

**End User Terms & Conditions**  
**GenCode Solutions and/or Services**

**1 INTRODUCTION**

- 1.1 These terms and conditions, including all attachments attached hereto (“**End User Terms and Conditions**”) along with the Documentation and other terms and conditions applicable to the relevant GenCode Solutions and/or Services shall form part of the Agreement formed between GenCode and the End User. These End User Terms and Conditions shall apply to all End Users using the GenCode Solutions and/or Services, whether ordered and/or purchased via a Reseller or otherwise.

**2 DEFINITIONS AND INTERPRETATIONS**

- 2.1 Unless the context otherwise requires, the following words and expressions shall have the respective meanings:

<b>Agreement</b>	means the agreement formed pursuant to the End User’s acknowledgment and acceptance of the End User Terms and Conditions herein by registering and/or signing in the GenCode Solutions and/or Services.
<b>Anonymous Data</b>	means any End User Data and other information and data in relation to the User’s use and the performance of the GenCode Solutions and/or Services collected and processed in anonymised and aggregate form (without identifying the User and without any personally identifiable information).
<b>Authorised Users</b>	any Personnel of the End User as expressly set out in the Reseller’s Statement of Work (if any) or as appointed and confirmed in writing by the End User to GenCode who are permitted to access and/or use the GenCode Solutions and/or Services, subject always to GenCode’s approval in respect of access or use by any third party if so stated in the Reseller’s Statement of Work.
<b>Deliverables</b>	means the relevant deliverables, including the Materials, provided/delivered or to be provided/delivered by GenCode in relation to the GenCode Solutions and/or Services and references to Deliverables shall, where relevant and applicable, include references to any part thereof.
<b>Documentation</b>	means the documentation provided by GenCode in relation to the provisioning and/or use of the GenCode Solutions and/or Services (as may be updated and notified to the End User by GenCode from time to time).
<b>Effective Date</b>	means the first date of the End User’s acknowledgment and acceptance of the End User Terms and Conditions herein by registering and/or signing in the GenCode Solutions and/or Services.
<b>End User</b>	means the person who has acknowledged and accepted the GenCode Solutions and/or Services by registering and/or signing in the GenCode Solutions and/or Services.
<b>End User Data</b>	means the Materials in the form of data forming part of the End User Materials.
<b>End User Materials</b>	means the Materials which are provided and made available to GenCode by the End User (and/or its Personnel and/or the Authorised Users), or otherwise collected from the End User (and/or its Personnel and/or the Authorised Users) by GenCode through the normal operation of GenCode Solutions and/or Services, in connection with the End User’s use of the GenCode Solutions and/or Services, excluding all Materials owned by GenCode or which any of GenCode’s Intellectual Property Rights subsist.
<b>Fees</b>	means the fees and all other payments, fees and/or amounts payable to GenCode in respect of the GenCode Solutions and/or Services as set out in the Reseller’s Statement of Work (if any) or under the Agreement.
<b>Force Majeure Event</b>	means any act, cause or circumstance beyond the Party’s reasonable control, including acts of God, war, riot, insurrection, civil disorder or military operations, national or local emergency, acts or omission of government or other governmental authorities, export or import prohibitions, change of law, government restraints, pandemics and/or viral outbreaks, concerted actions of workmen, sabotage, civil commotion, lock-outs or other industrial disputes (whether or not involving any of the Parties employees provided that such disputes are not initiated or caused by the affected Party for the purposes of avoiding its obligations herein), fire, lightning, strikes, explosion, flood, landslides, subsidence, inclement weather, general unavailability of transport, general shortage of energy, or any other cause whether similar or dissimilar outside the affected Party’s reasonable control.

<b>GenCode</b>	means GenCode Sdn Bhd (Company No.: 202401015141 (1560991-K)).
<b>GenCode Services</b>	means the services ordered, purchased and/or used by the End User, whether via a Reseller or otherwise.
<b>GenCode Solutions</b>	means the GenCode's technology solutions ordered, purchased and/or used by the End User, whether via a Reseller or otherwise, including all updates, upgrades, customisations, enhancements, new releases and patches provided by GenCode subject to and as part of its scope under the Agreement.
<b>GenCode Solutions and/or Services</b>	means GenCode Solutions and/or GenCode Services (as applicable and as the case may be) and the related Deliverables.
<b>GenCode's Standard Rates</b>	means GenCode's standard man-day rates as stated in the Documentation, which may be updated by GenCode from time to time.
<b>Indemnified Party</b>	means GenCode and its affiliated companies and each of their respective officers, directors, employees, attorneys and agents.
<b>Infringement Claim</b>	means any claim brought against the End User by a third party alleging that the use of the GenCode Solutions and/or Services by the End User in accordance with the terms of the Agreement infringes any Intellectual Property Rights of any third party.
<b>Intellectual Property Rights</b>	means any and all intellectual property rights (wherever in the world, whether registered or unregistered including any application or right of application for such rights, the renewal or extension of such rights), including all rights, interests and/or titles in, to, under, in connection with or relating to: (i) inventions and patents; (b) copyright, copyrightable works and rights in the nature of or analogous to copyright; (c) names, marks, trade names, trademarks, service marks and logos; (d) designs and circuit layouts; (e) any Confidential Information, trade secrets and know-how; and (f) other rights, titles and interests similar to the foregoing or are otherwise capable of being protected as intellectual property rights.
<b>Liability</b>	means any non-conformities, errors, issues, defects, problems, claims, breach, failure, indemnity, proceedings, demands, suits, fine, loss, damage, costs (including legal fees on a solicitor-client basis), expenses and/or other liabilities.
<b>Materials</b>	means any relevant information, documentation, properties, programs, details, content, data, images, photographs, files, text, audio or video clips, graphics and/or other materials.
<b>Out of Pocket Expenses</b>	means travel expenses, per diem allowance and out-of-pocket expenses, including but not limited to expenses in respect of air tickets and hotel accommodation.
<b>Payment Period</b>	means seven (7) days from the date of GenCode's invoice.
<b>Permitted Purpose</b>	means for the purpose of, and only to the extent necessary for the purpose of: <ul style="list-style-type: none"> <li>(a) in respect of the End User's use, (i) the End User's internal business operation and processing which is reasonably contemplated under the Agreement; (ii) carrying out the End User's obligations and enforcing the End User's rights under the Agreement; (iii) complying with the terms and conditions contained in the Agreement; and/or (iv) other purposes expressed under the Agreement, all for the sole benefit of the End User; and</li> <li>(b) in respect of GenCode's use, (i) GenCode's and/or its affiliates' internal business operation and processing which is reasonably contemplated under the Agreement; (ii) carrying out GenCode's obligations and enforcing GenCode's rights under the Agreement; (iii) complying with the terms and conditions contained in the Agreement; and/or (iv) other purposes expressed or reasonably contemplated under the Agreement.</li> </ul>
<b>Personnel</b>	means the relevant employees, officers, agents, contractors, service providers, suppliers, representatives and/or personnel of the relevant Party. No Party shall be considered to be the other Party's Personnel for the purpose of this definition.
<b>Reseller</b>	means an authorised reseller appointed by GenCode with whom GenCode has entered into a reseller agreement with.
<b>Reseller's Statement of Work</b>	means the relevant Reseller's statement of work, including the attachments attached thereto, mutually agreed and executed by GenCode and the Reseller in relation to the GenCode Solutions and/or Services.

<b>Taxes</b>	means all duties, imposts, taxes and/or similar government charges arising from or incidental to the Agreement that may now or hereinafter be introduced (including but not limited to value added tax, sales and service tax, levies, duties and imposts that may result from the provision, use and/or supply of the GenCode Solutions and/or Services).
<b>Third Party Items</b>	means any third party products, software and/or services.
<b>Third Party Software/Services</b>	means any software and/or services of any third party engaged directly by GenCode (if any) as communicated or made known to the End User by GenCode.
<b>Third Party Terms</b>	means the terms and conditions of the owner or licensor of the Third Party Software/Services which are published on the platform of such owner or licensor or otherwise made known to the End User by GenCode.

