**THIS MARKETING CONSULTANCY AND SERVICES AGREEMENT** is made on

BETWEEN

**DIGITAL TRUSTEES BERHAD (Company Registration No.: 202101035650 (1435950-A))**, a company incorporated in Malaysia under the laws of Malaysia, and having its business address atJ-39-01, Level 39, HCK Tower J, PJU 8, Jalan Damansara, Empire City, 47820 Petaling Jaya, Selangor (“**Company**”) of the one part;

And

**The Party** whose particulars are specified in **Section 2 of the First Schedule** of this Agreement (“**Consultant**”) of the other part.

(Collectively referred to as the **“Parties**” and individually as a “**Party**”)

**WHEREAS:**

The Company is desirous to appoint the Consultant and the Consultant hereby agrees to provide the Company with the Services (as defined) in accordance with the terms and conditions hereinafter appearing.

**NOW THEREFORE**, it is hereby agreed as follows: -

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings: -

|  |  |
| --- | --- |
| **“Agreement”** | means this Marketing Consultancy and Services Agreement including all schedules and appendices hereto (if any) and any such modifications, variations, amendments or additions as the Parties may agree in writing from time to time; |
| **“Appropriate Authorities”** | means any governmental, semi or quasi-governmental and/or statutory departments, agencies or any privatised corporation; |
| **“Business Day”** | means a day other than a Saturday, Sunday or public holiday (gazetted or ungazetted and whether scheduled or unscheduled) on which commercial banks are open for business in Kuala Lumpur; |
| **“Confidential Information”** | means any information or material, orally or in written form, graphic, electronic or other form:   1. which is confidential or proprietary in nature, including but not limited to, business plans and strategies, contracts, employment agreements, corporate information, financial information, management information, flow charts, organisational charts, spreadsheets, graphs, tables, operational descriptions, customer and product development plans, ideas, improvements, research or development, customer and supplier list, technology, software development tools, inventions (patentable or otherwise), trade secrets, trademarks, confidential operations, processes, schedules, know-how, designs, formulas, computer programs, data bases, techniques, algorithms, computer code, software design and architecture, schematics, forecast, documentation, manuals, budgets, marketing studies, drawings, notes, memoranda and the information contained therein; 2. relating to the actual or proposed development, manufacture, analysis, marketing, sale or supply of any products or services by it, and plans for the development or marketing of such products or services and information; 3. relating to the customers, business, assets or affairs of the Company or any member of their group which the Consultant may have acquired or acquire through the exercise of its rights or performance of its obligations under this Agreement; 4. relating to the contents of this Agreement or any discussion or documents relating, ancillary or entered into pursuant hereto; and/or 5. which is either marked confidential or is by its nature intended to be exclusively for the knowledge of the Consultant alone. |
| **“Effective Date”** | means the date stated in **Section 1 of the First Schedule** herein; |
| **“Intellectual Property”** | means all intellectual property rights of the Company, including but not limited to its rights to patents, rights in circuit layouts, trademarks, service marks, trade names, registered designs, copyrights, and other forms of intellectual property or industrial property, know-how, inventions, formulae, creative works, confidential or secret processes, trade secrets and confidential information, and any other protected rights and assets and any licenses and permissions in connection therewith, in each case in any part of the world and whether or not registered or registrable and for the full period thereof, and all extensions and renewals thereof, and all applications for registration in connection with the foregoing; |
| **“Investment Portfolio”** | means the investment portfolio issued by the Collaboration Partner which more particulars are as described in **Appendix A** herein; |
| **“Marketing Guidelines”** | has the meaning as ascribed to it in Clause 4.1(a); |
| **“RM” or “Ringgit Malaysia”** | means the lawful currency of Malaysia; |
| **“Services”** | has the meaning as ascribed to it in Clause 2.1; and |
| **“Trustee”** | means Digital Trustees Berhad, the trustee appointed by the Collaboration Partner. |

1.2In this Agreement, unless the context otherwise requires: -

(a) “law” includes common law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement, in each case having the force of law;

(b) “person” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality);

(c) “encumbrance” includes any interest or equity of any person (including any right to acquire, option or right of first refusal) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement;

