

## SOFTWARE AS A SERVICE AGREEMENT (VH SMART™ System)

THIS SOFTWARE AS A SERVICE AGREEMENT (“Agreement”) dated [insert date] is

BETWEEN

- (1) **Serunai Commerce Sdn. Bhd.** (Company No.: [875806]), a company incorporated under the laws of Malaysia having its registered office at [Unit 1-17-1, Menara Bangkok Bank@ Berjaya Central Park, No.105 Jalan Ampang, 50450, Kuala Lumpur] (hereinafter referred to as the “**Provider**”); and
- (2) A company subscribing to VH SMART™ system (hereinafter referred to as the “**Customer**”).

Each of them referred to as “**a party**” collectively as the “**parties**”.

WHEREAS

- A. The Provider is in the business of developing and providing business information technology solutions for the Halal Industry including the VH SMART™ System, an Agile Digital Halal Assurance System.
- B. The Customer is in the business of [manufacturing/producing/supplying and/or distributing] halal products. The Customer is desirous of subscribing to the Services for the use of the VH SMART™ System for its use and the Provider has agreed to provide the Service on a non-exclusive basis for its use for the purposes and in accordance with the terms and conditions set out herein.

NOW, THEREFORE, the parties hereby agree as follows:

### 1. Definitions & Interpretation

- 1.1 In this Agreement (which expression includes the Recitals, the Schedules and any attachments to this Agreement) the following words and phrases shall have the following meanings:

“**Additional Services**” has the meaning set out in Clause 4.4.

“**Additional Service Request Procedures**” shall mean the procedures set forth in Schedule 6.

“**Content**” means any content, information, pictures, images or data of whatever nature and medium provided by the Customer or User to the Provider and/or input or uploaded on to the System by the Customer or User.

“**Customer Project Manager**” means the person being a Customer personnel who is appointed by the Customer to act as its project manager and representative for the Project in accordance with Clause 7.1.

“**Developed IP**” has the meaning set out in Clause 13.3.

“**Effective Date**” has the meaning set out in Clause 2.1.

“**Event of Force Majeure**” has the meaning set out in Clause 18.1.

“**Extended Term**” has the meaning set out in Clause 2.2.

“**Fault**” means, in relation to the System, any error, defect or malfunction in the System which materially affects the performance of which affects the Customer’s ability to access the site or the functioning of the site but does not include any error, defect or malfunction in the System

caused by:

- (a) an Event of Force Majeure;
- (b) negligence, fault or omission by any person other than the Provider;
- (c) modifications made to the System or any part thereof by any person other than the Provider;
- (d) the Customer's hardware error, defect or malfunction;
- (e) inappropriate use of the System or use of either in breach of the terms of this Agreement; or
- (f) sabotage, malicious damage (including without limitation hacking, spamming or other similar acts), vandalism or criminal acts by any person.

**"Governmental Agency"** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**"Initial Term"** has the meaning set out in Clause 2.1.

**"Intellectual Property"** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works (including computer programs), dramatic works, musical works, artistic works, cinematograph films, sound recording, television broadcasts, sound broadcasts, translations, adaptations, arrangements and other transformations of works eligible for copyright, collections of works eligible for copyright, published editions of works, databases and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trademarks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) trade secrets or know-how; and
- (f) internet domain names;

whether created or in existence before or after the date of this Agreement and includes anything, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in clauses (a) to (f) inclusive of this definition.

**"Payment Due Date"** has the meaning set out in Schedule 4.

**"Personal Data"** for purposes of this Agreement means any information which may directly or indirectly identify any individual, including name, age, gender, date of birth, address, email address, telephone number, photograph, opinions, comments of any particular individual.

**"Project"** means the provision of the Service pursuant to this Agreement.

**"Service"** means the services developed or performed by the Provider as set out in Schedule 3 (Services) and under this Agreement, including the provision of the System and all related documentation and manuals and where, applicable, may include related support services.

**"Service Fee"** means the fees payable by the Customer to the Provider as detailed in Schedule 4.

**"Service Unavailability"** has the meaning set out in clause 10.2.

**"SST/VAT"** means the implementation by the competent authorities of a sales and services tax and any rules, regulations, rulings, decisions or guidelines made thereunder, as amended, modified or revised from time to time.

**"System"** shall mean the VH SMART™ System.

“**Taxes**” means applicable taxes, levies, duties, retentions, fees, tariffs, imposts, fiscal charges, withholding taxes and any government-imposed or surcharges (including SST/VAT).

“**Technical Environment**” means the Customer’s computer system and related system software, which is necessary for the provision of the Service, which shall be in accordance with the specifications described in Schedule 5.

“**Term**” means the Initial Term and the Extended Term.

“**User**” means employees of the Customer who have been provided with an account to use the Service and any other person(s) who is provided with an account to use the Service as agreed in writing between the parties.

“**VH SMART™ System**” means the VH SMART™ System an Agile Digital Halal Assurance System as more specifically described in Schedule 2.

1.2 In this Agreement, unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided:

- (a) References to Recitals, Clauses, Paragraphs and Schedules are to recitals, clauses and paragraphs in and schedules to this Agreement.
- (b) The table of contents, headings to the Clauses and Schedules are for ease of reference only and are not relevant to the interpretation of this Agreement.
- (c) The Schedules form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Schedules.
- (d) Words importing the singular include the plural and vice-versa.
- (e) Words importing a gender include every gender.
- (f) References to persons include bodies corporate and unincorporated, partnerships and any governmental agencies.
- (g) A reference to a statute or any provision thereof include any modification, extension, re-enactment or replacement thereof in force at a particular time and all regulations, rules, orders, directives, notices and other instruments then in force and made under that statute.
- (h) Any term which has been defined in any of the Clauses of this Agreement or in any of the Schedules shall have the same meaning when used elsewhere in this Agreement;
- (i) No rule of construction applies to the disadvantage of a party because that party or its solicitor was responsible for the preparation of this Agreement or any part of it.
- (j) Any phrase introduced by the terms “including”, “includes”, “in particular”, “e.g.” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.
- (k) A reference to a party to any document includes that party's successors and permitted assigns to substantially the whole of its undertaking and, in the case of an individual, to his or her estate and personal representatives.
- (l) References to time and date refer to Malaysian time and date unless expressly indicated otherwise.
- (m) A reference to “day”, “week”, “month” or “year” is to a calendar day, calendar week,

calendar month or calendar year respectively in the Gregorian calendar unless expressly indicated otherwise.

