

CERTIFICATION AGREEMENT HNCA-TAC-01/1

(FOR CERTIFICATION AND COMPLIANCE APPROVAL OF IoT, COMMUNICATIONS AND MULTIMEDIA EQUIPMENT)

THIS AGREEMENT is made on this _____ day of _____ (Year _____). BETWEEN

Harvestnet Sdn Bhd, a company incorporated under the Companies Act 1965 whose business address is at **Harvestnet Sdn Bhd**, C05-05, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, Selangor Darul Ehsan, Malaysia (hereinafter referred to as "HNCA") of the one part.

Applicant Name.: _____

IC. No.: _____ Contact: _____ EMail: _____

Company's Name. _____

(Company Registration No: _____) whose business address is at

(hereinafter referred to as "the Certificate Holder") of the other part.

HNCA and the Certificate Holder shall collectively be referred to as the "Parties" or individually as the "Party".

WHEREAS:

- A. HNCA is the leading certification, inspection and database solutions body in Malaysia that provides a comprehensive range of certification, inspection and IT solutions services that conform to Malaysia requirements and international standards and guidelines.
- B. Certificate Holder refers to the Applicant or Consultant who is applying or has been granted with the Certificate of Conformity (CoC) by HNCA.
- C. For avoidance of doubt, this Agreement shall be read together with Certification Policy (HNCA-TAC-01/2): Information and Requirements for Type Approval of IoT, Communications and Multimedia Equipment (hereinafter referred to as "Requirements").
- D. Certificate Holder shall subject to the Communications and Multimedia Act 1998 and Communications and Multimedia (Technical Standards) Regulations 2000 (hereinafter referred to as "the Act and Regulations").

NOW THEREFORE the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Certificate of Conformity (CoC)

refers to document issued by HNCA to the Certificate Holder in recognizing the conformance of the Certificate Holder's Communications Equipment to Standards, Procedures, Requirements and the Act and Regulations ;

Certificate Holder

refers to an individual body corporate or body unincorporated registered under Company Commission of Malaysia (SSM) and owned the Registration of Company (ROC) / Registration of Business (ROB).

Certification Mark

refers to a protected mark according to guidelines by Malaysian Communications and Multimedia Commission (MCMC) on Certification Mark for Self-Labeling which is applied or issued under the rules of Compliance Approval, indicating that adequate confidence is provided in that the relevant Communications Equipment is in conformity with the Standards, Procedures, Requirements and the Act and Regulations ;

Certification Label

refers to HNCA physical or digital Label with unique serial number and inherent security features to be applied only to the Certified Equipment as a means of control and traceability;

Certified Equipment

refers to the Certificate Holder's Communications Equipment that is owned by its principal and produced at the Production Site and has undergone Certification Activities in accordance with the Scope of Certification by HNCA and complied with Standards, Procedures, Requirements and the Act and Regulations ;

Certification Activities

refers to a program, including its processes or procedures, to certify communications equipment or persons;

Communications Equipment

refers to either wired or wireless or a combination of both and/or integrated with communications modules which requires Compliance Approval which is categorized as Network Facilities and/ or Customer Premise Equipment (CPE);

Compliance Approval

refers to the Type Approval granted to a specific model of Communications Equipment when the MCMC or HNCA, as the case may be, is satisfied that the communications equipment complies with the Standards, Procedures, Requirements, the Act and Regulations;

Consultant

refers to an authorized agent of the manufacturer or importer of Communications Equipment which is registered under Company Commission of Malaysia (SSM) and owned the Registration of Company (ROC) / Registration of Business (ROB).

Design Freeze

refers to a procedure where upon successful completion of type testing, the design of all major and critical components and materials in the equipment and manufacturing, assembly and testing processes shall be documented and frozen. The design freeze shall include labelling, packaging and instruction for use, care, installation and maintenance where applicable;

Effective Date

refers to the submission date of the application of Compliance Approval;

Electronic labelling

refers to one of the Self-Labeling method for the Certified Equipment that has a built-in display and supported by firmware or operating system (OS) which can be displayed, stored and retrieved from the equipment;

MCMC

refers to Malaysian Communications and Multimedia Commission;

Production Site

refers to the place where the equipment is produced and where the inspection may be carried out by HNCA to determine the compliance of the equipment to the Standards, Procedures, Requirements, the Act and Regulations ;

Recall

refers to a method of removing or correcting equipment, their labelling, and/or promotional literature that violate HNCA Compliance Approval rules and procedures from commerce when there is sufficient evidence that the equipment may be adulterated or misbranded and violated the Standards, Procedures, Requirements, the Act and Regulations upon direction by MCMC;

Scheme Rule

refers to Certification Policy (HNCA-TAC-01/02) Information and Requirements for Type Approval of IoT, Communications and Multimedia Equipment;

