

**USAHA TEGAS SDN BHD**

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**DEALING WITH THIRD PARTIES POLICY**

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## 1. INTRODUCTION

Usaha Tegas Sdn Bhd (“**UT**”) and each of the group companies of and affiliated to UT (each a “**Company**”) strictly prohibits bribery and corruption in all its businesses. The Company adopts a **ZERO TOLERANCE APPROACH** against all forms and acts of bribery and corruption, and upholds all applicable laws in relation to anti-bribery and corruption.

The objective of this Dealing with Third Parties Policy (“**Policy**”) is to establish a standard policy to ensure that the whole approach and process in dealing with Third Parties<sup>1</sup> is consistent across the Company and in line with the Company’s policies and commitment against bribery and corruption.

## 2. APPLICATION

This Policy applies to all directors (executive and non-executive) and employees (permanent or contract) of the Company, and Third Parties which the Company engages or proposes to engage.

This Policy shall be effective on 1 June 2020.

## 3. DEALING WITH THIRD PARTIES

- 3.1 The Company may potentially be exposed to liability as a result of bribery and corruption committed by Third Parties.
- 3.2 As such, the Company expects Third Parties dealing with the Company to apply the highest ethical standards in their business relationships and that they have an appropriate anti-bribery and corruption compliance framework in place.
- 3.3 The Company may not enter into, or continue, a relationship with any Third Party if it cannot be satisfied that such Third Party will behave in a manner consistent with this Policy, the Company’s Anti-Bribery and Corruption Policy (“**ABC Policy**”) and in accordance with applicable anti-bribery and corruption laws.

To protect directors, employees and the Company from potential liability for bribery or corruption committed by Third Parties, there are a number of steps that must be taken as set out below:

(i) Due Diligence

Risk based due diligence must be conducted on all Third Parties by the respective departments engaging with the Third Party.

The level of due diligence should be guided by the results of a preliminary risk assessment process, categorising the Third Parties as high, medium or low risk.

(ii) Appropriate provisions in the agreements with the Third Parties

Arrangements with Third Parties must be transparent and documented in a written agreement with the relevant Third Parties. The following should be included in the agreement to be entered into with a relevant Third Party:

- the remuneration/compensation payable to the Third Party (which must be appropriate and justifiable remuneration for legitimate services rendered or goods supplied);

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<sup>1</sup> “Third Parties” includes, without limitation, agents, consultants, contractors, supplier, joint venture partners, consortium partners and proposed merger and acquisition targets.

- a warranty or undertaking that the Third Party has not and will not engage in corrupt conduct or bribery;
- an undertaking that the Third Party will comply with all relevant anti-bribery and corruption laws, this Policy and the ABC Policy;
- a continuing obligation on the Third Party to advise the Company if any contravention of the above provisions occurs; and
- a right of termination/right of exit if the Third Party pays bribes or acts in a manner which is inconsistent with the agreement, all relevant anti-bribery and corruption laws and this Policy and the ABC Policy.

The relevant employee engaging with the Third Party must ensure that the Third Party complies with all the clauses in such contractual arrangements that he/or she manages or administers.

Agreements to be entered into between the Company and the Third Parties will contain anti-bribery and corruption clauses in accordance with the specimen clauses appended in **Appendix A**.

Further, all existing Third Parties that already have an agreement in place with the Company must complete and sign the Third Parties Anti-Bribery & Corruption Declaration Form as appended in **Appendix B**.

(iii) On-going requirements

The Company will establish monitoring and re-evaluation requirements for Third Parties, depending on the assessment of the risk and the steps necessary to mitigate that risk and taking into consideration the nature of the Third Party's role and history. This will include regular and on-going review of the Third Parties by the respective departments engaging with the Third Parties, acting on red flags and changes in risk factors.

(iv) General red flags

There may be conduct, circumstances and actions that directors and employees come across during their appointment or employment with the Company, which constitute warning signs that a Third Party may be engaging in bribery or other forms of corruption.