(d) “consent” includes an approval, authorisation, exemption, filing, license, order, permission, permit, recording or registration (and references to obtaining consent shall be construed accordingly);

(e) a “day, month or year” shall be construed by reference to the Gregorian calendar;

(f) the words “hereof”, “herein”, “hereon” and “hereunder” and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(g) words importing the singular number shall include the plural number and vice versa and references to natural persons shall include bodies corporate (vice versa) and the use of any gender shall include all other genders;

(h) any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted whether before or after the date of this Agreement;

(i) references to Recitals, Clauses, Schedules and Appendices are references to recitals and clauses of and schedules and appendices to this Agreement unless otherwise stipulated;

(j) “including” and similar expressions are not and must not be treated as words of limitation;

(k) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and

(l) where a word or phrase indicates an exception to any of the provisions of this Agreement and a wider construction is possible, such word or phrase is not to be construed *ejusdem generis* with any foregoing words or phrases and where a word or phrase serves only to illustrate or emphasise any of the provisions of this Agreement, such word or phrase is not to be construed, or to take effect as limiting the generality of such provision.

1.3 The headings and sub-headings to the clauses of this Agreement shall not be taken into consideration in the interpretation or construction thereof or of this Agreement.

1.4 The Recitals, Schedules and Appendices to this Agreement, shall be taken, read and construed as essential parts of this Agreement.

1.5 Any reference to this Agreement or any other agreement or deed or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or deed or document as the same may be or have been or may from time to time be amended, varied or supplemented.

1.6 In this Agreement a period of days from the occurrence of an event or the performance of any act or thing shall be deemed to exclude the day on which the event happens or the act or thing is done or to be done (and shall be reckoned from the day immediately following such event or act or thing), and if the last day of the period is not a Business Day, then the period shall include the next following day which is a Business Day.

**2. ENGAGEMENT OF SERVICES**

2.1 Subject to the provisions of this Agreement, the Company hereby engages the Consultant and the Consultant hereby agrees to introduce and refer potential clients to invest in and/or subscribe for interests in the Investment Portfolio (“**Services**”) whereby such Investment Portfolio is part of the collaboration between the Company and the private entity specified therein (“**Collaboration Partner**”).

2.2 The Consultant hereby undertakes that it shall not engage any third party or assign any of its rights under this Agreement without the Company’s prior written consent.

2.3 The Consultant is hereby authorised to act on behalf of the Trustee in relation to the processing of the trust applications, including the handling of the documentations required, unless such rights are revoked by the Trustee via a written notice to the Consultant.

2.4 Trust Application

(a) The Consultant shall be responsible to submit the duly completed Trust Application Form (whereby such form is provided by the Trustee) together with all documents and/or information as may be required under the Trust Application Form to the Trustee.

(b) The Consultant hereby acknowledges that all trust applications shall be subject to the acceptance by the Trustee and the Consultant shall have no authority to make any acceptance or confirmation of the trust application to prospective clients. The Trustee specifically reserves the right to reject any trust applications without assigning any reason and the Consultant may not object to any decisions made by the Trustee in relation thereto.

(c) Subsequent to the Trustee’s acceptance of the trust application, the Trustee shall forward a copy of the Trust Deed to the Consultant to obtain the signature of the client and the Consultant shall immediately return the signed copy of the Trust Deed to the Trustee upon execution by the client of the same.

(d) The Consultant shall collect any payment from the client only in the form of cheque or bank draft made in favour of the Trustee whereby the Consultant is responsible for such payment collected from the client until the payment is deposited into the bank account of the Trustee.

2.5 The Consultant’s Responsibility

1. The Consultant shall cross check with the Company’s client database before proceeding to approach the potential clients. If the said potential client does not exist in the Company’s database, the Consultant may proceed to approach the potential clients.
2. If the potential clients’ details had already existed in the Company’s database, this Agreement shall not apply, unless agreed otherwise in writing by the Company.

**3. PAYMENT AND COMMISSION**

3.1 In consideration of the Services provided by the Consultant, the Consultant is entitled to a commission which is calculated in accordance with the manner set out in the **Second Schedule** herein (“**Commission**”).