Scope of Certification

refers to the Certified Equipment which complies with the Standards, Procedures, Requirements, the Act and Regulations ;

Self-Labeling

refers to the logo design and word of "MCMC" and its unique ID that carries information of the certified equipment, associated with Certificate Holder, manufacturer and principal, which are similar with the submitted Compliance Approval. For avoidance of doubt, the Self-Labeling can be in the form of Surface Labelling or Electronic Labelling;

Standards

refers to the applicable Technical Code / Technical Specification/ Standard / Technical Checklist / Technical Declaration or proficiency tests including processes and procedures, whether set out in the mandatory standards, technical codes or Malaysian Standards and established for the purpose of ensuring proficiency levels of persons and the safety, non-interference levels, performance levels and interoperability of any Communications Equipment;

Surface Labelling

refers to one of the Self-Labeling method which is a permanent feature placed on the Certified Equipment. It must be applied to a surface of the Certified Equipment that is readily accessible to the user. The labelling should be durable and applied by any suitable means including printing, painting, moulding, etching, engraving or embossing;

Surveillance

refers to a systematic iteration of conformity assessment activities as a basis for maintaining the validity of the statement of conformity;

Technical Checklist

refers to technical / specification issued by HNCA;

Technical Code/ Technical Specification

refers to the documents registered by the MCMC under the Act and Regulations;

Technical Declaration

refers to the manufacturer's specification which shall conform to;

1.2 Interpretations

- i) The Malaysian's Spectrum Allocation registered by the MCMC under the Act and Regulations; and/or
- ii) Network Interoperability.

In this Agreement unless the context otherwise requires:

- (a) Words importing the singular or the masculine gender shall include the plural number or the feminine gender and words importing persons shall include corporations;
- (b) References to appendices, schedules and clauses are references to the appendices, schedules and clauses of this Agreement and references to clauses shall be read as references to sub- clauses where appropriate;
- (c) References to any party to this Agreement or any other agreement or instrument shall include the party's successors and permitted assigns;
- (d) References to any agreement or instrument shall include references to such agreement or instrument as amended, supplemented, varied or replaced from time to time;
- (e) Headings are for convenience only and shall not affect interpretation; and
- (f) References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations and statutory instruments issued under, such legislation or provision.

2. INCORPORATION OF TERMS

- 2.1 The Parties hereby confirm and agree to abide by any relevant statutory requirements and regulations by regulatory bodies, procedures, requirements, Standards and Accreditation Bodies and/or organizations providing the recognition during the term of this Agreement.
- 2.2 For avoidance of doubt, relevant regulatory provisions and legislations shall prevail and supersede any Standards if there are issues arising out of the provisions of this Agreement which lead to any cause of action.

3. SCOPE OF THIS AGREEMENT

- 3.1 HNCA agrees to provide Compliance Approval in accordance with the Certification Activities and Requirements and the Scope of Certification at Certificate Holder's request subject always to the fulfillment of Certificate Holder's obligations stated under Clause 6.
- 3.2 HNCA as the Certifying Agency appointed by MCMC hereby grants to the Certificate Holder a non-exclusive and non-transferable CoC and to use the Certification Mark or Certification Label for the Certified Equipment as detailed in the Requirements and Information Package.
- 3.3 MCMC may delegate certain responsibilities under Scope of Certification to be carried out by HNCA.

4. CERTIFICATE OF CONFORMITY (CoC) VALIDITY PERIOD

- 4.1 The CoC shall be valid for a maximum period of five (5) years from the current year of issuance. The CoC may be renewed for a further maximum period of five (5) years from its expiry date.

5. COMMENCEMENT AND PERIOD OF AGREEMENT

- 5.1 This Agreement shall commence on the Effective Date and shall be valid according to the validity period of the CoC unless this Agreement is terminated in accordance with Clause 14.

6. OBLIGATIONS OF THE CERTIFICATE HOLDER

- 6.1 The Certificate Holder; shall always comply with the other requirements issued by HNCA to the Certificate Holder from time to time for continued compliance with the Standards, procedures and Requirements the Act and Regulations including the Scope of Certification;
 - 6.1.1 shall notify HNCA immediately of any changes that may affect its ability to conform with the certification requirements, for instance, changes of information contained in the CoC, Product Specifications/Features, equipment's particular, manufacturer / principal, Production Site, major changes to the quality management system and its management representative including but not limited to changes in the legal status, commercial status, organizational or ownership status, name, address or location of facilities of the Certificate Holder, modification to the equipment or the production method;
 - 6.1.2 shall submit the samples for evaluation prior to issuance of CoC. For avoidance of doubt, it is hereby agreed that only new sample is accepted for evaluation unless being specified in Scheme Rule.

- 6.1.3 shall allow HNCA to retain the submitted sample for further evaluation and investigation for any other reason which HNCA deems fit;
- 6.1.4 HNCA hereby shall not be responsible for any damage to the samples during evaluation and/or equipment verification;
- 6.1.5 shall pay to HNCA the Fees as described under Clause 10;
- 6.1.6 shall provide to HNCA with adequate information and documents in the possession of the Certificate Holder (including but not limited to test samples, technical materials, test reports and corresponding technical support) and any assistance and clarification on technical matters pertaining to the equipment for the purpose of evaluation to enable HNCA to grant the Compliance Approval;
- 6.1.7 shall comply with all applicable relevant regulatory provisions and legislations in performing its obligations under this Agreement, including all applicable employment, tax, export control;
- 6.1.8 shall produce and/or supplied the Certified Equipment based on the CoC granted and shall comply with this Agreement and Scope of Certification;
- 6.1.9 shall permit the representative(s) of HNCA to have unlimited access during working hours for the purpose of ensuring continued compliance with the Standards, Procedures, Requirements, the Act and Regulations without prior notification to the Production Site covered by the Certificate Holder;
- 6.1.10 shall permit the representative(s) of HNCA to conduct additional inspection without prior notification as required by the Scope of Certification for the purpose of ensuring continued compliance;
- 6.1.11 shall be responsible to ensure the Certified Equipment produced and placed in the market which has been granted with the CoC, is in accordance with the same specifications as the sample that HNCA found to be in conformity with the Scope of Certification during the initial testing/evaluation;
- 6.1.12 shall be responsible to ensure that the Certified Equipment is in compliance with the Scope of Certification during the validity period of the CoC;
- 6.1.13 in the event it provides copies of the certification documents to others, the documents shall be reproduced in their entirety or as specified in the certification scheme. The recipient must be informed on the method on how to check via online to ensure it is a genuine certificate copy.

6.1.14 make necessary arrangements for;

- a) the conduct of the evaluation and surveillance (if required), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and client's subcontractors;
- b) investigation of complaints;
- c) the participation of observers, if applicable.

6.1.15 shall not use its Compliance Approval in such a manner as to bring HNCA into disrepute and shall not make any statement regarding its Compliance Approval that HNCA may consider misleading or unauthorized;

6.1.16 in making reference to its Certified Equipment in communication media such as documents, brochures or advertising, the claims made by the Certificate Holder regarding the certified equipment must be limited to; and consistent with the scope of certification and comply with the Standards, Procedures, Requirements, the Act and Regulations;

6.1.17 shall keep a record of all complaints made known to the Certificate Holder relating to its Certified Equipment covered by the CoC and make these records available to HNCA when requested and takes appropriate action and documents the actions taken with respect to such complaints that affect compliance with the requirements for certification;

6.1.18 shall allow the Accreditation Bodies to accompany and witness HNCA's personnel in carrying out inspection for the Certificate Holder;

6.1.19 shall take adequate corrective actions within the agreed time frame where non-compliances are identified by HNCA during evaluation/site inspection;

6.1.20 shall upon suspension or cancellation of the CoC, discontinue the use of Certification Mark or Certification Label and all publications including advertising materials which may have reference to the Certified Equipment. The Certificate Holder shall return the CoC and the balance of Certification Label, if any, to HNCA.

6.1.21 complies with any requirements that may be prescribed in the certification scheme that relate to the use of marks of conformity, and on information related to the product based on Terms and Conditions: Certification Mark for Self- Labelling (SLP) of Certified Communications Products in Malaysia SLP-PRO-01/3

7. OBLIGATION OF HNCA

7.1 HNCA;

- 7.1.1 shall carry out Compliance Approval activities and/or processes in accordance with the Scope of Certification using its qualified personnel;
- 7.1.2 shall evaluate and/or conduct site inspection at the Certificate Holder's premises or Production Site depending on the significant effects of the Certificate Holder's equipment and/or production activities at the time determined by HNCA in accordance with its scheme for the purpose of verifying the equipment;
- 7.1.3 reserves the right not to accept an application from any Certificate Holder if the Certificate Holder fails to provide adequate information and documents when so requested by HNCA;
- 7.1.4 reserves the right not to accept an application from any Certificate Holder when it is known that any member(s) of its Board of Directors had violated the Requirements when they were serving as member(s) of Board of Directors of a previous Certificate Holder;
- 7.1.5 shall notify the Certificate Holder when deem necessary of any changes on the Scope of Certification within a reasonable time for the Certificate Holder to adjust its processes and relevant procedures in order to meet the revised requirements.
- 7.1.6 shall protect the Confidentiality of all information given to HNCA during the application process.