(n) Where an act is required to be done within a specified period after or from a specified date, the period is inclusive of and time begins to run from the date so specified.

1.3 The Agreement and Schedules are intended to be read together and are complementary to one another. As such, if there is any inconsistency, between the main body of this Agreement and the Schedules, the main body of this Agreement shall prevail to the extent of such inconsistency.

1.4 The terms of this Agreement supersedes any terms contained in any prior proposal, quote, agreements, undertakings, contracts and proposals made between the parties.

## **2. Term**

2.1 This Agreement will commence on the date set forth at the head of this Agreement (“**Effective Date**”) and shall remain in effect for the period as set forth in Schedule 1 unless earlier terminated in accordance with Clause 15 of this Agreement (hereinafter referred to as the “**Initial Term**”). Save in the circumstances as provided under Clause 15.2, the Customer shall not terminate the Agreement for any reason prior to the expiration of the Initial Term.

2.2 At the end of the Initial Term, this Agreement shall be automatically extended for an additional period as stipulated in Schedule 1 (hereinafter referred to as the “**Extended Term**”) from the expiry of the Initial Term, save where the Customer gives the Provider written notice of its intention to not extend this Agreement at least six (6) months prior to the expiration of the Initial Term.

2.3 The Provider shall have the option not to agree to the extension of the term of this Agreement for the Extended Term if the Customer has breached any of the terms of this Agreement.

## **3. The Service**

3.1 As part of the Service, the Provider shall use reasonable efforts to:

(a) provide the System and the Service in accordance with Schedules 2 and 3 respectively; and

(b) grant the licence to the Customer in accordance with Clause 4.

3.2 The provision of the Service by the Provider to the Customer shall be subject to the Customer paying the Service Fee and any other fees due under this Agreement in a timely manner and at all times by the Payment Due Date.

## **4. Provision of Service and the Grant of Licence**

4.1 Subject to the the terms and conditions set forth in this Agreement and in consideration of the full payment of the amounts specified in Schedule 4, the Provider hereby grants a revocable, non-exclusive, non-sublicensable and non-transferable licence to the Customer and the Users to use the System together with any documentation insofar as this is necessary for the proper utilization of the Service within the territory as mentioned in Schedule 1 only and only as expressly permitted in this Agreement, for the duration of the Term.

4.2 The licence granted by the Provider to the Customer under Clause 4.1 is subject to the limitations set out in clause 8.2.

- 4.3 The Provider has the right to suspend, terminate or stop the usage of the System upon notice if the Customer fails to comply with the terms and conditions of this Agreement.
- 4.4 The Customer may from time to time request any additional services, such as training or on-site services from the Provider and/or any new services to be included in the scope of this Agreement other than those stated in Schedule 3 (“**Additional Services**”) during the Term using the Additional Service Request Procedures. Any Additional Services shall be subject to the additional services fee as set out in Schedule 6 or such other fees as mutually agreed by the parties.

## 5. Updates and Upgrades

- 5.1 The Customer agrees that from time to time, the Provider may disrupt the Service for the purposes of conducting routine tests, maintenance, updates, upgrades or repair to any part of the system used for the Service.
- 5.2 The Customer acknowledges that such support, Updates or Upgrades may result in changes of the appearance and/or functionality of the Service.

## 6. Fees and Payment

- 6.1 The Customer shall pay to the Provider the Service Fee in accordance with Schedule 4.
- 6.2 All amounts payable to the Provider under this Agreement shall:
- (a) be paid to the Provider without set off and free and clear of, and without deduction of, any Taxes;
  - (b) be paid to the account of the Provider by payment methods as specified in Schedule 4 or as otherwise advised by the Provider;
  - (c) be paid and received by the Provider in cleared funds on the Payment Due Date.
- 6.3 Without prejudice to any other remedy of the Provider, including the right to terminate this Agreement under Clause 15.1(b), in the event that any amount is not paid by the Payment Due Date, such sums shall bear interest at the rate of interest equal to one and a half percent (1.5%) per month, calculated on a daily basis from the Payment Due Date until such time that payment in full is made to the Provider. All charges and expenses incurred to collect outstanding amounts from the Customer, including but not limited to attorney fees and legal expenses shall be borne by the Customer.
- 6.4 The Customer shall have no right of set off in relation to any monies due by the Provider to the Customer.

## 7. Project Organisation and Governance

- 7.1 The Customer shall appoint as the Customer Project Manager a senior employee of the Customer acceptable to the Provider with proven project management skills to liaise with the Provider’s appointed project manager.
- 7.2 Within [14] days from the date of execution of this Agreement, both parties shall provide the other party with the names of the members of their respective staff (including its project manager and implementation team) who will serve on a steering committee for the purposes set out in Clause 7.3 below (the “**Steering Committee**”). The Provider may change its representatives from time to time upon written notice to the Customer. However, the Customer may not change its representatives without the prior written consent of the Provider. The parties may mutually agree to change the purpose or composition of the Steering Committee.