3.2 The Commission shall be payable by the Company to the Consultant in accordance with the following manner: -

1. Provided always that the full sum of the trust capital from the respective settlor-client shall have been received by the Trustee in bank cleared funds, the Commission shall be paid by the Company to the Consultant in the manner set out in the **Second Schedule** herein subject always that the Trustee shall have received the complete documentations as may be required by the Trustee;
2. In the event that the Trust Deed is terminated by the settlor-client at any time before the respective Commission payment date or is discontinued pursuant to the terms of the Trust Deed, the Consultant shall not be entitled to the Commission payable after the effective date of termination or expiry of the Trust Deed;

(c) The Commission shall be payable by the Company to the Consultant’s bank account which details are as set forth in **Section 3 of the First Schedule**; and

(d) It is hereby agreed that the Commission under this Agreement shall, as between the Company and the Consultant, be inclusive of all tax, imposition, duty and levy whatsoever, including but not limited to, any sales and services tax, withholding tax or any other taxes which may from time to time be imposed or charged (including any subsequent revisions thereto) by the Appropriate Authorities.

3.3 Notwithstanding any other provisions in this Agreement and without prejudice to any other rights of the Company, where the Services or any part thereof, performed and/ or delivered by the Consultant is not in accordance with the requirements set out in this Agreement, the Company shall be entitled to withhold payment to the Consultant until the Consultant has performed the Services in accordance with this Agreement. The Company will provide a prior written notice of its intention to withhold the payment and the reasons for withholding the payment.

3.4 The Consultant shall be responsible for any and all income and other taxes applicable to it in connection with its receipt of any sum payable to it pursuant hereto as an independent contractor of the Company. The Company will not be responsible for any expenses incurred by the Consultant in the course of the performance of its obligations hereunder unless such expenses have been previously approved in writing by the Company.

**4.** **RIGHTS OF THE COMPANY**

4.1 Notwithstanding anything to the contrary herein, the Company hereby reserves the rights to: -

1. make rules and give orders, directions and instructions by issuing and distributing to the Consultant circulars, guidelines and directives from time to time relating to the performance of the Services (“**Marketing Guidelines**”) and amend, modify, vary or revoke the same by giving written notice to the Consultant and the Consultant shall and/ or shall cause its personnel to observe such rules, orders, directions and instructions contained in the Marketing Guidelines as if they are part of this Agreement;
2. at any time and from time to time, to prescribe by notice in writing to the Consultant the Commission and any applicable target to be achieved by the Consultant and to amend, modify, vary and/or revoke the same by giving written notice to the Consultant;

(c) use its own employees to sell, promote and market the Investment Portfolio and to award to other parties the same rights conferred to the Consultant under this Agreement to sell, promote and market the Investment Portfolio; and

(d) include any other requirements as it deems fit at its sole and absolute discretion for the purposes and to give effect to the arrangement between the Parties herein.

**5. REPRESENTATIONS AND WARRANTIES**

5.1 The Consultant hereby represents and warrants to and for the benefit of the Company that: -

(a) it has the power, authority and capacity to execute, deliver and lawfully perform the terms of this Agreement;

(b) this Agreement constitutes legal, valid and binding obligations on it in accordance with its terms;

(c) the execution, delivery and performance of this Agreement, will not exceed the power granted to it or violate the provisions of:

(i) any law or regulation or any order or decree of any governmental authority, agency or court to which it is subject; or

(ii) any mortgage, contract or other undertaking or instrument to which it is a party or which is binding upon it or any of its assets and will not result in the creation or imposition of, or any obligation to create or impose, any mortgage, lien, pledge or charge on any of its assets pursuant to the provisions of any such mortgage, contract or other undertaking or instrument;

(d) all permits, licenses, registrations, approvals and other consents required by every national, local or municipal government or agency, in respect of the performance of its obligations under this Agreement and in connection with the execution, delivery, performance, legality or enforceability of this Agreement have been obtained and are in full force and effect;

(e) it is not in default in the payment or performance of any of its obligations for borrowed money; and

(f) it is not engaged in and not aware of any pending or threatened litigation or governmental investigation or proceedings which may have a materially adverse effect on its ability to enter into this Agreement and to fulfil its obligations hereunder.

