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 MALAYSIA

### Integrity Pact and Committee Integrity Pledges Policy

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ABMS-005

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## 1. Background

Procurement and contract management are highly susceptible to corruption risks. Leakages occur at all stages of procurement and contracting, including the pre-contract design stage, the tendering exercise, and during the contract period itself.

Integrity Pacts promote corruption-free operations on the part of both the procuring organisation and its External Providers during the award and execution of a contract. The implementation of Integrity Pacts yields other benefits such as greater transparency in contracting, and enhancement of public confidence and trust.

Tender committee Integrity Pledges set out the expected behaviours from the committee members. The Pledges are to be signed at the start of each tender-related committee meeting by each committee member present.

The Chairman of the Board Tender Committee recommended using the Ministry of Finance (MOF) structure of Integrity Pacts and committee Pledges for UNITEN. The Mass Rapid Transit Corporation Sdn Bhd (MRT Corp.) structure, based on the MOF structure, was identified as the best-practice document set to work from, combining the MOF structure with private sector elements. The MRT Corp. set was then further developed and simplified to match UNITEN requirements.

## 2. Objective

The purpose of this policy is to provide guidance to its users on the appropriate procedures when implementing Integrity Pacts in tendering, procurement and contract management.

## 3. Scope

This policy is applicable to UNITEN, the BOD and UNITEN Personnel to be included under the definitions, along with its Controlled Organisations, their BODs and personnel (together, UNITEN and its subsidiaries).

## 4. References

- a) ISO 37001:2016
- b) TNB Code of Ethics
- c) UNITEN ABMS Glossary of Terms
- d) UNITEN Conflicts of Interest policy
- e) UNITEN Gifts, Hospitality and Related Benefits Policy
- f) UNITEN Whistleblowing Policy
- g) UNITEN ABMS Monitoring and Review Procedure

## 5. Definitions

|     |   |
|-----|---|
| BOD | The Board of Directors of UNITEN and the Boards of its Controlled Organisations |
|-----|---|

|                   |   |
|-------------------|---|
| Bribery           | <p>Bribery is defined as any action which would be considered as an offence of giving or receiving 'gratification' under the Malaysian Anti-Corruption Commission Act 2009 (MACCA).</p> <p>In practice, this means offering, giving, receiving or soliciting something of value in an attempt to illicitly influence the decisions or actions of a person a position of trust within an organisation.</p> <p>'Gratification' is defined in the MACCA to mean the following:</p> <ul style="list-style-type: none"> <li>(a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;</li> <li>(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;</li> <li>(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;</li> <li>(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;</li> <li>(e) any forbearance to demand any money or money's worth or valuable thing;</li> <li>(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and</li> <li>(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).</li> </ul> <p>Bribery may be 'outbound', where someone acting on behalf of UNITEN attempts to influence the actions of someone external, such as a Government official or client decision-maker.</p> <p>It may also be 'inbound', where an external party is attempting to influence someone within the UNITEN and its subsidiaries such as a senior decision-maker or someone with access to Confidential Information.</p> |
| BTC               | Board Tender Committee of UNITEN  |
| External Provider | Any person or business that provides (or wishes to provide) products or services to or does business with UNITEN, with or without a written contract. This may include suppliers, vendors, contractors, consultants and agents.   |
| Integrity Pact    | A legal agreement between two entities (normally a purchaser and External Provider) to act according to an agreed set of practices, in order to prevent bribery arising during their commercial interactions. To be distinguished from an Integrity Pledge for personnel (see below).   |
| Integrity Pledge  | A document signed by an individual, committing themselves to act with integrity as they conduct their duties at UNITEN.   |

|                  |  |
|------------------|--|
| UNITEN Personnel | All individuals directly contracted to the company and its Controlled Organisations on an employment basis, including permanent and temporary employees and directors. |
|------------------|--|

## 6. Owner

The owner of this policy is the Finance and Procurement Department

## 7. Policy

### 7.1 Integrity Pacts

- a) Integrity Pacts shall be included in the documentation provided to potential External Providers for all UNITEN procurement..
- b) The Integrity Pact shall be signed by an authorised representative from the External Provider prior to the main contract for goods and services being signed.
- c) The Integrity Pact may be signed at the same meeting the main contract is signed.
- d) Integrity Pacts are subject to the laws of Malaysia and the Pacts are made in good faith by all parties involved. As such, they are legally binding.