2.2 Unless the context otherwise requires:

- (a) headings of the Agreement are inserted for convenience only and shall not affect the construction or interpretation of the Agreement;
- (b) the singular includes the plural and vice versa and words denoting any gender include all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) references to the any thing shall, where relevant and applicable, include references to any part thereof;
- (e) any reference to the Agreement or any other agreement or document shall be construed as a reference to the Agreement or, as the case may be, such other agreement or document as the same may have been or may from time to time be amended, varied, novated or supplemented save where the contrary is indicated;
- (f) any reference to a person shall be construed so as to include any individual, firm, company, corporation, government, state or agency of a state, any association or partnership and/or other persons or bodies (whether or not having separate legal personality);
- (g) any reference to a party to the Agreement or another agreement or document includes a reference to the party's successors, permitted nominees and permitted assigns (and where applicable, the party's personal representatives);
- (h) references to Clauses, Sub-Clauses, Schedules and Appendices (if any) are references to clauses, sub-clauses, schedules and appendices of or to these End User Terms and Conditions unless otherwise stated. References to a Sub-Clause under a Clause shall be construed as references to the Sub-Clause of the Clause under which such Sub-Clause is being referred;
- (i) references to any legislation, statute and/or law (or any provision thereof) shall include any subsidiary legislation, statutory guidelines, rulings, determinations and/or codes, legal requirements and/or regulations made under or pursuant to such legislation, statute and/or law and any amendment, substitution, re-enactment, modification and/or replacement ("Modification") made in relation to the foregoing from time to time so far as such Modification applies or is capable of applying;
- (j) any reference to proceedings includes litigation, arbitration or investigation and a reference to a judgement includes an order, injunction, decree, determination or award of any court or tribunal;
- (k) references to any terms, conditions and/or provisions of, under or contained in the Agreement shall be construed as to include any term, condition, stipulation, provision, warranty, covenant and/or undertaking and any rights and remedies conferred thereby and any reference to terms, conditions, and/or provisions shall include any part thereof where applicable and relevant;
- (l) the words "including", "for example" or similar expressions shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The meaning of general words shall not be limited by specific examples introduced by "including", "for example" or similar expressions;
- (m) the words "hereof", "herein", "hereon" and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement;
- (n) if an obligation, act or event must be carried out or occur on a stipulated day which is not a business day in the place which the obligation, act or event must be carried out or occur then the stipulated day will be taken to be the next business day in the said place unless otherwise stipulated herein;
- (o) any terms and conditions imposed on the End User shall include an obligation for the End User to ensure its Personnel comply with such terms and conditions to the extent applicable to such Personnel of the End User and the End User shall remain fully liable for all acts and/or omissions of its Personnel as if those acts and/or omissions were those of the End User;
- (p) any obligation imposed on the End User not to do an act or thing shall be deemed to include an obligation for the End User not to permit such act or thing to be done by another person;
- (q) no rule of construction or interpretation applies to the disadvantage or detriment of the Party having control or being responsible for the preparation of the Agreement; and
- (r) any approval to be obtained by any Party under the Agreement shall be obtained in advance and in written form (i.e. prior written approval, whether or not it is expressly stated as such in the Agreement) and any matter to be agreed between the Parties shall be agreed in writing (whether or not it is expressly stated as such in the Agreement).

### 3 CONFLICT AND ORDER OF PRECEDENCE

3.1 In the event of any conflict or inconsistencies among the documentation forming part of the Agreement, such conflict or inconsistencies shall be resolved in accordance with the following order of precedence: (a) these End User Terms and Conditions; and (b) the provisions of the Documentation, to the extent necessary to resolve such conflict or

inconsistencies. Any liabilities and/or obligations of GenCode stated in the Agreement shall be construed with the least obligation on the part of GenCode and in GenCode's favour.

#### 4 LICENCE

- 4.1 **General Licence (Limited).** Subject to payment of the Fees (whether by the Reseller or the End User) to GenCode and the End User's, its Personnel's and its Authorised Users' compliance with the Agreement and the Documentation, GenCode grants the End User a personal, revocable, non-exclusive, non-sublicenseable, non-transferable license to internally access and/or use the GenCode Solutions and/or the relevant Deliverables solely for the Permitted Purpose and subject to the terms and condition contained in the Agreement, including all assumptions, restrictions, qualifications and usage and time limitations based on the quantity and type of licences and term of the licences acquired by the End User, whether via the Reseller pursuant to the Reseller's Statement of Work or directly from GenCode. The End User shall ensure that the use of the GenCode Solutions does not exceed the scope of the licence granted under the Agreement. Unless otherwise agreed by the Parties, the End User shall use the GenCode Solutions only in one (1) single instance in one (1) production environment. The licences granted in the Agreement are subject to all terms and conditions contained in the Agreement and will automatically expire or terminate upon the termination or expiration of the relevant Reseller's Statement of Work (if applicable) or the relevant document governing the licences. Where applicable, the End User and/or the Authorised Users will be required to install the GenCode Solutions on certain third party wireless device through a third party application store and the End User is responsible for ensuring its Personnel and the Authorised Users' compliance with the applicable client end user license agreement.
- 4.2 **Use by Authorised Users.** The End User may only authorise the Authorised Users (subject always to GenCode's approval in respect of access or use by any third party Authorised Users) to use and access the GenCode Solutions and/or Services on a need-to-know basis, subject always to ensuring that all such Authorised Users comply with the Agreement and the Documentation and provided that the End User shall remain fully responsible for its Authorised Users' use and access of the GenCode Solutions and/or Services. Subject to the foregoing, no other third party shall be permitted to access and/or use the GenCode Solutions and/or Services. Subject to the terms of the Reseller's Statement of Work or any Documentation, an Authorised User will be considered provisioned where the Authorised User is assigned the ability to access the GenCode Solutions, regardless of whether such assigned Authorised User has accessed or utilised the GenCode Solutions. Provisioned Authorised Users will be counted to determine whether the End User is within (or has exceeded) its licensed usage of the GenCode Solutions and the End User is solely responsible for ensuring that it does not provision Authorised Users in excess of the scope of its licence.
- 4.3 **Third Party Software/Services.** This provision applies to the extent any specific GenCode Solutions and/or Services utilises any Third Party Software/Services. The End User acknowledges that the use and provisioning of GenCode Solutions and/or Services will, where applicable, be subject to the Third Party Terms. To the extent applicable, the End User shall, in respect of its use of the GenCode Solutions and/or Services and/or the Third Party Software/Services, comply (and shall ensure the compliance by its Personnel and/or the Authorised Users) with all such Third Party Terms. The End User shall comply with the terms and conditions under the Agreement, which are applicable to the GenCode Solutions and/or Services hereunder, as if such terms and conditions are applicable to the Third Party Software/Services, with respect to any use or access of the Third Party Software/Services to the extent applicable to the End User.
- 4.4 **Output.** The End User agrees and understands that output of any GenCode Solutions and/or Services are dependent on the assumptions and input provided by the End User. GenCode does not warrant the accuracy, completeness or reliability of such output unless otherwise stated in the Documentation. It shall be the End User's sole responsibility to verify the accuracy, completeness and reliability of the output and any dissemination of the output (subject always to confidentiality requirements under the Agreement).