8. SURVEILLANCE

- 8.1 HNCA shall carry out continuous surveillance of the Certificate Holder's conformity with its obligations to ensure ongoing fulfillment of requirements of the Scope of Certification.
- 8.2 HNCA reserves the right to carry out Surveillance activities upon its discretion which shall include:-
 - a. routine market sampling which will be carried out at least once a year; and/or
 - b. sampling of the Certified Equipment for the purpose of complaint validation.
- 8.3 The Certificate Holder hereby agree and acknowledge that HNCA shall have the right to carry out either with or without notice of its surveillance activities.

9. PUBLIC INFORMATION

- 9.1 The Certificate Holder has the right to publish its equipment as Certified Equipment to which the CoC applies.
- 9.2 HNCA shall publish the particulars of the CoC granted to the Certificate Holder in the Directory of Certified Equipment (Communications & Multimedia Certified) that is available to the public (www.iot.upsizze.com) via E2 Database ETracker and Knowledge Base.
- 9.3 HNCA makes available the following documented information through Certification Policy (HNCA-TAC-01/2): Information and Requirements for Type Approval of IoT, Communications and Multimedia Equipment and will update all related publications and publicly accessible web-site:
- a) information about the certification scheme(s), including evaluation procedures, rules and procedures for granting, for maintaining, for extending or reducing the scope of, for suspending, for withdrawing or for refusing certification;
 - b) product certification scheme offered and fees chargeable to the applicants and certified clients; (refer HNCA-TAC-01/2 Clause 3.4 Certification Fees)
 - c) a description of the rights and duties of applicants and clients, including requirements, restrictions or limitations on the use of HNCA's name and certification mark and on the ways of referring to the certification granted;
- 9.4 The Certificate Holder has the right to publish its equipment as Certified Equipment to which the CoC applies.
- 9.5 HNCA shall publish the particulars of the CoC granted to the Certificate Holder in the Directory of Certified Equipment that is available to the public (www.iot.upsizze.com).
- 9.6 If HNCA needs extra information to be published, then HNCA will obtain consent from the Certificate Holder. Refer to Certification Policy HNCA-TAC-01/2 Clause 6.3.2

10. FINANCIAL PROVISIONS

- 10.1.1 In consideration of HNCA providing the Compliance Approval and the non-exclusive rights to use its Certification Mark and/or Certification Label, the Certificate Holder shall agree to pay to HNCA the fees based on the certification fees issued to the Certificate Holder as stipulated under Clause 10.2 (hereinafter referred to as "**the Fees**"). All the Fees shall be paid in full and in advance to HNCA and HNCA reserves the right to change the Fees and/or the Certification Fees without prior notice to the Certificate Holder.

- 10.1.2 In the event of any excess in the Fees, it may be reimbursed by HNCA at its absolute discretion. If during the evaluation it becomes evident that the Fees collected earlier is insufficient, the Certificate Holder shall be required to make payment for the balance of the Fees. Failure to make such payment within the time stipulated by HNCA, shall result in non-issuance of Compliance Approval.
- 10.2 The Fees payable to HNCA by the Certificate Holder shall be as follows:-
- i. Processing fee;
 - ii Registration fee;
 - iii. Certification Activities / Evaluation fees for documentation audit, equipment evaluation and all other associated costs for conducting such evaluation/site inspection including fees for employing technical specialists;
 - iv. Annual renewal fee for the renewal of each CoC granted;
 - v. All fees shall subject to six (6%) percent of Sales and Services Tax (SST);
 - vi. Any additional costs incurred by HNCA due to the Certificate Holder's non-compliance with this Agreement or for evaluating changes to the Certificate Holder's equipment which shall be borne by the Certificate Holder at the rate to be determined by HNCA.
- 10.3 The Certificate Holder shall pay the Fees to HNCA prior to the Certification Activities are carried out or within thirty (30) days from the date of the invoice issued by HNCA whichever is earlier.
- 10.4 In the event the Certificate Holder is unable to adhere to the schedule stipulated in the Fee and Schedule for Compliance Approval as issued by HNCA, the Certificate Holder shall give a written notice to HNCA prior to the Certification Activities are carried out.
- 10.5 If the Certificate Holder fails to notify HNCA for any reason whatsoever, HNCA shall be entitled to impose a surcharge on the Certificate Holder. The amount of surcharge payable by the Certificate Holder shall be as determined by HNCA.
- 10.6 In the event of the Certification Activities fails to meet one or more of the requirements of the Standards and the remaining evaluation has not been carried out by HNCA, the Certificate Holder may request for the refund of the balance of the Fees. HNCA may at its absolute discretion reimburse the balance of the Fees to the Certificate Holder .
- 10.7 In the event that sampling and testing of the Certified Equipment is required, the Certificate Holder hereby agrees to pay for all the associated costs to ensure continued compliance with this Agreement and Scope of Certification.
- 10.8 In the event that any Certified Equipment is/are found not to be in compliance with the Scope of Certification and therefore recall is required, the Certificate Holder hereby agrees to bear all the associated cost involved.

