may be required to communicate electronically. While BM will make reasonable efforts to ensure that any electronic communication is secure, it is possible that such communication can be accessed, read, modified, altered and/or transmitted by and to third parties without BM's authorisation.

**6 Warranties**

Unless prescribed in the applicable Service Schedule, the Service and any related services are provided on an “as is” and “as available” basis, without warranty of any kind, whether oral or written, express or implied. BM and its affiliates disclaim all implied warranties, including but not limited to warranties of title, non-infringement, merchantability, satisfactory quality or fitness for a particular purpose. BM does not represent or warrant that the Service will meet the Customer’s needs or requirements, in a manner selected for use by the Customer, that any information obtained through use of the Service will be accurate, complete or reliable, that use of the Service will be uninterrupted, timely, secure or error-free, or that all defects in the Service will be corrected.

**7 Limitation of Liability**

In no event shall either party be liable to the other party for any indirect, incidental, consequential or special, damages even if a party has been notified of the possibility of such damages (including but not limited to lost data, profits or opportunity). BM’s liability to the Customer for the Service shall be limited to actual damages and shall in no event exceed the Service Fee paid by the Customer in the preceding twelve (12) months of the event giving rise to the claim.

**8 Force Majeure**

In no event shall BM be liable or responsible to the Customer for any delay or failure to perform its obligations to the extent such delay or failure are due to acts beyond the reasonable control of BM.

**9 Suspension**

9.1 BM may suspend all or parts of the Service at any time upon notice if BM reasonably believes that:

- (a) a material breach occurs and not remedied within seven (7) days from the time the Customer was notified of it;
- (b) the Customer does not fully pay for the Service Fee and Taxes within the period prescribed in the invoice issued by BM;
- (c) the Customer’s use of the Service adversely affects the Service to BM’s other customer or BM’s or customer systems or data;
- (d) there are operational, security or technical risk to the Service or systems used for the Service; or
- (e) it is required to do so by applicable law or regulatory body.

9.2 The Customer remains liable for the Service Fee during the suspension.

9.3 BM will resume the suspended Service once the circumstances giving rise to the suspension have been resolved.

9.4 A reconnection fee may be imposed to resume the suspended Service.

**10 Termination**

10.1 Each party may terminate the Service at any time by giving at least thirty (30) days’ written notice (“**Termination Notice**”) to the other party:

- (a) if a material breach occurs and not remedied within thirty (30) days from the time the other party was notified of it;
- (b) if insolvency proceedings have commenced against the other party; or
- (c) a force majeure event beyond the reasonable control of either party endures for a continuous period of more than ninety (90) days,

and the Service shall then terminate on the date specified in the termination notice ("**Termination Date**").

- 10.2 BM may terminate the Service immediately if the Subscriber ceases to be a participant in the relevant market or ceases to be a customer of BM or its affiliates.
- 10.3 Unless otherwise prescribed in the applicable Service Schedule, either party may terminate the Service at any time after the expiry of the initial one (1) year term of the Service without assigning any reason by giving the Termination Notice and the Service will then terminate on the Termination Date.
- 10.4 Nothing in these Terms and Conditions shall prevent the parties from mutually agreeing to terminate the Service.
- 10.5 Any provisions which by their sense and context are intended to survive the expiry or termination of the Service shall survive the expiry or termination of the Service.

## **11 Assignment and Novation**

Each party shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to its rights, obligations or liabilities under these Terms and Conditions without other party's prior written consent, such consent not to be unreasonably withheld. BM may assign these Terms and Conditions to its affiliates upon written notice to the Customer.

## **12 Waiver and Cumulative Remedies**

Any waiver of a right or remedy under these Terms and Conditions must be in writing and signed by the waiving party's duly authorised representative. The rights and remedies under these Terms and Conditions are cumulative and do not exclude any rights or remedies provided by law, equity or otherwise.

## **13 Relationship of the parties**

These Terms and Conditions do not create a partnership, joint venture or employer-employee or principal-agent relationship between the parties.

## **14 Anti-fraud, bribery and corruption**

- 14.1 For the purposes of this clause, "**Anti-Corruption Laws**" refers to all anti-bribery and anti-corruption laws in any jurisdiction that is applicable to either party including the Malaysian Anti-Corruption Commission Act 2009 and any of its subsidiary legislation.
- 14.2 In connection with the matters contemplated by the these Terms and Conditions, each party represents and warrants to the other party that to the best of its knowledge, neither it nor any party acting on its behalf ("**Representatives**") have directly or indirectly offered, given, requested or accepted any bribe, kickback, payment, gift, or undue advantage from the other party or its Representatives which have the purpose or effect of breaching any Anti-Corruption Laws.