5.2 The Consultant covenants and agrees that during the term of this Agreement it shall take no action and permit no omission which could cause any of its respective representations and warranties hereunder to become inaccurate. The Consultant shall give the Company prompt notice in writing in the event any representation or warranty becomes inaccurate.

**6. UNDERTAKINGS AND OBLIGATIONS OF THE CONSULTANT**

6.1 In addition to any and all covenants, representations and obligations set forth elsewhere in this Agreement, the Consultant hereby undertakes and warrants that it shall: -

(a) use its best efforts to perform its obligations under this Agreement, including but not limited to, promoting the Investment Portfolio and working diligently to increase such sales;

(b) ensure that the performance of the Services is in strict adherence to the regulatory and professional requirements, and all applicable laws, rules, guidelines and regulations of Malaysia;

(c) comply with all permits and licenses and to obtain consents required by local law or local authorities in connection with the provision of Services;

(d) observe and comply with the guidelines, procedures of the Services as set out in this Agreement and all applicable rules, procedures, guidelines and policies as may be issued by the Company from time to time and make best efforts to comply with the advice of the Company from time to time during the duration of the Agreement;

(e) operate and direct the operation of the Services, and render the usual and customary services incidental thereto, in a professional, businesslike and efficient manner and provide supervision and inspection adequate to properly manage the Services;

(f) make available and provide the Company with any reports, returns and other information relating to all transactions in relation to the Services;

(g) hire, pay, provide customary benefits for and supervise sufficient experienced and qualified personnel who will render the Services required by this Agreement;

(h) bear all costs and liabilities relating to the conduct of its business, including but not limited to the cost and expense of providing and maintaining its place of business, the wages of its employees, the payment of commissions or other compensation to its consultants or independent contractors (subject to Clause 2.2 above), and its expenses incurred for or in connection with its performance under this Agreement;

1. ensure that its personnel/ employees possess the appropriate level of skills and competency required to perform the Services under this Agreement and ensure that all of its personnel/ employees comply with and observe the provisions of this Agreement (including but not limited to confidentiality and PDPA) and the Marketing Guidelines issued by the Company;
2. it complies with the Company’s requirements and guidelines, and if necessary or required, to obtain prior written approval from the Company for any advertising copy, promotional materials or other written or printed material used by the Consultant;

(k) not to fraudulently utilize or misuse or misrepresent the Services which may result in the Company being responsible for any liability that may arise from such fraudulent activity;

(l) not to use and take all reasonable steps to prevent the use of the Services for any fraudulent, improper or illegal activity under all applicable and relevant laws;

(m) not make any statement or do any act which constitutes a misrepresentation of or which is contrary to the terms of the Investment Portfolio;

(n) promptly notify the Company of any matter that in the Consultant’s reasonable judgment requires the Company’s attention; and

(o) refrain from disparaging the Company, or from otherwise injuring the reputation and good standing of the Company.

6.2 If any such representations and warranties set out under this Clause 6 shall at any time hereafter be found to have been incorrect in any material aspect or if the Consultant shall fail to make full disclosure to the Company of any material particular concerning the engagement or provision of the Services upon execution of this Agreement, then and in such event and notwithstanding anything to the contrary herein contained, the Company shall have the right at its absolute discretion to terminate this Agreement whereupon the Company shall reserve the right to claim for any loss and/or damages arising due to the breach of such representations and warranties.

**7. TERM AND TERMINATION**

7.1 This Agreement shall continue in full force and effect for a period of one (1) year from the Effective Date (“**Initial Term**”), unless terminated earlier under the provisions of this Agreement. Upon expiration of the Initial Term or Renewal Term (as herein defined), this Agreement shall be renewed automatically for an additional one (1) year term under the same terms and conditions (each, a “**Renewal Term**”) unless the Company chooses not to renew this Agreement prior to the expiration of the Initial Term or any of the Renewal Term.

