

## Part G: BSI TERMS OF SERVICE

### Part 1 The Contract

The Contract under which BSI Services Malaysia Sdn Bhd is to provide services to you consists of the Proposal, these Terms of Service and one or more of the Appendices attached to it, depending on what is relevant to the particular services you are to purchase from BSI Services Malaysia Sdn Bhd.

The Appendices are:

- Appendix A – Testing & Notified Body Services
- Appendix B – Training

#### 1 Definitions

In these Terms of Service, these words have specific meaning:

- a) BSI Affiliate - a member of BSI's group is any company that is ultimately owned by The British Standards Institution, including The British Standards Institution itself.
- b) BSI/we/our – the BSI company with whom you have signed the Proposal.
- c) BSI Logos – means any trade mark, certification mark, design or device owned or controlled by BSI which you may be permitted to use under a limited licence provided by BSI.
- d) the Certificate – means the certificate of conformity granted to you by BSI;
- e) CE Marking – means the Conformité Européenne mark as regulated by relevant European legislation.
- f) the Contract – means the Proposal and these Terms of Service (including the Appendices, as may be relevant to the Services).
- g) Notified Body – means BSI acting under its accreditation issued by a relevant governmental organisation pursuant to a directive of the European Union for inspection and examination of a product, its design and manufacture.
- h) the Proposal- means the document describing the Services and containing these Terms of Service, provided to you by BSI, which you have signed.
- i) the Services – means the services described in the Proposal to be provided by BSI to you pursuant to the Contract.
- j) you / your – means the party who has signed the Proposal and who is buying the Services from BSI.

### Part 2 Code of Business Ethics and Anti-Bribery and Corruption Policy

BSI conducts its business strictly in accordance with its policies:

1. The Code of Business Ethics may be found here:

<http://www.bsigroup.com/upload/governance/business-ethics/bsi-code-of-business-ethics.pdf>

2. Anti-Bribery and Corruption may be found here:

<http://www.bsigroup.com/Documents/about-bsi/ethics-and-social-responsibility/bsi-anti-bribery-policy.pdf>

BSI employees, agents and other representatives are prohibited from giving or receiving money or gifts which could be construed as bribes or entering into arrangements that are construed as corrupt practices.

BSI has and will maintain in place throughout the term of the Contract policies and procedures to ensure compliance with its codes, and will enforce them where appropriate.

### Part 3 Your Duty to Provide Information

You acknowledge that your information is material to BSI providing the Services. Accordingly, you will provide to BSI and any assessor

appointed by BSI to conduct assessment services as part of the Services:

- a) full, complete and accurate information relevant to the Services;
- a) regular updates comprising full, complete and accurate details of any changes to the information since you first provided it to BSI (and, with regard to any adverse event that may affect the decision to issue a certificate, such updates must be provided immediately); and
- b) any additional information that BSI may request from you as being relevant to the Services.

This duty to provide and update information is a continuing one and lasts for the duration of the Contract. In particular, if BSI receives a complaint from a third party that, in the sole opinion of BSI, requires investigation, you will provide such information as BSI may reasonably request (including access to any relevant site) in order for BSI to so investigate it.

You undertake, warrant and represent that all information provided to BSI for the purpose of the Contract shall be true, accurate and complete, and not misleading. In providing the Services, BSI is entitled to assume that all information that you provide is true, accurate and complete in all respects and that you have complied fully with your duty to provide all relevant information. BSI will not investigate or confirm the truth, accuracy or completeness of any information provided by you and accordingly BSI accepts no liability for any losses, costs or damages suffered or incurred by you arising out of or in relation to the Services provided to you on the basis of information provided by you which is not true, accurate and complete in all respects or which is misleading.

### Part 4 Provisions relating to Assessments and Site Visits

This Part is relevant for all Services that may include assessments and site visits.

#### 1 Qualification and Selection of Assessors

BSI warrants that all assessments will be performed by appropriately qualified and trained assessors exercising the skill, care and diligence as may be reasonably expected of a reputable provider of similar services. In its sole and absolute discretion, BSI will select the appropriate assessors to perform the assessments. BSI may change the assessor at any time. In the event of a change in assessor by BSI, no additional fees will be charged to you.