**Appendix C** sets out a non-exhaustive list of examples of "red flags" that directors and employees should review in relation to the Third Parties and report immediately to the Company through the Compliance Officer or via the whistleblowing channel provided in the Whistleblowing Policy. The Company may take any remedial action as appropriate, including declining any business relationship or agreement with the Third Party, or terminating any existing agreement with the Third Party.

(v) Payment

As a matter of general policy, the Company does not allow payment to Third Parties to be made to their offshore accounts save and except where such Third Parties are foreign companies or operated or located offshore. If a Third Party insists on payment to be made to their offshore account, the employee concerned shall report the matter to his/her Head of Department or the Compliance Officer immediately.

- 3.4 In respect of joint ventures, in addition to the steps set out in Paragraph 3.3 above, the following further steps need to be carried out:
- (i) If the Company has a controlling interest in the joint venture company (“**JV Co**”), ensure that the JV Co adopts this Policy and the ABC Policy.
  - (ii) If the Company neither controls nor operates the JV Co, the Company should:
    - make reasonable efforts to influence and procure the JV Co to adopt this Policy and the ABC Policy, or equivalent standards and principles, and to establish controls substantially similar to the Company’s standards to prevent bribery and corruption.
    - be alert to warning signs, which may arise in the conduct of the business. Any such warning signs must be reported to the Compliance Officer and appropriate action to be taken.
    - require (or where this right does not formally exist, request) that the majority partner/shareholder or the JV Co to provide written representation of anti-bribery and corruption compliance on an annual basis.
- 3.5 In respect of any engagement of a government official or ex-government official, or their immediate family members (“**person**” in the section below), to perform services that have a legitimate business purpose, in addition to the steps set out in Paragraph 3.3, the employee engaging with the person must ensure that:
- the circumstances surrounding the person’s engagement do not give rise to appearance of impropriety;
  - the person is not engaged to perform services that conflict with the official’s duties or obligations;
  - the person is objectively and unquestionably qualified in terms of background and experience to perform the services for which he or she is being engaged;
  - there is no expectation that the person is being engaged by the Company in exchange for any improper action or business advantage from the government (a quid pro quo);
  - the Company has no official applications currently pending decision before the official and/or the relevant governmental ministry department from the time the person first came to the Company’s attention as a candidate through the time at which he/she was formally engaged;
  - the fees are reasonable and consistent with the services to be performed and the person’s professional qualifications and experience;
  - appropriate ethical Chinese walls and monitoring of those walls, are implemented to ensure that the person does not interact with his or her government or former government colleagues on matters that can affect the Company business; and
  - the engagement is made only after proper evaluation where proposals were also obtained from at least two (2) others similar service providers.

## DOs

- **DO** conduct due diligence to assess the integrity of Third Parties depending on the level established by the risk analysis.
- **DO** ensure all Third Parties are made aware of this Policy and the ABC Policy and the Company's expectations of them.
- **DO** periodically monitor Third Parties' performance and business practices to ensure ongoing compliance.
- **DO** ensure when there are "red flags" raised, further investigation must be conducted and the red flags are sufficiently addressed before entering into any business relationship with the Third Party.
- **DO** ensure that all commercial contracts incorporate the provisions relating to anti-bribery and corruption.
- **DO** make reasonable efforts to influence the JV Co to adopt this Policy (or substantially equivalent standards and principles) and to comply with all applicable anti-bribery and corruption laws and to establish controls substantially similar to the Company.

## DON'Ts

- **DO NOT** enter into any business dealings with any Third Party reasonably suspected of engaging in bribery and improper business practices unless those suspicions are investigated and resolved.
- **DO NOT** allow payment to Third Parties to be made to their offshore accounts save and except where such Third Parties are foreign companies or operated or located offshore.
- **DO NOT** enter into business relationships with Third Parties who object to anti-bribery and corruption representations and warranties in commercial agreements or give negative response when told of such requirements.

## APPENDIX A - SPECIMEN ANTI-BRIBERY AND CORRUPTION CLAUSES

### (Paragraph 3.3(ii))

A specimen anti-bribery and anti-corruption clause intended for use in agreements with Third Parties.