7.2 This Agreement may be terminated by the Company immediately at any time during the term of this Agreement by giving written notice of termination to the Consultant upon the occurrence of any events of default as follows: -

(i) if the Consultant commits a breach of this Agreement which shall not be capable of remedy;

(ii) if the Consultant commits a material breach of this Agreement and fails to remedy the same within fourteen (14) days after receipt of a written notice giving particulars of the breach and requiring it to be remedied;

(iii) if the Consultant commits a breach of any of the representations and warranties made under this Agreement or any representations and warranties made herein are found to be false, untrue and misleading;

(iv) if Consultant becomes insolvent, or files a voluntary petition in bankruptcy/ winding up, or has filed for an involuntary petition in bankruptcy/ winding up;

(v) if the Consultant engages in behavior that, in the Company’s reasonable determination, is materially detrimental to the Company or its business reputation or would have a negative impact towards the performance of the Consultant’s obligations under this Agreement;

(vi) if the Company is of the opinion that the Consultant is guilty of willful misconduct or gross negligence or has acted in any way that is prejudicial to the Company and/or the interest of the Company including but not limited to:

(a) misrepresentation by the Consultant to the prospective clients with regards to the Investment Portfolio and/ or the Company;

(b) misappropriation of any monies received from the clients.

(vii) such termination is necessitated by any order or directive from any lawful, regulatory, governmental or statutory authority having jurisdiction over the matters herein and thereafter prohibiting either Party from performing its obligations under this Agreement.

7.3 Notwithstanding any provisions to the contrary, the Company shall be entitled to terminate this Agreement without assigning any reasons thereto by giving to the Consultant seven (7) days prior written notice prior to the proposed date of termination.

7.4 Upon the expiry or termination of this Agreement for any reason whatsoever: -

(a) The Consultant shall cease performance of its obligations under the Agreement and all rights granted by the Company to the Consultant will be immediately relinquished;

(b) The Consultant will not be entitled to any payment on Commission after the effective date of expiration or termination of this Agreement;

(c) The Consultant shall promptly return to the Company all documents and information in relation to the performance of Services hereunder, including but not limited to, advertising and marketing material and any other materials and documents given to the Consultant, the database of the clients and any other documents in connection with the products of the Company; and

(d) The Consultant shall cease use of the Intellectual Property and shall thereafter refrain from associating itself with the Company, and the Consultant will forthwith remove and thereafter discontinue all advertisements, signs and notifications stating or implying in any way that it is connected with the Company.

7.5 The expiry or earlier termination of this Agreement shall not relieve the Consultant from those obligations that by nature shall survive such expiration or termination, including but not limited to the Consultant’s warranties and its obligations of indemnity, confidentiality and intellectual property rights.

7.6 Upon expiry or termination thereof, and subject to Clause 7.5 above, the Agreement shall be void and of no effect save for any antecedent breaches committed prior to the date of expiry or termination.

**8. CONFIDENTIALITY**

8.1 The Consultant in the course of performing its obligations hereunder may gain access to certain Confidential Information of the Company. The Consultant shall treat as strictly confidential all the Confidential Information disclosed to it by the Company.

8.2 The Consultant must use its best endeavours to cause all of its directors, officers, employees and agents who have or are likely to have access to any Confidential Information to observe all the obligations of confidentiality under this Clause 8.

8.3 The Consultant shall not at any time: -

(a) disclose the Confidential Information to any person except to those authorised by the Company to know on a need-to-know basis;

(b) use the Confidential Information for its own purposes or for any purposes; or

(c) through failure to exercise all due care and diligence cause or permit any unauthorised disclosure of any Confidential Information.

8.4 The Consultant may disclose Confidential Information which would otherwise be confidential if and to the extent: -

(a) it is required to do so by law or an order of a court of competent jurisdiction or regulatory or governmental body to which it is subject wherever situated;

(b) it considers it necessary to disclose the Confidential Information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;

(c) the Confidential Information was lawfully available to the Consultant on a non-confidential basis from a source other than the Company prior to any disclosure thereof by the Company, as evidenced by competent proof thereof; or

(d) the Confidential Information has come into the public domain through no fault of the Consultant.

8.5 For purposes of this Agreement, Confidential Information shall not be deemed to be in the public domain merely because individual elements thereof are separately found in the public domain.

8.6 All documents, records and other information delivered by the Company to the Consultant or received by the Consultant pursuant to or connected with this Agreement shall be returned to the Company in the event that this Agreement is terminated or upon expiry of this Agreement.

