

The Standard Form of Minor Works Building Contract

2018 Edition

Issued by



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ARTICLES OF AGREEMENT

THIS AGREEMENT is made on the day of year

Between

..... of
.....
..... (hereinafter called the “**Employer**”)
of the first part;

And

..... of.....
.....
..... (hereinafter called
the “**Contractor**”) of the second part.

WHEREAS

- A.** The Employer desires the execution of certain **Works** known as
..... at the
Site located at
- B.** The Contractor has examined the Employer’s Requirements, Specifications and Drawings and which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of (**RM**) or such other sum as may be ascertained under the Contract.
- C.** The Employer has accepted the Contractor’s Offer for the execution and completion of the Works and the remedying of any defects therein.

Now the Employer and the Contractor agree as follows:

Article 1

Contractor's Obligations

In consideration of the payments to be made by the Employer to the Contractor as mentioned in this Contract, the Contractor covenants with the Employer to complete the Works and remedy the defects therein, in conformity with the provisions of the Contract.

Article 2

Contract Documents

The following documents shall be deemed to form, and be read and construed as part of the Contract Documents:

*** (delete if not applicable)*

- (a) The Employer's Requirements;
- (b) This Agreement;
- (b) The Conditions of Contract and the Appendix;
- (d) The Specification;
- (e) The Drawings;
- (f) The Contractor's tendered design;
- (g) The Bill of Quantities;
- (h) The Contractor's Offer;
- (i); and
- (j) Any other documents incorporated in the Contract Documents, unless expressly stated to be excluded in any of the Contract Documents.

The Contract Documents are to be read as mutually explanatory of one another. In the event of any conflict or inconsistency between any of the Contract Documents, the priority in the interpretation of such documents shall be in the descending order as listed above.

Article 3

Contract Sum

The Employer will pay the Contractor the sum of
..... (RM.....) or such other sum as shall become payable hereunder at the times and in the manner prescribed by the Contract (hereinafter called the "**Contract Sum**").

Article 4

Contract Administrator

The Contract Administrator is

Article 5

Definitions

In this Contract, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- | | | |
|------|-------------------------------|---|
| 5.1 | Appropriate Authority | means any statutory authority having jurisdiction over the Works; |
| 5.2 | CIPAA | means Construction Industry Payment and Adjudication Act 2012; |
| 5.3 | Commencement Date | means 14 Days after the date the Agreement comes into effect or any other date agreed between the Parties as set out in the Appendix; |
| 5.4 | Completion Date | means the date of completion as stated in the Appendix, or as extended under the Conditions of Contract or by agreement of the Parties; |
| 5.5 | Contract | means the documents listed in Article 2; |
| 5.6 | Contract Administrator | means the Person appointed by the Employer, or failing such appointment, the Employer |
| 5.7 | Contractor | means the Party named in the second part of this Agreement and the legal successors in title to this Party or any Person to whom the rights and obligations of the Contractor have been transferred with the agreement of the Employer; |
| 5.8 | Contractor's Equipment | means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials; |
| 5.9 | Cost | means all expenditure properly incurred by the Contractor, whether on Site or off Site, including overheads and similar charges, but does not include profit; |
| 5.10 | Day | means calendar day; |
| 5.11 | Drawings | means the drawings of the Works provided by the Employer, and any variation to such drawings; |
| 5.12 | Force Majeure | means an exceptional event or circumstances which:
(a) is beyond a Party's control;
(b) neither Party could not reasonably have provided against before entering into the Contract; |

- (c) having arisen, such Party could not reasonably have avoided or overcome; and is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions in Article 5.11(a) to (c) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by Persons other than the personnel, servants, agents, and employees of the Contractor and Sub-Contractors;
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophe such as earthquakes, hurricane, typhoon or volcanic activity.

5.13	AIAC	means the Asian International Arbitration Centre (Malaysia), a successor of the Kuala Lumpur Regional Centre for Arbitration;
5.14	Materials	means things of all kinds intended to form or forming part of the Works;
5.15	Party	means either the Employer or the Contractor;
5.16	Person	means a natural person, sole proprietor, firm (partnership) or body corporate.
5.17	Employer	means the Party named in the first part of this Agreement and the legal successors in title to this Party or any Person to whom the rights and obligations of the Employer have been transferred with the agreement of the Contractor;
5.18	Practical Completion or Practically Complete	means the state of completion described in Clause 11.1;
5.19	Service Provider	means any company or body authorised to provide water, electricity, telephone, sewerage and other related services;
5.20	Site	means the places provided by the Employer where the Works are to be executed and any other places specified in the Contract as forming part of the Site;
5.21	Specification	means the document listed in Article 2(d) that specifies the Works, including the Employer's requirements in respect of design to be carried out by the Contractor, if any;
5.22	Sub-Contractor	means any sub-contractor, supplier, designer, consultant or any other Person employed by the Contractor for the purposes of the Works;

