# Non Disclosure Agreement

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ 2020

Between:

**(1) SYARIKAT P CUBE SDN BHD,** a company incorporated under the laws of Brunei Darussalam, with its registered address at Level 4, Ministry of Finance and Economy Building, Commonwealth Drive, Bandar Seri Begawan BB3910, Brunei Darussalam (“**P3 Sdn Bhd**”);

**AND**

**(2)** **[INSERT COMPANY NAME OF PARTICIPANT]**, a [insert company type, e.g. limited liability company] incorporated under the laws of [insert jurisdiction] with a company registration number being [insert company registration number] and whose business address is at [insert business address] (“**Participant**”);

(P3 Sdn Bhd and Participant may hereinafter be singularly referred to as a “**Party**” and collectively referred to as “**Parties**”).

**WHEREAS:**

A. P3 Sdn Bhd is the implementing agent representing The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, represented by the Ministry of Health (“MOH”), in connection with the proposed project to finance, develop, operate and maintain a mixed-use development at Kampung Pandan, Kuala Belait, which is to comprise a health centre as well as commercial facilities and other amenities for the general public (“To Finance , Develop, Operate and Maintain the Kampung Pandan Health Centre Project in Kuala Belait, Brunei Darussalam”).

B. Through the issuance of an Expression of Interest (“EOI”), P3 Sdn Bhd is seeking EOI submissions from suitable qualified participants for the proposed project To Finance, Develop, Operate and Maintain the Kampung Pandan Health Centre Project in Kuala Belait, Brunei Darussalam.

C. The Participant has contacted P3 Sdn Bhd and expressed interest in participating in the EOI submission process for the proposed project To Finance, Develop, Operate and Maintain the Kampung Pandan Health Centre Project in Kuala Belait, Brunei Darussalam (“the Project”, which definition shall include any continuing relationship entered into as a result of the Participant’s EOI submission).

D. For the purposes of the aforesaid Project, it may be necessary for the Parties to exchange with each other certain information which they regard as proprietary and/or confidential. Hereinafter, the Party disclosing Confidential Information shall be referred to as the “Disclosing Party” and the Party receiving Confidential Information shall be referred to as the “Receiving Party”.

**THE PARTIES HEREBY AGREE** as follows:

**1. Definitions:**

“**Affiliate**” shall mean:

1. a Party’s parent company or any company in which it or its parent company owns or controls directly or indirectly at least 50% of the voting stock or of the registered capital; and

b) in the case of **P3 Sdn Bhd**, includes statutory corporations or body corporates constituted in accordance with the applicable laws in Brunei Darussalam.

“**Confidential Information**” shall mean all information identified as confidential, proprietary, private or restricted (including but not limited to financial, commercial, and technical data and information, such as volumes of goods and/or services, prices and pricing, discoveries, ideas, concepts, know-how, techniques, specifications, processes and process data, drawings, blueprints, tracings, diagrams, designs, models, samples, flow charts, computer programmes, marketing plans, customer data, methods and business studies) disclosed by one Party to the other Party in connection with the Project, whether in tangible form, in electronic form, orally, by visual display, and/or in the form of samples or models, or otherwise. The terms of any substantive discussions between the Parties and/or their Affiliates in relation thereto, shall also constitute Confidential Information, and are deemed to be confidential.

“**Representatives**” shall mean with respect to each Party, such Party’s and its directors, officers, employees, consultants, contractors, subcontractors, attorneys, lawyers, advisers and agents.

**2. Interpretation**

2.1 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing gender include every gender and words denoting person shall include a natural person, company, firm, unincorporated association or any other legal entity whether acting as trustee or not.

2.2 Any reference to a working day shall mean a reference to any day other than a Saturday and Sunday or a public holiday in Brunei Darussalam and any reference to a month or year shall mean a month or year reckoned according to the Gregorian calendar.

2.3 References herein to Sections and Appendices are to sections in and appendices to this Agreement.

2.4 The Appendices to this Agreement shall be deemed to form part of this Agreement.

2.5 The headings to the Sections and Appendices are inserted for ease of reference only and shall not affect the interpretation and construction of this Agreement.

2.6 Unless otherwise expressly stated, references to any statute, regulation, order or by-law shall be taken to be enacted in Brunei Darussalam.