#### 5 SPECIFIC OBLIGATIONS OF THE END USER

- 5.1 **General Obligations.** The End User shall, and shall ensure that its Personnel and the Authorised Users shall, at its and their respective own cost and expense:
- (a) co-operate with and assist GenCode's Personnel and affiliates with all matters in connection with the Agreement;
  - (b) provide and secure for GenCode (including GenCode's Personnel and affiliates) the necessary right to access, modify and use the End User's site and relevant operating network (including all relevant facilities, systems, premises, devices, equipment, resources and/or third-party software, product and/or equipment, forming part of the End User's operation environment/network relevant to the GenCode Solutions and/or Services) to the extent necessary for the Permitted Purpose;
  - (c) provide access to the appropriate personnel of the End User and provide accurate and complete Materials, including the End User's Materials and the relevant data, in the format required by GenCode in relation to the End User's use of the GenCode Solutions and/or Services to GenCode to the extent necessary for the Permitted Purpose;
  - (d) procure, obtain and maintain all necessary licences, consents, approvals and permits (regulatory, contractual or otherwise) relating to the use of the GenCode Solutions and/or Services and the business activities and obligations of the End User in connection with the Agreement;
  - (e) declare, make or sign all documents and do all things necessary or desirable to give effect to the Agreement; and
  - (f) ensure that the relevant End User's Personnel and the Authorised Users comply with all the relevant terms and conditions contained in the Agreement as if the End User's Personnel and the Authorised Users are the "End User" and shall be fully responsible for any act and/or omission of the End User's Personnel and the Authorised Users.

- 5.2 **Operating Environment of the End User.** The End User shall, and shall ensure that its Personnel and the Authorised Users shall, at its and their own cost and expense, prepare and ensure that the End User's and the Authorised Users' operating environment/network relevant to the receipt of the GenCode Solutions and/or Services comply with the minimum specifications and requirements set out by GenCode in the relevant Documentation or the Reseller's Statement of Work (if any). The End User shall be responsible for, and shall ensure that the Authorised Users be responsible for, the preparation, procurement, security, functionality, operation and/or maintenance of its and their respective operation environment/network and all other necessary facilities, hardware and software for the purpose of the Agreement which do not form part of GenCode's scope of work under the Agreement, including procuring and maintaining all necessary network connections and telecommunications services in relation to their operating environment/network. The End User and the Authorised Users assume full responsibility for the overall effectiveness and efficiency of the operating environments of the End User and the Authorised Users respectively in which the licensed GenCode Solutions are to function. The End User acknowledges that any changes to its or the Authorised Users' operating environment/network may adversely affect the use of the GenCode Solutions and/or Services and accordingly, any material changes shall be subject to GenCode's prior written approval (such approval not to be unreasonably withheld). Any additional works required pertaining to any such changes will result in additional fees. The End User represents and warrants that it is authorised to act on behalf of the owner or licensee of, or is the authorised representative of an individual, business or other legal entity having contractual usage rights granted by an internet service provider or web host owning or licensed to use, any and all internet protocol addresses and the associated computer hardware, network, storage, input/output, or electronic control devices, or software installed on such devices on which the End User directs the GenCode Solutions and/or Services to be installed or performed.
- 5.3 **End User's Obligations, Assumptions and Dependencies.** The End User shall, and shall ensure that its Personnel and the Authorised Users shall, carry out all obligations under the Agreement, including those stipulated in the relevant Documentation and/or Reseller's Statement of Work (if any) in a timely and efficient manner. The End User acknowledges that the provisioning, delivery and/or use of the GenCode Solutions and/or Services is dependant on the End User carrying out all the End User's obligations under the Agreement in a timely and efficient manner and subject to any assumptions, restrictions, limitations and qualifications set out in the Documentation, Reseller's Statement of Work (if any) and hereunder. Any deviations from or use exceeding any assumptions, restrictions, limitations and qualifications or failure of the End User to meet its obligations, may result in additional fees and/or charges, without prejudice to other rights and remedies of GenCode under the Agreement or at law. GenCode shall be reimbursed of reasonable costs and/or expenses caused by or due to the End User's and/or the Authorised Users' failure to perform their obligations as required under the Agreement. The End User shall immediately notify GenCode of any matter which may materially affect the End User's obligations under the Agreement.

## 6 TERMS OF USE

- 6.1 Except as expressly set out in the Agreement or expressly authorised by GenCode in writing, the End User shall not and shall not attempt to and shall ensure that its Personnel and the Authorised Users shall not and shall not attempt to:
- (a) copy, distribute and/or disseminate the GenCode Solutions and/or Services for any purposes except for any copying which is necessary for and incidental to the normal use of the GenCode Solutions and/or Services for the Permitted Purpose or where it is necessary for back-up, operational and/or security reasons as reasonably approved by GenCode in writing;
  - (b) rent, lease, licence, sell, loan, translate, merge, adapt, vary or modify the GenCode Solutions and/or Services. The proprietary notices on any part of the GenCode Solutions shall not be altered, defaced or removed under any circumstances whatsoever;
  - (c) disassemble, decompile, reverse-engineer, recreate or otherwise reduce to human-perceivable form all or any part of the GenCode Solutions;
  - (d) reconstruct, identify or discover any underlying software, source code, underlying ideas, underlying user interface techniques or algorithms of the GenCode Solutions;
  - (e) create derivative works based on the whole or any part of the GenCode Solutions and/or Services;
  - (f) commercially exploit the GenCode Solutions and/or Services. The GenCode Solutions and/or Services shall not be commercialised in any manner whatsoever;
  - (g) use the GenCode Solutions and/or Services for any purpose other than the Permitted Purpose;
  - (h) make alterations or modifications to the whole or any part of the underlying software of the GenCode Solutions, or permit the underlying software of the GenCode Solutions to be combined with, or become incorporated in, any other programs;
  - (i) use the GenCode Solutions and/or Services in any improper, unauthorised and/or unlawful manner, for any unlawful purpose, or in any manner inconsistent with or not authorised by the Agreement;
  - (j) use any device, software or routine to interfere or attempt to interfere with the proper working of the GenCode Solutions and/or Services and/or any associated systems and/or networks of GenCode or other third party;
  - (k) transmit or distribute, or cause to be transmitted or distributed, any malicious code, viruses or harmful data into or through the GenCode Solutions and/or Services or any associated systems and/or networks of GenCode or other third party. The End User shall, and shall ensure that the Authorised Users, continuously operate nationally recognised or reasonable virus scanning software to ensure that the End User's and/or the Authorised User's system that integrates with or connected to the GenCode Solutions and/or Services does not contain any virus or any other contaminant;
  - (l) misuse, abuse or hack into any aspect of the GenCode Solutions and/or Services in any manner whatsoever or otherwise compromise the integrity of GenCode's systems and/or networks;

- (m) collect, share or harvest any Materials from the GenCode Solutions and/or Services and/or GenCode's systems (except where such act is necessary for and incidental to the normal use of the GenCode Solutions and/or Services for the Permitted Purpose or where it is necessary for back-up, operational and/or security reasons as authorised by GenCode in writing);
- (n) gain unauthorised access to any component or portion of the GenCode Solutions and/or Services and/or any accounts, computer systems or networks connected to the GenCode Solutions and/or Services, or otherwise obtain or attempt to obtain any Materials through any component or portion of the GenCode Solutions and/or Services, not intentionally made available by GenCode to the End User;
- (o) send, publish or advertise any unsolicited advertising or promotional content through or on the GenCode Solutions and/or Services;
- (p) overload, "flood," "spam," "mail bomb," or "crash" the GenCode Solutions and/or Services;
- (q) take any action that places excessive demand on the GenCode Solutions and/or Services or imposes, or may impose, an unreasonable or disproportionately large load on the servers and/or networks of GenCode or its Personnel;
- (r) use the GenCode Solutions and/or Services in a way that could: (i) damage, disable, overburden, impair or compromise the systems or security of GenCode or its Personnel; or (ii) interfere with other users' use of the GenCode Solutions and/or Services in any manner whatsoever;
- (s) scan, test or tamper with the security or configuration of the GenCode Solutions and/or Services or otherwise breach any security or authentication measures;
- (t) bypass or circumvent measures employed to prevent or limit access to the GenCode Solutions and/or Services; and
- (u) decipher any transmissions to or from the servers running any of the GenCode Solutions and/or Services.