You may request BSI to change the assessor with at least 30 days written notice prior to the commencement of an assessment, provided that you agree to pay any additional fees or expenses incurred by BSI in providing an alternative assessor. If no appropriate assessor is available, BSI may in its sole and absolute discretion refuse your request.

#### 2 Arrangement of Assessment Visits to your Sites

BSI will arrange visits to your site or sites as expressly described on the Proposal, or, if later, as may be expressly agreed with you in writing. Unless BSI determines that an unannounced visit is necessary, BSI will inform you of the assessment visits within a reasonable time in advance of the visits.

If the timetable for visits is determined by the relevant standard or scheme, you and BSI each agree to comply with that timetable. If the frequency of visits is not fixed by the relevant standard or scheme, BSI will arrange them at its reasonable discretion.

In each case, you will provide BSI and its assessor all reasonable access to all and any areas of the site, data and records, and any materials and equipment as the assessor deems reasonably

necessary in order to allow the assessor to undertake the assessment.

(Change of date of site visit) Either party may change the date of a visit. In order to do this:

- a) if you change the date of the visit: you must do so by giving not fewer than **30 days advance written notice to BSI**. If you fail to give the required written notice, you will be liable to pay **10% of the full audit fee** for the originally booked visit. Any **notice less than 15 days a 50% of the full audit fee will apply**. You may not delay the date of a visit if to do so would have the effect of invalidating your certification;
- b) if BSI changes the date of the visit: BSI may do this at any time up to 24 hours prior to the booked date of the visit, and BSI will contact you to agree a revised date.

In certain circumstances (such as non-compliance with the relevant standard or investigation pursuant to a third party complaint) it may be necessary for BSI to make additional visits. You will be liable for the fee for any additional visits at the assessment day rate set out in the Proposal.

### 3 Unannounced and Observed Visits

BSI will comply with any standard or scheme that requires unannounced visits. You will permit access to the relevant site on the arrival of an assessor as well as to all relevant information that may reasonably be required by the assessor.

BSI's assessor may be accompanied by a third party observer from time to time, who is to witness an assessment. BSI will inform you, as well as provide you with the identity of the observer, within a reasonable time prior to the visit. A third party observer will only accompany the BSI assessor if the third party observer is subject to confidentiality obligations at least to the same level as those to which BSI is bound. The fee for the visit will not be increased due to the visit being observed.

### 4 Assessors' Health and Safety

(Hazards) When an assessor attends your premises, you are responsible for ensuring that adequate information is given on the hazards and risks to which the assessor may be exposed. You will provide the assessor with an appropriate level of supervision as well as all necessary personal protective equipment. You will immediately notify BSI of any event, accident or incident on your premises which could pose a risk to an assessor.

(BSI's right to abort a visit) If, while on your premises, the assessor has reason to believe that you are not complying with the relevant health and safety rules, or that the assessor's safety is at risk in any way, then the assessor may abort the visit. BSI will report to you the reasons for the termination of the visit. In such an event, BSI will not be in breach of the Contract and you will be required to pay in full for the Services. BSI will not attend the affected premises again until it is satisfied that the issues so reported have been resolved.

### 5 Assessors' Entry Requirements

You must, at the time of arranging a visit, notify BSI of the health and safety rules and any other reasonable security requirements applicable to visitors to the premises. BSI will observe, or will use reasonable endeavours to procure the observance of, as far as it is reasonably able, all such health and safety rules and any other reasonable security requirements that you notify to BSI, and notify to the assessor on arrival at the site. If, by observing these rules and other requirements, BSI is prevented from providing the Services, BSI will not be in breach of the Contract and you will be required to pay in full for the Services. If the Proposal requires a visit to a third party's premises, you undertake, warrant and represent that you have a relationship with the third party that permits BSI to attend the premises of the third party for the purposes of the Contract.

