



**KERAJAAN MALAYSIA**

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**Pentadbiran Kontrak Dan  
Format Perjanjian Piawai Perunding**

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**PERBENDAHARAAN MALAYSIA**

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## PEROLEHAN PERKHIDMATAN PERUNDING

### PK 3.3/2013 PENTADBIRAN KONTRAK DAN FORMAT PERJANJIAN PIAWAI PERUNDING

#### 1. Pendahuluan

- 1.1. Sebelum ini semua pelantikan perunding sama ada bagi projek pembangunan fizikal mahupun kajian Kerajaan hendaklah menggunakan perjanjian piawai perunding sedia ada (telah disemak oleh Jabatan Peguam Negara – AGC dan diluluskan oleh Kementerian Kewangan – MOF) seperti berikut:
  - 1.1.1. BEM/JKR Form A (Rev. 1/83) - pelantikan perunding kejuruteraan dengan bayaran secara Skala Yuran Piawai (SOF);
  - 1.1.2. BAM/JKR Form B (Rev. 1/83) - pelantikan perunding arkitek dengan bayaran secara SOF;
  - 1.1.3. BQSM/JKR Form C (Rev. 1/83) - pelantikan perunding ukur bahan dengan bayaran secara SOF;
  - 1.1.4. Man-Month (Rev. 1/83) - pelantikan perunding dengan bayaran secara Input Masa yang tidak melibatkan penyertaan perunding asing; dan
  - 1.1.5. Man-Month (Rev. 1/83)(in Association with..) - pelantikan perunding dengan bayaran secara Input Masa yang melibatkan penyertaan perunding asing.
- 1.2. Walau bagaimanapun, perjanjian piawai di atas telah disemak semula dan dibuat penambahbaikan bagi mengambil kira perubahan semasa daripada aspek keperluan Agensi dan perubahan polisi untuk menjaga kepentingan Kerajaan dalam pelaksanaan projek pembangunan fizikal atau kajian Kerajaan. Oleh itu, kelima-lima perjanjian piawai di atas adalah dibatalkan penggunaannya dengan pengeluaran arahan baru ini melalui **PK 3.3/2013**.

#### 2. Perkara Penting Berkaitan Perjanjian Perunding Dan Pentadbiran Kontrak

- 2.1. Arahan yang dikeluarkan oleh wakil Kerajaan (Government Representative – GR)
  - 2.1.1. Agensi hendaklah terlebih dahulu mengenal pasti GR (perjanjian membenarkan bilangan GR melebihi seorang) yang boleh terdiri daripada Pegawai

Pengawal atau pegawai-pegawai lain yang kompeten dalam menyelia kerja perunding, mentadbir kontrak dan memahami keperluan projek/kajian yang dilaksanakan. **GR adalah khusus dari kalangan kakitangan Kerajaan sahaja.**

- 2.1.2. Semua GR yang telah dikenalpasti hendaklah disenaraikan di dalam perjanjian perunding bertujuan memastikan semua arahan yang dikeluarkan kepada perunding adalah daripada GR tersebut sahaja. Ini adalah kerana hanya arahan daripada GR sahaja adalah sah dari segi perundangan.
  - 2.1.3. GR hendaklah memastikan arahan yang dikeluarkan kepada perunding adalah arahan yang jelas dan tidak kerap berubah tanpa justifikasi yang kukuh, arahan yang mematuhi syarat-syarat perjanjian dan skop kerja perunding.
  - 2.1.4. Semua arahan yang dikeluarkan oleh Agensi kepada perunding terutamanya arahan secara lisan hendaklah dengan segera disusuli dengan surat rasmi oleh GR tidak melebihi tujuh (7) hari bekerja dan direkodkan di dalam fail projek berkaitan.
  - 2.1.5. Semua arahan yang dikeluarkan oleh GR kepada perunding di dalam mesyuarat hendaklah dengan segera diminitkan dan minit mesyuarat hendaklah disahkan oleh Pengerusi mesyuarat dan wakil syarikat perunding yang hadir dalam tempoh tidak melebihi tujuh (7) hari bekerja serta direkodkan di dalam fail projek berkaitan.
- 2.2. Kehadiran prinsipal firma di dalam mesyuarat/perbincangan yang dilaksanakan oleh pihak Kerajaan
- 2.2.1. Bagi mesyuarat/perbincangan yang memerlukan kehadiran perunding (sama ada Prinsipal atau wakil), Agensi hendaklah mengeluarkan surat panggilan/emel secara rasmi dengan lebih awal dalam tempoh minimum lima (5) hari bekerja kepada perunding bagi mengelakkan berlakunya ketidakhadiran perunding di dalam mesyuarat/ perbincangan tersebut.
  - 2.2.2. Sekiranya Prinsipal tidak dapat menghadiri mesyuarat/perbincangan di atas alasan yang munasabah, Agensi hendaklah memaklumkan kepada Prinsipal bahawa beliau hendaklah mewakilkan pegawai dari kalangan ahli pasukan projek (pegawai tersebut telah dinamakan di dalam perjanjian) seorang yang kompeten, boleh menjawab persoalan atau isu yang dibangkitkan dan

boleh membuat keputusan. Wakil Prinsipal tersebut hendaklah merupakan wakil tetap di dalam mesyuarat/perbincangan yang diadakan sepanjang pelaksanaan projek/kajian bertujuan mengelakkan Prinsipal diwakili pegawai yang berbeza setiap masa mesyuarat/perbincangan diadakan.

### 2.3. Perkhidmatan Rekabentuk Bagi Projek Pembangunan Fizikal

2.3.1. Bagi memastikan keperluan teknikal dan prosidur pengemukaan dokumen bagi permohonan Kebenaran Merancang/ Kelulusan Pelan Bangunan daripada Pihak Berkuasa Tempatan (PBT) dibuat dengan teratur oleh perunding, Agensi adalah disarankan ketika membuat pemilihan perunding di peringkat awal menetapkan kriteria penilaian perunding seperti berikut:

2.3.1.1. Kekerapan perunding berurusan dengan PBT di lokaliti projek yang akan dilaksanakan; dan

2.3.1.2. Mengadakan sesi temuduga perunding sebagai salah satu daripada Kriteria Utama Penilaian Teknikal untuk mendapatkan kepastian mengenai pengalaman perunding berurusan dengan PBT berkaitan.

2.3.2. Agensi hendaklah memastikan semua rekabentuk pengiraan, lukisan dan dokumen berkaitan ditandatangani oleh hanya Pemilik firma perunding memandangkan ianya adalah terletak di bawah tanggungjawab pemilik firma yang memiliki kelulusan profesional yang ditetapkan.

2.3.3. **Sebarang arahan yang perlu dikeluarkan oleh perunding atau apa-apa pindaan yang perlu dibuat ke atas lukisan/brif projek/lain-lain dokumen berkaitan sama ada melibatkan pertambahan kos atau tidak, hendaklah mendapat kelulusan daripada Agensi terlebih dahulu. Perunding tidak dibenarkan sama sekali mengeluarkan arahan atau membuat apa-apa pindaan tanpa kebenaran awal daripada Agensi selaras dengan pematuhan ke atas klausa 5.5(c) hingga (g) di dalam perjanjian perkhidmatan perunding yang baharu.**

2.3.4. Agensi dibenarkan untuk mendapatkan remedi daripada kecacatan (*defect*), kesilapan (*fault*) dan kekurangan (*insufficiency/ inadequacy*) yang disebabkan oleh rekabentuk perunding ketika

perkara-perkara tersebut disahkan berlaku. Remedi tersebut boleh dilakukan seperti berikut:

- 2.3.4.1. Penolakan sejumlah wang yang ditentukan oleh GR daripada harga kontrak perunding; dan
- 2.3.4.2. Sekiranya penolakan daripada harga kontrak tersebut tidak dapat dilaksanakan disebabkan baki bayaran tidak mencukupi, remedi boleh diperolehi daripada Insuran Tanggung Rugi Profesional (*Profesional Indemnity Insurance – PII*) yang diambil oleh firma perunding.

#### 2.4. Kakitangan firma perunding

- 2.4.1. Agensi hendaklah memastikan semua kakitangan perunding yang terlibat sama ada di dalam projek pembangunan fizikal mahupun kajian Kerajaan telah dikenalpasti dan dinamakan sebelum perjanjian ditandatangani bagi memastikan hanya kakitangan yang berkelayakan, berkeupayaan dan berpengalaman sahaja telah dipilih oleh firma perunding yang dilantik oleh Agensi.
- 2.4.2. Bagi memastikan kelancaran projek, sekiranya terdapat kakitangan perunding yang terpaksa digantikan dengan kakitangan lain disebabkan perkara yang tidak dapat dielakkan, GR adalah diberi kuasa untuk meluluskan penggantian kakitangan tersebut tertakluk kakitangan yang digantikan hendaklah mempunyai kelayakan dan pengalaman yang sama atau lebih tinggi sebagaimana yang telah dipersetujui di dalam perjanjian tanpa melibatkan sebarang tambahan kos kepada Kerajaan.
- 2.4.3. Agensi berhak memotong bayaran perkhidmatan perunding sekiranya pengganti yang diberikan oleh perunding adalah berkelayakan dan berpengalaman lebih rendah daripada tawaran perunding yang telah dipersetujui di dalam perjanjian tertakluk penggantian ini telah mendapat kebenaran daripada GR terlebih dahulu. GR hendaklah memastikan pengganti tersebut walaupun berkelayakan dan berpengalaman lebih rendah adalah masih kompeten dalam melaksanakan skop kerjanya.
- 2.4.4. Agensi juga berhak memotong bayaran perkhidmatan perunding sekiranya didapati bilangan kakitangan pasukan perunding sebagaimana yang dipersetujui di

dalam perjanjian adalah tidak mencukupi sepanjang pelaksanaan projek.

2.5. Insuran Tanggung Rugi Profesional (*Professional Indemnity Insurance – PII*) bagi perunding untuk semua Projek Pembangunan Fizikal

- 2.5.1. Agensi hendaklah memastikan perunding yang dilantik telah pun mengambil atau mempunyai insuran tanggung rugi profesional (PII) sebagai sekuriti kepada Kerajaan bagi melindungi daripada segala liabiliti yang disebabkan kecuaiian atau kesilapan firma, rakan kongsinya dan kakitangannya semasa memberikan perkhidmatan perundingan di dalam projek pembangunan fizikal terutamanya di dalam rekabentuk mahupun apa-apa pandangan/nasihat yang diberikan.
- 2.5.2. Kos untuk menyelia PII adalah ditanggung sendiri oleh perunding dan tidak boleh disenaraikan di dalam butiran kos perunding memandangkan adalah menjadi tanggungjawab semua profesional untuk mengambil insuran ini sebagai jaminan ke atas kepakaran yang diberikan.
- 2.5.3. Tempoh sah laku PII tersebut hendaklah turut meliputi minimum 12 bulan selepas tempoh Defect Liability Period tamat.
- 2.5.4. Memandangkan perkara ini dinyatakan sebagai salah satu syarat mandatori di dalam klausa perjanjian piawai perunding ini, Agensi bertanggungjawab untuk memastikan perkara ini dinyatakan secara jelas di dalam kriteria pemilihan perunding, syarat pelawaan/ tender dan syarat lantikan.

2.6. Ganti Rugi Tertentu Dan Ditetapkan (*Liquidated Ascertained Damages - LAD*)

- 2.6.1. Agensi hendaklah memastikan pengenaan LAD ke atas perunding dilaksanakan sekiranya berlaku perkara-perkara berikut:
- 2.6.1.1. Perunding gagal menepati tarikh penyerahan akhir setiap deliverables yang telah dipersetujui di dalam perjanjian perunding; dan
- 2.6.1.2. Kelewatan/ kegagalan perunding menepati tarikh serahan akhir yang ditetapkan terbukti adalah disebabkan oleh pihak perunding

sahaja dan tidak turut melibatkan kelewatan di pihak Agensi.

- 2.6.2. Pengenaan LAD ke atas perunding adalah bagi kelewatan penyerahan *deliverables* pada peringkat perkhidmatan seperti berikut:
    - 2.6.2.1. Projek pembangunan fizikal – setiap peringkat sehingga sebelum peringkat pembinaan bermula; dan
    - 2.6.2.2. Kajian - setiap peringkat sehingga penutupan akaun
  - 2.6.3. Bagi memastikan pengenaan LAD dapat dikuatkuasakan melalui perjanjian perunding, Agensi hendaklah menyenaraikan semua aktiviti secara terperinci mengikut *deliverables* di setiap peringkat perkhidmatan yang akan dilaksanakan oleh perunding. Agensi tidak dibenarkan untuk sekadar meletakkan jangka tempoh sahaja di setiap *deliverables* yang ditetapkan sebaliknya hendaklah menyatakan dengan jelas tarikh serahan akhir setiap *deliverables* tersebut.
  - 2.6.4. Berdasarkan jadual *deliverables* yang ditetapkan di dalam perjanjian, GR hendaklah mengeluarkan arahan rasmi kepada perunding sekurang-kurangnya seminggu lebih awal daripada tarikh serahan akhir setiap *deliverables* untuk mendapatkan maklumat terkini kemajuan kerja perunding (*work progress*). Ini adalah bertujuan untuk membolehkan GR membuat pertimbangan sekiranya LAD perlu dikenakan atau EOT wajar diberikan berdasarkan maklum balas yang dikemukakan oleh perunding.
- 2.7. Lanjutan tempoh masa perkhidmatan perunding (*Extension of Time - EOT*)
- 2.7.1. EOT hanya boleh dipertimbangkan oleh Agensi bagi perkara-perkara berikut sahaja:
    - 2.7.1.1. Sekiranya pihak perunding telah menghadapi kelewatan yang disebabkan oleh Agensi antaranya di dalam mendapatkan maklumat atau pengesahan/persetujuan ke atas maklumat yang dikemukakan oleh perunding kepada individu/jawatankuasa di Agensi berdasarkan tarikh serahan *deliverables* yang telah dipersetujui di dalam perjanjian; dan



- 2.7.1.2. Sekiranya terdapat arahan rasmi daripada GR untuk menanggungkan kesemua/ sebahagian daripada perkhidmatan yang ditetapkan di dalam perjanjian yang telah menyebabkan kelewatan di pihak perunding.
- 2.7.2. Sekiranya kelewatan terbukti adalah disebabkan oleh pihak perunding sahaja dan tidak turut melibatkan kelewatan di pihak Agensi, Agensi hendaklah mengambil tindakan penganan LAD ke atas perunding selaras dengan peruntukan di dalam perjanjian.
- 2.8. Perlanjutan tempoh perjanjian perunding (*Extension Of Contract Period*)
- 2.8.1. Berdasarkan jadual pelaksanaan kerja yang ditetapkan di dalam perjanjian, sekiranya didapati kemajuan kerja perunding mengalami kelewatan dan dikhuatiri tidak dapat diselesaikan dalam tempoh perjanjian, Agensi hendaklah membuat semakan semula ke atas jadual pelaksanaan kerja perunding untuk menentukan sama ada terdapat keperluan untuk melanjutkan tempoh perjanjian perunding.
- 2.8.2. Sekiranya perjanjian perunding perlu dilanjutkan, Agensi hendaklah memastikan sebarang permohonan berkaitan dengannya dikemukakan lebih awal bagi memastikan kelulusan perlanjutan tempoh perjanjian oleh Pihak Berkuasa Melulus dan rundingan terma/syarat perjanjian tambahan dapat diselesaikan sebelum tarikh tamat perjanjian.
- 2.8.3. Agensi hendaklah memastikan bahawa perlanjutan tempoh perjanjian perunding dilaksanakan semasa perjanjian perunding sedia ada masih sah berkuat kuasa.
- 2.8.4. Sekiranya terdapat permohonan perlanjutan tempoh kontrak bagi perkhidmatan perunding setelah kontrak tamat, ianya hendaklah dibawa untuk pertimbangan dan kelulusan Pegawai Pengawal. Pegawai Pengawal hendaklah mendapatkan nasihat daripada Penasihat Undang-Undang dan mengambil tanggungjawab sepenuhnya ke atas keputusan yang dibuat. Oleh itu, AP201.1(b) adalah tidak terpakai khusus untuk perolehan perkhidmatan perunding sahaja.

2.9. Menahan daripada membuat bayaran kepada perunding (*withholding payment*)

2.9.1. Agensi berhak menahan daripada membuat bayaran kepada perunding sekiranya berlaku perkara-perkara berikut :

2.9.1.1. Perunding melanggar terma dan syarat perjanjian;

Contohnya:

(a) gagal memperbaharui pendaftaran dengan Kementerian Kewangan/ Lembaga Profesional dalam tempoh perjanjian masih berkuat kuasa

(b) membocorkan/ berkongsi maklumat Kerajaan kepada pihak ketiga tanpa kebenaran Agensi

2.9.1.2. Agensi telah mendapati bahawa bayaran yang telah dibuat kepada perunding sebelum ini adalah tidak setimpal dengan kerja yang telah dilaksanakan;

Contohnya:

Payment of fees for Basic Services (Architecture)

<u>Upon completion of each phase</u>	<u>Percentage of total fee payable</u>
Design Development Phase (6 months)	30%

Schedule of Payment

<u>Upon completion of each phase</u>	<u>Percentage of total fee payable</u>
Design Development Phase	5% monthly until month 6

Senario:

Agensi telah membuat pembayaran sehingga bulan keempat iaitu sebanyak 20% mengikut *Schedule of Payment* sedangkan didapati kemajuan kerja rekabentuk oleh perunding adalah hanya setakat 13 - 15% sahaja. Sehubungan itu, bagi bayaran seterusnya, Agensi berhak menahan bayaran sehingga perunding mencapai kemajuan kerja sebanyak 20%.

- 2.9.1.3. Apa-apa keadaan/ situasi, pada pandangan Agensi yang boleh mengganggu kelancaran pelaksanaan projek;

Contohnya:

- (a) Kakitangan perunding gagal hadir bertugas dalam tempoh yang munasabah atau tanpa kebenaran GR dan tanpa sebarang penggantian yang seterusnya mengakibatkan kelewatan projek/kajian.

- 2.9.1.4. Kegagalan perunding untuk menyempurnakan kerja/ perkhidmatan berdasarkan keperluan yang telah ditetapkan oleh Agensi

Contohnya:

- (a) Perunding gagal menyempurnakan laporan interim mengikut tahap yang dipersetujui oleh Agensi walaupun telah berulang kali diberi teguran dan cadangan penambahbaikan.

- (b) Perunding lewat mendapatkan kelulusan PBT kerana kurang memahami keperluan teknikal dan prosidur permohonan yang ditetapkan oleh PBT.

- 2.9.2. Walau bagaimanapun, perunding adalah dibenarkan untuk membuat rayuan ke atas penahanan bayaran tersebut dengan syarat perunding mengemukakan dokumen dan bukti untuk menyokong bayaran tersebut. Penahanan bayaran yang disebabkan oleh Perenggan 2.9.1.4 di atas, Agensi hendaklah memastikan perunding terlebih dahulu memenuhi keperluan/ kriteria yang ditetapkan bagi *deliverables* yang berkenaan sebelum penahanan bayaran dipertimbangkan untuk ditarik balik.

2.10. Bayaran kepada perunding bagi perkhidmatan yang telah dilaksanakan

- 2.10.1. Agensi hendaklah memastikan bayaran kepada perunding adalah dibuat mengikut kemajuan kerja sebagaimana yang telah ditetapkan di dalam perjanjian tertakluk perkhidmatan yang diberikan oleh perunding telah selesai dilaksanakan mengikut kemajuan kerja dan hasil kerja adalah memenuhi keperluan/kriteria

yang ditetapkan oleh Agensi. Bayaran yang dibuat secara teratur akan memastikan Agensi mendapatkan kerjasama sebaik-baiknya daripada pihak perunding terutamanya sewaktu projek adalah di peringkat pembinaan.

2.10.2. Bayaran kepada perunding hanya boleh dibuat apabila perjanjian telah ditandatangani oleh kedua-dua pihak. Sehubungan itu, Agensi dan perunding dikehendaki menyegerakan untuk menandatangani perjanjian bagi mengelakkan masalah pembayaran. Memandangkan perjanjian piawai ini akan dikuatkuasakan penggunaannya bagi semua projek pembangunan fizikal dan kajian Kerajaan, sewajarnya tiada kelewatan di pihak Agensi atau perunding untuk menandatangani perjanjian dengan segera.

2.11. Jawatankuasa Penyelesaian Pertikaian (*Dispute Resolution Committee – DRC*)

2.11.1. Agensi hendaklah menubuhkan satu jawatankuasa yang dipersetujui oleh kedua-dua pihak bagi membincangkan dan menyelesaikan sebarang pertikaian yang timbul antara perunding dengan Agensi sepanjang pelaksanaan projek pembangunan fizikal/kajian termasuk perkara berkaitan LAD selaras dengan peruntukan di dalam perjanjian perunding. Kaedah pelantikan keahlian dan terma rujukan bagi DRC hendaklah disediakan oleh Agensi sebelum DRC bersidang.

2.11.2. DRC hendaklah terdiri daripada keahlian seperti berikut:

2.11.2.1. Ketua Setiausaha/ Ketua Jabatan selaku Pengerusi;

2.11.2.2. Seorang (1) wakil daripada pihak Agensi yang terlibat/ mempunyai pengetahuan mengenai projek pembangunan fizikal/ kajian yang terlibat; dan

2.11.2.3. Seorang (1) wakil daripada pihak perunding.

2.11.3. Bagi memastikan perbincangan, tindakan dan cadangan penyelesaian yang akan diambil adalah selaras dengan peruntukan klausa di dalam perjanjian, Agensi hendaklah mendapatkan nasihat dan pandangan daripada Bahagian Undang-Undang (BUU) Agensi masing-masing. Pengerusi DRC boleh sama

ada meminta kehadiran wakil daripada BUU masing-masing sebagai Ahli Jemputan di dalam DRC atau mendapatkan ulasan daripada BUU sebelum atau selepas mesyuarat DRC bersidang bagi sesuatu perkara yang akan/ telah dibincangkan supaya apa-apa keputusan yang dibuat adalah selaras dengan perundangan yang berkuat kuasa.

- 2.11.4. Sekiranya pertikaian yang dibawa tidak dapat diselesaikan dip peringkat DRC, Agensi dan perunding hendaklah terus merujuk pertikaian tersebut ke *Arbitration* selaras dengan peruntukan di dalam perjanjian perunding dan bukannya ke Kementerian Kewangan.

2.12. Penamatan perkhidmatan perunding gagal melaksanakan obligasi perjanjian

- 2.12.1. Agensi berhak mengambil tindakan menamatkan perkhidmatan perunding sekiranya perunding melakukan perkara-perkara berikut tanpa justifikasi yang munasabah:

2.12.1.1. Menangguhkan pelaksanaan perkhidmatan dan gagal meneruskan kerja dengan tekun sebagaimana obligasi perunding di dalam perjanjian;

Contohnya:

- (a) Perunding telah menangguhkan penyediaan Laporan Awal bagi kajian yang dilaksanakannya dan gagal menyiapkan laporan tersebut sebagaimana dikehendaki oleh Agensi.

2.12.1.2. Gagal melaksanakan semua/ sebahagian perkhidmatan atau secara berterusan mengabaikan obligasi perunding di bawah perjanjian;

Contohnya:

- (a) Perunding tidak melaksanakan kerja pengawasan tapak yang merupakan skop perkhidmatan yang dikehendaki oleh Agensi di dalam perjanjian.

2.12.1.3. Kemungkiran melaksanakan tanggungjawab perunding iaitu tidak memberikan perkhidmatan secara profesional, kompeten, berhati-hati dan tekun sepanjang masa;

Contohnya:

- (a) Perunding memperakukan tuntutan bayaran oleh kontraktor pembinaan bagi kuantiti bahan binaan melebihi daripada kuantiti sebenar yang berada di tapak pembinaan.

2.12.1.4. Obligasi yang dilaksanakan oleh perunding tidak menepati kehendak Agensi atau gagal mematuhi terma/ syarat yang lain di dalam perjanjian.

Contohnya:

- (a) Perunding menggantikan kakitangan yang terlibat dalam pasukan kajian tanpa terlebih dahulu mendapatkan kebenaran daripada pihak Kerajaan.

2.12.2. Walau bagaimanapun, penamatan perkhidmatan perunding hendaklah mengikut kaedah atau tatacara yang telah diperuntukkan di dalam perjanjian perunding.

2.13. Prestasi perkhidmatan perunding dalam projek/kajian Kerajaan

2.13.1. Agensi dikehendaki memastikan perunding yang dilantik mempunyai prestasi perkhidmatan yang baik/sangat baik di dalam pelaksanaan projek/kajian dengan mana-mana Agensi Kerajaan bagi mengurangkan risiko pelantikan perunding yang bermasalah. Sehubungan itu, semasa peringkat awal pemilihan perunding, Agensi hendaklah turut menilai aspek prestasi semasa perunding. Maklumat prestasi perunding boleh diperolehi daripada Sistem ePerunding atau rekod Jabatan Teknik/ Agensi lain yang pernah melantik perunding tersebut atau perunding mengemukakan *testimonial* perkhidmatan cemerlang bagi projek/kajian yang telah dilaksanakan.

2.13.2. GR adalah bertanggungjawab untuk memastikan penilaian prestasi perunding dibuat pada setiap peringkat perkhidmatan yang telah dilaksanakan oleh perunding. Maklumat prestasi perunding yang telah dinilai oleh Agensi hendaklah direkodkan ke dalam Sistem ePerunding. Borang penilaian prestasi adalah seperti di [Lampiran A](#).

2.13.3. Perunding yang melakukan kesalahan antaranya melanggar mana-mana syarat/obligasi perjanjian perunding, Agensi hendaklah terlebih dahulu mengambil tindakan ke atas perunding berkenaan mengikut terma dan syarat yang diperuntukkan di dalam perjanjian sebelum sebarang laporan aduan dikemukakan ke Kementerian Kewangan untuk tindakan susulan selaras dengan **PK 8/2013**. Laporan aduan ini hendaklah diperakukan oleh GR melalui borang di **Borang KKM-BA (2010)** dan disertakan bukti sebagai dokumen sokongan. Laporan aduan ini juga hendaklah disalinkan kepada badan kawal selia profesional yang berkaitan untuk diambil tindakan tatatertib.

### 3. Surat Setuju Terima

- 3.1. Surat Setuju Terima (SST) adalah merupakan sebahagian daripada dokumen perjanjian. Ia adalah untuk mengesahkan penerimaan sesuatu tawaran berasaskan kepada syarat-syarat yang telah ditetapkan di dalam dokumen pelawaan.
- 3.2. Pegawai yang boleh menandatangani SST hendaklah pegawai awam yang diberi kuasa di bawah Seksyen 2 Akta Kontrak Kerajaan 1949 (Semakan 1973).
- 3.3. Satu ikatan yang sah dari segi perundangan hanya akan terbentuk setelah Agensi dan Perunding telah menandatangani surat tersebut iaitu setelah SST dikembalikan semula oleh firma perunding yang dipilih. Agensi hendaklah memastikan Surat Akuan Perunding Yang Dilantik hendaklah turut lengkap ditandatangani oleh perunding berkenaan
- 3.4. **Firma hanya boleh memulakan kerja apabila SST telah ditandatangani. Agensi dilarang sama sekali untuk mengeluarkan arahan memulakan kerja kepada perunding sebelum SST ditandatangani. Firma berhak untuk tidak memulakan kerja tanpa SST.**
- 3.5. **Agensi hendaklah berhati-hati dalam mengeluarkan arahan memulakan kerja kepada perunding tanpa SST ditandatangani terlebih dahulu kerana arahan tersebut sekiranya dilaksanakan oleh perunding, akan mengakibatkan masalah di dalam pembayaran kelak dan kemungkinan pegawai Kerajaan dikenakan AP59.**

#### 4. Tempoh Menandatangani Perjanjian Perunding

- 4.1 Sebaik sahaja Surat Setuju Terima dikeluarkan kepada perunding, Agensi hendaklah menandatangani perjanjian perunding dengan sesegera mungkin iaitu sebelum tarikh bayaran yang ditetapkan oleh Agensi bagi peringkat kemajuan kerja yang pertama dibuat kepada perunding.

#### 5. Penggunaan Bahasa Inggeris Di Dalam Perjanjian Perunding

- 5.1 Perjanjian piawai perunding ini adalah disediakan di dalam Bahasa Inggeris untuk digunakan bagi semua pelantikan perunding bagi projek pembangunan fizikal mahupun kajian Kerajaan. Perjanjian ini telah disemak oleh AGC serta telah diluluskan penggunaannya oleh MOF.

#### 6. Perubahan Ke Atas Klausula/Isi Kandungan Perjanjian Perunding

- 6.1 Perjanjian piawai perunding ini yang disediakan oleh Kementerian Kewangan telah pun disemak dan mendapat kelulusan penggunaannya daripada AGC. Sehubungan itu, semua Agensi Kerajaan hendaklah memastikan sebarang pelantikan perunding bagi semua projek pembangunan fizikal mahupun kajian adalah menggunakan *template* perjanjian piawai ini.
- 6.2 Sebarang perubahan ke atas klausa/isi kandungan yang ditetapkan di dalam perjanjian piawai perunding ini adalah tidak dibenarkan. Sekiranya terdapat keperluan khusus untuk menambah klausa baru sebagai tambahan di dalam perjanjian ini, ianya adalah dibenarkan. Walau bagaimanapun, Agensi hendaklah terlebih dahulu merujuk kepada Bahagian Undang-Undang Agensi untuk semakan dan kelulusan.

#### 7. Kuat Kuasa

- 7.1 *Consultancy Service Agreement* (CSA) baru bagi bidang perkhidmatan Arkitek, Kejuruteraan, Ukur Bahan dan Kajian adalah seperti berikut :
- 7.1.1 Form CSA2014-Architectural (incl. SOF 2010) seperti di [Lampiran B](#);
- 7.1.2 Form CSA2014-Engineering (incl. SOF 1998) seperti di [Lampiran C](#);
- 7.1.3 Form CSA2014-Quantity Surveying (incl. SOF 2004) seperti di [Lampiran D](#); dan
- 7.1.4 Form CSA2014-Research seperti di [Lampiran E](#).



