

**STANDARD FORM OF CONTRACT TO BE USED WHERE BILL OF QUANTITIES
FORM PART OF THE CONTRACT PWD FORM 203A (REV. 1/2010)**

CONDITIONS OF CONTRACT

Document No. _____

Letter of Appointment Number: _____

A CONTRACT made on _____ between the Government of Malaysia (hereinafter referred to as the "Government") of the one part and _____ (hereinafter called the "Contractor") and having its registered address at _____ of the other part.

(The Government and the Contractor shall hereinafter individually referred to as a "Party" and collectively as the "Parties").

WHEREAS:

- A. The Government is desirous of _____ (hereinafter referred to as the 'Works') and has caused Drawings, Bills of Quantities, Specification describing the work to be done to be prepared.
- B. The said Drawings numbered _____ (hereinafter referred to as the "Contract Drawings"), and the Bills of Quantities, Specification, Form of Tender and Letter of Acceptance of Tender have been signed by or on behalf of the Parties hereto.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definition

Unless the context otherwise requires, this Contract or an item or entry in the Appendices specifically otherwise provides, the following words and phrases in this Contract and the Appendices shall have the meaning given below or ascribed in the clauses or Appendix item to which reference is made:

- (a) "**Contract**" means this contract and the appendices attached hereto;

(b) **“Contract Documents”** means the documents forming the tender and acceptance thereof including:

- (i) Form of Tender;
- (ii) Letter of Acceptance of Tender;
- (iii) Contract Drawings;
- (iv) Bills of Quantities;
- (v) Specifications;
- (vi) Treasury’s Instructions;
- (vii) _____;
- (viii) _____;
- (ix) _____,

and all these documents shall be complementary to one another;

(c) **“Contractor”** means the person or persons, sole proprietor, partnership, firm or company whose tender for the Works has been accepted and who has or have signed this Contract and includes the Contractor's personal representatives, heirs, successors, executors, administrators, servant and agent;

(d) **“Contract Period”** means the time frame stipulated in clause 2;

(e) **“Contract Sum”** means the sum stipulated in clause 7;

(f) **“Date for Completion”** means the date fixed and stated in Appendix or any other date as provided for in clause 39;

(g) **“Defects Liability Period”** means the period stated in Appendix or if none stated, the period is twelve (12) months from the date of practical completion certified by the S.O. as provided for under clause 39.3;

(h) **“Nominated Sub-Contractor” or “Nominated Supplier”** means all specialist, merchants, tradesmen and others executing any work or services, or supplying any materials or goods for which Prime Cost Sum (or P.C. Sums) are included in the Bills of Quantities or which

the S.O. has given written instructions in regard to the expenditure of Provisional Sum and who may be nominated by the S.O. and employed by the Contractor as Sub-Contractor or Suppliers;

- (i) **“On-Cost Charges”** means any cost and expenses reasonably incurred by the Government;
- (j) **“Officer Named”** means officer empowered to take action on behalf of the Government pertaining to clauses(_____);
- (k) **“Prime Cost” or abbreviation “P.C. Sum”** means a sum for works or services to be executed by a Nominated Sub-Contractor or sums for materials or goods to be obtained from a Nominated Supplier;
- (l) **“Provisional Sum”** means a sum for work or for the supply of goods or materials which cannot be defined or detailed at the time the tender documents are issued;
- (m) **“Site”** means the land and other places on, above, under, in or through which the Works are to be executed and any other lands or places provided or approved by the Government for working space or any other purposes as may be specifically designated in this Contract and whether the same may be on the Site or not;
- (n) **“S.O.”** means the Superintending Officer who shall be(_____) and/or his successors in office;
- (o) **“S.O.’s Representative”** means any person or persons delegated or authorised in writing by the S.O. to perform any of the duties of the S.O. as may be from time to time notified in writing to the Contractor by the S.O. pursuant to clause 3.3(a) of this Contract;
- (p) **“Works”** means the works specified in the Contract Documents and shall include temporary works.

1.2 Interpretation

- (a) The terms “approved or approval” and “directed or direction” wherever used in this Contract shall be in writing.
- (b) Words importing the singular include the plural and vice versa where the context requires.
- (c) The headings are for convenience of reference only and shall not be deemed to be part of this Contract or be taken into consideration in the interpretation or construction of this Contract.
- (d) Unless otherwise specifically stated, a reference in this Contract and the Appendices to any clause means that clause in this Contract.

- (e) This Contract and the Appendices are to be read as a whole and the effect or operation of any clause in this Contract or item in or entry in the Appendices shall, unless otherwise specifically stated, be read subject to any relevant qualification or modification in any other clauses in this Contract or item in or entry in the Appendices.

2.0 CONTRACT PERIOD

The Contract Period shall be for a period of _____ commencing from _____ ending on _____.

3.0 THE S.O. AND S.O.'S REPRESENTATIVE

3.1 Duties of S.O. and S.O.'s Representative

The S.O. shall be responsible for the overall supervision and direction of the Works. All matters regarding the Works shall be dealt with by the Contractor with the S.O.

3.2 S.O.'s Representative

- (a) The S.O. may from time to time appoint such number of S.O.'s Representative as he deems fit.
- (b) The S.O.'s Representative shall be responsible to the S.O. and his duties are to watch and supervise the Works and to test and examine any materials or goods to be used or workmanship employed in connection with the Works.

3.3 S.O.'s Authority to Delegate

- (a) The S.O. may from time to time in writing delegate to the S.O.'s Representative any of the powers and authorities vested in the S.O. as listed in the letter of delegation and shall furnish to the Contractor a copy of all such written delegation of powers and authorities.
- (b) Any instruction or approval given by the S.O.'s Representative to the Contractor within the terms of such delegation shall bind the Contractor and the Government as though it had been given by the S.O. PROVIDED THAT failure of the S.O.'s Representative to disapprove any work or material shall not prejudice the power of the S.O. thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.
- (c) If the Contractor is not satisfied with any decision of the S.O.'s Representative, the Contractor shall refer the matter to the S.O. who shall confirm, reverse or vary the decision of the S.O.'s Representative.

- (d) The delegation under this clause shall not preclude the S.O. from himself exercising or performing at any time any of the delegated powers and duties.

4.0 S.O.'S RIGHT TO TAKE ACTION

4.1 Notwithstanding any provision in this Contract it is hereby agreed that:

- (a) the power of the S.O. to issue instruction requiring a variation under clause 24 shall be subject to the financial limits as set out in Appendix hereto. If the instruction for a variation under clause 24 is more than the financial limits as set out in the Appendix, the S.O. shall obtain the prior written approval of the relevant authorities of the Government; and

- (b) the right to act on behalf of the Government in respect of any matter which arises out of the provisions of clauses 51, 52, 53, 58 and 66 shall be exercised by the Officer Named in Appendix;

4.2 The Contractor shall not be entitled to extension of time or any additional cost or expense or whatsoever arising from compliance with this clause 4.

5.0 S.O.'S INSTRUCTIONS

5.1 The S.O. may from time to time issue further drawings, details and/or written instructions (all of which are hereafter collectively referred to as "S.O.'s instructions") in regard to-

- (a) the Variation as referred to in clause 24 hereof;
- (b) any discrepancy in or between the Contract Documents as referred to in clause 8.2(b) hereof;
- (c) the removal from the Site of any materials or goods brought thereon by the Contractor and the substitutions of any other materials or goods therefore;
- (d) the removal and/or re-execution of any works executed by the Contractor;
- (e) the dismissal from the Works of any person mentioned in clause 23.6 hereof employed thereupon;
- (f) the opening up for inspection of any work covered up;
- (g) the amending and making good of any defects whatsoever under clause 48;
- (h) any matter which is necessary and incidental to the carrying out and completion of the Works under this Contract; and

- (i) any matter in respect of which the S.O. is expressly empowered by this Contract to issue instructions.

5.2 All instructions issued by the S.O. shall be in writing. The Contractor shall forthwith comply with all instructions issued to him by the S.O. If such instruction is given orally, the S.O. shall then issue a written instruction within seven (7) days from the date of such oral instruction is given.

5.3 If within seven (7) days after receipt of a written notice from the S.O. requiring compliance of an instruction and the Contractor does not comply therewith, then the S.O. without prejudice to any other rights or remedies available to the Government under this Contract, undertake the work departmentally or employ and pay another Contractor or any other persons to execute any work whatsoever which may be necessary to give effect to such instruction. All costs and expenses incurred in connection with such employment (including On-Cost Charges), shall be deducted from any money due or to become due to the Contractor under this Contract, and failing which such deductions shall be recovered from the Performance Bond or as a debt due from the Contractor.

5.4 The Contractor shall be responsible for all costs and expenses incurred by the Government in carrying out the Works under clause 5.3 and On-Cost Charges (calculated by applying the Percentage of On-Cost Charges stated in Appendix hereto to the amount incurred). The Government shall be entitled to deduct such costs, expenses and On-cost Charges or any part thereof from any monies due or to become due to the Contractor under this Contract or to recover the same from the Performance Bond or as a debt due from the Contractor.

6.0 SCOPE OF CONTRACT

6.1 The Contractor shall upon and subject to this Contract, construct and complete the Works using materials, goods and workmanship of the quality and standards therein specified in accordance with best industry practice.

6.2 The Contractor shall also undertake any consequential work in relation to the construction and completion of Works on the Site i.e. removal/diversion of public sewer, water mains, electrical mains, gas mains and telephone mains and the installation of permanent connections thereto shall be borne by the Government. The Government shall reimburse the Contractor for such costs by adding it to the Contract Sum PROVIDED THAT such cost have not already been included in the Contract Sum by way of a Provisional Sum or otherwise.

PROVIDED FURTHER any temporary connection shall be obtained by the Contractor with no additional cost to the Government for purpose of carrying out their work.

6.3 The Contractor shall also make good any defect, imperfection, shrinkage or any other fault whatsoever which may appear during the Defects Liability Period in accordance with clause 48 hereof.

7.0 CONTRACT SUM

The Government hereby covenants to pay the Contractor in consideration of the construction

and completion of the Works and making good of any defects whatsoever to the Works the sum of Ringgit Malaysia: _____ (RM_____) or such other sum as shall become payable under and at the times and in the manner specified in this Contract.

8.0 CONTRACT DOCUMENTS

8.1 Custody of the Contract Documents

- (a)** This Contract shall be prepared in two (2) original copies. The original copies of the Contract shall remain in the custody of the S.O. and the Contractor.
- (b)** Immediately after the execution of this Contract, the S.O. shall furnish to the Contractor without any charge (unless he shall have been previously furnished) with:
 - (i)** two (2) copies of the Contract Drawings; and
 - (ii)** two (2) copies of the unpriced Bills of Quantities and (if requested by the Contractor) one copy of the priced Bills of Quantities.
- (c)** The S.O. shall, as and when necessary and without charge to the Contractor, furnish him with two (2) copies of such further working drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or the Specifications (if any) or to enable the Contractor to construct and complete the Works in accordance with this Contract. PROVIDED THAT nothing contained in the said working drawings or details shall impose any obligation beyond those imposed by the Contract Documents.
- (d)** The Contractor shall keep one copy of the Contract Drawings, the Specification (if any), unpriced Bills of Quantities, priced Bills of Quantities (if any) and other like documents referred to in sub-clause (c) hereof on the Site and the S.O. shall at all reasonable times have access to the same.
- (e)** Upon final payment being made pursuant to the issuance of Final Account and Payment Certificate under clause 31, the Contractor shall return to the S.O. all drawings, details, specifications, unpriced copy of Bill of Quantities and priced Bill of Quantities, if any.
- (f)** None of the documents hereinbefore mentioned shall be used by the Contractor for any purpose other than this Contract.

8.2 Sufficiency of Contract Documents

- (a)** The Contract Documents are to be taken as mutually explanatory of one another. The Contractor shall provide everything necessary for the proper execution of the Works until its completion according to the true intent and meaning of the Contract Documents taken together whether the true intent and meaning may or may not be particularly shown or described PROVIDED THAT it can be reasonably inferred therefrom.

- (b) If the Contractor shall find any discrepancy in or divergence between any two or more of the Contract Documents including a discrepancy or divergence between parts of any one of them, he shall immediately give to the S.O. a written notice specifying the discrepancy or divergence and the S.O. shall issue instructions in regard thereto PROVIDED ALWAYS that such discrepancy or divergence shall not vitiate this Contract.

9.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE CONTRACTOR

9.1 Representations and Warranties

The Contractor hereby represents and warrants to the Government that-

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) the Contractor has obtained a valid registration with the Construction Industry Development Board;
- (c) it has the corporate power to enter into and perform its obligations under this Contract and to carry out the transactions and to carry on its business as contemplated by this Contract;
- (d) it has taken all necessary corporate actions to authorize the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract;
- (e) as at the execution date, neither the execution nor performance by it of this Contract nor any transactions contemplated by this Contract will violate in any respect any provision of-
 - (i) its Memorandum and Articles of Association; or
 - (ii) any other document or agreement which is binding upon it or its asset;
- (f) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this Contract;
- (g) this Contract constitutes a legal, valid and binding obligation of the Contractor and is enforceable in accordance with its terms and conditions;
- (h) it has necessary financial and technical capability to undertake the Works,

and the Contractor acknowledges that the Government has entered into this Contract in reliance on its representations and warranties as aforesaid.

9.2 Undertaking of the Contractor

The Contractor undertakes that-

- (a) it shall comply with all requirements, statutory or otherwise, regulating or relating to the conduct, trade, business or profession of a contractor, and the Contractor shall be fully and solely liable for all costs incurred thereby;
- (b) it shall pay all taxes that may be imposed on the profits made in respect of this Contract in accordance with the applicable laws; and
- (c) it shall ensure that all his employees, including non-Malaysian personnel, comply with all relevant laws to which they are subject to including payment of income tax, which in respect thereto the Contractor shall make such deductions from the salaries of his employees as may be lawfully imposed by the relevant authority.

10.0 OBLIGATIONS OF THE CONTRACTOR

The Contractor shall-

- (a) construct, complete, test and commission the Works in accordance with the Specifications, Contract Drawings and any other documents specified in the Contract Documents;
- (b) perform the Works in a proper manner and in accordance with good management practice and to the best advantage of the Government;
- (c) take all appropriate measures expected of a contractor providing similar works to ensure that the Works comply with the requirements of this Contract;
- (d) perform the Works and discharge its obligations as contained in this Contract by exercising professional judgment and practice, requisite skill, care and diligence. In performing the Works, the Contractor shall provide well-outlined procedures in the form agreed by the Government for reporting and co-ordination purposes;
- (e) at all times perform the Works in such manner as will always safeguard and protect the Government's interest in relation to the Works and take all necessary and proper steps to prevent abuse or uneconomical use of facilities, if any, made available by the Government to the Contractor;
- (f) inform the Government immediately in writing of the occurrence of any factor or event, which is likely to affect the Works. Such notification shall not be construed as a discharge of any of the Contractor's obligations under this Contract;
- (g) provide and maintain throughout the Contract Period such number, categories of qualified and competent personnel necessary to perform the Works;

- (h) provide and maintain at its own cost and expense all equipment and materials necessary for the proper and effective performance of the Works;
- (i) instruct and supervise its staffs and sub-contractor in carrying out the Works' repairs and other works in relation to the Works;
- (j) make good any defect, imperfection, shrinkage or any other fault whatsoever which may appear during the Defects Liability Period; and
- (k) carry out any other obligations and responsibilities under this Contract.

11.0 INSPECTION OF SITE

11.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his tender as to the following:

- (a) the nature of the ground and subsoil;
- (b) the form and nature of the Site;
- (c) the extent and nature of the work, materials and goods necessary for the completion of the Works;
- (d) the means of communication with and access to the Site;
- (e) the accommodation he may require; and
- (f) in general to have obtained for himself all necessary information as to risks, contingencies and all circumstances influencing and affecting his tender.

11.2 Any information or document forwarded by the Government to the Contractor shall not relieve the Contractor of his obligations under the provisions of this clause.

12.0 PROGRAMME OF WORK

12.1 Within fourteen (14) days from the receipt of the Letter of Acceptance by the Government, the Contractor shall submit to the S.O for his approval –

- (a) a work programme for the carrying out of the Works (hereinafter referred to as "Work Programme") in such form and details as determined by the S.O. showing the detail activities of the Works so as to enable the Government to monitor the progress thereof; and

- (b) a general description in writing, of the arrangements and methods of construction which the Contractor proposes to adopt for the carrying out of the Works.

12.2 The S.O shall within _____ days after receipt of the Contractor's programme:

- (a) approve the Work Programme in writing; or
- (b) reject the Work Programme in writing with reasons and/or request modifications; and/or
- (c) request the Contractor to supply further information to clarify or substantiate the Work Programme or to satisfy the S.O as to its reasonableness having regard to the Contractor's obligations under the Contract,

PROVIDED THAT if none of the above actions is taken within the said period of _____ days the S.O shall be deemed to have approved the Work Programme as submitted.

12.3 The Contractor shall upon receipt from the S.O any request under clause 12.2(b) or (c) resubmit a modified Work Programme or provide further information as requested.

12.4 If at any time it should appear to the S.O that the actual progress of Works does not conform to the approved Work Programme referred to herein before the Contractor shall produce, at the request of the S.O., a revised Work Programme showing the modifications to the approved Work Programme necessary to ensure completion of the whole Works within the time for completion provided for in clause 39 hereof or extended time granted pursuant to clause 43 hereof.

12.5 The submission to and approval by the S.O or the S.O.'s Representative of such Work Programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under this Contract.

13.0 PERFORMANCE BOND / PERFORMANCE GUARANTEE SUM

13.1 The Contractor shall, on the date of the possession of Site, provide a Performance Bond or Performance Guarantee Sum, as the case may be, substantially in the form as in Appendix issued by an approved licensed bank or financial institution incorporated in Malaysia in favour of the Government for a sum equivalent to five percent (5%) of the total Contract Sum as specified in Appendix to secure the due performance of the obligations under this Contract by the Contractor. The Performance Bond shall remain valid and effective until twelve (12) months after the expiry of the Defects Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is the later.

13.2 If the Contractor fails to submit the said Performance Bond as specified in clause 13.1 above on the date of possession of site, then the Contractor shall be deemed to have opted for Performance Bond in the form of Performance Guarantee Sum as provided for under clause 13.3 hereof.

13.3 The Contractor may opt for a Performance Bond in the form of Performance Guarantee Sum in

lieu of the Bank, Insurance or Finance Company Guarantee as specified in clauses 13.1 and 13.2 hereof whereby deductions of ten percent (10%) shall be made from the first interim payments and subsequent interim payment until the total amount deducted aggregate to a sum equivalent to five percent (5%) of the Contract Sum. The amount deducted shall be retained by the Government up to twelve (12) months after the expiry of the Defect Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is the later.

- 13.4** Notwithstanding anything contained in this Contract, the Government shall be entitled at any time to call upon the Performance Bond, wholly or partially, in the event that the Contractor fails to perform or fulfil its obligations under this Contract and such failure is not remedied in accordance with this Contract.
- 13.5** If a payment is made to the Government pursuant to any claim under the Performance Bond, the Contractor shall issue to the Government further security in the form of additional performance bond or bonds for an amount not less than the amount so paid to the Government on or prior to the date of such payment so that the total sum of the Performance Bond shall be maintained at all times at the value specified in clause 13.1.
- 13.6** The Performance Bond (or any balance thereof remaining for the credit of the Contractor) may be released or refunded to the Contractor on the completion of making good of all defects, shrinkages or other faults which may appear during the Defects Liability Period and upon the giving of the Certificate of Completion of Making Good Defects for the whole of the Works under clause 48.
- 13.7** Notwithstanding the above, in the event that this Contract is terminated under clause 51 hereof the said Performance Bond or any balance thereof shall be forfeited.

14.0 INDEMNITY IN RESPECT OF PERSONAL INJURIES AND DAMAGE TO PROPERTY

14.1 The Contractor agrees with the Government that-

- (a) it shall perform all of its obligations under this Contract at its own risk and releases, to the fullest extent permitted by law, the Government and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from the carrying out of the Works except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Government or its agents and servants. The Contractor expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death;
- (b) it shall indemnify and keep indemnified the Government from and against all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from-
- (i) the negligent use, misuse or abuse by the Contractor or its personnel, servants, agents or employees appointed by the Contractor;
- (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever

or wherever sustained or caused or contributed to by carrying out of the Works by the Contractor to any person and not caused by the negligence or wilful act, default or omission of the Government, its agents or servants; or

(iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Works to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Contractor or personnel, servants, agents or employees; and

(c) the obligations under this clause shall continue after the expiry or earlier termination of this Contract in respect of any act, deed, matter or thing happening before such expiration or termination of this Contract.

14.2 The Contractor shall indemnify, protect and defend at its own cost and expense, the Government and its agents and servants from and against all actions, claims and liabilities arising out of acts done by the Contractor in the performance of this Contract.