7.3 The Steering Committee shall:

- (a) oversee, monitor and review the resources to be committed to the Project and the progress and organizational impacts of the Project;
- (b) empower the core team for the Project to make decisions;
- (c) make timely decisions and support the Customer Project Manager and the Provider's project manager to accomplish the goals of the Project;
- (d) oversee any operational issues arising from this Agreement and performance of the Service;
- (e) meet as required by the Provider to review performance, coordinate the completion of the Project;
- (f) serve as the principal interface between the parties with respect to all issues relating to the Project; and
- (g) any other matters arising pursuant to this Agreement.

**8. Customer's Obligations, Warranties and Representations**

8.1 The Customer shall:

- (a) provide the Provider promptly, at no cost, with any information which the Provider may require from time to time to enable the Provider to proceed uninterruptedly with the performance of this Agreement and update the Provider in writing with any changes in such information. The Customer shall be solely responsible for any consequences caused by failure or delay in providing or updating such information;
- (b) if in any event the Provider is required to attend the Customer's premises, to make available to the Provider, at no cost, facilities (including internet connection and other facilities) and services reasonably required by the Provider to perform its obligations under this Agreement. The Customer shall be solely responsible for any consequences caused by failure or delay in making available such facilities;
- (c) be responsible for ensuring that its own systems and equipment comply with the Technical Environment and any other technical requirements notified by the Provider that are necessary to use the Service and prevent itself from the risk of losing data, files and programs by making regular backups and using antivirus software updated regularly;
- (d) only use the Service in accordance with written directions given by the Provider;
- (e) only input and provide Content and data in accordance with all applicable local laws and regulations, make all necessary disclosures and obtain any necessary authorizations, before using the Service, regarding the collection, the transmission and the use of any persons identifying information by the Provider and its partners;
- (f) restrict knowledge and maintain the confidentiality of all passwords, logins and personal identification numbers used in connection with the Service and generally safeguard such information to ensure that there is no unauthorized use of the Service;
- (g) if in any event the Provider is required to attend the Customer's premises, afford to the authorised personnel of the Provider during normal working hours full and safe access to the Customer's premises or to its information technology systems and shall provide

adequate free working space and such other facilities as may be necessary for the performance of this Agreement; and

- (h) in respect of the Customer's network environment, ensure the following:
  - (i) The Customer's network environment shall have an internet connection that meets the Provider's requirements. The Customer is responsible for ensuring that the internet connection remains accessible and in a condition suitable for the Provider to perform its obligations under this Agreement.
  - (ii) The Customer shall bear any and all costs of access, download and upload charges associated with the internet connection between the Customer's network environment and the Service. The Customer agrees that the Customer has no claim against the Provider in relation to any costs incurred by the Customer in using the internet connection to provide the Customer with the Service under this Agreement.

8.2 The Customer shall not or attempt to:

- (a) sell, rent, lease, assign or transfer the Customer's rights granted under this Agreement for any reason whatsoever;
- (b) (i) resell, sublease, sublicense, or otherwise transfer in whole or in part the Service; (ii) capture, copy, duplicate, modify or translate any aspect of the Service (except for temporary copies for facilitating a technical computing process); (iii) reverse engineer, decompile, or disassemble or otherwise uncover the source code of the Service, (iv) create derivative works based on the Service, (v) merge the Service with another product for any reason whatsoever unless expressly allowed by the Provider;
- (c) hack, infiltrate or otherwise do anything which may compromise the Service in any manner;
- (d) authorise any other person to do any act which would, if that act were to be done by the Customer, infringe any Intellectual Property Rights of the Provider;
- (e) use the Service in a manner that implies that the Customer and the Provider have any connection other than that of principal and independent contractor; or
- (f) use the Service in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity. An "unlawful, illegal, fraudulent or harmful purpose or activity" for the purposes of this clause includes the transmission, storage or distribution of any information, data, material or code that is obscene, defamatory or constitutes an illegal threat or that is otherwise in violation of any applicable law, statute, rule or other regulation.

8.3 The Customer shall be responsible for (i) the acts, omissions and defaults of the Users as if they were its own; (ii) the Content and its transmission; and (iii) for any support to the Users. In the event any act, omission or default of the User causes the Customer to violate its obligations under this Agreement or the User fails to observe the requirements expected of it under this Agreement, then the Customer shall be responsible for terminating the User's access to the Content immediately upon becoming aware of the violation.

8.4 The Customer further warrants and represents:-

- (a) it is entitled to enter into this Agreement and has the capacity to perform its obligations under this Agreement;
- (b) there are no actions, claims, proceedings, prosecution, litigation, arbitration, administrative proceedings or investigations, current, pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement or materially affects the

performance of its respective obligations under this Agreement;

- (c) it has all licences, authorisations, consents, approvals and permits required by applicable laws in the Territory in order to perform its obligations under this Agreement, and complies with all laws applicable to it, its business and operations in the performance of those obligations, including any rules, regulations, directives or guidelines issued by religious authorities; and
- (d) it will at all times comply with any laws and regulatory requirements (including any rules, regulations, directives or guidelines issued by religious authorities) applicable to it, its business and operations in the performance of its obligations under this Agreement.

## 9. Information and Access

- 9.1 The Customer undertakes to provide the Provider promptly with any information which the Provider may require from time to time to enable the Provider to proceed uninterrupted with the performance of this Agreement.
- 9.2 The Customer grants to the Provider upon reasonable notice, for the purposes of this Agreement and for the purposes of support, audit and billing, full and safe access to the Customer's premises or to its information technology systems (including the Technical Environment) without charge and shall provide adequate free working space and such other facilities as may be necessary for the performance of this Agreement.
- 9.3 The Customer acknowledges and agrees that by using the Service, any data, information, pictures, images and/or Content input or uploaded on to the Service by the Customer and/or its Users shall be stored with and be accessible to the Provider. The Customer hereby further acknowledges and agrees that the Provider shall be entitled to access, use, process, modify, amend, disclose, store and/or meta-tag any such data, information, pictures, images and/or Content that has been input or uploaded on to the Service for any purposes, including to integrate and incorporate such data, information, pictures, images and/or Content with other systems, platforms and/or products offered or operated by the Provider. In so far as any of the data, information, pictures, images and/or Content contains personal data, the Customer's warranties and representations under Clause 14.2 shall apply.