8.7 The provisions of this Clause 8 shall continue to apply after the expiration or sooner termination of this Agreement without limit in point of time but shall cease to apply to information or knowledge which may properly come into the public domain through no fault of the Consultant.

**9. INDEMNITY AND LIMITATION OF LIABILITY**

9.1 The Consultant shall indemnify, defend and hold harmless the Company, and its officers, directors, shareholders, employees and affiliates (the “**Company Indemnitees**”) from all claims, damages, losses, costs and expenses (including reasonable solicitors’ fees) (the “**Liabilities**”) which the Company and/or any of the Company Indemnitees may incur to the extent that such Liabilities arise out of or result from: -

(a) any breach or failure to perform any of its responsibilities or obligations under this Agreement, including but not limited to the performance of Services; or

(b) any liability, damages, or injuries to other persons or the other party or to the property of other persons or to the other party caused by acts, omissions, ordinary or gross negligence, or intentional acts of the Consultant, its employee, agent or representative; or

(c) any infringement by any employees, personnel or third parties engaged by the Consultant of the terms of this Agreement, including but not limited to the provisions in relation to intellectual property and confidentiality; or

(d) any inaccuracy in, or breach of, any of the representations, warranties, covenants or agreements made by it in this Agreement.

9.2 All indemnification by the Consultant shall be effected by payment of cash or delivery of a banker’s draft in the amount of the indemnification liability within fourteen (14) days of the Company’s demand.

**10. INTELLECTUAL PROPERTY**

10.1 The Company owns and/or controls the rights to the Intellectual Property and the Consultant shall use and cause its representatives, agents, personnel or employees to use the Intellectual Property in connection with, and exclusively for, the purposes of the Services in accordance with the instructions, rules and procedures that the Company may reasonably prescribe from time to time.

10.2 The Consultant shall not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the Intellectual Property except such rights of use are specifically set out in this Agreement, and hereby acknowledges and agrees that all such use shall at all times inure for the benefit of the Company only.

10.3 The Consultant represents and warrants that in the performance of the Services hereunder: -

(a) The Consultant or its employees shall not infringe the Intellectual Property of the Company or such other intellectual property rights of any third party; and

(b) The Consultant shall not use, issue, distribute or circulate, in hardcopies or digital copies, the Company’s logo or other trademarks of the Company and shall not make reference to the Company in any of the Consultant’s proposal, advertising activities, marketing materials, brochures or other similar documents unless prior written consent has been obtained from the Company.

**11. PERSONAL DATA PROTECTION ACT (“PDPA”)**

11.1 The Consultant agrees that is shall not perform or caused to be performed any act which violates Personal Data Protection Act 2010 (including their subsidiary legislations and guidelines) (“**PDPA 2010**”) and shall exercise a reasonable degree of skill, due diligence, prudence and foresight to comply with all principles set out herein including, registering itself with the Personal Data Protection Commissioner of Malaysia as data user (if required), having in place adequate and reasonable procedures, protection and measures and continue to keep such procedures, protections and measures in place, in order to maintain the confidentiality and prevent unauthorized use and unauthorized disclosure of any personal data which came into possession of the Consultant in the course of performing its Services hereunder and that it will not make any copies of the personal data or reproduce any of it in any form.

11.2 Upon the termination of this Agreement for any reason whatsoever, the Consultant shall immediately cease all processing personal data which came into possession of the Consultant in the course of performing its Services and will return to the Company in a format specified by the Company, or destroy, as the Company may request in its discretion, all personal data processed by the Consultant.

**12. FORCE MAJEURE**

12.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Agreement if and to the extent that such delay or failure is caused by Force Majeure (as defined in Clause 12.2) and the time for performance of the relevant obligation(s) shall be extended accordingly.

12.2 For the purpose of this Agreement, “**Force Majeure**” means any circumstances which are not foreseeable at the date of this Agreement and not within the reasonable control of the party in question including without limitation, acts of God, natural disasters, any action taken bya governmental or public authority of any kind including not granting a consent, exemption, approval or clearance; any civil commotion or disorder, riot, labour disputes, invasion, war, terrorist act, threat of or preparation for war or terrorist act, any fire, explosion, storm, flood, earthquake, subsidence, pandemic, epidemic, spread of virus or disease or other natural physical disaster; failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks, power failures.