15.0 INSURANCE AGAINST PERSONAL INJURIES AND DAMAGE TO PROPERTY

15.1 Taking of Insurance

(a) Without prejudice to his liability to indemnify the Government under clause 14 hereof, the Contractor shall, as a condition precedent to the commencement of any work under this Contract, effect and maintain such insurances whether with or without an excess amount as specified in Appendix hereto as are necessary to cover the liability of the Contractor and all sub-contractors, whether nominated or otherwise.

(b) Such insurance shall be for the purpose of personal injuries or death, damage or loss to property, movable or immovable, arising out of, or in the course of, or by reason of the execution of the Works and caused by any negligence, omission, breach of contract or default of the Contractor or any sub-contractor, whether nominated or otherwise, or of any servants or agents of the Contractor or of any such sub-contractor, whether nominated or otherwise. Where an excess amount is specified in Appendix, the Contractor shall bear the amount of such excess. The policy or policies of insurance shall contain a cross liability clause indemnifying each of the jointly insured against claims made by on him by the other jointly insured.

(c) Such insurance as referred to under sub-clause (a) hereof shall be effected with an insurance company as approved by the Government and maintained in the joint names of the Government and Contractor and all sub-contractors, whether nominated or otherwise. Such insurance shall cover from the period of the date of possession of site until the date of issuance of Certificate of Making Good Defects for any claim occasioned by the Contractor or any sub-contractor in the course of any operations carried out by the Contractor or any sub-contractor for the purpose of complying with his obligations under clause 48 hereof.

15.2 Production of Policies

It shall be the duty of the Contractor to produce and shall deposit the relevant policy or policies of the insurance together with receipts in respect of premiums paid to the S.O., whether demanded

or not.

15.3 Default in Insuring

If the Contractor fails to effect or renew such insurances as are required to be effected and maintained under this Contract, the Government or the S.O. on its behalf may effect or renew such insurance and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and On-Cost Charges (calculated by applying the 'Percentage for On-cost Charges' stated in Appendix hereto to the premiums paid), from any money due or to become due to the Contractor under this Contract or to recover the same from the Performance Bond or as a debt due from the Contractor.

15.4 Cancellation of Insurance

- (a) The Contractor shall ensure that any insurance policy effected hereto shall only be cancelled by the insurer after the expiry of thirty (30) days from the date of receipt by the Government of a written notice from the insurer advising of such impending cancellation PROVIDED THAT the Contractor has been issued with the Certificate of Making Good Defects in accordance with clause 48.
- (b) The Contractor shall not at any time permit or cause to be done any act, matter or thing which may result in any insurance effected by virtue of this Contract being vitiated or rendered void or voidable or whereby the rate of the premium on any insurance effected shall be liable to be increased.

15.5 Loss or Damage Occasioned by Insured Risk

- (c) In the event of any damage or loss occurring during the performance of this Contract, the Contractor shall repair, replace or make good such damage or loss from the amount of insurance claimed, if sufficient, or if insufficient, using his own resources.

16.0 INDEMNITIES TO GOVERNMENT IN RESPECT OF CLAIMS BY WORKMEN

16.1 Workmen Compensation

- (a) The Contractor shall be liable for and shall indemnify and keep indemnified the Government and its officers or servants from all liabilities arising out of claims by any workman employed by the Contractor in and for the performance of this Contract for payment of compensation under or by virtue of the Workmen's Compensation Act 1952 and the Employee's Social Security Act 1969 or any other law amending or replacing such law and from all costs and expenses incidental and consequential thereto.
- (b) The Contractor shall effect and maintain throughout the Contract Period a "Workmen Compensation Insurance" or any other applicable insurance for its personnel, servants, agents or employees required under the laws of Malaysia.

17.0 EMPLOYEES' SOCIAL SECURITY ACT, 1969

17.1 Registration with SOCSO

Without prejudice to his liability to indemnify the Government under clause 16, the Contractor shall register or cause to register all local workmen employed in the execution of the Works and who are subject to registration under the Employee's Social Security Scheme ("the SOCSO Scheme") in accordance with the Employee's Social Security Act 1969 or any subsequent modification or re-enactment of the said Act. For the purpose of this sub-clause, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.

17.2 Contribution to SOCSO

The Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the SOCSO scheme to the S.O. for verification. The Contractor shall make payment of all contribution from time to time on the first contribution day on which the same ought to be paid and until the completion of this Contract and it shall be the duty of the Contractor to produce to the S.O. contribution statement or payment vouchers as evidence of payment of such contribution, whether demanded or not.

17.3 Default in Complying with SOCSO

If the Contractor fails to comply with the terms of this Clause, the Government or the S.O. on its behalf may without prejudice to any other remedy available to the Government for breach of any terms of this Contract:

- (a) withhold an amount from any money which would otherwise be due to the Contractor under this Contract and which in the opinion of the S.O. will satisfy any claims for compensation by workmen that would have been borne by SOCSO Scheme had the Contractor not made default in maintaining the contribution; and/or
- (b) pay such contributions as have become due and remain unpaid and deduct the amount of such contributions including On-Cost Charges (calculated by applying the Percentage of On-Cost Charges stated in Appendix to the contributions paid), from any money due or to become due to the Contractor under this Contract, and failing which such contributions shall be recovered from the Performance Bond or as a debt due from the Contractor.

18.0 INSURANCE OF WORKS

18.1 Taking of Insurance

- (a) The Contractor shall in the joint names of the Government and the Contractor insure against loss and damage by fire, lightning, explosion, storm, tempest, flood, ground subsidence, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, all work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and

intended therefore (but excluding temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor, nominated or otherwise) to the full value thereof (plus any amount which may be specifically stated in Appendix or elsewhere in the Contract Documents) and shall keep such work, materials and goods so insured until the completion of the whole of the Works, notwithstanding any arrangement for Sectional Completion or Partial Occupation by the Government under this Contract. Such insurance policy or policies shall provide expressly for payment in the first place to the Government of any insurance monies due under the policy or policies.

- (b) The said insurance with or without an excess clause as specified in Appendix hereto shall be effected with an insurance company approved by the S.O. and it shall be the duty of the Contractor to produce to the S.O. the said policy or policies and the receipts in respect of the premium paid. Where an excess clause is specified in Appendix, the Contractor shall bear the amount of such excess.

18.2 Default in Insuring

If the Contractor fails to effect or renew such insurance as are necessary under this clause, the Government or the S.O. on its behalf may renew such insurance and pay the premium in respect thereof and deduct the amount so expended including On-Cost Charges (calculated by applying the 'Percentage of On-cost Charges' stated in Appendix to the premiums paid), from any money due or to become due to the Contractor under this Contract, and failing which such premium shall be recovered from the Performance Bond or as a debt due from the Contractor.

18.3 Payment of Insurance in the Event of any Loss/Damage

Upon the occurrence of any loss or damage to the Works or unfixed materials or goods prior to the date the Works has been certified as practically completed by the S.O. in the Certificate of Practical Completion, the Contractor shall notwithstanding that settlement of any insurance claim has not been completed, with due diligence restore, replace or repair the same, remove and dispose of any debris and proceed with the carrying out and completion of the Works. All money if and when received from the insurance under this clause shall be paid in the first place to the Government and then (less any such amounts as are specifically required in Appendix or elsewhere in the Contract Documents) be released to the Contractor by instalments on the certificate for payment issued by the S.O., calculated as from the date of receipt of the money in proportion to the extent of the work of restoration, replacement or repair and the removal and disposal of debris previously carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of the work of restoration, replacement or repair and the removal and disposal of debris other than the money received under the said insurance.

18.4 Cancellation of Insurance Policy

The Contractor shall ensure that any insurance policy effected hereto shall only be cancelled by the insurer after the expiry of thirty (30) days from the date of receipt by the Government of a written notice from the insurer advising of such impending cancellation PROVIDED THAT the Contractor has been issued with the Certificate of Making Good Defects in accordance with clause 48.

19.0 SETTING OUT

- 19.1** The Contractor shall be responsible for the true and proper setting out of the Works and for the correctness of the positions, levels, dimensions and alignments of all parts of the Works and for the provisions of all necessary instruments, appliances and labour in connection therewith.
- 19.2** If at any time during the progress of the Works any error in the positions, levels, dimensions or alignments of any part of the Works is discovered, the Contractor shall at his own expense rectify such error unless such error is based on incorrect data supplied in writing by the S.O.'s Representative in which case the expense of rectifying shall be borne by the Government.
- 19.3** If at any time during the progress of the Works, any error shall appear or arise in the setting-out required to construct the Works or in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required to do so by the S.O., shall at his own expense rectify such error to the satisfaction of the S.O. The checking of any setting out of or of any line or level by the S.O. shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all things used in the setting-out required for the construction of the Works until the S.O. agrees that the said things may be abandoned.
- 19.4** The Contractor shall give to the S.O. without charge such information as may be required by the S.O. to enable him to check the setting-out required for the construction of the Works including interpreting any marks made by the Contractor for the purpose of setting out.

20.0 UNFIXED MATERIALS AND GOODS

Unfixed materials and goods delivered to, placed on or adjacent to the Site and intended for incorporation therein, shall not be removed except for use upon the Works, unless the S.O. has consented in writing to such removal. Where the S.O. has included the value of such materials or goods in any certificate in accordance with clause 28, under which the Contractor has received payment, such materials and goods shall become the property of the Government, but the Contractor shall remain responsible for loss or damage to the same.

21.0 COMPLIANCE WITH THE LAW

- 21.1** The Contractor shall comply in all respects (including the giving of all notices and the paying of all fees required) with any law, regulation or by-law, or any order or directive issued by any public authority or public service company (hereinafter referred to as "Statutory Requirements"), relating to the Works or, in the case of public authority or public service company, with those systems the same are or will be connected. The Contractor shall submit to the S.O. all approvals received by the Contractor in connection therein. The Contractor shall keep the Government indemnified against all penalties and liability of every kind for breach of any such Statutory Requirements.
- 21.2** If after the Date of Tender (as specified in Appendix) there is any change or amendment in any written law, regulations and by-laws which necessitates any variation to the Works, the Contractor shall, before making such variation, give to the S.O. a written notice specifying and giving the reason for such variation and apply for the S.O.'s instruction in respect of the matter.

22.0 DESIGN

22.1 Design Liability

- (a) Notwithstanding any design and specifications supplied by the Government, if the Contractor is required under this Contract to undertake the design of any part of the Works which is a stand alone design as determined by the Government, the Contractor shall ensure that such design is suitable, functional, safe, compatible and integrates with the design and specification of the Works and it shall be undertaken, approved and endorsed by a competent and registered professional.
- (b) The Contractor shall submit to the S.O. all drawings, specifications, calculations and any other relevant information pertaining to the stand- alone design for approval. No work shall commence without prior written consent of the S.O.
- (c) The Contractor shall be fully responsible and guarantee the Government that the stand-alone design, integration, execution of the Works, materials and workmanship for the Works or part of the Works are independent of fault, suitable, functional, safe and compatible with the requirements of the Government.
- (d) The approval of the stand alone design by the S.O pursuant to sub-clause (b) shall not absolve the Contractor from its responsibility under sub-clause (c) and the Contractor shall be liable and shall fully indemnify and keep the Government indemnified for any design defects, damage, inadequacies or insufficiency of such design.

22.2 Design Guarantee Bond

- (a) The Contractor shall provide a Design Guarantee Bond for the stand alone design issued by an approved licensed bank or financial institution of the sum of Ringgit Malaysia _____ (RM_____) amounting to five percent (5%) of the value of the said part of the Works substantially in the form as in Appendix _____ upon or before the issuance of the Certificate of Practical Completion of the Works as a security for the Contractor's obligation and warranties under Clause 22.1. Such Design Guarantee Bond shall remain valid for a period of five (5) years from the date of practical completion of the Works.
- (b) If any defect or damage shall occur to that particular part of the Works as a result of any defect, fault, insufficiency, imperfection, shrinkage or inadequacy in the stand alone design including workmanship, materials or equipment which has become defective arising from design fault then the approved licensed bank or financial institution issuing the Design Guarantee Bond pursuant to sub-clause (a) above shall pay to the Government, on demand by the Government in writing notwithstanding any objection by the Contractor or any third party, the sum of Ringgit Malaysia _____ (RM_____) being equal to five percent (5%) of the value of the said part of the Works or such part thereof as may be demanded.
- (c) If the Design Guarantee Bond is not deposited with the Government in accordance with sub-clause (a) above, the Government shall have the right to claim from the Performance Bond the sum of Ringgit Malaysia _____ (RM_____) being equal to five percent (5%) of the value of the said part of the Works or such part thereof as may be demanded.
- (d) If a payment is made to Government pursuant to sub-clause (b), the Contractor shall ensure that further security in the form of an additional Design Guarantee Bond for an

amount no less than the amount so paid to Government shall be issued to Government prior to or upon the date of such payment. If any of the issued Design Guarantee Bond were to expire prior to the validity period, a replacement Design Guarantee Bond shall be issued to Government on or prior to the date of expiry of the first mentioned Design Guarantee Bond in an amount not less than the amount of that Design Guarantee Bond.

23.0 EMPLOYMENT OF WORKMEN

23.1 Workmen

- (a) The Contractor shall employ, in the execution of this Contract, only Malaysian citizens as workmen.
- (b) If in any particular trade or skill required to complete the Works, the Contractor can show to the satisfaction of the S.O. that Malaysian citizens are not available, then the Contractor may employ non-Malaysian citizens subject to the approval of the Government.
- (c) The Contractor shall on the commencement of the Works furnish to the Jabatan Tenaga Kerja of the State in which this Contract is performed all particulars connected with this Contract and such returns as may be called for from time to time in respect of labour employed by him on for the execution of this Contract, in accordance with the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, and Internal Security (Registration of Labour) Regulation 1960 or any subsequent modification or re-enactment thereof.
- (d) The Contractor shall maintain on the Site at all times during the progress of the Works an up to date register containing particulars of all workers employed by him.
- (e) The Contractor shall cause his sub-contractors (including 'labour only' sub-contractors) and Nominated Sub-Contractors to comply with the provisions of this clause.

23.2 Compliance with Employment Act 1955, etc.

In the employment of workmen for the execution of this Contract, the Contractor shall comply, and shall cause his sub-contractors (including "labour only" sub-contractors) and Nominated Sub-Contractors to comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employee's Provident Fund Act 1951, the Industrial Relations Act 1967 and any other law relating to the employment of workmen, or any subsequent modification or re-enactment thereof. PROVIDED THAT the Contractor shall not be entitled to any claim for additional costs and payments whatsoever in respect of his compliance with this clause.

23.3 Days and Hours of Working

No work shall be done on:

- (a) the weekly day of rest;

(b) any public holiday which is recognised in the state where this Contract is being carried out;
or

(c) between the hours of six in the evening and six in the following morning;

without the written permission of the S.O. PROVIDED THAT when such written application of the Contractor is approved by the S.O., the Contractor shall comply fully with all the requirements of the Employment Ordinance 1955 in regard thereto or any subsequent modification or re-enactment thereof and shall bear any costs for compliance therewith, and any extra costs incurred by the Government in connection with the supervision of the Works.

23.4 Wages Books and Time Sheets

(a) The Contractor shall keep and shall cause his sub-contractors (including "labour only" sub-contractors) and Nominated Sub-Contractors to keep proper wages books and time sheets showing wages paid to and the time worked by all workmen employed by him and his sub-contractors as aforesaid in and for the performance of this Contract.

(b) The Contractor shall produce such wages books and time sheets on demand inspection by any persons duly authorised by the S.O.

(c) The Contractor shall furnish to the S.O. or S.O.'s Representative such information relating to the wages and conditions of employment of such workmen as the S.O. may from time to time require.

23.5 Defaults in Payment of Wages

In the event of default in the payment of –

(a) any money in respect of wages; and/or

(b) payment in respect of Employees Provident Fund Contributions,

of any workmen employed by the Contractor or his sub-contractors (including "labour only" sub-contractors) and Nominated Sub-contractors in and for the performance of this Contract, which a claim has been filed with the Department of Labour, then the S.O. shall make payment to the Director General of Labour and/or Employees Provident Fund, as the case may be, out of any monies at any time due to the Contractor under this Contract and such payment shall be deemed to be a payment made to the Contractor by the Government under and by virtue of this Contract.

23.6 Discharge of Workmen

- (a) The Contractor shall employ in and about the execution of the Works only such persons as are of good character, careful, skilled and experienced in their respective vocations and trades.
- (b) The S.O. shall be at liberty to object to and require the Contractor to remove immediately from the Site any person employed by the Contractor in or about the execution of the Works who in the opinion of the S.O. misconducts himself or is incompetent or negligent in the proper performance of his duties. Such person shall not again be employed upon the Works without the prior written permission of the S.O.
- (c) Any person so removed from the Works shall be replaced without delay by a substitute approved by the S.O. PROVIDED THAT the Contractor shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the S.O. under this clause.

24.0 VARIATIONS

24.1 The S.O. may issue instructions requiring a Variation in a form of a Variation Order. No variation required by the S.O. shall vitiate this Contract. Upon the issuance of such Variation Order, the Contractor shall forthwith comply with the Variation Order issued by the S.O.

24.2 The term 'Variation' means a change in the Contract Document which necessitates the alteration or modification of the design, quality or quantity of the Works as described by or referred to therein and affects the Contract Sum, including:

- (a) the addition, omission or substitution of any work;
- (b) the alteration of the kind or standard of any of the materials, goods to be used in the Works;
or
- (c) the removal from the Site of any work executed or materials or goods brought thereon by the Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with this Contract.

24.3 Any variation made under this clause shall not relieve the Contractor from his obligations under clause 22.1(c).

25.0 VALUATION OF VARIATION

25.1 All variations instructed in writing by the S.O. in accordance with clause 24 hereof shall be measured and valued by the S.O. The valuation of Variations, unless previously or otherwise agreed, shall be made in accordance with the following rules:

- (a) the rates in the Bills of Quantities after adjustment if necessary as provided in clauses 26.6 and 26.7 hereof, shall determine the valuation of work of similar character and executed under similar conditions as work priced therein;

- (b) the said rates, where work is not of similar character or executed under similar conditions as aforesaid, shall be the basis of rates for the same, so far as may be reasonable, failing which a fair valuation thereof shall be made by the S.O.;
- (c) the rates in the Bills of Quantities shall determine the valuation of items omitted, PROVIDED THAT if the omission substantially vary the conditions under which any remaining items of work are carried out, the rates of such remaining items shall be valued under rule (b);

25.2 Where work cannot properly be measured or valued, the S.O. may allow daywork price as specified in Appendix. Unless otherwise provided in the Bills of Quantities, the daywork prices for the purpose of this Contract shall be taken to mean the actual net cost to the Contractor of his materials, plant and labour for the work concerned. The Contractor shall be paid daywork prices, plus fifteen percent (15%), which shall include for the cost of all ordinary plant, tools, scaffolding, supervision and profit. PROVIDED ALWAYS that as a condition precedent to any right to any payment the Contractor shall produce vouchers, receipts and wage books specifying the time for labour and plant employed and materials used to the S.O. not exceeding seven (7) days after the work shall have been done.

25.3 The amount of variations shall be certified by the S.O. and added to or deducted from the Contract Sum as the case may be and the amount shall be adjusted accordingly.

26.0 BILL OF QUANTITIES

Basis of Contract Sum

26.1 The quality and quantity of the Works as set out in the Bills of Quantities shall be the basis of the Contract Sum. Any error in description or quantity or omission of Works from the Bills of Quantities shall not vitiate this Contract but shall be rectified and the amount in respect of such rectification shall be added to or deducted from the Contract Sum as the case may be.

26.2 The Government reserves the right to adjust the prices and rates in the Bills of Quantities submitted by the Contractor to ensure their reasonableness before acceptance of tender and the decision of the Government shall be final.

26.3 Any adjustment of the prices and/or rates in the Bills of Quantities required under clause 26.2 and any arithmetical error or omission in the prices or rates and/or calculations of the Contractor in the Bills of Quantities shall before the signing of this Contract be so rectified and adjusted that when correctly calculated, the total amount in the Summary of the Bills of Quantities shall represent the same amount as the tender amount in the Form of Tender. The tender amount shown in the Form of Tender shall remain unaltered but the nett aggregate amount of the difference between the total adjusted amount in the Summary of the Bills of Quantities and the tender amount shown in the Form of Tender, whether a net deduction or nett addition, shall be calculated as a percentage of the total adjusted amount shown in the Summary of the Bills of Quantities and all prices and/or rates throughout the Bills of Quantities shall be subject to such percentage discounts or premiums as the case may be. Provided always that Provisional and Prime Cost Sums shall be excluded from such calculation and shall not be subject to such percentage discount or premium.

Standard Method of Measurement

- 26.4** The Bills of Quantities, unless otherwise expressly stated in respect of any specified item or items, shall be deemed to have been prepared in accordance with the principles of the Standard Method of Measurement of Building Works as published by the Institution of Surveyors (Malaysia) or Civil Engineering Method of Measurement published by Institution of Civil Engineers (London) or Method of Measurement as set out in Bill of Quantities.