## 10. Disclaimers

- 10.1 The Customer acknowledges and understands that the Service and any other information or materials provided by the Provider hereunder are provided "as is" and without any warranty of any kind.
- 10.2 Unavailability of Service

In the event of any circumstances beyond the reasonable control of the Provider which affects the Service, including without limitation:

- (a) routine tests, maintenance, update, upgrade or repairs (excepting repairs when carried out beyond mean time to repair), which the Provider may undertake from time to time;
- (b) acts or omissions, by the Customer, its employees or agents, or Users, resulting in downtime;
- (c) Domain name system ("DNS") problems outside of the Provider's control, issues with the Customer's internet access including but not limited to any problems with the Customer's internet service provider, interruption by or failure of, telecommunication or digital transmission links, hostile network attacks, network congestion, faulty web browsers, or



caching that might make it appear the Service is unavailable even though others can still access the Provider's servers;

- (d) any negligence, wilful misconduct or use of the Service in breach of this Agreement; or
- (e) Event of Force Majeure;

(collectively referred to as "**Service Unavailability**"), the Customer agrees and acknowledges that the Provider shall not be required to provide the Service.

10.3 The Customer further acknowledges and understands that:

- (a) the Service has not been customised for the Customer and may not meet the Customer's individual requirements and that it is the Customer's responsibility that the Service are used pursuant to the requirements or specifications provided by the Provider;
- (b) the Service may not meet any specific levels and may not be timely, secure, free of interruptions, errors or bugs and the existence of any errors or bugs and any occurrences of unavailability of the Service shall not constitute a breach of this Agreement, unless otherwise agreed in writing between the parties;
- (c) the Service are intended for use on the Technical Environment only;
- (d) the Provider does not warrant or represent that the Service will be compatible with any application, program or software not specifically identified as compatible;
- (e) the Service including any data, information or reports generated by the Service is not designed to provide advice and/or recommend courses of action to the Customer's;
- (f) any material downloaded or otherwise obtained through the Service is done at the Customer's own discretion and risk;
- (g) the Customer shall be solely responsible for any damage to its computer system or other device or loss of data or records that results from the use of the Service or from the Customer's network environment accessing the Service;
- (h) the provision of the Service is dependent on a stable internet connection and any downtime or unavailability of the Service which results from internet outages, disruptions to telecommunication lines, electricity cuts or other outages of a similar nature shall not be deemed to be a breach of the Provider of its obligations under this Agreement. The Customer acknowledges and agrees that the Service provided via the internet connection to the Customer's network environment is subject to any limits imposed by the Customer's internet service provider (including connection speed and download limits) and the time taken for the Customer's network environment to communicate with the Service; and
- (i) the need for routine maintenance and error correction may result in down time of the Service and such down time may occur without any prior notice given to the Customer.

10.4 Except as otherwise expressly provided in this Agreement and to the furthest extent permitted by applicable law, the Provider:

- (a) does not warrant, guarantee or make any representations in respect of the Service, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;
- (b) does not warrant, guarantee or make any representations in respect of the Service regarding the results, security, non-infringement, integration, merchantability, fitness for a particular purpose and satisfactory quality;

- (c) does not warrant, guarantee or make any representations in respect of third-party products. The Provider will pass on to the Customer the benefit of any third party warranty supplied by a third party manufacturer or supplier;
  - (d) does not warrant, guarantee or make any representations regarding the use or the results of the use of the Service in terms of correctness, accuracy, reliability, availability or otherwise. No oral or written advice or information given by the Provider, its affiliates, agents or employees shall create a warranty and the Customer may not rely on such advice or information.
- 10.5 Where any law implies into this Agreement any term, condition or warranty and that law avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement and shall prevail in the event of any conflict with any term and condition of this Agreement.

## 11. Indemnities

The Customer shall indemnify, hold harmless and at the request of the Provider defend the Provider and its principals, officers, directors, employees, representatives and/or agents from and against any and all claims, demands, damages, losses, liabilities, costs and expenses (including attorney's fees on a solicitor client bases and other costs of litigation), including claims by third parties, arising out of, with respect to or incurred in connection with the Service and/or arising out of any breach of the Customer of this Agreement and/or arising out of or related to: (i) the misuse of the Service by the Users including illegal, immoral, fraudulent or out of the scope of the Agreement use; (ii) the Content; (iii) the disclosure of Confidential Information made through the use of the Service including the transmission of the Content (such as application sharing, document sharing, file transfer); (iv) the User's infringement of any Intellectual Property Rights or other rights of any person or entity caused by the use of the Service including the use of any software.

