

**SHRINK WRAP LICENSE AGREEMENT IN RESPECT OF THE JUMPSTART PACK RELATED TO
MSTB'S QUALITY SOFTWARE PRODUCT CERTIFICATION SCHEME
("THIS AGREEMENT")**

BETWEEN

YOU

**(AN INDIVIDUAL OR COMPANY (A) WHO HAS PAID FOR THE LICENSE (AS DEFINED
HEREIN); OR (B) WHO, WHERE RELEVANT, AN AMOUNT HAS BEEN PAID FOR THE LICENSE)**

AND

MALAYSIAN SOFTWARE TESTING BOARD (Company Registration No.822609-W) ("MSTB")

THIS PACKAGE CONTAINED THE JUMPSTART PACK ("**THIS PACKAGE**"). CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE OPENING THIS PACKAGE. OPENING THIS PACKAGE INDICATES YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY RETURN THIS PACKAGE UNOPENED TO MSTB FOR REFUND IN THE AMOUNT YOU PAID (IF ANY) WITHIN THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT OF THIS PACKAGE, FAILING OF WHICH MSTB SHALL HAVE THE RIGHTS NOT TO REFUND AND TO FORFEIT THE AMOUNT YOU PAID (IF ANY) FOR THIS PACKAGE. IN THE EVENT THIS PACKAGE IS UNREADABLE ("**UNREADABLE PACKAGE**"), YOU ARE NOT ENTITLED TO ANY REFUND OF THE AMOUNT YOU PAID (IF ANY) BUT MSTB WILL REPLACE THE UNREADABLE PACKAGE WITH THE NEW PACKAGE PROVIDED THAT (A) THE UNREADABLE PACKAGE IS SOLELY DUE TO MSTB'S FAULT; AND (B) YOU NOTIFY MSTB IN WRITING ON THE UNREADABLE PACKAGE AND RETURN THE UNREADABLE PACKAGE TO MSTB WITHIN FORTEEN (14) DAYS FROM THE DATE YOU OPENED THIS PACKAGE.

TERMS AND CONDITIONS OF THIS AGREEMENT

1. GRANT OF LICENSE

MSTB agrees to grant to you non-exclusive, non-transferable and revocable license to the jumpstart pack, comprising of (a) the Survey Kit; (b) the Application Form; (c) the Product Information declaration (d) the Product Description Sample; (e) Frequently Asked Questions; (f) Sample of Non-Conformance Report; and (g) Specific Technical Requirements (Document (a) shall be hereinafter referred to as "**the Survey Kit**", documents (b) until (g) shall be hereinafter referred to as "**the Remaining Documents of the Jumpstart Pack**" and documents (a) until (g) shall be collectively hereinafter referred to as "**the Jumpstart Pack**") upon the terms and conditions of this Agreement ("**the License**").

2. EFFECTIVE DATE OF THIS AGREEMENT, THE LICENSE TERM AND THE LICENSE CONDITIONS

2.1 Effective Date of this Agreement

This Agreement shall become effective the moment you open this Package ("**the Effective Date**"). For the avoidance of doubt, (a) this Package shall be deemed to have been opened upon the unsealing of the specific MSTB's seal used on this Package ("**the Seal**"); and (b) MSTB shall have the rights to determine on the issue whether this Package has been opened or not based on MSTB's examination on the Seal).

2.2 The License Term

The License shall continue to be effective for a period of three (3) years from the date of MSTB's invoice ("**License Term**") notwithstanding the fact that you have not opened this

Package upon the delivery of this Package to you, unless terminated in any of the circumstances provided under **Clause 7** of this Agreement.

2.3 The License Conditions

You agree that the License is subject to the following conditions:

- (a) the License is only valid for your one (1) software product ("**Your Software Product**") and the relevant documentation in relation thereto ("**the Related Documentation**") and shall be used for your personal use as stipulated in this Agreement; and
- (b) subject to **Clause 2.3(a)** above, the Jumpstart Pack may be used for MSTB QS 9126 Product Certification (as defined in the Scheme Document) and MSTB QS 9126 Elite Product Certification (as defined in the Scheme Document) provided that:
 - (i) you shall submit to MSTB the Product Certification Application Form (as defined in **Clause 3.3** below) for MSTB QS 9126 Product Certification within one (1) year from the date of MSTB's invoice as mentioned in **Clause 2.2** above;
 - (ii) in case where MSTB has issued the certificate in respect of MSTB QS 9126 Product Certification ("**the Certificate**") and you decided to proceed with MSTB QS 9126 Elite Product Certification, you shall submit to MSTB the Product Certification Application Form for MSTB QS 9126 Elite Product Certification within nine (9) months from the date of the issuance of the Certificate; and
 - (iii) both Product Certification (as defined in **Clause 3.3** below) for MSTB QS 9126 Product Certification and MSTB QS 9126 Elite Product Certification shall be completed within the License Term.