- 7.2 *Softcopy* bagi perjanjian di **perenggan 7.1.1 hingga 7.1.4** di atas boleh dimuat turun melalui laman web Sistem ePerunding di <http://porteperunding.treasury.gov.my/index.php/perjanjian-piawai>.
- 7.3 Agensi hendaklah memastikan *template* CSA ini megikut bidang perundingan yang berkaitan dilampirkan bersekali di dalam surat pelawaan atau dokumen tender yang dikeluarkan kepada perunding sebagai maklumat awal kepada perunding mengenai pematuhan kepada terma dan syarat perjanjian yang dikenakan oleh Kerajaan ke atas mereka.
- 7.4 **Penggunaan format CSA bagi pelantikan perunding untuk semua projek pembangunan fizikal atau kajian Kerajaan seperti di perenggan 7.1 adalah berkuat kuasa mulai 10 Jun 2014 bagi semua perolehan perunding yang baru dan mana-mana pelantikan perunding yang perjanjiannya masih belum ditandatangani lagi.**
- 7.5 Bagi mana-mana perjanjian perunding yang sedang berjalan, Agensi boleh meneruskan pemakaian perjanjian tersebut sehingga ia tamat.

## 8. Pembatalan

- 8.1 Dengan kuat kuasanya **PK 3.3/2013** ini, perjanjian piawai sedia ada seperti dinyatakan di **perenggan 1.1** adalah dibatalkan.

# LAMPIRAN

**LAMPIRAN A****BORANG LAPORAN PENILAIAN PRESTASI PERUNDING**

<b>MAKLUMAT PERUNDING</b>				
Nama :				
Alamat :				
No. Telefon :				
No. Fax :				
Bidang/ Kategori Perunding : (cth: Arkitek/C&S/M&E/QS lain-lain)				
<b>MAKLUMAT PROJEK/KAJIAN</b>				
Projek/Kajian :				
Lokasi :				
Skop Perkhidmatan :				
Agensi Pelaksana :				
No. Tel Pegawai Agensi :				
No. Faks :				
Tarikh Penilaian :			Peringkat Kerja :	
TarikhSiap Projek/Kajian :			Kemajuan Kerja : % (progress)	
<b>MAKLUMAT PENILAIAN PRESTASI PERUNDING</b>				
<b>Markah Keseluruhan (%)</b>	<b>Gred Keseluruhan</b>	<b>Ulasan</b>		
91 - 100	Sangat Baik	Perunding Pilihan		
76 - 90	Baik	Secara Umum Perunding Boleh Diterima		
61 - 75	Sederhana	Perunding Boleh Diterima Dengan Syarat		
0 - 60	Lemah	Perunding yang Tidak Disyorkan		
<b>Kriteria</b>	<b>Markah Prestasi</b>			
	Skala Prestasi = Lemah- 0, Sederhana - 1, Baik - 2, Sangat Baik - 3			
	<b>Lemah</b>	<b>Sederhana</b>	<b>Baik</b>	<b>Sangat Baik</b>
1) Mematuhi Jadual Pelaksanaan				
2) Mematuhi Skop Perkhidmatan				
3) Pengurusan Sumber				
4) Keupayaan Teknikal				
5) Kualiti Kerja				
6) Kerjasama				
7) Mematuhi Peruntukan Diluluskan				
8) Pengawasan/Penyeliaan (jika berkaitan)				
<b>JUMLAH KESELURUHAN</b>				
<b>PENILAIAN PRESTASI KESELURUHAN</b>	<b>Jumlah Keseluruhan / Markah Penuh* X 100</b>			
*Markah Penuh kriteria 1 hingga 7 = 21; atau				
*Markah Penuh kriteria 1 hingga 8 = 24				
<b>DISYORKAN UNTUK PROJEK/KAJIAN AKAN DATANG : YA/TIDAK</b>				
<b>ULASAN :</b>				
.(sila nyatakan)				
<b>Disediakan Oleh:</b>		<b>Disahkan dan Disyorkan Oleh:</b>		
Tandatangan :		Tandatangan :		
Nama & Jawatan :		Nama & Jawatan :		
Tarikh :		Tarikh :		

**CONSULTANCY SERVICES**

**FOR** ..... **Specify full name of project** .....

**CONTRACT NO. :** ..... **Specify contract number** .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

..... **Name of consultancy firm** .....

**(COMPANY NO. :** ..... **Company registration no with Suruhanjaya Syarikat Malaysia (local company) or Board of Architects Malaysia Registration No. If foreign companies specify its registration number in its country)** .....

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**CONTRACT NO. :** Specify contract number

**“RECITALS”**

THIS AGREEMENT is made on Date (day)...day of Month and year...

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by Name of Government Agency.....  
whose address is at Specify full address.....(hereinafter referred to as “the **Government**”)  
of the first part;

**AND**

Name of the sole proprietorship/partnership/body corporate, (whichever is applicable)  
.....  
Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration No..... and Board of Architects  
Malaysia Registration No..... Specify registration number, a sole proprietorship or partnership  
registered in Malaysia or a body corporate incorporated under the Companies Act  
1965 (whichever is applicable) and practising as an Architectural Consultancy  
Practice, having its registered office at Specify full address.....hereinafter referred to as  
“**CA**”) of the other part.

The Government and the CA shall individually be referred as the “**Party**“ and  
collectively referred to as the “**Parties**”.

**WHEREAS -**

- (A) The Government intends to construct and complete Specify full name of project  
(hereinafter referred to as “**the Project**”) and is desirous of obtaining  
(hereinafter referred to as “**the Services**”) from the CA in connection with  
the Specify field of the consultancy service.....(hereinafter referred to as “**the Works**”).
- (B) The CA has submitted its proposal to the Government on the scope for the  
Services and both Parties have agreed on the scope of Services as per the  
Terms of Reference specified in **Appendix 1** and Technical Documents in  
**Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the  
CA and the CA has agreed to such appointment to provide the Services  
necessary for the effective implementation of the Project. A copy of the Letter  
of Acceptance dated Date issued by Government... is attached in **Appendix 3** of this  
Agreement.



**NOW IT IS HEREBY AGREED** as follows:

**PART A**

**GENERAL**

**1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1. Definitions**

Under this Agreement, unless the context otherwise requires the following words and expressions used under this Agreement shall have the following meanings:

- (a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (b) "Associated Consultant" means other consultant(s) engaged by the CA upon request and approval by the Government to carry out services for any part of the project;
- (c) "CA" means the architectural consultancy practice named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered under the Registration of Architects Act 1967 [Act 117] and engaged to provide professional architectural consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Architects Act 1967 [Act 117] is attached in **Appendix 4**;
- (d) "Contractor" means any sole proprietorship, partnership or company engaged by the Government under a contract for the Project or to supply goods in connection with the Project or both and includes sub-contractors;
- (e) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (f) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (g) "Cost of Works" means the cost incurred by the Government for the Works as particularly specified under the Schedules of this Agreement (Part B -Schedule of Fees);

- (h) “Defects Liability Period” is as provided in the contract between the Government and Contractor;
- (i) “Deliverables” means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 5** to be submitted to the Government by the CA as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (j) “Government’s Representative (“GR”) means the person under item 5 in **Appendix 7** or such other person as may be appointed from time to time by the Government and notified in writing to the CA to carry out the duties of the GR and the person so designated or appointed may be described by position;
- (k) “Services” means the professional consultancy services for the project which the Government has engaged the CA to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2 and 5**;
- (l) “Professional Indemnity Insurance” means the insurances taken and maintained by the CA covering its liability in respect of any negligence, error or omission acts of CA and its employees under Clause 5.11;
- (m) “Project” means the project of which the Works form a part;
- (n) “Works” means the works described briefly in Recital (A) of this Agreement which the Government has engaged the CA to perform professional services and which may comprise those as specified under the Schedules of this Agreement (Part A - Schedule of Services).

### 1.1. Interpretations

Under this Agreement, except to the extent that the context otherwise requires:

- (a) references to any law, legislation or to any provisions of any law and legislation shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or statutory instruments issued under the legislation or provisions;
- (b) references to clauses, appendices, and schedules are references to Clauses, Appendices, and Schedules of this Agreement;
- (c) words denoting the singular shall include the plural and vice versa;
- (d) words denoting individuals shall include corporations and vice versa;
- (e) recitals and headings are for convenience only and shall not affect the interpretation thereof;

- (f) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as being references to sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (g) the Appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement PROVIDED HOWEVER that in the event of any conflict between the clauses and the Appendices of this Agreement, the clauses shall prevail;
- (h) the expression of "this Agreement" or any similar expression shall include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (i) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an "approval" is a reference to an approval in writing; and "approved" shall be construed accordingly;
- (l) any reference to an "amendment" includes any variation, deletion or additions, and "amend" or "amended" shall be construed accordingly;
- (m) any technical term not specifically defined under this Agreement shall be construed in accordance with the general practice of such relevant profession in Malaysia;
- (n) for the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of, and time begins to run from, the date so specified;
- (o) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the Parties from time to time";
- (p) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar.

## **1.2. Entire Agreement**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written.

## 2.0 APPOINTMENT AND CONSIDERATION

The Government hereby appoints the CA and the CA accepts the appointment to provide the Services for a consideration of Ringgit Specify total cost in word format only (RM. Specify total cost in number format) as the ceiling contract amount (hereinafter referred to as the “**Contract Price**” and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia Specify consulting fee in word format only (RM. Specify consulting fee in number format) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit Specify out of pocket expenses in word format only (RM. Specify out of pocket expenses in number format) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated Date issued by Government (as specified in **Appendix 3** of this Agreement).

## 3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

### 3.1. Contract Period

This Agreement shall be for a period of Specify duration of consultancy period (week/month/year) as specified under item 2 in **Appendix 7** (hereinafter referred to as the “**Contract Period**”) commencing from Specify start date (hereinafter referred to as “**Commencement Date**”) and shall expire on the date stated under item 3 in **Appendix 7** (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

### 3.2. Extension of Contract Period

- (a) The CA shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The CA shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension Specify period prior to the Contract Expiry Date as specified under item 4 in **Appendix 7**. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

## PART B

### CA'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

#### 4.0 CA'S REPRESENTATIONS AND WARRANTIES

The CA hereby represents and warrants to the Government that –

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the CA is a body corporate or partnership or sole-proprietorship registered under the Registration of Architects Act 1967 [Act 117] and exists validly under the laws of Malaysia;
- (d) the CA shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (e) the CA has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;
- (f) the CA has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;
- (g) as at the execution date, neither the execution nor performance by the CA of this Agreement nor any transactions contemplated by this Agreement 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 assets;
- (h) 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 Agreement;
- (i) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;
- (i) this Agreement constitutes a legal, valid and binding obligation of the CA and is enforceable in accordance with its terms and conditions;
- (j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

## **5.0 CA'S OBLIGATIONS**

### **5.1. Quality of Services**

- (a) The CA shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed in this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.
- (b) The CA shall have sufficient knowledge of current Local Authority requirements, bye-laws, local land acts and other regulations relating to the Project, and shall advise the Government accordingly in matters affecting the implementation of the Project.

### **5.2. Timeliness of Services**

- (a) The CA shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 8**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The CA shall provide to the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The CA shall keep the GR informed on a day to day basis of all instructions, variations and design changes made or authorized by the CA.

### **5.3. Consequences of Delay**

- (a) If the CA fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 5** of this Agreement without reasonable cause, the CA shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.

- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 8 in **Appendix 7** of this Agreement.

#### **5.4. Instructions by The Government**

- (a) The CA shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The CA shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the CA in connection with the Services.
- (b) The CA shall attend or be represented at all meetings convened by the Government to which the CA may be summoned, and shall advise and assist the Government on all matters relating to the Services.

#### **5.5. Design Services**

- (a) Where the CA is required by the Government to provide design services, the CA shall guarantee the Government that such design shall be suitable, functional, safe and in compliance with the design standard and specification of the Works.
- (b) The CA shall use due skill and care to ensure that the design of all parts of the Works for which the CA is responsible under this Agreement is in accordance with the laws and regulations and other statutory and regulatory requirement applicable to the Works.
- (c) The CA shall strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference. The CA shall not without prior written approval of the Government amend the project brief which in the opinion of the CA is likely to increase the project cost.
- (d) All drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by the CA for or in connection with any invitation for tenders shall not be used for any other such purposes unless they shall first have been approved by the GR. The approval by the GR shall not relieve the CA of its obligations in connection with the Services.
- (e) All designs, calculations, drawings and documents and any other deliverables in relation to the Services to be provided by the CA to the Government shall be approved and signed by the CA.
- (f) The CA shall not without prior written approval of the Government, make amendments to any approved design or give any instruction which is likely to increase the cost of the project, unless the variations are of an emergency nature and any delay in carrying out such variation works can cause claims against the Government or involve

danger to life and property and in the circumstance it is impracticable for the CA to obtain such approval. In such circumstances, the CA shall seek the approval of the Government as soon as possible of such variation works.

- (g) If during construction any defect or damage shall occur to the Works or any part thereof or if there shall arise a need for a variation to the Works, as a result of any defect, fault, insufficiency or inadequacy in the design, the Government shall issue to the CA a notice specifying the default and requiring the CA to remedy the same within the period specified by GR at the CA'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 CA under this Agreement or at law, to claim and recover from the CA any payment for any loss/claims and/or damages suffered or any other expenses incurred as a result thereof.
- (h) Notwithstanding clause 5.5(g), the Government may elect to remedy the defect, fault, insufficiency or inadequacy in the design as at the time such defect, fault, insufficiency or inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the GR to be the sum required to remedy the same from any money due or to become due to the CA under this Agreement, failing which such sum shall be recovered from the Professional Indemnity Insurances taken by the CA or as a debt from the CA.

#### **5.6. CA's Personnel**

- (a) The CA shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.
- (b) The Services shall be carried out by the CA's Personnel as specified under **Appendix 9** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 8**.
- (c) The Project Manager of the CA as specified in **Appendix 9** shall be responsible for the management of the CA's Personnel for the Services as well as to act as liaison between the CA and the Government.
- (d) There shall be no changes or substitutions in the CA's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CA, it becomes necessary to replace any of the CA's Personnel, the CA shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.



- (e) In the event the number of CA's Personnel as specified in **Appendix 9** is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on CA's Personnel Time Input Schedule as specified in **Appendix 10**.
- (f) The CA shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

#### **5.7. Information and Records**

- (a) The CA shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The CA shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 6A, Appendix 6B and Appendix 6C** of this Agreement have been duly incurred.
- (c) The CA shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (d) In the event of failure occurring after the completion of the Project, the CA may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

#### **5.8. Liability**

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

#### **5.9. Indemnity**

The CA agrees with the Government that –

- (a) the CA shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep 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 carrying out of the Services 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 and the CA expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

- (b) the CA shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from -
  - (i) the negligent use or act, misuse or abuse by the CA or the CA's Personnel, servants, agents or employees appointed by the CA in the performance of the Services; or
  - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the CA to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or
  - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error, omission, neglect, breach or default of the CA or the CA's Personnel, servants, agents or employees; and
- (c) the obligations under this clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

## **5.10. Insurance**

The CA shall its own cost and expense effect and maintain all necessary insurance including insurances for its professional architect, graduate architect, sub-professional staff and employees. The insurance shall be valid until the expiry of the Defect Liability Period.

## **5.11. Professional Indemnity Insurance**

- (a) The CA warrants that the CA has taken and is maintaining its own cost and expense professional indemnity insurance covering its liabilities in respect of any act of negligence, error or omission of the CA, its employees, partners, servants and any persons under its supervision in the course of providing the Services under this Agreement. The professional indemnity insurance shall be valid and irrevocable not less than twelve (12) months after the expiry of the Defect Liability Period.

- (b) The GR may at any time request the CA to produce a copy of the insurance policy as evidence that the insurances required under this clause are being maintained and remain valid not less than twelve (12) months after the expiry of the Defect Liability Period.

## 5.12. Emergency and Accident

- (a) Where any accident, failure or other event occurs due to any cause whatsoever to, in or in connection with the Services provided for the Works or any part thereof either during the execution of the Works or during the Defect Liability Period or the period thereafter, the CA shall immediately report to the Government of the accident, failure or event together with the CA's proposal on any interim measures required to be taken.
- (b) The CA shall conduct a full investigation on the accident, failure or event if directed in writing by the Government in order to determine the cause or reason for the accident, failure or event and submit a report of the investigation to the Government together with the CA's proposals for remedial works in respect thereof.
- (c) If the Government directs the CA to carry out any remedial works as specified under clause 5.12 (b), the CA shall carry out the remedial works within fourteen (14) days from the date of the written direction.
- (d) The CA shall immediately obtain the approval of the Government before giving any instruction for any variation of works required if an accident, failure or event had occurred and any delay in carrying out the variation will cause claims against the Government or involve danger to life or property.
- (e) In the event that the Government decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Government, its employee or any person or body appointed or authorized by the Government, the CA shall give full co-operation and render all necessary assistance and facilities including the giving of access to all specifications, designs, records and other available information relating to the Works as may be required by the Government, its employee or such authorized person or body at no additional cost.
- (f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CA, then the Services provided by the CA hereto during the Defect Liability Period shall be construed as Additional Professional Services not included in Basic Professional Services and be paid accordingly by the Government and any services required from a third party for works not within the scope of Basic Professional Services described in **Appendix 1** of this Agreement shall also be paid accordingly by the Government.

- (g) If the investigation reveals that the accident, failure or event which occurred is due to the negligence, error, omission, default or poor supervision of the CA, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CA shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to—
  - (i) pay any person for the injury, damage or loss suffered by any person or his property; and
  - (ii) repair, replace or make good all injury, damages and/or pay all expenses and costs pertaining to injury and loss suffered by that person or his property.
- (h) In the event that the CA fails to comply with clause 5.12(g) and the Government is held liable for damages to any person for injury, damage or loss suffered, or has to repair or make good such damages and/or losses, such payment shall be deducted from any payment due to the CA under this Agreement or shall be claimed from the CA as a debt due to the Government.

### **5.13. Confidentiality**

- (a) Except with the prior written consent or the instructions of the Government, the CA shall not at any time communicate to any person or body or entity any confidential information disclosed to the CA for the purpose of the provision of the Services or discovered by the CA in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.
- (b) This sub-clause shall not apply to information which:
  - (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
  - (ii) is already known to the other party to whom it is disclosed to, at the time of disclosure;
  - (iii) is independently developed without benefit of the confidential information of the other party;

- (iv) is in possession of the CA without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.
- (c) In the event that the CA receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the CA shall not constitute a violation of this Agreement provided that-
  - (i) the CA promptly notifies the Government of the existence, terms and circumstances surrounding such request;
  - (ii) the CA consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and
  - (iii) the CA exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.
- (d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

#### **5.14. Notice of Delay**

In the event the CA encounters any delay in obtaining the required assistance and information set forth in clause 5.7(a), the CA shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

#### **5.15. Assistance in Arbitration Inquiry or Litigation**

The CA shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of arbitration or other proceedings arising after the completion of Services, if so required by the Government, the CA shall assist in any manner whatsoever and advise the Government under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the CA to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and

- (b) the right of the CA to take appropriate measures to safeguard and protect its interest.

#### **5.16. Situation Beyond Control Of CA**

- (a) The CA shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the CA, which makes it impossible for the CA to carry out its obligations hereunder.
- (b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CA in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 7** for a decision.

#### **5.17. Prohibition on Association**

The CA agrees that during and after the conclusion or termination of this Agreement, the CA shall limit its role for the Project to the provision of the Services and hereby disqualifies itself from the provision of goods or services in any capacity for the Project including bidding for any part of the Project except as the Government may otherwise agree or request the CA.

#### **5.18. Prohibition on Conflicting Activities**

No Personnel of the CA assigned to the Services under this Agreement nor the CA's staff, subsidiary or associate shall engage, directly or indirectly, either in his name or through his then employer, in any business or professional activities connected to the Services or Project and neither shall the CA's Personnel be so engaged directly or indirectly, either in his name or through the CA in any such other conflicting business or professional activities.

#### **5.19. Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government and the CA the relationship of master and servant or principal and agent. The position of the CA performing the Services is that of an independent consultant.

#### **5.20. Technology and Knowledge Transfer**

- (a) If the CA appoints foreign professionals, the CA 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 and knowledge transfer.

- (b) Pursuant to clause 5.20(a) above, the CA shall provide training for a minimum of .....**Specify number of government officer**.....officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The CA shall allow the employees of the Government to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

### **5.21. Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The CA shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.
- (b) The CA 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 CA or in respect of which the CA has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The CA 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 Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the CA may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## PART C

### GOVERNMENT'S OBLIGATIONS AND RIGHTS

#### 6.0 GOVERNMENT'S OBLIGATIONS

##### 6.1. Appointment of GR

- (a) The Government shall appoint the person under item 5 in **Appendix 7** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].
- (b) The CA shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

##### 6.2. Obligation to give instructions, decisions, etc. without delay

- (a) All instructions, notifications, consent or approval issued by the Government or the GR shall be in writing. However the GR may, where necessary issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consents or approvals shall be followed in writing not later than seven (7) days thereafter.
- (b) If the CA requires a decision from the Government for the performance of its Services under this Agreement, the CA shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 7** of this Agreement.

##### 6.3. Obligation to Supply Relevant Information and Assistance

- (a) The CA may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the CA pursuant to clause 6.3(a) of this Agreement shall not relieve the CA of any of the CA's obligations under this Agreement.



- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the CA, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the CA's obligation under this Agreement.
- (d) Where necessary, the Government shall assist the CA to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### **6.4. Payment to the CA for Services**

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the CA the Contract Price subject to the ceiling consulting fee, the ceiling out of pocket expenses or any other agreed and approved amount as revised from time to time, and in situation where the actual costs incurred in the performance of the Services does not exceed the ceiling consulting fee and the ceiling out of pocket expenses, downward adjustments can be made in accordance with **Appendix 6A, Appendix 6B and Appendix 6C**. The payment shall exclude the Government Service Tax, which amount shall be paid by the Government to the Royal Malaysian Customs Department through the CA upon the CA giving proof of the Service Tax License. A copy of the Service Tax License is attached in **Appendix 11** of this Agreement.
- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 12** upon the CA furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the CA shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the CA and be deposited to the account of the CA as specified under item 7 in **Appendix 7**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the CA is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the CA in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.

- (e) Except as otherwise agreed between the Government and the CA, payments in respect of all fees and expenses incurred by the CA shall be made in Ringgit Malaysia.
- (f) If the CA intends to claim any additional payment pursuant to any clause of this Agreement, the CA shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the CA fails to comply with this clause, the CA shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.
- (g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the CA and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the CA to the Government within thirty (30) days after receipt by the CA of notice thereof.

#### **6.5. Withholding Payment**

- (a) The Government may by giving written notice to the CA, and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the CA under this Agreement, upon the occurrence and continuance of any of the following events:
  - (i) the CA commits any breach of the terms and conditions of this Agreement; or
  - (ii) the progress of the Services fails to measure up to the aggregate payment made to date; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or
  - (iv) any failure of the CA to deliver the Services to the satisfaction of the Government.
- (b) The CA may apply to the Government, within fourteen (14) days after receiving notice referred to in clause 6.5(a) to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## **7.0 GOVERNMENT'S RIGHTS**

### **7.1. Proprietary Rights of The Government in Relation to Documents**

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the CA in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.
- (b) The CA shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The CA shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the CA's quality performance review processes.
- (c) The CA shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

## **8.0 DISPUTE RESOLUTION**

### **8.1. Dispute Resolution by Government Representative**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.
- (c) If the Consultant:
  - (i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

- (ii) is dissatisfied with any decision of the GR.

then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen days (14) days.

## **8.2. Dispute Resolution Committee**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the "Dispute Resolution Committee"), comprising –
  - (i) Secretary General of the Ministry/ Head of Department as the Chairman;
  - (ii) one (1) representative to be appointed by the Government; and
  - (iii) one (1) representative appointed by the Consultant.
- (b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## **8.3. Arbitration**

- (a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration 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.
- (b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the Consultant's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the Consultant.
- (c) In the event that such consent has been obtained in accordance with clause 8.3(b), 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.

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

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

##### **9.1. Suspension and Resumption of Services**

- (a) The GR may at any time instruct the CA to suspend part or all of the Services by the giving the CA due notice in writing.
- (b) Upon receipt of such instruction, the CA shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.
- (c) During the suspension period, the CA shall continue to perform his obligations under the Agreement which is not affected by the instruction to suspend, including the obligation to effect and maintain insurance.
- (d) The GR may instruct the CA to resume the Services at any time thereafter. Upon receipt of such instruction the CA shall resume the Services and the parties shall jointly examine the Services affected by

the suspension. The CA shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The CA shall also take all necessary actions to mitigate the expenses incurred.

## **9.2. Extension of Time**

- (a) If the CA suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the CA, the CA shall give notice for extension of time. PROVIDED THAT the CA shall not be entitled to such extension if the suspension is due to a cause attributable to the CA and the CA shall not be entitled to payment of loss and expenses if the CA–
  - (i) fails to take measures specified in clause 9.1(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 of more than twelve (12) months, the parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3. Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause–
  - (i) clause 11.1 (b) shall apply; and
  - (ii) payment obligations including all costs and expenditure incurred by the Government and the CA shall be ascertained in accordance with clause 14.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1. Withholding Payment**

If any of the conditions referred to in clause 6.5(a) shall have happened and be continuing for a period of fourteen (14) days after the Government has given written notice of withholding of payments to the CA under this Agreement, the Government may by written notice to the CA terminate this Agreement.

## **10.2. Default by the CA**

- (a) In the event the CA without reasonable cause –
  - (i) suspends the implementation of the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
  - (ii) fails to execute the Services in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
  - (iii) defaults in performing the duties under this Agreement; or
  - (iv) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the CA specifying the default and requiring the CA to remedy such defaults within fourteen (14) days from the date of such notice. If the CA fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

## **10.3. Events of Default**

- (a) If at any time during the Contract Period-
  - (i) the CA goes into liquidation or a receiver is appointed over the assets of the CA or the CA makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
  - (ii) any of the CA's director is prosecuted for any offences; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

## **10.4. Consequences of Termination by the Government**

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The CA shall hence forth –

- (i) cease all the Services;
  - (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;
  - (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advise opinion or report that the CA may provide; and
  - (iv) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services.
- (c) The Government shall hence forth –
- (i) be entitled to claim against the CA for any losses and/or damages suffered as a result of the termination; and
  - (ii) be entitled to appoint another consultant to perform the Services and the CA shall pay to the Government all cost and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the CA to complete the Services had this Agreement not been terminated.

PROVIDED THAT the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

#### **11.0 TERMINATION BY THE CA**

- (a) If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the CA's obligations under this Agreement, then the CA may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CA shall be entitled to terminate this Agreement at any time by giving notice to that effect.



### **11.1. Consequences of Termination by the CA**

Upon such termination, the CA shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

- (a) The Government shall, after receiving the detailed reports of the costs of the Services and other payments which has become due and owing to the CA, pay the CA all costs incurred in accordance with this Agreement.
- (b) The CA shall –
  - (i) cease to provide the Services to the Government;
  - (ii) at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the CA, its employees, servants and agents and make good all damage caused by such removal or such detachment; and
  - (iii) at no cost, deliver to the Government all documents relevant to the Project as are in the possession of the CA who shall be permitted to retain copies of any documents so delivered to the Government.
- (c) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CA shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### **12.0 TERMINATION ON NATIONAL INTEREST**

- (a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the CA (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.
- (b) Upon such termination –
  - (i) clause 11.1(b) shall apply; and
  - (ii) the CA shall be entitled to compensation in accordance with clause 14 which shall be determined by an independent auditor appointed by the Government after due consultation with the CA in respect of the appointment of the independent auditor.
- (c) For the purposes of this clause, what constitutes “national interest”, “interest of national security”, “the Government policy” and “public policy” 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.

### **13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES**

- (a) Without prejudice to any other rights of the Government, if the CA, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CA may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the CA.
- (b) Upon such termination –
  - (i) clauses 10.4(b) and (c) shall apply; and
  - (ii) 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.

### **14.0 FORCE MAJEURE**

#### **14.1. Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An “Event of Force Majeure” shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the CA or its employees,

which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

PROVIDED THAT Event of Force Majeure shall not include economic downturn, non-availability or insufficient of fund or lack of financing on the part of the CA to perform its obligations under this Agreement.

#### **14.2. Notification of Force Majeure**

If any Event of Force Majeure occurs which renders a Party unable to perform or fulfil any of its obligations under this Agreement, the Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this Agreement giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If either Party does not agree that an Event of Force Majeure has occurred then the dispute shall be referred to the GR for a decision.

#### **14.3. Termination by Force Majeure**

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than six (6) months then the Parties may mutually terminate this Agreement.

#### **14.4. Consequences of Termination due to Event of Force Majeure**

If this Agreement is terminated pursuant to clause 15.3, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

#### **14.5. Delay**

- (a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.
- (b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if

appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

#### **14.6. Restoration**

Notwithstanding any other provision in this Agreement, if an Event of Force Majeure occurs and this Agreement is not terminated then in any case where the delivery of the Services or any part thereof has been affected, the CA shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the CA is able to demonstrate that it has incurred substantial costs affecting the Services, the CA may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

#### **14.7. Insurance**

Notwithstanding any other Clause, the CA shall ensure that whenever reasonably practicable insurance is effected (whether by itself or by its contractors) to cover the occurrence of Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are reasonably and practicably insurable.

### **PART F**

#### **GENERAL PROVISIONS**

#### **15.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

#### **16.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the CA, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages, as specified under item 9 in **Appendix 7** of this Agreement.

- (b) 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 days (14).

## **17.0 GOVERNING LAW**

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

## **18.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The CA shall comply with all applicable laws and regulations in Malaysia and all statutory requirements, standards and guidelines, regulating or relating to the conduct, trade, business of it's profession and shall be fully and solely liable for the provisions of the Services.
- (b) The CA shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **19.0 SEVERABILITY**

If any provision of this Agreement is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Agreement such provision shall be fully severable and this Agreement shall be construed as if such illegal or invalid provision had never comprised as part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Agreement.