6.2 **Unlawful Materials.** The End User shall not, and shall ensure that its Personnel and/or the Authorised Users shall not, store in, distribute or transmit to or through (or cause to be stored in, distributed or transmitted to or through) the GenCode Solutions and/or Services any Materials that: (i) will violate or infringe any applicable law or the rights (including any Intellectual Property Rights) of others; and/or (ii) is unlawful, inaccurate, technologically harmful, threatening, abusive, discriminatory, defamatory, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any law. Without limiting the generality of the foregoing, the End User shall not, and shall procure its Personnel and/or the Authorised Users not to, use the GenCode Solutions and/or Services to facilitate illegal activity or to cause damage or injury to any person or property.

6.3 **Limiting Access to Authorised Users.** The End User shall limit the access to and use of the GenCode Solutions and/or Services to only Authorised Users who are required to access and use the GenCode Solutions and/or Services for the Permitted Purpose, subject to the terms and conditions in the Agreement and subject further to any approval required to be obtained from GenCode as set out in the Reseller's Statement of Work in relation to use and access by third party Authorised Users (if any). It shall be the responsibility of the End User to supervise and control the use of the GenCode Solutions and/or Services by its Personnel, by the Authorised Users or to the extent within the operating environment of the End User, its Personnel or the Authorised Users in accordance with the terms of the Agreement. The End User covenants with GenCode that the End User shall take appropriate action, by instruction, agreement or otherwise, to ensure that all such persons permitted to have access to the GenCode Solutions and/or Services shall comply with the relevant terms of the Agreement and shall not cause the End User to breach any of its obligations contained in the Agreement. The End User shall, and shall ensure that its Personnel and the Authorised Users, take all necessary steps and measures to prevent any unauthorized access to, or use of, the GenCode Solutions and/or Services and, in the event of any such unauthorized access or use, the End User shall promptly notify GenCode.

6.4 **Responsible for Authorised Users/Personnel.** The End User shall ensure and procure that all its Personnel and the Authorised Users comply with all the relevant terms and conditions in respect of the access to and use of the GenCode Solutions and/or Services contained in the Agreement as if they were the End User under the Agreement. The End User shall be responsible and assume full liability for: (a) any acts, omission, violation, breach, non-observance, non-compliance and/or negligence by or on the part of any of its Personnel and/or the Authorised Users that would constitute a breach under the Agreement or otherwise cause the End User to be in breach of any of its obligations under the Agreement; (b) any disclosure or use of the GenCode Solutions and/or Services in a manner not permitted under the Agreement by any of its Personnel and/or the Authorised Users; (c) any violation, breach and/or non-observance of or non-compliance with any of the relevant and applicable terms by or on the part of any of its Personnel and/or the Authorised Users; and/or (d) the acts or omissions of any third party having unauthorized access to or use of the GenCode Solutions and/or Services due to any reason attributable to the End User's failure to comply with the terms and conditions contained in the Agreement.

6.5 **Right to Remove Unlawful/Infringing Materials.** Without prejudice to any rights or remedies of GenCode under the Agreement or at law, GenCode shall be entitled, without any liability whatsoever, to remove any Materials that breaches the provisions of this Agreement from the GenCode Solutions and/or Services.

6.6 **Third Party Items.** In the event the End User requires the GenCode Solutions and/or Services to integrate, interoperate or interface with any Third Party Items or requires the GenCode Solutions and/or Services to facilitate the End User's access to or use of any Third Party Items, such integration, interoperation, interfacing and/or facilitation shall be subject to GenCode's prior written approval provided always that the End User assumes sole responsibility and liability for: (a) the establishment of appropriate security measures to control access and prevent unauthorised access to the GenCode Solutions in relation to the endpoints and/or interfacing/integration points; (b) the End User's selection, use, access, cost, implementation and/or proper functioning of any Third Party Items, regardless of how the End User acquires or

obtains access to the Third Party Items, or whether any such Third Party Items are required in order to use all or any part of, or operate in conjunction with, the GenCode Solutions and/or Services; and (c) the compliance with all the applicable terms herein in relation to the use or access of the GenCode Solutions and/or Services by the relevant third party licensor and/or operator of the Third Party Items. The End User acknowledges and agrees that where the GenCode Solutions and/or Services may interface, integrate and/or interoperate with, or facilitate the End User's access to, the Third Party Items, GenCode has no control over the functionality, delivery, use or performance of such Third Party Items. In this respect, the End User acknowledges, undertakes and warrants that the End User is solely responsible and liable for verifying the accuracy and adequacy of any input, output or alert into or from the GenCode Solutions and/or Services. GenCode makes no warranties, representations and/or undertakings whatsoever in relation to such Third Party Items. For the avoidance of doubt, GenCode shall not be made responsible or liable in any manner whatsoever for any issues, errors and/or damages caused by any Third Party Items.

## 7 WARRANTIES, DISCLAIMERS, INDEMNITIES AND LIABILITY

- 7.1 GenCode warrants that it will provide the GenCode Solutions and/or Services in accordance with the Documentation in all material respects.
- 7.2 To the maximum extent permitted by all applicable law and notwithstanding anything contained in the Agreement:
- (a) save and except as expressly provided in the Agreement, the GenCode Solutions and/or Services are provided on an "as is" and "as available" basis, and all conditions, endorsements, guarantees, assurances, representations and warranties of any kind, express or implied, with respect to the GenCode Solutions and/or Services are hereby disclaimed and excluded, including any implied warranty of merchantability, satisfactory quality, non-infringement or fitness for a particular purpose. Unless specifically incorporated into the Agreement in writing, no oral or written information or advice given by GenCode or its dealers, distributors, employees and/or agents shall in any way extend, modify or add to the conditions, endorsements, guarantees, assurances, representations and warranties (as applicable) provided by GenCode in writing under the Agreement; and
  - (b) in no event shall GenCode be liable for any: (i) indirect, incidental, punitive and/or consequential damages and/or losses; and/or (ii) loss of or corrupted data, loss of profit or goodwill and/or loss of business, production or revenue, whatsoever, whether or not such damages and/or losses were reasonably foreseeable or GenCode had been advised of the possibility of the End User incurring the same.
- 7.3 Nothing stated in the Agreement will imply, and GenCode does not warrant or provide any other similar assurance whatsoever, that: (i) the use or operation of any GenCode Solutions and/or Services will be uninterrupted or error free; (ii) data will be transmitted timely and accurately; and/or (iii) all cyber-threats, vulnerabilities, cyber-attacks, ransomware, virus and/or malware will be discovered, detected, remedied and/or resolved. The End User shall be solely responsible and liable for the End User's decision to allow or maintain any malware or vulnerability on or to the End User's (or its Authorised Users') endpoints, systems and/or networks.
- 7.4 The End User acknowledges and agrees that the GenCode Solutions and/or Services are not designed or intended for use in any hazardous environment requiring fail-safe performance or operation, nor is it intended for the operation of navigation, nuclear facilities, weapons systems, life-support systems, or any application or installation where failure could result in death, severe physical injury or property damage.
- 7.5 To the maximum extent permitted by all applicable law and notwithstanding anything contained in the Agreement, GenCode's maximum and cumulative total liability (including any liability for acts and omissions of its Personnel/affiliates) in respect of any and all costs, indemnities, losses, damages, claims, fines, penalties, liabilities and/or expenses however arising under, or in connection with, the Agreement (whether arising in contract, tort or otherwise) shall not exceed a sum equivalent to the amount paid by the End User, whether via the Reseller or directly to GenCode, in respect of the relevant GenCode Solutions and/or Services during the twelve (12) month period immediately preceding the date upon which such claim accrued.
- 7.6 The liability cap set out in **Clause 7.5** above is GenCode's total potential liability in the aggregate and shall not in any manner be exceeded, no matter how many claims, counterclaims, causes of action, suits, or demands may be asserted.
- 7.7 Subject to **Clause 8** and other provisions of this **Clause 7**, GenCode agrees to indemnify the End User from and against any Infringement Claim provided always and upon the conditions that: (a) the End User shall promptly notify GenCode in writing of the claim and allow GenCode to solely control the defence and any related settlement negotiations of such Infringement Claim. Any settlement which requires the End User to admit any liability shall be subject to the approval of the End User such approval not to be unreasonably withheld; (b) the End User shall cooperate fully with GenCode; (c) GenCode shall not be liable to indemnify the End User for any settlement made in respect of such infringement claim without GenCode's written approval; (d) the Infringement Claim is not caused by or attributable to, in whole or in part, the use of the GenCode Solutions and/or Services by the End User, its Personnel and/or the Authorised Users in the manner not authorised under the Agreement or not in compliance with any of the terms and conditions contained in the Agreement; and (e) the payment of any costs, expenses and/or damages shall be restricted to costs and/or expenses properly and reasonably incurred and damages finally awarded by any court or tribunal having competent jurisdiction over the Infringement Claim.
- 7.8 If the Infringement Claim has occurred or in the opinion of GenCode is likely to occur, the End User agrees to permit GenCode, at GenCode's sole option to:
- (a) procure for the End User the right to continue to use the GenCode Solutions and/or Services;