("the License Conditions").

3. YOUR OBLIGATIONS

3.1 In respect of the Survey Kit

You agree to the following terms and conditions in respect of the Survey Kit: (a) the Survey Kit is licensed to you to assist you in conducting the necessary survey ("**the Survey**") in determining the readiness of Your Software Product and the Related Documentation based on MSTB quality model as explained in the document related to MSTB's Quality Software Product Certification Scheme ("**the Scheme**"), which is applicable as at the date of this Agreement ("**the Scheme Document**") before applying for the Product Certification to be offered by MSTB under the Scheme ("**the Product Certification**"); (b) you shall, on your own effort and at your own cost, conduct the Survey in the manner as mentioned in the Survey Kit; and (c) you shall not deal with the Survey Kit in any manner which is against the interests of MSTB, which may include but not limited to reproduce the Survey Kit or any of the its components in any form or for whatsoever purposes other than for the purposes mentioned under this Agreement. For the avoidance of doubt, you agree that the Survey Kit is merely a guideline for you to conduct the Survey and therefore, the result pursuant to the Survey is merely your own finding as to whether Your Software Product and the Related Documentation are ready for the Product Certification and in no event MSTB warrants on or shall be responsible for the accuracy of the result (and even the result obtained pursuant to the conduct of the Survey) of the Survey which was conducted based on the Survey Kit.

3.2 In respect of the Remaining Documents of the Jumpstart Pack

You agree that (a) the Remaining Documents of the Jumpstart Pack is licensed to you to assist you (i) in preparing the documents required to be submitted to MSTB ("**the Required Documents**") in the event the result of the Survey shows that Your Software Product and the Related Documentation are ready for the Product Certification and you decided to obtain the Product Certification from MSTB; (ii) in understanding the Scheme and its evaluation methods;

and (iii) in applying for the Product Certification; and (b) you shall not use or deal with the Jumpstart Pack in any manner which is against the interests of MSTB, which may include but not limited to reproduce the Jumpstart Pack or any of the its documents in any form or for whatsoever purposes other than for the purposes mentioned under this Agreement.

3.3 In respect of the Product Certification

In the event the result of the Survey shows that Your Software Product and the Related Documentation are ready for the Product Certification and you decided to obtain the Product Certification from MSTB, you may apply for the Product Certification from MSTB in the manner as explained in the Scheme Document, inter alia, by submitting the Required Documents to MSTB. MSTB will issue its quotation in attending to the Product Certification of Your Software Product and the Related Documentation ("**MSTB's Quotation**") upon receipt of the Required Documents. Once you and MSTB have agreed on the terms and conditions relating to the Product Certification, you will submit the application form for the Product Certification ("**Product Certification Application Form**") duly signed by your authorized signatory and MSTB will, as it deems fit, further sign the Product Certification Application Form submitted by you to signify its acceptance of such application and thereafter, both Parties shall be bound by the terms and conditions contained in the Product Certification Application Form.

3.4 In respect of the appointment of an independent third party consultant ("**the Consultant**")

You may, at your own cost, appoint the Consultant to assist you in conducting the Survey and applying for the Product Certification from MSTB in the event the result of the Survey shows that Your Software Product and the Related Documentation are ready for the Product Certification and you decided to obtain the Product Certification from MSTB provided that you shall secure the prior written agreement of the Consultant to adhere to the confidentiality obligations under **Clauses 3.5(a)** and **(b)** of this Agreement and you shall be responsible for the breach by the Consultant of any terms and conditions of such confidentiality obligations.