### 7.2 Tender Committee Integrity Pledges

Committee Pledges shall be signed by all participants present at the beginning of all committee meetings relating to procurement.

## 8. Procedure

### 8.1 Integrity Pacts

- a) The Integrity Pact shall be provided as part of the documentation for all parties participating in a procurement exercise where a contract is involved.
- b) UNITEN FPD shall answer any queries raised by the External Provider if requested to so, before the Pacts are signed.
- c) The Integrity Pact shall be signed prior to the signing of the contract.
- d) UNITEN FPD shall retain the original copy of the Integrity Pact(s) with the bidding and contract documentation for further reference.
- e) A copy of the Integrity Pact is included in Appendix 1.

### 8.2 Tender Committee Pledges

- a) The Chairman of the meeting shall instruct the committee members to sign the Pledges at the start of the meeting.
- b) The secretary of the meeting shall gather the signed documents and retain them for the company's records.

- c) As per item e) of the Pledge document, committee members shall immediately declare to the Chairman if they become aware of a conflict of interest arising. The Chairman shall then decide the appropriate action as per the Conflicts of Interest policy.
- d) A copy of the Integrity Pledge is included in Appendix 2.

## **9. Sanctions for non-compliance**

### **9.1 Integrity Pacts**

In the event that an external provider has been found to, or be suspected of, violating the Integrity Pact, UNITEN shall conduct an investigation to ascertain whether the terms of the Pact have indeed been violated. The BTC or other relevant authority within UNITEN shall then review the investigation report and decide what further action should be taken.

### **9.2 Tender Committee Pledges**

In the event that the requirements of a Tender Committee Pledge have been violated, standard UNITEN disciplinary proceedings shall be pursued.

## **10. Waiver**

Any deviation or waiver from this policy must be approved by the BTC.

## **11. Review & Inspection**

11.1 The HR shall conduct periodic reviews to ensure that the Integrity Pacts were signed as stipulated in this policy.

11.2 The FPD shall review the suitability of this policy from time to time.

# Appendix 1: Integrity Pact

## Universiti Tenaga Nasional Integrity Pact

We acknowledge the commitment of Universiti Tenaga Nasional (UNITEN), to ethical business; and hereby undertake to act with integrity in all our dealings with UNITEN. We express our commitment by undertaking the following:

- 1) We shall perform all contractual obligations professionally and ethically;
- 2) We shall comply with UNITEN's code of business conduct & ethics and applicable policies, procedures and guidelines at all times;
- 3) We shall not conspire or collude with other companies;
- 4) We shall not disclose details of the tender/contract to any party without prior written consent from the Procurement Department of UNITEN;
- 5) If any products or part thereof are procured from a third party, we shall not present such products as our own without disclosing the third party;
- 6) We shall not give, offer or promise any kind of bribe, reward or other form of 'gratification' (as defined in Section 3 of the Malaysian Anti-Corruption Commission Act 2009) to an employee, agent, director or other representative of UNITEN in relation to this or any other tender/contract with UNITEN at any stage of the tender/contract;
- 7) We shall expeditiously report to the Malaysian Anti-Corruption Commission and/or to a senior officer of UNITEN if an employee, agent or director -of UNITEN requests for any form of gratification at any stage of the tender/contract; and
- 8) We shall inform and ensure that our employees, agents, directors and other representatives of our company comply with these requirements.

