**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**UNIVERSITI MALAYA**

**AND**

cOMPANY XXXXX

**2021**

MEMORANDUM OF AGREEMENT FOR CONDUCTING RESEARCH …..........................................................................................................................

# THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2020

BETWEEN **UNIVERSITI MALAYA,**

located at Lembah Pantai, 50603 Kuala Lumpur hereinafter referred to as “**UM**” of the first part

AND **………CO NAME…………………………… (Company No………..),** located at …………………………………………………Selangor, Malaysia (hereinafter referred to as “…….”) of the second part.

# WHEREAS

(1) As part of a research program, UM intends to develop cellular lightweight concrete (CLC) using coal bottom ash (CBA) as partial or whole replacement of conventional sand and cement.

(2) ………. is willing to assist UM in conducting this research program by providing free of charge some of the materials for the development of the CLC designed by UM.

**NOW THEREFORE**, the parties hereto, for and in consideration of the respective undertakings hereinafter set forth, each of which shall be construed as a covenant as well as condition, THE PARTIES have agreed as follows:

# DEFINITIONS

In this Agreement, except insofar as the context or subject matter otherwise indicates or requires, the following terms and expressions shall have the following meanings:

**“Agreement”** means this Agreement, all Schedules and Annexures to it.

**“Background Intellectual Property”** means any Intellectual Property owned by the Parties prior to the commencement of this Agreement and which is made available by a Party or Parties in the course of this Agreement.

**“Collaboration Cap”** means the maximum amount of costs and expenses that CO. NAME………..accepts to incur under or in connection with this Agreement, as defined in Schedule 1.

**“Collaboration Tasks”** means the tasks described in Schedule 1 to be performed by the Parties under this Agreement.

**“Commencement Date”** means the date first appearing on this Agreement.

**“Confidential Information”** means all information passing from the disclosing Party to the other Party relating to the collaboration program including without limitation (i) financial information, business plans, reports or findings, investigative studies, consultations, methodologies, proposals, systems, programs, course content, techniques, strategies, improvements, discoveries, processes, innovations, inventions, trade secrets, drawings, know how, source and object code, arrangements and agreements with third parties, formulae, concepts not reduced to material form, designs, plans and models whether given orally or in writing (ii) any derivations of any information or data which embodies, contains or describes the Confidential Information and (iii) any other data or information designated by the disclosing Party be confidential or relating to the current or prospective activities or business of the disclosing Party.

**"Force Majeure"** has the meaning specified in Clause 14.3.

**“Intellectual Property”** means all rights in relation to inventions (including patents), registered and unregistered trademarks (including service marks), copyright, circuit layouts, registrable designs, registrable plant varieties, processes, know-how and confidential information in the industrial, scientific and artistic fields including application or right to apply for registration of any of those rights.

**“Project”** means the research project described in Clause 1 below.

# INTENDED PROJECT OUTCOME

1.1 The Project consists in developing a product of CLC using coal bottom ash as sand and cement replacement materials and supplementary cementing material (the **“Project”**).

# COLLABORATION TASKS

2.1 The Collaboration Tasks and their allocation between the Parties are defined in Schedule 1.

# COLLABORATION TASKS AND PAYMENTS

3.1 The Parties shall use reasonable efforts to carry out the Project. The Parties will direct their employees, servants, agents or contractors to carry out the Collaboration Tasks described in Schedule 1 in order to achieve the tentative time schedule defined in Schedule 2. The tasks of each Party are respectively allocated in Schedule 1.

3.2 The Parties shall provide to each other the equipment, materials, facilities, information and assistance as may reasonably be required by the Parties to satisfactorily perform the Collaboration Tasks and achieve the Project.

3.3 Each Party shall use reasonable endeavours to assist the other Party in the carrying out of the Collaboration Tasks and to achieve the Project.

3.4 The yearly contribution from CO. NAME……….. shall be paid to the Bursary, University of Malaya on yearly basis and shall be used by UM solely for the purposes of the Project, as indicated in Schedule 3.

3.5 Each Party shall immediately notify the other Party in writing if there is an unexpected technical or scientific problem which makes it impossible to achieve or is likely to cause a material delay to the achievement of any of the objectives of the Project or any particular stage of the Project or any material increase in the costs of the Project or if either Party becomes aware of the action of any third party which threatens to affect adversely the successful completion of the Project or the reasonable expectations of either Party hereunder.

# INTELLECTUAL PROPERTY

4.1 Each of the Parties, subject to any third party rights that may exist, agree to provide, free of charge, a non-exclusive, non-transferable, licence to any Background Intellectual Property which shall be limited solely for the purpose of performing work under this Agreement. Any Background Intellectual Property must be clearly identified as such by the contributor at the time it is provided to the other Party.

4.2 Intellectual Property created independently by one Party under this Agreement shall be owned by that Party and shall be under the exclusive administration and control of that Party.

