

## TERMS AND CONDITIONS FOR PURCHASE ORDER (WORKS)

Document No. (Purchase Order): \_\_\_\_\_

Document No. (Letter of Appointment): *To insert Document No. for Letter of Appointment, if applicable* \_\_\_\_\_

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions shall, unless the context otherwise requires, have the meaning respectively assigned to them hereunder:-

"**Business Day(s)**" means any day (except Saturday, Sunday or any statutory public holiday) on which banks are generally open for business in Selangor and Federal Territories of Kuala Lumpur and Putrajaya;

"**Certificate of Practical Completion**" means the Certificate of Practical Completion to be issued by the C.A. upon completion of the Works by the Contractor to the Company's satisfaction and in accordance with the provisions of this PO;

"**Commencement Date**" means the commencement date of the Works as stipulated in this PO;

"**Company**" or "**Purchaser**" means **Pengurusan Air Selangor Sdn. Bhd. (Registration Number: 201401006213)** and includes its successors-in-title and assigns;

"**Contract Period**" means the period commencing from the Commencement Date and expiring on the Expiry Date, or such contract period as stipulated in this PO, as may be varied or extended by the Company in writing;

"**Contract Sum**" or "**Purchase Order / Contract Sum**" means the total consideration price for the Works as specified in this PO which shall, unless otherwise stipulated therein, be a fixed amount;

"**Contractor**" or "**Vendor**" means the person named as a contractor in this PO and includes its successors-in-title and permitted assigns;

"**Cover Page PO**" means the cover page forming part of this PO (if applicable);

"**DLP**" means the defects liability period as described in Clause 12.1 of this PO;

"**Expiry Date**" means the expiry date as stipulated in this PO;

"**Extension of Time and Suspension of Works**" shall have the meaning as described in Clause 9 of this PO;

"**LAD**" means the liquidated and ascertained damages payable by the Contractor to the Company in accordance with Clause 10 of this PO;

"**Movement Control Order**" means the regulations, orders and other subsidiary legislation promulgated under the Prevention and Control of Infectious Diseases Act 1988 [Act 342] and any other guidelines, procedures and practices issued by the relevant authority from time to time which restricts or impose conditions on movement;

**"Party"** or **"Parties"** means the Company and the Contractor may individually be referred to as a "Party" or collectively as the "Parties";

**"PO"** means the Cover Page PO (if applicable) and these Terms;

**"Related Works Contractors"** means all contractors and other parties appointed, engaged or nominated by the Company in connection with the Works and/or to carry out any work at the Site(s) and/or its surrounding areas;

**"Site(s)"** means the land, property, building, structure and any other place on, over, under or through which the Works are to be performed and/or delivered and any other lands, properties, buildings, structures or places provided or approved by the Company for working space or any other purposes as may be specifically designated by the Company as forming part of the Site(s);

**"Specifications"** means any and all specifications, descriptions, drawings, schedules, technical documents and requirements as described in this PO;

**"Terms"** means these terms and conditions which include all annexures, appendices, attachments and documents attached hereto and/or referred to herein as may be amended, modified or supplemented from time to time, and shall include any document which amends, modifies or supplements it/them or is entered into, made or given pursuant to or in accordance with its/their terms;

**"Variation"** shall have the meaning as described in in Clause 8.2 of this PO;

**"Variation Order"** means an order that may be issued by the Company to the Contractor in respect of Variation in the scope of Works;

**"Works"** means the scope of works as described in this PO in accordance with the design, scope, Specifications, quality and quantity as set out in this PO; and

**"Works Programme"** shall have the meaning as described in Clause 11.1(a) of this PO.

- 1.2 Except where the context otherwise requires or otherwise defined herein, words and expressions defined in this PO shall have the same meanings when used or referred to herein.
- 1.3 Reference to statutes including reference to any provisions, sections, articles or paragraphs shall include any such modification, consolidation, re-enactment or replacement thereof and/or any legislation or legislative provisions, sections, articles or paragraphs substituted therefor, and all regulations, subsidiary legislations, by-laws, guidelines, practice notes, codes of practice, statutory instruments or orders issued thereunder.
- 1.4 Any reference to any agreement, instrument or document shall include references to such agreement, instrument or document as amended, novated, supplemented, varied or replaced from time to time.
- 1.5 Words importing the singular shall also include the plural and vice-versa where the context so requires.
- 1.6 Words denoting the masculine gender shall include the feminine and the neuter genders and vice versa.
- 1.7 References to a person shall be construed as including references to any individual, firm, partnership, body corporate, unincorporated association or body of persons, government, state or agency of a state or joint venture.

- 1.8 Unless otherwise stipulated, references to clauses and appendices are to clauses and appendices to these Terms.
- 1.9 Headings to clauses and appendices of these Terms are inserted for convenience only and shall not affect the construction or interpretation of these Terms.
- 1.10 Where a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have the corresponding meaning.
- 1.11 If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day and if any period of time falls on a day which is not a Business Day(s), then that period is to be deemed to only expire on the next Business Day(s).
- 1.12 Any reference to a date or time is a reference to that date or time in Malaysia.
- 1.13 The term "month" means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it commences or, where there is no date in the next calendar month numerically corresponding as aforesaid, the last day of such calendar month, and "months" and "monthly" shall be construed accordingly.
- 1.14 References to "law" or "laws" include common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure of Malaysia or any present or future directive, regulation, request or requirement.
- 1.15 References to documents, records or other information include paper, electronically digitally or magnetically stored data, microfilm and information in any other form or format and references to "writing" or "written" include facsimile and any other method of reproducing words in a legible and non-transitory form.
- 1.16 The words "include", "includes", "including" and "included" shall be construed without limitation unless inconsistent with the context.
- 1.17 No rule of construction applies to the disadvantage of the Company, being the party responsible for the preparation of this PO.

## **1. APPLICATION OF THESE TERMS**

- 1.1 This PO issued by the Company shall form the terms and conditions of the Works. Any additional or different terms in the Contractor's acknowledgment of acceptance, quotation, correspondence or any other documents of the Contractor are deemed rejected and shall not be applicable if it is not stated in these Terms.
- 1.2 Where special conditions are stated or attached to this PO, those conditions shall apply equally with these Terms, except where there is any inconsistency between these Terms and the special conditions, then the special conditions shall prevail.
- 1.3 In the event of any ambiguity, inconsistency or contradiction between any provision of these Terms and the appendices or other attachments hereto, then the said provision shall, unless otherwise determined by the Company, take precedence and prevail over the appendices or other attachments hereto.

## **2. SCOPE OF WORKS**

- 2.1 The Contractor shall perform the Works as described in this PO in accordance with the scope, Specifications and quality as set out in these Terms.

2.2 The Contractor represents and warrants that it knows and understands the nature and scope of Works as well as the general and local conditions and other matters which could affect works and the performance of the Works under this PO.

2.3 The failure of the Contractor to become knowledgeable about the conditions or to discover the matters that could affect the Works shall not relieve the Contractor from its obligations under this PO.

### 3. **CONTRACT ADMINISTRATOR**

3.1 The Contract Administrator ("C.A.") for this PO shall be the **Head of \_\_\_\_\_ Department** and his successors in office.

3.2 The C.A. shall be entitled to delegate all or any of his powers or functions under this PO in respect of the Works, as may be informed in writing to the Contractor, provided that such delegation shall not prevent the C.A. from exercising the powers or performing the functions delegated.

### 4. **CONTRACT SUM**

4.1 The Contract Sum shall be inclusive of sales tax, services 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 with 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.

4.2 In the event of any Variation Order affecting the Contract Sum which has been approved or agreed by the Company in accordance with Clause 8 of this PO, the Contract Sum shall be adjusted accordingly.

### 5. **COMPLETION OF WORKS**

5.1 The Contractor shall complete the entire Works on or before the Expiry Date or such extended time as may be allowed under Clause 9 of this PO.

5.2 If the Contractor considers that the Works have achieved its practical completion, the Contractor shall notify the C.A. in writing to that effect.

5.3 Within 14 days of receipt of such written notice, the C.A. shall carry out testing / inspection of the Works. Pursuant to such inspection / testing, the C.A. shall:-

(a) issue the Certificate of Practical Completion to the Contractor if in his opinion the whole Works have reached the practical completion and have satisfactorily passed any inspection / test carried out by the C.A. The date of such completion shall be certified by the C.A. and such date shall be considered as the date of the commencement of the DLP as provided in Clause 12.1 of this PO; or

(b) give instruction in writing 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.

### 6. **SUBMISSION OF CLAIMS AND PAYMENT**

6.1 All submission of claims by the Contractor shall be based on the Works properly delivered and executed and in accordance with the schedule of payment as approved by the Company in accordance with such format, policy and procedures as may be stipulated by the Company from time to time in accordance with these Terms.

- 6.2 In the event that the Contractor is entitled for lump sum payment as described in this PO, all submission of claims by the Contractor shall be based on the Works properly completed, delivered and executed in accordance with these Terms.
- 6.3 The Contractor is required to submit its progress claims for the Works delivered together with the breakdown, records, invoices, delivery order (duly acknowledged by the Company's authorized personnel), Certification of Works and all other relevant supporting documents as may be required in accordance with the Submission Checklist of Claims and Payment as set out in **Appendix 1** of this PO.
- 6.4 Any claim or invoice from the Contractor shall be submitted to the Invoice Registration Unit at Finance and Strategy Department and will only be processed for payment if it is assigned a Registration Number by the Invoice Registration Unit ("**IRU**") via an IRUAcknowledgement Slip as set out in **Appendix 2** of this PO. The Contractor shall ensure that all invoices submitted do not exceed the actual amount due and payable to the Contractor.
- 6.5 Subject to Clauses 7.4, 7.6, 7.8 and 7.9 of this PO, payment for such progress claims or invoices will be made within 60 days from the date of the Certification of Works. The Certification of Works referred herein shall mean the certificate issued by the C.A. in respect of such portion of the Works successfully delivered by the Contractor in accordance with this PO ("**Certification of Works**").
- 6.6 The Contractor will be paid such sum as shall be verified and approved by the C.A. No payment shall be made unless the same has been verified and approved accordingly.
- 6.7 Payments made by the Company shall not constitute an admission by the Company as to the performance by the Contractor of its obligations under this PO and in no event shall any such payment affect the warranty obligations of the Contractor. Any payment withheld shall be without prejudice to any other rights or remedies available to the Company.
- 6.8 The Company shall not be liable to pay in accordance with Clause 7.5 of this PO if the Contractor, its sub-contractors, agents, employees or servants is in breach or in default of any of these Terms.
- 6.9 Notwithstanding any provision contained in this PO, the Company shall be entitled to withhold any payment or monies due to the Contractor in the event of a dispute or investigation into a dispute pursuant to this PO provided that the undisputed amount, if any, shall be paid by the Company in accordance with Clause 7.5 of this PO. Following the resolution of the dispute or investigation by the Company, any such amount agreed upon or determined to be payable by the Company (less any undisputed amount paid, if any) shall be paid to the Contractor within 60 days of such resolution, agreement or determination.
- 6.10 In the event the Contractor fails to pay its sub-contractors or suppliers for works or services provided by them, and where the Company is satisfied that such payments are due and owing by the Contractor, the Company shall be entitled to make all payments directly to the sub-contractors or suppliers for all amounts which may become due to them. The amount so paid directly to the sub-contractors or suppliers shall be deemed to be payment of the sums due from the Company to the Contractor and shall be deducted from any sum due or which may become due from the Company to the Contractor and of which the Contractor may no longer claim against the Company. For purposes of this PO, all sub-contractors, specialists, suppliers, tradesmen and others executing any works or services, or supplying any materials or goods to the Contractor in respect of the Works are herein referred to as "the sub-contractors" or "the suppliers". Nothing herein contained shall create any obligation or privity of contract between the Company and the sub-contractors and/or the suppliers or render the Company liable to pay any of them. The Contractor shall fully and effectively indemnify and keep the Company harmless from any claims, demands, actions, proceedings and/or any other liabilities whatsoever against the Company which may arise therefrom.

## **7. VARIATION**

- 7.1** The Company may, at any time during the continuance of this PO issue instructions requiring variations in the form of Variation Order. No variation required by the Company shall vitiate this PO. Upon the issuance of such Variation Order, the Contractor shall carry out such variations under these Terms.
- 7.2** For the purposes of this Clause 8, "Variation" shall mean a change in this PO which necessitates the alteration or modification of the design, scope, Specifications, quality and/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 Works;
  - (b)** the alteration of the kind or standard of any of the materials to be used in the Works; or
  - (c)** the removal from the Site(s) of any Works executed or materials brought thereon by the Contractor for the purposes of the Works.
- 7.3** Any Variation made under Clause 8 shall not relieve the Contractor from its obligations under Clause 8 of this PO.
- 7.4** All Variation instructed in writing by the Company in accordance with this Clause 8 shall be measured and valued in the method and manner as may be determined by the Company.
- 7.5** The amount of Variation shall be certified by the C.A. and added to or deducted from the Contract Sum, and the amount of the Contract Sum shall be adjusted accordingly.
- 7.6** The application of this Clause 8 shall in no way permit the Contractor to suspend or delay its obligation to perform the Works or any part thereof pending the Company's review and/or valuation of the authorized Variation.

## **8. EXTENSION OF TIME AND SUSPENSION OF WORKS**

- 8.1** Upon it becomes reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice to the Company as to the causes of delay and relevant information with supporting documents enabling the Company to form an opinion as to the cause and calculation of the length of the delay. If in the opinion of the Company, the completion of the Works is likely to be delayed or has been delayed beyond the Expiry Date or beyond any extended Expiry Date previously fixed under this Clause 9 due to any or more of the following events:-
- (a)** force majeure as provided under Clause 18 of this PO;
  - (b)** the Contractor not having received in due time any instruction or approval from the Company necessary for the execution of the Works under these Terms PROVIDED THAT the Contractor shall have specifically applied in writing on a date which having regard to the Expiry Date or to any extension of time then fixed under this Clause 9, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
  - (c)** delay on the part of specialists, artists, tradesmen, suppliers or other contractors engaged by the Company in executing any work not forming part of the Works which affect the performance of the Works; or
  - (d)** the Contractor's inability for reason beyond its control and which it could not have foreseen at the date of submission by the Contractor of the quotation or pre-qualification

for the Works to secure such materials as are essential to the proper carrying out of the Works,

then, the Company may if it is of the opinion that the extension of time should be granted and to the extent that it 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 reasonable extension of time for completion of the Works by the Contractor.

PROVIDED THAT all such delays are not due to any act, negligence, default or breach by the Contractor and/or its sub-contractors and/or their employees, servants and/or agents and/or the employees, servants and/or agents of such sub-contractors of the Contractor.

PROVIDED ALWAYS that the Contractor has taken all reasonable steps to avoid and reduce or mitigate such delay and shall do all that may reasonably be required to the satisfaction of the Company 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 Company are necessitated by or intended to remedy any default of or breach by the Contractor.

**8.2** Notwithstanding any provision of this PO, the Company may at any time instruct the Contractor to suspend part or all of the Works. In this connection, the Parties agree that:-

- (a) 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;
- (b) during the suspension period, the Contractor shall continue to perform its obligations under this PO, which are not affected by the instruction to suspend, including the obligation to effect and maintain insurances;
- (c) the Company may instruct the Contractor to resume the Works at any time thereafter and upon receipt of such instruction, the Contractor shall resume the Works and the Parties shall jointly examine the Works affected by the suspension.

**8.3** The Contractor shall make good any deterioration or defect in or loss of the Works which has occurred during the suspension. The Contractor undertakes to take all necessary actions to mitigate the expenses incurred.

## **9. LIQUIDATED AND ASCERTAINED DAMAGES**

**9.1** In the event that the Contractor fails to complete the Works or any part thereof on or before the Expiry Date or within any extension of time as may be approved in writing by the Company, the Contractor shall be liable to pay to the Company the LAD at the rate and manner as described in **Appendix 3** of this PO.

**9.2** The LAD shall become immediately payable to the Company upon the Company's written notice to the Contractor and may be deducted from any monies payable to the Contractor under this PO. The Company shall be entitled to claim for payment of the LAD under the Performance Bond (if applicable) if the Contractor fails to pay the LAD within the period stipulated in this Clause 10.

**9.3** Notwithstanding the Company's rights for LAD under this Clause 10, the Company:-

- (a) may exercise its right to terminate this PO pursuant to Clause 15 of this PO;
- (b) reserves its right to appoint any other party/parties to undertake or provide the Works or

any part thereof and all additional costs and expenses incurred by the Company in respect thereof shall be a debt due and shall be borne by the Contractor.

- 9.4** The LAD shall be deemed to be a reasonable and a genuine pre-estimate of loss which the Company will suffer in the event that the Contractor fails to complete the Works or any part thereof in accordance with the Works Programme or within any extension of time as may be approved in writing by the C.A. The Contractor agrees to pay the Company the said amount (s) if the same becomes due without the need for the Company to prove its actual damage or loss.
- 9.5** The payment or deduction of such LAD shall not relieve the Contractor from its obligation to complete the Works or from any of its obligations and liabilities under this PO.

## **10. WORKS PROGRAMME**

- 10.1** Within 14 days from the receipt of this PO from the Company, the Contractor shall submit to the Company for its approval:-

- (a)** a detailed works programme for carrying out of the Works ("**Works Programme**") in such form and contents as determined by the Company showing details of the activities and sequences for the Works so as to enable the Company 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.

- 10.2** The Company shall within 7 days after receipt of the Works Programme:-

- (a)** approve the Works Programme in writing; or
- (b)** reject the Works Programme in writing with reasons and/or request modifications; and/or
- (c)** request the Contractor to supply further information to clarify or substantiate the Works Programme or to satisfy the Company as to its reasonableness having regard to the Contractor's obligations under this PO,

PROVIDED THAT, if none of the above actions are taken within the period of 7 days, the Company shall be deemed to have approved the Works Programme as submitted.

- 10.3** The Contractor shall, upon receipt from the Company any request under Clauses 11.2(b) or 11.2(c) of this PO, resubmit a modified Works Programme or provide further information as requested.
- 10.4** If at any time it should appear to the Company that the actual progress of the Works does not conform to the approved Works Programme, the Contractor shall produce, a revised Works Programme showing the necessary modifications to the approved Works Programme to ensure completion of the Works within the time for completion provided in these Terms or pursuant to any extension of time as provided in these Terms (if applicable).
- 10.5** The submission to and approval by the Company of such revised Works Programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under this PO.

## **11. DEFECTS LIABILITY PERIOD**

- 11.1** The DLP shall be for a period of \_\_\_\_\_ months from the date stipulated in the Certificate of Practical Completion.



- 11.2 At any time during the DLP, any defect, imperfection, shrinkage, crack or any other fault or damage whatsoever which may appear and which are due to materials, goods, workmanship or services which is/are not in accordance with this PO shall be notified by the Company in writing to the Contractor who shall within the time specified therein by the Company, make good, rectify, repair and/or replace such defects, imperfections, shrinkages, cracks or any other faults or damage whatsoever at the Contractor's own costs and expense. The Contractor shall complete all such works with due expedition and diligence within such time as may be specified by the Company.
- 11.3 If the Contractor fails to make good, rectify, repair and/or replace any defect, imperfection, shrinkage, crack or any other fault or damage whatsoever within the time specified or if no time is specified, within a reasonable time, the Company may instruct another third party contractor to make good, rectify, repair and/or replace such defects, imperfections, shrinkages, cracks or any other faults or damage whatsoever and the Contractor shall fully and effectively indemnify the Company from and against any and all costs, expenses, damages, claims, demands or liabilities that it may incur in connection therewith. The Company may deduct such sums as a debt from any monies payable or due to the Contractor under this PO.
- 11.4 If any defect, imperfection, shrinkage, crack or any other fault or damage whatsoever be such that, in the opinion of the Company, it shall be impracticable or inconvenient for the Company to have the Contractor to remedy the same, the Company shall ascertain the diminution in the value of the Works due to the existence of such defects, imperfections, shrinkages, cracks or any other faults or damage and deduct the amount of such diminution from the sum remaining to be paid to the Contractor or as a LAD.
- 11.5 When in the opinion of the Company the Contractor has made good the defects, imperfections, shrinkages, cracks or any other faults or damage whatsoever which he is required to make good under Clause 12.2 of this PO, the Company will 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, cracks or any other faults or damage. The said certificate shall be referred to as the 'Certificate of Completion of Making Good Defects'.

## 12. PERFORMANCE BOND

- 12.1 The Contractor shall deliver to the Company a performance bond in the amount and which shall remain in full force for the guaranteed period as stipulated in **Appendix 4** of this PO in the form of an irrevocable, unconditional bank guarantee payable on demand ("**Bank Guarantee**") from a financial institution in Malaysia acceptable to the Company.
- 12.2 The Contractor may opt for Performance Bond in the form of Performance Guarantee Sum in lieu of the Bank Guarantee as specified in Clause 13.1 of this PO whereby deductions of 10% shall be made from the first interim payment and subsequent interim payments until the total amount deducted aggregate to a sum equivalent to 5% of the Contract Sum. The amount deducted shall be retained by the Company up to the expiration of the DLP or the issuance of the Certificate of Making Good Defects, whichever is the later.

## 13. INSURANCE, LEVIES AND CONTRIBUTION

- 13.1 Without prejudice to the Contractor's liability to indemnify the Company pursuant to Clause 16 of this PO, the Contractor shall at its own costs and expenses effect and maintain throughout the Contract Period or the extended Contract Period (if applicable), the insurances as stipulated in **Appendix 5** of this PO ("**Insurances**") and shall procure the Company to be endorsed as loss payee.
- 13.2 The Contractor is required to furnish to the Company a certified true copy of each of the Insurances undertaken by the Contractor pursuant to Clause 14.1 of this PO within 14 days

prior to the Commencement Date.

- 13.3** The Contractor shall make all requisite contributions and levies to the relevant authorities and/or regulatory bodies including the Construction Industry Development Board Malaysia, Employee Provident Fund, Inland Revenue Department, Immigration (for foreign labour) and/or Social Security Organisation ("**SOCSO**") on behalf of the Contractor's employees and workers, and shall further ensure that the Contractor's sub-contractors (if applicable) make the same contributions on behalf of their employees and workers.

#### **14. TERMINATION**

- 14.1** Without prejudice to any other rights and remedies of the Company provided in these Terms, the Company shall be entitled to terminate this PO by giving the Contractor 14 days' notice in writing upon the occurrence of any of the following events:-
- (a)** if the Contractor is in breach of any of the terms, conditions, covenants and/or undertakings under this PO and fails to make good such breach within the period stipulated in the Company's notice to the Contractor specifying the breach and requiring the Contractor to rectify the same;
  - (b)** if the quality or performance of the Works performed by the Contractor does not comply with the Specifications and quality as set out in this PO or is not to the satisfaction of the Company;
  - (c)** if the Contractor suspends or abandons the Works or any parts thereof for 7 consecutive days or fails to proceed regularly and diligently with the performance and/or delivery of the Works;
  - (d)** if the Contractor goes into liquidation or is insolvent or has a receiver appointed over any of its assets or enters into any arrangement or composition with its creditors;
  - (e)** if any licence, permit, approval or consent from any relevant authorities which is necessary for the Contractor to perform the Works is revoked, withdrawn or suspended for any reason whatsoever;
  - (f)** if there has been any change in the controlling shareholder(s) of the Contractor and/or its holding company; or
  - (g)** if the Contractor defaults or commits any breach of or fails to perform any of its obligations under any other contract(s) that it may have with the Company.
- 14.2** Notwithstanding Clause 15.1 of this PO, the Company shall have the absolute discretion to terminate this PO at any time by giving 30 days' written notice to that effect without stating any reason therefor nor incurring any liability to the Contractor and without prejudice to the Company's rights and remedies against the Contractor for any antecedent breach hereunder.
- 14.3** Upon termination of this PO pursuant to Clauses 15.1 or 15.2 of this PO, the Contractor shall immediately hand over all data, information, materials and documents (including confidential information) belonging to the Company after which the Contractor will be paid for any part of the Works successfully delivered, performed and/or completed by the Contractor as at the date of termination on quantum meruit basis less any amount(s) already paid and any loss and/or expenses incurred by the Company pursuant to the termination. The determination of such amount payable by the Company herein, save for manifest error, shall be final and binding on the Contractor.
- 14.4** Notwithstanding the provisions hereinbefore provided, the Company reserves the right, at any time, to immediately take over all or any part of the Works in the event that:-

- (a) the quality or performance of the Works is unsatisfactory to the Company;
  - (b) the delivery, performance and/or progress of the Works is delayed, suspended or not in accordance with the Works Programme;
  - (c) the Contractor fail to heed any of the notice(s) issued by the Company; or
  - (d) the Contractor fails to take immediate rectification or remedial works in respect of the Works to the satisfaction of the Company.
- 14.5** Without prejudice to any other rights of the Company provided in this PO, the Company further reserves the absolute right to appoint any third party/parties to undertake and/or to complete the Works and any additional costs incurred by the Company shall be deducted from monies (if any) due to the Contractor or recovered as a debt due from the Contractor.
- 14.6** Notwithstanding any provisions of this PO in the event that the Contractor fails, abandons and/or withdraws in performing and/or delivering the Works after the acceptance of this PO, the Contractor shall be liable to pay withdrawal fee at the rate and in the manner as described in **Appendix 6** of this PO ("**Withdrawal Fee**"). The Parties hereby acknowledge that the acceptance by the Company of such Withdrawal Fee shall be without prejudice to other rights and remedies of the Company under this PO.
- 14.7** In the event of termination of this PO for any reason whatsoever, the Parties' obligations pursuant to this PO, unless otherwise expressly stipulated, shall come to an end. The Company shall not be liable to pay the Contractor any compensation or payment for any loss, damages, cost and/or claims (including but not limited to the loss of income or profit) and without prejudice to the rights and remedies which the Company may have against the Contractor for any antecedent breach.
- 14.8** Notwithstanding termination or expiration of this PO, the provisions of Clauses 7, 10, 12, 15, 16, 19, 20, 23, 26, 27, 28, 30, 31, 41 and 43 of this PO shall remain binding on the Parties hereto.
- 15. INDEMNITY**
- 15.1** The Contractor shall remain continuously liable and shall fully and effectively indemnify and keep the Company indemnified from and against any and all losses, liabilities (whether criminal or civil), outgoings, costs (including but not limited to legal costs on a solicitors and client basis), claims, charges, actions, proceedings, demands, damages or expenses and the like (whether direct or indirect) which may be suffered or incurred by the Company or to which the Company may be or become liable as a result of or in relation to the Works, including without limitation, any tax liabilities and any liabilities resulting from any personal injury, death or loss or damage to any third party arising at any time in the course of or incidental to the Works and/or in relation to this PO. The Contractor's liability to indemnify the Company shall not be discharged or affected by the Company having accepted, approved or paid for the Works.
- 15.2** The Contractor's obligation pursuant to this Clause 16 shall continue and survive the termination or expiration of this PO.
- 15.3** The Contractor shall be liable for the care of all information and document prepared by the Contractor or entrusted to it by the Company until handed over or returned by the Contractor to the Company.
- 15.4** In the event of any claim being made or any action being brought against the Company arising out of the matters referred to in Clause 28 of this PO, the Contractor shall be promptly notified thereof and may at its own costs and expense, conduct all negotiations for the settlement of

the same, and any litigation that may arise therefrom, provided that it takes over such conduct within 28 days of receiving such notification and provided further that the Contractor shall give to the Company such security as shall from time to time be required by the Company in its sole discretion to cover the amount ascertained, agreed or estimated, of any compensation, damages, expenses and costs for which the Company may become liable. The Company shall, at the request of the Contractor, afford reasonable assistance for the purpose of contesting any such claim or action. The compensation, damages, expenses or costs incurred by the Company in so doing shall be paid by the Contractor to the Company and/or deducted from the Contract Sum.

- 15.5** In the event that the Contractor fails to take over the conduct of the negotiations or litigation or if the Company should at any time be of the reasonable opinion that the security provided pursuant to Clause 16.4 of this PO is inadequate or should the Company be dissatisfied with the conduct by the Contractor of such litigation involving the Company, the Company shall have the right and option to assume or take over the conduct of the defence of such litigation without waiver of any of the rights and benefits provided under this PO.
- 15.6** If the Contractor causes the Company to incur or suffer costs, loss, expense or damage resulting from any act, delay, abortive work, error or omission of the Contractor or its sub-contractors, agents, employees or servants, then provided always that the Contractor is permitted at the discretion of the Company to adopt and implement such effective mitigating measures, the Contractor shall fully and effectively indemnify and keep the Company indemnified against all such costs, losses, expenses and damages. The Contractor's liability to indemnify the Company will be reduced proportionately to the extent that any act, delay or omission of the Company has directly contributed to the costs, losses, expenses and damages.

**16. SITE(S)**

- 16.1** The Contractor is deemed to have inspected and examined the Site(s) and its surroundings and have satisfied itself as to the nature of the ground and sub-soil, the form and nature of the Site(s), the extent and nature of the Works, the material and equipment necessary, the means of communication with and access to the Site(s) and the Contractor have obtained all necessary information as to the risk contingencies, circumstances influencing the Works and the Contractor have obtained all the necessary permits, licences, permission and/or approvals it may require to perform and execute this PO.
- 16.2** The Contractor shall at all times co-operate with the Company, the Related Works Contractors and all relevant authorities (including federal, territorial, state or local governmental authorities, quasi-governmental authorities or any regulatory, administrative or other agencies) to ensure the successful completion of the Works.
- 16.3** For avoidance of doubt, the Company and its representative(s) shall at all times have access to the Site(s), work areas, workshops, office, stores and other premises occupied by the Contractor and other places where work is being carried out by the Contractor or its sub-contractors in connection with the project and/or the Works to inspect the aforementioned areas or premises and/or the Works being carried out by the Contractor.

**17. FORCE MAJEURE**

- 17.1** Neither the Contractor nor the Company shall be liable for any delay or failure of performance of this PO due to contingency beyond its control including act of God, act of war (whether declared or not) or act of public enemy, embargo, quarantine or public disorder or due to changes in law.
- 17.2** Without limiting the generality of the foregoing provisions, 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 PO nugatory, shall constitute an event of force

majeure.

**17.3** Notwithstanding Clause 18.1 of this PO, Force Majeure shall not include the following:-

- (a) late delivery of Works caused by congestion at the Contractor's plant or elsewhere or oversold condition of the market, inefficiencies or similar occurrences;
- (b) late performance by the Contractor caused by a shortage of supervisors, strikes, boycotts or labour disturbances or inefficiencies or similar occurrences;
- (c) breakdown of any item of the Contractor's tool, equipment, plant or machinery;
- (d) contractual commitment made by the Contractor to third parties which limits the Contractor's ability to provide the Works;
- (e) financial distress of the Contractor or sub-contractor; and
- (f) any cumulative effect of recurring weather over time, including but not limited to excessive cumulative rainfall and/or period of high relative humidity.

**17.4** The Party prevented by an event of force majeure from performing shall promptly notify the other Party the circumstances constituting the force majeure and shall specify the obligations, the performance of which is or will be prevented and shall take all necessary steps to resume performance hereunder as soon as practicable.

**17.5** If in the opinion of the Company, the Contractor's ability to carry out its obligations under this PO has been affected to a significant degree by the force majeure, the Company shall be entitled to terminate the whole or any part of the Works without any obligation on the part of the Company to pay compensation to the Contractor for any loss of income or profit and without prejudice to the Company's rights and remedies against the Contractor for any antecedent breach of these Terms.

**17.6** Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Works as a result of force majeure.

**17.7** Either Party shall not be liable to the other Party for any loss or damage or delay or breach of this PO caused by the force majeure.

**17.8** 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 18 continue in full force and effect.

**17.9** Unless otherwise agreed by the Parties, if the Works to be performed by the Contractor are suspended by force majeure conditions lasting for more than 6 months, the Company and the Contractor shall have the option of terminating this PO in whole or part thereof and each Party shall have no further liability to the other save for the value of the Works which have been delivered or performed up to the date of termination.

**17.10** The Contractor acknowledges that the Works must be carried out taking into account pandemics, any law including the Movement Control Order, border closures or restrictions and any situation arising therefrom which could reasonably be anticipated by an experienced contractor.

## **18. TITLE AND RISK**

**18.1** The title and ownership of the Works and any part thereof performed and delivered under this PO shall pass to the Company progressively as the Works and any part thereof is performed

or constructed. Title and ownership to all other materials that are supplied by the Contractor under this PO shall pass to the Company immediately upon:-

- (a) the payment of the same; or
- (b) its arrival at the Site(s) where the Works is delivered,

whichever is earlier. For avoidance of doubt, the passing of title and ownership shall not affect the Company's right to reject the Works.

**18.2** Notwithstanding Clause 19.1 of this PO, risks of loss or damage to the Works or any part thereof shall only pass to the Company upon the issuance of the Certificate of Practical Completion. The Contractor shall insure and keep insured the Works until the expiration of the DLP.

## **19. RIGHT OF SET-OFF**

The Company shall have the right to set-off and/or deduct any money due from the Contractor to the Company under this PO against any sum which may become due or payable by the Company to the Contractor under this PO and/or under any other contracts without prejudice to any other rights and remedies which the Company may have for the recovery of any sum due.

## **20. DECLARATION**

**20.1** The Contractor shall declare that neither the Contractor nor any of its shareholders, directors, managers, partners, joint-venture partners/parties or agents is a person connected with any member of the Company's board of directors or the Company's senior management or any person connected with the aforementioned persons. The Contractor shall also declare that the Contractor is not a person connected with its consultants, sub-contractors, suppliers, manufacturers and/or agents, if any, and acknowledge that the validity of this PO is based on this declaration.

**20.2** The Contractor shall unconditionally and irrevocably undertake 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 PO, failing which the Company shall, without incurring any liability, be entitled to immediately terminate this PO by serving a written notice to that effect on the Contractor.

**20.3** The Contractor shall procure its partners, joint-venture partners/parties, related companies, consultants, sub-contractors, suppliers, manufacturers and/or agents as referred to in Clauses 21.1 and 21.2 of this PO in respect of any relation to or connection with the Company, failing which, the Company shall without incurring any liability, be entitled to immediately terminate this PO by serving a written notice to that effect on the Contractor.

**20.4** For the purpose of this Clause 21:-

- (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 [Act 777] (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 [Act 777] (including any modification, re-enactment or replacement thereof or any legislation or legislative provision(s) made in substitution therefor).

## **21. FOREIGN WORKERS**

- 21.1** The Contractor shall in the performance of the Works, employ only Malaysian citizens as workmen unless the Contractor has obtained the requisite approval of the Ministry of Human Resources to employ non-Malaysian citizens ("**Foreign Workers**").
- 21.2** Should the Contractor employ Foreign Workers, the Contractor shall provide the Company with a list of such Foreign Workers and the Contractor shall ensure full compliance with all applicable laws relating to the employment of Foreign Workers and shall pay all fees and levies so required under the Employment Act 1955 [Act 265], Employment (Restriction) Act 1968 [Act 353], and other laws of Malaysia.
- 21.3** The Contractor shall notify the Company if there are any changes to its personnel of Foreign Workers.
- 21.4** The Contractor shall also ensure that its sub-contractors comply with the provisions of this Clause 22.
- 21.5** The Contractor shall fully and effectively indemnify the Company and hold the Company harmless against all claims, liabilities, penalties, fines, damages, costs, expenses and proceedings arising from any breach or contravention of any laws referred to herein.

## **22. RELIANCE**

- 22.1** The Contractor acknowledges that the Company has engaged the Contractor in full reliance upon the Contractor's expertise, skill, experience and ability to perform the Works in accordance with this PO. The Contractor shall carry out the Works promptly and competently with diligence and to exercise the skill expected of a reputable, properly qualified and experienced and highly skilled contractor engaged in performing similar works and the Contractor shall compensate the Company in respect of the direct consequences of any neglect, lack of skill or misconduct by the Contractor, its servants, agents and/or sub-contractors.
- 22.2** Without prejudice to Clause 23.1 of this PO, 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.
- 22.3** The Contractor warrants to the Company that:-
- (a)** all designs, materials, documents, methods and other matters proposed or specified by the Contractor under this PO 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 PO;
  - (c)** all designs, materials, documents, methods and other matters or thing proposed or specified by the Contractor for the Works under this PO 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 PO, whether expressed or reasonably to be inferred therefrom;
  - (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 PO 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 by the Expiry Date;
- 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 PO; and
- iv)** it has performed and will continue to perform its obligations under this PO 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.

**22.4** The Parties agree that the principal objective of this PO 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 will require the closest consultation, co-operation, communication and co-ordination between itself, the Related Works Contractors 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 PO 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 and supervision of the Works in such a way as to ensure that the Expiry Date is achieved.

**22.5** The Contractor is and shall remain fully responsible for the design and construction of the Works in accordance with this PO and no action or failure to act by the Company shall in any way relieve the Contractor of its obligations under this PO 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.

**22.6** The Contractor is responsible for initiating and implementing the production, optimisation, development and finalisation of the design of the Works 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.

**22.7** If there shall be any discrepancy, ambiguity, divergence, inconsistency, deficiency, or design 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 PO, 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 PO and of all costs and losses occasioned thereby.

- 22.8** Any information or document given or forwarded by the Company to the Contractor shall not relieve the Contractor of its obligations under this PO. 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.

### **23. BRIBERY AND CORRUPT GIFTS**

- 23.1** 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 employee or servant, any gift or consideration of any kind as an inducement or reward to show favour in obtaining or execution of this PO which shall be deemed to be a bribery or corrupt gift from or to such person, in which event the Company is entitled to immediately terminate this PO without incurring any liability to the Contractor and without prejudice to other rights and remedies of the Company.

- 23.2** In the event of the Company 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 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 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 PO should not be terminated on grounds of the said bribery and corrupt gifts, failing which, the Company may in its absolute discretion immediately terminate this PO as if effected under Clause 24.1 of this PO.

- 23.3** If at any time from the acceptance of the quotation or pre-qualification for the Works, the Contractor shall have committed an act for which it is subsequently arrested or charged for an offence under the Malaysian Anti-Corruption Commission Act 2009 ("**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 PO as if effected under Clause 24.1 of this PO.

- 23.4** Any act or attempt to corruptly offer or give, solicit or receive any gratification to and from any person in connection with this PO is a criminal offence under the MACC Act. If any person offers or gives any gratification to any employee or servant of the Company, the latter shall at the earliest opportunity thereafter lodge a report at the nearest office of the Malaysian 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 an employee or servant of the Company and blacklisting of the Contractor may be taken if the parties are involved in an act of corruption under the MACC Act. Any contractor, supplier or consultant 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 employee or servant of the Company who certifies the claim commits an offence under the MACC Act.

### **24. PROVISIONS OF DOCUMENTS AND AUDIT**

- 24.1** The Contractor shall permit the Company to have access to, examine, inspect and/or audit all information, reports, correspondence, data, files, register, invoices, records and any other documents pertaining to the Works for any purpose as the Company may require (including for use in court proceeding(s) and/or for official reporting to Jabatan Audit Negara and/or any

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 authorised by the Company.

- 24.2** The Contractor shall promptly and in any event, not later than 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.

## **25. CONFIDENTIALITY**

- 25.1** The Contractor shall not (directly or indirectly) disclose, divulge, reveal, copy, report, publish, circulate, use, sell, transfer, deal in or otherwise appropriate or exploit any confidential information (including any information marked or designated as being confidential by the Company) communicated or made available to the Contractor or discovered by it in the course of performing this PO or use the same for any purpose other than to perform this PO without the prior written consent of the Company other than permitted disclosure to its employees and agents on a specific need to know basis and the Contractor shall ensure that such employees and agents are bound by the same undertaking.

- 25.2** The Contractor shall not disclose or divulge to any third party any information, document or any part thereof:-

- (a) derived from, or prepared for, this PO; or
- (b) regarding the nature and progress of the Works,  
without the prior written approval of the Company.

- 25.3** All documents provided by the Company must be returned to the Company upon termination or expiration of this PO.

- 25.4** The provisions of this Clause 26:-

- (a) shall survive the termination or expiration of this PO;
- (b) shall at all times be enforceable at law and in equity; and
- (c) shall inure for the benefit and be enforceable and binding upon the Company's and the Contractor's successors-in-title and assigns.

## **26. PROTECTION AND SECURITY OF PERSONAL DATA**

- 26.1** The Contractor recognises that it is possible for personal data to be collected or received in relation to the Works and/or pursuant to this PO. In this connection, the Contractor shall expressly take notice of the strict provisions of the Personal Data Protection Act 2010 [Act 709] ("**PDPA**") and the Contractor shall take all necessary steps and actions to comply with and observe the provisions of the PDPA and all other applicable data protection and privacy laws and regulations.

- 26.2** The Contractor shall implement and maintain all necessary administrative, technical and physical safeguards to protect such personal data which the Contractor may receive from the Company against unauthorised access to or disclosure or use of such personal data, and to protect against accidental or unlawful destruction or accidental loss or alteration of such personal data.

## **27. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY RIGHTS**

- 27.1** The Contractor hereby warrants that the performance of the Works under this PO, 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 PO shall in no way infringe any patent, design, trademark or other rights of any third party.
- 27.2** The Contractor hereby grants the Company a perpetual, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence under all patent, utility models or other industrial property rights and know-how now or hereafter created or owned by the Contractor which cover any apparatus, article, process or composition used or produced in the performance of the Works including the right to use, operate, maintain and repair the goods, materials and all parts thereof. For goods or materials manufactured under licence (where applicable), the Contractor shall submit a certificate from the licensor that such goods and materials have been manufactured to the licensor's design and application.
- 27.3** The copyright of all drawings, reports, data, books, Specifications, designs, calculations, brochures, pamphlets and other similar intellectual proprietary rights and documents provided by the Contractor in connection with the Works and/or under this PO ("**Documents**") shall be vested in the Company. The Company shall therefore be entitled to make copies of such Documents or use any of them for any other purposes whatsoever without the Contractor's prior written consent being first obtained by the Company. Such proprietary rights in the Works and/or this PO shall vest in the Company free and clear of all liens, claims and encumbrances.
- 27.4** The Contractor shall remain continuously liable and shall fully and effectively indemnify and keep the Company indemnified from and against all losses, liabilities, action, claims, demands, charges, expenses, costs (including but not limited to legal costs on solicitors and client basis) and proceedings for or on account of infringement of any patent rights, copyrights, design, trademarks or name or other protected rights in any of the goods and other materials developed and supplied by the Contractor pursuant to or under this PO and against all claims, demands, proceedings, damages, costs, charges, and expenses (including but not limited to legal costs on solicitors and client basis) in respect thereof or in relation thereto.
- 27.5** 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).
- 27.6** The Contractor acknowledges that any and all trademarks, trade name, copy rights, patents, patentable inventions, designs or processes and other intellectual property rights developed in the performance of or arising in the course of, or out of this PO shall be the property of the Company unless otherwise agreed in writing by the Company. The Contractor shall on demand execute such notices, waivers or assignments as may be necessary to enable the Company to register the patents and any other intellectual property rights thereof.
- 27.7** If any analysis, design, process or construction to be proposed or specified by the Contractor may or will involve the payment of royalties, fees or licence fees which are not included in the Contract Sum, the Contractor shall not proceed with such proposal without the prior written approval of the Company.
- 27.8** 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 written consent is given by the Company, the Contractor shall acknowledge the intellectual property rights of the Company in such publication.

**27.9** The Contractor shall not during or at any time after the termination or expiration of this PO, in any way question or dispute any such intellectual property rights owned, granted or vested in the Company under this PO.

**28. SAFETY**

**28.1** In compliance with Section 15 of the Occupational Safety & Health Act 1994 [Act 514] and in accordance with the Company's Health Safety and Environment requirements, the employees or workers of the Contractor and its sub-contractors who are required to work at the Site(s) or any of the Company's office(s) must successfully complete such safety training programme(s) as may be stipulated by the Company and must obtain the Company's safety card (if applicable) at the Contractor's own costs and expense.

**28.2** The Contractor shall further ensure that all the employees and workers of the Contractor and its sub-contractors who are engaged in the performance of the Works shall have valid safety card issued by the Company and shall display the safety card (if applicable) at all times when working at the Site(s) and/or the Company's office(s).

**29. COMPLIANCE WITH LAWS AND POLICIES**

**29.1** Without prejudice to Clause 29 of this PO, the Contractor shall and shall ensure that its employees, workmen, personnel or agents shall at all times comply with all applicable laws and shall abide by and adhere to health, safety, environment and other policies, guidelines and directives as may be issued by the Company from time to time in the performance of this PO.

**29.2** If, in the Company's sole and absolute opinion, immediate and/or urgent actions, steps or measures are not being taken or implemented by the Contractor pursuant to such policies, guidelines or directives and/or that urgent or temporary actions, steps or measures need to be taken, then the Company shall be entitled, but not obliged, to take such action, steps or measures as the Company shall deem necessary (including but not limited to varying, modifying, suspending and/or terminating the Works and/or any part thereof under this PO to correct, address, redress or remedy such failure, neglect, refusal, contravention or disregard or to alleviate the impact or the risk of harm and danger that may arise from or be caused by such failure, neglect, refusal, contravention or disregard on the Contractor's part. All costs and expense of any such actions, steps or measures incurred by us shall be borne by the Contractor and shall be deemed to be a debt due and owing to the Company.

**29.3** The Contractor shall, if required by the Company, deliver the following documents to the Company at least 5 days prior to the Commencement Date:-

(a) its quality assurance program and safety plan and procedures for the Company's perusal and approval provided that compliance with such program, plan and procedures shall not relieve the Contractor from any of its duties, obligations or liabilities under this PO;

(b) registration number of their employees' SOCSO scheme;

(c) the full list of all the names of the employees and workers to be employed or engaged by the Contractor for the Contract for Works together with 2 copies of recent photograph of such employees and workers;

(d) a valid certificate of registration with the Construction Industry Development Board (Lembaga Pembangunan Industri Pembinaan Malaysia) with the relevant and appropriate grade, categories and specialisation; and

(e) the necessary permit from Suruhanjaya Perkhidmatan Air Negara together with all other licences, permits, approvals or consents from any other relevant authorities.

**30. LIMITATION OF LIABILITY**

**30.1** Notwithstanding any provision contained in this PO, the Company shall not be liable to the Contractor whether based on contract, warranty, negligence or other legal or equitable grounds for any economic loss and loss of interest, profits, contracts, business, revenue, opportunity or any consequential, indirect, incidental, special, punitive and/or exemplary damages suffered by the Contractor arising out of or in relation to this PO. This Clause 31 shall remain in force notwithstanding the termination or expiration of this PO.

**30.2** Nothing in this PO shall be intended to disclaim or limit the Contractor's liability in relation to:-

- (a) death or personal injury arising from the Contractor's negligence, act or omission;
- (b) damage of any kind to any property, real or personal, arising from the Contractor's negligence, act or omission;
- (c) the Contractor commits a fraudulent negligence, act or omission;
- (d) the Contractor defaults in performing its obligations under this PO;
- (e) infringement of intellectual property rights; and
- (f) breach of confidentiality.

**30.3** The Contractor shall at all times fully and effectively indemnify and keep the Company indemnified from all and any claims of the nature indicated in Clause 31.2 of this PO.

**31. RETROSPECTIVE EFFECT**

Where the performance of the Works has commenced prior to the date of this PO, the provisions of this PO shall apply retrospectively to the date of commencement of the Works.

**32. NOTICE**

**32.1** Any notice, approval, consent, request or other communications required or permitted to be given or made under this PO shall be made in writing in Bahasa Malaysia or English language and delivered to the addressee by post to the address or sent to the facsimile number, or sent to the email address as stated below, or to such other address or facsimile number or email address as any Party may have notified in writing the other Party and shall be deemed to be duly given or made:-

- (a) in the case of delivery in person, at the time of delivery and duly acknowledged; or
- (b) in the case of delivery by post, 72 hours after date of posting; or
- (c) in the case of facsimile, at the time the transmission report is received by the sender which purports to confirm that the addressee has received such facsimile; or
- (d) in case of delivery by email, when the email enters the recipient's mail server,

but if delivery or receipt is on a day which is not a Business Day(s) or is after 5.00 p.m., it is deemed to be duly given on the next Business Day(s).

To the Company

Address:

\_\_\_\_\_

Facsimile:\_\_\_\_\_

Email Address:\_\_\_\_\_

Attention:\_\_\_\_\_

To the Contractor

Address:

\_\_\_\_\_

Facsimile:\_\_\_\_\_

Email Address:\_\_\_\_\_

Attention:\_\_\_\_\_

- 32.2** In the event that the Contractor is a foreign entity without any local presence, any service of notice in connection with this PO shall be deemed completed on delivery to the service process agent appointed by the Contractor and such service shall constitute good service on the Contractor. If for any reason the service process agent ceases to be able to act as agent or no longer has an address within Malaysia, the Contractor shall immediately appoint a substitute and give notice to the Company of the new service agent's name and address within Malaysia.

**33. 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.

**34. ASSIGNMENT**

- 34.1** 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 PO to any party as the Company deems 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.
- 34.2** The Contractor shall not without the prior written consent from the Company, novate, transfer, assign, sub-contract or delegate the Works and/or the Contractor's obligations under this PO, or any rights, benefit, interest and liabilities therein or thereunder, including but not limited to any right to receive from or make payment to the Company and any attempt to transfer or assign or subcontract or delegate such duties, benefit or interest shall be void.
- 34.3** Such consent, if given, shall not relieve the Contractor from the Contractor's obligations and liabilities under this PO and it shall be responsible for the due observance by such permitted assignee(s), of all the terms, stipulations and conditions under this PO. The Contractor shall also be responsible for the acts, defaults or neglects of any permitted assignee(s), agents, servants or workmen.

**35. AMENDMENT**

Save as otherwise expressly provided herein, this PO shall not have any amendment, variation or addition in any form without the mutual consent of the Parties in writing.

36. **WAIVER AND SEVERABILITY**

- 36.1 Failure by the Company to enforce the performance of any of the provision of this PO against the Contractor shall neither be deemed to be a waiver of its rights nor shall it affect the validity of this PO in any way.
- 36.2 Any waiver by the Company to any breach of this PO by the Contractor shall not be deemed as a waiver of any succeeding breach of the same provision or any other provision of this PO.
- 36.3 Any provision of this PO which is or becomes illegal or unenforceable shall be severed from this PO and shall not affect the validity of the remaining provisions thereof or hereof.

37. **NON-EXCLUSIVITY**

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

38. **TIME OF THE ESSENCE**

Time wherever mentioned in this PO shall be of the essence.

39. **COSTS AND STAMP DUTY**

- 39.1 Each Party shall bear its own costs and expenses incurred in relation to or in connection with the negotiation, preparation and execution of this PO.
- 39.2 Notwithstanding the foregoing, the Contractor shall bear all stamp duty chargeable on this PO (if applicable).

40. **GOVERNING LAW AND JURISDICTION**

This PO shall in all respects (including but not limited to the validity, performance and construction thereof or hereof) be governed by and construed in accordance with the laws of Malaysia and the Parties shall submit to the exclusive jurisdiction of the courts of Malaysia.

41. **CONFLICT OF INTEREST**

- 41.1 The Contractor covenants to the Company that it has disclosed to the Company any and all pecuniary interest related to the Works and warrants that it has no conflict of interest in undertaking the Works. The Contractor shall inform the Company immediately in writing of any matter related to the Works which could give rise to an actual or potential conflict of interest.
- 41.2 The Contractor shall not obtain pecuniary advantage from information gained in undertaking and/or in the performance of the Works. For avoidance of doubt, all information obtained under this PO shall only be used for the purpose of performing the Contractor's obligation under this PO.

42. **PUBLICITY, ANNOUNCEMENTS AND USAGE OF THE SOCIAL MEDIA PLATFORMS**

- 42.1 The Contractor either in personal or official capacity shall not issue any announcements, circulars, press releases, advertisements, statements, articles, photographs, videos, audios, interviews, quotes, public communications or other publicity materials which includes reference to the Company (including the Company's logo or any identifiable brand) on this PO or any related matter to it on any medium including electronic documents, instant messages,

websites, social media platforms, blogs, paper documents, facsimile, voice and voicemail recordings without the Company's prior written consent.

- 42.2** The Contractor shall not without the Company's prior written consent, refer in any of its advertising or marketing material to the Company or the fact that it has a contractual relationship with the Company regarding the Works and/or this PO and such information shall only be used for the purpose of performing the Contractor's obligations under this PO.
- 42.3** All information, documents and materials relating to this PO which is intended for publication and disclosure pursuant to Clauses 43.1 and 43.2 of this PO shall first be approved in writing by the Company.
- 42.4** Nothing in this Clause 43 shall prohibit any disclosure or announcement relating to this PO which is required by law or regulatory authority or by the rules and requirements of any relevant regulatory body provided that the Contractor shall inform and consult the Company on the contents of any such disclosure or announcement prior to the disclosure or announcement thereof.
- 42.5** The Contractor shall ensure compliance by its employees, workmen, personnel, agents or sub-contractors of the obligations imposed on the Contractor under this Clause 43 as if they were the contractor under this PO. The Contractor shall be liable for any breach by its employees, workmen, personnel, agents or sub-contractors of the obligations referred to in this Clause 43.
- 42.6** The Contractor shall comply with all the guidelines and policies issued by the Company from time to time in relation to the details mentioned in this Clause 43.

**43. ENTIRE AGREEMENT**

This PO shall constitute the entire agreement between the Parties and shall supersede all prior negotiations, representations or agreements, whether oral or written.

(The remainder of this page is intentionally left blank)



## **APPENDIX 1**

### **Submission Checklist of Claims and Payment**

Please see overleaf / Not Applicable

(The remainder of this page is intentionally left blank)

## **APPENDIX 2**

### **IRU Acknowledgement Slip**

Please see overleaf / Not Applicable

(The remainder of this page is intentionally left blank)

## APPENDIX 3

### LAD

Option 1 (Where LAD is required)

LAD shall be at the rate of **RM**\_\_\_\_\_ only per day, calculated from the date of delay of the Works until the date of completion of the Works as stipulated in the Certificate of Practical Completion or the date of termination of this PO, whichever is the earlier.

Option 2 (Where LAD is not required)

Not Applicable

(The remainder of this page is intentionally left blank)

## **APPENDIX 4**

### **Bank Guarantee**

Option 1 (Where Bank Guarantee is required)

1. The Contractor shall deliver to the Company, within 14 days from the Commencement Date, a Bank Guarantee amounting to 5% of the Contract Sum which shall remain in full force for 18 months from the date stipulated in the Certificate of Practical Completion.
2. Please see the overleaf for the Form of the Bank Guarantee.

Option 2 (Where Bank Guarantee is not required)

Not Applicable

(The remainder of this page is intentionally left blank)

## APPENDIX 5

### Insurances

Option 1 (Where Insurances is required)

The Contractor is required to procure and maintain the following Insurances:-

1. all risks insurance policy for the Works of an insured value of not less than **RM**\_\_\_\_\_ only;
2. public liability insurance (including insurance against injury to persons and to property) of an insured value of not less than **RM**\_\_\_\_\_ only; and
3. workmen's compensation insurance of an insured value of not less than **RM**\_\_\_\_\_ only.

Option 2 (Where Insurance is not required)

Not Applicable

(The remainder of this page is intentionally left blank)

## **APPENDIX 6**

### **Withdrawal Fee**

Option 1 (Where Withdrawal Fee is required)

The Withdrawal Fee shall be immediately payable upon the failure, abandonment and/or withdrawal by the Contractor in performing the Works and to be calculated as follows:-

1. any costs or expenditure incurred or to be incurred by the Company in completing the Works due to the withdrawal including on-cost charges at the rate of 20%; and
2. the amount of direct loss and/or damage caused to the Company due to the withdrawal including on-cost charges at the rate of 20%.

Option 2 (Where Withdrawal Fee is not required)

Not Applicable

(The remainder of this page is intentionally left blank)