

EXPLANATORY AND WARRANTIES

INTRODUCTION

This Explanatory and Warranties contains the definition and interpretation together with the warranties, representations and undertakings by you to be referred in the relevant letters, documents and/or agreement (collectively refer to as the “**Agreement**”) for any relationships, appointments, authorizations, contract and/or such other businesses transactions of similar kinds and nature (collectively referred to as the “**Arrangement**”) with 98 Percent Sdn. Bhd. [201901002087(1311413-W)] and all companies included in the group of companies of 98 PERCENT (henceforth referred to as “**98 Percent**” or “**the Company**”)

IMPORTANT: This Explanatory and Warranties shall be read, construed and formed as part of the Agreement and the Code of Ethics, Intellectual Property & Confidentiality Undertaking (“**Codes**”) with the Company.

1. **DEFINITIONS AND INTERPRETATION**

1.1 **DEFINITIONS**

In this Agreement, unless the contrary intention appears,

“Appropriate Authority” means any Federal, State or Local Government, semi-government, quasi-government or other body or authority, statutory or otherwise, land authorities, local authorities, utility and service providers of Malaysia including but not limited to all privatized corporations or bodies and persons authorised to act on its behalf.

“Authorised Recipient” means

- (a) any of the following who needs access to Information for the Agreement and/or Arrangement:
 - i. an officer or employee of the Recipient;
 - ii. a subsidiary of the Recipient; and
 - iii. an officer or employee of a subsidiary within sub-paragraph (ii) above;
- (b) any of the following who needs access to Information for the purposes of providing his services to the Recipient or its subsidiaries in connection with Agreement and/or Arrangement:
 - i. any professional adviser of the Recipient (see Confidential Information); and
 - ii. any professional adviser of a subsidiary within sub-paragraph (a)(ii); and
- (c) if consent is given to any disclosure of Information under the exception pursuant to the provision of the Codes any person to whom the disclosure is made in accordance with that

EXPLANATORY AND WARRANTIES

"Confidential Information"	<p>consent.</p> <p>means all the discussions between the Parties in relation to the Agreement and/or Arrangement, and all information or data disclosed (whether in writing, orally, by inspection, access, or by any other means) by 98 Percent or the Company ("Discloser") to the authorized reseller/supplier/business partner/agent of this Codes ("Recipient") or by an authorised third party on behalf of the Discloser in respect of or arising from the Purpose for information, technical, or know-how considered proprietary to the Discloser which includes, but not limited to the recipe, ingredients, marketing research, software and system operation, all codes of the software and system, details of the services offered to customer, all business developments, inventions, all kinds of processes and methods (without limitation to specifications, designs, drawings, diagrams, engineering, marketing techniques, mass works, documentation), customer information and data, pricing information, both business and internal operation procedures and policies, all data of the company, concepts, financial and marketing information, sales and purchasing information, manufacturing, operational, strategic planning, budgeting and other information belonging to the Discloser.</p>
"Default Damages"	<p>means the agreed compensation to the Company by you in the event of termination of the Agreement and/or Arrangement due to your default for an amount equivalent to the total profits received by you within <u>two (2) years</u> period before the date of default occurs or a sum of RM200,000.00 (whichever is higher)</p>
"Force Majeure"	<p>means any strike, lock out or lock down, civil commotion, labour dispute, Act of God, restrictions, regulations or control imposed by any Act of Parliament, enforcement and administration of any rule, ordinance, proclamation or order issued by any competent authority, enemy or hostile government action, general chaos, act of war, combination of workmen, shortage of resource, material or labour, curfew, rationing or the regulation or prohibition of the use of any material, fuel, hours of work or award, priority allocation, emergency, riot, pandemic, fire, natural disaster (without limitation to earthquake, flood, storm, tempest, landslide, landslip, volcanic eruption, hurricane, inclement weather) or other circumstances of whatever nature beyond control of the Parties hereof</p>

EXPLANATORY AND WARRANTIES

“Events of Default”	<p>means occurrence of the followings event:</p> <ul style="list-style-type: none">(a) Breach of any material provision of the Agreement and/or Arrangement by you which is capable of remedy and you have failed to rectify the said breach within thirty (30) days after being notified in writing by the Company of the breach; or(b) You have in breach or attempted/caused to breach the Codes; or(c) You have and/or threaten/attempted/caused to unilaterally terminates the Agreement and/or Arrangement without the written consent of the Company before the expiry of applicable agreed period of the Agreement and/or Arrangement; or(d) You have been judicially adjudged bankrupt (as an individual); or(e) You have been judicially determine to be insolvent (as a corporation in the definition of the Companies Act 2016); or(f) You have became the subject of any writ of execution or distress, attachment or disposition; or(g) You, as a corporation, have voluntarily goes into liquidation or judicial managements; or(h) You, as a corporation, enters into reconstruction and amalgamation; or(i) You enters into a compromise arrangement or composition with its creditors or assigns; or(j) any warranty or representation in or given by you in the Agreement and/or Arrangement is or becomes false, misleading or incorrect in a material aspect when made or deemed to be made under this Agreement and/or Arrangement; or(k) You are prohibited from continuing with the Agreement and/or Arrangement by any rule or regulation or directive having the force of law.
“General Notice Period”	<p>means one (1) calendar month before a desired effective date for the written notice to be send by the issuer.</p>
“Group of Companies”	<p>means the Company’s parent company, subsidiaries, affiliates and any subsidiaries of the parent company.</p>

EXPLANATORY AND WARRANTIES

- “Intellectual Property”** means the rights subsisting in patents, trademarks, trade names, logo signs, symbols, emblems, insignia, fascia, slogan copyrights, know-how, information, processed and/or analyzed data, drawing plans and Materials (see definition of Materials)of the Company whether registered or capable to be registered and all other related proprietary rights;
- “Materials”** Means any software, source code, computer programmes, electronic and/or mobile application, literature, artwork, logos, images, sketches, photographs, music, sounds, look and feel, designs and/or any other content / materials provided, developed, is associated with and/or used by the Company;
- “Related Party”** Means either Party’s (as the case maybe)
a) directors, representatives, officers, employee, advisers, agents, consultant and contractor;
b) parent company, subsidiaries, affiliates and any subsidiaries of its parent company; and
c) director, representative, officer, employee, adviser, agent, Agents and contractor within (b) above.
- “Working Days”** means any day in the calendar week other than both the Malaysia and the State of Selangor’s Public Gazetted Holidays, Saturday and/or Sunday.

1.2 INTERPRETATION

In any of the Agreement and/or Arrangement, unless the contrary intention appears:

- (b) the headings of the article are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (f) a reference to **you** or **your** includes any authorized reseller/agent/supplier/business partner or any other parties is in any Arrangement and/or Agreement with the Company;

EXPLANATORY AND WARRANTIES

- (g) the Schedules, Annexures and Appendices (if any) attached shall be taken to read and construed as an integral part of the Agreement and/or Arrangement and the same shall be subjected to changes by the Company from time to time;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Agreement and/or Arrangement or any part thereof;
- (i) where an act is required to be done within a specified period, the period is inclusive of and commences on the date specified. A period of days commencing on the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done and if the last day of the period is not a working day, the last day shall end on day immediately preceding the day which is a working day; and
- (j) any reference to "law" and/or rules and regulations includes common law, equity and any constitution, decree, judgment, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement, legislation, order, ordinance, regulation, statute without limitation to any modification, consolidation or re-enactment thereof for the time being in force and all statutory instruments, rules, regulations or orders made from time to time pursuant thereto.

2. WARRANTIES, COVENANT AND REPRESENTATION

2.1 You represent, warrants and undertakes to the Company of the followings for any applicable Agreement and/or Arrangement to be entered into with the Company that:

- (a) you have the capacity and power to enter into and execute the Agreement and/or Arrangement and to carry the terms hereof into effect;
- (b) your performance hereof are not and shall not be prohibited by any laws and/or any other agreement, charge, debentures, trust deed, contract or other instrument or document to which you have entered into;
- (c) you have complied and shall at all times comply with all requirements, conditions and rules and regulation imposed by the Appropriate Authorities having jurisdiction over each respective party hereof without limitation to orders, rulings, statutory provisions and/or by-laws for the time being in performing each respective party's obligation hereof;

EXPLANATORY AND WARRANTIES

- (d) that all information provided in any of the relevant Agreement and/or Arrangement is true, complete and accurate and not misleading in any respect;
- (e) to adhere and comply with the Company's instruction and request at all times in performing any of the relevant Agreement and/or Arrangement;
- (f) to promptly pay all applicable payments required to be paid in accordance with the provisions of any of the relevant Agreement and/or Arrangement;
- (g) to seek all necessary advice from the Company without delay for any actions to be taken (without limitation to those specified in any of the relevant Agreement and/or Arrangement) and shall not act without such prior consultation and/or not in accordance to the Company's recommendation;
- (h) to act in professional manner with due care and diligence with customers of the Company and/or while performing any of your obligations and responsibilities of the relevant Agreement and/or Arrangement;
- (i) to adhere with the Company's advice, recommendation, handbook and/or guidelines while performing any of your obligations and responsibilities of the relevant Agreement and/or Arrangement including any updated or amended version of the same from time to time;
- (j) to act with the highest standards of honesty, fairness and integrity in all communications, dealings, activities or relationships in respect of the relevant Agreement and/or Arrangement;
- (k) if required by the relevant Agreement and/or Arrangement, to permit the Company to access your business premises at any time for onsite supervisory or to inspect the conditions or operation of your business or warehousing and the Company may provide on-site instruction, correction and/or recommendation for improvement purposes;
- (l) if required by the relevant Agreement and/or Arrangement, to permit the Company to audit your account, finance, business operation and management and you shall procure and ensure that the Company and its representatives (including its solicitors and agents acting on instructions) are granted uninterrupted access to your books and records;
- (m) to immediately notify the Company if you are aware of any event which results or may result in litigation, claims, summons, compounds, fines to the Company by any other third party;
- (n) to ensure that any communications in respect of the relevant Agreement and/or Arrangement are properly communicated or responded to the Company clear in writing and without delay;

EXPLANATORY AND WARRANTIES

- (o) to promptly provide to the Company for requisite information, documents and necessary information as request by Company that are necessary and relates to the relevant Agreement and/or Arrangement;
- (p) to comply with the Codes and to aware and regularly check and read the Codes for any updates or amendments;
- (q) not to sell assign, transfer, charge or sub-license the relevant Agreement and/or Arrangement hereof without the written consent of the Company;
- (r) not to do and/or cause to terminate the relevant Agreement and/or Arrangement unilaterally without the written consent of the Company;
- (s) not to do and/or cause to do any act of dishonesty, breach of the fiduciary duty and trust;
- (t) not to and/or cause to engage directly or indirectly in any activity that conflicts with the interest and/or principles of the Company;
- (u) not to do and/or cause to create conflicts with or disputes among employees and/or management of the Company and not to interfere, disrupt, obstruct or delay the Company's operation and/or the management's decision;
- (v) not to offer or solicit or accept gifts in any form, commission, emolument, service, gratuity, money as advantage or gain to/from any other third party that in connection with the relevant Agreement and/or Arrangement;
- (w) not to do and/or cause to use and/or exploit the Company's resources, Intellectual Property and any Confidential Information of the Company for personal gain during and/or after the relevant Agreement and/or Arrangement with the Company;
- (x) not to do and/or cause to do or allow any actions that would directly or indirectly caused any dispute with any other third party that relates to the relevant Agreement and/or Arrangement or to caused any claim, demand and/or legal action of whatsoever manner being made against the Company by such party;
- (y) not to do and/or cause to do or allow any actions that would negate the image and name of or to defamed the Company or to cause the Company involved into any enquiry, claims and/or enforcement action by the Appropriate Authority or customer of the Company; and

EXPLANATORY AND WARRANTIES

- (z) not to perform, attempt and/or caused to performed the followings without the prior written consent of the Company during the period and/or two (2) years after the termination or determination after the relevant Agreement and/or Arrangement with the Company:
- (i) directly or indirectly solicit, endeavour to entice away, employ or offer to employ, any employee presently in the employment of the Company and/or the Group of Companies. For these purposes, it does not matter whether that person knows of any Information, or would commit a breach of his contract of employment by reason of his leaving the employment; or
 - (ii) solicit or endeavour to entice away any person who is currently a customer of, or supplier to the Company, in each case whether directly or indirectly.

COMPLIANCE

You should read and comprehend the content in 98 PERCENT's Explanatory and Warranties together with any of the relevant Agreement and/or Arrangement with the Company

You have the responsibility to inform your Related Party about the content hereof and to secure their compliance and understanding of the same.

98 PERCENT is committed to continuously reviewing and updating its policies and procedures, therefore the Explanatory and Warranties can be subject to modification. You are required to keep yourselves informed and updated of the contents of such documents.

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