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- 5.23 **Variation** means a change to the design (except for design provided by the Contractor), quality or quantity of the Works which is instructed by the Contract Administrator under the Conditions of Contract;
- 5.24 **Works** means all the work and design (if any) to be performed by the Contractor including temporary work and any Variation.

Article 6

Interpretations

Words importing singular or one gender include plural or the other gender where the context requires. A reference to any Act of Parliament and its subsidiary legislations is deemed to include references to any subsequent amendments, consolidation or replacement of the Acts and the subsidiary legislation.

THE CONDITIONS OF CONTRACT

1.0 THE EMPLOYER'S GENERAL OBLIGATIONS

Provision of Site and Access Route

- 1.1 The Employer shall provide the Site and right of access to the Site on a timely basis.

Permits and Licenses

- 1.2 If so requested by the Contractor, the Employer shall assist him in applying for permits, licenses or approvals which are required for the Works.

2.0 THE CONTRACTOR'S GENERAL OBLIGATIONS

Carry Out and Complete the Works

- 2.1 The Contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works by the Completion Date. The Contractor shall provide the plant, machinery and Materials as required for the Works. All Materials which have been paid for by the Employer shall be deemed to be the property of the Employer.

Contractor's Representative

- 2.2 The Contractor shall submit to the Contract Administrator and Employer for consent the name and particulars of the person authorised to receive instructions on behalf of the Contractor.

Compliance

- 2.3 2.3(a) The Contractor shall comply with all applicable laws and regulations to the Works, including safety, health and environmental laws, and with all requirements and any terms and conditions imposed by the Appropriate Authority. The Contractor shall give all notices and pay all fees and other charges in respect of the Works.
- 2.3(b) The Contractor shall comply with all instructions given by the Contract Administrator in respect of the Works. No approval or absence of comment by the Contract Administrator shall affect the Contractor's obligations.

Avoidance of Interference

- 2.4 The Contractor shall not interfere unnecessarily or improperly with the convenience of the public, including neighbours and neighbouring properties.

Submission of Programme

- 2.5 Within 14 Days from the Commencement Date, the Contractor shall submit to the Contract Administrator a programme for the Works in a particular form and content as required by the Contract Administrator.

Performance Bond/Performance Guarantee Sum

- 2.6 2.6(a) Before the Commencement Date, the Contractor shall submit to the Employer a Performance Bond in the form and from a third party approved by the Employer for a sum equivalent to 5% of the Contract Sum as a security for the due performance and observance by the Contractor of his obligations under the Contract up to Practical Completion of the Works.
- 2.6(b) If the Contractor fails to submit the said Performance Bond as specified in Clause 2.6(a) by the Date of Commencement of the Works, then the Contractor shall be deemed to have opted for Performance Bond in the form of Performance Guarantee Sum as provided for under Clause 2.6(c) hereof and in which case, all provisions set out in the Contract in relation to the Employer's rights with regard to the use of and recovery from the proceeds of the Performance Bond shall equally apply to the Performance Guarantee Sum.
- 2.6(c) The Contractor may opt for a Performance Guarantee Sum *in lieu of* a Performance Bond, whereby deductions of 20% shall be made from the first interim payment and subsequent interim payments until the total amount deducted aggregate to a sum equivalent to 5% of the Contract Sum. The amount deducted shall be retained by the Employer until three (3) Months after the issuance of the Certificate of Practical Completion under Clause 11.1 or the Notice of Taking Over under Clause 11.2, as the case may be.

Contractor's Design Responsibilities

- 2.7 2.7(a) If the Contractor proposes any alternative design to that specified in the Works or if the Contract specifies that the Contractor is to design any part of the Works, the Contractor shall be responsible for that part of the works, and ensure that they shall be fit for their intended purpose defined in the Contract.
- 2.7(b) Any design and alternative design by the Contractor shall be duly approved by the Contract Administrator and accepted by the Employer before it is implemented. Such approval and acceptance shall not relieve the Contractor of his responsibilities under the Contract and the Contractor shall be fully responsible for his design, alternative design and the execution of the Works.
- 2.7(c) The copyright of the Contractor's design and alternative design belongs to the Contractor, but the Employer will be entitled to use the design and alternative design for the completion, maintenance, repair and future

extension of the Works. The Contractor shall be deemed to have given the Employer a non-exclusive royalty free license for such use which shall survive any termination of the employment of the Contractor under the Contract.