## 6 Term of Proposal

If an initial assessment is not conducted within one year of the date of the Proposal due to any reason other than the fault of BSI, this Contract shall terminate insofar as it relates to Assessment and Site visits, and you will need to reapply for such services, which may be at other rates to the ones quoted to you in the Proposal.

## Part 5 Certificates and Reports

This Part is relevant for all Certificates and reports that BSI may issue or produce pursuant to the Services

### 1 Certificates

(No automatic right to a Certificate) The Contract does not give you an automatic right to a Certificate. You will be awarded a Certificate if the certification or testing process is successful, in BSI's absolute and sole judgement acting independently to your interests.

(BSI's right to refuse a Certificate, or to suspend or revoke it) At its sole and absolute discretion, BSI may refuse to issue a Certificate, or revoke or suspend an issued Certificate, if in its reasonable opinion:

- a) you do not meet, or fail to continue to meet, the relevant standard or regulation; or
- b) you amend any specification of the product of which the test item was representative and to which a Certificate relates; or
- c) you fail to disclose any information to BSI that may affect BSI's decision to issue or continue the Certificate; or
- d) you fail to comply with the continuing obligation to supply information; or
- e) you fail to pay any fees due to BSI under the Contract; or
- f) in the opinion of BSI, you use the Certificate in a manner that may be misleading or that may bring BSI into disrepute.

If BSI revokes an issued Certificate, you will refrain from representing that the revoked Certificate is valid.

(Ownership) BSI will at all times remain the owner of a Certificate. BSI grants you a limited non-exclusive licence to display the Certificate (and any accompanying BSI logo or certification mark) at your premises or on your products (but only in so far as the scope of the Certificate is relevant) for so long as the Certificate remains valid. You may not sub-license or transfer the right to display the Certificate (or the accompanying BSI logo or certification mark) to any other party. You may not amend the content or change the appearance of the Certificate or the BSI logo or certification mark.

(Change of details on a Certificate) If you wish to change any details on a Certificate, you will notify BSI of the required changes. If, in the reasonable opinion of BSI, such changes will not affect the validity of the Certificate, BSI may issue a revised Certificate on the same terms and for the same period of validity as the replaced Certificate. BSI will charge you and you shall pay an administration fee to be determined by BSI from time to time.

(Publication of your certification status) BSI may put into the public domain (either on a web site or by any other manner that BSI may, at its sole and absolute discretion, determine) your name, the scope of your certification, as well as details of the issuance, suspension, revocation or termination of a Certificate.

### 2 Certification Reports

(Ownership) BSI will at all times remain the owner of a certification report. BSI grants you a non-exclusive limited licence to use the certification report in support of the Certificate for so long as the accompanying Certificate remains valid. On termination of the Contract for any reason, or on the expiry, suspension or revocation of the relevant Certificate, the certification report will be cancelled.

(Your disclosure of the certification report) If you disclose a certification report to any third party, it must not be amended, abridged, or presented in any form other than that prepared by BSI at the time of its creation. If you do disclose the certification report, you agree to indemnify and hold harmless BSI and BSI Affiliates against all cost or losses suffered or incurred by BSI or BSI Affiliates due to claims, demands, suits, proceedings, actions, losses, judgments, damages, costs including all reasonable legal fees), expenses, fines or penalties or actions against BSI or BSI Affiliates arising out of or relating to a third party's reliance on the certification report, whether disclosed to that third party with the prior written consent of BSI or not.

## Part 6 General Provisions for All Services

### 1 Use of Marks

On you being successfully issued with a Certificate by BSI, BSI licenses you to use the BSI Logos on a non-exclusive, royalty-free basis. The licence is personal to you. You may not sub-licence the use of the BSI Logos to any third party. You may not tamper with or change the appearance of the BSI Logos. You may only display the BSI Logos in accordance with the instructions of BSI.

If the Contract is terminated, a Certificate expires or is withdrawn or cancelled by BSI, your licence to use the BSI Logos shall immediately terminate. Further, BSI may cancel a licence granted to you to use the BSI Logos at any time for any or no reason with immediate effect. Upon cancellation of the licence you will immediately cease to use the BSI Logos and discontinue any reference to the BSI Logos in any materials.

### 2 Fees and Payment

(Payment terms) You will pay every invoice submitted to you by BSI within the number of days stated on the Proposal (or, in the case of training services, at least 10 working days before the start of the relevant training course) in full and in cleared funds to a bank account nominated by BSI.

(Fees and Expenses) The fees for the Services will be set out in the Proposal. In addition, BSI will charge 10% handling fee for arranging travel (flight) and accommodation at costs in providing services and any out-of-pocket expenses reasonably incurred. (such as local travel, subsistence and other costs and other expenses).

(Increase in fees) BSI may increase its fees annually 3% plus CPI Inflation rate quote from Bank Negara Malaysia by given you notice. If we increase our fees and you do not accept the increase, you may terminate the Contract by notifying BSI in writing not more than 30 days following the date of BSI's notice to you regarding the fee increase. If you terminate, you will be liable for all fees and expenses up to the effective date of termination which shall be the date on which BSI receives your notice to terminate. If you do not notify BSI of your intention to terminate the Contract within 30 days following the date of BSI's notice to you regarding the fee increase, then you will be deemed to have accepted the fee increase, which shall take effect 45 days from the date of BSI's notice to you.

(VAT or general sales tax) All amounts set out in the Proposal or payable by you under the Contract are exclusive of sales or value added tax or other tax that may be applicable at the time of invoice. If applicable, you will, on receipt of a valid tax invoice from BSI, pay to BSI such additional amounts in respect of tax as may be chargeable at the same time as payment is due for the supply of the Services.

(Interest on overdue amounts) If you fail to make a payment due to BSI under the Contract by its due date as set out in the Proposal, BSI may charge interest on the overdue amount at the rate of 2.5 per

cent a year above the then current base rate of BSI's bankers, accruing on a daily basis from the due date until the date of actual payment, which will be compounded quarterly.

(If a third party is to pay) If you arrange for a third party to pay any of BSI's fees or charges, you remain liable to the extent that the third party does not pay in full by the due date.

### 3 Remedies, Waiver and Rights of Third Parties

A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall preclude or restrict the further exercise of any such right or remedy.

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law governing the Contract.

A person who is not a party to this agreement shall not have any rights under or in connection with it.

### 4 Appeals and Complaints

If you wish to appeal a decision made by BSI, you must serve written notice of your intention to appeal within 21 days of receipt of the BSI decision. Your notice must be addressed to the Compliance and Risk Director at BSI.

Once your notice of appeal has been received, the Compliance and Risk Director at BSI will notify you of the procedure under which your appeal will be heard. All appeals are heard by an independent appeals panel, established under the accreditation rules governing BSI. The decision of BSI will remain in force pending the decision of the appeals panel. A decision made pursuant to the appeals procedure shall be final and you and BSI each agree to adhere to that decision.

If you have a complaint about the service that you are receiving from us, then please contact your normal BSI contact. We have internal procedures to meet the complaints of our customers and you will be informed of the relevant procedures should you make a complaint.

### 5 Limitation of BSI's Liability

Notwithstanding any other provision of this Contract, neither party's liability under or in connection with this Contract shall be excluded or limited to the extent that such exclusion or limitation is not otherwise permitted by law.

Subject to this, BSI will not be liable to you for any loss of profit, loss of goodwill, or any indirect or consequential loss arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise; and the total liability of BSI to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will not exceed an amount equal to the annual fees payable by you under the Contract in relation to the Services giving rise to the liability. This limitation of BSI's liability will survive termination of the Contract.

### 6 Force Majeure

Save with respect to your obligation to pay all fees and expenses pursuant to Section 2 of Part 6 of this Contract, neither you nor BSI will be in breach of the Contract if it is not reasonably possible to perform an obligation under the Contract due to circumstances beyond that party's reasonable control. In such circumstances the affected party will be entitled to a reasonable extension of the time for performing such obligations. If the period of non-performance

continues for eight weeks, the party not affected may terminate the Contract by giving 14 days' advance written notice to the other party.

#### 7 No Partnership or Agency

Nothing in this Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### 8 No Assignment

Unless specifically permitted in any of the Appendices attached, the Contract is personal to the parties and neither party may assign, transfer, charge, mortgage, subcontract, or deal in any other manner with any or all of its rights and obligations under the Contract. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Notwithstanding the preceding paragraph, BSI may assign, transfer or subcontract any or all of its rights and obligations under the Contract to a BSI Affiliate.

#### 9 Termination

Our Contract shall continue to run until it is terminated by either you or BSI.

(On notice) Either party may terminate the Contract at any time by giving the other party not less than 60 days' notice of its intention to end the Contract. In the event of termination of this Contract for any reason any annual management fee paid (if applicable to you) and the application fee are non-refundable.

(Immediately by BSI on notice) Without prejudice to any rights that have accrued under the Contract, BSI may terminate the Contract:

- a) with immediate effect if you fail to pay any amount under the Contract on the due date for payment and it remains unpaid 7 days after BSI has notified you to make such payment; or
- b) if you breach any material obligation of the Contract and such breach remains unremedied, if such breach is capable of remedy, after thirty (30) days from the date of notification to you by BSI of such breach, or immediately upon notice to you by BSI if such breach is incapable of remedy; or
- c) with immediate effect if, in the reasonable opinion of BSI, you act in such a manner that may bring the reputation of BSI into disrepute; or
- d) with immediate effect if you are unable to pay your debts as they fall due, or you suspend the payment of your debts, or you make a proposal to your creditors to reschedule any of your debts; or you take any action in connection with your winding up or suffer the appointment of an administrator or an administrative receiver; or someone takes action to attach or take possession of any of your assets; or you stop the business you were doing at the time of entering into the Contract; or you become insolvent or are wound up; or any event occurs, or proceeding is taken, in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in this paragraph.

(Payment of outstanding amounts) All amounts payable by you to BSI under the Contract will become due immediately upon termination of the Contract for whatever reason.

#### 10 Non Disclosure of Confidential Information

Confidential Information means all information of a confidential nature relating to your business that is disclosed to BSI in connection with the Services, but does not include information that:

- a) is or becomes generally available to the public (other than as a result of its disclosure by BSI in breach of the Contract); or
- b) was known to BSI before you disclosed it; or
- c) you have not treated as confidential or have agreed with BSI is not confidential or may be disclosed.

BSI will keep Confidential Information confidential for a period of 6 years after it has received it and will not use or disclose it except:

- d) for the purpose of exercising or performing its rights and obligations under the Contract; or
- e) to the extent required by law, or by any governmental or other regulatory authority or accreditation authority, or by a court or other authority of competent jurisdiction.

In these cases, BSI will not be required to notify you of such disclosure and will not be required to oppose any demand made by such entities.

#### 11 Entire Agreement

The Contract constitutes the entire agreement between you and BSI and supersedes and extinguishes all previous drafts, agreements, warranties, arrangements and understandings, whether written or oral, relating to its subject matter. Each party acknowledges that, in entering this Contract it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding that is not set out in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

If there is an inconsistency between any of the provisions of the Contract and the provisions of any master services agreement, purchase Proposal, your standard conditions of purchase or any other document stated to be produced relating to the Services or the Contract, the provisions of this Contract will prevail.

No variation of or amendment to the Contract will be effective unless it is in writing and signed by an authorized representative of each party.

#### 12 Severance

If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.

If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 13 Notices

A notice required to be given to a party under or in connection with the Contract must be in writing and sent to the party at its address on the Proposal. Unless expressly prohibited by the Proposal, notices may be sent by email.

#### 14 Governing law and Jurisdiction

The law of Malaysia governs the Contract and any disputes or claims arising out of it.

The Malaysia courts have exclusive jurisdiction to settle any dispute or claim that arises out of the Contract.

The Contract has been entered into on the date of your signature of the Proposal.