Provisional Quantities

- 26.5** Unless where the quantities of the Works or any part thereof are stated as 'provisional' in the Bills of Quantities such quantities are firm and the Works shall not be subject to re-measurement unless the Bills of Quantities are proven to be erroneous and shall be dealt with under clause 26.1.
- 26.6** Where the quantities of Works are stated as 'provisional' in the Bills of Quantities, such quantities are the estimated quantities which shall not be taken as the actual and correct quantities of the Works to be executed by the Contractor in the fulfilment of his obligations under this Contract. The amount to be paid to the Contractor in respect of such Works upon completion of this Contract shall be ascertained by re-measurement of the work as it is actually executed and valued in accordance with clause 25.1 hereof, after adjustment if necessary, as provided in clause 25.3 hereof.
- 26.7** For the purpose of clause 26.6, the amount to be paid to the Contractor shall be set off against the amount for such work in the Bills of Quantities, and the balance shall be added to or deducted from the Contract Sum, as the case may be.

27.0 MEASUREMENT OF WORKS

- 27.1** The S.O. shall, when he requires any part or parts of the Works to be measured or remeasured for the purpose of clauses of Variation under clause 24 and provisional quantities under clause 26.5, give reasonable notice to the Contractor who shall attend or send a qualified agent to assist the S.O. or S.O.'s Representative in making such measurement and shall furnish all particulars required by the S.O. Should the Contractor fail to attend or neglect or omit to send such agent, then the measurement made by the S.O. or approved by him shall be taken to be the correct measurement of the work.
- 27.2** Upon the completion of the measurement pursuant to clause 27.1, the S.O. shall supply the Contractor with such measurement in respect of the said parts.

28.0 PAYMENT TO CONTRACTOR AND INTERIM PAYMENT CERTIFICATE

- 28.1** When the Contractor has executed work including delivery to or adjacent to the Works of any unfixed materials or goods intended for incorporation into the Works in accordance with the terms of this Contract and their total value of work thereof has reached the sum referred to in Appendix, the S.O. shall at that time make the first valuation of the same.

- 28.2** Thereafter, once (or more often at the discretion of the S.O.) during the course of each succeeding month the S.O. shall make a valuation of the works properly executed and of unfixed materials and goods delivered to or adjacent to the Site, provided the total value of work properly executed and the value of unfixed materials and goods as specified in clause 28.4 hereof, delivered to the Site intended for incorporation into the Works in each subsequent valuation shall not be less than the sum referred to in Appendix.
- 28.3** Within fourteen (14) days from the date of any such valuation being made and subject to the provision mentioned in clause 28.1, the S.O. shall issue an interim payment certificate stating the amount due to the Contractor from the Government. PROVIDED THAT the signing of this Contract shall not be a condition precedent for the issue of the first interim payment certificate (and no other) so long as the Contractor has returned the Letter of Acceptance of Tender duly signed and has deposited with the S.O. or the Government the relevant insurance policies under clauses 15 and 18 hereof.
- 28.4** The amount stated as due in an interim payment certificate shall, subject to any agreement between the Parties as to payment by stages, be the estimated total value of the work properly executed and up to ninety percent (90%) of the value of the unfixed materials and goods delivered to or adjacent to the Site intended for incorporation into the permanent Works up to and including the date the valuation was made, less any payment (including advance payment) previously made paid under this Contract. PROVIDED THAT such certificate shall only include the value of the said unfixed materials and goods as and from such time as they are reasonably and properly and not prematurely delivered to or adjacent to the Site and adequately protected against weather, damage or deterioration.
- 28.5** This clause shall not apply to any unfixed materials and goods which are supplied and delivered by Nominated Supplier for which payment shall be made for the full value of the unfixed materials and goods.
- 28.6** Within a number of days as stated in Appendix (or if none stated then within thirty (30) days of the issue of any such interim payment certificate), the Government shall make a payment to the Contractor as follows:
- (a) where the Performance Bond is in the form of a Banker's, Insurance or Finance Company Guarantee, payment shall be made on the amount certified as due to the Contractor in the said interim payment certificate; or
 - (b) where the Performance Bond is in the form of a Performance Guarantee Sum, payment of ninety percent (90%) on the amount certified as due to the Contractor shall be made with the remaining ten percent (10%) being retained by the Government as a Performance Guarantee Sum. PROVIDED THAT when the sum retained is equivalent to five percent (5%) of the Contract Sum then in any subsequent Certificate, payment shall be made on the full amount certified as due to the Contractor.

29.0 ADJUSTMENT OF CONTRACT SUM

The amount to be added to or deducted from the Contract Sum in respect of expenses or loss due to fees and charges in relation to the supply of water and electricity and permanent connections to water, electricity, telephone and sewerage mains under clause 6.2, variations under clause 24, rectification of errors in Bill of Quantities under clause 26.3, fluctuation of price under clause 30, payment of P.C. Sums and Provisional Sums under clause 34, opening up work

for inspection and testing of materials or goods and executed work under clause 35.2, loss and expense under clause 44 and costs of disposal of fossils, etc. under clause 65 hereof, shall be certified by the S.O.

30.0 FLUCTUATION OF PRICE

In accordance with the Special Provisions to the Conditions of Contract for Fluctuation of Price as contained in Appendix (if applicable), the amount payable by the Government to the Contractor upon the issue by the S.O. of an interim payment certificate under clause 28 hereof shall be increased or decreased accordingly. The net total of any such increases or decreases shall be given effect to in determining the Contract Sum.

31.0 FINAL ACCOUNT AND PAYMENT CERTIFICATE

- 31.1** As soon as is practicable but not later than three (3) months after the issuance of the Certificate of Practical Completion, the Contractor shall submit full particulars complete with receipts, vouchers records that would substantiate the Contractor's claim under clause 44 together with any documents, supporting vouchers and any explanation and calculations including documents relating to the accounts of Nominated Sub-Contractors or Nominated Suppliers, which may be necessary to enable the Final Account to be prepared by the S.O. PROVIDED ALWAYS the Contractor had given the notice of claim in writing within the stipulated time or times in the said provisions.
- 31.2** If the Contractor fails to submit full particulars of all claims within the stipulated period, the S.O. shall forthwith make the assessment based on the available documents submitted by the Contractor for the purpose of the Final Account. The Government shall be discharged from all liabilities in connection with the claims.
- 31.3** Within three (3) months after the expiry of the Defects Liability Period for the whole of the Works or three (3) months after the issue of the Certificate of Completion of Making Good Defects under clause 48 hereof, whichever is the later, the S.O. shall issue the Final Certificate.
- 31.4** The Final Certificate shall be supported by documents, and full particulars complete with receipts, vouchers records showing the S.O.'s final valuation of Works and any amount determined in clause 31.1 in accordance with the terms of this Contract. After setting out or allowing for all payments or other expenditure of the Government or any permitted deductions made by the Government or the S.O. on its behalf, the Final Certificate shall state any final balance due from the Government to the Contractor or from the Contractor to the Government, as the case may be, which shall thereupon become the debt payable. Such certificate shall also take account of any outstanding permitted deductions not yet made by the Government under the terms of this Contract whether by way of liquidated damages or otherwise.
- 31.5** No final payment due to the Contractor under the Final Certificate, shall be made unless and until the Contractor shall have satisfied the S.O. by means of a Statutory Declaration made by or on behalf of the Contractor to the effect that the workmen who have been employed by the Contractor on the Works including workmen employed by sub-contractors, whether nominated or otherwise (including "labour only" sub-contractors) have received all wages due to them in connection with such employment, and that all dues or contributions under the Employment Act 1955, the Employee's Social Security Act 1969, the Employee's Provident Fund Act 1965 and any other laws relevant to the employment of workmen, have been paid.

32.0 EFFECT OF S.O.'S CERTIFICATES

No certificate of the S.O. under any provision of this Contract shall be considered as conclusive evidence as to the sufficiency of any work, materials or goods to which it relates, nor shall it relieve the Contractor from his liability to amend and make good all defects, imperfections, shrinkages, or any other faults whatsoever as provided by this Contract. In any case, no certificate of the S.O. shall be final and binding in any dispute between the Government and the Contractor if the dispute is brought whether before an arbitrator or in the Courts.

33.0 DEDUCTION FROM MONEY DUE TO CONTRACTOR

The Government or the S.O. on its behalf shall be entitled to deduct any money owing from the Contractor to the Government under this Contract from any sum which may become due or is payable by the Government to the Contractor under this Contract or any other contracts to which the Government and Contractor are Parties thereto. The S.O. in issuing any certificate under clauses 28 and 31, shall have regard to any such sum so chargeable against the Contractor, provided always that this provision shall not affect any other remedy to which the Government may be entitled for the recovery of such sums.

34.0 PRIME COST / PROVISIONAL SUMS

34.1 In respect of any and every Prime Cost or P.C. Sum provided in the Contract, the amount due to any Contractor shall be determined by deducting the said Prime Cost or P.C. Sum and the relevant profit and/or attendance charges from the Contract Sum and substituting for the same with the actual amount due to relevant Nominated Sub- Contractor or Nominated Supplier as valued in accordance with the relevant sub-contract and the sums due to any Contractor by way of profit and/or attendance charges at the rates or prices stipulated in the Contract Documents (if any).

34.2 The Provisional Sum may be expended at such times and in such amounts as the S.O. may direct. Such sum if not used either wholly or in part shall be deducted from the Contract Sum. The value of works which are executed by the Contractor in respect of Provisional Sums shall be ascertained in accordance with clause 25 hereof. The said value of such work executed by the Contractor shall be set off against all such Provisional Sums and the balance shall be added to or deducted from the Contract Sum as the case may be.

34.3 Any work to be executed, or materials or goods to be supplied for which Provisional Sums are provided in the Bills of Quantities may, if the S.O. so decides, be treated as P.C. Sum items and shall be dealt with in accordance with clause 34.1.

34.4 Where the Contractor in the ordinary course of his business directly carries out works for which P.C. Sums are provided in the Bills of Quantities and where such works are set out in Appendix hereto and the S.O. is prepared to accept tenders from the Contractor for such works the Contractor shall be permitted to tender for the same or any of them without prejudice to Government's right to reject the lowest or any tender. If the tender of the Contractor for any work included in the P.C. Sum is accepted, such tender shall be held to include the profit and attendance charges, and the Contractor shall not be entitled to the profit and attendance charges as contained in the Bills of Quantities notwithstanding any provision to the contrary under clause 34.1.

35.0 MATERIALS, GOODS AND WORKMANSHIP

- 35.1** All materials, goods and workmanship shall be of the respective kinds and standards described in the Specification and of good quality and in accordance with the standard of the workmanship in the industry. The Contractor shall upon the request of the S.O. furnish him with the relevant certificates and/or vouchers to prove that the materials and goods comply with the Specification.
- 35.2** The Contractor shall, entirely at his own cost, provide samples of materials and goods for testing purposes. The Contractor shall, when instructed by the S.O. to open up for inspection any work covered up, or arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work which the S.O. may in writing require and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Bills of Quantities by way of Provisional Sums or otherwise or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.
- 35.3** The Contractor shall pay all duties and taxes which may be imposed by law, such as customs duties and sales tax, on all materials, goods and equipment, whether purchased or imported in the Contractor's name or his agent, which are incorporated in the Works or used directly in the construction, completion or maintenance of the Works.
- 35.4** Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent fees and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works.

36.0 INSPECTION AND TESTING OF MATERIALS, GOODS AND EQUIPMENT

- 36.1** Further to the Contractor's obligations under clause 10, the Contractor shall submit to the S.O. for his approval, proposals for inspecting the design and setting out of the Works and testing the materials and workmanship to ensure that the Contractor's obligations under the Contract are fulfilled.
- 36.2** The Contractor shall carry out the inspection and tests approved under clause 36.5 or elsewhere in the Contract and such further tests as the S.O. may reasonably require, including to open up for inspection any work covered up or to carry out any test of any materials or goods (whether or not already incorporated in the Works or any executed Works).
- 36.3** The S.O. may issue instructions to the Contractor to remove from the Site or rectify any work, goods which are not in accordance with this Contract at his own cost.
- 36.4** The Contractor shall, as may be required by the S.O. from time to time, provide such assistance, instruments, machines, labour, and materials as are normally required for the purpose of examining, measuring and testing of any work, as well as and the quality, weight or quantity of the materials used, and shall supply samples of materials before incorporation in the Works for testing.
- 36.5** Unless the Contract otherwise provides, the cost of making any test shall be borne by the

Contractor if such test is:

(a) proposed by the Contractor; or

(b) clearly intended by or provided for in the Contract.

36.6 Notwithstanding anything in clause 36.5, if the Contractor carries out any further test as required by the S.O. pursuant to clause 36.2 and the result of such test shows the workmanship or materials is not in accordance with the provisions of the Contract, then the cost of such test shall be borne by the Contractor. But if the result of such test shows the workmanship or materials comply with the provisions of the Contract, and then the cost of such test shall be borne by the Government.

37.0 CONSTRUCTIONAL PLANT, EQUIPMENT, VEHICLES AND MACHINERIES

37.1 The Contractor shall pay all port dues including (but not by way of limitation) wharfage dues, pilotages fees, anchorage, berthage and mooring fees, quarantine dues, loading portorage and overtime fees for constructional plant, equipment, vehicles and machineries for use directly in connection with the construction, completion of the works brought into and despatched from Malaysia by the Contractor (or in his name by agents).

37.2 The Contractor shall furnish to the S.O. all such shipping documents, invoices and other documentation as may be required by the Customs Authorities in connection with the importation of goods, materials, constructional plant, equipment, vehicles and machineries.

37.3 In the case of constructional plant, equipment, vehicles, and machineries imported on the Contractor's behalf by importing agents and the like both the shipping documents and the invoices of the original suppliers or manufacturers must indicate clearly that the consignment is for the Contractor's account.

37.4 The procedure in respect of the requirements of the foregoing shall be determined by the Customs Authorities. The Contractor shall make written application to the S.O. and shall provide the relevant documentation of all constructional plant, equipment, vehicles and machineries to be imported into Malaysia not less than forty-five (45) days before the arrival of the said constructional plant, equipment, vehicles and machineries.

37.5 The Contractor shall pay all charges and other expenses in connection with the landing and shipment of all constructional plant materials and other things of whatsoever nature brought into or despatched from Malaysia for the purpose of the Contract.

37.6 The Contractor shall make his own arrangement in obtaining clearance through the Customs of constructional plant, equipment, vehicles and machineries. However, if required, the S.O.'s assistance may be sought.

37.7 Under this Contract, the Contractor shall be required to furnish all lists of constructional plant, equipment, vehicles and machineries to the S.O. whether the constructional plant, equipment, vehicles and machineries are hired or acquired.

38.0 POSSESSION OF SITE

- 38.1** No work under this Contract shall commence unless and until the Performance Bond stipulated under clause 13 and such insurance policy as specified under clauses 15 and 18 shall have been deposited with the Government, PROVIDED THAT for the purpose of this clause only (but for no other), if the Contractor shall produce to the Government the cover note of the said insurance policy and the receipt of premium paid, it shall be a sufficient discharge of his obligations under this clause.
- 38.2** Unless the Contract Documents shall otherwise provide, possession of the Site as complete as may reasonably be possible but not so as to constitute a tenancy, shall be given on or before the "Date for Possession" stated in the Letter of Acceptance to the Contractor who shall thereupon and forthwith commence the Works (but subject to clause 38.1) and regularly and diligently proceed with and complete the Works on or before the Date for Completion as stated in Appendix.
- 38.3** The "Date for Completion" of the Works as referred to under clause 39 hereof shall be calculated from the said "Date for Possession". PROVIDED ALWAYS that the possession of Site may be given in section or in parts and any other restrictions upon possession of the Site shall be stated in the Appendix to these Conditions or in the Contract Documents.
- 38.4** In the event of any delay in giving possession of the Site from the "Date for Possession" as stated in Letter of Acceptance or delay in giving any section or part of the Site as provided in clause 38.3, the S.O. may issue instructions in regard to the revision of the "Date for Possession" and the "Date for Completion" shall be appropriately revised under clause 43.1(g) hereof, but the Contractor shall not be entitled to claim for any loss or damage caused by such delay in giving possession of the Site, nor shall he be entitled to terminate this Contract.
- 38.5** In the event that the giving of the possession of the whole Site is delayed beyond ninety (90) days of the "Date for Possession" stated in the Letter of Acceptance, the S.O. shall give written notice to the Contractor of the causes of such delay. Upon the receipt of the said written notice issued by the S.O., the Contractor may, inform the S.O. in writing of its decision within fourteen (14) days of receipt of the said notice either to:
- (a)** agree to proceed with the Works when the Site is subsequently made available, in which case clause 38.4 shall apply in particular, the Contractor shall not be entitled to claim for any loss or damage caused by such delay in giving possession of the Site; or
 - (b)** terminate this Contract, without prejudice to any other rights or remedies that the Government and the Contractor may have as a result of the termination.
- 38.6** In the event that the giving of possession of any section or part of the Site (whether provided for in clause 38.3 or otherwise) is delayed beyond ninety (90) days from the Date of Possession stated in the Appendix or the date the Contractor is scheduled to commence work on that section or part of the Works in accordance with the approved programme of Works as referred to in clause 12 hereof as the case may be, then the S.O. shall give written notice to the Contractor of the causes of such delay. Upon receipt of the said written notice, the Contractor may inform the S.O. in writing, within fourteen (14) days of receipt of the said notice of its decision either to:

- (a) agree to proceed with the Works when the section or part of the Site is subsequently made available, in which case sub-clause 38.5(a) above shall apply and in particular, the Contractor shall not be entitled to claim for any loss or damage caused by such delay as aforesaid; or
- (b) request for S.O.'s instruction to omit the relevant section or part of the Works from the Contract. If the S.O. agrees to such request then the relevant section or part of the Works shall be duly omitted and deemed to be a variation to the Contract. Such variation shall not vitiate this Contract. If the S.O. does not agree to such request as aforesaid, then the Contractor shall be entitled to claim for any loss and/or expenses caused by and in respect of such delay beyond ninety (90) days as aforesaid.

39.0 COMPLETION OF WORKS

- 39.1** Subject to clauses 38.3 and 41, the Contractor shall complete the whole of the Works on or before the "Date for Completion" as stated in the Appendix or such extended time as may be allowed under clause 43 hereof.
- 39.2** If the Contractor considers that the works have achieved practical completion, the Contractor shall notify the S.O. in writing to that effect.
- 39.3** Within 14 days of receipt of such notice, the S.O. shall carry out testing/ inspection of the Works. Pursuant to such inspection/testing, the S.O. shall –
 - (a) issue the Certificate of Practical Completion to the Contractor if in his opinion the whole Works have reached Practical Completion and have satisfactorily passed any inspection/test carried out by the S.O. The date of such completion shall be certified by the S.O. and such date shall be the date of the commencement of the Defects Liability Period as provided in clause 48 hereof; or
 - (b) give instruction to the Contractor specifying all defective works which are required to be completed by the Contractor before the issuance of the Certificate of Practical Completion.
- 39.4** If the S.O. has given instruction pursuant to clause 39.3(b), no Certificate of Practical Completion shall be issued to the Contractor until the Contractor has effectively carried out the remedial work within reasonable period to the satisfaction of the S.O.
- 39.5** The Works shall not be regarded as practically complete unless it has fulfilled the following:
 - (a) the Works have been completed in accordance with the terms and conditions of this Contract;
 - (b) the Government can have full, proper and beneficial use of the Works for their intended purpose, notwithstanding that there may be works of a very minor defects PROVIDED THAT such works do not prevent or diminish the full, proper and beneficial use as aforesaid;

- (c) the Works have passed any commissioning tests required in the Contract Document;
- (d) the Works shall be made available to the Government in a condition fit for occupation; and
- (e) all the essential services, including access roads, landscape, car parks, drains, sanitary, water and electricity installation, fire hydrant, sewerage and refuse disposal equipment and fire lifts specified in this Contract.

39.6 When the whole of the Works has reached practical completion to the satisfaction of the S.O., the date of such completion shall be certified by him and such date shall be the date of the commencement of the Defects Liability Period as provided in clause 48 hereof.

40.0 DAMAGES FOR NON-COMPLETION

40.1 If the Contractor fails to complete the Works by the Date for Completion or within any extended time granted pursuant to clause 43, the S.O. shall forthwith issue a Certificate of Non-Completion to the Contractor.

40.2 Without prejudice to the Government's right to terminate this Contract, when the S.O. issues the Certificate of Non-Completion, the Government shall be entitled to recover from the Contractor, Liquidated and Ascertained Damages calculated at the rate stated in Appendix from the period of the issuance of the Certificate of Non-Completion to the date of issuance of Certificate of Practical Completion or the date of termination of this Contract. The S.O. may deduct such Liquidated and Ascertained Damages from any money due or to become due to the Contractor, failing which such damages shall be recovered from the Performance Bond or as a debt due from the Contractor. The S.O. shall inform the Contractor in writing of such deduction.

