

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("**Agreement**") is entered into on

BETWEEN

- (1) **RAILWAY ASSETS CORPORATION**, a statutory body established under the Railways Act 1991 [*Act 463*] with its registered office at No. 29G, Blok B, Jalan TKS 1, Kajang Sentral Business Park, 43000 Kajang, Selangor Darul Ehsan ("**RAC**").

AND

- (2) XXX(Company No.), a company incorporated under the laws of Malaysia with its registered address at ("**XXX**").

WHEREAS:

- (a) RAC is a statutory body established under the Railways Act 1991 [*Act 463*] tasked with the function under the Railways Act 1991 [*Act 463*] amongst other things to manage, maintain and administer the assets related to the railway infrastructure and ancillary facilities as well as to undertake projects for the development or redevelopment of the railway industry in Malaysia.
- (b) XXX,
- (c) RAC and XXX proposes to enter into discussions with one another to explore the potential to formalise the relationship between RAC and XXX whereby RAC will agree to appoint XXX and XXX will agree to perform its duties and obligations as a railway operator ("**Purpose**") and consequently both parties are providing certain information which is highly sensitive and confidential in nature to each other.
- (d) The parties agree that the provision of such information shall be in accordance with the terms and conditions of this Agreement.

NOW, IT IS HEREBY AGREED as follows:

1. Definition

"**Authorised Person**" means (i) in relation to XXX, authorised representatives of XXX to whom disclosure of Confidential Information is strictly necessary to fulfill the Purpose, including other members of XXX's Group and shall include its advisers; and (ii) in relation to RAC, authorised representatives of RAC to whom disclosure of Confidential Information is strictly necessary to fulfill the Purpose, and shall include its advisers and consultants.

"**Confidential Information**" shall mean:

- (a) all commercial, business, financial, technical, operational, administrative, marketing or other information or data (including trade secrets, know-how, customer and supplier details, business

opportunities and processes, plans, intentions, market strategy and opportunities, customer and business affairs, future plans for the development of the business of the Group, and any other material bearing or incorporating any information and documentation relating to the Group) in whatever form supplied or received (whether in oral, written, magnetic, electronic, digital or any other form) relating to the Group and its affairs which is directly or indirectly disclosed or made available on or after the date of this Agreement;

- (b) copies, analyses, compilations, studies and other documents which contain or otherwise reflect or are generated from any such information; and
- (c) the fact that the Purpose and potential transactions are contemplated, any terms or facts or discussions relating to the Purpose and the terms of any documentation for the Purpose, if any, including this Agreement.

“Disclosing party” means the party disclosing the Confidential Information.

“Group” means for purposes of this Agreement, as the context may require, either (i) RAC and its subsidiaries, associates and affiliates or (ii) XXX and its subsidiaries, associates and affiliates.

“Receiving party” means the party to whom the Confidential Information is disclosed.

2. Scope

In consideration of the disclosure of Confidential Information by the Disclosing party to the Receiving party, the Receiving party undertakes and agrees to treat and maintain as confidential the Confidential Information it has received in accordance with the terms and conditions in this Agreement.

3. Purpose

The Receiving party shall use the Confidential Information only for the Purpose.

4. Confidentiality Obligation

The Receiving party shall:

- (a) not disclose the Confidential Information or any part of it to any person other than an Authorised Person and require that each such Authorised Person comply with confidentiality provisions no less onerous than those contained in this Agreement;
- (b) not use the Confidential Information or any part of it for any purpose other than the Purpose;
- (c) not make any copies, summaries, transcripts, analyses, compilations, studies or other documents which contain or otherwise reflect or are generated from, the whole or any part of the Confidential Information save as is strictly necessary for the Purpose and provided that all such copies, summaries, transcripts, analyses, compilations, studies or other documents shall be clearly identified as being, Confidential Information;

- (d) notify the Disclosing party immediately when it becomes aware that any Confidential Information has been disclosed to or is in the possession of any person who is not an Authorised Person;
- (e) to the extent possible keep all Confidential Information separate from its own information in a safe and secure place and shall treat all Confidential Information in a manner which is no less secure than the manner in which it treats its own confidential or proprietary information; and
- (f) upon termination or at the request of the Disclosing party, deliver up to the Disclosing party or destroy or erase (as the Disclosing party may direct) any records of whatsoever nature in the possession, custody or control of the Receiving party which contain any Confidential Information or which are produced or received by the Receiving party in connection with the Purpose, except to the extent that the same form part of the permanent records of the Receiving party which it is bound by law or regulatory requirement to preserve, or which the Receiving party may reasonably require to keep for archive purposes, and the provisions of this Agreement shall, notwithstanding its termination, continue to apply to all such retained Confidential Information.