## 12. Limitation of Liability

- 12.1 In no event shall the Provider be liable to the Customer or any other person or entity for death or personal injury or special, indirect, incidental or consequential damages (including but not limited to loss of profits, interruption or loss of business, loss of use, corruption of data, losses suffered by third parties or loss of goodwill) or any loss or damage suffered by the Customer as a result of an action brought by a third party arising out of the supply, sale, provision, operation or use of the Service even if the Provider has been advised of the possibility of such damage or loss.
- 12.2 Notwithstanding any other provision to the contrary in this Agreement, the Provider shall not be liable for any damage or loss incurred or suffered by the Customer or any third party, directly or indirectly:
- (a) arising from an Event of Force Majeure;
  - (b) failure of the Customer's internet connection;
  - (c) failure of or error in the Customer's network environment;
  - (d) arising from or related to the use of the Service and/or System including any inaccuracies, inconsistencies, unreliability or errors in the Service including any output, data or results generated by the Service;
  - (e) caused by any equipment, software, data feeds or services not provided by the Provider, or their combination with or application to the Service or act or omission of the Customer or any third party; or

- (f) any breach by the Customer of this Agreement.
- 12.3 In no event shall the Provider be liable for any reason and upon any cause of action whatsoever relating to any third party software or hardware.
- 12.4 If the Provider is held or found to be liable to the Licensee for any matter relating to or arising in connection with this Agreement or any collateral agreement, the Provider's maximum aggregate liability, whether based on an action or claim in contract including under an indemnity, tort, negligence, strict liability in tort or by statute or otherwise, for any reason(s) and upon any cause(s) of action whatsoever, shall be for direct losses only and shall be limited to the amount of Service Fee paid by the Customer at the time such liability arises.
- 12.5 All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, the "Provider" includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above.
- 12.6 The parties acknowledge and agree that the limitations contained in this Clause 12 are reasonable in the light of all the circumstances.

### 13. Intellectual Property

- 13.1 The Customer hereby acknowledges that any and all rights, title and interest including Intellectual Property Rights subsisting in and/or arising from (a) the Service including any applications, enhancements, modifications or variations thereof; (b) any materials provided pursuant to the Service, such as training manuals or supporting documentation; (c) Confidential Information belonging to or disclosed by the Provider; and (d) marketing plans, business strategies, financial reports, get-up, production processes or materials, machinery configurations, engineering drawings, technical information, data, know-how, formulae and all information relating to the Provider or its related companies, during or after the Term, shall vest in and remain at all times the sole and exclusive property of the Provider.
- 13.2 Nothing in this Agreement shall be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in the Service to the Customer or any third party.
- 13.3 The Customer further acknowledges that Provider will be the entire legal and beneficial owner of all Intellectual Property Rights in any works (including any customisations, enhancements or modifications) created whether jointly by Provider and the Customer or solely by Provider in the course of carrying out its obligations under this Agreement ("**Developed IP**").
- 13.4 To the extent that the Customer has or is deemed to have acquired any right, title or interest in any part of the Service, and/or in any Developed IP, the Customer hereby assigns and transfers all such right, title and interest to the Provider. The Customer further agrees to execute and deliver such documents as may be requested by Provider from time to time to confirm and implement the intent of the preceding sentence.
- 13.5 The Customer also acknowledges that such Intellectual Property Rights and other rights belonging to Provider or its licensor are only used by the Customer with the consent of Provider and during continuation of this Agreement.
- 13.6 The Customer shall not during or after the expiry or termination of this Agreement, without the prior written consent of the Provider, use or adopt any name, trade name, trading style or commercial designation used by the Provider or its licensor.

- 13.7 The Customer acknowledges that it has no right to access the Service in source code form or in unlocked coding.
- 13.8 The Customer shall never assist, direct or indirectly, in a challenge to the validity or enforceability of any rights or Intellectual Property Rights in the Service, or the Developed IP and hereby disclaims any basis for such claim. The Customer shall not in any manner represent, directly or indirectly, that it has any ownership interest in any rights including Intellectual Property Rights subsisting in the Service, or in the Developed IP. The Customer acknowledges that injunctive relief would be appropriate in order to redress or prevent such breach by the Customer of this clause.
- 13.9 The integrity of the Service is protected by technical protection measures so that the Intellectual Property Rights, including copyright, subsisting in the Service are not misappropriated. Customer must not attempt in any way to remove or circumvent such technical protection measures.
- 13.10 If a third party claims that use of the Service infringes that person's intellectual property rights, the Customer shall:-
- (a) promptly notify the Provider in writing of the claim or the possibility of a claim, and
  - (b) permit the Provider to arrange control over any such claim or action and cooperate fully with the Provider in the defence of the claim and related settlement of the dispute.
- 13.11 The Provider shall have no liability to the Customer in respect of any claim of Intellectual Property Rights infringement in relation to the Service if the same results from any unauthorised alteration, modification or adjustment to the Service by the Customer without the prior written consent of the Provider.
- 13.12 Except as expressly authorised by the Provider, the Customer agrees not to use, copy, imitate, or incorporate any trade mark, service mark, trade dress, company name, or product name of the Provider in a way that is likely to cause confusion. The Customer also agrees not to remove, obscure, or alter the Provider's or any third party's copyright notice, trade marks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Service.

#### 14. Confidentiality & Data Protection

- 14.1 The parties anticipate that it may be necessary to provide access to Confidential Information (as defined below) to each other pursuant to this Agreement. As used herein, the party disclosing Confidential Information is the "**Disclosing Party**" and the party receiving the Confidential Information is the "**Recipient**". In connection therewith, the parties agree as follows:
- (a) Confidential Information means all information, in whatever form (written, oral or otherwise), concerning this Agreement and the business and affairs of each party (including but not limited to plans, trade secrets, concepts, know-how, strategies, intentions, ideas, operations, processes, techniques, methodologies, practices, patents, financial information, market opportunities, sales distribution strategies, pricing policies, customers, suppliers, and works of authorship, products, systems and materials such as computer programs, source codes, object codes, software tools, software libraries, system architecture, business process flows, data, diagrams, charts, reports, specifications, manuals, sketches, inventions and working papers or similar materials thereto) that shall have been obtained or received by each party as a result of the discussions leading up to, or the entering into, or the performance of, this Agreement.
  - (b) Without the prior written consent of the Disclosing Party, the Recipient shall not disclose the Confidential Information, in whole or in part, to any third party. Access to the Confidential

Information shall be restricted to the Recipient's employees with a need to know such information for purposes solely related to the Project and for the implementation of this Agreement. The Recipient shall make all such employees aware of the confidentiality of the Confidential Information and they shall agree to be bound by the restrictions contained in this section. Without prejudice to the generality of the foregoing, the Recipient will take all such steps as shall from time to time be necessary to ensure compliance by its employees with the provisions of this clause.

