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**EXHIBITS**

- 1 EXHIBIT I - SCOPE OF WORKS**
- 2 EXHIBIT II – CONTRACT PRICE**
- 3 EXHIBIT III (a) - THE COMPANY'S REPRESENTATIVE**
- 4 EXHIBIT III (b) - THE CONTRACTOR'S REPRESENTATIVE**



Now, therefore, for and in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

#### **ARTICLE 1 - CONTRACTS DOCUMENTS**

- 1.1 The following documents together constitute this CONTRACT:
  - 1.1.1 **ARTICLES 1- 45 (inclusive)**
  - 1.1.2 **EXHIBIT I - SCOPE OF WORKS**
  - 1.1.3 **EXHIBIT II - CONTRACT PRICE**
  - 1.1.4 **EXHIBIT III (a) - THE COMPANY'S REPRESENTATIVE**
  - 1.1.5 **EXHIBIT III (b) - THE CONTRACTOR'S REPRESENTATIVE**
- 1.2 In the event of any ambiguity, inconsistency or conflict between the ARTICLES and EXHIBITS listed above, the ARTICLES shall take precedence and prevail over the Exhibits.
- 1.3 In the event of any ambiguity, inconsistency or conflict between the provisions of the Exhibits, the COMPANY shall decide the order of prevalence amongst the Exhibits.
- 1.4 All standards, codes, specifications, drawings, instructions and other documents, which are referred to in the Exhibits, shall be deemed incorporated herein by reference and made a part of the CONTRACT.
- 1.5 None of the documents abovementioned shall be used by the CONTRACTOR for any purpose other than this CONTRACT.

#### **GENERAL TERMS AND CONDITIONS**

#### **ARTICLE 2 - DEFINITIONS AND INTERPRETATIONS**

The following expressions shall apply to this CONTRACT except where the context otherwise requires:

- 2.1 **"AFFILIATES"** means any company or entity that directly or indirectly through one or more intermediary, controls or is controlled by or is under common control with a Party to this CONTRACT. "Control" in this context means ownership of more than fifty percent (50%) of the voting stock of the controlled company.
- 2.2 **"CONTRACT PRICE"** means the agreed amount or price to be payable to the CONTRACTOR as stated in the relevant ORDER, which shall be in accordance with **EXHIBIT 2 – CONTRACT PRICE**.
- 2.3 **"APPLICABLE LAWS"** means with respect to any person, any foreign, national, federal, state, local, municipal or other law, statute, constitution, resolution, ordinance, code, permit, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any GOVERNMENTAL AUTHORITY and any orders, writs, injunctions, awards, judgments and decrees applicable to such person or its subsidiaries, their business or any of their respective assets or properties.
- 2.4 **"BENEFICIARY"** or **"BENEFICIARIES"** means the recipient(s) of the GOODS as identified and notified by the COMPANY.

- 2.5 “**CHANGE NOTICE**” means a document or any written notification to be issued by the CONTRACTOR to the COMPANY for approval, before embarking into any changes to the CONTRACT, advising the COMPANY on the proposed change with full justification along with indicative costs estimate and notification of schedule impact.
- 2.6 “**COMPANY**” means the YAYASAN PETRONAS.
- 2.7 “**COMPANY REPRESENTATIVE**” means the person authorised by the COMPANY as stipulated in **EXHIBIT III(a) - THE COMPANY’S REPRESENTATIVE**.
- 2.8 “**CONFIDENTIAL INFORMATION**” means INTELLECTUAL PROPERTY, all documents, manuals, drawings, specifications, letters, facsimile or any other material containing any information or records, whether marked confidential or otherwise, whether or not related to the WORKS, at any one time disclosed to the CONTRACTOR by or on behalf of the COMPANY in writing, drawing, computer program or in any other way or acquired by the CONTRACTOR from the COMPANY including data derived therefrom to the extent that such knowledge and information at the time of such disclosure or acquisition is not:-
- 2.8.1 already in possession of the CONTRACTOR; or
  - 2.8.2 part of or become part of public knowledge or literature; or
  - 2.8.3 received by the CONTRACTOR from a third party having no obligation of secrecy with respect thereto.
- 2.9 “**CONTRACT**” means this agreement entered into between the COMPANY and the CONTRACTOR for the WORKS in accordance with the terms and conditions contained herein including all ARTICLES, EXHIBITS and any other documents attached hereto or incorporated by reference including any subsequent amendments to them.
- 2.10 “**CONTRACT PERIOD**” means the period as stated in **ARTICLE 5 – CONTRACT PERIOD**.
- 2.11 “**CONTRACTOR**” means the party entering into this CONTRACT with the COMPANY and may include its directors, shareholders, employees, representatives, agents, SUB-CONTRACTOR (if applicable), successors in title and permitted assigns.
- 2.12 “**CONTRACTOR REPRESENTATIVE**” means the person authorised by the CONTRACTOR as stipulated in **EXHIBIT III(b)**.
- 2.13 “**EFFECTIVE DATE**” means the date of this CONTRACT.
- 2.14 “**GOODS**” means the equipment, materials or products to be procured by the COMPANY whether through purchase, rental, lease or such other form, as the case may be pursuant to the supply of GOODS as expressly set forth in this CONTRACT, which is more particularly described in **EXHIBIT I – SCOPE OF WORKS** and shall exclude CONTRACTOR’s equipment.
- 2.15 “**GROSS NEGLIGENCE**” means any act or failure to act (whether sole, joint or concurrent) by any person or entity which was in reckless disregard of or in wanton indifference to, which cause harmful consequences that such person or entity knew, or should have known, such act or failure would have, including on the safety or property of another person or entity.
- 2.16 “**INTELLECTUAL PROPERTY**” means any copyright, patent, design, trademark, application to register any of the aforementioned rights, trade secrets, rights in know-how, and any other intellectual or industrial property right of any nature whatsoever subsisting in any part of the world.

- 2.17 “**ORDER**” means a Purchase order, Release order, Service order, Work order or other similar document issued by the COMPANY to the CONTRACTOR, as the case may be during the term of this CONTRACT PERIOD requisitioning the supply of the GOODS. Each ORDER shall be deemed to have incorporated the terms and conditions of this CONTRACT.
- 2.18 “**SUB-CONTRACT**” means any contract between the CONTRACTOR and the SUB-CONTRACTOR, as approved in writing by the COMPANY, for the performance of any part of the supply of GOODS.
- 2.19 “**SUB-CONTRACTOR**” means any party or parties registered and/or licensed by the COMPANY, that has or have entered into a contract with the CONTRACTOR as its SUB-CONTRACTOR (as approved in writing by the COMPANY) for the performance of any part of the supply of GOODS.
- 2.20 “**TAX**” or “**TAXES**” include but shall not be limited to all income, profit, withholding tax, franchise, excess profits, royalty, other taxes, personal property taxes, employment taxes and contributions, imposed or that maybe imposed by law, regulations or trade union contracts, which are enforced by or on behalf the Inland Revenue Board (IRB) or of any taxing authorities and includes penalties, interest and/or fines in respect thereof based on the Income Tax Act 1967 or any Malaysian tax legislation applicable during the duration of the CONTRACT, excluding Custom Charges and stamp duty.
- 2.21 “**SITE**” means the places before the delivery of the GOODS as specified **IN EXHIBIT I - SCOPE OF WORK** or any other places as may be instructed by the COMPANY.
- 2.22 “**WORKS**” means the provision of services to supply the GOODS, to be performed and rendered by the CONTRACTOR, as expressly set forth in this CONTRACT, which is more particularly described in EXHIBIT I – SCOPE OF WORKS attached herein.
- 2.23 Interpretations
- 2.23.1 All headings, indexes, titles, subtitles, subheadings, words that are bold, italicised, capitalised or otherwise emphasised are for ease of reference only and such emphasis should not be taken into consideration in the interpretation or construction of this CONTRACT.
- 2.23.2 Words importing the singular only also include the plural and vice versa where the context so requires.
- 2.23.3 Words denoting a natural person include any body or person corporate or incorporated.
- 2.23.4 The terms “hereof”, “herein”, “hereby”, “hereto” and similar words refer to this CONTRACT and not any particular ARTICLE, EXHIBIT or any other subdivision of this CONTRACT.
- 2.23.5 The words “include” or “including” shall be deemed to be followed with “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import.
- 2.23.6 References to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted.
- 2.23.7 References to documents or other instruments include all amendments and replacements thereof and supplements thereto.

- 2.23.8 References to persons include their successors and any permitted transferees and assigns.
- 2.2.1 No rule of construction shall apply to the detriment of any Party by reason of that Party having control and/or was responsible for the preparation of this CONTRACT or any part thereof.
- 2.2.2 All accounting terms used herein shall be interpreted and all accounting classifications and determinations hereunder shall be made in accordance with approved accounting standards which have been issued and adopted from time to time by the Malaysian Accounting Standards Board or in accordance with accounting principles generally accepted in Malaysia.
- 2.2.3 Whenever this CONTRACT refers to a number of days, such reference shall be to calendar days unless Business Days are specified. "Business Day" shall mean the day the COMPANY is open for business and operation.
- 2.2.4 In carrying out its obligations and duties under this CONTRACT, the Parties shall have an implied obligation of good faith.
- 2.2.5 Each of the attachments, annexes, Exhibits and schedules attached or referred hereto shall form an integral part of this CONTRACT.
- 2.2.6 "month" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month (and references to "months" shall be construed accordingly) save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next Business Day. If any such period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that later month save as aforesaid.

### **ARTICLE 3 - RESPONSIBILITY OF CONTRACTOR TO INFORM ITSELF**

- 3.1 The CONTRACTOR shall be deemed to have:
  - 3.1.1 Carefully read this CONTRACT documents and/or any ORDER issued by the COMPANY to determine all the necessary services, labor, equipment and materials required for the performance of the WORKS;
  - 3.1.2 Familiarise itself with the SITE, any restrictions applicable to or associated with the SITE whether imposed by any party and all ingress and egress from it;
  - 3.1.3 Ascertain for itself any other information or data which may be necessary and/or incidental to the proper performance of its obligations under the CONTRACT and/or the ORDER; and
  - 3.1.4 Obtain for itself in advance a full understanding and knowledge of the work, the surrounding environment and the conditions under which the work shall be carried out.
- 3.2 Any information that the COMPANY decides to give to the CONTRACTOR shall be information that is reasonably available to the COMPANY at the material time. The CONTRACTOR shall interpret and apply such received information for the performance of the work.

- 3.3 No additional payment beyond the AGREED PRICE shall be paid to the CONTRACTOR due to the CONTRACTOR's lack of understanding and knowledge of the work, which a reasonably prudent contractor should have determined and understood in advance, or due to CONTRACTOR's incorrect conclusions or misinterpretations of any data or information. The CONTRACTOR shall not be relieved of any risk or obligation imposed under this CONTRACT on the grounds that it did not or could not foresee any matter which may in fact affect or has affected the execution of the work.
- 3.4 Any failure by the CONTRACTOR to take account of matters which may affect work shall not relieve the CONTRACTOR from its obligations under this CONTRACT.

#### **ARTICLE 4 - RESPONSIBILITY OF CONTRACTOR TO INFORM THE COMPANY**

- 4.1 The CONTRACTOR shall notify the COMPANY without undue delay of all things that are or may appear to be:
- 4.1.1 In conflict with APPLICABLE LAW and/or COMPANY's requirement and/or guidelines including but not limited to COMPANY's registration and/or licensing requirements; or
  - 4.1.2 Deficiencies, omissions, contradictions, mistakes or ambiguities in this CONTRACT.
- 4.2 Failure to notify the COMPANY of deficiencies, omissions, contradictions, mistakes or ambiguities in the CONTRACT shall be deemed to be the CONTRACTOR's confirmation that there are no deficiencies, omissions, contradictions, mistakes or ambiguities in this CONTRACT. However, if the COMPANY does receive such notice, the COMPANY will review these items and issue the necessary confirmations before the CONTRACTOR proceeds with any part of the WORKS affected. The CONTRACTOR shall not proceed with the WORKS affected prior to receiving such confirmations. Such confirmations given by the COMPANY shall not amount to a change order and the CONTRACTOR shall not be entitled to any extension of time or extra payment or cost in respect thereof.
- 4.3 The CONTRACTOR shall notify the COMPANY immediately of any impending or actual stoppages of the WORKS, industrial disputes or other matters affecting or are likely to affect the performance of the WORKS.
- 4.4 The CONTRACTOR shall keep the COMPANY fully informed of the progress of the WORKS and shall comply with the reporting requirements as set out by the COMPANY.
- 4.5 Without prejudice against the foregoing, the CONTRACTOR shall request in a timely manner any information it reasonably requires from the COMPANY for the performance of the WORKS and the COMPANY shall use its reasonable endeavors to respond within a reasonable time to such request.
- 4.6 The CONTRACT is placed on the understanding that component parts, or identical replacement of the GOODS will be available to the COMPANY throughout the CONTRACT PERIOD. In the event of spares becoming obsolete or no longer made available in the market, the CONTRACTOR shall, as soon as reasonably practicable, notify the COMPANY in writing of alternatives or substitutes, to address the issue of non-availability of spares.

## **ARTICLE 5- CONTRACT PERIOD**

- 5.1 This CONTRACT shall commence on the **EFFECTIVE DATE** and shall continue in force for a period of twenty-four (24) months (hereinafter referred to as the "**CONTRACT PERIOD**"), unless terminated earlier pursuant to **ARTICLE 21 -TERMINATION**.
- 5.2 Notwithstanding Clause 5.1 above, the COMPANY shall have the option to extend the CONTRACT PERIOD (hereinafter referred to as the "**EXTENDED PERIOD**") for a further period of twenty-four (24) months + twenty-four (24) months or any other period by providing the CONTRACTOR one (1) month prior written notice prior to the expiry of the CONTRACT PERIOD. Such extension shall be subject to the same terms and conditions contained in this CONTRACT.

## **ARTICLE 6- CONTRACT PRICE**

- 6.1 The CONTRACT PRICE for the performance of the supply of GOODS shall be as stated in **EXHIBIT II – CONTRACT PRICE** and shall remain firm and valid throughout the CONTRACT PERIOD, and/or any extension periods thereto. The CONTRACT PRICE shall not be subject to change for any reason whatsoever including, but not limited to, cost escalation, currency fluctuations or minimum order size/tonnage.
- 6.2 Subject to the agreement by both Parties, the CONTRACT PRICE shall not be subjected to change and/or variations for any reason whatsoever during the CONTRACT PERIOD. For avoidance of doubt, either Party may request to change and/or revise the CONTRACT PRICE at the maximum amount of five per centum (5%) or the prevailing market rate, whichever lower, from the CONTRACT PRICE in the following event:
- 6.2.1 Fluctuations / reduction in the ceiling price of GOODS as set out by the GOVERNMENTAL AUTHORITY; or
- 6.2.2 If the CONTRACT is extended throughout the EXTENDED PERIOD.
- 6.3 Unless specifically excluded, all prices shall be in **RINGGIT MALAYSIA** and shall be deemed to be inclusive of labour, material handling, packaging and other related charges and services necessary for the successful performance and completion of the supply of GOODS.