Assignment & Sub-Contracting

- 2.8 Unless with the written consent of the Contract Administrator (which consent shall not be unreasonably withheld), the Contractor shall not assign any rights or benefits under the Contract, or sub-contract any portion of the works, to any Person. If the Contractor sub-contracts any portion of the Works to any Person with the consent of the Contract Administrator, the Contractor shall be fully responsible for the acts, defaults, neglects, or breach of contract of any of the Sub-Contractors.

Duty to Co-operate

- 2.9 The Contractor must fully cooperate, and if required by the Contract Administrator, coordinate with all other contractors, whether employed by the Employer or others, with regard to the execution of the Works.

Contractor's Care of the Works

- 2.10 The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the Certificate of Practical Completion, or until the Notice of Taking Over has been issued and the Site has been returned to the Employer, subject to his obligations to remedy any defects and outstanding works under this Contract and/or the common law.

Indemnity to Employer

- 2.11 The Contractor shall be liable for and indemnify the Employer against any damage, expense, liability, loss, claim or proceedings whatsoever in respect of:
- 2.11(a) personal injury to or the death of any Person arising out of or in the course of or caused by the carrying out of the Works, and
 - 2.11(b) any property, real or personal, in so far as such loss and/or damages arises out of the execution of the Works,

PROVIDED ALWAYS the same were due to any negligence, omission, default and/or breach of contract by the Contractor or any Person to whom the Contractor is responsible.

Duty to Insure Contract

- 2.12 The Contractor shall effect and maintain insurances as required in Clause 4.0 hereof.

3.0 CONTRACT ADMINISTRATOR

Contract Administrator's Functions

- 3.1 The Contract Administrator's functions include:
- 3.1(a) providing all relevant information for the Works in a timely manner;
 - 3.1(b) except as otherwise provided in the Contract, issuing all instructions concerning quality, quantity, variation, payment and the Contract, on a timely manner;
 - 3.1(c) exercising his powers and administering this Contract impartially.

Contract Administrator's Instructions

- 3.2 All Contract Administrator's Instructions shall be in writing. If an instruction is given by the Contract Administrator otherwise than in writing, the Contract Administrator may subsequently confirm it in writing or, the Contractor may confirm the instruction in writing. The said instruction shall have taken effect on the date when the written confirmation was issued.

4.0 INSURANCES

Extent of Cover

- 4.1 Before the Commencement Date, the Contractor shall effect and maintain insurances in the joint names of the Parties, and any Sub-Contractors involved in the Works:
- 4.1(a) for liabilities for loss and damage to the Works, Materials, and Contractor's Equipment; and
 - 4.1(b) for liabilities for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the Works, including the Contractor's liability for damages to the Employer's property other than the Works.

Insurance for Workmen

- 4.2 In addition to Clause 4.1, the Contractor shall:
- 4.2(a) register or cause to register all local workmen employed on the Works and who are subject to registration under the Employee's Social Security Scheme (hereinafter called "**SOCSO**") in accordance with the Employees' Social Security Act 1969 and cause all Sub-Contractors to comply with the same;
 - 4.2(b) where the workmen are not subject to registration under SOCSO, effect and maintain in the joint names of the Parties an insurance policy and shall cause all Sub-Contractors to do the same, for liabilities for death or injury to these workmen which may arise in the course of the execution of the Works; and

- 4.2(c) where the workmen are foreign workers, effect and maintain a similar insurance policy and shall cause all Sub-Contractors to do the same, for these foreign workers employed on the Works as required by the Workmen's Compensation Act 1952 and Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005.

Insurance – Arrangements

- 4.3 All insurances required in Clauses 4.1(a) and 4.1(b), 4.2(b) and 4.2(c) shall conform with any requirements detailed in the Appendix. The policies shall be issued by insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid. All payments received from insurers relating to loss and damage to the Works shall be held by the Employer and used for the repair of the loss or damage or as compensation for loss or damage that is not required to be repaired.