- (c) The Recipient will not, at any time, use the Confidential Information of the Disclosing Party in any fashion, form, or manner (including but not limited to the use of the Confidential Information for its own benefit or the benefit of any third party), except solely in furtherance of the Project and implementation of this Agreement.
- (d) Confidential Information of the Disclosing Party may not be copied, reproduced or altered, in whole or in part, by the Recipient without the Disclosing Party's prior written consent.
- (e) Each party will protect the confidentiality of the other's Confidential Information to prevent the unauthorized use, dissemination or publication of such Confidential Information in the same manner it protects the confidentiality of its own confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.
- (f) Confidential Information disclosed hereunder shall at all times remain the property of the Disclosing Party. No right in or licence to Confidential Information disclosed hereunder is granted by this section.
- (g) All title rights and intellectual property rights of whatever nature (including but not limited to copyrights, patents, trademarks, registered designs and the right to apply therefor) to the Confidential Information and to the matters referred to therein are vested in the Disclosing Party and its third party suppliers and no rights, interests or licences in any part of the Confidential Information are granted or transferred either expressly or impliedly to the Recipient. The Disclosing Party shall in its sole discretion be entitled to apply in any jurisdiction for any patents, trademarks and designs and applications in respect of any part of the Confidential Information, including without limitation, author certificates, inventor certificates, improvement patents, utility certificates and models and certificates of addition including revisions, renewals, continuation, extensions or reissues thereof.
- (h) All Confidential Information made available hereunder, including copies of the same in any form, shall be returned to the Disclosing Party or destroyed upon the first to occur of (a) termination of this Agreement or (b) request by the Disclosing Party. The Recipient's obligations under this section shall survive the return or destruction of such Confidential Information.
- (i) Nothing in this section shall prohibit or limit either party's use of information:
  - (i) previously known to it prior to disclosure;
  - (ii) independently developed by or for it;
  - (iii) acquired by it from a third party which was not under an obligation to the Disclosing Party not to disclose such information;
  - (iv) which is or becomes publicly available through no breach by the Recipient of this clause; or
  - (v) required to be disclosed by an order from a court of competent jurisdiction or in accordance with the requirements of any law or regulatory body.
- (j) In the event either party receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information of the other party, the Recipient shall promptly notify the Disclosing Party and tender to it the defence of such demand. Unless the demand shall have been timely limited, quashed or extended, the Recipient shall thereafter be entitled to comply with such demand to the extent permitted by law. If

requested by the party to whom the defence has been tendered, the Recipient shall cooperate (at the expense of the requesting party) in the defence of a demand.

- (k) The Disclosing Party (including its officers, employees, agents, advisers or consultants) does not make any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information and accepts no responsibility or liability for any inaccuracy or incompleteness of the Confidential Information.
- (l) Irreparable harm shall be presumed if either party breaches any provision of this section. This section is intended to protect the Confidential Information owned by the Disclosing Party and its proprietary rights. Any misuse of such Confidential Information will cause substantial harm to the business of the Disclosing Party. Accordingly, in the event of a breach or threatened breach of any provision of this section, the Disclosing Party shall be entitled to seek and obtain immediate and permanent injunctive relief to enforce obligations under this section, but nothing herein shall preclude the Disclosing Party from pursuing any other action or remedy. The Recipient agrees to indemnify the Disclosing Party from and against any loss, damage, cost, expense or injuries it may suffer or incur as a result of the breach.

#### 14.2 The Customer represents and warrants that:

- (a) any Personal Data provided to the Provider under this Agreement does not infringe the rights, including any data protection rights conferred under the law, of the person(s) to whom the Personal Data relates to or of any third party;
- (b) provision of the Personal Data by the Customer (or any third parties authorised by the Customer) to the Provider is in compliance with all applicable laws, including the Personal Data Protection Act 2010 of Malaysia and any other applicable data protection laws in the Territory; and
- (c) the Customer (or any third party authorised by the Customer) has complied with all requirements under applicable laws to enable the Provider to use the Personal Data as envisaged under this Agreement and to comply with its obligations under this Agreement, including any notification and consent requirements.

## 15. Termination

### Termination by the Provider

15.1 The Provider may terminate this Agreement (at the Customer's cost and without liability and without entitling the Customer or User to receive any compensation in respect of the termination of this Agreement):

- (a) for any reason whatsoever, by giving the Customer thirty (30) days' notice;
- (b) immediately, if the Customer breaches or fails to perform any of its obligations, representations, warranties or provisions under this Agreement;
- (c) if the Customer fails to pay any of the amounts payable under or pursuant to this Agreement by the Payment Due Dates in accordance with Schedule 4, by giving thirty (30) days' written notice to the Customer;
- (d) immediately, if required by law or the Governmental Agency or if the Provider decides at its sole discretion that the continuation of this Agreement would cause the Provider to be in breach of any law or direction or guidance from the Governmental Agency. In such event, the parties shall work together and cooperate, and the Customer shall take all steps necessary to assist in the Provider's compliance with the law and directions, instructions or guidance from the Governmental Agency; or

- (e) in the event the Customer ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the Provider in writing) or is dissolved or struck off; or if the Customer is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings.

#### Termination by the Customer

15.2 The Customer may terminate this Agreement where the Provider:-

- (a) commits a persistent and material breach of its obligations under this Agreement and such breach is non-remediable, provided that one (1) month written notice is given by the Customer to the Provider;
- (b) commits a breach which is remediable, the Customer may only terminate if the Provider fails to remedy the breach within three (3) months of being served with a written notice to remedy from the Customer specifying the nature of the breach; or
- (c) ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the Customer in writing) or is dissolved or struck off; or if the Provider is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings.