2.7 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

2.8 This Agreement shall bind each Party’s legal representatives, successors or assigns.

**3. Purpose**

3.1 The Receiving Party undertakes that it shall make use of the Confidential Information solely for the purpose of the Project (“**Permitted Purpose**”).

3.2 It is understood and agreed between the Parties that this Agreement creates no legally binding obligations to realise the development of the Project unless and until a definitive agreement or agreements that give effect to such contemplation have been executed by the Parties.

4. **Use and** **Non-disclosure of Confidential Information**

4.1 The Receiving Party shall treat all Confidential Information learned, acquired, received or obtained from the other Party or its Affiliates as follows:

a) treat strictly secret and confidential and, except as permitted by this Agreement, shall not disclose or permit it or any part thereof to be disclosed to any third party (whether such third party be in the form of a person, firm, corporation, partnership or other entity);

b) shall only use it for the purposes and within the scope of the Project set out in **Section 3.1** according to, without the prior written consent of the Disclosing Party, the terms of this Agreement and, in particular, not to exploit it commercially, for gain or advantage outside the scope of the Project;

c) shall not make it, directly or indirectly, the subject of any patent application or other application for the registration or protection of any intellectual property or other proprietary right;

d) shall ensure that any disclosures of Confidential Information to its Representatives shall be strictly on a “need-to-know” basis for the purposes of the Project and only to such extent as is strictly necessary, provided that such Representatives are contractually or otherwise obligated to keep such Confidential Information confidential and are instructed to neither use nor disclose such Confidential Information in any manner other than as permitted herein;

e) shall protect the Confidential Information against any unauthorised use or disclosure with the same degree of care as it affords its own confidential and/or proprietary information (which shall in no event be less than a reasonable degree of care); and

f) shall take all necessary and suitable measures and actions to effectively protect the Confidential Information at any time against loss as well as against unauthorized access.

**5. Exceptions to Non-disclosure of the Confidential Information**

5.1 The obligations set out in **Section 4** shall not apply to Confidential Information which the Receiving Party can prove:

a) was properly and lawfully known to, or in the possession of, prior to its receipt thereof;

b) was publicly known prior to its receipt thereof;

c) became publicly known after its receipt thereof other than as a result of a breach of this Agreement;

d) was disclosed to it without restriction on disclosure or use by a third party which to the Receiving Party’s knowledge was authorized to make such disclosure;

e) was independently developed by the Receiving Party without the benefit or use of Confidential Information as evidenced by written records in the possession of the Receiving Party; or

f) is required to be disclosed by law or a stock exchange having jurisdiction over the Receiving Party provided however that the Receiving Party shall first have used all reasonable efforts to promptly notify the Disclosing Party of the details and circumstances thereof so as to afford such Party every opportunity to take any remedial action as it may deem necessary or appropriate, including seeking an appropriate protective order (if possible). In the event that such protective order is not, or cannot be, obtained, then the Receiving Party may disclose the Confidential Information to the appropriate body, but only that portion of Confidential Information which the Receiving Party is advised by its legal counsel that it is legally required to disclose and the Receiving Party shall nevertheless use reasonable efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information.

5.2 Specific Confidential Information shall not be exempted from the provisions of **Section 4** merely because it is embraced by general information within any of the exceptions set forth in **Sections 5.1 a) to f)** above.

5.3 Combinations of parts of Confidential Information shall not be exempted from the provisions of **Section 4** merely because any of the provisions of **Sections** **5.1 a) to f)** applies only to such parts but not to their combination.

**6. Disclosure to Affiliates**

6.1 The Parties agree that notwithstanding **Section 5** above, each Party may disclose Confidential Information to its Affiliates, provided prior written consent of the Disclosing Party is obtained (which shall not unreasonably be withheld) and that such Affiliates assume the same confidentiality and non-use obligations as stipulated in this Agreement. Disclosure by or to the Affiliates of a Party shall be deemed to be a disclosure by or to that Party, as applicable. The Receiving Party shall be responsible for the observance and proper performance of the terms and conditions of this Agreement by all of its Affiliates to which Confidential Information of the Disclosing Party has been disclosed.

6.2 For the purposes of this **Section 6**, P3 Sdn Bhd hereby consents to the disclosure of P3 Sdn Bhd’s Confidential Information to the Participant’s Affiliates listed in **Appendix 1** (if any), and the Participant hereby consent to the disclosure of their Confidential Information to P3 Sdn Bhd Affiliates also listed in **Appendix 1** (if any).