Failure to Insure

- 4.4 If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer, may without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

5.0 SUSPENSION OF WORK

Suspension of Work Instructed by Contract Administrator

- 5.1 5.1(a) The Contract Administrator may at any time instruct the Contractor to suspend the Works, in part or in whole. During such suspension, the Contractor shall protect, store and secure such part of the Works against any deterioration, loss or damage.
- 5.1(b) If the Contractor suffers delay and/or incurs Cost arising from the suspension and/or resuming work, the Contractor is entitled to make a claim under Clause 10.0.
- 5.1(c) Unless the suspension is due to the default, breach or negligence of the Contractor, and the suspension has continued for more than 60 Days, the Contractor may:
- 5.1(c)(i) by notice to the Contract Administrator, treat the suspended works as an omission under Clause 7.0, or
 - 5.1(c)(ii) if the suspension affects the whole or substantial part of the Works, terminate his own employment under Clause 13.0.

Suspension of Work by Contractor

- 5.2 5.2(a) If the Employer does not pay the Contractor the amount due as certified by the Contract Administrator, the Contractor may, without prejudice

to his other rights and remedies, suspend the work, subject to the following:

- 5.2(a)(i) the Contractor shall give a notice to the Employer and Contract Administrator delivered by hand or registered post stating that if payment is not made within 14 Days, the Contractor may suspend the work thereafter;
- 5.2(a)(ii) the Contractor shall as soon as practicable, but not later than 14 Days after having been paid the said amount due, resume performance of the Works in accordance with the Contract.

Delay and Cost caused by Suspension

- 5.3 If the Contractor suffers delay and/or incurs Cost arising from the suspension and/or resuming work, the Contractor is entitled to make a claim under Clause 10.0.

6.0 DEFECTS AND TESTING

Rectification of Defects

- 6.1 The Contract Administrator may at any time prior to the expiry of the Defects Liability Period stated in the Appendix, notify the Contractor of any defects or outstanding work. The Contractor shall rectify at no cost to the Employer any defects due to the Contractor's design, Materials or workmanship not being in accordance with the Contract. The rectification costs for defects attributable to any other cause shall be valued and paid as a Variation in accordance with Clause 7.0.

Failure to Rectify

- 6.2 Failure to rectify any defects or complete any outstanding work within 7 Days of the Contract Administrator's notice to rectify shall entitle the Employer to carry out all necessary work at the Contractor's cost.

Inspection and Testing

- 6.3 The Contract Administrator may issue instructions ordering the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any Materials or of any executed work. Unless as a result of any such opening up and/or testing it is established that the Contractor's design, Materials or workmanship are not in accordance with the Contract, the Contractor shall be paid for such opening up and/or testing as a Variation in accordance with Clause 7.0.

7.0 VARIATIONS

Instruction to Vary

- 7.1 The Contract Administrator may instruct Variations.

Claim Notification

- 7.2 The Contractor shall submit to the Employer an itemised make-up of the value of Variations and claims within 28 Days of the Contract Administrator's Instruction to vary. The Contract Administrator shall check, and after consulting the Employer, agree on the value. In the absence of agreement, the Contract Administrator shall determine the value in accordance with Clause 7.3.

Valuation of Variations

- 7.3 Variations may be valued as follows:
- 7.3(a) where works and condition of execution thereof are similar, the rates provided in the Contract shall determine the valuation;
 - 7.3(b) where works and condition of execution thereof are different, then at appropriate new rates as may be agreed or which the Contract Administrator considers appropriate and best reflect the market price; or
 - 7.3(c) if the Contract Administrator so instructs, at daywork rates specified in the Appendix for which the Contractor shall keep records of vouchers, receipts and wage books specifying the time for labour and Contractor's Machinery employed and Materials used.

Amount of Variation Added to Contract Sum

- 7.4 As soon as the amount of Variation is ascertained, it shall be added to the Contract Sum, and the Contractor shall then be entitled to include the amount for claim in his monthly statement.

Delay & Cost Caused by Variation

- 7.5 If the Contractor suffers delay and/or incurs Cost arising from the Variations, the Contractor is entitled to make a claim under Clause 10.0.

8.0 PAYMENTS AND RETENTION FUND

Valuation of the Works

- 8.1 The Works shall be valued as provided for in the Appendix, subject to Clause 7.0.

Monthly Statements

- 8.2 The Contractor shall be entitled to be paid at monthly intervals the value of the Works executed and the percentage of the value of the Materials delivered to the Site as specified in the Appendix, subject to any additions or deductions which may be due. The Contractor shall submit together with the monthly statement all documents and information to substantiate his claims.

Interim Payments

- 8.3 Within 14 Days of delivery of each monthly statement, the Contract Administrator must assess the claims and issue an Interim Certificate to the Employer with a copy to the Contractor. The Employer shall pay the amount certified within 30 Days from the date as follows:
- 8.3(a) if the Contractor is a taxable person under the Goods and Services Act 2014 (hereinafter called the “**GST Act**”), from the date of presentation of such certificate together with a Tax Invoice which is issued in accordance with the GST Act; or
 - 8.3(b) if the Contractor is not a taxable person under the GST Act, from the date of issuance of the Interim Certificate.

Retention Fund

- 8.4
- 8.4(a) The Employer may retain the percentage of the total value of the Works and Materials certified which is stated in the Appendix as Percentage of Certified Value Retained, up to the amount stated in the Appendix as Limit of Retention Fund.
 - 8.4(b) Upon issuance of the Certificate of Practical Completion, or the Notice of Taking Over, the Contract Administrator shall within 14 Days issue a certificate for the release of one half of the Retention Fund and the Contractor shall be entitled to payment thereafter within 30 Days from the date of receipt of the certificate. The condition precedent to payment set out in Clauses 8.3(a) and 8.3(b) for interim payments shall equally apply to payment under this Clause.
 - 8.4(c) Upon expiry of the Defects Liability Period as stated in the Appendix, or the completion of the notified defects or outstanding works as referred to in Clause 6.0, whichever is the later, the Contract Administrator shall within 14 Days thereof issue a certificate for the release of the residue amount of the Retention Fund and the Contractor shall be entitled to payment thereafter within 30 Days from the date of receipt of the certificate. The condition precedent to payment set out in Clauses 8.3(a) and 8.3(b) for interim payments shall equally apply to payment under this Clause.

Final Account

- 8.5
- 8.5(a) Within 42 Days of the Certificate of Practical Completion, or the Notice of Taking Over, the Contractor shall submit a final account to the Contract Administrator together with any documentation reasonably required to enable the Contract Administrator to ascertain the final contract value, taking into account any additions or deductions.
 - 8.5(b) Within 28 Days after the submission of this final account, the Contract Administrator shall certify any amount due (less the second half of the Retention Fund). If any of the Parties disputes the final account, then the following provisions shall apply:

- 8.5(b)(i) the Party disputing the final account shall by notice to the other Party (with a copy to the Contract Administrator), set out any disagreement thereof complete with particulars within 30 Days of the date of receipt of the final account,
- 8.5(b)(ii) within 30 Days from the date of receipt of the notice of dispute, the Contract Administrator shall decide either to amend or not to amend the final account, and provide reasons for his decision. The Contract Administrator may also request any necessary further particulars, but the Contract Administrator shall nevertheless give his decision within the stipulated 30 Days period,
- 8.5(b)(iii) if the Parties agree with the Contract Administrator's decision, then the final account or amended final account (as the case may be) shall become conclusive and binding,
- 8.5(b)(iv) should any Party dispute the Contract Administrator's decision under Clause 8.5(b)(iii), then such dispute shall be resolved in accordance with Clause 14.0.

Final Certificate

- 8.6 The Contract Administrator shall issue the Final Certificate for any payment due based on the final account within 30 Days after the expiry of the Defects Liability Period as stated in the Appendix, or the completion of the notified defects or outstanding works as referred to in Clause 6.0, whichever is the later. The Employer shall pay to the Contractor (or *vice versa* as appropriate) the net amount due stated in the Final Certificate within 30 Days from the date of receipt thereof.

Direct Payment under Section 30 of CIPAA

- 8.7
 - 8.7(a) In the event the Employer makes any payment, or is ordered by the Court to make any payment, in the capacity as the Principal, to the Person who obtained an adjudication decision under CIPAA against the Contractor pursuant to Section 30(3) of CIPAA, the Employer may recover the amount paid from the Contractor as a debt or by deducting from any monies due or to become due to the Contractor under this Contract, or from the Performance Bond or Performance Guarantee Sum.
 - 8.7(b) The Contractor shall have no recourse against the Employer in respect of the payment made under Section 30 of CIPAA, notwithstanding that the adjudication decision upon which the payment is made, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration.

9.0 EMPLOYER'S EVENTS AND NEUTRAL EVENTS

Employer's Events

- 9.1 In this Contract, the Employer's Events mean:

- 9.1(a) breach of contract or act of prevention by the Employer;
- 9.1(b) without any reasonable cause, use or occupation by the Employer of any part of the Works, without consent from the Contractor;
- 9.1(c) a suspension under Clause 5.0 unless it is attributable to the Contractor's failure;
- 9.1(d) any delay or disruption caused by any Variation;
- 9.1(e) faulty design in respect of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible.

Claims arising from Employer's Events

- 9.2 If the Contractor suffers delay and/or incurs Cost arising from the Employer's Events, the Contractor is entitled to make a claim under Clause 10.0.

Neutral Events

- 9.3 In this Contract, the Neutral Events mean:
- 9.3(a) Force Majeure;
 - 9.3(b) any change to the law, regulations, by-laws or terms and conditions of any Appropriate Authority and/or Service Provider after the date of the Contractor's Offer as stated in the Agreement; and
 - 9.3(c) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects.

Claims arising from Neutral Events

- 9.4 If the Contractor suffers delay arising from the Neutral Events, the Contractor is entitled to make a claim under Clause 10.0. However, the Contractor is not entitled to any additional Costs or other compensation caused by or arising from any of the Neutral Events.

10.0 PROCEDURE FOR CLAIMS FOR TIME AND COST

Procedure for Claims

- 10.1 10.1(a) The Contractor shall be entitled to apply for such extension of time and/or Cost under this Clause if the Contractor considers himself to be entitled to such claims:
- 10.1(a)(i) under any Clauses or otherwise in connection with the Contract, and/or
 - 10.1(a)(ii) through exercising the right to suspend or reduce the rate of progress of the performance of the Works under Section 29 of CIPAA.
- 10.1(b) As soon as practicable, but not later than 28 Days after the Contractor became aware, or should have become aware of any event giving rise to

such extension of time or Cost, the Contractor shall give a notice to the Contract Administrator indicating his intention to claim and describing the event giving rise to such extension of time or Cost. If the Contractor fails to give such notice within the 28 Days, the Contractor shall not be entitled to any extension of time or Cost, and the Employer shall be discharged from all liability in connection with the claim.

- 10.1(c) Within 28 Days of the end of the effects resulting from the event, or within such other period as may be agreed by the Contract Administrator, the Contractor shall send to the Contract Administrator the relevant particulars of the basis of his claim together with all necessary calculations and documents to substantiate his claims. If the Contractor fails to give such notice within the 28 Days, the Contractor shall not be entitled to any extension of time or Cost, and the Employer shall be discharged from all liability in connection with the claim.
- 10.1(d) Within 42 Days after receiving the particulars under Clause 10.1(c), the Contract Administrator shall respond with approval, or with disapproval, with comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.
- 10.1(e) If either Party disputes the decision of the Contract Administrator issued under Clause 10.1(d), then the following provisions shall apply:
 - 10.1(e)(i) the Party disputing the decision shall by written notice to the other Party (with a copy to the Contract Administrator) set out any disagreement thereof complete with particulars within thirty (30) Days of the date of receipt of the decision from the Contract Administrator,
 - 10.1(e)(ii) within thirty (30) Days from the date of receipt of the notice of dispute, the Contract Administrator shall decide either to amend or not to amend his decision, and provide reasons. The Contract Administrator may also request any necessary further particulars, but the Contract Administrator shall nevertheless give his decision within the stipulated thirty (30) Days period,
 - 10.1(e)(iii) if the Parties agree with the Contract Administrator's decision under Clause 10.1(e)(ii), then the decision or amended decision (as the case may be) shall become conclusive and binding on the Parties,
 - 10.1(e)(iv) any Party disagreeing with the Contract Administrator's decision under 10.1(e)(ii) shall refer the dispute to arbitration under Clause 14.0. However, until any final decision is made by the Arbitrator, the decision of the Contract Administrator shall remain binding.

Duty to Keep Records

- 10.2 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the

Contract Administrator. Without admitting the Employer's liability, the Contract Administrator may, after receiving any notice under this Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Contract Administrator to inspect all these records, and shall (if instructed) submit copies to the Contract Administrator.

11.0 COMPLETION AND TAKING OVER

Completion

- 11.1 The Contractor may notify the Contract Administrator when he considers that the Works are complete. The Contract Administrator shall issue a Certificate of Practical Completion if he is of the opinion that the Works have been practically complete in the sense that the Employer can have full use of the Works for their intended purpose (based on the requirements of the Contract), notwithstanding that there may be outstanding works and defects which are of a minor nature still to be executed.

Taking Over

- 11.2 At the request of the Employer, the Contract Administrator shall notify the Contractor when he considers that the Contractor has completed the Works stating the date accordingly. Alternatively, the Contract Administrator may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly. The Employer shall take over the Works on the date as specified in this notice. The Contractor shall promptly complete any outstanding work, and subject to Clause 6.0, clear the Site.

12.0 DELAY AND LIQUIDATED DAMAGES

Failure to Complete by the Completion Date

- 12.1 If the Contractor fails to complete the Works by the Completion Date or within any extended time fixed under Clause 10.0 or as mutually agreed by the Parties, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the Appendix as Liquidated Damages for the period from the Completion Date, or any extended date where applicable, to the date of Practical Completion.

Liquidated Damages Amount Deemed as Agreed

- 12.2 12.2(a) The Liquidated Damages stated in the Appendix is deemed to be the reasonable loss and/or damage which the Employer will suffer in the event that the Contractor is in breach of the Clause hereof. The Parties agree that by entering into this Contract, Section 75 of the Contracts Act 1950 shall not apply for the purposes of the Contractor's liability to pay Liquidated Damages under this Clause, and the Contractor shall,

upon first written demand by the Employer, forthwith pay or allow to the Employer the said amount of Liquidated Damages due without the need of the Employer to prove his actual damage or loss.

- 12.2(b) Further and in any event, the Employer and the Contractor acknowledge and declare that it will be difficult to assess damages for the actual damage or loss incurred as a result of the Contractor's failure to complete the Works by the Completion Date. The Contractor acknowledges that the Liquidated Damages stated in the Appendix represents the loss or damage that would be caused to the Employer which naturally arose in the usual course of things from the breach and/or which the Parties knew, when they made the Contract, to be likely to result from the breach of the Contract. The Contractor irrevocably undertakes that he will not, whether by legal proceedings or otherwise, contend that such sums and the limits thereon in the Appendix are not reasonable nor will he put the Employer to the proof thereof, nor further contend that his agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Employer.
- 12.2(c) For the avoidance of doubt, the Liquidated Damages imposed or deducted by the Employer shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

13.0 TERMINATION

Termination by Employer

- 13.1 If the Contractor:
- 13.1(a) based on reasonable evidence, has engaged in or committed any illegal bribery or corrupt practices relating to and/or in connection with the execution of the Works;
- 13.1(b) without reasonable cause, fails to commence the Works for more than fourteen (14) Days from the Date of Commencement or any other extended date allowed in accordance with the relevant provisions of the Contract,
- 13.1(c) without reasonable cause, wholly or substantially suspends the carrying out of the Works before Practical Completion of the Works or taking over of the Works by the Employer,
- 13.1(d) fails to proceed regularly and/or diligently with the Works,
- 13.1(e) persistently refuses or neglects to comply with the Contract Administrator's Instructions,
- 13.1(f) fails to comply with the provisions in Clause 2.8, or
- 13.1(g) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

then the Employer or the Contract Administrator on his behalf may deliver a notice to the Contractor by hand or registered post referring to this Clause and stating the default. If the Contractor has not taken all practical steps to remedy the default within 14 Days after the date of receipt of the said notice, the Employer may by a second notice given within a further 14 Days, terminate the employment of the Contractor under the Contract. The Contractor shall then demobilise from the Site leaving behind Materials and any Contractor's Equipment which the Employer informs in the second notice is to be used until the completion of the Works.

Termination by Contractor

13.2 If the Employer:

13.2(a) fails or neglects to pay the Contractor the amount due on any certificate (less any deduction, set off and/or Liquidated Damages to which the Employer is entitled to make under these Conditions), in accordance with the Contract,

13.2(b) before the date of Practical Completion, or the Notice of Taking Over, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended under the conditions set out in Clause 5.1(c)(ii),

then the Contractor may deliver a notice to the Employer, with a copy to the Contract Administrator, by hand or registered post referring to this Clause and stating the default. If the Employer has not taken all practical steps to remedy the default within 14 Days after the date of receipt of the said notice, the Contractor may by a second notice given within a further 14 Days, terminate his own employment under the Contract. The Contractor shall then demobilise from the Site.

Insolvency

13.3 If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The Contractor shall then demobilise from the Site leaving behind, in the case of the Contractor's insolvency, any Contractor's Equipment which the Contract Administrator instructs in the notice is to be used until the completion of the Works.

Payment Upon Termination

13.4 After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials reasonably delivered to the Site, adjusted by the following:

13.4(a) any sums to which the Contractor is entitled under Clause 7.0;

13.4(b) any sums to which the Employer is entitled under the terms of this Contract;

13.4(c) if the Employer has terminated under Clauses 13.1 or 13.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination;

- 13.4(d) if the Contractor has terminated under Clauses 13.2 or 13.3, the Contractor shall be entitled to the Cost of his suspension and demobilisation together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination.

The net balance due shall be paid or repaid within 42 Days of the notice of termination.

14.0 RESOLUTION OF DISPUTES

Disputes to be referred to Arbitration

- 14.1 14.1(a) Any disputes, controversy or claims arising out of or relating to this Contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Fast Track Arbitration Rules.
- 14.1(b) The seat of arbitration shall be Malaysia.
- 14.1(c) This Contract shall be governed by the substantive law of Malaysia.

Commencement of Arbitration

- 14.2 Unless otherwise agreed in writing by the Parties, such arbitration shall be commenced after the Practical Completion or alleged Practical Completion of the Works, or determination or alleged determination of the Contractor's employment under the Contract, or termination or alleged termination of the Contract under the law, or abandonment or alleged abandonment of the Works.

15.0 MISCELLANEOUS

Notice, Decisions and Instructions

- 15.1 All notices, decisions and instructions referred to in these Conditions shall be made in writing.

Service of Notices or Documents under Contract

- 15.2 Unless otherwise specifically provided under these Conditions, any written notice or other document to be given under the Contract shall be given or sent by:
- 15.2(a) hand, in which case, the notice or document shall be deemed to have been duly served at the time of delivery,
- 15.2(b) ordinary mail or registered post, in which case, the notice or document shall be deemed to have been duly served after three (3) Days of Posting,
- 15.2(c) facsimile transmission, in which case, it shall be deemed to have been duly transmitted at the time of successful transmission, or

15.2(d) any other means as agreed by the Parties.

Service of Notices or Documents under CIPAA

- 15.3 Unless otherwise expressly agreed by the Parties in the Contract, service of any notices or documents under CIPAA shall only be effected in accordance with any of the modes provided in Sections 38(a), 38(b) and 38(c) of CIPAA.

Written Communication

- 15.4 All written communication shall be sent to the address stated in the Articles of Agreement unless otherwise notified in writing.

Governing Law

- 15.5 Unless otherwise agreed in writing by the Parties, the law governing the Contract shall be the Laws of Malaysia.

Waiver

- 15.6 Unless otherwise provided, no failure or delay on the part of either Party to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereto nor shall any single or partial exercise of any right or remedy be construed as waiver of any other rights or remedies provided in this Contract. Such rights and remedies are cumulative and not exclusive of any rights or remedies provided by the law.

Appendix

** Insurances:

Type of Cover	Clause	Amount of Cover	Exclusion
The Works and Materials	4.1(a)	The Contract Sum plus 15%	
Contractor's Equipment	4.1(a)	Full Replacement Fee	
Third Party Injury to persons and damage to property	4.1(b)	
Workmen	4.2(b) and 4.2(c)	

** Valuation of the Works – Clause 8.1

Types of Valuation	Details
Firm Lump Sum Price ...	
Lump Sum Price with Schedule of Rates ...	
Lump Sum Price with Bill of Quantities ...	
Or, any other type of valuation as agreed between the Parties ...	

	Clause/Article of Agreement	
Performance Bond	Clause 2.6(a)	Form (details)
Requirements for Contractor's design (if any)	Clause 2.7(a) (details)
Commencement Date	Article 5.3
Completion Date	Article 5.4
Defects Liability Period [if none is stated is twelve (12) Months from the day stated in the Certificate of Practical Completion of the Works or the date of the Notice of Taking Over, as the case may be]	Clauses 6.1, 8.4(c)
Valuation of Variation – Daywork Rates	Clause 7.3(c) (details)
Percentage of Value of materials and goods included in the Certificate [if none stated is 100%]	Clause 8.2
Percentage of Certified Value Retained [if none stated is 10% of the value of work executed and materials on site included in the certificate subject to the Limit of Retention Fund]	Clause 8.4(a)
Limit of Retention Fund [if none stated is 5% of the Contract Sum]	Clause 8.4(a)	RM
Liquidated Damages	Clause 12.1	at the rate of RM (per Day)

** Employer to amend as appropriate.