11. REQUIREMENTS FOR EQUIPMENT RE-EVALUATION

- 11.1 In addition to and subsequent to the equipment being certified, the Certificate Holder shall agree to re-test (either full or partial test) of the Certified Equipment to ensure continued compliance with the Scope of Certification.
- 11.2 The Certificate Holder shall agree to allow HNCA to carry out its surveillance activities as described under Clause 8 above.
- 11.3 The Certificate Holder shall submit the equipment for re-evaluation upon being notified in writing of its non-compliance to the Scope of Certification. An application for re-evaluation shall be submitted by the Certificate Holder within six (6) months from the date of official notification of the results by HNCA. Application for re-evaluation submitted later than such period shall be treated as a new application and the respective Fees shall be applicable. For avoidance of doubt, a full evaluation shall be conducted on the modified equipment.

12. SUSPENSION OR CANCELLATION

- 12.1 In the event that the Certificate Holder is temporarily unable to comply with the Scope of Certification, HNCA shall be entitled to issue a recommendation to MCMC to suspend or cancel the CoC and require the Certificate Holder to discontinue the use of Certification Mark or Certification Label and/or any claim to Certification Activities with immediate effect until HNCA is fully satisfied that the Scope of Certification is duly complied with. The suspension or cancellation of the CoC of the Certificate Holder by the MCMC, may result in the termination of this Agreement as provided under Clause 14.
- 12.2 If HNCA is satisfied with the corrective action taken by the Certificate Holder, HNCA may recommend to MCMC to lift the suspension or cancellation of the CoC. For avoidance of doubt, the lifting of the CoC will be notified to the Certificate Holder in writing by MCMC or HNCA upon direction from MCMC.
- 12.3 If the Compliance Approval is reinstated after suspension or cancellation or reduced scope, HNCA shall make all necessary modifications to the CoC, public information, authorizations for use of Certification Marks / Certification Label in order to ensure all appropriate indications exist that the Certified Equipment continues to be certified.
- 12.4 If a decision to reduce the scope of certification is made as a condition of reinstatement, and the Certificate Holder has to fulfil Clause 12.2 by written acceptance to the notification email by HNCA on reduced scope and make the necessary changes to their product public information which may include but not limited to pamphlets, website and boxes. All these need to be informed and provide the proof to HNCA via email.

13. RECALL OF COMMUNICATION EQUIPMENT

- 13.1 In the event that public safety is in jeopardy, HNCA shall initiate to recall the Communications Equipment upon direction from MCMC based on the following reasons;
- i) CoC has been suspended or cancelled;
 - ii) Misuse of Certification Mark and/or Certification Label on non-certified Communications Equipment;
 - iii) Unauthorized variation from the Design Freeze of the Certified Equipment which may jeopardize the safety of user;
 - iv) Certified Equipment with critical or major defects detected during Surveillance, market sampling or complaint investigation which:
 - a) have been released for sale;
 - b) are being offered for sale;
 - c) have already been sold.
- 13.2 The MCMC may direct the Certificate Holder to recall the Certified Equipment within a reasonable time and in the manner specified by MCMC.
- 13.3 The Certificate Holder shall advertise the recalled Certified Equipment as stipulated in the Requirements and shall bear all the costs for the recall including the cost for its advertisement.
- 13.4 In the event the Certificate Holder refuse to advertise the recalled Certified Equipment, Certificate Holder hereby agree that HNCA shall have the right to advertise the recalled Certified Equipment and agree that all the costs for advertisement shall be borne by the Certificate Holder. The Certificate Holder shall have no right to take any action against HNCA relating to such action taken by HNCA.

14. TERMINATION OF AGREEMENT

14.1 The Agreement may be terminated as follows:-

(a) By Certificate Holder

The Certificate Holder may terminate this Agreement by giving an official six (6) months notice in writing to HNCA. This termination shall not affect any rights, obligations or liabilities of the Certificate Holder that has accrued prior to the termination date and shall not relieve the Certificate Holder of its obligation to indemnify HNCA hereunder.