40.3 The Liquidated and Ascertained Damages stated in Appendix shall be deemed to be a reasonable amount of loss which the Government will suffer in the event that the Contractor is in breach of this clause. The Contractor by entering into this Contract agrees to pay to the Government the said amount(s) if the same become due without the need of the Government to prove his actual damage or loss.

40.4 The payment or deduction of such Liquidated and Ascertained Damages shall not relieve the Contractor from his obligation to complete the Works or from any of its obligations and liabilities under this Contract.

41.0 SECTIONAL COMPLETION

41.1 Where different completion dates for different sections or parts of the Works are stated and identified in Appendix or elsewhere in the Contract Documents and different and separate Liquidated and Ascertained Damages are provided for each section or part of the Works, the provisions of this Contract in regard to:

- (a) Certificate of Practical Completion;

- (b) Delay and Extension of Time;
- (c) Liquidated and Ascertained Damages; and
- (d) Defects Liability Period,

but not Insurance of the Works under clause 18, Performance Bond under clause 13 and final payment on the Final Certificate under clause 31 hereof shall, in the absence of any express provision to the contrary elsewhere in the Contract Documents apply as if each such section or part was the subject of a separate and distinct contract between the Government and the Contractor.

- 41.2** For the avoidance of doubt, nothing contained in clause 41.1 shall entitle the Contractor to the release of the whole or any part of the Performance Bond or Performance Guarantee Sum deposited by him. The Performance Bond or Performance Guarantee Sum shall be released or be refunded only upon the issue of the Certificate of Making Good Defects of the whole of the Works or in respect of the last section of the Works, as the case may be.

42.0 PARTIAL OCCUPATION/TAKING OVER BY GOVERNMENT

- 42.1** If at any time before the whole of the Works have reached practical completion pursuant to clause 39, the Government with the consent of the Contractor (which consent shall not be unreasonably withheld) shall take possession of and occupy any part or parts of the same (any such part being hereinafter in this clause referred to as 'the relevant part'), then notwithstanding anything expressed or implied elsewhere in this Contract.

Certificate of Partial Occupation

- (a) within seven (7) days from the date on which the Government shall have taken possession of the relevant part, the S.O. shall issue a Certificate of Partial Occupation in respect of the relevant part stating the estimated value of the said relevant part, and for all the purposes of this Clause (but for no other) the value so stated shall be deemed to be the total value of the said relevant part;

Defects Liability Period

- (b) for the purposes of clauses 39 and 48 hereof, the relevant part shall be deemed to have reached practical completion and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Government shall have taken possession and occupied thereof;

Certificate of Making Good Defects

- (c) at the end of the Defects Liability Period of the relevant part and if in the opinion of the S.O. any defect, imperfection, shrinkage or any other fault whatsoever in respect of the relevant part which he may have required to be made good under clause 48.1, shall have been

made good by the Contractor, the S.O. shall issue a certificate to that effect;

Reduction of Liquidated and Ascertained Damages

- (d) if, before the time of completion of the whole of the Works or, if applicable any section, a Certificate of Practical Completion has been issued for any part of the Works or of a section, the rate of the liquidated and ascertained damages for delay in completion of the remainder of the Works or of that section shall, for any period of delay after the date stated in such Certificate of Practical Completion, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or section, as applicable;

Insurance of the Works

- (e) notwithstanding the partial occupation by the Government of the relevant part the Contractor shall insure and keep insured the Works in the manner as stipulated under clause 18 and the Contractor shall give notice to the insurer of such partial occupation; and

Performance Bond Not Affected

- (f) it is expressly agreed that nothing contained in the preceding paragraphs shall entitle the Contractor to the release of the Performance Bond or any part thereof deposited by him under clause 13 hereof, the intention being that the said Performance Bond or any part thereof shall be released or refunded only upon the completion of making good all defects, imperfections, shrinkages or other faults which may appear during the Defects Liability Period and upon the giving of the Certificate of Completion of Making Good Defects for the whole of the Works under clause 48 hereof.

43.0 DELAY AND EXTENSION OF TIME

43.1 Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice to the S.O. as to the causes of delay and relevant information with supporting documents enabling the said officer to form an opinion as to the cause and calculation of the length of delay. If in the opinion of the S.O the completion of the Works is likely to be delayed or has been delayed beyond the Date for Completion stated in Appendix 1 or beyond any extended Date for Completion previously fixed under this Clause due to any or more of the following events:

- (a) force majeure as provided under clause 58;
- (b) exceptionally inclement weather;
- (c) suspension of Works under clause 50;
- (d) directions given by the S.O., consequential upon disputes with neighbouring owners provided the same is not due to any act, negligence or default of the Contractor or any sub-contractor, nominated or otherwise;

- (e) S.O.'s instructions issued under clause 5 hereof, PROVIDED THAT such instructions are not issued due to any act, negligence, default or breach of this Contract by this Contractor or any sub-contractor, nominated or otherwise;
- (f) the Contractor not having received in due time instructions in regard to the nomination of sub-contractors and/or suppliers provided in this Contract, necessary instructions, drawings or levels for the execution of the Works from the S.O. due to any negligence or default of the S.O. PROVIDED THAT the Contractor shall have specifically applied in writing on a date which having regard to the Date for Completion stated in Appendix or to any extension of time then fixed under this clause, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
- (g) delay in giving possession of the Site as provided under clause 38.4 hereof other than claim in effecting insurance and Performance Bond;
- (h) delay on the part of artists, tradesman or others engaged by the Government in executing work not forming part of this Contract;
- (i) the Contractor's inability for reason beyond his control and which he could not reasonably have foreseen at the date of closing of tender of this Contract to secure such goods, materials and/or services as are essential to the proper carrying out of the Works; or
- (j) delay on the part of the Nominated Sub-contractors and/or Nominated Suppliers to perform their works, due to reasons as stated above in sub-clauses (a) to (i),

then the S.O may if he is of the opinion that the extension of time should be granted, so soon as he is able to estimate the length of the delay beyond the date or time aforesaid issue a Certificate of Delay and Extension of Time giving a fair reasonable extension of time for completion of the Works.

PROVIDED THAT all such delays are not due to any act, negligence, default or breach of contract by the Nominated Sub-contractor and/or Nominated Supplier and/or the Contractor, or any of the servants or agents of such Nominated Sub-contractor or Nominated Supplier or the Contractor.

PROVIDED ALWAYS that the Contractor has taken all reasonable steps to avoid or reduce such delay and shall do all that may reasonably be required to the satisfaction of the S.O. to proceed with the Works.

PROVIDED FURTHER that the Contractor shall not be entitled to any extension of time where the instructions or acts of the S.O. are necessitated by or intended to remedy any default of or breach of contract by the Contractor.

44.0 CLAIMS FOR LOSS AND EXPENSE

44.1 If at any time during the regular progress of the Works or any part thereof has been materially

affected by reason of delays as stated under clause 43.1 (c), (d), (e), (f) and (h), and the Contractor has incurred direct loss and/or expense beyond that reasonably contemplated and for which the Contractor would not be reimbursed by a payment made under any other provision in this Contract, then the Contractor shall within thirty (30) days of the occurrence of such event or circumstances or instructions give notice in writing to the S.O. of his intention to claim for such direct loss or expenses together with an estimate of the amount of such loss and/or expense, subject always to clause 44.2 hereof.

44.2 As soon as is practicable but not later than ninety (90) days after practical completion of the Works, the Contractor shall submit full particulars of all claims for direct loss or expense under clause 44.1 together with all supporting documents, vouchers, explanations and calculations which may be necessary to enable the direct loss or expense to be ascertained by the S.O. shall be added to the Contract Sum.

44.3 If the Contractor fails to comply with clauses 44.1 and 44.2, he shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.

45.0 INVESTIGATION BY THE GOVERNMENT AND OTHER PERSONS IN CASE OF ACCIDENT, FAILURE OR OTHER EVENT

Where the Government, its employee or any person or body appointed or authorised by it carries out any investigation in relation to any accident, failure or other event which has occurred to, in or in connection with the Works or any part thereof for the purpose of determining the cause or reason for the said accident, failure or event, the Contractor shall render all such necessary assistance and facilities as may be required by the Government, its employee or such person or body, including the giving of access to all specifications, designs, records and other available information relating to the Works.

46.0 ACCESS FOR WORKS, ETC.

46.1 Access for S.O.

(a) The S.O. and any person authorised by the S.O. shall at all times have access to the Works and to the factories, workshops or other places of the Contractor or of any sub-contractor or supplier where any equipment, materials, goods or work are being manufactured, fabricated, assembled, prepared or stored for the Contract.

(b) Where any such equipment, materials, goods or work are being manufactured, fabricated, assembled, prepared or stored in the factories, workshops or other places of a sub-contractor or supplier, the Contractor shall by a term in the sub-contract secure a similar right of access to those factories, workshops or other places for the S.O. and any person authorised by the S.O., and shall take reasonable steps required of him by the S.O. to enforce or assist in enforcing such right.

(c) Any person so removed from the Works shall be replaced without delay by a substitute approved by the S.O.; PROVIDED THAT the Contractor shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the S.O. under this Clause.

46.2 Access for Other Contractors and Workmen

The Contractor shall in accordance with the requirements of the S.O. afford all reasonable access and facilities to any other person engaged by the Government and their workmen and of any other constituted authorities for the purposes of executing any work on or near the Site.

47.0 SUB-CONTRACT OR ASSIGNMENT

47.1 The Contractor shall not without the prior written consent of the S.O. (which consent shall not be unreasonably delayed or withheld) sub- contract the design for any portion of the Works under clause 22 of this Contract. Where the S.O. consents to any sub-contract under this clause, such consent shall not in any way absolve the obligations of the Contractor under clause 10.

47.2 The Contractor shall not sub- contract the whole or any substantial part of the Works without the prior written consent of the S.O. (which consent shall not be unreasonably delayed or withheld). Any such consent, if given, shall not relieve the Contractor from any liability or obligation under this Contract and he shall be responsible for the due observance by such sub-contractors, of all the terms, stipulations and conditions under this Contract.

47.3 Notwithstanding any sub-contract made pursuant to clauses 47.1 and 47.2, the Contractor shall be fully responsible for the acts, defaults or neglects of any sub-contractor, including 'labour only' sub-contractors, his agents, servants or workmen as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen; PROVIDED THAT the provision of labour on a piecework basis shall not be deemed to be a sub-contract under this clause.

47.4 It shall be a condition in any sub-contract which has been consented to by the Government that upon termination of the Contractor's employment under the Contract, the employment of the sub-contractor under the sub-contract shall terminate immediately. No claim whatsoever shall be made by the Contractor and/or sub-contractor against the Government for any work done or materials or goods supplied.

47.5 If the Contractor sub-contracts the Works, in whole or in part, to any person without getting prior written consent of the S.O. as provided under this clause, the S.O. shall have the right to instruct the Contractor to forthwith terminate such sub-contract and the Contractor shall be liable for all costs and expense relating to such termination.

47.6 The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder otherwise than by way of assignment in favour of the Contractor's banker or any financial institution or Corporation of any monies due or to become due under this Contract without prior written consent of the S.O.

48.0 DEFECTS AFTER COMPLETION

48.1 Completion of Outstanding Work and Remedying Defects

(a) At any time during the Defects Liability Period as stated in Appendix hereto (or if none stated the period is twelve (12) months from the date of practical completion of the Works),

any defect, imperfection, shrinkage or any other fault whatsoever which may appear and which are due to materials or goods or workmanship not in accordance with this Contract, the S.O. shall issue written instruction to the Contractor to make good such defects, imperfections, shrinkages or any other fault whatsoever at the Contractor's own cost. The Contractor shall complete all such works with due expedition or within such time as may be specified by the S.O.

- (b) Without prejudice to sub-clause (a), any defect, imperfection, shrinkage or any other fault whatsoever which may appear during the Defects Liability Period to be made good by the Contractor, shall be specified by the S.O. in the Schedule of Defects which he shall deliver to the Contractor not later than fourteen (14) days after the expiration of the Defects Liability Period. The defects, imperfections, shrinkages or any other fault whatsoever specified in the Schedule of Defects shall be made good by the Contractor at his own costs and to be completed within a reasonable time but in any case, not later than three (3) months after the receipt of the said Schedule. PROVIDED THAT the S.O shall not be allowed to issue any further instruction requiring the Contractor to make good of any defect, imperfection, shrinkage or any other fault whatsoever after the issuance of the said Schedule of Defects or after fourteen (14) days from the expiration of the said Defects Liability Period, whichever is the later.

48.2 Default in Remediating Defects

If the Contractor shall fail to comply with either clauses 48.1(a) and/or 48.1(b) within the time so specified, the materials or works so affected may be made good in such manner as the S.O. may think fit, in which case the costs incurred including On-Cost Charges (calculated by applying the Percentage of On-Cost Charges stated in Appendix to the costs incurred), shall be deducted from any money due or to become due, to the Contractor under this Contract and failing which such costs shall be recovered from the Performance Bond or as a debt due from the Contractor.

48.3 Diminution in Value of Works

If any defect, imperfection, shrinkage or any other fault whatsoever is such that, in the opinion of the S.O., it shall be impracticable or inconvenient to the Government to have the Contractor to remedy the same, the S.O. shall ascertain the diminution in the value of the Works due to the existence of such defects, imperfections, shrinkages or any other fault whatsoever. The amount of such diminution shall be recoverable by the Government from the Contractor as a debt due under the Contract and failing which such diminution shall be recovered from the Performance Bond.

48.4 Certificate of Completion of Making Good Defects

When in the opinion of the S.O. the Contractor has made good the defects, imperfections, shrinkages or any other fault whatsoever which he is required to make good under clauses 48.1(a) or 48.1(b), or both, the S.O. shall issue a certificate to that effect, and the date specified in such certificate shall be the date on which the Contractor has completed making good such defects, imperfections, shrinkages or any other fault whatsoever. The said Certificate shall be referred to as the "Certificate of Completion of Making Good Defects".

49.0 UNFULFILLED OBLIGATIONS

Notwithstanding the issue of the Certificate of Completion of Making Good Defects under clause 48.4 hereof, the Contractor and the Government shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract, prior to the issued of the said certificate, which remains unfulfilled at the time such certificate is issued, and for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the Parties hereto.

50.0 SUSPENSION OF WORKS

50.1 Suspension and Resumption of Works

- (a)** The S.O. may at any time instruct the Contractor to suspend part or all of the Works.
- (b)** Upon receipt of such written instruction, the Contractor shall suspend part or all of the Works for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Works or such part of the Works against any deterioration, loss or damage.
- (c)** During the suspension period, the Contractor shall continue to perform its obligations under this Contract, which are not affected by the instruction to suspend, including the obligation to effect and maintain insurances and Performance Bond.
- (d)** The S.O. may instruct the Contractor to resume the Works at any time thereafter. Upon receipt of such instruction the Contractor shall resume the Works and the Parties shall jointly examine the Works affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works which has occurred during the suspension. The Contractor shall also take all necessary actions to mitigate the expenses incurred.

50.2 Extension of Time

If the Contractor suffers delay and/or incurs expenses in complying with the instruction under clause 50.1(a), and in resumption of the Works, and if such delay and/or expenses was not foreseeable by the Contractor, the Contractor shall give notice for extension of time under clause 43 and the provisions thereof shall apply accordingly. PROVIDED THAT the Contractor shall not be entitled to such extension if the suspension is due to a cause attributable to the Contractor and he shall not be entitled to payment of loss and expense if he –

- (a)** fails to take measures specified in clause 50.1(b); and
- (b)** fails to take all necessary action to mitigate the expenses incurred.

In the event such suspension shall continue for a period exceeding twelve (12) months, the Parties shall then discuss whether to mutually terminate the Contract or suspend the Works for a further period.

50.3 Consequences of Mutual Termination

(a) If the Contract is mutually terminated under this clause:-

- (i)** clause 51.1(c)(i) shall be applicable; and
- (ii)** payment obligations including all costs and expenditure incurred by the Government and the Contractor shall be ascertained in accordance with clause 54.

51.0 EVENTS AND CONSEQUENCES OF DEFAULT BY THE CONTRACTOR

51.1 Default of Obligations

(a) Events of Default

In the event the Contractor –

- (i)** fails to commence works at the Site within two (2) weeks after the Date for Possession;
- (ii)** suspends or abandons the carrying out of the Works or any part thereof for a continuous period of _____ days;
- (iii)** fails to proceed regularly and diligently with the performance of his obligations under the Contract;
- (iv)** fails to execute the Works in accordance with the Contract;
- (v)** persistently neglects to carry out his obligations under the Contract;
- (vi)** refuses or persistently neglects to comply with a written notice from the S.O. in relation to any defective work or equipment, materials or goods which are defective or do not meet the requirements of the Contract;
- (vii)** fails to comply with the provisions of clause 47; or
- (viii)** fails to comply with any terms and conditions of this Contract,

then the Government shall give written notice to the Contractor specifying the default and requiring the Contractor to remedy such default within fourteen (14) days of the receipt of the default notice or any period determined by the Government.

(b) Termination

If the Contractor fails to remedy the breach within such period, the Government shall have the right to forthwith terminate this Contract by giving a written notice to that effect.

(c) Consequences of Termination

If this Agreement is terminated under clause 51.1(b):-

(i) the Contractor shall –

(A) forthwith cease all operations of the Works;

(B) carry out any protection works so as to secure the Site, equipment, goods, materials therein against any deterioration, loss or damage and to do all things necessary so as to leave the Site in a clean and tidy condition;

(C) remove its personnel and workmen from the Site;

(D) vacate the Site within the time stipulated by the S.O., remove all temporary buildings, plant, tools, equipment, goods and unfixed materials which have not been paid by the Government, as specified by the S.O. Failing which, the Government may (but without being responsible for any loss or damage) remove and sell any such property belonging to the Contractor, holding the proceeds, less all cost incurred, to the credit of the Contractor;

(E) either:-

(a) terminate all third party contracts entered into by the Contractor for the purposes of this Contract;

(b) assign to the Government, if so required by the S.O., at no cost or expense to the Government, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work or services for the purposes of this Contract; or

(c) allow such third party to enter into a contract with the Government or any person deemed necessary by the Government for the purpose of completing the Works;

PROVIDED THAT the Government shall not be obliged to pay any third party for any materials or goods delivered or any work executed or services for the purposes of this Contract (whether before or after the date of termination) for which the Government has paid but the Contractor has failed to make payment to the third party;

- (F) at no cost to the Government, hand over to the Government all plans, designs, specification and other relevant documents relating to the Works;
 - (G) pay to the Government for any losses and damages as a result of termination of this Contract in the manner provided under clause 56; and
 - (H) not be released from any of its obligations under the Contract.
- (ii) the Government shall –
- (A) call upon the Performance Bond or forfeit the Performance Guarantee Sum;
 - (B) enter and repossess the Site;
 - (C) be entitled to carry out and complete the Works on its own or employ any other person to carry out and complete the Works; and
 - (D) be entitled to claim against the Contractor for any losses, costs, expenses and damages suffered as a result of termination of this Contract in the manner provided under clause 56.
- (iii) for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract under this clause.

51.2 General Default

(a) Events of Default

If any time during the Contract Period-

- (i) the Contractor becomes bankrupt;
- (ii) the Contractor becomes insolvent or compounds with or enters into an arrangements or compositions with its creditors;
- (iii) an order is made or resolution is effectively passed for the winding-up of the Contractor (except for the purpose of restructuring or amalgamation with the written consent of the Government, which consent shall not be unreasonably withheld);
- (iv) a provisional liquidator, receiver or manager of its business or undertaking duly

appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject of the floating charge; or

- (v) execution is levied against a substantial portion of the Contractor's assets,

then the Government shall have the right to terminate this Contract forthwith by giving notice to that effect.

(b) Consequences of Termination

- (i) In the event the termination of this Contract under clause 51.2 takes place, clauses 51.1(c)(i) and 51.1(c)(ii) shall apply.
- (ii) For the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract under this clause.

52.0 TERMINATION ON NATIONAL INTERESTS

52.1 Termination

- (a) Notwithstanding any provision of this Contract, the Government may terminate this Contract by giving not less than thirty (30) days written notice to that effect to the Contractor (without any obligation to give any reason thereof) if the Government considers that such termination is necessary for national interest, national policy or national security.
- (b) For the purpose of this clause, what constitutes "national interest", "national policy" and "national security", shall be solely made and determined by the Government and such determination shall for all intent and purposes be final and conclusive and shall not be open to any challenge whatsoever.

52.2 Consequences of Termination

Upon such termination of this Contract under clause 52.1:-

- (a) payment obligations including all costs and expenditure incurred by the Government and the Contractor shall be ascertained in accordance with clause 54; and
- (b) clause 51.1(c)(i) and clause 51.1(c)(ii)(B) and (C) shall apply.

53.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES

53.1 Termination

Without prejudice to any other rights of the Government, if the Company, its personnel, servants or employees is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Contract or any other agreement that the Contractor may have with the Government, the Government shall be entitled to terminate this Contract at any time, by giving immediate written notice to that effect to the Contractor.