If we are found to be in breach of the above, or to have undertaken any other unlawful or illegal activities in relation to this tender/contract, we agree that the following actions shall be taken:

- 1) UNITEN shall immediately terminate the tender/contract without any cost, penalty or liability to UNITEN; and/or
- 2) our company and its directors shall be blacklisted from participating in UNITEN's future procurement activity; and/or
- 3) we shall indemnify UNITEN, its officers, employees, servants and agents against any claims, losses or damages arising from such breach or from such unlawful or illegal activities.

On behalf of the company:

Signature: .....

Name: .....

NRIC/Passport No: .....

Position: .....

Company Name:.....

Company RegNo: .....

## Appendix 2: Tender Committee Integrity Pledges

### FOR SIGNATURE BEFORE THE TENDER EVALUATION

Statement of non-conflict of interest, confidentiality of information and prevention of corruption by

Member of Tender Evaluation Committee ('TEC') for

Tender/quotation title and reference number \_\_\_\_\_ ('the Tender')

\_\_\_\_\_, in the TEC hereby

solemnly and sincerely declare that:-

- a) I shall abstain from any corrupt practices with any person(s) directly or indirectly related to any of the submissions evaluated during my position with respect to the procurement process of Universiti Tenaga Nasional ("UNITEN");
- b) I shall not collude with any party that may affect the transparency and fairness of the procurement process and during the implementation period of the contract;
- c) I shall not, either directly or through another party, solicit for myself and/or any person and/or company connected to me, including but not limited to my relatives (as defined by the MACC Act 2009, summarised below), acquaintances and business associates, any improper inducement or reward or any other form of 'gratification' (as defined by the MACC Act 2009, summarised below), to facilitate the award of contracts related to the Tender;
- d) I neither I nor any of the above-mentioned persons and/or company have received from and/or been approached, offered, provided, granted and/or given by any of the bidders either directly or indirectly, through agents or other third parties (including bidders' related companies, subcontractors or consultants), any form of 'gratification' to facilitate the award of contracts related to the Tender;
- e) I shall immediately declare to the Chairman of the TEC if any of the above-mentioned person and/or company has any interest in any items of procurement in which am involved;
- f) I shall at all times keep strictly private and confidential information which may be considered sensitive in nature and/or is marked confidential ("Confidential Information") which is in my possession, received by me or come to my knowledge in the discharge of my duties as being involved in the procurement process of UNITEN-;
- g) I shall not (except with the direct or express consent from **UNITEN** or permitted by any law) divulge either directly or indirectly to the bidder, their agents and/or any other third parties (including its related companies, subcontractors or consultants) any Confidential Information prior to and/or during the award of contracts to be made by UNITEN that may place any bidder in any advantageous position as compared to other participating bidders in any way whatsoever;
- h) If there is any attempt of bribery from any party, I shall immediately inform the ItO of the IU regarding the matter.
- i) I am fully aware that any non-compliance of the above-mentioned articles shall in effect tantamount to a criminal offence and I may be subject to criminal charges under the Penal Code (Revised 1997) (and its amendments) and/or the Malaysian Anti-Corruption Commission Act 2009



(and its amendments) and/or other applicable laws being reinforced both in Malaysia and internationally; and

- j) I am fully aware that by any non-compliance of the above-mentioned articles, I have effectively breached my contract of employment and may be subject to civil and/or industrial suit by UNITEN. I understand that UNITEN may enforce the following disciplinary actions against me:
1. Stern written warning
  2. Suspension of job without salary
  3. Deferment of salary increment/ bonus .
  4. Reduction in salary
  5. Demotion
  6. Dismissal

**Section 3 of the Malaysian Anti-Corruption Commission Act 2009 provides that:...**

**"relative"**, in relation to a person, means — (a) A

spouse of the person;

(b) A brother or sister of the person;

(c) A brother or sister of the spouse of the person;

(d) A lineal ascendant and descendant of the person;

(e) A lineal ascendant and descendant of a spouse of the person; J/ A lineal descendant of a person referred to in paragraph (b);

(g) The uncle, aunt or cousin of the person; or (h) The son-in-law or daughter-in-law of the person. .