### **16. Effects of Expiry or Termination**

16.1 Upon expiry or termination of this Agreement:

- (a) The Customer agrees for the Provider to cease all granted access to the Content and Service and, in essence, terminate the provision of the Service. The Provider may at its sole discretion retain all such data, information, material, pictures, images and/or Content input or uploaded on to the Service or modify or remove such data, information, material, pictures, images and/or Content from the Provider's system or reformat the server space used to store the same.
- (b) Where the Service is deployed in any circumstance where administrative access to the Service is limited from the Provider, the Customer shall provide the Provider with all necessary access to remove and/or reclaim the Service.
- (c) All the rights granted under this Agreement to the Customer shall terminate.
- (d) The Customer remains responsible for all outstanding Service Fee.
- (e) The provisions of this Agreement that are expressed or by their context are intended to survive the expiration or termination of this Agreement or are capable of being performed and observed, including without limitation, Clauses 11, 12, 13, 14 and 16, shall so survive and continue in full force and effect notwithstanding the expiration or termination of this Agreement.
- (f) The Customer shall forthwith discontinue use of the Service, without receipt of compensation for such discontinuation.

- (g) The Customer shall return to the Provider all its materials without retention of copies.
  - (h) The Customer agrees that the Provider reserves its right to refer any outstanding amounts owed by the Customer to the Provider under this Agreement to a third party collection agency to collect the payment of such amounts from the Customer. All charges and expenses incurred to collect outstanding amounts from the Customer, including but not limited to attorney fees and legal expenses shall be borne by the Customer.
  - (i) Where the termination by the Customer is premature or due to the Customer's or User's failure to comply with the terms and conditions of this Agreement, the Customer shall pay the Service Fee and any other applicable fees, expenses and charges for the unexpired period of the Term and such amount shall be payable within seven (7) days of termination.
- 16.2 For the avoidance of doubt, any and all payment(s) paid by the Customer to the Provider, including the Initial Fee shall not be refundable.

## 17. Entire Agreement

This Agreement (including the Recitals, the Schedules and any documents annexed or otherwise referred to in this Agreement) constitutes the entire agreement between the parties relating to its subject matter and supersedes any and all previous or contemporaneous communications, representations, proposals, commitments, arrangements, understandings, or agreements between the parties (whether written, oral or otherwise) regarding that subject matter.

## 18. Force Majeure

- 18.1 Neither party hereto shall be liable for any delay or failure to perform its obligations hereunder resulting from causes beyond its control including but not limited to fires, floods, strikes or other labour disturbance (other than of its own employees) insurrection or riots, war, sabotage, embargo, embargoes, typhoons, unavailability of or interruption or delay in telecommunications services or failure of third party software or inability to obtain equipment needed for the provision of the Service, requirements or regulations of any Governmental Agency ("**Event of Force Majeure**").
- 18.2 In every case the delay or failure to perform must be beyond the control and without the fault or negligence of the party claiming excusable delay. The party claiming excusable delay must give written notice to the other party upon becoming aware of an Event of Force Majeure. Such notice must contain details of the circumstances giving rise to the Event of Force Majeure and an estimate of the extent and duration of its inability to perform, and must use its reasonable endeavours to overcome the effect of such Event of Force Majeure.
- 18.3 Any Event of Force Majeure shall suspend the obligations arising from this Agreement for as long as such event shall last.
- 18.4 If a party is prevented from performing its obligations under this Agreement by an Event of Force Majeure which continues for more than three (3) months then the party not in default shall be entitled to terminate this Agreement by giving written notice to the other party. Neither party shall have any liability to the other party in respect of the termination of this Agreement as a result of an Event of Force Majeure.

## 19. Amendments

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each party.



## **20. Severability**

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision with a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **21. Costs and Expenses**

21.1 Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

## **22. Waiver**

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **23. Assignment**

23.1 The Customer shall not assign any of its rights or obligations under this Agreement to any other third party without first obtaining the express written consent of the Provider.

23.2 The Provider may assign any of its rights or novate any of its obligations under this Agreement.

## **24. Notices**

Any notice required under this Agreement shall be given in writing and in the English language and sent to the address of the party for which it is intended to be given, or such other address as shall have been notified to the other party in accordance with this Clause 24 and be sent by registered post or equivalent, facsimile, courier or other electronic transmission; and

- (a) if posted, shall be deemed to have been received three (3) business days after the date of posting or, in the case of a notice to an addressee not in the country of the sender, ten (10) business days after the date of posting;
- (b) in the case of facsimile or other electronic transmission, upon confirmation of complete receipt being given by the intended recipient party; or
- (c) if couriered, on delivery.

## **25. Governing law**

This Agreement is made under and shall be governed by and construed in accordance with the laws of the Malaysia.

## 26. Dispute Resolution and Jurisdiction

All claims, disputes, controversies, or differences between the parties arising under, out of or in connection with this Agreement or arising out of the breach, termination or invalidity thereof (“**Dispute**”) shall be amicably resolved between the parties through discussion and negotiation. If the parties fail to settle the Dispute through discussion and negotiation within thirty (30) days or such extended period as the parties may agree, the parties agree and submit to the exclusive jurisdiction of the courts of Malaysia.

The parties have indicated their acceptance of this Agreement by executing it below.

**EXECUTION:**

SIGNED by .....

SIGNED by .....

Duly authorized and on behalf of  
The PROVIDER

Duly authorized and on behalf of  
The CUSTOMER

.....

.....