## **ARTICLE 7- INVOICING AND PAYMENTS**

- 7.1 The CONTRACTOR shall send the service confirmation to the COMPANY for the supply of GOODS as specified in this CONTRACT for the COMPANY REPRESENTATIVE's approval.
- 7.2 Service confirmation must be supported by the delivery orders to fully support such reimbursement for verification thereof by the COMPANY.
- 7.3 The COMPANY may dispute and reject any service confirmation notification that does not fulfil the COMPANY's verification requirements.
- 7.4 The supply of GOODS shall be considered as complete once the COMPANY has accepted the service confirmation.
- 7.5 The CONTRACTOR shall then submit the Payment Request together with the relevant invoice(s) via SMART GEP portal and/or any other platform as may be required by the COMPANY or as otherwise agreed between the Parties from time to time.

- 7.6 Payments shall be made by the thirtieth (30<sup>th</sup>) day after receipt date of the Payment Request complete with the invoice by the COMPANY (date of receipt excluded). If the thirtieth (30<sup>th</sup>) day falls on Saturday, Sunday or a gazetted public holiday, the next working day shall be deemed to be the due date for payment.
- 7.7 Notwithstanding the above, the COMPANY may withhold payments of the invoice in the event that it is of the opinion that further verifications are required.
- 7.8 Payments due to the CONTRACTOR may be withheld by the COMPANY on account of the following:
- a. breach and/or unsatisfactory performance of the WORKS under this CONTRACT;
  - b. the filing of claims against the COMPANY caused by acts or omissions of the CONTRACTOR or failure of the CONTRACTOR;
  - c. failure to submit or maintain valid Insurance Policies; or
  - d. failure of the CONTRACTOR to pay amounts when due for the work/facilities used by the CONTRACTOR in performing the WORKS or amounts due to CONTRACTOR's SUB-CONTRACTOR on the WORKS.
  - e. If and when the cause for withholding any such payment has/have been remedied by the CONTRACTOR and satisfactory evidence of such remedy has been presented to the COMPANY, the payments withheld shall be released by the COMPANY.
- 7.9 If and when the cause for withholding any such payment is not remedied by the CONTRACTOR, the COMPANY shall then have the right to deduct any monies due to the CONTRACTOR. For **ARTICLE 7.8(d)**, the COMPANY may, as the case maybe, make payments directly to the SUB-CONTRACTOR. Such payment shall be deemed to be a payment made to the CONTRACTOR by the COMPANY under this CONTRACT.
- 7.10 Payments under the CONTRACT, applicable SUB-CONTRACT or ORDER will be made by the COMPANY into the bank account of the CONTRACTOR specified in the CONTRACT or otherwise notified by the CONTRACTOR.
- 7.11 In the event the CONTRACTOR is non-SST registrant, then for the purposes of converting such other currency to enable payment to be made in RM, the rate of exchange to be used shall be the Bank Negara Malaysia selling rate of exchange prevailing in Malaysia at the date of the invoice. If such day falls on a day where the rate is not available, the last rate quoted before such day shall be used.
- 7.12 All bank charges pertaining to the payment shall be borne by the CONTRACTOR.
- 7.13 Upon notification of any erroneous billings made by or payments made to the CONTRACTOR by the COMPANY, the CONTRACTOR shall, within fourteen (14) days, issue a credit or debit note and refund to the COMPANY any amount of overpayment. Until the required credit or debit note is issued, the COMPANY shall withhold any payments due to the CONTRACTOR.
- 7.14 Payments made by the COMPANY under this CONTRACT shall not preclude the right of the COMPANY to thereafter dispute any of the items invoiced and in no event shall any such payments affect the warranty obligations by the CONTRACTOR. Any payments made shall be without prejudice to any other rights or remedies available to the COMPANY.

- 7.15 All Service Notification, INVOICES or financial statements/settlements, and billings by the CONTRACTOR to the COMPANY shall reflect properly the facts relating to all activities and transactions handled for the COMPANY's account.

## **ARTICLE 8 - TAXES AND SERVICE TAX**

### 8.1 Taxes

8.1.1 The CONTRACTOR shall be responsible for and shall pay at its own expense when due and payable all TAXES assessed against it in connection with the CONTRACT. All TAXES levied on the CONTRACTOR shall be for the account of the CONTRACTOR and shall not be reimbursed by the COMPANY.

8.1.2 The CONTRACTOR shall protect and indemnify the COMPANY and hold the COMPANY safe and harmless from any and all claims or liability for TAXES assessed or levied by the Inland Revenue Board of Malaysia (IRB), whichever is applicable against the CONTRACTOR or its SUB-CONTRACTOR or against the COMPANY for or on account of any payment made to or earned by CONTRACTOR in connection with this CONTRACT.

The CONTRACTOR further shall protect and hold the COMPANY harmless from all TAXES assessed or levied against or on account of wages, salaries or other benefits paid to or enjoyed by the CONTRACTOR's employees, or employees of its SUB-CONTRACTOR, and all TAXES assessed or levied against, on or for account of any property or EQUIPMENT of the CONTRACTOR or its SUB-CONTRACTOR.

8.1.3 The COMPANY shall have the right to withhold TAXES from payments due to the CONTRACTOR under this CONTRACT to the extent that such withholding may be required by the IRB or relevant tax authorities, and payment by the COMPANY to the IRB or relevant tax authorities of the amount of money so withheld will relieve the COMPANY from any further obligation to the CONTRACTOR with respect to the amount so withheld. If the CONTRACTOR is under the opinion that the payment should not be subject to withholding tax in Malaysia, the CONTRACTOR shall submit to COMPANY a letter from IRB or the relevant tax authorities confirming that CONTRACTOR is a resident in Malaysia, failing which the COMPANY shall consider the CONTRACTOR a non-resident in Malaysia for tax purposes until such time that the required letter is submitted to the COMPANY.

If any withholding is done, the COMPANY will provide the CONTRACTOR with official receipts or other satisfactory evidence in respect of such deduction or withholding.

8.1.4 The CONTRACTOR shall indemnify the COMPANY against all claims, demands and causes of action based on any actual TAXES for which they are liable or any actual or alleged failures by the CONTRACTOR or its SUB-CONTRACTOR to comply with applicable tax reporting, return, or other procedural requirement with respect to the CONTRACT. This indemnity shall include without limitation all penalties, awards, and judgments; court and arbitration costs; legal fees; and other reasonable expenses associated with such claims, demands, and causes of action.

8.1.5 The CONTRACTOR shall give prompt notice to COMPANY of all matters pertaining to non-payment, payment under protest or claim for immunity or exemption from any TAXES.

- 8.1.6 In the event that a refund opportunity arises with respect to any TAX paid by one party as a result of the transactions governed by this CONTRACT, both Parties shall reasonably work together to pursue such refund. If one party receives a refund or a credit for any TAX paid by the other party with respect to the CONTRACT, then the party receiving the refund or credit agrees to refund to that other party the full amount of such refund or credit.
- 8.1.7 In the event that the CONTRACTOR is a foreign incorporated company and by virtue of its activities related to the provision of services is considered to have a permanent establishment in Malaysia or in any other country, the CONTRACTOR shall be solely liable or responsible for the following:
- 8.1.7.1 Any liability for TAXES
  - 8.1.7.2 Any and all other costs incurred by the CONTRACTOR due to the creation of a permanent establishment
  - 8.1.7.3 Any tax and other filing obligation occasioned by the creation of the permanent establishment.
- 8.1.8 For avoidance of doubt, "TAX" or "TAXES" as mentioned above shall include but not limited to all income, profit, withholding tax, franchise, excess profits, royalty, other taxes, personal property taxes, employment taxes and contributions, imposed or that maybe imposed by law, regulations or trade union contracts, which are enforced by or on behalf the IRB or of any taxing authorities and includes penalties, interest and/or fines in respect thereof based on the Income Tax Act 1967 or any Malaysian tax legislation applicable during the duration of this Contract, excluding Customs Charges, Services Tax and stamp duty.

## 8.2 Service Tax

- 8.2.1 Where Service Tax is applicable to any services rendered by the CONTRACTOR under the CONTRACT, the COMPANY shall be responsible for and pay the Service Tax when invoiced by the CONTRACTOR for taxable services rendered in accordance with the CONTRACT, provided that the CONTRACTOR shall provide the COMPANY a copy of valid Service Tax registration approval letter issued by the GOVERNMENTAL AUTHORITY confirming that the CONTRACTOR is registered under the applicable Act as a taxable person providing taxable services. The CONTRACTOR shall also provide the COMPANY the applicable Service Type Code for each of the taxable services provided.
- 8.2.2 Service Tax amount shall be separately stated from the prices and/or rates and shall be separately itemised in the invoice.
- 8.2.3 The CONTRACTOR shall protect and indemnify the COMPANY and hold the COMPANY safe and harmless from any and all claims, demands and causes of action in respect of Service Tax and penalties made against the CONTRACTOR/COMPANY by the GOVERNMENTAL AUTHORITY including but not limited to award, judgments, court and arbitration costs, legal fees, and other reasonable expenses associated with such claims, demands due to the incorrect and/or inaccurate information and documents furnished by the CONTRACTOR.
- 8.2.4 For avoidance of doubt, "Service Tax" as mentioned above refers to the tax as defined in the Service Tax Act 2018 and any legislation pertaining to the same

including regulations, orders and any amendments relating thereto.

## **ARTICLE 9 - REPRESENTATIONS AND WARRANTY**

- 9.1 The CONTRACTOR represents and warrants that as at and from the EFFECTIVE DATE the following:
- 9.1.1 The CONTRACTOR is a corporation which is duly organised, validly existing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to carry on its business as now being conducted.
  - 9.1.2 The CONTRACTOR has the authority to execute and to perform its obligations under this CONTRACT and all such actions have been duly authorised by all necessary corporate action on its part.
  - 9.1.3 The execution and delivery of, and the performance by the CONTRACTOR of its obligations under this CONTRACT shall not conflict with, or result in the breach of, or constitute a default under any of the terms of constitution or bylaws of the CONTRACTOR or any applicable law or any covenant, agreement, understanding, decree, instrument or order to which the CONTRACTOR is a party or by which the CONTRACTOR or any of its properties or assets is bound or affected.
  - 9.1.4 The CONTRACTOR has access to or right of use of and owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits and rights with respect to the foregoing necessary to perform the supply of GOODS and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others.
  - 9.1.5 The CONTRACTOR has complied with all applicable laws such that it has not been subject to any fines, penalties, injunctive relief or criminal liabilities that in the aggregate have materially affected or may materially affect the business operations or financial condition or ability to perform the supply of GOODS.
  - 9.1.6 The CONTRACTOR is fully experienced and properly licensed, equipped, and in all ways competent and qualified to perform all aspects of the supply of the GOODS in accordance with the terms of this CONTRACT.
  - 9.1.7 The CONTRACTOR shall have obtained all necessary permits, consents, approval required including but not limited under the applicable law, guidelines, rules, requirements to operate or conduct its business as contemplated herein and to undertake, execute until completion of the supply of GOODS.
  - 9.1.8 The CONTRACTOR and its personnel are adequately competent, experienced, suitably qualified, in a professional manner in accordance with good industry practices and possess all the necessary and relevant qualifications, experience and expertise in respect of the supply of GOODS to be performed herein and are, therefore, competent and willing to perform the supply of GOODS in accordance with this CONTRACT.
  - 9.1.9 The CONTRACTOR shall have obtained the necessary tools and equipment in carrying out the supply of GOODS and that the CONTRACTOR shall maintain and

use such tools and equipment in accordance with the relevant manufacturer's specifications and recommendations, including good engineering and operational practices. The CONTRACTOR shall procure and be fully responsible that each of its SUB-CONTRACTOR comply with the requirement under this provision.

- 9.1.10 The CONTRACTOR is aware of all the legal requirements and business practices that must be followed and adhered to in performing the supply of GOODS and the supply of GOODS shall conform with such requirements and practices and in compliance with all applicable laws and necessary permits.
  - 9.1.11 The CONTRACTOR is solvent with good financial standing and is able to pay all related debts and expenses, and with adequate capital to carry on its business and to execute the supply of GOODS until completion in accordance with the terms and conditions of this CONTRACT.
  - 9.1.12 The supply of GOODS when completed shall be free from any liens and/or encumbrances.
- 9.2 The representations and warranties in **ARTICLE 10.1** are taken to be also made on each date on which any ORDER is issued by the COMPANY after the date of this CONTRACT.

#### **ARTICLE 10- OBLIGATIONS OF CONTRACTOR**

- 10.1 The CONTRACTOR shall comply with and perform all **EXHIBIT I- SCOPE OF WORKS** throughout the CONTRACT PERIOD and shall supply the GOODS in compliance with the provisions of the CONTRACT and shall comply with and adhere to the COMPANY's instructions and directions on any matter concerning the supply of the GOODS provided or made by the COMPANY for carrying out the supply of the GOODS.
- 10.2 The CONTRACTOR shall perform the supply of GOODS in accordance with good principles and accepted professional standards with due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of work to be carried out under the CONTRACT and shall meet the intents and objectives of this CONTRACT.
- 10.3 The CONTRACTOR shall provide efficient and suitably qualified and experienced personnel in sufficient numbers to perform the supply and delivery of GOODS for each ORDER. For the purposes of this ARTICLE, "sufficient" shall mean such number of personnel as is reasonably necessary to ensure the timely, safe and proper delivery of the GOODS in accordance with this CONTRACT, taking into account the nature, volume and handling requirements of the GOODS, and without causing delay or risk to persons or property.
- 10.4 The CONTRACTOR shall have complete control of all its personnel engaged for the performance of the supply of GOODS and shall ensure that all of its personnel shall comply with all the COMPANY's applicable rules and regulations, policies, requirements and guidelines as updated by the COMPANY from time to time.
- 10.5 The CONTRACTOR shall act as an independent contractor with respect to the supply of GOODS and neither the CONTRACTOR nor any of the CONTRACTOR's personnel, servants, representatives or agents shall be deemed to be personnel, servants, representatives or agents of the COMPANY during the performance of the supply of GOODS.
- 10.6 The CONTRACTOR shall perform the supply of GOODS in accordance with the terms and

conditions of this CONTRACT and in such manner as will always safeguard and protect the COMPANY's interests. The CONTRACTOR shall instruct and ensure that its personnel adhere to the requirements of this provision.