- (b) modify or replace the parts of the GenCode Solutions and/or Services so that the GenCode Solutions and/or Services become compatible but non-infringing; or
- (c) if neither (a) nor (b) is available or commercially practicable, terminate the Reseller's Statement of Work or the use of the infringing part of the GenCode Solutions and/or Services.

7.9 The End User shall fully indemnify, hold harmless, and if requested by GenCode (subject to conditions as may be imposed by GenCode), defend, the Indemnified Party from and against any and all actions, claims, proceedings, costs (including reasonable legal fees and expenses), damages, demands, expenses, losses, fines, penalties and liabilities made against, suffered, or incurred by the Indemnified Party arising howsoever from or in connection with any breach, misconduct, default, omission, misrepresentation, negligence, non-observance and/or non-performance of, under or in connection with the Agreement (whether in tort, contract or otherwise) by or on the part of the End User or of any other person for whose acts or omissions the End User is responsible or liable (vicariously or otherwise). Where GenCode requests the End User to defend any claim or proceeding pursuant to this Clause, the End User shall defend such claim or proceeding in good faith, in the best interest of GenCode and in accordance with GenCode's instruction. The defence strategy and any settlement in respect of the claim or proceeding shall be subject to GenCode's approval. In the event the End User fails to conduct the defence, or settlement, of the claim or proceeding to the satisfaction of GenCode or if the defence or settlement of such claim or proceeding is conducted by the End User in a manner which may prejudice the interest of GenCode (in GenCode's sole opinion), GenCode shall be entitled to conduct or take control of the defence and/or the settlement of such claim or proceeding at the End User's costs and expense and GenCode's conducting or taking control of the defence and/or the settlement in such event shall be without prejudice in any manner whatsoever to the right of GenCode to claim full indemnity from the End User under this Clause.

7.10 This Clause shall survive the termination or expiry of the Agreement for whatsoever reason.

## 8 EXTENT OF LIABILITY

8.1 Notwithstanding anything contained herein and without prejudice to GenCode's other rights and remedies under the Agreement or at law, GenCode shall not be liable or held responsible in any manner whatsoever for any Liability to the extent such Liability arises from or is attributable or due to any of the following:

- (a) any unilateral or unauthorised alteration, modification, variation, translation or revision by the End User, its Personnel and/or the Authorised Users of GenCode Solutions and/or Services;
- (b) the improper or unauthorised use or operation of the GenCode Solutions and/or Services by the End User, its Personnel and/or the Authorised Users, including the use of the GenCode Solutions and/or Services for a purpose for which it was not designed or outside the scope of the Agreement or any Documentation;
- (c) the use of GenCode Solutions and/or Services through the End User, its Personnel and/or the Authorised Users by any person not authorised under the Agreement;
- (d) the End User's failure to use software updates or upgrades made available by GenCode in relation to the GenCode Solutions and/or Services;
- (e) any works made pursuant to the End User's unique requirements and GenCode's compliance with any unique designs, specification and/or instructions provided by the End User, or another party on behalf of the End User, in which GenCode has raised any objection/concern;
- (f) anything (including any Materials) which the End User, its Personnel and/or the Authorised Users provide which is incorporated into GenCode Solutions and/or Services;
- (g) any failure, delay, wilful act, misconduct, default, breach, negligence and/or omission on the part of the End User, its Personnel and/or the Authorised Users or any other person for whose acts or omissions the End User is responsible or liable, whether in tort, contract or otherwise in connection with the End User's activities and obligations under the Agreement;
- (h) failure of the End User to procure, properly install and/or maintain its operating environment/system which falls outside the scope of the Agreement;
- (i) the transfer of data over communications networks and facilities of third parties, including the internet, and the End User acknowledges that the GenCode Solutions and/or Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities;
- (j) any Force Majeure Event; and/or
- (k) any third party (other than Personnel of GenCode) and/or third party services and/or system/product/software not supplied by or directly through GenCode, including Third Party Items, used in connection with the GenCode Solutions and/or Services.

8.2 If GenCode agrees to attend to any non-conformity, error, issue, defect and/or problem due to or caused by any of the foregoing events, such works or services shall be additionally chargeable based on GenCode's Standard Rates (unless otherwise agreed by the Parties). This Clause shall survive the termination or expiry of the Agreement for whatsoever reason.

## 9 INTELLECTUAL PROPERTY RIGHTS

9.1 **Existing IPR.** All existing Intellectual Property Rights of a Party (and/or its third party suppliers, licensors, service providers or affiliates) shall continue to be owned by the Party (and/or its third party suppliers, licensors, service providers or affiliates). Nothing in the Agreement shall transfer or assign any such Intellectual Property Rights to the other Party.

9.2 **New IPR owned by GenCode.** As between the Parties, all Intellectual Property Rights in relation to any Materials created pursuant to the Agreement in relation to the GenCode Solutions and/or Services shall immediately vest in

GenCode upon its creation, save for the End User Materials contained therein which shall remain the property of the End User.

- 9.3 **GenCode IPR.** For the avoidance of doubt and as between the Parties, the GenCode Solutions and the other Materials (whether written or in machine readable form) originated, prepared and/or provided by GenCode under the Agreement, including any extension, modification, customisations, enhancements and Deliverables in connection with the GenCode Solutions, shall belong absolutely to GenCode (and/or its affiliates), save for the End User Materials contained therein which shall remain the property of the End User. Subject only to the limited licence grants stated in the Agreement, GenCode (and/or its affiliates) is the sole and exclusive owner of all worldwide title, rights and interest in and to the GenCode Solutions and all Materials related thereto in all aspects, including all Intellectual Property Rights subsisting or embodied in the GenCode Solutions and all Materials related thereto, save for the End User Materials contained therein which shall remain the property of the End User. The End User acknowledges and agrees that it does not acquire any Intellectual Property Rights in or relating to the GenCode Solutions or any translation or other derivative work thereof. The End User agrees that it shall not refute or otherwise challenge GenCode's and/or any of its affiliates' ownership of any such Intellectual Property Rights. All rights, title and interest not expressly granted by GenCode herein in relation to the GenCode Solutions and/or Services are reserved by GenCode.
- 9.4 **Use of GenCode IPR.** All Materials in which any of the Intellectual Property Rights of GenCode (and/or its third party suppliers, licensors, service providers or affiliates) subsist which are made available by GenCode to, or obtained by, the End User, its Personnel and/or Authorised Users under the Agreement shall be used by the End User, and the End User shall ensure that its Personnel and/or Authorised Users use such Materials, strictly in accordance with the terms and conditions contained in the Agreement and solely, and only to the extent necessary, for the Permitted Purpose. The End User shall not use any of GenCode's or its affiliates' product or corporate names, logos, trade names, trademarks, service names and/or service marks unless it has procured GenCode's approval, which may be subject to any conditions imposed by GenCode in respect of each use.
- 9.5 This Clause shall survive the termination or expiry of the Agreement for whatsoever reason.