12.3 The party whose performance of its obligations under this Agreement is delayed or prevented byForce Majeure: -

shall forthwith notify the other party ofthe nature, extent, effect and likely duration ofthe circumstances constituting the Force Majeure;

shall use all reasonable endeavours to minimise the effect ofthe Force Majeure on its performance of its obligations under this Agreement; and

shall subject to Clause 12.1 and 12.4, immediately after the cessation ofthe Force Majeure notify the other party thereof and resume full performance ofits obligations under this Agreement.

12.4 If any Force Majeure delays or prevents the performance ofthe obligations ofeither party for a continuous period such that it frustrates the original intentions and objectives of this Agreement or any part thereof, the Parties shall discuss the circumstances and consequences of the Force Majeure in good faith and the Parties shall mutually agree upon the amendment or termination of the Agreement within a period of one (1) month and in the event that no such agreement has been achieved within the said period of time, either party may give at least thirty (30) days written notice to the other party to terminate this Agreement, specifying the date on which termination will take effect. Such a termination notice shall be irrevocable except with the consent ofboth parties and upon termination the provisions ofClause 7.4 shall apply.

**13. NOTICES**

13.1 Any notice or request to be given, made or served for any purpose under this Agreement shall be in writing and shall be deemed effectively given, made or served by (i) sending the same by registered post or delivering it by hand to the Parties at their respective addresses herein stated or to such address as one party may notify to the other in writing or to their respective solicitors or agents duly authorised or (ii) sending it by facsimile transmission or electronic mail and such notice or request shall be deemed to have been duly served: -

(a) in the case of prepaid registered post, five (5) days after the same shall have been delivered to the postal authorities; or

(b) in the case of delivery by hand, on the date of receipt by the addressee thereof; or

(c) in the case of transmission by facsimile or electronic mail, at the time of transmission provided that it is sent during regular business hours on a Business Day and if sent otherwise than during regular business hours, at the commencement of the next Business Day.

**14. GOVERNING LAW**

14.1 This Agreement is governed by, and shall be construed in accordance with, the laws of Malaysia. The Parties shall undertake to use their best endeavours and efforts to resolve any dispute arising therefrom this Agreement, promptly through amicable consultations, conciliation or other agreed upon methods. Any unresolved dispute, controversy or claim arising out of or relating to this Agreement, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of Malaysia which will have exclusive jurisdiction.

**15. COSTS AND EXPENSES**

15.1 Each party shall bear and pay its own costs and expenses including solicitors’ cost incurred in or in connection with the preparation of this Agreement and the stamp duty payable for this Agreement (if required) shall be borne by the Company.

**16. SEVERANCE**

16.1 Any term, condition, stipulation, provision, covenant or undertaking in this Agreement which is illegal, void, prohibited or unenforceable shall be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such illegality, voidness, prohibition or unenforceability shall not invalidate or render illegal, void or unenforceable any other term, condition, stipulation, provision, covenant or undertaking herein contained.

**17. TIME**

17.1 Time whenever mentioned shall be deemed to be treated as the essence of this Agreement.

**18. REMEDIES**

18.1 No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or that may be now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any of the parties hereto shall not constitute a waiver by such party of the right to pursue any other available remedy.

**19. AMENDMENT AND VARIATION**

19.1 The Company reserves its rights to make any amendments to or variation of this Agreement by providing a written notice of such amendments or variation to the Consultant.

**20. WAIVER AND INDULGENCE**

20.1 No delay or omission by a Party in the exercise of any right, power or remedy provided by law or under this Agreement shall impair such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy.

20.2 The single or partial exercise by a Party of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**21. NO PARTNERSHIP INTENDED**

21.1 The Parties hereby confirm that nothing in this Agreement shall be deemed expressly or impliedly, directly or indirectly or in any other way to be a partnership, association or other relationship amongst the Parties in which any of the Party may be liable for the acts or omissions of the other Party, nor shall anything herein contained be considered or interpreted as constituting any Party as the general agent of any of the other Party.