53.2 Consequences of Termination

Upon such termination under clause 53.1 –

- (a)** the Government shall be entitled to all losses, costs, damages and expenses including any incidental costs and expenses incurred by the Government arising from such termination;
- (b)** clause 51.1(c)(i) and (ii) shall apply; and
- (c)** for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract.

54.0 PAYMENTS UPON SUSPENSION AND TERMINATION ON NATIONAL INTERESTS

54.1 If this Contract is terminated under clause 50 or clause 52, the amount to be paid (in so far as such amounts or items have not already been covered by payments on account made to the Contractor) shall be the following:

- (a)** the value of all work carried out up to the date of termination;
- (b)** the amounts payable in respect of any preliminary items so far as the Works or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
- (c)** the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Government upon such payment being made to the Contractor);
- (d)** a sum being the amount of any expenditure reasonably incurred by the Contractor in so far as such expenditure has not been recovered by any other payments referred to in this sub-clause; and
- (e)** the reasonable cost of any protection works and removal of equipment and site facilities pursuant to termination as provided under this Contract,

PROVIDED THAT such amount to be paid by the Government shall be confined only to those items as are clearly and expressly stated in sub-clauses (a)-(e) above.

54.2 For the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than stipulated under clause 54.1(a)-(e). The Parties further agree that the amount agreed above by the Government shall constitute as a full and final settlement between the Parties.

54.3 Upon termination of this Contract under clause 50 and clause 52, a final account of this Contract shall be prepared and issued by the S.O.

55.0 EVENTS AND CONSEQUENCES OF DEFAULT BY THE GOVERNMENT

Default of Obligations

(a) Events of Default

If the Government without any reasonable cause fails to perform or fulfil any of its obligations which adversely affects the Works, then the Contractor may issue a notice specifying the default by the Government and requiring the Government to remedy the same within the period specified therein taking into account the nature of the remedy to be carried out by the Government or such other period as may be agreed by both Parties from the date of receipt of such notice.

(b) Termination

If the Government fails to remedy the default period specified in such notice issued under Clause 55 (a) within the stipulated period time therein, the Contractor shall have the right to forthwith terminate this Contract by giving a written notice to that effect.

(c) Consequences of Termination

If this Contract is terminated under Clause 55(b)

(i) the Government shall pay to the Contractor –

(A) the value of the Works carried out up to the date of termination;

(B) the amounts payable in respect of any preliminary items so far as the Works or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;

(C) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Government upon such payment being made to the Contractor); and

(D) a sum being the amount of any expenditure reasonably incurred by the Contractor in so far as such expenditure has not been recovered by any other payments referred to in this sub-clause.

(ii) For the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract.

56.0 CERTIFICATE OF TERMINATION COSTS

56.1 As soon as the arrangements for the completion of the Works made by the Government enable the S.O. to make a reasonably accurate assessment of the ultimate cost to the Government of completing the Works following the termination of the Contractor's employment and the engagement of other contractors or persons, and the amount of direct loss and/or damage caused to the Government due to the termination has been ascertained by the S.O., then the S.O. may issue a certificate (hereinafter referred to as the "Certificate of Termination Costs") stating the Completion Cost (hereinafter defined) and the Final Contract Sum (hereinafter defined).

56.2 The Completion Cost comprises the following sums, costs or expenditure:

- (a) the sums previously paid to the Contractor by the Government;
- (b) the sums paid or payable to other contractors or persons engaged by the Government to complete the Works;
- (c) any sums paid to sub-contractors or suppliers under clause 61;
- (d) any costs or expenditure incurred or to be incurred including On-Cost Charges incurred by the Government in completing the Works; and
- (e) the amount of direct loss and/or damage caused to the Government due to the termination.

56.3 The Final Contract Sum comprises of the following amounts or sums:

- (a) the amount which would have been payable under the Contract on completion in accordance with the Contract, allowing any variations or other matters which would have resulted in an adjustment of the original Contract Sum; and
- (b) any other sums which the Government might be entitled under the terms of the Contract to

deduct from the original Contract Sum,

had the Contractor's employment not been terminated.

56.4 The Certificate of Termination Costs shall state the difference between the Final Contract Sum and the Completion Cost. If the Final Contract Sum is less than the Completion Cost, the difference shall be a debt payable by the Contractor to the Government and if greater the difference shall be a debt payable by the Government to the Contractor.

56.5 The Certificate of Termination Costs shall be binding and conclusive on the Contractor as to the amount of such loss or damage specified therein.

56.6 In the event the completion of the Works being undertaken departmentally, allowance shall be made, when ascertaining the amount to be certified as costs and expense incurred by the Government, for cost of supervision, interest and depreciation on plant and all other usual overhead charges and profit as would be incurred if the Works were completed by other contractors or persons.

57.0 SURVIVING RIGHTS

Any termination under this Contract shall not affect the liability of either Party hereto for any of its acts or omissions during the period of the Contract and both Parties shall thereafter continue to be so liable and shall keep the other Party hereto indemnified and hold harmless in respect of any claims arising therefrom.

58.0 EFFECT OF FORCE MAJEURE

58.1 Neither the Government nor the Contractor shall be in breach of its obligations under this Contract if it is unable to perform its obligation under this Contract (or any part of thereof), other than the payment obligations as a result of the occurrence of an Event of Force Majeure.

58.2 An "Event of Force Majeure" is an event beyond the control of both Parties which are:

- (a) war (whether declared or not), hostilities, invasion, act of foreign enemies;
- (b) insurrection, revolution, rebellion, military or usurped power, civil war, terrorism;
- (c) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;
- (d) nuclear explosion, radioactive or chemical contamination or radiation (unless caused by the negligence act, omission or default of the Contractor, its agents or personnel);

(e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and

(f) riot, commotion or disorder, unless solely restricted to employees of the Contractor or its personnel, servants or agents.

58.3 If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligation under this Contract (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that Event of Force Majeure with full particulars thereof and the consequences thereof.

58.4 If either Party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Contract, then the Parties may agree that this Contract may be terminated upon mutual agreement of the Parties.

58.5 If this Contract is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the Parties under this Contract shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.

58.6 Neither Party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an Event of Force Majeure has not occurred.

58.7 For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this Clause continue in full force and effect.

59.0 SITE AGENT AND ASSISTANTS

Unless otherwise provided elsewhere in this Contract, the Contractor shall keep constantly on the Site a competent, efficient, suitability qualified, experienced and good character site agent and his assistants in each trade as may be necessary who must be capable of receiving instructions in Bahasa Malaysia, and in default it shall be the responsibility of the Contractor to provide replacement for them and all wages and other expenses in connection with the employment of such replacement site agent and assistants. Any directions, explanations or instructions given to such site agent by the S.O. shall be deemed to have been given to the Contractor under this Contract.

60.0 NOMINATED SUB-CONTRACTORS AND/OR NOMINATED SUPPLIERS

60.1 The S.O. shall obtain tenders for Nominated Sub-Contractor's or Nominated Supplier's work or services, or for the supply of materials or goods in respect of which Prime Cost Sums or Provisional Sums are included in the Bills of Quantities, and the Contractor shall, on the written instruction of the S.O., enter into such sub-contracts with the Nominated Sub-Contractor or Nominated Supplier, as the case may be, and such sub-contracts shall be in the form as referred to in clause 60.2(b).

60.2 The S.O. shall not nominate as a sub-contractor or a supplier in connection with the Works:

- (a) a person against whom the Contractor shall make in writing within twenty one (21) days from the date of the S.O.'s instruction under clause 60.1 hereof what the S.O. considers to be reasonable objection;
- (b) a person who will not enter into a sub-contract with terms and conditions as provided in the Government standard form of sub-contract for Nominated Sub-contractor (Form PWD 203N) or for Nominated Supplier (Form PWD 203P), as the case may be; or
- (c) a person who will not give to the Government such indemnity with terms and conditions as provided in the Government standard form of Letter of Indemnity for Nominated Sub-contractors (Form PWD 203N7) or for Nominated Suppliers (Form PWD 203P7), as the case may be.

60.3 If pursuant to clause 60.2, the Contractor is not required to enter into a sub-contract with a Nominated Sub-contractor or Nominated Supplier, as the case may be, the S.O. shall do one or more of the following:

- (a) nominate an alternative sub-contractor or supplier, as the case may be, in which case clause 60.2 hereof shall apply;
- (b) by order under clause 24, vary the Works or the work or services, materials or goods, the subject of the Prime Cost Sums or Provisional Sum as aforesaid, including it necessary the omission of any such work or services, materials or goods so that they may be provided by workmen, contractors or suppliers, as the case may be, employed by the Government either concurrently with the Works or at some other date in which case the Contractor shall not be entitled to claim for any losses therefrom; or
- (c) in accordance with clause 34.4 arrange for the Contractor to execute such work or services, or to supply such materials or goods.

61.0 PAYMENT TO NOMINATED SUB-CONTRACTOR OR SUPPLIER

61.1 The S.O. in issuing interim payment certificates under clause 28 or the Final Certificate under clause 31 hereof shall state separately the amount of interim or final payment due to each Nominated Sub-Contractors or Suppliers which amount subject to clause 61.2 hereof, shall be paid by the Government direct to the Nominated Sub-contractors or Suppliers. The amount paid by the Government direct to the Nominated Sub-contractors or Suppliers shall be deemed to be a payment to the Contractor by the Government under and by virtue of this Contract.

61.2 Subject to the relevant provisions in the sub-contract (Form PWD 203N or Form PWD 203P as the case may be), the Contractor shall be entitled to be paid and the Government may pay to the Contractor out of any money otherwise due to a Nominated Sub-contractors or Suppliers:

- (a) any amount which the Government or the S.O. on its behalf in exercise of any rights under this Contract has deducted from any money due to the Contractor and such deduction is in

respect of some act or default solely of the Nominated Sub-contractors or Suppliers, his servants or agents;

- (b) any amount agreed by the Nominated Sub-Contractor or Suppliers as due to the Contractor, or any amount awarded in arbitration or litigation in favour of the Contractor which arises out of or under the sub-contract; and
- (c) the amount of any claim for loss and/or expense actually incurred by the Contractor by reason of any breach or failure to observe the provisions of the sub-contract by the Nominated Sub-contractors or Supplier under the sub-contract.

61.3 Any amount paid to the Contractor in accordance with this clause shall be deemed to be a payment to the Nominated and/or Sub-Contractors or Suppliers under the sub-contract.

62.0 NO LIABILITY OF GOVERNMENT TO NOMINATED AND/OR SUB-CONTRACTOR OR SUPPLIER

Nothing in clauses 60 or 61 or anything else contained in this Contract shall render the Government in any way liable to any Nominated and/or Sub-Contractor or Supplier.

63.0 RESPONSIBILITIES OF CONTRACTOR TO NOMINATED AND/OR SUB-CONTRACTORS OR SUPPLIER

63.1 The Contractor shall be fully responsible to ensure that the Nominated Sub-Contractor or Suppliers shall conform with the terms and conditions of this Contract and shall be fully responsible for the acts, defaults, or breach of any terms and/or conditions of this Contract by the Nominated Sub-Contractor and/or Suppliers on their part in the same way as for his own or those of other sub-contractors or suppliers engaged by himself. The Government shall in no circumstances be liable to the Contractor for the default of any Nominated Sub-Contractors and/or Supplier.

63.2 In the event of repudiation or abandonment of his sub-contract by any Nominated Sub-contractor or Supplier, or the determination by the Contractor of the employment of the Nominated Sub-contractor or Supplier for any reason whatsoever under the sub-contract, the Contractor shall do one of the following:

(a) with the consent of the S.O. (such consent not to be unreasonably withheld) employ another competent sub-contractor or supplier to complete the sub-contract; or

(b) undertake to complete the sub-contract himself.

PROVIDED THAT in any of such events the Contractor is entitled to be paid the same sum for the work or services to be executed, or materials or goods to be supplied, as would have been payable had the original Nominated Sub-contractor or Supplier completed the sub-contract without any default on its part.

64.0 INTELLECTUAL PROPERTY RIGHTS

- 64.1** The Copyright and all other proprietary rights whatsoever in the Works and other material developed and supplied by the Contractor pursuant to or under this Contract shall vest in and shall be the sole property of the Government and the Contractor shall not during or at any time after completion of the Works or after the expiry or termination of this Contract, in any way, question or dispute the ownership of the Government. The proprietary rights in the Works shall vest in the Government free and clear of all liens, claims and encumbrances on the Works.
- 64.2** The Contractor shall be responsible for any claim that the equipment supplied infringes a patent, copyright or registered design.
- 64.3** If the Government's use or possession of the equipment is likely to constitute an infringement, then the Contractor shall promptly and at its own expenses procure for the Government the right to continue using and possessing the equipment; or modify or replace the equipment so as to avoid the infringement (in which event the Contractor shall compensate the Government for the amount of any direct loss or damage sustained or incurred by the Government during such modification or replacement).
- 64.4** The Contractor shall indemnify the Government against any claim for the infringement of any letters patent, copyright or registered designs by the use of any equipment or of information supplied under this Contract and against all costs and damages which the Government may incur in any action for which such infringements or for which the Government may become liable in any such action.

65.0 ANTIQUITIES

- 65.1** All fossils, coins, antiquities and other objects of interest or value which may be found on the Site or in excavating the same during the progress of the Works shall become absolute property of the Government and upon discovery of such an object the Contractor shall forthwith-
- (a)** not to disturb the object and shall cease work if and in so far as the continuance of the work would endanger the object or prevent or impede its excavation or its removal;
 - (b)** take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and
 - (c)** inform the S.O. of the discovery and precise location of the object.
- 65.2** The S.O. shall issue instructions in regard to what is to be done concerning the object reported by the Contractor under clause 65.1 and (without prejudice to the generality of his power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party. Any such third party shall for the purpose of clause 15 be deemed to be a person for whom the Government is responsible and not to be a sub-contractor.
- 65.3** If compliance with the provisions of clause 65.1 or with an instruction issued under clause 65.2 has involved the Contractor in direct loss and/or expense for which he would not be reimbursed

by a payment made under any other provisions of this Contract, then the amount of such loss and/or expense shall be added to the Contract Sum.

66.0 ARBITRATION

66.1 If any dispute or difference shall arise between the Government and the Contractor out of or in connection with the contract, then parties shall refer such matter, dispute or difference to the officer named in Appendix for a decision.

66.2 The officer named in Appendix's decision shall be in writing and shall subject to clause 66.4 hereof, be binding on the Parties until the completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether or not notice of dissatisfaction is given by him.

66.3 If the Parties –

(a) fails to receive a decision from the officer named in the Appendix within forty-five (45) days after being requested to do so; or

(b) is dissatisfied with any decision of the officer named in the Appendix,

then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur on the application of either Party hereto. Such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration and shall be conducted in accordance with the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration using the facilities and the system available at the Centre.

66.4 Such reference, except on any difference or dispute under clause 51 hereof shall not be commenced until after the completion or alleged completion of the Works or determination or alleged determination of the Contractor's employment under this Contract, or abandonment of the Works, unless with the written consent of the Government and the Contractor.

66.5 In the event that such consent has been obtained in accordance with clause 66.4, the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this Contract.

66.6 In any arbitration proceedings conducted pursuant to clause 66.3, the Parties may make any counter claim in relation to any dispute or difference arising from the Contract.

66.7 Upon every or any such reference the costs of such incidental to the reference and award shall be in the discretion of the Arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and client or as between party, and shall direct by whom and to whom and in what manner the same be borne, award and paid.

- 66.8** The award of the Arbitrator shall be final and binding on the Parties.
- 66.9** In the event of the death of the arbitrator or his unwillingness or inability to act, then the Government and the Contractor upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the Contractor fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur.
- 66.10** In this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- 66.11** The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

67.0 NOTICE, ETC.

67.1 Any notice, approval, consent, request or other communication required or permitted to be given or made under this Contract shall be in writing in Bahasa Malaysia or English language.

67.2 Such notice shall be effected by:

- (a) hand delivery or courier and an acknowledgement of receipt obtained;
- (b) leaving the notice at the registered office or site office of the Contractor in which case it shall be deemed to have been duly delivered; or
- (c) registered post in which case it shall be deemed to have been received seven (7) days after the date of posting.

67.3 The address of the Government and the Contractor is as shown below or such other address as either party may have notified the sender:-

to the Government

Address: (_____)

to the Contractor

Address: (_____)

67.4 It shall be the duty of the parties to notify the other if there is a change of address or entity by giving a written notice within fourteen (14) days. In the event of the Contractor failing to notify the S.O. of such an address or any change in his address, such written notices and instructions shall be deemed to have been served upon the Contractor if they are sent in the manner stated above

to the address stated in this Contract or to the Contractor's site office.

68.0 SAFETY AT THE SITE

68.1 Compliance with Safety Requirements

The Contractor shall comply with all relevant laws, regulations, rules, by-laws, directive or order by the relevant authorities on the requirements of safety-at-work ("Safety Requirements") and shall ensure his personnel, workmen and sub-contractors at all times during the execution of the Works comply with such Safety Requirements.

68.2 Submission of Safety Programme

- (a) Within 14 days from the receipt of the Letter of Acceptance by the Government, the Contractor shall submit to the S.O. a safety programme to ensure that all construction activities required for the execution of the Works are carried out in a safe manner and in compliance with Safety Requirements.
- (b) The safety programme shall be subject to the approval of the S.O. The submission to and approval by the S.O. of the safety programme shall not relieve the Contractor of any of his obligations and liabilities pertaining to the safety requirement under the Contract.

68.3 Safety Officer and Personnel

- (a) The Contractor shall appoint a suitably qualified and experienced person as safety officer who shall be responsible for compliance with Safety Requirements and all safety matters relating to the Works. The Contractor shall, from time to time, provide such other personnel and resources as may be required to ensure the effective implementation of the safety programme on Site.
- (b) The Contractor shall conduct training programmes for all workmen including workmen of his sub-contractors for compliance with the Safety Requirements.

68.4 Safety Measures

- (a) The Contractor shall ensure that the constructional plant together with all other tools and equipment and other items used in the execution of the Works are in a safe, sound and good condition and capable of performing the functions for which they are intended.
- (b) The Contractor is responsible for instituting a safe method of construction on Site for all the workers and shall ensure that his sub-contractors whether nominated or otherwise institute the same method of construction for their workers.
- (c) Without limiting his liability under the Contract, the Contractor shall provide all workmen on Site with the necessary safety equipment including but not limited to safety boots, safety

helmets and protective clothing.

69.0 ADVANCE PAYMENT

69.1 The Contractor shall be entitled to an advance payment on the Contract amounting to twenty five percent (25%) of the value of the Contract Sum less Prime Cost Sums and Provisional Sums (hereinafter referred to as the "Builder's Work") but subject to a maximum of Ringgit Malaysia Ten Million (RM10,000,000.00) on compliance with the following conditions:

- (a)** on return of the Letter of Acceptance duly signed by the Contractor together with the Performance Bond (if any), insurance policies, confirmation from SOCSO Authorities and the receipts for all premium paid;
- (b)** production of a Banker's/Insurance/Finance Company Guarantee in the approved format equal in value to the advance proposed to be paid;
- (c)** submission of the Banker's Guarantee/Insurance Guarantee/Financial Company Guarantee not later than three (3) months from the date of possession of Site.

69.2 The advance payment shall be recouped when the cumulative total value of the Builder's Work executed and certified (including the amount certified for materials on site) reaches twenty five percent (25%) of the total contract value of Builder's Work, by way of a fixed percentage deduction from the total certified value of the Builder's Work executed (including the amount certified for materials on site) during the period covered by an interim payment certificate, in all the subsequent interim payment certificates on the basis that the advance payment made shall be fully recovered in the interim payment certificate in which the cumulative total certified value of the Builder's Work executed (including the amount certified for materials on site) reaches seventy-five percent (75%) of the total contract value of the Builder's work. The deduction shall be calculated as follows:

$$\text{\$ D} = 200 \text{ A /B percent of } \text{\$PB}$$

Where $\text{\$ D}$ = cumulative deduction to be made in interim payment certificate,

$\text{\$ A}$ = total amount of advance paid,

$\text{\$ B}$ = total contract value of Builder's Work

$\text{\$ P}$ = gross certified value of Builder's Work executed (including the amount certified for materials on site) or agreed cumulative schedule payments in excess of twenty five percent (25%) of $\text{\$ B}$

69.3 The liability under the advance guarantee shall be terminated upon realization by the Government of the full sum of advance paid. However, if the full sum of the advance paid cannot be realized before the completion date of the contract or any authorised extension thereof or the case of the contract been determined before the date of the determination, then the balance of

the advance repayable to the Government shall be recovered from the advanced guarantee.

70.0 AMENDMENT

No modification, amendment or waiver of any of the provisions of this Contract shall be effective unless made by mutual consent and made in writing by way of supplementary agreement specifically referring to this Contract and duly signed by the Parties. The provisions in respect of such amendment, variation or modification thereof shall be supplemental to and be read as integral part of this Contract which shall remain in full force and effect as between both Parties.