- 10.7 The CONTRACTOR shall be responsible for the payment of wages, salaries, bonus, overtime and any other allowances reasonably earned by its personnel and shall make all appropriate deductions from their salaries in respect of any employee contributions, and the CONTRACTOR hereby indemnifies the COMPANY against any liability in respect thereof.
- 10.8 The CONTRACTOR and its personnel shall pay all taxes properly and lawfully assessed or imposed on the CONTRACTOR or its personnel in connection with the supply of GOODS. For the purpose of this ARTICLE, "tax" includes any tax, duty or charge and any penalty or interest thereon and any other costs and charges whatsoever assessed or imposed by the Government of Malaysia or any relevant authority having jurisdiction in respect of the matter.
- 10.9 The CONTRACTOR shall ensure that its personnel comply with any reasonable requests or instructions given by the COMPANY under the provisions of this CONTRACT and in particular with any safety and/or security regulations or instructions which are enforced from time to time at the SITE where the CONTRACTOR's personnel are performing their duties under this CONTRACT.
- 10.10 The CONTRACTOR shall perform and complete its obligations towards any person employed by the CONTRACTOR, for the purpose of the supply of GOODS.
- 10.11 The CONTRACTOR shall not in any way be relieved from its obligations under the CONTRACT in any of the following instances:-
- i. Technical information obtained from the COMPANY or other sources being incorrect and/or insufficient; or
  - ii. By reason of any approvals, consents, instructions, comments, advice and the like given by or on behalf of the COMPANY acting on the advice of the CONTRACTOR.
- 10.12 The CONTRACTOR shall take full responsibility for the adequacy, stability and safety of all operations and methods necessary for the performance of the supply of GOODS.
- 10.13 The CONTRACTOR shall timely mobilise its personnel and equipment to the SITE and shall execute, perform, carry out effect performance of the supply of GOODS on or before the stipulated completion and/or delivery date as stated in the CONTRACT.
- 10.14 The CONTRACTOR shall comply with and shall be deemed to be aware of applicable laws, rules and regulations in force/effect at the time of execution of this CONTRACT and shall keep itself informed of future law, rules and regulations which affect the Parties, supply of GOODS (of which CONTRACTOR undertakes to advise COMPANY accordingly without undue delay).

#### **ARTICLE 11- OBLIGATIONS AND RIGHTS OF COMPANY**

- 11.1 The COMPANY shall be responsible for making all payments for completed WORKS and/or ORDER to CONTRACTOR in accordance with the provisions of **ARTICLE 7 – INVOICING AND PAYMENTS** and **EXHIBIT II – CONTRACT PRICE**.
- 11.2 The COMPANY shall have the authority to stop the supply of GOODS at any stage and at any time during the performance of this CONTRACT, whenever such stoppage is, in the sole opinion of the COMPANY, is necessary. The COMPANY shall have the right to order remedial action or removal and replacement or repair of any part of the supply of GOODS which does not meet

the requirements of this CONTRACT.

- 11.3 The COMPANY shall, at all reasonable times, have access to the CONTRACTOR's premises to inspect the supply of GOODS. The CONTRACTOR shall arrange and provide assistance for such access and inspection to determine whether such supply of GOODS meets the requirements of this CONTRACT.
- 11.4 If any of the CONTRACTOR's personnel is found unfit by the COMPANY to perform the supply of GOODS due to incompetence, breach of regulations or by specific request to be replaced with reason, the CONTRACTOR shall, upon receipt of a written request from the COMPANY, remove the relevant personnel and within a period of five (5) days of such removal or any other period otherwise agreed by both Parties, replace the said personnel with another personnel to be approved by the COMPANY. The cost of removal and replacement shall be borne by the CONTRACTOR.

#### **ARTICLE 12- NO REPRESENTATION ON BEHALF OF THE COMPANY**

- 12.1 The CONTRACTOR is an independent contractor and neither the CONTRACTOR nor the CONTRACTOR's AFFILIATES are deemed to be agents or employees of the COMPANY.
- 12.2 The CONTRACTOR shall not act or cause to do any act in the performance of the WORKS which would subject the COMPANY to liability or penalty under any laws, rules, regulations or decrees of any relevant authority.

#### **ARTICLE 13- REPRESENTATIVES OF THE PARTIES**

##### 13.1 The COMPANY REPRESENTATIVE

- 13.1.1 The COMPANY REPRESENTATIVE shall be as designated in **EXHIBIT III (a)**. Notice of any change of the COMPANY REPRESENTATIVE shall be given by the COMPANY to the CONTRACTOR in writing within a reasonable time period. The COMPANY REPRESENTATIVE is the person who shall be responsible for and is duly authorised to receive and act on behalf of the COMPANY on all matters pursuant to the terms and conditions of this CONTRACT. The COMPANY REPRESENTATIVE shall have the authority to make the final decisions for the COMPANY on all questions or disputes involving the interpretation and implementation of this CONTRACT.
- 13.1.2 The COMPANY REPRESENTATIVE shall have the right to issue instructions with respect to the CONTRACT, reject or disapprove any part of the WORKS, which does not conform to this CONTRACT, and to decide on all matters or questions which may arise relating to the performance of the WORKS and his decision shall be final and conclusive.
- 13.1.3 The COMPANY REPRESENTATIVE (or any of its authorised delegates) shall be entitled to inspect the WORKS performed hereunder and to witness and to check all related tests on the WORKS.
- 13.1.4 Notwithstanding the above, the presence of and the inspection by the COMPANY REPRESENTATIVE (or any of its authorised delegates) shall not relieve the CONTRACTOR from the CONTRACTOR's obligations and duties and shall not prejudice the COMPANY's rights under this CONTRACT and/or ORDER.

13.1.5 For avoidance of doubt, any other instructions issued by any personnel apart from the COMPANY REPRESENTATIVE shall have no effect whatsoever, until and unless confirmed in writing by the COMPANY REPRESENTATIVE.

13.2 The CONTRACTOR REPRESENTATIVE

13.2.1 The CONTRACTOR REPRESENTATIVE shall be as designated in **EXHIBIT III (b) - THE CONTRACTOR'S REPRESENTATIVE**. The CONTRACTOR REPRESENTATIVE and any assistants shall be competent and experienced and satisfactory to the COMPANY. Notice of any change of the CONTRACTOR REPRESENTATIVE shall be given by the CONTRACTOR to the COMPANY in writing within a reasonable time period and shall be subject to the prior written consent of the COMPANY.

13.2.2 The CONTRACTOR REPRESENTATIVE shall consult with the COMPANY REPRESENTATIVE in delivery, planning and coordination of the WORKS. All instruction given by the COMPANY REPRESENTATIVE consistent with the provisions of this CONTRACT and/or ORDER shall be deemed those of the COMPANY's and shall be complied with, by the CONTRACTOR.

13.2.3 The CONTRACTOR REPRESENTATIVE shall supervise, coordinate and ensure compliance of all aspects of CONTRACTOR's obligations under this CONTRACT and/or ORDER.

13.2.4 The COMPANY shall be entitled to rely on all decisions and positions of the CONTRACTOR REPRESENTATIVE as those of the CONTRACTOR's.

13.3 All instructions, notifications, agreements, authorisations, approvals and acknowledgments issued by the COMPANY REPRESENTATIVE and/or CONTRACTOR REPRESENTATIVE shall be made in writing, in accordance with **ARTICLE 35 – NOTICES**.

**ARTICLE 14 – LIENS AND CLAIMS**

14.1 The CONTRACTOR shall indemnify and hold the COMPANY harmless from and shall keep the GOODS free of all liens, claims, assessments, fines, and levies created, caused, or committed by the CONTRACTOR or its SUB-CONTRACTOR and all costs, damages, and expenses incidental thereto; including without limitation all court and arbitration costs, legal fees, and other reasonable expenses. The CONTRACTOR shall notify the COMPANY of such liens and/or claims.

14.2 The COMPANY shall have the right to retain from any payment to be made under this CONTRACT an amount sufficient to offset such liens and/or claims which the CONTRACTOR fails to discharge promptly until such lien and/or claim is proven to be invalid or is satisfied, discharged, or settled.

14.3 Should there be any liens and/or claims after all payments hereunder have been made, the CONTRACTOR agrees to refund to the COMPANY upon demand all monies that the COMPANY may be compelled to pay to discharge any such liens and/or claims in consequence of CONTRACTOR's default including all costs and legal and/or professional fees.

14.4 The CONTRACTOR shall indemnify and hold the COMPANY harmless from and against all claims, demands, damages, losses, costs, proceedings, charges, and expenses arising out of or incurred in connection with any claims or liens asserted by the CONTRACTOR's SUB-

CONTRACTOR, suppliers, or any other liens and claims arising out of the performance of this CONTRACT by the CONTRACTOR.

## **ARTICLE 15 - HEALTH, SAFETY AND ENVIRONMENT REQUIREMENTS**

15 The CONTRACTOR shall comply with all applicable Health, Safety and Environment (“HSE”) rules, laws and regulations pertaining to safety, health, environment protection and fire protection, which are applicable to the SITE. The CONTRACTOR shall also comply at all times with the requirements as set forth by the COMPANY in its Health, Safety and Environment Management System (“HSEMS”), policies, operating standards, site HSE requirements, COMPANY Zero Tolerance Rules (“ZeTo”) and any special instructions and all requirements stipulated in this CONTRACT. These requirements are intended to supplement any known or ought to be known laws and regulations applicable at the SITE. The CONTRACTOR shall take all necessary HSE control and recovery measures related to or arising out of the performance of this CONTRACT in order to protect the WORKS, the personnel and property of the COMPANY, the CONTRACTOR, SUB-CONTRACTOR, all third Parties and public from the hazards and risks associated with the planning and execution of the WORKS.

### 15.2 Default of the CONTRACTOR

The failure of the CONTRACTOR to comply with the COMPANY’s applicable Health, Safety and Environment (HSE) requirements shall be deemed as a default by the CONTRACTOR and shall constitute a breach of this CONTRACT.

### 15.3 Right to Stop Work on HSE Ground

The COMPANY shall have the right to prohibit commencement of the WORKS or to stop any WORKS in progress on HSE ground if (without limitation) materials, construction equipment, the CONTRACTOR’s personnel (whether procured by the CONTRACTOR from third Parties or supplied by the CONTRACTOR) or work conditions are considered to be unsafe or not in compliance with COMPANY’s HSE rules and/or requirements. In such event, the CONTRACTOR shall without reservation remove the unsafe materials, construction equipment, the CONTRACTOR’s personnel or work conditions prior to seeking the COMPANY’s permission to resume or commence the WORKS. Any costs incurred by the CONTRACTOR or the CONTRACTOR REPRESENTATIVE as a result of any delays or actions taken or required which arise in any way in connection with this ARTICLE and/or the WORKS stoppage, shall be at the CONTRACTOR’s sole expense and shall not entitle the CONTRACTOR to any compensation thereof.

### 15.4 Right to Withhold Payment on HSE Ground

15.4.1 In the event the CONTRACTOR or the CONTRACTOR REPRESENTATIVE fail to comply with any of the HSE requirements, the COMPANY shall be entitled to withhold amounts from payments due to the CONTRACTOR under this CONTRACT until the CONTRACTOR rectifies the non-compliance to the satisfaction of the COMPANY whereupon the COMPANY shall immediately release such sums withheld to the CONTRACTOR (without any interest imposed thereon).

15.4.2 In the event the CONTRACTOR fails to take appropriate remedial action or refuses to remedy or remove the causes for withholding such payments after delivery of written notice to the CONTRACTOR by the COMPANY, the COMPANY shall be entitled to cause the same to be remedied or removed on its own and may deduct the costs including the expenses thereby incurred by the COMPANY from any

amounts due or owing or which may become due or owing to the CONTRACTOR under this CONTRACT provided that this provision shall not affect any other rights or remedies to which the COMPANY may be entitled hereunder the CONTRACT or at law or otherwise for the recovery of such sums.

15.5 Consequence Management for HSE Non-Compliance

- 15.5.1 In case of HSE non-compliance committed by the CONTRACTOR's personnel which has been verified by the COMPANY, consequence management shall be applied to the CONTRACTOR's personnel.
- 15.5.2 If HSE non-compliances were repeatedly committed by the CONTRACTOR's personnel, the COMPANY shall have the right to terminate this CONTRACT in accordance with the provisions of **ARTICLE 22 – TERMINATION** of this CONTRACT and claim for any loss and/or damages suffered by the COMPANY as a result thereof.
- 15.5.3 If an incident of HSE non-compliance by the CONTRACTOR occurs and results in fatality during execution of the WORKS, the COMPANY shall have the right to terminate this CONTRACT in accordance with the provisions **ARTICLE 22 – TERMINATION**.
- 15.5.4 The above are without prejudice to any other rights and remedies of the COMPANY arising hereunder or by law or otherwise.

**ARTICLE 16- ACCEPTANCE OF THE GOODS**

- 16.1 The COMPANY shall have the right to monitor and review, from time to time, the CONTRACTOR's performance of the supply of GOODS under this CONTRACT, and the CONTRACTOR's compliance with its obligations hereunder.
- 16.2 All the GOODS under this CONTRACT shall be performed in accordance with this CONTRACT. The supply of GOODS shall only be considered as completed upon acceptance of GOODS by the COMPANY in writing.
- 16.3 Pursuant to this ARTICLE, the COMPANY REPRESENTATIVE shall be the focal person on all matters as to the performance and fulfilment of this CONTRACT.
- 16.4 Notwithstanding the above, acceptance of the GOODS, or part thereof or approval of the CONTRACTOR's activities for the GOODS, or part thereof, or partial payments made to the CONTRACTOR shall not relieve the CONTRACTOR of any of its obligations and/or liabilities under this CONTRACT. Such acceptance shall not prejudice the COMPANY's right to reject the supply of GOODS, in whole or in part, if the GOODS subsequently are found to be not in accordance with this CONTRACT, including but not limited to, whether by reason of not being of the quality or not in the quantity or measurement stipulated or being unfit for the purpose for which they are required.

