

# **GOVERNMENT OF MALAYSIA**

## **STANDARD FORM OF DESIGN AND BUILD CONTRACT**

**PWD FORM DB (Rev. 2007)**

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CONTRACT NO : \_\_\_\_\_ Of 20 \_\_\_\_\_

EXPENDITURE to be met from Head \_\_\_\_\_ Year of \_\_\_\_\_

Sub-head \_\_\_\_\_

THIS CONTRACT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** (hereinafter referred to as "the Government") of the one part;

**AND**

\_\_\_\_\_ (hereinafter referred to as "the Contractor"), [a company incorporated in Malaysia under the Companies Act 1965 (Com. No. \_\_\_\_\_) ] with its registered office at \_\_\_\_\_ of the other part.

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

**WHEREAS**

- A. The Government is desirous of obtaining the design, construction, equipping\* and maintenance\* of \_\_\_\_\_ # (hereinafter referred to as the 'Works') at \_\_\_\_\_ for which Works the Government has issued to the Contractor its requirements and instructed the Contractor to design the Works and to submit proposals including drawings and specification for carrying out the Works.
- B. The Contractor has examined the site and has submitted proposals including drawings and specification for carrying out the Works.
- C. The Contractor has made an estimate of the sum which he will require for carrying out that which is necessary for completing all the Works in accordance with the Conditions of Contract and has submitted an analysis of that sum (hereinafter referred to as 'the Contract Sum Analysis').
- D. The Government has examined the Contractor's Proposals and the Contract Sum Analysis and subject to the Conditions of Contract, is satisfied that they appear to meet the Government's Requirement.+

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\* Delete if not applicable

# State the title of intended works.

+ Where the Government has accepted a divergence in the Proposals submitted by the Contractor from the Government's Requirements, the divergence should be effected by deletion or substitution in the Government's Requirements before the contract documents are signed.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

In this Contract, unless the context otherwise requires, the following words and phrases in this Contract and the Appendices shall have the meaning given below:

- (a) "Appendices" means Appendix 1, 2, 3, 4, 5, 6\*\*, 7, and 8 to this Contract;
- (b) "Contract" means this Contract including all the appendices attached hereto;
- (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) "Contractor's Proposals" means the proposals submitted by the Contractor for carrying out the Works, including all drawings which comprises of preliminary design and specifications as appended herewith and Detailed Design and Specifications as submitted by the Contractor from time to time;
- (e) "Contract Period" means the contract period specified in the Letter of Acceptance;
- (f) "Contract Sum" means the sum stipulated in clause 2.2 of this Contract;
- (g) "Contract Sum Analysis" means the sum stated in Appendix 4 which is prepared by the Contractor as the estimate which he will require for carrying out that which is necessary for completing all the Works in accordance with this Contract;
- (h) \*\*"Contract Schedule of Rates" means the schedule of rates agreed between the Contractor and the Government prior to the execution of the Contract, for the purpose of valuation of variations under the Contract;
- (i) "Date for Completion" means the date fixed and stated in Appendix 1 or any date fixed under clause 49 as provided under clause 44.1;

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\*\* Delete if Contract Schedule of Rates is not applicable

- (j) "Date for Possession" means the date stated in Appendix 1;
- (k) "Date of Tender" means the date fixed for submission of Tender as stated in Appendix 1;
- (l) "Day work" means the Day work price as specified in Appendix [ ];
- (m) "Defects Liability Period" means the period stated in Appendix 1 or if none stated the period is twenty four (24) months from the date of practical completion certified by the P.D as provided under clause 44.2;
- (n) "On-cost Charges" means the cost and expense reasonably incurred by the Government to perform the Contractor's obligations which the Contractor has failed to perform and is calculated by applying the percentage for On-cost Charges as stated in Appendix 1 to the amount incurred;
- (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 Government for working space or any other purpose as may be specifically designated under this Contract or subsequently agreed by the P.D as forming part of the Site;
- (p) 'Project Director or P.D" means \* .....and his successors in office;
- (q) "P.D's Representative" means any person delegated by the P.D to perform any or all of the duties of the P.D;
- (r) "Variation Order" means an instruction issued by the P.D in the form as set out in Appendix [ ] pursuant to clause 23.2; and
- (s) "Works" means the works briefly described in Recital A and referred to in the Government Requirements and the Contractor's Proposals and shall include both permanent and temporary works.

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\* *State the official designation of the officer responsible for the overall supervision and direction of the Works.*

## 1.2 Interpretation

- (a) Unless otherwise specifically stated, any reference to Clauses and Appendices in this Contract and the Appendices to any clause means that clause of this Contract.
- (b) 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 or entry in the Appendices.
- (c) The terms “concurrence” and “approval” wherever used in this Contract means written consent or approval by the Government or the P.D as the case may be, pursuant to a written request or submission made by the Contractor;
- (d) The term “instructed” wherever used in this Contract means instructed in writing by the P.D (including subsequent confirmation of previous verbal instruction by the P.D).
- (e) Words importing the singular shall also include the plural and vice versa.
- (f) 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.
- (g) The English text of this Contract shall be the authentic text and prevail over any translations made on this Contract.

## 2.0 CONSIDERATION

- 2.1 For the consideration mentioned in clause 2.2, the Contractor shall upon and subject to the clauses of this Contract both complete the design for the Works and carry out construction and completion of the Works.
- 2.2 The Government hereby covenants to pay to the Contractor the sum of Malaysian Ringgit:  

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\_\_\_\_\_ i.e. RM \_\_\_\_\_ (hereinafter referred to as ‘the Contract Sum’) or such other sum as shall become payable hereunder at the times and in the manner specified in the Conditions of Contract.



### **3.0 SCOPE OF CONTRACT**

- 3.1 The Contractor shall subject to the provisions of the Contract and save in so far as it is legally or physically impossible, -
- (a) plan, design, construct, complete, test and commission the Works; and
  - (b) provide all design, services, labour, materials, Contractor's equipment, temporary works, transport to and from and in or about the Site and everything whether of a temporary or permanent nature required in and for such planning, design, construction, completion, testing and commissioning so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.
- 3.2 The Contractor shall design, construct and complete the Works in accordance with the Contract and where not expressly provided otherwise in the Contract, to the best advantage of the Government and in accordance with good management and best industry practice, as determined by the Government.
- 3.3 The Contractor shall take all appropriate measures expected of a competent contractor 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.
- 3.4 The Contractor shall at all times perform its obligations specified in clause 3.1 in such manner as will always safeguard and protect the Government's interest and take all necessary and proper steps to prevent abuse and in accordance with the provisions of this Contract.

### **4.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE CONTRACTOR**

#### **4.1 Representations and Warranties**

The Contractor represents and warrants to the Government that as at the execution date and through out the Contract Period—

- (a) the Contractor 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) the Contractor has the corporate power to enter into and perform his obligations under this Contract and to carry out the transactions and to carry on his business as contemplated by this Contract\*;

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\* applicable only if the Contractor is a company registered under the Companies Act 1965.

- (d) the Contractor 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) 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; and
- (h) it has necessary financial and technical capability, skills and expertise 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.

#### **4.2 Undertakings 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.

#### **5.0 COMPLIANCE WITH THE LAW IN PERFORMING THE WORKS**

- 5.1 The Contractor shall comply with 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

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\* applicable only if the Contractor is a company registered under the Companies Act 1965.

to the Works or, in the case of a public authority or public service company, with whose systems the same are or will be connected. The Contractor shall keep the Government indemnified against all penalties and liability of every kind of breach of any such Statutory Requirements. The Contractor shall submit to the P.D all documentation received by the Contractor in complying with the Statutory Requirements.

- 5.2 If the Contractor or the P.D finds any divergence between the Statutory Requirements and either the Government's Requirements (including any Variation), or the Contractor's Proposals, he shall immediately give to the other written notice specifying the divergence. In either case, the Contractor shall inform the P.D in writing of his proposed amendment for removing the divergence, and with the P.D's consent (which shall not be unreasonably delayed or withheld) the Contractor shall entirely at his own cost save as provided in clause 5.5 and clause 5.6 complete the design and construction of the Works in accordance with the amendment and the P.D shall note the amendment on the Contract Documents.
- 5.3 If in any emergency, compliance with clause 5.1 requires the Contractor to supply materials or execute work before receiving the P.D's consent under clause 5.2, the Contractor shall supply such materials and execute such works as are reasonably necessary to secure immediate compliance with the Statutory Requirements. The Contractor shall forthwith inform the P.D of the emergency and of the steps that he is taking under this clause.
- 5.4 The Contractor shall pay and indemnify the Government against liability in respect of any fees, levy, charges, rates or taxes (excluding capital contribution) legally demandable under any written law, regulation or by-law of any local authority or of any statutory undertaker in respect of the Works. No adjustment shall be made to the Contract Sum in respect of the amount of any such fees, levy, charges, rates or taxes.
- 5.5 If after the Date of Tender, there is a variation in the Statutory Requirements affecting the Works which necessitates some amendment to the Contractor's Proposals, such amendments shall be treated as if it were an instruction of the P.D under clause 23.2 affecting a Variation.
- 5.6 If after the date of Tender, there is a decision made by a relevant authority which necessitates any amendment to the Contractor's Proposals, such amendment shall be treated as if it were an instruction of the P.D under clause 23.2 affecting a Variation to this Contract, PROVIDED THAT such amendment is not precluded in the Government's Requirements.

## **6.0 CUSTODY AND SUPPLY OF CONTRACT**

- 6.1 The Contract shall be prepared in two (2) original copies. The original copies of the Contract shall remain in the custody of the P.D and the Contractor.
- 6.2 Immediately after the execution of this Contract the Contractor shall furnish without charge to the Government, unless the Government shall have been previously so provided, with at least ten (10) certified true copies.

- 6.3 The Contractor shall, without further charge to the Government, provide the P.D with two copies of the construction drawings, specifications, details, levels and setting out dimension which the Contractor prepares or uses for the purposes of the Works.
- 6.4 The Contractor shall keep one certified true copy of the Contract and other documents referred to in clause 6.3 at the Site so as to be available to the P.D at all reasonable times.
- 6.5 After the practical completion of the Works but within three (3) months after that date the Contractor shall without further charge to the Government supply for the retention and use of the P.D two (2) sets of drawings stored in CD-ROMs and four (4) sets of such drawings, documents, information and manuals showing or describing the Works as built, and concerning the maintenance and operation of the Works, including any installations comprised in the Works, as may be specified in the Contract.
- 6.6 It is expressly agreed between parties that all maps, drawings, reports, specifications, calculations, designs, and all other relevant documents pertaining to this Contract shall be the absolute property of the Government and shall not be utilised or retained by the Contractor for any purpose other than with the permission of the Government.
- 6.7 The Contractor's plans and specifications shall use the S.I. Units (System International D'Unites) of measurement, commonly known as the metric system as this is the requirement of all approving authorities in Malaysia.

## **7.0 SUFFICIENCY OF CONTRACT DOCUMENTS**

- 7.1 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 taken together whether the same may or may not be particularly shown or described provided the same can be reasonably inferred therefrom.
- 7.2 The Appendices are to be taken as mutually explanatory of one another but in the event of any ambiguity or discrepancy the same shall be explained by the P.D to the Contractor who shall rectify the discrepancy at his own cost and expense.
- 7.3 If there remain ambiguities or discrepancies between the Government's Requirements and the Contractor's Proposal, the Government's Requirements shall prevail without adjustment of the Contract Sum. Provided that if in the opinion of the P.D the Contractor's Proposal is better than the Government's Requirements in terms of grade, technical specifications and materials the Contractor's Proposal and drawings shall prevail.
- 7.4 Any ambiguities or discrepancies within the Government's Requirements shall be explained and resolved by the P.D who shall thereupon issue to the Contractor appropriate instructions.
- 7.5 Where there is a discrepancy within the Contractor's Proposals or drawings, the Contractor shall inform the P.D in writing of his proposed amendment to remove the discrepancy and (subject

always to compliance with Statutory Requirements) the P.D shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the decision or acceptance by the P.D without cost to the Government.

7.6 The Government gives no warranty in any manner whatsoever for any information provided by the Government in the Contract as to their accuracy or sufficiency or as to how the same shall be interpreted and the Government shall not be liable if such information is inaccurate or insufficient. The Contractor shall not be relieved from its obligations to ensure that such information is accurate and sufficient for the purposes of this Contract.

## **8.0 RIGHTS OF P.D**

8.1 The Contractor shall, subject to clauses 8.4 and 23.2, forthwith comply with all instructions issued to him by the P.D in regard to any matter in respect of which the P.D is expressly empowered by this Contract to issue instructions.

8.2 All instructions, notifications, consent or approvals issued by the P.D shall be in writing. However, the P.D may, where necessary, issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consent or approvals shall be followed in writing not later than seven (7) days thereafter.

8.3 Such written instructions, notifications, consent or approval shall be left at the office of the Contractor at the Site or sent to the Contractor's principal place of business.

8.4 If within seven (7) days after receipt of a written notice from the P.D requiring compliance with an instruction the Contractor does not comply therewith, then the P.D may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment including On-cost Charges shall be deducted by him from any monies due or to become due to the Contractor under this Contract, failing which such deductions shall be recovered from the Performance Bond or as a debt due from the Contractor.

8.5 In the event there is any change in the person who is named as P.D during the continuance of this Contract, such successor shall not disregard or overrule any decision, approval, concurrence or direction given to the Contractor in writing by his predecessor unless he is satisfied that such action will not cause any pecuniary loss to the Contractor.

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

(a) the right to take action and/or initiate proceedings on behalf of the Government in respect of any matter which arises out of the provisions of clauses 49, 59, 60, 61, 62, 66 or 67 where appropriate, is expressly reserved to the Officer named in Appendix 1; and

(b) the power of the P.D to issue instructions requiring a variation under clause 23.2 shall be

subject to the financial limits as set out in Appendix 1 hereto. If the P.D is required to issue an instruction requiring a variation under clause 23.2 which is more than the financial limits set out in Appendix 1, the P.D shall obtain the prior written approval of the relevant authorities of the Government.

8.7 If any of the P.D's instructions which is issued pursuant to this clause 8 require the Contractor to make any changes to the design in order to ensure that the Government's Requirements are fulfilled, such changes shall not constitute a variation within the meaning of clause 23.

8.8 The Contractor shall not be entitled to claim for extension of time or any extra cost or expense or whatsoever arising from compliance with the provisions of clause 8.7.

## **9.0 CONTRACTOR'S PROJECT MANAGER**

9.1 The Contractor shall at all times retain at the Site a competent, efficient, suitably qualified, and experienced Project Manager who must be of good character and capable of receiving instructions and communicating in Bahasa Malaysia and English.

9.2 Any instruction given to such Project Manager referred to in clause 9.1 by the P.D shall be deemed to have been given to the Contractor.

## **10.0 PERFORMANCE BOND**

10.1 The Contractor shall, as a condition precedent to the commencement of any work deposit with the Government a Performance Bond substantially in the form as set out 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 Contract Sum to secure the due performance of the Contractor's obligations under this Contract. The Performance Bond shall remain valid and effective from the date of issuance until 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.

10.2 If the Contractor fails to submit the said Performance Bond in the form as specified under clause 10.1 by the Date for Possession, the Contractor shall be deemed to have opted for a Performance Bond in the form of a performance guarantee sum instead whereby deductions of ten percent (10%) shall be made from every interim payments until the total amount deducted is equivalent to a 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.

10.3 Notwithstanding clause 10.2, the Contractor may submit a Performance Bond in the manner specified in clause 10.1 at any time after deductions of the interim payments are made pursuant to clause 10.2. In such an event the Government shall refund the Contractor the amount which has been deducted up to the date of submission of the Performance Bond.

- 10.4 Notwithstanding anything contained in this Contract, if the Contractor fails to perform any of his obligations under the Contract and such failure is not remedied in accordance with this Contract, the Government shall be entitled to call upon the Performance Bond, wholly or partially.
- 10.5 If a payment is made to the Government pursuant to any claim under the Performance Bond, -
- (a) in the case of a Performance Bond in the form specified under clause 10.1, the Contractor shall issue to the Government further security in the form of additional Performance Bond, or
  - (b) in the case of a Performance Bond in the form of a performance guarantee sum under clause 10.2, the Government may further deduct from any monies due by the Government to the Contractor,
- 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 10.1 or clause 10.2, whichever is applicable.
- 10.6 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 issuance of the Certificate of Completion of Making Good Defects for the whole of the Works under clause 47.
- 10.7 Notwithstanding clauses 10.2 and 10.4, in the event this Contract is terminated under clauses 60 and 61 the said Performance Bond or any balance thereof shall be forfeited.

## **11.0 INSURANCE OF WORKS**

- 11.1 The Contractor shall, in the joint names of the Government and 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 works executed and all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended thereof (but excluding temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) to the full value thereof together with the cost of the design work of the Contractor (plus any amount which may be specifically stated in Appendix 1) and shall keep such works, materials and goods so insured until the practical completion of the whole of the Works but subject to any partial termination of insurance permitted under this Contract in cases of sectional completion or Partial Occupation by the Government. 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.
- 11.2 The said insurance with or without an excess clause as specified in Appendix 1 shall be effected with an insurance company approved by the P.D and the Contractor shall deposit with the P.D the policy or policies and the receipts for the premium paid for such insurance. Where an excess clause is specified in Appendix 1, the Contractor shall bear the amount of such excess.

- 11.3 In the event the Contractor fails to renew such insurance as are necessary under this clause, the Government or the P.D on its behalf may renew such insurance and pay the premium in respect thereof and deduct the amount so expended including On-cost Charges 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.
- 11.4 Upon the occurrence of any loss or damage to the Works or unfixed materials or goods prior to the completion of the Works from any cause whatsoever, 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 only such amounts as are specifically required in Appendix 1 or elsewhere in the Contract Documents) be released to the Contractor by installments on the certificate for payment issued by the P.D., 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.
- 11.5 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 Completion of Making Good Defects in accordance with clause 47.
- 11.6 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.

## **12.0 POSSESSION OF SITE**

- 12.1 No work on this Contract shall commence unless and until the Performance Bond stipulated under clause 10.1 and such insurance policies as specified under clause 39 shall have been deposited with the Government. Provided that for the purposes of this clause only (but for no other), if the Contractor shall produce to the Government or the P.D the Performance Bond, if opted for by the Contractor, and the original cover notes of the said insurance policies and the receipts of premiums paid, it shall be sufficient discharge of his obligations under this clause.
- 12.2 Unless the Contract Documents provide otherwise, the Contractor shall be entitled on or before the Date for Possession to access to and possession of the Site or such part of the Site to enable the Contractor to commence Works. The Contractor's access to and possession of the Site or such part of the Site shall not be exclusive but shall be subject to the Government's rights. The Contractor shall thereupon forthwith commence the Works (but subject to clause 12.1) and regularly and diligently proceed with and complete the Works on or before the Date for Completion. The Date for Completion of the Works as referred to under clause 44 shall be calculated from the said Date for Possession.
- 12.3 Notwithstanding clause 12.2, possession of Site may be given in sections or in parts and may be imposed with any restriction as specified in the Appendices or in this Contract.



- 12.4 In the event of any delay in giving possession of the Site or in giving any section or part of the Site, whether or not provided in Appendix 1, the P.D may issue instructions to revise the 'Date for Possession', and the 'Date for Completion' shall be accordingly revised under clause 49.1(g). The Contractor however shall not be entitled to claim for any loss, expense or damage caused by such delay nor shall he be entitled to terminate this Contract.
- 12.5 Notwithstanding clause 12.4, should the delay in giving possession of the whole Site exceed ninety (90) days from the Date for Possession, the P.D shall notify the Contractor of the causes of such delay. Within fourteen (14) days of receipt of such notification, the Contractor may inform the P.D in writing of his decision which is either -
- (a) agree to proceed with the Works when the whole Site is made available, in which case sub-clause 12.4 shall apply and the Contractor shall not claim any loss or damage caused by such delay; 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.
- 12.6 Notwithstanding clause 12.4, should the delay in giving possession of any section or part of the Site (whether or not provided in clause 12.3) exceeds ninety (90) days from the Date of Possession 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 referred to in clause 13.5, as the case may be, the P.D shall notify the Contractor of the causes of such delay. Within fourteen (14) days of receipt of such notification, the Contractor may inform the P.D in writing of his decision which is either -
- (a) agree to proceed with the Works when the section or part of the Works is made available, in which case clause 12.4 shall apply and the Contractor shall not be entitled to claim any loss or damage caused by the delay; or
  - (b) request for the relevant section or part of the Works to be omitted from the Contract. If the P.D. agrees to such request then the relevant section or part shall be duly omitted and deemed to be a variation to the Contract. Such variation shall not vitiate the Contract. If the P.D does not agree to such request then the Contractor shall be entitled to claim for any loss or expense caused by the delay which exceeds ninety (90) days.

### **13.0 PERFORMANCE OF THE WORKS**

#### **13.1 Submission of Supervision Reports**

- (a) The Contractor shall submit supervision reports on the following:
  - (i) works properly done on Site;
  - (ii) progress of the Works;
  - (iii) any tests done on the Site;
  - (iv) safety measures at the Site;
  - (v) environmental impact assessment of the Works; and

(vi) any other matter as required by the Government,

to the P.D each month, or at any other time as required by the P.D.

- (b) All such reports which are to be submitted by the Contractor shall be duly verified and certified by the Consultants of the Contractor.
- (c) The submission of such reports under this clause shall be a condition precedent to any interim payment that the Contractor shall be entitled under clause 53 of this Contract. In the event that the Contractor fails to comply with the requirement of this clause, the Government shall be entitled to withhold the interim payment that the Contractor would otherwise be entitled to.
- (d) The submission of reports by the Contractor pursuant to this clause shall not in any way absolve the Contractor of any of its liability under this Contract.

### **13.2 Quality Assurance System**

- (a) To the extent required by the Contract the Contractor shall institute a quality assurance system, and for this purpose the Contractor shall submit to the P.D the Contractor's plan for the quality assurance systems for his approval before the commencement of the Works.
- (b) The parties hereby agree that compliance with such approved quality assurance system shall not relieve the Contractor from any of his other duties, obligations or liabilities under the Contract and neither shall the P.D or the Government be liable in any manner whatsoever notwithstanding the approval by the P.D of the said system.

### **13.3 Contractor to be Responsible for the Works, Materials, etc.**

- (a) From the commencement of the Works to the date of the issuance of the Certificate of Practical Completion for the whole of the Works the Contractor shall, save as in clause 13.3(b), take full responsibility for the care of the Works and for materials, plant and equipment for incorporation therein and shall at his own cost replace, repair and make good any damage, loss or injury to the same so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the P.D's instructions. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under clause 47 hereof.
- (b) If the P.D issues a Certificate of Practical Completion or Certificate of Partial Occupation for any Section or part of the permanent works the Contractor shall cease to be responsible for the care of that Section or part from the date of issuance of that Certificate of Practical Completion or Certificate of Partial Occupation when the responsibility for the care of that Section or part shall pass to the Government. Provided always that the Contractor shall remain responsible for any damage to such completed work caused by or as a result of his other activities on the Site.

- (c) The Contractor shall take full responsibility for the care of any outstanding work and materials, plant and equipment for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding work has been completed.

#### **13.4 Accident, failure, etc., to the Works**

- (a) If any accident, failure or other event occurs due to any cause whatsoever to, or in connection with the Works or any part thereof either during the execution of the Works or during the Defects Liability Period, the Contractor shall immediately report the accident, failure or event to the P.D. Unless otherwise directed by the P.D generally or in any particular respect conduct a full investigation into the said accident, failure or event in order to determine the cause or reason for the accident, failure or event and submit a report to the Government and the P.D together with his proposals for remedial works in respect thereof.
- (b) The Contractor shall not, however, cause remedial work to be carried out in respect thereof until directed to do so by the P.D in writing. And upon being so directed the Contractor shall proceed with the remedial works within fourteen (14) days from the date of such direction.
- (c) Where the Government, its employee or any person or body appointed or authorised by it carried 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 specification, designs, records or other available information relating to the Works.
- (d) If by reason of any accident, or failure, or other event occurring to in or in connection with the Works, or any part thereof either during the execution of the Works or during the Defects Liability Period, any remedial or other work or repair shall, in the opinion of the P.D be urgently necessary for the safety of the Works or the public and the Contractor fails to immediately do such work or repair, the Government may employ and pay other persons to carry out such work or repair as the P.D may consider necessary. If the work or repair so done by the Government is work which, in the opinion of the P.D, the Contractor was liable to do at his own expense under the Contract, all costs and charges properly incurred by the Government in so doing shall be recoverable from the Contractor by the Government, or may be deducted by the Government from any monies due or which may become due to the Contractor. Provided always that the P.D shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

#### **13.5 Programme of Works**

- (a) Within fourteen (14) days from the receipt of the Letter of Acceptance the Contractor shall submit to the P.D for his approval -

- (i) a programme showing the order in which he proposes to carry out the Works having regard to the provisions of clause 12.3; and
  - (ii) 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.
- (b) The P.D shall within twenty-one (21) days after receipt of the Contractor's programme:
- (i) approve the programme in writing; or
  - (ii) reject the programme in writing with reasons and/or request modifications; and/or
  - (iii) request the Contractor to supply further information to clarify or substantiate the programme or to satisfy the P.D 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 twenty-one (21) days the P.D shall be deemed to have approved the programme as submitted.

- (c) The Contractor shall upon receipt from the P.D any request under clause 13.5(b)(ii) or (iii) resubmit a modified programme or provide further information as requested.
- (d) If at any time it should appear to the P.D that the actual progress of Works does not conform to the approved programme referred to hereinbefore the Contractor shall produce, at the request of the P.D., a revised programme showing the modifications to the approved programme necessary to ensure completion of the whole Works within the time for completion provided for in clause 44 hereof or extended time granted pursuant to clause 49 hereof.
- (e) The submission to and approval by the P.D or the P.D's representative of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under this Contract.

## **14.0 DESIGN**

### **14.1 Design**

- (a) The Contractor shall be fully responsible for the design, execution and maintenance of the Works/portion of the Works for which his design/alternative design have been accepted by the Government. The Contractor further guarantees to the Government that the design, materials and workmanship of the Works or portion of the Works complies with the Government's Requirements as well as are suitable and fit for purpose and independent of fault.
- (b) Any reference to the design which the Contractor has prepared or shall prepare or issue for the Works shall include the reference to any design which the Contractor has caused

or shall cause to be prepared or issued by others.

- (c) Where any part of the Works has been designed by or on behalf of the Government, and that design has been included in the Government's Requirements, the Contractor shall check the design and accept responsibility for it, having first obtained the approval of the P.D for any modifications which the Contractor considers to be necessary.
- (d) The Contractor shall take full and unequivocal responsibility for the safety of the design and for the adequacy, stability and safety of all site operations and methods of construction.
- (e) Where any Act of Parliament, Regulation or Bye-law requires that a separate check of the design or a test shall be carried out prior to the construction of any permanent and temporary Works. The Contractor shall arrange and carry out such check or test at his own costs.

#### **14.2 Design Guarantee**

- (a) The Contractor shall deposit to the Government a Design Guarantee as per Appendix \_\_\_ as a security to the Contractor's obligations under this Contract. The Design Guarantee shall be effective for the duration of five (5) years commencing from the date of practical completion ("the Design Guarantee Period").
- (b) If any defect or damage shall occur to the Works or any part thereof as a result of any defect, fault, insufficiency or inadequacy in the design including workmanship, material or equipment arising from design default during the Design Guarantee Period, the Government shall issue to the Contractor a notice specifying the default and requiring the Contractor to remedy the same within the period specified at the Contractor's own cost and expense. If the same is not remedied, the Government shall be entitled, without prejudice to any other rights or remedies it may possess against the Contractor under this Contract or at law, to claim and recover from the Contractor any payment for any loss and/or damages suffered or any other expenses incurred as a result thereof.
- (c) Notwithstanding the above, the Government may elect to remedy the defect, fault, insufficiency or inadequacy in the design as at the time such defect, fault, insufficiency, inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the P.D to be the sum required to remedy the same from any money due or to become due to the Contractor under this Contract, and failing which such sum shall be recovered from the Performance Bond or as a debt due from the Contractor.

#### **14.3 Design Guarantee Bond**

- (a) The Contractor shall provide to the Government a banker's guarantee issued by an approved licensed bank/financial institution of the sum of Ringgit ..... (RM ..... ) (hereinafter referred to as

“the Design Guarantee Bond”) substantially in the form as in Appendix upon or before the issuance of the Certificate of Practical Completion of the Works. 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 the Works or any part thereof as a result of any defect, fault, insufficiency or inadequacy in the designs including workmanship, materials or equipment arising directly from design fault then the approved licensed bank / financial institution issuing the Design Guarantee Bond pursuant to clause (a) above will indemnify and pay the Government, on demand by the Government in writing and notwithstanding any objection by the Contractor or any other third party, the sum of ..... being equal to 5% of the cost 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 clause (a) above, the Government shall have the right to claim from the Performance Bond the sum of RM ..... being 5% of the cost of the Works.

## **15.0 MATERIALS, GOODS AND WORKMANSHIP**

### **15.1 Compliance with Government’s Requirements**

- (a) All materials, goods and workmanship shall, so far as procurable, be of the respective kinds and standards described in the Government’s Requirements, or, if not therein, as specifically described in the Contractor’s Proposals or specifications referred to in clause 6.3: PROVIDED THAT the Contractor shall not substitute anything so described without the P.D’s consent in writing, which consent shall not be unreasonably delayed or withheld. No such consent shall relieve the Contractor of his other obligations.
- (b) The Contractor shall upon the request of the P.D provide him with the relevant certificates or vouchers to prove that the materials and goods comply with clause 15.1.

### **15.2 Inspection and Testing of Materials, Goods and Workmanship**

- (a) Further to the Contractor’s obligations under clause 14.1(e), the Contractor shall submit to the P.D 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.
- (b) The Contractor shall carry out the inspection and tests approved under clause 15.2(a) or elsewhere in the Contract and such further tests as the P.D 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).

- (c) The P.D 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.
- (d) The Contractor shall, as may be required by the P.D 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 the quality, weight or quantity of the materials used; and shall supply samples of materials before incorporation in the Works for testing.
- (e) Unless the Contract otherwise provides, the cost of making any test shall be borne by the Contractor if such test is:
  - (i) proposed by the Contractor under clause 14.1(e) or clause 15.2(a); or
  - (ii) clearly intended by or provided for in the Contract.
- (f) Notwithstanding anything in clause 15.2(e), if the Contractor carries out any further test as required by the P.D pursuant to clause 15.2(b) 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, then the cost of such test shall be borne by the Government.

## **16.0 RESTRICTION AND PROCEDURE ON USE OF IMPORTED MATERIALS AND GOODS**

- 16.1 The Contractor shall use local goods/materials as listed in the 'Senarai Bahan/Barangan Buatan Tempatan' 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.
- 16.2 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 P.D's prior approval, have the testing done by another agency.
- 16.3 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 the 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 subsequent changes or adjustment to the design of the Works to accommodate such substitution, all to the concurrence of the P.D. Such substitution, any necessary subsequent

changes to the design of the Works and the P.D's concurrence thereto shall not prejudice or affect the Contractor's obligation and liability to guarantee the design under clause 14.

- 16.4 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 Modal Transport Operators (hereinafter referred to as MTO) as listed in Appendix 7. 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.
- 16.5 The Contractor shall submit documentary evidence of compliance with this clause to the P.D within one (1) month from the date of each delivery to the Site of such materials, plant, equipment, vehicles or other goods.

#### **17.0 CONSTRUCTIONAL PLANT, EQUIPMENT, VEHICLES AND MACHINERIES**

- 17.1 The Contractor shall pay all port dues including (but not by way of limitation) wharfage dues, pilotage 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).
- 17.2 The Contractor shall furnish to the P.D 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.
- 17.3 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.
- 17.4 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 P.D 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.
- 17.5 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.
- 17.6 The Contractor shall make his own arrangement in obtaining clearance through the Customs of constructional plant, equipment, vehicles and machineries. However, if required, the P.D's



assistance may be sought.

- 17.7 Under this Contract the Contractor shall be required to furnish all lists of constructional plant, equipment, vehicles and machineries to the P.D whether the constructional plant, equipment, vehicles and machineries are hired or acquired.

## **18.0 NON-REMOVAL OF MATERIALS AND GOODS ON SITE**

### **18.1 Exclusive Use for the Works**

- (a) All equipment, temporary works, materials for temporary works or other goods or materials provided by the Contractor shall, when brought onto the Site, be deemed to be exclusively intended for the execution of the Works.
- (b) The Contractor shall not without the written consent of the P.D (which consent shall not unreasonably be withheld where the items in question are no longer immediately required for the purposes of the completion of the Works) remove such equipment, temporary works, materials for temporary works or other goods or materials or any part of the same except for the purpose of moving it within the Site.

### **18.2 Passing of Proprietary Rights and Vesting**

Proprietary rights and ownership in goods or materials which form part of the Works, equipment, temporary works and materials for temporary works, shall pass to the Government when payment is made for the same in accordance with clause 53 and such property shall be deemed to be the property of the Government.

### **18.3 Government not liable for Damage**

The Government shall not at any time be liable for loss or damage to any of the equipment, temporary works, materials for temporary works or other goods or materials nor for any loss, expense, costs, damages, liability or claim arising from the presence of use of the equipment, temporary works, materials for temporary works or other goods or materials except and to the extent that the same is due to any act or neglect of the Government or of any person for whom the Government is responsible.

### **18.4 Incorporation of clause in sub-contract**

The Contractor shall, when entering into any sub-contract for the execution of any part of the Works, incorporate in such sub-contract (by reference or otherwise) the provisions of this clause in relation to equipment, temporary works, materials for temporary works or other goods or materials brought onto the Site by the sub-contractor.

## **19.0 SITE BOUNDARIES AND SETTING OUT**

- 19.1 The P.D shall define the boundaries of the Site and shall determine any levels, boundary stones and any other points of reference which may be required by the Contractor for the execution of the Works. The P.D shall also furnish the Contractor such information to enable the Contractor to set out the Works at ground level.
- 19.2 Notwithstanding clause 19.1, the Government gives no warranty in any manner whatsoever for the information either as to their accuracy or sufficiency or as to how the same shall be interpreted and the Contractor, when he makes use of and interprets the same shall do so at his own risk and the Government shall not be liable if such information is inaccurate or insufficient.
- 19.3 The Contractor shall use and interpret the information at his own risk and 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.
- 19.4 If at any time during the progress of the Works any error in the position, levels, dimensions or alignments of any part of the Works is discovered, the Contractor shall, at his own expense, rectify such error notwithstanding that the error arises from inaccurate or insufficient information given by the Government.
- 19.5 The Contractor shall provide the P.D at no cost such information relating to the setting out as may be required by the P.D from time to time.

## **20.0 ANTIQUITIES**

- 20.1 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 the absolute property of the Government and upon discovery of such an object the Contractor shall forthwith –
- (a) not 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 P.D of the discovery and precise location of the object.
- 20.2 The P.D shall issue instructions in regard to what is to be done concerning the object reported by the Contractor under clause 20.1 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 39 be deemed to be a person for whom the Government is responsible and not to be a sub-contractor.
- 20.3 If compliance with the provisions of clause 20.1 or with an instruction issued under clause 20.2 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.

## **21.0 INSPECTION OF SITE**

- 21.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself and allowed in the Contract Sum 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.
- 21.2 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.

## **22.0 ACCESS TO THE SITE**

- 22.1 The P.D and any person authorised by him shall at all reasonable times have access to the Site and 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 this Contract.
- 22.2 Where any such equipment, materials, goods or works are being 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, so far as possible secure a similar right of access to those factories, workshops or other places for the P.D and any person authorised by him, and shall take all reasonable steps required of him by the P.D to enforce or assist in enforcing such right.
- 22.3 The Contractor shall, in accordance with the requirements of the P.D, afford all reasonable access and facilities to any person engaged by the Government for purposes of executing any work on or near the Site.

## **23.0 VARIATIONS**

- 23.1 The term 'variation' means a change in the Government's Requirements which makes necessary 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; and
- (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.

23.2 The P.D may issue instructions effecting a variation by way of a Variation Order. The Contractor shall forthwith comply with the Variation Order. No variation instructed by the P.D under this clause shall in any way vitiate or invalidate the Contract but the fair and reasonable value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Sum, unless such variation is necessitated by the Contractor's default. PROVIDED THAT any variation which alters or modifies the design of the Works shall be with the consent of the Contractor, whose consent shall not be unreasonably delayed or withheld.

23.3 Notwithstanding clause 23.2, if in the opinion of the P.D the variation is necessary for the purpose of suitability, functionality and safety of the Works, the Contractor shall effect the variations. For the purpose of this clause, what constitutes "suitability, functionality and safety of the Works" shall be solely determined by the P.D and such determination shall for all intents and purposes be final and conclusive. Notwithstanding thereto the Contractor shall remain responsible for the design of the works as provided under clause 14.

23.4 Where a variation under clause 23.3 results in extra cost, the said extra cost shall be borne by the Contractor. However, if the variation results in a reduction in cost, the Contract Sum shall be accordingly reduced.

23.5 Any variations made under this clause shall not relieve the Contractor of his obligations under clause 14.1(a).

#### **24.0 VALUATION OF VARIATIONS**

24.1 The valuation of additional or substituted work shall be consistent with the value of works of similar character set out in the Contract Sum Analysis or Contract Schedule of Rates, making due allowance for any change in the conditions under which the work is carried out or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Contract Sum Analysis or Contract Schedule of Rates a valuation shall be made by the P.D.

24.2 The valuation of the omission of work shall be in accordance with the values in the Contract Sum Analysis or Contract Schedule of Rates.

24.3 Any valuation of work under clause 24.1 and 24.2 shall include allowance for any necessary

addition to or reduction of the Site administration, Site facilities and temporary works.

- 24.4 Where an appropriate basis of a valuation of additional or substituted work is Day work, the valuation shall comprise the prime cost of such work plus 15% which shall include the provision of Site administration, Site facilities and temporary works and for profit. PROVIDED THAT as a condition precedent to any right to any payment the Contractor shall produce vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed to the P.D for verification not exceeding seven (7) days after the work has been executed.
- 24.5 The valuation made under this clause shall not include any claims for direct loss or expense notwithstanding that such variation affects the regular progress of the Works.
- 24.6 Upon determination of the valuation of the variation, the Contract Sum shall be revised accordingly by way of addition or deduction.

## **25.0 PROVISIONAL SUMS**

- 25.1 The term Provisional Sum included in the Contract Documents means a sum for work to be executed or the supply of materials or goods which cannot be entirely foreseen, defined or detailed before the Date of Tender and the P.D shall issue instruction to the Contractor in regard to the expenditure of such Provisional Sum.
- 25.2 The value of works which are executed by the Contractor in respect of a Provisional Sum shall be ascertained in accordance with clause 24. At the settlement of the accounts the value of such work executed by the Contractor shall be set against the Provisional Sum and the balance shall be added to or deducted from the Contract Sum. If the Provisional Sum is not used either wholly or partly, the unused amount shall be deducted from the Contract Sum.

## **26.0 EMPLOYMENT OF WORKMEN**

- 26.1 The Contractor shall employ in the execution of the Contract only Malaysian citizens as workmen. If in any particular trade or skill required to complete this Contract, the Contractor can show to the satisfaction of the P.D that Malaysian citizens are not available, then the Contractor may employ non-Malaysian citizens subject to the approval of the relevant authorities.
- 26.2 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 and his sub-contractors (including 'labour only' sub-contractors) on 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. 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.

26.3 The Contractor shall cause his sub-contractors including 'labour-only' sub-contractors to comply with clause 26.

## **27.0 COMPLIANCE WITH EMPLOYMENT ACT 1955, ETC.**

The Contractor shall comply and shall cause his sub-contractors including 'labour only' sub-contractors to comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employees Provident Fund Act 1991, 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.

## **28.0 EPIDEMICS AND MEDICAL ATTENDANCE**

28.1 The Contractor shall maintain the Site in clean and sanitary condition and shall comply with the requirements of all relevant laws and with any instructions and requirements issued by the relevant 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.

28.2 The Contractor shall ensure that sufficient first aid kits are made available at suitable locations on the Site and shall instruct an adequate number of person in their use. The names of the persons so instructed shall be made known to all employees of the Contractor.

## **29.0 DAYS AND HOURS OF WORKING**

29.1 No work shall be done on:

- (a) the weekly day of rest;
- (b) any public holiday which is recognized 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 prior written consent of the P.D and such consent shall not be unreasonably withheld or delayed.

29.2 In the event that the written application of the Contractor is approved by the P.D under clause 29.1, the Contractor shall comply with all requirements of the Employment Act 1955 in regard thereto and shall bear all cost for compliance therewith including payment of wages.

### **30.0 WAGES, BOOKS AND TIME SHEETS**

30.1 The Contractor shall keep and shall cause his sub-contractors (including 'labour only' sub-contractors) to keep proper wages books and time sheets showing the amount of wages paid to and the number of hours worked by every workman employed by him and his sub-contractors as aforesaid in and for the performance of this Contract.

30.2 The Contractor shall produce such wages books and time sheets on demand for inspection by any persons duly authorised by the P.D.

30.3 The Contractor shall furnish the P.D or his duly authorised representative such information relating to the wages and conditions of employment of such workmen as the P.D may from time to time require.

### **31.0 DEFAULT IN PAYMENT OF WAGES**

31.1 In the event of default being made in the payment of –

(a) wages; and/or

(b) Employee's Provident Fund Contributions,

of any workman employed by the Contractor or his sub-contractors, including 'labour only' sub-contractors in and for the performance of this Contract then the P.D shall make payment to the Director General of Labour and/or Employee's Provident Fund Board, as the case may be.

31.2 Such payment made by the P.D under clause 31.1 and On-cost Charges shall be deducted from any money due or to become due to the Contractor under this Contract, and failing which such payment shall be recovered from the Performance Bond.

### **32.0 DISCHARGE OF WORKMEN**

32.1 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.

- 32.2 The P.D 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 P.D misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such person shall not again be employed upon the Works without the prior written permission of the P.D.
- 32.3 Any person so removed from the Works shall be replaced without delay by a substitute approved by the P.D; 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 P.D under this clause.

### **33.0 EMPLOYEES SOCIAL SECURITY ACT 1969**

- 33.1 Without prejudice to his liability to indemnify the Government under clause 14, 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 clause, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.
- 33.2 The Contractor shall submit his Code Number and Social Security Numbers of all workers on the Site required to be covered under the Employees Social Security Act 1969 to the P.D for checking.
- 33.3 The Contractor shall make payment of all contributions from time to time on the first day on which the same ought to be paid and until the end of the Defects Liability Period and it shall be the duty of the Contractor to produce to the P.D contribution cards or stamp vouchers as evidence of payment of such contribution, whether demanded or not.
- 33.4 If the Contractor fails to comply with the terms of this clause, the Government or the P.D on its behalf may without prejudice to any other remedy available to Government for breach of any of the 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 P.D will satisfy any claims for compensation by workmen that would have been borne by SOCSO 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 from any money due or 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.



#### **34.0 INDEMNITIES TO GOVERNMENT IN RESPECT OF CLAIMS BY WORKMEN**

- 34.1 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 and every workmen employed 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.
- 34.2 The Contractor shall effect and maintain throughout the Contract Period an Employer's Liability Insurance or Workmen Compensation Insurance or any other applicable insurance for its personnel, servants, agents or employees required under the laws of Malaysia.

#### **35.0 CONSULTANTS**

- 35.1 The Contractor shall enter into an agreement with each consultant and shall deposit eight (8) copies of the Contract entered to the P.D as a condition precedent before the P.D approve the first interim payment.
- 35.2 The Contractor shall only employ local consultants for the design and supervision of the Works and the management of the Project. Under no circumstances will the Contractor be permitted to employ foreign consultants except where there are no local consultants with the required expertise and special exemption had been obtained from the Government, prior to the execution of the Contract.
- 35.3 The Contractor shall submit a complete list of consultants to be employed for the Works stating their job and their obligations. The Contractor shall ensure that the consultants are efficient, suitably qualified and experienced and are registered with their respective professional Boards.
- 35.4 The Contractor shall not employ any other professionals (other than those named in his proposal) without the prior consent of the P.D The Contractor's attention is also drawn to the fact that the said consultants shall be retained throughout the Contract Period for the supervision of the Works and they shall not be discharged without the consent of the P.D. All as-built drawings required for the Works shall be certified by the relevant consultant.
- 35.5 Any action, decision, instruction or consent taken, made or given by the Government or the P.D as the case may be under this clause shall not in any way whatsoever relieve the Contractor of any of his obligations under this Contract.

## **36.0 DIRECT PAYMENTS TO CONTRACTOR'S CONSULTANTS**

### **36.1 Payment to Consultants**

- (a) For purposes of payment to the consultant, the Contractor and the Consultant shall enter into an Irrevocable Deed of Assignment for the assignment of any money due to the Consultant to be paid directly by the Government. The Irrevocable Deed of Assignment shall provide for an escrow account to be opened jointly by the Contractor and consultant at a bank licensed in Malaysia.
- (b) The Contractor shall submit to the Government the escrow account number and the Government shall pay the amount recommended by the consultant to the P.D as the amount payable to the consultants directly into the said escrow account. Any payment made by the Government into the escrow account shall be deemed to be a payment under this Contract. Any dispute between the Contractor and the consultant in relation to the amount due to the escrow account shall not affect the continuous payment by the Government into the escrow account pursuant to this Contract and the Government shall not be a party to any such dispute.
- (c) The Contractor shall recommend to the P.D the amount payable to the consultants. The P.D in issuing Interim Certificates under clause 53 or the Final Certificate under clause 54 of the Contract shall state separately the amount of interim or final payment due to each consultant which amount subject to clause 36.1(d), shall be paid by the Government direct to the consultant. The amount paid by the Government direct to the consultant shall be deemed to be a payment to the Contractor by the Government under and by virtue of this Contract, provided that if the P.D received written notice of dissatisfaction from the consultant not later than two (2) weeks before the issuance of the next interim certificate or final certificate regarding the amount certified by the Contractor then the P.D may certify and the Government may make direct payment to the consultant in accordance with the clause 36.1.
- (d) The amount payable to the consultant by the P.D shall include fees for basic services and supervision as specified in the Consultancy Agreement. Supervision fees shall be paid for supervision of Works carried out during the Contract Period and approved extended period subject to clause 50. Any additional costs for supervision of Works beyond the approved period shall be borne by the Contractor.
- (e) Subject to the relevant provisions in the Consultancy Agreement, the Contractor shall be entitled to be paid and the Government may pay to the Contractor out of any money otherwise due to a Consultant:
  - (i) any amount which the Government or the P.D on its behalf in exercise of any right 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 Consultant, his servants or agents;
  - (ii) any amount agreed by the Consultant 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 Consultancy Agreement; and

- (iii) 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 Consultancy Agreement by the Consultant.

Any amount paid to the Contractor in accordance with this clause shall be deemed to be a payment to the Consultant under the Consultancy Agreement.

- (f) Nothing in this clause nor anything else contained in this Contract shall render the Government in any way liable to any Consultant nor relieve the Contractor from his obligations and liabilities under the Contract.

### **36.2 Responsibilities of Contractor to Consultants**

- (a) In and for the purpose of this Contract, the Contractor shall be fully responsible to ensure that the Consultants 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 Consultants on their part in the same way as for his own or those of other sub-contractors or suppliers engaged by himself, and the Government shall in no circumstances be liable to the Contractor for the default of any Consultant.
- (b) In the event of repudiation or abandonment of his consultancy services by any Consultant, or the determination by the Contractor of the employment of the Consultant for any reason whatsoever under the Consultancy Agreement or as directed by the P.D, the Contractor shall with the consent of the P.D (such consent shall not be unreasonably withheld) employ another competent consultant to complete the consultancy services. Provided that in any of such events the Contractor is entitled to be paid the same sum for the services to be executed, as would have been payable had the original Consultant completed the consultancy services without any default on his part.
- (c) All notices with regard to termination of the Consultancy Agreement shall not be issued without the prior consent of the P.D. Where in the opinion of the P.D the Consultant has defaulted due to any reason as provided for under the Consultancy Agreement, the P.D may instruct the Contractor to determine the employment of the Consultant, and the Contractor shall forthwith determine the employment of the Consultant.

### **37.0 ACCESS TO THE SITE**

The Contractor shall, in accordance with the requirements of the P.D, afford all reasonable access and facilities to any person engaged by the Government for purposes of executing any work on or near the Site.

**38.0 GOVERNMENT'S INDEMNITY IN RESPECT OF INJURY TO PERSONS AND DAMAGE TO PROPERTY**

38.1 The Contractor 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.

38.2 The Contractor 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—

- (a) the negligent use, misuse or abuse by the Contractor or its personnel, servants, agents or employees appointed by the Contractor;
- (b) 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 willful act, default or omission of the Government, its agents or servants; or
- (c) 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.

38.3 The Contractor agrees that 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.

38.4 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.

**39.0 INSURANCE AGAINST INJURY TO PERSONS AND DAMAGE TO PROPERTY**

39.1 Without prejudice to his liability to indemnify the Government under clause 38, 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 1 as are necessary to cover the liability of the Contractor and all sub-contractors.

39.2 Such insurance shall be in respect 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, or of any servants or agents of the Contractor or of any such sub-contractor. Where an excess amount is specified in Appendix 1 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 on him by the other jointly insured.

- 39.3 The Contractor shall effect and maintain insurances during the execution of the Works as well as during the Defects Liability Period for such amount of indemnity as may be specified in Appendix 1 in respect of any expense, liability, loss, claim or proceedings which the Government may incur or sustain by reason of damage to any property (including the Works and any other property of the Government) caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works except damage arising from an Event of Force Majeure under clause 66.2.
- 39.4 Such insurance as referred to under clause 39.1 and 39.2 shall be effected with an insurance company approved by the Government and maintained in the joint names of the Government and Contractor, from the period of the date of possession of site until the date of issuance of Certificate of Completion of Making Good Defects. The Contractor shall ensure that such insurance shall also cover the Government, the Contractor and all sub-contractors, for any claim occasioned by the Contractor or any sub-contractor in the course of any operations carried out by him or any sub-contractor for the purpose of complying with his obligations under clause 47 hereof. It shall be the duty of the Contractor to produce the relevant policy or policies of the insurance together with receipts in respect of premiums paid to the P.D, whether demanded or not.
- 39.5 If the Contractor or any sub-contractor fails to renew such insurance as are necessary under this clause, the Government or the P.D on its behalf may renew such insurance as aforesaid and may deduct a sum equivalent to the amount in respect of premiums paid including On-cost Charges from any money due or to become due to the Contractor under this Contract, failing which such premiums shall be recovered from the Performance Bond or as a debt due from the Contractor.
- 39.6 The Contractor shall ensure that any insurance policy effected 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 a Certificate of Completion of Making Good Defects in accordance with clause 47.
- 39.7 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.

#### **40.0 SUB-CONTRACTING AND ASSIGNMENT**

- 40.1 The Contractor shall not without the prior written consent of the P.D (which consent shall not be unreasonably delayed or withheld) sub- contract the design for all or any portion of the Works. Where the P.D consents to any sub- contract under this clause, such consent shall not in any

way absolve the obligations of the Contractor under clause 14.1(a).

- 40.2 The Contractor shall not sub-contract the whole or any substantial part of the Works without the prior written consent of the P.D (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.
- 40.3 Notwithstanding any sub-contract made pursuant to clauses 40.1 and 40.2, 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; PROVIDED THAT the provision of labour on a piecework basis shall not be deemed to be a sub- contract under this clause.
- 40.4 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.
- 40.5 If the Contractor sub-contracts the Works, in whole or in part, to any person without getting prior written consent of the P.D as provided under this clause, the P.D 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.
- 40.6 The Contractor shall not assign the Contract or any part thereof; or any benefit or interest therein or thereunder without the prior written consent of the P.D.

#### **41.0 BUMIPUTERA PARTICIPATION**

- 41.1 The Contractor shall employ Bumiputera organisations or professionals to carry out specific portion of the Works on a sub-contract basis as defined under clause 40 and the amount of all these participation shall be at least 30% of the total Contract Sum.
- 41.2 It is also required that:
- (a) the Bumiputera organisation shall be from the list of registered contractors maintained by the Contractors Service Centre of the Ministry of Entrepreneurial Development Malaysia or the list of registered suppliers and professional firms maintained by the Ministry of Finance Malaysia, whichever is applicable;
  - (b) within fourteen (14) days from the receipt of the Letter of Acceptance, the Contractor shall submit to the P.D for his approval a list of works, supply or services which he proposes to sub-contract to Bumiputera organisations in accordance with this clause. The P.D shall, within twenty-one (21) days after receipt of this list, –

- (i) approve the list in writing; or
- (ii) reject the list in writing, with reasons and/or request modifications; and/or
- (iii) request the Contractor to supply further information to clarify or substantiate the list;

PROVIDED THAT if none of the above actions is taken within the said period of twenty-one (21) days the P.D shall be deemed to have approved the list as submitted.

- 41.3 If the Contractor fails to fulfill the requirements of this clause, the Government reserves the right to -
- (a) reallocate any portion of the Works to Bumiputera organisations for which the Contractor shall remain fully responsible for any delay or failure on the part of the Bumiputera organisations; or
  - (b) take action against the Contractor by suspension or cancellation of the Contractor's registration as a "Government Contractor".
- 41.4 Any action, decision, instruction or consent taken, made or given by the Government or the P.D, as the case may be, under this clause shall not in any way whatsoever relieve the Contractor of any of his obligations under this Contract.

#### **42.0 TESTING AND COMMISSIONING OF MECHANICAL, ELECTRICAL AND OTHER SERVICES**

- 42.1 Where the Works require the installation of any mechanical, electrical and other systems, the Contractor shall carry out testing and commissioning of the installation to prove that the equipment has been properly adjusted and calibrated to produce the required guaranteed performance and that the system as a whole conforms to the specifications.
- 42.2 Upon completion of the installation work at the Site the Contractor shall arrange for all necessary tests to be carried out on the equipment and installation as required by applicable laws. . The Contractor shall also perform all other tests which may be specified elsewhere in this Contract. The costs of all tests including the provision of necessary equipment, tools, materials, labour and all other expenses shall be deemed to be included in the Contract Sum.
- 42.3 In the event the equipment or system fails to achieve the required guaranteed performance or does not conform to the specifications, the Contractor shall take all necessary measures to ensure that the equipment or system installed pass all the necessary tests. The installation work shall not be considered as complete until the equipment or systems have achieved the required guaranteed performance and have conformed to the specifications.
- 42.4 The Contractor shall submit a test programme to and notify the P.D when these tests are to be conducted so that the P.D or his representatives may be present to witness such tests.

- 42.5 The Contractor shall also carry out further adjustments to the controls whilst the building is occupied and the installation is in use, during the Defects Liability Period. No additional cost shall be charged in carrying out these adjustments.
- 42.6 A complete record of the tests and results of such tests (whether successful or otherwise) shall be kept up-to-date by the Contractor. At the conclusion of all the tests, these records shall be collated and two bound sets are to be provided to the P.D.
- 42.7 On successful testing of the complete installation, the Contractor shall arrange to commission the equipment in the presence of the P.D or his representatives. The Contractor shall demonstrate the correct operation of all mechanical and electrical aspects of the equipment, the correct operations of all controls and prove that the installation is complete.

### **43.0 SECTIONAL COMPLETION**

Where different completion dates for different sections or parts of the Works are stated and identified in Appendix 1 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) clause 44 (Completion of the Works);
- (b) clause 45 (Damages for Non-completion);
- (c) clause 47 (Defects After Completion); and
- (d) clause 49 (Delay and Extension of Time),

but not clause 10, clause 11 and clause 54 shall, in the absence of any express provision to the contrary elsewhere in the Contract Documents apply *mutatis mutandis* as if each such section or part was the subject of a separate and distinct contract between the Government and the Contractor.

### **44.0 COMPLETION OF THE WORKS**

- 44.1 Subject to any requirement as to the completion of any section or part of the Works under clauses 12.3 and 43 before the completion of the whole of the Works, the Contractor shall complete the whole of the Works on or before the Date for Completion or such extended time as may be allowed under clause 49.



- 44.2 When the whole of the Works have reached practical completion according to the provisions of this Contract and to the satisfaction of the P.D, and the Contractor has obtained a temporary certificate of fitness for occupation / certificate of completion and compliance, wherever applicable, the date of such completion shall be certified by the P.D and such date shall be the date of the commencement of the Defects Liability Period as provided in clause 47. The certificate issued under this clause shall be referred to as the 'Certificate of Practical Completion'.
- 44.3 If the Contractor considers that the Works have achieved practical completion, the Contractor shall notify the P.D in writing to that effect.
- 44.4 Within 14 days of receipt of such notice, the P.D shall carry out testing / inspection of the Works. Pursuant to such inspection/testing, the P.D 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 P.D subject to the Contractor giving a written undertaking to complete any outstanding work during the Defects Liability Period. The date of such completion shall be certified by the P.D and such date shall be the date of the commencement of the Defects Liability Period as provided in clause 47.2 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.
- 44.5 If the P.D has given instruction pursuant to clause 44.4(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 P.D.
- 44.6 The Works shall only be regarded as practically complete if -
- (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 nature still to be fully executed provided that such works do not prevent or diminish the full, proper and beneficial use as aforesaid;
  - (c) the Contractor has given to the P.D an undertaking to complete any outstanding work of a very minor nature;
  - (d) the Works have passed any commissioning tests required in this Contract ;
  - (e) the Works shall be made available to the Government in a condition which is fit for occupation; and
  - (f) all the essential services, including access roads, landscape (if applicable), car parks (if applicable), drains, sanitary, water and electricity installation, fire hydrant, sewerage and

refuse disposal equipment and, fire lifts where required, have been provided.

44.7 Notwithstanding the provision of clauses 45 and 49, time shall be the essence of this Contract.

#### **45.0 DAMAGES FOR NON-COMPLETION**

45.1 If the Contractor fails to complete the Works by the Date for Completion or within any extended time granted pursuant to clause 49, the P.D shall issue a Certificate of Non-Completion to the Contractor. Prior to the issuance of the Certificate of Non-Completion, the P.D shall issue a notice to the Contractor informing the Contractor the intention of the Government to impose Liquidated and Ascertained Damages to the Contractor if the Contractor fails to complete the Works by the Date for Completion or within any extended time granted.

45.2 Upon issuance of a 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 1 from the period of 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 P.D may deduct such 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 P.D shall inform the Contractor of such deduction.

#### **46.0 PARTIAL OCCUPATION / TAKING OVER BY GOVERNMENT**

46.1 If at any time or times before the whole of the Works have reached practical completion, the Government with the consent of the Contractor 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 -

- (a) within seven (7) days from the date on which the Government shall have taken possession of the relevant part the P.D 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;
- (b) for the purposes of clauses 44 and 47 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;
- (c) at the end of the Defects Liability Period of the relevant part and if in the opinion of the P.D 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 47, shall have been made good by the Contractor, the P.D shall issue a certificate to that effect;

- (d) the Contractor shall insure and keep insured the Works in the manner as stipulated under clause 11 and the Contractor shall give notice to the insurer of such partial occupation notwithstanding the partial occupation by the Government of the relevant part; and
- (e) the Liquidated and Ascertained Damages specified under clause 45 for any period of delay after such certification of the practical completion of the relevant part under clause 44.1, shall be reduced in the proportion which the total value of the relevant part bear to the Contract Sum.

46.2 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; 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 47 hereof.

#### **47.0 DEFECTS AFTER COMPLETION**

47.1 The Contractor shall, during the Defects Liability Period complete with due expedition or within such time as may be specified by the P.D, any work outstanding at the Date of Practical Completion (whether or not the Contractor has undertaken to do so).

47.2 The Contractor shall, at any time during the Defects Liability Period as stated in Appendix 1 hereto (or if none stated the period is twenty-four (24) months from the date of practical completion of the Works) make good any defect, imperfection, shrinkage or any other fault whatsoever which may appear and which are due to design, materials, goods, workmanship or equipment not in accordance with this Contract, as specified by the P.D in a written instruction to the Contractor.

47.3 Notwithstanding sub-clause 47.1 above, 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 P.D in the Schedules of Defects of which the first schedule shall be delivered to the Contractor within fourteen (14) days and the final schedule shall be delivered not later than twenty-eight (28) days after the expiration of the Defects Liability Period. The defects, imperfections, shrinkages or any other fault whatsoever specified in the Schedules 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 final schedule. Provided that the P.D shall not be allowed to issue any further instruction requiring the Contractor to make good any defect, imperfection, shrinkage or any other fault whatsoever after the issuance of the said Schedule of Defects or after twenty eight (28) days from the expiration of the said Defects Liability Period, whichever is the later.

47.4 If the Contractor shall fail to comply with either clause 47.1 or clause 47.2 or both within the time so specified, the materials or works so affected may be made good in such manner as the P.D may think fit, in which case the costs incurred 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 costs shall be recovered from the Performance Bond or as a debt due from the Contractor.

- 47.5 If any defect, imperfection, shrinkage or any other fault whatsoever is such that, in the opinion of the P.D, it shall be impracticable or inconvenient to the Government to have the Contractor to remedy the same, the P.D 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 to the Government under this Contract, and failing which such diminution shall be recovered from the Performance Bond.
- 47.6 When in the opinion of the P.D the Contractor has made good the defects, imperfections, shrinkages or any other fault whatsoever which he is required to make good under clauses 47.1 or 47.2, or both, the P.D shall issue a certificate to that effect, and the date stated 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'.

#### **48.0 UNFULFILLED OBLIGATIONS**

Notwithstanding the issue of the Certificate of Completion of Making Good Defects under clause 47.6, the Contractor and the Government shall remain liable for the fulfillment of any obligation arising under the provisions of the Contract, prior to the issuance of the said certificate, which remains unfulfilled at the time such certificate is issued. 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.

#### **49.0 DELAY AND EXTENSION OF TIME**

- 49.1 Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice to the officer named in Appendix 1 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 the length of delay. If in the opinion of the said officer 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 -
- (a) by an occurrence of an Event of Force Majeure as provided under clause 66;
  - (b) by reason of directions given by the P.D, 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;
  - (c) by reason of exceptionally inclement weather conditions;
  - (d) by reason of P.D's instructions issued under clauses 7.5, 15.2(b), 20.2 or 23.2 provided that such instructions are not issued due to any act, negligence, default or breach of this contract by the Contractor or any sub contractor;

- (e) by reason of the Contractor not having received in due time necessary instructions, decisions, information, concurrence or consent from the P.D which the P.D is obliged to provide or give under the Contract for which the Contractor shall have specifically applied in writing on a date which having regard to the Date for Completion stated in Appendix 1 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 the Contractor to receive the same; or
- (f) by delay in receipt of any necessary permission or approval of any statutory body or local authority which the Contractor has taken all practicable steps to avoid or reduce; or
- (g) by reason of delay in giving possession of the Site as provided under clause 12.4 and/or 12.5; or
- (h) by delay on the part of artists, tradesmen or others engaged by the Government in executing work not forming part of this Contract;
- (i) by 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) by reason of suspension of the Works as provided under clause 59,

then the officer named in Appendix 1 may, if he is of the opinion that an 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 and reasonable extension of time for completion of the Works.

PROVIDED 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 P.D 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 Government or the P.D are necessitated by or intended to cure any default of or breach of contract by the Contractor.

- 49.2 If during the regular progress of the Works or any part thereof has been materially affected by reason of delays as stated under clause 49.1(b), (d), (e), (h) and (j) hereof (and no other), and the Contractor has incurred or is likely to incur 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 be entitled to claim for such direct loss and/or expense incurred, subject always to clause 50.

## **50.0 PROCEDURE FOR CLAIMS**

- 50.1 Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any clause of this Contract, the Contractor shall within sixty (60) days of the occurrence of such event or circumstances or instructions give notice in writing to the P.D of his intention for such claim.
- 50.2 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 the claims under clause 50.1 together with all supporting documents, vouchers, explanations, calculations, records and receipts for payment made which may be necessary to enable the claims to be ascertained by the P.D. Upon expiry of the ninety (90) days period, the P.D shall proceed to ascertain the claims based on such documents submitted by the Contractor. The amount of such claims ascertained by the P.D shall be added to the Contract Sum.
- 50.3 If the Contractor fails to comply with clause 50.1 and clause 50.2, he shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.

## **51.0 INTELLECTUAL PROPERTY RIGHTS, ROYALTIES, *ETC.***

- 51.1 Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Works shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The Contractor shall not during or at any time after completion on the Works or after the expiry or termination of this Contract, in any way, question or dispute the ownership of the Government.
- 51.2 The Contractor agrees to grant to the Government free from all royalties, fees and other charges, all licenses in respect of intellectual property rights now or hereafter owned or controlled by the Contractor or in respect of which the Contractor has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Works or any part thereof.
- 51.3 All royalties or other sums payable in respect of the design, plans, calculations, drawings which are subject to copyright (other than the design, plans, calculations or drawings provided by the P.D) which are used in the Works shall be deemed to have been included in the Contract Sum.
- 51.4 The Contractor shall defend and indemnify the Government from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any intellectual property rights in respect of any design, plans, calculations, drawings, documents, plant, equipment, machinery, material, methods or processes developed or used for or incorporated in the Works except where such infringement results from compliance with the P.D's instructions pursuant to clause 23.

- 51.5 Where any infringement results from compliance with the P.D's instructions pursuant to clause 23, any royalties, damages or other monies which the Contractor may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.
- 51.6 The Contractor shall indemnify the Government from and against all claims, proceedings, damages, costs and expense which may be brought or made against the Government as a result of the use of such intellectual property rights or infringement by the Contractor of the same.
- 51.7 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.

## **52.0 MAINTENANCE OF WORKS AND SERVICES**

- 52.1 The Contractor shall maintain the whole of the Works and Services as listed in the scope of maintenance of works contained in the Government's Requirements for a period of twenty-four (24) months from the date of the Practical Completion of the Works (hereinafter referred to as the "Maintenance Period") and guarantee the same to be in good working conditions at all times. This maintenance shall include services and equipment provided by the manufacturer of the equipment installed and all materials and workmanship supplied by the Contractor.
- 52.2 The Contractor hereby expressly undertakes to remedy and supply/replace all defective parts or items caused by normal wear and tear, inclusive of all consumable items at his own cost during the said twenty-four (24) months so that the whole of the Works and Services is maintained in the best efficient working order. This maintenance shall include regular and systematic checking, cleaning, servicing, testing, calibration and services as recommended by the manufacturer/supplier as required by the relevant authorities and necessary adjustment to the equipment. The Contractor shall also provide alternative/temporary substitutes to the equipment and services as required in the event of a breakdown of the plant. Any spare parts required for replacement shall be made readily available during the Maintenance Period.
- 52.3 Replacement made or required to be made during the Maintenance Period shall be subjected to a similar Maintenance Period from the date of replacement, provided that such Maintenance Period shall not exceed 24 months from the expiry date of the first Maintenance Period as aforesaid.
- 52.4 When in the opinion of the P.D the Contractor has satisfactorily completed the maintenance of the Works and Services as required under this clause, the P.D shall issue a certificate to that effect, and the date named in such certificate shall be the date on which the Contractor has completed the same. The said Certificate shall be referred to as the "Certificate of Completion of Maintenance".

### **53.0 INTERIM PAYMENTS**

- 53.1 Interim payments shall be made by the Government based on the P.D's monthly valuation of the Works done and properly executed and of any goods or unfixed materials delivered to or adjacent to the Site intended for use or to be incorporated into the Works PROVIDED THAT it shall be a condition precedent to the first interim payment, for the Contractor to submit to the Government copies of the Consultancy Agreement as provided under clause 35.1.
- 53.2 The Contractor shall submit to the P.D, at such times and in such form as the P.D may prescribe, written application for Interim Payments showing the amounts which in the Contractor's opinion are due under the Contract Payments. The submission shall include the following:
- (a) the value of Works done and properly executed;
  - (b) the amount of any valuation of variations or of the instructions by the P.D (clause 24);
  - (c) the amount in regard to the expenditure of Provisional Sums executed or expended (clause 25);
  - (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; and
  - (e) the supervision reports as required by the P.D under clause 13.1.
- 53.3 The P.D shall within twenty-eight (28) days upon receipt of the application for Interim Payments, 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 1.
- 53.4 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 (90) percent 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.
- 53.5 Within a number of days as stated in Appendix 1 (or if none stated then within thirty (30) days of the issuance of any such Interim Payment Certificate) the Government shall pay the Contractor the amount certified as due to the Contractor in the said Certificate.

### **54.0 FINAL ACCOUNT AND FINAL CERTIFICATE**

- 54.1 Within three (3) months after issuance of the Certificate of Completion of Making Good Defects or the Certificate of Completion of Maintenance (if any) whichever is the later, the Contractor shall submit to the P.D a statement of the final account showing in detail the value in accordance with



the 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 the 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.

- 54.2 Upon expiry of the three (3) months period as specified in clause 54.1, the P.D shall proceed to verify the Final Account based on such documents submitted by the Contractor. The P.D shall issue a certificate (hereinafter referred to as “the Final Certificate”) stating the amount which in his opinion is finally due under the Contract from the Government to the Contractor or from the Contractor to the Government, as the case may be, 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 the Contract not later than three (3) months thereafter.
- 54.3 If the Contractor does not submit the final account within the three (3) months referred to in clause 54.1 the P.D may on the expiry of the said three (3) months give notice in writing to the Contractor that if the final account is not submitted by the Contractor within two (2) months from the date of the written notice the P.D may himself prepare the Final Account.
- 54.4 Subject to any deductions authorised by the Contract any balance properly stated in the Final Certificate shall as from the 30th day after the issuance of the same become conclusive as to the balance due between the parties and be a debt payable as the case may be by the Government to the Contractor or by the Contractor to the Government.
- 54.5 Where the Government exercises any right of deduction from monies due or to become due to the Contractor, the P.D shall inform the Contractor in writing the reason of that deduction.
- 54.6 No final payment due to the Contractor shall be made unless and until the Contractor shall have satisfied the P.D by means of a Statutory Declaration made by or on behalf of the Contractor 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 1991 and any other laws relevant to the employment of workmen, have been paid.

## **55.0 EFFECT OF P.D’S CERTIFICATES AND PAYMENT BY GOVERNMENT**

No certificate of the P.D or any approval, written or otherwise, by the P.D or the Government or payment by the Government under any provision of this Contract shall be considered as conclusive evidence as to the sufficiency of any design, works, materials or goods to which it relates, nor shall it relieve the Contractor from any or all of his obligations under this Contract and/or 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 P.D 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.

## 56.0 DEDUCTION FROM MONEY DUE TO CONTRACTOR

The Government or the P.D 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 to the Contractor under this Contract or any other contracts to which the Government and Contractor are parties thereto. The P.D in issuing any certificate under clauses 53 and 54, shall have regard to any such sum so chargeable against the Contractor, PROVIDED THAT this provision shall not affect any other remedy to which the Government may be entitled for the recovery of such sums.

## 57.0 ADVANCE PAYMENT

57.1 The Contractor shall be entitled to an advance payment on the Contract amounting to 25% of the value of the Contract Sum less Provisional Sums (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 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 3 months from the date of possession of Site.

57.2 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 (25%) twenty five percent 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 (75) percent of the total contract value of the Builder's work\*. The deduction shall be calculated as follows:

$$\begin{aligned} \$ D &= \frac{200}{B} \text{ percent of } \$P \\ \text{Where } \$ D &= \text{cumulative deduction to be made in Interim Payment certificate,} \\ \$ A &= \text{total amount of advance paid,} \\ \$ B &= \text{total contract value of builder's work} \\ \$ P &= \text{gross certified value of builder's work executed (including the amount certified for materials on site) or agreed cumulative scheduled payments in excess of 25\% of } \$ B \end{aligned}$$

57.3 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 advance guarantee.

## **58.0 BILLS OF QUANTITIES**

- (a) Where the Contract includes any Bills of Quantities, the quantities set out therein unless stated as "provisional" in respect of any specified items, shall not form part of the Contract. Where quantities are stated as "provisional" such quantities are the estimated quantities of the Works but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract.
- (b) Where the quantities of any part of the Works are stated as "provisional" in the Bills of Quantities the amount to be paid to the Contractor in respect of the said part of the Works upon completion of this contract shall be ascertained by remeasurement as they are actually executed. Provided always the remeasurement of the said "provisional" quantities is not due to the fault, omission or negligence of preparation of the said "provisional" quantities by the Contractor or his Consultants on his behalf. However, if the remeasurement of the said "provisional" quantities results in a reduction in cost the Contract Sum shall be accordingly reduced.
- (c) The rates in the "provisional" in the Bills of Quantities shall determine the valuation of the Works of similar character and executed under similar conditions as work priced therein. 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 maybe reasonable, failing which a fair valuation thereof shall be made by the P.D..

## **59.0 SUSPENSION**

### **59.1 Suspension and Resumption of Works**

- (a) The officer named in Appendix 1 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 his 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 Government 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.

## **59.2 Extension of time**

- (a) If the Contractor suffers delay and/or incurs expenses in complying with the instruction under clause 59.1(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 49 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 the Contractor shall not be entitled to payment of loss and expense if he -
  - (i) fails to take measures specified in clause 59.1(b); and
  - (ii) fails to take all necessary action to mitigate the expenses incurred.
- (b) In the event such suspension shall continue for a period exceeding 12 months, the parties shall then discuss whether to mutually terminate the Contract or suspend the Works for a further period.

## **59.3 Consequences of mutual termination**

If this Contract is mutually terminated under this clause –

- (a) clause 60.1(c)(i) shall apply; and
- (b) payment obligations including all costs and expenditure incurred by the Government and the Contractor shall be ascertained in accordance with clause 63.

## **60.0 EVENTS AND CONSEQUENCES OF DEFAULT BY THE CONTRACTOR**

### **60.1 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 before the Date for Completion;
- (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 P.D in relation to any defective work or equipment, materials or goods or which do not meet the requirements of the Contract;
- (vii) fails to comply with the provisions of clause 4 ;
- (viii) fails to obtain the prior written consent of the P.D. required under clause 40; or
- (ix) fails to comply with any terms and conditions of this Contract,

then the officer named in Appendix 1 may 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 office named in Appendix 1.

#### **(b) Termination**

If the Contractor fails to remedy the breach within such period, the officer named in Appendix 1 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 60.1(b),

- (i) the Contractor shall -
  - (A) forthwith cease all operations on the Works;
  - (B) carry out any protection works so as to secure the Site, equipment,

goods and 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 specified by the P.D and remove all temporary buildings, plant, tools, equipment, goods and unfixed materials which have not been paid by the Government, as specified by the P.D. 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 –
  - (aa) terminate all third party contracts entered into by the Contractor for the purposes of this Contract;
  - (bb) assign to the Government, if so required by the Government, 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 for the purposes of this Contract; or
  - (cc) allow such third party to enter into a contract with the Government or any other 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, drawings, specifications and other relevant documents relating to the Works;
- (G) pay to the Government any losses and damages suffered as a result of the termination of this Contract in the manner provided under clause 64; and
- (H) not be released from any of its obligations or liabilities under this Contract.

(ii) the Government shall –

- (A) call upon the Performance Bond or forfeit the performance guarantee sum, and/or call upon the Design Guarantee Bond;
- (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 and damages suffered as a result of the termination of this Contract in the manner provided under clause 64.

- (iii) Nothing in clause 60.1 or anything else contained in this Contract shall render the Government in any way liable for payments upon termination.

## **60.2 General Default**

### **(a) Events of Default**

If at any time during the contract period –

- (i) the Contractor becomes bankrupt;
- (ii) the Contractor becomes insolvent or compounds with or enters into an arrangement 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 said floating charge; or
- (v) execution is levied against a substantial portion of the Contractor's assets,

then the officer named in Appendix 1 shall have the right to terminate this Contract forthwith by giving notice to that effect.

### **(b) Consequences of Termination**

- (i) In the event of termination of this Contract under clause 60.2, clause 60.1(c)(i) and (ii) shall apply.
- (ii) Nothing in clause 60.2 or anything else contained in this Contract shall render the Government in any way liable for payments upon termination.

## **61.0 TERMINATION ON CORRUPTION**

### **61.1 Termination**

If the Contractor, its personnel, servants, agents, employees or any of its sub-contractors gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward –

- (a) for doing or forbearing to do any action in relation to the Contract or in any other Contract with the Government; or
- (b) for showing or forbearing to show favour or disfavour to any person in relation to the

Contract or any other contract with the Government,

then the [officer named in Appendix 1] shall be entitled to forthwith terminate this Contract at any time by giving written notice to that effect to the Contractor.

## **61.2 Consequences of Termination**

Upon such termination under clause 61.1 –

- (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 60.1(c)(i) and (ii) shall apply; and
- (c) nothing in clause 61 or anything else contained in this Contract shall render the Government in any way liable for payments upon termination.

## **62.0 TERMINATION ON NATIONAL INTEREST**

### **62.1 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 purposes 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.

### **62.2 Consequences of Termination**

Upon such termination under clause 62.1 –

- (a) payment obligations including all costs and expenditure incurred by the Government and the Contractor shall be ascertained in accordance with clause 63; and
- (b) clause 60.1(c)(i) and clause 60.1(c)(ii)(B) and (C) shall apply.

## **63.0 PAYMENTS UPON TERMINATION**

- 63.1 If this Contract is terminated under clause 59 or clause 62, 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 works carried out up to the date of termination;
- (b) the amounts payable in respect of any preliminary items so far as the Work 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 the expectation of completing the whole of the Works 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 paragraphs (i)-(v) above.

63.2 Upon the termination of this Contract under clause 59 and clause 62, a final account of this Contract shall be prepared and issued by the P.D.

#### **64.0 CERTIFICATE OF TERMINATION COSTS**

64.1 As soon as the arrangements for the completion of the Works made by the Government enable the P.D 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 P.D then the P.D 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).

64.2 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 60.1(c)(i)(E);
- (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.

64.3 The Final Contract Sum comprises the following amounts or sums:

- (a) the amount which would have been payable under the Contract on completion in accordance with the Contract, allowing for 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.

64.4 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.

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

64.6 In the event of the completion of the Works being undertaken departmentally, allowance shall be made, when ascertaining the amount to be certified as costs or 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.

## **65.0 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.

## **66.0 FORCE MAJEURE**

66.1 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.

66.2 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.

PROVIDED THAT an Event of Force Majeure shall not include financial inability on the part of the Contractor to perform his obligations under this Contract.

- 66.3 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.
- 66.4 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 be terminated upon mutual agreement of the parties.
- 66.5 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.
- 66.6 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.
- 66.7 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.

## **67.0 ARBITRATION**

- 67.1 If any dispute or difference shall arise between the Government and the Contractor out of or in connection with the contract, then the parties shall refer such matter, dispute or difference to the officer named in Appendix 1 for a decision.
- 67.2 The decision of the officer named in Appendix 1 shall be in writing and shall subject to clause 67.4, 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.

67.3 If the parties –

- (a) fail to receive a decision from the officer named in Appendix 1 within forty-five (45) days after being requested to do so; or
- (b) are dissatisfied with any decision of the officer named in Appendix 1,

then such dispute or difference shall be referred to arbitration within forty-five 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.

67.4 Such reference, except on any difference or dispute under clause 66 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.

67.5 In the event that such consent has been obtained in accordance with clause 67.4, 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.

67.6 In any arbitration proceedings conducted pursuant to clause 67.3, the parties may make any counter claim in relation to any dispute or difference arising from the Contract.

67.7 The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with clause 67.3 aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given.

67.8 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 party, and shall direct by whom and to whom and in what manner the same be borne, award and paid.

67.9 The award of the Arbitrator shall be final and binding on the parties.

67.10 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.

67.11 In this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.

67.12 The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

## **68.0 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.

## **69.0 ENVIRONMENTAL MATTERS**

If the Contractor is required under the Environmental Quality Act 1974 to carry out an environmental impact assessment report ("EIA Report") in relation to the Works, the Contractor shall –

- (a) comply with all relevant laws, in particular the Environmental Quality Act 1974 and the Government policies as set out in the approval conditions of the EIA Report. The Government acknowledges that compliance with the approval conditions of the EIA Report shall satisfy the noise, visual impact, aerial pollution and vibration parameters required in respect of the Works;
- (b) ensure the incorporation of appropriate mitigative, rehabilitative, restorative and enhancement measures in the planning, design and implementation works;
- (c) give due consideration to the preservation and social implications of the water and air quality, soil, flora and fauna within the site of the Works.

PROVIDED THAT the Government reserves the right to determine the cutting, felling or preservation of trees or the replanting thereof on the Site and the Contractor shall comply with any direction of the Government in this respect.

## **70.0 LAW GOVERNING THIS CONTRACT**

71.1 This Contract shall be governed by and construed according to the laws of Malaysia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

71.2 The Contractor binds himself to acknowledge and accept as final in all respects within the country of domicile of the Contractor or elsewhere, any decision or award of an Arbitrator or judgment in any court of Malaysia in relation to any dispute between the parties under this Contract.

71.3 This clause shall apply in all respects in case any such decision award or judgment is to be enforced in the courts of the country of domicile of the Contractor or elsewhere in any manner. However, if the country of domicile of the Contractor is not a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Reciprocal Enforcement of Judgments Act, 1958, the principle of common law shall apply.

## **71.0 COMPLIANCE WITH THE LAW**

The Contractor shall comply with all applicable laws and with all guidelines, instruction, directions, orders, requirements and instructions issued to the Contractor by any authority competent to do so under any applicable law.

## **72.0 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.

## **73.0 CONFIDENTIALITY**

73.1 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.

73.2 Where information has been disclosed to third parties pursuant to clause 68.1, the Contractor undertakes to ensure that such third parties shall not disclose the information to any other third party.

73.3 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.

## **74.0 STAMP DUTY**

All costs for the preparation of this Contract including the stamp duty, if any, shall be borne by the Contractor.

## **75.0 NOTICES**

75.1 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.

75.2 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.

75.3 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:

75.4 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 P.D 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.

## **76.0 TIME**

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

**IN WITNESS WHEREOF** This Contract has been executed by the duly authorised representative of the parties on the day and year first above written.

Signed for and on behalf of )  
**THE GOVERNMENT OF MALAYSIA** )  
In the presence of )

Witness

Signed for and on behalf of )  
 )  
 )  
In the presence of )

Witness



APPENDIX TO THE CONDITIONS OF CONTRACT

Clause

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

Clause 49 .....

Clauses 59, 60, 61, 62, 66 and 67 .....

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

Financial Limits	Officer

5.5 Date of Tender ..... RM .....

5.6  
25.1

10 Performance Bond

Amount of Guarantee ..... RM .....

Guarantor Bank/Insurance Company .....

Guarantee No. ....

11 Amount to be added to full value of Contract Sum as the insured sum ..... RM .....

Total Amount Insured ..... RM .....

Policy No.....

Period of insurance.....

11.2 Amount of excess ..... RM .....

**APPENDIX 1**

**Clause**

12      `Date for Possession' of the Site ... ..

33      SOCSO Scheme registration number ... ..

39      Minimum insurance cover for any one  
 accident or series of accidents  
 arising out of one event ... .. RM .....

Policy No... ..

Period of insurance... ..

39.2    Amount of excess ... .. RM .....

43      Sectional Completion:

Identification of Sections or parts	Date for Possession [Clause 39.3]	Date for Completion (Clause 41.1)	Liquidated and Ascertained Damages (Clause 42.1)

44      `Date for Completion' for whole of the Works ... ..

45      Liquidated and Ascertained Damages at the rate of ... .. RM .....per .....

47      Defects Liability Period (if none stated, then the period is twenty four (24) months) ... ..

53.3    Value of work to be executed including materials and goods to be delivered before Interim Certificate will be issued ... .. RM .....

**APPENDIX 1**

**Clause**

53.5	Period for honouring payment certificate (if none stated, then within thirty (30) days of the issue of the Certificate)	.....	.....
8.4, 11.3, 31.2, 33.4(b), 39.5.	Percentage of on-cost charges	.....	5%
47.4 64.2(iv)	Percentage of on-cost charges	.....	10%