21.2 The Consultant shall provide the Services as an independent contractor and shall not act as an employee, agent or broker of the Company. The Consultant is not authorized to enter into any commitment, agreements or contract of any kind on behalf of the Company. The Company will not incur any liability whatsoever to any third party by reason of the Consultant having acted negligently in the performance of its obligations hereunder or by reason of any misrepresentation by the Consultant of its relationship to the Company or of the Investment Portfolio or any warranties, policies, practices or procedures of the Company. Nothing contained in this Agreement is intended to be construed as creating or implying a relationship of principal and agent or employer and employee between the Company and the Consultant or between the Company and Consultant’s employees or consultants.

**22. NON-COMPETITION**

22.1 The Consultant shall not market, promote and/or provide any other competing services similar to the Investment Portfolio herein without prior written consent from the Company.

**23. EXECUTION AND COUNTERPARTS**

23.1 This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original, but such counterparts or duplicates shall together constitute but one and the same agreement and shall come into effect on the Effective Date irrespective of the diverse dates upon which the Parties may have executed this Agreement.

**24. ASSIGNMENT**

24.1 The Consultant shall not assign any of their rights under this Agreement or delegate the performance of any of the obligations or duties hereunder, without the prior written consent of the Company and any attempt by the Consultant to assign, transfer or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

24.2 Where assignment is allowed, this Agreement ensures to the benefit of and shall be binding on the respective successors in title and permitted assigns.

**25. BINDING EFFECT**

25.1 This Agreement shall be binding on and inure to the benefit of the successors, permitted assigns, heirs and estate, as the case may be, of each Party.

**26. ENTIRE AGREEMENT**

26.1 This Agreement including the Schedules hereto constitute the entire agreement and understanding between the Parties and supersede all negotiations, commitments, agreements and writings prior to the date hereof relating to the subject matter hereof.

*[The remainder of this page is intentionally left blank]*

**IN WITNESS WHEREOF** the Parties hereto have set their hands the day and year first above written.

The Company

Signed by

For and on behalf of )

**GAMBIT GROUP SDN. BHD.** )

**(Company Registration No. 201801043103** )

**(1305135-P))** )

) …….………………………………………

in the presence of: ) Name:

Designation:

The Consultant

*\*\*If the Consultant is an individual*

Signed by

***{{NAME}}***

***(NRIC No./ Passport No.: {{ID\_NO}})***

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

in the presence of: -

**FIRST SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **SECTION** | **SUBJECT MATTER** | **PARTICULARS** |
| 1 | Effective Date | {{DATE}} |
| 2 | Particulars of the Consultant | **In the event that the Consultant is an individual**  (a) Name: {{NAME}}  (b) Passport No./ NRIC No.: {{ID\_NO}}  (c) Residential Address:{{ADDRESS}}    (d) Correspondence Address: {{CORR\_ADDRESS}}  (e) Nationality: {{NATIONALITY}}  (f) Contact details   * Email Address: {{EMAIL}} * Mobile Number: {{PHONE}} |
| 3 | Consultant’s bank account details | 1. Account Holder: {{NAME}} 2. Bank: {{BANK}} 3. Account No.: {{BANK\_ACC}} 4. Branch Address: {{BRANCH\_ADD}} 5. Swift Code: {{SWIFT}} |

(End of the First Schedule)

**SECOND SCHEDULE**

**Payment and Commission**

1. The Consultant shall be eligible for Commission calculated as follows: -

|  |  |
| --- | --- |
| Commission  (based on % of the Trust Capital) | Tenure of the Trust  Y1: {{COMM1}}%  Y2: {{COMM2}}% |

1. The Commission shall be processed and paid out in accordance with the following date: -

|  |  |
| --- | --- |
| **Submission Cut-Off Date** | **Commission Payment Date** |
| By 15th of every calendar month | 22nd of the same month |
| By the last day of every calendar month | 7th of the following calendar month |

For the avoidance of doubt, the Submission Cut-Off Date means that all trust documentations have been duly signed, completed and delivered to the Trustee.

(End of the Second Schedule)

**APPENDIX A**

**INVESTMENT PORTFOLIO**