Non- Performance or Defective Performance

- 16.5 If the GOODS are found to be defective, not conforming to the specifications or CONTRACTOR's representations and warranties including but not limited to non-conformance to the design, not genuine or does not fulfill or pass the tests as required by the COMPANY pursuant to this CONTRACT:

- (a) The COMPANY shall be entitled to reject the GOODS (whether wholly or partial), without affecting the rights of the COMPANY under the CONTRACT including the rejected GOODS to be replaced by the CONTRACTOR forthwith at its own costs and expense and/or terminate the CONTRACT. In the event of replacement, the CONTRACTOR shall indemnify and hold the COMPANY harmless against and from any claims, damages and/or losses attributable to the rejected GOODS for replacing such GOODS.
- (b) The CONTRACTOR shall collect and replace the rejected GOODS at the COMPANY's premise or any designated place as advised by the COMPANY, at the CONTRACTOR's own cost and risk, within the period specified in the written notification issued by the COMPANY;
- (c) The CONTRACTOR shall make necessary arrangement (including but not limited to obtaining the requisite permits, notices or approval, if any) and shall bear all costs incurred in collecting and replacing the rejected GOODS; and
- (d) The COMPANY has no obligation to keep, store, preserve, protect and secure the rejected GOODS against any risks, deterioration, loss or damage and shall not in any way be liable to the CONTRACTOR for any loss or damage to the rejected GOODS.
- (e) Presence of the rejected GOODS on the SITE and/or the COMPANY's premise due to CONTRACTOR's failure to collect within the period as specified by the COMPANY shall not create any form of acceptance of such rejected GOODS on the part of the COMPANY, for any reasons whatsoever.

16.4 If the CONTRACTOR fails to collect the rejected GOODS within the said notice period stated, the COMPANY shall have the right to:

- (a) withhold any payment due to the CONTRACTOR for the period the rejected GOODS remain uncollected;
- (b) the COMPANY shall have the right to rectify the defects or to purchase elsewhere and to claim from the CONTRACTOR for any additional expenses incurred without prejudice to any other rights which the COMPANY may have against the CONTRACTOR; or
- (c) exercise any other rights as provided for under this CONTRACT or at law.

#### **ARTICLE 17- LIQUIDATED ASCERTAINED DAMAGES**

17.1 If the CONTRACTOR fails to deliver the WORKS and/or the GOODS on or before the scheduled delivery date as stipulated in the ORDER within seven (7) days upon being notified by the COMPANY via a written notice, then it is agreed that the CONTRACTOR shall pay the COMPANY by way of liquidated and ascertained damages at the rate of 0.5% of the ORDER for each day of the delay up to the actual completion of the WORKS ("**LAD**"). The Parties hereto agree that the liquidated damages for late delivery under this ARTICLE shall be deemed a genuine pre-estimate of losses likely to be suffered by the COMPANY.

17.2 The CONTRACTOR and the COMPANY agree that the LAD shall not exceed the maximum amount of 10% of the ORDER issued or per shipment. In the event that the delay exceeds the number of days allowable within the aforementioned limit of the LAD, the COMPANY reserves its right to terminate this CONTRACT.

- 17.3 The COMPANY may, in addition to its rights under this CONTRACT, deduct the amount of such LAD from any payment due to or which may become due to the CONTRACTOR. The deduction of such LAD shall not relieve the CONTRACTOR from its obligations and liabilities under the CONTRACT.
- 17.4 The payment of LAD is in addition to and not in lieu of or substitution for any other remedy that may be available to the COMPANY under the CONTRACT and/or law in the event of delay in completion of the WORKS.

#### **ARTICLE 18- DEFAULT OF CONTRACTOR**

- 18.2 The occurrence of any of the following events shall be deemed a default by the CONTRACTOR under this CONTRACT:
- (a) The CONTRACTOR commits a breach of this CONTRACT and/or ORDER and if capable of remedy, fails to remedy that breach within thirty (30) days from the date of the notice or within the period specified in the notice from the COMPANY specifying such a breach had occurred or such other period as may be reasonably determined by the COMPANY in the circumstances failing which the COMPANY is entitled to take any action under the CONTRACT and under the law; or
  - (b) Any attempted transfer, novation or assignment by the CONTRACTOR under this CONTRACT without the prior written approval of the COMPANY; or
  - (c) The making by the CONTRACTOR of an assignment for the benefits of creditors, the filing by or against the CONTRACTOR of a petition in bankruptcy or for corporate re-organisation, or the appointment of a receiver or trustee for the CONTRACTOR or the properties of the CONTRACTOR or the CONTRACTOR becomes insolvent or suspends payment of its debts generally or is unable to pay its debt as and when the fall due or an order is made or a resolution is passed for the winding-up, liquidation and/or dissolution of the CONTRACTOR; or
  - (d) The failure of the CONTRACTOR to satisfy within thirty (30) days of its entry any judgment upon which execution is possible or the attachment of any general liens against the real or personal property of the CONTRACTOR; or
  - (e) If the CONTRACTOR or its employees, servants or agents is incompetent or has acted in a manner prejudicial to the COMPANY's best interest or has engaged in graft or any malpractices for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or executing of the CONTRACT and/or ORDER or any other contract with the COMPANY; or
  - (f) If the CONTRACTOR has failed to perform the WORKS or part thereof, in a diligent, skillful and professional manner as required herein, failed to comply with the COMPANY's safety or other rules or regulations, has produced sub-standard work, the WORKS supplied and delivered are defective or failed to adhere to any of its duties and obligations under this CONTRACT and/or ORDER; or
  - (g) If the CONTRACTOR fails, neglects or refuses to carry out its obligations under this CONTRACT and/or ORDER; or
  - (h) The failure by the CONTRACTOR to supply and deliver the WORKS and/or GOODS by the due date or failure to rectify or replace defective WORKS and/or GOODS to the

COMPANY's satisfaction within the time period stipulated herein; or

- (i) The failure by the CONTRACTOR to maintain a valid company's licence and/or registration; or
- (j) If the CONTRACTOR has failed to comply with the COMPANY's applicable Health, Safety and Environmental (HSE) rules and regulations as per **ARTICLE 15 - HEALTH, SAFETY AND ENVIRONMENT REQUIREMENTS**; or
- (k) If the CONTRACTOR has failed to acquire the requisite insurance under **ARTICLE 20-INSURANCES**.

18.3 In the event that a default is capable of remedy, the COMPANY shall notify the CONTRACTOR of the occurrence of the default and the CONTRACTOR shall be required to remedy the default (or overcome its effects) within the period specified in the notice (which COMPANY will determine, acting reasonably).

18.3 The CONTRACTOR shall inform the COMPANY in writing of the effects of its default and of the measures it intends to take in order to remedy the default within the specified period for remedy.

18.4 All the costs borne by the COMPANY as a result of the CONTRACTOR's default shall be reimbursed by the CONTRACTOR, which, where applicable, shall include any additional cost incurred by the COMPANY in engaging a third-party service provider to complete the WORKS and any associated delays.

18.5 In addition to the termination rights that the COMPANY may have herein, the COMPANY shall, without prejudice to any other rights it may have, withhold any payments due to the CONTRACTOR as per **ARTICLE 7 – INVOICING AND PAYMENTS**, suspend the WORKS (full or partial) as per **ARTICLE 21 – SUSPENSION OF WORKS** and/or terminate the CONTRACT as per **ARTICLE 22 - TERMINATION** herein.

## **ARTICLE 19- LIABILITIES AND INDEMNITIES**

For the purposes of this ARTICLE, the COMPANY shall mean the COMPANY, its AFFILIATES and shall include its and its respective directors, officers and employees.

### 19.1 Personnel of the COMPANY

The COMPANY shall be liable for and shall protect, defend, indemnify and hold harmless the CONTRACTOR from and against any and all claims, liabilities, costs, damages and expenses of every kind and nature, with respect to injury or death or damage to or loss of property of any person employed by the COMPANY, howsoever arising save for GROSS NEGLIGENCE and/or WILFUL MISCONDUCT of the CONTRACTOR.

### 19.2 Personnel of the CONTRACTOR

The CONTRACTOR shall be liable for and shall protect, defend, indemnify and hold harmless the COMPANY from and against any and all claims, liabilities, costs, damages and expenses of every kind and nature, with respect to injury or death or damage to or loss of property of any person employed by the CONTRACTOR and/or the SUB-CONTRACTOR, howsoever arising.

### 19.3 Third Party

The CONTRACTOR shall be responsible for and shall protect, defend, indemnify and hold harmless the COMPANY from and against any and all claims, liabilities, cost, damages and expenses of every kind and nature, with respect to injury, illness or death of, or damage to or loss of property of any third party, arising during and/or as a result of the CONTRACTOR's performance of this CONTRACT.

19.4 CONTRACTOR's Equipment

The CONTRACTOR shall assume the risk of and shall be solely responsible for and in this regard shall indemnify, defend and hold the COMPANY harmless against any claims arising out of all damage to and/or loss or destruction of CONTRACTOR's EQUIPMENT and property and its SUB-CONTRACTOR's Equipment and property, from any cause whatsoever, at all times during the duration of this CONTRACT. In the event that any of the CONTRACTOR's EQUIPMENT is lost or damaged, affects the performance of the WORKS, the CONTRACTOR shall replace any lost or damaged CONTRACTOR's EQUIPMENT at the CONTRACTOR's sole cost in the most expeditious manner possible and at the CONTRACTOR's sole expense.

19.5 Pollution

19.5.1 The CONTRACTOR shall protect, indemnify and hold harmless the COMPANY from and against all liability for pollution emanating from equipment and/or property owned, leased, chartered or hired by the CONTRACTOR in connection to the performance of the WORKS and shall reimburse the COMPANY for all control and/or clean-up costs, and/or claims related to any such pollution. The CONTRACTOR undertakes that equipment or waste in any form originating from the WORKS shall be dumped at designated place.

19.5.2 The indemnity addressed in **ARTICLE 19.5.1** shall include all control and/or cleanup costs, and/or claims related to any such pollution.

19.6 The indemnities given by the CONTRACTOR shall not be reduced by reasons of any omission of the COMPANY REPRESENTATIVE in failing to supervise or control the CONTRACTOR's site operations or methods of working or to detect or prevent or remedy defective WORKS or to ensure proper performance of any other obligations of the CONTRACTOR under this CONTRACT.

19.7 Unless provided to the contrary elsewhere within this CONTRACT, the CONTRACTOR shall be solely responsible for the costs of all loss or damage caused by the negligence, GROSS NEGLIGENCE and/or wilful misconduct of the CONTRACTOR and/or its SUB-CONTRACTOR.

19.8 The CONTRACTOR shall notify the COMPANY immediately of any incident, claims or litigation affecting the provisions of this ARTICLE. Each PARTY shall be obligated to respond to a request for defense and/or indemnity in a timely manner. In the event a request for defense and/or indemnity is made to a PARTY and such PARTY fails to respond in a timely manner and/or refuses to assume such defense and/or indemnity obligation (for which such PARTY is responsible for assuming), such PARTY shall pay all costs incurred in defending against the claim or allegation and in enforcing the defense and indemnity provisions of this CONTRACT including attorney's fees, expert fees, court costs and other related legal expenses.

19.9 Any exclusion or limitation of liability specified in this CONTRACT shall apply to claims in Tort or otherwise at law in respect of matters covered by such exclusion or limitation.

19.10 Notwithstanding any provision in this CONTRACT, in no event whatsoever shall either Party be liable to the other by way of indemnity nor by reason of any breach of CONTRACT nor by reason

of Tort, for any indirect, remote or consequential losses of any kind, including but not limited to, loss of profit, loss of earnings, loss of use, loss of contract, loss of opportunity or for any financial or economic loss or damages whatsoever that may be suffered by the other Party.

## **ARTICLE 20- INSURANCES**

- 20.1 The CONTRACTOR shall at its own cost and expense carry and maintain in full force throughout the duration of this CONTRACT at least the following insurances with insurance companies satisfactory to the COMPANY. Nothing contained herein shall serve in any way to limit or waive CONTRACTOR's liability under this CONTRACT. The insurances to be carried by CONTRACTOR are as follows:
- (a) Workmen's Compensation and/or Employer's Liability Insurance and/or similar statutory social insurance** as required by law at the SITE where the WORKS will be performed and which may be applicable covering all CONTRACTOR's employees engaged in accomplishing the WORKS.
  - (b) Comprehensive General Liability or Third Party Liability or Public Liability Insurance** covering all operations hereunder against bodily injury, death, loss of property or property damage to third Parties. Such insurance shall include contractual liability coverage.
- 20.2 The CONTRACTOR shall carry and maintain any other insurance which may be relevant and/or necessary and/or as may be required by any APPLICABLE LAW to which the CONTRACTOR and/or SUB-CONTRACTOR are subjected to or as instructed by the COMPANY.
- 20.3 All deductibles, exceptions, and exclusions applicable to the foregoing insurances of the CONTRACTOR shall be for the account of and be paid by the CONTRACTOR. Any breach of conditions and/or warranties contained in such policies of insurance shall also be for the account of the CONTRACTOR.
- 20.4 The CONTRACTOR shall fully indemnify the COMPANY against all and any loss or damage arising out of any failure to effect or maintain such insurance specified by this CONTRACT or out of any act or omission which invalidates insurance.
- 20.5 If requested by the COMPANY, the CONTRACTOR shall permit the COMPANY to examine copies of its and its SUB-CONTRACTOR's insurance policies and premium receipts.
- 20.6 The furnishing of certificates of insurance shall not be interpreted as implying endorsement by the COMPANY or that the COMPANY assumes responsibility for the accuracy and adequacy of such documents or that the CONTRACTOR has complied with its other obligation contained in the CONTRACT.
- 20.7 The CONTRACTOR shall ensure that its SUB-CONTRACTOR maintains similar insurance coverage as specified herein and that its SUB-CONTRACTOR similarly indemnify and hold the COMPANY harmless against all costs, claims, and demands. Any deficiencies in the coverage or policy limits of SUB-CONTRACTOR's insurance shall be for the sole responsibility of the CONTRACTOR.
- 20.8 The COMPANY shall bear no financial liability attributable to deficient insurance coverage by the CONTRACTOR.

## **ARTICLE 21- SUSPENSION OF WORKS**

- 21.1 The COMPANY shall have the right to suspend this CONTRACT for the following reasons:
- i. Force majeure as per **ARTICLE 25 – FORCE MAJEURE** herein; or
  - ii. Upon the occurrence of the CONTRACTOR's default as per **ARTICLE 18 – DEFAULT OF CONTRACTOR** herein; or
  - iii. For the safety of the supply of GOODS or any part thereof insofar as such necessity does not arise from any act or default by the COMPANY REPRESENTATIVE or the COMPANY or from any of the excepted risks; or
  - iv. Necessary by reason of direction or order by any statutory or governmental authorities; or
  - v. For any other operational reason as deemed fit by the COMPANY.

Except for suspension under **ARTICLE 21.1(i)** hereinabove, any period of suspension shall not result in any extension of time.