## 10 CONFIDENTIALITY

- 10.1 **Confidential Information.** The "Confidential Information" of a Party ("disclosing Party") shall mean all Materials of any kind, whether in writing, machine readable or visually readable form, oral or otherwise and whether or not labelled as "Confidential": (i) that are made available, communicated or released by, or on behalf of, the disclosing Party to the other Party ("receiving Party") or to the receiving Party's Personnel or other persons who are receiving such Materials on the receiving Party's behalf (whether prior to or after the Effective Date) under, for the purpose in connection with or as a result of the Agreement; and (ii) that are obtained by the receiving Party or the receiving Party's Personnel or other persons who are obtaining such Materials on the receiving Party's behalf (whether prior to or after the Effective Date), relating to the disclosing Party's business, products, services, Personnel, customers and/or operations under, for the purpose in connection with or as a result of the Agreement. Notwithstanding anything contained herein, the disclosing Party's Confidential Information shall exclude any Material that:
- (a) is already known to the receiving Party or in its possession before the disclosure hereunder free of any obligation to keep it confidential;
  - (b) is furnished to the receiving Party by an independent third party free of any restriction on its dissemination;
  - (c) is approved for release in writing by the disclosing Party designating said information as Confidential Information (provided that the disclosure is only to the party expressly permitted by the disclosing Party);
  - (d) is or becomes publicly known through no wrongful act or default of the receiving Party (and/or its Personnel and/or any party for whose act or omission the receiving Party is responsible or liable); or
  - (e) is independently developed by the receiving Party.
- 10.2 **Permitted Disclosure.** Unless otherwise stated in the Agreement, the receiving Party shall not disclose the disclosing Party's Confidential Information to any person except: (a) to the relevant governmental or statutory authorities, officers or bodies or any other person to the extent required by any applicable law subject always to **Clause 10.5**; (b) to any relevant tribunals, court officers, parties and/or court to the extent necessary to resolve any disputes under the Agreement; (c) to any person expressly permitted under the Agreement; (d) to its employees, auditors and/or legal, financial and/or accounting advisors (in their professional capacity), who have a definite need to know the disclosing Party's Confidential Information for the Permitted Purpose; and/or (e) to any person approved by the disclosing Party in writing ("**Permitted Disclosure**"). The receiving Party shall limit the disclosure of the disclosing Party's Confidential Information and shall only disclose such part of the disclosing Party's Confidential Information as may be necessary having regard to the purpose relating to the Permitted Disclosure. Notwithstanding the foregoing, GenCode shall be entitled to disclose the End User's Confidential Information to its Personnel and affiliates to the extent necessary for the Permitted Purpose and the End User shall be entitled to disclose the GenCode's Confidential Information to the Authorised Users only to the extent necessary for the Permitted Purpose. Each Party shall use the other Party's Confidential Information only to the extent necessary for the Permitted Purpose in accordance with the terms and conditions contained in the Agreement.
- 10.3 **Protection Standard.** The standard used by the receiving Party to protect the disclosing Party's Confidential Information shall not be lesser than the standard it uses to protect its own confidential information and in no event shall such standard be lesser than a reasonable standard or any standard required by applicable law.
- 10.4 **Confidential Information of GenCode.** The End User acknowledges that GenCode may be disclosing valuable or proprietary information of GenCode to the End User in relation to the GenCode Solutions and/or Services without

limiting the generality of the other provisions contained in this **Clause 10**. All such valuable or proprietary information of GenCode shall be treated as part of GenCode's Confidential Information. Notwithstanding anything contained herein, the End User shall use, and ensure that all its Personnel, the Authorised Users and/or other third parties engaged by the End User who are permitted to access GenCode's Confidential Information ("**Recipients of GenCode's Confidential Information**") use, GenCode's Confidential Information solely for the Permitted Purpose and shall supervise and control the use of GenCode's Confidential Information by all such Recipients of GenCode's Confidential Information. The End User shall ensure that all the Recipients of GenCode's Confidential Information have been duly apprised of the requirements of this Clause and are or will be bound to keep GenCode's Confidential Information confidential as required under the Agreement. The End User shall be responsible and assume full liability for any disclosure or use of GenCode's Confidential Information in a manner not permitted under the Agreement by any or all of the Recipients of GenCode's Confidential Information. If requested by GenCode, the End User shall ensure, and shall procure, that the relevant Recipients of GenCode's Confidential Information enter into a non-disclose or confidentiality agreement with GenCode.

- 10.5 **Disclosure required by law.** In the event that any GenCode's Confidential Information is required to be disclosed by the End User (and/or any Recipients of GenCode's Confidential Information) in any manner due to the requirements of any applicable law, the End User shall give prompt written notice to GenCode unless prohibited by applicable law. The End User shall: (i) take all necessary steps to verify the authority of the officer requesting for such information and only disclose such minimum information as is legally required. The End User shall, at the request of GenCode, use commercially reasonable efforts to obtain confidential treatment for any GenCode's Confidential Information that is to be disclosed; (ii) allow GenCode, if it wishes, to take such measures as it deems necessary or desirable to challenge any such disclosure or to otherwise redact or minimize such disclosure; and (iii) fully cooperate with GenCode.

## 11 END USER MATERIALS

- 11.1 **End User Materials owned by the End User.** The End User Materials shall be owned by the End User and the End User shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such End User Materials.
- 11.2 **Right for GenCode to process End User Materials.** The End User grants GenCode (and its Personnel and affiliates) the royalty-free right and licence, and shall procure and secure all the necessary right, licence, approval, consent and/or permit, for GenCode (and its Personnel and affiliates), to collect, use, transfer, modify, and process the End User Materials, including the End User Data and all personal data contained therein, to the extent necessary for the Permitted Purpose. The End User warrants, and shall ensure, that all such End User Materials, and the use and processing of the same by GenCode (and/or its Personnel and/or affiliates) to the extent necessary for the Permitted Purpose under the Agreement, will not violate any applicable law and/or infringe the rights (including the Intellectual Property Rights) of any third party.
- 11.3 **Anonymous Data.** The End User understands that the processing of Anonymous Data is a condition to provide the GenCode Solutions and/or Services and may be required to monitor, analyze or improve the GenCode Solutions and/or Services. In this regard and notwithstanding anything to the contrary, the End User acknowledges that GenCode shall be entitled to collect, use and process Anonymous Data for industry analysis, benchmarking, analytics, product development and support, marketing and other lawful business purposes (such as improving and enhancing the GenCode Solutions and/or Services). The End User, on its own behalf and on behalf of its Personnel and the Authorised Users, grants GenCode a non-exclusive, worldwide, royalty-free, perpetual right and license to collect, use, transfer, modify, and process the End User Data to generate Anonymous Data. The End User agrees that GenCode has the right to generate Anonymous Data and that the Anonymous Data generated is owned by GenCode, which GenCode may use for any lawful business purpose. The End User warrants and covenants that it has the right to grant to GenCode such right and licence under this Clause.
- 11.4 **Personal Data.** To the extent that any personal data is extended to or made available by the End User (and/or its Personnel and/or the Authorised Users) to GenCode under the Agreement, the End User, agrees that GenCode (and/or its Personnel and/or affiliates) may process the Personal Data for the Permitted Purpose and for the purposes set out in and in accordance with the relevant privacy notice published by GenCode, in relation to the relevant GenCode Solutions and/or Services, which is incorporated herein by this reference. The End User warrants, and shall ensure the use and processing of the same by GenCode (and/or its Personnel and/or affiliates) to the extent necessary for the Permitted Purpose under the Agreement and/or in accordance with the said privacy notice (including transferring the personal data to a place outside of Malaysia for the Permitted Purpose) will not cause GenCode to violate any applicable law and/or infringe the rights (including the Intellectual Property Rights) of any third party.