**7. Consent to Disclose Confidential Information to Government**

Notwithstanding the provisions in **Section 4, 5 and 6**, P3 Sdn Bhd may disclose Confidential Information to the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, Brunei Economic Development Board and any relevant government authorities and any companies fifty (50%) percent or more owned by or controlled by the government (directly or indirectly) or any form of government’s contractors or advisers on a need to know basis for the purposes of the Project.

**8. Restricted Disclosure of Competitively-Sensitive Information**

The scope of Confidential Information to be disclosed hereunder shall be at the sole discretion of the respective Disclosing Party. However, the Parties agree to conduct the exchange of any competitively-sensitive Confidential Information hereunder in a manner reasonably calculated to:

a) restrict the exchange of such Confidential Information to that which is reasonably necessary for the conduct of the Project; and

b) ensure that no such Confidential Information is exchanged prior to the time when it is reasonably required by the Receiving Party for the conduct of the Project.

**9. Return or Destruction of Confidential Information**

The Receiving Party shall, upon termination of this Agreement or upon any earlier request of the Disclosing Party at its discretion promptly return or destroy all Confidential Information of the Disclosing Party, including all copies (whether physical, electronic or otherwise), analyses, compilations, studies or other documents which reflect any of such Confidential Information, save and except for one (1) set of documents which may be kept in the Receiving Party’s legal department’s files for archival purposes only. The obligations of the Receiving Party shall survive this Agreement with respect to such aforesaid set of documents which is retained in the Receiving Party’s legal department’s file for archival purposes.

**10. Ownership of the Confidential Information**

 Confidential Information and any copies thereof that the Disclosing Party may have permitted the Receiving Party to make and/or retain shall at all times remain, as between the respective Parties, the sole property of the Disclosing Party. Other than as expressly provided herein, nothing contained in this Agreement shall be construed (by implication, estoppel or otherwise) as granting, or as an agreement or undertaking by the Disclosing Party to subsequently grant, to the Receiving Party or to any third party any licence, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other intellectual property or other proprietary right.

**11. Remedies**

The Parties agree that monetary damages may not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party would be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law.

**12. Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of Brunei Darussalam.

**13. Dispute Resolution**

13.1 The Parties shall make every effort to amicably resolve, by direct informal negotiation, any disagreement or dispute arising between them pursuant to or in connection with this Agreement.

13.2 Subject to **Section 13.1**, if the Parties are unable to amicably resolve any disagreement or dispute within thirty (30) days from the date when such dispute arose, either Party shall require that the disagreement or dispute be referred for resolution by arbitration in accordance with Brunei Darussalam Arbitration Centre (BDAC) Arbitration Rules, which rules are deemed to be incorporated by reference into this **Section 13.2**.

13.3 The seat and place of arbitration shall be Brunei Darussalam.

13.4 The appointing authority will be the Brunei Darussalam Arbitration Centre or its successor (as the case may be) and the language used in the arbitral proceedings shall be English.

13.5 The arbitration shall be conducted by three (3) arbitrators. Each Party shall appoint 1 arbitrator and the Parties shall agree on the identity of the third arbitrator, failing which he shall be appointed by the Brunei Darussalam Arbitration Centre or its successor (as the case may be).

13.6 All arbitral proceedings and awards arising from such arbitral proceedings shall be confidential and binding on the Parties.

13.7 All rights and obligations of the Parties under this Agreement shall continue in full force and effect pending the final outcome of such arbitration.

**14. Interim Relief**

**Section 13** shall not in any way restrict or prohibit the rights of any Party to seek and/or obtain urgent interlocutory or interim relief from a court of law.

**15. Effective Date**

15.1 This Agreement shall be deemed to have come into force as of [**insert**] (hereinafter the “**Effective Date**”) and shall govern all communications relating to Confidential Information between the Parties for a period of five (5) years from the Effective Date or until this Agreement is expressly superseded by a subsequent agreement between the Parties, whichever is earlier. Each Party has the right to terminate this Agreement at any time by giving to the other Party prior written notice of thirty (30) days that it wishes to exercise such right.

15.2 To the extent that the Disclosing Party has disclosed Confidential Information to the Receiving Party prior to the Effective Date of this Agreement, and the Receiving Party has been advised that it is confidential at the time of disclosure or prior to disclosure to a third party, such disclosure shall be covered by this Agreement.