- 21.2 In the event that the COMPANY suspends all or part of the supply of GOODS under **ARTICLE 21.1** hereinabove, the COMPANY shall give the CONTRACTOR at least fourteen (14) days prior written notice specifying the effective date of the suspension, including where possible, the anticipated period of suspension.

- 21.3 Upon receipt of the notice of suspension as per **ARTICLE 21.2** hereinabove, the CONTRACTOR shall perform the following on the effective date of suspension:

- i. immediately cease/discontinue performance of the said suspended part of the supply of GOODS;
- ii. continue to perform the supply of GOODS which are not affected by such suspension;
- iii. remove the CONTRACTOR's personnel and item(s) not required pursuant to the suspended part of the supply of GOODS throughout the suspension period provided that it shall not affect other part of the supply of GOODS which have not been suspended; and during such suspension; and
- iv. use its best reasonable efforts to minimise the cost associated with the suspension.

- 21.4 Neither the COMPANY nor the CONTRACTOR shall be liable to the other Party for loss of anticipated profits or consequential loss sustained on account of any suspension of the supply of GOODS or part thereof.

- 21.5 The COMPANY may, at any time, authorise resumption of all or any part of the suspended WORKS by giving notice to the CONTRACTOR specifying the supply of GOODS to be resumed and the effective date of withdrawal of suspension. Upon effective date of withdrawal of suspension, the CONTRACTOR shall resume the supply of GOODS. Notwithstanding the aforementioned, either Party may request for a joint examination on the supply of GOODS affected by such suspension.

## **ARTICLE 22- TERMINATION**

### **22.1 CHANGE IN CIRCUMSTANCES**

- 22.1.1 In the event the COMPANY reasonably believes that a change in circumstances which prejudice or is foreseen to prejudice the COMPANY's ability to perform this CONTRACT the COMPANY may terminate this CONTRACT by giving at least thirty (30) days prior written notice to the CONTRACTOR specifying the CONTRACT is to be terminated and the effective date of the termination.

- 22.1.2 Upon the effective date of termination, the CONTRACTOR shall ensure the following:
- i. The CONTRACTOR shall stop performance of the supply of GOODS on the effective date of termination; and
  - ii. All CONTRACTOR'S EQUIPMENT and CONTRACTOR's personnel are completely removed and demobilised from the SITE.
- 22.1.3 The CONTRACTOR shall, within thirty (30) days from the effective date of termination, submit its final invoice for the following:
- i. All cost reasonably incurred for the WORKS performed up to the effective date of termination; and
  - ii. All related expenses incurred by CONTRACTOR in executing CONTRACTOR's commitments under the CONTRACT, including costs contractually committed but not yet incurred and any valid cancellation costs incurred by the CONTRACTOR resulting directly from the termination.
- 22.1.4 For the avoidance of doubt, the following cost, expenses and claim shall be excluded from **ARTICLE 22.1.3**:
- i. any financing cost obtained for the supply of GOODS including any incidental costs such as but not limited to interest charges, bank charges, commissions, fees and brokerage incurred by the CONTRACTOR or any of its SUB-CONTRACTOR;
  - ii. any settlement amount as agreed between the CONTRACTOR and its SUB-CONTRACTOR in connection with this CONTRACT; and
  - iii. any cost or expenses related to purchasing of the CONTRACTOR'S EQUIPMENT for the performance of the WORKS.
- 22.1.5 On the termination of this CONTRACT pursuant to this ARTICLE and at the request of the COMPANY, the CONTRACTOR shall handover any asset under this CONTRACT to the COMPANY free from any liabilities, or any contracts entered into by the CONTRACTOR in relation to the WORKS shall be novated to COMPANY or any of COMPANY's designated AFFILIATES.
- 22.1.6 The CONTRACTOR shall:
- i. waive all claims against the COMPANY; and
  - ii. release, protect, indemnify and hold harmless the COMPANY, from and against any claims, demands, causes of action, liabilities or losses arising from or connected with termination by the COMPANY under this **ARTICLE 22.1**.

## 22.2 Termination With Cause

Subject to the provision provided under **ARTICLE 18 - DEFAULT OF CONTRACTOR** herein:

- 22.2.1 the COMPANY shall forthwith terminate this CONTRACT in the event that a default is not capable of remedy; or

- 22.2.2 in the event the CONTRACTOR fails to remedy a default (or overcome its effects) within the period specified by the COMPANY in the notice given pursuant to **ARTICLE 21.2**, the COMPANY shall give thirty (30) days written notice to the CONTRACTOR specifying this CONTRACT to be terminated and the effective date of termination.
- 22.3 The Contractor shall be responsible for all claims, losses, costs and liabilities howsoever incurred as the result of the termination under this **ARTICLE 22.2**.
- 22.4 Upon receipt of notice of termination from the COMPANY, the CONTRACTOR shall forthwith perform all necessary preparatory works to exit the CONTRACT.
- 22.5 Upon the effective date of termination, the CONTRACTOR shall ensure the following:
- 22.5.1 That the WORKS has been completely stopped. The COMPANY may, however, instruct the CONTRACTOR to continue working on the existing ORDER before the said effective date;
- 22.5.2 All CONTRACTOR's EQUIPMENT and CONTRACTOR's PERSONNEL are completely removed and demobilised from the SITE, at the CONTRACTOR's cost;
- 22.6 Consequential Loss
- Neither Party shall be liable to the other for loss of anticipated profits and/or consequential loss sustained on account of termination whether with cause or without cause.

#### **ARTICLE 23- ACCESS AND AUDIT RIGHTS**

- 23.1 The COMPANY shall have the right to access and audit all the CONTRACTOR's documents and records related to this CONTRACT. Such right shall remain in force and the documents and records be retained for a period of not less than seven (7) years after the expiry of this CONTRACT or any termination thereof.
- 23.2 The CONTRACTOR shall ensure that the provisions of this ARTICLE are included in all SUB-CONTRACT it may enter into with its SUB-CONTRACTOR and AFFILIATES who will supply any of the labour, equipment, materials or services to be provided under this CONTRACT.

#### **ARTICLE 24- CHANGES**

- 24.1 Changes to the supply of GOODS may be required during the CONTRACT PERIOD (including extension(s) and should be handled expeditiously and effectively by the Parties hereto. Such changes may include, but are not limited to amendments, additions, deletions, substitutions, alterations and modifications.
- 24.2 The COMPANY shall have the right, at any time, to make any change but such change shall in no way affect the rights or obligations of the Parties hereto except as provided in a written CHANGE ORDER.
- 24.3 Either Party may request for a change, wherein it shall advise the other Party of the said requirement. For avoidance of doubt, the COMPANY retains the right to decide on the requested CHANGE ORDER.
- 24.4 The CONTRACTOR shall, upon request from the COMPANY, provide the COMPANY within fourteen (14) days, a CHANGE NOTICE which shall include, but not be limited to price, method

of payment, earliest commencement date, and any other information deemed necessary.

- 24.5 Except as provided in **ARTICLE 24.6** below, the CONTRACTOR shall not proceed with any change prior to receipt of a change order.
- 24.6 When and if the COMPANY approves the CHANGE NOTICE, the COMPANY shall issue to the CONTRACTOR a written change order.

#### **ARTICLE 25- FORCE MAJEURE**

- 25.1 Neither Party shall be liable to the other nor shall be in breach of any obligation under this CONTRACT (other than payment of monies due prior to occurrence of force majeure) to the extent its performance, in full or in part thereof is prevented, impeded or delayed by an act, event or circumstance that is beyond the reasonable control of that Party and which that Party could not reasonably have prevented or overcome (such act, event or circumstance is herein referred to as "Force Majeure") provided that the same is not wilfully or negligently done or brought for purpose of excusing a failure to perform under the CONTRACT.
- 25.2 A Party claiming relief from its obligations by reason of Force Majeure (hereinafter referred to as "the Affected Party"), shall be relieved from its obligations under the CONTRACT to the extent only that the occurrence circumstances constituting Force Majeure continues.
- 25.3 If an event or circumstance of Force Majeure occurs, the Affected Party shall at all times use its best endeavours to minimise any adverse effect on the performance of the CONTRACT as a result of Force Majeure and remove the adverse effect in order to mitigate the effect of the event or circumstance of Force Majeure.
- 25.4 Subject to and without prejudice to the generality of **ARTICLE 25.1**, an event of Force Majeure shall include but not limited to the following:-
- a. acts of God or force of nature, including unusually severe weather, landslide, lightning, earthquake, fire, frost, flood, storm, fog, tidal waves, perils of the sea;
  - b. insurrection, revolutions, expropriation, requisition, nationalisation, riots, civil disturbances, acts of the public enemy and acts of terrorism;
  - c. blockade, embargo or boycott;
  - d. strikes or other labour disturbances (including sabotage);
  - e. war, acts of war or warlike hostilities;
  - f. pandemic, epidemic, outbreak of disease or quarantine restrictions;
  - g. any change of law;
  - h. civil emergency; or
  - i. any other events or similar occurrences beyond the control of the Parties.
- 25.5 Notwithstanding **ARTICLE 25.4**, the following events or circumstances shall not be treated as Force Majeure:

- a. inability or failure to pay amounts or inability or failure to make payments when due;
  - b. the imposition of sanctions by any governmental authority due to the failure of the Affected Party to comply with the applicable law;
  - c. failure of the Affected Party to obtain or maintain necessary permits, licenses, approvals and certificates from governmental authorities;
  - d. any event or circumstance that results from the negligence of the Affected Party.
- 25.6 The Affected Party intending to seek relief under **ARTICLE 25.4** shall notify the other party in writing of the occurrence of the event. The notice shall be given as soon as practicable, but in any event no later than fourteen (14) days (hereinafter referred to as the "Force Majeure Notice") after the Affected Party becomes aware of the relevant event or circumstances constituting the Force Majeure event.
- 25.7 The Force Majeure Notice given pursuant to **ARTICLE 25.6** shall contain the following information relating to the event or circumstances of Force Majeure:
- a. the reasonably ascertainable particulars of the occurrence;
  - b. the details of the obligations affected;
  - c. the estimate of the time during which the Affected Party will be unable to carry out the affected obligations due to the Force Majeure Event and expected date that full performance shall be resumed; and to the extent then reasonably ascertainable or applicable;
  - d. the reasons for the occurrence;
  - e. the actions which the Affected Party intends to minimise or mitigate the effect of the Force Majeure event.
- 25.8 As soon as reasonably practicable and in any case by no later than seven (7) days after the date of issuance of the Force Majeure Notice pursuant to **ARTICLE 25.6**, the Parties shall meet to discuss and agree a good faith estimate of when it is anticipated that the Affected Party will be able to resume performance of its obligations under this CONTRACT. Following the issue of the Force Majeure Notice, the Affected Party shall keep the other Party informed at reasonable intervals any significant update with respect to the Force Majeure.
- 25.9 Where the Affected Party has given the Force Majeure Notice pursuant to **ARTICLE 25.6**, the Affected Party's obligations under the CONTRACT are temporarily suspended to the extent affected by the Force Majeure. The suspension will apply from the date stipulated in the Force Majeure Notice until the Affected Party gives notice of the full resumption.
- 25.10 Any delay or failure in performance of the CONTRACT by the Affected Party during the Force Majeure Event shall not constitute default hereunder. Neither Party shall be entitled for any claim for damages or loss of anticipated profits or consequential loss, if and to the extent such delay or failure is caused by Force Majeure.
- 25.11 When the Affected Party is able to resume performance of its obligations under this CONTRACT, the Affected Party shall give the other Party notice to that effect and shall

promptly resume performance thereunder. The Parties shall co-operate and hold discussions to accomplish actions or steps to enable resumption of full performance under this CONTRACT.

- 25.12 In the event that the Force Majeure Event continues for a period of more than three (3) months, both Parties shall meet in good faith with a view to discuss the situation and necessary action to be taken. If the Force Majeure Event continues and prolongs beyond a period of six (6) months (inclusive of the three (3) months above), either Party may terminate this CONTRACT by issuing a termination notice to the other and the notice shall take effect seven (7) days after the notice is given.
- 25.13 In the event of termination pursuant to **ARTICLE 25.12**, the Parties shall be entitled to be paid for whatever payment due and payable (if any) up to the occurrence of the Force Majeure Event.

#### **ARTICLE 26- INTELLECTUAL PROPERTY RIGHTS**

- 26.1 All INTELLECTUAL PROPERTY, residing in any information, materials, products and equipment of any nature whatsoever supplied by one Party to the other under this CONTRACT shall belong exclusively to and shall remain the property of the Party supplying the said Intellectual Property.
- 26.2 The Parties agree that all INTELLECTUAL PROPERTY in all data, specifications, reports, solutions, drawings, know-how, technical information, inventions and technologies developed, obtained, created, written, prepared or discovered by the Parties or by either Party as a result of the performance of the CONTRACT shall reside solely in the COMPANY and the COMPANY shall have the exclusive right to protect, exploit and enforce its rights to those INTELLECTUAL PROPERTY RIGHTS.
- 26.3 If the INTELLECTUAL PROPERTY described in **ARTICLE 26.1** belonging to the CONTRACTOR is required to exploit the INTELLECTUAL PROPERTY RIGHTS specified in **ARTICLE 26.2**, then the CONTRACTOR shall grant a perpetual, non-exclusive, royalty free license to the COMPANY in relation to such CONTRACTOR Intellectual Property.
- 26.4 The CONTRACTOR shall not use, reproduce or disclose to any party any Intellectual Property belonging to the COMPANY, including those developed, obtained, created, written, prepared or discovered by the CONTRACTOR through the performance of the CONTRACT without the prior written approval of the COMPANY.
- 26.5 The CONTRACTOR warrants that the information, materials, products and equipment supplied by the CONTRACTOR or used by the CONTRACTOR in performing the CONTRACT do not infringe the Intellectual Property or any other proprietary rights of any person or entity.
- 26.6 The CONTRACTOR agrees to indemnify and hold the COMPANY harmless against all losses, claims, demands, proceedings, costs, legal fees, damages, charges, and expenses that may arise by reason of any threatened or actual infringement of Intellectual Property or other proprietary rights belonging to any person or entity in the performance of the SCOPE OF WORKS hereunder, or by reason of the manner in which the same is performed, or through the use by the COMPANY and/or the CONTRACTOR of any information, materials, products and equipment supplied under the CONTRACT. Upon receipt of any claim the COMPANY shall promptly notify the CONTRACTOR and allow the CONTRACTOR to control the defence, settlement or compromise thereof however if the CONTRACTOR does not take the necessary action to defend the COMPANY in a satisfactory manner, the COMPANY shall take over the control of the defence, settlement or compromise thereof. The COMPANY shall provide the

CONTRACTOR upon request, all needed information, assistance and authority to enable the CONTRACTOR to defend the claim.