These clauses are not intended to be incorporated into an agreement without review or modification. Rather, they should be viewed as starting points, to be adapted to fit the specific needs, business risks and circumstances of each situation. Depending on the governing law of the agreement, these clauses may be subject to further review by the relevant foreign counsels.

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1. The [ ]<sup>1</sup> hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees (“**Representatives**”) have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence (“**Third Parties**”), from doing so.
2. The [ ] represents and warrants that so far as it is aware, at the date of the entering into force of the Contract, neither itself or its Representatives are involved in any pending or threatened investigation, inquiry or enforcement proceedings by or before any governmental, administrative or regulatory body regarding any offence or alleged offence under any applicable laws for the prevention of fraud, bribery and corruption.
3. The [ ] agrees that, at all times in connection with and throughout the course of the Contract and thereafter, it will and it will take reasonable measures to ensure that its Third Parties will, prohibit at all times and in any form (in relation with a public official at the international, national or local level, a person connected to any political party and office, and a director, officer or employee of the Company, whether these practices are engaged in directly or indirectly, including through third parties) any offering, promising, giving, authorizing or accepting of any gratification, undue pecuniary or other advantage to, by or for any of the persons listed above or for anyone else in order to obtain or retain a business or other improper advantage.
4. The Company has put in place, at the date of the entering into force of the Contract, an Anti-Bribery and Corruption Policy (“**Policy**”) and the [ ] hereby acknowledges receipt of a copy of the Policy. The [ ] agrees that, at all times in connection with and throughout the course of the Contract and thereafter, it will and it will take reasonable measures to ensure that its Third Parties will, comply with the Policy and shall not cause the Company to be in breach of such Policy. The [ ] shall notify the Company in writing if it becomes aware of any breach of provisions in the Policy, or has reason to believe that it or its Representatives or its Third Parties, has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract.
5. The [ ] has put into place, at the date of the entering into force of the Contract, or undertakes to put into place soon thereafter, its own corporate anti-corruption compliance policy and procedures. The [ ] agrees to maintain and implement such policy and procedures at least throughout the lifetime of the Contract.
6. In the event that the Company in good faith, has a reasonable belief to suspect that a breach of Clause 3 above may take or has taken place, the Company will notify the [ ] accordingly and require the [ ] to take the necessary remedial action in a reasonable time and to inform the Company about such remedial action. If the [ ] fails to take the necessary remedial action or if

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<sup>1</sup> To insert the name of the Third Party i.e. adviser, agent, consultant, contractor, vendor, lender etc.

such remedial action is not possible, this shall constitute a material default of this Contract and the Company may, at its discretion, either suspend or terminate the Contract.

7. Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this Clause.

[End of Appendix A]



**APPENDIX B - THIRD PARTIES ANTI-BRIBERY & CORRUPTION FORM**

(Paragraph 3.3(ii))

**ANTI-BRIBERY & CORRUPTION DECLARATION FORM**  
**[USAHA TEGAS SDN BHD<sup>1</sup>] (“Company”)**

I, \_\_\_\_\_ (Name), being the [director/ authorised representative <sup>2</sup>] of \_\_\_\_\_ (Company/ Business Name) (hereinafter referred to as “[ <sup>3</sup> ]”) hereby:

1. **DECLARE THAT:**

- (a) The [ ] and its officers, directors, employees (each a “**Representative**”) have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the contract that it had entered into with the Company (“**Contract**”) and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence (“**Third Parties**”), from doing so.
- (b) So far as the [ ] is aware, at the date of this Declaration, neither it or its Representatives are involved in any pending or threatened investigation, inquiry or enforcement proceedings by or before any governmental, administrative or regulatory body regarding any offence or alleged offence under any applicable laws for the prevention of fraud, bribery and corruption.
- (c) The [ ] agrees that, at all times in connection with and throughout the course of the Contract and thereafter, it will not and it will take reasonable measures to ensure that its Third Parties will not, promise, authorise, offer or ratify or offer to make, or take any act in furtherance of any payment, contribution, gift, reimbursement or other transfer of anything of value, or any solicitation, directly or indirectly to:
  - (i) any director or employee or other individual(s) representing the Company;
  - (ii) any government official at the international, national or local level;
  - (iii) any person connected to any political party and office; or
  - (iv) any other person,in order to obtain or retain a business or any improper advantage in connection with the Contract.
- (d) The [ ] agrees that, if required by the Company, it shall execute and deliver any such additional documents, supplemental agreement, side letter or agreements in the form satisfactory to the Company in order to confirm and reflect its obligations and declaration contemplated herein.

2. **UNDERTAKE THAT:**

- (a) The [ ] shall, and shall procure that its Representatives shall comply with the Company’s Anti-Bribery and Corruption Policy (a copy of which has been provided to the [ ]), as may be amended by the Company from time to time (“**Policy**”); and
- (b) The [ ] shall maintain in place its own policies and procedures, including but not limited to adequate procedures to ensure compliance with the Policy and the Malaysian Anti-

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<sup>1</sup> To replace as appropriate

<sup>2</sup> To delete as appropriate

<sup>3</sup> To insert the appropriate third party i.e. adviser, agent, consultant, contractor, vendor, lender, etc.

Corruption Commission Act 2009<sup>4</sup>, and will enforce them where appropriate. The [ ] agrees to maintain and implement such policy and procedures at least throughout the lifetime of the Contract.

3. **AGREE THAT:**

- (a) In the event that the Company in good faith, has a reasonable belief to suspect that a breach of Paragraph 1(c) of this Declaration may take or has taken place, the Company will notify the [ ] accordingly and require the [ ] to take the necessary remedial action in a reasonable time. If the [ ] fails to take the necessary remedial action or if such remedial action is not possible, this shall constitute a material default by the [ ] and:
- i. the Company shall be entitled to terminate the Contract immediately; and
  - ii. The Company may take any other remedial action as the Company deems appropriate.
- (b) Should any individual representing the Company attempt to solicit any bribe or advantage (whether financial or otherwise) from the [ ] or its Representatives or where the [ ] has reasonable grounds to suspect any breach or potential breach of the obligations in the Policy, the [ ] will report such act immediately in accordance with the whistleblowing section in the Policy.

Signed: \_\_\_\_\_

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

Position: \_\_\_\_\_

Name of Company/ Company stamp: \_\_\_\_\_

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

[End of Appendix B]

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<sup>4</sup> To modify as appropriate

## **APPENDIX C - GENERAL RED FLAGS**

### **(Paragraph 3.3(iv))**

The following is a list of possible red flags that may arise which may raise concerns under various anti-bribery and corruption laws. The list is not intended to be exhaustive and is for illustrative purposes only.

- (a) a Third Party has a reputation for paying bribes, or requiring that bribes be paid to them, or has a reputation for having a 'special relationship' with foreign government officials;
- (b) a Third Party insists on receiving a commission or fee payment before committing to sign up a contract with the Company, or carrying out a government function or process for the Company;
- (c) a Third Party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- (d) a Third Party requests that payment is made to a country or geographic location different from where the Third Party resides or conducts business;
- (e) a Third Party requests an unexpected additional fee or commission to 'facilitate' a service;
- (f) a Third Party demands lavish entertainment or gifts before commencing or continuing contractual negotiations or provision of services;
- (g) a Third Party requests that a payment is made to 'overlook' potential legal violations;
- (h) a Third Party requests that employment or some other advantage be provided to a friend or relative;
- (i) an invoice received from a Third Party that appears to be non-standard or customised;
- (j) a Third Party insists on the use of side letters or refuses to put terms agreed in writing;
- (k) the Company has been invoiced for a commission or fee payment that is disproportionate to the services provided;
- (l) a Third Party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to the Company; or
- (m) a Third Party offers an unusually generous gift or lavish hospitality to any of the directors or employees.

[End of Appendix C]