3.5 In respect of the Confidentiality Obligations

- (a) You shall maintain in the strictest confidence and shall not disclose to any other third party or make public MSTB's information and documents that are by its nature confidential and shall include but shall not be limited to the Jumpstart Pack ("**MSTB's Confidential Information**") without the prior written approval of MSTB. In case where you are a company, you shall only disclose MSTB's Confidential Information to your employees who have reasonable need to have access to MSTB's Confidential Information only for the purposes as described in this Agreement and your confidentiality obligations in respect of MSTB's Confidential Information shall equally apply to each of your said employees. You agree that you shall be responsible and liable for the breach of any of the confidentiality obligations under this Agreement by any of your said employees. The confidentiality and non-disclosure obligations under this **Clause 3.5(a)** shall be perpetual and survive the expiry or termination of this Agreement (whichever is the case); and
- (b) In the event the result of the Survey shows that Your Software Product and the Related Documentation are ready for the Product Certification and you decided to obtain the Product Certification from MSTB, MSTB agrees to maintain in the strictest confidence and not to disclose to any other third party or make public your information and documents provided to you to MSTB clearly marked with "confidential" ("**Your Confidential Information**") during the application stage of the Product Certification pending the execution of the Product Certification Application Form by both Parties to stipulate the rights and obligations of the Parties for the Product Certification ("**During the Application Stage**"). For the avoidance of doubt, the term "MSTB's Confidential Information" under **Clause 3.5(a)** above shall include information and documents of MSTB provided to you During the Application Stage. This **Clause 3.5(b)** shall be perpetual and survive the expiration or termination of this Agreement (whichever is the case).

4. INDEMNITY

You shall indemnify and hold harmless MSTB and/or its employee(s) from any claim, demand, loss, liability, damage or expense arising pursuant to any action or claim brought by any party against MSTB and/or its employee(s) in respect of your breach of any of the terms and conditions of this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

All intellectual properties (“**IPs**”) of MSTB created or developed prior to the Effective Date which include (but shall not be limited to the Jumpstart Pack) are the absolute property of MSTB. Nothing herein shall operate to assign to or vest any IPs of MSTB (and the rights relating thereto) in or to you. You warrant that Your Software Product and the Related Documentation do not infringe the third (3rd) party rights or IPs rights. The provisions of this **Clause 5** shall survive the expiry or termination of this Agreement (whichever is the case).

6. TERMINATION

MSTB may forthwith terminate this Agreement by giving written notice to you, wherein such termination shall take effect immediately, if you commit any breach of the provisions in this Agreement and, if the breach is capable of remedy, fails to remedy it within seven (7) days after being given a written notice containing full particulars of the breach and extent of remedy sought. In addition, the License and this Agreement shall be automatically terminated due to the breach of any of the License Conditions.

7. TERMINATION AND EXPIRATION CONSEQUENCES

The License shall be automatically revoked or expired (whichever is the case) and you shall cease from dealing with the Jumpstart Pack upon the termination or expiration (whichever is the case) of this Agreement. You shall immediately return to MSTB all MSTB’s Confidential Information or upon instructions of MSTB, erase or delete all MSTB’s Confidential Information in your possession upon the termination or expiration (whichever is the case) of this Agreement, if any. In no event MSTB is required to refund to you the amount paid and received by MSTB from you (if any) for the Jumpstart Pack upon the termination of this Agreement, if any. Termination or expiration (whichever is the case) of this Agreement shall not release you from any obligation accrued hereunder on or before the termination or expiration (whichever is the case) of this Agreement and also any obligation of damages which would accrue after the termination or expiration (whichever is the case) of this Agreement for any reason related to this Agreement.

8. REPRESENTATION & WARRANTIES

You represent and warrant to MSTB that (a) this Agreement constitutes your legal, valid and binding obligations in accordance with the respective terms; (b) this Agreement will neither result in the breach nor the violation of any of your obligations under any agreement or instrument whatsoever with any person or entity, by which you are bound; or (c) there is no court or other proceeding pending or threatened against you which would negatively affect the performance of your obligations under this Agreement.

9. GOVERNING LAW & DISPUTE RESOLUTION

Any dispute, controversy or differences arising out of or in relation to this Agreement, including any question regarding its interpretation, breach, termination or validity thereof shall be settled, insofar as it is possible, by mutual consultation and consent between MSTB and you failing of which, such matters shall be governed by and construed in accordance with the laws of Malaysia and finally settled by the Malaysian courts.

10. NOTICES

All notices and other communications ("**Notices**") in connection with this Agreement shall be in writing in the English language and shall be sent by hand, by pre-paid registered post, by facsimile or through official/working email(s) to the other Party's person and address in each Party's latest records. All Notices shall be deemed to have been served on the recipient when delivered (if delivery by hand) or forty-eight (48) hours after posting (if sent by pre-paid registered post) or on transmission by the sender (if sent by facsimile or official/working email).

11. MISCELLANEOUS

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written between the Parties. No modification, variation or amendment of this Agreement shall have any legal effect and force unless such modification, variation or amendment is in writing and executed by the Parties. Time wherever mentioned in this Agreement shall be of the essence. Unless otherwise agreed in writing by MSTB, you shall pay the stamp duty payable in respect of this Agreement. This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

(End of Provisions)