**16. Notice**

 16.1 All notices required to be given hereunder shall be in writing and shall be given to the following addresses or such other addresses as the Parties shall designate to each other by notice:

 If to **P3 Sdn Bhd**:

Level 4, Ministry of Finance and Economy Building

Commonwealth Drive

Bandar Seri Begawan BB3910

Brunei Darussalam

Fax: +673 2230074

Attn: Chief Executive Officer

If to the **Participant**:

[Insert Notice Address]

Tel: + [insert]

Fax: + [insert]

Attn: [insert position, e.g. Chief Executive Officer]

 16.2 Any notice demand, or communication delivered by hand during the normal business hours of the addressee to the addressee’s last known address shall be presumed to have been received by the addressee upon acknowledgement of receipt.

 16.3 Any notice, demand or communication sent by fax during the normal business hours of the addressee shall be presumed to have been received on the date of the successful transmission.

 16.4 Any notice, demand or communication sent by registered post during the normal business hours of the addressee shall be presumed to have been received within four (4) working days from the date of posting.

**17. Survival of Confidentiality Obligations**

The confidentiality obligations of the Parties expressed herein shall survive the expiration or earlier termination of this Agreement for a period of **three (3) years** from such date with respect to Confidential Information of **a solely technical nature** and for a period of **two (2) years** from such date with respect to Confidential Information of **any nature other than solely technical**.

**18. Severability**

Notwithstanding that any provision of this Agreement may prove to be invalid, illegal or unenforceable, the remaining provisions shall continue in full force and effect.

**19. No Assignment**

No Party shall assign this Agreement in whole or in part without written consent of the other Parties. Any purported assignment by any Party without said written consent by the other Parties shall be void and of no effect.

**20. No Modification or Amendments**

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by each of the Parties.

**21. Counterparts**

This Agreement may be executed in two (2) counterparts and each counterpart shall be deemed to be an original Agreement for all purposes. The Parties may sign a counterpart copy of this Agreement by photocopying a facsimile of this Agreement and signing that photocopy. The transmission by facsimile by a Party to the other of a counterpart copy of this Agreement signed by that Party will be deemed proof of signature of the original and the signed facsimile so transmitted will be deemed an original.

**22. Non Exclusive Agreement**

Notwithstanding anything contained in this Agreement, both the Parties shall be free to enter into similar agreements with any other party.

**23. No Commitment**

Nothing contained in this Agreement shall be deemed to create any partnership, joint venture, or employment between the Parties hereto. The Parties shall have a “principal to principal” relationship.

**24. No Representations or Warranties on Accuracy or Completeness**

24.1 Each Receiving Party acknowledges and agrees that no representation or warranty or undertaking, whether express or implied, as to the accuracy, completeness or reasonableness of the Confidential Information, has been made by the Disclosing Party and that the Disclosing Party shall not be liable in any way for any liabilities incurred by the Receiving Parties or any other person arising from any error, inaccuracy, incompleteness or other defect in the Confidential Information. The Receiving Parties agree that all Confidential Information is provided “AS IS”. The Receiving Party shall be responsible for making their own evaluation on such Confidential Information.

24.2 The Receiving Parties agree that the Disclosing Party shall not be liable for any direct, indirect or consequential loss or damage suffered by the Receiving Parties as a result of relying on any statement contained in or omitted from the Confidential Information.

**25. Waiver**

 Failure, delay or neglect by the Disclosing Party to enforce at any time any of the provisions hereof shall not be construed nor be deemed to be a waiver of the Disclosing Party’s rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Disclosing Party’s rights to take subsequent action.

**26. No Obligations**

For the avoidance of doubt, nothing contained herein shall compel or oblige the Disclosing Party to enter into any transaction(s) contemplated hereunder with the Receiving Party.

**27. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements or understandings, both oral and written, with respect to the subject matter hereof. No Party shall be under any obligation or commitment to enter into discussions nor any further agreement merely by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorised representatives.

For and on behalf of }

**Syarikat P Cube Sdn Bhd** }}

Name: } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: }

in the presence of:-

Witness :

Name: } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: }

For and on behalf of }

**[insert]** }}

Name: } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: }

in the presence of:-

Witness :

Name: } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: }

**Appendix 1**

**P3 SDN BHD AFFILIATES**

**PARTICIPANT’S AFFILIATES**