# CONSULTANCY SERVICES AGREEMENT

FOR

## CADANGAN PEMBINAAN
## PROJEK BALAI BOMBA DAN PENYELAMAT BEAUFORT, SABAH.

## CONTRACT NO. : KPKT/CPP/SB/802/48

BETWEEN

## THE GOVERNMENT OF MALAYSIA

AND

## NOOR IZWAN ARCHITECT
(BOARD OF ARCHITECTS MALAYSIA REGISTRATION NO. : SP/N 157)

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**CONTRACT NO. : KPKT/CPP/SB/802/48**

## "RECITALS"

THIS AGREEMENT is made on ..... day of .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by **KEMENTERIAN PERUMAHAN DAN KERAJAAN TEMPATAN** whose address is at **ARAS 5-8, NO.51, PERSIARAN PERDANA, PRESINT 4, 62100 PUTRAJAYA** (hereinafter referred to as "the **Government**") of the first part;

**AND**

**NOOR IZWAN ARCHITECT**, **MINISTRY OF FINANCE REGISTRATON NO. 465-0002045226** and Board of Architects Malaysia Registration No. **SP/N 157**, a sole proprietorship and practising as an Architectural Consultancy Practice, having its registered office at **E-0-3, BLOCK E, KARAMUNSING CAPITAL, OFF JALAN TUARAN, 88100 KOTA KINABALU, SABAH** hereinafter referred to as "**CA**") of the other part.

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

**WHEREAS -**

(A) The Government intends to construct and complete **CADANGAN PEMBINAAN PROJEK BALAI BOMBA DAN PENYELAMAT BEAUFORT, SABAH** (hereinafter referred to as "**the Project**") and is desirous of obtaining (hereinafter referred to as "**the Services**") from the CA in connection with the **ARCHITECTURAL CONSULTANCY SERVICES** (hereinafter referred to as "**the Works**").

(B) The CA has submitted its proposal to the Government on the scope for the Services and both Parties have agreed on the scope of Services as per the Terms of Reference specified in **Appendix 1** and Technical Documents in **Appendix 2** of this Agreement.

(C) In furtherance of such intention, the Government has agreed to appoint the CA and the CA has agreed to such appointment to provide the Services necessary for the effective implementation of the Project. A copy of the Letter of Acceptance dated **18 SEPTEMBER 2019** is attached in **Appendix 3** of this Agreement.

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

## PART A

## GENERAL

### 1.0 DEFINITIONS AND INTERPRETATIONS

### 1.1. Definitions

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

(a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;

(b) "Associated Consultant" means other consultant(s) engaged by the CA upon request and approval by the Government to carry out Services for any part of the project;

(c) "CA" means the architectural consultancy practice named in the Recitals of this Agreement, a sole proprietorship which is established or incorporated under the laws of Malaysia and registered under the Registration of Architects Act 1967 [Act 117] and engaged to provide professional architectural consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Architects Act 1967 [Act 117] is attached in **Appendix 4**;

(d) "Contractor" means any sole proprietorship, partnership or company engaged by the Government under a contract for the Project or to supply goods in connection with the Project or both and includes subcontractors;

(e) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;

(f) Contract Period means the contract period as prescribed under Clause 3.1 herein;

(g) "Estimated Cost of the Works" the estimated cost of the Works for which the CA is engaged to provide the Services;

(h) "Defects Liability Period" is as provided in the contract between the Government and Contractor;

(i) "Deliverables" means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 5** to be submitted to the Government by the CA as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;

(j) "Contract Sum for the Works" means the Contract Sum accepted by the Government for the construction of the Works as stated in the Letter of Acceptance less contingency items;

(k) "Government's Representative" ("GR") means the person under item 5 in **Appendix 7** or such other person as may be appointed from time to time by the Government and notified in writing to the CA to carry out the duties of the GR and the person so designated or appointed may be described by position;

(l) "Services" means the professional consultancy services for the project which the Government has engaged the CA to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2** and **5**;

(m) "Professional Indemnity Insurance" means the insurances taken and maintained by the CA covering its liability in respect of any negligence, error or omission acts of CA and its employees under Clause 5.11;

(n) "Project" means the project of which the Works form a part;

(o) "Works" means the works described briefly in Recital (A) of this Agreement which the Government has engaged the Contractor to carry out and the CA is appointed to perform Services and which may comprise those as specified under this Agreement.

## 1.2. Interpretations

In this Agreement, including the appendices/schedules/annexures, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) words denoting the singular number shall include the plural and vice versa;

(b) words denoting any gender shall include all genders;

(c) words denoting persons shall include a body of persons, corporate or unincorporated;

(d) any reference to clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs shall be a reference to the clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs of this Agreement;

(e) reference to any party referred to in this Agreement shall include its successors or permitted assigns;

(f) reference to any document or agreement shall include reference to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;

(g) reference to any legislation or any provision of any legislation shall include statutory modification and any amendment, modification or any legislation or re-enactment of that legislation or any legislative provisions substituted for, and all regulations and statutory instruments issued under such legislation or provision;

(h) recital headings are for convenience only and shall not affect the interpretation and construction hereof;

(i) the recitals and appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement and in the event of any inconsistency between the terms of any of the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices;

(j) any reference to an "amendment" includes any variation, deletion or addition and "amend" or "amended" shall be construed accordingly;

(k) any reference to "design" includes technical specifications, design drawings and any other relevant documentation;

(l) any reference to "law" includes any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, by-law or other legislative measure in Malaysia;

(m) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar;

(n) if any period of time is specified from a given day or a day of a given act or event, it is to be calculated exclusive of that day and if any such specified period of time or a day of a specified given act or event falls on a day which is not a Working Day, then such period of a specified time or a specified day of a given act or event is deemed to be on the next Working Day; and

(o) any reference to "pay" or its cognate expressions includes payment made in cash or by way of bank draft (drawn on a bank licensed to carry on banking business under the provisions of the Financial Services Act 2013 [Act 758] and Islamic Financial Services Act 2013 [Act 759]) or effected through inter-bank transfers to the account of the payee giving the payee immediate access to available funds.

## 1.3. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, between the Parties in relation to such matter. The Parties hereby acknowledge that in entering into this Agreement, it has not relied on any

representation or warranty save as expressly set out herein or in any document expressly referred to herein.

## 2.0 APPOINTMENT AND CONSIDERATION

The Government hereby appoints the CA and the CA accepts the appointment to provide the Services for a consideration of Ringgit Malaysia **EIGHT HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED TWENTY ONE AND CENT NINETY ONE** only (**RM856,421.91**) as the ceiling contract amount (hereinafter referred to as the "**Contract Price**" and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia **SEVEN HUNDRED THIRTY EIGHT THOUSAND ONE HUNDRED SEVENTY FIVE AND CENT TWENTY** only (**RM738,175.20**) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit Malaysia **SIXTY NINE THOUSAND SEVEN HUNDRED SEVENTY** only (**RM69,770.00**) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated **18 SEPTEMBER 2019** (as specified in **Appendix 3** of this Agreement).

## 3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

### 3.1. Contract Period

This Agreement shall be for a period of **45 MONTHS** as specified under item 2 in **Appendix 7** (hereinafter referred to as the "**Contract Period**") commencing from **13 SEPTEMBER 2019** (hereinafter referred to as "**Commencement Date**") and shall expire on the date stated under item 3 in **Appendix 7** (hereinafter referred to as the "**Contract Expiry Date**") unless terminated earlier in accordance with the provisions of Part E of this Agreement.

### 3.2. Extension of Contract Period

(a) The CA shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The CA shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.

(b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the Contract Period, the Government shall inform the CA in writing pertaining to the period of extension. Provided that the extension on the Contract Period shall not affect the Contract Price as specified in **clause 2.0**.

# PART B

# CA'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

## 4.0 CA'S REPRESENTATIONS AND WARRANTIES

The CA hereby represents and warrants to the Government that –

a) it is a corporation validly existing under the laws of Malaysia;

b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);

c) it is a body corporate or partnership or sole-proprietorship registered under the Registration of Architects Act 1967 [Act 117] and exists validly under the laws of Malaysia;

d) it shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;

e) it has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;

f) it has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;

g) as at the execution date, neither the execution nor performance by the CA of this Agreement nor any transactions contemplated by this Agreement will violate in any respect any provision of –

   i. its Memorandum and Articles of Association; or

   ii. any other document or agreement which is binding upon it or its assets;

h) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this Agreement;

i) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;

j) this Agreement constitutes a legal, valid and binding obligation of the CA and is enforceable in accordance with its terms and conditions;

k) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement, and the CA acknowledges that the Government has entered into this Agreement in reliance on its representations and warranties as aforesaid.

## 5.0 CA'S OBLIGATIONS

### 5.1. Quality of Services

a) The CA shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed in this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.

b) The CA shall have sufficient knowledge of current Local Authority requirements, bye-laws, local land acts and other regulations relating to the Project, and shall advice the Government accordingly in matters affecting the implementation of the Project.

### 5.2. Timeliness of Services

a) The CA shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.

b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 8**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.

c) The CA shall provide to the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.

d) The CA shall keep the GR informed on a day to day basis of all instructions, variations and design changes made or authorized by the CA.

### 5.3. Consequences of Delay

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

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

## 5.4. Instructions by The Government

a) The CA shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The CA shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the CA in connection with the Services.

b) The CA shall attend or be represented at all meetings convened by the Government to which the CA may be summoned, and shall advise and assist the Government on all matters relating to the Services.

## 5.5. Design Services

a) Where the CA is required by the Government to provide design services, the CA shall guarantee the Government that such design shall be suitable, functional, safe and in compliance with the design standard and specification of the Works.

b) The CA shall use due skill and care to ensure that the design of all parts of the Works for which the CA is responsible under this Agreement is in accordance with the laws and regulations and other statutory and regulatory requirement applicable to the Works.

c) The CA shall strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference. The CA shall not without prior written approval of the Government amend the project brief which in the opinion of the CA is likely to increase the project cost.

d) All drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by the CA for or in connection with any invitation for tenders shall not be used for any other such purposes unless they shall first have been approved by the GR. The approval by the GR shall not relieve the CA of its obligations in connection with the Services.

e) All designs, calculations, drawings and documents and any other deliverables in relation to the Services to be provided by the CA to the Government shall be approved and signed by the CA.

f) The CA shall not without prior written approval of the Government, make amendments to any approved design or give any instruction which is likely to increase the cost of the project, unless the variations are of an emergency nature and any delay in carrying out such variation works can cause claims against the Government or involve danger to life and property and in the circumstance it is impracticable for the CA to obtain

such approval. In such circumstances, the CA shall seek the approval of the Government as soon as possible of such variation works.

g) If during construction any defect or damage shall occur to the Works or any part thereof or if there shall arise a need for a variation to the Works, as a result of any defect, fault, insufficiency or inadequacy in the design, the Government shall issue to the CA a notice specifying the default and requiring the CA to remedy the same within the period specified by GR at the CA's own cost and expense. If the same is not remedied, the Government shall be entitled, without prejudice to any other rights or remedies it may possess against the CA under this Agreement or at law, to claim and recover from the CA any payment for any loss/claims and/or damages suffered or any other expenses incurred as a result thereof.

h) Notwithstanding **clause 5.5(g)**, the Government may elect to remedy the defect, fault, insufficiency or inadequacy in the design as at the time such defect, fault, insufficiency or inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the GR to be the sum required to remedy the same from any money due or to become due to the CA under this Agreement, failing which such sum shall be recovered from the Professional Indemnity Insurances taken by the CA or as a debt from the CA.

## 5.6. CA's Personnel

a) The CA shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.

b) The Services shall be carried out by the CA's Personnel as specified under **Appendix 9** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 8.**

c) The Project Manager of the CA as specified in **Appendix 9** shall be responsible for the management of the CA's Personnel for the Services as well as to act as liaison between the CA and the Government.

d) The CA shall ensure the Personnel are dedicated to the Services and give priority to the performance of their respective portions of the Services assigned to them over any other works, tasks and assignments in relation to other existing or future projects.

e) No Personnel shall be engaged by the CA or its affiliates for other work or project without the prior written consent of GR.

f) There shall be no changes or substitutions in the CA's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CA, it becomes necessary to replace any of the CA's Personnel, the CA shall forthwith

provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

g) No Personnel shall be engaged by the CA or its affiliates for other work or project without the prior written consent of GR.

h) In the event the number of CA's Personnel as specified in **Appendix 9** is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on CA's Personnel Time Input Schedule as specified in **Appendix 10.**

i) The CA shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

j) Notwithstanding **clause 5.6(f)**, the GR may at any time request the CA to reduce the number of the Personnel according to the progress of the Works.

k) The GR may with the agreement of the CA, direct the CA, within a time frame of not less than fourteen (14) days, to remove any Personnel who, in the opinion of the GR, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent.

## 5.7. Information and Records

(a) The CA shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.

(b) The CA shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 6A, Appendix 6B** and **Appendix 6C** of this Agreement have been duly incurred.

(c) The CA shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.

(d) In the event of failure occurring after the completion of the Project, the CA may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

## 5.8. Liability

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

## 5.9. Indemnity

The CA agrees with the Government that –

a) the CA shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep the Government and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from carrying out of the Services except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Government or its agents and servants and the CA expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

b) the CA shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from –

   i. the negligent use or act, misuse or abuse by the CA or the CA's Personnel, servants, agents or employees appointed by the CA in the performance of the Services; or

   ii. any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the CA to any person and not caused by the negligence or wilful act, default or omission of the Government, its agents or servants; or

   iii. any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error**,** omission, neglect, breach or default of the CA or the CA's Personnel, servants, agents or employees; and

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

## 5.10. Insurance

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

## 5.11. Professional Indemnity Insurance

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

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

## 5.12. Emergency and Accident

a) Where any accident, failure or other event occurs due to any cause whatsoever to, in or in connection with the Services provided for the Works or any part thereof either during the execution of the Works or during the Defect Liability Period or the period thereafter, the CA shall immediately report to the Government of the accident, failure or event together with the CA's proposal on any interim measures required to be taken.

b) The CA shall conduct a full investigation on the accident, failure or event if directed in writing by the Government in order to determine the cause or reason for the accident, failure or event and submit a report of the investigation to the Government together with the CA's proposals for remedial works in respect thereof.

c) If the Government directs the CA to carry out any remedial works as specified under **clause 5.12 (b)**, the CA shall carry out the remedial works within fourteen (14) days from the date of the written direction.

d) The CA shall immediately obtain the approval of the Government before giving any instruction for any variation of works required if an accident, failure or event had occurred and any delay in carrying out the variation will cause claims against the Government or involve danger to life or property.

e) In the event that the Government decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Government, its employee or any person or body appointed or authorized by the Government, the CA shall give full co-operation and render all necessary assistance and facilities including the giving of access to all specifications, designs, records and other available information relating to the Works as may be required by the Government, its employee or such authorized person or body at no additional cost.

f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CA, then the Services provided by the CA hereto during the Defect Liability Period shall be construed as part of the Basic Professional Services and the CA is not entitled to claim for any additional payment. Any services required from a third party for works not within the scope of Basic Professional Services described in **Appendix 1** of this Agreement shall also be paid accordingly by the Government.

g) If the investigation reveals that the accident, failure or event which occurred is due to the negligence, error, omission, default or poor supervision of the CA, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CA shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to−

i. pay any person for the injury, damage or loss suffered by any person or his property; and

ii. repair, replace or make good all injury, damages and/or pay all expenses and costs pertaining to injury and loss suffered by that person or his property.

h) In the event that the CA fails to comply with **clause 5.12(g)** and the Government is held liable for damages to any person for injury, damage or loss suffered, or has to repair or make good such damages and/or losses, such payment shall be deducted from any payment due to the CA under this Agreement or shall be claimed from the CA as a debt due to the Government.

## 5.13. Confidentiality

a) Except with the prior written consent or the instructions of the Government, the CA shall not at any time communicate to any person or body or entity any confidential information disclosed to the CA for the purpose of the provision of the Services or discovered by the CA in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance

of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.

b) This sub-clause shall not apply to information which:

i. is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;

ii. is already known to the other party to whom it is disclosed to, at the time of disclosure;

iii. is independently developed without benefit of the confidential information of the other party;

iv. is in possession of the CA without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.

c) In the event that the CA receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the CA shall not constitute a violation of this Agreement provided that-

i. the CA promptly notifies the Government of the existence, terms and circumstances surrounding such request;

ii. the CA consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and

iii. the CA exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.

d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

## 5.14. Notice of Delay

In the event the CA encounters any delay in obtaining the required assistance and information set forth in **clause 5.7(a)**, the CA shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may

grant an appropriate extension of time and other consideration appropriate for provision of the Services.

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

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

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

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

**5.16. Situation Beyond Control of CA**

a) The CA shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the CA, which makes it impossible for the CA to carry out its obligations hereunder.

b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CA within thirty (30) days from the date of termination of this Agreement.

c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 7** for a decision.

**5.17. Prohibition on Association**

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

### 5.18. Prohibition on Conflicting Activities

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

### 5.19. Independent Consultant

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

### 5.20. Technology and Knowledge Transfer

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

b) Pursuant to **clause 5.20(a)** above, the CA shall provide training for a minimum **ONE (1)** of officials nominated by the Government to be competent and conversant in the implementation of the Project.

c) The CA shall allow the employees of the Government to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

### 5.21. Intellectual Property Rights

a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The CA shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.

b) The CA agrees to grant to the Government free from all royalties, fees and other charges, all licenses in respect of intellectual property rights now or hereafter owned or controlled by the CA or in respect of which the CA has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.

c) The CA shall defend and indemnify the Government from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any intellectual property rights in respect of any design, plans, calculations, drawings, documents, plant, equipment, machinery, material, methods or processes developed or used for or incorporated in the Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.

d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the CA may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

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# PART C

# GOVERNMENT'S OBLIGATIONS AND RIGHTS

## 6.0 GOVERNMENT'S OBLIGATIONS

### 6.1. Appointment of GR

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

b) The CA shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

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

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

b) If the CA requires a decision from the Government for the performance of its Services under this Agreement, the CA shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 7** of this Agreement.

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

a) The CA may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.

b) Any necessary and relevant information supplied by the Government to the CA pursuant to **clause 6.3(a)** of this Agreement shall not relieve the CA of any of the CA's obligations under this Agreement.

c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the CA, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under **clause 6.3(a)** of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the CA's obligation under this Agreement.

d) Where necessary, the Government shall assist the CA to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

## 6.4. Payment to the CA for Services

a) In consideration for the performance of the Services, the Government shall pay or reimburse to the CA –

i. the Contract Price consist of the fixed ceiling consulting fee as specified in **Appendix 6 B** (“Fixed Ceiling Consulting Fees”) and the ceiling out of pocket expenses as specified in **Appendix 6 C** (“Ceiling Out of Pocket Expenses”). If the actual costs incurred in the performance of the Services does not exceed the Fixed Ceiling Consulting Fee and the Ceiling Out of Pocket Expenses, downward adjustments can be made in accordance with **Appendix 6A**, **Appendix 6B** and **Appendix 6C**. The payment shall include amongst others the Government Service Tax, which amount shall be paid by the Government to the CA upon the CQS giving proof of the registration of the Service Tax Act 2018 with the Royal Customs Department of Malaysia. A copy of the registration of Government Service Tax with the Royal Customs Department of Malaysia is attached in **Appendix 11** of this Agreement.

ii. Notwithstanding **clause 6.4(a)(i)**, the Fixed Ceiling Consulting Fees as specified in **Appendix 6B** is fixed and cannot be adjusted throughout the Contract Period even if the Contract Sum for the Works exceeds the Estimated Contract Sum for Works or there is a change of the scope of Service or increase in the value of Works.

iii. However, the Fixed Ceiling Consulting Fees as specified in **Appendix 6 B** shall be adjusted and reduced proportionately according to the following formula if the Contract Sum for the Works is less than the Estimated Contract Sum for Works or there is a change of the scope of Service or reduce in the value of Works:

| | |
|---|---|
| Contract Sum for the Works<br>Estimated Cost for the Works | x Ceiling of the Consulting Fee |

b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 12** upon the CA furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.

c) Payment to the CA shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the CA and be deposited to the account of the CA as specified under item 7 in **Appendix 7.**

d) If any item or part of an item of an account/claims/invoices rendered by the CA is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the CA in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.

e) Except as otherwise agreed between the Government and the CA, payments in respect of all fees and expenses incurred by the CA shall be made in Ringgit Malaysia.

f) If the CA intends to claim any additional payment pursuant to any clause of this Agreement, the CA shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the CA fails to comply with this clause, the CA shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.

g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the CA and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the CA to the Government within thirty (30) days after receipt by the CA of notice thereof.

### 6.5. Withholding Payment

a) The Government may by giving written notice to the CA, and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the CA under this Agreement, upon the occurrence and continuance of any of the following events:

i. the CA commits any breach of the terms and conditions of this Agreement;

ii. the progress of the Services fails to measure up to the aggregate payment made to date;

iii. any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or

iv. any failure of the CA to deliver the Services to the satisfaction of the Government.

b) The CA may apply to the Government, within fourteen (14) days after receiving notice referred to in **clause 6.5(a)** to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## 7.0 GOVERNMENT'S RIGHTS

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

a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the CA in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.

b) The CA shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The CA shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the CA"s quality performance review processes.

c) The CA shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.

d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

# PART D

# DISPUTE RESOLUTIONS

## 8.0 DISPUTE RESOLUTION

### 8.1. Dispute Resolution by Government Representative

a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.

b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.

c) If the Consultant:

i. fail to receive a decision from the GR within seven days (7) days after being requested to do so; or
ii. is dissatisfied with any decision of the GR,

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

### 8.2. Dispute Resolution Committee

a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the “Dispute Resolution Committee"), comprising –

i. Deputy Secretary of the Ministry / Head of Department as the Chairman;

ii. one (1) representative to be appointed by the Government; and

iii. one (1) representative appointed by the Consultant.

b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## 8.3. Arbitration

a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Asian International Arbitration Centre on the application of either Party hereto. Such arbitration shall be heard at the Asian International Arbitration Centre and shall be conducted in accordance with the rules for arbitration of the Asian International Arbitration Centre using the facilities and the system available at the Centre.

b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the CA's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the CA.

c) In the event that such consent has been obtained in accordance with **clause 8.3(b)**, the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this Agreement.

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

e) The award of the Arbitrator shall be final and binding on the Parties.

f) In the event of the death of the arbitrator or his unwillingness or inability to act, then the Government and the CA upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the CA fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Asian International Arbitration Centre.

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

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

# PART E

# SUSPENSION AND TERMINATION

## 9.0 SUSPENSION

### 9.1. Suspension and Resumption of Services

a) The GR may at any time instruct the CA to suspend part or all of the Services by the giving the CA due notice in writing.

b) Upon receipt of such instruction, the CA shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.

c) During the suspension period, the CA shall continue to perform his obligations under the Agreement which is not affected by the instruction to suspend, including the obligation to effect and maintain insurance.

d) The GR may instruct the CA to resume the Services at any time thereafter. Upon receipt of such instruction the CA shall resume the Services and the Parties shall jointly examine the Services affected by the suspension. The CA shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The CA shall also take all necessary actions to mitigate the expenses incurred.

### 9.2. Extension of Time

a) If the CA suffers delay and/or incurs expenses in complying with the instruction under **clause 9.1** and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the CA, the CA shall give notice for extension of time. PROVIDED THAT the CA shall not be entitled to such extension if the suspension is due to a cause attributable to the CA and the CA shall not be entitled to payment of loss and expenses if the CA−

i. fails to take measures specified in **clause 9.1(b)**; and

ii. fails to take all necessary action to mitigate the expenses incurred.

b) In the event such suspension shall continue for a period of more than twelve (12) months, the Parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

### 9.3. Consequences of Mutual Termination

a) If this Agreement is mutually terminated under this clause-

i. **clause 11.1 (b)** shall apply; and

ii. all costs and expenditure incurred by the Government and the CA hall be determined by the Government

## 10.0 TERMINATION BY THE GOVERNMENT

### 10.1. Withholding Payment

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

### 10.2. Default by the CA

a) In the event the CA without reasonable cause −

i. suspends the implementation of the Services;

ii. fails to proceed regularly and diligently with the performance of its obligations under this Agreement;

iii. fails to execute the Services in accordance with this Agreement;

iv. persistently neglects to carry out its obligations under this Agreement;

v. defaults in performing the duties under this Agreement; or

vi. breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

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

### 10.3. Events of Default

a) If at any time during the Contract Period-

i. the CA goes into liquidation or compounds with or enter into an arrangement or compositions with its creditors;

ii. an order is made or resolution is effectively passed for winding up of the CA (except for the purpose of restructuring or amalgamation with the written consent of the Government, which consent shall not be unreasonably withheld);

iii. a provisional liquidator, receiver or manager of its business or undertaking is appointed, or possession taken by or on behalf of the creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge over the assets of the CA;

iv. execution is levied against a substantial portion of the CA's assets;

v. the CA assigns the whole or any part of this Agreement;

vi. the CA did not obtain prior written approval from the Government for any sale or transfer of company's equity throughout the contract period;

vii. any of the CA's director is prosecuted for any offences; or

viii. any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

### 10.4. Consequences of Termination by the Government

a) Upon termination of this Agreement under **clause 10.1, 10.2** or **10.3** the powers and rights granted by the Government to the CA and the obligations in this Agreement shall terminate immediately.

b) The CA shall hence forth –

i. cease all the Services immediately;

ii. submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;

iii. forthwith, at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and

materials belonging to the CA, its Personnel, employees, servants and agents and make good all damage caused by such removal or such detachment;

iv. at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advice opinion or report that the CA may provide;

v. terminate all the third party contract entered into by the CA in relation to the Project on or before the date of termination and the Government shall not be liable for any termination costs arising thereby and shall be indemnified and held harmless by the CA in respect hereof;

vi. allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services;

vii. bear all liabilities, obligations, claims, suits or proceedings whatsoever exiting prior to and as at the date of termination arising out of or in connection with-

A. any other agreement entered by the CA in relation to its obligation under this Agreement; or

B. any act of default, omission or negligence of the CA, its Personnel, employers, agents or servants,

and the Government shall not be liable in respect of such liabilities, obligations, claims, suits or proceedings; and

viii. pay to the Government not later than six (6) months after the date of termination the aggregate of-

A. all amounts at that time which may be owing by the CA to the Government under this Agreement; and

B. any costs and expenses (including any incidental costs and expenses) paid or incurred by the Government arising from such default including any additional costs incurred by the Government in having to engage third party to complete the Service in excess of the costs and expenses which would have been incurred by CA in completing the Services.

c) The Government shall hence forth −

i. pay the CA part of the consulting fees in proportion to the amount of the Services performed up to the date of termination;

ii. deduct all costs, losses and damages incurred under **clause 10.4 (b)(viii)**, from the payment then or thereafter due to the CA. The amount, if any, remaining to be paid thereafter to the CA and the amount under **clause 10.4 (c)(i)** shall constitute the CA's sole claim for payment following termination under **clauses 10.1, 10.2** and **10.3**

iii. be entitled to claim against the CA for any losses and/or damages suffered as a result of the termination; and

iv. be entitled to appoint another consultant to perform the Services.

d) For the avoidance of doubt, the Parties hereby agree that the CA shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than those stipulated under **clause 10.4 (c)(i)** (if any). The Parties further agree that the payment made by the Government under **clauses 10.4 (c)(i)** shall constitute as a full and final settlement between the Parties.

## 11.0 TERMINATION BY THE CA

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

b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CA shall be entitled to terminate this Agreement at any time by giving notice to that effect.

## 11.1. Consequences of Termination by the CA

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

a) the powers and rights granted by the Government to the CA and the obligations in this Agreement shall terminate immediately.

b) The CA shall −

i. cease all the Services immediately;

ii. submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;

iii. forthwith, at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the CA, its Personnel, employees, servants and agents and make good all damage caused by such removal or such detachment;

iv. at no cost, hand over all plans, drawings, reports, records, documents, specifications, drawings including intellectual property rights and similar materials to the Government;

v. terminate all the third party contract entered into by the CA in relation to the Project on or before the date of termination and the Government shall not be liable for any termination costs arising thereby and shall be indemnified and held harmless by the CA in respect hereof;

vi. allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services;

vii. bear all liabilities, obligations, claims, suits or proceedings whatsoever exiting prior to and as at the date of termination arising out of or in connection with-

a. any other agreement entered by the CA in relation to its obligation under this Agreement; or

b. any act of default, omission or negligence of the CA, its Personnel, employers, agents or servants,

and the Government shall not be liable in respect of such liabilities, obligations, claims, suits or proceedings; and

viii. pay to the Government not later than six (6) months after the date of termination the aggregate of all amounts at that time which may be owing by the CA to the Government under this Agreement.

c) The Government shall −

i. pay the CA part of the consulting fees in proportion to the amount of the Services performed up to the date of termination;

ii. deduct all costs, losses and damages incurred under **clause 10.4 (b)(viii)**, from the payment then or thereafter due to the CA. The amount, if any, remaining to be paid thereafter to the CA and the amount under **clause 11.1 (c)(i)** shall constitute the CA's sole claim for payment following termination under **clause 11.1**.

iii. be entitled to claim against the CA for any losses or damages suffered as a result of the termination; and

iv. be entitled to appoint another consultant to perform the Services.

d) For the avoidance of doubt, the Parties hereby agree that the CA shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than those stipulated under **clause 11.1 (c)(i)** (if any). The Parties further agree that the payment made by the Government under **clause 11.1 (c)(i)** shall constitute as a full and final settlement between the Parties.

## 12.0 TERMINATION ON NATIONAL INTEREST

a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the CA (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.

b) Upon such termination −

i. **clause 11.1** shall be applicable; and

ii. the Parties hereby agree that the CA shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than those stipulated under **clause 11.1 (c)(i)**. The Parties further agree that the payment made by the Government under **clause 11.1 (c)(i)** shall constitute as a full and final settlement between the Parties.

## 13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES

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

b) Upon such termination −

i. **clauses 10.4(b)** and **(c)** be applicable;

ii. the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination; and

iii. For avoidance of doubt, the Parties hereby agree that, subject to **clause 13 (b)(i)**, the CA shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

## 14.0 FORCE MAJEURE

### 14.1. Events

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

a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;

b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;

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

d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; or

e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the CA or its employees, which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

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

### 14.2. Notification of Force Majeure

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

### 14.3. Termination by Force Majeure

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be

continuing for a period of more than six (6) months, then the Parties may mutually terminate this Agreement.

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

If this Agreement is terminated pursuant to **clause 14.3**, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

### 14.5. Delay

a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with **clause 14.2** shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.

b) Notwithstanding **clause 14.5(a)**, if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

### 14.6. Restoration

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

### 14.7. Insurance

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

# PART F

# GENERAL PROVISIONS

## 15.0 AMENDMENT

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

## 16.0 NOTICES

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

b) It shall be the duty of the Parties to notify the other if there is a change of address or entity by giving a written notice within fourteen days (14).

## 17.0 GOVERNING LAW

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

## 18.0 COMPLIANCE WITH LAWS AND REGULATIONS

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

b) The CA shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.

## 19.0 SEVERABILITY

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

## 20.0 ASSIGNMENT

The CA shall not assign, transfer or novate this Agreement or any part of it or any benefit or interest conferred by this Agreement to any third party.

## 21.0 RELATIONSHIP OF THE PARTIES

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

## 22.0 ADVERTISEMENT

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

## 23.0 TIME

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

## 24.0 COSTS AND STAMP DUTY

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

## 25.0 INCOME TAX

a) The CA and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.

b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.

c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

## 26.0 SCHEDULES AND APPENDICES

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

a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or

b) in the Appendices of this Agreement, the GR and CA shall reach a mutual understanding to resolve the ambiguity or discrepancy.

## 27.0 WAIVER

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

## 28.0 CUSTODY OF AGREEMENT

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

## 29.0 SUCCESSORS BOUND

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

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# PART G

# SPECIAL PROVISIONS

- None -

**SIGNATORIES TO THE AGREEMENT**

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

SIGNED for and on behalf of ) ……
**THE GOVERNMENT** )

In the presence of:

…….....
Name of witness :
NR IC No. :

SIGNED for and on behalf of ) ……
**THE CA** )

In the presence of:

…….....
Name of witness : **MOHD ILHAM BIN MOHD YOUSOF**
NR IC No. : **920320-14-6255**

# PART A : SCHEDULE OF SERVICES

## 1.0 TYPES OF PROFESSIONAL SERVICES

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

a) Basic Professional Services

b) Additional Professional Services

c) Special Services

d) Supervision On Site

## 2.0 BASIC PROFESSIONAL SERVICES

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

a) Schematic Design Phase

b) Design Development Phase

c) Contract Documentation Phase

d) Contract Implementation and Management Phase

e) Final Completion Phase

### Basic Professional Services under Schematic Design Phase

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

a) taking the Government's instruction and analysing the project brief;

b) preparing preliminary conceptual sketch proposals to interpret the project brief;

c) developing the preliminary conceptual sketch proposals into sketch designs to a stage sufficient to enable an application to be made for planning approval or approval in principle as required under any relevant laws and regulations;

d) preparing preliminary estimates of the probable construction cost based on current area, volume or other unit costs;

e) where applicable, preparing and submitting the drawings and other necessary documents to relevant approving authorities for either planning approval or approval in principle as required under any relevant laws.

**Basic Professional Services under Design Development Phase**

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

a) upon the approval of the sketch design by either the relevant authority or the Government, developing the schematic design drawings to a stage to enable other consultants to commence their detailed design work;

b) preparing working drawings and submitting the same together with all necessary particulars to the relevant approving authorities to obtain statutory building approval;

c) updating the preliminary estimates of construction costs and submitting the same to the Government;

d) updating the project planning and implementation schedule and submitting the same to the Government for approval.

**Basic Professional Services under Contract Documentation Phase**

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

a) upon the approval by the Government of the updated preliminary estimates of construction costs and the project planning and implementation schedule, preparing and finalising the detailed drawings and other particulars necessary to the stage of completion sufficient to enable bills of quantities to be prepared;

b) in collaboration with other consultants, preparing all documents necessary for obtaining competitive tenders for the works;

c) inviting, on behalf of the Government, tenders for the work or collaborating with the other consultants engaged by the Government to do so;

d) evaluating the results of the tenders and submitting a report and recommendation to the Government;

e) awarding the contract on behalf of the Government;

f) preparing the building contract documents either alone or in collaboration with other consultants appointed by the Government for signature by the Government and the contractor.

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

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

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

**Basic Professional Services under Final Completion Phase**

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

a) issuing Certificate of Completion and Compliance for buildings after having satisfied that the buildings are fit and safe for occupancy;

b) certifying as-built drawings and submitting maintenance manuals together with all warranties to the Government;

c) issuing Certificate of Making Good Defects after having satisfied that all defects to the building(s) have been rectified;

d) preparing final accounts for the contract and issuing a final certificate of payment to the contractor.

## 1.0 ADDITIONAL PROFESSIONAL SERVICES

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

a) inspecting and advising on the selection and suitability of sites, conducting or taking part in negotiations connected therewith, taking levels and preparing measured drawing plans of sites, sites and buildings or existing buildings;

b) inspecting, reporting and giving advice on the condition of buildings;

c) preparing schedules of dilapidations for either the landlord or the tenant, taking particulars on site, preparing specifications for repairs and supervising the execution;

d) preparing a preliminary technical appraisal of a project to enable the Government to reach a decision on whether to proceed and the form and content that the Project shall take;

e) involving in special or protracted negotiations for waivers and appeals and in connection with applications for town planning approvals or for approvals under building by-laws including applying for conversions of land for development purposes, zoning and densities;

f) amending or preparing new drawings or producing information as a result of the Government's instructions to amend the content, scope, design or details of a project, building or part thereof after the Project or building has been approved and finalised;

g) putting in additional time or work due to delays in the Contract beyond the control of the CA; and

h) carrying out such other additional professional services, if any, as directed by the Government.

## 2.0 SPECIAL SERVICES

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

a) preparing detailed development plans in connection with housing or other development based on a layout plan approved by the relevant approving authority;

b) providing full interior design services including the taking of instruction from the Government; formulating the brief, deciding on the themes, estimating and establishing the budget and implementation schedule, preparing sketch layouts and studies, preparing working and construction drawings, details, schedules and colour schemes, designing special items of furniture where appropriate or giving detailed advice on the selection of furniture, fittings and soft furnishings, preparing tender documents, obtaining tenders or quotations and advising thereon, accepting on behalf of the Government offers for implementation, preparing the contract documents if necessary, managing the contract, supervising the works and certifying the works on completion;

c) Serving as an expert or as an expert witness in connection with litigation, giving evidence, setting proofs, conferring with legal counsel, attending court or arbitration or other inquiries;

d) Serving as a specialist consultant;

e) Providing town planning services;

f) Providing project management services; and

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

## 3.0 SUPERVISION ON SITE

a) The CA may be required to provide part-time or full-time supervision on site. Where such service is required, the number of staff to be employed, including the CA's own staff to be seconded to site for the purpose, shall be approved in writing by the Government.

b) Unless otherwise agreed to by the approving authorities concerned, the CA shall be in full control of, and responsible for, construction supervision of the Works on site.

c) All site staff shall be under the control of, and take instructions from the CA.

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## PART B : PAYMENT FOR PROFESSIONAL SERVICES

### 1.0 PAYMENT FOR PROFESSIONAL SERVICES

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

a) Payment is based on Fixed Ceiling of Consulting Fee and shall be made in progressively in stages in accordance with the Schedule of Payment as in **Appendix 12**;

- Basic Professional Services;
- Additional Professional Services Additional Professional Services During Pre-Contract and Post-Contract;
- Special Services; and
- For Supervision On Site.

b) Payment for Disbursements / Reimbursable is subject to the Ceiling Out of Pocket Expenses and verification on the expenses incurred by the CA.

### 1.1 Payment When Works are Damaged or Destroyed

If at any time before completion of the Works, any part of the Works or any materials, plant or equipment whether incorporated in the Works or not are damaged or destroyed, resulting in additional services being required by the Government to be carried out by the CA, provided always such damage was not due to the negligence on the part of the CA, then the CA shall be paid base on the Contract Price as in Clause 6.4 of the Agreement.

### 1.2 Payment Following Termination Or Suspension By The Government

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

i. a sum deducible from the stage of Services completed at the time of termination or suspension; and

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

b) In the event that the CA is required to recommence its Services for the Project suspended by the Government, the CA shall be paid for the performance of its Services the sum payable to the CA base from the stage of Services pursuant to paragraph 2 of this Schedule, the payments under sub-paragraphs 1.2(a)(i) and (ii) of this Schedule being treated as payments on account.

c) Where the tendering of the Project (or any part thereof) is likely to be delayed for more than **twelve (12)** months or postponed at the request of the Government, the CE shall be paid according base from the stage of Services pursuant to paragraph 2 of this Schedule.

d) Where the Project is suspended or postponed after the tenders have been called, the fees payable to the CA shall be computed based on the lowest acceptable tender received.

e) Where tenders are recalled and the Project is subsequently resumed, the total fees payable to the CA, inclusive of the fees paid under sub-paragraph 1.2(d) of this Schedule.

i. a sum deducible from the stage of Services completed at the time of termination or suspension

f) Upon suspension or termination of this Agreement, the CA shall within the period specified under item 10 in Appendix 7 of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.

g) Within the period specified under item 11 in Appendix 7 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

h) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CA shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### 1.3 Payment Following Termination by the CA

If there is a termination by the CA of his Services (unless the termination had been occasioned by the default or negligence of the CA), the CA shall be entitled to be paid the sums specified in sub-paragraphs 1.2(a)(i) of this Schedule less the amount of payments previously made to the CA.

## 2.0 STAGES OF PAYMENT OF FEES

a) The fees payable to the CA for every stage of basic professional services, shall be as follows:

**Table I – STAGES OF PAYMENT**

| ***Upon completion of each Phase:*** | ***Percentage of the total fee*** |
|---|---|
| Schematic Design Phase | 15% |
| Design Development Phase | 30% |
| Contract Documentation Phase | 25% |
| Contract Implementation and Management Phase | 25% |
| Final Completion Phase | 5% |

b) The CA shall be entitled to payments at intervals to be mutually agreed upon by the CA and the Government in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the stages shall be equal to the percentages as set out in Table I.

c) Unless otherwise specified or mutually agreed beforehand between the Government and the CA in this Agreement, the fee apportioned to each stage shall be paid in full, even if, under the circumstances in a particular case, the CA is not required to perform some of the Services listed under that stage in Paragraph 2.0 in Part A - Schedule of Services.

d) Where the CA is engaged only for the purpose of the Contract Implementation and Management Phase and Final Completion Phase, the CA shall be paid based on the contract price as stated in **Clause 6.4 (a)**.

e) Where there are variations to the works at any time during the course of construction which results in changes (reduction/increase) to the original contract sum, the fees for the services rendered by architectural consultancy practice –

**i.** under the completed Schematic Design stage, Design Development stage, Contract Documentation stage and the completed Construction Stage, shall be based on the on the contract price as stated in **Clause 6.4 (a)**.

f) Notwithstanding subparagraph (e), where the CA has not completed all the services specified under the Schematic Design stage, the fee shall be based on an amount to be agreed between the CA and the Government, and in the absence of such agreement, the fee shall be derived on the basis of Time Cost.

g) Where the payment is based on Time Cost, the proportions of the total fee for the Works to be paid to the CA shall be based on the completion of deliverables or on a pro-rated monthly basis or any other agreed stages of payment.

h) Payment for site supervision services shall be paid on a monthly basis.

i) Payment for disbursement / reimbursable items shall be made on a monthly basis upon submission of receipts and invoices where applicable.

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**APPENDIX 1**

# APPENDIX 1 : TERMS OF REFERENCE

**APPENDIX 2**

# APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION

**APPENDIX 3**

# APPENDIX 3 : LETTER OF ACCEPTANCE

**APPENDIX 4**

# APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD

**APPENDIX 5**

# APPENDIX 5 : DELIVERABLES

**APPENDIX 6A**

# APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST

**APPENDIX 6B**

# APPENDIX 6B : CONSULTING FEES

**APPENDIX 6C**

# APPENDIX 6C : OUT OF POCKET EXPENSES

**APPENDIX 7**

# APPENDIX 7 : SCHEDULE OF AGREED ITEMS

**APPENDIX 8**

# APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE

**APPENDIX 9**

# APPENDIX 9 : CA'S PERSONNEL

**APPENDIX 10**

# APPENDIX 10 : CA'S PERSONNEL TIME INPUT SCHEDULE

**APPENDIX 11**

# APPENDIX 11 : CA'S SERVICES TAX LICENSE

**APPENDIX 12**

# APPENDIX 12 : SCHEDULE OF PAYMENT