- 26.7 The provision of this ARTICLE shall not apply to infringement caused by the specifications furnished solely by the COMPANY or the use of any of the equipment in combination with other materials or the practice of any process not supplied or provided by the CONTRACTOR.
- 26.8 The CONTRACTOR shall ensure that any SUB-CONTRACTS between the CONTRACTOR and its SUB-CONTRACTORS or suppliers contain a provision similar to this ARTICLE.

#### **ARTICLE 27- WAIVERS**

- 27.1 The failure of the COMPANY, at any time, or from time to time to enforce, or to require the strict adherence and performance of any of the terms and conditions of this CONTRACT, to exercise any option, right, or privilege hereunder, or to demand compliance as to any obligation or covenant, shall not constitute a waiver of any such terms and conditions and/or affect or impair such terms or conditions in any way, or the right, privilege, or option of the COMPANY, or of the strict performance of the CONTRACTOR thereof unless an express waiver is properly executed and evidenced in writing. Waivers by the COMPANY of any breach or non-observance by the CONTRACTOR of any of the terms and conditions of this CONTRACT shall not constitute or be construed as a waiver of any succeeding breach or non-observance of the same of any other terms or conditions and shall be effective only in relation to a particular obligation or breach in respect of which it is given, and shall not be deemed to be an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **ARTICLE 28- CONFIDENTIALITY**

- 28.1 The CONTRACTOR hereby represents and warrants, and undertakes that during the CONTRACT PERIOD and/or EXTENDED PERIOD and after its expiration or termination, the CONTRACTOR shall:-
- a. not use any CONFIDENTIAL INFORMATION furnished by the COMPANY under this CONTRACT and/or ORDER for any purpose other than in connection with the GOODS under this CONTRACT and/or ORDER;
  - b. not divulge, publish or disclose to any third party, any CONFIDENTIAL INFORMATION except with the COMPANY's prior written consent in which case the CONTRACTOR shall require such third party to abide by of this ARTICLE herein; and
  - c. preserve and cause its employees to preserve the secrecy of any CONFIDENTIAL INFORMATION.
- 28.2 In any event, the CONTRACTOR warrants that it shall ensure that any and all persons to whom any CONFIDENTIAL INFORMATION under this CONTRACT is disclosed shall keep such information confidential and shall be fully aware of the obligations under this CONTRACT and complies with such obligations as though such person were a party to this CONTRACT.
- 28.3 This ARTICLE shall continue in force notwithstanding the completion or earlier termination of this CONTRACT.
- 28.4 The CONTRACTOR further undertakes and agrees to take precautions to safeguard any documents, records, data, notes and instructions which the COMPANY may supply to the CONTRACTOR in relation to the WORKS. The CONTRACTOR, with the prior written approval

of the COMPANY, may make copies of such documents, records, data, notes and instructions only to the extent that they are necessary for effectively carrying out the supply of GOODS. On completion of the supply of GOODS, the CONTRACTOR shall return such documents and copies thereof to the COMPANY.

- 28.5 The CONTRACTOR shall keep all CONFIDENTIAL INFORMATION in a neat and legible manner. The CONTRACTOR shall not, without the prior written consent of the COMPANY, retain and/or make copies of such information. If upon completion or termination of this CONTRACT and/or ORDER, the CONTRACTOR is in possession of any such information, the CONTRACTOR shall forthwith return the same to the COMPANY.
- 28.6 None of the item(s) mentioned in this CONTRACT nor any item(s) connected therewith which are developed exclusively for the supply of GOODS pursuant to this CONTRACT shall be sold, developed, reproduced or otherwise exploited in whole or in part by the CONTRACTOR for any purposes not related to this CONTRACT without the COMPANY's prior written consent.
- 28.7 The COMPANY may from time to time disclose to its AFFILIATES, any government body, agency or department or any other fiscal, monetary, regulatory authority or agency (including but not limited to the Ministry of Finance), their legal counsels and/or other professional advisers information relating to the CONTRACTOR and/or this CONTRACT as such authority may require whether or not such requirement has the force of law.

#### **ARTICLE 29- GOVERNING LAWS AND DISPUTE RESOLUTION**

- 29.1 This CONTRACT shall be governed by and construed in accordance with the laws of Malaysia.
- 29.2 Any dispute or difference arising out of or in connection with this CONTRACT or the implementation of any of the provisions of this CONTRACT shall be referred to the respective Parties' senior management for resolution.
- 29.3 Where such dispute or difference as stated in **ARTICLE 29.2** above cannot be settled amicably within thirty (30) days from being referred to the Parties' senior management, such dispute or difference under **ARTICLE 29.2** shall be submitted to arbitration by a panel of three (3) arbitrators, one (1) to be appointed by the claimant, one (1) to be appointed by the respondent (or if there is more than one claimant or respondent, the one (1) arbitrator in question shall be appointed jointly by such claimants or respondents) and the third, who shall be the chairman, to be jointly appointed by the arbitrators appointed by the claimant and respondent.
- 29.4 If either the claimant or respondent fails to appoint an arbitrator or do not concur on the appointment of the third arbitrator, either Party may serve the other Party with a written notice to conclude the appointment of such arbitrator, and if the appointment is not made within thirty (30) days of service of the notice, the Asian International Arbitration Centre shall, on application by the Party who gave notice, appoint such arbitrator, who shall have the like powers to act as if he had been appointed by the claimant, respondent or the party-appointed arbitrator, as applicable. The procedure herein shall apply *mutatis mutandis* if there is more than one claimant or respondent and such claimants or respondents do not concur in the appointment of the one (1) arbitrator in question.
- 29.5 Any third arbitrator so appointed shall be a person of a nationality different from that of any of the Parties in dispute.
- 29.6 The place of arbitration shall be Kuala Lumpur, Malaysia. The arbitration shall be conducted in accordance with the Rules of Asian International Arbitration Centre. The language of the arbitration shall be English.

29.7 Any award of the arbitration shall be final and binding upon the Parties to the dispute. The Parties shall have the right to apply to any court having competent jurisdiction for leave to enforce an arbitration award in the same manner as a judgment or order of the said court having jurisdiction, and, where leave is so given, judgment may be entered in terms of the arbitration award.

### **ARTICLE 30 - COMPLIANCE WITH LOCAL LAW**

30.1 In the performance of this CONTRACT, the CONTRACTOR shall be subjected to all applicable laws. For the purpose of this ARTICLE, "laws" includes any laws (national, state, municipal, local or others) and any requirements, acts, enactments, ordinances, by-laws, rules or regulations of any relevant authority or agency (national, state, municipal, local or other).

30.2 The CONTRACTOR shall be deemed to be aware of all applicable laws, by-laws and regulations, local customs and practices of Malaysia and any local and any other duly constituted authority which affects the WORKS and shall keep itself informed of future laws, rules and regulations which affect the WORKS.

30.3 The CONTRACTOR shall, at the CONTRACTOR's own expense, release, defend, protect, indemnify and hold the COMPANY harmless from all forms of penalty which may be imposed on the COMPANY by reason of any alleged violation of law by the CONTRACTOR and also from all claims, suits, or proceedings that may be brought against the COMPANY arising under or by reason of the performance of this CONTRACT with respect to such alleged or violation of law whether brought by employees of the CONTRACTOR or by third parties or by any relevant authority.

30.4 The CONTRACTOR's obligations under this ARTICLE shall include, without limitation, obtaining all necessary or appropriate licences or import licences or customs clearances or permits wherever applicable.

30.5 If the CONTRACTOR perform any part of the WORKS hereunder in breach of the law, then the CONTRACTOR shall bear any additional costs resulting from the said violation and rectification thereof. The CONTRACTOR shall not enter into negotiations with any relevant authority or agency to develop acceptance to exemption, composition, variation, or revision to law in connection with this CONTRACT without the COMPANY's prior written approval.

### **ARTICLE 31- ENTIRE AGREEMENT**

31.1 This CONTRACT constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements related to this CONTRACT, either written or oral, including the COMPANY's bid document and the CONTRACTOR's proposals, except to the extent they are expressly incorporated into this CONTRACT. No changes, alterations, or modifications to this CONTRACT shall be effective unless in writing and executed by the authorised signatories of the COMPANY and the CONTRACTOR.

### **ARTICLE 32- NON-EXCLUSIVE AGREEMENT**

32.1 This CONTRACT is non-exclusive and the COMPANY reserves the right to engage other contractors to perform works similar or identical to the supply of GOODS and/or supply similar or identical works to the supply of GOODS at any time during the CONTRACT PERIOD.

### **ARTICLE 33- SUB-CONTRACTING AND ASSIGNMENT**

- 33.1 The CONTRACTOR shall not SUB-CONTRACT nor assign any of its rights and/or obligations under this CONTRACT or any part thereof without the COMPANY's prior written approval. Approval granted shall not release or relieve the CONTRACTOR of any of its obligations under this CONTRACT or create any contractual relationship between any SUB-CONTRACTOR and the COMPANY.
- 33.2 The CONTRACTOR shall be fully responsible for any acts, defaults, and omissions of any SUB-CONTRACTOR, and persons either directly or indirectly employed by the SUB-CONTRACTOR, to the same extent as it is for the acts and omissions of persons directly or indirectly employed by the CONTRACTOR.
- 33.3 The CONTRACTOR shall be fully responsible to perform and complete its obligations towards its SUB-CONTRACTOR under the SUB-CONTRACT.
- 33.4 The COMPANY may assign, novate and/or transfer this CONTRACT, including all rights and/or obligations hereunder, to any of its AFFILIATES, performing similar or identical works this CONTRACT, including all rights and/or obligations hereunder, to any of its AFFILIATES, or any contractor of the COMPANY, performing similar or identical works at any time with prior written notification to the CONTRACTOR.
- 33.5 The CONTRACTOR shall ensure that all the COMPANY's rights under this CONTRACT including access and audit rights are incorporated in all the CONTRACTOR's SUB-CONTRACT hereunder. For avoidance of doubt but not by way of limitation, the CONTRACTOR shall, in all SUB-CONTRACT, include the following provisions:
- a. the option of immediate termination of the SUB-CONTRACT;
  - b. the option of immediate suspension of the SUB-CONTRACT;
  - c. all rights and remedies available to the COMPANY in this CONTRACT; and
  - d. all of the general duties and obligations the CONTRACTOR is required to fulfill as provided for in this CONTRACT.
- 33.6 The CONTRACTOR shall not be relieved from any obligations under this CONTRACT by entering into the SUB-CONTRACT, the CONTRACTOR undertakes to be fully responsible to the COMPANY for any acts, defaults and omissions of any of the SUB-CONTRACTOR, and persons either directly or indirectly employed by SUB-CONTRACTOR to the same extent as it is for the acts and omissions of persons directly or indirectly employed by the CONTRACTOR.
- 33.7 The CONTRACTOR shall fulfil all its payment obligations under the CONTRACT including to its SUB-CONTRACTOR and if required by the COMPANY, the CONTRACTOR shall provide a confirmation in writing that all sums due and payable to the SUB-CONTRACTOR under the SUB-CONTRACT have been paid.
- 33.8 No SUB-CONTRACT shall bind or purport to bind the COMPANY and each of the SUB-CONTRACT shall provide for the possibility of its immediate termination at any time. Without prejudice to the provisions herein contained the CONTRACTOR shall hold harmless and indemnify the COMPANY from and against any action, damage, claim and/or demand whatsoever by any of the SUB-CONTRACTOR.
- 33.9 The CONTRACTOR shall be responsible for and shall pay at its own expense when due and

payable all TAXES and Sales and Service Tax assessed against it and this shall not be reimbursed by the COMPANY. This includes any TAXES and Sales and Service Tax assessed or levied by the IRB or any other GOVERNMENTAL AUTHORITY on the SUB CONTRACTOR for the payment made by the CONTRACTOR to the SUB CONTRACTOR in connection with this CONTRACT. This would also include any TAXES levied on account of wages, salaries or other benefits paid to or enjoyed by employees of the SUB CONTRACTOR.

- 33.10 Notwithstanding any ARTICLES provided in this CONTRACT, CONTRACTOR shall not except with prior approval of COMPANY conclude, negotiate or sign contracts on behalf of COMPANY and this authority shall vest only with COMPANY.

#### **ARTICLE 34- PROCUREMENT OF EQUIPMENT, FACILITIES, GOODS, MATERIALS, SUPPLIES AND SERVICES IN MALAYSIA**

34.1 In the procurement of GOODS, equipment, facilities, materials, supplies, and services, the CONTRACTOR shall use its best endeavours to observe the following:

- a. the enhancement of an effective local, management and employment;
- b. the transfer of technology to local firms and companies with the objective of developing local technical and managerial capabilities; and
- c. the need to minimise outflow of foreign exchange.

34.2 In pursuance of the provision of **ARTICLE 34.1**, the CONTRACTOR shall, unless otherwise approved by the COMPANY, comply with the following,

- a. give priority to which are produced and manufactured by the B40 vendors, enterprises and/or individuals;
- b. give priority to locally-manufactured goods in the procurement of equipment, facilities, goods, materials, supplies, and services required for the WORKS;
- c. give priority to Malaysian suppliers or manufacturers for equipment, facilities, goods, materials, supplies, and services required for the WORKS;
- d. give priority to services and research facilities, professional or otherwise, which are rendered by Malaysians or firms or companies incorporated or licensed in Malaysia;

#### **ARTICLE 35- NOTICES**

**35.1** All notices to be given, submitted or made hereunder shall be in writing and made to either Party and shall be deemed to have been properly given or made to the Party it is addressed to if the notices are sent (by registered mail, courier service or facsimile) to the respective Party at the address as per **EXHIBIT III (a) - THE COMPANY'S REPRESENTATIVE** and **EXHIBIT III(b) - THE CONTRACTOR'S REPRESENTATIVE**.

#### **ARTICLE 36- SURVIVAL**

36.1 Notwithstanding anything to the contrary, the obligations of the COMPANY and the CONTRACTOR in this CONTRACT in relation to **ARTICLE 7 – INVOICING AND PAYMENTS, ARTICLE 9 – REPRESENTATIONS AND WARRANTY, ARTICLE 19 – LIABILITIES AND INDEMNITIES, ARTICLE 26 – INTELLECTUAL PROPERTY RIGHTS** and **ARTICLE 28 - CONFIDENTIALITY** shall survive expiration or termination of this CONTRACT.

### **ARTICLE 37 – AMENDMENTS TO CONTRACT**

37.1 This CONTRACT may be amended or modified in whole or in part at any time by an agreement in writing executed in the same manner and by the same Parties of this CONTRACT.

### **ARTICLE 38- SEVERABILITY**

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

### **ARTICLE 39- TIME IS OF THE ESSENCE**

39.1 The time stipulated for the performance and/or delivery of the WORKS is of the essence of this CONTRACT.

### **ARTICLE 40- TITLE AND RISK**

40.1 Title and risk in the GOODS will pass from the CONTRACTOR to the COMPANY at acceptance in writing by the COMPANY in accordance with the COMPANY's requirements under the ORDER.

### **ARTICLE 41- LEGAL FEES AND STAMP DUTY**

41.1 Each Party shall bear its own legal costs and expenses incurred in the preparation, execution and implementation of this CONTRACT (including solicitors' costs). The stamping of this CONTRACT shall be borne by the COMPANY.

### **ARTICLE 42 – COMPLIANCE WITH CRITICAL LAWS**

#### **42.1 COMPETITION LAWS**

42.1.1 The CONTRACTOR shall comply, and/or ensure that its directors, employees, subcontractors, agents or other third parties who are performing services in connection with this CONTRACT to comply, with all applicable COMPETITION LAWS.

42.1.2 The CONTRACTOR agrees to promptly notify the COMPANY within seven (7) calendar days of any suspected or occurrence of infringement of any COMPETITION LAWS in connection with this CONTRACT, becoming aware of any fact that causes or constitutes a material breach of any of its representations and warranties under this ARTICLE, or a conviction by a court of competent jurisdiction or an agreement to be entered into with any governmental authority in respect of the applicable COMPETITION LAWS. Upon the notification of any suspected or actual breach of COMPETITION LAWS in connection with this CONTRACT, the COMPANY shall be fully entitled to suspend or terminate this CONTRACT without any liability howsoever with written notice with immediate effect.

42.1.3 In the event the COMPANY terminates this CONTRACT in accordance with **ARTICLE 42.1.2** above, the CONTRACTOR shall hold the COMPANY, its AFFILIATES, its and

their directors, shareholders and employees harmless from any cost, expenses, claim, liability, fine or penalty, as a result of any breach of this ARTICLE by the CONTRACTOR, its directors, employees, subcontractors and/or agents who are performing services in connection with this CONTRACT.

42.1.4 For the purposes of this ARTICLE:

- (b) “**COMPETITION LAWS**” means the Competition Act 2010 of Malaysia, and all applicable laws and regulations that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolisation, abuse of dominance, lessening of competition, engaging in cartel behaviour, price discrimination, predatory pricing, margin squeezing, impeding effective competition, restraint of trade or collusion.

## 42.2 PERSONAL DATA PROTECTION

42.2.1 Insofar as the CONTRACTOR processes any PERSONAL DATA on behalf of the COMPANY under or in relation to this CONTRACT, the CONTRACTOR shall:

- (a) process the PERSONAL DATA only on behalf of the COMPANY (or, if so directed by the COMPANY, on behalf of its AFFILIATES), only for the purpose of performing this CONTRACT and only in accordance with instructions and/or obligations contained in this CONTRACT or as received from the COMPANY from time to time;
- (b) not otherwise modify, amend or alter the contents of the PERSONAL DATA or disclose or permit the disclosure of any of the PERSONAL DATA to any third party unless specifically authorised in writing by the COMPANY or compelled by law to make such disclosure. In the event of disclosure compelled by law, the CONTRACTOR may only make such disclosure to the extent required by law and provided at all times that the CONTRACTOR gives the COMPANY reasonable prior written notice of such disclosure and makes reasonable efforts to assist the COMPANY in obtaining a protective order preventing or limiting disclosure;
- (c) represent, warrant and undertake to at all times comply fully with the provisions of all applicable DATA PROTECTION LEGISLATION and, in doing so, employ appropriate safeguards including implementation of technical and organisational measures to protect the PERSONAL DATA against any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction or other Personal Data Breach;
- (d) ensure that only personnel of the CONTRACTOR who need to have access to the PERSONAL DATA are granted access, and only for the purposes of the performance of this CONTRACT, and they have sufficient skills and have received training and/or instructions in the care and handling of PERSONAL DATA and compliance with all privacy laws and DATA PROTECTION LEGISLATION, are informed of the confidential nature of the PERSONAL DATA, and comply with the obligations set out in this **ARTICLE 42.2.1(d)**;
- (e) ***immediately*** notify the COMPANY in writing if it:
  - (i) receives a request from a DATA SUBJECT to have access to the DATA SUBJECT'S PERSONAL DATA;

- (ii) is compelled by any applicable laws and regulations to disclose any PERSONAL DATA or permit the disclosure of any of the PERSONAL DATA to any third party;
  - (iii) receives a complaint or request relating to the COMPANY or the CONTRACTOR's obligations under privacy laws and the DATA PROTECTION LEGISLATION; or
  - (iv) receives any other communication relating directly or indirectly to the processing of any PERSONAL DATA in connection with this CONTRACT;
- (f) ***immediately*** notify the COMPANY in writing if it becomes aware of any Personal Data Breach by itself or others, including notification of loss or suspected loss of the PERSONAL DATA, whether or not such PERSONAL DATA was encrypted. In such event, the CONTRACTOR shall co-operate with the COMPANY to, and in accordance with the DATA PROTECTION LEGISLATION (such as the PDPA and GDPR), including but not limited to: conduct an investigation; co-operate with authorities; notify at the CONTRACTOR's sole expense, all affected persons, credit bureaus, and all other persons or entities deemed appropriate by the COMPANY; and issue press releases. Such co-operation will include, without limitation:
  - (i) allowing the COMPANY access to the CONTRACTOR's records and facilities;
  - (ii) providing the COMPANY with all relevant data and reports; and
  - (iii) obtaining prior advance approval from the COMPANY of any notifications to impacted individuals or press releases;
- (g) provide the COMPANY with full co-operation and assistance in relation to any complaint or request made in respect of any PERSONAL DATA, including by:
  - (i) providing the COMPANY with full details of any complaint or request;
  - (ii) complying with a data access request within the relevant timescales set out in the DATA PROTECTION LEGISLATION but strictly in accordance with the COMPANY's instructions;
  - (iii) providing the COMPANY with any PERSONAL DATA it holds in relation to the DATA SUBJECT making a complaint or request within the timescale required by the COMPANY; and
  - (iv) providing the COMPANY with any information requested by the COMPANY;
- (h) permit the COMPANY or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the CONTRACTOR's data processing activities and comply with all reasonable requests or directions by the COMPANY to enable the COMPANY to verify and ensure that the CONTRACTOR is in full compliance with its obligations under this **ARTICLE 42.2.1**;
- (i) not transfer, share or disclose any such Personal Data to CONTRACTOR's AFFILIATES or any third parties (other than to the COMPANY, PETRONAS or its AFFILIATES), save and except with the written consent of the COMPANY and, where the COMPANY consents to such transfer:
  - (i) to provide a written undertaking to the COMPANY that the PERSONAL DATA transferred shall be protected at a standard that is comparable to

- that under the DATA PROTECTION LEGISLATION (such as the PDPA and GDPR); and
- (ii) if the CONTRACTOR transfers PERSONAL DATA to any third party overseas, the CONTRACTOR shall procure the same written undertaking from such party.
- (j) cease to use the PERSONAL DATA, upon the expiry or termination of this contract for whatever reason or if it is no longer necessary for the CONTRACTOR fulfilment of the purpose for which such PERSONAL DATA was processed under this CONTRACT. The CONTRACTOR shall, at the COMPANY's option, either:
- (i) arrange for the prompt and safe return to the COMPANY of all PERSONAL DATA together with all copies in its possession or control, or
  - (ii) delete or destroy all copies of the same, unless mandated by the laws that are applicable to the CONTRACTOR. Where retention of the PERSONAL DATA is mandated by laws that are applicable to the CONTRACTOR, the CONTRACTOR shall inform the COMPANY in writing of the relevant law mandating such retention, the minimum retention period under such law, and the PERSONAL DATA that will be retained following the termination or expiry of the CONTRACT, or when it is no longer necessary for the fulfilment of the purpose for which such PERSONAL DATA was processed under this CONTRACT and shall undertake to either return or delete such PERSONAL DATA (at the COMPANY's option) immediately upon the expiry of the retention period. . Prior to such return or deletion, the CONTRACTOR undertakes to comply with all the requirements in this CONTRACT in respect of the PERSONAL DATA that remains in its possession or control. After returning and/or deleting such PERSONAL DATA, the CONTRACTOR shall certify in writing to PETRONAS that it has done so and no longer has any PERSONAL DATA within its possession.

In both (i) and (ii), the CONTRACTOR shall ensure that all PERSONAL DATA are removed and destroyed from its storage, both manual and electronic;

- (k) undertake that it shall not retain any PERSONAL DATA if it is no longer necessary for the fulfilment of the purpose for which such PERSONAL DATA was processed under this CONTRACT and it shall ensure that all such PERSONAL DATA are removed and destroyed from its storage, both manual and electronic, upon such determination and provide the COMPANY with written confirmation that it no longer possesses any PERSONAL DATA after such removal or destruction;
- (l) ensure any third party that processes the PERSONAL DATA on behalf of the CONTRACTOR to agree in writing to the same terms that the CONTRACTOR agrees to in this **ARTICLE 42.2.1**;
- (m) at all times during and after the term of this CONTRACT, indemnify and keep indemnified the COMPANY and its AFFILIATES against all losses, damages, costs or expenses and other liabilities incurred by, awarded against or agreed to be paid by the COMPANY and its AFFILIATES and arising from any breach of the CONTRACTOR's obligations under this **ARTICLE 42.2.1** except and to the extent that such liabilities have resulted directly from the COMPANY's, and/or its AFFILIATES' instructions, or breach of this CONTRACT by the COMPANY; and

- (n) undertake to maintain a record of all categories of processing activities carried out under this CONTRACT.

42.2.2 For the purposes of this ARTICLE:

- (a) **“DATA CONTROLLER”** means a person who either alone or jointly or in common with other persons processes any PERSONAL DATA or has control over or authorises the processing of any PERSONAL DATA, but does not include DATA PROCESSOR, or as similarly defined under DATA PROTECTION LEGISLATION.
- (b) **“DATA PROCESSOR”** means a person who processes PERSONAL DATA solely on behalf of the DATA CONTROLLER, or as similarly defined under any applicable DATA PROTECTION LEGISLATION. A “DATA PROCESSOR” does not include a natural person processing PERSONAL DATA solely for domestic, personal or household purposes.
- (c) **“DATA PROTECTION LEGISLATION”** means the Personal Data Protection Act 2010 of Malaysia, GDPR or all other applicable laws and regulations relating to the processing of PERSONAL DATA and privacy including where applicable the guidance and codes of practice issued by the relevant governmental authority.
- (d) **“DATA SUBJECT”** means an individual who is the subject of personal data, or as similarly defined under any applicable DATA PROTECTION LEGISLATION.
- (e) **“GDPR”** means the United Kingdom or European Union General Data Protection Regulation.
- (f) **“PERSONAL DATA”** has the meaning given by the any applicable DATA PROTECTION LEGISLATION and relates only to personal data of which the DATA CONTROLLER has control and authority over the processing thereof, and in respect of which a DATA PROCESSOR is required to perform its obligations under this CONTRACT.
- (g) **“Personal Data Breach”** means means an incident that has resulted in the accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, access to or encryption of the PERSONAL DATA transmitted, stored or otherwise processed and any other occurrence classified under applicable DATA PROTECTION LEGISLATION as a personal data breach.
- (h) **“process”** or **“processes”** or **“processing”** shall mean collecting, recording, holding or storing PERSONAL DATA or carrying out any operation or set of operations on the PERSONAL DATA, **whether or not by automated means**, including (a) the organisation, adaptation, **structuring** or alteration of PERSONAL DATA; (b) the retrieval, consultation or use of PERSONAL DATA; (c) the disclosure of PERSONAL DATA by transmission, transfer, dissemination or otherwise making it available; or (d) the alignment, combination, correction, erasure, **restriction** or destruction of PERSONAL DATA.

## 42.3 ANTI-BRIBERY, ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING

- 42.3.1 The CONTRACTOR shall comply, and shall ensure that its directors, employees, subcontractors, agents and its other third parties who are performing services in connection with this CONTRACT to comply, with all applicable anti-money laundering and anti-corruption laws, including but not limited to, the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Malaysian Anti-Corruption Commission Act 2009, the United Kingdom Bribery Act 2010 and U.S. Foreign Corrupt Practices Act of 1977, and regulations and any relevant anti-money laundering and/or anti-corruption policies and documents provided by the COMPANY (including the provisions of the COMPANY's Code of Business Ethics ("CoBE") relevant to COMPANY third parties and Anti-Bribery and Corruption Manual ("ABC Manual")) and have in place adequate controls and procedures to prevent corruption including attending any training required by the COMPANY. The CONTRACTOR also undertakes that it has conducted and will continue to conduct their businesses in compliance with all applicable anti-corruption laws and have instituted, enforced and maintained, and will continue to enforce and maintain all necessary controls, measures / policies and procedures designed to promote and achieve compliance with all anti-money laundering and anti-corruption laws.
- 42.3.2 The CONTRACTOR warrants that no foreign public officials are officers or employees of the CONTRACTOR or have direct or indirect interests in the CONTRACTOR as at the date of this CONTRACT.
- 42.3.3 Without limiting the generality of the foregoing, in performing its obligations under this CONTRACT, the CONTRACTOR warrants that it has not made, and undertakes that it shall not make, any payments or provide any benefit to a public official, or to any other person, to improperly induce such public official or person to make any act or decision whether or not to help the COMPANY obtain or retain business or otherwise gain an improper business advantage.
- 42.3.4 The CONTRACTOR represents and warrants that none of the funds or any part thereof it uses to purchase, take and pay for the WORKS, are directly or indirectly in violation of the applicable anti-money laundering and anti-corruption laws or similar law of any other relevant jurisdiction, or the rules or regulations thereunder.
- 42.3.5 The CONTRACTOR shall immediately notify the COMPANY in writing if:
- (a) there is any request or demand for any undue financial or other advantage of any kind received by the CONTRACTOR in connection with the performance of this CONTRACT and take such steps in response to any such request as the COMPANY may require; or
  - (b) a foreign public official becomes an officer or employee of the CONTRACTOR, its subcontractors, agents or other third parties, or acquires a direct or indirect interest of the CONTRACTOR, its subcontractors, agents or other third parties.
- 42.3.6 In addition, the CONTRACTOR has provided and/or shall continue to provide truthful statements to the COMPANY and complete documentation supporting, in reasonable detail, the WORKS performed under this CONTRACT and any expenses incurred and maintain true, accurate and complete invoices, reports, statements, books and other relevant records, and/or will provide the same or allow reasonable access to documents and information (within a reasonable time) and/or provide full cooperation in any investigation, to the COMPANY upon request.