71.0 CONFIDENTIALITY

71.1 This Contract and all such drawings, records, data, books, reports and all matters pertaining hereto shall be considered as confidential matter and shall not be disclosed to any third party without prior written mutual agreement, save and except where-

- (a)** disclosure of such information is necessary for the purposes of raising finance to undertake the obligations of the Contractor under this Contract;
- (b)** disclosure of such information is made to the Contractor's consultants, auditors or advisers;
- (c)** disclosure of such information is required by law or by any government agency or for the performance of any obligations under this Contract; or
- (d)** the information has entered public domain.

71.2 Where information has been disclosed to third parties pursuant to clause 69.1, the Contractor undertakes to ensure that such third parties shall not disclose the information to any other third party.

71.3 The restrictions contained in this clause shall survive the termination of this Contract and shall continue to bind both Parties without limit in point of time.

72.0 STAMP DUTY

The Contractor shall solely bear the stamp duties, legal costs and fees in the preparation and execution of this Contract and anything incidental thereto.

73.0 SEVERABILITY

If any provision of this Contract is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Contract such provision shall be fully severable and this Contract shall be construed as if such illegal or invalid provision had never comprised as

part of this Contract and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Contract.

74.0 WAIVER

Failure by any Party to enforce at any time, any provision of this Contract shall not be construed as a waiver of its right to enforce the breach of such provision or any other provision in this Contract or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Contract.

75.0 LAWS APPLICABLE

This Contract shall be governed by and construed in accordance with the laws of Malaysia and the Parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

76.0 SUCCESSORS BOUND

This Contract shall be binding upon the respective successors-in-title of the Parties.

77.0 EPIDEMICS AND MEDICAL ATTENDANCE

77.1 The Contractor shall maintain the Site in clean and sanitary condition and shall comply with all requirements of the Government Health and Sanitary Authorities. In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or health authorities for the purpose of dealing with and overcoming the same.

77.2 The Contractor shall ensure that sufficient first aid kits are made available at suitable locations on the Site.

78.0 TECHNOLOGY TRANSFER

If the Contractor appoints foreign professionals, the Contractor shall endeavour to ensure that the employees of the Government are trained or exposed to the expertise of such foreign professionals pursuant to a programme for technology transfer.

79.0 GENERAL DUTIES AND PERFORMANCE STANDARD

79.1 Industry Practice

The Contractor shall provide and perform the Works in a proper manner in accordance with good management and best industry practice and to the best advantage of the Government and shall comply with all law, statutes and any guidelines or direction issued by the Government to the

contractor from time to time.

79.2 Competency

The Contractor shall provide and perform its obligations under this Contract and take all appropriate measures expected of a competent company using due care and skills of a professional person providing similar service or works to ensure that the Works comply with the terms and conditions of this Contract.

79.3 Government's Interest

The Contractor shall at all times perform the Works in such manner as will always safeguard and protect the Government's interest and take all necessary and protect the Government interest take all necessary and proper steps to prevent abuse and in accordance with the provisions of this Contract.

80.0 RESTRICTION AND PROCEDURE ON USE OF IMPORTED MATERIALS AND GOODS

80.1 The Contractor shall use local goods/materials as listed in the 'SenaraiBahan/BaranganBuatanTempatan issued by IKRAM QA Services Sdn. Bhd. and/or issued by SIRIM QA Services Sdn. Bhd., whichever is relevant. If the Contractor fails to comply with this requirement, the Government may reject the goods/materials which are found to be not in compliance with this requirement.

80.2 For local goods/materials not listed as aforesaid, such goods/materials may be allowed if prior testing and certification from IKRAM QA Services Sdn. Bhd. or SIRIM QA Services Sdn. Bhd., whichever is relevant, has been obtained. Where such testing cannot be carried out by IKRAM QA Services Sdn. Bhd. or SIRIM QA Services Sdn. Bhd., the Contractor may, with the S.O.'s prior approval, have the testing to be done by another agency.

80.3 Under no circumstances shall the Contractor be permitted to incorporate or supply imported materials, plant, equipment, vehicles or other goods into the Works or forming part of the scope of the Works except those approved by the Government, prior to the execution of this Contract. The Contractor shall at his own cost entirely substitute any materials, plant, equipment, vehicles or other goods proposed to be imported but not approved by the Government, with suitable local materials, plant, equipment, vehicles or other goods, including making any necessary subsequential changes or adjustment to the design of the Works to accommodate such substitution, all to the concurrence of the S.O.

80.4 The Contractor shall ensure that the procurement of approved imported materials, plant, equipment, vehicles or other goods are obtained directly from the country of origin based on F.O.B. or other similar basis. The transportation and insurance of such imported materials, plant, equipment, vehicles or other goods from the country of origin to the Site shall be arranged by the Contractor through the Government's Multi Model Transport Operators (hereinafter referred to as MTO) as listed in Appendix. The Contractor shall allow in his tender all costs and time required in complying with the requirements of this Clause including the cost required for the services provided by the MTO.

80.5 The Contractor shall submit documentary evidence of compliance with this clause to the S.O.

within one (1) month from the date of each delivery to the Site of such materials, plant, equipment, vehicles or other goods.

81.0 TIME

Time whenever mentioned shall be of the essence of this Agreement.

SIGNING PAGE

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and year first above written.

Signed for and on behalf of
THE GOVERNMENT OF MALAYSIA

.....

in the presence of:

.....

Signed by
For and on behalf

.....

in the presence of:-

.....

APPENDIX TO THE CONDITIONS OF CONTRACT

Clause 4.1(a)

Officer(s) empowered to approve variations according to the limits as set out in Treasury's Instruction No. 202 as amended.

Financial Limits – _____

Officer – _____

Clause 4.1(b)

Officer(s) empowered to take action on behalf of the Government in respect of:-

Clauses 51, 52, 53, 58 and 66 – _____

Clause 13

Performance Bond

Amount of Guarantee – _____

Guarantor Bank / Insurance Company / Finance Company – _____

Guarantee No. – _____

Clause 15

Minimum insurance cover for any one accident or series of accidents arising out of one event –
RM_____

Policy No. – _____

Period of Insurance – _____

Clause 15.1(b)

Amount of excess – **RM**_____

Clause 17

SOCSSO Scheme registration number – _____

Clause 18

Amount to be added to full value of Contract Sum as the insured sum – RM_____

Total Amount Insured – RM_____

Policy No. – _____

Period of Insurance – _____

Clause 18.1(b)

Amount of excess – RM_____

Clause 21.2

Date of Tender – _____

Clause 28.1

Value of work to be executed including materials and goods to be delivered before First Interim Certificate will be issued – RM_____

Clause 28.2

Value of work to be executed including materials and goods to be delivered before each subsequent Interim Certificate will be issued – RM_____

Clause 28.6

Period for honouring payment certificate (if none stated, then within thirty (30) days of the issuance of the Certificate) – _____

Clause 34.4

Work covered by P.C Sums for which the Contractor will be permitted to tender – _____

Clause 38.2

Date for Possession of the Site – _____

Clause 39.1

Date for Completion for whole of the Works – _____

Clause 40.2

Liquidated and Ascertained Damages at the rate of **RM**_____ per _____

Clause 41.1

Sectional Completion

Identification of Sections or parts – _____

Date for Possession (Clause 38.3) – _____

Date for Completion – _____

Liquidated and Ascertained Damages – _____

Identification of Sections or parts – _____

Date for Possession (Clause 38.3) – _____

Date for Completion – _____

Liquidated and Ascertained Damages – _____

Identification of Sections or parts – _____

Date for Possession (Clause 38.3) – _____

Date for Completion – _____

Liquidated and Ascertained Damages – _____

Clause 48.1(a)

Defects Liability Period (if none stated, then the period of twelve (12) months) – _____

Clauses 5.3, 5.4, 15.3, 17.3(b), 18.2

Percentage of on-cost charges - 5%

Clause 48.2, 56.2(d)

Percentage of on-cost charges - 10%

SIGNING PAGE

This Addendum No. 1 to the Conditions of Contract PWD 203/203A (Rev. 1/2010) consisting of 4 pages (including this page) which are and shall be read and construed as part of this Contract

Signed by
For and on behalf

.....
Name:
NRIC No.
Designation: Authorised Signatory

In the presence of:-

.....
Witness
Name:
NRIC No.
Designation:

Signed by
For and on behalf

.....
Name:
NRIC No.

Designation:

In the presence of:-

.....

Witness

Name:

NRIC No.

Designation:

ADDENDUM NO. 1 TO THE CONDITIONS OF CONTRACT PWD 203/203A (REV. 1/2010)

1. Clause 28

Substitute the whole of Clause 28 with the new Clause 28 as follows:-

28.1 Subject to compliance with the terms and conditions under this Contract, the Contractor shall be entitled for Interim Payment certified by the S.O.'s monthly evaluation (or more often at the discretion of the S.O.). Provided always that the Contractor shall submit to the S.O., at such times and in such form as the S.O. may prescribe, written application for Interim Payments showing the amounts which in the Contractor's opinions are due under the Contract Payments. The submission shall include the following:-

- (a) the value of Works done and properly executed and valued in accordance with these terms of this Contract;
- (b) the amount of any valuation of variations or of the instructions by the S.O. (Clause 25);
- (c) the amount in regard to the expenditure of Provisional Sums and Prime Cost Sums executed or expended (Clause 34);
- (d) the value of any goods or unfixed materials delivered to or adjacent to the Site intended for use or to be incorporated into the Works;
- (e) the value of fluctuation of price pursuant to Clause 30: and
- (f) all relevant documents including site measurement, working diagrams, delivery orders, relevant invoices, as-built drawings, shop drawings relevant tests and environmental impact assessment of the Works or other relevant documents as the S.O. may require, to substantiate the Contractor's written application for interim payments,.

28.2 The S.O. shall within fourteen (14) days from the date of receipt of the application for Interim Payments, inspect and verify the Works, and make a valuation of the same and issue an Interim Payment Certificate stating the amount due to the Contractor from the Government PROVIDED THAT the total value in each monthly valuation shall not be less than the sum referred to in Appendix.

28.3 The amount stated as due in an Interim Payment Certificate shall be the estimated total value of the Works done and properly executed and up to ninety percent (90%) of the value of any goods or unfixed materials delivered to or adjacent to the Site intended for use or to be incorporated into the Works up to and including the date the valuation was made, less any payments (including Advance Payment) previously paid under this Contract. PROVIDED THAT such Certificate shall only include the value of the said goods or unfixed materials as and from such time as they are reasonably and properly

and not prematurely delivered to or adjacent to the Site and adequately protected against weather, damage or deterioration.

- 28.4 This Clause shall not apply to any unfixed materials and goods which are supplied and delivered by Nominated Supplier for which payment shall be made for the full value of the unfixed materials and goods.
- 28.5 Within a number of days as stated in Appendix (or if none stated then within thirty (30) days of the issue of any such Interim Certificate), the Government shall make a payment to the Contractor as follows:-
- (a) where the Performance Bond is in the form of a Banker's, Insurance or Finance Company Guarantee, payment shall be made on the amount certified as due to the Contractor in the said Interim Certificate; or
 - (b) where the Performance Bond is in the form of a Performance Guarantee Sum, payment of ninety percent (90%) on the amount certified as due to the Contractor shall be made with the remaining ten percent (10%) being retained by the Government as a Performance Guarantee Sum. PROVIDED THAT when the sum retained is equivalent to five percent (5%) of the Contract Sum then in any subsequent Certificate, payment shall be made on the full amount certified as due to the Contractor.
- 28.6 If the Contractor fails to submit full particulars of written application for Interim Payment as stipulated in Clause 28.1, the S.O. shall make the valuation of works based on the available documents to him for the purpose of the Interim Payment Certificate. The Government shall be discharged from all liabilities in connection with the Interim Payments.

2. Clause 31

Substitute the whole of Clause 31 with the new Clause 31 as follows:-

- 31.1 As soon as is practicable but not later than three (3) months after the issuance of the Certificate of Practical Completion, the Contractor shall submit full particulars complete with receipts, vouchers records that would substantiate the Contractor's claim under Clause 44 together with any documents, supporting vouchers and any explanation and calculations including documents relating to the accounts of Nominated Sub-Contractor or Nominated Supplier, which may be necessary to enable the Final Account to be prepared by the S.O. PROVIDED ALWAYS the Contractor had given the notice of claim in writing within the stipulated time or times in the said provisions.
- 31.2 Within three (3) months after issuance of the Certificate of Completion of Making Good Defects, the Contractor shall submit to the S.O. a statement of the final account showing in detail the value in accordance with this Contract, of the Works carried out together with all further sums which the Contractor considers to be due to him after giving credit to the Government for all amounts previously paid by the Government and for all sums to which the Government is entitled under this Contract up to the date of the Certificate of Completion of Making Good Defects or the Certificate of Completion of Maintenance, as the case may be. The Final Account shall be supported by all documentation

substantiating the value of the same.

- 31.3 If the Contractor fails to submit full particulars of all claims within the stipulated period, the S.O. shall forthwith make the assessment based on the available documents submitted by the Contractor for the purpose of the Final Account. The Government shall be discharged from all liabilities in connection with the claims.
- 31.4 Within three (3) months after the expiry of the Defects Liability Period for the whole of the Works or three (3) months after the issue of the Certificate of Completion of Making Good Defects under Clause 48 hereof, whichever is the later, the S.O. shall issue the Final Certificate.
- 31.5 The Final Certificate shall be supported by documents, and full particulars complete with receipts, vouchers records showing the S.O.'s final valuation of Works and any amount determined in Clause 31.1 in accordance with the terms of this Contract. After setting out or allowing for all payments or other expenditure of the Government or any permitted deductions made by the Government or the S.O. on its behalf, the Final Certificate shall state any final balance due from the Government to the Contractor or from the Contractor to the Government, as the case may be, which shall thereupon become the debt payable. Such certificate shall also take account of any outstanding permitted deductions not yet made by the Government under the terms of this Contract whether by way of liquidated damages or otherwise.
- 31.6 No final payment due to the Contractor under the Final Certificate, shall be made unless and until the Contractor shall have satisfied the S.O. by means of a Statutory Declaration made by or on behalf of the Contractor to the effect that the workmen who have been employed by the Contractor on the Works including workmen employed by sub-contractors, whether nominated or otherwise (including "labour only" sub-contractors) have received all wages due to them in connection with such employment, and that all dues or contributions under the Employment Act 1955, the Employee's Social Security Act 1969, the Employee's Provident Fund Act 1965 and any other laws relevant to the employment of workmen, have been paid.

3. Clause 40

3.1 Substitute Clause 40.1 with the new Clause 40.1 as follows:-

- 40.1** If the Contractor fails to complete the Works by the Date for Completion or within any extended time granted pursuant to Clause 43, the S.O. shall issue a Certificate of Non-Completion to the Contractor.

3.2 Substitute Clause 40.2 with the new Clause 40.2 as follows:-

- 40.2** Without prejudice to the Government's right to terminate this Contract, when the S.O. issues the Certificate of Non-Completion, the Government shall be entitled to recover from the Contractor, Liquidated and Ascertained Damages calculated at the rate stated in Appendix from the date of the failure to complete the work pursuant to Clause 40.1 to the date of the Practical Completion or the date of termination of this Contract. The S.O. may deduct such Liquidated and Ascertained Damages from any money due or to become due to the Contractor, failing which such damages shall be recovered from the

Performance Bond or as a debt due from the Contractor. The S.O. shall inform the Contractor in writing of such deduction.

SIGNING PAGE

This Addendum No. 2 to the Conditions of Contract PWD 203/203A (Rev. 1/2010) consisting of 2 pages (including this page) which are and shall be read and construed as part of this Contract

Signed by
For and on behalf

.....
Name:
NRIC No.
Designation: Authorised Signatory

In the presence of:-

.....
Witness
Name:
NRIC No.
Designation:

Signed by
For and on behalf

.....
Name:
NRIC No.

Designation:

In the presence of:-

.....

Witness

Name:

NRIC No.

Designation:

ADDENDUM NO. 2 TO THE CONDITIONS OF CONTRACT PWD 203/203A (REV. 1/2010)

1. Clause 1.1(ea)

Insert Clause 1.1(ea) after Clause 1.1(e) "Contract Sum" as follows:-

(ea) "**Tender Price**" means the price offered by the Contractor as stipulated in the Letter of Acceptance of Tender;

2. Clause 69.1 (PWD 203A) / Page 46, Clause 69.1 (PWD203)

Substitute Clause 69.1 with the new Clause 69.1 as follows:-

69.1 The Contractor shall be entitled to an advance payment on this Contract amounting to twenty five percent (25%) of the Tender Price less the aggregate amount of Prime Cost Sum and Provisional Sum including the value of tax imposed under the Goods and Services Tax 2014 (hereinafter referred to as the "**Builder's Work**") but subject to a maximum of RM10 million on compliance with the following conditions:-

- (a) on return of the Letter of Acceptance duly signed by the Contractor together with the Performance Bond (if any), insurance policies, confirmation from the SOCSO Authorities and the receipt for all premium paid;
- (b) production of a Banker's / Insurance / Finance Company Guarantee in the approved format equal in value to the advance proposed to be paid; and
- (c) submission of the Banker's Guarantee / Insurance Guarantee / Financial Company Guarantee not later than three (3) months from the date of possession of Site.

SIGNING PAGE

This Addendum No. 3 to the Conditions of Contract PWD 203/203A (Rev. 1/2010) consisting of 2 pages (including this page) which are and shall be read and construed as part of this Contract

Signed by
For and on behalf

.....
Name:
NRIC No.
Designation: Authorised Signatory

In the presence of:-

.....
Witness
Name:
NRIC No.
Designation:

Signed by
For and on behalf

.....
Name:
NRIC No.

Designation:

In the presence of:-

.....

Witness

Name:

NRIC No.

Designation:

**ADDENDUM NO. 3 TO THE CONDITIONS OF CONTRACT PWD 203/203A (REV.
1/2010)**

1. Clause 13

13.0 PERFORMANCE BOND / PERFORMANCE GUARANTEE SUM

1.1 Substitute the Clause 13.1 with the new Clause 13.1 as follows:-

13.1 The Contractor shall, on the date of the possession of Site, provide a Performance Bond or Performance Guarantee Sum, as the case may be, substantially in the form as in Appendix issue by an approved licensed bank or financial institution incorporated in Malaysia in favour of the Government for a sum equivalent to five percent (5%) of the total Contract Sum as specified in Appendix to secure the due performance of the obligations under this Contract by the Contractor. The Performance Bond shall remain valid and effective until *twelve (12) / twenty four (24) months after the expiry of the Defects Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is later.

1.2 Substitute Clause 13.3 with the new Clause 13.3 as follows:-

13.3 The Contractor may opt for a Performance Bond in the form of Performance Guarantee Sum in lieu of the Bank, Insurance or Finance Company Guarantee as specified in Clauses 13.1 and 13.2 hereof whereby deductions of ten percent (10%) shall be made from the first interim payments and subsequent interim payment until total amount deducted aggregate to a sum equivalent to five percent (5%) of the Contract Sum. The amount deducted shall be retained by the Government up to *twelve (12) / twenty four (24) months after the expiry of the Defects Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is later.

SIGNING PAGE

This Air Selangor Addendum to the Conditions of Contract PWD 203/203A (Rev. 1/2010) consisting of 20 pages (including this page) which are and shall be read and construed as part of this Contract

Signed by
For and on behalf

.....
Name:
NRIC No.
Designation: Authorised Signatory

In the presence of:-

.....
Witness
Name:
NRIC No.
Designation:

Signed by
For and on behalf

.....
Name:

NRIC No.

Designation:

In the presence of:-

.....

Witness

Name:

NRIC No.