# PATENTING AND LICENSING

5.1 In the event of the Collaboration Tasks resulting in a patentable invention, both Parties shall jointly determine what if any, patent applications shall be made in respect thereof and in which countries such applications shall be made and be responsible for the registration and maintaining of the patent.

5.2 All costs arising from the registration and maintenance of the patent in accordance with this clause shall be borne by CO. NAME……….. which has full right on the patent and licensing.

# CONFIDENTIALITY

6.1 Confidential Information” means all information passing from the disclosing Party to the other Party relating to the Project including without limitation:

(i) financial information, business plans, reports or findings, investigative studies, consultations, methodologies, proposals, systems, programs, course content, techniques, strategies, improvements, discoveries, processes, innovations, inventions, drawings, know how, source and object code, arrangements and agreements with third parties, formulae, concepts not reduced to material form, designs, plans and models whether given orally or in writing;

(ii) any derivations of any information or data which embodies, contains or describes the Confidential Information; and

(iii) any other data or information designated by the disclosing Party to be confidential or relating to the current or prospective activities or business of the disclosing Party.

6.2 Where the data and information of this Project have been designated as Confidential Information by any of the Parties, neither Party shall not inform, announce or disclose to any third party other than its respective authorities, any data and information obtained through the implementation of this Agreement or any result of it, unless written approval is obtained from the other Party.

6.3 Where results of this Project have been designated as Confidential Information by any of the Parties, neither Party will inform, announce or disclose to any third party other than its respective authorities, any result obtained through the implementation of this Agreement, unless written approval is obtained from the other Party.

6.4 Notwithstanding the generality of the foregoing, the receiving Party shall not disclose all or any part of such Confidential Information to any third party or make any use of the same (except for the purpose of performing its obligations under this Agreement) without the prior written consent of the disclosing Party.

6.5 The receiving Party agrees to restrict access to all Confidential Information within its organisation to only such limited group of authorised employees or agents who require to know such information in connection with the receiving Party’s obligations or otherwise obligated to keep such information confidential and are instructed to neither use nor disclose such information in a manner other than as permitted herein.

6.6 The obligations of confidentiality contained in this Agreement shall not apply to any Confidential Information which:

(i) has been made public by the Disclosing Party or by others with the permission of the Disclosing Party;

(ii) is independently received from a third party who is free to disclose it;

(iii) is in the public domain or is a compilation of material in the public domain; or

(iv) is required to be disclosed by order of court or any applicable government authority or under any applicable law.

6.7 Upon termination of this Agreement, the Receiving Party shall, upon the request of the Disclosing Party, return all Confidential Information (including all copies thereof) to the Disclosing Party or destroy the same on Disclosing Party’s instruction, within thirty (30) days after the termination or expiration of the term of this Agreement, whichever is earlier.

6.8 The obligations of confidentiality under this Agreement shall survive the expiry or earlier termination of this Agreement.

# PUBLICATION

7.1 Each Party bears right to publish about the research outcome in any article, poster, presentation and/or conference without revealing the formulations achieved.

7.2 Notwithstanding any other provision to the contrary contained herein, either Party may publish or present material at any symposia, national, international or regional professional meeting, academic lecture or in any journal, thesis, dissertation, newspaper or otherwise of its own choosing, the findings, methods and results derived from the Project provided that:

(a) All material prepared for publication by a Party (the "Submitting Party") shall be submitted to the other for permission to publish at least one (1) month prior to submission for publication or disclosure to a third party which permission shall not be unreasonably withheld; and

(b) If at any time during the said period of one (1) month the other Party requests the Submitting Party not to proceed with publication or disclosure of the material in the form submitted then the Submitting Party will either

i. amend the material as requested by the other Party; or

ii. unless otherwise agreed, delay publication or disclosure for a period not exceeding six (6) months to allow registration or protection of intellectual property, or

iii. where the material contains commercially sensitive information for which such registration or protection is not possible or appropriate, for such further period as may be agreed between the Parties and not exceeding two (2) years. Such periods shall commence from the date on which the material was first submitted by the Submitting Party to the other Party.

(c) If no response is received from the other Party by the expiry of the period referred to in sub-clause (b) above, the Submitting Party may forthwith proceed with the intended publication or disclosure without further reference to the other Party.

# OTHER ACTIVITIES

8.1 Subject to the Parties at all times observing their respective duties and obligations under this Agreement the existence of this Agreement shall not preclude either Party from engaging in any other activities similar to or in competition with those the subject matter of this Agreement nor shall it prevent a Party from developing or exploiting products and/or processes other than those developed or exploited as a result of the Collaboration Tasks.

# ADVERTISING

9.1 No Party shall use the name of the other Party in any advertising or other promotional material without the written permission of the other Party.

# TERM AND TERMINATION

10.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with this Agreement, shall continue until the Collaboration Tasks is completed or for a duration of three (3) years, whichever occurs sooner.