- 14.3 Each party undertakes that it and its Representatives shall at all times:
- (a) comply with Anti-Corruption Laws that are applicable to the respective parties;
  - (b) ensure that they do not directly or indirectly violate the Anti-Corruption Laws or cause the other party or its Representatives to breach or commit an offence or incur any liability under any Anti-Corruption Laws;
  - (c) establish, maintain and enforce policies, procedures and practices which are adequate to ensure compliance with the Anti-Corruption Laws and are consistent with best practices on the prevention of fraud, bribery and corruption; and
  - (d) keep appropriate records of its compliance with its obligations under this clause.
- 14.4 Each party shall promptly notify the other party if it becomes aware of any:
- (a) receipt of or request or demand for, any undue financial or other advantage of any kind by it; and/or
  - (b) giving of or intention to give any undue financial or other advantage of any kind or intention to give by it

whether directly or indirectly in connection with the subscribed services.

- 14.5 Each party shall be entitled to exercise its termination right pursuant to the termination clause in these Terms and Conditions if the other party materially breaches the obligations in this clause.

## **15 Severability**

Any provisions of these Terms and Conditions held to be unenforceable, illegal or otherwise invalid under the law will not affect the other provisions of these Terms and Conditions and these Terms and Conditions will be construed as if the unenforceable, illegal or invalid provisions had never formed part of these Terms and Conditions.

## **16 Further Assurances**

Each party will do all acts and execute all documents which are reasonably necessary to give effect to the meaning of these Terms and Conditions.

## **17 Entire Agreement**

These Terms and Conditions together with the Service Form, Service Annexure and Service Schedule constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements and understandings made between them in relation to its subject matter.

## **18 Amendments**

- 18.1 These Terms and Conditions, Service Annexure(s) and Service Schedule(s) may be amended from time to time and:
- (a) the latest version of these Terms and Conditions and/or Service Schedule(s) will be published on the Bursa Malaysia website; and
  - (b) the latest Service Annexure(s) will be sent to the Customer.

18.2 The Customer will be notified of any material amendments to these Terms and Conditions, Service Annexure(s) and Service Schedule(s) at least one (1) month before such amendments take effect. If the Customer continues with its current or future request for the Service after the amendments take effect, the Customer is deemed to have accepted such amendments.

18.3 If there is a change in any information that the Customer has provided in the Service Form or the Customer intends to change its selection in the Service Annexure(s), the Customer will update BM promptly of the changes or intended changes. The changes will take effect one (1) month after its written acknowledgement and acceptance by BM.

## **19 Notices**

19.1 Notices under a Service must be in writing and sent to the address and for the attention of the contact person set out in the Service Form.

19.2 Notices served under a Service is deemed received:

- (a) if sent by personal delivery, on the day of delivery;
- (b) if sent by prepaid registered mail, at the time recorded by the delivery service; and
- (c) if by facsimile transmission, upon receiving a confirmation report stating successful transmission of the facsimile,

provided that if delivery is after the business days and business hours of the recipient, delivery occurs on the next business day.

## **20 Governing Law and Jurisdiction**

These Terms and Conditions are governed by Malaysian law and the parties submit to the exclusive jurisdiction of the Malaysian courts.

## **21 Compliance with Laws**

Each party will comply with all law, statute, subsidiary legislation, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which that party is bound to comply.

## **22 Successors-in-title and Assigns**

These Terms and Conditions are binding on the parties and their successors-in-title and permitted assigns.

## **23 Time of the Essence**

Time wherever mentioned in these Terms and Conditions is of the essence.

## **24 Definitions and Interpretation**

In these Terms and Conditions, unless the context otherwise requires:

24.1 the singular includes the plural and vice versa;

24.2 reference to a gender includes the other gender and the neuter;

24.3 references to a person include an individual, company, body corporate, corporation,

- unincorporated association, firm, partnership or other legal entity;
- 24.4 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;
- 24.5 the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 24.6 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 24.7 the headings are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions;
- 24.8 references to Clauses are references to the clauses of these Terms and Conditions;  
and
- 24.9 references to these Terms and Conditions are references to these Terms and Conditions as amended from time to time.