Designation:

AIR SELANGOR ADDENDUM TO THE STANDARD FORM OF CONTRACT TO BE USED WHERE BILL OF QUANTITIES FORM PART OF THE CONTRACT PWD FORM 203A (REV. 1/2010)

(A) CONDITIONS OF CONTRACT PWD FORM 203(A) (REV. 1/2010)

1. Unless the context otherwise requires, the term "Government of Malaysia" or the "Government" shall refer to "**Pengurusan Air Selangor Sdn. Bhd. (Registration Number: 201401006213) (1082296 U)**" or "the Company" wherever appearing in this Contract.
2. Recital B shall not be applicable.
3. Substitute clause 1.1 with the new clause 1.1 as follows:-

1.1 Definition

Unless the context otherwise requires, this Contract or an item or entry in the Appendices specifically otherwise provides, the following words and phrases in this Contract and the Appendices shall have the meaning given below or ascribed in the clauses or Appendix item to which reference is made:-

- (a) "**C.A.**" means the contract administrator who shall be the _____ of the Company and/or his successors in office;
- (b) "**C.A.'s Representative**" means any person or persons delegated or authorized in writing by the C.A. to perform any duties of the C.A. as may be from time to time notified in writing to the Contractor by the C.A. pursuant to clause 3.3(a) of this Contract;
- (c) "**Contract**" means this Contract including the appendices, Addendum No. 1, Addendum No. 2 and Addendum No.3 of this Contract and this Air Selangor Addendum;
- (d) "**Contract Documents**" means:-
 - (i) this Contract;
 - (ii) Contract Drawings;
 - (iii) Bills of Quantities;
 - (iv) Specifications,

and all these documents shall be complementary to one another and the order of priority shall be determined by the Company at its sole discretion;

- (e) **“Contractor”** means _____ and includes the Contractor's personal representatives, heirs, successors, executors, administrators, servant and agent;
- (f) **“Contract Period”** means the time frame stipulated in clause 2.0;
- (g) **“Contract Sum”** means the sum stipulated in clause 7.1;
- (h) **“Date for Completion”** means the date fixed and stated in Appendix or any other date as provided for in clause 39.0;
- (i) **“Defects Liability Period”** means the period stated in Appendix or if none stated, the period is twelve (12) months from the date of practical completion certified by the C.A. as provided for under clause 39.3;
- (j) **“Nominated Sub-Contractor” or “Nominated Supplier”** means all specialist, merchants, tradesmen and others executing any work or services, or supplying any materials or goods for which Prime Cost Sum (or P.C. Sums) are included in the Bills of Quantities or which the C.A. has given written instructions in regard to the expenditure of Provisional Sum and who may be nominated by the C.A. and employed by the contractor as Sub-Contractor or Suppliers;
- (k) **“On-Cost Charges”** means any cost and expenses reasonably incurred by the Company;
- (l) **“Officer Named”** means officer empowered to take action on behalf of the Company pertaining to clauses _____;
- (m) **“Prime Cost” or abbreviation “P.C. Sum”** means a sum for works or services to be executed by a Nominated Sub-Contractor or sums for materials or goods to be obtained from a Nominated Supplier;
- (n) **“Provisional Sum”** means a sum for work or for the supply of goods or materials which cannot be defined or detailed at the time the Letter of Appointment dated _____ (Letter of Appointment Number: _____) is issued by the Company to the Contractor;
- (o) **“Site”** means the land and other places on, above, under, in or through which the Works are to be executed and any other lands or places provided or approved by the Company for working space or any other purposes as may be specifically designated in this Contract and whether the same may be on the Site or not; and

(p) **“Works”** means the works specified in the Contract Documents and shall include temporary works.

4. The term “S.O.” shall be replaced with the term “C.A.” wherever appearing in this Contract.
5. The term “S.O.’s Representative” shall be replaced with the term “C.A.’s Representative” wherever appearing in this Contract.
6. The word “he”, “his” or “him” shall be replaced with the word “it” or “its” wherever appearing in this Contract, as the context may allow.
7. The following new sub-clauses shall be incorporated in clause 1.2 as follows:-
 - (f) References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations and statutory instruments issued under such legislation or provision.
 - (g) Any negative obligations imposed on any Party shall be considered as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any Party shall be considered as if it were also an obligation to procure that the act in question be done.
 - (h) Reference to the term “day” or “month” shall be a reference to a calendar day or month, as the case may be, unless the context otherwise requires.
 - (i) For the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of and time begins to run from the date so specified.
8. Substitute clause 5.3 with the new clause 5.3 as follows:-
 - 5.3 If within seven (7) days after receipt of a written notice from the C.A. requiring compliance of an instruction and the Contractor does not comply therewith, then the C.A. without prejudice to any other rights or remedies available to the Company under this Contract, undertake the work departmentally or employ and pay another contractor or any other persons to execute any work whatsoever which may be necessary to give effect to such instruction. All costs and expenses incurred in connection with such employment (including On-Cost Charges), shall be deducted from any money due or to become due to the Contractor under this Contract, and failing which such deductions shall be recovered from the Performance Bond or as a debt due from the Contractor.
9. Substitute clause 6.3 with the new clause 6.3 as follows:-
 - 6.3 The Contractor shall also, at its own cost and expense, make good any defect, imperfection, shrinkage or any other fault whatsoever which may appear during the

Defects Liability Period in accordance with clause 48.0 hereof.

10. The initial provision in clause 7.0 shall be numbered as clause 7.1 and a new clause 7.2 shall be incorporated in clause 7.0 as follows:-

7.2 The Contract Sum shall be inclusive of sales tax, service tax and all other taxes including but not limited to export, import, value-added, use, local excise, personal property, withholding and all other relevant taxes and charges which may be levied, imposed or assessed by the government and/or any other relevant authorities, and all other incidental costs including without limitation all transportation, freight, insurance and packing charges and in connection with the Works.

11. Substitute clause 10.0(i) with the new clause 10.0(i) as follows:-

(i) instruct and supervise its staff and sub-contractor in carrying out the Works, including repairing any defects and other works in relation to the Works;

12. Substitute clause 11.1 with the new clause 11.1 as follows:-

11.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself as to the following:

13. Substitute clause 11.1(f) with the new clause 11.1(f) as follows:-

(f) in general to have obtained for himself all necessary information as to risks, contingencies and all circumstances influencing and affecting the Works.

14. Substitute clause 12.1 with the new clause 12.1 as follows:-

12.1 Within fourteen (14) days from the date of execution of this Contract by the Contractor, the Contractor shall submit to the C.A. for his approval -

15. Substitute clause 14.1(a) with the new clause 14.1(a) as follows:-

(a) it shall perform all of its obligations under this Contract at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep indemnified the Company, its directors and employees harmless at all times against whatsoever actions, demands, suits, proceedings, fines, penalties, orders, injunctions, cost, damages, losses and/or claims whatsoever and howsoever caused (whether arising at common law or by statute) from any accident, damage, injury or death arising from the carrying out of the Works except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Company, its directors and employees. The Contractor expressly agrees that in the absence of any such act, omission or negligence as aforesaid, the Company shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death;

16. Substitute clause 14.1(b) with the new clause 14.1(b) as follows:-

- (b)** it shall indemnify and keep indemnified the Company, its directors and employees harmless at all times from and against all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Company shall or may be or become liable in respect of or arising from-
- (i)** thenegligence use, misuse or abuse by the Contractor or its personnel, servant, agents or employees appointed by the Contractor;
 - (ii)** any loss or damage to property or injury whatsoever nature or kind and howsoever or whenever sustained or cause or contributed to by carrying out of the Works by the Contractor to any person and not caused by the negligence or wilful act, default or omission of the Company, its agents, or employees; or
 - (iii)** any loss, damage or injury from any cause whatsoever to property or persons affected by the Works to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Contractor or personnel, servants, agents or employees; and

17. Substitute clause 14.2 with the new clause 14.2 as follows:-

- 14.2** The Contractor agrees to hold harmless and indemnify the Company, its directors and employees from and against any and all damages, injuries, death, liabilities, actions, proceedings, judgments, orders, awards, expenses, costs (including but not limited to legal costs on a solicitors and client basis incurred in defending or compromising an action whether instituted or threatened) which may be sustained by the Company, its directors and employees or any third party, arising out of or in connection with any act or omission of the Contractor, its agents, employees or sub-contractors in the performance of this Contract.

18. Substitute clause 18.2 with the new clause 18.2 as follows:-

- 18.2** If the Contractor fails to effect or renew such insurance as are necessary under this clause, the Company or the C.A. on its behalf may renew such insurance and pay the premium in respect thereof and deduct the amount so expended including On-Cost Charges (calculated by applying the 'Percentage of On-cost Charges' stated in Appendix to the premiums paid), from any money due or to become due to the Contractor under this Contract, and failing which such premium plus other costs paid shall be recovered from the Performance Bond or as a debt due from the Contractor.

19. Substitute clause 21.2 with the new clause 21.2 as follows:-

- 21.2** If after the date of execution of this Contract by the Contractor there is any change or amendment in any written law, regulations and by-laws which necessitates any variation to the Works, the Contractor shall, before making such variation, give to the C.A. a written notice specifying and giving the reason for such variation and apply for the C.A.'s instruction in respect of the matter.

20. Substitute clause 23.1(b) with new clause 23.1(b) as follows:-

- (b) If in any particular trade or skill required to complete the Works, the Contractor can show to the satisfaction of the C.A. that Malaysian citizens are not available, then the Contractor may employ non-Malaysian citizens subject to the approval of the Company. The Contractor shall ensure that valid working permit and laws of Malaysia in connection with foreign workers have been complied with before and during the performance of this Contract. Any violation due to employing illegal foreign workers by the Contractor in the performance of this Contract shall amount to breach of this Contract and will result in immediate termination.

21. Substitute clause 23.1(c) with the new clause 23.1(c) as follows:-

- (c) The Contractor shall on the commencement of the Works furnish to the Company all particulars of the workmen connected with this Contract and such returns as may be called for from time to time in respect of labour employed by it for the execution of this Contract, in accordance with the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, and Internal Security (Registration of Labour) Regulation 1960 or any subsequent modification or re-enactment thereof.

22. Clause 26.2 shall not be applicable.

23. Clause 26.3 shall not be applicable.

24. Substitute clause 28.3 with the new clause 28.3 as follows:-

- 28.3** Within fourteen (14) days from the date of any such valuation being made and subject to the provision mentioned in clause 28.1, the C.A. shall issue an interim payment certificate stating the amount due to the Contractor from the Company PROVIDED THAT the Contractor has returned this Contract duly executed and stamped, and has deposited with the C.A. or the Company the relevant insurance policies under clauses 15.0 and 18.0 hereof.

25. Clause 30.0 shall not be applicable and the heading of clause 30.0 shall be substituted with the new heading of clause 30.0 as follows:-

30.0 FLUCTUATION OF PRICE (NOT APPLICABLE)

26. Substitute clause 32.0 with new clause 32.0 as follows:-

- 32.0** No certificate of the C.A. under any provision of this Contract shall be considered as conclusive evidence as to the sufficiency of any work, materials or goods to which it relates, nor shall it relieve the Contractor from his liability to amend and make good all defects, imperfections, shrinkages, or any other faults whatsoever as provided by this Contract. In any case, no certificate of the C.A. shall be final and binding in any dispute between the Company and the Contractor if the dispute is brought before the courts of

Malaysia.

27. Clause 34.4 shall not be applicable.

28. Substitute clause 38.2 with the new clause 38.2 as follows:-

38.2 Unless the Contract Documents shall otherwise provide, possession of the Site as complete as may reasonably be possible but not so as to constitute a tenancy, shall be given on or before the "Date for Possession" as stated in this Contract who shall thereupon and forthwith commence the Works (but subject to clause 38.1) and regularly and diligently proceed with and complete the Works on or before the Date for Completion as stated in Appendix.

29. Substitute clause 38.4 with the new clause 38.4 as follows:-

38.4 In the event of any delay in giving possession of the Site from the "Date for Possession" as stated in this Contract or delay in giving any section or part of the Site as provided in clause 38.3, the C.A. may issue instructions in regard to the revision of the "Date for Possession" and the "Date for Completion" shall be appropriately revised under clause 43.1(g) hereof, but the Contractor shall not be entitled to claim for any loss or damage caused by such delay in giving possession of the Site, nor shall he be entitled to terminate this Contract.

30. Substitute clause 38.5 with the new clause 38.5 as follows:-

38.5 In the event that the giving of the possession of the whole Site is delayed beyond ninety (90) days of the "Date for Possession" as stated in this Contract, the C.A. shall give written notice to the Contractor of the causes of such delay. Upon the receipt of the said written notice issued by the C.A., the Contractor may, inform the C.A. in writing of its decision within fourteen (14) days of receipt of the said notice either to:-

31. A new clause 41.3 shall be incorporated as follows:-

41.3 In line with clause 41.1 above, the Company shall have the absolute right to terminate the whole or any part of this Contract due to the Contractor's failure in completing any sections and/or any parts of the Works as identified in Appendix or elsewhere in the Contract Documents.

32. A new clause 41.4 shall be incorporated as follows:-

41.4 Without prejudice to the Company's right in clause 41.3 above, when the C.A. has determined that the Contractor has failed to complete the sectional tasks or any part of the Works, the Company shall be entitled to recover from the Contractor, Liquidated and Ascertained Damages calculated at the rate and/or formula stated in Appendix from the date as specified in the Certificate of Non Completion for the sectional works until the actual Sectional Completion date. Without prejudice to any other method of recovery, the C.A. shall be entitled to deduct such Liquidated and Ascertained Damages from any

money due or to become due to the Contractor or shall recover from the Performance Bond or as a debt due from the Contractor under this Contract or any other contracts to which the Company and Contractor are parties thereto. The C.A. shall inform the Contractor in writing of such deduction.

33. Substitute clause 43.1(i) with the new clause 43.1(i) as follows:-

- (i)** the Contractor's inability for reason beyond his control and which he could not reasonably have foreseen at the date of execution of this Contract by the Contractor to secure such goods, materials and/or services as are essential to the proper carrying out of the Works; or

34. Substitute clause 44.2 with the new clause 44.2 as follows:-

- 44.2** As soon as is practicable but not later than ninety (90) days after practical completion of the Works, the Contractor shall submit full particulars of all claims for direct loss or expense under clause 44.1 together with all supporting documents, vouchers, explanations and calculations which may be necessary to enable the direct loss or expense to be verified and ascertained by the C.A. The amount of such direct loss or expense verified and ascertained by the C.A. shall be added to the Contract Sum.

35. Substitute clause 47.1 with the new clause 47.1 as follows:-

- 47.1** The Contractor shall not without the prior written consent of the C.A., sub-contract the design for any portion of the Works under clause 22.0 of this Contract. Where the C.A. consents to any sub-contract under this clause, such consent shall not in any way absolve the obligations of the Contractor under clause 10.0.

36. Substitute clause 47.2 with the new clause 47.2 as follows:-

- 47.2** The Contractor shall not sub-contract the whole or any substantial part of the Works without the prior written consent of the C.A. Any such consent, if given, shall not relieve the Contractor from any liability or obligation under this Contract and it shall be responsible for the due observance by such sub-contractors, of all the terms, stipulations and conditions under this Contract.

37. Substitute clause 47.6 with the new clause 47.6 as follows:-

- 47.6** The Contractor shall not assign this Contract or any part thereof, or any benefit or interest therein or thereunder otherwise than by way of assignment in favour of the Contractor's banker or any financial institution or corporation of any monies due or to become due under this Contract without prior written consent of the C.A.

38. A new clause 47.7 shall be incorporated as follows:-

- 47.7** The Company may at its absolute discretion and at any time by giving notice in writing to

the Contractor, novate and/or assign all the Company's rights, benefits, interest and liabilities arising out of this Contract to any party as the Company deem fit, and upon receipt of such notice from the Company, the Contractor shall execute such document(s) as may be necessary to give effect to such novation and/or assignment.

39. Substitute clauses 51.1(a)(vii) and (viii) with the new clauses 51.1(a)(vii) and (viii) as follows:-

(vii) fails to comply with the provisions of clause 47.0;

(viii) fails to comply with any terms and conditions of this Contract; or

40. A new clause 51.1(a)(ix) shall be incorporated as follows:-

(ix) fails to supply material and/or quality of work or services rendered by the Contractor does not comply with this Contract or is not up to the Company's satisfaction,

41. Substitute clause 52.0 with the new clause 52.0 as follows:-

52.NaN TERMINATION FOR CONVENIENCE

52.NaN Termination

Notwithstanding any provision of this Contract, the Company shall have the absolute discretion to terminate this Contract at any time by giving thirty (30) days' written notice to that effect without any obligation to give any reason therein.

52.NaN Consequences of Termination

Upon such termination under clause 52.1:-

(a) payment obligations including all costs and expenditure incurred by the Company and the Contractor shall be ascertained in accordance with clause 54.0;

(b) clause 51.1(c)(i) and clause 51.1(c)(ii)(B) and (C) shall apply; and

(c) for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract under this clause.

42. Substitute clause 53.1 with the new clause 53.1 as follows:-

53.1 Without prejudice to any other rights of the Company, if the Contractor, its personnel, servants or employees is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Contract or any other agreement that the Contractor may have with the Company, the Company shall be entitled to terminate this Contract at any time, by giving immediate written notice to that effect to the Contractor.

43. Substitute the heading of clause 54.0 with the new heading of clause 54.0 as follows:-

54.0 PAYMENTS UPON SUSPENSION OR TERMINATION FOR CONVENIENCE

44. Substitute clause 56.1 with the new clause 56.1 as follows:-

56.1 As soon as the arrangements for the completion of the Works or the Sectional Completion of the Works made by the Company enable the C.A. to make a reasonably accurate assessment of the ultimate cost to the Company of completing the Works following the termination of the Contractor's employment and the engagement of other contractors or persons, and the amount of direct loss and/or damage caused to the Company due to the termination has been ascertained by the C.A., then the C.A. may issue a certificate (hereinafter referred to as the "**Certificate of Termination Costs**") stating the Completion Cost (hereinafter defined) and the Final Contract Sum (hereinafter defined).

45. Substitute clause 58.2(e) and (f) with the new clause 58.2(e) and (f) as follows:-

(e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(f) riot, commotion or disorder, unless solely restricted to employees of the Contractor or its personnel, servant or agents; and

46. A new clause 58.2(g) shall be incorporated as follows:-

(g) a directive from the government or governmental agency to a Party to act or refrain from acting in a manner which shall directly or indirectly render further performance of this Contract.

47. Substitute clause 58.3 with the new clause 58.3 as follows:-

58.3 If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligation under this Contract (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that Event of Force Majeure with full particulars and consequences thereof and shall take all necessary steps to resume performance hereunder as soon as practicable.

48. A new clause 58.8 shall be incorporated as follows:-

58.8 Financial distress is hereby declared as not an Event of Force Majeure.

49. Substitute clause 60.2(b) with the new clause 60.2(b) as follows:-

(b) a person who will not enter into a sub-contract with terms and conditions as provided in the Public Works Department (PWD) standard form of sub-contract for Nominated Sub-Contractor (Form PWD 203N) or for Nominated Supplier (Form PWD 203P), as may be duly amended to reflect the provision of this Contract; or

50. Substitute clause 60.2(c) with the new clause 60.2(c) as follows:-

(c) a person who will not give to the Company such indemnity with terms and conditions as provided in the Public Works Department (PWD) standard form of letter of indemnity for Nominated Sub-Contractor (Form PWD 203N7) or for Nominated Supplier (Form PWD 203P7), as the case may be.

51. Substitute clause 61.2 with the new clause 61.2 as follows:-

61.2 Subject to the relevant provisions in the sub-contract (Form PWD 203N or Form PWD 203P, as may be duly amended to reflect the provision of this Contract), the Contractor shall be entitled to be paid and the Company may pay to the Contractor out of any money otherwise due to a Nominated Sub-Contractor or Nominated Supplier:-

(a) any amount which the Company or the C.A. on its behalf in exercise of any rights under this Contract has deducted from any money due to the Contractor and such deduction is in respect of some act or default solely of the Nominated Sub-Contractors or Suppliers, its servants or agents;

(b) any amount agreed by the Nominated Sub-Contractors or Suppliers as due to the Contractor, or any amount awarded in arbitration or litigation in favour of the Contractor which arises out of or under the sub-contract; and

(c) the amount of any claim for loss and/or expense actually incurred by the Contractor by reason of any breach or failure to observe the provisions of the sub-contract by the Nominated Sub-Contractors or Suppliers under the sub-contract.

52. Substitute clause 64.2 with the new clause 64.2 as follows:-

64.2 The Contractor shall be responsible for any claim against the Company that the equipment supplied infringes a patent, copyright, passing-off or registered design.

53. A new clause 64.5 shall be incorporated as follows:-

64.5 The Contractor hereby warrants that the execution of performance of the Works under

this Contract, including without limitation, the design, manufacture, installation and use of the goods, materials, services and/or the Works delivered or performed by the Contractor under this Contract shall in no way infringe any patent, design, trademark or other right of any third party.

54. A new clause 64.6 shall be incorporated as follows:-

64.6 Where applicable, if use or possession of the goods or materials is likely to constitute an infringement by the Company, then the Contractor shall promptly and at its own expenses procure for the Company the right to continue using and possessing the goods or materials or modify or replace the goods or materials so as to avoid the infringement (in which event the Contractor shall compensate the Company for the amount of any direct loss or damage sustained or incurred by the Company during such modification or replacement).

55. A new clause 64.7 shall be incorporated as follows:-

64.7 In the event the Contractor wishes to publish an article in any professional publication which contains any part of the information and document provided by the Company, the Contractor shall first seek the Company's prior written consent, and if such consent is given, the Contractor shall acknowledge the intellectual property rights of the Company in such publication.

56. Clause 66.0 shall not be applicable and the heading of clause 66.0 shall be substituted with the new heading of clause 66.0 as follows:-

66.0 ARBITRATION (NOT APPLICABLE)

57. A new sub-clause 67.2(d) shall be incorporated as follows:-

(d) email once the email enters the recipient's mail server.