**"Gratification"** means—

(a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;

(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;

(C) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;

(e) any forbearance to demand any money or money's worth or valuable thing;

(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).

I make this declaration conscientiously and in good faith.  
Subscribed and solemnly declared by:

Signature: \_\_\_\_\_

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

NRIC: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR SIGNATURE BEFORE THE OPENING OF THE TENDER BOX**

**Statement of non-conflict of interest, confidentiality of information and prevention of corruption by**

**Member of Tender Opening Committee ('TOC') for**

**Tender/quotation title and reference number \_\_\_\_\_ ('the Tender')**

I,

in the TOC

hereby solemnly and sincerely declare that:-

- (a) I shall abstain from any corrupt practices with any person(s) directly or indirectly related to any of the submissions evaluated during my position with respect to the procurement process of Universiti Tenaga Nasional ("UNITEN");
- (b) I shall not collude with any party that may affect the transparency and fairness of the procurement process and during the implementation period of the contract; .
- (c) I shall not, either directly or through another party, solicit for myself and/or any person and/or company connected to me, including but not limited to my relatives (as defined by the MACC Act 2009, summarised below), acquaintances and business associates, any improper inducement or reward or any other form of 'gratification' (as defined by the MACC Act 2009, summarised below), to facilitate the award of contracts related to the Tender;
- (d) neither I nor any of the above-mentioned persons and/or company have received from and/or been approached, offered, provided, granted and/or given by any of the bidders either directly or indirectly, through agents or other third parties (including bidders' related companies, subcontractors or consultants), any form of 'gratification' to facilitate the award of contracts related to the Tender;
- (e) I shall immediately declare to the Chairman of the TOC if any of the above-mentioned . person and/or company has any interest in any items of procurement in which I am involved;
- (f) I shall at all times keep strictly private and confidential information which may be considered sensitive in nature and/or is marked confidential ("Confidential Information") which is in my possession, received by me or come to my knowledge in the discharge of my duties as being involved in the procurement process of UNITEN ;
- (g) I shall not (except with the direct or express consent from UNITEN or permitted by any law) divulge either directly or indirectly to the bidder, their agents and/or any other third parties (including its related companies, subcontractors or consultants) any Confidential Information prior to and/or during the award of contracts to be made by UNITEN that may place any bidder in any advantageous position as compared to other participating bidders in any way whatsoever;
- (h) if there is any attempt of bribery from any party, I shall immediately inform the ItO regarding the matter.
- (i) I am fully aware that any non-compliance of the above-mentioned articles shall in effect tantamount to a criminal offence and I may be subject to criminal charges under the Penal Code (Revised 1997) (and its amendments) and/or the Malaysian Anti-Corruption Commission Act 2009 (and its amendments) and/or other applicable laws being enforced both in Malaysia and internationally; and

(j) I am fully aware that by any non-compliance of the above mentioned articles, I have effectively breached my contract of employment and may be subject to civil and/or industrial suit by UNITEN. I understand that UNITEN may enforce the following disciplinary actions against me:

1. Stern written warning
2. Suspension of job without salary
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5. Demotion
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**Section 3 of the Malaysian Anti-Corruption Commission Act 2009** provides that:

**'relative'**, in relation to a person, means — (a) A

spouse of the person;

(b) A brother or sister of the person;

(c) A brother or sister of the spouse of the person;

(d) A lineal ascendant and descendant of the person;

(e) A lineal ascendant and descendant of a spouse of the person; *J/A*

lineal descendant of a person referred to in paragraph (b);

(g) The uncle, aunt or cousin of the person; or (h) The son-

in-law or daughter-in-law of the person.

**"Gratification"** means—

(a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description Whether movable or immovable, financial benefit, or any other similar advantage;

(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;

(e) any forbearance to demand any money or money's worth or valuable thing;

(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).

I make this declaration conscientiously and in good faith.

Subscribed and solemnly declared by:

Signature: \_\_\_\_\_

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

NRIC: \_\_\_\_\_

Date: \_\_\_\_\_