(b) By HNCA

HNCA may terminate this Agreement if:-

- i. The Certificate Holder fails to comply with the Scope of Certification;
- ii. The Certificate Holder misuses the Certification Mark and/or Certification Label after suspension or cancellation of the CoC and warning letter has been issued by HNCA;
- iii. There is any legal action taken from any other related authority on the Certificate Holder;
- iv. In the opinion of HNCA that its interest or rights under this Agreement is in jeopardy or for any reason whatsoever;
- v. The Certificate Holder makes any arrangements or composition with its creditors or enters into liquidation, whether compulsory or voluntary (but not liquidation for the purpose of reconstruction or amalgamation), or has a Receiver of its business appointed or is convicted of an offence tending to discredit the Certificate Holder's reputation and good faith as a trader;
- vi. The Certificate Holder fails to notify HNCA of any changes of name, location of facilities or any significant changes to its organization within a reasonable time;
- vi. The Certificate Holder fails to notify HNCA immediately when there is a change of particulars in CoC, Equipment Specifications / Features, and Production Site of the equipment and/or any changes that may affect its ability to conform with the certification requirements;
- vii. The Certificate Holder refuses to allow HNCA to carry out its surveillance audit when requested by HNCA;
- viii. HNCA has the evidence that the Certificate Holder has infringed and breached its Intellectual Property Rights.

- 14.2 HNCA shall give a minimum of one (1) month written notice to the Certificate Holder prior to the termination of this Agreement.
- 14.3 For a CoC that has been suspended or terminated by HNCA, the Certificate Holder may appeal to HNCA and the appeal procedure shall be given to the Certificate Holder upon request.
- 14.4 Termination of this Agreement by whatever means shall not affect any liability of the parties existing as at the date of such termination and shall not relieve the Certificate Holder of its obligation to indemnify HNCA hereunder.

15. EFFECT OF TERMINATION

- 15.1 In the event that this Agreement is terminated hereunder, the following provisions shall apply:
- a) Certificate Holder shall cease in using of all Certification Mark and/or Certification Label to all equipment with immediate effect;
 - b) Certificate Holder shall cease in using of all company data and / or HNCA Intellectual Property and proprietary rights related to the equipment with immediate effect;
 - c) Certificate Holder shall cease in using of all data for importation purposes.
- 15.2 The termination of this Agreement shall not prevent HNCA to:
- a) File an actions or suits in the court of law against the Certificate Holder for any infringements or allegations of infringement in respect of HNCA`s Intellectual Property Rights;
 - b) Publish a public notice through either printed or electronic media in relation to the infringements or allegations of infringement of HNCA`s Intellectual Property Right made by the Certificate Holder;
 - c) Claim for any outstanding amount which is still due and payable by the Certificate Holder;
 - d) Claim any cost incurred due to the termination;
 - e) Conduct inspection within twelve (12) months after termination date of CoC and this Agreement in order to verify that neither production of equipment with Certification Mark nor Certification Label at the Certificate Holder`s premises is being carried out.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 The Parties hereby agree as follows:

- a) The Certificate Holder shall acknowledge and agree that any Intellectual Property Rights currently owned by HNCA shall remain the sole property of HNCA.
- b) The Intellectual Property Rights for CoC, Certification Mark and/or Certification Label granted and certified by HNCA to all equipment by the Certificate Holder shall remain vested in HNCA
- c) The Certificate Holder shall not by itself procuring or assisting any third party without either Party's written consent assemble any part of HNCA Intellectual Property Rights during the term of this Agreement and the Certificate Holder shall undertake to ensure that its employee, affiliates, consultants, and/or any third party (where applicable) who are given the access to the same shall be aware of the provision of this Clause 16.

16.2 Without prejudice to the generality of sub-clause 16.1, all HNCA's company data provided or accessible to the Certificate Holder pursuant to this Agreement shall remain the property of HNCA.

16.3 The Certificate Holder shall not utilise HNCA's company data, CoC, Certification Mark and/or Certification Label, or other proprietary rights belonged or licensed to HNCA for any purpose other than in relation to its obligations under this Agreement.

16.4 The Certificate Holder shall forthwith notify HNCA if any claim or demand is made or action brought against Certificate Holder for infringement or alleged infringement of any Intellectual Property Rights in connection with this Agreement and shall indemnify HNCA from and against all actions, suits, losses or damages for the infringement or allegation of infringement in respect of any third party's intellectual property rights.

16.5 HNCA shall have at its own expense to conduct any litigation arising and all negotiations in connection therewith and in such event Certificate Holder hereby agrees to grant to HNCA exclusive control of any such litigation and such negotiations.

16.6 Certificate Holder shall at the request of HNCA afford to HNCA all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Certificate Holder or HNCA for infringement or alleged infringement of any such Intellectual Property Rights and shall be repaid all costs and expenses (including but not limited to reasonable legal costs and disbursements) incurred in so doing.

16.7 Provision stated in Clause 16 shall be at HNCA's sole and exclusive remedies with respect to breach of intellectual property rights.

