

**“CONFIDENTIAL”**

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## **CONFIDENTIALITY AGREEMENT (MUTUAL)**

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**“CONFIDENTIAL”**

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This Agreement is made on the      day of      20

**BETWEEN:**

**SARAWAK ENERGY BERHAD** (Company No. 007199-D), a company incorporated and registered under the laws of Malaysia and having its registered office at Menara Sarawak Energy, No.1 The Isthmus, 93050 Kuching, Sarawak in Malaysia ("**Sarawak Energy**")

AND

**[INSERT NAME OF COUNTERPARTY]** (Company No. *[insert Company No.]*), a company incorporated and registered under the laws of *[insert country of registration]* and having its registered office at *[insert registered office address]* (the "**Counterparty**")

individually referred to as a "**Party**" and collectively as the "**Parties**"

**RECITALS:**

- A. Sarawak Energy and the Counterparty wish to engage in certain discussions and / or dialogue and, as a result or in the course of these particular discussions and / or dialogue, the Counterparty may acquire or become privy to Confidential Information.
- B. In consideration of the matters agreed to by the Parties, which are set out in this Agreement, each party agrees to keep all Confidential Information confidential and to be legally bound by the terms set out in this Agreement.

**AGREEMENT:**

Sarawak Energy and the Counterparty agree as follows:

**1 Definitions and Interpretation**

- 1.1 In this Agreement, the following words and expressions shall have the meanings stated:
  - (a) "**Agreement**" means this document (including any appendices to this document);
  - (b) "**Confidential Information**" means any Information, irrespective of the medium in which such Information is conveyed, communicated or embedded, which is:
    - (i) either:
      - (A) disclosed to one Party (whether before or after the date of this Agreement) to the other Party; or

(B) acquired directly or indirectly by one Party from or on behalf of the other Party,  
in connection with the Permitted Purpose; and

(ii) not otherwise being in the public domain,  
and, for the avoidance of doubt, the Parties also agree that:

(iii) Information shall not be deemed to be in the public domain by reason that any part of such information is already embodied in general disclosures or because individual features, components, or combinations of the Information are now known to the public; and

(iv) the Confidential Information shall include:

(A) this Agreement;

(B) the Permitted Purpose; and

(C) any copy (including electronic or softcopy) of the Confidential Information;

(c) **"Government"** means the federal government of Malaysia, the government of Sarawak or provincial government (as the case may be);

(d) **"Government Authority"** means the Government, any governmental department, state owned entity, ministry, commission, board, bureau, agency, regulatory authority, instrumentality, judicial, legislative or administrative body of Sarawak or Malaysia, or any subdivision of any of them;

(e) **"Information"** means any information which is provided by one Party to the other Party and includes the following:

(i) any operational, technical, operational business and financial information; and

(ii) any ideas, data, instructions, plans, specifications, formulae, know-how, opinions, studies (including feasibility studies), surveys, experience, inventions, techniques, technology, computer software, designs, copyright, drawings, charts, sketches, process descriptions, reports, developments, results, technical advice, intellectual property rights, trade secrets and any other technical, commercial or other information, whether

in writing or in documentary, visual, oral, machine readable, electronic or other form or recorded on tape or other media;

- (f) "**Laws**" means all federal, national, state or local laws, legislation, statutes, acts, decrees, rules, ordinances, codes, judgements, orders, treaties, regulations, guidelines, directives, requirements, by-laws, codes of practice and other laws, government restrictions, announcements or interpretation and other subordinate legislation, enacted or issued by any legally constituted federal, national, state, local, statutory or Government Authority as may apply at any time in Malaysia;
- (g) "**Media Outlet**" means any person or entity that publishes, broadcasts or transmits information to third parties, including the public at large, via any means of communication whatsoever, including print media, web-based media, television or radio broadcast, or any other means (and including any recording or reproduction of such information);
- (h) "**Permitted Purpose**" has the meaning given in the Appendix; and
- (i) "**Sarawak**" means the State of Sarawak, Malaysia.

1.2 In this Agreement, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) "day" means a calendar day, "month" means a calendar month and "year" means three hundred and sixty five (365) days;
- (d) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (e) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (f) references to "include", "includes" and "including" shall not be construed restrictively but shall be read to mean "include / includes / including without limitation";
- (g) references to any Clause and Appendix are references to the clauses and appendix of this Agreement;

- (h) where a word, term, phrase or abbreviation is defined, another part of speech or grammatical form in respect of that word or expression will have a corresponding meaning;
- (i) a reference to anything (including an amount) is a reference to the whole and each part of it;
- (j) whenever the date for the performance of any term, condition, obligation, covenant, agreement or provision required or provided under this Agreement falls on a date that is not a working day (being a day on which banks are not generally open for business in Sarawak), such date shall be extended to the next working day;
- (k) words importing persons or parties shall include firms and corporations and any organisation or entity having legal capacity; and
- (l) marginal words and other headings shall not be taken into consideration in the interpretation of this Agreement.

## 2 **Confidentiality Obligations**

### 2.1 Each Party irrevocably agrees that it shall:

- (a) use any Confidential Information disclosed to it by the other Party only in connection with the Permitted Purpose and not for any other reason;
- (b) hold the Confidential Information disclosed to it by the other Party in absolute confidence and secrecy, in accordance with the provisions of this Agreement and the highest ethical and international business practices;
- (c) not in any manner, in whole or in part, copy, reproduce, disseminate, disclose, or cause or permit the disclosure of any Confidential Information except:
  - (i) to its employees, who have, on account of the Permitted Purpose, a clear and strict need to have access to the Confidential Information;
  - (ii) with the prior written consent of the other Party; and / or
  - (iii) where the Confidential Information is required to be disclosed under any applicable Laws, including the rules of any applicable listing authority or stock exchange on which the Party's shares are listed;
- (d) notify the other Party immediately if it suspects, or become aware of, any

unauthorized use, storage, copying or disclosure of the Confidential Information; and

- (e) do anything reasonably required by the other Party to prevent or stop a breach or threatened breach of this Agreement or an infringement or threatened infringement of the other Party's right arising out of this Agreement by any person, whether by court proceedings or otherwise.

2.2 If the Party must make a disclosure referred to in Clauses 2.1(c)(i) or 2.1(c)(ii), then such disclosure shall be limited in nature such that it shall strictly only be on a "need to know" basis and no other.

2.3 If a Party must make a disclosure referred to in Clause 2.1(c)(iii):

- (a) that Party must take all lawful measures available to restrict such disclosure;
- (b) that Party must disclose only the minimum Confidential Information required, in order to comply with any applicable Laws; and
- (c) before making such disclosure, the Party making the disclosure must:
  - (i) give the other Party reasonable notice of the full circumstances of the required disclosure and the Confidential Information which it proposes to disclose; and
  - (ii) consult with the other Party as to the form and the extent of the proposed disclosure.

2.4 Each party agrees and covenants with the other Party that it shall not disclose, either directly or indirectly, any Confidential Information to any Media Outlet without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed).

2.5 Where requested by the other Party, each Party shall, and shall procure that all persons to whom it has disclosed Confidential Information shall, at the its own expense, within seven (7) days of receipt of a written demand from the other Party:

- (a) destroy and / or return to the other Party (as may be requested in the circumstances by the other Party) the Confidential Information, together with all notes or memoranda of conversations relating to the Confidential Information and any documents containing analyses, studies, compilation and other materials derived from the Confidential Information; and

- (b) provide a certificate signed by its director or authorised officer confirming compliance with the obligations contained in this Clause 2.5.

### **3 Continuing Obligations**

This Agreement shall continue, without limitation in time, and, for the avoidance of doubt, the obligations of both Parties, which are set out in this Agreement, shall survive notwithstanding:

- (a) the fact that any process (including any pre-qualification process, request for proposal process or tender process) to which the Permitted Purpose relates has concluded;
- (b) the termination of this Agreement (for whatever reason); and / or
- (c) any request received by any Party pursuant to Clause 2.5.

### **4 Confidential Information Provided by Sarawak Energy**

4.1 Each Party acknowledges and agrees that:

- (a) all Confidential Information will be provided to the other Party without any express or implied representations or warranties by the other Party as to its completeness, correctness and / or accuracy;
- (b) the other Party has no liability whatsoever to the Party as a result of the use of the Confidential Information; and
- (c) any reliance placed by the Party on the Confidential Information provided by the other Party is to be at the risk of the Party.

### **5 Intellectual Property**

5.1 Any intellectual property in the Confidential Information which has been disclosed by one Party to the other shall remain the property of the Party making the disclosure, notwithstanding any use of the Confidential Information by the other Party or incorporation of the Confidential Information into any document, analysis or report (whether written or electronic).

5.2 Nothing contained in this Agreement shall prejudice or otherwise limit the rights of either Party in respect of any intellectual property in the Confidential Information.

5.3 This Agreement shall not be construed to:

- (a) grant either Party any licence or rights in respect of the intellectual property in any Information (including the Confidential Information) which has been disclosed to; or
- (b) require either Party to disclose any Information (or the intellectual property in any Information) to the other Party.

## 6 **Indemnity**

Each Party agrees to indemnify and hold harmless the other Party against all actions, claims, suits, liability, damages, costs, charges and expenses in connection with, or arising out of any:

- (a) breach of a Party's obligations under this Agreement;
- (b) failure by a Party to ensure compliance by any employee, third party or person with the terms of this Agreement; and / or
- (c) infringement of the other Party's intellectual property rights in respect of the Confidential Information.,

provided that the indemnified Party has taken all reasonable, necessary measures to mitigate any liability, damages, costs, charges and expenses that may be suffered or incurred or arisen out of any breach, failure or infringement under this Clause 6 (as the case may be).

## 7 **Assignment**

Neither Party may assign, novate or otherwise transfer, in whole or in part, any of its rights, interests or obligations under this Agreement without the prior written consent of the other Party, which must not be unreasonably withheld or delayed.

## 8 **Remedies and Waiver**

- 8.1 Each Party acknowledges and agrees that any breach of its obligations under this Agreement shall entitle the other Party to seek immediate relief, to the fullest extent permitted under any applicable Laws.
- 8.2 Each Party further acknowledges and agrees that any breach of its obligations under this Agreement may cause the other Party irreparable harm, loss, injury or damage (including damage to other Party's reputation), the extent of which may be impossible to ascertain and which cannot be fully compensated through the payment of monetary damages.

- 8.3 Without prejudice to any other rights or remedies that the other Party may have under any applicable Laws, each Party acknowledges and agrees that the other Party may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is, would be or could reasonably be perceived to be in breach of this Agreement.
- 8.4 Nothing contained in this Agreement shall be construed as prohibiting either Party from pursuing any other remedies which may be available to it, under or pursuant to any applicable Laws, in addition to those specific remedies which are set out in this Agreement.
- 8.5 Failure by a Party to exercise or enforce, a delay by the other Party in exercising or enforcing, or the partial exercise or enforcement by a Party, a particular right, whether that right exists under this Agreement or otherwise at Law, shall not preclude, or operate as a waiver of:
  - (a) the exercise or enforcement; or
  - (b) further or future exercise or enforcement,of that right by that Party.
- 8.6 A waiver or consent given by either Party under this Agreement shall only be effective and binding if given or confirmed in writing.

## 9 General

- 9.1 This Agreement shall be governed by the laws of Malaysia, as applicable in Sarawak.
- 9.2 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Sarawak for the resolution of any disputes arising out of or in connection with this Agreement, which cannot otherwise be resolved or settled through amicable discussion between the Parties.
- 9.3 To the extent permitted by any applicable Laws, this Agreement:
  - (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties in relation to its subject matter; and
  - (b) supersedes all prior communications, negotiations and any prior agreement (written or oral) of the Parties.
- 9.4 A variation of this Agreement is valid only if it is in writing, is dated, expressly refers to this Agreement and is signed by duly authorised representatives of the Parties.

- 9.5 Each Party shall bear its own costs and expenses incurred in connection with the preparation and execution of this Agreement.
- 9.6 If any provision of this Agreement is or becomes illegal, invalid, unenforceable or void in any relevant jurisdiction, the legality, validity, enforceability and validity of the remainder of this Agreement will not be affected (unless incapable of being operable in the absence of such provision) and this Agreement will be read as if the part had been deleted in that jurisdiction only.
- 9.7 This Agreement may be entered into by the Parties in a number of counterparts, all of which shall, together, constitute the same instrument.
- 9.8 The language for all communications shall be English.
- 9.9 All correspondence, notices, requests for clarifications or other communications relating to this Agreement shall be in writing and sent by courier, personal delivery or by electronic means, with any such correspondence, notices, requests for clarifications or other communications to be deemed to have been effectively given, if:
  - (a) sent to an address in the city of despatch, upon the expiry of three (3) days after the day of despatch;
  - (b) sent to an address elsewhere within the same country, upon the expiry of seven (7) days after the day of despatch;
  - (c) sent to an address which is overseas, upon the expiry of ten (10) days after the day of despatch; or
  - (d) delivered by personal delivery or sent by electronic means:
    - (i) if it is delivered or sent by 3:00pm (at the place of receipt), on that day; or
    - (ii) otherwise, on the following day.

This Agreement is executed by the Parties as follows:

Signed for and on behalf of **SARAWAK ENERGY BERHAD** by its authorised representative in the presence of:

.....

Signature of authorised representative

.....

Name of authorised representative

.....

Designation of authorised representative

.....

Signature of witness

.....

Name of witness

.....

Designation of witness

Signed for and on behalf of ..... by its authorised representative in the presence of:

.....

Signature of authorised representative

.....

Name of authorised representative

.....

Designation of authorised representative

.....

Signature of witness

.....

Name of witness

.....

Designation of witness

## APPENDIX – PERMITTED PURPOSE

The purpose of this Non-Disclosure Agreement is to ensure the protection and confidentiality of all information disclosed throughout the entire Request for Proposal (RFP) process for the Cascading Power Systems (CPS) initiative. This includes all data, documents, analyses, and materials shared or developed from the feasibility study stage through engineering and design, construction, commissioning, and subsequent operational phases. The Parties agree that such information shall be used solely for evaluating and undertaking activities related to the CPS RFP and shall not be disclosed or utilized for any other purpose without prior written consent