Date:

Date:

## Schedule 1

### Term, Territory and Onboarding Period

<b>Initial Term</b>	[ 12 ] months from the date set forth at the head of this Agreement
<b>Extended Term</b>	Additional [ 12 ] months from the expiry of the Initial Term
<b>Territory</b>	Malaysia

## Schedule 2

### System

#### Description of the VH SMART™ System

When a company wants to adopt Halal certification, proper Halal assurance system (HAS) must be put in place prior to the use of the Halal logo. This is to ensure the sanctity and purity of the Halal products and services produce by their respective manufacturers or operators.

When adopting HAS, companies must systematically put the whole process of manufacturing to be monitored and scrutinised for any threat to Halal.

Serunai's VH SMART™ is the digitalised and comprehensive version of the Halal Assurance System (HAS) which is an integral component of a company's Halal integrity, especially for Halal certification purposes. It will ensure that Halal practices is implemented, company-wide, with accuracy and done diligently. With VH SMART™, the level of products and services reliability and consumer confidence will increase, knowing that Halal is adopted systematically and according to Shariah law.

The main objective of VH SMART™ is to minimise Halal risk, reducing the fallout in the worst-case scenarios and eventually initiate a corrective action.

Maintaining a business Halal integrity can be an uphill task. Changes of suppliers, ingredients or even labels have to be made constantly to stay competitive but every change may cost you your Halal accreditation.

Be it a start-up operating in a small workshop or an enterprise with a factory, you and your team of Internal Halal Committee (IHC) can also be the experts and maintain your accreditation professionally with our two different packages to suit your needs.

#### VH SMART™ Lite

- VH SMART™ Lite maintains and allow brand owners to obtain or renew Halal certification and change documents online without having to physically make frequent trips to Halal authority office.
- VH SMART™ Lite grants clients and auditors' access to communicate to change or remove any information inside your Halal application.

#### VH SMART™ Advanced

- Maintain Halal certification in the factory and get accredited and approved without having to have the auditors' watchful eyes physically present to police your factory all the time
- No more hard copy reports and switch to paperless transaction which requires auditors to only come to site inspection to verify as what is stated in the system by the brand owner.

## Schedule 3

### Services

1. VH SMART™ system consist of the following modules and the functionality is as follows:
  - a. Dashboard
    - allow user to view the overall information related to the Halal Application / Company information
  - b. Company Profiles
    - manage the company profile, branch and document related to the company

- manage the premise information
- manage Internal Halal Committee
- View Internal Halal Committee Charts
- records the minutes of meeting
- records the Health record
- c. Halal Application
  - view the list of the Halal Application status
  - Apply Halal Application by scheme which consist of the stages of the information
    - i.e Company Information, ingredient, product, packaging etc.
- d. Audit Report
  - to view and manage audit report submitted by certification bodies
- e. Corrective Action Report
  - to perform the corrective action report based on the Non-Conformance list from certification bodies
- f. Halal Certificate
  - view the list of Halal certificate that has been issued by certification bodies
- g. Risk Assessment Raw Material
  - Manage and maintain the ingredient information and classify into the category critical, semi-critical, Halal or non-Halal
- h. Standard of Procedures
  - Manage the SOP based on the department and form related to the SOP.

## 2. Other services

- a. Training
  - based on the allocation man-days with proper syllabus or module to be train in VH SMART™
- b. User Manual
  - based on the module in VH SMART™
- c. Support
  - based on the allocation of man-days

## Schedule 4

### Service Fee

1. The Service Fee shall be paid by the Customer to the Provider for the Service as follows:-

- Yearly fee for VH SMART™ Lite [RM 1200].
- Yearly fee for VH SMART™ Advance [RM 2000].

2. **Other Payment Terms**

The Service Fee shall be paid by [transfer/credit card] made out to the following [Bank Name: CIMB Islamic Bank Berhad. Account No: 8603827437].

**Schedule 5**  
**Technical Environment**

The Customer’s technical environment should meet the minimum requirements but not limited to the following:

Since the deployment of the VH SMART™ will be handle by the system vendor, on the client side the minimum requirement to access the VH SMART™

1. Desktop PC / Laptop
  - a. Operating System : Windows 7 or later
  - b. Processor : Intel Pentium 4 or later
  - c. Memory : Minimum 4 GB, 8GB recommended
  - d. Screen resolution : 1280x1024 or larger
  - e. Internet Connection : Required

**Schedule 6**  
**Additional Services and Additional Service Request Procedures**

**Additional Services**

Any work outside the scope of the Services specified under Schedule 3, shall be considered an ‘Additional Service’.

*Training Services*

Training services shall be considered an Additional Service and shall be charged at the following rates:

<i>Man hour rates</i>	<i>upon agreed discussion</i>
<i>Travel Expenses</i>	<i>[To be borne by the customer if a face to face consultation is required.]</i>
<i>Other disbursements</i>	<i>upon agreed discussion</i>
<i>[ any others expenses]</i>	<i>upon agreed discussion</i>

*Any other Additional Services*

Where the Customer wishes to request for any other Additional Service, it shall adhere to the following Additional Service Request Procedures.

**Additional Service Request Procedure**

1. The Customer may request any Additional Service from the Provider or any new requirements outside the scope of this Agreement (“**Additional Service Request**”).
2. In the event of an Additional Service Request being made, the Provider shall investigate and make recommendations in respect of the said Additional Service Request and provide a proposal providing details of the Additional Service Request. The costs of such investigation



shall be as mutually agreed by the parties in advance of commencement of such investigation. The additional fees may apply depending on the Additional Service Request of the Customer.

3. No Additional Service Request shall commence or be effective, unless said Additional Service Request has been mutually agreed in writing between the Parties.
4. If an Additional Service Request is accepted by the Provider in writing, this Agreement will be deemed to be amended to incorporate the accepted Additional Service Request with effect from the date on which the Provider agrees in writing, or another date as mutually agreed in writing by the parties.