## 12 TERMINATION, SUSPENSION AND CONSEQUENCES OF TERMINATION

- 12.1 **Mutual Termination Right.** Without prejudice to any other rights that either Party may have under the Agreement or at law, a Party may immediately terminate the Agreement in writing if:
- (a) the other Party is in material breach of any of the terms and conditions contained in the Agreement and such breach is not remedied within thirty (30) days of the terminating Party's written notice requiring the breaching Party to remedy the breach; or
  - (b) (i) the other Party shall pass a resolution for winding up or becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency or bankruptcy administration or proceedings (save for any vexatious or frivolous proceedings); (ii) a receiving order is made against the other Party; (iii) the other Party

has a receiver or similar officer appointed over all or a substantial part of its assets; or (iv) the other Party makes any arrangement or composition with its creditors (other than relating to a solvent restructuring).

- 12.2 **Termination for Convenience.** GenCode shall be entitled to unilaterally terminate the Agreement (or any part thereof) for convenience (with or without any reason whatsoever) by giving the End User ninety (90) days' advance written notice.
- 12.3 **Consequences of Termination/Expiry.** Unless otherwise agreed by the Parties, upon termination or expiry of the Agreement and without prejudice to any other rights and remedies under the Agreement or at law or equity:
- (a) all licences and rights granted by GenCode under the Agreement shall immediately terminate and the End User shall immediately cease to use, and shall cause all the Personnel and Authorised Users to cease using, the GenCode Solutions and any other related Deliverables provided by GenCode under the Agreement. Upon GenCode's request, the End User shall delete and/or destroy all copies of GenCode Solutions that are in the possession or control of the End User, its Personnel and/or the Authorised Users and confirm the same in writing to GenCode (signed by an authorised officer of the End User). Each Party shall be entitled to retain such data it is required to retain under any applicable law and in accordance with its reasonable retention policy (based on standard industry practice and having regard to applicable law) provided that, to the extent such retained data consist of the other Party's Confidential Information, such retained data shall be subject to confidentiality requirements and the applicable terms of use under the Agreement;
  - (b) GenCode shall have the right to deactivate and/or block any use of and/or access to the GenCode Solution and/or Services, and/or delete any relevant files, data, history and/or programs associated with any account of the End User, its Personnel and/or an Authorised User, without notice to the End User subject to **Clause 12.2 (c)** below;
  - (c) GenCode may destroy or otherwise dispose of any or all of the End User Materials in its possession unless GenCode receives, no later than ten (10) days after the effective date of the termination or expiry of the Agreement, a written request for the provisioning and delivery up to the End User of the then most recent back-up of the End User Data to the extent stored by GenCode as part of GenCode's obligations under the Agreement. If GenCode is requested by the End User to deliver up such most recent back-up of the End User Data, the End User shall bear all costs and expenses reasonably incurred by GenCode in the preparation, delivery and provisioning of such End User Data to the End User;
  - (d) GenCode may (without prejudice to any other rights and remedies under the Agreement or at law):
    - (i) retain any monies paid; and
    - (ii) charge for such part of the GenCode Solutions and/or Services in respect of which GenCode has already rendered and which Fees becomes payable by the End User prior to such termination but the End User has not yet made the corresponding payment.

Where only a portion of the GenCode Solutions and/or Services has expired or is terminated, the foregoing subsections (a) to (d) shall be applicable to such portion and the Agreement shall continue for the remaining portion(s).

- 12.4 **Suspension.** Without prejudice to any other rights and remedies of GenCode under the Agreement or at law, GenCode shall be entitled, without any liability whatsoever, to immediately modify, suspend, discontinue and/or place limits (as the case may be and, where applicable, only to the extent necessary) on the provisioning and/or delivery of the GenCode Solutions and/or Services in the event: (a) the End User (and/or its Personnel and/or any Authorised User) is found to be in breach of any of the terms and conditions contained in the Agreement and such breach is not remedied within seven (7) days of GenCode's notice; (b) where the use of the GenCode Solutions and/or Services by the End User (and/or its Personnel and/or any Authorised User) poses a security risk or other risks to GenCode in a manner deemed material by GenCode or may otherwise, in GenCode's sole opinion, materially and adversely affect the manner GenCode provides its products and/or services to other customers; or (c) GenCode is required to do so due to the operation of any applicable law. If any suspension occurs for more than thirty (30) days and the event leading to suspension continue to subsist, GenCode shall be entitled to terminate the Agreement or the relevant portion of the affected GenCode Solutions and/or Services without prejudice to any other rights and remedies of GenCode under the Agreement or at law.

- 12.5 This Clause shall survive the termination or expiry of the Agreement for whatsoever reason.

### 13 COMPLIANCE WITH LAW AND POLICIES

- 13.1 **End User to Comply with Law.** The End User shall comply with all applicable law and regulations, orders, directives and requirements of any governmental or regulatory authority/body issued or established pursuant to applicable law, relating to the use of the GenCode Solutions and/or Services and the business activities and obligations of the End User in connection with the Agreement.
- 13.2 **GenCode to Comply with Law.** GenCode shall comply with all applicable law and regulations, orders, directives and requirements of any governmental or regulatory authority/body issued or established pursuant to applicable law, relating to the provisioning of the GenCode Solutions and/or Services and the business activities and obligations of GenCode in connection with the Agreement.

- 13.3 **Change in Law.** Notwithstanding anything contained herein, in the event any customisation or modification is required to be made to the GenCode Solutions and/or Services due to any change in law, the Parties shall discuss in good faith and any changes shall be subject to mutual agreement of both Parties (not to be unreasonably withheld). GenCode shall be entitled to charge additional fees for implementing such changes.
- 13.4 **Compliance with Specific Policies.** Without in anyway limiting the generality of the foregoing, the End User shall comply with the GenCode's policies in relation to general compliance with applicable laws from time to time. Without limiting the generality of the foregoing, the End User shall, at all times, comply with, and ensure that all its affiliated companies comply with, all anti-bribery and corruption laws and regulations as well as Gencode's Anti-Bribery and Corruption Policy and where applicable, Gencode's Supplier Code of Conducts and Ethics (an electronic version of which is available at [www.hli.com.my](http://www.hli.com.my)), failing which Gencode shall be entitled to, without prejudice to any other rights of Gencode hereunder, terminate the Agreement, and where applicable, any pending orders, with immediate effect. Upon such termination, the provisions hereunder in respect of a termination by Gencode in the event of a default by the End User shall apply. Notwithstanding any other provisions hereunder and without prejudice to any other rights of Gencode hereunder, the End User shall indemnify and hold harmless the Indemnified Parties, from and against any and all claims, demands, causes of actions, liabilities, losses, damages, judgments, suits, settlements or the like entered into by any of the Indemnified Parties (whether or not liability is admitted by such Indemnified Party), royalties, licence fees, and all cost and expenses of any kind arising out of or resulting from or in connection with the End User's breach of the provisions of this Clause.