58. Substitute clause 67.3 with the new clause 67.3 as follows:-

67.3 The address and email of the Company and the Contractor is as shown below or such other address or email as either party may have notified the sender:-

to the Company

Address: _____

Email: _____

to the Contractor

Address: _____

Email: _____

59. Substitute clause 68.2(a) with the new clause 68.2(a) as follows:-

(a) Within fourteen (14) days from the date of execution of this Contract by the Contractor, the Contractor shall submit to the C.A. a safety programme to ensure that all construction activities required for the execution of the Works are carried out in a safe manner and in compliance with Safety Requirements.

60. Clause 69.0 shall not be applicable and the heading of clause 69.0 shall be substituted with the new heading of clause 69.0 as follows:-

69.0 ADVANCE PAYMENT (NOT APPLICABLE)

61. Substitute clause 79.3 with the new clause 79.3 as follows:-

79.3 The Contractor shall at all times perform the Works in such manner as will always safeguard and protect the Company's interest and shall take all necessary and proper steps to prevent abuse and in accordance with the provisions of this Contract.

62. Substitute clause 80.4 with the new clause 80.4 as follows:-

80.4 The Contractor shall ensure that the procurement of approved imported materials, plant, equipment, vehicles or other goods are obtained directly from the country of origin based on F.O.B. or other similar basis. The transportation and insurance of such imported materials, plant, equipment, vehicles or other goods from the country of origin to the Site shall be arranged by the Contractor through the government's Multi Model Transport Operators (hereinafter referred to as MTO) as listed in Appendix.

63. A new clause 82.0 shall be incorporated as follows:-

82.0 REMEDIES

82.0a If the Contractor defaults under this Contract in any respect, the Company may exercise, in addition to the rights and remedies set forth herein, all rights and remedies available to the Company in law or equity, such rights and remedies shall be cumulative.

82.0b If the Contractor breaches this Contract, the Contractor's exclusive remedy shall be compensatory damages, and the Contractor will not be liable for incidental or consequential damages or any loss of profit.

64. A new clause 83.0 shall be incorporated as follows:-

83.0 RELATIONSHIP

The Contractor is an independent contractor and is neither a servant nor an agent of the Company and the Contractor, whether by itself, its servants, agents, permitted assignee(s), sub-lessee or sub-contractor or their servants or agents shall not represent to any person or authority anything to the contrary and shall take all necessary steps to correct any misconception harboured by any person or authority in connection with the relationship of the Parties hereto as soon as the Contractor is aware of the said misconception.

65. A new clause 84.0 shall be incorporated as follows:-

84.0 SURVIVAL OF THE INDEMNITIES

The indemnities contained in this Contract are continuing obligations of the Contractor, separate and independent from the other obligations of the Contractor and shall survive the termination of this Contract.

66. A new clause 85.0 shall be incorporated as follows:-

85.0 DECLARATION

85.1 The Contractor declares that neither the Contractor nor any of the Contractor's shareholders, directors, managers, partners, joint-venture partners/parties, related companies, consultants, sub-contractors, suppliers, manufacturers and/or agents is a person connected with any member of the board of directors or the senior management of the Company or any person connected with the aforementioned persons. The Contractor further declares that the Contractor is not a person connected with the Company's consultants, sub-contractors, suppliers, manufacturers and/or agents, if any, and acknowledges that the validity of this Contract is based on this declaration.

85.2 The Contractor unconditionally and irrevocably undertakes to forthwith notify the Company if any of the above relationship or connection is established at any time in the future during the subsistence of this Contract, failing which the Company shall, without incurring any liability, be entitled to immediately terminate this Contract by serving a written notice to that effect on the Contractor.

85.3 The Contractor shall procure its partners, joint-venture partners/parties, related companies, consultants, sub-contractors, suppliers, manufacturers and/or agents as referred to in in clause 85.1 above to notify the Company in respect of any relation to or in connection with the Company failing which the Company shall, without incurring any liability, be entitled to immediately terminate this Contract by serving a written notice to that effect on the Contractor.

85.4 For the purpose of this clause:-

(a) a person shall be deemed connected with another person if the relationship or

connection falls within the definition and meaning provided under Section 197 of the Companies Act 2016 (including any modification, re-enactment or replacement thereof or any legislation or legislative provision(s) made in substitution therefor); and

- (b) “related companies” shall mean a company that is related to another company within the definition and meaning provided under Section 7 of the Companies Act 2016 (including any modification, re-enactment or replacement thereof or any legislation or legislative provision(s) made in substitution therefor).

67. A new clause 86.0 shall be incorporated as follows:-

86.0 PROVISION OF DOCUMENTS AND AUDIT

86.1 The Contractor shall permit the Company to have access to, examine, inspect and/or audit all information, reports, documents, correspondence, data, files, register, invoices, records and any other documents pertaining to the Works for any purpose as the Company may require including for the use in court proceeding(s) and/or for official reporting to Jabatan Audit Negara and/or other relevant authorities, and the Contractor shall render all assistance as may be necessary to facilitate such access, examination, inspection and/or audit by the Company and/or any representatives authorized by the Company.

86.2 The Contractor shall promptly and in any event, no later than seven (7) days from the date of the Company’s request, provide the Company with all information, reports, correspondence, data, files, register, invoices, records and any other documents pertaining to the Works as the Company may request for any reason or purpose whatsoever.

68. A new clause 87.0 shall be incorporated as follows:-

87.0 NON-EXCLUSIVE CONTRACT

The award of the Works shall be a non-exclusive contract and the Company reserves the right to engage any contractors, consultants, advisers or any other persons to perform the Works or to undertake any work or perform similar or identical to the Works pursuant to this Contract.

69. A new clause 88.0 shall be incorporated as follows:-

88.0 RETROSPECTIVITY

Where the performance of the Works has commenced prior to the date of this Contract, the provisions of this Contract shall apply retrospectively to the Date for Possession of the Works.

70. A new clause 89.0 shall be incorporated as follows:-

89.0 RELIANCE

89.1 The Contractor acknowledges that the Company has engaged the Contractor in full reliance upon the expertise, skill, experience and ability of the Contractor to perform the Works in accordance with the terms of this Contract. The Contractor shall carry out the Works promptly and competently with diligence and to exercise the skill expected of a reputable, properly qualified, experienced and highly skilled contractor engaged in providing similar works and, the Contractor shall compensate the Company in respect of the direct consequences of neglect, lack of skill or misconduct by the Contractor, its servants, agents and/or sub-contractors.

89.2 Without prejudice to clause 89.1, the Contractor shall at all times act in the best interest of the Company and shall take all necessary steps and precautions consistent with sound industry practice, good principles and accepted professional standards.

89.3 The Contractor warrants to the Company that:-

- (a) all designs, materials, documents, methods and other matters proposed or specified by the Contractor under this Contract are suitable in all respects for their intended purposes;
- (b) it has the right and authority to possess and use all information and material provided by it to the Company under this Contract;
- (c) all designs, materials, documents, methods and other matters or thing proposed or specified by the Contractor for the Works under this Contract comply with all applicable laws, legislations, subsidiary legislations, by-laws, rules and regulations;
- (d) the Works will be executed using proven good practice, systems and technology and accepted professional standards, codes of practice and regulations which are applicable or are reasonably foreseeable by an experienced contractor to be likely to be applicable during the execution and/or supervision of the Works and which are consistent with the requirements of this Contract, whether expressed or reasonably to be inferred therefrom; and
- (e) it is fully experienced in the design, supply, build, transportation, delivery to Site, construction, erection and installation of works of a similar scope, complexity, size and technical sophistication as the Works and that it possesses the skills and expertise to commensurate with that experience which it will make available to the Company.

Without prejudice to the generality of the foregoing, in carrying out the Works and the co-ordination and planning thereof, the Contractor warrants that:-

- (i) the personnel to be employed by the Contractor in or about the performance of the Works will be properly skilled, competent and experienced having regard to the nature, scope and extent of the project and/or the Works;
- (ii) it will perform its obligations under this Contract in an expeditious manner and shall at all times provide such supervision and personnel of sufficient numbers and quality to maintain progress so as to complete the Works by the Date for Completion;
- (iii) the Works when completed will, consistent with the use of the said expertise, experience, ability and skill, meet the intents and objectives of the main contract works of the project (where applicable) and this Contract; and
- (iv) it has performed and will continue to perform its obligations under this Contract in accordance with all applicable laws of Malaysia from time to time in force and with all directions, orders, requirements and instructions whatsoever given by any authority competent to do so under any applicable laws.

89.4 The Parties agree that the principal objective of this Contract is the economic and timely and successful completion of the Works. As an experienced contractor upon whose skill and expertise in the planning, programming and co-ordination of its obligations and activities hereunder the Company is relying upon, the Contractor further represents and warrants:-

- (a) that it recognises that the process of producing, optimising, developing and finalising the design of the Works pursuant to clause 22 of this Contract will require the closest consultation, co-operation, communication and co-ordination between itself, the related works contractor and the Company. The Contractor further recognises that it will be necessary for the Parties to develop and agree on systems, methods and procedures to enable that process to be carried out;
- (b) that it fully appreciates the importance of the integration and co-ordination of the supervision of the Works in accordance with the requirements of this Contract and that as a consequence:-
 - (i) the Contract Sum is inclusive of the costs of proper compliance with the Contractor's obligations hereunder; and
 - (ii) the Contractor has scheduled and will continue to schedule the design pursuant to clause 22.0 of this Contract and supervision of the Works in such a way as to ensure that the completion date is achieved.

89.5 The Contractor is and shall remain fully responsible for the design pursuant to clause 22.0 of this Contract, and construction of the Works in accordance with this Contract and no action or failure to act by the Company shall in any way relieve the Contractor of its obligations under this Contract nor shall the same operate as any waiver of due performance by the Contractor nor restrict, debar, exclude or waive any claims, rights or actions whatsoever by the Company for any breach of any such obligation.

- 89.6** The Contractor is responsible for initiating and implementing the production, optimisation, development and finalisation of the design of the Works pursuant to clause 22.0 of this Contract and for ensuring a regular flow of design documentation to the Company in a timely, orderly, logical and consistent manner and so as not to delay or disrupt the regular progress of the design development or the commencement of execution of any part of the Works or the regular progress of the execution of the Works or any part thereof. The Contractor shall not without the consent of the Company do or omit anything which might vary the cost of the Works or the period for its construction.
- 89.7** If there shall be any discrepancy, ambiguity, divergence, inconsistency, deficiency, or design pursuant to clause 22.0 of this Contract or construction impracticality, or omission from in or between any of the design documentation or there shall be any failure by the Contractor to submit the design to the Company at any stage in due time or otherwise in accordance with the requirements of this Contract, then the Contractor shall bear the cost of resolving or rectifying the design. The Contractor shall also bear the cost of removal, substitution remedial works, and/or re-execution of any work, or materials which as a result of any such discrepancy, ambiguity, divergence, inconsistency, deficiency, or design or construction impracticality, or omission are not in accordance with this Contract and of all costs and losses occasioned thereby.
- 89.8** Any information or document given or forwarded by the Company to the Contractor shall not relieve the Contractor of its obligations under this Contract. The Company gives no warranty for the information or documentation either as to the accuracy or the sufficiency or as to how the same should be interpreted or otherwise howsoever and the Contractor shall make use of and interpret the same entirely at its own risk.

71. A new clause 90.0 shall be incorporated as follows:-

90.0 PERSONAL DATA PROTECTION ACT 2010

Where applicable, the Parties hereby agree to the salient provisions on Personal Data Protection Act 2010 (PDPA) as follows:-

- (a) in addition to the obligations of confidentiality, each Party agrees and undertakes to the other during the duration of this Contract that it shall comply with the provisions of the Personal Data Protection Act 2010 (hereinafter referred to as the “**Act**”) and its regulations, by-laws, codes of practice and/or any regulatory requirements pertaining to the Act that may be issued from time to time by the relevant governmental or regulatory authority in Malaysia in connection with any obligation under this Contract which requires that Party to process personal data. For clarification, any reference of processing of personal data shall be as defined under Section 4 of the Act and in accordance with the requirements of Part II of the Act in relation to the personal data protection principles.
- (b) where required under the Act, each Party shall obtain the necessary consent from the other Party in order to allow that Party to process the personal data of the other Party.
- (c) in addition to clause 90.0(b) above, each Party shall also:-

- (i) process such data only in accordance with the other Party's lawful instructions; and
- (ii) take appropriate technical and organizational measures against unauthorized or unlawful processing of such data and against accidental loss or destruction of or damage to data.

72. A new clause 91.0 shall be incorporated as follows:-

91.0 BRIBERY AND CORRUPT GIFTS

- 91.1** The Contractor shall not offer or give or agree to give or cause to be offered or given to any person who is the Company's servant or agent, any gift or consideration of any kind as an inducement or reward to show favour in obtaining or execution of this Contract which shall be deemed to be a bribery or corrupt gift from the Contractor to such person in which event the Company is entitled to immediately terminate this Contract without incurring any liability to the Contractor and without prejudice to the Company's other rights and remedies.
- 91.2** In the event the Contractor being informed or made aware of such bribery or corrupt gift being offered or given or caused to be offered or given or agreed to be given or caused to be offered or given by the Contractor to such person, the Company shall accordingly notify the same to the Contractor in writing without the necessity of conducting its own investigation or specifying the source of the information. Thereafter, the onus shall be on the Contractor within seven (7) days from the date of receipt of the notice to show cause in writing to the satisfaction of the Company as to why this Contract should not be terminated on grounds of the said bribery and corrupt gifts, failing which the Company in its absolute discretion may immediately terminate this Contract as if effected under clause 91.1.
- 91.3** If at any time from the acceptance of the tender, the Contractor shall have committed an act for which it is subsequently arrested or charged for an offence under the Malaysia Anti-Corruption Commission Act 2009 (hereinafter referred to as "**MACC Act**"), or of dishonesty or an offence of like nature under any law for the time being in force, the Company may immediately terminate this Contract as if effected under clause 91.1.
- 91.4** Any act or attempt to corruptly offer or give, solicit or receive any gratifications to and from any person in connection with this Contract is a criminal offence under the MACC Act. If any person offers or gives any gratification to any servant of the Company, the servant shall at the earliest opportunity thereafter lodge a report at the nearest office of the Malaysia Anti-Corruption Commission or police station. Failure to do so is an offence under the MACC Act. Without prejudice to any other actions, disciplinary action against the servant of the Company and blacklisting of the contractor or supplier may be taken if the Parties are involved with an act of corruption under the MACC Act. Any contractor or supplier who makes a claim for payment in relation to this procurement although no work was carried out or no goods were supplied or no services rendered in accordance

with the specifications and any servant who certifies the claim commits an offence under the MACC Act.

73. A new clause 92.0 shall be incorporated as follows:-

92.0 E-COMMUNICATION AND SIGNATURE

The Parties hereby consent to electronic communication and electronic signature being equal to signatures inked on paper. The Parties acknowledge and agree that electronic communication is an acceptable method of communicating information from a Party to the other Party without having to communicate the same on paper. Any communication and subsequent electronic signature that has been sent or signed in the past, present or future between the Parties will hold the same in full force and effect as a document signed and inked on paper.

74. A new clause 93.0 shall be incorporated as follows:-

93.0 WITHDRAWAL FEES

In the event that the Contractor fails, abandons and/or withdraws in performing the Works after the acceptance of this Contract, the Contractor shall be liable to pay a withdrawal fee at the rate and in the manner as described in the Appendix 1 (hereinafter referred to as the "Withdrawal Fee"). The Parties hereby acknowledge that the acceptance by the Company of such Withdrawal Fee shall be without prejudice to the other rights and remedies of the Company under this Contract.

75. A new clause 94.0 shall be incorporated as follows:-

94.0 ENTIRE AGREEMENT

This Contract shall constitute the entire agreement between the Parties hereto and shall supersede all previous agreements, arrangements, understandings whatsoever on the subject matter thereof.

76. This Air Selangor Addendum shall be taken, read and construed as an essential part of this Contract. In the event of any conflict or discrepancy, the terms and conditions contained in this Air Selangor Addendum shall supersede and take precedence over the terms and conditions of this Contract.

(B) APPENDIX TO THE CONDITIONS OF CONTRACT PWD FORM 203A (REV. 1/2010)

1. Substitute clause 4.1(a) with the new clause 4.1(a) as follows:-

Clause 4.1(a)

Officer(s) empowered to approve variations according to the limits as set out in the Company's Procurement Manual – **Approving Authority of the Company in accordance with the financial authority limit.**

2. Substitute clause 4.1(b) with the new clause 4.1(b) as follows:-

Clause 4.1(b)

Officer(s) empowered to take action on behalf of the Company in respect of:-

Clauses 51, 52, 53, 58 and 66 – **Approving Authority of the Company in accordance with the financial authority limit as set out in the Company's Procurement Manual.**

3. Substitute clause 13 with the new clause 13 as follows:-

Clause 13

Performance Bond / Performance Guarantee Sum

Amount of Guarantee – **RM** _____

Guarantor Bank / Banker's Cheque / Retention Sum / Financial Company - **To be confirmed**

Guarantee No. - **To be confirmed**

Validity of the Performance Bond – _____ **until** _____

4. Clause 21.2 of the Appendix to the Conditions of Contract shall not be applicable.

5. Substitute clause 28.6 with the new clause 28.6 as follows:-

Clause 28.6

Period for honouring payment certificate (if none stated, then within sixty (60) days from the issuance of the Certificate) – _____

6. Clause 34.4 of the Appendix to the Conditions of Contract shall not be applicable.

7. Substitute clauses 5.3, 5.4, 15.3, 17.3(b) and 18.2 with the new clauses 5.3, 5.4, 15.3, 17.3(b) and 18.2 as follows:-

Clauses 5.3, 5.4, 15.3, 17.3(b) and 18.2

Percentage of on-cost charges – _____

8. Substitute clauses 48.2 and 56.2(d) with the new clauses 48.2 and 56.2(d) as follows:-

Clauses 48.2 and 56.2(d)

Percentage of on-cost charges – _____

9. A new clause 93.0 shall be incorporated as follows:-

Clause 93.0

Withdrawal Fees – _____

(C) ADDENDUM NO. 1 TO THE CONDITIONS OF CONTRACT PWD FORM 203A (REV. 1/2010)

1. Substitute clause 28.5 with the new clause 28.5 as follows:-

28.5 Within a number of days as stated in Appendix (or if none stated then within sixty (60) days of the issue of any such interim payment certificate), the Company shall make a payment to the Contractor as follows:-

(a) where the Performance Bond is in the form of a Banker's Guarantee, payment shall be made on the amount certified as due to the Contractor in the said interim payment certificate; or

(b) where the Performance Bond is in the form of a Performance Guarantee Sum, payment of ninety percent (90%) on the amount certified as due to the Contractor shall be made with the remaining ten percent (10%) being retained by the Company as a Performance Guarantee Sum. PROVIDED THAT when the sum retained is equivalent to five percent (5%) of the Contract Sum then in any subsequent certificate, payment shall be made on the full amount certified as due to the Contractor.

2. Substitute clause 40.2 with the new clause 40.2 as follows:-

40.2 Without prejudice to the Company's right to terminate this Contract, when the C.A. issues the Certificate of Non-Completion, the Company shall be entitled to recover from the Contractor, Liquidated and Ascertained Damages calculated at the rate stated in Appendix from the date of the failure to complete the work pursuant to clause 40.1 to the date of the Practical Completion or the date of termination of this Contract. Without prejudice to any other method of recovery, the C.A. shall be entitled to deduct such Liquidated and Ascertained Damages from any money due or to become due to the Contractor or shall be recovered from the Performance Bond or as a debt due from the Contractor under this Contract or any other contracts to which the Company and the

Contractor are Parties thereto. The C.A. shall inform the Contractor in writing of such deduction.

(D) ADDENDUM NO.2 TO THE CONDITIONS OF CONTRACT PWD FORM 203A (REV. 1/2010)

Addendum No. 2 to the Conditions of Contract PWD Form 203A (Rev. 1/2010) shall not be applicable.

(E) ADDENDUM NO. 3 TO THE CONDITIONS OF CONTRACT PWD FORM 203A (REV. 1/2010)

1. Substitute clause 13.1 with the new clause 13.1 as follows:-

13.1 The Contractor shall, on the date of the possession of Site, provide a Performance Bond or Performance Guarantee Sum, as the case may be, substantially in the form as in Appendix issued by an approved licensed bank or financial institution incorporated in Malaysia in favour of the Company for a sum equivalent to five percent (5%) of the total Contract Sum as specified in Appendix to secure the due performance of the obligations under this Contract by the Contractor. The Performance Bond shall remain valid and effective until the expiry of the Defects Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is the later.

2. Substitute clause 13.3 with the new clause 13.3 as follows:-

13.3 The Contractor may opt for a Performance Bond in the form of Performance Guarantee Sum in lieu of the Bank Guarantee as specified in clauses 13.1 and 13.2 hereof whereby deductions of ten percent (10%) shall be made from the first interim payment and subsequent interim payments until the total amount deducted aggregate to a sum equivalent to five percent (5%) of the Contract Sum. The amount deducted shall be retained by the Company up to the expiry of the Defects Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is the later.