17. CERTIFICATE HOLDER'S REPRESENTATIONS AND WARRANTIES

17.1 The Certificate Holder hereby represents and warrants that:

17.1.1 It is a company and/or business validly existing under the Malaysia laws or of any similar local laws in other country outside Malaysia;

17.1.2 It has the company and/or business power to enter into and perform its obligations under this Agreement and to carry out the transaction and to carry on its business as contemplated by this Agreement;

17.1.3 It has taken all the necessary company and/or business actions to authorize the entry into and the performance of this Agreement and to carry out the transactions contemplated by this Agreement;

17.1.4 That the execution, delivery and performance of this Agreement shall not exceed the power granted to the Certificate Holder or violate the provisions and legislations of the following:

- (i) any law or regulation or any order or decree of any governmental authority, agency or court to which it is subject;
- (ii) its Memorandum of Association and Articles of Association; and
- (iii) any mortgage, agreement or other undertaking or instrument to which it is a party or which is binding upon it or upon its assets.

18. HNCA'S REPRESENTATIONS AND WARRANTIES -

18.1 HNCA hereby represents and warrants that:

18.1.1 It is duly organized and validly existing under the laws of Malaysia and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions and legislations hereof;

18.1.2 This Agreement constitute the valid, legal and binding obligation of HNCA and enforceable in accordance with the terms hereof.

18.1.3 There are no actions, suit or proceedings pending or, to the best knowledge of HNCA, threatened against or affecting HNCA before any court or authority that might materially adversely affect the ability of HNCA to meet and carry out its obligations under this Agreement;

18.1.4 That the execution, delivery or performance of this Agreement shall not exceed the power granted to HNCA or violate the provisions and legislations of the following:

- (i) any law or regulation or any order or decree of any governmental authority, agency or court to which it is subject;
- (ii) its Memorandum of Association and Articles of Association ; and
- (iii) any mortgage, agreement or other undertaking or instrument to which it is a party or which is binding upon it or upon its assets.

18.1.5 It shall carry out the Certification Activities in accordance with the Standards, procedure, Requirements including relevant regulatory provisions and legislations required for the Certification Activities by using its authorized representative.

19. CONFIDENTIALITY

19.1 HNCA agrees not to disclose, communicate or publish, without the written permission of the Certificate Holder any Confidential Information provided by the Certificate Holder to HNCA except as required by law.

19.2 HNCA shall take all reasonable measures to prevent unauthorized disclosure of the confidential information known by HNCA relating to the Certificate Holder's equipment.

19.3 The obligation of confidentiality shall not apply to information which:-

- (a) is already in the public domain or becomes part of the public domain other than a result of the wrongful disclosure by HNCA; or
- (b) is disclosed to HNCA by a third party; or
- (c) is independently developed or procured by HNCA ; or
- (d) is required by law, Standards, procedures, Requirements including regulatory provisions and legislations to be disclosed.

19.4 Confidential Information of HNCA means;

19.4.1 Information which HNCA possess, develop and acquire and trade secrets including methods, techniques, specifications, marketing, programs, Standards, procedures and Requirements in the Certification Activities (hereinafter referred to as "**Confidential Information**"). The Certificate Holder shall not acquire any interest in HNCA Confidential Information other than the right to utilize it in connection with this Agreement.

19.4.2 The Certificate Holder shall not use and shall not disclose to any third party of HNCA Confidential Information in any business or capacity during or after the term of this Agreement unless required by law.

20. DISPOSAL OF EQUIPMENT SAMPLE

- 20.1 The Certificate Holder shall collect the sample of the Certified Equipment within fourteen (14) working days from the date of the CoC issued. Failure to collect the equipment within such period may result in the equipment being disposed in any manner deemed fit by HNCA. HNCA shall not be liable in whatsoever manner for any loss or damage suffered by the Certificate Holder as a result of the disposal of the equipment after such period or in any manner account for the disposal of the equipment after such period.
- 20.2 The Certificate Holder shall agree to dispose the equipment or any part of the equipment that HNCA has notified the Certificate Holder of its intention if;
- i. HNCA is satisfied that the Certified Equipment or any part of it has failed to comply with the Scope of Certification and the Certificate Holder is unable to resolve the matter within two (2) months;
 - ii. The CoC has been suspended or terminated;
 - iii. The equipment or any part of it has not been certified.