5. Exceptions to obligation of confidence

Notwithstanding any other provisions in this Agreement, the Receiving party shall not be liable for release or disclosure of, and the confidentiality obligations shall not apply to, any Confidential Information that:

- (a) is required by law or any governmental or other regulatory authority to be disclosed;
- (b) is or becomes part of the public domain through no fault of the Receiving party;
- (c) is known to the Receiving party prior to the disclosure by the Disclosing party without an obligation to keep such Confidential Information confidential;
- (d) is subsequently obtained by the Receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the Disclosing party;
- (e) is independently developed by the Receiving party without any breach of this Agreement as evidenced by written records; or
- (f) is approved for public release by the Disclosing party.

6. Announcements

Neither party shall make any public announcement or comment in relation to the Confidential Information or the Purpose, without the prior written consent of the other party.

7. Ownership of Confidential Information

The Receiving Party acknowledges and agrees that all Confidential Information disclosed by or on behalf of the Disclosing Party shall remain the property of the Disclosing Party, as the case may be. Nothing in this Agreement shall be construed as granting or conferring any license or any rights whatsoever (including without limitation intellectual property rights), whether expressly, impliedly or otherwise, in respect of the Confidential Information released to the Receiving Party.

8. Warranty

The Confidential Information disclosed under this Agreement is delivered on a "as is" basis, and all representations or warranties, whether express or implied, including warranties or conditions for fitness for a particular purpose, accuracy or completeness, title and non-infringement, are disclaimed.

9. Duration

This Agreement shall automatically terminate upon notification by RAC or XXX, or when RAC or XXX decides not to proceed with the Purpose and gives the other party a written notice to such effect or upon the entry by the parties into a definitive agreement relating to the Purpose, whichever is earlier. Notwithstanding the termination for whatever reason of this Agreement, the obligations of confidentiality shall continue in effect without limitation of time.

10. Law

This Agreement is governed by and interpreted in accordance with the laws of Malaysia and each party submits to the exclusive jurisdiction of the courts of Malaysia.

11. Counterparts

This Agreement may be entered into in the form of two or more counterparts, and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

12. Notices

12.1 Any notification, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing, in the form of type-written or printed communication, including facsimile transmission and electronic mail, shall be addressed to the respective Parties at the respective addresses stipulated herein or at any other addresses as may be notified by one party to the other from time to time. The said notification or request shall be to the attention of the respective signatories of this Agreement and/or their personnel(s) as may be designated by the respective signatories from time to time.

For XXX:

Address:
Phone :
Fax :
Email :
Attention to:

For RAC:

Address:
Phone:
Fax :
Email :
Attention to:

12. General

- (a) This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to the subject matter.
- (b) No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorised representative of each party and no failure or delay in enforcing any right will be deemed a waiver.
- (c) This Agreement shall be binding upon each party's respective successors in title and this Agreement and the obligations created by this Agreement shall continue to be valid and binding notwithstanding any change by amalgamation reconstruction or otherwise (including but not limited to a change of name or corporate identity) which may be made in the constitution of either party to this Agreement.
- (d) If any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.
- (e) The headings to the Clauses of this Agreement are included merely for reference and shall not affect the meaning of the language therein.
- (f) Words denoting natural persons include bodies corporate or unincorporated. Words denoting singular shall include the plural and vice versa.
- (g) Each Party shall bear its own costs, legal fees and other expenses incurred in the preparation, negotiation and execution of this Agreement. Notwithstanding the above, XXX shall bear all cost in relation to the stamping of this Agreement.

[THE REST OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

In witness whereof the parties have executed this Agreement on the day, month and year first above written.

Signed for and on behalf of:
RAILWAY ASSETS CORPORATION

by:

Name:
Designation:

Witnessed by:

Name:
Designation:

Signed for and on behalf of:
.....
(Company No.)

by:

Name:
Designation:

Witnessed by:

Name:
Designation: