

1.0 INTERPRETATION, DEFINITION ETC

- 1.1 Unless otherwise specifically stated a reference in the Articles of Agreement, the reference to Conditions or the Appendices to any CLAUSE means that CLAUSE of the Conditions.
- 1.2 The Articles of Agreement, the Conditions and the Appendices are to be read as a whole and the effect or operation of any Article or CLAUSE in the Conditions or item in the Appendices must therefore unless otherwise specifically stated be read subject to any relevant qualification or modification in any other Article or any other CLAUSES in the Conditions or item in or entry in the Appendices.
- 1.3 Unless the context otherwise requires or the Articles or the Conditions or an item in or entry in the Appendices specifically otherwise provides, the following words and phrases in the Articles of Agreement, the Conditions and the Appendices shall have the meaning given below or as ascribed in the Article. CLAUSE or Appendix item to which reference is made.

'Appendices'	Appendix 1, 2 and 3 to the Conditions as completed by the parties
Appendix 1	Work Order
Appendix 2	Bond/Guarantee Form (if any)
Appendix 3	Rental Fees of MAIN CONTRACTOR facilities (if any)
'Arbitrator'	the person appointed under CLAUSE 60 to be the Arbitrator.
'Article or Articles of Agreement'	the Articles of Agreement to which the Conditions are annexed and references to any Recitals are to be Recitals set out before Articles
'Conditions'	the CLAUSE 1 to 67
'Date of Commencement'	the date seven (7) days after the date of an order in writing to commence issued by the MAIN CONTRACTOR to the SUBCONTRACTOR.
'Defects Liability Period'	the period named in Appendix 1 (see CLAUSE 55).
'Employer'	the person named as employer in the Articles of Agreement and shall include his successors, permitted assigns, representatives, servants and agents.
'Final Account'	See CLAUSE 57.
'Interim Payment'	any one of the payments to which CLAUSE 57 refers
'Subcontract'	means the contract entered into between the MAIN CONTRACTOR and the SUBCONTRACTOR for the WORKS in accordance with the terms and conditions contained herein including all articles, exhibits and any other documents attached hereto or incorporated by reference including any subsequent amendments to them.
'MAIN CONTRACTOR'	WZS Misi Setia Sdn. Bhd.
'Schedule of Defects'	the Schedule of Defects as provided under CLAUSE 55
'Specifications Drawings'	the specifications and drawings set out in the and Drawings' Sub-contract and documents.
'Statutory Requirements'	see CLAUSE 58.
SUBCONTRACTOR'	the person(s) named as SUBCONTRACTOR in the Articles of Agreement.
'SUBCONTRACT Completion Period'	the date or period named in Appendix 1 (see CLAUSE 47).



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' SUBCONTRACT works' the SUBCONTRACT Works briefly described in the Third Recital and referred to in the SUBCONTRACT Documents.

'Variations' see CLAUSE 36

- 1.4 The headings and marginal notes in these Conditions shall not be deemed part thereof to be taken into consideration in the interpretation or construction thereof or of the Contract.
- 1.5 Words importing the singular shall include the plural and vice versa where the context requires.
- 1.6 Words importing persons of parties shall include firms and corporations and any organization having legal capacity.
- 1.7 Wherever in the Subcontract provision is made for the giving or issue of any notice, consent, approval, certificate, confirmation or determination by any person, unless otherwise specified such notice, consent, approval, certificate, confirmation or determination shall be in writing and the words "notify", "certify", "confirm" or "determine" shall be construed accordingly.

2.0 NOTICE AND OBSERVANCE OF THE MAIN CONTRACT

- 2.1 The MAIN CONTRACTOR shall make the Main Contract Documentations (other than the details of the MAIN CONTRACTOR's prices there under as stated in the bills of quantities or schedules of rates and prices as the case may be) available for inspection to the SUBCONTRACTOR and, if so requested by the SUBCONTRACTOR, shall provide the SUBCONTRACTOR with a true copy of the Main Contract (less such details of the MAIN CONTRACTOR's prices), at the cost of the SUBCONTRACTOR. The SUBCONTRACTOR shall be deemed to have full knowledge of the provisions of the Main Contract (less such details of the MAIN CONTRACTOR's prices).
- 2.2 The SUBCONTRACTOR is deemed to have full notice of all the provisions and requirements of the Contract Documents, except for details of prices included therein.
- 2.3 The SUBCONTRACTOR further hereby undertakes to observe, perform and comply with all the said Contract provisions and requirements in so as they relate and apply to the Subcontract Works (or any portion thereof) and as if the same were fully set out herein.
- 2.4 The SUBCONTRACTOR shall further ensure that such conditions as are necessary to enable the Subcontractor to fulfil his obligations under this SUBCONTRACT are included in any agreement with his subsequent sub-SUBCONTRACTORS;
- 2.5 Nothing herein shall be construed as creating any privity of contract between the SUBCONTRACTOR and the MAIN CONTRACTOR.
- 2.6 The SUBCONTRACTOR shall irrevocably undertake and agree to fully indemnify and shall at all times indemnify and keep indemnified and save the MAIN CONTRACTOR harmless from and against any indirect, damages, incident or consequential losses, actionable torts, demands, claims, legal costs, expenses, law suits, and causes of action and any obligations or liabilities, any related settlements arising from or proceedings whatsoever liability suffered, incurred or for which the SUBCONTRACTOR may become liable to as a result of any claims, suits instituted, initiated or commenced by or against the MAIN CONTRACTOR hereinafter by any third party and MAIN CONTRACTOR are entitled at their own absolute discretion to deduct whatsoever costs from monies due to the SUBCONTRACTOR.
- 2.7 The SUBCONTRACTOR shall indemnify the MAIN CONTRACTOR against every liability which the MAIN CONTRACTOR may incur to any person whatsoever and against all claims, demands, proceeding, damages, cost and expenses made against or incurred by the MAIN CONTRACTOR by reason of any breach by the SUBCONTRACTOR of the SUBCONTRACT.
- 2.8 The SUBCONTRACTOR hereby acknowledges that any breach by him of the SUBCONTRACT may result in the MAIN CONTRACTOR's committing breaches of and becoming liable in damages under the Main Contract and other contracts made by him in connection with the Main Works and may occasion further loss or expenses to the MAIN CONTRACTOR in connection with the Main Works and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the SUBCONTRACTOR.



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3.0 MAIN CONTRACTOR'S INDEMNITY

- 3.1 The SUBCONTRACTOR shall indemnify and keep harmless the MAIN CONTRACTOR against and from any or all liability of the MAIN CONTRACTOR to the Employer in respect of the Contract.
- 3.2 The SUBCONTRACTOR shall be liable for and shall indemnify the MAIN CONTRACTOR against any damage, expense, liability, loss, claim or proceedings whatsoever whether arising at common law or by statute in respect of personal injury to or death of any person whomsoever arising out of or in the course of or by reason of the execution of SUBCONTRACT Works.
- 3.3 The SUBCONTRACTOR shall be liable for and shall indemnify the MAIN CONTRACTOR against any damage, expense, liability, loss, claim or proceedings due to injury or damage of any kind to any property real or personal (including the SUBCONTRACT Works and any other property of the Employer and the MAIN CONTRACTOR) insofar as such injury or damage arises out of or in the course of or by reason of the execution of the SUBCONTRACT Works.
- 3.4 The indemnities given by the SUBCONTRACTOR under CLAUSES 3.2 and 3.3 shall not be defeated or reduced by reason of any negligence or omission of the Employer, the Employer's representatives, the MAIN CONTRACTOR or their servants and/or agents in failing to ensure proper performance at any obligation of the SUBCONTRACTOR under this SUBCONTRACT.
- 3.5 Provided that nothing contained in this SUBCONTRACT shall impose any liability on the SUBCONTRACTOR in respect of any negligence or breach of duty on the part of the Employer, the MAIN CONTRACTOR, other SUBCONTRACTORS or their respective servants and/or agents nor create any privity of contract between the SUBCONTRACTOR and the Employer or any *other* SUBCONTRACTOR.
- 3.6 The SUBCONTRACTOR shall irrevocably undertake and agree to fully indemnify and shall at all times indemnify and causes of action and any obligations or liabilities, any related settlements arising and causes of action and any obligations or liabilities, any related settlements arising incurred or for which you may become liable to as a result of any claims, suits instituted, suits instituted, initiated or commenced by or against the MAIN CONTRACTOR hereinafter by any third party. The MAIN CONTRACTOR is entitled at his own absolute discretion to deduct whatsoever costs from monies due or may be become due from the SUBCONTRACTOR to MAIN CONTRACTOR

4.0 SUBCONTRACTOR GENERAL OBLIGATIONS

- 4.1 The SUBCONTRACTOR shall upon and subject to the Conditions hereof execute and complete the SUBCONTRACT Works and the making good of defects pursuant to the provisions of CLAUSE 55 in accordance with all the provisions and requirements of the SUBCONTRACT.
- 4.2 The said execution and completion of the SUBCONTRACT Works shall be carried out with due care and diligence and be to the joint satisfaction of the MAIN CONTRACTOR in accordance with the provisions of this SUBCONTRACT and the Employer in accordance with the provisions of the Contract. Any applications or requests to be made by the SUBCONTRACTOR to the MAIN CONTRACTOR pursuant to the provisions of this SUBCONTRACT shall be in strict accordance with the requirements set out herein. Any applications or requests received by the MAIN CONTRACTOR *after* the time specified shall not be entertained.
- 4.3 The SUBCONTRACTOR shall be given prompt notice to the MAIN CONTRACTOR if any error, omission fault or other defect in the design of or specification for the Subcontract works which he discover when reviewing the SUBCONTRACT and/or the Main Contract or executing the SUBCONTRACT Works.
- 4.4 The SUBCONTRACTOR shall, with due care and diligence, design (to the extent required by the SUBCONTRACT) execute and complete the SUBCONTRACT Works and remedy any defects therein in accordance with the provisions of the CLAUSE 55 in the SUBCONTRACT. The SUBCONTRACTOR shall provide all superintendence, labour, materials, plant, SUBCONTRACTOR's equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is to be inferred from the SUBCONTRACT.
- 4.5 If the SUBCONTRACT requires the SUBCONTRACTOR to obtain security for his proper performance of the SUBCONTRACT, he shall obtain and provide to the MAIN CONTRACTOR such security in the sum stated in the Special Provisions hereto. Such security shall be in the form annexed to the Conditions of SUBCONTRACT or in such form as agreeable to the MAIN CONTRACTOR. The institution providing such security shall be subject to the



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approval of the MAIN CONTRACTOR. The cost of complying with the requirements of this CLAUSE shall be borne by the SUBCONTRACTOR.

- 4.6 The performance security shall be valid until the SUBCONTRACTOR has executed and completed the SUBCONTRACT Works and remedied any defects therein in accordance with the Subcontract and such security shall be returned to the SUBCONTRACTOR within 28 days of the issue of the said Defects Liability Certificate/Warranty Period of the Main Contract.
- 4.7 The SUBCONTRACTOR shall, within 7 days after the date of the MAIN CONTRACTOR's Letter of Award, submit to the MAIN CONTRACTOR for his consent a program, in such form and detail as the MAIN CONTRACTOR shall reasonably prescribe, for the execution of the Subcontract Works. The SUBCONTRACTOR shall, whenever required by the MAIN CONTRACTOR, also provide in writing for his information a general description of the arrangements and methods which the SUBCONTRACTOR proposes to adopt for the execution of the SUBCONTRACT Works.
- 4.8 If at any time it should appear to the MAIN CONTRACTOR that the actual progress of the SUBCONTRACT Works does not conform to the program to which consent has been given, the SUBCONTRACTOR shall produce, at the request of the MAIN CONTRACTOR, a revised program showing the modifications to such program necessary to ensure completion of the SUBCONTRACT Works within the SUBCONTRACTOR's Time for Completion.
- 4.9 The SUBCONTRACTOR shall not, without the prior consent of the MAIN CONTRACTOR (which consent shall be at the sole discretion of the MAIN CONTRACTOR), assign the SUBCONTRACT or any part thereof, or any benefit or interest therein or there under.
- 4.10 The SUBCONTRACTOR shall not subcontract the whole of the SUBCONTRACT Works, nor shall he SUBCONTRACT any part of the SUBCONTRACT Works without the prior consent of the MAIN CONTRACTOR. Any such consent shall not relieve the SUBCONTRACTOR from any liability or obligation under the SUBCONTRACT and the SUBCONTRACTOR shall be responsible for the acts, defaults and neglects of any of his SUBCONTRACTORS, including such SUBCONTRACTOR's agents, servants or workmen as fully as if they were the acts, defaults or neglects of the SUBCONTRACTOR, his agents, servants or workmen.
- 4.11 In the event of a SUBCONTRACTOR having undertaken towards the SUBCONTRACTOR in respect of the works executed, or the goods, materials, plant or services supplied by such SUBCONTRACTOR, any continuing obligations extending for a period exceeding that of the Defects Liability Period/Warranty Period under the Main Contract in respect of the Main Works or of the Section or Sections or part thereof in which the SUBCONTRACT Works are comprised, as the case may be, the SUBCONTRACTOR shall at any time after the expiry of such Period, assign to the MAIN CONTRACTOR at the MAIN CONTRACTOR's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 4.12 In consideration of the SUBCONTRACTOR constructing, designing (to the extent required by the SUBCONTRACT) and completing the SUBCONTRACT Works and making good any defects whatsoever to the SUBCONTRACT Works in conformity in all respects to the Main Contract and the terms and conditions of this SUBCONTRACT, the MAIN CONTRACTOR shall pay the SUBCONTRACTOR the SUBCONTRACT Sum as set out in the Bills of Quantities or such other sum as shall become payable at the time and in the manner specified in the Conditions of Subcontract.
- 4.13 The SUBCONTRACTOR shall indemnify the MAIN CONTRACTOR against every liability which the MAIN CONTRACTOR may incur to any person whatsoever and against all claims, demands, proceeding, damages, cost and expenses made against or incurred by the MAIN CONTRACTOR by reason of any breach by the SUBCONTRACTOR of the SUBCONTRACT.
- 4.14 The SUBCONTRACTOR hereby acknowledges that any breach by him of the SUBCONTRACT may result in the MAIN CONTRACTOR's committing breaches of and becoming liable in damages under the Main Contract and other contracts made by him in connection with the Main Works and may occasion further loss or expenses to the MAIN CONTRACTOR in connection with the Main Works and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the SUBCONTRACTOR.



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5.0 SUBCONTRACTOR'S DRAWINGS

- 5.1 The SUBCONTRACTOR shall provide and shall cause all subsequent SUBCONTRACTORS or suppliers to provide the MAIN CONTRACTOR with full, complete and sufficient shop drawings for all of the SUBCONTRACT Works or any part thereof.
- 5.2 The SUBCONTRACTOR shall also submit shop drawings for all temporary works. system formwork, access road, scaffoldings, etc. to the MAIN CONTRACTOR before any erection of such temporary works.
- 5.3 The MAIN CONTRACTOR shall also prepare all co-ordinate shop drawings for approval by the Employer.
- 5.4 Such drawings or details shall in the first instance be checked and verified by the SUBCONTRACTOR before submitting to the MAIN CONTRACTOR for approval.
- 5.5 Such drawings shall be submitted in ample time for checking and for re-submission for any amendments described so as not in any way to jeopardize the time for completion of the SUBCONTRACT.
- 5.6 No works shall be carried out until the relevant shop drawings have been approved by the MAIN CONTRACTOR.
- 5.7 It should be clearly understood that the approval of shop drawings by the MAIN CONTRACTOR is solely an approval of subject matters in principle and does not constitute checking of detail dimensions or acceptance of auxiliary units or material unless specifically mentioned in writing by the MAIN CONTRACTOR.
- 5.8 Any approvals by the MAIN CONTRACTOR shall not relieve the SUBCONTRACTOR from any of his contractual obligations contained herein.
- 5.9 The SUBCONTRACTOR shall keep and maintain a complete set of SUBCONTRACT Drawings and specifications on Site with all latest amendments, revisions and the like.
- 5.10 As the work progresses, the SUBCONTRACTOR shall make all deviations and changes from the SUBCONTRACT Drawings thereon Approved in accordance with CLAUSE 36 due to Site Conditions, variations/change orders, and any other reasons, keeping an accurate record of work as actually installed.
- 5.11 After consultation with the Employer/MAIN CONTRACTOR for correct presentation and contents and at the completion of the Works, the SUBCONTRACTOR shall supply a complete full set of prints to the Company for approval, prior to the Certificate of Initial Acceptance. The prints shall show in detail the full extent of the installations in a logical sequence. Shop Drawings shall not be used as Record Drawings or As-built Drawings.
- 5.12 Drawings and prints shall be at the MAIN CONTRACTOR's cost and expense

6.0 ACCIDENTS, FAILURES ETC

- 6.1 If my accident, failure or other event occurs due to any cause whatsoever to, or in connection with the SUBCONTRACT Works or any part thereof either during the execution of the Subcontract Works or during the Defect Liability Period, the SUBCONTRACTOR shall immediately report the accident, failure or event to the MAIN CONTRACTOR, and unless otherwise directed by the MAIN CONTRACTOR generally or in any particular respect, the SUBCONTRACTOR shall conduct a full investigation into the said accident, failure or event in order to determine the cause or reason for the accident, failure or event and submit a report thereon to the MAIN CONTRACTOR together with his proposals for remedial works in respect thereof.
- 6.2 Where the Employer and/or the MAIN CONTRACTOR and /or its respective employee or any person or body appointed or authorized by it carries out any investigation in relation to any accident. failure or other event which has occurred to, or in connection with the Sub-Connect Works or any part thereof for the purpose of determining the cause or reason for the said accident, failure or event, the SUBCONTRACTOR shall render all such necessary assistance and facilities as may be required by the Employer and/or the MAIN CONTRACTOR and/or its respective employees or such person or body including the giving of access to all specification, designs, records or others available information relating to the SUBCONTRACT Works.



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7.0 URGENT REPAIRS

- 7.1 If by reason of any accident or failure or other event occurring to in or in connection with the SUBCONTRACT Works. or any part thereof, either during the execution of the Subcontract Works or during the Defects Liability and Maintenance Period.
- 7.2 (if so stipulated) any remedial or other work or repair shall, in the opinion of the Employer or the MAIN CONTRACTOR be urgently necessary for the safety of the SUBCONTRACT Works and the SUBCONTRACTOR is unable or unwilling at once to carry out such work or repair, the MAIN CONTRACTOR may employ and pay any other persons to carry out such work or repair.
- 7.3 If the work or repair so done by the MAIN CONTRACTOR is work which, in the opinion of the MAIN CONTRACTOR, the SUBCONTRACTOR was liable to do at his own expense under the SUBCONTRACT, all expenses properly incurred by the MAIN CONTRACTOR in so doing shall be recoverable from the SUBCONTRACTOR by the MAIN CONTRACTOR or may be deducted by the MAIN CONTRACTOR from any moneys due or which may become due to the SUBCONTRACTOR.
- 7.4 Provided always that the MAIN CONTRACTOR shall. as soon after the occurrence of any such event as may be reasonably practicable, notify the SUBCONTRACTOR thereof in writing.

8.0 SUBSEQUENT SUBCONTRACTORS AND SUPPLIERS NOMINATED BY THE MAIN CONTRACTOR

- 8.1 These subsequent SUBCONTRACTORS and suppliers nominated by the MAIN CONTRACTOR shall include all specialists, merchant, Tradesmen and others executing work or services. or supplying any materials or goods for which **Prima Cost Sums** (or P.C. Sums) are included in the SUBCONTRACT Documents or for which the MAIN CONTRACTOR has given written instructions in regard to the expenditure of Provision items.
- 8.2 Such subsequent SUBCONTRACTORS and suppliers although nominated by the MAIN CONTRACTOR shall be employed by and upon the MAIN CONTRACTOR's instructions enter into agreement with the SUBCONTRACTOR who shall ensure that all the SUBCONTRACTOR's obligations in this SUBCONTRACT are complied with.
- 8.3 The MAIN CONTRACTOR or the SUBCONTRACTOR if so instructed in writing by the MAIN CONTRACTOR, shall obtain tenders for work or services to be executed or for the supply of materials or goods by the subsequent SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR.
- 8.4 The SUBCONTRACTOR shall be entitled to object in writing to the MAIN CONTRACTOR's nomination within fourteen (14) days from the MAIN CONTRACTOR's instruction under CLAUSE 8.2. if the MAIN CONTRACTOR shall consider such objection to be reasonable then the said nomination shall not be made.
- 8.5 It pursuant to CLAUSE 8.4 the SUBCONTRACTOR is not required to enter into agreement with the subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR then the MAIN CONTRACTOR shall do one of the following:
- 8.5.1 nominate an alternative subsequent SUBCONTRACTOR or supplier as the case may be, subject to the application of CLAUSE 8.5:
- 8.5.2 by order under CLAUSE 36 vary the SUBCONTRACT Works, or works, services, materials or goods forming the subject of the Prime Cost Sums or Provisional Sums as aforesaid, including if *necessary* the omission of the same or any portion thereof, so that they may be provided by workmen, SUBCONTRACTORS or supplier. as the case may be employed by the MAIN CONTRACTOR either concurrently with the SUBCONTRACT Works or at same other date.
- 8.5.3 In accordance with CLAUSE 8.5.2 arrange for the SUBCONTRACTOR to execute such work or services, or to supply such materials or goods.
- 8.6 The Interim Amount due to the SUBCONTRACTOR from the MAIN CONTRACTOR pursuant to CLAUSE 57 shall state separately the amounts due to each of the subsequent SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR as the value of the work or services executed or materials and goods delivered at the relevant date under the said CLAUSE 57 which amount shall be paid by the SUBCONTRACTOR to such SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR within seven (7) days of receipt by the SUBCONTRACTOR of the interim Amount from the MAIN CONTRACTOR.



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- 8.7.1 In the event the SUBCONTRACTOR *has* failed to make payment in accordance with CLAUSE 8.6 to the subsequent SUBCONTRACTOR or suppliers nominated by the MAIN CONTRACTOR, the MAIN CONTRACTOR shall be entitled to do one of the following:
- pay direct to the subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR such amounts due but which have not been paid by the SUBCONTRACTOR;
 - pay direct to the subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR such amounts which may subsequently become due to the said subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR.
- 8.7.2 The amounts so paid direct to the subsequent SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR shall be deducted from any sums due or which may become due from the MAIN CONTRACTOR to the SUBCONTRACTOR
- 8.8 Nothing contained in any of the SUBCONTRACT Documents shall create privity of contract between the MAIN CONTRACTOR and any subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR nor render the MAIN CONTRACTOR liable in any manner to any of them.
- 9.0 RESPONSIBILITIES OF SUBCONTRACTOR FOR SUBSEQUENT SUBCONTRACTORS AND/OR SUPPLIERS NOMINATED BY THE MAIN CONTRACTOR**
- 9.1 The SUBCONTRACTOR shall be fully responsible to ensure that the subsequent SUBCONTRACTORS and suppliers nominated by the MAIN CONTRACTOR shall fully conform to this SUBCONTRACT and shall be fully responsible for the act, default and/or emissions of the subsequent SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR as these subsequent SUBCONTRACTORS or suppliers were engaged by the SUBCONTRACTOR himself. In no circumstances shall the MAIN CONTRACTOR be liable to the SUBCONTRACTOR for such subsequent SUBCONTRACTORS or suppliers nominated by the MAIN CONTRACTOR.
- 9.2.1 In the event the agreement between the SUBCONTRACTOR and the subsequent SUBCONTRACTOR or supplier nominated by the MAIN CONTRACTOR is abandoned, repudiated or in any manner terminated for any reason then the SUBCONTRACTOR shall either :
- with the consent of the MAIN CONTRACTOR employ another competent subsequent SUBCONTRACTOR or supplier to complete the agreement: or
 - himself undertake to complete the said agreement.
- 9.2.2 In either case the SUBCONTRACTOR shall be entitled to be paid the same sum for the work or services to be executed or materials or goods to be supplied as would have been payable had the subsequent SUBCONTRACTOR or supplier originally nominated had completed the agreement without any default on his part.
- 10 PROGRAMME OF SUBCONTRACT WORKS**
- 10.1 As soon as practicable after receipt by the SUBCONTRACTOR of the Letter of Acceptance Contract but before he signing of the SUBCONTRACT the SUBCONTRACTOR shall (unless already previously submitted) submit to the MAIN CONTRACTOR for his approval, a work program conforming to the MAIN CONTRACTOR's Work Program under the Contract showing the order or procedure and method in which the SUBCONTRACTOR proposes to carry out the SUBCONTRACT Works and shall whenever required by the MAIN CONTRACTOR or his representative furnish for his information particulars of the SUBCONTRACTOR's arrangement for carrying out of the SUBCONTRACT Works and of the construction plant and temporary works, if any, which the SUBCONTRACTOR intends to supply, use or construct as the case maybe. The approval of the MAIN CONTRACTOR of such work program or the furnishing of such particulars shall not relieve the SUBCONTRACTOR of any of his duties or Responsibilities under his SUBCONTRACT.
- 10.2 The SUBCONTRACTOR shall additionally be required to provide Daily and Weekly activity and output program reports to the MAIN CONTRACTOR for the entire duration of the SUBCONTRACT Completion Period. These detailed programs must also conform to the MAIN CONTRACTOR's program under the Contract.
- 10.3 If at any time it should appear to the MAIN CONTRACTOR that the actual progress of SUBCONTRACT Works does not conform to the approved work program referred to hereinbefore, the SUBCONTRACTOR shall produce, at the request of the MAIN CONTRACTOR, the revised work programs showing the modifications to the approved work program necessary to ensure completion of the SUBCONTRACT Works within the time for completion provided for in CLAUSE 47.3 hereof *or* under any extended time as may be allowed under CLAUSE 50.



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11.0 CLEANLINESS OF SITE

- 11.1 The SUBCONTRACTOR shall ensure that the portion of the Site where the SUBCONTRACT Works is carried out is reasonably free from all unnecessary obstruction and shall at his own expense properly remove all surplus materials, wreckage, rubbish and/or temporary works no longer required to the designated dumps at the Site during the SUBCONTRACT period.
- 11.2 Upon completion of the SUBCONTRACT Works the SUBCONTRACTOR shall similarly at his own expense clear away and remove from the Site where the SUBCONTRACT Works is carried out to the designated dumps on the Site all tools, equipment, surplus materials, rubbish, temporary works of every and any kind so as to leave the Site in a condition satisfactory to the MAIN CONTRACTOR.
- 11.3 In the event the Site is not left in a condition satisfactory to the MAIN CONTRACTOR then the MAIN CONTRACTOR shall without any further notice to the SUBCONTRACTOR to undertake such works on behalf of the SUBCONTRACTOR or employ third parties to carry out the same. All costs and expenses incurred together with an administrative fee of not less than 25% of the value of the work done shall be recoverable from the SUBCONTRACTOR by the MAIN CONTRACTOR or may be deducted by the MAIN CONTRACTOR from any moneys rightfully due or which may become due to the SUBCONTRACTOR or by way of demand on the Performance Bond or part thereof.

12.0 QUALITY CONTROL

- 12.1 The SUBCONTRACTOR shall conform with and adhere to all quality control procedures which may be introduced and implemented by the MAIN CONTRACTOR from time to time.
- 12.2 The cost of such conformity and adherence shall be included in the SUBCONTRACT Sum.

13.0 TEMPORARY FACILITIES

- 13.1 The MAIN CONTRACTOR shall make available such temporary facilities as listed out at Appendix 3 for use by the SUBCONTRACTOR in the execution and completion of the SUBCONTRACT Works.
- 13.2 Such usage of temporary facilities by the SUBCONTRACTOR shall be charged at the rates set out at Appendix 3, in accordance with the record of usage kept by the Project Manager.
- 13.3 The charges incurred by the SUBCONTRACTOR shall be a debt owing from the SUBCONTRACTOR to the MAIN CONTRACTOR for which the MAIN CONTRACTOR shall be entitled to set-off from any amounts due to the SUBCONTRACTOR.
- 13.4 Nothing contained herein shall render the MAIN CONTRACTOR liable for the usage in any manner by the SUBCONTRACTOR of the Temporary Facilities.

14.0 SUBCONTRACTING

- 14.1 The SUBCONTRACTOR shall not assign any benefit, interest any moneys due or which may be due under this SUBCONTRACT.
- 14.2 The SUBCONTRACTOR shall not sub-let the whole of the contracting SUBCONTRACT of Works, the whole SUBCONTRACT Works.
- 14.3 The SUBCONTRACTOR shall not further SUBCONTRACT any part of the SUBCONTRACT Works except with the consent of the MAIN CONTRACTOR which consent shall be at the sole discretion of the MAIN CONTRACTOR. Any such consent shall not relieve the SUBCONTRACTOR from any liability or obligation under the SUBCONTRACT and he shall be responsible for the acts, defaults and neglects of any SUBCONTRACTOR (including in this instance "labour only" SUBCONTRACTORS) his agents, servants or workmen as fully as if they were the acts, defaults or neglect of the SUBCONTRACTOR, his agents, servants or workmen. Provided that the SUBCONTRACTOR shall not be required to obtain such consent for:
- (i) the provision of labour on a piecework basis; or
 - (ii) the purchase of materials which are in accordance with the standards specified in the SUBCONTRACT.
- 14.4 In the event of a subsequent SUBCONTRACTOR having undertaken towards the SUBCONTRACTOR in respect of the work executed, or the goods, materials, plant or services supplied by such subsequent SUBCONTRACTOR,



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any continuing obligation extending for a period exceeding that of the Defect Liability Period under the Contract and /or SUBCONTRACT, the SUBCONTRACTOR shall at any time, after the expiration of such Period, assign to the MAIN CONTRACTOR, the benefit of such obligations for the unexpired duration thereof.

- 14.5 It shall be a condition in any subsequent SUBCONTRACT entered into by the SUBCONTRACTOR that the employment of the subsequent SUBCONTRACTOR under the subsequent SUBCONTRACT shall determine immediately upon the determination of the SUBCONTRACTOR's employment under this SUBCONTRACT and that no claims whatsoever and howsoever shall be made against the MAIN CONTRACTOR for any work done and/or materials or goods supplied.
- 14.6 All subsequent SUBCONTRACTORS employed in connection with the SUBCONTRACT Work shall be employed from within the Districts where the Subcontract Works are situated and where such SUBCONTRACTORS are not available in the said Districts, then from within the States where the SUBCONTRACT Works are situated.
- 14.7 Any assignment or SUBCONTRACT entered into by the SUBCONTRACTOR shall not create or deem to create any privity of contract or relationship of principal and agent or master and servant/employer and employee between the MAIN CONTRACTOR or and any subsequent SUBCONTRACTOR or their workers.

15.0 INSTRUCTIONS FROM THE MAIN CONTRACTOR

- 15.1 The SUBCONTRACTOR shall forthwith comply with all instructions issued by the MAIN CONTRACTOR in regard to any matter in respect of which the MAIN CONTRACTOR is MAIN CONTRACTOR's empowered by the Conditions herein to issue instructions including instructions pursuant to CLAUSE 36 whether expressly or impliedly as is necessary and incidental to the carrying out and completion of the SUBCONTRACT Works. If within three (3) day from receipt of a written notice from the MAIN CONTRACTOR requiring compliance of an instruction the SUBCONTRACTOR does not comply forthwith, then the MAIN CONTRACTOR may employ or pay other persons or firms to execute any work whatsoever which may be necessary to give effect to such instruction and costs and expenses incurred together with an administrative fee of not less than 25% incurred in connection with such employment may be deducted from any moneys due or become due to the SUBCONTRACTOR or may be recoverable from the SUBCONTRACTOR as a debt or by way of demand on the Performance Bond or part thereof.
- 15.2 The SUBCONTRACTOR shall not take my instructions whatsoever directly from any party other than the MAIN CONTRACTOR.
- 15.3 All instructions issued by the MAIN CONTRACTOR shall be in writing.
- 15.4 Any oral instruction by the MAIN CONTRACTOR shall have no immediate effect but shall be in writing by MAIN CONTRACTOR within three (3) days of the oral instruction aforesaid.
- 15.5 Provided always that if the MAIN CONTRACTOR shall not have confirmed such instructions in the manner and at the times as aforesaid but the SUBCONTRACTOR nevertheless complied with the same, then the MAIN CONTRACTOR may confirm the same in writing at any time prior to the issue of the Final Account and the said instruction shall thereupon be deemed to have taken effect on the on the date it was orally issued.

16.0 NOTICES

- 16.1 The SUBCONTRACTOR shall by notice in writing, inform the MAIN CONTRACTOR of his address where notices and instructions under this SUBCONTRACT may be served upon him and of my changes made thereto. In the event of the SUBCONTRACTOR failing to notify, notice or instructions shall deemed to have been served upon SUBCONTRACTOR, if they are left at his offices on the Site and and acknowledgement of the receipt of the notices or instructions is obtained from the SUBCONTRACTOR, his agent or authorized representative.

17.0 SUBCONTRACT DOCUMENTS

- 17.1 The SUBCONTRACT Documents as aforesaid shall remain in custody of the MAIN CONTRACTOR and shall be produced as and when required by the SUBCONTRACTOR.
- 17.2 immediately after the execution of this SUBCONTRACT the MAIN CONTRACTOR shall furnish without charge to the SUBCONTRACTOR (unless he shall have been previously furnished) with:
- (i) one certified true copy of the SUBCONTRACT Documents;
 - (ii) two copies of SUBCONTRACT Drawings; and



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(iii) two copies of the unpriced Bills of Quantities and (if requested by the SUBCONTRACTOR) the copy of the priced Bills of Quantities

- 17.3 The MAIN CONTRACTOR shall, as and when necessary and without charge to the SUBCONTRACTOR, furnish him with two copies of such further working drawings or details as are reasonably necessary either to explain and amplify the SUBCONTRACT Drawings or the Specification (if any) or to enable the SUBCONTRACTOR to design, construct and complete the SUBCONTRACT Works in accordance with this SUBCONTRACT. Provided that nothing contained in the said working drawings or details shall impose any obligation beyond those imposed by the Subcontract Documents.
- 17.4 The SUBCONTRACTOR shall keep one copy of the SUBCONTRACT Drawings, the Specifications (if any), unpriced Bills of Quantities and other like document referred to in CLAUSE 17.3 hereof on the Site and the MAIN CONTRACTOR shall at all reasonable times have access to the same.
- 17.5 Upon final payment of the Final Account, hereof the SUBCONTRACTOR shall, if so requested by the MAIN CONTRACTOR forthwith return to the MAIN CONTRACTOR all drawings, details, specifications. unpriced copy of Bills of Quantities and other documents of like nature.
- 17.6 None of the documents hereinbefore mentioned shall be used by the SUBCONTRACTOR for any purpose other than this SUBCONTRACT.

18.0 SUFFICIENCY OF SUBCONTRACT DOCUMENTS

- 18.1 The SUBCONTRACTOR shall provide everything necessary for the proper execution of the SUBCONTRACT Works until its completion (including the making good of defects pursuant to CLAUSE 55) according to true intent and meaning of the SUBCONTRACT Document taken together whether the same may or may not be particularly shown or described provided that the same can be reasonably referred therefrom.
- 18.2 Except if and to the extent provided under this SUBCONTRACT, the provisions of the Articles of Agreement, the Conditions including any Conditions of Particular Application and the Appendices thereto shall over those of any other documents forming part of this SUBCONTRACT.
- 18.3 Subject to the provisions of CLAUSE above, the Contract Document shall be taken as mutually explanatory of one another but where vagueness, ambiguities or discrepancies arise, such ambiguities or discrepancies shall be decided by the MAIN CONTRACTOR and the SUBCONTRACTOR shall comply with such decision.
- 18.4 If the SUBCONTRACTOR or the MAIN CONTRACTOR finds any discrepancy as is referred to in CLAUSE 18.3 he shall immediately give the other written notice specifying the discrepancy.
- 18.5 Any Conditions of Particular Application annexed hereto shall be construed as and deemed to be part of the SUBCONTRACT Conditions. in the event of any divergence' between the Conditions of Particular Application and the SUBCONTRACT Conditions, the Conditions of Particular Application shall prevail.

19.0 MATERIALS GOODS AND WORKMANSHIP - TESTING AND INSPECTION

- 19.1 All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards as described in the specifications referred to in CLAUSE 17.3 provided that the SUBCONTRACTOR shall not substitute anything so described without the MAIN CONTRACTOR's consent in writing which consent shall be at the MAIN CONTRACTOR's absolute discretion and be final and binding. No such consent shall relieve the SUBCONTRACTOR of his obligations.
- 19.2 The SUBCONTRACTOR shall where require entirely at his own cost provide samples of materials and goods for testing. The SUBCONTRACTOR shall further upon the request of the MAIN CONTRACTOR submit to the MAIN CONTRACTOR documents to prove that the materials and goods comply with CLAUSE 19.1.
- 19.3 The SUBCONTRACTOR shall at the request of the MAIN CONTRACTOR open up for inspection, any work covered up or arrange for or carry out any test of any materials or goods (whether, or not already incorporated in the SUBCONTRACT Works) or of any executed work and the cost of such opening up or testing (together with the cost of making good the consequence thereof) shall be added to the SUBCONTRACT Sum, unless provided for in the SUBCONTRACT Documents or unless the inspection or test shows that the work, materials, or goods are not in accordance with this SUBCONTRACT.



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19.4 The MAIN CONTRACTOR may issue instructions requiring the removal from the Site or rectification of any work, materials or goods which are not in accordance with this SUBCONTRACT at the SUBCONTRACTOR's own cost.

20.0 UNFIXED MATERIALS AND GOODS

20.1 All SUBCONTRACTOR's Equipment, Temporary Works and materials provided by the SUBCONTRACTOR shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the SUBCONTRACT Works and the SUBCONTRACTOR shall not remove the same or any part thereof except for the purpose of moving it from one of the Site to another, without the consent of the MAIN CONTRACTOR.

20.2 The SUBCONTRACTOR shall be responsible and be liable for the loss of or damage to, any of these Equipment, Temporary Works or materials.

20.3 Unfixed materials and goods once delivered to Site, placed on or adjacent to the SUBCONTRACT Works and intended for incorporation therein shall become the property of the MAIN CONTRACTOR but the SUBCONTRACTOR shall remain responsible for loss or damage to the same.

20.4 The SUBCONTRACTOR shall ensure that in any contract for the supply of materials and goods, property shall pass from the supplier to the SUBCONTRACTOR upon passing of delivery to or placement on or adjacent to the SUBCONTRACT Works so as to property comply with CLAUSE 20.1 herein.

20.5 The said materials and goods shall not be removed without the consent of the MAIN CONTRACTOR except for use on the SUBCONTRACT Works.

21.0 MATERIALS OF MALAYSIAN ORIGIN

21.1 The SUBCONTRACTOR shall use materials of Malaysian origin for incorporation in the to use SUBCONTRACT Works save:

- (i) where materials of Malaysian origin are not available: and
- (ii) if available, are not in accordance with the standards described in the SUBCONTRACT Documents. and in the case of paragraph (i) and (ii) the MAIN CONTRACTOR's consent/approval should be sought.

22.0 NOTICES, FEES AND CHARGES

22.1 The SUBCONTRACTOR shall conform and cause its SUBCONTRACTORS and respective personnel to conform in all respects with the provisions of the Local laws, byelaws, withholding taxations, regulations and of any local or other duly constituted authority which may be applicable to the Works including the necessary registration with the relevant authorities such as Construction Industry and Development Board (CIDB) etc. In the event of any non-compliance by the SUBCONTRACTOR and/ or its SUBCONTRACTORS, the SUBCONTRACTOR shall keep both, the MAIN CONTRACTOR and the Employer harmless against any losses claims, demands, expenses and/or proceedings.

22.2 SUBCONTRACTOR comply with and give all notices required by any written law, regulation or by-law or any local authority or of any statutory authority which has jurisdiction with regard to the SUBCONTRACT Works or with whose systems the same are or will be connected (all requirements to be so complied with being referred to in these Conditions as ' the Statutory Requirements') and the SUBCONTRACTOR shall submit to the MAIN CONTRACTOR all approvals received by the SUBCONTRACTOR in connection therewith.

22.3 The SUBCONTRACTOR shall pay and indemnify the MAIN CONTRACTOR against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any written law, regulation or by-law of any local authority or of any statutory authority in respect of the SUBCONTRACT Works which are due to any acts or omissions of the SUBCONTRACTOR. No adjustments shall be made to the SUBCONTRACT Sum in respect of the amount of any such fees or charges (including any rates or taxes) unless they are stated by way of a Provisional Sum in the SUBCONTRACT Documents.

22.4 If after the final date of me Letter of Acceptance, there is a variation in the Statutory Requirements affecting the SUBCONTRACT Works which necessitates some amendment to the SUBCONTRACT Works such amendment shall be treated as if it were an instruction of the MAIN CONTRACTOR under CLAUSE 36.2 affecting a Variation and *if* such Variation is prior to the final date of the Letter of Acceptance the necessary amendment to the SUBCONTRACT Works shall be at the SUBCONTRACTOR's own cost.



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22.5 If any amendment to the SUBCONTRACT Works becomes necessary for conformity with the terms of any permission or approval made by a decision of the relevant authority after the final date of receipt of the Letter of Acceptance such amendment shall be treated as *if* it were an instruction of the MAIN CONTRACTOR under CLAUSE 36.2 effecting a Variation to this Subcontract provided that such treatment is not precluded in the SUBCONTRACT Documents.

23.0 TAXATION

23.1 The SUBCONTRACTOR shall be liable for the payment of and/or deduction for all taxes on such part of their payments in respect of this SUBCONTRACT as is chargeable therewith under the prevailing withholding taxation Laws for the time being in force in Malaysia and the SUBCONTRACTOR's country of residence.

23.2 The SUBCONTRACTOR's employees including any non-Malaysian personnel shall be liable to pay Income Tax in respect of their salaries as are chargeable therewith under the Laws for the time being in force in Malaysia and SUBCONTRACTOR's country of residence and the SUBCONTRACTOR shall perform such duties in regard to the deduction thereof as may be lawfully imposed on them by the Employer.

24.0 ANTIQUITIES

24.1 All fossils, coins, antiquities and other object of interest or value which may be found on the Sites or in excavating the same during the progress of the SUBCONTRACT Works shall become the property of the Employer and upon discovery of such an object the SUBCONTRACTOR shall forthwith:

24.1.1 use his best endeavours not to disturb the object and shall cease work if and in so far as the continuance or work would endanger the object or prevent or impede its excavation or its removal;

24.1.2 take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and

24.1.3 inform the MAIN CONTRACTOR of the discovery and the precise location of the object.

24.2 The MAIN CONTRACTOR shall issue instructions to what is to be done concerning an object reported by the SUBCONTRACTOR under CLAUSE 24.1.3 and (without prejudice to the generality of his power) such instructions may require the SUBCONTRACTOR to permit the examination, excavation or removal of the object by a third party.

24.3 if compliance with the provisions of CLAUSE 24.1 or with an instruction issued under CLAUSE 24.2 has involved the SUBCONTRACTOR in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision of this SUBCONTRACT then the amount of such loss and/or expense shall be added to the SUBCONTRACT Sum.

25.0 COPYRIGHT, ROYALTIES AND PATENT RIGHTS

25.1 All royalties or other sums payable in respect of the supply and use in carrying out the SUBCONTRACT Works of any patented articles, processes or inventions or in respect of the supply and use for the SUBCONTRACT Works of drawings or models of buildings the subject of any other protected right other than drawings or models provided by the MAIN CONTRACTOR shall be deemed to have been included in the SUBCONTRACT Sum and the SUBCONTRACTOR shall indemnify the MAIN CONTRACTOR from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the MAIN CONTRACTOR or which it may be put by reason of the SUBCONTRACTOR infringing or being held to have infringed any patent right in relation to any such articles, processes and inventions or infringing or being held to have infringed any other protected rights.

25.2 Provided that where in compliance with the MAIN CONTRACTOR's instructions the SUBCONTRACTOR shall be required to supply and use in carrying out the SUBCONTRACT Works any patented articles, processes or inventions, the SUBCONTRACTOR shall not be liable in respect of any infringement or alleged infringement of any patent or any other patent rights in relation to any such articles, processes and inventions and all royalties, damages or other moneys which the SUBCONTRACTOR may be liable to pay to the persons entitled to such patent or copyrights shall be added to the SUBCONTRACT Sum.

25.3 Except where otherwise specified, the SUBCONTRACTOR shall pay all tonnage and other royalties, rent, fees and other payments or compensation (if any) for getting sand, gravel, clay or other materials required for the SUBCONTRACT Works.



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26.0 SETTING OUT

26.1 The MAIN CONTRACTOR shall furnish to the SUBCONTRACTOR such information as shall enable the SUBCONTRACTOR to set out the SUBCONTRACT Works provided always that the SUBCONTRACTOR shall be responsible for checking the accuracy of such information and shall entirely at his own cost amend any errors arising from his own inaccurate seeing out.

27.0 INSPECTION OF SITE

27.1 The SUBCONTRACTOR shall be deemed to have inspected the Site and to have satisfied himself and allowed in the SUBCONTRACT Sum as to the form and nature of the Site, the extent and nature of the work and materials necessary for the completion of the SUBCONTRACT Works, the accommodation he may require and in general shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect the SUBCONTRACT Sum.

27.2 Where the SUBCONTRACT incorporates an applied finish to any surface formation or prepared surfaces me like prepared by the MAIN CONTRACTOR or other MAIN CONTRACTOR for example but not limited to walls, floors, ceilings, roofs, woodwork roads and like areas it is the responsibilities of the SUBCONTRACTOR to ensure that the base provided by the MAIN CONTRACTOR is suitable in all respects for the SUBCONTRACTOR's work and in each and every case where it is not to notify the MAIN CONTRACTOR in writing to that effect before commencing work.

27.3 Where the SUBCONTRACT incorporates materials likely to be affected by atmospheric conditions for example but not limited to kiln dried timber in flooring or joinery polishing and decorating or the like it is the responsibility of the SUBCONTRACTOR to ensure that the conditions are suitable in all respects before commencing the SUBCONTRACT Works and in each and every case where they are not the SUBCONTRACTOR must notify the MAIN CONTRACTOR in writing to that effect.

27.4 Failure on the part of the SUBCONTRACTOR to conform to the requirements of liability sub-CLAUSE 27.2.1 and 27.2.2 of this CLAUSE shall in no way relief SUBCONTRACTOR from any contractual obligations or guarantees.

27.5 The SUBCONTRACTOR shall be responsible for the protection of the SUBCONTRACT Works against any damage from whatever cause arising and shall take all Works necessary precautions in carrying out the SUBCONTRACT Works to prevent damage to other existing work.

28.0 EMPLOYMENT OF WORKMEN

28.1 The SUBCONTRACTOR shall employ in the execution of the SUBCONTRACT only Malaysian citizens as workmen. if in any particular trade or skill required to complete this SUBCONTRACT, the SUBCONTRACTOR can demonstrate to the satisfaction of the MAIN CONTRACTOR that Malaysian citizens are not available or that non-Malaysian specialist and others are required in connection with the installation and commissioning of specialist equipment goods or materials to be incorporated in the SUBCONTRACT then the SUBCONTRACTOR may employ non-Malaysian citizens subject to the approval from all related authorities.

28.2 The SUBCONTRACTOR shall provide all accommodation and messing for his workmen and employees as necessary and the cost thereof shall be deemed to be included in the Subcontract Price

28.3 The ratio of Malaysian citizens who shall be employed by the SUBCONTRACTOR in the execution of this SUBCONTRACT shall reflect the racial ratio of the citizens of this country as prescribed by the Employer from time to time.

28.4 The SUBCONTRACTOR shall on the commencement of the SUBCONTRACT Works furnish to the MAIN CONTRACTOR all particulars connected with this SUBCONTRACT and such returns as may be called for from time to time in respect of labour employed by him and his subsequent SUBCONTRACTORS (including 'labour only 'SUBCONTRACTOR') on the execution of this Sub- Contract. in accordance with the requirements of the Employment Act 1955, Employment (Restriction) Act 1968 and Internal Security (Registration of Labour) Regulation 1960 or any subsequent modification on or re-enactment thereof. The SUBCONTRACTOR shall maintain on Site at all times during the progress of the SUBCONTRACT works an up-to-date register containing particulars of all workmen employed by him.

28.5 All workmen employed in connection with the Sub- Contract Works shall be employed from within the Districts where the SUBCONTRACT Works are situated and where such workmen are not available in the said Districts,

then from within the States where the SUBCONTRACT Works are situated. The SUBCONTRACTOR shall immediately after the award of this SUBCONTRACT arrange with the local labour office, District Officer /Pegawai Daerah or Penghulu/Pengawal to effect such employment.

- 28.6 Provide always that the employment of the workmen in CLAUSE 28.1 shall not create or be deemed to create the relationship of principal and agent or master and servant/employer and employee between the workmen and the MAIN CONTRACTOR and/ or the Employer.
- 28.7 The SUBCONTRACTOR shall cause his subsequent SUBCONTRACTOR including the labour only SUBCONTRACTORS to comply with CLAUSES 28 1 to 28 6

29.0 COMPLIANCE WITH EMPLOYMENT ACT 1955 ETC

- 29.1 In the employment of workmen for the execution of this SUBCONTRACT, the SUBCONTRACTOR shall comply and shall cause his subsequent SUBCONTRACTORS (including "labour only" SUBCONTRACTORS) to comply with all the requirements of the Employment (Restriction) Act 1968. Employees' Provident Fund Ordinance 1951, the Industrial Relation Act 1967 and any other law relating to employment of workmen or any subsequent modification or re-enactment thereof.

30.0 EPIDEMICS AND MEDICAL ATTENDANCE

- 30.1 The SUBCONTRACTOR shall maintain the Site in a clean and sanitary condition and shall comply with all requirements of the MAIN CONTRACTOR or Employer Health and Sanitary Authorities. In the event of any outbreak of illness of an epidemic nature the SUBCONTRACTOR shall comply with and carry out such regulations, orders and requirements as may be made by the MAIN CONTRACTOR or Employer or the local medical or health authorities for the purpose of dealing with and overcoming the same.
- 30.2 The SUBCONTRACTOR shall provide to the satisfaction of the MAIN CONTRACTOR and Employer or the Local Authorities concerned adequate medical attendance for his employees. In particular the SUBCONTRACTOR shall provide first aid kits at the Site and shall instruct an adequate number of persons in their use. The names of the persons so instructed shall be made known to all employees of the SUBCONTRACTOR.

32.0 WAGE BOOKS AND TIME SHEETS

- 32.1 The SUBCONTRACTOR shall keep and shall cause his subsequent SUBCONTRACTORS (Including 'labour only' SUBCONTRACTORS) to keep proper wage books and time sheets showing wages paid to and the time worked by all workmen employed by him and his SUBCONTRACTORS as aforesaid in and for the performance of this SUBCONTRACT and shall produce such wage books and time sheets on demand for inspection by any persons duly authorized by the MAIN CONTRACTOR and shall furnish to the MAIN CONTRACTOR or his duly authorized representative such information relating to the wages and conditions of employment of such workmen as the MAIN CONTRACTOR may from time to time require.

33.0 DEFAULT IN PAYMENT OF WAGES

- 33.1 In the event of default being made in the payment of any money in respect of wages, a claim of which has been filed at against the SUBCONTRACTOR in an office of the Department of Labour and /or default in the payment in respect of Employee's Provident Fund contributions of any workmen employed by the SUBCONTRACTOR or his subsequent SUBCONTRACTORS (including "labour only" ; SUBCONTRACTORS) in and for the performance of this SUBCONTRACT, then the MAIN CONTRACTOR having satisfied himself with the proof thereof furnished to him may, but shall not be bound to, upon the failure of the SUBCONTRACTOR to pay any such money for which he is liable under the relevant statutory provisions make payment of such claim to the Director General of Labour and/or Employee's Provident Fund Board, as the case may be, out of any monies at any time due to the SUBCONTRACTOR under this SUBCONTRACT and such payment shall be deemed to be a payment made to the SUBCONTRACTOR by the MAIN CONTRACTOR under and by virtue of this SUBCONTRACT.

34.0 DISCHARGE OF WORKMEN

- 34.1 The SUBCONTRACTOR shall only employ such technical staff foremen artificers and labourers on the SUBCONTRACT Works who are thoroughly efficient and of good characters. If, in the sole opinion of the MAIN CONTRACTOR any person employed by the SUBCONTRACTOR misconducts himself or has caused delays or is incompetent, the SUBCONTRACTOR when so directed by the MAIN CONTRACTOR in writing, shall at once remove such person from the SUBCONTRACT Works and he shall not again be employed on the SUBCONTRACT

Works without the written permission of the MAIN CONTRACTOR. Upon removal of any such person the SUBCONTRACTOR shall forthwith find a suitable replacement. Provided that the SUBCONTRACTOR shall not be entitled to any claim for any expenses whatsoever incurred by him in respect of any direction given by the MAIN CONTRACTOR under this CLAUSE.

35.0 ACCESS TO THE WORKS AND INFORMATION

- 35.1 The MAIN CONTRACTOR and any person authorized the by either of them shall at all reasonable times have access to the Site and SUBCONTRACT Works or to such Works portion of the Site where the SUBCONTRACT Works are being carried out and to the workshops or other places of the SUBCONTRACTOR where work is being prepared for this SUBCONTRACT and where work is being so prepared in workshops or other places of a subsequent SUBCONTRACTOR, the SUBCONTRACTOR shall, by a term in the subsequent SUBCONTRACT so far as possible secure a similar right of access to those workshops or places for the MAIN CONTRACTOR and shall do all things reasonably necessary to make such right effective.
- 35.2 The SUBCONTRACTOR shall provide the following to information and/or information and documentation to the MAIN CONTRACTOR to allow the MAIN CONTRACTOR to satisfy documents himself as to the progress of the SUBCONTRACTOR's procurement activities in accordance with the SUBCONTRACT work program provided always that these provisions do not relieve the SUBCONTRACTOR of his contractual obligations contained herein:
- 35.2.1 Drawing Program including information release dates, production dates etc., updated during the currency of the SUBCONTRACT Works and frequency as directed by the MAIN CONTRACTOR;
 - 35.2.2 Procurement schedule showing information release, enquiry, vet, order, manufacture, test and transport periods as appropriate to each materiel or equipment updated during the currency of the SUBCONTRACT Works and frequency as directed by the MAIN CONTRACTOR;
 - 35.2.3 copies of Purchase Orders and Work Orders as and when placed;
 - 35.2.4 expediting reports - showing the status of each order, its estimated ex-works and shipment dates, shall be issued at least at monthly intervals or as directed by the MAIN CONTRACTOR;
 - 35.2.5 shipping programs - showing forecast and current shipments, the details of the materials, the approximate shipping weight or volume, the mode of transport, the name of the carrying vessel, flight number, etc., and the parts of departure and arrival together with the estimated time departure, estimated time arrival, actual time departure end actual time arrival as appropriate;
 - 35.2.6 notification of shipment, arrival at and clearance from the port of entry, arrival on site of all materials;
- 35.3 The MAIN CONTRACTOR hereby reserve the right to expedite and inspect specific items forming part of the SUBCONTRACT Works. The MAIN CONTRACTOR will notify the SUBCONTRACTOR of his intention to expedite or inspect.
- 35.4 The SUBCONTRACTOR shall ascertain from the MAIN CONTRACTOR in adequate time before his goods are ready for shipment whether inspection is required or not. Such inspection shall not in any way relieve the SUBCONTRACTOR of his obligations pursuant to the SUBCONTRACTOR and on receipt of such notice the SUBCONTRACTOR shall arrange facilities for persons duly authorized to expedite and inspect.
- 35.5 Where the SUBCONTRACTOR is responsible for providing information to enable the MAIN CONTRACTOR to make provision for fixings the leaving of holes the forming of chases and any other such work the SUBCONTRACTOR shall provide all necessary information in sufficient time to enable the MAIN CONTRACTOR to make such provision before the relevant section of the Subcontract Works is set out. Any additional cost involved in making provision after the setting out of the MAIN CONTRACTOR's work will be chargeable to the SUBCONTRACTOR.

36.0 VARIATIONS IN THE CONTRACT DOCUMENTS

- 36.1 The term Variation in the SUBCONTRACT Documents means:
- 36.1.1 a change in the SUBCONTRACT Documents which makes necessary the alteration or modification of the design, quality or quantity of the SUBCONTRACT Works as described by or Referred to in the SUBCONTRACT Documents, otherwise than such as may be reasonably necessary for the purpose of rectification pursuant to CLAUSE 19.4 including:
 - (i) the addition, omission or substitution of any work;
 - (ii) the alteration of the kind or standard of any of the materials, goods to be used in the SUBCONTRACT Works;
 - (iii) the removal from the Site of any work executed or materials or goods brought thereon by the SUBCONTRACTOR or the purposes of the SUBCONTRACT Works other than work, materials or goods which are not in accordance with this SUBCONTRACT.



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36.2 The MAIN CONTRACTOR may issue instructions effecting a Variation in the SUBCONTRACT Documents. No Variation effected by the MAIN CONTRACTOR shall vitiate his SUBCONTRACT.

37.0 VALUATION OF VARIATIONS OR CHANGE ORDER WORKS

37.1 The valuation of additional or substituted work shall additional or be consistent with the values of work of similar character as set out in the SUBCONTRACT Bills of Quantities or Schedule of Rates making due allowance for any significant change in the quantity of the work. Where there is no work of a similar character as set out in the SUBCONTRACT Bills of Quantities or Schedule of Rates, a fair valuation shall be made therefor.

37.2 The valuation of the omission of work shall be in accordance with the values of the SUBCONTRACT Bills of Quantities or Schedule Of rates.

37.3 No allowance shall be made under CLAUSE 37 for any effect upon the regular progress of the SUBCONTRACT Works or of any other direct loss and/or expense for which the SUBCONTRACTOR would otherwise be reimbursed.

37.4 Obvious works and the correction of discrepancies or errors in the drawings and the respective Contract and SUBCONTRACT Documents shall not be treated as Variations.

37.5 Effect shall be given to CLAUSE 37 by addition to or deduction from the SUBCONTRACT Sum provided always that such addition or deduction has been certified by the MAIN CONTRACTOR.

37.6 For items stated as Lumpsum (L.S.) or Sum, or LUMPSUM , such items shall be executed on a fixed lump sum basis and the lump sum price shall not subjected to any remeasurement or adjusted in the event of the actual quantities of work, material, goods and services to be supplied differs from any estimated quantities of work, material, goods and services to be supplied as provided under this SUBCONTRACT.

37.8 For items marked PV or PROVISIONAL, the quantities set out in the SUBCONTRACT Bill of Quantities are the estimated quantities for the SUBCONTRACT Works. All these items shall be re-measured basing on the actual completed work done on site.

38.8 Where the SUBCONTRACTOR has been instructed by the MAIN CONTRACTOR to carry out work on a day work basis. The SUBCONTRACTOR shall be paid for such work at the rates and prices specified in the Day Work Rates included in the SUBCONTRACT, or in the absence of such Day Work Rate, the SUBCONTRACTOR shall be paid based on the reasonable prevailing market rates.


38.0 PROVISIONAL SUM

38.1 The term Provisional Sum included in the SUBCONTRACT Documents means a sum for work to be executed or the supply of materials or goods which cannot be entirely foreseen, defined or detailed before the date of the Letter of Acceptance and the MAIN CONTRACTOR shall issue instruction to the SUBCONTRACTOR in regard to the expenditure of such Provisional Sum.

38.2.1 Prices and Rates in the Tender submitted by the SUBCONTRACTOR shall be subjected to rationalization, prior consent of the MAIN CONTRACTOR as to their reasonableness. Such prior consent and any subsequent adjustment to the Prices and Rates in the Tender shall be made before the signing of this Sub-Contract. Hence, the MAIN CONTRACTOR hereby reserve the right to rationalize all the SUBCONTRACTOR's tender rates so as to reflect the actual completion of actual work done on Site.

38.2.2 Any adjustment of Prices end Rates in the Tender submitted by the SUBCONTRACTOR pursuant to CLAUSE 38.2.1 and any arithmetical error shall before the signing of this SUBCONTRACT be adjusted and rectified so that the total amount in the Tender shall correspond to the lump sum amount tendered by the SUBCONTRACTOR in the Form of Tender. Provided always the lump sum amount shown in the Form of Tender shall remain unaltered.

38.3 The value of works which are executed by the SUBCONTRACTOR in respect of a Provisional Sum shall be ascertained in accordance with CLAUSE 37. At the settlement of the accounts the value of such work executed by the SUBCONTRACTOR shall be set against the Provisional Sum and the balance shall be added to or deducted from the SUBCONTRACT Sum.

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38.4 The Provisional Sum if not used either wholly or in part shall as to the amount not used be deducted from the SUBCONTRACT Sum.

39.0 SUBCONTRACT SUM

39.1 The SUBCONTRACT sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provision of the Conditions.

39.2.1 Prices and Rates in the Tender submitted by the SUBCONTRACTOR shall be subject to the prior consent of the MAIN CONTRACTOR as to their reasonableness such prior consent and any subsequent adjustment to the Prices and Rates in the Tender shall be made before the signing of this SUBCONTRACT.

39.2.2 Any adjustment of Prices and Rates in the Tender submitted by the SUBCONTRACTOR pursuant to CLAUSE 39.2.1 and any arithmetical error shall before the signing of this Sub-Contract Be adjusted and rectified so that the total amount in the Tender shall correspond to the lump sum amount tendered by the SUBCONTRACTOR in the Form of Tender. Provided always the lump sum amount shown in the Form of Tender shall remain unaltered.

39.3 Where in the Conditions it is provided that an amount duly approved and certified by the MAIN CONTRACTOR is to be added or deducted from the SUBCONTRACT Sum or dealt with by adjustment of the SUBCONTRACT Sum, then as soon as such amount for in the is ascertained in whole or in part such amount shall be taken into account in the Interim Payment computation of the next Interim Payment following such whole or partial ascertainment.

40.0 OTHER SUBCONTRACTORS

40.1 Where the MAIN CONTRACTOR requires the execution of work not forming part of this SUBCONTRACT by the MAIN CONTRACTOR or by others employed or otherwise engaged by the MAIN CONTRACTOR, then the SUBCONTRACTOR shall permit the execution of such work on the relevant Site or any part thereof.

41.0 WRONGFUL USE OR INTERFERENCE WITH PROPERTIES OF OTHERS

41.1 The SUBCONTRACTOR, his servants, employees or agents shall not wrongfully use or interfere with the plant, equipment, ways, scaffoldings, temporary works, appliances or other properties belonging to the Employer, the MAIN CONTRACTOR or its other SUBCONTRACTOR, or be guilty of any breach or infringement of any Ordinance or by-law, regulation, order or rule made under the same or by any local or other public or competent authority.

42.0 CARE AND PROTECTION OF SUBCONTRACT WORKS

42.1 The SUBCONTRACTOR shall be entirely responsible for the whole of the SUBCONTRACT Works including all apparatus, equipment and materials furnished by him in connection with this work and special care shall be taken to protect all parts thereof in such a manner as may be necessary as directed by the MAIN CONTRACTOR.

42.2 This protection shall include but is not limited to covers, crating, stores, sheds or other means to protect the apparatus, equipment and materials from the weather and the ingress or dirt, grit, plaster or other foreign substances.

42.3 Special care shall be taken to keep all open ends of pipes, duct, etc. closed while in storage or in the course of installation.

43.0 PROTECTION OF PROPERTY AND PERSONNEL

43.1 The SUBCONTRACTOR shall take precautions to avoid causing unnecessary damage to the work of other trades. The SUBCONTRACTOR's workmen will be required to conform with the general regulations governing personnel on the Site and must keep to the working space allocated to him. The interest of the project must be safeguarded in every way and any person interfering with the job or making himself objectionable will be liable to be dismissed.

43.2 All precautions shall be taken for the safety of personnel on Site. Barriers shall be erected and warning notices displayed where required and as directed by the MAIN CONTRACTOR.



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44.0 INSURANCE AGAINST INJURY TO PERSONS AND DAMAGE TO PROPERTY

- 44.1 The MAIN CONTRACTOR is for the duration of the Contract, insured under a MAIN CONTRACTOR's All Risk Policy covering the Contract Sum incorporating Public Risk Policy Liability claims.
- 44.2 All claims made under this policy shall be subject to the payment of an Excess per occurrence as set out in Appendix I.
- 44.3 In the event of any claim being made on behalf of the SUBCONTRACTOR or as a result of the SUBCONTRACTOR's act or omission, the amount of Excess payable shall be borne by the SUBCONTRACTOR.
- 44.4 Nothing contained herein shall make the MAIN CONTRACTOR liable for failing to maintain the Policy or to give any notice to the Insurance Company or for any other matter relating to the Policy or any claim thereto.
- 44.5 Apart from any exclusions, where there is any legal liability arising out of the use by the SUBCONTRACTOR of any vehicle where indemnity is provided by any motor or other insurance policy or where any insurance or security is required by law to be taken out by the SUBCONTRACTOR, such liability shall be pursued by the SUBCONTRACTOR under the relevant policy on the MAIN CONTRACTOR's behalf with all due haste.
- 44.6 If any loss or damage affecting this SUBCONTRACT Works or any part thereof or any unfixed materials or goods is occasioned by any one or more of the perils covered in the Policy the SUBCONTRACTOR shall notwithstanding that settlement of any insurance claim has not been completed with due diligence restore work damaged replace or repair any unfixed materials or goods which have been destroyed or injured remove and dispose of any debris and proceed with the carrying out and completion of the SUBCONTRACT Works.
- 44.7 All monies received from the insurance referred to in CLAUSE 44.1 shall be paid in the first place to the MAIN CONTRACTOR and then shall be paid to the SUBCONTRACTOR by instalment on any payment certificate issued under CLAUSE 57 and calculated as from the date of receipt of the moneys in proportion to the extent of restoration of work damaged replacement or repair of any unfixed materials or goods and the removal and disposal of debris carried out by the SUBCONTRACTOR.
- 44.8 The SUBCONTRACTOR shall not be entitled to any payment in respect of the restoration of work damaged the replacement and repair of any unfixed materials or goods and the removal and disposal of debris other than the monies received under the aforesaid insurances.

45.0 WORKMEN'S COMPENSATION AND SOCSO SCHEME

- 45.1 The SUBCONTRACTOR shall be liable and shall indemnify the MAIN CONTRACTOR from all liabilities arising out of claim by any and every workman employed in and for the performance of this SUBCONTRACT for payment of compensation at common law, under or by virtue of the Workmen's Compensation Ordinance 1952 (Revised 1987) and the Employees' Social Security Act 1969 or any other law amending or replacing such law, and from all costs and expenses incidental and consequential thereto.
- 45.2 Without prejudice to his liability to indemnify the Employer and the MAIN CONTRACTOR under CLAUSE 45.1 the MAIN CONTRACTOR is (subject to policy exclusions) for the duration of the Contract insured under a Workmen's Compensation Policy and shall assist the SUBCONTRACTOR in making claims hereon.
- 45.3.1 The SUBCONTRACTOR shall register his employees and contribute under the Social Security (SOCSO) Scheme in the places where the SOCSO Scheme is implemented and comply with the provision of the said Act. The SUBCONTRACTOR shall submit the code number and social security numbers of all the workers on site to the MAIN CONTRACTOR for checking.
- 45.3.2 The SUBCONTRACTOR shall make payment of all contributions from time to time on the first day on which the same ought to be paid and until the completion of the SUBCONTRACT works and it shall be the duty of the SUBCONTRACTOR to produce to the MAIN CONTRACTOR contribution cards or stamp vouchers as evidence of all payments of such contribution whether demanded or not.
- 45.3.3 if any default is made by the SUBCONTRACTOR in complying with the terms of CLAUSE 45.3 the MAIN CONTRACTOR may without prejudice to any other remedy available is to the MAIN CONTRACTOR for breach of any terms of this SUBCONTRACT:
- (i) withhold an amount from any money which would otherwise be due to the SUBCONTRACTOR under this SUBCONTRACT and which in the opinion of the MAIN CONTRACTOR will satisfy my claims for

compensation by workmen that would have been borne by SOCSO had the SUBCONTRACTOR not made default in maintaining the contribution; and/or

- (ii) pay such contributions as have become due and remain unpaid and deduct the amount of such contribution from any moneys due or become due to the SUBCONTRACTOR.

45.4 Nothing in this CLAUSE shall be construed to take away or to waive or in any manner to modify the right of the MAIN CONTRACTOR to be indemnified by the SUBCONTRACTOR under CLAUSE 47.1 in respect of all compensation, costs and other expenses whatsoever which by reason of the SUBCONTRACTOR's default or otherwise become payable by the MAIN CONTRACTOR under the legislation referred to CLAUSE 45.1 or other law.

46.0 PERFORMANCE BOND

46.1 The SUBCONTRACTOR shall provide to the MAIN CONTRACTOR a Performance Bond in the form as set out in Appendix 2 from, a bank operating in Malaysia and approved by the MAIN CONTRACTOR in a sum equal to 5 percent (5%) of the SUBCONTRACT Sum for the due observance and performance of this SUBCONTRACT and the cost of obtaining the Performance Bond shall be borne by the SUBCONTRACTOR and shall be deemed to have been included in the SUBCONTRACT Sum.

46.2 The original of the Performance Bond shall be deposited with the MAIN CONTRACTOR as a condition precedent to the commencement of the SUBCONTRACT Works and shall remain valid for the period named in Appendix 1.

46.3 If the SUBCONTRACTOR fails in any respect to execute this SUBCONTRACT or entitled to make commits any breach of his obligations in this SUBCONTRACT, the MAIN CONTRACTOR may forthwith and without notice to the SUBCONTRACTOR make a demand or otherwise call an me Performance Bond or any part hereof.

46.4 The MAIN CONTRACTOR shall be entitled to utilise moneys received under the Performance Band in whatever manner the MAIN CONTRACTOR for deems fit.

46.5 The Performance Bond (or any balance thereof remaining for the credit of the to be returned SUBCONTRACTOR) shall be released or refunded to the SUBCONTRACTOR on the expiration thereof.

47.0 COMMENCEMENT AND COMPLETION OF THE WORKS

47.1 No work under this SUBCONTRACT shall commence unless and until the Performance Bond under CLAUSE 46 has been deposited with the MAIN CONTRACTOR.

47.2 The SUBCONTRACTOR shall commence me SUBCONTRACT Works within seven (7) days after the date of an order in writing under this SUBCONTRACT from the MAIN CONTRACTOR to that effect or such other date stated therein and shall proceed with the *same* with due expedition.

47.3 The SUBCONTRACTOR shall complete the whole of the SUBCONTRACT Works within Completion Period the SUBCONTRACT Completion Period as stated in Appendix 1 or such extended time as may be allowed under CLAUSE 50.

47.4 The whole of the SUBCONTRACT Works shall have been deemed to be completed when accepted in accordance with the provisions of this SUBCONTRACT (hereinafter referred to as the Date of Acceptance of the whole of the SUBCONTRACT Works). Provided Always that such acceptance shall not relieve the SUBCONTRACTOR's obligations to make good any defects pursuant to CLAUSE 55.

47.5 The SUBCONTRACTOR shall conform to the MAIN CONTRACTOR's hours and days of work.

47.5.1 Where additional working hours for the SUBCONTRACTOR is deemed necessary by the MAIN CONTRACTOR then the SUBCONTRACTOR shall duly comply with the MAIN CONTRACTOR's direction.

47.5.2 All costs and expenses arising out of these additional working hours, including the MAIN CONTRACTOR's and Consultant Engineer's attendance fee, shall be borne by the SUBCONTRACTOR.

47.5.3 In the event the SUBCONTRACTOR is desirous of carrying out work beyond the hours observed by the MAIN CONTRACTOR, the SUBCONTRACTOR shall prior to the commencement of such work, obtain the written consent of the MAIN CONTRACTOR. In such event the SUBCONTRACTOR shall be liable for all

costs and expenses arising therefrom including MAIN CONTRACTOR's and Consultant Engineer's attendance fee.

48.0 DAMAGES FOR NON-COMPLETION

48.1 If the SUBCONTRACTOR fails to complete the SUBCONTRACT Works within the SUBCONTRACT Completion Period as stated in Appendix 1 or within any extended time under CLAUSE 50 and the Main Contract certifies in writing that in his opinion the same ought reasonably so to have been completed the SUBCONTRACTOR shall subject to the maximum amount of damages which may be stipulated, pay or allow the MAIN CONTRACTOR a sum calculated at the rate as stated in Appendix 1 as Liquidated and Ascertained Damages (LADs) for the period during which such SUBCONTRACT Works shall so remain and have remained incomplete and the MAIN CONTRACTOR may deduct such damages from any monies due to the SUBCONTRACTOR.

49.0 PARTIAL OCCUPATION

49.1 If at any time or times before the whole of the SUBCONTRACT Works have reached completion, the Employer shall take possession of and occupy any part or parts of the same (any such part being hereinafter in this Condition referred to as " the relevant part ") by issuing a Certificate at Partial Occupation to the MAIN CONTRACTOR in accordance with the provisions of the Contract then notwithstanding anything expressed or implied elsewhere in this SUBCONTRACT:

49.1.1 For the purposes of CLAUSES 48 and 55 hereof, the relevant part shall be deemed to have been completed and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date of the Certificate of Partial Occupation as provided for in CLAUSE 49.1 .

49.1.2 At the end of the Defects Liability Period of the relevant part and if in the opinion of MAIN CONTRACTOR any defects, imperfection, shrinkage or any other faults whatsoever in the relevant which he may have required to be made good under CLAUSE 55 hereof, shall have been made good by the SUBCONTRACTOR, the MAIN CONTRACTOR shall issue a certificate to that effect.

49.1.3 The Liquidated and Ascertained Damages specified under CLAUSE 48 for any period end of delay after such certification of the practical completion of the relevant part under 49.1 shall be reduced in the proportion which the total value of the relevant part bears to the SUBCONTRACT Sum.

49.1.4 *It is expressly* agreed that nothing contained the preceding paragraphs shall entitle the SUBCONTRACTOR to release of the performance bond or any part thereof deposit by him under CLAUSE 46, the intention being that the said Performance Bond or any part thereof shall be released or refunded only upon its expiration as stated in Appendix 1.

50.0 DELAY AND EXTENSION OF TIME

50.1 Upon it becoming reasonably apparent that the progress of the SUBCONTRACT Works is delayed, the SUBCONTRACTOR shall within one (1) month give written notice of the causes of delay fully supported by all relevant documents to the MAIN CONTRACTOR together with an estimate of the likely delays and in the opinion of the MAIN CONTRACTOR the completion of the Subcontract Works is likely to be delayed or has been delayed beyond the SUBCONTRACT Completion Period or beyond any extended date for completion previously ascertained under this CLAUSE :

50.1.1 by Force Majeure; or

50.1.2 by exceptionally adverse weather conditions ; or

50.1.3 by reason of loss or damaged occasioned by any one or more of the excepted risks contained in the MAIN CONTRACTOR All Risks policy taken up by the MAIN CONTRACTOR (provided and to extend that the same is not due to any act or negligence, default or breach of contract by the SUBCONTRACTOR or subsequent SUBCONTRACTOR whether in failing to take reasonable steps to protect the SUBCONTRACT Works or otherwise); or

50.1.4 by reason of the MAIN CONTRACTOR's instruction issued under CLAUSE 24.2 and 36.2 provided that such instructions are not issued due to any default or breach of Sub-contact by the SUBCONTRACTOR or subsequent SUBCONTRACTOR; or

50.1.5 by reason of the SUBCONTRACTOR not having received in due time necessary instructions, decisions information or consent from the MAIN CONTRACTOR which the MAIN CONTRACTOR is obliged to provide or give under the Conditions, including a decision under CLAUSE 18.3 for which he has specifically applied in writing provided that such application was made on a date which having regard to the date for completion or to any extension of time when fixed under CLAUSE 50 was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same: or

50.1.6 by the execution of work not forming part of the SUBCONTRACT by the Employer itself the MAIN CONTRACTOR or by artists, tradesmen, SUBCONTRACTOR or others employed or otherwise engaged by the Employer or the MAIN CONTRACTOR or failure to execute such work: then the MAIN CONTRACTOR shall soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for completion of the SUBCONTRACT Works.

50.2 Provided always; the SUBCONTRACTOR shall use constantly his best endeavours to prevent delay or further delay in the progress of h SUBCONTRACT Works, howsoever caused;

51.0 NOTICES AND INSTRUCTIONS

51.1 All notices to be given to either the MAIN CONTRACTOR or the SUBCONTRACTOR and all instruction to be given to the SUBCONTRACTOR under the terms of the SUBCONTRACT shall be sent by post, cable, telex or facsimile transaction to or left at the principle place of business of the MAIN CONTRACTOR or SUBCONTRACTOR, as the case may be, or such other address as the MAIN CONTRACTOR or SUBCONTRACTOR shall nominate for that purpose.

51.2 Either party may change the nominated address to another address by prior notice to the other party.

52.0 FIXED AND FIRM PRICE CONTRACT

52.1 Unless otherwise stated, notwithstanding any changes in legislations, regulations and byelaws during and throughout the Contract Period, this is a FIXED AND FIRM Price Subcontract.

52.2 Hence, there shall no adjustment to the contract rates whatsoever due to fluctuations or escalations or variation in prices or cost of materials, labour, rental, plants, fuel, power, currencies, equipment, taxes, duties, and etc.

53.0 TERMINATION

53.1 TERMINATION WITHOUT CAUSE

In addition to the MAIN CONTRACTOR's rights set forth in CLAUSE 53.2, the MAIN CONTRACTOR may, at any time without assigning any reason and at its absolute discretion, to terminate the SUBCONTRACT any part or parts thereof subject to seven (7) days prior notice in writing. In the event of such notification to terminate the SUBCONTRACT, the SUBCONTRACTOR shall remove from the work Site all SUBCONTRACTOR's construction equipment owned by the SUBCONTRACTOR. In the event of such termination, the SUBCONTRACTOR shall be entitled to the payment for the part of the work performed by the SUBCONTRACTOR up to the date of such termination but shall be entitled to the anticipated profit or consequential or indirect damages arising from termination of this SUBCONTRACT.

The SUBCONTRACTOR shall hold harmless and indemnify the MAIN CONTRACTOR from and against any action, damages claims, demands whatsoever by the SUBCONTRACTOR's MAIN CONTRACTORS and/ or third parties including costs, or legal fees which may be rendered against the MAIN CONTRACTOR arising from termination under this CLAUSE.

Upon the termination without cause by the MAIN CONTRACTOR, upon the effective date of termination, SUBCONTRACTOR shall either immediately or upon such other date as specified in the notice:

- (a) discontinue its performance of the WORKS other than such part of the WORKS as the MAIN CONTRACTOR may instruct for the purpose of protecting, making safe or tidying up such parts of the WORKS as may already have been executed or may be in the course of execution; or
- (b) assign to the MAIN CONTRACTOR or its nominee, to the extent required by the MAIN CONTRACTOR all WORKS and other obligations and any rights and titles; or
- (c) except for those SUBCONTRACT as are required for the WORKS as stipulated in 53.1(a) which subcontract shall terminate upon completion of such work, terminate all subcontract and other obligations not assigned to the MAIN CONTRACTOR pursuant to (b) above; or



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- (d) enable the MAIN CONTRACTOR or its nominee, to take over the WORKS so far completed and more specifically, all or the relevant part of the EQUIPMENT, MATERIAL and SUPPLIES in the SUBCONTRACTOR's care, custody or control; or
- (e) remove from the SITE all CONSTRUCTION EQUIPMENT owned by the SUBCONTRACTOR, unless otherwise purchased by MAIN CONTRACTOR
- (f) deliver to the MAIN CONTRACTOR, or its nominee, all original drawings, reproducible, schedules, specifications, calculations and all other data prepared by the SUBCONTRACTOR or any sub-SUBCONTRACTOR in connection with the WORKS and all documents, drawings and other data supplied to the SUBCONTRACTOR by or on behalf of MAIN CONTRACTOR in connection with the WORKS.

- 53.1.2 In the event of such termination, the SUBCONTRACTOR shall be entitled to a sum of money representing:
- (a) the actual cost incurred by the SUBCONTRACTOR in the performance of the part of the WORKS completed in accordance with the SUBCONTRACT up to the effective date of termination referred to in this CLAUSE broken down according to the following categories:
 - i. the per diem cost of the SUBCONTRACTOR's home office personnel as per final approved quotation of the SUBCONTRACT and the SUBCONTRACTOR's overhead thereon;
 - ii. the per diem cost of the SUBCONTRACTOR's personnel at the SITE as final approved quotation in the SUBCONTRACT and the SUBCONTRACTOR's overheads thereon;
 - iii. the cost of such items of CONSTRUCTION EQUIPMENT as are owned by the SUBCONTRACTOR, during the period they were at the SITE for purposes required under the SUBCONTRACT;
 - iv. demobilisation costs of the SUBCONTRACTOR's personnel under (ii) above and CONSTRUCTION EQUIPMENT under (iii) above to their next destination or to SUBCONTRACTOR's base, whichever is the lower; or
 - v. properly and lawful amounts paid by the SUBCONTRACTOR to any sub-SUBCONTRACTOR.
 - (b) subject to clause 53.1.5 the actual cost in as far as not already covered under clause 53.1.2 (a) incurred by the SUBCONTRACTOR as a result of termination of the SUBCONTRACT.

53.1.3 The amounts established in accordance with clause 53.1.2 shall be expressed in the agreed currencies as identified in the SUBCONTRACT.

53.1.4 The actual cost referred to under clause 53.1.2(a) and clause 53.1.2(b) above shall, if MAIN CONTRACTOR so wishes, be established as sound by external auditors to be appointed by MAIN CONTRACTOR. All cost involved therein shall be for the MAIN CONTRACTOR' account. The SUBCONTRACTOR shall keep appropriate accounting records in order to enable such audit to be carried out without difficulty or delay, as and when required.

53.1.5 As soon as the Parties have reached agreement on the total sum of money to which the MAIN CONTRACTOR is entitled pursuant to this clause 53.1.5, they shall establish the difference between that sum and the total of amounts already paid to the SUBCONTRACTOR by MAIN CONTRACTOR under the SUBCONTRACT. The amount of the difference so established shall be settled between the Parties within thirty (30) calendar days of the date of a debit note submitted by the creditor to the debtor.

53.2 TERMINATION WITH CAUSE

53.2.1 if the SUBCONTRACTOR fails to execute the SUBCONTRACT Works in accordance with the SUBCONTRACT in any respect or neglects to carry out any of his obligations under the Subcontract, the MAIN CONTRACTOR shall reserve the rights to undertake or to employ end pay other persons to execute such work *or* to carry am such obligations which the SUBCONTRACTOR has failed to execute *or* carry out; and all costs thereby incurred shall be deducted from any money (including any sum retained as retention fund pursuance to CLAUSE 47 *or any amount that are* rightfully due or become due to the SUBCONTRACTOR .

53.2.2 If the SUBCONTRACTOR fails to perform in any aspects in the following manners :-

- i. without reasonable cause suspends the carrying out of the SUBCONTRACT Works or any section thereof before completion; or
- ii. if he fails to proceed regularly and diligently with the performance of his obligations under the Sub-Constuded; or
- iii. fails to adhere to the Work program of works under CLAUSE 10; or
- iv. fails to execute the SUBCONTRACT Works in accordance to SUBCONTRACT or persistently neglects to carry out his obligations under the SUBCONTRACT ; or
- v. without the prior consent of the MAIN CONTRACTOR assigns his right to receive any payment under the SUBCONTRACT or sublet the whole or any section *or* part of the SUBCONTRACT Works; or

- vi. if he refuses or persistently neglects to comply with a written instructions from the MAIN CONTRACTOR to remove and replace any defective work or improper materials or goods: *or*
- vii. if he in any manner defaults an any of his obligations contained herein, then the MAIN CONTRACTOR may give to him a notice by registered post or by recorded delivery specifying the default and if the SUBCONTRACTOR either shall continue such default for seven (7) days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not) then the MAIN CONTRACTOR may, without prejudice to any other rights or remedies he may possess, thereupon by a notice sent by registered post or by recorded delivery determine the employment of the SUBCONTRACTOR under the SUBCONTRACT.

53.2.3 Alternately, if the SUBCONTRACTOR:

- (i) commits act of bankruptcy; *or*
- (ii) becomes insolvent or compounds with or makes arrangement with his creditors; *or*
- (iii) being a company, has a winding up order made against him; *or*
- (iv) has a provisional liquidator receiver or manager of his business or undertaking duly appointed or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject to the said floating charge.
- (v) then in any such event, without prejudice to any other rights it may possess, the MAIN CONTRACTOR may by a notice sent by registered past forthwith determine the employment of the Sub- MAIN CONTRACTOR under this SUBCONTRACT.

53.2.4 if the MAIN CONTRACTOR's employment under the Contract is determined for any reason whatsoever then the SUBCONTRACTOR's employment hereunder shall also forthwith automatically determine, In such event the provision of the Contract as are applicable to the MAIN CONTRACTOR shall also apply in full force and effect on the SUBCONTRACTOR,

53.2.5 In the event of the MAIN CONTRACTOR's employment under this Contract being determined under CLAUSE 53.2.2 or 53.2.3 the provisions under CLAUSE 53.2.6 to 53.2.12 shall apply:

53.2.6 the SUBCONTRACTOR shall immediately cease all operations on the SUBCONTRACT Works, remove his personnel and workmen from the Site or such portions of *the* Site where the SUBCONTRACT Works are being carried out leaving all temporary buildings, plant, tools, equipment, goods and unfixed materials belonging to him upon the Sites save only such as he may at any time be specifically directed in writing by the MAIN CONTRACTOR to remove therefrom.

53.2.7 the MAIN CONTRACTOR may carry cut and complete the SUBCONTRACT Works or and pays a third party to carry out and complete the SUBCONTRACT Works which remains incomplete at the time of determination and he *or* they may enter upon the SUBCONTRACT Works and use all temporary buildings, plants, tools, equipment, goods and materials intended far, delivered to *or* placed on or adjacent to me SUBCONTRACT Works and may purchase all materials and goods necessary for the carrying out and completion of the SUBCONTRACT Works.

53.2.8 The MAIN CONTRACTOR shall also be allowed access to such design information as may be held by the SUBCONTRACTOR but only insofar as such information shall relate to the SUBCONTRACT Works and have been paid far under this SUBCONTRACT.

53.2.9 The SUBCONTRACTOR shall if so required assign to the MAIN CONTRACTOR without payment the benefit *or* any agreement for the supply of materials or goods and/*or* for the execution of any work for the purposes of this SUBCONTRACT.

53.2.10 The MAIN CONTRACTOR shall have power but shall not be obliged to pay any supplier or subsequent SUBCONTRACTORs for any materials or goods delivered or any work executed for the purposes of this SUBCONTRACT (whether before or after the date of determination) for which the SUBCONTRACTOR has failed to make payment.

53.2.11 The SUBCONTRACTOR shall as and when required remove from the Site any temporary buildings, plant. tools, equipment. materials and goods belonging to or hired by him within such reasonable time as the MAIN CONTRACTOR may specify in a written notice to him and in default the MAIN CONTRACTOR may (but without being responsible for any loss or damage) remove and sell any such property belonging to the SUBCONTRACTOR holding the proceeds less all cost incurred to the credit of the SUBCONTRACTOR.

53.2.12 No further sum shall be due to the SUBCONTRACTOR until after the completion of the SUBCONTRACT Works under CLAUSE 53.2.7.



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- 53.2.13 The SUBCONTRACTOR shall allow or pay to the MAIN CONTRACTOR the amount of any loss and/or damages caused to the MAIN CONTRACTOR by the determination of his employment under this Subcontract including but not limited to the following:
- 53.2.14 if or as soon as the arrangement for the completion of the SUBCONTRACT Works made by the MAIN CONTRACTOR enable them to make a reasonably accurate assessment of the ultimate cost to the MAIN CONTRACTOR of completing the SUBCONTRACT Works following the determination of the SUBCONTRACTOR's employment and the engagement of other MAIN CONTRACTORs or persons, the MAIN CONTRACTOR may issue a statement of the amount of the costs so incurred or to be incurred by the MAIN CONTRACTOR;
- 53.2.15 the statement referred to in CLAUSE 59.6.1 shall state separately the sums previously paid to the SUBCONTRACTOR by the MAIN CONTRACTOR, the sums paid or due or ;
- 53.2.16 to become due to the other MAIN CONTRACTORs or persons engaged by the MAIN CONTRACTOR to complete the SUBCONTRACT Works, any sums paid to SUBCONTRACTORs or suppliers under CLAUSE
- 53.2.17 and any other costs or expenditure incurred or to be incurred by the MAIN CONTRACTOR in completing the SUBCONTRACT Works (all such costs herein referred to as 'the Sub- Contract Completion Costs')
- 53.2.18 the statement shall also state the final SUBCONTRACT Sum allowing for any Variations or other matters which would have resulted in an adjustment of the original SUBCONTRACT Sum and for any other sums which the MAIN CONTRACTOR might be entitled under the terms of the SUBCONTRACT to deduct therefrom, would have been payable under the SUBCONTRACT had the SUBCONTRACTOR's employment not been determined; if the final SUBCONTRACT Sum is less than the SUBCONTRACT Completion Cost, the difference shall be a debt payable by the SUBCONTRACTOR to the MAIN CONTRACTOR;
- 53.2.19 within a reasonable time after the completion at the SUBCONTRACT Works and the issuance of the Certificate of Completion of Making Good Defects the MAIN CONTRACTOR shall issue a final version of the statement referred to in CLAUSE 53.2.14 to 53.2.18 indicating the actual loss and/or damage properly incurred by the MAIN CONTRACTOR for completing the SUBCONTRACT Works together with an administrative fee of not less than twenty-five percent (25%) of the value of the SUBCONTRACT completion costs.
- 53.2.20 Notwithstanding the provisions of CLAUSE 53.2.18 if the actual loss and/or damage is more than the final SUBCONTRACT Sum, the difference shall be a debt payable by the SUBCONTRACTOR to the MAIN CONTRACTOR. And if the actual loss and /or damage is less than the final SUBCONTRACT Sum. the difference shall be a debt due by the MAIN CONTRACTOR to the SUBCONTRACTOR ;
- 53.2.21 The SUBCONTRACTOR is responsible for all other losses, liability and expenses incurred by the MAIN CONTRACTOR under this CLAUSE 53.2

54.0 COMPETENT SITE MANAGEMENT TEAM

- 54.1 For efficient administration and implementation of the SUBCONTRACT Works, the SUBCONTRACTOR shall at its own cost appoint and engage competent staff including a full time site agent to carry out, supervise and implement the SUBCONTRACT Works to the satisfaction of the MAIN CONTRACTOR.
- 54.2 The said site agent shall at all material times be authorized and empowered to receive instructions from the MAIN CONTRACTOR and act on them promptly. Such site agent shall not give any undertaking nor assume any liability on behalf of the MAIN CONTRACTOR without the prior written consent of the MAIN CONTRACTOR. The SUBCONTRACTOR hereby undertakes to indemnify the MAIN CONTRACTOR against all loss and expense suffered by the MAIN CONTRACTOR in consequence of any act or omission of the site agent.
- 54.3 The SUBCONTRACTOR shall only employ such technical staff, foreman, artifices and laborers on the Works as are thoroughly efficient and good character. If, in the sole opinion of the MAIN CONTRACTOR any person employed by the SUBCONTRACTOR misconducts himself or has caused delays or is incompetent, the SUBCONTRACTOR when so directed by the MAIN CONTRACTOR in writing shall at once remove such person from the Works and he shall not again be employed on the Works without permission of the MAIN CONTRACTOR. Any person so removed from the Works shall be replaced without delay by a competent substitute approved by the MAIN CONTRACTOR. Provided that the SUBCONTRACTOR shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the MAIN CONTRACTOR under this CLAUSE.



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55.0 OUTSTANDING WORK AND DEFECTS

- 55.1 The SUBCONTRACTOR shall complete the SUBCONTRACT Works as required by Sub CLAUSE 4.0 before the issue of the Certificate of Practical Occupation/Completion in respect of the Works. In case of the Partial Occupation, before a Certificate of Partial Practical Occupation/Completion is issued in respect of the Section or Sections or part of the Works in which the SUBCONTRACT Works are comprised, the SUBCONTRACTOR shall continue to maintain the SUBCONTRACT Works in the condition required by the Contract to the satisfaction of the MAIN CONTRACTOR/Employer. In either case, the SUBCONTRACTOR shall remedy every defect therein from whatever cause arising until the said Certificate of Practical Occupation/Completion or its equivalent is issued in respect of the Works or such Section or Sections or any part or parts thereof. Subject to CLAUSE 56, the SUBCONTRACTOR shall not be entitled to any additional payment for doing so.
- 55.2 After the issuance of the Certificate of Practical Occupation/Completion in respect of the Works or of the Section or Sections or any parts thereof in which the SUBCONTRACT Works are comprised, as the case may be, the SUBCONTRACTOR shall remedy such defects in the SUBCONTRACT Works throughout the Defects Liability Period as stipulated in Appendix -1.
- 55.3 The protection of the SUBCONTRACT Works shall be the responsibility of the SUBCONTRACTOR. Any loss or damage to the SUBCONTRACT Works shall be the sole risk of the SUBCONTRACTOR.
- 55.4 The plant, tools, equipment or other property belonging to or provided by the SUBCONTRACTOR shall be at the sole risk of the SUBCONTRACTOR and any loss or damage to the same or caused by the same shall be the sole liability of the SUBCONTRACTOR.
- 55.5 Notwithstanding the above, the SUBCONTRACTOR shall assume complete responsibility for any failure, defects, damage or fault in the Works, Equipment, Supplies, Material, Spare Parts, process and / or poor workmanship due to improper design, engineering, procurement, specifications, storage, construction, and quality of workmanship, whereby the SUBCONTRACTOR shall be liable to make the necessary corrective measures at his/her own expenses and costs.
- 55.6 In the event that due to mistakes, negligence, omissions or errors in the Works and for whatever reason falling within the SUBCONTRACTOR's obligations, there is a failure, defect, damage or fault in the Works, Equipment, Supplies, Material or Spare parts, and / or SUBCONTRACTOR is unable to undertake, perform or verify any of the Guarantees, or complete the Works, the SUBCONTRACTOR shall proceed to effect the rectifications, modifications, additions and / or changes which are necessary to eliminate the defects and / or faults and thereby to achieve the specified guarantees and criteria. The SUBCONTRACTOR shall provide, at no cost and expense to the MAIN CONTRACTOR, all necessary work services, Equipment, Material, Supplies, and Spare Parts to complete the Work. All remedial work shall be commenced within one (1) calendar week of SUBCONTRACTOR having been notified in writing by the MAIN CONTRACTOR of such failure, defect, damage or fault and shall be completed as soon as possible within the time to be determined by the MAIN CONTRACTOR.
- 55.7 If the SUBCONTRACTOR delays, neglects or refuses to take the necessary measures to eliminate the failure, defects, damage and / or faults expeditiously, then the MAIN CONTRACTOR may take such remedial steps as the MAIN CONTRACTOR deems necessary to eliminate the same and correct all associated problems. The cost of such steps taken by the MAIN CONTRACTOR shall be recoverable in any manner from the MAIN CONTRACTOR at the discretion of the MAIN CONTRACTOR in accordance with the provisions of this SUBCONTRACT and applicable laws. Such remedial work as may be undertaken by the MAIN CONTRACTOR by way of employment another third party shall not discharge, alter or reduce the SUBCONTRACTOR's obligations under this SUBCONTRACT.
- 55.8 With regards to defects found during inspection before the dispatch of Equipment, Material or Supplies, from the SUBCONTRACTOR" shop or to defects materializing during erection or Pre-Commissioning or Commissioning tests at the Site or in the Works, SUBCONTRACTOR shall immediately advise the MAIN CONTRACTOR to the action proposed to be taken to replace or repair the defective Equipment, Material and/or Supplies in the shortest possible time. The MAIN CONTRACTOR shall have the right to approve or reject the proposed action without affecting SUBCONTRACTOR's obligations under the SUBCONTRACT. With respect to Spare Parts, if any defect is found in the Suppliers' supplied Spare Parts within the period during the valid guarantee period, the SUBCONTRACTOR shall immediately undertake necessary measures to have the Vendor replace the defective Spare Parts within the shortest possible time, including air freighting of the Spare Parts at the SUBCONTRACTOR's cost.



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- 55.9 Whenever any of the defects referred to under this provision appear, and SUBCONTRACTOR has advised the MAIN CONTRACTOR thereof, the defective Material shall be examined by the SUBCONTRACTOR and the MAIN CONTRACTOR's authorized representatives and the procedure specified hereunder shall apply in connection with any repair and/or replacement.
- 55.10 In the event that the defect and/or damage was been agreed by both parties to be a minor defect, the SUBCONTRACTOR shall satisfactorily rectify the same through the most expeditious means.
- 55.11 In the case of a major, serious or extensive defect or damage, the SUBCONTRACTOR shall propose to the Company the most efficient and expeditious method of making good the defect or damage and undertake at its own expense, one of the following methods subject however to considerations of efficiency, speed and the Schedule.
- (i) The undertaking of repair/rectification work or alteration at Site or
 - (ii) Removal of the defective or damaged Material from the Site and the undertaking of repair or rectification at a site for which MAIN CONTRACTOR shall stipulate the location where this repair or rectification will be performed or
 - (iii) Replacement of new Material.
- 55.12 Upon completion of such repair or replacement, the MAIN CONTRACTOR may require the SUBCONTRACTOR to carry out additional tests required under the SUBCONTRACT before accepting the repair or replacement.
- 55.13 If SUBCONTRACTOR fails to demonstrate any of the Guarantees and tests as required, and if any one and/or other of the factors or reasons affect, impair or prevent the proper operation, capacity and deliverability of the Facilities/Equipment under the terms of the Contract, whether due to any discrepancies, or mistakes, errors and/or omissions in design, engineering, inspection, procurement and construction, MAIN CONTRACTOR shall require SUBCONTRACTOR to carry out such modification, correction, rectifications and replacement at no expenses to the MAIN CONTRACTOR. The time required if any to carry out each action by MAIN CONTRACTOR shall not in any way absolve it of any liabilities for the period of delay and/or application of CLAUSE 3 i.e. SUBCONTRACTOR's Liability & Indemnity, SUBCONTRACTOR shall complete the above SUBCONTRACT Works in conformity with the requirement of the SUBCONTRACT without prejudice to any of the MAIN CONTRACTOR's other rights.
- 55.14 In the event that there are discrepancies or mistakes in design, process, engineering; instructions, specifications, inspections, procurement, fabrication and supply, civil engineering, erection, and errors and/ or omissions (as the case may be), which require modification, corrections, rectifications and/or Equipment replacement, so as to correct and remove the defects related thereto, with or without replacement of any Equipment, parts and/ or materials or for any other reason which clearly is or is implied to be within SUBCONTRACTOR's responsibility and scope of SUBCONTRACT Work, then the MAIN CONTRACTOR may at its discretion require the SUBCONTRACTOR to undertake such modifications, corrections, rectifications or Equipment replacement and to submit a detailed report to the MAIN CONTRACTOR specifying the extent, nature, degree and effect of the discrepancies, mistakes, errors and /or omissions above referred in relation to the SUBCONTRACT Works.
- 55.15 The MAIN CONTRACTOR shall assess the full impact of such report, and following consultations with the Sub-MAIN CONTRACTOR or with any other person, firm, or corporation as the MAIN CONTRACTOR may deem expedient (with or without the presence of the SUBCONTRACTOR), the MAIN CONTRACTOR shall provide the SUBCONTRACTOR with an allotted time upon specified conditions for the undertaking of such modification(s), rectification(s), replacement(s), corrective engineering and (if applicable) the making good of faulty workmanship and defective materials.
- 55.16 The extension and time allowed to the SUBCONTRACTOR hereby shall not in any way relieve SUBCONTRACTOR of any liabilities for the period of delay and /or application of CLAUSE 3 and CLAUSE 53 as the case may be. The SUBCONTRACTOR shall complete the above SUBCONTRACT Works in conformity with the requirements of the Contract and shall, at the discretion of the MAIN CONTRACTOR, be granted such further extensions as may be necessary without prejudice to any of the MAIN CONTRACTOR's rights as aforementioned.
- 55.17 The MAIN CONTRACTOR shall extend the period of validity of the Performance Bond to be commensurate with the period of Extension of Time being granted by the MAIN CONTRACTOR.
- 55.18 Subject to the MAIN CONTRACTOR's right to hire assistance from any other SUBCONTRACTOR at their sole discretion, the SUBCONTRACTOR's obligation to modify Work and rectify the defects and to take corrective steps including the replacement of Supplies, Material and/or Spare Parts shall be continuous and unabated, for



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the successive periods authorized by the MAIN CONTRACTOR in writing as stipulated under CLAUSE 55.17 above and in accordance with the term of the SUBCONTRACT with all costs to be borne by the SUBCONTRACTOR. Notwithstanding the exercise by the MAIN CONTRACTOR of its rights to hire external assistance, and / or exercise other remedies pursuant to this SUBCONTRACT, the obligations of the SUBCONTRACTOR herein shall not end until all of the proper and necessary changes are made.

- 55.19 Notwithstanding anything to the contrary elsewhere in the SUBCONTRACT, the SUBCONTRACTOR's obligations to execute the modification, corrections, rectifications, and replacement of Material, Supplies and/or Spare Parts shall be unlimited.
- 55.20 Any extension of time granted to the SUBCONTRACTOR under the provisions of this CLAUSE 55 shall be without prejudice to any rights or remedies of the MAIN CONTRACTOR whatsoever under this SUBCONTRACT, should the SUBCONTRACTOR fail to accomplish the work within the given extended time.
- 55.21 No extension of time, whether on the MAIN CONTRACTOR's initiative or on the application of the SUBCONTRACTOR, shall be deemed to have been granted unless the MAIN CONTRACTOR specifically states so in writing to the SUBCONTRACTOR.

56.0 INSURANCES

- 56.1 The SUBCONTRACTOR shall affect such insurance policies as specified in the Special Provisions and All Risk Physical Damage Insurance covering loss or damage to the SUBCONTRACTOR's Equipment and other property of the SUBCONTRACTOR at the Site. The SUBCONTRACTOR shall keep in force such insurance from the time that so much of the Site and such access is made available to him as may be required to enable him to commence and proceed with the execution of the SUBCONTRACT Works in accordance with the SUBCONTRACT until he has finally performed his obligations under the SUBCONTRACT.
- 56.2 Provided that the SUBCONTRACTOR shall insure against the liability in respect of any person employed by him on the SUBCONTRACT Works in such manner that Employer and/or the MAIN CONTRACTOR is indemnified under the policy.
- 56.3 The MAIN CONTRACTOR shall keep in force, until such time as a Completion Certificate is issued in respect of the Main Works or the Main Works have ceased to be at his risk under Main Contract, the MAIN CONTRACTOR's All Risk Policy and the Workmen's Compensation Policy.
- 56.4 In the event of the SUBCONTRACT Works, Temporary Works, Materials or other things belonging to the SUBCONTRACTOR being destroyed or damaged during such period in such circumstances that a claim is established in respect thereof under the said policy, then the SUBCONTRACTOR shall be paid the amount of such claim, or the amount of his loss, whichever is the less, and shall apply such sum in replacing or repairing that which was destroyed or damaged. Save as aforesaid the SUBCONTRACT Works shall be at the risk of the SUBCONTRACTOR until a Completion Certificate is issued in respect of the Main Works or, if a Completion Certificate is issued in respect of a Section or Sections or part or parts of the Main Works, until a Completion Certificate is issued in respect of the last of the Sections or parts of the Main Works in which the SUBCONTRACT Works are comprised. The SUBCONTRACTOR shall make good all loss or damage occurring to the SUBCONTRACT Works prior thereto at his own expense. The SUBCONTRACTOR shall also be liable for any loss or damage to the SUBCONTRACT Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Sub-CLAUSE 55.2
- 56.5 Where by virtue of this CLAUSE either party is required to effect and keep in force insurance, he shall if so required by the other party provide evidence of insurance and the receipt for the payment of the current premium.
- 56.6 If either the MAIN CONTRACTOR or the SUBCONTRACTOR fails to effect and keep in force any of the insurance required under the SUBCONTRACT, or fails to provide evidence of insurance, when required, then and in any such case the other party may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and may from time to time deduct the amount so paid from any monies due or to become due to the party in default, or recover the same as a debt due from the party in default, as the case may be.

57.0 PAYMENTS

- 57.1 All quantities and measurement shall be made jointly by the representatives of the MAIN CONTRACTOR and SUBCONTRACTOR at the site according to the actual work done and agreed upon before the SUBCONTRACTOR



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submits his monthly progress claim as mentioned Sub-CLAUSE 57.2 hereof. Such quantities and measurements shall be certified by the Project Manager/Site Agent and approved by the Senior Project Manager or the Project Director of the MAIN CONTRACTOR.

- 57.2 No Interim Payment Certificates of the MAIN CONTRACTOR (whether the quantity is measured or not) shall be considered as conclusive evidence as to the quantity of any work carried out or materials or goods supplied. The MAIN CONTRACTOR may issue any certificate to make any correction or modification in any previous certificates which have been issued by him.
- 57.3 No Certificate other than the Statement of Final Accounts incorporating the final measurements and rates/prices issued by the Senior Project Manager or Project Director shall be considered as final and binding.
- 57.4 The SUBCONTRACTOR shall in accordance with the provisions of the Main Contract submit a statement of work done on a monthly basis at least seven (7) days before the MAIN CONTRACTOR submits the claim to the Employer.
- 57.5 All interim payments shall be made to the SUBCONTRACTOR within the agreed period of honoring interim payment upon receipt by the MAIN CONTRACTOR of the same from the Employer under the terms of the Main Contract.
- 57.6 All interim payments shall be subjected to a 10% (Ten Per centum) retention to a maximum limit of 5% (Five Per cent) of the SUBCONTRACT Sum. The First Moiety of retention monies shall be released after issuance of Certificate of Occupation/Practical Completion of the Contract or date of finalization of the final accounts whichever is the later. The Second Moiety of retention monies shall be only released upon the issuance of Certificate of making good defects or the Final Certificate from the Employer, whichever is the later.
- 57.7 Unless otherwise provided, there shall be no advance payment in this SUBCONTRACT.
- 57.8 The MAIN CONTRACTOR shall be entitled to deduct from or set off against each progress payment due from him to the SUBCONTRACTOR (including any retention money, damages, liquidated damages etc.) any sum or sums which the SUBCONTRACTOR may be liable to pay to the MAIN CONTRACTOR under the terms of this SUBCONTRACT. In the event that the amount in a relevant progress payment is insufficient to allow the MAIN CONTRACTOR to deduct there from the full sum under the provisions of this SUBCONTRACT the MAIN CONTRACTOR is entitled to deduct from the next or subsequent progress payment such balance due.

58.0 STATUTORY AND OTHER OBLIGATIONS

- 58.1 The SUBCONTRACTOR shall comply with and give all notices required under any Statutes or instrument rule or regulation made by Government Departments and Local or other Authorities affecting the SUBCONTRACT Works and shall indemnify the MAIN CONTRACTOR against any breach of or non-compliance with such obligations. Provided always that the SUBCONTRACTOR shall not be entitled to any claim for additional cost payment and extension of time for completion whatsoever in respect of his compliances with this CLAUSE.
- 58.2 Occupational Safety and Health Act
The SUBCONTRACTOR shall comply with the provisions of the OCCUPATIONAL SAFETY AND HEALTH ACT 1994 (OSHA 1994) or any modification thereof or any other law relating thereto and rules made there under from time to time and the SUBCONTRACTOR shall observe and give effect to the provisions of any law for the time being in force.
- 58.3 The SUBCONTRACTOR shall indemnify and keep indemnified the MAIN CONTRACTOR against any claim or penalties under the OSHA 1994 and any other law relating thereto that may be suffered by the MAIN CONTRACTOR for the non-compliance or non-observance by the SUBCONTRACTOR of the aforesaid laws.
- 58.3 In the employment of workmen for the execution of the SUBCONTRACT, the SUBCONTRACTOR shall comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employee's Provident Fund Act revised 1991, the Industrial Relations Act 1967 and may other law relating to the employment of workmen, or any subsequent modification or re-enactment of the same.
- 58.4 Employees' Social Security Act 1969
If the workers employed by the SUBCONTRACTOR in the SUBCONTRACT Works are liable for coverage under the Employees' Social Security Act 1969 and any statutory modifications or re-enactment thereof the SUBCONTRACTOR shall register his employees and contribute under the Social Security Scheme and comply



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with the provisions of the said Act. The SUBCONTRACTOR shall produce to the MAIN CONTRACTOR the Code Number and Social Security Numbers of all workers on site and the receipts of his contribution.

59.0 ANTI-BRIBERY & ANTI-CORRUPTION

59.1 None of the MAIN CONTRACTOR or any of its AFFILIATES, nor, any director, officer, agent, employee or other PERSON acting on behalf of the MAIN CONTRACTOR or any of its AFFILIATES is aware of or has taken any action, directly or indirectly that would result in, or is at any time prior to or after the date hereof being subject to any internal and/or regulatory investigation in relation to, a violation by such PERSONS of the MAIN CONTRACTOR Code of Business Ethics ("COBE"), the MAIN CONTRACTOR Anti-Bribery Policy as well as any applicable anti-bribery law, including but not limited to, the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act"), the United Kingdom Bribery Act 2010 ("UK Bribery Act") and U.S. Foreign Corrupt Practices Act of 1977 ("FCPA"). Furthermore, the MAIN CONTRACTOR and its AFFILIATES have at all times conducted their businesses in compliance with the MACC Act, the UK Bribery Act, the FCPA and similar laws, rules or regulations (as amended from time to time) (collectively, "Anti-Bribery Laws") and have instituted, maintained and at all times complied with their policies and procedures designed to ensure continued compliance with such Anti-Bribery Laws.

59.2 CODE OF CONDUCT AND BUSINESS ETHICS

59.2.1 The MAIN CONTRACTOR shall comply with the relevant parts of the MAIN CONTRACTOR Code of Conduct and Business Ethics, Country Supplement, other applicable rules, regulations, policies, procedures, guidelines and requirements as updated by MAIN CONTRACTOR from time to time in the performance of the WORKS as published in <http://msog.com.my/Home/quality>

59.2.2 The MAIN CONTRACTOR shall ensure that all its ASSOCIATED PERSONS who perform WORKS or provide EQUIPMENT, MATERIALS and/or SUPPLIES in connection with this CONTRACT comply in all relevant part with the MAIN CONTRACTOR Code of Conduct and Business Ethics, Country Supplement, other applicable rules, regulations, policies, procedures, guidelines and requirements as updated by MAIN CONTRACTOR from time to time.

59.2.3 From time to time, at the request of the COMPANY, the MAIN CONTRACTOR shall confirm in writing that the MAIN CONTRACTOR and its ASSOCIATED PERSONS have complied with the obligations imposed upon it in this and provide any information reasonably requested by MAIN CONTRACTOR in support of the compliance obligations.

59.2.4 In the event that the MAIN CONTRACTOR and/or its ASSOCIATED PERSONS refuses, fails and/or is negligent in complying with the provisions as stated in this **CLAUSE 59.2**, the MAIN CONTRACTOR may, without prejudice to any other remedies available to it within this CONTRACT or under the LAWS, take any such action as deemed necessary including termination of this CONTRACT.

59.3 CONFLICT OF INTEREST AND FIGHTING CORRUPTION AND UNETHICAL PRACTICES

The SUBCONTRACTOR shall at all times:

- (i) comply with all RELEVANT REQUIREMENTS and RELEVANT POLICIES;
- (ii) have in place and maintain throughout the CONTRACT PERIOD, its own policies and procedures to ensure compliance with the RELEVANT REQUIREMENTS and RELEVANT POLICIES;
- (iii) with respect to any matter arising out of this CONTRACT, maintain adequate internal controls and accurately record all transactions in its books and records;
- (iv) enforce the policies and procedures referred to in **CLAUSE 59.3(ii)** above, where appropriate;
- (v) promptly report to the MAIN CONTRACTOR any breach of this **CLAUSE** arising in connection with this CONTRACT and take such steps as the MAIN CONTRACTOR may reasonably require in order to rectify any such breach;
- (vi) promptly report any request or demand for any undue financial or other advantage of any kind received by the MAIN CONTRACTOR in connection with the performance of this CONTRACT and take such steps in response to any such request as the MAIN CONTRACTOR may require;
- (vii) immediately notify the MAIN CONTRACTOR in writing if a foreign public official becomes an officer or employee of the MAIN CONTRACTOR or acquires a direct or indirect interest in the MAIN CONTRACTOR's company and that the MAIN CONTRACTOR warrants that no foreign public officials are officers or employees of the MAIN CONTRACTOR or have direct or indirect interests in the MAIN CONTRACTOR at the date of this CONTRACT.



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- 59.4 The MAIN CONTRACTOR shall ensure that all its ASSOCIATED PERSONS who perform WORKS or provide EQUIPMENT, MATERIALS or SUPPLIES in connection with this CONTRACT do so on the basis of a written contract which imposes RELEVANT OBLIGATIONS on the ASSOCIATED PERSONS.
- 59.5 The MAIN CONTRACTOR shall be responsible for the observance and performance by its ASSOCIATED PERSONS of the RELEVANT OBLIGATIONS and shall be directly liable to COMPANY for any breach of the RELEVANT OBLIGATIONS by an ASSOCIATED PERSONS.
- 59.6 Breach of this **CLAUSE 59.3** shall be deemed a material breach and the MAIN CONTRACTOR may terminate this CONTRACT, without any ensuing obligations nor liabilities, except for that incurred prior to the date of the breach.

60.0 SETTLEMENT OF DISPUTES

- 60.1 If any dispute or difference shall arise between the MAIN CONTRACTOR and the SUBCONTRACTOR, (whether during the progress of the SUBCONTRACT Work, or after their completion and whether before or after the termination or breach of this SUBCONTRACT) as to the construction of this SUBCONTRACT or any matter or thing or whatsoever nature in connection with or arising under this SUBCONTRACT, then either the MAIN CONTRACTOR or the SUBCONTRACTOR shall give a notice of such dispute to the other party, in which case the parties shall attempt for the next fifty six (56) days to resolve such dispute amicably before the commencement of arbitration. Such notice shall state that it is made pursuant to this Sub CLAUSE.
- 60.2 Any dispute or difference which has not been amicably settled within fifty-six (56) days after the day on which such notice is given shall be referred to arbitration and final decision of a person to be agreed between the parties to act as the sole Arbitrator.
- 60.3 Within twenty-one (21) days of a reference being made to arbitration as provided in this CLAUSE, if the parties have not agreed on an Arbitrator, then either party may apply to the President of the Institution of Engineers, Malaysia ("the President") to appoint the Arbitrator. Arbitrator under provision of this Sub CLAUSE shall be conducted in accordance with the Rules of Arbitration of the Institution of Engineers, Malaysia.
- 60.4 No steps shall be taken in the reference to the arbitration until after the completion or alleged completion of the Main Works or, with the written consent of the MAIN CONTRACTOR, until the SUBCONTRACT Works have been certified as completed by the Employer. The SUBCONTRACTOR shall not be entitled to suspend or stop work during the intervening period and shall proceed with the SUBCONTRACT Works regularly and diligently until completion of the SUBCONTRACT Works.
- 60.5 The Arbitrator shall be such person as is agreed between the parties or failing agreement, be a person appointed by the Director of the Regional Arbitration Centre in Kuala Lumpur .
- 60.6 The place of arbitration shall be the Regional Centre of Arbitration in Kuala Lumpur in accordance with the Rules of the Centre unless mutually agreed otherwise.
- 60.7 This SUBCONTRACT shall be end shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia: the Arbitrator as provided for in CLAUSE 60 shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this SUBCONTRACT and the SUBCONTRACTOR hereby submits to the jurisdiction of the Arbitrator for the purpose of any such actions and proceedings.
- 60.8 The SUBCONTRACTOR binds himself to acknowledge and accept as final in all respects any decision or award of an Arbitrator in relation to any dispute in relation to any dispute between the parties under his SUBCONTRACT.

61.0 WARRANTIES AND GUARANTEES

- 61.1 The MAIN CONTRACTOR warrants that the Works shall be completed within the Completion Period as stipulated in Appendix 1.
- 61.2 The MAIN CONTRACTOR warrants that at all times before Commissioning, and during the Defects Liability Period/Warranty Period and any extension thereof, the Works pursuant to this Contract and specifically the Equipment, Material, Supplies, Spare Parts, design, engineering and workmanship incorporated into the Works conforms with all requirements of the Contract and shall be free from any deficiencies, faults and defects.



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- 61.3 The MAIN CONTRACTOR warrants that the procurement services will be performed recognizing the MAIN CONTRACTOR/Employer 's long-term dependence on Vendors for service information, assistance and Spare Parts.
- 61.4 The SUBCONTRACTOR warrants that all inspections and tests will be performed in accordance with pertinent codes and standards to ensure that only Equipment and Material meets the Contract requirements and specification are provided; and
- 61.5 The SUBCONTRACTOR warrants that it shall use due diligence in performing, expediting and shipping services to comply with the Schedule.
- 61.6 The SUBCONTRACTOR warrants that the Works shall be executed in accordance with the certified "Approved for Construction" Drawings; that all applicable standards, codes, safety regulation and quality requirements have been met; that the quality of construction work has been checked by suitable means including radiography of welds, regular concrete test, pressure testing, etc., and that proper record have been kept of all these test results; and that all inspections and tests relating to the construction of the Facilities have been properly carried out.
- 61.7 The SUBCONTRACTOR warrants that all Equipment, Supplies and Material shall, when installed, be new and unused, of correct/ current design and workmanship, within and/or above the specification, or if no such specification exist, fully suitable for the use intended and the SUBCONTRACTOR shall without prejudice to the SUBCONTRACTOR's own guarantee hereby obtain in the name of the MAIN CONTRACTOR the best obtainable suitable guarantees and warranties in this respect from the Suppliers of Equipment, Material, Supplies and Spare Parts and shall assume complete responsibility for all the terms of guarantee provisions and such other criteria established by this Contract, inclusive of the warrant ability and fitness for purpose of the Equipment, Material, Supplies and Spare Parts intended for use in the construction and realization of the Works.
- 61.8 If for the purpose of fulfilment by the SUBCONTRACTOR of its obligations under this provision any item of Equipment, Material, Supplies or Spare Parts have to be remedied or replaced, the SUBCONTRACTOR may exercise its rights under the relevant supplier's guarantee as referred to under this CLAUSE 61.5 to the extent that such item of Equipment, Material, Supplies or Spare Parts is remedied or replaced as the case may be, and the SUBCONTRACTOR shall exercise such rights in order to recover all that appears to be recoverable under the applicable guarantee.
- 61.9 Should the SUBCONTRACTOR fail to take any action required according to CLAUSE 61.5, the MAIN CONTRACTOR shall be entitled to take such action or to have such action taken to recover and/or withhold to the extent possible from the SUBCONTRACTOR the costs thereof and /or relating thereto.
- 61.10 The SUBCONTRACTOR warrants that Equipment and Material will be designed and conform to the requirements of the Contract, governing regulations and codes, standards and practices.
- 61.11 The SUBCONTRACTOR warrants the mechanical and structural integrity of Equipment and Material. The SUBCONTRACTOR shall repair or make good, any defect or fault resulting from imperfect or defective Works done or Equipment or Material furnished, including engagement of Vendor for such purpose if necessary, without cost to the MAIN CONTRACTOR.
- 61.12 The SUBCONTRACTOR shall, without prejudice to its own warranty, obtain the best obtainable and suitable warranties of all Equipment and Material from its Vendor. Such warranties shall include warranties of materials, construction or manufacture, and performance. Warranties shall be made for the benefit of the Employer. SUBCONTRACTOR shall be responsible to procure all Vendor warranties for the Employer.
- 61.13 The SUBCONTRACTOR agrees upon request by the MAIN CONTRACTOR to deliver to the MAIN CONTRACTOR all warranties, bonds or other Forms of Guarantee, or indemnity of manufacturer of Material or Equipment and execute assignments thereof.
- 61.14 Should the SUBCONTRACTOR be required as part of the Works to carry out design and engineering works pertaining to the Facilities or any part thereof, the SUBCONTRACTOR shall then warrant that the such design and the engineering works are free from deficiencies and conform to applicable governmental legislation and Regulations, codes and standards, generally engineering practice, establish methods and procedure and in accordance with the requirement of the Contract.
- 61.15 In the event that from the date of Commissioning through the end of Defects Liability Period/Warranty Period it appears that the warranty by the SUBCONTRACTOR under this CLAUSE 61 have not been or are no longer met,



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the MAIN CONTRACTOR shall as soon as possible notify the SUBCONTRACTOR in writing thereof. Promptly upon receipt of the MAIN CONTRACTOR written notice as aforesaid, the SUBCONTRACTOR shall do everything required to have such guarantee met and to repair, replace or make good without cost to the MAIN CONTRACTOR all deficiencies, faults or defects in Works, Facilities, Equipment, Material, Engineering and Workmanship.

- 61.16 The SUBCONTRACTOR shall when fulfilling its obligations referred to under this CLAUSE 61 keep the MAIN CONTRACTOR fully informed of the action that will be taken and the result obtained. Each such action shall require prior approval of MAIN CONTRACTOR, which will not be unreasonably withheld.
- 61.17 If for the purpose of fulfilment by the SUBCONTRACTOR of its obligation referred to under this CLAUSE 61 any item Equipment or Material has to be repaired or replaced, the MAIN CONTRACTOR shall be deemed to have permitted SUBCONTRACTOR to exercise the MAIN CONTRACTOR rights under the relevant Vendor's warranties as to warrantability and fitness of the Equipment and Material to the extent that such item of Equipment and Material a repaired or replaced, as the case may be. Such action taken by the MAIN CONTRACTOR shall not detract from the SUBCONTRACTOR's own warranty of Equipment and Material under this Contract.
- 61.18 Should the SUBCONTRACTOR fail to take any action required according to under CLAUSE 61 the MAIN CONTRACTOR shall entitled to take such action or/to have such action taken and to recover and/or withhold from Contract the cost thereof and/or relating thereto.
- 61.19 SUBCONTRACTOR guarantees in the event of any deficiency, omission, fault or defects arising during the Defects Liability Period, in respect of such deficiency, fault or defect shall be extended without limit to the number of extension, for a period of twelve (12) months from the of rectification(s) to the satisfaction of the MAIN CONTRACTOR/Employer for the affected items.
- 61.20 To the extent that any of SUBCONTRACTOR's warranties are more comprehensive than MAIN CONTRACTOR warranties, or extended for longer periods of time, such warranties shall accrue to the benefit of the MAIN CONTRACTOR.
- 61.21 Unless expressly stated otherwise, nothing in any of these warranties shall in any way limit the liability of the SUBCONTRACTOR.

62.0 FORCE MAJEURE

An event of Force Majeure is an event beyond the control of both or either of the Parties. Events falling within Force Majeure shall include but are not limited to acts of God or force of nature, landslide, lightning, earthquake, flood, fire, explosion, storm or storm warning, tidal wave, tsunami, typhoon, shipwreck and perils to navigation, act of terrorism, act of war (declared or undeclared) of foreign enemy, **necessary by reason of direction or order by any statutory or governmental authorities**, strike [excluding strikes, lockouts or other industrial disputes or action solely amongst employees of SUBCONTRACTOR and VENDOR's act or omission of sovereign or those purporting to represent sovereign states, blockade, embargo, quarantine, public disorder, sabotage, terrorism, declaration of state of emergency, nuclear explosion, expropriation, moratorium, radioactive or chemical contamination or coup d'état (stroke of state) or any events beyond the control of the Parties or either of them.

- 62.1 Without limiting the generality of **the above**, Force Majeure shall exclude the following events:
- events or circumstances arising directly or indirectly from the negligence or default of SUBCONTRACTOR or its associated persons;
 - riots, strikes, lockouts or other industrial action specific to the employees of SUBCONTRACTOR or its sub-SUBCONTRACTORS (or any combination thereof);
 - weather conditions which could reasonably be anticipated given the climate in the geographic area of the SITE, and any other place where WORKS is performed, and any other events or circumstances of a seasonally occurring or repetitive or recurring nature;
 - events or circumstance arising from or connected with the requirements of or compliance with any law or PERMIT;
 - the availability of money or events affecting financial markets;
 - late delivery of WORKS caused by congestion at the SUBCONTRACTOR's SITE(s) or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences;
 - late performance by the SUBCONTRACTOR and/or its sub-SUBCONTRACTOR(S) caused by unavailability of equipment, supervisors, or labour, inefficiencies or similar occurrences; or
 - mechanical breakdown of any item of SUBCONTRACTOR's EQUIPMENT or its sub-SUBCONTRACTOR's equipment, plant, or machinery;

- (i) financial distress of the SUBCONTRACTOR or its sub-SUBCONTRACTOR(S); or
- (j) unless caused by an event or circumstance which is itself a FORCE MAJEURE event, the price or availability of equipment, materials, services or other resources in the marketplace.

- 62.2 If a SUBCONTRACTOR and/or VENDOR is entitled under any agreement relating to the WORKS to relief for Force Majeure on terms additional to or broader than those specified as the CLAUSE 62.0, such additional or broader rights shall not affect the MAIN CONTRACTOR' rights or obligations under the SUBCONTRACT or entitle it to relief under the above definitions.
- 62.3 In the event of Force Majeure, neither the failure nor omission of the MAIN CONTRACTOR or the SUBCONTRACTOR to perform their obligations under this SUBCONTRACT shall be treated as failure or omission to comply with this SUBCONTRACT.
- 62.4 Upon the occurrence of any Force Majeure event, the Party so affected in the discharge of its obligation shall as soon as reasonably practicable give written notice of such event to the other Party. For avoidance of doubt, any declaration of Force Majeure shall be within the exclusive discretion of the MAIN CONTRACTOR, if in the opinion of the MAIN CONTRACTOR, the SUBCONTRACTOR is prevented from performing its obligations under this SUBCONTRACT.
- 62.5 The affected Party shall make every reasonable effort to remove or remedy the cause of such Force Majeure and mitigate its effects as quickly as may be possible.
- 62.6 If either Party considers the event of Force Majeure to be of such severity or that it had continued for a period of thirty (30) days that it effectively frustrates the original intention of this CONTRACT, then the **MAIN CONTRACTOR** may suspend the CONTRACT as per **ARTICLE 63.0 – SUSPENSION OF WORKS** or the Parties may agree that this CONTRACT is terminated with cause as per **ARTICLE 53.2 (TERMINATION WITH CAUSE)**.
- 62.7 For avoidance of doubt, any declaration of Force Majeure shall be within the exclusive discretion of AIN CONTRACTOR, if in the opinion of the MAIN CONTRACTOR, the SUBCONTRACTOR is prevented from performing its obligations under this SUBCONTRACT.
- 62.8 For avoidance of doubt, any delay or failure in performance by either Party herein shall not constitute a default hereunder or give rise to any claims for damages or loss of anticipated profits.
- 62.9 In the event of Force Majeure, the SUBCONTRACTOR shall not be entitled to any compensation for suspension caused by Force Majeure.

63.0 SUSPENSION OF WORKS

- 63.1 Without prejudice to the MAIN CONTRACTOR's other rights or remedies under the SUBCONTRACT, the MAIN CONTRACTOR may, at its discretion, by giving written notice to the CONTRACTOR, suspend the performance of all or any portion of the WORKS. The SUBCONTRACTOR shall continue performance the WORKS to which the suspension does not apply. The MAIN CONTRACTOR shall have the right to suspend the SUBCONTRACT (in part or in whole) for the following reasons:
- (a) Force majeure as per **CLAUSE 62.0 – FORCE MAJEURE** herein;
 - (b) Upon the occurrence of the SUBCONTRACTOR's default
 - (c) For any other operational reason as deemed fit by the MAIN CONTRACTOR; or
 - (d) For the safety of the WORKS or any part thereof insofar as such necessity does not arise from any act or default by the MAIN CONTRACTOR REPRESENTATIVE or the MAIN CONTRACTOR or from any of the excepted risks; or
 - (e) Necessary by reason of direction or order by any statutory or governmental authorities.
- Except for suspension under **CLAUSE 63.1 (a) & (e)** hereinabove, any period of suspension shall not result in any extension of time.
- 63.2 In the event that the COMPANY suspends all or part of the remaining WORKS under **CLAUSE 63** hereinabove, the MAIN CONTRACTOR shall give the SUBCONTRACTOR at least three (3) days prior written notice specifying the effective date of the suspension, including where possible, the anticipated period of suspension.
- 63.3 Upon receipt of the notice of suspension as per **ARTICLE 63.2** hereinabove, the SUBCONTRACTOR shall perform the following on the effective date of suspension:
- (a) immediately cease/discontinue performance of the said suspended part of the WORKS;
 - (b) continue to perform the WORKS which are not affected by such suspension;

- (c) suspend work under subcontracts and place no further subcontracts with respect to the suspended work, other than to the extent required in the notice;
- (d) promptly make every effort to obtain suspension upon terms satisfactory to the MAIN CONTRACTOR of all orders, subcontracts and agreements for hire or lease of the item of hired equipment to the extent that they relate to performance of the WORKS suspended;
- (e) properly protect, secure and maintain the WORKS including those parts of the WORKS suspended;
- (f) not remove from the SITE any SUBCONTRACTOR'S EQUIPMENT, EQUIPMENT and MATERIALS or any part of the WORKS without prior written consent of the MAIN CONTRACTOR; and
- (g) take all measures to minimize the cost of suspension both to the MAIN CONTRACTOR and the SUBCONTRACTOR, including meeting with the MAIN CONTRACTOR on a regular basis.

63.4 The MAIN CONTRACTOR may, at any time, authorize resumption of all or any part of the suspended WORKS by giving notice to the SUBCONTRACTOR specifying the WORKS to be resumed and the effective date of withdrawal of suspension. Upon receipt of such instruction, the SUBCONTRACTOR shall resume the WORKS. Notwithstanding, the aforementioned, either Party may request for a joint examination to the WORKS affected by such suspension.

Notice to Step-In

63.5 If either:

- (a) The MAIN CONTRACTOR reasonably forms the opinion there is or is likely to be a material risk
 - i. to the environment;
 - ii. to the health or safety of any person; or
 - iii. of damage to any part or parts of the WORKS or the SITE; or
- (b) The SUBCONTRACTOR breaches an obligation under the subcontract and upon receiving a maximum of three (3) notices from the MAIN CONTRACTOR, fails within a reasonable time and/or any stipulated time in the notice issued by MAIN CONTRACTOR to either remedy that breach (or overcome its effects), or to commence and continue to diligently pursue the remedy of the breach (or the overcoming of its effects), as applicable,

63.6 then the MAIN CONTRACTOR may, giving a final notice to the SUBCONTRACTOR to that effect:

- (a) Unilaterally and temporarily take or assume partial (having regard to the nature of the issue to be addressed) management and control of the WORKS; and
- (b) Unilaterally take such other steps or action that, in the reasonable opinion of the MAIN CONTRACTOR, are necessary or desirable to:
 - i. minimize the risk to the environment, the general public or of damage to the WORKS or the WORKS SITE; or
 - ii. remedy or overcome the effects of the breach by the SUBCONTRACTOR.(each a "**STEP-IN RIGHT**")

63.7 If the MAIN CONTRACTOR elects to exercise a STEP-IN RIGHT, the SUBCONTRACTOR must assist the MAIN CONTRACTOR wherever and however possible to ensure that the MAIN CONTRACTOR is able to exercise that STEP-IN RIGHT effectively and expeditiously, including giving MAIN CONTRACTOR all rights or access to the SITE that the MAIN CONTRACTOR may reasonably require.

63.8 Upon the MAIN CONTRACTOR exercising its STEP-IN RIGHTS, the SUBCONTRACTOR's rights under the subcontract are suspended to the extent necessary to permit the exercise of those STEP-IN RIGHT. The SUBCONTRACTOR must continue to undertake the WORKS in accordance with its obligations under the subcontract to the extent that the matters which are the subject of those obligations are not being addressed by the exercise of the STEP-IN RIGHT. Any uncertainty as to the interface between the obligations which are the responsibility of the SUBCONTRACTOR and those which are the responsibility of the MAIN CONTRACTOR will be resolved by the MAIN CONTRACTOR acting reasonably.

63.9 The SUBCONTRACTOR:

- (a) irrevocably appoints the MAIN CONTRACTOR, and such persons as are from time to time nominated by the MAIN CONTRACTOR, jointly and severally, as its attorney with full power and authority to exercise the rights of the SUBCONTRACTOR for the purpose of satisfying the MAIN CONTRACTOR's STEP-IN RIGHT; and
- (b) at the MAIN CONTRACTOR's direction, agrees to:
 - i. do all things required to enter into, authenticate and register a formal power of attorney instrument as required under Malaysian Law (including the Powers of Attorney Act 1949); and
 - ii. ratify and confirm whatever action such an attorney takes in accordance with this **ARTICLE 63.9**.

63.10 The MAIN CONTRACTOR may cease to exercise STEP-IN RIGHT at any time and, in any event, will cease to exercise those STEP-IN RIGHT as soon as practical after the reason for exercising the STEP-IN RIGHT has been remedied or its effects overcome. Upon the MAIN CONTRACTOR ceasing to exercise any STEP-IN RIGHT, the SUBCONTRACTOR must immediately recommence performance of the SUBCONTRACTOR's obligations which were suspended.

63.11 The SUBCONTRACTOR acknowledges and agrees that the MAIN CONTRACTOR is not obliged to remedy or overcome the effects of any breach, or to overcome or mitigate any risk or risk consequences, in respect of which the MAIN CONTRACTOR exercises STEP-IN RIGHT.

63.12 Limited reimbursement rights

63.13 Subject to **CLAUSE 63.14** and **CLAUSE 63.15**, where the SUBCONTRACTOR actually and reasonably incurs additional cost as a result of a suspension or exercise of a STEP-IN RIGHT under this **CLAUSE 63 (SUSPENSION OF WORKS)**, such extra cost will be reimbursed by the MAIN CONTRACTOR.

63.14 The CONTRACTOR's entitlement (if any) to reimbursement or other payment as a result of a suspension or exercise of a STEP-IN RIGHT under this **CLAUSE 63 (SUSPENSION OF WORKS)**, will end and be released, unless, within ten (10) working days after receipt of the MAIN CONTRACTOR's notice to (as applicable):

- (a) suspend under **CLAUSE 63.1**; or
- (b) exercise a STEP-IN RIGHT under **CLAUSE 63.5**

The SUBCONTRACTOR gives to the MAIN CONTRACTOR a notice in writing of its intention to make a claim for the extra cost together with an estimate (in reasonable detail) of such extra cost.

63.15 The SUBCONTRACTOR is not entitled to any reimbursement or other payment or relief arising from or connected with the MAIN CONTRACTOR's suspension or exercise of a STEP-IN RIGHT of all or any portion of the WORKS where such suspension or exercise STEP-IN RIGHT:

- (a) is permitted without reimbursement, payment or other relief elsewhere in the subcontract;
- (b) is due to Force Majeure;
- (c) is due to the direction or order by any statutory or governmental authorities
- (d) has arisen as a result of the EVENT OF DEFAULT, breach and/or negligence of the SUBCONTRACTOR;
- (e) has arisen as a result of adverse or inclement climatic conditions at SITE;
- (f) is necessary for the proper execution of the WORKS or for the safety of the WORKS or any part thereof; or
- (g) is directed in accordance with **CLAUSE 24 - ANTIQUITES**.

Should the exercise of STEP-IN RIGHT is due to **CLAUSE 63.15 (b)** above, the MAIN CONTRACTOR has the right to deduct any amount incurred by the MAIN CONTRACTOR to complete the work from the CONTRACT PRICE and such amount deducted shall be deemed to be the amount paid under the subcontract.

Resumption of WORKS, prolonged suspension

63.16 If the COMPANY gives a notice to (as applicable) suspend under **CLAUSE 63** or exercise a STEP-IN RIGHT under **CLAUSE 63.5**:

- (a) and if the MAIN CONTRACTOR does not give notice to the SUBCONTRACTOR to resume the affected WORKS within a period of one hundred and eighty (180) calendar days from the date of suspension or step-in, as applicable;
- (b) then, except where a suspension is under **CLAUSE 63.1(a) to 63.1(e)**, the SUBCONTRACTOR may give notice to the MAIN CONTRACTOR requesting permission to recommence the affected WORKS on a date nominated by the SUBCONTRACTOR in the notice, which shall be no earlier than twenty-eight (28) calendar days from the date the MAIN CONTRACTOR receives the notice.

63.17 If the MAIN CONTRACTOR does not grant the SUBCONTRACTOR's request under **CLAUSE 63.16 (B)**, the SUBCONTRACTOR may, but is not bound to:

- (a) where the suspension or STEP-IN RIGHT, as applicable, affects only part of the WORKS, elect to treat the suspension or step-in as a CHANGE NOTICE to remove the affected WORKS from the SUBCONTRACTOR's scope of work; or
- (b) where the suspension or STEP-IN RIGHT, as applicable, affects the whole scope of work, terminate the subcontract with seven (7) working days' notice, and:
 - i. if the suspension or STEP-IN RIGHT arose as a result of a breach of the subcontract or the negligence or other default of SUBCONTRACTOR, such termination will be treated as a termination under **CLAUSE 53.2 (TERMINATION WITH CAUSE)**; or



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- ii. if the suspension or STEP-IN RIGHT arose for any other reason, such termination will be treated as a termination under **CLAUSE 53.1 TERMINATION WITHOUT CAUSE** as if the MAIN CONTRACTOR had issued a notice under **CLAUSE 53.2 (TERMINATION WITH CAUSE)**

64.0 LAW GOVERNING THIS CONTRACT

- 64.1 This SUBCONTRACT shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia: the Arbitrator as provided for in **CLAUSE 60** shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this SUBCONTRACT and the SUBCONTRACTOR hereby submits to the jurisdiction of the Arbitrator for the purpose of any such actions and proceedings.
- 64.2 The SUBCONTRACTOR binds himself to acknowledge and accept as final in all respects any decision or award of an Arbitrator in relation to any dispute in relation to any dispute between the parties under his SUBCONTRACT.

65.0 STAMP DUTY

- 65.1 The proper stamp duty, if any, and this SUBCONTRACT shall be borne by the SUBCONTRACTOR.

66.0 LANGUAGE OF THE CONTRACT

- 66.1 The language in which the SUBCONTRACT shall be construed and interpreted shall be English. Correspondence between the parties shall be either in Bahasa Malaysia or English. All drawings, specifications, operating manuals and the like shall be in English. If in any other language shall be accompanied by an English version thereof, which English version shall prevail in the event of any divergence of discrepancy.

67.0 MISCELLANEOUS

- 67.1 Time whenever mentioned shall be of the essence on this SUBCONTRACT.
- 67.2 The parties hereto represent and warrant to one another that the transaction herein contemplated have been duly and validly authorized by all necessary corporate action where relevant on the part of each of them and each have full corporate power and lawful authority to execute and deliver this SUBCONTRACT and to consummate and perform the transactions contemplated herein.
- 67.3 Amendments to or modifications of this SUBCONTRACT may be made only by mutual agreement of the parties hereto in writing.
- 67.4 In the event that any part of this SUBCONTRACT shall be held invalid as contrary to any law statute or regulation in that regards the invalidity of such part shall in no way affect the validity of any other part of this SUBCONTRACT and each and every part shall be severable from each and every other.
- 67.5 The waiver, expressed or implied by any of the parties hereto of any hereunder or any failure to perform or any breach hereof by the other party hereto shall not constitute or be deemed as a waiver of any other right hereunder or of any other failure to perform or breach hereof by such other party whether of similar or dissimilar nature thereto.
- 67.6 This SUBCONTRACT supersedes all written memoranda and agreements and any representations or understandings written or otherwise between the parties hereto.
- 67.7 All items and conditions appearing in or annexed to or referred to in the SUBCONTRACTOR's tender and/or quotation other than the terms and conditions of the Main Contract shall not form part of the SUBCONTRACT.
- 67.8 This SUBCONTRACT shall remain valid throughout the whole Main Contract period and defects liability period or to any period extended in accordance to the provisions of the Subcontract.