KERAJAAN MALAYSIA

Surat Setuju Terima dan Perjanjian Perunding

PERBENDAHARAAN MALAYSIA

KANDUNGAN

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PK 3.8 SURAT SETUJU TERIMA DAN PERJANJIAN PERUNDING

1. Pelantikan Rasmi Perunding

1.1. Pelantikan rasmi perunding hendaklah dilaksanakan dengan mengeluarkan dokumen seperti berikut :

1.1.1. Surat Setuju Terima (SST); dan
1.1.2. Perjanjian Perunding.

2. Surat Setuju Terima

2.1. SST adalah satu dokumen perundangan yang sah dan merupakan sebahagian daripada dokumen perjanjian. Ia adalah untuk mengesahkan penerimaan sesuatu tawaran berasaskan kepada syarat-syarat yang telah ditetapkan di dalam dokumen pelawaan. Format SST perunding adalah seperti di **Lampiran 1** dan **Lampiran 2**.

2.2. SST hendaklah dikeluarkan kepada firma yang berjaya dengan kadar segera melalui pos laju daripada tarikh keputusan Pihak Berkuasa Melulus diterima oleh Agensi. Agensi adalah digalakkan untuk memaklumkan notis penghantaran SST kepada firma secara emel/faks.

2.3. Agensi hendaklah memastikan kandungan SST adalah jelas. Dokumen berikut hendaklah disertakan bersama dengan SST yang dikemukakan kepada firma :

2.3.1. Surat Akuan Perunding Yang Dilantik;
2.3.2. Butiran kos terperinci yang telah dipersetujui;
2.3.3. Jadual pelaksanaan projek/kajian yang telah diluluskan;dan
2.3.4. Carta ahli pasukan kerja beserta peranan serta tanggungjawab yang telah diluluskan.

2.4. Dengan pengeluaran SST tanpa bersyarat dan persetujuan oleh perunding, suatu ikatan kontrak telah terwujud antara Kerajaan dengan perunding yang ditawarkan.

2.5. Perunding hendaklah mengembalikan kepada Kerajaan salinan asal dan kedua berserta lampiran yang berkaitan yang telah ditandatangani dengan sempurna oleh perunding berserta cop rasmi dan saksi perunding dalam tempoh yang ditetapkan (3/7/14 hari) dari tarikh SST tersebut, untuk rekod dan tindakan Kerajaan selanjutnya. Sekiranya perunding tidak mengemukakan maklum balas dalam tempoh yang ditetapkan dan setelah Agensi memberi peringatan kepada perunding tetapi masih gagal untuk mengemukakan maklum balas, SST tersebut boleh terbatal dengan sendirinya.

2.6. Agensi juga hendaklah memastikan sebelum SST ditandatangani oleh perunding yang dilantik, beberapa perkara hendaklah dipatuhi dan sekiranya didapati terdapat kecuaian di pihak pegawai awam ke atas

perkara tersebut, tindakan tatatertib akan dikenakan. Perkara yang dimaksudkan adalah seperti berikut:

2.6.1. Perunding yang ingin dilantik adalah bebas daripada sebarang tindakan undang-undang seperti muflis, jenayah dan tatatertib daripada mana-mana badan kawal selia seperti Unit Pendaftaran Syarikat di Kementerian Kewangan dan Lembaga Profesional bidang masing-masing dengan mengemukakan satu Surat Akuan Sumpah berhubung perkara ini; dan

2.6.2. Peruntukan bagi perolehan tersebut adalah mencukupi sebelum SST dikeluarkan kepada perunding yang dilantik dan tidak melebihi siling peruntukan yang ditetapkan.

2.7. Firma hanya boleh memulakan kerja apabila SST telah ditandatangani. Agensi tidak dibenarkan untuk mengeluarkan arahan memulakan kerja kepada perunding sebelum SST ditandatangani. Ketidakpatuhan ke atas arahan ini boleh mengakibatkan pembayaran di bawah AP59.

3. Perjanjian Perunding

3.1. Perjanjian merupakan satu ikatan rasmi di antara Kerajaan dengan firma dan mengandungi obligasi/persetujuan yang perlu dipatuhi dan dilaksanakan sepanjang tempoh perjanjian tersebut. Berikut adalah kepentingan Perjanjian :

3.1.1. Memelihara kepentingan Kerajaan;

3.1.2. Memastikan kedua-dua pihak mematuhi obligasi masing-masing sebagaimana dinyatakan di dalam perjanjian/kontrak yang ditandatangani;

3.1.3. Sekiranya ada pelanggaran/ketidak patuhan terma dan syarat perjanjian, dokumen perjanjian boleh digunakan untuk proses pendakwaan undang-undang / gantirugi; dan

3.1.4. Penjelasan mengenai tanggungjawab perunding di samping menjelaskan perkhidmatan yang bakal diberikan kepada Kerajaan dalam tempoh yang ditetapkan.

3.2. Bagi semua perolehan perunding tanpa mengira had nilai, SST hendaklah dikeluarkan dan disusuli dengan dokumen kontrak komprehensif dalam tempoh empat (4) bulan selepas SST ditandatangan balas oleh perunding. Format perjanjian perunding adalah seperti di **Lampiran 3 (Arkitek), Lampiran 4 (Kejuruteraan)**, **Lampiran 5 (Ukur Bahan)** dan **Lampiran 6 (Kajian)**. Bagi perjanjian ukur tanah atau kerja-kerja ukur lain, Agensi adalah dinasihatkan merujuk kepada Jabatan Ukur & Pemetaan Malaysia (JUPEM). Semua perjanjian ini hendaklah dikemukakan kepada Bahagian Undang-Undang Agensi untuk semakan bagi memastikan ia tidak bercanggah dengan peraturan perolehan perkhidmatan perunding yang berkuat kuasa.

4. Kuasa Menandatangani SST dan Perjanjian Perunding

4.1. Agensi hendaklah memastikan bahawa hanya pegawai awam yang telah diturunkan kuasa secara bertulis di bawah Seksyen 2, Akta Kontrak Kerajaan 1949 menandatangani dokumen perjanjian bagi pihak kerajaan. Had penurunan kuasa menandatangani SST dan Perjanjian oleh pegawak Kerajaan hendaklah selaras dengan AP200.1.

4.2. Pegawai yang tidak diberi penurunan kuasa untuk menandatangani perjanjian atau pegawai yang menandatangani dokumen perjanjian melebihi had nilai penurunan kuasa oleh Menteri boleh dikenakan tindakan tatatertib.

4.3. Bagi pihak perunding pula (kecuali perunding individu), Agensi hendaklah memastikan hanya penama dalam sijil pendaftaran Kementerian Kewangan sahaja yang menandatangani Surat Akuan Penerimaan SST dan dokumen perjanjian.

5. Bayaran Kepada Perunding Selepas SST Dikeluarkan Tetapi Sebelum Perjanjian Ditandatangani

5.1. Dengan pengeluaran SST tanpa bersyarat, suatu ikatan kontrak telah terwujud antara Kerajaan dengan perunding yang ditawarkan. Walau bagaimanapun, pembayaran kepada perunding selepas SST dikeluarkan tetapi sebelum dokumen perjanjian ditandatangani adalah tidak dibenarkan bagi semua perolehan perunding. Ini adalah bertujuan untuk memastikan penyediaan, pemuktamadan dan tandatangan dokumen perjanjian perunding disediakan dengan segera bagi memelihara kepentingan Kerajaan.

5.2. Oleh itu, Agensi hendaklah memastikan bahawa dokumen perjanjian perunding ditandatangani dalam tempoh empat (4) bulan selepas SST ditandatangan balas oleh perunding.

6. Penggunaan Bahasa Inggeris Di Dalam Perjanjian Perunding

6.1. Perjanjian piawai perunding ini adalah disediakan di dalam Bahasa Inggeris untuk digunakan bagi semua pelantikan perunding bagi projek pembangunan fizikal mahupun kajian Kerajaan.

7. Pengemukaan Bon Pelaksanaan Bagi Perolehan Perunding

7.1 Pengemukaan Bon Pelaksanaan selaras dengan AP176.2 adalah dikecualikan untuk perolehan perunding. Walau bagaimanpun, bagi perolehan perunding untuk projek pembangunan fizikal, pengemukaan *Profesional Indemnity Insurance* (PII) adalah diwajibkan.

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

LAMPIRAN 1
(Versi Bahasa Malaysia)

SURAT SETUJU TERIMA
(Bagi Lantikan Terus Beserta Kos Siling/Tender Perunding)
Untuk Perolehan Dengan Firma Perunding Yang **Tidak Berdaftar** Di Bawah JKDM Bagi **Perkhidmatan Perunding**
Yang Dikenakan Cukai Di Bawah Akta Cukai Perkhidmatan 2018

Rujukan Kami : ……Rujukan Agensi……
Tarikh : ……Tarikh……

……Nama Syarikat……
……Alamat Syarikat……
……

Tuan,

***Lantikan Terus Beserta Kos Siling /Tender Untuk : ……Tajuk *LTBKS/Tender……...**
No. * Lantikan Terus Beserta Kos Siling /Tender/ Kontrak : ……No. *LTBKS/ Tender/ Kontrak……

Dengan ini dimaklumkan bahawa Kerajaan telah bersetuju menerima tawaran *lantikan terus beserta kos siling (LTBKS)/tender syarikat tuan dengan harga sebanyak Ringgit ……Harga kontrak dalam perkataan…… (RM……Harga kontrak dalam angka……) yang merupakan harga kontrak bagi tempoh kontrak selama ….Hari/Minggu/Bulan/Tahun…. tertakluk kepada dokumen *LTBKS/tender yang menjadi sebahagian daripada perolehan ini dan Surat Setuju Terima ini berserta dengan ***Lampiran A*** kepada Surat Setuju Terima iaitu maklumat terperinci kontrak (selepas ini disebut sebagai “Surat ini”).

2. Dengan pengakuan penerimaan Surat ini, suatu kontrak yang mengikat terbentuk antara Kerajaan dengan syarikat tuan. Satu dokumen kontrak hendaklah ditandatangani dengan kadar segera dengan memasukkan semua terma sebagaimana dokumen *LTBKS/tender serta semua terma dalam ***Lampiran A***. Sehingga dokumen kontrak tersebut ditandatangani, Surat ini hendaklah terus mengikat kedua-dua pihak.

3. Harga kontrak adalah tidak termasuk peruntukan Kerajaan sebanyak Kadar peratusan berdasarkan Akta Cukai Perkhidmatan 2018 % cukai perkhidmatan memandangkan syarikat tuan tidak berdaftar dengan Jabatan Kastam Diraja Malaysia (JKDM). Sekiranya syarikat tuan telah berdaftar dengan JKDM, tuan adalah dikehendaki untuk memaklumkan nombor pendaftaran dan tarikh kuat kuasanya kepada Kerajaan untuk pelarasan harga kontrak dalam tempoh tujuh (7) hari dari tarikh surat kelulusan JKDM. Pembayaran cukai perkhidmatan ini adalah dikira berdasarkan tuntutan sebenar dan tarikh kuat kuasa pendaftaran syarikat tuan dengan JKDM.

4. Adalah dimaklumkan bahawa tiada perkhidmatan boleh dibuat **melainkan** jika syarikat tuan telah mengemukakan kepada Kerajaan dokumen-dokumen berikut:

*(a) suatu polisi Insurans Tanggung Rugi Profesional yang diambil atas nama syarikat tuan;
Perenggan 4(a) hanya terpakai bagi pelantikan perunding untuk semua projek pembangunan fizikal

(b) jadual pelaksanaan perkhidmatan perunding yang muktamad; dan

(c) senarai nama kakitangan perunding yang terlibat dalam *projek/kajian ini berserta peranan masing-masing,

seperti yang ditetapkan dalam ***Lampiran A*** tidak melebihi *14/30 hari dari tarikh pengakuan penerimaan Surat ini oleh syarikat tuan. Apa-apa kegagalan dalam mematuhi kehendak di perenggan ini dalam tempoh masa yang ditetapkan, boleh mengakibatkan Surat ini terbatal dan Kerajaan tidaklah dengan apa-apa cara jua bertanggungan terhadap syarikat tuan **melainkan jika** penepian bertulis diberikan oleh orang yang

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

diberi kuasa, bagi perkhidmatan yang perlu dibuat dengan segera atau serta-merta apabila kelewatan itu akan memudarat dan menjejaskan perkhidmatan dan kepentingan awam.

5. Setelah arahan dikeluarkan oleh Kerajaan, syarikat tuan dikehendaki melaksanakan perkhidmatan dalam tempoh yang ditetapkan dan kualiti perkhidmatan tersebut hendaklah memuaskan hati serta memenuhi kehendak Kerajaan. Sekiranya syarikat tuan gagal melaksanakan perkhidmatan dalam tempoh dan/atau kualiti yang ditetapkan, Kerajaan berhak membatalkan arahan yang dikeluarkan dan/atau mengenakan *Liquidated & Ascertained Damages* (LAD) seperti yang ditetapkan dalam ***Lampiran A***. Kerajaan juga berhak menolak apa-apa deliverables sekiranya deliverables tersebut tidak memuaskan hati serta memenuhi kehendak Kerajaan dan dikemukakan semula selaras dengan dengan kualiti dan tempoh yang ditetapkan.

*6. Syarikat tuan juga adalah dikehendaki melaksanakan program *Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) seperti yang ditetapkan oleh Kerajaan berdasarkan harga kontrak dengan bilangan minimum peserta PROTÉGÉ sebanyak ……Bil. minimum peserta PROTÉGÉorang tanpa sebarang kos kepada Kerajaan. Bilangan minimum peserta yang diperlukan hendaklah dikira berdasarkan formula di bawah:

$$\frac{\text{1\% X Harga Kontrak*}}{\text{RM24,000**}}$$

*Bagi tujuan pengiraan PROTÉGÉ, Harga Kontrak adalah nilai tawaran yang dipersetujui tanpa cukai

Perenggan ini terpakai sekiranya Harga Kontrak **melebihi nilai ambang** dan syarikat dikehendaki untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK

*6. Syarikat tuan juga adalah digalakkan melaksanakan program *Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) seperti yang ditetapkan oleh Kerajaan.

Perenggan ini terpakai sekiranya Harga Kontrak **di bawah nilai ambang** dan syarikat digalakkan untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK

7. Bagi tujuan program PROTÉGÉ ini, syarikat tuan adalah dikehendaki untuk:

(a) mengemukakan Jadual Pelaksanaan Program PROTÉGÉ berdasarkan tempoh kontrak kepada Sekretariat PROTÉGÉ untuk kelulusan dalam tempoh dua (2) minggu selepas tarikh pengakuan penerimaan Surat ini oleh syarikat tuan;

(b) melaksanakan program ini mengikut Jadual Pelaksanaan Program PROTÉGÉ yang diluluskan oleh Sekretariat PROTÉGÉ;

(c) mengemaskini maklumat berkaitan pengalaman syarikat melaksanakan program PROTÉGÉ dalam sistem ePerolehan di Kementerian Kewangan atau sistem di Lembaga Pembangunan Industri Pembinaan Malaysia (CIDB), mengikut mana yang berkaitan;

(d) mengemukakan sijil atau surat pengesahan oleh Sekretariat PROTÉGÉ kepada Agensi sebaik sahaja pelaksanaan program PROTÉGÉ selesai; dan

(e) mengemukakan laporan berkaitan pelaksanaan program PROTÉGÉ kepada Sekretariat PROTÉGÉ.

*8. Sekiranya syarikat tuan gagal mematuhi mana-mana terma di perenggan 6 dan 7 atau arahan oleh Kerajaan, Kerajaan berhak untuk tidak mempertimbangkan sebarang tawaran kontrak baharu atau pelanjutan kontrak pada masa hadapan kepada syarikat tuan.

Perenggan ini terpakai sekiranya Harga Kontrak melebihi nilai ambang dan syarikat dikehendaki untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK 1.2. Bagi Harga Kontrak di bawah nilai ambang, perenggan ini hendaklah dipotong.

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

9. Syarikat tuan juga adalah diingatkan bahawa Kerajaan berhak untuk membatalkan Surat ini sekiranya:

(a) syarikat tuan gagal mematuhi mana-mana terma di perenggan 4 dalam tempoh masa yang ditetapkan;

(b) syarikat tuan gagal mematuhi mana-mana terma yang dinyatakan dalam Surat Akuan Perunding Berjaya;

(c) syarikat tuan telah membuat salah nyataan (*misrepresentation*) atau mengemukakan maklumat palsu semasa berurusan dengan Kerajaan bagi perolehan ini atau melakukan apa-apa perbuatan lain, seperti memalsukan maklumat dalam Sijil Akuan Pendaftaran Syarikat, mengemukakan dokumen lain yang palsu atau yang telah diubah suai;

(d) syarikat tuan membenarkan Sijil Akuan Pendaftaran Syarikat disalahgunakan oleh individu/syarikat lain;

(e) syarikat tuan terlibat dalam membuat pakatan harga dengan syarikat-syarikat lain atau apa-apa pakatan sepanjang proses *LTBKS/tender sehingga dokumen kontrak ditandatangani;

(f) syarikat tuan telah memberikan subkontrak sama ada sepenuhnya atau sebahagiannya perkhidmatan tanpa kelulusan Kerajaan terlebih dahulu;

(g) syarikat gagal menyempurnakan perkhidmatan dalam tempoh yang ditetapkan seperti di ***Lampiran A***;

(h) syarikat tuan gagal mematuhi mana-mana terma/arahan di dalam dokumen *LTBKS/tender;

(i) syarikat tuan/ pemilik/ rakan kongsi/ pengarah telah disabitkan atas kesalahan jenayah di dalam atau luar Malaysia;

(j) syarikat tuan digulungkan;

(k) syarikat gagal mematuhi skop perkhidmatan yang ditetapkan dan/atau *Service Level Agreement*;

(l) syarikat tuan tidak mendapat kelulusan daripada Kerajaan terlebih dahulu bagi apa-apa penjualan atau pemindahan ekuiti sepanjang tempoh kontrak ini berkuat kuasa; atau

(m) terdapat perkara yang melibatkan kepentingan awam atau keselamatan dan kepentingan negara.

10. Sekiranya Surat ini dibatalkan atas alasan seperti yang ditetapkan di perenggan 9, Kerajaan tidak akan bertanggungan terhadap apa-apa kerugian syarikat tuan termasuk kerugian masa hadapan.

11. Bersama-sama Surat Akuan Perunding Berjaya dan Surat Akuan Sumpah Syarikat seperti di ***Lampiran B*** dan ***Lampiran C*** untuk ditandatangani oleh syarikat tuan dan dikembalikan bersama-sama dengan Surat ini.

12. Surat ini dihantar kepada syarikat tuan dalam tiga (3) salinan. Sila kembalikan ke pejabat ini salinan asal dan kedua berserta lampiran yang berkaitan yang telah ditandatangani dengan sempurna oleh syarikat tuan dan saksi syarikat tuan tidak melebihi *3/7/14 hari dari tarikh Surat ini diterima untuk tindakan kami selanjutnya. Apa-apa kegagalan dalam mematuhi kehendak di perenggan ini dalam tempoh masa yang ditetapkan boleh mengakibatkan Surat ini terbatal dan Kerajaan tidaklah dengan apa-apa jua bertanggungan terhadap syarikat tuan.

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Sekian, terima kasih.

“BERKHIDMAT UNTUK NEGARA”

Saya yang menurut perintah,

Tandatangan Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak

.....
(Nama Penuh Pegawai)
Jawatan Pegawai

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

PENGAKUAN PENERIMAAN SURAT SETUJU TERIMA DAN LAMPIRAN YANG BERKAITAN OLEH SYARIKAT

Dengan ini disahkan bahawa yang bertandatangan di bawah ini mengakui penerimaan Surat ini dan lampiran yang berkaitan yang rujukannya ialah .....Rujukan Agensi..... bertarikh .....Tarikh SST ditandatangani oleh Menteri..... dan bersetuju dengan terma dan syarat yang terkandung dalam Surat ini tanpa syarat yang mana salinan kepada Surat ini telah pun disimpan, dan selanjutnya disahkan bahawa tiada apa-apa terma, syarat atau stipulasi tambahan kepada yang terkandung dalam dokumen *sebut harga/tender dan Surat ini telah dikenakan.

Tandatangan Syarikat
……..
Nama Penuh :
No. Kad Pengenalan :
Alamat :
Tarikh :

Tandatangan Saksi Syarikat
……
Nama Penuh :
No. Kad Pengenalan :
Alamat :
Tarikh :

Meterai atau Cop Syarikat

**potong mana yang tidak berkenaan*

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran A

BUTIRAN KONTRAK

Tajuk *Sebut Harga/Tender

……

1. **Pendaftaran Syarikat Dengan Suruhanjaya Syarikat Malaysia (SSM) (jika berkaitan)**

   1.1 No. Pendaftaran : ……Nombor pendaftaran……

   1.2 Tempoh Sah Laku ……Tempoh sah laku sijil pendaftaran……

2. **Pendaftaran Syarikat Dengan Lembaga Profesional (jika berkaitan)**

   2.1 No. Pendaftaran : ……Nombor pendaftaran……

   2.2 Tempoh Sah Laku ……Tempoh sah laku sijil pendaftaran……

3. **Pendaftaran dengan Kementerian Kewangan (jika berkaitan)**

   3.1 No. Pendaftaran : ……Nombor pendaftaran……

   3.2 Tempoh Sah Laku : ……Tempoh sah laku sijil pendaftaran dengan Kementerian Kewangan……

   3.3 Kod Bidang : ……Kod bidang yang berkaitan untuk *sebut harga/tender ini……

   3.4 Ekuiti Bumiputera : ……Tiada/ Melebihi 50%/ 100%……

4. **Pendaftaran Cukai Perkhidmatan dengan Jabatan Kastam Diraja Malaysia (jika berdaftar), sekiranya berkaitan**

   4.1 No. Pendaftaran : ……Nombor pendaftaran cukai perkhidmatan……

   4.2 Tarikh Kuat Kuasa : ……Tarikh kontraktor boleh mula mengenakan cukai perkhidmatan ke atas perkhidmatan……

5. **Harga dan Tempoh Kontrak**

   5.1 Harga *LTBKS/Tender (butiran harga seperti di ***Lampiran A1***) : RM……Harga *LTBKS/Tender yang telah disetuju terima (Yuran+ Imbuhan Balik)……
   Lampiran A1 adalah butiran kos perunding melibatkan yuran dan imbuhan balik

   5.2 Peruntukan Cukai Perkhidmatan (sekiranya berkaitan) : RM ……Cukai Perkhidmatan dalam angka……

   5.3 Harga Kontrak : RM ……Harga *LTBKS/Tender (Yuran+ Imbuhan Balik) + Cukai Perkhidmatan (jika berkaitan)……

   5.4 Tempoh Kontrak : ……Hari/Minggu/Bulan/Tahun……

   5.5 Tarikh Mula Perkhidmatan : ……DD/MM/YYYY……

   5.6 Tarikh Tamat Perkhidmatan : ……DD/MM/YYYY……

6. **Terma Rujukan/Skop Perkhidmatan Perunding**

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

* Terma Rujukan/Skop Perkhidmatan Perunding yang ditetapkan seperti di ***Lampiran A2***
Lampiran A2 akan disediakan oleh Agensi

7. ***Polisi Insurans Tanggung Rugi Profesional (jika berkaitan)**

7.1 Nilai Polisi : RM……Nilai dalam angka……

7.2 Tempoh Perlindungan : Dari tarikh kuat kuasa kontrak sehingga 12 bulan selepas tamat Tempoh Tanggungan Kecacatan

8. **Kenaan *Liquidated & Ascertained Damages (LAD)***
(Lewat mengemukakan *deliverables* yang telah dipersetujui)

8.1 Formula : $\frac{\textit{Base Lending Rate}}{100} \times \frac{\text{Yuran Perunding}}{365}$
(tertakluk minimum RM100 sehari)

8.2 Kadar sehari : RM……Nilai dalam angka……..

9. ***Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) (jika berkaitan)**
(Bagi perolehan yang telah melebihi nilai ambang berdasarkan 1PP/PK1.2)

9.1 Tertakluk kepada pelaksanaan Program PROTÉGÉ : Ya / Tidak (Berdasarkan nilai ambang yang ditetapkan dalam 1PP/PK1)

9.2 Bilangan minimum peserta PROTÉGÉ : ..... peserta

Formula:

$\frac{\text{1\% X Harga Kontrak*}}{\text{RM24,000**}}$

*Bagi tujuan pengiraan PROTÉGÉ, Harga Kontrak adalah nilai tawaran yang dipersetujui tanpa cukai
**Elaun PROTÉGÉ (RM2,000 seorang x 12 bulan)

**potong mana yang tidak berkenaan*

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak ……..

Salinan Kepada :

Ketua Setiausaha Perbendaharaan
Bahagian Perolehan Kerajaan
Aras 4, Blok Utara, Kompleks Kementerian Kewangan
Presint 2, Pusat Pentadbiran Kerajaan Persekutuan,
62592 PUTRAJAYA
(u.p. : Ketua Seksyen Dasar Perolehan)

Ketua Pegawai Eksekutif
Ibu Pejabat Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil
Aras 18, Persiaran Rimba Permai, Cyber 8
63000 CYBERJAYA
(u.p.: Pengarah Jabatan Pematuhan Cukai)

Ketua Pengarah Kastam
Ibu Pejabat Kastam Diraja Malaysia
Bahagian Cukai Dalam Negeri (SST)
Aras 3 -7, Blok A, Menara Tulus
No. 22, Persiaran Perdana , Presint 3
61200 PUTRAJAYA
(u.p.: Pengarah Bahagian Cukai Dalam Negeri)

Sekretariat
Majlis Perundingan Gaji Negara
Kementerian Sumber Manusia
Aras 7, Blok D3, Kompleks D
62530 PUTRAJAYA

Professional Training & Education For Growing Entrepreneurs (Protege)
Aras 2, Blok E4/5, Parcel E
Kementerian Pembangunan Usahawan
Pusat Pentadbiran Kerajaan Persekutuan
62668, PUTRAJAYA
(u.p. : Ketua Sekretariat PROTÉGÉ)

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran B

SURAT AKUAN PERUNDING BERJAYA
(Tajuk dan Nombor Rujukan *LTBKS/Tender)

Saya, ...nombor K.P. ..... yang mewakili .....(nama syarikat)..... nombor pendaftaran (*MOF/CIDB/SSM) ..... dengan ini mengisytiharkan bahawa saya atau mana-mana individu yang mewakili syarikat ini tidak akan menawar atau memberi rasuah kepada mana-mana individu dalam ..... atau mana-mana individu lain, sebagai ganjaran untuk dipilih dalam *lantikan terus beserta kos siling (LTBKS)/tender seperti di atas. Bersama ini dilampirkan Surat Perwakilan Kuasa bagi saya mewakili syarikat seperti tercatat di atas untuk membuat pengisytiharan ini.

2. Sekiranya saya atau mana-mana individu yang mewakili syarikat ini didapati bersalah menawar atau memberi rasuah kepada mana-mana individu dalam .....(nama kementerian/agensi)..... atau mana-mana individu lain sebagai ganjaran mendapatkan *sebut harga/tender seperti di atas, maka saya sebagai wakil syarikat bersetuju tindakan-tindakan berikut diambil:

2.1 penarikan balik tawaran kontrak bagi *LTBKS/tender di atas; atau
2.2 penamatan kontrak bagi *LTBKS/tender di atas; dan
2.3 lain-lain tindakan mengikut peraturan perolehan Kerajaan yang berkuat kuasa.

3. Sekiranya terdapat mana-mana individu cuba meminta rasuah daripada saya atau mana-mana individu yang berkaitan dengan syarikat ini sebagai ganjaran mendapatkan *LTBKS/tender seperti di atas, maka saya berjanji akan dengan segera melaporkan perbuatan tersebut kepada pejabat Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) atau balai polis yang berhampiran.

Yang Benar,

.....
(Nama dan No. KP)

Cop Syarikat :

Catatan:
i) * Potong mana yang tidak berkenaan
ii) Surat akuan ini hendaklah dikemukakan bersama Surat Perwakilan Kuasa

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran C

SURAT AKUAN SUMPAH SYARIKAT

Saya…… nombor kad pengenalan ……..
yang mewakili syarikat …….. nombor pendaftaran…….
(*MOF/Lembaga Profesional/SSM) dengan sesungguhnya dan sebenarnya mengaku bahawa:

(a) syarikat **TIDAK** membuat salah nyataan (*misrepresentation*) atau mengemukakan maklumat palsu semasa berurusan dengan Kerajaan bagi perolehan ini atau melakukan apa-apa perbuatan lain, seperti memalsukan maklumat dalam Sijil Akuan Pendaftaran Syarikat, mengemukakan dokumen lain yang palsu atau yang telah diubah suai;

(b) syarikat **TIDAK** membenarkan Sijil Akuan Pendaftaran Syarikat disalahgunakan oleh individu/syarikat lain;

(c) syarikat **TIDAK** terlibat dalam membuat pakatan harga dengan syarikat-syarikat lain atau apa-apa pakatan sepanjang proses perolehan sehingga dokumen kontrak ditandatangani;

(d) syarikat/ pemilik/ rakan kongsi/ pengarah **TIDAK** disabitkan atas kesalahan jenayah di dalam atau luar Malaysia; dan

(e) syarikat **TIDAK** digulungkan.

Sekiranya pada bila-bila masa, dibuktikan bahawa pengisytiharan perenggan di atas adalah tidak benar, Kerajaan berhak menarik balik tawaran kontrak atau menamatkan perkhidmatan syarikat bagi projek ini.

Dan saya membuat Surat Akuan Bersumpah ini dengan kepercayaan bahawa apa-apa yang tersebut di dalamnya adalah benar serta menurut Akta Akuan Berkanun 1960.

Diperbuat dan dengan)
sebenar-benarnya diakui oleh)
) Tandatangan…….
……..)
di……..)
pada ……)

Di hadapan saya,

……
Pesuruhjaya Sumpah

Catatan:
i. *Potong mana yang tidak berkenaan.
ii. Surat akuan ini hendaklah ditandatangani oleh hanya penama di sijil pendaftaran MOF/CIDB.

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

LAMPIRAN 1
(Versi Bahasa Inggeris)

LETTER OF ACCEPTANCE
(for the *Lantikan Terus Beserta Kos Siling/Tender of Service)

For Procurement With Consultancy Firm **Unregistered** Under JKDM and **Taxable** Consultancy Services Under The Service Tax Act 2018

Our Reference : ……Agency's reference……
Date : ……Date……

……Company's name……
……Company's address……
……

Sir,

***Quotation / Tender for:**Title of the *Quotation/Tender……
***Quotation/Tender/Contract Number :**……*Quotation/Tender/Contract number……

This is to inform that the Government has agreed to accept your *Lantikan Terus Beserta Kos Siling (LTBKS)/tender for a consideration of Ringgit ……Contract Sum in words…… (RM……Contract Sum in number……) being the Contract Sum for a contract period of ……*Day/Week/Month/Year…… subject to the *LTBKS/tender document that forms part of this procurement and this Letter of Acceptance and ***Appendix A*** to this Letter of Acceptance which are contract details (hereinafter referred to as "this Letter").

2. Upon your acknowledgement of receipt of this Letter and its relevant appendices, a binding contract is formed between the Government and your company. A contract document shall be signed immediately by incorporating the terms in *LTBKS/tender document and all the terms in ***Appendix A***. Until the contract document is signed, this Letter shall continue to bind the Parties.

3. The Contract Sum is exclusive of Government's allocation of Percentage rate under the Service Tax Act 2018 % service tax as your company is not registered with the Royal Customs Department of Malaysia (JKDM). If your company has registered with the JKDM, you are required to inform the registration number and its effective date to the Government for rationalisation of the contract sum within seven (7) days from the date of JKDM's approval letter. The payment of sales tax is calculated based on actual claims and the effective date of your company's registration with JKDM.

4. It is hereby notified no services shall be performed **unless** you have submitted to the Government the following documents:

*(a) a Professional Indemnity Insurance (PII) under the name of the company;
Clause 4(a) is applicable only for physical project

*(b) a final Work Implementation Schedule;

*(c) a list of personnel involved in the consultancy,

as stipulated in ***Appendix A*** not later than *14/30 days from the date of your Acknowledgement Receipt of this Letter. Any failure to comply with the requirement in this paragraph within the stipulated time, may

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

result in the revocation of this Letter and the Government shall not be liable to you in any way whatsoever **unless** a written waiver is given by an authorised person, for services that needs to be performed urgently or immediately where such delays will be detrimental and will affect the public service and interest.

5. Upon issuance of the instructions by the Government, you are required to perform the services within the stipulated time and the quality of services shall be up to the satisfaction and meet the requirements of the Government. In the event you are unable to perform the services within the time and/or quality stipulated, the Government reserves the right to revoke any instructions and/or impose Liquidated & Ascertained Damages (LAD) as stipulated in ***Appendix A***. The Government also reserves the right to reject any deliverables in the event the deliverables does not meet the satisfaction and requirements of the Government and to resubmit within the time and quality stipulated.

*6. Your company is also required to implement the Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) programme as stipulated by the Government based on the Contract Sum with a minimum number of ..Min. number of participants..... PROTÉGÉ participants, without any cost to the Government. The minimum number of participants required is calculated based on the formula as below :

$$\frac{\text{1\% X Contract Sum*}}{\text{RM24,000**}}$$

*For the purpose of PROTÉGÉ's calculation, the Contract Sum is the agreed offer price exclude tax
**PROTÉGÉ's allowance (RM2,000 per person x 12 months)

This paragraph is applicable if the Contract Sum is **exceeding** the threshold value and the company is required to implement SL1M programme as stipulated in 1PP/PK 1.2.

*6. Your company is also encouraged to implement the Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) programme as stipulated by the Government.

This paragraph is applicable if the Contract Sum is **Not exceeding** the threshold value and the company is encourage to implement SL1M programme as stipulated in 1PP/PK 1.2.

7. For the purpose of the PROTÉGÉ programme, your company is required to:

(a) submit the PROTÉGÉ Programme Implementation Schedule based on the contract to the PROTÉGÉ's Secretariat for approval within two (2) weeks after the signing of the Acknowledgement Receipt of this Letter by your company;

(b) implement the PROTÉGÉ Programme in accordance with the approved PROTÉGÉ Programme Implementation Schedule;

(c) update the information on the experience of implementing PROTÉGÉ programme in the Ministry of Finance's ePerolehan system or Construction Industry Development Board's system, whichever is applicable;

(d) submit the certificate or acknowledgement letter by the PROTÉGÉ Secretariat to the Agency immediately after completion of the implementation of the PROTÉGÉ programme; and

(e) submit reports on implementation of the PROTÉGÉ programme to the PROTÉGÉ Secretariat.

*8. In the event your company fail to comply with any terms in paragraph 6 and 7 or any instructions by the Government, the Government reserves the right not to consider any new contract or contract extension with your company in the future.

This paragraph is applicable if the Contract Sum is exceeding the threshold value and the company is required to implement SL1M programme as stipulated in 1PP/PK 1.2. This paragraph can be strike out if the Contract Sum is not exceeding the threshold value.

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

9. You are also reminded that the Government reserves the right to revoke this Letter in the event:

(a) the company fails to comply with any terms in paragraph 4 within the stipulated time;

(b) the company fails to comply with any terms set forth in the Successful Consultant's Declaration;

(c) the company has misrepresented or has submitted false information while dealing with the Government for this procurement or commits any act, such as falsifying information in the Companies Registration Certificate, submitting fake or fabricated documents;

(d) the company allows its Companies Registration Certificate to be misused by other individuals/companies;

(e) the company is involved in bid rigging with other companies and other collusive conduct throughout the *LTBKS/tender process until the contract document is signed;

(f) the company has subcontracted either fully or partially the services without prior approval from the Government;

(g) the company fails to complete the services within the stipulated time in ***Appendix A***;

(h) the company fails to comply with any terms/instructions in the *LTBKS/tender document;

(i) the company/owner/partners/directors/management has/have been convicted of a criminal crime inside or outside Malaysia;

(j) the company is wound up;

(k) the company fails to comply with the stipulated scope of services and/or Service Level Agreement;

(l) the company did not obtain prior written approval from the Government for any sale or transfer of company's equity throughout the contract period; or

(m) public interest or national security and interest is involved.

10. In the event this Letter is revoked due to reason(s) stipulated in paragraph 9, the Government shall not be liable for any loss or damages suffered by your company including future loss.

11. Attached herewith is the Successful Consultant's Declaration and Declaration of Oath as per ***Appendix B*** and ***Appendix C*** for your signature and to be returned together with this Letter.

12. This Letter is sent to you in three (3) copies. Please return to this office the original and second copy together with the relevant appendices properly signed by you and the company's witness not later than *3/7/14 days from the date of this Letter received for our further actions. Any failure to comply with the requirement in this paragraph within the stipulated time may result in the revocation of this Letter and the Government shall not be liable to you in any way whatsoever.

Thank you.

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

“BERKHIDMAT UNTUK NEGARA”

Yours faithfully,

Signature of the officer authorised by the Minister under section 2 of the Government Contracts Act 1949 to sign contracts

.....
(Officer’s Full Name)
Officer’s Designation

Initial & Office Stamp (Government) : …….
Initial & Office Stamp (Company) : …….

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak ……..

ACKNOWLEDGEMENT RECEIPT OF THE LETTER OF ACCEPTANCE AND THE RELEVANT APPENDICES BY THE COMPANY

It is hereby confirmed that the undersigned below acknowledge receipt of this Letter and its relevant appendices the reference to .....Agency's reference number..... dated .....Date of the letter signed by Minister..... and agrees with the terms and conditions contained in this Letter unconditionally where a copy of this Letter has been retained, and it is further reconfirmed that no terms, conditions or additional stipulations to those contained in the *quotation/tender document and this Letter have been imposed.

Signature by the Company
……..
Full Name :
I/C Number :
Address :
Date :

Signature by the witness of the Company
……
Full Name :
I/C Number :
Address :
Date :

Company's seal or stamp

**strike whichever not applicable*

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Appendix A

CONTRACT DETAILS

*LTBKS/Tender's Title

……

1. **Registration with the Companies Commission of Malaysia (SSM) (if applicable)**

1.1	Registration No.	:	Registration number ……
1.2	Validity period	:	Validity period of the registration certificate ……

2 **Registration with the Professional Bodies (if applicable))**

2.1	Registration No.	:	Registration number ……
2.2	Validity period	:	Validity period of the registration certificate ……

3. **Registration with the Ministry of Finance (if registered)**

3.1	Registration No.	:	Registration number ……
3.2	Validity period	:	Validity period of the registration certificate with Ministry of Finance ……
3.3	Field Code	:	Field code relevant to this quotation/tender ……
3.4	Bumiputera Equity	:	Nil/Above 50%/100% ……

4. **Registration of Service Tax with the Royal Customs Department of Malaysia (if registered), if applicable**

4.1	Registration No.	:	Service Tax Registration number ……
4.2	Effective Date	:	Effective date for the contractor to impose service tax on services ……

5. **Contract Sum and Period**

5.1	*LTBKS/Tender Price (cost breakdown as in ***Appendix A1***)	:	RM……Agreed *LTBKS/Tender price (fees and reimbursables) Appendix A1 is the form inside the * LTBKS/ tender document with price which have been signed by the company.
5.2	Allocation for Service Tax (if applicable)	:	RM …… Service Tax in numbers
5.3	Contract Sum	:	RM LTBKS/Tender Price (fees and reimbursables) + Service Tax (if applicable)….
5.4	Contract Period	:	Days/Weeks/Months/Year ……
5.5	Service Commencement Date	:	DD/MM/YYYY ……
5.5	Service Expiry Date	:	DD/MM/YYYY ……

6. **Terms of Reference/Scope of Consultancy Work**

* Terms of reference or scope of consultancy work as in ***Appendix A2***

Appendix A2 will be prepared by the Agency

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

7. ***Professional Indemnity Insurance (if applicable)**

7.1 Policy Value : RM……In numbers……

7.2 Coverage Period : From the effective date of contract until 12 months after the Defect Liability Period

8. **Imposed Liquidated & Ascertained Damages (LAD)**
(Delay in submission of *deliverables*)

8.1 Formula : $\frac{\textit{Base Lending Rate}}{100} \times \frac{\textit{Consultancy Fee}}{365}$
(*Minimum of RM100 per day*)

8.2 Rate per day : RM……In numbers……

9. ***Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) (if applicable)**
(For procurement which have exceeded the threshold value as stipulated in the 1PP/PK1.2)

9.1 Subject to the implementation of the PROTÉGÉ Program : Yes / No According to the threshold value stipulated in 1PP/PK1.2

9.2 Minimum number of PROTÉGÉ participant : ..... participant

Formula:

$\frac{\text{1\% X Contract Sum*}}{\text{RM24,000**}}$

*For the purpose of PROTÉGÉ's calculation, the Contract Sum is the agreed offer price exclude tax

**PROTÉGÉ's allowance (RM2,000 per person x 12 months)

**strike whichever not applicable*

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Copies to:

Ketua Setiausaha Perbendaharaan
Bahagian Perolehan Kerajaan
Aras 4 Blok Utara
Kementerian Kewangan
Presint 2
62592 PUTRAJAYA
(u.p. : Ketua Seksyen Dasar Perolehan)

Ketua Pegawai Eksekutif
Ibu Pejabat Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil
Aras 18, Persiaran Rimba Permai, Cyber 8
63000 CYBERJAYA
(u.p.: Pengarah Jabatan Pematuhan Cukai)

Ketua Pengarah Kastam
Ibu Pejabat Kastam Diraja Malaysia
Bahagian Cukai Dalam Negeri (SST)
Aras 3 -7, Blok A, Menara Tulus
No. 22, Persiaran Perdana , Presint 3
61200 PUTRAJAYA
(u.p.: Pengarah Bahagian Cukai Dalam Negeri (SST))

Sekretariat
Majlis Perundingan Gaji Negara
Kementerian Sumber Manusia
Aras 7, Blok D3, Kompleks D
62530 PUTRAJAYA

Professional Training & Education For Growing Entrepreneurs (Protege)
Aras 2, Blok E4/5, Parcel E
Kementerian Pembangunan Usahawan
Pusat Pentadbiran Kerajaan Persekutuan
62668, PUTRAJAYA
(u.p. : Ketua Sekretariat PROTÉGÉ)

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Appendix B

SUCCESSFUL CONSULTANT'S DECLARATION
(*Quotation/Tender Title and Reference Number)

I,…… NRIC No……. representing……(name of company) with registration number ……(MOF/Professional Bodies/SSM) hereby declare that I, or any individual(s) representing this company, shall not offer or give bribes to any individual(s) in …….. or any other individual(s), as an inducement to be selected in the aforementioned *Lantikan Terus Beserta Kos Siling (LTBKS)/tender. I attach herewith a Letter of Authorisation which empowers me, as a representative of the aforementioned company, to make this declaration.

2. If I, or any individual(s) representing this company, is offering or giving any bribes to any individual(s) in ……..or any other individual(s) as gratification for being selected in the aforementioned *LTBKS/tender, I hereby agree, as a representative of the aforementioned company, for the following actions to be taken:

2.1 revocation of the contract offer for the aforementioned *LTBKS/tender; or
2.2 termination of the contract for the aforementioned *LTBKS/tender; and
2.3 other actions according to the Government procurement rules and regulations currently in force.

3. In the event where there is any individual(s) who attempts to solicit any bribes from me or any individual(s) related to this company as gratification for being selected in the aforementioned tender/quotation, I hereby pledge to immediately report such act(s) to the Malaysian Anti-Corruption Commission (MACC)'s office or at the nearest police station.

Sincerely,

(Signature)
(Name and NRIC No.)

Company stamp:

Note. i) * Delete whichever not applicable
ii) This declaration is to be submitted together with Letter of Authorisation

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Appendix C

DECLARATION OF OATH

I, …… NRIC No. …….. representing ……..(name of company) registration number ……..(*MOF/Professional Bodies) hereby solemnly and sincerely declare that:

(a) the company has **NOT** misrepresented or submitted false information while dealing with the Government for this procurement or commits any act, such as falsifying information in the Companies Registration Certificate, submitting fake or fabricated documents;

(b) the company has **NOT** allowed its Company Registration Certificate to be misused by other individuals/companies;

(c) the company is **NOT** involved in bid rigging with other companies and other collusive conduct throughout the procurement process until the contract document is signed;

(d) the company/owner/partners/directors/management has/have **NOT** been convicted of a crime inside or outside Malaysia; and

(e) the company has **NOT** been wound up.

If, at any time, it is proved that the declarations as the above paragraph are untrue, the Government reserves the right to withdraw its contract offer or terminate the service of the company for this project.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1950.

Subscribed and solemnly declared by)
The above named)
)
……..) Signature……
at……..)
on ……

before me,

……
Commissioner for Oath

Note:

i. *Strike whichever is applicable
ii. This letter is to be signed only by the authorised persons as stated in the MOF/CIDB registration certificate.

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

No. * LTBKS/Tender/Kontrak *No.LTBKS/ Tender/ Kontrak……..

LAMPIRAN 2
(Versi Bahasa Malaysia)

SURAT SETUJU TERIMA
(Bagi Lantikan Terus Beserta Kos Siling/Tender Perunding)
Untuk Perolehan Dengan Firma Perunding Yang **Berdaftar** Di Bawah JKDM Bagi **Perkhidmatan Perunding** Yang Dikenakan Cukai Di Bawah Akta Cukai Perkhidmatan 2018

Rujukan Kami : ……Rujukan Agensi……
Tarikh : ……Tarikh……

……Nama Syarikat……
……Alamat Syarikat……
……

Tuan,

***Lantikan Terus Beserta Kos Siling /Tender Untuk : ……Tajuk *LTBKS/Tender……...**
No. * Lantikan Terus Beserta Kos Siling /Tender/ Kontrak : ……No. *LTBKS/ Tender/ Kontrak……

Dengan ini dimaklumkan bahawa Kerajaan telah bersetuju menerima tawaran *lantikan terus beserta kos siling (LTBKS)/tender syarikat tuan dengan harga sebanyak Ringgit ……Harga kontrak dalam perkataan…… (RM……Harga kontrak dalam angka……) yang merupakan harga kontrak bagi tempoh kontrak selama ……Hari/Minggu/Bulan/Tahun…… tertakluk kepada dokumen *LTBKS/tender yang menjadi sebahagian daripada perolehan ini dan Surat Setuju Terima ini berserta dengan ***Lampiran A*** kepada Surat Setuju Terima iaitu maklumat terperinci kontrak (selepas ini disebut sebagai "Surat ini").

2. Dengan pengakuan penerimaan Surat ini, suatu kontrak yang mengikat terbentuk antara Kerajaan dengan syarikat tuan. Satu dokumen kontrak hendaklah ditandatangani dengan kadar segera dengan memasukkan semua terma sebagaimana dokumen *LTBKS/tender serta semua terma dalam ***Lampiran A***. Sehingga dokumen kontrak tersebut ditandatangani, Surat ini hendaklah terus mengikat kedua-dua pihak.

3. Harga kontrak adalah termasuk peruntukan Kerajaan sebanyak Kadar peratusan berdasarkan Akta Cukai Perkhidmatan 2018% cukai perkhidmatan memandangkan perkhidmatan ini dikenakan cukai dan syarikat tuan berdaftar dengan Jabatan Kastam Diraja Malaysia (JKDM). Pembayaran cukai perkhidmatan ini adalah dikira berdasarkan tuntutan sebenar dan tarikh kuat kuasa pendaftaran syarikat tuan dengan JKDM.

4. Adalah dimaklumkan bahawa tiada perkhidmatan boleh dibuat **melainkan** jika syarikat tuan telah mengemukakan kepada Kerajaan dokumen-dokumen berikut:

*(a) suatu polisi Insurans Tanggung Rugi Profesional yang diambil atas nama syarikat tuan;
Perenggan 4(a) hanya terpakai bagi pelantikan perunding untuk semua projek pembangunan fizikal

(b) jadual pelaksanaan perkhidmatan perunding yang muktamad; dan

(c) senarai nama kakitangan perunding yang terlibat dalam *projek/kajian ini berserta peranan masing-masing,

seperti yang ditetapkan dalam ***Lampiran A*** tidak melebihi *14/30 hari dari tarikh pengakuan penerimaan Surat ini oleh syarikat tuan. Apa-apa kegagalan dalam mematuhi kehendak di perenggan ini dalam tempoh masa yang ditetapkan, boleh mengakibatkan Surat ini terbatal dan Kerajaan tidaklah dengan apa-apa cara jua bertanggungan terhadap syarikat tuan **melainkan jika** penepian bertulis diberikan oleh orang yang diberi kuasa, bagi perkhidmatan yang perlu dibuat dengan segera atau serta-merta apabila kelewatan itu akan memudarat dan menjejaskan perkhidmatan dan kepentingan awam.

5. Setelah arahan dikeluarkan oleh Kerajaan, syarikat tuan dikehendaki melaksanakan perkhidmatan dalam tempoh yang ditetapkan dan kualiti perkhidmatan tersebut hendaklah memuaskan hati serta

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak *No.LTBKS/ Tender/ Kontrak……..

memenuhi kehendak Kerajaan. Sekiranya syarikat tuan gagal melaksanakan perkhidmatan dalam tempoh dan/atau kualiti yang ditetapkan, Kerajaan berhak membatalkan arahan yang dikeluarkan dan/atau mengenakan *Liquidated & Ascertained Damages* (LAD) seperti yang ditetapkan dalam ***Lampiran A***. Kerajaan juga berhak menolak apa-apa deliverables sekiranya deliverables tersebut tidak memuaskan hati serta memenuhi kehendak Kerajaan dan dikemukakan semula selaras dengan dengan kualiti dan tempoh yang ditetapkan.

*6. Syarikat tuan juga adalah dikehendaki melaksanakan program *Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) seperti yang ditetapkan oleh Kerajaan berdasarkan harga kontrak dengan bilangan minimum peserta PROTÉGÉ sebanyak ....Bil. minimum peserta.....orang tanpa sebarang kos kepada Kerajaan. Bilangan minimum peserta yang diperlukan hendaklah dikira berdasarkan formula di bawah:

$$\frac{1\% \text{ X Harga Kontrak*}}{\text{RM24,000**}}$$

*Bagi tujuan pengiraan PROTÉGÉ, Harga Kontrak adalah nilai tawaran yang dipersetujui tanpa cukai

Perenggan ini terpakai sekiranya Harga Kontrak **melebihi nilai ambang** dan syarikat dikehendaki untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK

*6. Syarikat tuan juga adalah digalakkan melaksanakan program *Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) seperti yang ditetapkan oleh Kerajaan.

Perenggan ini terpakai sekiranya Harga Kontrak **di bawah nilai ambang** dan syarikat digalakkan untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK

7. Bagi tujuan program PROTÉGÉ ini, syarikat tuan adalah dikehendaki untuk:

(a) mengemukakan Jadual Pelaksanaan Program PROTÉGÉ berdasarkan tempoh kontrak kepada Sekretariat PROTÉGÉ untuk kelulusan dalam tempoh dua (2) minggu selepas tarikh pengakuan penerimaan Surat ini oleh syarikat tuan;

(b) melaksanakan program ini mengikut Jadual Pelaksanaan Program PROTÉGÉ yang diluluskan oleh Sekretariat PROTÉGÉ;

(c) mengemaskini maklumat berkaitan pengalaman syarikat melaksanakan program PROTÉGÉ dalam sistem ePerolehan di Kementerian Kewangan atau sistem di Lembaga Pembangunan Industri Pembinaan Malaysia (CIDB), mengikut mana yang berkaitan;

(d) mengemukakan sijil atau surat pengesahan oleh Sekretariat PROTÉGÉ kepada Agensi sebaik sahaja pelaksanaan program PROTÉGÉ selesai; dan

(e) mengemukakan laporan berkaitan pelaksanaan program PROTÉGÉ kepada Sekretariat PROTÉGÉ.

*8. Sekiranya syarikat tuan gagal mematuhi mana-mana terma di perenggan 6 dan 7 atau arahan oleh Kerajaan, Kerajaan berhak untuk tidak mempertimbangkan sebarang tawaran kontrak baharu atau pelanjutan kontrak pada masa hadapan kepada syarikat tuan.

Perenggan ini terpakai sekiranya Harga Kontrak melebihi nilai ambang dan syarikat dikehendaki untuk melaksanakan Program PROTÉGÉ berdasarkan 1PP/PK 1.2. Bagi Harga Kontrak di bawah nilai ambang, perenggan ini hendaklah dipotong.

9. Syarikat tuan juga adalah diingatkan bahawa Kerajaan berhak untuk membatalkan Surat ini sekiranya:

(a) syarikat tuan gagal mematuhi mana-mana terma di perenggan 4 dalam tempoh masa yang ditetapkan;

(b) syarikat tuan gagal mematuhi mana-mana terma yang dinyatakan dalam Surat Akuan Perunding Berjaya;

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak *No.LTBKS/ Tender/ Kontrak……..

(c) syarikat tuan telah membuat salah nyataan (*misrepresentation*) atau mengemukakan maklumat palsu semasa berurusan dengan Kerajaan bagi perolehan ini atau melakukan apa-apa perbuatan lain, seperti memalsukan maklumat dalam Sijil Akuan Pendaftaran Syarikat, mengemukakan dokumen lain yang palsu atau yang telah diubah suai;

(d) syarikat tuan membenarkan Sijil Akuan Pendaftaran Syarikat disalahgunakan oleh individu/syarikat lain;

(e) syarikat tuan terlibat dalam membuat pakatan harga dengan syarikat-syarikat lain atau apa-apa pakatan sepanjang proses *LTBKS/tender sehingga dokumen kontrak ditandatangani;

(f) syarikat tuan telah memberikan subkontrak sama ada sepenuhnya atau sebahagiannya perkhidmatan tanpa kelulusan Kerajaan terlebih dahulu;

(g) syarikat gagal menyempurnakan perkhidmatan dalam tempoh yang ditetapkan seperti di ***Lampiran A***;

(h) syarikat tuan gagal mematuhi mana-mana terma/arahan di dalam dokumen *LTBKS/tender;

(i) syarikat tuan/ pemilik/ rakan kongsi/ pengarah telah disabitkan atas kesalahan jenayah di dalam atau luar Malaysia;

(j) syarikat tuan digulungkan;

(k) syarikat gagal mematuhi skop perkhidmatan yang ditetapkan dan/atau *Service Level Agreement*;

(l) syarikat tuan tidak mendapat kelulusan daripada Kerajaan terlebih dahulu bagi apa-apa penjualan atau pemindahan ekuiti sepanjang tempoh kontrak ini berkuat kuasa; atau

(m) terdapat perkara yang melibatkan kepentingan awam atau keselamatan dan kepentingan negara.

10. Sekiranya Surat ini dibatalkan atas alasan seperti yang ditetapkan di perenggan 9, Kerajaan tidak akan bertanggungan terhadap apa-apa kerugian syarikat tuan termasuk kerugian masa hadapan.

11. Bersama-sama Surat Akuan Perunding Berjaya dan Surat Akuan Sumpah Syarikat seperti di ***Lampiran B*** dan ***Lampiran C*** untuk ditandatangani oleh syarikat tuan dan dikembalikan bersama-sama dengan Surat ini.

12. Surat ini dihantar kepada syarikat tuan dalam tiga (3) salinan. Sila kembalikan ke pejabat ini salinan asal dan kedua berserta lampiran yang berkaitan yang telah ditandatangani dengan sempurna oleh syarikat tuan dan saksi syarikat tuan tidak melebihi *3/7/14 hari dari tarikh Surat ini diterima untuk tindakan kami selanjutnya. Apa-apa kegagalan dalam mematuhi kehendak di perenggan ini dalam tempoh masa yang ditetapkan boleh mengakibatkan Surat ini terbatal dan Kerajaan tidaklah dengan apa-apa jua bertanggungan terhadap syarikat tuan.

Sekian, terima kasih.

“BERKHIDMAT UNTUK NEGARA”
Saya yang menurut perintah,

Tandatangan Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak

.....
(Nama Penuh Pegawai)
Jawatan Pegawai

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak *No.LTBKS/ Tender/ Kontrak……..

PENGAKUAN PENERIMAAN SURAT SETUJU TERIMA DAN LAMPIRAN YANG BERKAITAN OLEH SYARIKAT

Dengan ini disahkan bahawa yang bertandatangan di bawah ini mengakui penerimaan Surat ini dan lampiran yang berkaitan yang rujukannya ialah ..... Rujukan Agensi ..... bertarikh ..... Tarikh SST ditandatangani oleh Menteri ..... dan bersetuju dengan terma dan syarat yang terkandung dalam Surat ini tanpa syarat yang mana salinan kepada Surat ini telah pun disimpan, dan selanjutnya disahkan bahawa tiada apa-apa terma, syarat atau stipulasi tambahan kepada yang terkandung dalam dokumen *sebut harga/tender dan Surat ini telah dikenakan.

Tandatangan Syarikat ……..		Tandatangan Saksi Syarikat ……	
Nama Penuh	:	Nama Penuh	:
No. Kad Pengenalan	:	No. Kad Pengenalan	:
Alamat	:	Alamat	:
Tarikh	:	Tarikh	:

Meterai atau Cop Syarikat

**potong mana yang tidak berkenaan*

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran A

BUTIRAN KONTRAK

Tajuk *Sebut Harga/Tender

……

1. **Pendaftaran Syarikat Dengan Suruhanjaya Syarikat Malaysia (SSM) (jika berkaitan)**

   1.1 No. Pendaftaran : ……Nombor pendaftaran……

   1.2 Tempoh Sah Laku ……Tempoh sah laku sijil pendaftaran……

2. **Pendaftaran Syarikat Dengan Lembaga Profesional (jika berkaitan)**

   2.1 No. Pendaftaran : ……Nombor pendaftaran……

   2.2 Tempoh Sah Laku ……Tempoh sah laku sijil pendaftaran……

3. **Pendaftaran dengan Kementerian Kewangan (jika berkaitan)**

   3.1 No. Pendaftaran : ……Nombor pendaftaran……

   3.2 Tempoh Sah Laku : ……Tempoh sah laku sijil pendaftaran dengan Kementerian Kewangan……

   3.3 Kod Bidang : ……Kod bidang yang berkaitan untuk *sebut harga/tender ini……

   3.4 Ekuiti Bumiputera : ……Tiada/ Melebihi 50%/ 100%……

4. **Pendaftaran Cukai Perkhidmatan dengan Jabatan Kastam Diraja Malaysia**

   4.1 No. Pendaftaran : ……Nombor pendaftaran cukai perkhidmatan……

   4.2 Tarikh Kuat Kuasa : ……Tarikh kontraktor boleh mula mengenakan cukai perkhidmatan ke atas perkhidmatan……

5. **Harga dan Tempoh Kontrak**

   5.1 Harga *LTBKS/Tender (butiran harga seperti di ***Lampiran A1***) : RM……Harga *LTBKS/Tender yang telah disetuju terima (Yuran + Imbuhan Balik)……
   Lampiran A1 adalah butiran kos perunding melibatkan yuran dan imbuhan balik

   5.2 Peruntukan Cukai Perkhidmatan : RM ……Cukai Perkhidmatan dalam angka……

   5.3 Harga Kontrak : RM ……Harga *LTBKS/Tender (Yuran + Imbuhan Balik) + Cukai Perkhidmatan……

   5.4 Tempoh Kontrak : ……Hari/Minggu/Bulan/Tahun……

   5.5 Tarikh Mula Perkhidmatan : ……DD/MM/YYYY……

   5.6 Tarikh Tamat Perkhidmatan : ……DD/MM/YYYY……

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

6. **Terma Rujukan/Skop Perkhidmatan Perunding**

* Terma Rujukan/Skop Perkhidmatan Perunding yang ditetapkan seperti di ***Lampiran A2***
Lampiran A2 akan disediakan oleh Agensi

7. ***Polisi Insurans Tanggung Rugi Profesional (jika berkaitan)**

7.1 Nilai Polisi : RM……Nilai dalam angka……

7.2 Tempoh Perlindungan : Dari tarikh kuat kuasa kontrak sehingga 12 bulan selepas tamat Tempoh Tanggungan Kecacatan

8. **Kenaan *Liquidated & Ascertained Damages (LAD)***
(Lewat mengemukakan *deliverables* yang telah dipersetujui)

8.1 Formula : $\frac{\textit{Base Lending Rate}}{100} \times \frac{\text{Yuran Perunding}}{365}$
(tertakluk minimum RM100 sehari)

8.2 Kadar sehari : RM……Nilai dalam angka……

9. ***Professional Training And Education For Growing Entrepreneurs* (PROTÉGÉ) (jika berkaitan)**
(Bagi perolehan yang telah melebihi nilai ambang berdasarkan 1PP/PK1.2)

9.1 Tertakluk kepada pelaksanaan Program PROTÉGÉ : Ya / Tidak (Berdasarkan nilai ambang yang ditetapkan dalam 1PP/PK1)

9.2 Bilangan minimum peserta PROTÉGÉ : ..... peserta

Formula:

$\frac{\text{1\% X Harga Kontrak*}}{\text{RM24,000**}}$

*Bagi tujuan pengiraan PROTÉGÉ, Harga Kontrak adalah nilai tawaran yang dipersetujui tanpa cukai
**Elaun PROTÉGÉ (RM2,000 seorang x 12 bulan)

**potong mana yang tidak berkenaan*

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Salinan Kepada :

Ketua Setiausaha Perbendaharaan
Bahagian Perolehan Kerajaan
Aras 4, Blok Utara, Kompleks Kementerian Kewangan
Presint 2, Pusat Pentadbiran Kerajaan Persekutuan,
62592 PUTRAJAYA
(u.p. : Ketua Seksyen Dasar Perolehan)

Ketua Pegawai Eksekutif
Ibu Pejabat Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil
Aras 18, Persiaran Rimba Permai, Cyber 8
63000 CYBERJAYA
(u.p.: Pengarah Jabatan Pematuhan Cukai)

Ketua Pengarah Kastam
Ibu Pejabat Kastam Diraja Malaysia
Bahagian Cukai Dalam Negeri (SST)
Aras 3 -7, Blok A, Menara Tulus
No. 22, Persiaran Perdana , Presint 3
61200 PUTRAJAYA
(u.p.: Pengarah Bahagian Cukai Dalam Negeri (SST))

Sekretariat
Majlis Perundingan Gaji Negara
Kementerian Sumber Manusia
Aras 7, Blok D3, Kompleks D
62530 PUTRAJAYA

Professional Training & Education For Growing Entrepreneurs (Protege)
Aras 2, Blok E4/5, Parcel E
Kementerian Pembangunan Usahawan
Pusat Pentadbiran Kerajaan Persekutuan
62668, PUTRAJAYA
(u.p. : Ketua Sekretariat PROTÉGÉ)

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran B

SURAT AKUAN PERUNDING BERJAYA
(Tajuk dan Nombor Rujukan *LTBKS/Tender)

Saya, ...nombor K.P. ..... yang mewakili .....(nama syarikat)..... nombor pendaftaran (*MOF/CIDB/SSM) ..... dengan ini mengisytiharkan bahawa saya atau mana-mana individu yang mewakili syarikat ini tidak akan menawar atau memberi rasuah kepada mana-mana individu dalam ..... atau mana-mana individu lain, sebagai ganjaran untuk dipilih dalam *lantikan terus beserta kos siling (LTBKS)/tender seperti di atas. Bersama ini dilampirkan Surat Perwakilan Kuasa bagi saya mewakili syarikat seperti tercatat di atas untuk membuat pengisytiharan ini.

2. Sekiranya saya atau mana-mana individu yang mewakili syarikat ini didapati bersalah menawar atau memberi rasuah kepada mana-mana individu dalam .....(nama kementerian/agensi)..... atau mana-mana individu lain sebagai ganjaran mendapatkan *sebut harga/tender seperti di atas, maka saya sebagai wakil syarikat bersetuju tindakan-tindakan berikut diambil:

2.1 penarikan balik tawaran kontrak bagi *LTBKS/tender di atas; atau
2.2 penamatan kontrak bagi *LTBKS/tender di atas; dan
2.3 lain-lain tindakan mengikut peraturan perolehan Kerajaan yang berkuat kuasa.

3. Sekiranya terdapat mana-mana individu cuba meminta rasuah daripada saya atau mana-mana individu yang berkaitan dengan syarikat ini sebagai ganjaran mendapatkan *LTBKS/tender seperti di atas, maka saya berjanji akan dengan segera melaporkan perbuatan tersebut kepada pejabat Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) atau balai polis yang berhampiran.

Yang Benar,

.....
(Nama dan No. KP)

Cop Syarikat :

Catatan:
i) * Potong mana yang tidak berkenaan
ii) Surat akuan ini hendaklah dikemukakan bersama Surat Perwakilan Kuasa

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

No. * LTBKS/Tender/Kontrak :*No.LTBKS/ Tender/ Kontrak……..

Lampiran C

SURAT AKUAN SUMPAH SYARIKAT

Saya…… nombor kad pengenalan ……..
yang mewakili syarikat ……. nombor pendaftaran…….
(*MOF/Lembaga Profesional/SSM) dengan sesungguhnya dan sebenarnya mengaku bahawa:

(a) syarikat **TIDAK** membuat salah nyataan (*misrepresentation*) atau mengemukakan maklumat palsu semasa berurusan dengan Kerajaan bagi perolehan ini atau melakukan apa-apa perbuatan lain, seperti memalsukan maklumat dalam Sijil Akuan Pendaftaran Syarikat, mengemukakan dokumen lain yang palsu atau yang telah diubah suai;

(b) syarikat **TIDAK** membenarkan Sijil Akuan Pendaftaran Syarikat disalahgunakan oleh individu/syarikat lain;

(c) syarikat **TIDAK** terlibat dalam membuat pakatan harga dengan syarikat-syarikat lain atau apa-apa pakatan sepanjang proses *sebut harga/tender sehingga dokumen kontrak ditandatangani;

(d) syarikat/ pemilik/ rakan kongsi/ pengarah **TIDAK** disabitkan atas kesalahan jenayah di dalam atau luar Malaysia; dan

(e) syarikat **TIDAK** digulungkan.

Sekiranya pada bila-bila masa, dibuktikan bahawa pengisytiharan perenggan di atas adalah tidak benar, Kerajaan berhak menarik balik tawaran kontrak atau menamatkan perkhidmatan syarikat bagi projek ini.

Dan saya membuat Surat Akuan Bersumpah ini dengan kepercayaan bahawa apa-apa yang tersebut di dalamnya adalah benar serta menurut Akta Akuan Berkanun 1960.

Diperbuat dan dengan)
sebenar-benarnya diakui oleh)
) Tandatangan…….
……..)
di……..)
pada ……)

Di hadapan saya,

……
Pesuruhjaya Sumpah

Catatan:
i. *Potong mana yang tidak berkenaan.
ii. Surat akuan ini hendaklah ditandatangani oleh hanya penama di sijil pendaftaran MOF/CIDB.

Tandatangan & Cop (Kerajaan) : ……
Tandatangan & Cop (Syarikat) : ……

Pihak Kerajaan : Pegawai yang diberi kuasa oleh Menteri di bawah seksyen 2 Akta Kontrak Kerajaan 1949 untuk menandatangani kontrak
Pihak Syarikat : Penama pada sijil pendaftaran untuk menandatangani Surat ini

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

LAMPIRAN 2
(Versi Bahasa Inggeris)

LETTER OF ACCEPTANCE
(for the *Lantikan Terus Beserta Kos Siling/Tender of Service)

For Procurement With Consultancy Firm **Registered** Under JKDM and **Taxable** Consultancy Services Under The Service Tax Act 2018

Our Reference : ……Agency's reference……
Date : ……Date……

……Company's name……
……Company's address……
……

Sir,

***Quotation / Tender for:**Title of the *Quotation/Tender……
***Quotation/Tender/Contract Number :**……*Quotation/Tender/Contract number……

This is to inform that the Government has agreed to accept your *Lantikan Terus Beserta Kos Siling (LTBKS)/tender for a consideration of Ringgit ……Contract Sum in words…… (RM……Contract Sum in number……) being the Contract Sum for a contract period of ……*Day/Week/Month/Year…… subject to the *LTBKS/tender document that forms part of this procurement and this Letter of Acceptance and ***Appendix A*** to this Letter of Acceptance which are contract details (hereinafter referred to as "this Letter").

2. Upon your acknowledgement of receipt of this Letter and its relevant appendices, a binding contract is formed between the Government and your company. A contract document shall be signed immediately by incorporating the terms in *LTBKS/tender document and all the terms in ***Appendix A***. Until the contract document is signed, this Letter shall continue to bind the Parties.

3. The Contract Sum is inclusive of Government's allocation of ____Percentage rate under the Service Tax Act 2018____% service tax as the service is taxable and your company is registered with the Royal Customs Department of Malaysia (JKDM). The payment of sales tax is calculated based on actual claims and the effective date of your company's registration with JKDM.

4. It is hereby notified no services shall be performed **unless** you have submitted to the Government the following documents:

*(a) a Professional Indemnity Insurance (PII) under the name of the company;
Clause 4(a) is applicable only for physical project

*(b) a final Work Implementation Schedule;

*(c) a list of personnel involved in the consultancy,

as stipulated in ***Appendix A*** not later than *14/30 days from the date of your Acknowledgement Receipt of this Letter. Any failure to comply with the requirement in this paragraph within the stipulated time, may result in the revocation of this Letter and the Government shall not be liable to you in any way whatsoever **unless** a written waiver is given by an authorised person, for services that needs to be performed urgently or immediately where such delays will be detrimental and will affect the public service and interest.

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

5. Upon issuance of the instructions by the Government, you are required to perform the services within the stipulated time and the quality of services shall be up to the satisfaction and meet the requirements of the Government. In the event you are unable to perform the services within the time and/or quality stipulated, the Government reserves the right to revoke any instructions and/or impose Liquidated & Ascertained Damages (LAD) as stipulated in ***Appendix A***. The Government also reserves the right to reject any deliverables in the event the deliverables does not meet the satisfaction and requirements of the Government and to resubmit within the time and quality stipulated.

*6. Your company is also required to implement the Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) programme as stipulated by the Government based on the Contract Sum with a minimum number of ...Min. number of participants.... PROTÉGÉ participants, without any cost to the Government. The minimum number of participants required is calculated based on the formula as below :

$$\frac{1\% \text{ X Contract Sum*}}{\text{RM24,000**}}$$

*For the purpose of PROTÉGÉ's calculation, the Contract Sum is the agreed offer price exclude tax
**PROTÉGÉ's allowance (RM2,000 per person x 12 months)

This paragraph is applicable if the Contract Sum is **exceeding** the threshold value and the company is required to implement PROTÉGÉ programme as stipulated in 1PP/PK 1.2.

*6. Your company is also encouraged to implement the Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) programme as stipulated by the Government.

This paragraph is applicable if the Contract Sum is **Not exceeding** the threshold value and the company is encourage to implement PROTÉGÉ programme as stipulated in 1PP/PK 1.2.

7. For the purpose of the PROTÉGÉ programme, your company is required to:

(a) submit the PROTÉGÉ Programme Implementation Schedule based on the contract to the PROTÉGÉ's Secretariat for approval within two (2) weeks after the signing of the Acknowledgement Receipt of this Letter by your company;

(b) implement the PROTÉGÉ Programme in accordance with the approved PROTÉGÉ Programme Implementation Schedule;

(c) update the information on the experience of implementing PROTÉGÉ programme in the Ministry of Finance's ePerolehan system or Construction Industry Development Board's system, whichever is applicable;

(d) submit the certificate or acknowledgement letter by the PROTÉGÉ Secretariat to the Agency immediately after completion of the implementation of the PROTÉGÉ programme; and

(e) submit reports on implementation of the PROTÉGÉ programme to the PROTÉGÉ Secretariat.

*8. In the event your company fail to comply with any terms in paragraph 6 and 7 or any instructions by the Government, the Government reserves the right not to consider any new contract or contract extension with your company in the future.

This paragraph is applicable if the Contract Sum is exceeding the threshold value and the company is required to implement PROTÉGÉ programme as stipulated in 1PP/PK 1.2. This paragraph can be strike out if the Contract Sum is not exceeding the threshold value.

9. You are also reminded that the Government reserves the right to revoke this Letter in the event:

(a) the company fails to comply with any terms in paragraph 4 within the stipulated time;

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

(b) the company fails to comply with any terms set forth in the Successful Consultant's Declaration;

(c) the company has misrepresented or has submitted false information while dealing with the Government for this procurement or commits any act, such as falsifying information in the Companies Registration Certificate, submitting fake or fabricated documents;

(d) the company allows its Companies Registration Certificate to be misused by other individuals/companies;

(e) the company is involved in bid rigging with other companies and other collusive conduct throughout the *LTBKS/tender process until the contract document is signed;

(f) the company has subcontracted either fully or partially the services without prior approval from the Government;

(g) the company fails to complete the services within the stipulated time in ***Appendix A***;

(h) the company fails to comply with any terms/instructions in the *LTBKS/tender document;

(i) the company/owner/partners/directors/management has/have been convicted of a criminal crime inside or outside Malaysia;

(j) the company is wound up;

(k) the company fails to comply with the stipulated scope of services and/or Service Level Agreement;

(l) the company did not obtain prior written approval from the Government for any sale or transfer of company's equity throughout the contract period; or

(m) public interest or national security and interest is involved.

10. In the event this Letter is revoked due to reason(s) stipulated in paragraph 9, the Government shall not be liable for any loss or damages suffered by your company including future loss.

11. Attached herewith is the Successful Consultant's Declaration and Declaration of Oath as per ***Appendix B*** and ***Appendix C*** for your signature and to be returned together with this Letter.

12. This Letter is sent to you in three (3) copies. Please return to this office the original and second copy together with the relevant appendices properly signed by you and the company's witness not later than *3/7/14 days from the date of this Letter received for our further actions. Any failure to comply with the requirement in this paragraph within the stipulated time may result in the revocation of this Letter and the Government shall not be liable to you in any way whatsoever.

Thank you.

"BERKHIDMAT UNTUK NEGARA"

Yours faithfully,

Signature of the officer authorised by the Minister under section 2 of the Government Contracts Act 1949 to sign contracts

.....
(Officer's Full Name)
Officer's Designation

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

ACKNOWLEDGEMENT RECEIPT OF THE LETTER OF ACCEPTANCE AND THE RELEVANT APPENDICES BY THE COMPANY

It is hereby confirmed that the undersigned below acknowledge receipt of this Letter and its relevant appendices the reference to .....Agency's reference number..... dated .....Date of the letter signed by Minister..... and agrees with the terms and conditions contained in this Letter unconditionally where a copy of this Letter has been retained, and it is further reconfirmed that no terms, conditions or additional stipulations to those contained in the *quotation/tender document and this Letter have been imposed.

Signature by the Company
……..
Full Name :
I/C Number :
Address :
Date :

Signature by the witness of the Company
……
Full Name :
I/C Number :
Address :
Date :

Company's seal or stamp

**strike whichever not applicable*

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

Appendix A

CONTRACT DETAILS

*LTBKS/Tender's Title

……

1. **Registration with the Companies Commission of Malaysia (SSM) (if applicable)**

1.1	Registration No.	:	Registration number ……
1.2	Validity period	:	Validity period of the registration certificate ……

2 **Registration with the Professional Bodies (if applicable))**

2.1	Registration No.	:	Registration number ……
2.2	Validity period	:	Validity period of the registration certificate ……

3. **Registration with the Ministry of Finance (if registered)**

3.1	Registration No.	:	Registration number ……
3.2	Validity period	:	Validity period of the registration certificate with Ministry of Finance ……
3.3	Field Code	:	Field code relevant to this quotation/tender ……
3.4	Bumiputera Equity	:	Nil/Above 50%/100% ……

4. **Registration of Service Tax with the Royal Customs Department of Malaysia**

4.1	Registration No.	:	Service Tax Registration number ……
4.2	Effective Date	:	Effective date for the contractor to impose service tax on services ……

5. **Contract Sum and Period**

5.1	*LTBKS/Tender Price (cost breakdown as in ***Appendix A1***)	:	RM…… Agreed *LTBKS/Tender price Appendix A1 is the form inside the * LTBKS/ tender document with price which have been signed by the company.
5.2	Allocation for Service Tax	:	RM …… Service Tax in numbers (Fees and Reimbursables)
5.3	Contract Sum	:	RM …LTBKS/Tender Price (Fees and Reimbursables) + Service Tax……
5.4	Contract Period	:	…… Days/Weeks/Months/Year ……
5.5	Service Commencement Date	:	DD/MM/YYYY ……
5.5	Service Expiry Date	:	DD/MM/YYYY ……

6. **Terms of Reference/Scope of Consultancy Work**

* Terms of reference or scope of consultancy work as in ***Appendix A2***

Appendix A2 will be prepared by the Agency

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

7. ***Professional Indemnity Insurance (if applicable)**

7.1 Policy Value : RM……In numbers……

7.2 Coverage Period : From the effective date of contract until 12 months after the Defect Liability Period

8. **Imposed Liquidated & Ascertained Damages (LAD)**
(Delay in submission of *deliverables*)

8.1 Formula : $\frac{\textit{Base Lending Rate}}{100} \times \frac{\textit{Consultancy Fee}}{365}$
(*Minimum of RM100 per day*)

8.2 Rate per day : RM……In numbers……

9. ***Professional Training And Education For Growing Entrepreneurs (PROTÉGÉ) (if applicable)**
(For procurement which have exceeded the threshold value as stipulated in the 1PP/PK1.2)

9.1 Subject to the implementation of the PROTÉGÉ Program : Yes / No According to the threshold value stipulated in 1PP/PK1.2

9.2 Minimum number of PROTÉGÉ participant : ..... participant

Formula:

$\frac{\text{1\% X Contract Sum*}}{\text{RM24,000**}}$

*For the purpose of PROTÉGÉ's calculation, the Contract Sum is the agreed offer price exclude tax

**PROTÉGÉ's allowance (RM2,000 per person x 12 months)

**strike whichever not applicable*

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

Copies to:

Ketua Setiausaha Perbendaharaan
Bahagian Perolehan Kerajaan
Aras 4 Blok Utara
Kementerian Kewangan
Presint 2
62592 PUTRAJAYA
(u.p. : Ketua Seksyen Dasar Perolehan)

Ketua Pegawai Eksekutif
Ibu Pejabat Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil
Aras 18, Persiaran Rimba Permai, Cyber 8
63000 CYBERJAYA
(u.p.: Pengarah Jabatan Pematuhan Cukai)

Ketua Pengarah Kastam
Ibu Pejabat Kastam Diraja Malaysia
Bahagian Cukai Dalam Negeri (SST)
Aras 3 -7, Blok A, Menara Tulus
No. 22, Persiaran Perdana , Presint 3
61200 PUTRAJAYA
(u.p.: Pengarah Bahagian Cukai Dalam Negeri (SST))

Sekretariat
Majlis Perundingan Gaji Negara
Kementerian Sumber Manusia
Aras 7, Blok D3, Kompleks D
62530 PUTRAJAYA

Professional Training & Education For Growing Entrepreneurs (Protege)
Aras 2, Blok E4/5, Parcel E
Kementerian Pembangunan Usahawan
Pusat Pentadbiran Kerajaan Persekutuan
62668, PUTRAJAYA
(u.p. : Ketua Sekretariat PROTÉGÉ)

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

Appendix B

SUCCESSFUL CONSULTANT'S DECLARATION
(*Quotation/Tender Title and Reference Number)

I,…… NRIC No…… representing……(name of company) with registration number ……(MOF/Professional Bodies/SSM) hereby declare that I, or any individual(s) representing this company, shall not offer or give bribes to any individual(s) in …….. or any other individual(s), as an inducement to be selected in the aforementioned *Lantikan Terus Beserta Kos Siling (LTBKS)/tender. I attach herewith a Letter of Authorisation which empowers me, as a representative of the aforementioned company, to make this declaration.

2. If I, or any individual(s) representing this company, is offering or giving any bribes to any individual(s) in ……..or any other individual(s) as gratification for being selected in the aforementioned *LTBKS/tender, I hereby agree, as a representative of the aforementioned company, for the following actions to be taken:

2.1 revocation of the contract offer for the aforementioned *LTBKS/tender; or
2.2 termination of the contract for the aforementioned *LTBKS/tender; and
2.3 other actions according to the Government procurement rules and regulations currently in force.

3. In the event where there is any individual(s) who attempts to solicit any bribes from me or any individual(s) related to this company as gratification for being selected in the aforementioned tender/quotation, I hereby pledge to immediately report such act(s) to the Malaysian Anti-Corruption Commission (MACC)'s office or at the nearest police station.

Sincerely,

(Signature)
(Name and NRIC No.)

Company stamp:

Note. i) * Delete whichever not applicable
ii) This declaration is to be submitted together with Letter of Authorisation

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

*LTBKS/Tender/Contract Num. : ……*LTBKS/Tender/Contract Num.

Appendix C

DECLARATION OF OATH

I, …… NRIC No. …….. representing ……..(name of company) registration number ……..(*MOF/Professional Bodies) hereby solemnly and sincerely declare that:

(a) the company has **NOT** misrepresented or submitted false information while dealing with the Government for this procurement or commits any act, such as falsifying information in the Companies Registration Certificate, submitting fake or fabricated documents;

(b) the company has **NOT** allowed its Company Registration Certificate to be misused by other individuals/companies;

(c) the company is **NOT** involved in bid rigging with other companies and other collusive conduct throughout the procurement until the contract document is signed;

(d) the company/owner/partners/directors/management has/have **NOT** been convicted of a crime inside or outside Malaysia; and

(e) the company has **NOT** been wound up.

If, at any time, it is proved that the declarations as the above paragraph are untrue, the Government reserves the right to withdraw its contract offer or terminate the service of the company for this project.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1950.

Subscribed and solemnly declared by)
The above named)
)
……..) Signature……
at……..)
on ……

before me,

……
Commissioner for Oath

Note:

i. *Strike whichever is applicable
ii. This letter is to be signed only by the authorised persons as stated in the MOF/CIDB registration certificate.

Initial & Office Stamp (Government) : ……
Initial & Office Stamp (Company) : ……

Government: Public Officer authorised by the Minister under the section 2 of the Government Contracts Act 1949 to sign contracts
Company: Only persons named in the registration certificate to sign this Letter

CONSULTANCY SERVICES

FOR Specify full name of project .....

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

BETWEEN

THE GOVERNMENT OF MALAYSIA

AND

Name of consultancy firm
.....

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

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CONTRACT NO. : …….. Specify contract number

"RECITALS"

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

BETWEEN

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

AND

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

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

WHEREAS -

(A) The Government intends to construct and complete……Specify full name of project…… (hereinafter referred to as **"the Project"**) and is desirous of obtaining (hereinafter referred to as **"the Services"**) from the CA in connection with the ……Specify field of the consultancy service……(hereinafter referred to as **"the Works"**).

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

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

NOW IT IS HEREBY AGREED as follows:

PART A

GENERAL

1.0 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

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, partnership or body corporate (whichever is applicable) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered under the Registration of Architects Act 1967 [Act 117] and engaged to provide professional architectural consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Architects Act 1967 [Act 117] is attached in **Appendix 4**;

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

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

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

(g) "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;

(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; and

(p) 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 the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices.

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 Specify total cost in word format …… only (RM…Specify total cost in number format..) as the ceiling contract amount (hereinafter referred to as the "**Contract Price**" and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia Specify consulting fee in word format …… only (RM…Specify consulting fee in number format……) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit Specify out of pocket expenses in word format …….. only (RM…Specify out of pocket expenses in number format…) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated …Date issued by Government…… (as specified in **Appendix 3** of this Agreement).

3.0 EEFECTIVE DATE AND DURATION OF THIS AGREEMENT

3.1. Contract Period

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

3.2. Extension of Contract Period

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

(b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the Contract Period, the 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;

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

(j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

5.0 CA'S OBLIGATIONS

5.1. Quality of Services

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

(b) The CA shall have sufficient knowledge of current Local Authority requirements, bye-laws, local land acts and other regulations relating to the Project, and shall 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 willful act, default or omission of the Government, its agents or servants; or

(iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error**,** omission,

neglect, breach or default of the CA or the CA's Personnel, servants, agents or employees; and

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

5.10. Insurance

The CA shall 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 profesional 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 in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.

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

5.17. Prohibition on Association

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

5.18. Prohibition on Conflicting Activities

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

5.19. Independent Consultant

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

5.20. Technology and Knowledge Transfer

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

(b) Pursuant to clause 5.20(a) above, the CA shall provide training for a minimum of .....Specify number of government officer.....oficials nominated by the Government to be competent and conversant in the implementation of the Project.

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

5.21. Intellectual Property Rights

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

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

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

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

PART C

GOVERNMENT'S OBLIGATIONS AND RIGHTS

6.0 GOVERNMENT'S OBLIGATIONS

6.1. Appointment of GR

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

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

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

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

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

6.3. Obligation to Supply Relevant Information and Assistance

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

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

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

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

6.4. Payment to the CA for Services

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

(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:

$$\frac{\text{Contract Sum for the Works}}{\text{Estimated Cost for the Works}} \times \text{Ceiling of the Consulting Fee}$$

(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; or

(ii) the progress of the Services fails to measure up to the aggregate payment made to date; or

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

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

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

7.0 GOVERNMENT'S RIGHTS

7.1. Proprietary Rights of The Government in Relation to Documents

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

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

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

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

PART D

DISPUTE RESOLUTIONS

8.0 DISPUTE RESOLUTION

8.1. Dispute Resolution by Government Representative

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

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

(c) If the Consultant:

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

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

8.2. Dispute Resolution Committee

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

(i) Deputy Secretary of the Ministry/ Head of Department as the Chairman; **Rujuk 1PP/PK3.10**

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

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

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

8.3. Arbitration

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

(b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the 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 Kuala Lumpur Regional Centre for Arbitration.

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

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

PART E

SUSPENSION AND TERMINATION

9.0 SUSPENSION

9.1. Suspension and Resumption of Services

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

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

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

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

9.2. Extension of Time

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

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

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

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

9.3. Consequences of Mutual Termination

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

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

(ii) all costs and expenditure incurred by the Government and the CA shall 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; or

(iv) execution is levied against a substantial portion of the CA's assets; or

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

(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 advise 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 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 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.

(iii) For avoidance of doubt, the Parties hereby agree that, subject to 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; and

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

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

14.2. Notification of Force Majeure

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

14.3. Termination by Force Majeure

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

14.4. Consequences of Termination due to Event of Force Majeure

If this Agreement is terminated pursuant to clause 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.

PART G

SPECIAL PROVISIONS

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

- None -

SIGNATORIES TO THE AGREEMENT

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

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

In the presence of:

…….....
Name of witness :
NR IC No. :

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

In the presence of:

……
Name of witness :
NR IC No. :

PART A : SCHEDULE OF SERVICES

1.0 TYPES OF PROFESSIONAL SERVICES

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

(a) Basic Professional Services

(b) Additional Professional Services

(c) Special Services

(d) Supervision On Site

2.0 BASIC PROFESSIONAL SERVICES

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

(a) Schematic Design Phase

(b) Design Development Phase

(c) Contract Documentation Phase

(d) Contract Implementation and Management Phase

(e) Final Completion Phase

Basic Professional Services under Schematic Design Phase

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

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

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

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

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

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

Basic Professional Services under Design Development Phase

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

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

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

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

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

Basic Professional Services under Contract Documentation Phase

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

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

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

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

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

(e) awarding the contract on behalf of the Government;

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

Basic Professional Services under Contract Implementation & Management Phase

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

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

Basic Professional Services under Final Completion Phase

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

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

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

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

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

1.0 ADDITIONAL PROFESSIONAL SERVICES

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

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

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

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

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

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

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

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

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

2.0 SPECIAL SERVICES

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

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

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

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

(d) Serving as a specialist consultant;

(e) Providing town planning services;

(f) Providing project management services; and

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

3.0 SUPERVISION ON SITE

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

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

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

PART B : 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
- 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 pursant 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 pursant 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 8 in Appendix 7 of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.

(g) Within the period specified under item 9 in Appendix 7 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

(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%

(a) 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.

(b) 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.

(c) 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)

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

(e) 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.

(f) 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.

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

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

APPENDIX 1

APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief

2. List & Mode of Deliverables

3. Scope of Services

   (a) Basic Services
   (b) Additional Services
   (c) Site Supervision (if applicable)

APPENDIX 2

APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION

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

APPENDIX 3

APPENDIX 3 : LETTER OF ACCEPTANCE

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

APPENDIX 4

APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 5

APPENDIX 5 : DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 6A

APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 6B

APPENDIX 6B : CONSULTING FEES

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

APPENDIX 6C

APPENDIX 6C : OUT OF POCKET EXPENSES

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

APPENDIX 7

APPENDIX 7 : SCHEDULE OF AGREED ITEMS

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

APPENDIX 8

APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE

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

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

OR

GANTT CHART

APPENDIX 9

APPENDIX 9 : CA'S PERSONNEL

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 10

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

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 11

APPENDIX 11 : CA'S SERVICES TAX LICENSE

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 12

APPENDIX 12 : SCHEDULE OF PAYMENT

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

CONSULTANCY SERVICES

FOR Specify full name of project .....

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

BETWEEN

THE GOVERNMENT OF MALAYSIA

AND

Name of consultancy firm
.....

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

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CONTRACT NO. : …….. Specify contract number

"RECITALS"

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

BETWEEN

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

AND

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

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

WHEREAS -

(A) The Government intends to construct and complete……Specify full name of project…… (hereinafter referred to as **"the Project"**) and is desirous of obtaining (hereinafter referred to as **"the Services"**) from the CE in connection with the ……Specify field of the consultancy service……(hereinafter referred to as **"the Works"**).

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

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

NOW IT IS HEREBY AGREED as follows:

PART A

GENERAL

1.0 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

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 CE upon request and approval by the Government to carry out services for any part of the project;

(c) "CE" means the engineering consultancy firm named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered under the Registration of Engineers Act 1967 [Act 138] and engaged to provide professional engineering consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Engineers Act 1967 [Act 138] is attached in **Appendix 4**;

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

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

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

(g) "Estimated Cost of the Works" the estimated cost of the Works for which the CE 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 CE 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 CE 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 CE 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 CE covering its liability in respect of any negligence, error or omission acts of CE 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 CE 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;

(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; and

(p) 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 the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices.

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

3.0 EEFECTIVE DATE AND DURATION OF THIS AGREEMENT

3.1. Contract Period

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

3.2. Extension of Contract Period

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

(b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the Contract Period, the Government shall inform the CE 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

CE'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

4.0 CE'S REPRESENTATIONS AND WARRANTIES

The CE hereby represents and warrants to the Government that –

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

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

(c) the CE is a body corporate or partnership or sole proprietorship registered under the Registration of Engineers Act 1967 [Act 138] and exists validly under the laws of Malaysia;

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

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

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

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

(i) its Memorandum and Articles of Association; or

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

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

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

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

(j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

5.0 CE'S OBLIGATIONS

5.1. Quality of Services

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

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

5.2. Timeliness of Services

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

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

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

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

5.3. Consequences of Delay

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

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

5.4. Instructions by The Government

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

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

5.5. Design Services

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

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

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

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

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

(f) The CE shall not without prior written approval of the Government, make amendments to any approved design or give any instruction which is likely to increase the cost of the project, unless the variations are of an emergency nature and any delay in carrying out such

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

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

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

5.6. CE's Personnel

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

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

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

(d) The CE 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 CE 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 CE's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CE, it becomes necessary to replace any of the CE's Personnel, the CE shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

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

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

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

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

(k) The GR may with the agreement of the CE, direct the CE, 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 CE shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.

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

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

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

5.8. Liability

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

5.9. Indemnity

The CE agrees with the Government that –

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

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

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

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

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

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

5.10. Insurance

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

5.11. Professional Indemnity Insurance

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

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

5.12. Emergency and Accident

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

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

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

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

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

(f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CE, then the Services provided by the CE hereto during the Defect Liability Period shall be construed as part of the Basic Professional Services and the CE 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 CE, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CE shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to−

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

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

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

5.13. Confidentiality

(a) Except with the prior written consent or the instructions of the Government, the CE shall not at any time communicate to any person or body or entity any confidential information disclosed to the CE for the purpose of the provision of the Services or discovered by the CE in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.

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

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

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

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

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

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

(i) the CE promptly notifies the Government of the existence, terms and circumstances surrounding such request;

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

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

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

5.14. Notice of Delay

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

5.15. Assistance in Arbitration Inquiry or Litigation

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

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

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

5.16. Situation Beyond Control Of CE

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

(b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CE in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.

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

5.17. Prohibition on Association

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

5.18. Prohibition on Conflicting Activities

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

5.19. Independent Consultant

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

5.20. Technology and Knowledge Transfer

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

(b) Pursuant to clause 5.20(a) above, the CE shall provide training for a minimum of .....Specify number of government officer.....officials nominated by the Government to be competent and conversant in the implementation of the Project.

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

5.21. Intellectual Property Rights

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

termination of this Agreement, in any way, question or dispute the ownership of the Government.

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

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

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

PART C

GOVERNMENT'S OBLIGATIONS AND RIGHTS

6.0 GOVERNMENT'S OBLIGATIONS

6.1. Appointment of GR

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

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

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

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

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

6.3. Obligation to Supply Relevant Information and Assistance

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

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

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

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

6.4. Payment to the CE for Services

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

(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 CE 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:

$$\frac{\text{Contract Sum for the Works}}{\text{Estimated Cost for the Works}} \times \text{Ceiling of the Consulting Fee}$$

(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 CE furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.

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

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

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

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

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

6.5. Withholding Payment

(a) The Government may by giving written notice to the CE, and without prejudice to any other rights the Government may have under this

Agreement, withhold payments to the CE under this Agreement, upon the occurrence and continuance of any of the following events:

(i) the CE commits any breach of the terms and conditions of this Agreement; or

(ii) the progress of the Services fails to measure up to the aggregate payment made to date; or

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

(iv) any failure of the CE to deliver the Services to the satisfaction of the Government.

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

7.0 GOVERNMENT'S RIGHTS

7.1. Proprietary Rights of The Government in Relation to Documents

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

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

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

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

PART D

DISPUTE RESOLUTIONS

8.0 DISPUTE RESOLUTION

8.1. Dispute Resolution by Government Representative

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

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

(c) If the Consultant:

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

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

8.2. Dispute Resolution Committee

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

(i) Deputy Secretary of the Ministry/ Head of Department as the Chairman; **Rujuk 1PP/PK3.10**

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

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

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

8.3. Arbitration

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

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

(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 CE upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the CE fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration.

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

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

PART E

SUSPENSION AND TERMINATION

9.0 SUSPENSION

9.1. Suspension and Resumption of Services

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

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

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

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

9.2. Extension of Time

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

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

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

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

9.3. Consequences of Mutual Termination

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

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

(ii) payment obligations including all costs and expenditure incurred by the Government and the CE shall be ascertained in accordance with clause 14.

10.0 TERMINATION BY THE GOVERNMENT

10.1. Withholding Payment

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

10.2. Default by the CE

(a) In the event the CE without reasonable cause −

(i) suspends the implementation of the Services;

(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 “CE Default”), then the Government shall give notice in writing (hereinafter referred to as the “Default Notice”) to the CE specifying the default and requiring the CE 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 CE fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect to the CE.

10.3. Events of Default

(a) If at any time during the Contract Period-

(i) the CE 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 CE (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 CE; or

(iv) execution is levied against a substantial portion of the CE's assets; or

(v) the CE assigns the whole or any part of this Agreement; or

(vi) the CE 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 CE'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 CE and the obligations in this Agreement shall terminate immediately.

(b) The CE 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 CE, 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 advise opinion or report that the CE may provide;

(v) terminate all the third party contract entered into by the CE 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 CE 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-

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

ii. any act of default, omission or negligence of the CE, 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 CE 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 CE in completing the Services

(c) The Government shall hence forth −

(i) pay the CE 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 10.4 (b)(viii), from the payment then or thereafter due to the CE. The amount, if any, remaining to be paid thereafter to the CE and the amount under clause 10.4 (c)(i) shall constitute the CE's sole claim for payment following termination under clauses 10.1, 10.2 and 10.3

(iii) be entitled to claim against the CE 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 CE 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 CE

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

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

11.1. Consequences of Termination by the CE

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

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

(b) The CE 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 CE, 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 CE 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 CE 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 CE in relation to its obligation under this Agreement; or

b. any act of default, omission or negligence of the CE, 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 CE to the Government under this Agreement.

(c) The Government shall −

(i) pay the CE 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 10.4 (b)(viii), from the payment then or thereafter due to the CE. The amount, if any, remaining to be paid thereafter to the CE and the amount under clause 11.1 (c)(i) shall constitute the CE's sole claim for payment following termination under clause 11.1.

(iii) be entitled to claim against the CE 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 CE 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 CE (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.

(b) Upon such termination −

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

(ii) the 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 CE, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CE may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the CE.

(b) Upon such termination −

(i) clauses 10.4(b) and (c) 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.

(iii) For avoidance of doubt, the Parties hereby agree that, subject to 13 (b)(i), the CE 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; and

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

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

14.2. Notification of Force Majeure

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

14.3. Termination by Force Majeure

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

14.4. Consequences of Termination due to Event of Force Majeure

If this Agreement is terminated pursuant to clause 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 CE shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the CE is able to demonstrate that it has incurred substantial costs affecting the Services, the CE may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

14.7. Insurance

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

PART F

GENERAL PROVISIONS

15.0 AMENDMENT

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

16.0 NOTICES

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

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

17.0 GOVERNING LAW

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

18.0 COMPLIANCE WITH LAWS AND REGULATIONS

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

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

19.0 SEVERABILITY

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

20.0 ASSIGNMENT

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

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

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

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 CE 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 CE. The duplicate copy shall be kept by the CE.

29.0 SUCCESSORS BOUND

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

PART G

SPECIAL PROVISIONS

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

- None -

SIGNATORIES TO THE AGREEMENT

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

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

In the presence of:

…….....
Name of witness :
NR IC No. :

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

In the presence of:

……
Name of witness :
NR IC No. :

PART A : SCHEDULE OF SERVICES

1.0 TYPES OF PROFESSIONAL SERVICES

(a) The professional services to be provided by the CE shall consist of any or combination of the following :

(i) Basic Professional Services
(ii) Additional Professional Services
(iii) Supervision On Site

(b) The CE shall provide basic professional services for any of the following types of works:

(a) **Type A Works** - namely civil and structural engineering works (other than structural engineering works in building), mechanical engineering works and electrical engineering works (other than the engineering systems in buildings).

(b) **Type B Works** - namely structural engineering works in buildings; i.e. all works in structural reinforced concrete, pre-stressed concrete, steel, timber and other materials or a combination of any of these, which are designed to transmit the weight of, and the load on, the building to the ground and includes the foundation and excavations connected with them.

(c) **Type C Work** - namely engineering systems in buildings; i.e. means all mechanical and electrical services, plant and equipment installed for the complete functionality of the building, including but not limited to :

- lighting, power and electrical distribution system;
- air-conditioning and mechanical ventilation system;
- fire-fighting and prevention system;
- stage lighting system and mechanism;
- hot and cold water system;
- steam generating system;
- gas distribution system;
- telephone distribution and intercommunication system;
- lightning protection system;
- electrical substation;
- public address system, personnel location and call system;
- radio and television system;
- security system
- lift, hoist, dumbwaiter and escalator
- standby generator
- soil and waste water piping system

- pumping installation within the building
- integrated building management system
- compressed air and vacuum system
- refrigeration and cooling water system.

2.0 BASIC PROFESSIONAL SERVICES

2.1. Type A Works - Basic Professional Services

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

(a) Preliminary Stage

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

(i) investigating data and information relevant to the Works and considering any reports relating to the Works;

(ii) advising the Government on making any further topographical survey of the proposed site of the Works which may be necessary to supplement available topographical information;

(iii) advising the Government on the need to carry out any geotechnical investigation which may be necessary to supplement the available geotechnical information, arranging for such investigation, certifying the amount of any payments to be made by the Government to the persons, firms or companies carrying out such investigation under the CE's direction, and advising the Government on the results of such investigation;

(iv) advising the Government on the need for arrangements to be made, in accordance with paragraph 3.1 of this Schedule, for the carrying out of special surveys, special investigation or model tests and advising the Government of the results of any such surveys, investigations or tests carried out;

(v) consulting any local or other approving authorities on matters of principle in connection with the Works;

(vi) consulting any architect appointed by the Government in connection with the architectural treatment of the Works; and

(vii) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's proposals, including alternatives for the constructions of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in

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

(b) Design Stage

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

(i) preparing designs, including reinforced concrete and structural steel work designs, and tender drawings in connection with the Works, including bar bending schedules, if required; and

(ii) preparing such condition of contract, specifications, schedules and bills of quantities as may be necessary to enable the Government to obtain tenders or otherwise award a contract for carrying out of the Works.

(c) Tender Stage

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

(d) Construction Stage

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

(i) advising on the preparation of formal contract documents, including Letter of Acceptance relating to the accepted tenders for carrying out the Works or any part thereof;

(ii) inspecting and testing during manufacture and installation such electrical and mechanical materials, machinery and plant supplied for incorporation in the Works as are usually inspected and tested by the CE, and arranging and witnessing acceptance tests;

(iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.1(d)(ii) of this Schedule;

(iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;

(v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;

(vi) preparing any further bar bending schedules, designs and drawings, if required;

(vii) examining and approving the Contractor's proposals and working drawings relating to the Works;

(viii) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;

(ix) giving all necessary instructions relating to the Works to the Contractor;

(x) issuing all certificates as required in the contracts;

(xi) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;

(xii) delivering to the Government on the completion of the works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;

(xiii) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and

(xiv) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.

(e) Defect Liability Period Stage

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

(i) in the event of non-conformance to the performance requirement of Works rendered, the CE shall be responsible for compiling, investigating, evaluating and forwarding proposal for rectification to the Contractor as well as to inspect and certify the completion of such rectification Works;

(ii) preparing an assessing of the performance of the Contractor to GR;

(iii) conducting or attending periodic maintenance meetings;

(iv) compiling all complaints and submitting the complaints to Contractor for rectification;

(v) monitoring, inspecting and certifying rectification Works done by the Contractor;

(vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;

(vii) inspecting and compiling final defects list at the end of Defects Liability Period and to monitor and certify the Works that have been carried out;

(viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the Certificate of Making Good Defects and closing of account to GR;

(ix) preparing and recommending the Certificate of Making Good Defects and closing of account;

(x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and

(xi) any other responsibilities which are deemed necessary to be done by an engineer for the successful implementation of the Works.

2.2. Type B Works - Basic Professional Services

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

(a) Preliminary Stage

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

(i) investigating data and information relevant to the Works and considering any reports relating to the Works;

(ii) advising the Government on making any further topographical survey of the proposed site of the Works which may be necessary to supplement available topographical information;

(iii) advising the Government on the need to carry out any geotechnical investigation which may be necessary to supplement the available geotechnical information, arranging for such investigation, certifying the amount of any payments to be made by the Government to the persons, firms or companies carrying

out such investigation under the CE's direction, and advising the Government on the results of such investigation;

(iv) advising the Government on the need for arrangements to be made, in accordance with paragraph 3.2 of this Schedule, for the carrying out of special surveys, special investigation or model tests and advising the Government of the results of any such surveys, investigations or tests carried out;

(v) consulting any local or other approving authorities on matters of principle in connection with the Works;

(vi) consulting any architect appointed by the Government in connection with the architectural treatment of the Works;

(vii) providing sufficient structural information to enable the architect to produce his sketch plan; and

(viii) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's proposals, including alternatives for the constructions of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in principle for the execution of the Works in accordance with such proposals from the appropriate authorities.

(b) Design Stage

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

(i) Developing the design of the Works in collaboration with the architect and others, preparing calculations, drawings and specifications for the Works to enable a bill of quantities to be prepared by others, consulting any local or other approving authorities in collection with the design of the Works and preparing typical details and typical calculations; and

(ii) preparing such calculations and details relating to the Works as may be required for submission to any appropriate authority, preparing all other drawings in sufficient details to enable construction to be carried out, and advising on conditions of contract and specifications relevant to the Works and on forms of tender and invitation to the tender as they relate to the Works.

(c) Tender Stage

The Services to be provided by the CE at this stage comprise advising the Government as to the suitability for carrying out the Works of the persons, firms or companies tendering and as to the relative merits of

the tenders, including relative merit of alternative tenders, prices and estimates received for carrying out the Works.

(d) Construction Stage

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

(i) advising on the preparation of formal contract documents including Letter of Acceptance relating to the accepted tenders for the Works;

(ii) inspecting and testing during manufacture and installation such electrical and mechanical materials, machinery and plant supplied for incorporation in the Works as are usually inspected and tested by CE, and arranging and witnessing acceptance tests;

(iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.2(d)(ii) of this Schedule;

(iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;

(v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;

(vi) preparing any further designs, specifications and drawings to enable the contractor to carry out the Works but shall not include the preparation of any shop details relating to the Works or any part of them;

(vii) examining and approving the Contractor's proposals and working drawings relating to the Works;

(viii) checking shop details for general dimensions and adequacy of members and connections;

(ix) approving the Contractor's testing procedures and inspecting the Works on completion;

(x) advising the Government or the architect as to the need to vary any part or the Works;

(xi) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;

(xii) giving all necessary instructions relating to the Works to the Contractor;

(xiii) issuing all certificates as required in the contracts;

(xiv) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;

(xv) delivering to the Government on the completion of the works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;

(xvi) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and

(xvii) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.

(e) Defect Liability Period Stage

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

(i) in the event of non-conformance to the performance requirement of Works rendered, the CE shall be responsible for compiling, investigating, evaluating and forwarding proposal for rectification to the Contractor as well as to inspect and certify the completion of such rectification Works;

(ii) preparing an assessing of the performance of the Contractor to the GR;

(iii) conducting or attending periodic maintenance meetings;

(iv) compiling all complaints and submitting the complaints to Contractor for rectification;

(v) monitoring, inspecting and certifying rectification Works done by the Contractor;

(vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;

(vii) inspecting and compiling final defects list at the end of Defects Liability Period and to monitor and certify the Works that have been carried out;

(viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the Certificate of Making Good Defects and closing of account to GR;

(ix) preparing and recommending the Certificate of Making Good Defects and closing of account;

(x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and

(xi) any other responsibilities which are deemed necessary to be done by an engineer for the successful implementation of the Works.

2.3. Type C Works - Basic Professional Services

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

(a) Preliminary Stage

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

(i) investigating data and information relevant to the Works and considering any reports relating to the Works;

(ii) consulting any local or other approving authorities on matters of principle in connection with the design of the Works;

(iii) providing sufficient preliminary information and approximate estimates (based on unit volume, unit surface area or similar bases of estimation) regarding the Works to enable the Government or the architect to prepare architectural sketch plans and budget estimates for the project;

(iv) consulting any architect appointed by the Government in connection with the architectural treatment of the Works; and

(v) preparing such reports and documents as are reasonably necessary to enable the Government to consider the CE's proposals, including alternatives for the construction of the Works in the light of the investigations carried out by him at this stage, and to enable the Government to apply for approval in principle

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

(b) Design Stage

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

(i) preparing designs and tender drawings, and providing information as to plant rooms, main service ducts and other similar elements to be incorporated in the building structure, and information as to the approximate weights of items of heavy plant and equipment which are to be incorporated in the Works; and

(ii) advising on condition of contract, preparing specifications and schedules as may be necessary to enable Government to obtain tenders or otherwise award a contract for carrying out the Works, and preparing such calculations and details relating to the Works as may be required for submission to any appropriate authorities.

(c) Tender Stage

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

(d) Construction Stage

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

(i) advising on the preparation of formal contract documents, including letter of acceptance relating to accepted tenders for carrying out the Works or part hereof;

(ii) inspecting and testing during manufacture and installation such materials and equipment supplied for incorporation in the Works where the inspection and test are within the technical competency of the CE, and arranging and witnessing the acceptance tests;

(iii) advising the Government on the need for special inspection or testing other than that referred to in sub-paragraph 2.3(d)(ii) of this Schedule;

(iv) advising the Government on the appointment of site staff in accordance with paragraph 4.0 of this Schedule;

(v) issuing construction drawings to enable the Works to be carried out by the Contractor or any other party to facilitate the execution of the Works;

(vi) examining and approving the Contractor's proposals and working drawings;

(vii) making such visits to site as the CE considers necessary to satisfy himself as to the performance of any site staff appointed pursuant to paragraph 4.0 of this Schedule and to satisfy himself that the Works are executed generally according to contract or otherwise in accordance with good engineering practice;

(viii) checking shop details and installation drawings;

(ix) approving the contractor's commissioning procedures and performance tests and inspecting the Works on completion;

(x) advising the Government or the architect as to the need to vary any part of the Works;

(xi) giving all necessary instructions relating to the Works to the Contractor;

(xii) issuing all certificates as required in contracts;

(xiii) performing any duties which the CE may be required to carry out in any contract for the execution of the Works;

(xiv) delivering to the Government on the completion of the Works such records and manufacturer's manuals as are reasonably necessary to enable the Government to operate and maintain the Works;

(xv) delivering to the Government duly signed and endorsed as-built drawings prepared by the Contractor; and

(xvi) deciding any dispute or difference arising between the Government and the Contractor in connection with the Works and referred to the CE for his decision provided that this professional service shall not extend to advising the Government following the taking of any step in or towards any arbitration or litigation in connection with the Works.

(e) Defect Liability Period Stage

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

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

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

(ii) preparing an assessment of the performance of the Contractor to GR;

(iii) conducting or attending periodic maintenance meetings;

(iv) compiling all complaints and submitting the complaints to Contractor for rectification;

(v) monitoring, inspecting and certifying rectification Works done by the Contractor;

(vi) in the event the Contractor fails to carry out the rectification Works, the CE shall propose a means of getting the rectification done subject to approval from the Government;

(vii) inspecting and compiling final defects list at the end of Defect Liability Period and to monitor and certify the Works that have been carried out;

(viii) at the end of defect liability period, the CE shall certify that all defects have been carried out and then shall prepare and recommend the certificate of making good defects and closing of account to GR;

(ix) preparing and recommending the Certificate of Making Good Defects and closing of account;

(x) making recommendation to the Government regarding the competent persons necessary for the inspection and operation of the installation during its lifetime according to the law; and

(xi) any other responsibilities which are necessary to be done by an engineer for the successful implementation of the Works.

3.0 ADDITIONAL PROFESSIONAL SERVICES NOT INCLUDED IN BASIC PROFESSIONAL SERVICES

3.1. Type A Works - Additional Professional Services

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

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

(ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;

(iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities)necessary to enable the Works to proceed;

(iv) carrying out services arising from the failure of the Government to award a contract in due time;

(v) preparing details for shop fabrication of ductwork, metal, plastic and timber framework;

(vi) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract beyond the control of the CE or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;

(vii) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;

(viii) carrying out such other additional services, if any, as directed by the Government;

(ix) carrying out services in conjunction with any other persons employed to provide any of the services specified in subparagraph 3.1(b) of this Schedule; and

(x) providing project management services.

(b) (i) obtaining specialist technical advice on any abnormal aspects of the Works;

(ii) obtaining other professional services (Associated Consultants) for the Works;

(ii) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves; and

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

3.2. Type B Works - Additional Professional Services

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

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

(ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;

(iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities)necessary to enable the Works to proceed;

(iv) checking and advising on any part of the project not designed by the CE;

(v) carrying out services arising from the failure of the Government to award a contract in due time;

(vi) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;

(vii) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;

(viii) carrying out such other additional services, if any, as directed by the Government;

(ix) preparing interim or other reports or detailed valuations including estimates or cost analysis based on measurement or forming an element of a cost planning service;

(x) carrying out services in conjunction with any other persons employed to provide any of the services specified in subparagraph 3.2(b) of this Schedule;

(xi) preparing preliminary estimates for the Works which are normally prepared by others including such persons as the architects, quantity surveyors and contractors; and

(xii) providing project management services.

(b) (i) obtaining specialist technical advice on any abnormal aspects of the Works;

(ii) obtaining other professional services (Associated Consultants) for the Works

(iii) surveying the site or existing works and installations;

(iv) providing investigation on the nature and strength of existing works and the making of model tests or special investigations;

(v) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves;

(vi) carrying out of marine, air and land surveys and making of model tests or special investigations; and

(vii) carrying out special inspection or tests advised by the CE under subparagraph 2.2(d)(iii) of this Schedule.

3.3. Type C Works - Additional Professional Services

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

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

(ii) carrying out services consequent upon a decision by the Government to seek amendments to existing laws affecting the Works;

(iii) carrying out services in connection with any application made by the Government for any order, sanction, license, permit or other consent, approval or authorization (not including normal approval required from relevant technical authorities)necessary to enable the Works to proceed;

(iv) checking and advising on any part of the project not designed by the CE;

(v) negotiating and arranging for the provision or diversion of utility services;

(vi) negotiating any contract or sub-contract with a contractor selected otherwise than by competitive tendering including checking and agreeing on the quantities and net costs of materials and labour, arithmetical checking and agreeing on the added percentages to cover overhead costs and profit;

(vii) carrying out services arising from the failure of the Government to award a contract in due time;

(viii) carrying out services consequent upon any abandonment of a contract by the Contractor or upon the failure of the Contractor to properly perform any contract or upon delay by the Government in fulfilling its obligations or in taking any other step necessary for the due performance of the Works;

(ix) assisting and advising the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and, if and when so required by the Government, attending and giving or otherwise assisting the Government before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Works;

(x) preparing interim or other reports or detailed valuations including estimates or cost analysis based on measurement or forming an element of a cost planning service;

(xi) providing manuals and other documents describing the design, operation and maintenance of the Works;

(xii) carrying out services in conjunction with any other persons employed to provide any of the services specified in sub-paragraph 3.3(b) of this Schedule;

(xiii) providing project management services;

(xiv) preparing builder's work drawings, record drawings or any detailed schedules where necessary; and

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

(b) (i) obtaining specialist technical advice on any abnormal aspects of the Works;

(ii) obtaining other professional services (Associated Consultants) for the Works;

(iii) surveying the site or existing works and installations;
(iv) providing services in connection with the valuation, purchase, sale or leasing of lands, and the obtaining of way-leaves;

(v) making model tests or special investigations;

(vi) carrying out special inspection or tests advised by the CE under sub-paragraph 2.3(d)(iii) of this Schedule; and

(vii) carrying out commissioning procedures or performance tests.

4.0 SUPERVISION ON SITE

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

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

(c) If in the opinion of the CE, the nature of the work including the carrying out of any geotechnical and other investigations, topographic survey and test warrants full-time or part-time supervision on site in addition to the site visits made by the CE under sub-paragraphs 2.1(d)(vii), 2.2(d)(vii) and 2.3(d)(vi) of this Schedule (whichever is applicable), the CE shall advise the Government of the fact and also the desired qualification and experience which the site staff shall possess.

(d) All site staff shall be under the control of, and take instructions from the CE.

PART B : PAYMENT FOR PROFESSIONAL SERVICES

1.0 PAYMENT FOR PROFESSIONAL SERVICES

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

a) Payment 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 Schedule 12

- Basic Professional Services
- Additional Professional Services
- 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 CE

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 CE, provided always such damage was not due to the negligence on the part of the CE, then the CE 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 CE) or the suspension of the Project by the Government, the CE shall be paid the following sums (less the amount of payments previously made to the CE):

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

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

(b) In the event that the CE is required to recommence its Services for the Project suspended by the Government, the CE shall be paid for the performance of its Services the sum payable to the CE base from the stage of Services pursant 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 pursant 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 CE shall be computed based on the lowest acceptable tender received.

(e) Where tenders are recalled and the Project is subsequently resumed, the total fees payable to the CE, inclusive of the fees paid under sub-paragraph 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 CE shall within the period specified under item 8 in Appendix 7 of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.

(g) Within the period specified under item 9 in Appendix 7 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

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

1.3 Payment Following Termination by the CE

If there is a termination by the CE of his Services (unless the termination had been occasioned by the default or negligence of the CE), the CE 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 CE.

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 Payments

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

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

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

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

(i) under the completed Preliminary, Design,Tender stage and the completed Construction Stage, shall be based on the contract price as stated in Clause 6.4 (a)

(e) Notwithstanding subparagraph (e), where the CE 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 CE and the Government, and in the absence of such agreement, the fee shall be derived on the basis of Time Cost.

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

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

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

APPENDIX 1

APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief

2. List & Mode of Deliverables

3. Scope of Services

   (a) Basic Services
   (b) Additional Services
   (c) Site Supervision (if applicable)

APPENDIX 2

APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION

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

APPENDIX 3

APPENDIX 3 : LETTER OF ACCEPTANCE

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

APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 5

APPENDIX 5 : DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 6A

APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 6B

APPENDIX 6B : CONSULTING FEES

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

APPENDIX 6C

APPENDIX 6C : OUT OF POCKET EXPENSES

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

APPENDIX 7

APPENDIX 7 : SCHEDULE OF AGREED ITEMS

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

APPENDIX 8

APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE

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

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

OR

GANTT CHART

APPENDIX 9

APPENDIX 9 : CE'S PERSONNEL

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 10

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

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 11

APPENDIX 11 : CE'S SERVICES TAX LICENSE

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 12

APPENDIX 12 : SCHEDULE OF PAYMENT

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

CONSULTANCY SERVICES

FOR Specify full name of project .....

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

BETWEEN

THE GOVERNMENT OF MALAYSIA

AND

Name of consultancy firm
.....

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

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CONTRACT NO. : …….. Specify contract number

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

BETWEEN

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

AND

……Name of the sole proprietorship/partnership/body corporate, (whichever is applicable)……,
……Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration No…… and Board of Quantity Surveyors Malaysia Registration No……Specify registration number……., a sole proprietorship or partnership registered in Malaysia or a body corporate incorporated under the Companies Act 2016 (whichever is applicable) and practicing as a Quantity Surveying Consultancy Practice, having its registered office at ……Specify full address……hereinafter referred to as "**CQS**") of the other part.

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

WHEREAS -

(A) The Government intends to construct and complete……Specify full name of project…… (hereinafter referred to as **"the Project"**) and is desirous of obtaining (hereinafter referred to as **"the Services"**) from the CQS in connection with the ……Specify field of the consultancy service……(hereinafter referred to as **"the Works"**).

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

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

NOW IT IS HEREBY AGREED as follows:

PART A

GENERAL

1.0 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

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 CQS upon request and approval by the Government to carry out Services for any part of the project;

(c) "CQS" means the consulting quantity surveyors named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable)) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1965 [Act 125]") and registered with the Board of Quantity Surveyors Malaysia (BQSM) under the Registration of Quantity Surveyors Act 1967 [Act 487] and engaged to provides professional quantity surveying consultancy services to the Government under this Agreement and shall include its personnel, servants, agents, heirs, assigns, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Quantity Surveyors Act 1967 [Act 117] is attached in **Appendix 4**;

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

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

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

(g) "Estimated Cost of the Works" the estimated cost of the Works for which the CQS 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 CQS 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 CQS 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 CQS to perform in accordance with the Term 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 CQS covering its liability in respect of any negligence, error or omission acts of CQS 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 CQS 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;

(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; and

(p) 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 the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices.

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

3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

3.1. Contract Period

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

3.2. Extension of Contract Period

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

CQS'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

4.0 CQS'S REPRESENTATIONS AND WARRANTIES

The CQS hereby represents and warrants to the Government that –

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

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

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

(d) 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 CQS of this Agreement nor any transactions contemplated by this Agreement will violate in any respect any provision of –

(i) its Memorandum and Articles of Association; or

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

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

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

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

(j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

5.0 CQS'S OBLIGATIONS

5.1. Quality of Services

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

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

5.2. Timeliness of Services

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

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

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

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

5.3. Consequences of Delay

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

(b) The LAD shall be computed on a daily basis for each day of delay at every stage of Deliverables based on the formula specified under item 9 in **Appendix 5** of this Agreement.

5.4. Instructions by The Government

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

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

5.5. Tender Document and Final Account Services

(a) Where the CQS is required by the Government to provide tender document for the Works, the CQS shall guarantee to the Government the adequacy and completeness of the documents and that the documents have been prepared in accordance with sound industry practice.

(b) The CQS shall prepare bills of quantities in accordance with the principles of the current edition of the Standard Method of Measurement of building works published by the Institution of Surveyors Malaysia (ISM) and other established method of measurement sanctioned by the ISM.

(c) The CQS shall strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference.

(d) All specification, bills of quantities or other documents, matters or things prepared by the CQS for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the GR. No such approval shall affect the responsibility of the CQS in connection with the Services.

(e) Where the CQS is required by the Government to finalise account of the Works, the CQS shall complete the Statement of Final Account and deliver the Statement of Final Account to the GR within the period specified under item 8 in **Appendix 7** of this Agreement.

(f) All documents in relation to the Services to be provided by the CQS to the Government shall be endorsed and signed by the CQS's Principal.

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

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

5.6. CQS's Personnel

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

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

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

(d) The CQS 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 CQS 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 CQS's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CQS, it becomes necessary to replace any of the CQS's Personnel, the CQS shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

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

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

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

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

(k) The GR may with the agreement of the CQS, direct the CQS, 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 CQS shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.

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

(c) The CQS shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the

Government, from time to time, to audit such records and accounts during the performance of the Services.

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

5.8. Liability

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

5.9. Indemnity

The CQS agrees with the Government that –

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

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

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

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

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

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

5.10. Insurance

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

5.11. Professional Indemnity Insurance

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

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

5.12. Emergency and Accident

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

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

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

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

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

(f) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CQS, then the Services provided by the CQS hereto during the Defect Liability Period shall be construed as part of the Basic Professional Services and the CQS 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 CQS, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CQS shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to−

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

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

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

5.13. Confidentiality

(a) Except with the prior written consent or the instructions of the Government, the CQS shall not at any time communicate to any person or body or entity any confidential information disclosed to the CQS for the purpose of the provision of the Services or discovered by the CQS in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.

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

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

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

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

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

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

(i) the CQS promptly notifies the Government of the existence, terms and circumstances surrounding such request;

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

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

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

5.14. Notice of Delay

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

5.15. Assistance in Arbitration Inquiry or Litigation

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

(a) the right of the CQS to recover its time and cost in attending to this request, such time and cost to be determined by the Government; and

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

5.16. Situation Beyond Control Of CQS

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

(b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CQS in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.

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

5.17. Prohibition on Association

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

5.18. Prohibition on Conflicting Activities

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

5.19. Independent Consultant

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

5.20. Technology and Knowledge Transfer

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

(b) Pursuant to clause 5.20(a) above, the CQS shall provide training for a minimum of .....Specify number of government officer.....oficials nominated by the Government to be competent and conversant in the implementation of the Project.

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

5.21. Intellectual Property Rights

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

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

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

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

PART C

GOVERNMENT'S OBLIGATIONS AND RIGHTS

6.0 GOVERNMENT'S OBLIGATIONS

6.1. Appointment of GR

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

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

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

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

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

6.3. Obligation to Supply Relevant Information and Assistance

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

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

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

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

6.4. Payment to the CQS for Services

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

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 CQS 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 x Ceiling of the Consulting Fee Estimated Cost for the Works

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

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

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

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

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

6.5. Withholding Payment

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

(i) the CQS commits any breach of the terms and conditions of this Agreement; or

(ii) the progress of the Services fails to measure up to the aggregate payment made to date; or

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

(iv) any failure of the CQS to deliver the Services to the satisfaction of the Government.

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

7.0 GOVERNMENT'S RIGHTS

7.1. Proprietary Rights of The Government in Relation to Documents

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

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

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

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

PART D

DISPUTE RESOLUTIONS

8.0 DISPUTE RESOLUTION

8.1. Dispute Resolution by Government Representative

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

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

(c) If the Consultant:

(i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

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

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

8.2. Dispute Resolution Committee

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

(i) Deputy Secretary of the Ministry/ Head of Department as the Chairman; **Rujuk 1PP/PK3.10**

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

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

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

8.3. Arbitration

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

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

(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 CQS upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the CQS fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration.

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

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

PART E

SUSPENSION AND TERMINATION

9.0 SUSPENSION

9.1. Suspension and Resumption of Services

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

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

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

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

9.2. Extension of Time

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

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

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

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

9.3. Consequences of Mutual Termination

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

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

(ii) all costs and expenditure incurred by the Government and the CQS shall 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 CQS under this Agreement, the Government may by written notice to the CQS terminate this Agreement.

10.2. Default by the CQS

(a) In the event the CQS without reasonable cause −

(i) suspends the implementation of the Services;

(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 "CQS Default"), then the Government shall give notice in writing (hereinafter referred to as the "Default Notice") to the CQS specifying the default and requiring the CQS 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 CQS fails to remedy the relevant default within the Remedy 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 CQS.

10.3. Events of Default

(a) If at any time during the Contract Period-

(i) the CQS 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 CQS (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 CQS.; or

(iv) execution is levied against a substantial portion of the CQS's assests; or

(v) the CQS assigns the whole or any part of this Agreement; or

(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 CQS'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 CQS and the obligations in this Agreement shall terminate immediately.

(b) The CQS 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 CQS, 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, 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 CQS 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 CQS 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 CQS in relation to its obligation under this Agreement; or

(B) any act of default, omission or negligence of the CQS, 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 CQS 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 CQS in completing the Services

(c) The Government shall −

(i) pay the CQS 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 10.4 (b)(viii), from the payment then or thereafter due to the CQS. The amount, if any, remaining to be paid thereafter to the CQS and the amount under clause 10.4 (c)(i) shall constitute the CQS's sole claim for payment following termination under clauses 10.1, 10.2 and 10.3

(iii) be entitled to claim against the CQS 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 CQS 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 CQS

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

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

11.1. Consequences of Termination by the CQS

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

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

(b) The CQS 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 CQS, 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 CQS 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 CQS 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 CQS in relation to its obligation under this Agreement; or

(B) any act of default, omission or negligence of the CQS, 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 CQS to the Government under this Agreement.

(c) The Government shall −

(i) pay the CQS 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 10.4 (b)(viii), from the payment then or thereafter due to the CQS. The amount, if any, remaining to be paid thereafter to the CQS and the amount under clause 11.1 (c)(i) shall constitute the CQS's sole claim for payment following termination under clause 11.1.

(iii) be entitled to claim against the CQS 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 CQS 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 CQS (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.

(b) For the purposes of this clause, what constitutes "national interest", "interest of national security", "the Government policy" and "public policy" shall be solely made and determined by the Government and such determination shall for all intent and purposes be final and conclusive and shall not be open to any challenge whatsoever.

(c) Upon such termination −

(i) clause 11.1 shall be applicable; and

(ii) the Parties hereby agree that the CQS 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 CQS, its Personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CQS may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the CQS.

(b) Upon such termination −

(i) clauses 10.4 shall 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 13 (b)(i), the CQS 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; and

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

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

14.2. Notification of Force Majeure

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

14.3. Termination by Force Majeure

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

14.4. Consequences of Termination due to Event of Force Majeure

If this Agreement is terminated pursuant to clause 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 CQS shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses.

14.7. Insurance

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

PART F

GENERAL PROVISIONS

15.0 AMENDMENT

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

16.0 NOTICES

(a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the CQS, as the case may be, shown under item 10 in **Appendix 7** of this Agreement or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages, as specified under item 10 in **Appendix 7** of this Agreement.

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

17.0 GOVERNING LAW

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

18.0 COMPLIANCE WITH LAWS AND REGULATIONS

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

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

19.0 SEVERABILITY

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

20.0 ASSIGNMENT

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

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

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

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 CQS 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 CQS. The duplicate copy shall be kept by the CQS.

29.0 SUCCESSORS BOUND

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

PART G

SPECIAL PROVISIONS

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

- None -

SIGNATORIES TO THE AGREEMENT

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

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

In the presence of:

…….....
Name of witness :
NR IC No. :

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

In the presence of:

……
Name of witness :
NR IC No. :

PART A : SCHEDULE OF SERVICES

1.0 TYPES OF PROFESSIONAL SERVICES

(a) The professional services to be provided by the CQS shall consist of any or a combination of the following:

(i) Basic Professional Services

- For building works
- For civil engineering works
- For mechanical and electrical works
- For interior design works
- For landscaping works

(ii) Additional Professional Services

- During pre-contract and during post-contract

2.0 BASIC PROFESSIONAL SERVICES

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

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

(a) preparing preliminary estimates and cost plans including up to 4 revisions of preliminary estimates and cost plans due to amendments to layout and scope of works;

(b) preparing bills of quantities and other tender documents necessary for the calling of tenders excluding mechanical and electrical works, interior design works or landscaping works (The specifications of the works to be incorporated in the tender documents shall be prepared and submitted by the respective consultant to the CQS);

(c) preparing tender reports and contract documents, including pricing of bills of quantities or pricing and agreeing schedule of rates, in collaboration with mechanical and electrical consultants, interior designers or landscape consultants for their respective works;

(d) valuing works in progress for interim valuations/certificates including measurement of variations excluding mechanical and electrical works,

interior design works or landscaping works and including the verifications and incorporation of the amounts recommended by the consultants for their respective works; and

(e) preparing final accounts for the whole works including the incorporation of the final accounts prepared by the mechanical and electrical consultants, interior designers or landscape consultants for their respective works.

3.0 ADDITIONAL PROFFESSIONAL SERVICES

3.1. Additional Professional Services during pre-contract

The Additional Professional Services to be provided by the CQS during pre-contract shall be any or a combination of the following:

(a) preparing feasibility studies including income/expenditure cash flow;

(b) preparing preliminary estimates and cost plans beyond the fourth revision;

(c) preparing documents and reports for pre-qualification of contractors;

(d) redrafting conditions of contract to meet requirements of the Government;

(e) pricing of bills of quantities for negotiated tenders including pricing and agreeing schedule of rates if the CQS is not appointed to undertake the basic professional services for the same project;

(f) preparing and analyzing of prices and attending negotiation meeting;

(g) preparing cost analysis based on the accepted contract sum;

(h) preparing tender price index based on the accepted contract sum; or

(i) any other professional services provided for in this Agreement.

3.2. Additional Professional Services during post-contract

The Additional Professional Services to be rendered by the CQS during post-contract shall be any or a combination of the following:

(a) Re-measuring the whole or part of the building and associated works due to re-planning of internal layout arising from a change of use, repositioning of the building (if re-measuring is required) and redesign of the structural elements in the works;

(b) Re-measuring works for contracts based on provisional bills of quantities;

(c) specific contractual advice on conditions of contract;

(d) services for management contracting;

(e) services arising out of determination of the contractor's employment;

(f) continuing professional services on a protracted basis (after DLP);

(g) attending post-contract meetings beyond the original completion date of the project (Contractor's Extension of Time and Liquidated And Ascertained Damages period);

(h) evaluating loss and expense and other contractual claims submitted by the contractor;

(i) preparing bills of quantities and other tender documents for defects and outstanding works to be carried out by a separate contractor and valuation of defective works to be omitted from the contract sum of the defaulting contractor;

(j) professional services for making good of works damaged by fire etc;

(k) preparing costs analysis based on the final Contract Sum for the Works;

(l) resident quantity surveying site staff as agreed by the Government; or

(m) any other professional services provided for in this Agreement.

PART B : PAYMENT FOR PROFESSIONAL SERVICES

1.0 PAYMENT FOR PROFESSIONAL SERVICES

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

(a) Payment 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

- For Basic Professional Services (for Building Works, Civil Engineering Works and Mechanical & Electrical Engineering Works)

- Additional Professional Services During Pre-Contract and Post-Contract.

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

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 CQS, provided always such damage was not due to the negligence on the part of the CQS, then the CQS 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 CQS) or the suspension of the Project by the Government, the CQS shall be paid the following sums (less the amount of payments previously made to the CQS):

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

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

(b) In the event that the CQS is required to recommence its Services for the Project suspended by the Government, the CQS shall be paid for the performance of its Services the sum payable to the CQS base from the stage of Services pursant 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 pursant 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 CQS 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 CQS, 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 CQS shall within the period specified under item 8 in Appendix 7 of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.

(g) Within the period specified under item 9 in Appendix 7 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

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

1.3 Payment Following Termination by the CE

If there is a termination by the CE of his Services (unless the termination had been occasioned by the default or negligence of the CE), the CE 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 CE.

2.0 STAGES OF PAYMENTS OF FEES

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

TABLE I: STAGE OF CQS BASIC PROFESSIONAL SERVICES

Stage of basic professional services		Fee payable
1	Preparation of preliminary estimates and cost estimates and cost plans	10%
2	Preparation of bills of quantities and other tender documents	48%
3	(i) Preparation of tender reports (ii) Preparation of contract documents	3% 4%
4	Valuation of works in progress for interim valuation/ certificates including measurement of variations	20%
5	Preparation of final accounts	15%
	BASIC PROFESSIONAL SERVICES	**100%**

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

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

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

APPENDIX 1

APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief

2. List & Mode of Deliverables

3. Scope of Services

   (a) Basic Services
   (b) Additional Services
   (c) Site Supervision (if applicable)

APPENDIX 2

APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION

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

APPENDIX 3

APPENDIX 3 : LETTER OF ACCEPTANCE

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

APPENDIX 4

APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 5

APPENDIX 5 : DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 6A

APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 6B

APPENDIX 6B : CONSULTING FEES

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

APPENDIX 6C

APPENDIX 6C : OUT OF POCKET EXPENSES

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

APPENDIX 7

APPENDIX 7 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	…… date to be inserted by Agency
2.	3.1	Contract period	…… week/month/year
3.	3.1	Contract Expiry date	…… date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	…….week/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	…… designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	…… days to be inserted by Agency
7.	6.4(c)	CQS's bank account details for purposes of payment	Name: ……. Account No.:…….. Bank Address:……..
8.	5.5(e)	Period for CQS to submit statement of final account for the Services and supporting documentation to GR	…..months after the expiry of DLP or …..months after the issuance of certificate of making good defects (CMGD) whichever is later
9.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: LAD = % BLR x Fees 100 365 (subject to a minimum of RM100/- per day)	RM……./day
10.	16(a)	a) For the Government b) For the CQS	a) Official Designation: Address: Fax No. : Tel. No : Email : b) Name of Firm : Address : Fax No. : Tel No.: Email :

APPENDIX 8

APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE

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

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

OR

GANTT CHART

APPENDIX 9

APPENDIX 9 : CQS'S PERSONNEL

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 10

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

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 11

APPENDIX 11 : CQS'S SERVICES TAX LICENSE

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 12

APPENDIX 12 : SCHEDULE OF PAYMENT

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

CONSULTANCY SERVICES

FOR ..... Specify full name of project

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

BETWEEN

THE GOVERNMENT OF MALAYSIA

AND

Name of consultancy firm
.....

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

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CONTRACT NO. : Specify contract number ……..

"RECITALS"

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

BETWEEN

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

AND

Name of the sole proprietorship/partnership/body corporate, (whichever is applicable) ……,
Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration ……, a body corporate incorporated under the Companies Act 1965 having its registered office at Specify full address ……hereinafter referred to as "**Consultant**") of the other part.

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

WHEREAS

(A) The Government is desirous of obtaining consultancy services (hereinafter referred to as "**the Services**") necessary for Specify full name of the research ……hereinafter referred to as "**the Project**").

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

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

NOW IT IS HEREBY AGREED as follows:

PART A

GENERAL

1.0 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

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) "Consultant" means a company incorporated under the Companies Act 1965 in Malaysia and having its registered address at Specify full address……;

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

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

(e) "Deliverables" means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 4** to be submitted to the Government by the Consultant as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;

(f) "Government's Representative ("GR") means the person under item 5 in **Appendix 6** or such other person as may be appointed from time to time by the Government and notified in writing to the Consultant to carry out the duties of the GR and the person so designated or appointed may be described by position;

(g) "Services" means the professional consultancy services for the project which the Government has engaged the Consultant to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2** and **4**;

(h) "Steering Committee" means the committee, comprising of Government officials whose main function is to provide directions, review, consider and approve the Deliverables;

(i) "Technical Committee" means the committee, comprising of Government officials who will monitor the progress and implementation of the Services and provide input and feedback to the findings or recommendations of the Consultant.

1.2. Interpretations

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;

(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; and

(p) 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 the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices.

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 Consultant and the Consultant accepts the appointment to provide the Services for a consideration of Ringgit ……Specify total cost in word format…… only (RM……Specify total cost in number format……) as the ceiling contract amount (hereinafter referred to as the "**Contract Price**" and specified in **Appendix 5A** of this Agreement) which consists of Ringgit Malaysia ……Specify consulting fee in word format…… only (RM……Specify consulting fee in number format……) as the ceiling consulting fee (as specified in **Appendix 5B** of this Agreement) and Ringgit ……Specify out of pocket expenses in word format…….. only

(RM.....Specify out of pocket expenses in number format.....) as the ceiling out of pocket expenses (as specified in **Appendix 5C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated .....Date issued by Government..... (as specified in **Appendix 2** of this Agreement).

3.0 EEFECTIVE DATE AND DURATION OF THIS AGREEMENT

3.1. Contract Period

This Agreement shall be for a period of.....Specify duration of consultancy period (week/month/year)..... as specified under item 2 in **Appendix 6** (hereinafter referred to as the "**Contract Period**") commencing from .....Specify start date.....(hereinafter referred to as "**Commencement Date**") and shall expire on the date stated under item 3 in **Appendix 6 (**hereinafter referred to as the "**Contract Expiry Date**") unless terminated earlier in accordance with the provisions of Part E of this Agreement.

3.2. Extension of Contract Period

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

(b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the Contract Period, the 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

CONSULTANT'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

4.0 CONSULTANT'S REPRESENTATIONS AND WARRANTIES

The Consultant hereby represents and warrants to the Government that –

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

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

(c) the Consultant shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;

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

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

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

(i) its Memorandum and Articles of Association; or

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

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

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

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

(j) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

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

5.0 CONSULTANT'S OBLIGATIONS

5.1. Quality of Services

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

(b) The Consultant shall have sufficient knowledge of the project and other regulations relating to the project, and shall advice the Government accordingly in matters affecting the implementation of the project.

5.2. Timeliness of Services

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

(b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 7**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.

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

(d) The Consultant shall undertake to provide status updates through reports and presentations relevant to the Services as required by the Government and attend all deliberations and meetings of the Technical Committee and Steering Committee.

(e) The Consultant shall take remedial action as advised by the Technical Committee and Steering Committee as deemed appropriate and shall prepare the final reports, incorporating the issues raised for the consideration and approval of the Steering Committee.

5.3. Consequences of Delay

(a) If the Consultant fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 4** of this Agreement without reasonable cause, the Consultant shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.

(b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 10 in **Appendix 6** of this Agreement.

5.4. Instructions by The Government

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

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

5.5. Consultant's Personnel

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

(b) The Services shall be carried out by the Consultant's Personnel as specified under **Appendix 8** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 7.**

(c) The Project Manager of the Consultant as specified in **Appendix 8** shall be responsible for the management of the Consultant's Personnel for the Services as well as to act as liaison between the Consultant and the Government.

(d) The Consultant 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 Consultant 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 Consultant's Personnel set forth in **Appendix 8** without the prior written approval of the Government. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Consultant's Personnel, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.

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

(h) In the event the number of Consultant's Personnel as specified in **Appendix 8** is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on Consultant's Personnel Time Input Schedule as specified in **Appendix 9.**

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

(j) Notwithstanding clause 5.5(f), the GR may at any time request the Consultant to reduce the number of the Personnel according to the progress of the Works.

(k) The GR may with the agreement of the Consultant, direct the Consultant, 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.

5.6. Information and Records

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

(b) The Consultant shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 5A, Appendix 5B and Appendix 5C** of this Agreement have been duly incurred.

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

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

5.7. Liability

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

5.8. Indemnity

The Consultant agrees with the Government that –

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

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

(i) the negligent use or act, misuse or abuse by the Consultant or the Consultant’s Personnel, servants, agents or employees appointed by the Consultant in the performance of the Services; or

(ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the Consultant to

any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or

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

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

5.9. Confidentiality

(a) Except with the prior written consent or the instructions of the Government, the Consultant shall not at any time communicate to any person or body or entity any confidential information disclosed to the Consultant for the purpose of the provision of the Services or discovered by the Consultant in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.

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

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

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

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

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

(c) In the event that the Consultant receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee,

such disclosure by the Consultant shall not constitute a violation of this Agreement provided that-

(i) the Consultant promptly notifies the Government of the existence, terms and circumstances surrounding such request;

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

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

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

5.10. Notice of Delay

In the event the Consultant encounters any delay in obtaining the required assistance and information set forth in clause 5.6(a), the Consultant shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

5.11. Assistance in Arbitration Inquiry or Litigation

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

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

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

5.12. Situation Beyond Control Of Consultant

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

(b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the Consultant in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.

(c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 6** for a decision.

5.13. Prohibition on Association

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

5.14. Prohibition on Conflicting Activities

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

5.15. Independent Consultant

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

5.16. Technology and Knowledge Transfer

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

(b) Pursuant to clause 5.14(a) above, the Consultant shall provide training for a minimum of ...Specify number of government officer.....oficials nominated by the Government to be competent and conversant in the implementation of the Project.

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

5.17. Intellectual Property Rights

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

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

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

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

PART C

GOVERNMENT'S RIGHTS AND OBLIGATIONS

6.0 GOVERNMENT'S OBLIGATIONS

6.1. Appointment of GR

(a) The Government shall appoint the person under item 5 in **Appendix 6** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [Revised 1973].

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

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

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

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

6.3. Obligation to Supply Relevant Information and Assistance

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

(b) Any necessary and relevant information supplied by the Government to the Consultant pursuant to clause 6.3(a) of this Agreement shall not

relieve the Consultant of any of the Consultant's obligations under this Agreement.

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

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

6.4. Payment to the Consultant for Services

(a) the Contract Price consist of the fixed ceiling consulting fee as specified in **Appendix 5B** ("Fixed Ceiling Consulting Fees") and the ceiling out of pocket expenses as specified in **Appendix 5C** ("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 5A**, **Appendix 5B** and **Appendix 5C** . The payment shall include amongst others the Government Service Tax, which amount shall be paid by the Government to the Consultant upon the Consultant 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 10** of this Agreement.

(b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 11** upon the Consultant furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.

(c) Payment to the Consultant shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the Consultant and be deposited to the account of the Consultant as specified under item 7 in **Appendix 6.**

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

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

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

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

6.5. Withholding Payment

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

(i) the Consultant commits any breach of the terms and conditions of this Agreement; or

(ii) the progress of the Services fails to measure up to the aggregate payment made to date; or

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

(iv) any failure of the Consultant to deliver the Services to the satisfaction of the Government.

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

7.0 GOVERNMENT'S RIGHTS

7.1. Proprietary Rights of The Government in Relation to Documents

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

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

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

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

PART D

DISPUTE RESOLUTIONS

8.0 DISPUTE RESOLUTION

8.1. Dispute Resolution by Government Representative

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

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

(c) If the Consultant:

(i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

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

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

8.2. Dispute Resolution Committee

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

(i) Deputy Secretary of the Ministry/ Head of Department as the Chairman; **Rujuk 1PP/PK3.10**

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

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

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

8.3. Arbitration

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

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

(c) In the event that such consent has been obtained in accordance with clause 8.3(b), the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this 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 Consultant upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the Consultant fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration.

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

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

PART E

SUSPENSION AND TERMINATION

9.0 SUSPENSION

9.1. Suspension and Resumption of Services

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

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

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

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

9.2. Extension of Time

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

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

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

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

9.3. Consequences of Mutual Termination

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

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

(ii) payment obligations including all costs and expenditure incurred by the Government and the Consultant shall be ascertained in accordance with clause 14.

10.0 TERMINATION BY THE GOVERNMENT

10.1. Withholding Payment

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

10.2. Default by the Consultant

(a) In the event the Consultant without reasonable cause −

(i) suspends the implementation of the Services;

(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 “Consultant Default”), then the Government shall give notice in writing (hereinafter referred to as the “Default Notice”) to the Consultant specifying the default and requiring the Consultant 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 Consultant fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect to the Consultant.

10.3. Events of Default

(a) If at any time during the Contract Period-

(b) the Consultant goes into liquidation or a receiver is appointed over If at any time during the Contract Period-

(i) the Consultant 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 Consultant (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 Consultant; or

(iv) execution is levied against a substantial portion of the Consultant's assets; or

(v) the Consultant assigns the whole or any part of this Agreement; or

(vi) the Consultant 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 Consultant and the obligations in this Agreement shall terminate immediately.

(b) The Consultant 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 Consultant, 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 advise opinion or report that the Consultant may provide;

(v) terminate all the third party contract entered into by the Consultant 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 Consultant 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-

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

ii. any act of default, omission or negligence of the Consultant, 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 Consultant 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 Consultant in completing the Services

(c) The Government shall hence forth −

(i) pay the Consultant 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 10.4 (b)(viii), from the payment then or thereafter due to the Consultant. The amount, if any, remaining to be paid thereafter to the Consultant and the amount under clause 10.4 (c)(i) shall constitute the Consultant's sole claim for payment following termination under clauses 10.1, 10.2 and 10.3

(iii) be entitled to claim against the Consultant 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 Consultant 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 CONSULTANT

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

(b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the

Consultant shall be entitled to terminate this Agreement at any time by giving notice to that effect.

11.1. Consequences of Termination by the Consultant

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

(b) The Consultant shall −

1. cease all the Services immediately;

2. 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;

3. 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 Consultant, its Personnel, employees, servants and agents and make good all damage caused by such removal or such detachment;

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

5. terminate all the third party contract entered into by the Consultant 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 Consultant in respect hereof;

6. 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;

7. 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 Consultant in relation to its obligation under this Agreement; or

   b. any act of default, omission or negligence of the Consultant, 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 Consultant to the Government under this Agreement.

(c) The Government shall −

(i) pay the Consultant 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 10.4 (b)(viii), from the payment then or thereafter due to the Consultant. The amount, if any, remaining to be paid thereafter to the Consultant and the amount under clause 11.1 (c)(i) shall constitute the Consultant's sole claim for payment following termination under clause 11.1.

(iii) be entitled to claim against the Consultant 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 Consultant 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 Consultant (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.

(b) Upon such termination −

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

(ii) the Parties hereby agree that the Consultant 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 Consultant, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the Consultant may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the Consultant.

(b) Upon such termination −

(i) clauses 10.4(b) and (c) 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.

(iii) For avoidance of doubt, the Parties hereby agree that, subject to 13 (b)(i), the Consultant 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 PAYMENT UPON SUSPENSION AND TERMINATION

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

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

provided that the Consultant 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) On suspension or termination, the Consultant shall be paid all fees and expenses commensurate with the Services performed by the Consultant up to the date of suspension or termination which may then be due. The payments made for fees and expenses shall be deemed as full and final payment for the Services up to the date of suspension or termination.

(a) If this Agreement is resumed, any payment of fees under this clause, except in respect of abortive work that has to be re-done, shall be taken as payment on account towards the fees payable under this Agreement.

(b) Upon suspension or termination of this Agreement, the Consultant shall within the period specified under item 8 in **Appendix 6** of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.

(c) Within the period specified under item 9 in **Appendix 6** of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.

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

15.0 FORCE MAJEURE

15.1. Events

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

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

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

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

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

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

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

15.2. Notification of Force Majeure

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

15.3. Termination by Force Majeure

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

15.4. Consequences of Termination due to Event of Force Majeure

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

15.5. Delay

(a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the

Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.

(b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

15.6. Restoration

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

15.7. Insurance

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

PART F

GENERAL PROVISIONS

16.0 AMENDMENT

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

17.0 NOTICES

(a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the Consultant, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages, as specified under item 11 in **Appendix 6** of this Agreement.

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

18.0 GOVERNING LAW

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

19.0 COMPLIANCE WITH LAWS AND REGULATIONS

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

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

20.0 SEVERABILITY

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

21.0 ASSIGNMENT

The Consultant 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.

22.0 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.

23.0 ADVERTISEMENT

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

24.0 TIME

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

25.0 COSTS AND STAMP DUTY

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

26.0 INCOME TAX

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

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

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

27.0 SCHEDULES AND APPENDICES

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

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

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

28.0 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.

29.0 CUSTODY OF AGREEMENT

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

30.0 SUCCESSORS BOUND

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

PART G

SPECIAL PROVISIONS

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

- None -

SIGNATORIES TO THE AGREEMENT

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

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

In the presence of:

…….....
Name of witness :
NR IC No. :

SIGNED for and on behalf of) ……(Signature)……
THE CONSULTANT) (Name, Designation & Company's Seal)

In the presence of:

……
Name of witness :
NR IC No. :

APPENDIX 1

APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Background
2. List & Mode of Deliverables
3. Scope of Services

APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION

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

APPENDIX 3 : LETTER OF ACCEPTANCE

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

APPENDIX 4

APPENDIX 4 : DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 5A

APPENDIX 5A : SUMMARY OF TOTAL CONSULTING COST

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 5B : CONSULTING FEES

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

APPENDIX 5C

APPENDIX 5C : OUT OF POCKET EXPENSES

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

APPENDIX 6

APPENDIX 6 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	…… date to be inserted by Agency
2.	3.1	Contract period	…… week/month/year
3.	3.1	Contract Expiry date	…… date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	…….week/month/year prior to Contract Expiry Date
5.	1.1(c), 5.12(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	…… designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government to give decision	…… days to be inserted by Agency
7.	6.4(c)	Consultant's bank account details for purposes of payment	Name: ……. Account No.:…….. Bank Address:……..
8.	14(d)	Period for Consultant to submit statement of final account for the Services and supporting documentation to GR	…….months from the date of suspension or termination
9.	14(e)	Period for GR to verify the statement of account and supporting documentation.	…….. months from the date of receipt from the Consultant
10.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: LAD = $\frac{\%\ BLR}{100} \times \frac{Fees}{365}$ (subject to a minimum of RM100/- per day)	RM……./day
11.	17(a)	a) <u>For the Government</u> b) <u>For the Consultant</u>	a) Official Designation: Address: Fax No. : Tel. No : Email : b) Name of Firm : Address : Fax No. : Tel No.: Email :

APPENDIX 7

APPENDIX 7 : SERVICES IMPLEMENTATION SCHEDULE

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

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

OR

GANTT CHART

APPENDIX 8

APPENDIX 8 : CONSULTANT'S PERSONNEL

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 9

APPENDIX 9 : CONSULTANT'S PERSONNEL TIME INPUT SCHEDULE (IF APPLICABLE)

[TO BE INSERTED BY RELEVANT AGENCY]

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

APPENDIX 10 : CONSULTANT'S SERVICES TAX LICENSE

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 11

APPENDIX 11 : SCHEDULE OF PAYMENT

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