10.2 The provisions of Clauses 4, 5, 6, 7 and 9 shall survive and be of full effect after expiration or termination of this Agreement.

10.3 This Agreement may be terminated at any time by mutual written agreement between the Parties.

10.4 If either Party commits a breach of this Agreement then the other Party may request in writing that the breach be remedied. If the Party committing the breach does not remedy it within 30 days then the other Party may terminate this Agreement immediately without further notice.

10.5 Upon termination or expiration of this Agreement the outcome of the Collaboration Tasks shall remain the property of UM and CO. NAME…………. shall make no claim in respect thereof.

# DISPUTE SETTLEMENT

If there is a dispute between the Parties then:

(a) the Parties must discuss the dispute initially with a view to settling the dispute amicably;

(b) if the Parties fail to settle the dispute within fourteen (14) days of the dispute arising, then the Parties must refer the dispute for mediation to a person appointed by agreement between the Parties who has at least two years’ experience as a mediator;

(c) the Parties must co-operate to the extent necessary to enable the mediator to mediate the dispute within 30 days of his or her appointment;

(d) the fees of the mediator shall be paid by the Parties in the proportion determined by the mediator;

(e) referral of a dispute for mediation under Clause 8 does not prevent a party from taking proceedings in court in relation to this Agreement after the referral and participation under Clauses ‎0 (b) and (c).

# LIABILITY

# 12.1 Neither Party shall be liable to the other Party for any loss or damage arising by reason of its failure to perform work on time or within estimated costs or at all, provided that the Party has used its reasonable endeavors in all respects.

# 12.2 Each Party agrees to indemnify and keep indemnified the other Party against any and all liabilities, losses, costs and expenses incurred by the other Party to the extent that the same are incurred as a result of the negligence, wilful misconduct, negligent act or omission or willful failure to act on the part of the first mentioned Party.

# GENERAL

13.1 The Parties shall be excused for the non-performance of their obligations that is attributable to a Force Majeure event. If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the works shall be suspended and equipment brought in by a Party may be demobilised.

13.2 If the event continues for a period of 28 days, either Party may then give notice of termination which shall take effect 28 days after the giving of the notice.

13.3 For the purposes of this Clause, Force Majeure shall mean an exceptional event or circumstance: which is beyond a Party’s control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and which is not substantially attributable to the other Party.

13.4 No Party shall assign all or any of its rights hereunder without the prior written consent of the other Party.

13.5 No Party shall mortgage, pledge, charge, assign by way of security or otherwise encumber any of its rights hereunder without the prior written consent of the other Party.

13.6 This Agreement shall be read and construed according to the laws for the time being in force in the Malaysia, and subject to Clause ‎0 the Parties agree to submit any dispute which may arise in relation to this Agreement to the jurisdiction of the Courts of Malaysia.

13.7 This Agreement may not be varied except in writing signed by the Parties.

13.8 Should any provision of this Agreement be held by a Court to be unlawful, invalid, and unenforceable or in conflict with any rule, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be thereby affected.

13.9 Any notice under this Agreement shall be served by hand delivery or by being forwarded by A.R. Registered post to the address of the Party shown in Schedule 3 Part II or to such other address as may be notified in writing by the Party from time to time and in the case of service by post shall be deemed to have been received within seven (7) days after posting. Such notices may be served by facsimile provided that confirmation is served by hand or post as described in this clause.

13.10 No servants or agents of any Party shall by virtue of this Agreement be deemed to be employees of the other Party.

13.11 Each Party shall execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as shall be necessary to give effect to this Agreement.

13.12 In this Agreement except to the extent that the context otherwise requires:

(a) words denoting the singular include the plural and vice versa;

(b) words denoting individuals or persons include bodies corporate and trusts and vice versa;

(c) headings are for convenience only and shall not affect interpretation;

(d) reference to any document or agreement includes reference to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;

(e) where any word or phrase is given a defined meaning in this Agreement any part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.

13.13 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter. Any prior arrangements, agreements, representations or undertakings are hereby superseded.

13.14 No Party shall use the name of the other Party in any advertising or other promotional material without the written permission of the other Party.

*[Signature pages follows]*

# EXECUTED by the Parties as an Agreement on the date first appearing.

|  |  |
| --- | --- |
| SIGNED for and on behalf of  **UNIVERSITI MALAYA**  by | SIGNED for and on behalf of  **CO. NAME………..**  By |
|  |  |
| Signature: | Signature: |
| Name: **PROFESSOR DATO’ SERI IR. DR. NOOR AZUAN ABU OSMAN** | Name: |
| Position: Vice Chancellor | Position: |
| Date: | Date: |
|  |  |
| in the presence of | in the presence of |
|  |  |
| Signature: | Signature: |
| Name: **ASSOCIATE PROFESSOR IR. DR. NIK NAZRI NIK GHAZALI** | Name: |
| Position: Dean, Faculty of Engineering | Position: |
| Date: | Date: |