#### 14 AUDIT

- 14.1 **Monitoring by GenCode.** The End User acknowledges that GenCode may monitor (remotely or otherwise) the use of the GenCode Solutions and/or Services for compliance with the Agreement and, where requested by GenCode, the End User shall provide information requested by GenCode necessary for such purpose. The End User shall maintain adequate records of the use of the GenCode Solutions and/or Services throughout the term of the Agreement and for a period of seven (7) years thereafter.
- 14.2 **Audit.** GenCode may, through an independent auditor and/or itself, audit the use of and/or access to the GenCode Solutions and/or Services by the End User, its Personnel and/or Authorised Users. The End User shall, upon GenCode's notice, permit (and procure its Personnel and/or the Authorised Users to permit) GenCode (and/or any third party appointed by GenCode) to audit, review and inspect the End User's, its Personnel's and/or the Authorised Users' compliance with the Agreement. This right shall be exercised by GenCode in such a manner as not to substantially interfere with the normal conduct of business of the audited party.
- 14.3 **Audit Revealing Breach/Underpayment.** Without prejudice to any other rights and remedies GenCode may have under the Agreement or at law, if any of such audit reveals that: (a) there is any breach, default, non-observance, omission or non-compliance by the End User (and/or any of its Personnel and/or the Authorised Users) of any of the terms and conditions contained in the Agreement, the costs and expenses incurred or suffered by GenCode relating to the relevant audit(s) shall be borne by the End User; and/or (b) the End User has underpaid any Fees, the End User shall pay to GenCode an amount equal to such underpayment together with late payment interest on such sum on a day to day basis at the agreed rate of 8% per annum or the maximum rate permitted by law, whichever is the lower.

#### 15 MISCELLANEOUS

- 15.1 **Force Majeure.** Save and except for the obligation to make payments, no Party shall be liable for, nor shall such Party be considered in breach of the Agreement due to, any delay or failure to perform its obligations hereunder, as a result of or due to any Force Majeure Event to the extent that such delay, failure or breach is caused by or due to the Force Majeure Event. If a Force Majeure Event continue for thirty (30) days consecutively or accumulatively (in any calendar year), GenCode shall be entitled terminate the Agreement or, where practical and reasonable, the affected portion of the GenCode Solutions and/or Services.
- 15.2 **Complete Agreement.** The Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any prior agreements, understandings or arrangements between the Parties, whether oral or in writing relating to the subject matter hereof and no representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the Agreement except as set out in the Agreement.
- 15.3 **Marketing and Promotion.** From time-to-time, GenCode may list, mention and publish its customers in its marketing and communications initiatives, platforms and/or websites. The End User agrees that GenCode may use the End User's name and logo worldwide, free of charge for such purpose.
- 15.4 **Binding Effect.** The Agreement shall be binding upon the Parties hereto, and inure to the benefit of GenCode and the End User and their respective permitted assigns and successors. The Agreement shall continue to be valid notwithstanding any changes in the Parties whether in name, style, constitution or composition.
- 15.5 **Assignability and Subcontract.** The End User shall not, without the prior written approval of GenCode, assign, transfer, novate, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. GenCode shall be entitled to assign, transfer, novate and/or sub-contract any of its rights, title, benefits, obligations and/or duties under the Agreement to any third party, including its affiliates.

- 15.6 **Governing Law.** The Agreement shall be governed by, construed and enforced under, and subject to, the law of Malaysia and the courts of Malaysia shall have exclusive jurisdiction hereto.
- 15.7 **Variation.** All additions, amendments, modifications and/or variations to or of any terms and conditions of the Agreement shall not be valid unless made in writing and signed by both Parties save and except that GenCode may add, amend, modify and/or vary these End User Terms and Conditions from time to time by publishing the updated version at or on <https://www.gencode.com.my/terms-conditions>. The End User shall be responsible for visiting Gencode's website from time to time to read the latest End User Terms and Conditions and shall be bound by the End User Terms and Conditions as added, amended, modified and/or varied by GenCode from time to time upon such added, amended, modified and/or varied End User Terms and Conditions are being published by GenCode. The End User shall promptly inform GenCode in writing of any End User Terms and Condition which the End User is unable to agree and in such event, GenCode shall be entitled to terminate the Agreement (without prejudice to any rights and/or remedies of GenCode).
- 15.8 **Severability.** Any provision contained in the Agreement which is illegal, invalid or unenforceable shall, to the maximum extent possible, continue to apply with the necessary modification in order that the provision is legal, valid and enforceable provision which most closely reflects the original provision. Subject to the foregoing or if the foregoing is not possible, any provision which is illegal, invalid or unenforceable shall be fully severable and ineffective to the extent of such illegality, invalidity or unenforceability without invalidating the remaining provisions contained in the Agreement (such remaining provisions shall remain in full force and effect).
- 15.9 **Notices.** All notices which are required to be given hereunder shall be in writing and in English and shall be sent to the address of the recipient Party set out in the Agreement or such other address, email address and/or facsimile as notified by the recipient Party. Any such notice may be delivered personally, by courier service or by registered or pre-paid post, by email or by facsimile transmission and shall be deemed to have been served if by hand when delivered, if by courier, registered or pre-paid post seventy two (72) hours after posting, if by email when successfully sent and registered as a sent email and if by facsimile transmission when successfully despatched (with a successful transmission report). If deemed service or receipt is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), such notice is deemed to have been served or received when business next starts in the place of receipt. Notwithstanding anything to the contrary in this Clause, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.
- 15.10 **Waiver.** No failure or delay on the part of a Party in exercising any rights or remedies under the Agreement at any time or for any period of time shall operate as or be deemed to be a waiver thereof or otherwise diminish or affect the Party's other rights and remedies under the Agreement. Any knowledge or acquiescence by a Party of, or in, any breach of any provision of the Agreement shall not operate as or be deemed to be a waiver. No single or partial exercise of any rights or remedies by a Party shall affect the other rights or remedies the party may have under the Agreement. A waiver by a Party of any breach shall not constitute a continuing waiver in respect of any subsequent or continuing breach. A provision of right or remedy under the Agreement may not be waived except in writing signed by the Party so waiving.
- 15.11 **Costs.** Each party shall bear its own costs incurred in the preparation of the Agreement (including but not limited to legal expenses) and the End User shall pay for the applicable stamp duty and be responsible for effecting any necessary stamping.
- 15.12 **Cumulative.** The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law or in equity unless otherwise stated. Unless otherwise stated, all rights and remedies hereunder are cumulative and are in addition to all other rights and remedies provided by law, agreement or otherwise and any express statement of a right or remedy conferred upon a Party shall be in addition to and without prejudice to any other rights and remedies which are available to the said Party.
- 15.13 **Survival.** The provisions contained in the Agreement which are: (i) expressed to survive the termination or expiration of the Agreement; or (ii) capable of having effect and which by their nature, sense and context are intended to survive the termination or expiration of the Agreement, shall remain in full force and effect following the termination or expiration of the Agreement. Termination or expiration of the Agreement for any reason shall not release any Party hereto from any liability which, at the time of such termination or expiration, has already accrued to the other Party or which is attributable to a period prior to such termination or expiration, nor preclude either Party from pursuing or enforcing any rights and/or remedies it may have under the Agreement or at law or in equity.
- 15.14 **No Agency No Partnership.** No Party shall hold itself out to be the principal or agent of the other Party for any purpose and under any circumstances. Nothing herein contained shall create or imply a partnership between the Parties. No Party has any authority to act, make representations or bind or contract on behalf of the other Party.

- End of the End User Terms and Conditions and the remainder of this page has been intentionally left blank -