

Introduction

PwC has narrowed down their **proposed amendments** to the agreement to the **three (3)** following clauses:

- ✓ **Clause 5.7 Liability**
- ✓ **Clause 5.8 Indemnity**
- ✓ **Clause 5.17 Intellectual Property Rights**

Clause 5.7 Liability

CLAUSE 5.7 LIABILITY

The Consultant agrees that it shall provide the Services under this Agreement in good faith and hereby warrants that the Services provided under this Agreement meets the professional standards for consultancy in the relevant field.

The Consultant's total liability (including any indemnity) for all claims relating to the Services or the Agreement is limited to three times the amount of fees payable for the portion of the services giving rise to the claim.

IMPACT

- The proposed paragraph would make MPC **not be able to claim any amount exceeding RM1,463,311.98**, as the proposed clause has set a liability cap to **three times** of the Services fee payable, which is RM 487,770.66.

APPENDIX 5

MPC hereby appoints the Consultant and the Consultant accepts the appointment to provide the Services for a consideration of Ringgit Malaysia Four Hundred Eighty-Seven Thousand Seven Hundred Seventy and Sixty-Six cents only (RM 487,770.66) as the ceiling contract amount inclusive of sales and services tax (SST).

Clause 5.8 Indemnity

CLAUSE 5.8 INDEMNITY

The Consultant agrees with MPC that –

(a) ...

(b) ...

(c) ...

For the avoidance of doubt, the Consultant accepts no liability or responsibility to anyone other than MPC in connection with the Services or the Agreement. MPC agrees to reimburse the Consultant for any liability and costs the Consultant may incur relating to any claim by anyone else in connection with the Services or the Agreement.

IMPACT

- The first proposed sentence is to clarify that **the Consultant is not liable or responsible to anyone other than MPC** in relation to the Services or Agreement.
- The second proposed sentence requires MPC to reimburse the Consultant for all **costs or liability that the Consultant may have to pay in relation to claims made by anyone else** in relation to the Services or Agreement.

Note: PwC has proposed for a cap on MPC's claims for indemnity for up to **three times** the Services fee. However, PwC has proposed for PwC's claims from MPC on the indemnity to be unlimited.

Clause 5.17 Intellectual Property Rights

CLAUSE 5.17 INTELLECTUAL PROPERTY RIGHTS

(a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of MPC free and clear of all liens, claims and encumbrances. The Consultant shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of MPC. **The Consultant shall not be deemed to have assigned or transferred:**

- (a) any third party intellectual property rights that does not belong to Consultant in the Deliverables; and**
- (b) any intellectual property rights (including but not limited to all methodologies, knowhows, tools, ideas, inventions, concepts, formulas, techniques) that is necessary for Consultant to, maintain and carry on its business, and to render services (whether similar services or otherwise) to Consultant's clients.**

IMPACT

- The proposed addition would mean that the Consultant would not transfer to MPC any intellectual property rights that:
 - belong to a third party and does not belong to the Consultant in the deliverables of the Services
 - the Consultant requires to maintain and carry on its business and provide services to the Consultant's clients.