## **20.0 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties and none of them shall have any authority to bind the other in any way nor shall this Agreement be construed to constitute any party the agent of the other party.

## **21.0 ADVERTISEMENT**

No advertisement in respect of this Agreement shall be published by the CA or with the CA's authority in the newspaper, magazine or in any forms of advertisement without prior written approval of the Government.

## **22.0 TIME**

Time wherever mentioned, shall be of the essence of this Agreement.

### **23.0 COSTS AND STAMP DUTY**

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

### **24.0 INCOME TAX**

- (a) The CA and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.
- (b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

### **25.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another. However, if there is any ambiguity or discrepancy –

- (a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or
- (b) in the Appendices of this Agreement, the GR and CA shall reach a mutual understanding to resolve the ambiguity or discrepancy.

### **26.0 WAIVER**

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

### **27.0 CUSTODY OF AGREEMENT**

This Agreement shall be prepared in both original and certified duplicate copy. The original of this Agreement shall remain in the custody of the Government and shall be made available at all reasonable times for the inspection of the CA. The duplicate copy shall be kept by the CA.

## **28.0 SUCCESSORS BOUND**

This Agreement shall be binding upon each of the Parties hereto and their respective successors in title.

### **PART G**

#### **SPECIAL PROVISIONS**

*[ NOTE : WHERE THERE IS A NEED FOR SPECIAL CONDITIONS OVER AND ABOVE THE GENERAL CONDITIONS, THIS SECTION IS TO BE INSERTED BY THE RELEVANT AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE LEGAL ADVISORS. OTHERWISE THIS PAGE TO BE LEFT AS SUCH ABOVE ]*

- None -

**SIGNATORIES TO THE AGREEMENT**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and the year first hereinbefore appearing.

SIGNED for and on behalf of ) .....(Signature).....  
**THE GOVERNMENT** ) (Name, Designation & Department's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

SIGNED for and on behalf of ) .....(Signature).....  
**THE CA** ) (Name, Designation & Company's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :



## **PART A : SCHEDULE OF SERVICES**

### **1.0 TYPES OF PROFESSIONAL SERVICES**

The CA shall provide any or all of the following types of professional services:

- (a) Basic Professional Services
- (b) Additional Professional Services
- (c) Special Services
- (d) Supervision On Site

### **2.0 BASIC PROFESSIONAL SERVICES**

The Basic Professional Services that may be provided by the CA shall comprise any or all of the following phases:

- (a) Schematic Design Phase
- (b) Design Development Phase
- (c) Contract Documentation Phase
- (d) Contract Implementation and Management Phase
- (e) Final Completion Phase

#### **Basic Professional Services under Schematic Design Phase**

The Basic Professional Services that may be provided by the CA under the Schematic Design Phase include :

- (a) taking the Government's instruction and analysing the project brief;
- (b) preparing preliminary conceptual sketch proposals to interpret the project brief;
- (c) developing the preliminary conceptual sketch proposals into sketch designs to a stage sufficient to enable an application to be made for planning approval or approval in principle as required under any relevant laws and regulations;
- (d) preparing preliminary estimates of the probable construction cost based on current area, volume or other unit costs;
- (e) where applicable, preparing and submitting the drawings and other necessary documents to relevant approving authorities for either planning approval or approval in principle as required under any relevant laws.

### **Basic Professional Services under Design Development Phase**

The Basic Professional Services that may be provided by the CA under the Design Development Phase include:

- (a) upon the approval of the sketch design by either the relevant authority or the Government, developing the schematic design drawings to a stage to enable other consultants to commence their detailed design work;
- (b) preparing working drawings and submitting the same together with all necessary particulars to the relevant approving authorities to obtain statutory building approval;
- (c) updating the preliminary estimates of construction costs and submitting the same to the Government;
- (d) updating the project planning and implementation schedule and submitting the same to the Government for approval.

### **Basic Professional Services under Contract Documentation Phase**

The Basic Professional Services that may be provided by the CA under the Contract Documentation Phase include:

- (a) upon the approval by the Government of the updated preliminary estimates of construction costs and the project planning and implementation schedule, preparing and finalising the detailed drawings and other particulars necessary to the stage of completion sufficient to enable bills of quantities to be prepared;
- (b) in collaboration with other consultants, preparing all documents necessary for obtaining competitive tenders for the works;
- (c) inviting, on behalf of the Government, tenders for the work or collaborating with the other consultants engaged by the Government to do so;
- (d) evaluating the results of the tenders and submitting a report and recommendation to the Government;
- (e) awarding the contract on behalf of the Government;
- (f) preparing the building contract documents either alone or in collaboration with other consultants appointed by the Government for signature by the Government and the contractor.

## **Basic Professional Services under Contract Implementation & Management Phase**

The Basic Professional Services that may be provided by the CA under the Contract Implementation and Management Phase include:

- (a) performing all functions and duties of the CA under the terms and conditions of the building contract;
- (b) advising the Government on the site staff required for the project and estimating the cost and the duration of their employment;
- (c) providing information and issuing instructions to the contractor as required under the terms and conditions of the building contract to enable the contractor to proceed with the works;
- (d) examining the works programme submitted by the contractor and to be satisfied that the works can reasonably be completed within the contract period;
- (e) inspecting the works at periodic intervals so as to ensure that the works are being executed in accordance with the building contract and to issue the Certificate of Practical Completion.

## **Basic Professional Services under Final Completion Phase**

The Basic Professional Services that may be provided by the CA under the Final Completion Phase include:

- (a) issuing Certificate of Completion and Compliance for buildings after having satisfied that the buildings are fit and safe for occupancy;
- (b) certifying as-built drawings and submitting maintenance manuals together with all warranties to the Government;
- (c) issuing Certificate of Making Good Defects after having satisfied that all defects to the building(s) have been rectified;
- (d) preparing final accounts for the contract and issuing a final certificate of payment to the contractor.

## **1.0 ADDITIONAL PROFESSIONAL SERVICES**

The Additional Professional Services to be rendered by the CA shall be as follows:

- (a) inspecting and advising on the selection and suitability of sites, conducting or taking part in negotiations connected therewith, taking levels and preparing measured drawing plans of sites, sites and buildings or existing buildings;
- (b) inspecting, reporting and giving advice on the condition of buildings;
- (c) preparing schedules of dilapidations for either the landlord or the tenant, taking particulars on site, preparing specifications for repairs and supervising the execution;

- (d) preparing a preliminary technical appraisal of a project to enable the Government to reach a decision on whether to proceed and the form and content that the Project shall take;
- (e) involving in special or protracted negotiations for waivers and appeals and in connection with applications for town planning approvals or for approvals under building by-laws including applying for conversions of land for development purposes, zoning and densities;
- (f) amending or preparing new drawings or producing information as a result of the Government's instructions to amend the content, scope, design or details of a project, building or part thereof after the Project or building has been approved and finalised; and
- (g) putting in additional time or work due to delays in the Contract beyond the control of the CA.
- (h) carrying out such other additional professional services, if any, as directed by the Government.

## **2.0 SPECIAL SERVICES**

The special services to be rendered by the CA shall consist of the following:

- (a) preparing detailed development plans in connection with housing or other development based on a layout plan approved by the relevant approving authority;
- (b) providing full interior design services including the taking of instruction from the Government; formulating the brief, deciding on the themes, estimating and establishing the budget and implementation schedule, preparing sketch layouts and studies, preparing working and construction drawings, details, schedules and colour schemes, designing special items of furniture where appropriate or giving detailed advice on the selection of furniture, fittings and soft furnishings, preparing tender documents, obtaining tenders or quotations and advising thereon, accepting on behalf of the Government offers for implementation, preparing the contract documents if necessary, managing the contract, supervising the works and certifying the works on completion;
- (c) Serving as an expert or as an expert witness in connection with litigation, giving evidence, setting proofs, conferring with legal counsel, attending court or arbitration or other inquiries;
- (d) Serving as a specialist consultant;
- (e) Providing town planning services;
- (f) Providing project management services; and

- (g) Obtaining other professional services (Associated Consultants) for the Works.

### **3.0 SUPERVISION ON SITE**

- (a) The CA may be required to provide part-time or full-time supervision on site. Where such service is required, the number of staff to be employed, including the CA's own staff to be seconded to site for the purpose, shall be approved in writing by the Government.
- (b) Unless otherwise agreed to by the approving authorities concerned, the CA shall be in full control of, and responsible for, construction supervision of the Works on site.
- (c) All site staff shall be under the control of, and take instructions from the CA.

## **PART B : SCHEDULE OF FEES**

### **1.0 PAYMENT FOR PROFESSIONAL SERVICES**

The CA in performing the Services described in Part A shall be paid in accordance with any or all of the following types/modes of payment :

- (a) Payment On the Basis Of Scale of Fees (Payment depending upon the Cost of Works)
  - For Basic Professional Services
- (b) Payment On The Basis Of Time Cost (Payment depending upon time spent)
  - For Additional Professional Services
  - For Special Services
  - For Supervision On Site
- (c) Disbursements / Reimbursable
- (d) Other Payments

### **2.0 PAYMENT ON THE BASIS OF SCALE OF FEES**

The CA in performing the Basic Professional Services described in Part A sub-paragraph 2.1, 2.2, 2.3, 2.4 and 2.5 shall be paid in accordance with the Scale Of Fees, based upon the Cost of Works.

#### **2.1. Definition Of Cost Of Works**

- (a) "Cost of Works" means the total cost to the Government for the Works, however incurred, of all contractors and specialist works, services, installations and equipment designed, specified or allowed for and forming an integral part of the total project to enable the project to be completed and occupied to its intended standard, including :
  - (i) a market value of any labour, materials, manufactured goods, machinery or other facilities provided by the Government;
  - (ii) the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Government which the Government has required to be used in the execution of the Works;

- (iii) the market value of materials, manufactured goods and machinery incorporated in the Works, but shall not include –
  - (a) operating equipment or machinery that are not an integral or essential part of the Works,
  - (b) administrative expenses incurred by the Government,
  - (c) all consultancy fees incurred by the Government,
  - (d) interest on capital incurred during construction,
  - (e) the costs of raising money required for the construction of the Works,
  - (f) price variations arising from fluctuation of prices, and
  - (g) costs of land and way leaves.
- (b) The Cost of Works for the purpose of calculating the fees shall be derived as follows:
  - (i) for works which have not yet been tendered, the latest estimate of costs prepared by the CA or other consultants and accepted by the Government.
  - (ii) for works tendered but not executed, the lowest acceptable tender as agreed by the CA and the Government, less contingency sum;
  - (iii) for works tendered and executed, the original contract sum less contingency items; and
  - (iv) for completed works, the final Cost of Works as per the final account including variations, except those variations incurred as a result of deficiency or default in services by the CA.

## 2.2. Fees For Basic Services

The fees for Basic Professional Services shall be derived as follows :

- (a) the Works shall first be classified under any of the three categories of complexities as specified in **Table I**; and
- (b) the Scale of Fees shall be a percentage based upon the total Cost of Works as specified in **Table II, Table III or Table IV**.

## 2.3. Repetitive Works For Buildings other than Housing

- (a) Where the CA is engaged to render Basic Services which entail repetitive works for the purpose of one building contract where the construction

works are executed within the same site and the same contract period, the fees shall be computed as **Table V**.

- (b) Where the CA is engaged to render Basic Services which entail repetitive work for the purpose of separate building contracts where the construction works are on different sites or at different contract periods, the fees shall be computed as **Table VI**.

#### **2.4. Repetitive Works For Housing**

- (a) Where the design for a building is repeated in the construction of subsequent units on the same site and under a single building contract for which standard type drawings, specifications and other documents are used, the fees shall be computed as **Table VII**.
- (b) The fees for repetitive works shall be applied subject to the following conditions:
  - (i) a pair of semi-detached buildings shall be considered as two units;
  - (ii) an identical unit in a row of terrace houses, shop houses, shop offices or factories shall be considered as a single unit;
  - (iii) a block of flats shall be considered as a single unit;
  - (iv) where due to variation in site conditions or authorities requirements, it is necessary to modify the design of the standard type plan to accommodate the ground level or substructure of the building, the modified unit may still be considered as a standard repetitive unit provided the additional work involved in modifying the design and the preparation of additional drawings is paid to the CA on the basis of time costs; and
  - (v) the use of plans in mirror image of an otherwise identical type of plans of standard units in a development scheme shall still qualify the units for application of the fees for repetitive work.



**TABLE I – CATEGORY OF BUILDING WORKS**

<b>CATEGORY 1 Buildings of exceptional character / complexity</b>	<b>CATEGORY 2 Buildings of average complexity requiring a moderate degree of design and detailing</b>		<b>CATEGORY 3 Buildings of the simplest utilitarian character</b>
Airport terminal buildings Abattoirs Chancery buildings Conservation works Embassy buildings Ferry terminal buildings Hospitals (service, teaching, central-support units or departments to hospitals) Individually designed houses Legislative buildings Mausoleums Memorials Monuments Museums Observatories Palaces Preservation works Renovation works	Aquaria Art galleries Assembly halls Audio visual/tele-communication building Auditoria Bakeries Banks Bowling alleys Cinema halls Club houses College buildings Concert halls and theatres Convention halls and facilities Court houses Crematoria Cafeteria and canteens Civic centres Community centres Departmental stores Exhibition/exposition buildings Fire stations Flats (blocks of apartment buildings) Gymnasias Hotels Housing Estates Industrial buildings with manufacturing and packaging facilities Kindergarten Libraries Marinas	Mixed residential/commercial complex Motels Nursing homes Office buildings Parking structures (multi-storeyed) Petrol filling and service stations Prisons Post offices Police stations Prefabricated structures Power stations Recreational buildings and facilities Restaurants Road transportation terminal buildings Religious buildings Research buildings School buildings (other than government primary and secondary schools where standard plans are used) Shophouses Shopping centres/complexes Skating rinks (covered, ice/roller skating) Sports buildings Stadia	Carports (single-storeyed) Farm buildings School buildings (government and government-aided primary and secondary schools where standard plans are used) Simple industrial type buildings Storage or warehouse buildings

	Markets Medical and health clinics	Supermarkets Telephone exchange buildings University buildings Veterinary clinics	
--	--	---	--

**TABLE II – SCALE OF FEES FOR CATEGORY 1 BUILDING WORKS**

<b>Scale of Fees – CATEGORY 1</b>	
<b>Cost of Works (RM)</b>	<b>Total Fees (RM)</b>
500,000 and below	[Cost] x 10.00%
500,000 - 1,000,000	[(Cost – 500,000) x 9.25% ] +50,000
1,000,000 – 2,000,000	[(Cost – 1,000,000) x 8.50% ] +96,250
2,000,000 – 4,000,000	[(Cost – 2,000,000) x 7.75% ] +181,250
4,000,000 – 8,000,000	[(Cost – 4,000,000) x 7.00% ] +336,250
8,000,000 – 16,000,000	[(Cost – 8,000,000) x 6.25% ] +616,250
16,000,000 – 32,000,000	[(Cost – 16,000,000) x 5.50% ] +1,116,250
32,000,000 – 64,000,000	[(Cost – 32,000,000) x 5.00% ] +1,996,250
64,000,000 – 128,000,000	[(Cost – 64,000,000) x 4.50% ] +3,596,250
128,000,000 – 256,000,000	[(Cost – 128,000,000) x 4.25% ] +6,476,250
256,000,000 – 512,000,000	[(Cost – 256,000,000) x 4.00% ] +11,916,250
Above 512,000,000	[(Cost – 512,000,000) x 3.75% ] +22,156,250

**TABLE III – SCALE OF FEES FOR CATEGORY 2 BUILDING WORKS**

<b>Scale of Fees – CATEGORY 2</b>	
<b>Cost of Works (RM)</b>	<b>Total Fees (RM)</b>
500,000 and below	[Cost] x 7.50%
500,000 – 1,000,000	[(Cost – 500,000) x 7.0% ] +37,500
1,000,000 – 2,000,000	[(Cost – 1,000,000) x 6.50% ] +72,500
2,000,000 – 4,000,000	[(Cost – 2,000,000) x 6.00% ] + 137,500
4,000,000 – 8,000,000	[(Cost – 4,000,000) x 5.50% ] + 257,500
8,000,000 – 16,000,000	[(Cost – 8,000,000) x 5.00% ] + 477,500
16,000,000 – 32,000,000	[(Cost – 16,000,000) x 4.75% ] + 877,500
32,000,000 – 48,000,000	[(Cost – 32,000,000) x 4.50% ] +1,637,500
48,000,000 – 64,000,000	[(Cost – 48,000,000) x 4.25% ] +2,357,500
64,000,000 – 80,000,000	[(Cost – 64,000,000) x 4.00% ] +3,037,500
80,000,000 – 96,000,000	[(Cost – 80,000,000) x 3.75% ] +3,677,500
96,000,000 – 112,000,000	[(Cost – 96,000,000) x 3.50% ] +4,277,500
Above 112,000,000	[(Cost – 112,000,000) x 3.25% ] +4,837,500

**TABLE IV – SCALE OF FEES FOR CATEGORY 3 BUILDING WORKS**

<b>Scale of Fees – CATEGORY 3</b>	
<b>Cost of Works (RM)</b>	<b>Total Fees (RM)</b>
1,000,000 and below	[Cost] x 5.00%
1,000,000 – 2,000,000	[(Cost – 1,000,000) x 4.75% ] + 50,000
2,000,000 – 4,000,000	[(Cost – 2,000,000) x 4.50% ] + 97,500
4,000,000 – 8,000,000	[(Cost – 4,000,000) x 4.25% ] + 187,500
8,000,000 – 16,000,000	[(Cost – 8,000,000) x 4.00% ] + 357,500
16,000,000 – 32,000,000	[(Cost – 16,000,000) x 3.75% ] + 677,500
32,000,000 – 64,000,000	[(Cost – 32,000,000) x 3.50% ] + 1,277,500
Above 64,000,000	[(Cost – 64,000,000) x 3.25% ] +2,397,500

**TABLE V – REPETITIVE WORKS FOR BUILDINGS OTHER THAN HOUSING (SAME SITE)**

<b>Building unit</b>	<b>Percentage of appropriate Fees based on total cost of works (%)</b>
<b>For the 1<sup>st</sup> unit</b>	<b>100</b>
<b>2<sup>nd</sup> to 5<sup>th</sup> unit</b>	<b>40</b>
<b>6<sup>th</sup> to 9<sup>th</sup> unit</b>	<b>35</b>
<b>10<sup>th</sup> and subsequent units</b>	<b>30</b>

**TABLE VI - REPETITIVE WORKS FOR BUILDINGS OTHER THAN HOUSING (DIFFERENT SITE)**

<b>Building unit</b>	<b>Percentage of appropriate Fees based on total cost of works (%)</b>
<b>For the 1<sup>st</sup> unit</b>	<b>100</b>
<b>2<sup>nd</sup> unit</b>	<b>65</b>
<b>3<sup>rd</sup> unit</b>	<b>55</b>
<b>4<sup>th</sup> and subsequent units</b>	<b>45</b>

**TABLE VII – REPETITIVE WORKS FOR HOUSING**

<b>Building unit</b>	<b>Percentage of appropriate Fees based on total cost of works (%)</b>
<b>For the 1<sup>st</sup> unit</b>	<b>100</b>
<b>2<sup>nd</sup> to 10<sup>th</sup> unit</b>	<b>75</b>
<b>11<sup>th</sup> to 30<sup>th</sup> unit</b>	<b>50</b>
<b>31<sup>st</sup> to 60<sup>th</sup> unit</b>	<b>40</b>
<b>61<sup>st</sup> to 100<sup>th</sup> unit</b>	<b>30</b>
<b>101<sup>th</sup> unit and above</b>	<b>20</b>

### **3.0 PAYMENT ON THE BASIS OF TIME COST**

The CA who has rendered any of the Additional Professional Services described in Part A – Schedule of Services sub-paragraph 3.0 and/or Special Services described in Part A – Schedule of Services sub-paragraph 4.0 and/or Site Supervision as described in Part A – Schedule of Services sub-paragraph 5.0 shall be paid in accordance with Payment On The Basis Of Time Cost as follows :-

- (a) Remuneration shall be determined on the basis of time actually spent multiplied by a rate specified in respect of the CA's personnel, where such rate shall be calculated based on basic salary times an appropriate multiplier as approved by the Government.
- (b) The Government shall not be responsible for payment of the above remuneration to the CA's Personnel who are on annual leave or sick leave.
- (c) the CA shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in the CA's office.
- (d) the CA shall be entitled for other payments, where applicable, as described in paragraph 4.0 and 5.0.

### **4.0 DISBURSEMENTS / REIMBURSIBLES**

The CA shall in all cases be reimbursed by the Government for the disbursements actually incurred as approved by the Government.

### **5.0 OTHER PAYMENTS**

#### **5.1 Payment For Other Consultants or Specialist Technical Advice**

If the CA has obtained the advice of a specialist or other consultants under sub-paragraphs 4.0(g) of Part A – Schedule of Services, the CA shall be paid separately by the Government the actual fees as charged by the other Consultant(s) or specialists, which shall be derived from *Payment On The Basis of Time Cost* or *Scale Of Fees* as approved by the Government.

#### **5.2 Payment for Alteration or Modification to Design**

If after the completion by the CA of his professional services under sub-paragraph 2.1 of Part A - Schedule of Services at any time after the execution of an agreement between the CA and the Government, any design whether completed or in progress or any specification, drawings or other document prepared in whole or in part by the CA are required to be modified or revised by reason of instructions received by the CA from the Government, or by reason of circumstances which could not reasonably have been foreseen by the CA, the

CA shall be paid an additional payment on the basis of time cost by the Government in accordance with paragraph 3.0 of this Schedule including any reimbursements provided in paragraph 4.0 of this Schedule for making any necessary modification or revision and for any consequential reproduction of documents provided that the CA shall only be paid for any modification or revision to the design after the Government has given its agreement to the final conceptual design.

### **5.3 Payment When Works are Damaged or Destroyed**

If at any time before completion of the Works, any part of the Works or any materials, plant or equipment whether incorporated in the Works or not are damaged or destroyed, resulting in additional services being required by the Government to be carried out by the CA, provided always such damage was not due to the negligence on the part of the CA, then the CA shall be paid by the Government payment on the basis of time cost for the additional works together with any reimbursements as provided in paragraphs 3.0 and 4.0 of this Schedule.

### **5.4 Payment Following Termination Or Suspension By The Government**

(a) In the event of the termination of this Agreement (unless such termination shall have been occasioned by the default of the CA) or the suspension of the Project by the Government, the CA shall be paid the following sums (less the amount of payments previously made to the CA):

- (i) a sum deducible from the stage of Services completed at the time of termination or suspension; and
- (ii) amounts due to CA under any other paragraphs of this Schedule

provided that the CA shall accept the said payments by the Government as full and complete settlement of all his claims for payment under or arising out of this Agreement.

(b) In the event that the CA is required to recommence its Services for the Project suspended by the Government, the CA shall be paid for the performance of its Services the sum payable to the CA under paragraph 2.0 and/or paragraph 3.0 of this Schedule, whichever may be applicable, the payments under sub-paragraphs 5.5(a) (i) and (ii) of this Schedule being treated as payments on account.

(c) Where the tendering of the Project (or any part thereof) is likely to be delayed for more than twelve (12) months or postponed at the request of the Government, the CA shall be paid according to the Scale of fees described paragraph 2.0 of this Schedule but the cost of works applicable shall be the estimated cost of works (or any relevant part thereof) and agreed to by the Government at the time of completion of the particular stage of professional services.

- (d) Where the Project is suspended or postponed after the tenders have been called, the fees payable to the consulting CA shall be computed based on the lowest acceptable tender received.
- (e) Where tenders are recalled and the Project is subsequently resumed, the total fees payable to the CA, inclusive of the fees paid under sub-paragraph 5.5(d) of this Schedule, shall be as follows:
- (i) for the Schematic Design Phase, Design Development Phase, Contract Documentation Phase, the fees shall be as computed in sub-paragraph 5.5(d) of this Schedule, and
  - (ii) for the Contract Administration and Supervision Phase and Final Completion Phase, the fees shall be computed based on the contract sum for the works at the time of resumption and in accordance with the definitions of “cost of works”.
- (f) If the CA is required to perform any additional services in connection with the resumption of his Services in accordance with sub-paragraph 5.5(b) of this Schedule, the CA shall be paid for the performance of the additional services on the basis of Time Cost and also any appropriate reimbursements in accordance with paragraph 4.0 of this Schedule.

## 5.5 Payment Following Termination by the CA

If there is a termination by the CA of his Services (unless the termination had been occasioned by the default or negligence of the CA), the CA shall be entitled to be paid the sums specified in sub-paragraphs 5.5(a)(i) and (ii) of this Schedule less the amount of payments previously made to the CA.

## 6.0 STAGES OF PAYMENT OF FEES

- (a) Where the payment is based on the Scale of Fees, the proportions of the total fee for the Works to be paid to the CA against the relevant stages of Services shall be as **Table VIII**.

**Table VIII – STAGES OF PAYMENT**

<i>Upon completion of each Phase:</i>	<i>Percentage of the total fee</i>
Schematic Design Phase	15%
Design Development Phase	30%
Contract Documentation Phase	25%
Contract Implementation and Management Phase	25%
Final Completion Phase	5%

- (b) The CA shall be entitled to payments at intervals to be mutually agreed upon by the CA and the Government in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the stages shall be equal to the percentages as set out in Table VIII.
- (c) Unless otherwise specified or mutually agreed beforehand between the Government and the CA in this Agreement, the fee apportioned to each stage shall be paid in full, even if, under the circumstances in a particular case, the CA is not required to perform some of the Services listed under that stage in Paragraph 2.0 in Part A - Schedule of Services.
- (d) Where the CA is engaged only for the purpose of the Contract Implementation and Management Phase and Final Completion Phase, the CA shall be paid by installments based on the value of works as certified from time to time.
- (e) Where there are variations to the works at any time during the course of construction which results in changes(reduction/increase) to the original contract sum, the fees for the services rendered by architectural consultancy practice –
  - (i) under the completed Schematic Design stage, Design Development stage and Contract Documentation stage, shall be based on the original contract sum; and
  - (ii) under the completed Contract Implementation and Management stage and Final Completion stage, shall be based on the final Cost of Works including variations.
- (f) Notwithstanding subparagraph (e), where the CA has not completed all the services specified under the Schematic Design stage, the fee shall be based on an amount to be agreed between the CA and the Government, and in the absence of such agreement, the fee shall be derived on the basis of Time Cost.
- (g) Where the payment is based on Time Cost, the proportions of the total fee for the Works to be paid to the CA shall be based on the completion of deliverables or on a pro-rated monthly basis or any other agreed stages of payment.
- (h) Payment for site supervision services shall be paid on a monthly basis.
- (i) Payment for disbursement / reimbursable items shall be made on a monthly basis upon submission of receipts and invoices where applicable.

## APPENDIX 1

### APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief
2. List & Mode of Deliverables
3. Scope of Services
  - (a) Basic Services
  - (b) Additional Services
  - (c) Site Supervision (if applicable)



**APPENDIX 2**

**APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT  
IMPLEMENTATION**

[CA'S TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 3**

**APPENDIX 3 : LETTER OF ACCEPTANCE**

[THE LETTER OF ACCEPTANCE SHALL INCLUDE THE SIGNING PAGE AND EXECUTED BY THE CA - TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 4**

**APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL  
BOARD**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 5**

**APPENDIX 5 : DELIVERABLES**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Deliverables Stages	Details	Due Date of Submission
1.			
2.			

**APPENDIX 6A**

**APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6B**

**APPENDIX 6B : CONSULTING FEES**

[DETAILED BREAKDOWN/CALCULATION OF FEES-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6C**

**APPENDIX 6C : OUT OF POCKET EXPENSES**

[DETAILED BREAKDOWN/CALCULATION OF OUT OF POCKET EXPENSES-  
TO BE INSERTED BY RELEVANT AGENCY]

## APPENDIX 7

## APPENDIX 7 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	..... date to be inserted by Agency
2.	3.1	Contract period	..... week/month/year
3.	3.1	Contract Expiry date	..... date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	.....week/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	..... designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	..... days to be inserted by Agency
7.	6.4(c)	CA's bank account details for purposes of payment	Name: ..... Account No.:..... Bank Address:.....
8.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: $\text{LAD} = \frac{\% \text{ BLR}}{100} \times \frac{\text{Fees}}{365}$ (subject to a minimum of RM100/- per day)	RM...../day
9.	16(a)	a) <u>For the Government</u>  b) <u>For the CA</u>	a) Official Designation: Address: Fax No. : Tel. No : Email :  b) Name of Firm : Address : Fax No. : Tel No.: Email :



**APPENDIX 8**

**APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE**

[TO INCLUDE DUE DATE(S) OF SPECIFICALLY IDENTIFIED DELIVERABLES-  
TO BE INSERTED BY RELEVANT AGENCY]

No	Deliverable stages	List of activities	Period of Implementations according to activities	Start Date (according to activities)	End Date (according to activities)

OR

**GANTT CHART**

**APPENDIX 9**

**APPENDIX 9 : CA'S PERSONNEL**

[TO BE INSERTED BY RELEVANT AGENCY]

No	Name of Personnel (inclusive of owner & principal)	Role in Team	Number of Years of Working Experience	Age	Employment Status with the firm (Permanent/Temporary)	Full Name of Highest Academic Qualification (specify name of university)	Professional Certificates (list name of certificate and membership no. (if any))

**APPENDIX 10**

**APPENDIX 10 : CA'S PERSONNEL TIME INPUT SCHEDULE  
(IF APPLICABLE)**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Name of Personnel Involved in each stages	Total Time Input by each personnel and according to deliverable stages	Start Date (work commenced by each personnel)	End Date (work ended by each personnel)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 11**

**APPENDIX 11 : CA'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 12**

**APPENDIX 12 : SCHEDULE OF PAYMENT**

[BREAKDOWN OF SCHEDULED PAYMENT BY STAGES/PHASES OR MONTHS-  
TO BE INSERTED BY RELEVANT AGENCY]

**CONSULTANCY SERVICES**

**FOR** ..... **Specify full name of project** .....

**CONTRACT NO. :** ..... **Specify contract number** .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

..... **Name of consultancy firm** .....

**(COMPANY NO. : .....** **Company registration no with Suruhanjaya Syarikat Malaysia (local company) or Board of Engineering Consultancy Practice Registration. If foreign companies specify its registration number in its country** **.....)**

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**CONTRACT NO. :** *Specify contract number* .....

**“RECITALS”**

THIS AGREEMENT is made on *Date (day)*...day of *Month and year*....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by *Name of Government Agency*.....  
whose address is at *Specify full address*.....(hereinafter referred to as “the **Government**”)  
of the first part;

**AND**

*Name of the sole proprietorship/partnership/body corporate, (whichever is applicable)*  
.....,  
*Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration No*..... and Board of  
Engineering Consultancy Practice Registration No....*Specify registration number*....., a sole  
proprietorship or partnership registered in Malaysia or a body corporate incorporated  
under the Companies Act 1965 (whichever is applicable) and practising as an  
Engineering Consultancy Practice, having its registered office at  
*Specify full address*.....hereinafter referred to as “**CE**”) of the other part.

The Government and the CE shall individually be referred as the “**Party**“ and  
collectively referred to as the “**Parties**”.

**WHEREAS -**

- (A) The Government intends to construct and complete *Specify full name of project*.....  
(hereinafter referred to as “**the Project**”) and is desirous of obtaining  
(hereinafter referred to as “**the Services**”) from the CE in connection with  
the *Specify field of the consultancy service*.....(hereinafter referred to as “**the Works**”).
- (B) The CE has submitted its proposal to the Government on the scope for the  
Services and both Parties have agreed on the scope of Services as per the  
Terms of Reference specified in **Appendix 1** and Technical Documents in  
**Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the  
CE and the CE has agreed to such appointment to provide the Services  
necessary for the effective implementation of the Project. A copy of the Letter  
of Acceptance dated *Date issued by Government*..... is attached in **Appendix 3** of this  
Agreement.

**NOW IT IS HEREBY AGREED** as follows:

**PART A**

**GENERAL**

**1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1. Definitions**

Under this Agreement, unless the context otherwise requires the following words and expressions used under this Agreement shall have the following meanings:

- (a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (b) "Associated Consultant" means other consultant(s) engaged by the CE upon request and approval by the Government to carry out services for any part of the project;
- (c) "CE" means the engineering consultancy firm named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered under the Registration of Engineers Act 1967 [Act 138] and engaged to provide professional engineering consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Engineers Act 1967 [Act 138] is attached in **Appendix 4**;
- (d) "Contractor" means any sole proprietorship, partnership or company engaged by the Government under a contract for the Project or to supply goods in connection with the Project or both and includes sub-contractors;
- (e) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (f) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (g) "Cost of Works" means the cost incurred by the Government for the Works as particularly specified under the Schedules of this Agreement (Part B -Schedule of Fees);

- (h) “Defects Liability Period” is as provided in the contract between the Government and Contractor;
- (i) “Deliverables” means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 5** to be submitted to the Government by the CE as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (j) “Government’s Representative (“GR”) means the person under item 5 in **Appendix 7** or such other person as may be appointed from time to time by the Government and notified in writing to the CE to carry out the duties of the GR and the person so designated or appointed may be described by position;
- (k) “Services” means the professional consultancy services for the project which the Government has engaged the CE to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2 and 5**;
- (l) “Professional Indemnity Insurance” means the insurances taken and maintained by the CE covering its liability in respect of any negligence, error or omission acts of CE and its employees under Clause 5.11;
- (m) “Project” means the project of which the Works form a part;
- (n) “Works” means the works described briefly in Recital (A) of this Agreement which the Government has engaged the CE to perform professional services and which may comprise those as specified under the Schedules of this Agreement (Part A - Schedule of Services).

### 1.1. Interpretations

Under this Agreement, except to the extent that the context otherwise requires:

- (a) references to any law, legislation or to any provisions of any law and legislation shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or statutory instruments issued under the legislation or provisions;
- (b) references to clauses, appendices, and schedules are references to Clauses, Appendices, and Schedules of this Agreement;
- (c) words denoting the singular shall include the plural and vice versa;
- (d) words denoting individuals shall include corporations and vice versa;
- (e) recitals and headings are for convenience only and shall not affect the interpretation thereof;

- (f) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as being references to sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (g) the Appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement PROVIDED HOWEVER that in the event of any conflict between the clauses and the Appendices of this Agreement, the clauses shall prevail;
- (h) the expression of "this Agreement" or any similar expression shall include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (i) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an "approval" is a reference to an approval in writing; and "approved" shall be construed accordingly;
- (l) any reference to an "amendment" includes any variation, deletion or additions, and "amend" or "amended" shall be construed accordingly;
- (m) any technical term not specifically defined under this Agreement shall be construed in accordance with the general practice of such relevant profession in Malaysia;
- (n) for the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of, and time begins to run from, the date so specified;
- (o) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the Parties from time to time";
- (p) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar.

## **1.2. Entire Agreement**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written.

## 2.0 APPOINTMENT AND CONSIDERATION

The Government hereby appoints the CE and the CE accepts the appointment to provide the Services for a consideration of Ringgit Specify total cost in word format only (RM. Specify total cost in number format) as the ceiling contract amount (hereinafter referred to as the “**Contract Price**” and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia Specify consulting fee in word format only (RM. Specify consulting fee in number format) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit Specify out of pocket expenses in word format only (RM. Specify out of pocket expenses in number format) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated Date issued by Government (as specified in **Appendix 3** of this Agreement).

## 3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

### 3.1. Contract Period

This Agreement shall be for a period of Specify duration of consultancy period (week/month/year) as specified under item 2 in **Appendix 7** (hereinafter referred to as the “**Contract Period**”) commencing from Specify start date (hereinafter referred to as “**Commencement Date**”) and shall expire on the date stated under item 3 in **Appendix 7** (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

### 3.2. Extension of Contract Period

- (a) The CE shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The CE shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension Specify period prior to the Contract Expiry Date as specified under item 4 in **Appendix 7**. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

## PART B

### CE'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

#### 4.0 CE'S REPRESENTATIONS AND WARRANTIES

The CE hereby represents and warrants to the Government that –

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the CE is a body corporate or partnership or sole proprietorship registered under the Registration of Engineers Act 1967 [Act 138] and exists validly under the laws of Malaysia;
- (d) the CE shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (e) the CE has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;
- (f) the CE has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;
- (g) as at the execution date, neither the execution nor performance by the CE of this Agreement nor any transactions contemplated by this Agreement 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 assets;
- (h) 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 Agreement;
- (i) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;
- (i) this Agreement constitutes a legal, valid and binding obligation of the CE and is enforceable in accordance with its terms and conditions;
- (j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,



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

## **5.0 CE'S OBLIGATIONS**

### **5.1. Quality of Services**

- (a) The CE shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed in this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.
- (b) The CE shall have sufficient knowledge of current Local Authority requirements, bye-laws, local land acts and other regulations relating to the Project, and shall advise the Government accordingly in matters affecting the implementation of the Project.

### **5.2. Timeliness of Services**

- (a) The CE shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 8**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The CE shall provide to the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The CE shall keep the GR informed on a day to day basis of all instructions, variations and design changes made or authorized by the CE.

### **5.3. Consequences of Delay**

- (a) If the CE fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 5** of this Agreement without reasonable cause, the CE shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.

- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 8 in **Appendix 7** of this Agreement.

#### **5.4. Instructions by The Government**

- (a) The CE shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The CE shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the CE in connection with the Services.
- (b) The CE shall attend or be represented at all meetings convened by the Government to which the CE may be summoned, and shall advise and assist the Government on all matters relating to the Services.

#### **5.5. Design Services**

- (a) Where the CE is required by the Government to provide design services, the CE shall guarantee the Government that such design shall be suitable, functional, safe and in compliance with the design standard and specification of the Works.
- (b) The CE shall use due skill and care to ensure that the design of all parts of the Works for which the CE is responsible under this Agreement is in accordance with the laws and regulations and other statutory and regulatory requirement applicable to the Works.
- (c) The CE shall strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference. The CE shall not without prior written approval of the Government amend the project brief which in the opinion of the CE is likely to increase the project cost.
- (d) All drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by the CE for or in connection with any invitation for tenders shall not be used for any other such purposes unless they shall first have been approved by the GR. The approval by the GR shall not relieve the CE of its obligations in connection with the Services.
- (e) All designs, calculations, drawings and documents and any other deliverables in relation to the Services to be provided by the CE to the Government shall be approved and signed by the CE.
- (f) The CE shall not without prior written approval of the Government, make amendments to any approved design or give any instruction which is likely to increase the cost of the project, unless the variations are of an emergency nature and any delay in carrying out such

variation works can cause claims against the Government or involve danger to life and property and in the circumstance it is impracticable for the CE to obtain such approval. In such circumstances, the CE shall seek the approval of the Government as soon as possible of such variation works.

- (g) If during construction any defect or damage shall occur to the Works or any part thereof or if there shall arise a need for a variation to the Works, as a result of any defect, fault, insufficiency or inadequacy in the design, the Government shall issue to the CE a notice specifying the default and requiring the CE to remedy the same within the period specified by GR at the CE'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 CE under this Agreement or at law, to claim and recover from the CE any payment for any loss/claims and/or damages suffered or any other expenses incurred as a result thereof.
- (h) Notwithstanding clause 5.5(g), the Government may elect to remedy the defect, fault, insufficiency or inadequacy in the design as at the time such defect, fault, insufficiency or inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the GR to be the sum required to remedy the same from any money due or to become due to the CE under this Agreement, failing which such sum shall be recovered from the Professional Indemnity Insurances taken by the CE or as a debt from the CE.

#### 5.6. CE's Personnel

- (a) The CE shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.
- (b) The Services shall be carried out by the CE's Personnel as specified under **Appendix 9** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 8**.
- (c) The Project Manager of the CE as specified in **Appendix 9** shall be responsible for the management of the CE's Personnel for the Services as well as to act as liaison between the CE and the Government.
- (d) There shall be no changes or substitutions in the CE's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CE, it becomes necessary to replace any of the CE's Personnel, the CE shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

- (e) In the event the number of CE's Personnel as specified in **Appendix 9** is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on CE's Personnel Time Input Schedule as specified in **Appendix 10**.
- (f) The CE shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

#### **5.7. Information and Records**

- (a) The CE shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The CE shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 6A, Appendix 6B and Appendix 6C** of this Agreement have been duly incurred.
- (c) The CE shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (d) In the event of failure occurring after the completion of the Project, the CE may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

#### **5.8. Liability**

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

#### **5.9. Indemnity**

The CE agrees with the Government that –

- (a) the CE shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep 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 carrying out of the Services 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 and the CE expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

- (b) the CE shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from -
  - (i) the negligent use or act, misuse or abuse by the CE or the CE's Personnel, servants, agents or employees appointed by the CE in the performance of the Services; or
  - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the CE to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or
  - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error, omission, neglect, breach or default of the CE or the CE's Personnel, servants, agents or employees; and
- (c) the obligations under this clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

## **5.10. Insurance**

The CE shall its own cost and expense effect and maintain all necessary insurance including insurances for its professional engineer, graduate engineer, sub-professional staff and employees. The insurance shall be valid until the expiry of the Defect Liability Period.

## **5.11. Professional Indemnity Insurance**

- (a) The CE warrants that the CE has taken and is maintaining its own cost and expense a professional indemnity insurance covering its liabilities in respect of any act of negligence, error or omission of the CE, its employees, partners, servants and any persons under its supervision in the course of providing the Services under this Agreement. The professional indemnity insurance shall be valid and irrevocable not less than twelve (12) months after the expiry of the Defect Liability Period.

- (b) The GR may at any time request the CE to produce a copy of the insurance policy as evidence that the insurances required under this clause are being maintained and remain valid not less than twelve (12) months after the expiry of the Defect Liability Period.

## 5.12. Emergency and Accident

- (a) Where any accident, failure or other event occurs due to any cause whatsoever to, in or in connection with the Services provided for the Works or any part thereof either during the execution of the Works or during the Defect Liability Period or the period thereafter, the CE shall immediately report to the Government of the accident, failure or event together with the CE's proposal on any interim measures required to be taken.
- (b) The CE shall conduct a full investigation on the accident, failure or event if directed in writing by the Government in order to determine the cause or reason for the accident, failure or event and submit a report of the investigation to the Government together with the CE's proposals for remedial works in respect thereof.
- (c) If the Government directs the CE to carry out any remedial works as specified under clause 5.12 (b), the CE shall carry out the remedial works within fourteen (14) days from the date of the written direction.
- (d) The CE shall immediately obtain the approval of the Government before giving any instruction for any variation of works required if an accident, failure or event had occurred and any delay in carrying out the variation will cause claims against the Government or involve danger to life or property.
- (e) In the event that the Government decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Government, its employee or any person or body appointed or authorized by the Government, the CE shall give full co-operation and render all necessary assistance and facilities including the giving of access to all specifications, designs, records and other available information relating to the Works as may be required by the Government, its employee or such authorized person or body at no additional cost.
- (f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CE, then the Services provided by the CE hereto during the Defect Liability Period shall be construed as Additional Professional Services not included in Basic Professional Services and be paid accordingly by the Government and any services required from a third party for works not within the scope of Basic Professional Services described in **Appendix 1** of this Agreement shall also be paid accordingly by the Government.

- (g) If the investigation reveals that the accident, failure or event which occurred is due to the negligence, error, omission, default or poor supervision of the CE, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CE shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to—
  - (i) pay any person for the injury, damage or loss suffered by any person or his property; and
  - (ii) repair, replace or make good all injury, damages and/or pay all expenses and costs pertaining to injury and loss suffered by that person or his property.
- (h) In the event that the CE fails to comply with clause 5.12(g) and the Government is held liable for damages to any person for injury, damage or loss suffered, or has to repair or make good such damages and/or losses, such payment shall be deducted from any payment due to the CE under this Agreement or shall be claimed from the CE as a debt due to the Government.

### **5.13. Confidentiality**

- (a) Except with the prior written consent or the instructions of the Government, the CE shall not at any time communicate to any person or body or entity any confidential information disclosed to the CE for the purpose of the provision of the Services or discovered by the CE in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.
- (b) This sub-clause shall not apply to information which:
  - (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
  - (ii) is already known to the other party to whom it is disclosed to, at the time of disclosure;
  - (iii) is independently developed without benefit of the confidential information of the other party;

- (iv) is in possession of the CE without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.
- (c) In the event that the CE receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the CE shall not constitute a violation of this Agreement provided that-
  - (i) the CE promptly notifies the Government of the existence, terms and circumstances surrounding such request;
  - (ii) the CE consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and
  - (iii) the CE exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.
- (d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

#### **5.14. Notice of Delay**

In the event the CE encounters any delay in obtaining the required assistance and information set forth in clause 5.7(a), the CE shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

#### **5.15. Assistance in Arbitration Inquiry or Litigation**

The CE shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of arbitration or other proceedings arising after the completion of Services, if so required by the Government, the CE shall assist in any manner whatsoever and advise the Government under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the CE to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and



- (b) the right of the CE to take appropriate measures to safeguard and protect its interest.

#### **5.16. Situation Beyond Control Of CE**

- (a) The CE shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the CE, which makes it impossible for the CE to carry out its obligations hereunder.
- (b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CE in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 7** for a decision.

#### **5.17. Prohibition on Association**

The CE agrees that during and after the conclusion or termination of this Agreement, the CE shall limit its role for the Project to the provision of the Services and hereby disqualifies itself from the provision of goods or services in any capacity for the Project including bidding for any part of the Project except as the Government may otherwise agree or request the CE.

#### **5.18. Prohibition on Conflicting Activities**

No Personnel of the CE assigned to the Services under this Agreement nor the CE's staff, subsidiary or associate shall engage, directly or indirectly, either in his name or through his then employer, in any business or professional activities connected to the Services or Project and neither shall the CE's Personnel be so engaged directly or indirectly, either in his name or through the CE in any such other conflicting business or professional activities.

#### **5.19. Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government and the CE the relationship of master and servant or principal and agent. The position of the CE performing the Services is that of an independent consultant.

#### **5.20. Technology and Knowledge Transfer**

- (a) If the CE appoints foreign professionals, the CE 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 and knowledge transfer.

- (b) Pursuant to clause 5.20(a) above, the CE shall provide training for a minimum of .....**Specify number of government officer**.....officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The CE shall allow the employees of the Government to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

### **5.21. Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The CE shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.
- (b) The CE 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 CE or in respect of which the CE has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The CE 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 Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the CE may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## PART C

### GOVERNMENT'S OBLIGATIONS AND RIGHTS

#### 6.0 GOVERNMENT'S OBLIGATIONS

##### 6.1. Appointment of GR

- (a) The Government shall appoint the person under item 5 in **Appendix 7** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].
- (b) The CE shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

##### 6.2. Obligation to give instructions, decisions, etc. without delay

- (a) All instructions, notifications, consent or approval issued by the Government or the GR shall be in writing. However the GR may, where necessary issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consents or approvals shall be followed in writing not later than seven (7) days thereafter.
- (b) If the CE requires a decision from the Government for the performance of its Services under this Agreement, the CE shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 7** of this Agreement.

##### 6.3. Obligation to Supply Relevant Information and Assistance

- (a) The CE may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the CE pursuant to clause 6.3(a) of this Agreement shall not relieve the CE of any of the CE's obligations under this Agreement.

- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the CE, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the CE's obligation under this Agreement.
- (d) Where necessary, the Government shall assist the CE to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### **6.4. Payment to the CE for Services**

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the CE the Contract Price subject to the ceiling consulting fee, the ceiling out of pocket expenses or any other agreed and approved amount as revised from time to time, and in situation where the actual costs incurred in the performance of the Services does not exceed the ceiling consulting fee and the ceiling out of pocket expenses, downward adjustments can be made in accordance with **Appendix 6A, Appendix 6B and Appendix 6C**. The payment shall exclude the Government Service Tax, which amount shall be paid by the Government to the Royal Malaysian Customs Department through the CE upon the CE giving proof of the Service Tax License. A copy of the Service Tax License is attached in **Appendix 11** of this Agreement.
- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 12** upon the CE furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the CE shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the CE and be deposited to the account of the CE as specified under item 7 in **Appendix 7**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the CE is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the CE in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.

- (e) Except as otherwise agreed between the Government and the CE, payments in respect of all fees and expenses incurred by the CE shall be made in Ringgit Malaysia.
- (f) If the CE intends to claim any additional payment pursuant to any clause of this Agreement, the CE shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the CE fails to comply with this clause, the CE shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.
- (g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the CE and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the CE to the Government within thirty (30) days after receipt by the CE of notice thereof.

#### **6.5. Withholding Payment**

- (a) The Government may by giving written notice to the CE, and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the CE under this Agreement, upon the occurrence and continuance of any of the following events:
  - (i) the CE commits any breach of the terms and conditions of this Agreement; or
  - (ii) the progress of the Services fails to measure up to the aggregate payment made to date; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or
  - (iv) any failure of the CE to deliver the Services to the satisfaction of the Government.
- (b) The CE may apply to the Government, within fourteen (14) days after receiving notice referred to in clause 6.5(a) to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## **7.0 GOVERNMENT'S RIGHTS**

### **7.1. Proprietary Rights of The Government in Relation to Documents**

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the CE in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.
- (b) The CE shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The CE shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the CE's quality performance review processes.
- (c) The CE shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

## **8.0 DISPUTE RESOLUTION**

### **8.1. Dispute Resolution by Government Representative**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.
- (c) If the Consultant:
  - (i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

- (ii) is dissatisfied with any decision of the GR.

then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen days (14) days.

## **8.2. Dispute Resolution Committee**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the "Dispute Resolution Committee"), comprising –
  - (i) Secretary General of the Ministry/ Head of Department as the Chairman;
  - (ii) one (1) representative to be appointed by the Government; and
  - (iii) one (1) representative appointed by the Consultant.
- (b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## **8.3. Arbitration**

- (a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration 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.
- (b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the Consultant's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the Consultant.
- (c) In the event that such consent has been obtained in accordance with clause 8.3(b), 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.

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

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

##### **9.1. Suspension and Resumption of Services**

- (a) The GR may at any time instruct the CE to suspend part or all of the Services by the giving the CE due notice in writing.
- (b) Upon receipt of such instruction, the CE shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.
- (c) During the suspension period, the CE shall continue to perform his obligations under the Agreement which is not affected by the instruction to suspend, including the obligation to effect and maintain insurance.
- (d) The GR may instruct the CE to resume the Services at any time thereafter. Upon receipt of such instruction the CE shall resume the Services and the parties shall jointly examine the Services affected by



the suspension. The CE shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The CE shall also take all necessary actions to mitigate the expenses incurred.

## **9.2. Extension of Time**

- (a) If the CE suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the CE, the CE shall give notice for extension of time. PROVIDED THAT the CE shall not be entitled to such extension if the suspension is due to a cause attributable to the CE and the CE shall not be entitled to payment of loss and expenses if the CE–
  - (i) fails to take measures specified in clause 9.1(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 of more than twelve (12) months, the parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3. Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause–
  - (i) clause 11.1 (b) shall apply; and
  - (ii) payment obligations including all costs and expenditure incurred by the Government and the CE shall be ascertained in accordance with clause 14.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1. Withholding Payment**

If any of the conditions referred to in clause 6.5(a) shall have happened and be continuing for a period of fourteen (14) days after the Government has given written notice of withholding of payments to the CE under this Agreement, the Government may by written notice to the CE terminate this Agreement.

## **10.2. Default by the CE**

- (a) In the event the CE without reasonable cause –
  - (i) suspends the implementation of the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
  - (ii) fails to execute the Services in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
  - (iii) defaults in performing the duties under this Agreement; or
  - (iv) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the CE specifying the default and requiring the CE to remedy such defaults within fourteen (14) days from the date of such notice. If the CE fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

## **10.3. Events of Default**

- (a) If at any time during the Contract Period-
  - (i) the CE goes into liquidation or a receiver is appointed over the assets of the CE or the CE makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
  - (ii) any of the CE's director is prosecuted for any offences; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

## **10.4. Consequences of Termination by the Government**

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The CE shall hence forth –

- (i) cease all the Services;
  - (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;
  - (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advise opinion or report that the CE may provide; and
  - (iv) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services.
- (c) The Government shall hence forth –
- (i) be entitled to claim against the CE for any losses and/or damages suffered as a result of the termination; and
  - (ii) be entitled to appoint another consultant to perform the Services and the CE shall pay to the Government all cost and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the CE to complete the Services had this Agreement not been terminated.

PROVIDED THAT the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

#### **11.0 TERMINATION BY THE CE**

- (a) If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the CE's obligations under this Agreement, then the CE may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CE shall be entitled to terminate this Agreement at any time by giving notice to that effect.

### 11.1. Consequences of Termination by the CE

Upon such termination, the CE shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

- (a) The Government shall, after receiving the detailed reports of the costs of the Services and other payments which has become due and owing to the CE, pay the CE all costs incurred in accordance with this Agreement.
- (b) The CE shall –
  - (i) cease to provide the Services to the Government;
  - (ii) at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the CE, its employees, servants and agents and make good all damage caused by such removal or such detachment; and
  - (iii) at no cost, deliver to the Government all documents relevant to the Project as are in the possession of the CE who shall be permitted to retain copies of any documents so delivered to the Government.
- (c) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CE shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### 12.0 TERMINATION ON NATIONAL INTEREST

- (a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the CE (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.
- (b) Upon such termination –
  - (i) clause 11.1(b) shall apply; and
  - (ii) the CE shall be entitled to compensation in accordance with clause 14 which shall be determined by an independent auditor appointed by the Government after due consultation with the CE in respect of the appointment of the independent auditor.
- (c) For the purposes of this clause, what constitutes “national interest”, “interest of national security”, “the Government policy” and “public policy” 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.

### **13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES**

- (a) Without prejudice to any other rights of the Government, if the CE, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CE may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the CE.
- (b) Upon such termination –
  - (i) clauses 10.4(b) and (c) shall apply; and
  - (ii) 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.

### **14.0 FORCE MAJEURE**

#### **14.1. Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An “Event of Force Majeure” shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the CE or its employees,

which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

PROVIDED THAT Event of Force Majeure shall not include economic downturn, non-availability or insufficient of fund or lack of financing on the part of the CE to perform its obligations under this Agreement.

#### **14.2. Notification of Force Majeure**

If any Event of Force Majeure occurs which renders a Party unable to perform or fulfil any of its obligations under this Agreement, the Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this Agreement giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If either Party does not agree that an Event of Force Majeure has occurred then the dispute shall be referred to the GR for a decision.

#### **14.3. Termination by Force Majeure**

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than six (6) months then the Parties may mutually terminate this Agreement.

#### **14.4. Consequences of Termination due to Event of Force Majeure**

If this Agreement is terminated pursuant to clause 15.3, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

#### **14.5. Delay**

- (a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.
- (b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if

appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

#### **14.6. Restoration**

Notwithstanding any other provision in this Agreement, if an Event of Force Majeure occurs and this Agreement is not terminated then in any case where the delivery of the Services or any part thereof has been affected, the CE shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the CE is able to demonstrate that it has incurred substantial costs affecting the Services, the CE may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

#### **14.7. Insurance**

Notwithstanding any other Clause, the CE shall ensure that whenever reasonably practicable insurance is effected (whether by itself or by its contractors) to cover the occurrence of Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are reasonably and practicably insurable.

### **PART F**

#### **GENERAL PROVISIONS**

#### **15.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

#### **16.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the CE, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date,

time and transmission of all pages, as specified under item 9 in **Appendix 7** of this Agreement.

- (b) 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 days (14).

## **17.0 GOVERNING LAW**

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

## **18.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The CE shall comply with all applicable laws and regulations in Malaysia and all statutory requirements, standards and guidelines, regulating or relating to the conduct, trade, business of it's profession and shall be fully and solely liable for the provisions of the Services.
- (b) The CE shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **19.0 SEVERABILITY**

If any provision of this Agreement is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Agreement such provision shall be fully severable and this Agreement shall be construed as if such illegal or invalid provision had never comprised as part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Agreement.

## **20.0 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties and none of them shall have any authority to bind the other in any way nor shall this Agreement be construed to constitute any party the agent of the other party.

## **21.0 ADVERTISEMENT**

No advertisement in respect of this Agreement shall be published by the CE or with the CE's authority in the newspaper, magazine or in any forms of advertisement without prior written approval of the Government.



## **22.0 TIME**

Time wherever mentioned, shall be of the essence of this Agreement.

## **23.0 COSTS AND STAMP DUTY**

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

## **24.0 INCOME TAX**

- (a) The CE and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.
- (b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

## **25.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another. However, if there is any ambiguity or discrepancy –

- (a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or
- (b) in the Appendices of this Agreement, the GR and CE shall reach a mutual understanding to resolve the ambiguity or discrepancy.

## **26.0 WAIVER**

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

## **27.0 CUSTODY OF AGREEMENT**

This Agreement shall be prepared in both original and certified duplicate copy. The original of this Agreement shall remain in the custody of the Government

and shall be made available at all reasonable times for the inspection of the CE. The duplicate copy shall be kept by the CE.

**28.0 SUCCESSORS BOUND**

This Agreement shall be binding upon each of the Parties hereto and their respective successors in title.

**PART G**

**SPECIAL PROVISIONS**

*[ NOTE : WHERE THERE IS A NEED FOR SPECIAL CONDITIONS OVER AND ABOVE THE GENERAL CONDITIONS, THIS SECTION IS TO BE INSERTED BY THE RELEVANT AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE LEGAL ADVISORS. OTHERWISE THIS PAGE TO BE LEFT AS SUCH ABOVE ]*

- None -

**SIGNATORIES TO THE AGREEMENT**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and the year first hereinbefore appearing.

SIGNED for and on behalf of ) .....(Signature).....  
**THE GOVERNMENT** ) (Name, Designation & Department's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

SIGNED for and on behalf of ) .....(Signature).....  
**THE CE** ) (Name, Designation & Company's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

## “SCHEDULES”

### FOR ENGINEERING CONSULTANCY SERVICES

#### PART A : SCHEDULE OF SERVICES

##### 1.0 TYPES OF PROFESSIONAL SERVICES

- (a) The professional services to be provided by the CE shall consist of any or combination of the following :
- (i) Basic Professional Services
  - (ii) Additional Professional Services
  - (iii) Supervision On Site
- (b) The CE shall provide basic professional services for any of the following types of works:
- (a) **Type A Works** - namely civil and structural engineering works (other than structural engineering works in building), mechanical engineering works and electrical engineering works (other than the engineering systems in buildings).
  - (b) **Type B Works** - namely structural engineering works in buildings; i.e. all works in structural reinforced concrete, pre-stressed concrete, steel, timber and other materials or a combination of any of these, which are designed to transmit the weight of, and the load on, the building to the ground and includes the foundation and excavations connected with them.
  - (c) **Type C Work** - namely engineering systems in buildings; i.e. means all mechanical and electrical services, plant and equipment installed for the complete functionality of the building, including but not limited to :
    - lighting, power and electrical distribution system;
    - air-conditioning and mechanical ventilation system;
    - fire-fighting and prevention system;
    - stage lighting system and mechanism;
    - hot and cold water system;
    - steam generating system;
    - gas distribution system;
    - telephone distribution and intercommunication system;
    - lightning protection system;
    - electrical substation;
    - public address system, personnel location and call system;
    - radio and television system;
    - security system

- lift, hoist, dumbwaiter and escalator
- standby generator
- soil and waste water piping system
- pumping installation within the building
- integrated building management system
- compressed air and vacuum system
- refrigeration and cooling water system.

## **2.0 BASIC PROFESSIONAL SERVICES**

### **2.1. Type A Works - Basic Professional Services**

The Basic Professional Services to be rendered by the CE in this paragraph include the provision of all expert technical advice and skills, which are normally required for the Works for which the CE has been engaged for any or all of the 5 stages below:

#### **(a) Preliminary Stage**

The Services to be provided by the CE at this stage include:

- (i) investigating data and information relevant to the Works and considering any reports relating to the Works;
- (ii) advising the Government on making any further topographical survey of the proposed site of the Works which may be necessary to supplement available topographical information;
- (iii) advising the Government on the need to carry out any geotechnical investigation which may be necessary to supplement the available geotechnical information, arranging for such investigation, certifying the amount of any payments to be made by the Government to the persons, firms or companies carrying out such investigation under the CE's direction, and advising the Government on the results of such investigation;
- (iv) advising the Government on the need for arrangements to be made, in accordance with paragraph 3.1 of this Schedule, for the carrying out of special surveys, special investigation or model tests and advising the Government of the results of any such surveys, investigations or tests carried out;
- (v) consulting any local or other approving authorities on matters of principle in connection with the Works;
- (vi) consulting any architect appointed by the Government in connection with the architectural treatment of the Works; and
- (vii) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's

proposals, including alternatives for the constructions of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in principle for the execution of the Works in accordance with such proposals from the appropriate authorities.

(b) Design Stage

The Services to be provided by the CE at this stage include:

- (i) preparing designs, including reinforced concrete and structural steel work designs, and tender drawings in connection with the Works, including bar bending schedules, if required; and
- (ii) preparing such condition of contract, specifications, schedules and bills of quantities as may be necessary to enable the Government to obtain tenders or otherwise award a contract for carrying out of the Works.

(c) Tender Stage

The Services to be provided by the CE at this stage comprise advising the Government as to the suitability for carrying out the Works of the persons, firms or companies tendering and as to the relative merits of the tenders, including relative merit of alternative tenders, prices and estimates received for carrying out the Works.

(d) Construction Stage

The Services to be provided by the CE at this stage include:

- (i) advising on the preparation of formal contract documents, including Letter of Acceptance relating to the accepted tenders for carrying out the Works or any part thereof;
- (ii) inspecting and testing during manufacture and installation such electrical and mechanical materials, machinery and plant supplied for incorporation in the Works as are usually inspected and tested by the CE, and arranging and witnessing acceptance tests;
- (iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.1(d)(ii) of this Schedule;
- (iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;
- (v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;

- (vi) preparing any further bar bending schedules, designs and drawings, if required;
- (vii) examining and approving the Contractor's proposals and working drawings relating to the Works;
- (viii) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;
- (ix) giving all necessary instructions relating to the Works to the Contractor;
- (x) issuing all certificates as required in the contracts;
- (xi) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;
- (xii) delivering to the Government on the completion of the works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;
- (xiii) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and
- (xiv) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.

(e) Defect Liability Period Stage

Wherever applicable, the Services to be provided by the CE at this stage include:

- (i) in the event of non-conformance to the performance requirement of Works rendered, the CE shall be responsible for compiling, investigating, evaluating and forwarding proposal for rectification to the Contractor as well as to inspect and certify the completion of such rectification Works;
- (ii) preparing an assessing of the performance of the Contractor to GR;
- (iii) conducting or attending periodic maintenance meetings;

- (iv) compiling all complaints and submitting the complaints to Contractor for rectification;
- (v) monitoring, inspecting and certifying rectification Works done by the Contractor;
- (vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;
- (vii) inspecting and compiling final defects list at the end of Defects Liability Period and to monitor and certify the Works that have been carried out;
- (viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the Certificate of Making Good Defects and closing of account to GR;
- (ix) preparing and recommending the Certificate of Making Good Defects and closing of account;
- (x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and
- (xi) any other responsibilities which are deemed necessary to be done by an engineer for the successful implementation of the Works.

## 2.2. Type B Works - Basic Professional Services

The Basic Services to be rendered by the CE in this paragraph include the provision of all expert technical advice and skills, which are normally required for the Works for which the CE has been engaged for any or all of the 5 stages below:

### (a) Preliminary Stage

The Services to be provided by the CE at this stage include:

- (i) investigating data and information relevant to the Works and considering any reports relating to the Works;
- (ii) advising the Government on making any further topographical survey of the proposed site of the Works which may be necessary to supplement available topographical information;
- (iii) advising the Government on the need to carry out any geotechnical investigation which may be necessary to supplement the available geotechnical information, arranging for such



investigation, certifying the amount of any payments to be made by the Government to the persons, firms or companies carrying out such investigation under the CE's direction, and advising the Government on the results of such investigation;

- (iv) advising the Government on the need for arrangements to be made, in accordance with paragraph 3.2 of this Schedule, for the carrying out of special surveys, special investigation or model tests and advising the Government of the results of any such surveys, investigations or tests carried out;
- (v) consulting any local or other approving authorities on matters of principle in connection with the Works;
- (vi) consulting any architect appointed by the Government in connection with the architectural treatment of the Works;
- (vii) providing sufficient structural information to enable the architect to produce his sketch plan; and
- (viii) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's proposals, including alternatives for the constructions of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in principle for the execution of the Works in accordance with such proposals from the appropriate authorities.

(b) Design Stage

The Services to be provided by the CE at this stage include:

- (i) Developing the design of the Works in collaboration with the architect and others, preparing calculations, drawings and specifications for the Works to enable a bill of quantities to be prepared by others, consulting any local or other approving authorities in connection with the design of the Works and preparing typical details and typical calculations; and
- (ii) preparing such calculations and details relating to the Works as may be required for submission to any appropriate authority, preparing all other drawings in sufficient details to enable construction to be carried out, and advising on conditions of contract and specifications relevant to the Works and on forms of tender and invitation to the tender as they relate to the Works.

(c) Tender Stage

The Services to be provided by the CE at this stage comprise advising the Government as to the suitability for carrying out the Works of the

persons, firms or companies tendering and as to the relative merits of the tenders, including relative merit of alternative tenders, prices and estimates received for carrying out the Works.

(d) Construction Stage

The Services to be provided by the CE at this stage include:

- (i) advising on the preparation of formal contract documents including Letter of Acceptance relating to the accepted tenders for the Works;
- (ii) inspecting and testing during manufacture and installation such electrical and mechanical materials, machinery and plant supplied for incorporation in the Works as are usually inspected and tested by CE, and arranging and witnessing acceptance tests;
- (iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.2(d)(ii) of this Schedule;
- (iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;
- (v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;
- (vi) preparing any further designs, specifications and drawings to enable the contractor to carry out the Works but shall not include the preparation of any shop details relating to the Works or any part of them;
- (vii) examining and approving the Contractor's proposals and working drawings relating to the Works;
- (viii) checking shop details for general dimensions and adequacy of members and connections;
- (ix) approving the Contractor's testing procedures and inspecting the Works on completion;
- (x) advising the Government or the architect as to the need to vary any part or the Works;
- (xi) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;

- (xii) giving all necessary instructions relating to the Works to the Contractor;
- (xiii) issuing all certificates as required in the contracts;
- (xiv) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;
- (xv) delivering to the Government on the completion of the works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;
- (xvi) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and
- (xvii) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.

(e) Defect Liability Period Stage

Wherever applicable, the Services to be provided by the CE at this stage include:

- (i) in the event of non-conformance to the performance requirement of Works rendered, the CE shall be responsible for compiling, investigating, evaluating and forwarding proposal for rectification to the Contractor as well as to inspect and certify the completion of such rectification Works;
- (ii) preparing an assessing of the performance of the Contractor to the GR;
- (iii) conducting or attending periodic maintenance meetings;
- (iv) compiling all complaints and submitting the complaints to Contractor for rectification;
- (v) monitoring, inspecting and certifying rectification Works done by the Contractor;
- (vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;

- (vii) inspecting and compiling final defects list at the end of Defects Liability Period and to monitor and certify the Works that have been carried out;
- (viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the Certificate of Making Good Defects and closing of account to GR;
- (ix) preparing and recommending the Certificate of Making Good Defects and closing of account;
- (x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and
- (xi) any other responsibilities which are deemed necessary to be done by an engineer for the successful implementation of the Works.

### **2.3. Type C Works - Basic Professional Services**

The Basic Services to be rendered by the CE in this paragraph include the provision of all expert technical advice and skills, which are normally required for the Works for which the CE has been engaged for any or all of the 5 stages below:

#### (a) Preliminary Stage

The Services to be provided by the CE at this stage include:

- (i) investigating data and information relevant to the Works and considering any reports relating to the Works;
- (ii) consulting any local or other approving authorities on matters of principle in connection with the design of the Works;
- (iii) providing sufficient preliminary information and approximate estimates (based on unit volume, unit surface area or similar bases of estimation) regarding the Works to enable the Government or the architect to prepare architectural sketch plans and budget estimates for the project;
- (iv) consulting any architect appointed by the Government in connection with the architectural treatment of the Works; and
- (v) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's proposals, including alternatives for the construction of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in principle

for the execution of the Works in accordance with such proposals from the appropriate authorities.

(b) Design Stage

The Services to be provided by the CE at this stage include:

- (i) preparing designs and tender drawings, and providing information as to plant rooms, main service ducts and other similar elements to be incorporated in the building structure, and information as to the approximate weights of items of heavy plant and equipment which are to be incorporated in the Works; and
- (ii) advising on condition of contract, preparing specifications and schedules as may be necessary to enable Government to obtain tenders or otherwise award a contract for carrying out the Works, and preparing such calculations and details relating to the Works as may be required for submission to any appropriate authorities.

(c) Tender Stage

The Services to be provided by the CE at this stage comprise advising the Government as to the suitability for carrying out the Works of the person, firms or companies tendering and as to the relative merits of tenders, including relative merit of alternative tenders, prices and estimates received for carrying out the Works.

(d) Construction Stage

The Services to be provided by the CE at this stage include:

- (i) advising on the preparation of formal contract documents, including letter of acceptance relating to accepted tenders for carrying out the Works or part hereof;
- (ii) inspecting and testing during manufacture and installation such materials and equipment supplied for incorporation in the Works where the inspection and test are within the technical competency of the CE, and arranging and witnessing the acceptance tests;
- (iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.3(d)(ii) of this Schedule;
- (iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;

- (v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;
  - (vi) examining and approving the Contractor's proposals and working drawings;
  - (vii) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;
  - (viii) checking shop details and installation drawings;
  - (ix) approving the contractor's commissioning procedures and performance tests and inspecting the Works on completion;
  - (x) advising the Government or the architect as to the need to vary any part of the Works;
  - (xi) giving all necessary instructions relating to the Works to the Contractor;
  - (xii) issuing all certificates as required in contracts;
  - (xiii) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;
  - (xiv) delivering to the Government on the completion of the Works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;
  - (xv) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and
  - (xvi) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.
- (e) Defect Liability Period Stage

Wherever applicable, the Services to be provided by the CE at this stage include:

- (i) in the event of non-conformance to the performance requirement of Works rendered, the CE shall be responsible for compiling,

investigating, evaluating and forwarding proposal for rectification to the Contractor as well as to inspect and certify the completion of such rectification Works;

- (ii) preparing an assessment of the performance of the Contractor to GR;
- (iii) conducting or attending periodic maintenance meetings;
- (iv) compiling all complaints and submitting the complaints to Contractor for rectification;
- (v) monitoring, inspecting and certifying rectification Works done by the Contractor;
- (vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;
- (vii) inspecting and compiling final defects list at the end of Defect Liability Period and to monitor and certify the Works that have been carried out;
- (viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the certificate of making good defects and closing of account to GR;
- (ix) preparing and recommending the Certificate of Making Good Defects and closing of account;
- (x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and
- (xi) any other responsibilities which are necessary to be done by an engineer for the successful implementation of the Works.

### **3.0 ADDITIONAL PROFESSIONAL SERVICES NOT INCLUDED IN BASIC PROFESSIONAL SERVICES**

#### **3.1. Type A Works - Additional Professional Services**

The Additional Professional Services to be provided by the CE include the following:

- (a) (i) preparing any report or additional contract documents required for consideration of proposal for the carrying out of alternative works;

- (ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;
  - (iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities) necessary to enable the Works to proceed;
  - (iv) carrying out services arising from the failure of the Government to award a contract in due time;
  - (v) preparing details for shop fabrication of ductwork, metal, plastic and timber framework;
  - (vi) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract beyond the control of the CE or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;
  - (vii) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;
  - (viii) carrying out such other additional services, if any, as directed by the Government;
  - (ix) carrying out services in conjunction with any other persons employed to provide any of the services specified in subparagraph 3.1(b) of this Schedule; and
  - (x) providing project management services.
- (b)
- (i) obtaining specialist technical advice on any abnormal aspects of the Works;
  - (ii) obtaining other professional services (Associated Consultants) for the Works;
  - (ii) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves; and



- (iii) carrying out of marine, air and land surveys other than those referred to in sub-paragraph 2.1(a) of this Schedule; and the making of model tests or special investigations.

### **3.2. Type B Works - Additional Professional Services**

The Additional Professional Services to be provided by the CE include the following:

- (a)
  - (i) preparing any report or additional contract documents required for consideration of proposals for the carrying out of alternative works;
  - (ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;
  - (iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities) necessary to enable the Works to proceed;
  - (iv) checking and advising on any part of the project not designed by the CE;
  - (v) carrying out services arising from the failure of the Government to award a contract in due time;
  - (vi) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;
  - (vii) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;
  - (viii) carrying out such other additional services, if any, as directed by the Government;
  - (ix) preparing interim or other reports or detailed valuations including estimates or cost analysis based on measurement or forming an element of a cost planning service;

- (x) carrying out services in conjunction with any other persons employed to provide any of the services specified in subparagraph 3.2(b) of this Schedule;
  - (xi) preparing preliminary estimates for the Works which are normally prepared by others including such persons as the architects, quantity surveyors and contractors; and
  - (xii) providing project management services.
- (b)
- (i) obtaining specialist technical advice on any abnormal aspects of the Works;
  - (ii) obtaining other professional services (Associated Consultants) for the Works
  - (iii) surveying the site or existing works and installations;
  - (iv) providing investigation on the nature and strength of existing works and the making of model tests or special investigations;
  - (v) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves;
  - (vi) carrying out of marine, air and land surveys and making of model tests or special investigations; and
  - (vii) carrying out special inspection or tests advised by the CE under subparagraph 2.2(d)(iii) of this Schedule.

### **3.3. Type C Works - Additional Professional Services**

The Additional Professional Services to be provided by the CE include the following:

- (a)
  - (i) preparing any report or additional contract documents required for consideration of proposal for the carrying out of alternative works;
  - (ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;
  - (iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities)necessary to enable the Works to proceed;
  - (iv) checking and advising on any part of the project not designed by the CE;

- (v) negotiating and arranging for the provision or diversion of utility services;
  - (vi) negotiating any contract or sub-contract with a contractor selected otherwise than by competitive tendering including checking and agreeing on the quantities and net costs of materials and labour, arithmetical checking and agreeing on the added percentages to cover overhead costs and profit;
  - (vii) carrying out services arising from the failure of the Government to award a contract in due time;
  - (viii) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;
  - (ix) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;
  - (x) preparing interim or other reports or detailed valuations including estimates or cost analysis based on measurement or forming an element of a cost planning service;
  - (xi) providing manuals and other documents describing the design, operation and maintenance of the Works;
  - (xii) carrying out services in conjunction with any other persons employed to provide any of the services specified in subparagraph 3.3(b) of this Schedule;
  - (xiii) providing project management services;
  - (xiv) preparing builder's work drawings, record drawings or any detailed schedules where necessary; and
  - (xv) carrying out such other additional services, if any, as directed by the Government.
- (b)
- (i) obtaining specialist technical advice on any abnormal aspects of the Works;
  - (ii) obtaining other professional services (Associated Consultants) for the Works;
  - (iii) surveying the site or existing works and installations;

- (iv) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves;
- (v) making model tests or special investigations;
- (vi) carrying out special inspection or tests advised by the CE under sub-paragraph 2.3(d)(iii) of this Schedule; and
- (vii) carrying out commissioning procedures or performance tests.

#### **4.0 SUPERVISION ON SITE**

- (a) The CE may be required to provide part-time or full-time engineering supervision on site. Where such service is required, the number of staff to be employed including the CE's own staff to be seconded to site for the purpose, shall be approved in writing by the Government.
- (b) Unless otherwise agreed to by the approving authorities concerned, the CE shall be in full control of, and responsible for, construction supervision of the Works on site.
- (c) If in the opinion of the CE, the nature of the work including the carrying out of any geotechnical and other investigations, topographic survey and test warrants full-time or part-time supervision on site in addition to the site visits made by the CE under sub-paragraphs 2.1(d)(vii), 2.2(d)(vii) and 2.3(d)(vi) of this Schedule (whichever is applicable), the CE shall advise the Government of the fact and also the desired qualification and experience which the site staff shall possess.
- (d) All site staff shall be under the control of, and take instructions from the CE.

### **“SCHEDULES”**

#### **FOR ENGINEERING CONSULTANCY SERVICES**

##### **PART B : SCHEDULE OF FEES**

#### **1.0 PAYMENT FOR PROFESSIONAL SERVICES**

The CE in performing the Services described in Part A shall be paid in accordance with any or all of the following types/modes of payment:

- (a) Payment On the Basis Of Scale of Fees;-
  - For Basic Professional Services
- (b) Payment On The Basis Of Time Cost
  - For Additional Services
  - For Site Supervision

- (c) Disbursements / Reimbursable
- (d) Other Payments

## **2.0 PAYMENT ON THE BASIS OF SCALE OF FEES**

The CE in performing the Basic Professional Services described in Part A - Schedule of Services sub-paragraph 2.1, 2.2 and 2.3 shall be paid in accordance with the Scale Of Fees, based upon the Cost of Works.

### **2.1. Definition Of Cost Of Works**

- (a) “Cost of Works” means the total cost to the Government however incurred of all contractors and specialist works, services, installations and equipment designed, specified or allowed for and forming an integral part of the total project to enable the project to be completed and occupied to its intended standards, including:
  - (i) a market value of any labour, materials, manufactured goods, machinery or other facilities provided by the Government,
  - (ii) the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Government which the Government has required to be used in the execution of the Works;
  - (iii) the market value of materials, manufactured goods and machinery incorporated in the Works;
  - (iv) the cost of geotechnical investigations and other specialist investigations related to the Works;
  - (v) a fair proportion of the total cost to the Government of any work in connection with the provision or diversion of public utilities system which is carried out, other than by the Contractor, under arrangements made by the CE, assessed with reference to the costs incurred by the CE in making such arrangements, but shall not include-
    - operating equipment or machinery that are not an integral or essential part of the Works,
    - administrative expenses incurred by the Government,
    - all consultancy fees incurred by the Government,
    - interest on capital incurred during construction,
    - the costs of raising money required for the construction of the Works;
    - price variations arising from fluctuation of prices, and
    - costs of land and way leaves.

- (b) The cost of works for the purpose of calculating the fees shall be derived as follows :
- (i) for works which have not yet been tendered, the latest estimate of cost prepared by the CE or other consultants and accepted by the Government;
  - (ii) for works tendered but not executed, the lowest acceptable tender received as agreed by the CE and the Government, less contingency sum;
  - (iii) for works tendered and executed, the original contract sum, less contingencies; or
  - (iv) for completed works, the cost of works shall be the final cost of works as per the final account of the project including variations, except those variations incurred as a result of deficiency or default in services by the CE.

## 2.2. Scale Of Fees For Basic Services

The fee to be paid to the CE shall be an amount equal to the product of the total cost of the Works times the percentage determined from the Scale of Fees as set out in Table I – Scale of Fees.

**Table I – Scale Of Fees**

<b>Total Cost Of Components Of The Works In the Respective Type (Cost of Works) (RM)</b>	<b>P(max)</b>	<b>P(min)</b>
100,000 and below	10.00%	8.25%
250,000	8.65%	7.45%
500,000	7.60%	6.85%
1,000,000	6.80%	6.30%
2,500,000	6.00%	5.65%
5,000,000	5.50%	5.20%
10,000,000	5.00%	4.75%
20,000,000	4.65%	4.25%
25,000,000	4.50%	4.10%
50,000,000	4.25%	3.80%
75,000,000	4.10%	3.70%
100,000,000	3.95%	3.60%
150,000,000	3.70%	3.40%
200,000,000	3.55%	3.25%
250,000,000	3.40%	3.10%
300,000,000	3.30%	3.00%
350,000,000	3.20%	2.90%
400,000,000	3.10%	2.80%

<b>Total Cost Of Components Of The Works In the Respective Type (Cost of Works) (RM)</b>	<b>P(max)</b>	<b>P(min)</b>
500,000,000	2.95%	2.70%
600,000,000	2.85%	2.60%
700,000,000	2.75%	2.50%
800,000,000	2.67%	2.40%
900,000,000	2.60%	2.33%
1,000,000,000 and above	2.54%	2.28%

- (a) Intermediate values shall be interpolated linearly from the adjacent percentages of P (max) or P (min), as the case may be.
- (b) The actual percentage to be used in sub-paragraph 2.2(a) of this Schedule shall be a value within the range P(min) to P(max), and shall be agreed to between the Government and the CE prior to the engagement. Selection of the actual percentage shall be based on the complexity of the works.
- (c) If bar bending schedules for reinforced concrete work are prepared and furnished by the CE, he shall be paid an additional fee calculated at 3/4 (three quarters) percent of the cost of the reinforced concrete work for which the bar bending schedules are prepared and furnished. In this context, reinforced concrete work comprises concrete, reinforcements, pre-stressing tendons and anchorages, formwork, inserts and all labour, together with the relevant portion of the preliminaries.
- (d) If the Works are to be constructed in more than one phase and as a consequence the Services which the CE has to perform under sub-paragraphs 2.1, 2.2 and 2.3 of Part A – Schedule of Services have to be undertaken by the CE separately in respect of each phase, then these provisions for payment shall apply separately to each phase as if the expression "the Works" as used in this clause means the works comprised in each phase.
- (e) If the design of any unit of Works is adopted again in the construction of subsequent units by the Government under one Works contract or under other works contracts at the same site or other sites under the same consultancy agreement, and the CE's same drawings, specifications and other documents are used with or without modification of foundations to suit site conditions, the fees shall be reduced for each of the second and subsequent units in accordance with the following Tables II or III:

**Table II: Repetitive Work Applicable to Type A Works**

	Fees as % of the full fee for all stages for First Unit		
Unit Concerned	For design copyright only	Up to and including tender stage	Up to and including construction stage
First Unit	(Apply subparagraph 2.2(a) of this Part)		
Second Unit	30	35	65
Third Unit	20	25	55
Fourth Unit	10	15	45
Each of the Fifth and Subsequent Units	Free of Charge	5	35

**Table III: Repetitive Work Applicable to Type B and Type C Works**

Unit Concerned	Fees A For Structural Engineering Works (As % of fee for First Unit)	Fees B For Engineering Systems (As % of fee for First Unit)
First Unit	100	100
Each of the 2 <sup>nd</sup> to 5 <sup>th</sup> Units	75	75
Each of the 6 <sup>th</sup> to 10 <sup>th</sup> Units	50	50
Each of the 11 <sup>th</sup> to 20 <sup>th</sup> Units	40	40
Each of the 21 <sup>st</sup> & Subsequent Units	30	30

- (f) The scale of fees for repetitive work mentioned in sub-paragraph 2.2(e) of this Schedule shall be applied subject to the following conditions:
- (i) a block of shops, flats, apartments or condominium shall be considered as a unit;
  - (ii) the cost of a single unit shall be computed by including the apportioned preliminaries;
  - (iii) if it is necessary to modify the design of the standard unit to accommodate the ground level for the substructure of any repetitive unit or part of any repetitive unit due to variation in site conditions or other reasons, the modified unit shall still be considered as a repetitive unit provided that the additional work involved in modifying the design and preparation of additional drawings is paid for by the Government to the CE on a time basis



(i.e. salary cost times a multiplier) together with relevant disbursements as provided in paragraphs 4.0 and 5.3 of this Part; and

- (iv) if a development has units comprising different numbers of shops, flats, apartments or condominiums of similar designs in each unit (i.e. the intermediate shops, flats, apartments or condominiums of the units having identical or mirror plans each to each, and the end shops, flats, apartments or condominiums of the units having identical or mirror plans each to each), then for the purpose of application of the scale for repeated works prescribed in sub-paragraph 2.2(f) of this Part, the cost of every one of the units shall be taken as equal to the average cost of all such units of similar design.

### **3.0 PAYMENT ON THE BASIS OF TIME COST**

The CE who has rendered any of the Additional Services described in Part A – Schedule of Services sub-paragraph 3.1, 3.2 and 3.3 and/or Site Supervision as described in Part A – Schedule of Services sub-paragraph 4.0 shall be paid in accordance with Payment On The Basis Of Time Cost as follows :-

- (a) Remuneration shall be determined on the basis of time actually spent and a rate specified in respect of the CE's personnel, where such rate shall be calculated based on basic salary times an appropriate multiplier as approved by the Government.
- (b) The Government shall not be responsible for payment of the above remuneration to the CE's Personnel who are on annual leave or sick leave.
- (c) the CE shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in the CE's office.
- (d) the CE shall be entitled for other payments, where applicable, as described in paragraph 4.0 and 5.0.

### **4.0 DISBURSEMENTS / REIMBURSIBLES**

The CE shall in all cases be reimbursed by the Government for the disbursements actually incurred as approved by the Government.

### **5.0 OTHER PAYMENTS**

#### **5.1. Payment For Other Consultants Or Specialist Technical Advice**

If the CE has obtained the advice of a specialist under sub-paragraphs 3.1(b), 3.2(b) and 3.3(b) of Part A – Schedule of Services, the CE shall be paid

separately by the Government the actual fees as charged by the other CEs or specialists, which shall be derived from *Payment On The Basis of Time Cost* or *Scale Of Fees* as approved by the Government.

## **5.2. Payment For Use Of Special Equipment**

If the CE, in the carrying out of his Services, requires the use of additional or special software for the services or other special equipment for specialised designs and studies and with the prior approval, or at the request, of the Government, the CE shall be paid separately for:

- (a) the time spent in connection with the use of the special equipment, the development and writing of programmes, and the operation of the special equipment, in accordance with sub-paragraph 3.0 of this Schedule ; and
- (b) the actual hiring charge for the use of the special equipment.

## **5.3. Payment for Alteration or Modification To Design**

If after the completion by the CE of its Services under sub-paragraphs 2.1(a), 2.2(a) and 2.3(a) of Part A – Schedule of Services whichever is applicable, any design whether completed or in progress or any specifications, drawings or other documents prepared in whole or in part by the CE is required to be modified or revised by reason of instructions received by the CE from the Government, or by reason of circumstances which could not reasonably have been foreseen, the CE shall be paid an additional payment based on time cost by the Government as provided in sub-paragraphs 3.0 of this Schedule, and also any appropriate reimbursements provided in paragraph 4.0 and 5.2 of this Schedule for making any necessary modifications or revisions and for any consequential reproduction of documents.

## **5.4. Payment When Works Are Damaged or Destroyed**

If at any time before completion of the Works, any part of the Works or any materials, plant or equipment whether incorporated in the Works or not are damaged or destroyed, resulting in additional services being required by the Government to be carried out by the CE, provided always such damage was not due to the negligence on the part of the CE, then the CE shall be paid by the Government payment on the basis of time cost for the additional works together with any reimbursements as provided in paragraphs 3.0 and 4.0 of this Schedule.

## **5.5. Payment Following Termination or Suspension by the Government**

- (a) In the event of the termination of this Agreement (unless such termination shall have been occasioned by the default of the CE) or the suspension of the Project by the Government, the CE shall be paid the following sums (less the amount of payments previously made to the CE):

- (i) a sum deductible from the stage of Services completed at the time of termination or suspension; and
- (ii) amounts due to the CE under any other paragraph of this Schedule.

provided that the CE shall accept the said payments by the Government as full and complete settlement of all his claims for payment under or arising out of this Agreement.

- (b) In the event that the CE is required to recommence its Services for the Project suspended by the Government, the CE shall be paid for the performance of its Services the sum payable to the CE under paragraph 2.0 and/or paragraph 3.0 of this Schedule, whichever may be applicable, the payments under sub-paragraphs 5.5(a)(i) and (ii) of this Schedule being treated as payments on account.
- (c) Where the tendering of the Project (or any part thereof) is likely to be delayed for more than **twelve (12)** months or postponed at the request of the Government, the CE shall be paid according to the Scale of fees described paragraph 2.0 of this Schedule but the cost of works applicable shall be the estimated cost of works (or any relevant part thereof) and agreed to by the Government at the time of completion of the particular stage of professional services.
- (d) Where the Project is suspended or postponed after the tenders have been called, the fees payable to the CE shall be computed based on the lowest acceptable tender received.
- (e) Where tenders are recalled and the Project is subsequently resumed, the total fees payable to the CE, inclusive of the fees paid under sub-paragraph 5.5(d) of this Schedule, shall be as follows:
  - (i) for the Preliminary, Design and Tender stage, the fees shall be as computed in sub-paragraph 5.5(d) of this Schedule, and
  - (ii) for the Construction and Defects Liability Period (DLP) stage, the fees shall be computed based on the contract sum for the works at the time of resumption and in accordance with the definitions of "cost of works".
- (f) If the CE is required to provide any additional services in connection with the resumption of his Services in accordance with sub-paragraph 5.5(b) of this Schedule, the CE shall be paid for the performance of the additional services on the basis of Time Cost and also any appropriate reimbursements in accordance with paragraphs 4.0 of this Schedule.
- (g) Upon suspension or termination of this Agreement, the CE shall within the period specified under item 8 in Appendix 7 of this Agreement submit to the GR a statement of final account and supporting

documentation showing in details the value of Services carried out in accordance with this Agreement.

- (h) Within the period specified under item 9 in Appendix 7 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.
- (i) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CE shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

## 6.0 STAGES OF PAYMENT OF FEES

- (a) Where the payment is based on the Scale of Fees, the proportions of the total fee for the Works to be paid to the CE against the relevant stages of Services shall be as Table IV.

**Table IV – Stages of Payments**

Stage	Type A , Type B and Type C Works
1. Preliminary stage	15%
2. Design stage (i)	30%
3. Design stage (ii)	15%
4. Tender stage	5%
5. Construction stage	30%
6. Defect Liability Period (DLP) stage	5%

- (b) The CE shall be entitled to payments at intervals to be mutually agreed upon by the CE and the Government in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the stages shall be equal to the percentages as set out in Table IV.
- (c) Unless otherwise specified or mutually agreed beforehand between the Government and the CE in this Agreement, the fee apportioned to each stage shall be paid in full, even if, under the circumstances in a particular case, the CE is not required to perform some of the Services listed under that stage in Paragraph 2.0 in Part A - Schedule of Services.
- (d) Where there are variations to the works at any time during the course of construction which results in changes (reduction/increase) to the original contract sum, the fees for the services rendered by CE:

- (i) under the completed Preliminary, Design and Tender stage, shall be based on the original contract sum; and
  - (ii) under the completed Construction stage, shall be based on the final cost of works including variations.
- (e) Where the payment is based on Time Cost, the proportions of the total fee for the Works to be paid to the CE shall be based on the completion of deliverables or on a pro-rated monthly basis or any other agreed stages of payment.
- (f) Payment for site supervision services shall be paid on a monthly basis.
- (g) Payment for disbursement / reimbursable shall be made on a monthly basis upon submission of receipts and invoices where applicable.

## APPENDIX 1

### APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief
2. List & Mode of Deliverables
3. Scope of Services
  - (a) Basic Services
  - (b) Additional Services
  - (c) Site Supervision (if applicable)

**APPENDIX 2**

**APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION**

[CE'S TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 3**

**APPENDIX 3 : LETTER OF ACCEPTANCE**

[THE LETTER OF ACCEPTANCE SHALL INCLUDE THE SIGNING PAGE AND EXECUTED BY THE CE - TO BE INSERTED BY RELEVANT AGENCY]



**APPENDIX 4**

**APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 5****APPENDIX 5 : DELIVERABLES**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Deliverables Stages	Details	Due Date of Submission
1.			
2.			

**APPENDIX 6A**

**APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6B**

**APPENDIX 6B : CONSULTING FEES**

[DETAILED BREAKDOWN/CALCULATION OF FEES-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6C**

**APPENDIX 6C : OUT OF POCKET EXPENSES**

[DETAILED BREAKDOWN/CALCULATION OF OUT OF POCKET EXPENSES-  
TO BE INSERTED BY RELEVANT AGENCY]

## APPENDIX 7

## APPENDIX 7 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	..... date to be inserted by Agency
2.	3.1	Contract period	..... week/month/year
3.	3.1	Contract Expiry date	..... date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	.....week/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	..... designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	..... days to be inserted by Agency
7.	6.4(c)	CE's bank account details for purposes of payment	Name: ..... Account No.:..... Bank Address:.....
8.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: $\text{LAD} = \frac{\% \text{ BLR}}{100} \times \frac{\text{Fees}}{365}$ (subject to a minimum of RM100/- per day)	RM...../day
9.	16(a)	a) <u>For the Government</u>  b) <u>For the CE</u>	a) Official Designation: Address: Fax No. : Tel. No : Email :  b) Name of Firm : Address : Fax No. : Tel No.: Email :

**APPENDIX 8**

**APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE**

[TO INCLUDE DUE DATE(S) OF SPECIFICALLY IDENTIFIED DELIVERABLES-  
TO BE INSERTED BY RELEVANT AGENCY]

No	Deliverable stages	List of activities	Period of Implementations according to activities	Start Date (according to activities)	End Date (according to activities)

OR

**GANTT CHART**

**APPENDIX 9**

**APPENDIX 9 : CE'S PERSONNEL**

[TO BE INSERTED BY RELEVANT AGENCY]

No	Name of Personnel (inclusive of owner & principal)	Role in Team	Number of Years of Working Experience	Age	Employment Status with the firm (Permanent/ Temporary)	Full Name of Highest Academic Qualification (specify name of university)	Professional Certificates (list name of certificate and membership no. (if any))



**APPENDIX 10**

**APPENDIX 10 : CE'S PERSONNEL TIME INPUT SCHEDULE  
(IF APPLICABLE)**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Name of Personnel Involved in each stages	Total Time Input by each personnel and according to deliverable stages	Start Date (work commenced by each personnel)	End Date (work ended by each personnel)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 11**

**APPENDIX 11 : CE'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 12**

**APPENDIX 12 : SCHEDULE OF PAYMENT**

[BREAKDOWN OF SCHEDULED PAYMENT BY STAGES/PHASES OR MONTHS-  
TO BE INSERTED BY RELEVANT AGENCY]

**CONSULTANCY SERVICES**

**FOR** ..... **Specify full name of project** .....

**CONTRACT NO. :** ..... **Specify contract number** .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

..... **Name of consultancy firm** .....

**(COMPANY NO. : .....** **Company registration no with Suruhanjaya Syarikat Malaysia (local company) or Board of Quantity Surveyors Malaysia Registration No. If foreign companies specify its registration number in its country** **.....)**

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CONTRACT NO. : Specify contract number

**“RECITALS”**

THIS AGREEMENT is made on Date (day)...day of Month and year...

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by Name of Government Agency.....  
whose address is at Specify full address.....(hereinafter referred to as “the **Government**”)  
of the first part;

**AND**

Name of the sole proprietorship/partnership/body corporate, (whichever is applicable)  
.....  
Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration No..... and Board of Quantity  
Surveyors Malaysia Registration No. Specify registration number....., a sole proprietorship or  
partnership registered in Malaysia or a body corporate incorporated under the  
Companies Act 1965 (whichever is applicable) and practising as a Quantity  
Surveying Consultancy Practice, having its registered office at  
Specify full address  
.....hereinafter referred to as “**CQS**”) of the other part.

The Government and the CQS shall individually be referred as the “**Party**” and  
collectively referred to as the “**Parties**”.

**WHEREAS -**

- (A) The Government intends to construct and complete Specify full name of project  
(hereinafter referred to as “**the Project**”) and is desirous of obtaining  
(hereinafter referred to as “**the Services**”) from the CQS in connection with  
the Specify field of the consultancy service.....(hereinafter referred to as “**the Works**”).
- (B) The CQS has submitted its proposal to the Government on the scope for the  
Services and both Parties have agreed on the scope of Services as per the  
Terms of Reference specified in **Appendix 1** and Technical Documents in  
**Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the  
CQS and the CQS has agreed to such appointment to provide the Services  
necessary for the effective implementation of the Project. A copy of the Letter  
of Acceptance dated Date issued by Government.. is attached in **Appendix 3** of this  
Agreement.



**NOW IT IS HEREBY AGREED** as follows:

**PART A**

**GENERAL**

**1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1. Definitions**

Under this Agreement, unless the context otherwise requires the following words and expressions used under this Agreement shall have the following meanings:

- (a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (b) "Associated Consultant" means other consultant(s) engaged by the CQS upon request and approval by the Government to carry out services for any part of the project;
- (c) "CQS" means the consulting quantity surveyors named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable)) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered with the Board of Quantity Surveyors Malaysia (BQSM) under the Registration of Quantity Surveyors Act 1967 [Act 487] and engaged to provides professional quantity surveying consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, assigns, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Quantity Surveyors Act 1967 [Act 117] is attached in **Appendix 4**;
- (d) "Contractor" means any sole proprietorship, partnership or company engaged by the Government under a contract for the Project or to supply goods in connection with the Project or both and includes sub-contractors;
- (e) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (f) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (g) "Cost of Works" means the cost incurred by the Government for the Works as particularly specified under the Schedules of this Agreement (Part B -Schedule of Fees);

- (h) “Defects Liability Period” is as provided in the contract between the Government and Contractor;
- (i) “Deliverables” means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 5** to be submitted to the Government by the CQS as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (j) “Government’s Representative (“GR”) means the person under item 5 in **Appendix 7** or such other person as may be appointed from time to time by the Government and notified in writing to the CQS to carry out the duties of the GR and the person so designated or appointed may be described by position;
- (k) “Services” means the professional consultancy services for the project which the Government has engaged the CQS to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2 and 5**;
- (l) “Professional Indemnity Insurance” means the insurances taken and maintained by the CQS covering its liability in respect of any negligence, error or omission acts of CQS and its employees under Clause 5.11;
- (m) “Project” means the project of which the Works form a part;
- (n) “Works” means the works described briefly in Recital (A) of this Agreement which the Government has engaged the CQS to perform professional services and which may comprise those as specified under the Schedules of this Agreement (Part A - Schedule of Services).

### 1.1. Interpretations

Under this Agreement, except to the extent that the context otherwise requires:

- (a) references to any law, legislation or to any provisions of any law and legislation shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or statutory instruments issued under the legislation or provisions;
- (b) references to clauses, appendices, and schedules are references to Clauses, Appendices, and Schedules of this Agreement;
- (c) words denoting the singular shall include the plural and vice versa;
- (d) words denoting individuals shall include corporations and vice versa;
- (e) recitals and headings are for convenience only and shall not affect the interpretation thereof;

- (f) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as being references to sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (g) the Appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement PROVIDED HOWEVER that in the event of any conflict between the clauses and the Appendices of this Agreement, the clauses shall prevail;
- (h) the expression of "this Agreement" or any similar expression shall include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (i) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an "approval" is a reference to an approval in writing; and "approved" shall be construed accordingly;
- (l) any reference to an "amendment" includes any variation, deletion or additions, and "amend" or "amended" shall be construed accordingly;
- (m) any technical term not specifically defined under this Agreement shall be construed in accordance with the general practice of such relevant profession in Malaysia;
- (n) for the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of, and time begins to run from, the date so specified;
- (o) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the Parties from time to time";
- (p) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar.

## **1.2. Entire Agreement**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written.

**2.0 APPOINTMENT AND CONSIDERATION**

The Government hereby appoints the CQS and the CQS accepts the appointment to provide the Services for a consideration of Ringgit ..... only (RM.....) as the ceiling contract amount (hereinafter referred to as the “**Contract Price**” and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia ..... only (RM.....) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit ..... only (RM.....) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated ..... (as specified in **Appendix 3** of this Agreement).

**3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT**

**3.1. Contract Period**

This Agreement shall be for a period of..... as specified under item 2 in **Appendix 7** (hereinafter referred to as the “**Contract Period**”) commencing from .....(hereinafter referred to as “**Commencement Date**”) and shall expire on the date as specified under item 3 in **Appendix 7** (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

**3.2. Extension of Contract Period**

- (a) The CQS shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The CQS shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension ..... prior to the Contract Expiry Date as specified under item 4 in **Appendix 7**. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

## PART B

### CQS'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

#### 4.0 CQS'S REPRESENTATIONS AND WARRANTIES

The CQS hereby represents and warrants to the Government that –

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the CQS is a body corporate or partnership or sole-proprietorship registered under the Registration of Quantity Surveyors Act 1967 [Act 117] and exists validly under the laws of Malaysia;
- (d) the CQS shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (e) the CQS has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;
- (f) the CQS has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;
- (g) as at the execution date, neither the execution nor performance by the CQS of this Agreement nor any transactions contemplated by this Agreement 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 assets;
- (h) 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 Agreement;
- (i) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;
- (i) this Agreement constitutes a legal, valid and binding obligation of the CQS and is enforceable in accordance with its terms and conditions;
- (j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

## **5.0 CQS'S OBLIGATIONS**

### **5.1. Quality of Services**

- (a) The CQS shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed in this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.
- (b) The CQS shall have sufficient knowledge of current Local Authority requirements, bye-laws, local land acts and other regulations relating to the Project, and shall advise the Government accordingly in matters affecting the implementation of the Project.

### **5.2. Timeliness of Services**

- (a) The CQS shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 8**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The CQS shall provide to the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The CQS shall keep the GR informed on a day to day basis of all instructions, variations and design changes made or authorized by the CQS.

### **5.3. Consequences of Delay**

- (a) If the CQS fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 5** of this Agreement without reasonable cause, the CQS shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.

- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 9 in **Appendix 7** of this Agreement.

#### **5.4. Instructions by The Government**

- (a) The CQS shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The CQS shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the CQS in connection with the Services.
- (b) The CQS shall attend or be represented at all meetings convened by the Government to which the CQS may be summoned, and shall advise and assist the Government on all matters relating to the Services.

#### **5.5. Tender Document and Final Account Services**

- (a) Where the CQS is required by the Government to provide tender document for the Works, the CQS shall guarantee to the Government the adequacy and completeness of the documents and that the documents have been prepared in accordance with sound industry practice.
- (b) The CQS shall prepare bills of quantities in accordance with the principles of the current edition of the Standard Method of Measurement of building works published by the Institution of Surveyors Malaysia (ISM) and other established method of measurement sanctioned by the ISM.
- (c) The CQS shall endeavour to strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference.
- (d) All specification, bills of quantities or other documents, matters or things prepared by the CQS for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the GR. No such approval shall affect the responsibility of the CQS in connection with the Services.
- (e) Where the CQS is required by the Government to finalise account of the Works, the CQS shall complete the Statement of Final Account and deliver the Statement of Final Account to the GR within the period specified under item 8 in **Appendix 7** of this Agreement.

- (f) All documents in relation to the Services to be provided by the CQS to the Government shall be endorsed and signed by the CQS's Principal.
- (g) If any defect, insufficiency or inadequacy in the documents shall be apparent, or if there shall arise a need for any variation to the Works as a result of any defect, fault, insufficiency or inadequacy in the documents prepared by the CQS, the Government shall issue to the CQS a notice specifying the default and requiring the CQS to remedy the same within the period specified by GR at the CQS'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 CQS under this Agreement or at law, to claim and recover from the CQS any payment for any loss and/or damages suffered or any other expenses incurred as a result thereof.
- (h) Notwithstanding Clause 4.5(g), the Government may elect to remedy the defect, insufficiency or inadequacy in the documents as at the time such defect, insufficiency or inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the GR to be the sum required to remedy the same from any money due or to become due to the CQS under this Agreement, failing which such sum shall be recovered from the Professional Indemnity Insurances taken by the CQS or as a debt from the CQS.

#### **5.6. CQS's Personnel**

- (a) The CQS shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.
- (b) The Services shall be carried out by the CQS's Personnel as specified under **Appendix 9** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 8**.
- (c) The Project Manager of the CQS as specified in **Appendix 9** shall be responsible for the management of the CQS's Personnel for the Services as well as to act as liaison between the CQS and the Government.
- (d) There shall be no changes or substitutions in the CQS's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CQS, it becomes necessary to replace any of the CQS's Personnel, the CQS shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.
- (e) In the event the number of CQS's Personnel as specified in **Appendix 9** is reduced without the prior written approval of the Government, the



Government shall have the right to deduct the Consulting Fee based on CQS's Personnel Time Input Schedule as specified in **Appendix 10**.

- (f) The CQS shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

#### **5.7. Information and Records**

- (a) The CQS shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The CQS shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 6A, Appendix 6B and Appendix 6C** of this Agreement have been duly incurred.
- (c) The CQS shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (d) In the event of failure occurring after the completion of the Project, the CQS may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

#### **5.8. Liability**

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

#### **5.9. Indemnity**

The CQS agrees with the Government that –

- (a) the CQS shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep 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 carrying out of the Services 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 and the CQS expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

- (b) the CQS shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from -
  - (i) the negligent use or act, misuse or abuse by the CQS or the CQS's Personnel, servants, agents or employees appointed by the CQS in the performance of the Services; or
  - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the CQS to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or
  - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error, omission, neglect, breach or default of the CQS or the CQS's Personnel, servants, agents or employees; and
- (c) the obligations under this clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

## **5.10. Insurance**

The CQS shall its own cost and expense effect and maintain all necessary insurance including insurances for its professional quantity surveyor, graduate quantity surveyor, sub-professional staff and employees. The insurance shall be valid until the expiry of the Defect Liability Period.

## **5.11. Professional Indemnity Insurance**

- (a) The CQS warrants that the CQS has taken and is maintaining its own cost and expense a profesional indemnity insurance covering its liabilities in respect of any act of negligence, error or omission of the CQS, its employees, partners, servants and any persons under its supervision in the course of providing the Services under this Agreement. The professional indemnity insurance shall be valid and irrevocable not less that twelve (12) months after the expiry of the Defect Liability Period.

- (b) The GR may at any time request the CQS to produce a copy of the insurance policy as evidence that the insurances required under this clause are being maintained and remain valid not less than twelve (12) months after the expiry of the Defect Liability Period.

## 5.12. Emergency and Accident

- (a) Where any accident, failure or other event occurs due to any cause whatsoever to, in or in connection with the Services provided for the Works or any part thereof either during the execution of the Works or during the Defect Liability Period or the period thereafter, the CQS shall immediately report to the Government of the accident, failure or event together with the CQS's proposal on any interim measures required to be taken.
- (b) The CQS shall conduct a full investigation on the accident, failure or event if directed in writing by the Government in order to determine the cause or reason for the accident, failure or event and submit a report of the investigation to the Government together with the CQS's proposals for remedial works in respect thereof.
- (c) If the Government directs the CQS to carry out any remedial works as specified under clause 5.12 (b), the CQS shall carry out the remedial works within fourteen (14) days from the date of the written direction.
- (d) The CQS shall immediately obtain the approval of the Government before giving any instruction for any variation of works required if an accident, failure or event had occurred and any delay in carrying out the variation will cause claims against the Government or involve danger to life or property.
- (e) In the event that the Government decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Government, its employee or any person or body appointed or authorized by the Government, the CQS shall give full co-operation and render all necessary assistance and facilities including the giving of access to all specifications, designs, records and other available information relating to the Works as may be required by the Government, its employee or such authorized person or body at no additional cost.
- (f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CQS, then the Services provided by the CQS hereto during the Defect Liability Period shall be construed as Additional Professional Services not included in Basic Professional Services and be paid accordingly by the Government and any services required from a third party for works not within the scope of Basic Professional Services described in **Appendix 1** of this Agreement shall also be paid accordingly by the Government.

- (g) If the investigation reveals that the accident, failure or event which occurred is due to the negligence, error, omission, default or poor supervision of the CQS, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CQS shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to—
  - (i) pay any person for the injury, damage or loss suffered by any person or his property; and
  - (ii) repair, replace or make good all injury, damages and/or pay all expenses and costs pertaining to injury and loss suffered by that person or his property.
- (h) In the event that the CQS fails to comply with clause 5.12(g) and the Government is held liable for damages to any person for injury, damage or loss suffered, or has to repair or make good such damages and/or losses, such payment shall be deducted from any payment due to the CQS under this Agreement or shall be claimed from the CQS as a debt due to the Government.

### **5.13. Confidentiality**

- (a) Except with the prior written consent or the instructions of the Government, the CQS shall not at any time communicate to any person or body or entity any confidential information disclosed to the CQS for the purpose of the provision of the Services or discovered by the CQS in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.
- (b) This sub-clause shall not apply to information which:
  - (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
  - (ii) is already known to the other party to whom it is disclosed to, at the time of disclosure;
  - (iii) is independently developed without benefit of the confidential information of the other party;

- (iv) is in possession of the CQS without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.
- (c) In the event that the CQS receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the CQS shall not constitute a violation of this Agreement provided that-
  - (i) the CQS promptly notifies the Government of the existence, terms and circumstances surrounding such request;
  - (ii) the CQS consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and
  - (iii) the CQS exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.
- (d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

#### **5.14. Notice of Delay**

In the event the CQS encounters any delay in obtaining the required assistance and information set forth in clause 5.7(a), the CQS shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

#### **5.15. Assistance in Arbitration Inquiry or Litigation**

The CQS shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of arbitration or other proceedings arising after the completion of Services, if so required by the Government, the CQS shall assist in any manner whatsoever and advise the Government under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the CQS to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and

- (b) the right of the CQS to take appropriate measures to safeguard and protect its interest.

#### **5.16. Situation Beyond Control Of CQS**

- (a) The CQS shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the CQS, which makes it impossible for the CQS to carry out its obligations hereunder.
- (b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CQS in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 7** for a decision.

#### **5.17. Prohibition on Association**

The CQS agrees that during and after the conclusion or termination of this Agreement, the CQS shall limit its role for the Project to the provision of the Services and hereby disqualifies itself from the provision of goods or services in any capacity for the Project including bidding for any part of the Project except as the Government may otherwise agree or request the CQS.

#### **5.18. Prohibition on Conflicting Activities**

No Personnel of the CQS assigned to the Services under this Agreement nor the CQS's staff, subsidiary or associate shall engage, directly or indirectly, either in his name or through his then employer, in any business or professional activities connected to the Services or Project and neither shall the CQS's Personnel be so engaged directly or indirectly, either in his name or through the CQS in any such other conflicting business or professional activities.

#### **5.19. Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government and the CQS the relationship of master and servant or principal and agent. The position of the CQS performing the Services is that of an independent consultant.

#### **5.20. Technology and Knowledge Transfer**

- (a) If the CQS appoints foreign professionals, the CQS 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 and knowledge transfer.

- (b) Pursuant to clause 5.20(a) above, the CQS shall provide training for a minimum of .....**Specify number of government officer**.....officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The CQS shall allow the employees of the Government to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

### **5.21. Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The CQS shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.
- (b) The CQS 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 CQS or in respect of which the CQS has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The CQS 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 Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the CQS may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## PART C

### GOVERNMENT'S OBLIGATIONS AND RIGHTS

#### 6.0 GOVERNMENT'S OBLIGATIONS

##### 6.1. Appointment of GR

- (a) The Government shall appoint the person under item 5 in **Appendix 7** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].
- (b) The CQS shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

##### 6.2. Obligation to give instructions, decisions, etc. without delay

- (a) All instructions, notifications, consent or approval issued by the Government or the GR shall be in writing. However the GR may, where necessary issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consents or approvals shall be followed in writing not later than seven (7) days thereafter.
- (b) If the CQS requires a decision from the Government for the performance of its Services under this Agreement, the CQS shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 7** of this Agreement.

##### 6.3. Obligation to Supply Relevant Information and Assistance

- (a) The CQS may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the CQS pursuant to clause 6.3(a) of this Agreement shall not relieve the CQS of any of the CQS's obligations under this Agreement.



- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the CQS, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the CQS's obligation under this Agreement.
- (d) Where necessary, the Government shall assist the CQS to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### **6.4. Payment to the CQS for Services**

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the CQS the Contract Price subject to the ceiling consulting fee, the ceiling out of pocket expenses or any other agreed and approved amount as revised from time to time, and in situation where the actual costs incurred in the performance of the Services does not exceed the ceiling consulting fee and the ceiling out of pocket expenses, downward adjustments can be made in accordance with **Appendix 6A**, **Appendix 6B** and **Appendix 6C**. The payment shall exclude the Government Service Tax, which amount shall be paid by the Government to the Royal Malaysian Customs Department through the CQS upon the CQS giving proof of the Service Tax License. A copy of the Service Tax License is attached in **Appendix 11** of this Agreement.
- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 12** upon the CQS furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the CQS shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the CQS and be deposited to the account of the CQS as specified under item 7 in **Appendix 7**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the CQS is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the CQS in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.

- (e) Except as otherwise agreed between the Government and the CQS, payments in respect of all fees and expenses incurred by the CQS shall be made in Ringgit Malaysia.
- (f) If the CQS intends to claim any additional payment pursuant to any clause of this Agreement, the CQS shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the CQS fails to comply with this clause, the CQS shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.
- (g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the CQS and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the CQS to the Government within thirty (30) days after receipt by the CQS of notice thereof.

#### **6.5. Withholding Payment**

- (a) The Government may by giving written notice to the CQS, and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the CQS under this Agreement, upon the occurrence and continuance of any of the following events:
  - (i) the CQS commits any breach of the terms and conditions of this Agreement; or
  - (ii) the progress of the Services fails to measure up to the aggregate payment made to date; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or
  - (iv) any failure of the CQS to deliver the Services to the satisfaction of the Government.
- (b) The CQS may apply to the Government, within fourteen (14) days after receiving notice referred to in clause 6.5(a) to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## **7.0 GOVERNMENT'S RIGHTS**

### **7.1. Proprietary Rights of The Government in Relation to Documents**

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the CQS in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.
- (b) The CQS shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The CQS shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the CQS's quality performance review processes.
- (c) The CQS shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

## **8.0 DISPUTE RESOLUTION**

### **8.1. Dispute Resolution by Government Representative**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.
- (c) If the Consultant:
  - (i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

- (ii) is dissatisfied with any decision of the GR.

then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen days (14) days.

## **8.2. Dispute Resolution Committee**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the "Dispute Resolution Committee"), comprising –
  - (i) Secretary General of the Ministry/ Head of Department as the Chairman;
  - (ii) one (1) representative to be appointed by the Government; and
  - (iii) one (1) representative appointed by the Consultant.
- (b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## **8.3. Arbitration**

- (a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration 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.
- (b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the Consultant's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the Consultant.
- (c) In the event that such consent has been obtained in accordance with clause 8.3(b), 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.

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

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

##### **9.1. Suspension and Resumption of Services**

- (a) The GR may at any time instruct the CQS to suspend part or all of the Services by the giving the CQS due notice in writing.
- (b) Upon receipt of such instruction, the CQS shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.
- (c) During the suspension period, the CQS shall continue to perform his obligations under the Agreement which is not affected by the instruction to suspend, including the obligation to effect and maintain insurance.
- (d) The GR may instruct the CQS to resume the Services at any time thereafter. Upon receipt of such instruction the CQS shall resume the Services and the parties shall jointly examine the Services affected by

the suspension. The CQS shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The CQS shall also take all necessary actions to mitigate the expenses incurred.

## **9.2. Extension of Time**

- (a) If the CQS suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the CQS, the CQS shall give notice for extension of time. PROVIDED THAT the CQS shall not be entitled to such extension if the suspension is due to a cause attributable to the CQS and the CQS shall not be entitled to payment of loss and expenses if the CQS–
  - (i) fails to take measures specified in clause 9.1(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 of more than twelve (12) months, the parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3. Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause–
  - (i) clause 11.1 (b) shall apply; and
  - (ii) payment obligations including all costs and expenditure incurred by the Government and the CQS shall be ascertained in accordance with clause 14.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1. Withholding Payment**

If any of the conditions referred to in clause 6.5(a) shall have happened and be continuing for a period of fourteen (14) days after the Government has given written notice of withholding of payments to the CQS under this Agreement, the Government may by written notice to the CQS terminate this Agreement.

### **10.2. Default by the CQS**

- (a) In the event the CQS without reasonable cause –

- (i) suspends the implementation of the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
- (ii) fails to execute the Services in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
- (iii) defaults in performing the duties under this Agreement; or
- (iv) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the CQS specifying the default and requiring the CQS to remedy such defaults within fourteen (14) days from the date of such notice. If the CQS fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

### **10.3. Events of Default**

- (a) If at any time during the Contract Period-
  - (i) the CQS goes into liquidation or a receiver is appointed over the assets of the CQS or the CQS makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
  - (ii) any of the CQS's director is prosecuted for any offences; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

### **10.4. Consequences of Termination by the Government**

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The CQS shall hence forth –
  - (i) cease all the Services;

- (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;
  - (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advise opinion or report that the CQS may provide; and
  - (iv) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services.
- (c) The Government shall hence forth –
- (i) be entitled to claim against the CQS for any losses and/or damages suffered as a result of the termination; and
  - (ii) be entitled to appoint another consultant to perform the Services and the CQS shall pay to the Government all cost and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the CQS to complete the Services had this Agreement not been terminated.

PROVIDED THAT the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

## **11.0 TERMINATION BY THE CQS**

- (a) If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the CQS's obligations under this Agreement, then the CQS may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CQS shall be entitled to terminate this Agreement at any time by giving notice to that effect.



### **11.1. Consequences of Termination by the CQS**

Upon such termination, the CQS shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

- (a) The Government shall, after receiving the detailed reports of the costs of the Services and other payments which has become due and owing to the CQS, pay the CQS all costs incurred in accordance with this Agreement.
- (b) The CQS shall –
  - (i) cease to provide the Services to the Government;
  - (ii) at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the CQS, its employees, servants and agents and make good all damage caused by such removal or such detachment; and
  - (iii) at no cost, deliver to the Government all documents relevant to the Project as are in the possession of the CQS who shall be permitted to retain copies of any documents so delivered to the Government.
- (c) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CQS shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### **12.0 TERMINATION ON NATIONAL INTEREST**

- (a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the CQS (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.
- (b) Upon such termination –
  - (i) clause 11.1(b) shall apply; and
  - (ii) the CQS shall be entitled to compensation in accordance with clause 14 which shall be determined by an independent auditor appointed by the Government after due consultation with the CQS in respect of the appointment of the independent auditor.
- (c) For the purposes of this clause, what constitutes “national interest”, “interest of national security”, “the Government policy” and “public policy” 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.

### **13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES**

- (a) Without prejudice to any other rights of the Government, if the CQS, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CQS may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the CQS.
- (b) Upon such termination –
  - (i) clauses 10.4(b) and (c) shall apply; and
  - (ii) 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.

### **14.0 FORCE MAJEURE**

#### **14.1. Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An “Event of Force Majeure” shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the CQS or its employees,

which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

PROVIDED THAT Event of Force Majeure shall not include economic downturn, non-availability or insufficient of fund or lack of financing on the part of the CQS to perform its obligations under this Agreement.

#### **14.2. Notification of Force Majeure**

If any Event of Force Majeure occurs which renders a Party unable to perform or fulfil any of its obligations under this Agreement, the Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this Agreement giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If either Party does not agree that an Event of Force Majeure has occurred then the dispute shall be referred to the GR for a decision.

#### **14.3. Termination by Force Majeure**

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than six (6) months then the Parties may mutually terminate this Agreement.

#### **14.4. Consequences of Termination due to Event of Force Majeure**

If this Agreement is terminated pursuant to clause 15.3, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

#### **14.5. Delay**

- (a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.
- (b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if

appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

#### **14.6. Restoration**

Notwithstanding any other provision in this Agreement, if an Event of Force Majeure occurs and this Agreement is not terminated then in any case where the delivery of the Services or any part thereof has been affected, the CQS shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the CQS is able to demonstrate that it has incurred substantial costs affecting the Services, the CQS may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

#### **14.7. Insurance**

Notwithstanding any other Clause, the CQS shall ensure that whenever reasonably practicable insurance is effected (whether by itself or by its contractors) to cover the occurrence of Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are reasonably and practicably insurable.

### **PART F**

#### **GENERAL PROVISIONS**

#### **15.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

#### **16.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the CQS, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission

regarding the date, time and transmission of all pages, as specified under item 10 in **Appendix 7** of this Agreement.

- (b) 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 days (14).

## **17.0 GOVERNING LAW**

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

## **18.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The CQS shall comply with all applicable laws and regulations in Malaysia and all statutory requirements, standards and guidelines, regulating or relating to the conduct, trade, business of it's profession and shall be fully and solely liable for the provisions of the Services.
- (b) The CQS shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **19.0 SEVERABILITY**

If any provision of this Agreement is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Agreement such provision shall be fully severable and this Agreement shall be construed as if such illegal or invalid provision had never comprised as part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Agreement.

## **20.0 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties and none of them shall have any authority to bind the other in any way nor shall this Agreement be construed to constitute any party the agent of the other party.

## **21.0 ADVERTISEMENT**

No advertisement in respect of this Agreement shall be published by the CQS or with the CQS's authority in the newspaper, magazine or in any forms of advertisement without prior written approval of the Government.

## **22.0 TIME**

Time wherever mentioned, shall be of the essence of this Agreement.

### **23.0 COSTS AND STAMP DUTY**

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

### **24.0 INCOME TAX**

- (a) The CQS and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.
- (b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

### **25.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another. However, if there is any ambiguity or discrepancy –

- (a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or
- (b) in the Appendices of this Agreement, the GR and CQS shall reach a mutual understanding to resolve the ambiguity or discrepancy.

### **26.0 WAIVER**

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

### **27.0 CUSTODY OF AGREEMENT**

This Agreement shall be prepared in both original and certified duplicate copy. The original of this Agreement shall remain in the custody of the Government and shall be made available at all reasonable times for the inspection of the CQS. The duplicate copy shall be kept by the CQS.

**28.0 SUCCESSORS BOUND**

This Agreement shall be binding upon each of the Parties hereto and their respective successors in title.

**PART G**

**SPECIAL PROVISIONS**

*[ NOTE : WHERE THERE IS A NEED FOR SPECIAL CONDITIONS OVER AND ABOVE THE GENERAL CONDITIONS, THIS SECTION IS TO BE INSERTED BY THE RELEVANT AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE LEGAL ADVISORS. OTHERWISE THIS PAGE TO BE LEFT AS SUCH ABOVE ]*

- None -

**SIGNATORIES TO THE AGREEMENT**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and the year first hereinbefore appearing.

SIGNED for and on behalf of ) .....(Signature).....  
**THE GOVERNMENT** ) (Name, Designation & Department's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

SIGNED for and on behalf of ) .....(Signature).....  
**THE CQS** ) (Name, Designation & Company's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :



## PART A : SCHEDULE OF SERVICES

### 1.0 TYPES OF PROFESSIONAL SERVICES

- (a) The professional services to be provided by the CQS shall consist of any or a combination of the following:
- (i) Basic Professional Services
    - For building works
    - For civil engineering works
    - For mechanical and electrical works
  - (ii) Basic Professional Services
    - For interior design works
    - For landscaping works
  - (iii) Additional Professional Services
    - During pre-contract and during post-contract
- (b) The CQS shall provide basic professional services for any of the following types of works:

**TABLE I: BUILDING WORKS**

<b>Category A</b>	Residential – Terrace and link houses, Semi Detached houses, Detached houses, Cluster houses not exceeding 4 levels, Shop houses not exceeding 4 ½ levels inclusive of mezzanine floor, Flats not exceeding 5 levels
<b>Category B</b>	All other buildings not included in Category A, including but not limited to - Residential – Condominiums, Hotels, Motels, Palaces, etc Commercial and Office – Multi storey car parks, Office, Cinemas, etc Educational - Hostel, Schools, Universities, Colleges, Museums, etc Transportation – Airport terminals, Hangars, Marinas, etc Production – Warehouses, Factories, Abattoirs, etc Sports – Sports Complex, Stadiums, etc Religious – Mosques, Crematoriums, Churches, Temples, etc Medical – Hospitals, Medical Centres, Clinics, etc Military & Security – Army Camps, Police stations, etc Any other buildings of exceptional character and complexity
<b>Category C</b>	Extension, alterations, adaptation, modifications, renovation, conservation and restoration and associated demolition works.

**TABLE II: CIVIL ENGINEERING WORKS**

<b>Category I</b>	General civil engineering works e.g. roads, drains, earthworks, water reticulation etc.
<b>Category II</b>	Reinforced concrete works, structural steelwork and building forming part of the civil engineering contract e.g. bridges, jetties, ports etc

**TABLE III: MECHANICAL AND ELECTRICAL WORKS**

<b>Mechanical and Electrical Works</b>	Works normally included as part of the building works or civil engineering e.g. Electrical low tension and high tension, Telephone and communication system, Air conditioning and ventilation, Lift, Fire protection, Security system, CCTV, Hospital equipment, Audio visual, IT system etc
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## **2.0 BASIC PROFESSIONAL SERVICES**

### **2.1 Basic Professional Services For Building Works, Civil Engineering Works And Mechanical and Electrical Works, Interior Design Works or Landscaping Works Which Are Included In One Tender**

The basic professional services for building works, civil engineering works and mechanical and electrical works, interior design works or landscaping works which are included in one tender to be provided by the CQS shall be as follows:

- (a) preparing preliminary estimates and cost plans including up to 4 revisions of preliminary estimates and cost plans due to amendments to layout and scope of works;
- (b) preparing bills of quantities and other tender documents necessary for the calling of tenders excluding mechanical and electrical works, interior design works or landscaping works (The specifications of the works to be incorporated in the tender documents shall be prepared and submitted by the respective consultant to the CQS);
- (c) preparing tender reports and contract documents, including pricing of bills of quantities or pricing and agreeing schedule of rates, in collaboration with mechanical and electrical consultants, interior designers or landscape consultants for their respective works;
- (d) valuing works in progress for interim valuations/certificates including measurement of variations excluding mechanical and electrical works, interior design works or landscaping works and including the verifications and incorporation of the amounts recommended by the consultants for their respective works; and
- (e) preparing final accounts for the whole works including the incorporation of the final accounts prepared by the mechanical and electrical

consultants, interior designers or landscape consultants for their respective works.

### **3.0 ADDITIONAL PROFESSIONAL SERVICES**

#### **3.1. Additional professional services during pre-contract**

The additional professional services to be provided by the CQS during pre-contract shall be any or a combination of the following:

- (a) preparing feasibility studies including income/expenditure cash flow;
- (b) preparing preliminary estimates and cost plans beyond the fourth revision;
- (c) preparing documents and reports for pre-qualification of contractors;
- (d) redrafting conditions of contract to meet requirements of the Government;
- (e) pricing of bills of quantities for negotiated tenders including pricing and agreeing schedule of rates if the CQS is not appointed to undertake the basic professional services for the same project;
- (f) preparing and analyzing of prices and attending negotiation meeting;
- (g) preparing cost analysis based on the accepted contract sum;
- (h) preparing tender price index based on the accepted contract sum; or
- (i) any other professional services provided for in this agreement.

#### **3.2. Additional professional services during post-contract**

The additional professional services to be rendered by the CQS during post-contract shall be any or a combination of the following:

- (a) Re-measuring the whole or part of the building and associated works due to re-planning of internal layout arising from a change of use, repositioning of the building (if re-measuring is required) and redesign of the structural elements in the works;
- (b) Re-measuring works for contracts based on provisional bills of quantities;
- (c) specific contractual advice on conditions of contract;
- (d) services for management contracting;
- (e) services arising out of determination of the contractor's employment;

- (f) continuing professional services on a protracted basis (after DLP);
- (g) attending post-contract meetings beyond the original completion date of the project (Contractor's Extension of Time and Liquidated And Ascertained Damages period);
- (h) evaluating loss and expense and other contractual claims submitted by the contractor;
- (i) preparing bills of quantities and other tender documents for defects and outstanding works to be carried out by a separate contractor and valuation of defective works to be omitted from the contract sum of the defaulting contractor;
- (j) professional services for making good of works damaged by fire etc;
- (k) preparing costs analysis based on the final contract sum;
- (l) resident quantity surveying site staff as agreed by the Government; or
- (m) any other professional services provided for in this agreement.

## **PART B : SCHEDULE OF FEES**

### **1.0 PAYMENT FOR PROFESSIONAL SERVICES**

The CQS in performing the Services described in Part A shall be paid in accordance with any or all of the following modes of payment:

- (a) Payment On the Basis Of Scale of Fees (Payment depending upon the Cost of Works)
  - For Basic Professional Services (for Building Works, Civil Engineering Works and Mechanical & Electrical Engineering Works)
- (b) Payment On The Basis Of Time Cost (Payment depending upon time spent)
  - For Basic Professional Services (for Interior Design Works and Landscaping Works)
  - For Additional Professional Services
- (c) Disbursements / Reimbursable
- (d) Other Payments

### **2.0 PAYMENT ON THE BASIS OF SCALE OF FEES**

The CQS in performing the Basic Professional Services described in Part A sub-paragraph 1.0 (a) (i) shall be paid in accordance with the Scale Of Fees, which amount shall be derived from the product of the total cost of the Works times the percentage determined from the Scale of Fees for the relevant works.

#### **2.1 Definition Of Cost Of Works**

- (a) "Cost of Works" means the total cost incurred by the Government for the Works, however incurred, of all builders works, all specialists' or sub-contractors works, services, installations and equipment designed, specified or allowed for and forming an integral part of the Project including:
  - (i) a market value of any labour, materials, manufactured goods, machinery or other facilities provided by the Government;
  - (ii) the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Government which the Government has required to be used in the execution of the Works;

- (iii) the market value of materials, manufactured goods and machinery incorporated in the Works;
  - (iv) price variations arising from fluctuation of prices; and
  - (v) approved Contractor's claims for additional preliminaries due to the extension of time which have been derived from the priced preliminaries but shall not include:
    - operating equipment or machinery that are not an integral or essential part of the Works;
    - administrative expenses incurred by the Government;
    - all consultancy fees incurred by the Government;
    - interest on capital incurred during construction;
    - the costs of raising money required for the construction of the Works; and
    - costs of land and way leaves.
- (b) The cost of works for the purpose of calculating the fees shall be derived as follows:
- (i) for works which have not been tendered, the costs of works shall be the latest estimate of costs prepared by the CQS and accepted by the Government;
  - (ii) for works tendered but not executed, the lowest *bona fide* tender received less contingency sum, prime cost and/or provisional sums for architectural, structural and civil works which do not require the CQS to carry out any measurements; and one third (1/3) of the prime costs and/or provisional sums for the works under the Mechanical and Electrical included in the tender documents; provided that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees;
  - (iii) for works tendered and executed, the original contract sum, less contingency items and one third (1/3) of the prime costs and/or provisional sums for the works under the Mechanical and Electrical included in the tender documents; provided that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees; and
  - (iv) for completed works, the cost of works shall be the final cost of works as per the final account or the original contract sum including variations whichever is the greater (except those variations incurred as a result of deficiency or default in services by the CQS); and in both cases to deduct one third (1/3) of the costs of the works under the Mechanical and Electrical, provided

that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees.

- (v) In addition to (iv) above, for works executed by a subsequent contractor arising from the determination of the employment of the previous contractor, the cost of works for calculation of fees in respect of Stage (2) of Basic Services - Preparation of Bills of Quantities and other tender documents and Stage (3) of Basic Services – Preparation of tender report and preparation of contract documents, shall be based on the net value of the uncompleted portion of partially completed sections or elements of the works which have been re-measured due to the determination of the employment of the previous Contractor.

## 2.2 Scale of Fees for Basic Professional Services for Building Works

- (a) The fees payable to the CQS for basic professional services for building works shall be in the tables as follows:

**TABLE IV: FEE PAYABLE FOR BUILDING WORKS (CATEGORY A)**

No. of units of same design	Fee Payable
1 <sup>st</sup>	RM1,000 or 1.5% of total cost of works <b>of each unit</b> whichever is higher
2 <sup>nd</sup> to 10 <sup>th</sup>	1.25% <b>of total cost of works</b>
11 <sup>th</sup> to 50 <sup>th</sup>	1.00% <b>of total cost of works</b>
51 <sup>st</sup> to 100 <sup>th</sup>	0.95% <b>of total cost of works</b>
101 <sup>st</sup> and above	0.90% <b>of total cost of works</b>

**TABLE V: FEE PAYABLE FOR BUILDING WORKS (CATEGORY B)**

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 Or 3.00% of total costs of works whichever is higher
RM1,000,001 – RM3,000,000	RM30,000 + 2.75% in excess of RM1 million
RM3,000,001 – RM5,000,000	RM85,000 + 2.50% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM135,000 + 2.15% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM188,750 + 1.80% in excess of RM7.5 million
RM10,000,001 – RM20,000,000	RM233,750 + 1.55% in excess of RM10 million
RM20,000,001 – RM50,000,000	RM388,750 + 1.30% in excess of RM20 million
RM50,000,001 – RM100,000,000	RM778,750 + 1.25% in excess of RM50 million
RM100,000,001 – RM250,000,000	RM1,403,750 + 1.10% in excess of RM100 million
Over RM250 million	RM3,053,750 + 1.00% in excess of RM250 million

**TABLE VI: FEE PAYABLE FOR BUILDING WORKS (CATEGORY C)**

Total cost of works	Fee Payable
RM1,000,000 and below	RM17,500 or 3.50% of total costs of works whichever is higher
RM1,000,001 – RM3,000,000	RM35,000 + 3.25% in excess of RM1 million
RM3,000,001 – RM5,000,000	RM100,000 + 3.00% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM160,000 + 2.75% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM228,750 + 2.50% in excess of RM7.5 million
RM10,000,001 – RM15,000,000	RM291,250 + 2.25% in excess of RM10 million
RM15,000,001 – RM25,000,000	RM403,750 + 2.00% in excess of RM15 million
Over RM25 million	RM603,750 + 1.75% in excess of RM25 million

- (b) Where consultants are appointed by the Government for Mechanical and Electrical works, for the purpose of calculating the fees of the CQS, no deduction whatsoever shall be made on the cost of works where measurement is required for such professional services. If no measurement is required, a reduction of one third (1/3) of the cost of those works under Mechanical and Electrical works shall be made for the cost of works in calculating the fees of the CQS, provided that in any event, the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees.
- (c) For Categories B and C, where there is more than one unit of buildings of the same design in all respects to be repeated in the construction of subsequent units on the same site and under a single building contract for which standard type of drawings, specifications and bills of quantities and other documents are used, the fees payable for the Stage (2) - Preparation of bills of quantities and other tender documents shall be reduced as follows:

**TABLE VII: FEE PAYABLE FOR REPETITIVE BUILDINGS (CATEGORY B&C)**

Building unit for the	Fees payable
original unit	full fees
2 <sup>nd</sup> unit	65% of full fees
3 <sup>rd</sup> unit	55% of full fees
4 <sup>th</sup> unit	45% of full fees
5 <sup>th</sup> unit and subsequent units	40% of full fees

- (i) The calculation of full fees for preparation of bills of quantities and other tender documents for original unit of repetitive buildings shall be as follows:



$$\text{FFOU} = \frac{\text{cost of RB}}{\text{no. of RB}} \times \frac{\text{FBPS}}{\text{Cost of Works}} \times \text{PBQ}$$

Where,

- (a) FFOU is full fees of original unit for preparation of bills of quantities and other tender documents for original unit of repetitive buildings;
  - (b) Cost of RB is cost of repetitive buildings **inclusive of original unit** (excluding works under the Mechanical and Electrical Consultants);
  - (c) No. of RB is total units of repetitive buildings inclusive of original unit;
  - (d) FBPS is fees for full basic professional services;
  - (e) PBQ is percentage breakdown of fees for preparation of bills of quantities and other tender documents;
- (ii) The definition of buildings of 'same design in all respects' shall mean that the buildings are same in design, shape, size, storey height and total height;
  - (iii) The reduced fees for repetitive buildings shall be applicable for repetitive buildings in a project as defined;
  - (iv) The reduced fees for repetitive buildings is only applicable to the Stage (2) - Preparation of bills of quantities and other tender documents as in Part B –Schedule of Fees as the case maybe whereas fees payable for other stages of professional services shall be paid in full.

### 2.3 Scale of Fees for Basic Professional Services for Civil Engineering Works

The fees payable to the CQS for basic professional services for civil engineering works shall be as follows:

**TABLE VIII: FEE PAYABLE FOR CIVIL ENGINEERING WORKS  
(CATEGORY I)**

Total cost of works	Fee Payable
RM1,000,000 and below	RM12,500 or 2.50% of total costs of works whichever is higher
RM3,000,001 – RM5,000,000	RM70,000 + 2.00% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM110,000 + 1.65% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM151,250 + 1.35% in excess of RM7.5 million
RM10,000,001 – RM20,000,000	RM185,000 + 1.15% in excess of RM10 million
RM20,000,001 – RM50,000,000	RM300,000 + 1.00% in excess of RM20 million
Over RM50 million	RM600,000 + 0.90% in excess of RM50 million

**TABLE IX: FEE PAYABLE FOR CIVIL ENGINEERING WORKS  
(CATEGORY II)**

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 or 3.00% of total costs of works whichever is higher
RM1,000,001 - RM3,000,000	RM30,000 + 2.75% in excess of RM1 million
RM3,000,001 - RM5,000,000	RM85,000 + 2.50% in excess of RM3 million
RM5,000,001 - RM7,500,000	RM135,000 + 2.15% in excess of RM5 million
RM7,500,001 - RM10,000,000	RM188,750 + 1.80% in excess of RM7.5 million
RM10,000,001 - RM20,000,000	RM233,750 + 1.50% in excess of RM10 million
RM20,000,001 - RM50,000,000	RM383,750 + 1.30% in excess of RM20 million
Over RM50 million	RM773,750 + 1.20% in excess of RM50 million

- (a) Where the CQS is engaged to provide quantity surveying professional services for building works (including external works) in a civil engineering project the respective scale of fees for building works shall apply.
- (b) Where more than one category of civil engineering works are involved then the scale of fees for the category of civil engineering works with the highest total value shall be applicable.
- (c) Where the CQS is engaged to provide quantity surveying professional services for the whole of a civil engineering project, the fee in respect of any building works and including related external works of which the bills of quantities is prepared based on the standard method of measurement of building works (SMM) published by the Institution of

Surveyors, Malaysia for building works shall be based on the scale of fees for building works.

#### 2.4 Fees for more than one category of buildings in building works or civil engineering works

Where there is more than one category of buildings in either building works or civil engineering works, the scale of fees for the category of buildings with the highest total value shall be applicable.

#### 2.5 Fees payable for Mechanical and Electrical works

Where the CQS is appointed to provide full basic professional services for Mechanical and Electrical works on its own, the fees payable shall be as follows:

**TABLE X: FEE PAYABLE FOR MECHANICAL AND ELECTRICAL WORKS**

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 or 3.00% of total costs of works whichever is higher
RM1,000,001 - RM3,000,000	RM30,000 + 2.50% in excess of RM1 million
RM3,000,001 - RM5,000,000	RM80,000 + 2.25% in excess of RM3 million
RM5,000,001 - RM7,500,000	RM125,000 + 2.00% in excess of RM5 million
RM7,500,001 - RM10,000,000	RM175,000 + 1.85% in excess of RM7.5 million
RM10,000,001 - RM20,000,000	RM221,250 + 1.55% in excess of RM10 million
Over RM20 million	RM376,250 + 1.25% in excess of RM20 million

#### 2.6 Fees Payable For Interior Design Works And Landscaping Works

Where the CQS is appointed to provide full basic professional services for landscaping works and interior design works on its own, the fees payable shall be on the basis of time cost.

#### 2.7 Additional Fees For Contracts Based On Provisional Bills of Quantities

- (a) Where provisional bills of quantities have to be prepared for the calling of tenders and the bills of quantities for the original scope of works and normal variation under the contract have to be re-measured, the fees for Stage (2) - Preparation of bills of quantities and other tender documents shall be increased by 35%.
- (b) The entitlement for the additional fees due to the re-measurement of the provisional bills of quantities is subject to the following:
  - (i) the CQS is appointed for full basic professional services;

- (ii) before commencing on the measurements of provisional bills of quantities, the CQS must obtain written approval from the Government since the Government has to bear the additional fees.

## **2.8 Fees for CQS appointed for partial services**

- (a) If a CQS is appointed for pre-contract professional services only stage (1), (2) & (3), the total fees is 65% of the total fees for full basic professional services.
- (b) If a CQS is appointed for post contract professional services only stage (4) & (5), the total fees is 35% of the total fees for full basic professional services.
- (c) In addition to the provision in sub-paragraph (b) above, the CQS shall be paid an additional 10% of the total fees for full basic professional services for the preparatory works prior to commencement of his professional services.
- (d) If a CQS is appointed for stage (5) preparation of final accounts which may also involve part of stage (4) valuation of works in progress including variation works, the total fees is 25% of the total fees for full basic professional services.

## **3.0 PAYMENT ON THE BASIS OF TIME COST**

The CQS who has rendered any of the Basic Professional Services or the Additional Services described in Part A sub-paragraph 1.0(a)(ii) and (iii) shall be paid in accordance with Payment On The Basis Of Time Cost as follows:

- (a) Remuneration shall be determined on the basis of time actually spent and a rate specified in respect of the CQS's personnel, where such rate shall be calculated based on basic salary times an appropriate multiplier as approved by the Government.
- (b) The Government shall not be responsible for payment of the above remuneration to the CQS's Personnel who are on annual leave or sick leave.
- (c) The CQS shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in the CQS's office.
- (d) The CQS shall be entitled for other payments, where applicable, as described in paragraph 4.0 and 5.0.

#### **4.0 DISBURSEMENTS / REIMBURSIBLES**

The CQS shall in all cases be reimbursed by the Government for the disbursements actually as approved by the Government.

#### **5.0 OTHER PAYMENTS**

##### **5.1. Payment for re-measurement of works due to alteration or modification of design**

- (a) If after the completion by the CQS of his basic professional services under paragraph 2 of Part A –Professional Services at any time after execution of an agreement between the CQS and the Government, any measurement whether completed or in progress or any specification or other document prepared in whole or in part by the CQS required to be modified or revised by reason of instructions received by the CQS from the Government or others acting on behalf of the Government or by reason of circumstances which could not have been reasonably foreseen by the CQS, the CQS shall be paid an additional payment by the Government for making any necessary modification or revision and for any consequential reproduction of documents and the fees due will be based on subparagraph 6.1 (a) Stage (2) Part B – Schedule of Fees as the case may be, of the gross value of measured omissions and on the gross value of measured additions, both gross values added to the cost of works to calculate the fees provided such modification or revision be limited to the following:
- (i) Re-measurement of the whole or part of the works due to either re-planning of internal layout or repositioning of the structure or due to change of use of building or structure; and
  - (ii) Re-design of any structural element in the works.

##### **5.2. Payment when works are damaged or destroyed**

If at any time before completion of the Works, any part of the Works or any materials, plant or equipment whether incorporated in the Works or not are damaged or destroyed, resulting in additional services being required by the Government to be carried out by the CQS, provided always such damage was not due to the negligence on the part of the CQS, then the CQS shall be paid by the Government payment on the basis of time cost for the additional works together with any reimbursements as provided in paragraphs 3.0 and 4.0 of this Schedule.

##### **5.3. Payment Following Termination Or Suspension By The Government**

- (a) In the event of the termination of this Agreement (unless such termination shall have been occasioned by the default of the CQS) or the suspension of the Project by the Government, the CQS shall be

paid the following sums (less the amount of payments previously made to the CQS):

- (i) a sum deductible from the percentage of work completed up till the time of termination or suspension; and
- (ii) amounts due to the CQS under any other paragraph of this Schedule.

provided that the CQS shall accept the said payments by the Government as full and complete settlement of all his claims for payment under or arising out of this Agreement.

- (b) In the event that the CQS is required to recommence its Services for the Project suspended by the Government, the CQS shall be paid for the performance of its Services the sum payable to the CQS under paragraph 2.0 and/or paragraph 3.0 of this Schedule, whichever may be applicable, the payments under sub-paragraphs 5.3(a)(i) and (ii) of this Schedule being treated as payments on account.
- (c) Where the tendering of the Project (or any part thereof) is likely to be delayed for more than twelve (12) months or postponed at the request of the Government, the CQS shall be paid according to the Scale of fees described paragraph 2.0 of this Schedule but the cost of works applicable shall be the estimated cost of works (or any relevant part thereof) and agreed to by the Government at the time of completion of the particular stage of professional services.
- (d) Where the Project is suspended or postponed after the tenders have been called the fees payable to the consulting Quantity Surveyor shall be computed based on the lowest *bona fide* tender received.
- (e) Where tenders are recalled and the Project is subsequently resumed, the fees payable to the CQS shall be as follows:
  - (i) for stages of professional services under sub-paragraph 6.1(a) Stage (1), (2) and (3) under Part B – Schedule of Fees as the case may be; the fees shall be as computed in sub-paragraph 5.3(d) of this Schedule, and
  - (ii) for stages of professional services under sub-paragraph 6.1(a) Stage (4) and (5) listed under Part B – Schedule of Fees to be computed based on the contract sum for the works at the time of resumption and in accordance with the definitions of “cost of works”.
- (f) If the CQS is required to provide any additional professional services in connection with the resumption of his professional services in accordance with sub-paragraph 2 above, the CQS shall be paid in respect of the performance of such additional professional services on

the basis of Time Cost and any appropriate reimbursement in accordance with paragraph 4.0 of this Schedule.

#### 5.4. Payment Following Termination by the CQS

If there is a termination by the CQS of his Services (unless the termination had been occasioned by the default or negligence of the CQS), the CQS shall be entitled to be paid the sums specified in sub-paragraphs 5.3(a)(i) and (ii) of this Schedule less the amount of payments previously made to the CQS.

#### 6.0 STAGES OF PAYMENTS OF FEES

- (a) The fees payable to the CQS for every stage of basic professional services, shall be as follows:

**TABLE XI: STAGE OF CQS BASIC PROFESSIONAL SERVICES**

Stage of basic professional services		Fee payable
1	Preparation of preliminary estimates and cost estimates and cost plans	10%
2	Preparation of bills of quantities and other tender documents	48%
3	(i) Preparation of tender reports (ii) Preparation of contract documents	3% 4%
4	Valuation of works in progress for interim valuation/ certificates including measurement of variations	20%
5	Preparation of final accounts	15%
<b>FULL BASIC PROFESSIONAL SERVICES</b>		<b>100%</b>

- (i) The CQS shall be entitled to payments at intervals to be mutually agreed upon by the CQS and the Government in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the stages shall be equal to the percentages as set out in Table XI.
- (ii) Unless otherwise specified or mutually agreed beforehand between the Government and the CQS in this Agreement, the fee apportioned to each stage shall be paid in full, even if, under the circumstances in a particular case, the CQS is not required to perform some of the Services listed under that stage in Paragraph 2.0 in Part A - Schedule of Services.
- (b) Where the payment is based on Time Cost, the proportions of the total fee for the Works to be paid to the CQS shall be based on the completion of deliverables or on a pro-rated monthly basis or any other agreed stages of payment.
- (c) Payment for resident quantity surveying site staffs shall be paid on a monthly basis.

- (d) Payment for disbursement / reimbursable shall be made on a monthly basis upon submission of receipts and invoices where applicable.

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## APPENDIX 1

### APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief
2. List & Mode of Deliverables
3. Scope of Services
  - (a) Basic Services
  - (b) Additional Services
  - (c) Site Supervision (if applicable)

**APPENDIX 2**

**APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT  
IMPLEMENTATION**

[CQS'S TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 3**

**APPENDIX 3 : LETTER OF ACCEPTANCE**

[THE LETTER OF ACCEPTANCE SHALL INCLUDE THE SIGNING PAGE AND EXECUTED BY THE CQS - TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 4**

**APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 5**

**APPENDIX 5 : DELIVERABLES**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Deliverables Stages	Details	Due Date of Submission
1.			
2.			

**APPENDIX 6A**

**APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6B**

**APPENDIX 6B : CONSULTING FEES**

[DETAILED BREAKDOWN/CALCULATION OF FEES-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6C**

**APPENDIX 6C : OUT OF POCKET EXPENSES**

[DETAILED BREAKDOWN/CALCULATION OF OUT OF POCKET EXPENSES-  
TO BE INSERTED BY RELEVANT AGENCY]



## APPENDIX 7

## APPENDIX 7 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	..... date to be inserted by Agency
2.	3.1	Contract period	..... week/month/year
3.	3.1	Contract Expiry date	..... date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	.....week/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	..... designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	..... days to be inserted by Agency
7.	6.4(c)	CQS's bank account details for purposes of payment	Name: ..... Account No.:..... Bank Address:.....
8.	5.5(e)	Period for CQS to submit statement of final account for the Services and supporting documentation to GR	.....months after the expiry of DLP or .....months after the issuance of certificate of making good defects (CMGD) whichever is later
9.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: $\text{LAD} = \frac{\% \text{ BLR}}{100} \times \frac{\text{Fees}}{365}$ (subject to a minimum of RM100/- per day)	RM...../day
10.	16(a)	a) <u>For the Government</u>  b) <u>For the CQS</u>	a) Official Designation: Address: Fax No. : Tel. No : Email :  b) Name of Firm : Address : Fax No. : Tel No.: Email :

**APPENDIX 8**

**APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE**

[TO INCLUDE DUE DATE(S) OF SPECIFICALLY IDENTIFIED DELIVERABLES-  
TO BE INSERTED BY RELEVANT AGENCY]

No	Deliverable stages	List of activities	Period of Implementations according to activities	Start Date (according to activities)	End Date (according to activities)

OR

**GANTT CHART**

**APPENDIX 9**

**APPENDIX 9 : CQS'S PERSONNEL**

[TO BE INSERTED BY RELEVANT AGENCY]

No	Name of Personnel (inclusive of owner & principal)	Role in Team	Number of Years of Working Experience	Age	Employment Status with the firm (Permanent/Temporary)	Full Name of Highest Academic Qualification (specify name of university)	Professional Certificates (list name of certificate and membership no. (if any))

## APPENDIX 10

**APPENDIX 10 : CQS'S PERSONNEL TIME INPUT SCHEDULE  
(IF APPLICABLE)**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Name of Personnel Involved in each stages	Total Time Input by each personnel and according to deliverable stages	Start Date (work commenced by each personnel)	End Date (work ended by each personnel)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 11**

**APPENDIX 11 : CQS'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 12**

**APPENDIX 12 : SCHEDULE OF PAYMENT**

[BREAKDOWN OF SCHEDULED PAYMENT BY STAGES/PHASES OR MONTHS-  
TO BE INSERTED BY RELEVANT AGENCY]

**CONSULTANCY SERVICES**

**FOR** ..... **Specify full name of project** .....

**CONTRACT NO. :** ..... **Specify contract number** .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

..... **Name of consultancy firm** .....

**(COMPANY NO. :** ..... **Company registration no with Suruhanjaya Syarikat Malaysia (local company). If foreign companies specify its registration number in its country** ..... **)**

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**CONTRACT NO. :** Specify contract number .....

**“RECITALS”**

THIS AGREEMENT is made on Date (day).....day of Month and year .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by Name of Government Agency ..... whose address is at Specify full address .....(hereinafter referred to as “the **Government**”) of the first part;

**AND**

Name of the sole proprietorship/partnership/body corporate, (whichever is applicable) .....,  
Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration ....., a body corporate incorporated under the Companies Act 1965 having its registered office at Specify full address .....hereinafter referred to as “**Consultant**”) of the other part.

The Government and the Consultant shall individually be referred as the “**Party**” and collectively referred to as the “**Parties**”.

**WHEREAS**

- (A) The Government is desirous of obtaining consultancy services (hereinafter referred to as “**the Services**”) necessary for Specify full name of the research .....hereinafter referred to as “**the Project**”).
- (B) The Consultant has submitted its proposal to the Government on the scope for the Services and both Parties have agreed on the scope of Services as per the Terms of Reference specified in **Appendix 1** and Technical Documents in **Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the Consultant and the Consultant has agreed to such appointment to provide the Services necessary for the effective implementation of the Project. A copy of the Letter of Acceptance dated Date issued by Government ..... is attached in **Appendix 3** of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

## **PART A**

### **GENERAL**

#### **1.0 DEFINITIONS AND INTERPRETATIONS**

##### **1.1. Definitions**

Under this Agreement, unless the context otherwise requires the following words and expressions used under this Agreement shall have the following meanings:

- (a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (b) "Consultant" means a company incorporated under the Companies Act 1965 in Malaysia and having its registered address at .....  
*Specify full address*.....;
- (c) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (d) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (e) "Deliverables" means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 4** to be submitted to the Government by the Consultant as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (f) "Government's Representative ("GR") means the person under item 5 in **Appendix 6** or such other person as may be appointed from time to time by the Government and notified in writing to the Consultant to carry out the duties of the GR and the person so designated or appointed may be described by position;
- (g) "Services" means the professional consultancy services for the project which the Government has engaged the Consultant to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2 and 4**;
- (h) "Steering Committee" means the committee, comprising of Government officials whose main function is to provide directions, review, consider and approve the Deliverables;

- (i) "Technical Committee" means the committee, comprising of Government officials who will monitor the progress and implementation of the Services and provide input and feedback to the findings or recommendations of the Consultant.

## **1.2. Interpretations**

Under this Agreement, except to the extent that the context otherwise requires:

- (a) references to any law, legislation or to any provisions of any law and legislation shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or statutory instruments issued under the legislation or provisions;
- (b) references to clauses, appendices, and schedules are references to Clauses, Appendices, and Schedules of this Agreement;
- (c) words denoting the singular shall include the plural and vice versa;
- (d) words denoting individuals shall include corporations and vice versa;
- (e) recitals and headings are for convenience only and shall not affect the interpretation thereof;
- (f) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as being references to sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (g) the Appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement PROVIDED HOWEVER that in the event of any conflict between the clauses and the Appendices of this Agreement, the clauses shall prevail;
- (h) the expression of "this Agreement" or any similar expression shall include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (i) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an "approval" is a reference to an approval in writing; and "approved" shall be construed accordingly;
- (l) any reference to an "amendment" includes any variation, deletion or additions, and "amend" or "amended" shall be construed accordingly;

- (m) any technical term not specifically defined under this Agreement shall be construed in accordance with the general practice of such relevant profession in Malaysia;
- (n) for the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of, and time begins to run from, the date so specified;
- (o) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the Parties from time to time";
- (p) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar.

### 1.3. Entire Agreement

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written.

## 2.0 APPOINTMENT AND CONSIDERATION

The Government hereby appoints the Consultant and the Consultant accepts the appointment to provide the Services for a consideration of Ringgit ..... *Specify total cost in word format* ..... only (RM. *Specify total cost in number format* ..... ) as the ceiling contract amount (hereinafter referred to as the "**Contract Price**" and specified in **Appendix 5A** of this Agreement) which consists of Ringgit Malaysia *Specify consulting fee in word format* ..... only (RM. *Specify consulting fee in number format* ..... ) as the ceiling consulting fee (as specified in **Appendix 5B** of this Agreement) and Ringgit *Specify out of pocket expenses in word format* ..... only (RM. *Specify out of pocket expenses in number format* ..... ) as the ceiling out of pocket expenses (as specified in **Appendix 5C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated ..... *Date issued by Government* ..... (as specified in **Appendix 3** of this Agreement).

## 3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

### 3.1. Contract Period

This Agreement shall be for a period of ..... *Specify duration of consultancy period (week/month/year)* ..... as specified under item 2 in **Appendix 6** (hereinafter referred to as the "**Contract Period**") commencing from *Specify start date* ..... (hereinafter referred to as "**Commencement Date**") and shall expire on the date stated under item 3 in **Appendix 6** (hereinafter referred to as the "**Contract Expiry Date**") unless

terminated earlier in accordance with the provisions of Part E of this Agreement.

**3.2. Extension of Contract Period**

- (a) The Consultant shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The Consultant shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
  
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension ..... *Specify period* ..... prior to the Contract Expiry Date as specified under item 4 in **Appendix 6**. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

**PART B****CONSULTANT'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS****4.0 CONSULTANT'S REPRESENTATIONS AND WARRANTIES**

The Consultant hereby represents and warrants to the Government that –

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the Consultant shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (d) the Consultant has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;
- (e) the Consultant has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;
- (f) as at the execution date, neither the execution nor performance by the Consultant of this Agreement nor any transactions contemplated by this Agreement 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 assets;
- (g) 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 Agreement;
- (h) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;
- (i) this Agreement constitutes a legal, valid and binding obligation of the Consultant and is enforceable in accordance with its terms and conditions;
- (j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,



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

## **5.0 CONSULTANT'S OBLIGATIONS**

### **5.1. Quality of Services**

- (a) The Consultant shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed under this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.
- (b) The Consultant shall have sufficient knowledge of the project and other regulations relating to the project, and shall advise the Government accordingly in matters affecting the implementation of the project.

### **5.2. Timeliness of Services**

- (a) The Consultant shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 7**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The Consultant shall provide the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The Consultant shall undertake to provide status updates through reports and presentations relevant to the Services as required by the Government and attend all deliberations and meetings of the Technical Committee and Steering Committee.
- (e) The Consultant shall take remedial action as advised by the Technical Committee and Steering Committee as deemed appropriate and shall prepare the final reports, incorporating the issues raised for the consideration and approval of the Steering Committee.

### 5.3. Consequences of Delay

- (a) If the Consultant fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 4** of this Agreement without reasonable cause, the Consultant shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.
- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 10 in **Appendix 6** of this Agreement.

### 5.4. Instructions by The Government

- (a) The Consultant shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The Consultant shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the Consultant in connection with the Services.
- (b) The Consultant shall attend or be represented at all meetings convened by the Government to which the Consultant may be summoned, and shall advise and assist the Government on all matters relating to the Services.

### 5.5. Consultant's Personnel

- (a) The Consultant shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.
- (b) The Services shall be carried out by the Consultant's Personnel as specified under **Appendix 8** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 7**.
- (c) The Project Manager of the Consultant as specified in **Appendix 8** shall be responsible for the management of the Consultant's Personnel for the Services as well as to act as liaison between the Consultant and the Government.
- (d) There shall be no changes or substitutions in the Consultant's Personnel set forth in **Appendix 8** without the prior written approval of the Government. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Consultant's Personnel, the Consultant shall forthwith provide as a replacement, a

person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

- (e) In the event the number of Consultant's Personnel as specified in **Appendix 8** is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on Consultant's Personnel Time Input Schedule as specified in **Appendix 9**.
- (f) The Consultant shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

## **5.6. Information and Records**

- (a) The Consultant shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The Consultant shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 5A, Appendix 5B and Appendix 5C** of this Agreement have been duly incurred.
- (c) The Consultant shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (d) In the event of failure occurring after the completion of the Project, the Consultant may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

## **5.7. Liability**

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

## 5.8. Indemnity

The Consultant agrees with the Government that –

- (a) the Consultant shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep 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 carrying out of the Services 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 and the Consultant expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.
- (b) the Consultant shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from -
  - (i) the negligent use or act, misuse or abuse by the Consultant or the Consultant's Personnel, servants, agents or employees appointed by the Consultant in the performance of the Services; or
  - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the Consultant to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or
  - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error, omission, neglect, breach or default of the Consultant or the Consultant's Personnel, servants, agents or employees; and
- (c) the obligations under this clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

## 5.9. Confidentiality

- (a) Except with the prior written consent or the instructions of the Government, the Consultant shall not at any time communicate to any person or body or entity any confidential information disclosed to the Consultant for the purpose of the provision of the Services or

discovered by the Consultant in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.

- (b) This sub-clause shall not apply to information which:
  - (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
  - (ii) is already known to the other party to whom it is disclosed to, at the time of disclosure;
  - (iii) is independently developed without benefit of the confidential information of the other party;
  - (iv) is in possession of the Consultant without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.
- (c) In the event that the Consultant receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the Consultant shall not constitute a violation of this Agreement provided that-
  - (i) the Consultant promptly notifies the Government of the existence, terms and circumstances surrounding such request;
  - (ii) the Consultant consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and
  - (iii) the Consultant exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.
- (d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

### **5.10. Notice of Delay**

In the event the Consultant encounters any delay in obtaining the required assistance and information set forth in clause 5.6(a), the Consultant shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

### **5.11. Assistance in Arbitration Inquiry or Litigation**

The Consultant shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of arbitration or other proceedings arising after the completion of Services, if so required by the Government, the Consultant shall assist in any manner whatsoever and advise the Government under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the Consultant to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and
- (b) the right of the Consultant to take appropriate measures to safeguard and protect its interest.

### **5.12. Situation Beyond Control Of Consultant**

- (a) The Consultant shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the Consultant, which makes it impossible for the Consultant to carry out its obligations hereunder.
- (b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the Consultant in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 6** for a decision.

**5.13. Prohibition on Association**

The Consultant agrees that during and after the conclusion or termination of this Agreement, the Consultant shall limit its role for the Project to the provision of the Services and hereby disqualifies itself from the provision of goods or services in any capacity for the Project including bidding for any part of the Project except as the Government may otherwise agree or request the Consultant.

**5.14. Prohibition on Conflicting Activities**

No Personnel of the Consultant assigned to the Services under this Agreement nor the Consultant's staff, subsidiary or associate shall engage, directly or indirectly, either in his name or through his then employer, in any business or professional activities connected to the Services or Project and neither shall the Consultant's Personnel be so engaged directly or indirectly, either in his name or through the Consultant in any such other conflicting business or professional activities.

**5.15. Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government and the Consultant the relationship of master and servant or principal and agent. The position of the Consultant performing the Services is that of an independent consultant.

**5.16. Technology and Knowledge Transfer**

- (a) If the Consultant appoints foreign professionals, the Consultant 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 and knowledge transfer.
- (b) Pursuant to clause 5.14(a) above, the Consultant shall provide training for a minimum of .....*Specify number of government officer*.....officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The Consultant shall allow the employees of the Government to be involved in the study and implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

**5.17. Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear

of all liens, claims and encumbrances. The Consultant shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.

- (b) The Consultant 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 Consultant or in respect of which the Consultant has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The Consultant 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 Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the Consultant may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## **PART C**

### **GOVERNMENT'S RIGHTS AND OBLIGATIONS**

#### **6.0 GOVERNMENT'S OBLIGATIONS**

##### **6.1. Appointment of GR**

- (a) The Government shall appoint the person under item 5 in **Appendix 6** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].



- (b) The Consultant shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

**6.2. Obligation to give instructions, decisions, etc. without delay**

- (a) All instructions, notifications, consent or approval issued by the Government or the GR shall be in writing. However the GR may, where necessary issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consents or approvals shall be followed in writing not later than seven (7) days thereafter.
- (b) If the Consultant requires a decision from the Government for the performance of its Services under this Agreement, the Consultant shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 6** of this Agreement.

**6.3. Obligation to Supply Relevant Information and Assistance**

- (a) The Consultant may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the Consultant pursuant to clause 6.3(a) of this Agreement shall not relieve the Consultant of any of the Consultant's obligations under this Agreement.
- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the Consultant, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the Consultant's obligation under this Agreement.
- (d) Where necessary, the Government shall assist the Consultant to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### 6.4. Payment to the Consultant for Services

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the Consultant the Contract Price subject to the ceiling consulting fee, the ceiling out of pocket expenses or any other agreed and approved amount as revised from time to time, and in situation where the actual costs incurred in the performance of the Services does not exceed the ceiling consulting fee and the ceiling out of pocket expenses, downward adjustments can be made in accordance with **Appendix 5A**, **Appendix 5B** and **Appendix 5C**. The payment shall exclude the Government Service Tax, which amount shall be paid by the Government to the Royal Malaysian Customs Department through the Consultant upon the Consultant giving proof of the Service Tax License. A copy of the Service Tax License is attached in **Appendix 10** of this Agreement.
- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 11** upon the Consultant furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the Consultant shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the Consultant and be deposited to the account of the Consultant as specified under item 7 in **Appendix 6**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the Consultant is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the Consultant in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.
- (e) Except as otherwise agreed between the Government and the Consultant, payments in respect of all fees and expenses incurred by the Consultant shall be made in Ringgit Malaysia.
- (f) If the Consultant intends to claim any additional payment pursuant to any clause of this Agreement, the Consultant shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the Consultant fails to comply with this clause, the Consultant shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.

- (g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the Consultant and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the Consultant to the Government within thirty (30) days after receipt by the Consultant of notice thereof.

## **6.5. Withholding Payment**

- (a) The Government may by giving written notice to the Consultant, and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the Consultant under this Agreement, upon the occurrence and continuance of any of the following events:
  - (i) the Consultant commits any breach of the terms and conditions of this Agreement; or
  - (ii) the progress of the Services fails to measure up to the aggregate payment made to date; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or
  - (iv) any failure of the Consultant to deliver the Services to the satisfaction of the Government.
- (b) The Consultant may apply to the Government, within fourteen (14) days after receiving notice referred to in clause 6.5(a) to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## **7.0 GOVERNMENT'S RIGHTS**

### **7.1. Proprietary Rights of The Government in Relation to Documents**

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the Consultant in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.

- (b) The Consultant shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The Consultant shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the Consultant's quality performance review processes.
- (c) The Consultant shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

#### **8.0 DISPUTE RESOLUTION**

##### **8.1. Dispute Resolution by Government Representative**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.
- (c) If the Consultant:
  - (i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or
  - (ii) is dissatisfied with any decision of the GR.

then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen days (14) days.

## 8.2. Dispute Resolution Committee

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the "Dispute Resolution Committee"), comprising –
  - (i) Secretary General of the Ministry/ Head of Department as the Chairman;
  - (ii) one (1) representative to be appointed by the Government; and
  - (iii) one (1) representative appointed by the Consultant.
- (b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## 8.3. Arbitration

- (a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration 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.
- (b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the Consultant's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the Consultant.
- (c) In the event that such consent has been obtained in accordance with clause 8.3(b), 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.
- (d) 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.

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

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

##### **9.1. Suspension and Resumption of Services**

- (a) The GR may at any time instruct the Consultant to suspend part or all of the Services by the giving the Consultant due notice in writing.
- (b) Upon receipt of such instruction, the Consultant shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.
- (c) During the suspension period, the Consultant shall continue to perform his obligations under the Agreement which is not affected by the instruction to suspend, including the obligation to effect and maintain insurance.
- (d) The GR may instruct the Consultant to resume the Services at any time thereafter. Upon receipt of such instruction the Consultant shall resume the Services and the parties shall jointly examine the Services affected by the suspension. The Consultant shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The Consultant shall also take all necessary actions to mitigate the expenses incurred.

## **9.2. Extension of Time**

- (a) If the Consultant suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the Consultant, the Consultant shall give notice for extension of time. PROVIDED THAT the Consultant shall not be entitled to such extension if the suspension is due to a cause attributable to the Consultant and the Consultant shall not be entitled to payment of loss and expenses if the Consultant–
  - (i) fails to take measures specified in clause 9.1(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 of more than twelve (12) months, the parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3. Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause–
  - (i) clause 11.1 (b) shall apply; and
  - (ii) payment obligations including all costs and expenditure incurred by the Government and the Consultant shall be ascertained in accordance with clause 14.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1. Withholding Payment**

If any of the conditions referred to in clause 6.5(a) shall have happened and be continuing for a period of fourteen (14) days after the Government has given written notice of withholding of payments to the Consultant under this Agreement, the Government may by written notice to the Consultant terminate this Agreement.

### **10.2. Default by the Consultant**

- (a) In the event the Consultant without reasonable cause –
  - (i) suspends the implementation of the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;

- (ii) fails to execute the Services in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
- (iii) defaults in performing the duties under this Agreement; or
- (iv) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the Consultant specifying the default and requiring the Consultant to remedy such defaults within fourteen (14) days from the date of such notice. If the Consultant fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

### **10.3. Events of Default**

- (a) If at any time during the Contract Period-
  - (i) the Consultant goes into liquidation or a receiver is appointed over the assets of the Consultant or the Consultant makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
  - (ii) any of the Consultant's director is prosecuted for any offences; or
  - (iii) any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

### **10.4. Consequences of Termination by the Government**

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The Consultant shall hence forth –
  - (i) cease all the Services;
  - (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing



from the Government prior to the termination for verification and approval by the Government;

- (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advise opinion or report that the Consultant may provide; and
  - (iv) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services.
- (c) The Government shall hence forth –
- (i) be entitled to claim against the Consultant for any losses and/or damages suffered as a result of the termination; and
  - (ii) be entitled to appoint another consultant to perform the Services and the Consultant shall pay to the Government all cost and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the Consultant to complete the Services had this Agreement not been terminated.

PROVIDED THAT the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

## **11.0 TERMINATION BY THE CONSULTANT**

- (a) If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the Consultant's obligations under this Agreement, then the Consultant may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the Consultant shall be entitled to terminate this Agreement at any time by giving notice to that effect.

### **11.1. Consequences of Termination by the Consultant**

Upon such termination, the Consultant shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

- (a) The Government shall, after receiving the detailed reports of the costs of the Services and other payments which has become due and owing to the Consultant, pay the Consultant all costs incurred in accordance with this Agreement.
- (b) The Consultant shall –
  - (i) cease to provide the Services to the Government;
  - (ii) at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the Consultant, its employees, servants and agents and make good all damage caused by such removal or such detachment; and
  - (iii) at no cost, deliver to the Government all documents relevant to the Project as are in the possession of the Consultant who shall be permitted to retain copies of any documents so delivered to the Government.
- (c) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the Consultant shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

## **12.0 TERMINATION ON NATIONAL INTEREST**

- (a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the Consultant (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.
- (b) Upon such termination –
  - (i) clause 11.1(b) shall apply; and
  - (ii) the Consultant shall be entitled to compensation in accordance with clause 14 which shall be determined by an independent auditor appointed by the Government after due consultation with the Consultant in respect of the appointment of the independent auditor.
- (c) For the purposes of this clause, what constitutes “national interest”, “interest of national security”, “the Government policy” and “public policy” 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.

### 13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES

- (a) Without prejudice to any other rights of the Government, if the Consultant, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the Consultant may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the Consultant.
- (b) Upon such termination –
  - (i) clauses 10.4(b) and (c) shall apply; and
  - (ii) 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.

### 14.0 PAYMENT UPON SUSPENSION AND TERMINATION

- (a) If this Agreement is suspended or terminated under clauses 9.0, 11.0 or 15.0, 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 Consultant shall be the value of all Services carried out up to the date of suspension or termination.

PROVIDED THAT such amount to be paid by the Government shall be confined only to the payment as are clearly and expressly stated in the above.

- (b) On suspension or termination, the Consultant shall be paid all fees and expenses commensurate with the Services performed by the Consultant up to the date of suspension or termination which may then be due. The payments made for fees and expenses shall be deemed as full and final payment for the Services up to the date of suspension or termination.
- (c) If this Agreement is resumed, any payment of fees under this clause, except in respect of abortive work that has to be re-done, shall be taken as payment on account towards the fees payable under this Agreement.
- (d) Upon suspension or termination of this Agreement, the Consultant shall within the period specified under item 8 in **Appendix 6** of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.
- (e) Within the period specified under item 9 in **Appendix 6** of this Agreement, the GR shall verify the statement of account and its

supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

- (f) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the Consultant shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

## **15.0 FORCE MAJEURE**

### **15.1. Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An "Event of Force Majeure" shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the Consultant or its employees, which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

PROVIDED THAT Event of Force Majeure shall not include economic downturn, non-availability or insufficient of fund or lack of financing on the part of the Consultant to perform its obligations under this Agreement.

### **15.2. Notification of Force Majeure**

If any Event of Force Majeure occurs which renders a Party unable to perform or fulfil any of its obligations under this Agreement, the Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force

Majeure applicable to its obligations under this Agreement giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If either Party does not agree that an Event of Force Majeure has occurred then the dispute shall be referred to the GR for a decision.

### **15.3. Termination by Force Majeure**

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than six (6) months then the Parties may mutually terminate this Agreement.

### **15.4. Consequences of Termination due to Event of Force Majeure**

If this Agreement is terminated pursuant to clause 15.3, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

### **15.5. Delay**

- (a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.
- (b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

### **15.6. Restoration**

Notwithstanding any other provision in this Agreement, if an Event of Force Majeure occurs and this Agreement is not terminated then in any case where the delivery of the Services or any part thereof has been affected, the Consultant shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the Consultant is able to demonstrate that it has

incurred substantial costs affecting the Services, the Consultant may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

### **15.7. Insurance**

Notwithstanding any other Clause, the Consultant shall ensure that whenever reasonably practicable insurance is effected (whether by itself or by its contractors) to cover the occurrence of Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are reasonably and practicably insurable.

## **PART F**

### **GENERAL PROVISIONS**

#### **16.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

#### **17.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the Consultant, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages, as specified under item 11 in **Appendix 6** of this Agreement.
- (b) 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 days (14).

#### **18.0 GOVERNING LAW**

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

## **19.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The Consultant shall comply with all applicable laws and regulations in Malaysia and all statutory requirements, standards and guidelines, regulating or relating to the conduct, trade, business of it's profession and shall be fully and solely liable for the provisions of the Services.
- (b) The Consultant shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **20.0 SEVERABILITY**

If any provision of this Agreement is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Agreement such provision shall be fully severable and this Agreement shall be construed as if such illegal or invalid provision had never comprised as part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by its severance from this Agreement.

## **21.0 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties and none of them shall have any authority to bind the other in any way nor shall this Agreement be construed to constitute any party the agent of the other party.

## **22.0 ADVERTISEMENT**

No advertisement in respect of this Agreement shall be published by the Consultant or with the Consultant's authority in the newspaper, magazine or in any forms of advertisement without prior written approval of the Government.

## **23.0 TIME**

Time wherever mentioned, shall be of the essence of this Agreement.

## **24.0 COSTS AND STAMP DUTY**

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

## **25.0 INCOME TAX**

- (a) The Consultant and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.

- (b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

## **26.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another. However, if there is any ambiguity or discrepancy –

- (a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or
- (b) in the Appendices of this Agreement, the GR and Consultant shall reach a mutual understanding to resolve the ambiguity or discrepancy.

## **27.0 WAIVER**

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

## **28.0 CUSTODY OF AGREEMENT**

This Agreement shall be prepared in both original and certified duplicate copy. The original of this Agreement shall remain in the custody of the Government and shall be made available at all reasonable times for the inspection of the Consultant. The duplicate copy shall be kept by the Consultant.

## **29.0 SUCCESSORS BOUND**

This Agreement shall be binding upon each of the Parties hereto and their respective successors in title.



**PART G**

**SPECIAL PROVISIONS**

*[ NOTE : WHERE THERE IS A NEED FOR SPECIAL CONDITIONS OVER AND ABOVE THE GENERAL CONDITIONS, THIS SECTION IS TO BE INSERTED BY THE RELEVANT AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE LEGAL ADVISORS. OTHERWISE THIS PAGE TO BE LEFT AS SUCH ABOVE ]*

- None -

**SIGNATORIES TO THE AGREEMENT**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and the year first hereinbefore appearing.

SIGNED for and on behalf of  
**THE GOVERNMENT** ) .....(Signature).....  
 ) (Name, Designation & Department's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

SIGNED for and on behalf of  
**THE CONSULTANT** ) .....(Signature).....  
 ) (Name, Designation & Company's Seal)

In the presence of:

.....  
Name of witness :  
NR IC No. :

**APPENDIX 1**

**APPENDIX 1 : TERMS OF REFERENCE**

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Background
2. List & Mode of Deliverables
3. Scope of Services

**APPENDIX 2**

**APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION**

[CONSULTANT'S TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION-  
TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 3**

**APPENDIX 3 : LETTER OF ACCEPTANCE**

[THE LETTER OF ACCEPTANCE SHALL INCLUDE THE SIGNING PAGE AND EXECUTED BY THE CONSULTANT - TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 4****APPENDIX 4 : DELIVERABLES**

[TO BE INSERTED BY RELEVANT AGENCY]

<b>No.</b>	<b>Deliverables Stages</b>	<b>Details</b>	<b>Due Date of Submission</b>
1.			
2.			

**APPENDIX 5A**

**APPENDIX 5A : SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 5B**

**APPENDIX 5B : CONSULTING FEES**

[DETAILED BREAKDOWN/CALCULATION OF FEES-  
TO BE INSERTED BY RELEVANT AGENCY]



**APPENDIX 5C**

**APPENDIX 5C : OUT OF POCKET EXPENSES**

[DETAILED BREAKDOWN/CALCULATION OF OUT OF POCKET EXPENSES-  
TO BE INSERTED BY RELEVANT AGENCY]

## APPENDIX 6

## APPENDIX 6 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	..... date to be inserted by Agency
2.	3.1	Contract period	..... week/month/year
3.	3.1	Contract Expiry date	..... date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	.....week/month/year prior to Contract Expiry Date
5.	1.1(c), 5.12(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	..... designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	..... days to be inserted by Agency
7.	6.4(c)	Consultant's bank account details for purposes of payment	Name: ..... Account No.:..... Bank Address:.....
8.	14(d)	Period for Consultant to submit statement of final account for the Services and supporting documentation to GR	.....months from the date of suspension or termination
9.	14(e)	Period for GR to verify the statement of account and supporting documentation.	..... months from the date of receipt from the Consultant
10.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: $\text{LAD} = \frac{\% \text{ BLR}}{100} \times \frac{\text{Fees}}{365}$ (subject to a minimum of RM100/- per day)	RM...../day
11.	17(a)	a) <u>For the Government</u>  b) <u>For the Consultant</u>	a) Official Designation: Address: Fax No. : Tel. No : Email :  b) Name of Firm : Address : Fax No. : Tel No.: Email :

**APPENDIX 7**

**APPENDIX 7 : SERVICES IMPLEMENTATION SCHEDULE**

[TO INCLUDE DUE DATE(S) OF SPECIFICALLY IDENTIFIED DELIVERABLES-  
TO BE INSERTED BY RELEVANT AGENCY]

No	Deliverable stages	List of activities	Period of Implementations according to activities	Start Date (according to activities)	End Date (according to activities)

OR

**GANTT CHART**

**APPENDIX 8****APPENDIX 8 : CONSULTANT'S PERSONNEL**

[TO BE INSERTED BY RELEVANT AGENCY]

<b>No</b>	<b>Name of Personnel (inclusive of owner &amp; principal)</b>	<b>Role in Team</b>	<b>Number of Years of Working Experience</b>	<b>Age</b>	<b>Employment Status with the firm (Permanent/ Temporary)</b>	<b>Full Name of Highest Academic Qualification (specify name of university)</b>	<b>Professional Certificates (list name of certificate and membership no. (if any))</b>

**APPENDIX 9**

**APPENDIX 9 : CONSULTANT’S PERSONNEL TIME INPUT SCHEDULE  
(IF APPLICABLE)**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Name of Personnel Involved in each stages	Total Time Input by each personnel and according to deliverable stages	Start Date (work commenced by each personnel)	End Date (work ended by each personnel)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 10**

**APPENDIX 10 : CONSULTANT'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 11**

**APPENDIX 11 : SCHEDULE OF PAYMENT**

[BREAKDOWN OF SCHEDULED PAYMENT BY STAGES/PHASES OR MONTHS-  
TO BE INSERTED BY RELEVANT AGENCY]