- 42.3.7 Upon request in writing by the COMPANY, the CONTRACTOR shall within, seven (7) calendar days, provide the COMPANY with documentation evidencing compliance of its obligations under the applicable anti-corruption laws. If the COMPANY reasonably suspects that there is a breach of any obligation under this ARTICLE, the COMPANY or a third party appointed by the COMPANY shall have the right to immediately access and take copies of all records and other information relating to this CONTRACT held at the CONTRACTOR's premises and meet with the CONTRACTOR's personnel to audit the CONTRACTOR's compliance with its obligations under this ARTICLE and the CONTRACTOR shall provide all necessary assistance to the conduct of such audit by the COMPANY or such third party. If the audit reveals a breach of any obligations under this ARTICLE and any applicable anti-corruption laws, the CONTRACTOR will bear the cost of such audit and any remedial actions necessary to ensure compliance with this ARTICLE and indemnify and hold harmless the COMPANY and its AFFILIATES in respect of such breaches.
- 42.3.8 The CONTRACTOR must notify the COMPANY as soon as reasonably practicable or in any event within seven (7) calendar days upon becoming aware of any fact that causes or constitutes a breach of any of its representations and warranties under this ARTICLE or a conviction by a court of competent jurisdiction or an agreement to be entered into with any governmental authority in respect of the applicable anti-money laundering and anti-corruption laws.
- 42.3.9 If the CONTRACTOR breaches this ARTICLE or is convicted of any anti-bribery and anti-money laundering laws by a court of competent jurisdiction or has entered into an agreement with the governmental authority in respect of any applicable anti-bribery and anti-money laundering, the COMPANY shall be fully entitled to terminate the CONTRACT without any liability howsoever with immediate effect. The CONTRACTOR shall hold the COMPANY and its AFFILIATES harmless from any cost, expenses, claim, liability, fine or penalty, as a result of any breach of this ARTICLE by the CONTRACTOR, its directors, employees, subcontractors and/or agents who are performing services in connection with this CONTRACT.

#### 42.4 SANCTIONS

- 42.4.1 Each Party shall perform this CONTRACT in compliance with any applicable SANCTIONS LAWS. Neither Party shall have any obligation under this CONTRACT that will result in non-compliance with, a violation of, conflict with, or exposing either Party to punitive measures under any laws, regulations applicable to either Party relating to SANCTIONS LAWS.
- 42.4.2 The CONTRACTOR represents and warrants that the CONTRACTOR and its AFFILIATES, to the best of its knowledge, information and belief, each of their respective directors, officers, employees, agents, suppliers and representatives:
- (a) are not the target, or the subjects, of any SANCTIONS LAWS;
  - (b) are not owned or controlled by any person who is the target or subject of any SANCTIONS LAWS;
  - (c) are not acting for the benefit of or on behalf of any person that is the target or subject of any SANCTIONS LAWS; and

- (d) are not engaged and will not engage in any conduct/activity that would result in the CONTRACTOR being in breach of any SANCTIONS LAWS or becoming a target or subject of SANCTIONS LAWS.

42.4.3 The CONTRACTOR warrants that it is not prevented by any SANCTIONS LAWS from fulfilling its obligations under this CONTRACT and the CONTRACTOR further warrants that by entering into this CONTRACT with the COMPANY, it will not result in the COMPANY violating any of the COMPANY's obligations under any SANCTIONS laws.

42.4.4 The CONTRACTOR represents that, where necessary, it has obtained all the relevant permits and/or licences that are required under any applicable laws and regulations for the sale, supply and delivery of any products/services to the COMPANY under this CONTRACT.

42.4.5 The CONTRACTOR shall promptly notify the COMPANY in the event it is no longer able to comply with the warranties above. The CONTRACTOR agrees to fully indemnify the COMPANY, its AFFILIATES, its and their directors, shareholders and employees for any losses arising from a breach of these warranties.

42.4.6 The CONTRACTOR must immediately notify the COMPANY upon becoming aware that it or any of its affiliates is subject to any SANCTIONS LAWS imposed by any governmental authority.

42.4.7 Where any performance by a Party of any obligation in this CONTRACT has caused or is expected to result in violation of, inconsistent (conflict) with, or expose (exposure to the other Party) such Party, or a parent company of such Party, to punitive measures under any SANCTIONS LAWS, the Party shall, suspend the affected obligation and immediately give written notice to the other Party of the affected obligation. Upon such notice has been given, the Parties shall be entitled to:-

- (a) suspend the affected obligation (whether payment or performance) until such time as the obligation is no longer affected; and/or
- (b) where the obligation continues to be affected (or is reasonably expected to continue to be affected) until the end of the term of this CONTRACT, to a full release from the affected obligation,

in each case, subject as provided above, without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees or expenses).

42.4.8 Where the obligation materially affects the performance of the CONTRACT under this ARTICLE, the Parties shall enter into consultation in good faith with a view to mutually agree on appropriate measures/actions to continue with this CONTRACT in a manner which strictly complies with the applicable laws and regulations. In the event the Parties fail to mutually agree on such measures/actions within fourteen (14) Business Days from the start of the consultation (evidenced by a written letter from either Party to the other Party), either Party shall have the right, to immediately terminate this CONTRACT.

42.4.9 Notwithstanding any of the above, where the relevant obligation relates to payment for WORKS which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the payment obligation is no longer affected.

42.4.10 For the purposes of this ARTICLE:

“**SANCTIONS LAWS**” shall mean all applicable laws and regulations concerning economic sanctions (including embargoes, export controls, restrictions on the ability to make or receive international payments, freezing or blocking of assets of targeted PERSONS and entities, or the ability to engage in transactions with or involving specified PERSONS, entities or countries, or any applicable laws and regulations that threatens to impose economic sanctions on any PERSON, entities or countries for engaging in targeted behaviour) of any jurisdictions including –

- (a) the United Nations;
- (b) Malaysia;
- (c) the European Union;
- (d) the United Kingdom (including those administered by Her Majesty's Treasury);
- (e) the United States (including those administered by the Office of Foreign Assets Control of the Department of the Treasury, the Bureau of Industry and Security of the Department of Commerce, or the Department of State).

42.5 EXPORT CONTROLS

42.5.1 Each Party warrants to the other Party that all WORKS supplied under this CONTRACT shall not be used for any activities that will or may facilitate the design, development, production and delivery of or in connection with the weapons of mass destruction or any terrorism activities or any restricted activity under the Malaysian Strategic Trade Act 2010 (“**STA**”) or any other applicable export controls laws. Each Party fully indemnifies the other Party for any losses arising from the breach of the STA and/or any other applicable export controls laws.

42.5.2 Notwithstanding anything to the contrary contained herein, all obligations of the Parties are subject to prior compliance with export regulations applicable to each Party and such other related laws and regulations as may be applicable to each Party, and to obtaining all necessary approvals required by the applicable government entity. Each Party shall each use its reasonable efforts to obtain such approvals for its own activities. Each Party shall cooperate with the other Parties and shall provide assistance and information to the other Parties as reasonably necessary to obtain any required approvals.

42.5.3 The CONTRACTOR must notify the COMPANY as soon as reasonably practicable (and in any event within seven (7) calendar days) upon becoming aware of any fact that causes or constitutes a material breach of any of its representations and warranties under this CONTRACT or a conviction by a court of competent jurisdiction or an agreement to be entered into with any governmental authority in respect of the applicable export control laws. The Parties agree that upon request in writing by the COMPANY, the CONTRACTOR shall within, seven (7) calendar days, provide the COMPANY with documentation evidencing compliance of its obligations under the applicable export control laws.

#### 42.6 COMPLIANCE TO HUMAN RIGHTS

42.6.1 The CONTRACTOR shall carry out its performance under the CONTRACT in accordance with PETRONAS Human Rights Policy, PETRONAS Contractors Code of Conduct on Human Rights and applicable laws, guidelines, policies, codes, conventions relation to human rights.

42.6.2 In the event that this **ARTICLE 42.6** is breached by the CONTRACTOR, the COMPANY may, without prejudice to any other remedies available to it within the CONTRACT or under the laws, take any such action as the COMPANY deemed necessary including termination of the CONTRACT.

42.6.3 The CONTRACTOR shall defend, indemnify and hold the COMPANY and/or its AFFILIATES harmless from all forms of liability and/or penalty which may be imposed on the COMPANY and/or its AFFILIATES by reason of any breach of this **ARTICLE 41.6** including, but not limited to, claims, suits, or proceedings that may be brought by any person against the COMPANY and/or its AFFILIATES.

#### ARTICLE 43 – DELAYS

43.1 Upon it becoming reasonably apparent that the progress of the supply of GOODS is delayed, the CONTRACTOR shall forthwith give written notice to the COMPANY, as to the causes of delay and relevant information with supporting documents enabling the COMPANY to form an opinion as to the cause and calculation of the length of delay. If in the opinion of the COMPANY, the completion of the supply of GOODS is likely to be delayed or has been delayed beyond the date of completion or beyond the extended date of completion previously fixed under this ARTICLE due to any one or more of the following events:

- a. Force Majeure as provided under **ARTICLE 25– FORCE MAJEURE**;
- b. for any other reasons as deemed fit by the COMPANY

then, the COMPANY may, if it is of the opinion that extension of time should be granted, so soon as it is able to estimate the length of the delay beyond the date or time aforesaid, issue a Certificate of Delay and Extension of Time, giving a fair reasonable extension of time for completion of the supply of GOODS:

- a. PROVIDED ALWAYS that the CONTRACTOR has taken all steps to avoid or mitigate such delay and shall do all that may be required and the COMPANY is satisfied with the steps taken by the CONTRACTOR to avoid or mitigate such delay.
- b. PROVIDED FURTHER that any extension of time granted herein shall not result in any increase in CONTRACT PRICE in any manner and for any reasons whatsoever.

#### ARTICLE 44- ELECTRONIC SIGNATURE AND DELIVERY

44.1 The Parties hereby agree as follows:

- (a) that this CONTRACT may be executed by electronic communication in portable document format (.pdf), whereby the respective electronic transmitted signatures shall have the same effect as manually transmitted signatures.
- (b) delivery of a copy of this CONTRACT or any other document such as notices or letters pursuant to this CONTRACT bearing an original or electronic signature by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means

intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

- (c) where applicable and as the case maybe, to execute this CONTRACT and/or any other documents and/or notices and/or letters by electronic communication in order to give effect to the execution and delivery of the relevant documents pursuant to this provision.

#### **ARTICLE 45 – REQUISITION OF GOODS**

- 45.1 Nothing in the CONTRACT shall constitute or imply any commitment or guarantee by the COMPANY on any volume (including any minimum order) and/or call-outs on the GOODS. Requisition of GOODS to be supplied will be based on any ORDER issued by the COMPANY and any payment pertaining thereto will be subject to the terms and completion of the ORDER.
- 45.1 Termination or expiry of this CONTRACT shall not affect any extant ORDER which are commenced prior to and having completion dates after the expiry of CONTRACT PERIOD or extension period or termination, as the case may be, whereby each of which shall, for the avoidance of doubt, continue in full force and effect in accordance with its terms based on the terms and conditions contained herein, until the completion of the relevant ORDER, unless such ORDER is mutually terminated by the Parties.

**[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

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

Signed for and on behalf of )  
**YAYASAN PETRONAS** )  
Registration No.: 201701045484 )  
(1259657-D) )

**SHARIAH NELLY FRANCIS**  
Chief Executive Officer

In the presence of: )  
)  
)  
)

**KHAIRUNNISA GHAZALI**  
Head, Corporate Strategy & Services

Signed for and on behalf of )  
***[Insert information of CONTRACTOR]*** )  
)  
)

*[Insert information of CONTRACTOR]*

In the presence of: )  
)  
)  
)

*[Insert information of CONTRACTOR]*

## **EXHIBIT I – SCOPE OF WORKS**

A. The CONTRACTOR shall perform the following works within the agreed timeline as stipulated in the ORDER:

### **1) PROCUREMENT, SUPPLY AND PACKAGING OF GOODS**

- The CONTRACTOR shall take the necessary and required actions to ensure the availability of the GOODS as listed and within the timeline prescribed in the ORDER.
- The CONTRACTOR shall pack the GOODS as listed in the ORDER within suitably sized packaging as advised by COMPANY.
- The CONTRACTOR shall obtain prior written approval from the COMPANY for the sizes of the packaging and design to be printed on the bags which may include the following information:
  1. The COMPANY'S logo;
  2. The list of GOODS contained in the packaging;
  3. The BENEFICIARIES who will be receiving the packaging.

### **2) DELIVERY OF GOODS**

- The CONTRACTOR shall by itself or any of its appointed service providers, arrange for the GOODS to be transported and delivered to the SITE as identified by the COMPANY within the timeline prescribed in the ORDER.
- The CONTRACTOR shall ensure that all necessary licenses, requirements, permits, approvals, regulations, guidelines, restrictions which are applicable to deliver the GOODS to the SITE is obtained and adhered to.

### **3) RECORD KEEPING**

- The CONTRACTOR shall ensure that all records pertaining to the delivery and preparation of the GOODS is well kept and be attached with the payment invoices.
- The CONTRACTOR shall keep a record of the BENEFICIARIES who collect the GOODS at the SITE.

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**EXHIBIT II-THE CONTRACT PRICE**

The CONTRACTOR shall supply the GOODS to the BENEFICIARY at the fixed price as per below:  
*Note: The price for these items shall be as per regulated by the GOVERNMENTAL AUTHORITY.*

**EXHIBIT III(a)- THE COMPANY'S REPRESENTATIVE**

The COMPANY shall be represented by the persons holdings the following positions:

1. *[COMPANY to include details]*

The current person holding the abovementioned positions are as per listed below. The COMPANY shall notify the CONTRACTOR in the event of any changes to the positions.

<b>Designation</b>	
<b>Name:</b>	
<b>Phone / Mobile No:</b>	
<b>E-Mail:</b>	
<b>Address:</b>	

<b>Designation</b>	
<b>Name:</b>	
<b>Phone / Mobile No:</b>	
<b>E-Mail:</b>	
<b>Address:</b>	

<b>Designation</b>	
<b>Name:</b>	
<b>Phone / Mobile No:</b>	
<b>E-Mail:</b>	
<b>Address:</b>	

[Open]

**EXHIBIT III(b)-THE CONTRACTOR'S REPRESENTATIVE**

<b>Name:</b>	
<b>Phone / Mobile No:</b>	
<b>E-Mail:</b>	
<b>Address:</b>	
<b>Designation</b>	