21. LIABILITY AND INDEMNITY

- 21.1 The Certificate Holder hereby shall agree that HNCA neither assumes nor accepts any responsibility for any injury or damage to the Certificate Holder's property or personnel that may occur during or as a result of Certification Activities, wherever performed, whether performed in whole or in part by the Certificate Holder or HNCA, under the terms of this Agreement and whether or not any equipment, facility or personnel for or in connection with the activity is furnished by the Certificate Holder or HNCA, except when such injury or damage results solely from negligence on the part of HNCA's representatives.
- 21.2 The Certificate Holder shall defend and hold harmless HNCA and agrees that HNCA shall not be responsible for any liabilities, damages, injuries, losses, costs and expenses including equipment liability claims suffered by any third party due to reliance to the Certificate Holder's Certified Equipment.
- 21.3 The Certificate Holder shall be liable for any equipment failure of the Certified Equipment under this Agreement.
- 21.4 This indemnity shall be operative whether or not legal proceedings are instituted and if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

22. NOTICE

Any notice under this Agreement to the other Party shall be in writing and shall be sent by hand or by A.R. Registered Post to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time. Any such notice shall operate and be deemed to have been served by the expiration of fourteen (14)

23. DISPUTE RESOLUTION

Any dispute arising out of this Agreement shall be settled by way of amicable settlement, failing which such dispute shall be referred to arbitration in accordance with the Rules for Arbitration of the Regional Centre for Arbitration Kuala Lumpur. The parties hereby agree that the dispute shall be conducted in the following manner:

- (a) The appointing authority shall be the Regional Centre for Arbitration Kuala Lumpur;
- (b) The number of arbitrators shall be one (1);
- (c) The place of arbitration shall be in Kuala Lumpur;
- (d) The language(s) to be used in the arbitration proceedings shall be English;
- (e) The law applicable shall be that of Malaysia.

24. SUCCESSORS BOUND

This Agreement shall be binding upon the Parties and their permitted legal assigns and successors-in-title by operation of law or otherwise.

25. ASSIGNMENT

Neither Party shall be entitled to assign or novate this Agreement or any of their rights or obligations hereunder without the prior written approval of the other Party.

26. SEVERABILITY

If any provision of this Agreement is held to be illegal or invalid under present or future laws or regulations effective and applicable during the term of this Agreement, such provisions and legislations shall be fully separable and this Agreement shall be construed as if such illegal or invalid provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Agreement.

27. WAIVER

Failure by any Party to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision or any other provision of this Agreement, or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement or as waiver of any right under this Agreement.

28. FORCE MAJEURE

28.1 For the purpose of this Agreement, the term 'Force Majeure' shall refer to any acts of God, strikes, lock outs and other industrial disturbances, wars, insurrections, riots, epidemics, landslides, earthquakes, storms, lightning, floods, civil disturbances, explosions and any

other similar events not within the control of either Party and which by the exercise of due diligence neither Party is able to overcome.

- 28.2 If the Parties are temporarily unable by reason of Force Majeure to meet any of its obligation under this Agreement and if such Party promptly gives to the other Party written notice of the event after its occurrence, such obligations of the Party shall be suspended as it is unable to perform by reason of the event as long as the inability continues.

29. GOVERNING LAW

This Agreement is governed by and shall be construed in accordance with the laws of Malaysia and the Parties agree to submit to the exclusive jurisdiction of the Malaysian Courts.

30. NATURE OF AGREEMENT

Nothing in this Agreement shall create, or be deemed to create a partnership or the relationship of principal and agent between the Parties.

31. AMENDMENT

The Certificate Holder agrees that HNCA may at its absolute discretion amend and/or vary the Agreement.

32. COST

Each Party shall bear its own respective legal costs and incidental expenses to the preparation of this Agreement save and except the stamping fees which shall be borne by HNCA.

33. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the matters dealt with and supersedes any previous agreement or understanding between the Parties in relation to such matters.

34. LIMITATION OF LIABILITY

- 34.1 In any event and notwithstanding anything contained in this Agreement, HNCA's liability to the Certificate Holder if any under this Agreement shall be limited only to whatever amount that has already been paid to HNCA under this Agreement.

- 34.2 The amount that will be paid by HNCA shall exclude liability for any loss or damage suffered by third party whether directly, indirectly or consequential arising any way out of the services rendered by HNCA.

[END OF CLAUSES]

Note: THIS IS A BINDING AGREEMENT TO COVER ALL FUTURE CERTIFICATION UNDERTAKEN WITH HNCA and to be read with Certification Policy HNCA-TAC-01/2. Print-out and Initial every page for both HNCA-TAC-01/1 and HNCA-TAC-01/2. Submit to HNCA after you have registered your account online. Register Online via iot.upsizze.com under E-Form Request for New Registration to E2 Form, (HNCA-TAC-01/2/1) PRIOR TO ANY Certification Scheme Application.

Executed:

IN WITNESS WHEREOF the Parties have hereunto caused this Agreement to be signed in their respective names as of the day and year first above written.

Signed on behalf of HNCA

Reviewed by: Name	Approved by : Name
Signature :	Signature :
Position:	Position:
NRIC:	NRIC:

ID No. issued for the Company <i>(for HNCA use only)</i>

Signed on behalf of Certificate Holder:

..... Authorized Signatory

Name:

NRIC:

Position:

Witnessed by

.....

Name:

NRIC:

Position:

