

Islamic Standard Form of Building Contract (i-SFC)

2024 Edition

Main Contract



ASIAN INTERNATIONAL ARBITRATION CENTRE

The Islamic Standard Form of Building Contract (i-SFC)

2024 Edition

Issued by



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ARTICLES OF AGREEMENT

THIS AGREEMENT is made on the day of year

Between

.....
of (or whose registered office is situated at)
.....
..... (hereinafter called the “**Employer**”)
of the first part;

And

.....
of (or whose registered office is situated at)
.....
.....
(hereinafter called the “**Contractor**”) of the second part.

WHEREAS

- A.** The Employer desires that the Works known as
.....
(hereinafter called the “**Works**”) at
.....
(hereinafter called the “**Site**”) should be executed by the Contractor.
- B.** The Employer has caused the Specification, Drawings and the Contract Bills showing and describing the Works to be prepared by or under the direction of his Consultants.
- C.** The Specification, the said Contract Drawings numbered
..... appended hereto and the Contract Bills have been signed by or on behalf of the Parties.
- D.** The Employer has accepted the Tender by the Contractor for the execution and completion of the Works in accordance with the Contract.

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 agrees with the Employer to execute and complete the Works in conformity with the provisions of this Contract.

Article 2

Contract Documents

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

- (a) The Letter of Acceptance [or Letter of Award];
- (b) This Articles of Agreement;
- (c) The Conditions of the Contract and the Appendix;
- (d) The Employer's Requirements;
- (e) The Specification;
- (f) The Contract Drawings;
- (g) The Contract Bills and Schedule(s) of Rates*;
- (h); and
- (i) Any other documents incorporated in the Contract Documents, unless expressly stated to be excluded in any of the Contract Documents.

[] Delete or amend as may be necessary or required by the Parties.*

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 3.1

Contract Sum

The Employer will pay the Contractor the sum of
..... (RM.....) or such other sum as shall become payable under the Contract and be paid in the manner prescribed by the Contract. Contract Sum means:

- (a) where the Employer accepted a lump sum, a fixed firm lump sum. Save as otherwise expressly provided in the Contract, the Contract Sum which is agreed on a fixed

firm lump sum basis shall not be adjusted or altered in any way whatsoever ("Lump Sum"). Any errors in the prices and rates in the Schedules shall be corrected and/or rationalised by the CA without any changes to the lump sum before signing of the Contract. Notwithstanding Article 2, for the purposes of Works executed based on lump sum, the quantities in the Bill of Quantities and the prices and rates in the Schedules shall be used for reference only and shall not form part of the Contract. Unless otherwise provided, the fixed firm lump sum price is deemed to include all ancillary and other works and expenditure, which may or may not have been specifically mentioned or described in the Contract Documents, but which are indispensably or contingently necessary to be carried out to bring the Works to completion or to overcome difficulties before completion in accordance with the Contract;

- (b) where the Employer accepted the Works (or any part of the Works) to be valued based on Provisional Quantity, and unless otherwise stated or amplified by the Parties, the method of measurement shall be in accordance with the Appendix or, if not stated, that which shall be in accordance with the Bill of Quantities and the applicable Schedules. The quantities of the Works executed shall be subject to remeasurement. For the avoidance of doubts, any error in description, quantity or omission of items in the Contract Bills shall not vitiate the Contract and shall be rectified by the CA. Unless otherwise expressly stated in the Contract, the sum for the Works executed shall be ascertained based on the rules as follows:
- (i) where work is of similar character to the work as specified in the Contract, is executed under similar conditions, and the quantity of the work is not changed by more than (*if none is stated, then 12%) from the quantity of this item of work in the Contract, the rates and prices in the Bill of Quantities and applicable Schedules shall determine the valuation;
 - (ii) where work is of a similar character to the work set out in the Contract but is not executed under similar conditions or, is executed under similar conditions but the quantity of work is changed by more than (*if none is stated, then 12%) of the quantity of this item of work specified in the Contract, the rates and prices in the Bill of Quantities and applicable Schedules shall be the basis for determining the valuation which shall include a fair adjustment of the rates to consider such difference;
 - (iii) where work is of a different character to the work as set out in the Contract, the valuation shall be at fair market rates and prices determined by the CA;
 - (iv) where work cannot be properly measured and valued in accordance with Articles 3.1(a), (b) or (c), the Contractor shall be allowed the daywork rates specified in the Bill of Quantities and applicable Schedules, or where there are no such daywork rates in the Bill of Quantities and applicable Schedules, the actual cost to the Contractor of his materials, transport and labour for the work concerned, plus fifteen (15) percent, which percentage shall include the use of all tools, plant, scaffolding, supervision, overheads, profit and similar charges. In either case, the Contractor shall provide the vouchers specifying the time spent on a daily basis in carrying out the Works, the workers' names and designation, the materials, additional construction plant, scaffolding and transport used which shall be signed by the Site Agent and verified by the

Site Staff and shall be delivered to the CA at weekly intervals (or any other period as reasonably determined by the CA) with the final records delivered not later than fourteen (14) Days after the work has been completed. Where the Contractor fails to provide the vouchers as aforesaid, the CA may at his discretion proceed to value the same based on the information available to him;

or

- (c) where the Employer accepted a lump sum and re-measurement, the aggregate of the sums referred to in paragraphs (a) and (b) above,

including Provisional Sums and P.C. Sums, and any other sums which are specifically provided by the Contract to be included as part of the Contract Sum.

Article 3.2

Valuation of the Works

Types of Valuation	Amount and Details of Scope of Works
Fixed Firm Lump Sum Price ...	
Remeasurement according to quantities and unit rates and prices set out in the Schedules	
Or, any other type of valuation as agreed between the Parties ...	

Article 4

Contract Administrator (“CA”)

The term ‘Contract Administrator’ or ‘CA’ referred to in the Contract means

 of.....

If no such Person named herein as the CA, then the Architect shall be the CA, and all references to CA in this Contract shall refer to the Architect. Except where otherwise provided in the Contract, no CA so appointed shall be entitled to disregard or overrule any certificate or opinion or decision or approval or instruction given by the preceding CA. In the event of his death or ceasing to be the CA for the purpose of this Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom.

Article 5

Architect

The term 'Architect' referred to in the Contract means
.....
of

or in the event of his death or ceasing to be the Architect for the purpose of this Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Architect shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Architect as the CA deems fit.

Article 6

Engineer

The term 'Engineer' in the Contract means:

(a) Structural & Civil Engineer:
.....
of
.....
.....

(b) Mechanical & Electrical Engineer:
.....
of
.....
.....

(c)
of
.....
.....

or in the event of his death or ceasing to be the Engineer for the purpose of this Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Engineer shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Engineer as the CA deems fit.

Article 7

Quantity Surveyor

The term 'Quantity Surveyor' in the Contract means
.....

of
.....
.....

or in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Quantity Surveyor shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Quantity Surveyor as the CA deems fit.

Article 8

Specialist Consultant

The term 'Specialist Consultant' in the Contract means:

- (a)
of
.....
.....
- (b)
of
.....
.....
- (c)
of
.....
.....

or in the event of his death or ceasing to be the Specialist Consultant for the purpose of this Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Specialist Consultant shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the Architect to the Specialist Consultant as the CA deems fit.

Article 9

Definitions

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

- 9.1 **AIAC** means the Asian International Arbitration Centre (Malaysia), a successor of the Kuala Lumpur Regional Centre for Arbitration;
- 9.2 **Appendix** means the Appendix to the Conditions of the Contract;

- 9.3 **Appropriate Authority** means any statutory authority having jurisdiction over the Works;
- 9.4 **Architect** means the Person named in Article 5 and shall be a Professional Architect or any other form of practice registered under the Architect Act 1967 and approved by the Board of Architects, Malaysia;
- 9.5 **Articles** means the articles in the Articles of Agreement;
- 9.6 **As-Built Drawings** means as-built drawings for Works designed (including alternative design) by the Contractor and/or Nominated Sub-Contractor and any other as-built drawings required to be provided as specified in the Contract Documents;
- 9.7 **Bill of Quantities** means the documents entitled bill of quantities (if any) included in the Schedules under Article 9.54;
- 9.8 **Certificate of Extension of Time** means the certificate issued under Clause 23.0;
- 9.9 **Certificate of Making Good Defects** means the certificate issued under Clause 15.5;
- 9.10 **Certificate of Non-Completion** means the certificate issued under Clause 22.1;
- 9.11 **Certificate of Partial Possession** means the certificate issued under Clause 16.1;
- 9.12 **Certificate of Sectional Completion** means the certificate issued under Clause 21.3;
- 9.13 **CIPAA** means Construction Industry Payment and Adjudication Act 2012 [Act 746];
- 9.14 **Clause** means the clauses and sub-clauses (as the case may be) in the Conditions of the Contract;
- 9.15 **Completion Date** means the date(s) for completion of the Works stated in the Appendix under Clauses 21.1 and 21.3 or the last extended date granted under Clause 23.0;
- 9.16 **Conditions** means the Conditions of the Contract, including all revisions, amendments and/or amplifications as may be agreed by the Parties and incorporated as part of these Conditions of Contract;
- 9.17 **Confirmation of CA's Instruction** or **CCI** means the confirmation of CA's Instructions as described in Clause 2.4(b)(i);
- 9.18 **Consultant** means the Architect, Engineer, Quantity Surveyor and/or Specialist Consultant as appropriate;
- 9.19 **Contract** or **Contract Documents** means the documents referred to in Article 2;

9.20 **Contract Administrator** or **CA** means the Person named in Article 4 as the Contract Administrator or other Person from time to time appointed in writing by the Employer to be the Contractor Administrator and notified in writing to the Contractor by the Employer. In the event that no such Person is appointed by the Employer or named in Article 4 as the Contract Administrator, then the Architect shall be the Contract Administrator for the purposes of the Contract;

9.21 **Contract Bills** comprise the following documents:

- (a) Form of Tender;
- (b) Instructions to Tenderers;
- (c) Conditions of Tendering;
- (d) Preambles;
- (e) Preliminaries;
- (f) Bill of Quantities; and
- (g) Any other documents included as part of the Contract Bills.

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

9.22 **Contract Sum** means the sum stated in the Letter of Acceptance and in Article 3.1 or such other sum as shall become payable hereunder at the times and in the manner prescribed by the Contract;

9.23 **Contractor** means the Party named in the second part of the Articles of Agreement and includes the Contractor's legal successors or personal representatives or any Person to whom the rights and obligations of the Contractor have been transferred with the agreement of the Employer;

9.24 **Contractor's All Risks Insurance** ('CAR Insurance') means an insurance policy which provides coverage against any physical loss or damage to work executed and materials and goods under a standard CAR Insurance policy. The minimum insurance risks are specified in Clauses 19.0 and/or 20.0, and the insurance shall have the appropriate endorsements. Any additional insurance risks in addition to those stated in these Conditions that are required to be covered under the CAR Insurance shall be stated in the Contract Bills;

9.25 **Date of Commencement** means the date(s) fixed and stated in the Appendix under Clauses 21.1 and 21.2;

9.26 **DAAB** or **Dispute Avoidance/Adjudication Board** means the sole member or three members (as the case may be) so named in the Contract, or appointed under Clause 34.2 or Clause 34.3;

9.27 **DAAB Agreement** means the agreement signed or deemed to have been signed by both Parties and the sole member or each of the three members (as the case may be) of the DAAB in accordance with Clause 34.2 or Clause 34.3, incorporating by reference the General Conditions of Dispute Avoidance/Adjudication Agreement

contained in the Appendix to these General Conditions with such amendments as are agreed;

- 9.28 **Day** means calendar day including the weekly day of rest but excluding gazette holidays applicable to the location where the Works is carried out;
- 9.29 **Defects** means defects, shrinkages or other faults due to materials or workmanship not in accordance with the Contract, and/or due to any faulty design (if any) undertaken by the Contractor, Nominated Sub-Contractor and Nominated Supplier;
- 9.30 **Defects Liability Period** means the period stated in the Appendix under Clause 15.3;
- 9.31 **Employer** means the Party named in the first part of the Articles of Agreement and includes the Employer's legal successors or personal representatives or any Person to whom the rights and obligations of the Employer have been transferred with the agreement of the Contractor;
- 9.32 **Engineer** means the Person named in Article 6 and shall be a professional Engineer or any other form of practice registered under the Registration of Engineers Act 1967 and approved by the Board of Engineers, Malaysia;
- 9.33 **EOT** means extension of time;
- 9.34 **Exceptionally Adverse Weather Condition** means a condition of weather on a day before the Completion Date for the whole of the Works in the area of or nearby the Site within the particular Month the value of which, by comparison with the weather data, is shown to occur on average less frequently than once in ten years. Only the difference between the weather measurement and the weather which the weather data show to occur on average less frequently than once in ten years is taken into account in assessing a Time Impact Event;
- 9.35 **Final Account** means the documents showing the adjustment of the Contract Sum issued under Clause 30.10;
- 9.36 **Final Certificate** means the final certificate issued by the CA under Clauses 30.13 and 30.14;
- 9.37 **Force Majeure** means an exceptional event or circumstance which:
- (a) is beyond a Party's control;
 - (b) such 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
 - (d) 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 9.37(a) to (d) 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, ionising 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.

9.38 **Interim Certificate** means the progress payment certificate issued by the CA under Clauses 30.1 and 30.2;

9.39 **Letter of Acceptance** (or **Letter of Award**) means the letter of acceptance of the Contractor's Tender issued by or on behalf of the Employer;

9.40 **Limit of Liquidated Damages** means the amount as stated in the Appendix under Clause 22.1(a);

9.41 **Limit of Retention Fund** means the amount as stated in the Appendix under Clause 30.5;

9.42 **Lump Sum** means a fixed firm lump sum price for the Works as defined in Article 3.1(a);

9.43 **Month** means calendar month;

9.44 **Nominated Sub-Contractor** means a sub-contractor nominated by the CA and approved by the Employer under Clause 27.0;

9.45 **Nominated Supplier** means a supplier nominated by the CA and approved by the Employer under Clause 28.0;

9.46 **Party** (or **party**) means the Employer or the Contractor, as the context requires;

9.47 **Performance Bond** means the bond required to be provided by the Contractor as a security for the due performance of the Contract under Clause 37.0;

9.48 **Period of Honouring Certificates** means the period for honouring certificates stated in the Appendix under Clause 30.1;

9.49 **Person** (or **person**) means a natural person, sole proprietorship, firm (partnership) or body corporate;

9.50 **Practical Completion** or **Practically Completed** means the state of completion described in Clause 15.1;

- 9.51 **Prime Cost Sums ('P.C. Sums')** means the sums provided in the Contract for Works or services to be executed by Nominated Sub-Contractors and Nominated Suppliers or for materials and goods which cannot be determined or detailed at the time;
- 9.52 **Provisional** or **Provisional Quantity** means the estimated quantities of work provided in the Contract Bills for work to be executed or for the supply of any materials and goods which cannot be determined or detailed at the time;
- 9.53 **Provisional Sum** means a sum included in the Contract and so designated in the Contract Bills for the execution of any part of the Works or for the supply of goods and materials, or for contingencies, which sum may be used in whole or in part, or not at all, on the instruction of the CA. The Contractor shall be entitled to only such amounts in respect of the Works, supply or contingencies to which such Provisional Sum relate as the CA shall determine in accordance with Clause 11.5;
- 9.54 **Quantity Surveyor** means the Person named in Article 7 and shall be a Registered Quantity Surveyor or any other form of practice registered under the Quantity Surveyors Act 1967 and approved by the Board of Quantity Surveyors, Malaysia;
- 9.55 **Retention Fund** (or **Retention Money** or **Retention Monies**) means the sum retained in accordance with Clause 30.5;
- 9.56 **Schedules** means the document(s) entitled schedules, completed by the Contractor and submitted as part of the Tender and included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedule of rates and/or prices;
- 9.57 **Schedule of Rates** means any documents however entitled or described comprised in the Schedules and which is intended to be used for the purpose of valuing Variations;
- 9.58 **Service Provider** means any company or body authorised to provide water, electricity, telephone, sewerage and other related services;
- 9.59 **Site** means the Site designated as such in the Articles of Agreement and includes the land or other places on, under, in or through which the Works are to be executed and any other land or places provided by the Employer as may be specifically stated in the Contract Documents as forming part of the Site;
- 9.60 **Site Agent** means the Person appointed under Clause 8.1;
- 9.61 **Site Staff** means the Person appointed under Clause 10.1;
- 9.62 **Specialist Consultant** means the Person named in Article 8 and such Person shall be a Specialist Consultant appointed by the Employer for a designated scope of professional work;
- 9.63 **Specification** means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works;

- 9.64 **Sub-Contractor** means any sub-contractor including Nominated Sub-Contractor, Nominated Supplier and other domestic sub-contractor and supplier employed by the Contractor for the purposes of the Works;
- 9.65 **Survey Marks** means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract;
- 9.66 **Time Impact Events** means any one of the Non-Employer's Events and Employer's Events set out in Clause 23.8;
- 9.67 **Tender** means the Form of Tender, which was completed by the Contractor for the Works, and all other documents which the Contractor submitted with the Form of Tender, as included in the Contract;
- 9.68 **Unforeseeable** means not reasonably foreseeable by an experienced Contractor by the date for submission of the Tender;
- 9.69 **Variation** means changes made to the Works as defined in Clause 11.1;
- 9.70 **Works** means the Works described in the Articles of Agreement and are the whole of the materials, labour, plant and other things necessary and requisite for the proper execution of the Contract as shown on the Contract Drawings and described by or referred to in the Employer's Requirements, Specification, the Contract Bills and the Conditions, and include any changes made to these Works in accordance with the Conditions.

The assets and purpose of the Works shall be in compliance with Shariah principle*¹

- 9.71 **Works Programme** means the works programme described in the Contract Documents and in Clause 3.4.

Article 10

Meanings

Unless the context requires otherwise, the following shall apply for the purposes of interpretation of the Contract:

- (a) words of one gender include the other gender, and words indicating Persons or Parties include corporations and other legal entities;
- (b) 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 legislations;

¹ *Parties may opt out this paragraph as explained below:

The applicable Shariah principle is the compliance with Shariah throughout the entire Project entered under the Contract. This includes the assets and the purpose of the Works. Reference has been made to:

(i) Standard S14.3, BNM, Istisna' Guidelines (BNM/RH/PD 028-1) pp. 7.

- (c) words importing the singular also include the plural and vice versa where the context requires; and
- (d) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning.

Article 11

Acknowledgement of Shariah Compliant Contract

Notwithstanding anything contained in the Contract, the Parties agree that this Contract is of a Shariah-compliant nature or meets the same Shariah standards that may be adopted by any other parties, including all the accounts, documents and agreements executed pursuant to this Contract.

The Parties will not raise any claim, objection as to matters of Shariah non-compliance in respect of or otherwise in relation to the Contract, including all the documents and agreements executed pursuant to this Contract.

None of the Parties' obligations under this Contract, including all the documents and agreements executed pursuant to this Contract shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that this Contract, including all the documents and agreements executed pursuant to the Contract are not compliant with Shariah.

The Parties agree that if any conditions under this Contract, shall be held to be invalid, unenforceable, illegal or otherwise the invalidity, unenforceability and illegality under the Shariah principle, it shall be amended, to the extent that is possible, to comply with the Shariah principle. The said conditions shall not affect or impair the remaining terms and conditions in the Contract.

IN WITNESS WHEREOF the Parties hereto have entered into this Contract on the day and year first above written:

Signed for and on behalf of
the **Employer**

}
}
}

Signature

Name

In the presence of:

Signature

Name

Signed for and on behalf of
the **Contractor**

}
}
}

Signature

Name

In the presence of:

Signature

Name

THE CONTRACT CONDITIONS

1.0 CONTRACTOR'S GENERAL OBLIGATIONS

Completion of Works

- 1.1 In accordance with the Contract, the Contractor shall:
- 1.1(a) carry out and complete the Works;
 - 1.1(b) remedy any defects in the Works;
 - 1.1(c) be obliged to provide the plant, machinery, labour, materials, goods, services and other things required and necessary for the execution and completion of the works.

Site Operations, Temporary Works and Methods of Construction

- 1.2 Save for any temporary works or methods of construction which are designed by the Consultant and provided by the CA, the Contractor shall be responsible for:
- 1.2(a) the adequacy, stability and safety of all site operations, temporary works and all methods of construction of the Works; and
 - 1.2(b) submitting details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works, when requested by the CA.

Notwithstanding any checks carried out or approval by the CA of such proposed arrangements and methods, the Contractor shall not be relieved of his responsibilities under this Clause.

Contractor's Design, Responsibilities and Design Guarantee Bond

- 1.3
- 1.3(a) The Contractor shall be responsible for its part of the Works, either by Specification under the Contract to be designed by the Contractor or by his proposal for any alternative design, and shall ensure that:
 - (i) completed Works are fit for their purposes; and
 - (ii) the design and the execution thereof comply with the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider.
 - 1.3(b) Approval from the CA of any design or alternative design undertaken by the Contractor is necessary prior to its implementation. Notwithstanding such approval and acceptance, the Contractor remains fully responsible for his design, alternative design and the execution of the Works.
 - 1.3(c) The Contractor retains the copyright of its design and its alternative design. However, the Employer is 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 determination of the employment of the Contractor

under the Contract. Such licence may be assigned as part of any future sale or transfer of the Works by the Employer.

1.3(d) The Contractor:

- (i) shall provide an on-demand Design Guarantee Bond for the said part of the Works which is designed by the Contractor issued by an approved licensed bank, insurance company or financial institution of the sum equivalent to 5% of the value of the said part of the Works, the sum of which shall be determined by the CA, after consulting the relevant Consultant. The Design Guarantee Bond shall be Shariah compliant in so far as it is commercially available and in the form as approved by the Employer and submitted to the Employer upon or before the issuance of the Certificate of Practical Completion of the Works. Such Design Guarantee Bond shall remain valid until three (3) Months after the issuance of the Certificate of Making Good Defects; or
- (ii) alternatively, may opt for a Design Guarantee Sum whereby deductions of 5% from interim payments subsequent to the commencement of the said part of the Works until the total amount deducted aggregate to a sum equivalent to 5% of the value of the said part of the Works. The amount deducted shall be retained by the Employer until three (3) Months after the issuance of the Certificate of Making Good Defects.

1.3(e) The Contractor shall provide the Employer a 5-year design warranty, or a design warranty for any other duration as may be agreed by the Employer and the Contractor, for the said part of the Works before the expiry of the Defects Liability Period in the terms as approved by the CA, commencing from the day after the Defects Liability Period. If the Contractor fails to provide the design warranty in accordance with this Clause, then without prejudice to any other rights and remedies which the Employer may possess, the Employer may:

- (i) in the case where the Contractor has provided the Design Guarantee Bond, request the Contractor to extend the duration of the Design Guarantee Bond to expire on a date as may be instructed by the CA. If the Contractor fails to comply within seven (7) Days from the date of the Employer's request, call on the Design Guarantee Bond; or
- (ii) in the case where the Contractor has opted for the Design Guarantee Sum, withhold the release of the Design Guarantee Sum until the design warranty is provided by the Contractor.

1.3(f) If any defect or damage shall occur to that particular part of the Works designed by the Contractor as a result of any defect, fault, insufficiency or inadequacy in the design including workmanship, materials or equipment which has become defective arising directly from design fault, then the Employer shall be entitled to recover any loss, expense or damage suffered from the Design Guarantee Bond or the Design Guarantee Sum, as the case may be.

Discrepancy or Divergence between Contract Documents

- 1.4
- 1.4(a) The Contractor shall use the Contract Documents and any other subsequent documents issued by the CA to plan the Works prior to their execution.
 - 1.4(b) If the Contractor finds any discrepancy or divergence between any of the Contract Documents, or between the Contract Documents and any subsequent documents issued by the CA, the Contractor shall immediately give a written notice of such discrepancy or divergence to the CA prior to the commencement of the affected Works.
 - 1.4(c) Upon receipt of such written notice, the CA shall issue a written instruction within a period which would not materially delay the progress of the affected Works, having regard to the Completion Date. Such discrepancy or divergence shall not vitiate the Contract.

Safety Procedures

- 1.5 The Contractor shall:
- 1.5(a) comply with all applicable safety regulations;
 - 1.5(b) take all necessary measures to ensure the safety of all Persons entitled to be on the Site;
 - 1.5(c) provide fencing, lighting, guarding and watching of the Works until Practical Completion of the Works; and
 - 1.5(d) provide all necessary temporary works (including roadways, footways, guards and fences) for the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

Access to Site and Rights of Way

- 1.6
- 1.6(a) The Employer shall provide access for the Contractor to execute the Works.
 - 1.6(b) However, if the Contractor require any special and/or temporary rights-of-way, then the Contractor shall bear all fees, costs and charges in connection therewith.

Avoidance of Interference

- 1.7
- 1.7(a) The Contractor shall not interfere with:
 - (i) the convenience of the public; or
 - (ii) the access to and use and occupation of all roads and footpaths to which there is a public or private right of use or access.
 - 1.7(b) The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such interference.

Maintenance of Access Route

- 1.8 1.8(a) The Contractor shall:
- (i) take all necessary preventive measures to ensure that any activity connected with the execution of the Works does not cause damage to any road or bridge which forms part of or connects with the access route(s) to the Site; and
 - (ii) in the event of occasioning such damage, promptly make good the said damage.
- 1.8(b) Except as otherwise stated in these Conditions, the Contractor shall:
- (i) be responsible for any maintenance required as a result of his use of the access route(s);
 - (ii) provide all necessary signs or directions along access route(s), and shall obtain any necessary permissions or licences from the relevant authorities for his use of signs and directions; and
 - (iii) be solely responsible for any claims which may arise from the Contractor's use of the access route(s) and shall indemnify and hold harmless the Employer in respect of all and any such claims.

Protection of the Environment

- 1.9 1.9(a) The Contractor shall take all necessary measures to ensure that any activity connected with or engaged upon the execution of the Works does not inflict environmental damage and nuisance to people and property.
- 1.9(b) The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the levels stated in the Contract Documents or prescribed by applicable laws, by-laws, regulations, terms and conditions of any Appropriate Authority and Service Provider.

Progress Reports

- 1.10 1.10(a) Unless otherwise instructed by the CA, each monthly progress reports shall be prepared by the Contractor and submitted to the CA in six (6) copies. The first report shall cover the period up to the end of the first calendar month following the Date of Commencement. Reports shall be submitted monthly thereafter, each within seven (7) Days after the last day of the period to which it relates. Reporting shall continue until the issuance of the Certificate of Practical Completion.
- 1.10(b) Unless otherwise instructed by the CA, each report shall include (amongst others):
- (i) detailed descriptions of progress, including any Contractor's design, procurement and mobilisation of any plant, equipment and material, and the construction, erection, testing and commissioning of the Works both in respect of the Contractor and each Nominated Sub-Contractor;

- (ii) the status of manufacture of any major equipment, material or part of the Works as may be specifically required by the CA;
 - (iii) the details of the Contractor's and Sub-contractor's personnel, workmen, plant, materials and equipment mobilised for the execution of the Works;
 - (iv) a list of notices given for any claim for EOT and loss and/or expense under the Contract;
 - (v) safety statistics, including details of any hazardous incidents and activities relating to environmental issues and public relations;
 - (vi) any outstanding requests for instructions or information given to the CA; and
 - (vii) comparisons of actual and planned physical and financial progress, with details of any matters which may jeopardise the timely completion of the Works in accordance with the Contract, and the measures being (or to be) adopted to overcome such actual or potential delays.
- 1.10(c) The submission of progress reports by the Contractor shall not under any circumstances be construed as being the notice or application for EOT as required under Clause 23.0.

2.0 CA'S POWER, FUNCTIONS AND INSTRUCTIONS

CA's Power & Functions

- 2.1 2.1(a) The power of the CA shall be that stated in the Contract. Except as expressly stated in the Contract, the CA shall have no power to vary or modify the terms of the Contract or to relieve the Contractor of any of his obligations under the Contract.
- 2.1(b) The CA's functions include:
- (i) issuing all instructions concerning quality, quantity, variation, payment and other matters within his power in accordance with the Contract; and
 - (ii) exercising his power and administering this Contract impartially and in good faith.

CA's Representative(s)

- 2.2 The CA may appoint in writing any suitably qualified Person(s) to be the CA's representative(s) ("CA's Representative"). The CA's Representative(s) shall be directly responsible to the CA and shall carry out such duties and exercise such power as may be delegated to him by the CA under Clause 2.3.

CA's Power to Delegate

- 2.3 The CA may from time to time delegate to the CA's Representative(s) any of the duties or functions vested in the CA and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy of such delegation and/or revocation has been delivered

to the Contractor. Any act done by the CA's Representative(s) in accordance with such delegation shall have the same effect as though it has been done by the CA. Provided that:

- 2.3(a) any failure of the CA's Representative(s) to disapprove any materials, goods or any part of the Works shall not prejudice the power of the CA to disapprove such materials, goods or any part of the Works; and
- 2.3(b) if the Contractor disputes any act of the CA's Representative(s), he shall refer the matter to the CA who shall confirm, reverse or vary (as the case may be) the act, decision or omission of the CA's Representative(s).

CA's Instructions

- 2.4 2.4(a) Instructions given by the CA shall be in writing ("CA's Instruction"). For the avoidance of any doubt, a drawing issued by the CA (or by the Consultant and approved by the CA), or recorded minutes of any meeting, shall not be considered as a CA's Instruction within the meaning of this Clause unless it is issued together with a written statement from the CA stating that it is a CA's Instruction.
- 2.4(b) If for any reason the CA considers it necessary to give an instruction other than in writing, such instruction shall be deemed to be an CA's Instruction upon:
 - (i) delivery to the CA of a written confirmation of the instruction from the Contractor to the CA entitled "Confirmation of CA's Instruction" ('CCI'), and unless the CA objects to it in writing within five (5) Days of receipt of the CCI, the said instruction shall take effect on the date when the CCI was issued; or
 - (ii) subsequent confirmation of the instruction by the CA with a CA's Instruction. The instruction shall take effect as from the date of the CA's confirmation.
- 2.4(c) If an instruction issued by the CA is not in writing, and neither the CA nor Contractor confirms such instruction in the manner and at the time aforesaid but the Contractor nevertheless complies with the same, then the CA may confirm the same in writing with an CA's Instruction at any time prior to the issuance of the Final Account, and the said instruction shall be deemed to have taken effect on the date when it was first communicated to the Contractor otherwise than in writing by the CA.

Failure of Contractor to Comply with CA's Instruction

- 2.5 If within seven (7) Days upon receipt of the CA's Instruction in writing or within such period as may be stipulated in the CA's Instruction, the Contractor does not comply with it or, in the opinion of the CA, the Contractor has failed to take any necessary or reasonable step to comply with it, then the Employer may, without prejudice to any other rights and/or remedies which he may possess, employ and pay other Persons to execute any work as may be necessary to give effect to such instruction. Any additional costs incurred in connection with the carrying out of the said instruction by others shall be recoverable from the Contractor by the Employer as a debt, or may be deducted by him from any monies due or to become

due to the Contractor under this Contract, or recovered by the Employer from the Performance Bond in accordance with the terms provided under Clause 37.5.

Dispute as to CA's Power to Issue Instructions

- 2.6 2.6(a) Upon receipt of what purports to be an instruction from the CA, the Contractor may within five (5) Days thereof make a written request to the CA to specify in writing the provision in these Conditions which empowers the issuance of the said instruction. The CA shall within three (3) Days thereof comply with such a request.
- 2.6(b) If the Contractor complies with the said instruction without making a written request under Clause 2.6(a), the instruction shall be deemed to have been properly given under the stated provision.
- 2.6(c) Notwithstanding the CA's failure to comply with the Contractor's request under Clause 2.6(a), or any dispute with regard to the CA's power to issue such instruction after receiving the CA's answer to the written request under Clause 2.6(a), the Contractor shall, unless otherwise instructed by the CA, comply with the said instruction. For the avoidance of doubt, the Contractor's compliance with the instruction given by the CA shall be without prejudice to any other rights or remedies which he may possess.

Delayed Instructions

- 2.7 2.7(a) The Contractor shall give written notice to the CA whenever the Works are likely to be delayed or disrupted if any necessary instruction is not issued to the Contractor within a reasonable time. The notice must be given to the CA in sufficient time before the commencement of construction of the affected works to enable the CA to issue the necessary CA's Instruction, and shall include details of the necessary instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if the issuance of the instruction is delayed.
- 2.7(b) If the Contractor suffers delay and/or incurs loss and expense as a result of a failure of the CA to issue the notified instruction within the time required or within a reasonable time:
- (i) the Contractor may apply for an EOT under Clause 23.0 and for loss and expense under Clause 24.0;
 - (ii) however, if and to the extent that the CA's failure was caused by any negligence, omission, default and/or breach of contract by the Contractor or his Nominated Sub-Contractors, the Contractor shall not be entitled to any EOT, or loss or expense.

3.0 CONTRACT AND OTHER DOCUMENTS

Custody and Care of the Documents

- 3.1 3.1(a) The Contract Documents shall be in the custody and care of the CA so as to be available at all reasonable times for inspection by the Employer or the Contractor whenever so required.

- 3.1(b) The Contractor shall keep, on the Site, one copy of the documents referred to in Clauses 3.2, 3.3 and 3.4, together with drawings and documents required to be supplied by the Contractor under the Contract (if any) and other communications given under the Contract. The Employer, CA, Consultant and their authorised representatives shall have the right of access to all these documents at all reasonable times.

Copies of Documents

- 3.2 Immediately after the execution of this Contract, the CA shall without charge to the Contractor provide him with:

- 3.2(a) one (1) signed original copy of the Contract Documents;
3.2(b) two (2) further copies of the Contract Drawings; and
3.2(c) two (2) further copies of the Specification.

The Contractor shall make at his own cost any further copies required by him and shall not, without the consent of the CA, use or communicate the contents of any of the documents to a third party.

Further Drawings or Details

- 3.3 3.3(a) From time to time as may be necessary, the CA shall, without charge to the Contractor, furnish him with two (2) copies of further drawings, details, levels and any other information as is reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to complete the Works in accordance with the Contract.
- 3.3(b) If the Contractor requires any further drawings, details, levels and/or any other information, he shall apply in writing to the CA for these items in sufficient time before the commencement of construction of the affected works to enable the CA to issue instructions within such period so as not to materially delay the progress of the affected works having regard to the progress of the Works and the Completion Date.
- 3.3(c) The written notice in Clause 3.3(b) shall also state the consequences in terms of delay to the progress or completion of the Works or any part of the Works and any financial consequences if the CA does not comply with the Contractor's request.

Contractor to Provide Works Programme

- 3.4 3.4(a) Within fourteen (14) Days upon issuance of the Letter of Acceptance (or within such longer period as may be agreed in writing by the CA), the Contractor shall without charge to the Employer, provide the CA with six (6) copies of the Works Programme for the execution of the Works.
- 3.4(b) The Works Programme shall comply with the requirements specified in the Contract Documents. The CA may instruct the Contractor to prepare and submit the Works Programme in a particular form and content.
- 3.4(c) If the Works or any part thereof are delayed for any reason, or that the progress of the Works does not conform to the current Works

Programme, the Contractor shall, without charge to the Employer, submit a revised Works Programme to address such delay including the remedial action to be taken in order to meet the Completion Date or projected completion date as approved by the CA. The Contractor shall continue to provide monthly updates on the progress of such remedial action until he is able to demonstrate that there is no longer any delay in the Works.

- 3.4(d) Notwithstanding any instruction or approval of the Works Programme (whether current or revised) by the CA, the Contractor shall remain solely responsible for any error, omission and/or deficiency in the Works Programme.

Works Programme Not Part of or Incorporated into the Contract Documents

- 3.5 Works Programme shall not constitute part of the Contract, whether or not it is physically incorporated into the Contract Documents.

Submission and Approval of Works Programme

- 3.6 3.6(a) Approval of Works Programme (whether current or revised) by the CA shall not be a condition precedent to starting or continuing with the Works.
- 3.6(b) The submission to and approval by the CA of such Works Programme shall not relieve the Contractor of his obligations under the Contract.
- 3.6(c) The Works Programme may be used by the CA to monitor progress of the Works. The CA is entitled to rely on the Works Programme, if and in so far as he deems it appropriate to do so, as a basis for the assessment of an EOT and the effect of the delay and/or disturbances to the progress of the Works.
- 3.6(d) The submission of any Works Programme by the Contractor shall not under any circumstances be construed as being a notice or application for EOT as required under Clause 23.0.

Limitation of Use of Documents

- 3.7 Neither the Parties, the Consultant nor the CA and/or his authorised representative shall use the Contract Documents for any purpose other than this Contract, or divulge the Contract Documents or the information contained therein including the rates and prices to the Works to any other Person.

As-built Drawings, etc.

- 3.8 Before the Completion Date, or any other period as provided for in the Contract, the Contractor shall, without further charge to the Employer, supply and cause all his Sub-Contractors to supply for the retention and use of the Employer, four (4) copies of such drawings and information describing the Works as-built and concerning the maintenance and operation of the Works, as may be required by the Contract Documents, the Consultant or the CA.

4.0 STATUTORY OBLIGATIONS, NOTICES, FEES, LEVIES AND CHARGES

Compliance with Statutory Requirements

- 4.1
- 4.1(a) Unless otherwise stated in the Contract, the Contractor shall comply with and give all notices required by any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in respect of and/or arising from the execution of the Works, including all temporary works.
 - 4.1(b) At the request of the Contractor, the Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor for the Contractor's applications for any permits, licenses or approvals required by the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in connection with the Works.
 - 4.1(c) The Contractor shall provide the Employer, where applicable, all original copy of the permits, licenses, notices, certificates and/or approvals issued by the Appropriate Authorities and/or Service Provider upon obtaining the same.
 - 4.1(d) The Contractor shall do everything necessary to assist the Employer, the CA and/or the relevant Consultant in arranging for the Certificate of Completion and Compliance to be issued, including (where applicable) completing, signing and submitting the necessary notices, forms or applications required by the law in connection with the Works for the purposes of the issuance of the Certificate of Completion and Compliance. This obligation of the Contractor shall continue even after the Practical Completion of the Works.

Inconsistencies with Statutory Requirements

- 4.2 If the Contractor finds any inconsistencies between any of the documents in the Contract Documents (or any subsequent documents issued by the CA) and any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider, he shall immediately notify the CA. The notice shall include:
- 4.2(a) the details of the inconsistencies;
 - 4.2(b) the proposed action to be taken by him to address such inconsistencies; and
 - 4.2(c) the time and estimated costs (if any) required to undertake such action.

Conformance with Statutory Obligations

- 4.3
- 4.3(a) If the Contractor does not receive any instruction from the CA after seven (7) Days from the date of receipt of the notification as set out in Clause 4.2, the Contractor shall proceed with the work as proposed and in conformity with the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider.

- 4.3(b) Any changes so necessitated shall be deemed to be a Variation under Clause 11.

Fees, Levies or Charges

- 4.4 4.4(a) Each party shall indemnify the other against liability in respect of any fees, levies or charges (including any penalties, rates or taxes) which result from the Contractor's non-compliance with any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in respect of and/or arising from the execution of the Works, including all temporary works.
- 4.4(b) If the Contractor fails to pay any such fees, levies or charges, the Employer may pay such amount on behalf of the Contractor and recover such amount together with any additional cost in connection therewith as a debt from the Contractor, or may deduct the same from any monies due or to become due to the Contractor under the Contract, or recover the same from the Performance Bond in accordance with the terms provided under Clause 37.5.

5.0 SETTING OUT OF THE WORKS

Setting Out

- 5.1 5.1(a) Provided that all necessary information and drawings have been given to the Contractor, the Contractor shall:
- (i) accurately set out the Works in relation to Survey Marks, original points, lines and levels of reference specified in the Contract or notified by the CA or the Consultant;
 - (ii) ensure that the positioning, levels, dimensions and alignment of all parts of the Works are correct;
 - (iii) provide all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities, required for setting out the Works; and
 - (iv) provide every assistance and similar facilities to the CA or the Consultant for checking the setting out.
- 5.1(b) The inspection, assistance and/or approval by the CA and/or the Consultant shall not in any way relieve the Contractor of his responsibility for the accuracy of the setting out.

Inaccurate Setting Out

- 5.2 5.2(a) If a setting out is disturbed or obliterated, the Contractor shall immediately notify the CA. Unless the CA otherwise directs, the Contractor shall reinstate the setting out.
- 5.2(b) If the disturbance or obliteration is caused by a Person other than the Contractor or any of its representatives, the cost incurred by the Contractor in reinstating the setting out shall be valued by the CA and paid by the Employer.

- 5.2(c) The Contractor shall, at his own costs, rectify any error arising from his own inaccurate setting out at any time during the execution of the Works.
- 5.2(d) Notwithstanding Clauses 5.2(a) and 5.2(c), the CA may at his discretion accept the errors without amendment subject to a reduction (if any) in the Contract Sum as may be reasonably determined by the CA having regard to any loss of value suffered by the Employer and any reduced cost to the Contractor resulting from the error.

6.0 WORKS AND SERVICES TO CONFORM TO CONTRACT

Standards of Works, Workmanship, Materials, Goods and Services

- 6.1 All Works, workmanship, materials, goods and services shall be:
- 6.1(a) of the respective quality and standards described in the Contract; and
- 6.1(b) required by the CA in accordance with the Contract.

Production of Proof of Compliance for Materials and Goods

- 6.2 The Contractor shall, upon the request of the CA, provide him with the necessary documentary proof that the materials and goods supplied for or installed in the Works comply with Clause 6.1.

Inspection and Testing

- 6.3 6.3(a) Before their incorporation in the Works, the Contractor shall provide for testing samples of any materials or goods as may be identified and requested by the CA.
- 6.3(b) The CA may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work, or if the inspection and/or test is in the opinion of the CA required.
- 6.3(c) The cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be supplied by the Contractor at his own cost where:
- (i) such cost is already provided for in the Specification or Contract Bills;
 - (ii) the inspection or test shows that the Works, materials and goods were not in accordance with the Contract; or
 - (iii) the inspection or test was in the opinion of the CA required in consequence of prior negligence, omission, default and/or breach of contract by the Contractor.

Works, Materials, Workmanship, Services and Goods Not in Accordance with Contract

- 6.4 If the CA finds any Works, materials, workmanship, services and/or goods which are not in accordance with the Contract, the CA may instruct the Contractor in writing to do any or all of the following:
- 6.4(a) to remove from and/or not to bring to the Site any materials, services or goods which in the opinion of the CA are not in accordance with the Contract;
 - 6.4(b) to demolish and reconstruct any work so that it complies with the requirements of the Contract;
 - 6.4(c) to rectify such work as instructed by the CA so that it complies with the requirements of the Contract;
 - 6.4(d) within the time as stipulated in the CA's Instruction, to submit a method statement proposing how such Works, materials, goods, services or workmanship can be rectified to render them in accordance with the Contract. If the CA accepts the Contractor's proposal, the Contractor shall carry out the rectification work without any delay. However, if the CA does not accept the proposal, the CA may issue any other necessary written instruction under this Clause so as to render the work in accordance with the Contract;
 - 6.4(e) with the consent of the Employer, to leave all or any such Works, materials, goods or workmanship in the Works, without prejudice to the Employer's right to recover:
 - (i) from the Contractor any reduced value as may be reasonably determined by the CA; and
 - (ii) as a debt or to deduct it from any monies due or to become due to the Contractor under this Contract or to recover it from the Performance Bond in accordance with the terms provided under Clause 37.5.

No Compensation for Time and Cost

- 6.5 The Contractor shall not be entitled to any extra time or any loss, expense or cost that may be incurred as a result of his compliance with the CA's instructions under Clause 6.4.

Compliance with CA's Instruction

- 6.6
- 6.6(a) The Contractor shall comply with the instruction of the CA under Clause 6.4 within a reasonable time, specified by the CA, or immediately if there is urgency in complying with the subject matter of the instruction.
 - 6.6(b) If the Contractor fails, neglects or refuses to comply with such an instruction, the Employer may, without prejudice to any other rights or remedies, employ and pay other Persons to carry out the subject matter of the instruction.

- 6.6(c) Any loss, expense or damage thereby suffered or incurred by the Employer shall be recoverable from the Contractor as a debt, or may be deducted from any monies due or to become due to the Contractor under this Contract, or may be recovered from the Performance Bond in accordance with the terms under Clause 37.5.

Warranties or Guarantees in Respect of any Works, Materials and Goods

- 6.7 6.7(a) If the Contract requires the Contractor or any manufacturer, Nominated Sub-Contractor or Nominated Supplier to give a warranty or guarantee in respect of any proprietary systems, materials and goods supplied, the Contractor shall:
- (i) provide or procure such warranty or guarantee and submit it to the Employer as soon as practicable upon obtaining the same; and
 - (ii) ensure that all original certificates of warranties or guarantees to any proprietary systems, materials and goods supplied comply with the requirements of the Contract, and are issued in the name and favour of the Employer and to take effect from the Date of Practical Completion.
- 6.7(b) The provision of such warranty or guarantee shall in no way relieve or release the Contractor from any duties, responsibilities or liability under the Contract.

7.0 ROYALTIES AND INTELLECTUAL PROPERTY RIGHTS

Indemnity to Employer Against Claims

- 7.1 Subject to Clause 7.2:
- 7.1(a) all licenses, royalties or other sums payable in respect of the supply and use of any articles, processes, inventions or drawings for the Works shall be deemed to have been included in the Contract Sum.
- 7.1(b) the Contractor by infringing or being held to have infringed any such intellectual property rights shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer.

The indemnity provided for in Clauses 7.1(a) and (b) above are without prejudice to other rights and remedies of the Employer in respect of any such infringement.

Exclusion of Contractor's Liability to Pay for Infringement

- 7.2 Where in compliance with the Contract or CA's Instruction, the Contractor supplies or uses any articles, processes, inventions or drawings for the Works which infringes intellectual property rights, the Contractor shall not be held liable for such infringement, and shall be indemnified by the Employer in respect of any liability for the consequences thereof.

Government and/or Appropriate Authority Royalties

- 7.3 Except where otherwise provided for in the Contract, the Contractor shall pay all Government and/or Appropriate Authority royalties, levies, rent and all other payments in connection with and/or arising from the Works, including any temporary works.

8.0 SITE AGENT

Site Agent and His Assistants

- 8.1 8.1(a) The Contractor shall:
- (i) keep upon the Works a competent and suitably qualified and experienced Person who shall be the Site Agent of the Contractor for the purposes of this Contract;
 - (ii) together with Site Agents, keep senior assistants and supervisory staff in each trade as required by the Contractor or as may be instructed by the CA; and
 - (iii) ensure that the Site Agent and such senior assistants and supervisory staff are Persons who are capable of receiving instructions in a language as may be required for the purposes of executing the Works.
- 8.1(b) The Contractor shall give the Site Agent all authority necessary to act on the Contractor's behalf under the Contract.
- 8.1(c) If no Site Agent is named in the Contract, the Contractor shall:
- (i) prior to the Date of Commencement, submit to the CA for consent the name and particulars of the Person the Contractor proposes to appoint as the Site Agent; and
 - (ii) if such Site Agent fails to act, or if consent to the appointment is denied or revoked, then the Contractor shall submit to the CA for consent the name and particulars of another suitable Person for such appointment.
- 8.1(d) The Site Agent shall:
- (i) be on the Site during normal working hours, on a full-time basis; and
 - (ii) with the prior approval of the CA, appoint a suitable replacement Person to be present during any temporary absence of the Site Agent from the Site.

Instructions to Site Agent

- 8.2 Any directions or instructions given to the Site Agent and/or his senior assistants and supervisory staff by the CA or the Site Staff under Clause 10 shall be deemed as given to the Contractor.

Removal of Person Employed on the Works

- 8.3
- 8.3(a) The CA shall be empowered to object to the appointment or employment or continued employment of any Person appointed or employed as the Site Agent.
 - 8.3(b) Such objection must be given in writing. On receipt of the objection, the Contractor shall forthwith remove the Site Agent, and shall submit the name and particulars of another suitable replacement Person to the CA for his approval, prior to engaging the same upon the Works. The Site Agent or such other Person so removed shall not again be employed on the Site.
 - 8.3(c) The Contractor shall not be entitled to any EOT and additional cost in respect of any instruction or approval given by the CA under this Clause.

9.0 ACCESS TO THE WORKS

Right of Access

- 9.1
- 9.1(a) The Employer, CA, Consultant and/or their authorised representatives shall at all times be given access to the Works and to the factories, workshops or other places where any construction plant, materials, goods and works are being fabricated, prepared or stored for the purposes of the Contract.
 - 9.1(b) The Contractor shall ensure that all sub-contracts, whether for the execution or supply of materials, services and goods for the Works, contain provisions entitling the Employer, CA, Consultant, and their authorised representatives to have such access, and shall do all things reasonably necessary to make such right effective.
 - 9.1(c) The Contractor shall, in accordance with an instruction of the CA, afford all reasonable cooperation and access to any other Person engaged by the Employer for purposes of executing any other works not included in the Works on or near the Site.
 - 9.1(d) The Contractor shall not be responsible for any acts or omissions of any other Person engaged by the Employer for the purposes of executing any other works not included in the Works on or near the Site.

10.0 SITE STAFF

Duty of Site Staff

- 10.1
- The Employer may from time to time appoint such number of Site Staff as the Employer may deem necessary, to act under the direction of the CA, for the purposes of inspecting the progress and quality of the Works. The Contractor shall provide all reasonable assistance to the Site Staff in carrying out their duties.

Instructions Given by Site Staff

- 10.2 Any instruction given to the Contractor or his Site Agent upon the Works by the Site Staff shall be of no effect unless:
- 10.2(a) it is given in regard to a matter which the CA is expressly empowered by the Conditions to issue such instruction; and
 - 10.2(b) the Contractor receives a written confirmation from the CA within three (3) Days of such instruction being given.

11.0 VARIATIONS, PROVISIONAL SUMS AND PRIME COST SUMS

Definition of Variation

- 11.1 The term "Variation" means any change in the design, quality or quantity of the Works described by or defined in the Contract and shall include but is not limited to:
- 11.1(a) the addition, omission or substitution of any part of the Works;
 - 11.1(b) a change in the character or standard of any part of the Works, including the goods and materials specified in the Contract to be used for the Works;
 - 11.1(c) the demolition of or removal of any part of the Works no longer desired by the Employer or the CA;
 - 11.1(d) changes to the levels, positions and/or dimensions of any part of the Works;
 - 11.1(e) any change to the Contractor's access to or possession of the Site, or to the Contractor's working hours or restrictions on the Contractor's ability to carry out and complete the Works in such manner as he deems appropriate;
 - 11.1(f) The term "Variation" shall not substantially change the Works.

For the avoidance of doubt, the term "Variation" shall exclude any change to the Works which is necessary to cure or arises from any default of or breach of contract by the Contractor.

No Variation Instructed or Sanctioned by CA Shall Vitate the Contract

- 11.2
- 11.2(a) The CA may issue instructions requiring a Variation, or he may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction of the CA. Any Variation instructed by the CA or subsequently sanctioned by him shall not have the effect of vitiating this Contract.
 - 11.2(b) The Contractor shall not be under any obligation to execute each Variation should the Contractor raises reasonable objection by notice to the CA. Such notice of objection shall be given as soon as practicable, but not later than ten (10) Days from the date of the CA's instruction

requiring a Variation, with supporting particulars. Any objection shall be deemed reasonable if it arises from (among other things) any of the following matters:

- (i) the varied work was not reasonably foreseeable by an experienced contractor by the date of the Contract having regard to the scope and nature of the Works described in the Specification;
- (ii) the Contractor cannot readily obtain the goods, materials, plant or equipment required for the Variation; or
- (iii) it will adversely affect the Contractor's ability to comply with Clause 1.5 and/or Clause 1.9.

Upon receiving this notice, the CA may cancel, confirm or vary the instruction. Any instruction so confirmed or varied shall be taken as an instruction under Clause 11.0.

Dispute with Regard to Whether a Work Constitutes a Variation

- 11.3 Notwithstanding any dispute with regard to whether or not any work instructed by the CA constitutes a Variation, the Contractor shall, unless otherwise instructed by the CA or the Employer, forthwith give effect to the said instruction. For the avoidance of doubt, the Contractor's compliance with the instruction given by the CA shall be without prejudice to any rights and/or remedies which he may possess.

Issue of Variation

- 11.4 The CA may issue instructions in writing requiring a Variation at any time before the issuance of the Certificate of Practical Completion. After the Certificate of Practical Completion has been issued, the CA may not be empowered to issue such instruction unless required for the purposes of instructing the Contractor to correct defects or remedy non-compliance in the Works, or to comply with the requirements of any Appropriate Authority and Service Provider.

P.C. Sums and Provisional Sums

- 11.5
- 11.5(a) The CA shall issue a CA's Instruction in regard to the expenditure of P.C. Sums included in the Contract Bills or for the expenditure of P.C. Sums which arise as a result of instructions issued in regard to the expenditure of Provisional Sums.
 - 11.5(b) The CA shall issue a CA's Instruction in regard to the expenditure of any Provisional Sums included in the Contract Bills.
 - 11.5(c) Each Provisional Sum shall only be used, in whole or in part, in accordance with the CA's Instruction, and the Contract Sum shall be adjusted accordingly.
 - 11.5(d) The total sum paid to the Contractor shall include only such amounts for Works, supplies or services to which the Provisional Sums relate, as the CA shall have instructed. When required by the CA, the Contractor shall produce quotations, invoices, vouchers and accounts or receipts in substantiation of such expenditure.

- 11.5(e) If the expenditure of the P.C. Sums varied for more than 30% of the P.C. Sums stated in the Contract, the Contractor may raise reasonable objection to such expenditure, but no later than ten (10) Days from the date of notification of the nomination.

The CA's action following objections raised under Clause 27.4 is applicable to this Clause.

If the expenditure of the Provisional Sums varied for more than 30% of the Provisional Sums stated in the Contract, the Contractor may raise reasonable objection to such expenditure, but no later than ten (10) Days from the date of notification of the nomination.

Valuation of Variations

- 11.6 11.6(a) Within thirty (30) Days after completion of the work constituting a Variation:
- (i) The Contractor shall submit to the CA all documents necessary for their valuation, including details of the quantities of the work done, site information, rates and any additional claims made by the Contractor arising from the Variation.
 - (ii) Where any recording of site information and/or measurements are required to be carried out at the Site, the Contractor shall provide such assistance as may be necessary and may be present to take notes and measurements.
- 11.6(b) If the CA is of the opinion that the documents and particulars submitted by the Contractor pursuant to Clause 11.6(a) are insufficient for the evaluation and assessment of the Variation, the CA shall in writing within fourteen (14) Days from the date of receipt of the Contractor's original documents and particulars:
- (i) inform him of any deficiency or insufficiency in his submission; and
 - (ii) require such further documents and particulars from the Contractor as the CA considers to be necessary to make good the submission to be submitted within such further time as may be stated by the CA.
- 11.6(c) In the event the Contractor fails to submit the requested documents and particulars under Clause 11.6(b), the CA shall nevertheless complete the valuation of the Variation based on the information available to them and ascertain the value of the Variation (if any) within thirty (30) Days thereafter.
- 11.6(d) However, if the Contractor fails to submit the documents and particulars within the stipulated thirty (30) Days period under Clause 11.6(a), or within any further time as may be allowed by the CA:
- (i) then Clauses 11.6(b) and 11.6(c) shall not apply but the Contractor may still submit the documents and particulars of the Variation during the final account stage for the CA's assessment under Clause 30.10;

- (ii) notwithstanding this, the CA may (but is not obliged to) assess and ascertain the value of the Variation based on the information available to him at any time prior to the issuance of the Certificate of Practical Completion.
- 11.6(e) If the Parties agree with the valuation of the CA under either Clause 11.6(c) or Clause 11.6(d), then the valuation and ascertainment shall become conclusive.
- 11.6(f) If either the Contractor or the Employer disputes the valuation of the CA, then the dispute may be referred to DAAB or arbitration under Clause 34.0 as the case may be.

Valuation Rules

- 11.7 The valuation of any Variations and of work executed by the Contractor pursuant to CA's Instruction issued under Clause 11.5 (other than for work for which a tender had been accepted under Clauses 27.13 and 28.13) shall, unless otherwise agreed, be made in accordance with the following rules:
- 11.7(a) where work is of similar character to the work as specified in the Contract, is executed under similar conditions, and the quantity of the work concerned is not changed by more than (*if none is stated, then 12%) from the quantity of this item of work in the Contract, the rates and prices in the Contract Documents shall determine the valuation;
 - 11.7(b) where work is of a similar character to the work set out in the Contract but is not executed under similar conditions or, is executed under similar conditions but the quantity of work is changed by more than (*if none is stated, then 12%) of the quantity of this item of work specified in the Contract, the rates and prices in the Contract Documents shall be the basis for determining the valuation which shall include a fair adjustment of the rates to consider such difference;
 - 11.7(c) where work is of a different character to the work as set out in the Contract, the valuation shall be at fair market rates and prices determined by the CA;
 - 11.7(d) where work cannot be properly measured and valued in accordance with Clauses 11.7(a), 11.7(b) or 11.7(c), the Contractor shall be allowed:
 - (i) the daywork rates in the Contract Documents; or
 - (ii) where there are no such daywork rates in the Contract Documents, the actual cost to the Contractor of his materials, additional construction plant and scaffolding, transport and labour for the work concerned, plus fifteen (15) percent, which percentage shall include the use of all tools, standing plant, standing scaffolding, supervision, overheads and profit.

In either case, the Contractor shall provide the vouchers specifying the time spent on a daily basis in carrying out the Works, the workers' names and designation, the materials, additional construction plant, scaffolding and transport used which shall be signed by the Site Agent and verified by the Site Staff and shall be delivered to the CA at weekly

intervals (or any other period as reasonably determined by the CA) with the final records delivered not later than fourteen (14) Days after the work has been completed. Where the Contractor fails to provide the vouchers as aforesaid, the CA may at his discretion proceed to value the same based on the information available to him.

- 11.7(e) The rates and prices in the Contract Documents shall determine the valuation of items omitted. If omissions substantially vary the conditions under which any remaining items of work are to be carried out, the prices of such affected remaining items shall be valued under Clauses 11.7(b), 11.7(c) or 11.7(d).
- 11.7(f) In respect of Provisional Quantity, the quantities stated in the Contract Documents shall be re-measured based on the actual quantities executed. The rates and prices in the Contract Documents shall determine their valuations.

Compliance with CA's Instruction on Variation or Provisional Sums Pending Valuation

- 11.8 11.8(a) Pending the valuation of any Variation or of work executed by the Contractor for which a Provisional Quantity is included in the Contract or the expenditure of Provisional Sums (other than for work for which a tender had been accepted under Clauses 27.13 and 28.13), the Contractor shall forthwith carry out the CA's Instruction on Variations or Provisional Sums.
- 11.8(b) Until such time as the price of any Variation or CA's Instruction on Provisional Sums is agreed or ascertained, the CA may, but is not obliged to, determine a provisional rate or price for the purposes of Interim Payment Certificates.

Additional Expenses Caused by Variation

- 11.9 11.9(a) Where a Variation has caused or is likely to cause the Contractor to incur additional expenses for which he would not be paid under any provisions in Clause 11.7 or Clause 24.0, the Contractor may make a claim for such additional expenses subject always to the following provisions:
 - (i) The Contractor shall, within twenty-eight (28) Days from the date of receipt of the CA's Instruction or CCI giving rise to his claim (or in any event, before the completion of such Variation), give written notice to the CA of his intention to claim for such additional expenses together with an initial estimate of his claim duly supported with all necessary calculations.
 - (ii) Within twenty-eight (28) Days of completing such Variation, the Contractor shall send to the CA complete particulars of his claim for additional expenses together with all necessary calculations to substantiate his claims.
 - (iii) If the Contractor fails to submit the required particulars within the stipulated twenty-eight (28) Days of completion of such Variation, or within such longer period as may be agreed in writing by the

CA, it shall be deemed that the Contractor has waived his rights under this Contract and/or the law to claim for or recover any such additional expenses.

- (iv) If the CA is of the opinion that the particulars submitted by the Contractor are insufficient to enable the CA to decide on the claim for the additional expenses, the CA shall within fourteen (14) Days from the date of receipt of the Contractor's particulars, inform him of any deficiency in his submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may assess and value the Contractor's claim for such additional expenses based on such information as is available to him.
- (v) Any such amount as ascertained by the CA to be entitled by the Contractor shall be included in the Contract Sum.

- 11.9(b) At all times during the course of the Works, 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 CA. Without admitting the Employer's liability, the CA may, after receiving any notice under Clause 11.9(a), monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the CA and/or the Consultant to inspect and take copies of the records at any reasonable time upon request.

Proposal Prior to Issuance of a Variation

- 11.10 11.10(a) Without derogating from the powers conferred upon the CA by the aforesaid provisions in this Clause, the CA may prior to instructing a Variation, request a proposal in respect of any proposed Variation. The Contractor shall respond in writing with a proposal within such time as requested by the CA, by submitting:
- (i) a description of the proposed work to be performed and a programme for its execution;
 - (ii) the Contractor's proposal for any necessary modifications to the programme submitted under Clause 3.4 and to the Completion Date;
 - (iii) the Contractor's proposal for the evaluation of the Variation, including any additional time and/or any expenses arising therefrom.
- 11.10(b) The CA shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. However, the Contractor shall not suspend or delay the execution of the Works whilst awaiting a response.
- 11.10(c) Unless the CA instructs or approves otherwise in accordance with this Clause 11.10, each Variation and the time and cost impact arising therefrom shall be evaluated in accordance with Clause 11.7, Clause 11.9 and Clause 23 (as the case may be).

Variation Added to or Deducted from Contract Sum

- 11.11 11.11(a) The value of variations so ascertained by the CA shall be added to or deducted from the Contract Sum.
- 11.11(b) When an Interim Certificate is issued after the date of ascertainment, such amount shall be included in or deducted from the certificate.

12.0 QUALITY OF THE WORKS

Quality of the Works

- 12.1 The quality of the Works included in the Contract Sum shall be that set out in and defined by the Contract.

13.0 CONTRACT SUM AND VALUATION OF THE WORKS

Contract Sum and Valuation of the Works

- 13.1 The Contract Sum and Valuation of the Works under the Contract shall be in accordance with Article 3.1 and Article 3.2 respectively.

14.0 MATERIALS AND GOODS UNFIXED OR OFF-SITE

Unfixed Materials or Goods Not to Be Removed

- 14.1 14.1(a) Save as provided for in Clause 14.2, any unfixed materials and goods intended for the Works shall not be removed from the Site or other place at which they are stored until completion of the Works unless prior consent in writing from the CA is obtained for the removal. The CA shall not unreasonably delay or withhold the giving of such consent.
- 14.1(b) The Contractor shall provide the necessary and adequate storage and protection for these unfixed materials and goods until completion of the Works.

Materials or Goods Paid for Becomes Employer's Property

- 14.2 Any unfixed materials and goods shall become the property of the Employer after:
- 14.2(a) Its value has been included in any Interim Certificate under Clause 30.2; and
- 14.2(b) The Contractor has received its full payment.

Contractor Responsible for Loss or Damage to Materials or Goods

- 14.3 14.3(a) The Contractor shall remain responsible for any loss or damage to the unfixed materials and goods, including materials and goods supplied by Nominated Sub-Contractors and Nominated Suppliers.
- 14.3(b) In the event of loss or damage of unfixed materials or goods, unless it was caused by Force Majeure as defined in Article 9, the Employer is entitled to recover from the Contractor the value of such loss and/or

damage thereto as reasonably determined by the CA as a debt, or by deducting it from any monies due or to become due to the Contractor under this Contract, or to recover the said loss and/or damage from the Performance Bond provided under Clause 37.5.

Warranty of Title of Goods and Materials

- 14.4 14.4(a) The Contractor warrants that he has title free from liens and other encumbrances for such materials and goods upon inclusion of the value of such materials and goods in any application for payments under Clause 30.0.
- 14.4(b) In the event that the Contractor is found to have made a false or inadequate warranty of title, any loss suffered by the Employer shall be made good by the Contractor or may be recovered by the Employer as a debt, or by deducting it from any monies due or to become due to the Contractor under this Contract, or from the Performance Bond provided under Clause 37.5.

15.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY

Certificate of Practical Completion

- 15.1 The Works are Practically Completed when:
- 15.1(a) the Works have been completed in accordance with the terms and conditions of this Contract;
- 15.1(b) the Employer can have full, proper and beneficial use of the Works for their intended purpose, notwithstanding that there may be outstanding Works and Defects which are of a very minor nature in the sense that such minor outstanding Works and Defects do not prevent or diminish the full, proper and beneficial use as aforesaid;
- 15.1(c) the Works have passed any commissioning tests required in the Contract Documents;
- 15.1(d) the Contractor has provided the Employer with all the warranties and guarantees required pursuant to Clause 6 hereof; and
- 15.1(e) the Contractor has discharged any and all other requirements expressly stated in the Contract Documents to be a prerequisite for the issuance of the Certificate of Practical Completion.

Certificate of Practical Completion, or Deemed Practically Completed

- 15.2 15.2(a) When the Works or works in a Section are, in the opinion of the Contractor, Practically Completed, he may apply by written notice to the CA for a Certificate of Practical Completion. The CA shall, within fourteen (14) Days after receiving the Contractor's application either:
- (i) issue a Certificate of Practical Completion, stating the date on which the Works or Section were Practically Completed in accordance with the Contract. Where there are minor outstanding

Works and Defects of a minor nature still to be executed, the Contractor shall complete the said outstanding Works and rectification of the Defects within such period as is instructed by the CA; or

- (ii) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Certificate of Practical Completion to be issued. The Contractor shall then complete this work before issuing a further written notice under this Sub-Clause.

15.2(b) In the event the Contractor fails, neglects or refuses to complete the said outstanding Works and/or Defects within the time instructed by the CA under Clause 15.2(a)(i), the Employer may, without prejudice to any other rights or remedies:

- (i) grant the Contractor an additional time to be specified by the CA to enable the Contractor to comply with the CA's instruction; or
- (ii) employ and pay other Persons to carry out the subject matter of the instruction. Any loss, expense or damage thereby suffered or incurred by the Employer shall be recoverable from the Contractor as a debt or by deducting it from any monies due or to become due to the Contractor under this Contract; or
- (iii) accept to leave all or any such Works and/or Defects of a minor nature in the Works subject to the Employer's right to recover the loss and/or damage in the amount as reasonably determined by the CA as a debt, or by deducting it from any monies due or to become due to the Contractor under this Contract.

15.2(c) If the CA either fails to issue the Certificate of Practical Completion or does not reject the Contractor's application within the period of fourteen (14) Days, and if the Works or Section (as the case may be) are proved to be actually Practically Completed within the meaning of Clause 15.1, the Certificate of Practical Completion shall be deemed to have been issued on the last day of that period.

15.2(d) The issuance of the Certificate of Practical Completion under Clause 15.2(a)(i), or deemed Practical Completion under Clause 15.2(c) does not relieve the Contractor's duties, obligations and responsibilities in completing any outstanding Works and/or Defects.

15.2(e) The Contractor shall keep and maintain proper and adequate inspection, test and related records and provide either access or copies of such records to the CA. All such records shall be retained for a period of not less than five (5) years (or for such longer period as may be required by the Parties) after the actual date of Practical Completion.

Attending to Outstanding Works and Defects After Practical Completion

15.3 15.3(a) The Defects Liability Period shall commence on day following the Date of Practical Completion and continue for the duration stated in the Appendix to these conditions. It is the Contractor's obligation during the

Defects Liability Period, forthwith to complete any Works outstanding at the Date of Practical Completion and to rectify any Defects in the Works which appear during the Defects Liability Period. Any such Defects which have not been rectified by the Contractor at the conclusion of the Defects Liability Period shall be specified by the CA in a schedule of defects and delivered to the Contractor not later than fourteen (14) Days after the expiration of the Defects Liability Period.

- 15.3(b) The Contractor shall within a reasonable time, which shall be specified by the CA, make good such Defects entirely at his own cost. If the Contractor fails to attend to and complete the rectification of the Defects within the time requested by the CA, the Employer may, without prejudice to any other rights or remedies:
- (i) grant the Contractor additional time to be specified by the CA to enable the Contractor to make good the Defects so notified; or
 - (ii) employ and pay other Persons to rectify the Defects in the Works. Any loss, expense or damage thereby suffered or incurred by the Employer shall be recoverable from the Contractor as a debt or by deducting it from any monies due or to become due to the Contractor under this Contract; or
 - (iii) accept to leave all or any such Defects in the Works subject to the Employer's right to claim or recover the loss and/or damage in the amount as reasonably determined by the CA, as a debt, or by deducting it from any monies due or to become due to the Contractor under this Contract.

Instruction to Make Good Defects within Defects Liability Period

- 15.4 Notwithstanding Clause 15.3, the CA may at any time during the Defects Liability Period issue a CA's Instruction requiring any Defects which appear within the Defects Liability Period to be made good. The Contractor shall within a reasonable time, which shall be specified by the CA, comply with the same entirely at his own cost. If the Contractor fails to attend to and complete the rectification of the Defects within the time specified by the CA, the Employer may, without prejudice to any other rights or remedies:
- 15.4(a) grant the Contractor additional time to be specified by the CA to enable the Contractor to comply with the CA's Instruction;
 - 15.4(b) employ and pay other Persons to carry out the subject matter of the instruction. Any loss, expense or damage thereby suffered or incurred by the Employer shall be recoverable from the Contractor as a debt or by deducting it from any monies due or to become due to the Contractor under this Contract; or
 - 15.4(c) accept to leave all or any such Defects in the Works subject to the Employer's right to recover the loss and/or damage in the amount as reasonably determined by the CA and the relevant Consultant as a debt, or by deducting it from any monies due or to become due to the Contractor under this Contract.

Certificate of Making Good Defects

- 15.5 15.5(a) Upon the expiry of the Defects Liability Period, and completion of making good all defects which are required to be made good under Clause 15.3, the Contractor may apply by written notice to the CA for a Certificate of Making Good Defects. The CA shall within fourteen (14) Days after receiving the Contractor's application either:
- (i) issue to the Contractor the Certificate of Making Good Defects. The date of the Certificate of Making Good Defects shall be the date of receipt of the Contractor's written notice. A copy of the Certificate of Making Good Defects shall also be extended to the Employer and Nominated Sub-Contractors and Nominated Suppliers; or
 - (ii) reject the application, and notify the same to the Contractor, Nominated Sub-Contractors and Nominated Suppliers, giving reasons and specifying the outstanding Works and Defects required to be executed by the Contractor to enable the Certificate of Making Good Defects to be issued. In the notification, the CA shall set out the time period within which the Contractor shall complete such works. The Contractor must complete the said Works before issuing a further written notice under this Sub-Clause.
- 15.5(b) In the event the Contractor fails, neglects or refuses to complete the Defects within the time as instructed by the CA under Clause 15.5(a) (ii), the Employer may, without prejudice to any other rights or remedies which he may possess:
- (i) grant the Contractor additional time to be specified by the CA to enable the Contractor to comply with the CA's Instruction; or
 - (ii) employ and pay other Persons to carry out the subject matter of the instruction, in which event, the Certificate of Making Good Defects shall be issued and the date of making good Defects shall be the date as reasonably determined by the CA to be required for completing the outstanding Works and Defects. Any loss, expense or damage thereby suffered or incurred by the Employer shall be recoverable from the Contractor as a debt or by deducting it from any monies due or to become due to the Contractor under this Contract; or
 - (iii) accept to leave all or any such outstanding Works and/or Defects in the Works subject to the Employer's right to recover the loss and/or expense in the amount as reasonably determined by the CA as a debt or by deducting it from any monies due or to become due to the Contractor under this Contract. In such event, the CA shall issue the Certificate of Making Good Defects and the date of the Certificate of Making Good Defects shall be the last day of the period as instructed by the CA under Clause 15.5(a)(ii).
- 15.5(c) If the CA either fails to issue the Certificate of Making Good Defects or does not reject the Contractor's application within the period of fourteen

(14) Days, and if there are actually no further Defects (except wear and tear) preventing the issuance of the Certificate of Making Good Defects under the Contract, the Certificate of Making Good Defects shall be deemed to have been issued on the last day of that period.

- 15.5(d) After the Certificate of Making Good Defects has been issued, each Party shall remain liable for the fulfilment of any obligations which remain unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

16.0 PARTIAL POSSESSION BY EMPLOYER

Taking Over Parts of the Works with Consent

- 16.1 16.1(a) At any time before the issuance of the Certificate of Practical Completion of the Works in accordance with Clause 15.0, the Contractor may give consent to the Employer taking possession of any part or parts of the Works or a Section (any such part shall hereinafter be referred to as “the Relevant Part”) that is determined by the CA to be practically completed according to the requirements of the Contract.
- 16.1(b) For the purposes of Clause 16.1(a), the following shall apply:
- (i) the CA shall, within fourteen (14) Days from the date of receipt of such consent from the Contractor, issue a Certificate of Partial Possession for the Relevant Part. The Relevant Part shall be deemed to have been taken over as from the date on which it is issued. The Certificate of Partial Possession shall state the CA's determination of the approximate total value of the Relevant Part, and the Relevant Part shall be deemed to have been taken over from the date on which it is issued;
 - (ii) the Employer shall not use the Relevant Part (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the CA has issued a Certificate of Partial Possession for the Relevant Part;
 - (iii) after the CA has issued a Certificate of Partial Possession for the Relevant Part, the Contractor shall cease to be liable for the care of such Relevant Part, but the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding tests and/or to rectify other specified Defects and to complete the outstanding Works as may be instructed by the CA. The Contractor shall carry out these tests and/or complete the specified outstanding Works and rectification of the Defects as soon as practicable before the expiry date of the relevant Defects Liability Period;
 - (iv) the Defects Liability Period in respect of the Relevant Part shall be deemed to have commenced on the date when the Certificate of Partial Possession is issued. Clause 15.3 shall apply for the purposes of the Relevant Part;

- (v) upon completion of making good all defects which may have been required to be made good under Clause 15.3, the Contractor may apply by written notice to the CA for a Certificate of Making Good Defects for the Relevant Part. For this purpose, Clause 15.5 shall apply to the Relevant Part;
- (vi) Liquidated Damages under Clause 22.1 shall be reduced by the ratio of the determined value of the Relevant Part to the Contract Sum;
- (vii) within fourteen (14) Days of issuing the Certificate of Partial Possession, the CA shall issue a certificate to release one moiety of the Limit of Retention Fund (if any) in the ratio of the determined value of the Relevant Part to the Contract Sum. The Contractor shall be entitled to payment within the Period of Honouring Certificates. The amount of the Limit of Retention Fund shall then be reduced by the same amount of such moiety; and
- (viii) upon issuance of the Certificate of Making Good Defects of the Relevant Part, the CA shall within fourteen (14) Days issue a certificate for the release of the other moiety of the amount referred to in Clause 16.1 (b)(vii) and the Limit of Retention Fund amount shall be reduced by the amount of such moiety.

Taking Over Parts of the Works without Consent

- 16.2 16.2(a) If the Contractor fails or refuses to provide the consent without reasonable justification under Clause 16.1, the CA may, upon request of the Employer, issue a Certificate of Partial Possession of any part of the Works or Section that is determined by the CA to be Practically Completed according to the requirements of the Contract without the consent of the Contractor, in which event, the provisions of Clauses 16.1(b)(i) to 16.1(b)(viii) shall apply. Subject to Clause 16.2(b), the Contractor is entitled to claim for direct loss and/or expense actually incurred as a result of the Employer taking over part of the Works or Section under this Clause 16.2. The following conditions shall apply for any application for loss and/or expense arising from the taking of partial possession under this Clause:
- (i) within seven (7) Days of the issuance of the Certificate of Partial Possession, the Contractor shall give written notice to the CA stating his intention to claim for such direct loss and/or expense together with an initial estimate of his claim duly supported with all necessary calculations;
 - (ii) within sixty (60) Days of the notice in Clause 16.2(a)(i) being given, or any time as extended by the CA in writing, the Contractor shall send to the CA complete particulars of his claim for the loss and/or expense together with all necessary documents and calculations to substantiate his claims;
 - (iii) compliance with the time limit specified in Clause 16.2(a)(ii) is a condition precedent to the right to bring any claim under this Clause. Therefore, if the Contractor fails to submit the required

particulars within the stipulated time in Clause 16.2(a)(ii) without reasonable justification, it shall be deemed that the Contractor has waived any rights to bring any claim for loss, expense or damages consequent upon the Employer's early take over of any part(s) or Section of the Works;

- (iv) if the CA is of the opinion that the particulars submitted by the Contractor are insufficient to enable the CA to assess the claim for the loss and/or expenses, the CA shall within fourteen (14) Days from the date of receipt of Contractor's particulars, inform him of any deficiency in his submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may assess and value the Contractor's claim for such loss and/or expenses based on whatever information which is available to him;
- (v) any such loss and/or expense as ascertained by the CA to be entitled by the Contractor shall be added to and included in the Contract Sum.

16.2(b) For the avoidance of doubt, if, at the time of issuance of the Certificate of Partial Possession, the completion of the Works or the relevant Section of which the Relevant Part is a part, has been delayed and a Certificate of Non-Completion has been issued by the CA under Clause 22.1, the Contractor shall not be entitled to any loss and/or expense arising from the taking of partial possession by the Employer under this Clause.

Contractor to Remove Equipment, etc.

- 16.3 Unless otherwise instructed by the CA, the Contractor shall immediately remove his site facilities, construction plant or equipment, materials and goods from the Relevant Part.

Performance Bond Not Affected

- 16.4 For the avoidance of doubt, nothing contained in this Clause 16.0 shall entitle the Contractor to the release of the Performance Bond or any part thereof provided by him under Clause 37.0.

17.0 ASSIGNMENT OR SUB-CONTRACTING

Consent Required to Assign Rights, Interests or Benefits under the Contract

- 17.1 Other than assigning his rights, interests or benefits under the Contract to his financial institution, neither the Employer nor the Contractor shall, without the written consent of the other Party (which consent shall not be unreasonably delayed or withheld), assign the Contract or any part thereof, or any benefit or interest therein or thereunder to another Person.

Sub-Contracting Portion of Work

- 17.2 The Contractor shall not without the written consent of the Employer (which consent shall not be unreasonably delayed or withheld) sub-contract the Works, in whole or in part, except as otherwise provided by the Contract. Such consent if given shall not relieve the Contractor from any liability or obligation under the Contract. He shall be fully responsible for the acts, defaults, neglects, breach of contract of any of the Sub-Contractors, his agents, servants or workmen as if they were the acts, defaults or neglects of the Contractor. Where the Contractor sub-contracts labour only of craftsmen, skilled or semi-skilled workmen to carry out any portion of the work, this shall not constitute sub-contracting within the meaning of this Clause and he shall remain fully responsible for the quality of their work and craftsmanship and for any acts, defaults and negligence of the workman.

18.0 INJURY TO PERSONS OR PROPERTY AND INDEMNITY TO EMPLOYER

Indemnity Against Claims on Employer for Injury to or Death of Persons

- 18.1 The Contractor shall indemnify and hold harmless the Employer and their agents against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) in respect of personal injury, sickness, disease or death of any Person arising out of or in the course of or by reason of the Contractor's design, execution and completion of the Works and the remedying of any Defects, unless attributable to any negligence, wilful act or breach of contract by the Employer, or any Persons for whose actions the Employer is responsible.

Indemnity Against Claims on Employer for Damage or Loss of Property

- 18.2 The Contractor shall indemnify and hold harmless the Employer and their agents against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) in respect of any damage to or loss of property, real or personal (other than the Works), arising out of or in the course of or by reason of the Contractor's design, execution and completion of the Works and the remedying of any Defects, unless that such damage and loss is not attributable to any negligence, wilful act or breach of contract by the Employer, or any Persons whose actions the Employer is responsible.

Contractor to Indemnify Against Claims by Workmen

- 18.3 The Contractor shall indemnify and hold harmless the Employer against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) howsoever caused arising out of claims by any and every workman employed in and for the execution of the Works and for payment of compensation under or by virtue of the Workmen's Compensation Act 1952 and the Employee's Social Security Act 1969.

Indemnities Not to Be Defeated

- 18.4 Save as provided for in Clause 18.1, the indemnities given by the Contractor under Clauses 18.1 to 18.3 shall not be defeated or reduced by reason of any negligence or omission of the Employer, CA, Consultant or other authorised representatives in failing to:
- 18.4(a) supervise, inspect or control the Contractor's site operation or methods of working or temporary work;
 - 18.4(b) detect or prevent or remedy defective work; or,
 - 18.4(c) ensure proper performance of any obligation of the Contractor under the Contract.

19.0 DUTY OF CONTRACTOR TO INSURE AGAINST INJURY TO PERSON AND DAMAGE TO PROPERTY

Contractor to Insure Against Injury to Persons and Damage to Property

- 19.1 19.1(a) Without prejudice to his liability to indemnify the Employer under Clause 18.0, the Contractor shall before the commencement of any work under the Contract, effect and maintain insurances in the joint names of the Parties, Sub-Contractors and all other Persons involved in the Works:
- (i) for liabilities for loss and damage to the Works, materials, and equipment; and
 - (ii) for liabilities for loss, damage, death or injury to third parties or their property (real or personal) 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.
- 19.1(b) Such Takaful/insurance policies shall provide cover in respect of third-party liability for personal injury or death and damage to property for the amounts stated in the Appendix. If the Contractor having regard to his indemnity to the Employer under Clause 18.0 desires to increase any of the insurance coverage, he shall do so at his own cost.
- 19.1(c) The Contractor shall maintain and ensure that the insurance policy shall be valid and in full force up to the date of the issuance of the Certificate of Making Good Defects.

SOCISO and Insurances for Workmen

- 19.2 19.2(a) In addition to Clause 19.1, the Contractor shall:
- (i) 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 ("SOCISO") in accordance with the Employee's Social Securities Act 1969 and cause all Sub-Contractors to comply with the same;
 - (ii) where the workmen are not subject to registration under SOCISO, effect and maintain an insurance 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

- (iii) 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 Worker's Compensation Scheme) (Insurance) Order 1998.

- 19.2(b) The insurance policies mentioned in Clauses 19.2(a)(ii) and 19.2(a)(iii) shall be valid up to the Completion Date and the extended maintenance cover shall be for the Defects Liability Period plus a further three (3) Months. If the Contractor is unable to complete by the Completion Date or complete making good the Defects within the insured period, he shall ensure that the insurance is accordingly extended for the same or projected period of delay. The Contractor shall effect the said extension of the insurance cover not less than one (1) Month before the expiry of the insurance currently in force.

Approval of Insurance Companies

- 19.3 Any insurance referred to in Clauses 19.1 and 19.2 shall be placed with licensed insurance companies approved by the Employer, and the Contractor shall, prior to the commencement of any Works and whenever requested in writing, deposit with the Employer the policy or policies and the receipts in respect of premiums paid, and provide copies to the CA.

Contractor's or Sub-Contractor's Default

- 19.4 Should the Contractor or any Sub-Contractor make default in insuring or in continuing to insure as aforesaid, the Employer may himself insure against any risk with respect to which the default shall have occurred and the amount paid or payable by the Employer in respect of premiums shall be recovered from the Contractor by the Employer as a debt, or deducted from any monies due or to become due to the Contractor, or from the Performance Bond provided under Clause 37.5.

20.0 INSURANCE OF WORKS, MATERIALS AND GOODS

Insurance of Works by Insuring Party and Deductibles

- 20.1 20.1(a) Before the commencement of any work under the Contract, the insuring Party shall take out and maintain in the joint names of the Parties, Sub-Contractors and all interested Persons a CAR Insurance or other insurance to insure against loss and damage by fire, lightning, explosion, earthquake, volcanism, tsunami, storm, cyclone, flood, inundation, landslide, theft, ground subsidence, existing underground cables and/or pipes or other underground facilities, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, strike, riot and civil commotion,

malicious damage, trespass, cessation of work whether total or partial, vibration and weakening of support, all work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefor (but excluding temporary buildings, plant, tools and equipment owned or hired by the Contractor or any Sub-Contractor) to the full value thereof (plus any amount which may be specifically stated in the Appendix or elsewhere in the Contract Documents).

- 20.1(b) The insuring Party shall keep such Works, materials and goods so insured notwithstanding any arrangement for partial possession of any Relevant Part under Section 16.0, Sectional Completion under Clause 21.0 or Completion Date and the extended maintenance cover shall be for the Defects Liability Period plus a further three (3) Months.
- 20.1(c) The insurance policy shall be valid up to the Completion Date and the extended maintenance cover shall be for the Defects Liability Period plus a further three (3) Months. If the Contractor is unable to complete by the Completion Date or to complete making good the Defects within the insured period, the insuring Party shall ensure that the insurance is accordingly extended for the same or projected period of delay. The insuring Party shall effect the said extension of the insurance coverage not less than one (1) Month before the expiry of the insurance currently in force. If the insuring Party is responsible for the delay, then the premiums paid for the said extension of the insurance coverage shall be borne by the insuring Party. If the other Party is responsible for the delay, then the other Party shall pay the amount of these premiums paid to the insuring Party, and the Contract Sum shall be adjusted accordingly.
- 20.1(d) Where deductibles are specified in the Appendix or in the insurance policy, the Contractor shall bear the amount of all deductibles.

Additional Risks

- 20.2 Any additional risks or endorsement in addition to those stated in Clause 20.1 which may be required to be covered under the required insurance(s) shall be specified in the Contract Bills. If the Contractor desires to have any additional endorsements to the insurance in addition to the risks specified, he shall do so at his own cost.

Approval of Insurance Companies

- 20.3 Any insurance referred to in Clause 20.1 shall be placed with licensed insurance companies approved by the Employer. The insuring Party shall submit to the other Party and the CA evidence that the required insurances have been effected and copies of the policies for the insurances.

Insuring Party's Default

- 20.4 Should the insuring Party make default in insuring or in continuing to insure as aforesaid, the other Party may (without prejudice to any other right or remedy)

effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums paid by the other Party, and the Contract Sum shall be adjusted accordingly.

Application of Insurance Claim Proceeds

- 20.5 Upon the occurrence of any loss and/or damage to the Works or unfixed materials and goods prior to Practical Completion of the Works from any cause whatsoever, and notwithstanding that settlement of any insurance claim has not been completed, the Contractor shall with due diligence restore, replace or repair the same, remove and dispose of any debris and proceed with the carrying out and completion of the Works. All money if and when received from the insurance under this Clause shall be paid in the first place to the Employer. The Employer shall retain the amount paid by the insurance companies in respect of professional fees for reinstatement and pay the balance to the Contractor and/or Nominated Sub-Contractors and/or Nominated Suppliers under a separate certificate to be issued by the CA. The Contractor shall not be entitled to any additional payments in respect of the restoration of the damaged work and replacement or repair of any unfixed materials and goods and the removal and disposal of debris other than the monies received under the aforesaid insurance.

21.0 DATE OF COMMENCEMENT, SUSPENSION AND COMPLETION DATE

Date of Commencement and Completion Date

- 21.1 21.1(a) The Contractor shall be given possession of the Site by the Date of Commencement. The Contractor shall thereupon commence the execution of the Works, and regularly and diligently proceed with and complete the same on or before the Completion Date or the extended Completion Date.
- 21.1(b) Unless the delay in giving possession of the Site exceeds the Period of Delay stated in the Appendix, the Contractor shall not be entitled to determine his own employment under the Contract by reason of such delay in providing possession of the Site.

Dates of Commencement Given for Sections

- 21.2 Where there are different Dates of Commencement for sections of the Works, they shall be stated in the Appendix or elsewhere in the Contract Documents.

Different Completion Dates for Identified Sections or Parts of Works

- 21.3 Where there are different Completion Dates for such sections of the Works stated in the Appendix or elsewhere in the Contract Documents, the provisions of this Contract in regard to Practical Completion, EOT, Liquidated Damages, Defects Liability Period, the Contractor's obligation to make good Defects, and release of Retention Fund shall, in the absence of any express provision to the contrary elsewhere in the Contract Documents, apply to each such Section with the necessary changes in points of detail.

Suspension of Work

- 21.4 21.4(a) The CA may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part of the Works against any deterioration, loss or damage. The CA shall notify the cause for the suspension. The Party who carries the liability to provide insurance in respect of the cause of the suspension under Clauses 19.0 and 20.0, shall ensure full insurance coverage for the whole period of suspension.
- 21.4(b) If the Contractor suffers delay and/or incurs loss and/or expense from complying with the CA's Instruction under Clause 21.4(a) and/or from resuming the work, the Contractor shall be entitled to claim for an EOT under Clause 23.0 and/or loss and/or expense under Clause 24.0.
- 21.4(c) If the suspension under Clause 21.4(a) has continued for more than the Period of Delay stated in the Appendix, then the Contractor may:
- (i) by giving notice to the CA, treat the suspension as an omission under Clause 11.0 of the affected part of the Works; or
 - (ii) if the suspension affects the whole or substantial part of the Works, the Contractor may be entitled to determine his own employment under Clause 26.0.
- 21.4(d) If and to the extent that the cause notified is the responsibility of the Contractor, Clauses 21.4(b) and 21.4(c) above shall not apply. Similarly, the Contractor shall not be entitled to an EOT or payment of any loss and/or expense incurred in making good the consequences of the Contractor's faulty design (if applicable), workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Clause 21.4(a).

22.0 DAMAGES FOR NON-COMPLETION

Certificate of Non-Completion and Liquidated Damages

- 22.1 22.1(a) If the Contractor fails to complete the Works by the Completion Date or within any extended time fixed under Clause 23.0 or as mutually agreed by the Parties, and the CA issues a Certificate of Non-Completion that in his opinion the same ought reasonably so to have been completed by such date(s), 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, provided always that the total amount of Liquidated Damages due and retained under this Clause shall not exceed the amount stated in the Appendix as the Limit of Liquidated Damages. The Employer may recover such sum as a debt or may deduct such sum from any monies due or to become due to the Contractor under the Contract or may recover such sum from the Performance Bond in accordance with the terms under Clause 37.5.

- 22.1(b) In the event the CA issues a Certificate of Extension of Time under the Contract which has the effect of fixing a Completion Date later than the date stated in a Certificate of Non-Completion previously issued, the Employer shall then revise the amount of Liquidated Damages he is entitled to retain. For the avoidance of doubt, the CA may issue a further Certificate of Non-Completion, but the failure of the CA to issue such further Certificate of Non-Completion shall not affect or invalidate the Employer's right to his Liquidated Damages for the delay (if any) from the extended completion date to the date of Practical Completion. In the event the amount of Liquidated Damages retained exceeds the amount the Employer is entitled to retain, he shall repay the surplus amount to the Contractor within the Period of Honouring Certificates from the date of the latest Certificate of Extension of Time.

Liquidated Damages Amount Deemed as Agreed

- 22.2 22.2(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 fails to complete the Works by the Completion Date. 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.
- 22.2(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.
- 22.2(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.

23.0 EXTENSION OF TIME ('EOT')

Application for EOT

- 23.1 23.1(a) If the regular progress of the Works has been delayed by any of the Time Impact Events stated in Clause 23.8, then the Contractor shall be entitled to apply for an EOT under this Clause. If in the opinion of the CA the completion of the Works is or will be delayed beyond the Completion Date or beyond any extended Completion Date previously fixed under this Clause, then the CA may, subject to the provisions of this Clause, grant a fair and reasonable EOT for the completion of the Works.
- 23.1(b) As soon as practicable, but not later than twenty-eight (28) Days after the Contractor became aware, or should have become aware of the regular progress of the Works having been delayed by such Time Impact Events, the Contractor shall give written notice to the CA indicating his intention to claim for an EOT and describing the Time Impact Events giving rise to an EOT.
- 23.1(c) Within twenty-eight (28) Days of the end of the cause of delay, or within such other period as may be proposed by the Contractor and approved in writing by the CA, the Contractor shall send to the CA the relevant particulars of the basis of his claim for EOT together with all necessary calculations and documents to substantiate his Claims.
- 23.1(d) If the Contractor either fails to:
- (i) give such written notice under Clause 23.1(b); or
 - (ii) submit the required particulars within the stipulated twenty-eight (28) Days or such other period as approved by the CA under Clause 23.1(c), the CA is not obliged (until after the Practical Completion of the Works) to assess and grant any EOT in respect of the Contractor's application for EOT. In that event, subject to the CA's review under Clause 23.10, the Contractor shall not be entitled to any EOT, and the non-assessment and non-granting of the EOT due to the Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the CA, or any deduction or claim for Liquidated Damages made by the Employer under Clause 22.0.
- 23.1(e) If the CA is of the opinion that the particulars submitted by the Contractor pursuant to Clause 23.1(c) are insufficient for his assessment of the EOT applied, the CA shall within fourteen (14) Days from the date of receipt of the Contractor's particulars, inform him of any deficiency in his submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may determine the Contractor's claim for such EOT based on whatever information which is in the possession of the CA, and may either reject the Contractor's

application or issue a Certificate of Extension of Time within forty-two (42) Days from the last date of the period for the provision of further particulars by the Contractor. The CA's determination shall be binding upon the Contractor and the Employer until and unless it is revised by the CA under Clause 23.10.

Delay by Nominated Sub-Contractor

- 23.2 If the written notice given by the Contractor under Clause 23.1 include references to the Nominated Sub-Contractor and/or Nominated Supplier, the Contractor shall immediately send a copy of such written notice and particulars to the relevant Nominated Sub-Contractor and/or Nominated Supplier concerned.

Contractor to Keep Contemporary Records

- 23.3 The Contractor shall keep such contemporary records as may be relevant to a claim made under Clause 23.0, either at the Site or at another location acceptable and accessible to the CA. Without admitting to the Employer's liability, the CA may, after receiving any notice under Clause 23.1, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the CA to inspect all these records, and shall (if instructed) submit copies to the CA.

Determination of EOT Application

- 23.4 If the CA is of the opinion that the Contractor has submitted sufficient particulars for his determination, the CA shall determine the Contractor's application and shall within forty-two (42) Days from the date of the submission thereof, either reject the Contractor's application or issue a Certificate of Extension of Time. The CA shall provide reasons for his determination.

Other Considerations and Limitation in Fixing Completion Date

- 23.5 In assessing the EOT application, the CA may consider the effect or extent of any work omitted under the Contract. However, in assessing the Contractor's claim for any EOT, the CA shall not fix a Completion Date earlier than the Completion Date stated in the Appendix.

Contractor to Prevent Delay

- 23.6 The Contractor shall constantly and to the best of his ability, endeavour to do all that may reasonably be instructed by the CA to prevent or reduce delay in the completion of the Works, irrespective of whether the delay was caused by the Employer, the Contractor or other events. For the avoidance of doubts, the Contractor's compliance with the instruction given by the CA shall be without prejudice to any other rights or remedies which he may possess.

Notification to Nominated Sub-Contractors and/or Nominated Suppliers

- 23.7 The CA shall inform every Nominated Sub-Contractor and/or Nominated Suppliers in writing of his decision of fixing a later Completion Date for the Works.

Time Impact Events

- 23.8 23.8(a) The Time Impact Events comprise of Non-Employer's Events and Employer's Events, the occurrence of which may entitle the Contractor to a reasonable EOT subject to the provisions provided in the Conditions of Contract.
- 23.8(b) Non-Employer's Events mean:
- (i) Force Majeure as defined in Article 9;
 - (ii) Exceptionally Adverse Weather Condition as defined in Article 9. The Contractor is required to show that the Exceptionally Adverse Weather Condition occurred at the time when the Works were actually carried out, and not when they were programmed to be carried out nor, at a time when there was not supposed to be any work in progress; and it has caused delay to the completion of the Works;
 - (iii) loss and/or damage occasioned by one or more of the contingencies referred to in Clause 20.0 as the case may be, provided always that the same is not attributable to any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
 - (iv) delay on the part of Nominated Sub-Contractors or Nominated Suppliers for the reasons as set out in Clause 19.6 of the Standard Form of Building Sub-Contract issued by the AIAC;
 - (v) re-nomination of Nominated Sub-Contractors under Clause 27.0 and/or Nominated Suppliers under Clause 28.0 and delay caused by the additional time required by the new Nominated Sub-Contractor and/or Nominated Supplier to complete the sub-contracted Works or supplies;
 - (vi) war damage as defined in Clause 32.3;
 - (vii) compliance with any Unforeseeable changes to any law, regulations, by law or terms and conditions of any Appropriate Authority and/or Service Provider;
 - (viii) delay caused by any Appropriate Authority and Service Provider in carrying out, or in failing to carry out their work which affects the Contractor's work progress, provided always that the Contractor has diligently followed the procedures, terms and conditions laid down by the Appropriate Authority and Service Provider; the delay was Unforeseeable; and such delay is not attributable to any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
 - (ix) Industrial action by workmen, strikes, lock-outs or embargoes affecting any of the trades employed upon the Works or in the preparation, manufacture or transportation of materials or goods required for the Works and provided the same are not attributable to any negligence, wilful act or breach of contract by the Contractor,

or any Person for whose actions the Contractor is responsible;
and

- (x) any other ground for EOT expressly mentioned in the Contract.

23.8(c) Employer's Events mean:

- (i) the Contractor not having received from CA within a reasonable time necessary CA's Instruction in regard to the Works (including those for or in regard to the expenditure of P.C. Sums and Provisional Sums, further drawings, details, levels or any other information) for which he had specifically notified in writing to the CA. The Contractor's notification must be given to the CA in sufficient time before the commencement of construction of the affected works, to enable the CA to issue the necessary CA's Instruction within a period which would not materially affect the progress of the affected works, having regard to the Completion Date. Provided always the CA's Instruction was not necessitated by any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
- (ii) failure or delay by the Employer in giving possession of the Site or any section of the Site in accordance with Clauses 21.1 and 21.2;
- (iii) compliance with CA's Instructions under Clauses 1.4, 11.2, or 21.4, provided always the CA's Instruction was not necessitated by any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
- (iv) delay on the part of craftsmen, tradesmen or others employed or engaged by the Employer in executing work not forming part of this Contract or their failure to execute such work, provided always that the Contractor has given reasonable access to enable such craftsmen, tradesmen or others employed or engaged by the Employer to execute their works and has provided true and accurate site conditions and reasonable timelines for such works to be completed by them;
- (v) delay or failure in the supply of materials and goods which the Employer had agreed to supply for the Works;
- (vi) the opening up for inspection of any work covered up, the testing of any work, materials or goods in accordance with Clause 6.3 (including making good in consequence of such opening up or testing) provided always that the inspection or test is not provided for in the Specification or the Contract Bills; the inspection or test does not show that the works, materials or goods failed to comply with the Contract, and the said CA's Instruction was not necessitated by any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
- (vii) any act of prevention or breach of contract by the Employer;

- (viii) compliance with CA's Instruction issued in connection with the discovery of fossils, coins, articles of value or antiquity, or structures and other remains or items of geological or archaeological interest on the Site under Clause 33.1;
- (ix) delay on the part of the Employer to appoint a replacement Person under Articles 4, 5, 6, 7 and 8;
- (x) compliance with CA's Instruction issued in connection with disputes with neighbouring property owners provided always that such dispute is not attributable to any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible;
- (xi) delay as a result of the execution of work for which a Provisional Quantity is included in the Contract Bills which in the opinion of the CA is not a reasonably accurate forecast of the quantity of work required;
- (xii) failure of the Employer to give in due time entry to or exit from the Site or any part through or over any land, by way of passage adjoining or connected to the Site and in possession or control of the Employer, provided always that it is the duty and responsibility of the Employer to give such passage under the Contract;
- (xiii) suspension by the Contractor of his obligations under Clauses 30.7 and 30.8;
- (xiv) suspension of the whole or part of the Works by order of an Appropriate Authority provided that the same is not attributable to any negligence, wilful act or breach of contract by the Contractor, or any Person for whose actions the Contractor is responsible.

EOT After the Issuance of Certificate of Non-Completion

- 23.9 Where a Time Impact Event occurs after the issuance of the Certificate of Non-Completion, the CA shall assess and grant a reasonable EOT if the CA finds that the Time Impact Event will delay, or has delayed the completion of the Works. The EOT granted shall be added to the Completion Date of the Works or any section of the Works. In that event, Clause 22.1(b) shall apply.

CA's Review of EOT After Practical Completion

- 23.10 23.10(a) Notwithstanding the aforesaid, the Contractor may, within forty-two (42) Days after Practical Completion of the Works submit to the CA its final application containing a fully detailed claim for an EOT (including all Time Impact Events which have been specifically notified by the Contractor under Clause 23.1) and full supporting particulars of the basis of the EOT as claimed.
- 23.10(b) Within forty-two (42) Days after receiving the Contractor's said final application, the CA shall consider and determine the Contractor's said final application which shall either maintain his previous determination or, fix a later Completion Date which he considers as fair and reasonable. The CA shall set out the reasons for his determination.

- 23.10(c) If the Contractor fails to submit the final application under Clause 23.10(a), then the CA may still (but is not obliged to) within forty-two (42) Days after the expiry of the period within which the Contractor ought to have submitted his final application, review and fix a Completion Date later than that previously fixed, if in his opinion the fixing of such later Completion Date is fair and reasonable having regard to any of the Time Impact Events. In exercising the power to review, the CA may consider a Time Impact Event which has not been specifically notified by the Contractor under Clause 23.1.
- 23.10(d) If the CA determines and fixes a later Completion Date under Clauses 23.10(b) or 23.10(c), and as a consequence, the amount of Liquidated Damages previously retained by the Employer is reduced, then the Employer shall release the surplus amount to the Contractor within the Period of Honouring Certificates from the date of the CA's determination.
- 23.10(e) In reviewing his EOT determination under Clauses 23.10(b) or 23.10(c), the CA shall have no power to reduce the EOT already granted by him.

23A.0 EOT PURSUANT TO SECTION 29 OF CIPAA

Application for EOT

- 23A.1 If the Contractor is of the opinion that the completion of the Works has been delayed by reason of the suspension or reduction of the rate of progress of performance of the works under Section 29 of CIPAA, the following provisions shall apply:
- 23A.1(a) as soon as practicable, but not later than twenty-eight (28) Days after the date of resumption of performance or the rate of progress performance of the works under Section 29(4)(d) of CIPAA, the Contractor shall send to the CA the relevant particulars of his claim for EOT together with all necessary calculations and documents to substantiate his claims;
- 23A.1(b) if the Contractor fails to submit the required particulars within the stipulated twenty-eight (28) Days under Clause 23A.1(a) without reasonable justification or such other period as approved by the CA, the CA is not obliged (until after the Practical Completion of the Works) to assess and grant any EOT in respect of the Contractor's application for EOT. In that event, subject to the CA's review under Clause 23.10, the Contractor shall not be entitled to any EOT, and the non-assessment and non-granting of the EOT due to the Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the CA, or any deduction or claim for Liquidated Damages made by the Employer under Clause 22.0;
- 23A.1(c) if the CA is of the opinion that the particulars submitted by the Contractor pursuant to Clause 23A.1(a) are insufficient for his assessment of the EOT applied, the CA shall within fourteen (14) Days from the date of receipt of Contractor's particulars, inform him of any deficiency in his

submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may determine the Contractor's claim for such EOT based on whatever information which is available to him, and shall either reject the Contractor's application or issue a Certificate of Extension of Time within forty-two (42) Days from the last date of the period for the provision of further particulars by the Contractor. The CA's determination shall be binding upon the Contractor and the Employer until and unless it is revised by the CA under Clause 23.10;

23A.1(d) Clauses 23.2 to 23.7 shall apply to an application for EOT under this Clause 23A.1.

Adjudication Decision is Set Aside or Superseded by Court or Arbitration

23A.2 In the event that the Adjudication Decision to which the subject claim made by the Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Contractor shall not be entitled to any such EOT and any EOT previously granted by the CA pursuant to this Clause 23A.1 shall be deemed automatically cancelled. The CA may (but is not obliged to) issue a revised Certificate of Non-Completion, but the failure of the CA to issue a revised Certificate of Non-Completion shall not affect or invalidate the Employer's right to his Liquidated Damages for the delay from the last date when the Contractor ought to have completed the Works, to the date of Practical Completion.

24.0 LOSS AND/OR EXPENSE CAUSED BY MATTERS AFFECTING THE REGULAR PROGRESS OF THE WORKS

Application to Ascertain Loss and/or Expense

24.1 24.1(a) If the regular progress of the Works or any section of the Works has been materially affected by any of the Employer's Events set out in Clause 23.8(c), and the Contractor has incurred direct loss and/or expense which could not be reimbursed by a payment made under any other provision in the Contract, the Contractor may make a claim for such direct loss and/or expenses subject always to the following provisions:

- (i) the Contractor shall within twenty-eight (28) Days of the occurrence of such event, give a written notice to the CA of his intention to claim for such direct loss and/or expense together with an initial estimate of his claim duly supported with all necessary calculations and particulars; and
- (ii) within twenty-eight (28) Days after such event has ended, the Contractor shall send to the CA relevant particulars of his claim for the direct loss and/or expense together with all necessary calculations and particulars to substantiate his claims;

- (iii) if the Contractor fails to submit the required written notice in Clause 24.1(a)(i) or the particulars in Clause 24.1(a)(ii), or within such longer period as may be agreed in writing by the CA, it shall be deemed that the Contractor has waived his rights under this Contract to any such direct loss and/or expense; and
- (iv) if the CA is of the opinion that the particulars submitted by the Contractor are insufficient to enable him to decide on the claim for such direct loss and/or expense, the CA shall within fourteen (14) Days from the date of receipt of Contractor's particulars, inform him of any deficiency in his submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may value the Contractor's claim for such direct loss and/or expenses based on whatever information which is available to them and ascertain the amount (if any) entitled by the Contractor within forty-two (42) Days thereof.

Contractor to Keep Contemporary Records

- 24.2 The Contractor shall keep such contemporary records as may be relevant to a claim made under Clause 24.0, either at the Site or at another location acceptable and accessible to the CA. Without admitting to the Employer's liability, the CA may, after receiving any notice under Clause 24.1, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the CA to inspect all these records, and shall (if instructed) submit copies to the CA.

Amount Ascertained to be Added to Contract Sum, and Included in Certificate

- 24.3 If the CA is of the opinion that the Contractor has fulfilled his obligation in submitting the required notice and sufficient particulars for his determination, the CA shall determine and ascertain the amount (if any) of such direct loss and/or expense within forty-two (42) Days of receipt of the particulars from the Contractor under Clause 24.1(a)(ii). The CA shall set out the reasons for his determination. Any amount so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment, such amount shall be included in the certificate.

24A.0 LOSS AND/OR EXPENSE INCURRED PURSUANT TO SECTION 29 OF CIPAA

Application for Loss and/or Expense

- 24A.1 If the Contractor has incurred loss and/or expense through exercising his right to suspend or reduce the rate of progress of performance of the works under Section 29 of CIPAA, the Contractor may make a claim for such loss and/or expenses. The following provisions shall apply:

- 24A.1(a) the Contractor shall within twenty-eight (28) Days after the date of resumption of performance or the rate of progress performance of the works under Section 29(4)(d) of CIPAA, send to the CA relevant particulars of his claim for his loss and/or expense together with all necessary calculations and particulars to substantiate his claims;
- 24A.1(b) if the Contractor fails to submit the required particulars in Clause 24A.1(a), or within such longer period as may be agreed in writing by the CA, it shall be deemed that the Contractor has waived his rights under this Contract to any such loss and/or expense;
- 24A.1(c) if the CA is of the opinion that the particulars submitted by the Contractor are insufficient to enable him to decide on the claim for such loss and/or expense, the CA shall within fourteen (14) Days from the date of receipt of Contractor's particulars, inform the Contractor of any deficiency in his submission and require the Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA shall value the Contractor's claim for such loss and/or expenses based on whatever information which is available to them and ascertain the amount (if any) entitled by the Contractor within forty-two (42) Days thereof.

Contemporary Records

- 24A.2 Clause 24.2 shall apply to any claim made by the Contractor under Clause 24A.1(a).

Ascertainment of Loss and/or Expense

- 24A.3 If the CA is of the opinion that the Contractor has submitted sufficient particulars for his determination, the CA shall determine and ascertain the amount (if any) of such loss and/or expense within forty-two (42) Days of receipt of the particulars from the Contractor under Clause 24A.1(a). The CA shall set out the details of his determination. Any amount so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment, such amount shall be included in the certificate.

Adjudication Decision is Set Aside or Superseded by Court or Arbitration

- 24A.4 In the event that the Adjudication Decision to which the subject claim made by the Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Contractor shall not be entitled to any such loss and/or expense and the Employer shall be entitled to recover from the Contractor any amount of such loss and/or expense paid by the Employer as a debt, or by deducting from any monies due or to become due to the Contractor under this Contract, or recover from the Performance Bond provided under Clause 37.5.

25.0 DETERMINATION BY EMPLOYER

Defaults by Contractor

- 25.1 The Employer may determine the employment of the Contractor if, in the opinion of the CA, the Contractor, without reasonable cause, commits one or more of the following defaults:
- 25.1(a) fails to commence the Works for more than fourteen (14) Days from the Date of Commencement or any extended date allowed under the Contract;
 - 25.1(b) wholly or substantially suspends the carrying out of the Works before Practical Completion of the Works;
 - 25.1(c) fails to proceed regularly and/or diligently with the Works;
 - 25.1(d) persistently refuses or fails to comply with a CA's Instruction which the CA is empowered to give under the Contract;
 - 25.1(e) acts in breach of the provisions in Clause 17.0; or
 - 25.1(f) abandons the Works or otherwise plainly demonstrates the intention not to continue with the performance of his obligations under the Contract.

Determination of Employment of the Contractor

- 25.2 25.2 (a) Upon occurrence of any default under Clause 25.1, and if the Employer decides to determine the Contractor's employment, the Employer or CA on his behalf shall give to the Contractor a written notice delivered by hand or by registered post specifying the nature of the default ("Notice of Default").
- 25.2(b) If the Contractor continues with such default for fourteen (14) Days from the receipt of the Notice of Default, then the Employer may, within ten (10) Days from the expiry of the said fourteen (14) Days, by a further written notice delivered by hand or by registered post, forthwith determine the employment of the Contractor under the Contract ("Notice of Determination").

Contractor Becoming Insolvent, etc.

- 25.3 If the Contractor:
- 25.3(a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors; or
 - 25.3(b) being a company, any winding up order of any kind is made; or
 - 25.3(c) having a receiver or manager or judicial manager of the Contractor's undertaking or assets appointed; or
 - 25.3(d) having possession taken or execution levied by creditors or debenture holders or under a floating charge;
- then the employment of the Contractor under this Contract shall be forthwith automatically determined.

Bribery or Corrupt Practices

- 25.4 If the Employer determines, based on reasonable evidence, that the Contractor has given or offered to give (directly or indirectly) to any Party or Person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
- 25.4(a) for doing or forbearing to do any action in relation to the Contract; or
- 25.4(b) for showing or forbearing to show favour or disfavour to any Person in relation to the Contract, or that any of the Contractor's personnel, servants, agents or workmen has given or offered to give any such inducement or reward as aforesaid described, then the Employer or the CA on behalf of the Employer may, after giving fourteen (14) Days written notice to the Contractor by hand or by registered post specifying the bribery or corrupt practice, determine the employment of the Contractor under this Contract. However, the Employer shall not be entitled to determine the Contractor's employment under this Clause if the inducements and rewards are lawful. The burden of showing that any inducements or rewards offered or provided are lawful rests with the Contractor.

Rights and Duties of Employer and Contractor on Determination of Employment of Contractor

- 25.5 In the event that the employment of the Contractor is determined under Clauses 25.2, 25.3 or 25.4, the following shall be the respective rights and duties of the Employer and the Contractor:
- 25.5(a) irrespective of the validity or legality of the determination of the Contractor's employment, the Contractor shall, not later than fourteen (14) Days thereof, vacate the Site and surrender possession of the Site to the Employer, leaving the temporary buildings, plant, tools, equipment, unfixed materials and goods placed on or adjacent to the Site, other than those which the CA specifically instructs in writing to be removed by the Contractor. The Employer may purchase all unfixed materials and goods necessary for the carrying out and completion of the Works;
- 25.5(b) if so required by the CA, the Contractor shall within fourteen (14) Days of the date of determination, and without any charge, assign to the Employer, or such other Person as the Employer may instruct, the benefit of any agreement for the continuation of the hire of any plant and equipment on site, for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract. In this regard, the Contractor shall, before entering into such agreement, ensure that such agreement is assignable. In any case the Employer may pay any Sub-Contractor for any materials or goods delivered or Works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the price thereof has not already been paid by the Contractor. The Employer's rights under this paragraph are in addition to his rights to pay the Nominated Sub-Contractor as provided in Clause 27.6 and/or Nominated Supplier as provided in Clause 28.6

and payments made under this paragraph may be recovered from the Contractor as a debt or deducted from any sum due or to become due to the Contractor or may be recovered by the Employer from the Performance Bond provided under Clause 37.5;

- 25.5(c) when instructed in writing by the CA, the Contractor shall remove, at his own risk and cost, from the Site any temporary buildings, plants, tools, equipment, materials or goods belonging to or hired by him. After fourteen (14) Days from the date of receipt of such instruction and the Contractor has failed, neglected or refused to comply with the instruction, then the Employer may without liability remove and sell any such property belonging to the Contractor (except those that are on hire) and hold the proceeds less all costs incurred to the credit of the Contractor;
- 25.5(d) the Contractor shall submit to the CA all plans, drawings, designs, specification, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the CA may require in relation to the Works as at the date of the determination at no cost and expense to the Employer; and
- 25.5(e) the Contractor shall allow or pay to the Employer all additional cost incurred to complete the Works including all loss and/or expense suffered by the Employer. Save for any outstanding payments which have been certified and are due for payment under the Contract prior to the date of determination (after taking into account any set-off and/or deductions to which the Employer is entitled under the Contract), the Parties agree that the Employer shall not be bound by any provision in the Contract to make any other or further payment to the Contractor when the employment of the Contract was determined until after the completion of the balance of the Works. Upon completion of the balance of the Works, an account taking into consideration the value of works carried out, and goods and materials supplied by the Contractor, and all cost, damages, loss and/or expenses incurred or suffered by the Employer in completing the Works shall be incorporated in a final cost account prepared in accordance with Clause 25.7.

Site Inspection and Records of Works

- 25.6 25.6(a) The CA shall within fourteen (14) Days of the determination of the Contractor's employment, give a written notice to the Contractor of the date and time of inspection on Site to jointly record the extent of the Works executed and the materials and goods delivered to the Site. The Contractor shall provide all necessary assistance to the CA and the Consultants to perform their task.
- 25.6(b) If the Contractor fails to attend the site inspection at the appointed time and date, or the Contractor refuses or fails to cooperate with the CA and/or the Consultants for the purposes of conducting the site inspection, CA and the Consultants shall nevertheless proceed to carry out the inspection on Site to record the extent of the Works executed and the materials and goods delivered to the Site by the Contractor.

- 25.6(c) Within twenty-eight (28) Days of the completion of the site inspection under Clauses 25.6(a) or 25.6(b), the CA and the Consultant(s) shall complete the record and forward a copy thereof to the Contractor.

Settlement of Account Upon Determination

- 25.7 25.7(a) The CA shall:
- (i) within six (6) Months from the date of completion of the balance of the Works; or
 - (ii) within three (3) Months from the date when the cost of completion of the balance of the Works, damages for delay in completion (if any), and all other costs, damages, loss and/or expense incurred by the Employer have been established, whichever is the earlier, submit to the Employer and Contractor for their agreement, a final cost account for the total cost incurred by the Contractor in respect of the execution of the Works prior to the determination, and all cost incurred by the Employer to complete the balance of the Works, Liquidated Damages and other damages, loss and/or expense suffered or incurred by the Employer.
- 25.7(b) If the Parties agree with the final cost account presented by the CA, then the final cost account shall become final and conclusive and the following provisions shall apply:
- (i) if the amount in the final cost account entitled to by the Employer exceeds the total amount which would have been payable to the Contractor on completion in accordance with the Contract, the difference shall be a debt payable to the Employer by the Contractor;
 - (ii) if, on the other hand, the amount in the final cost account entitled to by the Employer is less than the said total amount payable to the Contractor, the difference shall be paid by the Employer to the Contractor within the Period of Honouring Certificates from the date of the agreement of the Parties with regard to the final cost account.
- 25.7(c) If either Party has any dispute on any item or amount in the final cost account, then the following provisions shall apply:
- (i) the Party disputing the final cost account shall by written notice to the CA set out any disagreement thereof complete with particulars within one (1) Month of the date of receipt of the final cost account from the CA;
 - (ii) within one (1) Month from the date of receipt of the notice of dispute, the CA shall decide either to amend or not to amend the final cost account, and provide reasons for his decision. The CA may also request any necessary further particulars, but the CA shall nevertheless give his decision within the stipulated one (1) Month period (unless such period is extended by mutual agreement of the Parties);

- (iii) any Party disagreeing with the CA's decision under Clause 25.7(c)
- (ii) shall refer the dispute to arbitration under Clause 34.0.

Employer's Other Rights and Remedies Not Prejudiced

- 25.8 The provisions of Clause 25.0 are without prejudice to any other rights and/or remedies which the Employer may possess under the Contract and/or the law.

26.0 DETERMINATION BY CONTRACTOR

Defaults by Employer

- 26.1 The Contractor may determine his own employment if:
- 26.1(a) the Employer refuses or fails 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), within the Period of Honouring Certificates;
 - 26.1(b) the Employer improperly interferes with or influences or obstructs the issuance of any certificate by the CA, or there is fraudulent collusion between the Employer and the CA;
 - 26.1(c) without reasonable cause, the Employer fails to nominate a succeeding CA, Consultant or Specialist Consultant in accordance with Articles 4, 5, 6, 7 and 8; or
 - 26.1(d) before the date of Practical Completion, the Employer has, without reasonable cause, suspended the continuation by the Contractor of the whole or substantially the whole of the uncompleted Works for a continuous period of time exceeding the Period of Delay stated in the Appendix.

Determination of Own Employment

- 26.2 Upon occurrence of any default under Clause 26.1, and if the Contractor decides to determine his own employment, then the Contractor shall give to the Employer a written notice delivered by hand or by registered post specifying the default. If the Employer shall continue with such default for fourteen (14) Days from the receipt of such written notice, then the Contractor may, within ten (10) Days from the expiry of the said fourteen (14) Days, by a further written notice delivered by hand or by registered post, forthwith determine his own employment under the Contract.

Employer Becoming Insolvent, etc.

- 26.3 If the Employer:
- 26.3(a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors; or
 - 26.3(b) if, being a company, any winding up order of any kind is made; or
 - 26.3(c) a receiver or manager or judicial manager of the Employer's undertaking or assets is appointed, or possession taken or execution levied by creditors or debenture holders or under a floating charge;

then the employment of the Contractor under this Contract shall be forthwith automatically determined.

Rights and Duties of Contractor and Employer Upon Determination

- 26.4 Upon such determination under Clause 26.2 or 26.3, the following shall be the respective rights and duties of the Contractor and Employer:
- 26.4(a) the Contractor shall within fourteen (14) Days or within such longer period as may be agreed in writing by the CA, remove from the Site all his temporary buildings, plant, tools, equipment, materials and goods and shall give facilities for his Nominated Sub-Contractors and Nominated Suppliers to do the same;
 - 26.4(b) the Contractor shall, within fourteen (14) Days or within such longer period as may be agreed in writing by the CA, vacate the Site and surrender possession of the Site to the Employer;
 - 26.4(c) If so required by the Employer or Architect, the Contractor shall, within fourteen (14) Days of the date of determination, assign to the Employer or such other Person as the Employer may instruct, the benefit of any agreement for the continuation of the hire of any plant and equipment on Site, for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract to the extent that the same is assignable. In this regard, the Contractor shall, before entering into such agreement, ensure that such agreement is assignable.
 - 26.4(d) The Contractor shall submit to the CA all plans, drawings, designs, specification, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the CA may require in relation to the Works as at the date of the determination; and
 - 26.4(e) the Employer shall allow or pay to the Contractor the total value of work properly executed and the value of materials and goods supplied including any loss and/or expense suffered by the Contractor arising from and/or caused by such determination.

Site Inspection and Records of Works

- 26.5 26.5(a) Within fourteen (14) Days of the determination of his own employment, the Contractor shall give a written notice to the CA, or the CA may give notice fixing the time and date of inspection on Site to jointly record the extent of the Works executed and the materials and goods delivered to the Site. The Contractor shall provide all necessary assistance to the CA and the Consultant(s) to perform their task.
- 26.5(b) If the Contractor fails to give a notice under Clause 26.5(a) within the stipulated time, or fails to attend the site inspection at the time and date as instructed by the CA, or the Contractor refuses or fails to cooperate with the CA and/or the Consultant for the purposes of conducting the site inspection, the CA and the Consultant shall nevertheless proceed to carry out the inspection on Site to record the extent of the Works

executed and the materials and goods delivered to the Site by the Contractor.

- 26.5(c) Within twenty-eight (28) Days of the completion of the site inspection under Clauses 26.5(a) or 26.5(b), the CA and the Consultant shall complete the record and forward a copy thereof to the Contractor.

Settlement of Account Upon Determination

- 26.6 26.6(a) Within six (6) Months after the determination of his own employment, the Contractor shall submit to the CA his final claim containing the total value of work properly executed, the value of materials and goods supplied and loss and/or expense suffered by the Contractor caused by such determination. Within three (3) Months after receiving the said final claim from the Contractor, the CA shall assess and prepare a final cost account, taking into account the final claim submitted by the Contractor and all deductions, set off and Liquidated Damages (if any) which the Employer is expressly entitled under the Contract.
- 26.6(b) If the Parties agree with the final cost account presented by the CA, then the final cost account shall become final and conclusive and the following provisions shall apply:
- (i) if the amount in the final cost account entitled to by the Contractor exceeds the sums paid to the Contractor (less any deductions, set off and Liquidated Damages which the Employer is expressly entitled under the Contract), the balance shall be a debt payable to the Contractor by the Employer within the Period of Honouring Certificates from the date of the agreement of the Parties with regard to the final cost account;
 - (ii) if, on the other hand, the amount in the final cost account entitled by the Contractor is less than the said total amount payable to the Contractor, the difference shall be a debt payable to the Employer by the Contractor.
- 26.6(c) If either Party has any dispute on any item or amount in the final cost account, then the following provisions shall apply:
- (i) the Party disputing the final cost account shall by written notice to the CA setting out any disagreement thereof complete with particulars within one (1) Month of the date of receipt of the final cost account from the CA;
 - (ii) within one (1) Month from the date of receipt of the notice of dispute, the CA shall decide either to amend or not to amend the final account, and provide reasons for his decision. The CA may also request any necessary further particulars, but the CA shall nevertheless give his decision within the stipulated one (1) Month period;
 - (iii) any Party disagreeing with the CA's decision under Clause 26.6(c) (ii) shall refer the dispute to arbitration under Clause 34.0.

Contractor's Other Rights and Remedies Not Prejudiced

- 26.7 The provisions of Clause 26.0 are without prejudice to any other rights and/or remedies which the Contractor may possess under the Contract and/or the law.

27.0 NOMINATED SUB-CONTRACTORS

Expenditure of Provisional and P.C. Sums

- 27.1 27.1(a) The CA may give an instruction in regard to the expenditure of Provisional Sums for the execution of Works and/or supply and/or installation of materials or goods by a Nominated Sub-Contractor.
- 27.1(b) A Nominated Sub-Contractor is a Sub-Contractor:
- (i) who is stated in the Contract as being a Nominated Sub-Contractor; or
 - (ii) whom the CA nominates and approved by the Employer to be employed by the Contractor.

Nomination of Nominated Sub-Contractor

- 27.2 The CA shall not nominate any Person as a Nominated Sub-Contractor who is not approved by the Employer, or against whom the Contractor makes reasonable objection in accordance with Clause 27.3. The Contractor shall make such reasonable objection in writing not later than fourteen (14) Days from receipt of the nomination instruction from the CA. The CA shall not nominate any Person who will not enter into a sub-contract based upon the terms and conditions of the AIAC Standard Form of Building Sub-Contract, or in other form of sub-contract which is approved by the CA. After executing the sub-contract with the Nominated Sub-Contractor, the Contractor shall forthwith forward a copy of the sub-contract to the CA.

Objection to Nomination

- 27.3 The Contractor shall not be under any obligation to employ a nominated Person as his Nominated Sub-Contractor against whom the Contractor raises reasonable objection by notice to the CA. Such notice of objection shall be given as soon as practicable, but not later than ten (10) Days from the date of notification of the nomination, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters:
- 27.3(a) the nominated Person does not agree to enter into a sub-contract based upon the terms and conditions of the AIAC Standard Form of Building Sub-Contract, or other form of sub-contract which is approved by the CA; or
- 27.3(b) there are reasons to believe that the nominated Person does not have sufficient competence, resources or financial strength, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences in respect thereof.

CA's Action Following Objection Raised

- 27.4 27.4(a) Where the CA is of the opinion that the Contractor has made a reasonable objection, the CA shall cancel such nomination instruction and issue an instruction omitting the work which was the subject of the nomination instruction or re-nominate another Person approved by the Employer for the sub-contract works.
- 27.4(b) If the CA is of the opinion that the Contractor's objection is not a reasonable objection, then the CA shall within seven (7) Days after receiving the objection notify the Contractor of his opinion and the grounds thereof. Upon receipt of the notification from the CA, the Contractor may either:
- (i) enter into a sub-contract with the Nominated Sub-Contractor within the time as instructed by the CA; or
 - (ii) notify the CA that he still does not accept to employ the nominated Person. The CA shall thereafter cancel such nomination instruction and shall, as soon as practicable, either issue an instruction omitting the work which was the subject of the nomination instruction or nominate another Person approved by the Employer for the sub-contract works. In that event, the Contractor shall not be entitled to claim for any EOT or any loss, expense or profit in respect of the omission or re-nomination (as the case may be).

Payment by Contractor to Nominated Sub-Contractor

- 27.5 The CA shall direct the Contractor as to the total value of the Works properly executed and the percentage of the value of the materials and/or goods stated in the Appendix supplied by a Nominated Sub-Contractor to be included in the calculation of the amount stated to be due in any certificate issued under Clause 30.0, and shall at the same time when the certificate is issued, inform the Nominated Sub-Contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the Nominated Sub-Contractor (less any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract and any sum to which the Contractor may be entitled to deduct from the sum payable under the express terms of the sub-contract) within seven (7) Days after the Period of Honouring Certificates.

Failure of Contractor to Pay Nominated Sub-Contractor

- 27.6 27.6(a) The CA may at any time request the Contractor to furnish to him reasonable proof that all amounts stated as due to a Nominated Sub-Contractor and included in the previous certificates have been paid to the Nominated Sub-Contractor pursuant to Clause 27.5.
- 27.6(b) The Contractor shall provide such proof within seven (7) Days of the CA's request. If the Contractor has any reasons for withholding any Nominated Sub-Contractor's payments under the express terms of the sub-contract, he shall provide the CA the written details of his compliance.

- 27.6(c) If the Contractor fails to comply with any such request within the stipulated period, or the CA is of the opinion that the reasons provided by the Contractor are unreasonable and/or insufficient to justify the withholding of payment, the CA may, with the written consent from the Employer, issue a certificate to that effect. Where the CA has so certified, the Employer may pay such amounts directly to the Nominated Sub-Contractor and recover the same from the Contractor as a debt or by deducting the same from any sums due or to become due to the Contractor or recover the same from the Performance Bond provided under Clause 37.5. When the CA is of the opinion that it is appropriate to do so, he may, with the written consent from the Employer, issue the aforesaid certificate irrespective of whether or not an Interim Certificate under Clause 30.0 is due for issuance.

Final Payment to Nominated Sub-Contractor before Final Payment to Contractor

- 27.7 If, upon a written request by the Nominated Sub-Contractor, and the Employer decides to make final payment to any Nominated Sub-Contractor before the final payment is due to the Contractor, and provided that the Nominated Sub-Contractor has satisfactorily indemnified the Contractor against all his liabilities under the sub-contract, then the CA may issue a certificate to the Contractor whereupon Contractor shall pay to such Nominated Sub-Contractor the amount so certified (less any sum to which the Contractor may be entitled to deduct from the sum payable under the express terms of the sub-contract). Upon such final payment, the amount stated in the Appendix as Limit of Retention Fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contract price to the Contract Sum.

Determination of the Nominated Sub-Contractor's Employment

- 27.8 27.8(a) The Contractor shall not determine the employment of any Nominated Sub-Contractor or enter into an agreement with a Nominated Sub-Contractor to mutually terminate the sub-contract, without the written consent of the CA.
- 27.8(b) If the Contractor intends to determine the employment of the Nominated Sub-Contractor or terminate the sub-contract, the Contractor shall send to the CA a written report stating the Nominated Sub-Contractor's default with a copy to the Nominated Sub-Contractor or any other reasons for the termination. The CA may request that the Nominated Sub-Contractor responds to the Contractor's report before he decides whether or not to give his written consent. The CA shall not unreasonably, or without any reasonable justification, withhold the consent.

Re-nomination of Nominated Sub-Contractor due to Determination by the Contractor

- 27.9 If the employment of a Nominated Sub-Contractor is determined or a nominated sub-contract is terminated with the consent of the CA, the CA shall re-nominate another Person to replace such Nominated Sub-Contractor. In the event, the

Contractor shall be entitled to be paid such difference (if any) between the sum payable to the Contractor and the new Nominated Sub-Contractor, and the sum payable to the previous Nominated Sub-Contractor. The Contractor is entitled to apply for an EOT under Clause 23.0 but he shall not be entitled to any damages, loss and/or expense arising therefrom.

Re-nomination of Nominated Sub-Contractor due to Determination by the Nominated Sub-Contractor, etc.

- 27.10 If a Nominated Sub-Contractor determines his own employment under the sub-contract, or a nominated sub-contract is terminated without the consent of the CA, the CA shall re-nominate another Person to replace such Nominated Sub-Contractor. In the event, without prejudice to any rights and remedies which he may possess against the previous Nominated Sub-Contractor, the Contractor:
- 27.10(a) shall be paid the same sum as would have been payable to the previous Nominated Sub-Contractor;
- 27.10(b) will be liable to pay the new Nominated Sub-Contractor any additional cost to complete the sub-contract works and pay the Employer for all additional costs incurred in re-nomination and loss and/or expense suffered by the Employer by such determination or termination (as the case may be);
- 27.10(c) shall not be entitled to an EOT nor any damages, loss and/or expense arising therefrom.

Contractor's Responsibility for Nominated Sub-Contractor

- 27.11 The Contractor shall ensure that all Nominated Sub-Contractors carry out the sub-contract works in accordance with the requirements that are consistent with that of the Contract, including:
- 27.11(a) compliance with the national statutory laws/provisions applicable; and
- 27.11(b) providing designs (if any), materials, goods and standards of workmanship of the quality and standard specified to the reasonable satisfaction of the CA.

Employer Not in Any Way Liable to Any Nominated Sub-Contractor

- 27.12 Neither the existence nor the exercise of the foregoing powers nor anything else contained in the Contract shall create a privity of contract between the Employer and any of the Nominated Sub-Contractors, or render the Employer in any way liable to any Nominated Sub-Contractor.

Contractor Shall be Permitted to Tender for P.C. Sums / Provisional Sums

- 27.13 27.13(a) Where the Contractor carries out Works for which P.C. Sums / Provisional Sums are included in the Contract Bills, the Contractor shall be permitted to tender for the same.

- 27.13(b) If the tender is accepted, it shall be considered as a Variation and the Contractor shall not be entitled to profit nor attendance charges as priced under the relevant P.C. Sums / Provisional Sums.

28.0 NOMINATED SUPPLIERS

Expenditure of Provisional Sums and P.C. Sums

- 28.1 28.1(a) The CA may give an instruction in regard to the expenditure of Provisional Sums (if provided in the Contract) for the supply and/or installation of materials or goods by a Nominated Supplier on the condition that the expenditure of the Provisional Sums does not vary more than 30% of the Provisional Sums stated in the Contract.
- 28.1(b) A Nominated Supplier is a Sub-Contractor:
- (i) who is stated in the Contract as being a Nominated Supplier; or
 - (ii) whom the CA nominates and approved by the Employer to be employed by the Contractor.

Nomination of Nominated Supplier

- 28.2 The CA shall not nominate any Person as a Nominated Supplier who is not approved by the Employer, or against whom the Contractor makes reasonable objection in accordance with Clause 28.3. The Contractor shall make such reasonable objection in writing not later than fourteen (14) Days from receipt of the nomination instruction from the CA. The CA shall not nominate any Person who will not enter into a supply sub-contract based upon the terms and conditions approved by the CA. After executing the supply sub-contract with the Nominated Supplier, the Contractor shall forthwith forward a copy of the supply sub-contract to the CA.

Objection to Nomination

- 28.3 The Contractor shall not be under any obligation to employ a nominated Person as his Nominated Supplier against whom the Contractor raises reasonable objection by notice to the CA. Such notice of objection shall be given as soon as practicable, but not later than ten (10) Days from the date of notification of the nomination, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters:
- 28.3(a) the nominated Person does not agree to enter into a sub-contract based upon the terms and conditions approved by the CA; or
- 28.3(b) there are reasons to believe that the nominated Person does not have sufficient competence, resources or financial strength to meet its obligations under the supply sub-contract, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences in respect thereof.

CA's Action Following Objection Raised

- 28.4 28.4(a) Where the CA is of the opinion that the Contractor has made a reasonable objection, the CA shall cancel such nomination instruction and issue an instruction omitting the supply work which was the subject of the nomination instruction or re-nominate another Person approved by the Employer for the sub-contract supply works.
- 28.4(b) If the CA is of the opinion that the Contractor's objection is not a reasonable objection, then the CA shall within seven (7) Days after receiving the objection notify the Contractor of his opinion and the grounds thereof. Upon receipt of the notification from the CA, the Contractor may either:
- (i) enter into a supply sub-contract with the Nominated Supplier within the time as instructed by the CA; or
 - (ii) notify the CA that he still does not accept to employ the nominated Person. The CA shall thereafter cancel such nomination instruction and shall, as soon as practicable, either issue an instruction omitting the work which was the subject of the nomination instruction or nominate another Person approved by the Employer for the sub-contract supply works. In that event, the Contractor shall not be entitled to claim for any EOT or any loss, expense or profit in respect of the omission or re-nomination (as the case may be).

Payment by Contractor to Nominated Supplier

- 28.5 28.5(a) The CA shall direct the Contractor as to the total value of the materials and/or goods supplied by a Nominated Supplier included in the calculation of the amount stated to be due in any certificate issued under Clause 30.0, and shall at the same time when the certificate is issued, inform the Nominated Supplier in writing of the amount of the said total value. The Contractor shall retain from the sums included for the value of materials and goods the percentage of such value stated in the Appendix as Percentage of Certified Value Retained up to an amount not exceeding five (5) percent of the Nominated Supplier's sum. The Contractor's interest in any sums so retained shall be fiduciary as trustee for the Nominated Supplier (but without any obligation to invest); and the Contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to deduct from any sum due or to become due to the Nominated Supplier under the express terms of the sub-contract. Upon the CA having certified the release of the Retention Fund under Clause 30.0, which included the retention sum for the Nominated Supplier, such sums shall be released to the Nominated Supplier within seven (7) Days after the Period of Honouring Certificates. Provided always that no retentions sums shall be released until the Nominated Supplier has delivered all warranties and/or certificates in the name of the Employer for the materials and goods supplied for the Works.

- 28.5(b) All payments in respect of the value of materials and goods supplied by a Nominated Sub-Contractor (subject to the retention by the Contractor under Clause 28.5(a) and less any sum to which the Contractor may be entitled to deduct from the sum payable under the express terms of the sub-contract) shall be made by the Contractor within seven (7) Days after the Period of Honouring Certificates.

Failure of Contractor to Pay Nominated Supplier

- 28.6 28.6(a) The CA may at any time request the Contractor to furnish to him reasonable proof that all amounts stated as due to a Nominated Supplier and included in the previous certificates have been paid to the Nominated Supplier pursuant to Clause 28.5.
- 28.6(b) The Contractor shall provide such proof within seven (7) Days of the CA's request. If the Contractor has any reasons for withholding any Nominated Supplier's payments under the express terms of the supply sub-contract, he shall provide the CA the written details of his compliance.
- 28.6(c) If the Contractor fails to comply with any such request within the stipulated period, or the CA is of the opinion that the reasons provided by the Contractor are unreasonable and/or insufficient to justify the withholding of payment, the CA may, with the written consent from the Employer, issue a certificate to that effect. Where the CA has so certified, the Employer may pay such amounts directly to the Nominated Supplier and recover the same from the Contractor as a debt or by deducting the same from any sums due or to become due to the Contractor or recover the same from the Performance Bond provided under Clause 37.5. When the CA is of the opinion that it is appropriate to do so, he may, with the written consent from the Employer, issue the aforesaid certificate irrespective of whether or not an Interim Certificate under Clause 30.0 is due for issuance.

Final Payment to Nominated Supplier before Final Payment to Contractor

- 28.7 If, upon a written request by the Nominated Supplier, and the Employer decides to make final payment to any Nominated Supplier before the final payment is due to the Contractor, and provided that the Nominated Supplier has satisfactorily indemnified the Contractor against all his liabilities under the supply sub-contract, then the CA may issue a certificate to the Contractor whereupon Contractor shall pay to such Nominated Supplier the amount so certified (less any sum to which the Contractor may be entitled to deduct from the sum payable under the express terms of the sub-contract). Upon such final payment, the amount stated in the Appendix as Limit of Retention Fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contract price to the Contract Sum.

Determination of the Nominated Supplier's Employment

- 28.8 28.8(a) The Contractor shall not determine the employment of any Nominated Supplier or enter into an agreement with a Nominated Supplier to mutually terminate the supply sub-contract, without the written consent of the CA.
- 28.8(b) If the Contractor intends to determine the employment of the Nominated Supplier or terminate the supply sub-contract, the Contractor shall send to the CA a written report stating the Nominated Supplier's default with a copy to the Nominated Supplier or any other reasons for the termination. The CA may request that the Nominated Supplier responds to the Contractor's report before he decides whether or not to give his written consent. The CA shall not unreasonably, or without any reasonable justification, withhold the consent.

Re-nomination of Nominated Supplier Due to Determination by the Contractor

- 28.9 If the employment of a Nominated Supplier is determined or a nominated supply sub-contract is terminated with the consent of the CA, the CA shall re-nominate another Person to replace such Nominated Supplier. In the event, the Contractor shall be entitled to be paid such difference (if any) between the sum payable to the Contractor and the new Nominated Supplier, and the sum payable to the previous Nominated Supplier. The Contractor is entitled to apply for an EOT under Clause 23.0 but he shall not be entitled to any damages, loss and/or expense arising therefrom.

Re-nomination of Nominated Supplier Due to Determination by the Nominated Sub-Contractor, etc.

- 28.10 If a Nominated Supplier determines his own employment under the supply sub-contract, or a nominated supply sub-contract is terminated without the consent of the CA, the CA shall re-nominate another Person to replace such Nominated Supplier. In the event, without prejudice to any rights and remedies which he may possess against the previous Nominated Supplier, the Contractor:
- 28.10(a) shall be paid the same sum as would have been payable to the previous Nominated Supplier;
- 28.10(b) will be liable to pay the new Nominated Supplier any additional cost to complete the sub-contract supply works and pay the Employer for all additional costs incurred in re-nomination and loss and/or expense suffered by the Employer by such determination or termination (as the case may be);
- 28.10(c) shall not be entitled to an EOT and any damages, loss and/or expense arising therefrom.

Contractor's Responsibility for Nominated Supplier

- 28.11 The Contractor shall ensure that all Nominated Suppliers carry out the sub-contract supply works in accordance with the requirements that are consistent with that of the Contract, including:

- 28.11(a) compliance with the national statutory laws/provisions applicable; and
- 28.11(b) providing designs (if any), materials, services and/or goods of the quality and standard specified to the reasonable satisfaction of the CA.

Employer Not in Any Way Liable to the Contractor or Any Nominated Supplier

- 28.12 Neither the existence nor the exercise of the foregoing powers nor anything else contained in the Contract shall create a privity of contract between the Employer and any of the Nominated Suppliers, or render the Employer in any way liable to any Nominated Supplier.

Contractor Shall be Permitted to Tender for P.C. Sums/ Provisional Sums

- 28.13 28.13(a) Where the Contractor carries out works for which P.C. Sums/Provisional Sums are included in the Contract Bills, the Contractor shall be permitted to tender for the same.
- 28.13(b) If the tender is accepted, it shall be considered as a Variation and the Contractor shall not be entitled to profit and attendance charges as priced under the relevant P.C. Sums/Provisional Sums.

29.0 WORKS BY CRAFTSMEN, TRADESMEN OR OTHER CONTRACTORS EMPLOYED OR ENGAGED BY THE EMPLOYER

Execution of Work Not Forming Part of Contract

- 29.1 29.1(a) The Contractor shall permit the execution of work not forming part of this Contract on the Works and at the Site and reasonable use of site facilities for such works by the craftsmen, tradesmen or other contractors employed or engaged by the Employer.
- 29.1(b) Every such craftsmen, tradesmen or other contractors employed or engaged by the Employer shall be deemed to be a Person for whom the Employer is responsible and not to be a Sub-Contractor of the Contractor.

30.0 PAYMENT

Payment Application and Certification Thereof

- 30.1 30.1(a) The Contractor shall submit a payment application at the Interim Claim Interval stated in the Appendix with complete details and particulars required by the CA, to enable the CA to consider and ascertain the amount to be included in an Interim Certificate.
- 30.1(b) Upon receipt of the Contractor's payment application, the CA shall within twenty-one (21) Days thereof issue an Interim Certificate to the Employer with a copy to the Contractor.

- 30.1(c) The Employer shall pay the amount certified to the Contractor within the Period of Honouring Certificates from the date of issuance of the Interim Certificate (less any Liquidated Damages and other sums which the Employer is expressly entitled to deduct from the certified sum under the Contract). The Period of Honouring Certificates shall commence as follows:
- (i) if the Contractor is a taxable person under the relevant applicable tax legislation currently in force, from the date of presentation of such certificate together with a tax invoice which is issued in accordance with the said legislation; or
 - (ii) if the Contractor is not a taxable person under the relevant tax legislation, from the date of issuance of the Interim Certificate. For the avoidance of doubt, the submission of the tax invoice under the relevant tax legislation currently in force shall be a condition precedent to payment under this Clause, provided that the Contractor is a taxable person under the tax legislation.
- 30.1(d) Any failure by the Contractor to submit a payment application shall be deemed to be a waiver of his contractual entitlement for that Interim Certificate, and the CA may or may not issue an Interim Certificate under the circumstances.
- 30.1(e) After the issuance of the Certificate of Practical Completion, Interim Certificates may be issued as and when further amounts are ascertained by the CA as payable to the Contractor by the Employer.

Amount Due in Interim Certificates

- 30.2 30.2(a) The amount stated as due in an Interim Certificate shall, subject to any agreement between the Parties as to stage payments, be the total value of the work properly executed and which shall include the percentage of the value of any unfixed materials and goods delivered to or adjacent to the Works which are intended for incorporation into the Works according to the terms of the Contract as stated in the Appendix up to the date of the Contractor's payment application, less any amount which may be retained by the Employer under Clauses 30.5 and 30.6, and less the amounts previously certified under Clause 30.1.
- 30.2(b) The unfixed materials and goods must be for incorporation into the permanent works and have been delivered to and properly stored at the Site and be protected against loss, damage or deterioration, and they must be in accordance with the Contract.
- 30.2(c) The certificate shall only include the value of the said materials and goods which are reasonably, properly and not prematurely brought to or placed adjacent to the Site.

Correcting Error or Discrepancy in Previous Payment Certificate

- 30.3 The CA may, by a later certificate, make correction or modification in respect of any valuation errors in any earlier certificate.

Set-Off by Employer

- 30.4 Unless otherwise expressly provided in these Conditions, the Employer shall not be entitled to withhold or deduct any amount certified as due under any payment certificates by reason of any claims to set-off or counterclaims or allegation of defective works, materials or goods or for any other reasons whatsoever which he may purport to excuse him from making payments of the amount stated to be due in a payment certificate.

Retention Fund

- 30.5 30.5(a) The Employer is entitled to retain the percentage of the total value of the work, materials and goods referred to in Clause 30.2 which is stated in the Appendix as Percentage of Certified Value Retained.
- 30.5(b) No further amounts shall be retained by virtue of this Clause when the sum of the amounts so retained equals the amount stated in the Appendix as Limit of Retention Fund or that amount as reduced in pursuance of Clauses 16.1(b)(vi), 16.1(b)(vii), 27.7 and/or 28.7, as the case may be.
- 30.5(c) The transaction shall not take place on interest-bearing account, and interest cannot be earned as interest-bear.

Rules Regarding Retention Fund

- 30.6 The amount retained by virtue of Clause 30.5 shall be subjected to the following rules:
- 30.6(a) the Employer's interest in any amount so retained shall be fiduciary as trustee for the Contractor, Nominated Sub-Contractors and Nominated Suppliers (but without any obligation to invest) and the Contractor's, Nominated Sub-Contractor's and Nominated Supplier's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of any amount as the CA may certify that he is entitled under the Contract to deduct from such sum due or to become due to the Contractor, Nominated Sub-Contractor and Nominated Supplier;
- 30.6(b) in the event the Contractor, Nominated Sub-Contractor and/or Nominated Supplier elect(s) to demand in writing from the Employer (with a copy to the CA) for such Retention Fund to be paid into a trust account, such fund shall be paid by the Employer within fourteen (14) Days into an escrow account to be held by a stakeholder appointed by the Party or Person making the demand. This demand can be made at any time prior to the release of the Retention Fund, even after the Employer has gone into liquidation or bankrupt. All incidental costs of setting up such a trust account shall be borne by the Contractor or Nominated Sub-Contractor or Nominated Supplier as the case may be;
- 30.6(c) for the avoidance of doubts, the duty of the Employer to hold the Retention Fund as trust monies shall remain irrespective of whether or not the Retention Fund has been paid into a separate trust account before its release, and the Retention Fund shall at all times remain

as trust monies even after the Employer has gone into liquidation or bankruptcy and shall not form part of the general funds upon liquidation or bankruptcy of the Employer;

- 30.6(d) when the Employer exercises any right under this Contract to deduct from any monies due to or to become due to the Contractor, or where applicable, the Nominated Sub-Contractor or Nominated Supplier, he shall inform the Contractor, Nominated Sub-Contractor or the Nominated Supplier in writing of the reason for that deduction;
- 30.6(e) upon issuance of the Certificate of Practical Completion, the CA shall within fourteen (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 the Period of Honouring Certificates;
- 30.6(f) upon the issuance of the Certificate of Making Good Defects, the CA shall within fourteen (14) Days issue a certificate for the release of the residue amount then so retained and the Contractor shall be entitled to payment thereafter within the Period of Honouring Certificates; and
- 30.6(g) the condition precedent to payment provided in Clause 30.1(c)(i) and 30.1(c)(ii) shall also apply for the purposes of payment under Clause 30.6(e) and Clause 30.6(f).

Suspension of Works Due to Non-Payment

- 30.7 30.7(a) Without prejudice to the Contractor's other rights and remedies which he may possess, if the Employer fails or neglects to pay the Contractor the amount due as shown in the payment certificate (less any Liquidated Damages and other sums which the Employer is expressly entitled to deduct from the certified sum under the Contract) and such default shall continue for fourteen (14) Days from the receipt of a written notice delivered by hand or by registered post from the Contractor stating that if payment is not made within the fourteen (14) Days, the Contractor may by a further written notice delivered by hand or by registered post, forthwith suspend the execution of the Works until such time payment is made.
- 30.7(b) For the avoidance of doubt, the Contractor in exercising his right to suspend under Clause 30.7(a):
 - (i) is not treated to be in breach of contract; and
 - (ii) is entitled to a reasonable EOT under Clause 23.0 and/or any loss and/or expense incurred under Clause 24.0 as a result of the suspension.
- 30.7(c) The Contractor shall as soon as practicable, but not later than fourteen (14) Days after having been paid the said amount due, resume performance of the Works in accordance with the Contract.

Compulsory Suspension of Work

- 30.8 If the CA or any Consultant informs the Contractor in writing of their withdrawal from the supervision of the execution of the Works required under the relevant

legislation or local building by-laws applicable to the Works for whatever reasons, and there is no immediate replacement Person appointed by the Employer to carry out such supervision, then the Contractor shall forthwith suspend the execution of the Works and continue such suspension until the resumption of the said supervision or a replacement Person is appointed by the Employer to carry out such supervision. Unless otherwise stated in the Contract, the Contractor shall be entitled to a reasonable EOT under Clause 23.0 and/or any loss and/or expense incurred under Clause 24.0 as a result of the suspension.

Cessation Insurance Resulting from Suspension

- 30.9 If the Contractor suspends the Works in accordance with the provisions of Clauses 30.7 and 30.8, he shall secure and protect the Works during the period of suspension and ensure that there is separate cessation insurance cover for all the risks specified in Clauses 19.0, and 20.0, for the whole period of suspension. The cost incurred for such protection and cessation insurance cover shall be added to the Contract Sum.

Final Account

- 30.10 30.10(a) Within six (6) Months after Practical Completion of the Works, the Contractor shall submit to the CA all documents necessary for preparing the Final Account, including all documents relating to the accounts of Nominated Sub-Contractor and Nominated Suppliers (whether previously submitted or not). Such documents shall contain all the latest construction drawings and details (bound together), details of all quantities, operation manuals, rates and prices and any adjustment of the Contract Sum and any additional payment or compensation claimed by the Contractor under the Contract together with any explanation and supporting vouchers, documents and calculations, which may be necessary to enable the Final Account to be prepared by the CA.
- 30.10(b) If the CA is of the opinion that the documents and particulars submitted by the Contractor pursuant to Clause 30.10(a) are insufficient for the CA's evaluation and preparation of the Final Account, the CA shall within thirty (30) Days from the date of receipt of the Contractor's said documents and particulars, inform him of any deficiency or insufficiency in his submission and require such further documents and particulars within thirty (30) Days thereof or such further time as may be stated by the CA in writing.
- 30.10(c) In the event the Contractor fails to submit the requested documents and particulars under Clause 30.10(b), the CA shall nevertheless complete and issue the Final Account based on the information available to them within the period to complete the Final Account as stated in the Appendix.
- 30.10(d) On completion of the Final Account, the CA shall then send a copy of the document to the Employer and Contractor.
- 30.10(e) If the Parties agree with the Final Account presented by the CA, then the Final Account shall become final and conclusive (other than any

outstanding items to be resolved separately between the Employer and the Contractor under Clauses 30.11(b)(i) and 30.11(b)(ii)), except where the Final Account is erroneous or becomes invalid by reason of:

- (i) fraud, dishonesty or fraudulent concealment relating to the Works; or
- (ii) any arithmetical errors in any computation.

30.10(f) If either Party disputes the Final Account, then the following provisions shall apply:

- (i) the Party disputing the final account shall by written notice to the other Party (with a copy to the CA) set out any disagreement thereof complete with particulars within thirty (30) Days of the date of receipt of the Final Account from the CA;
- (ii) within thirty (30) Days from the date of receipt of the notice of dispute, CA shall decide either to amend or not to amend the Final Account, and provide reasons for his decision. The CA may also request any necessary further particulars, but the CA shall nevertheless give his decision within the stipulated thirty (30) Days period;
- (iii) if the Parties agree with the CA's decision under Clause 30.10(f)(ii), then the Final Account or amended Final Account (as the case may be) shall become final and conclusive within the meaning of Clause 30.10(e);
- (iv) any Party disagreeing with the CA's decision under Clause 30.10(f)(ii) shall refer the dispute to arbitration under Clause 34.0.

Items in Final Account

30.11 30.11(a) The Final Account of the Works shall include:

- (i) any adjustment made to the Contract Sum;
- (ii) the amounts to which the CA considers that the Contractor is entitled under the express provisions of the Contract;
- (iii) the omission of all P.C. Sums and the related profit provided by the Contractor in the Contract Documents and the substitution of the amounts payable by the Employer to the Nominated Sub-Contractors and Nominated Suppliers together with the pro-rata amount for profit; and
- (iv) the adjustment of Provisional Sums and omission of any Provisional Sums if not expended.

30.11(b) The following items shall not be included in the Final Account and are matters to be resolved separately between the Employer and the Contractor

- (i) Liquidated Damages (if any) imposed by the Employer under Clause 22.0; and
- (ii) any claims, set-off or deductions by the Employer under the Contract.

Disputes as to Employer's Claims, Set-Offs, Deductions, etc.

- 30.12 Any dispute on or in relation to Liquidated Damages, set-off, deductions and/or claims which the Employer makes or claims to be entitled to make under the Contract shall be referred to arbitration under Clause 34.0.

Issuance of Final Certificate

- 30.13 The Final Certificate shall be issued within twenty-eight (28) Days after the Certificate of Making Good Defects has been issued. For the avoidance of doubt, the CA shall not be obliged to issue the Final Certificate before the issuance of a Certificate of Making Good Defects.

Final Certificate and Payment Thereof

- 30.14 30.14(a) The Final Certificate shall state:
- (i) the total amount in the Final Account, less
 - (ii) the total sums certified in previous payment certificates (whether paid or not paid) to the Contractor.
- 30.14(b) Subject to the Employer's right to any Liquidated Damages and other sums which the Employer is expressly entitled to deduct from any sum due to the Contractor under the Contract, the Employer shall pay the balance due as shown in the Final Certificate to the Contractor within the Period of Honouring Certificates. If, however, the Final Certificate shows an amount due and payable by the Contractor to the Employer, then the Contractor shall pay the such amount to the Employer within the Period of Honouring Certificates. The condition precedent to payment provided in Clause 30.1(c)(i) and Clause 30.1(c)(ii) shall also apply for the purposes of payment under this Clause.

No Certificate of CA Shall of Itself Be Conclusive Evidence

- 30.15 No certificate of the CA shall of itself be conclusive evidence that any work, materials or goods to which it relates and/or designs executed or supplied by the Contractor, Nominated Sub-Contractors and/or Nominated Suppliers are in accordance with the Contract.

30A.0 DIRECT PAYMENT UNDER SECTION 30 OF CIPAA

Direct Payment Pursuant to Section 30(3) of CIPAA

- 30A.1 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 in accordance with the terms under Clause 37.5.

No Recourse Against the Employer

- 30A.2 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.

31.0 OUTBREAK OF HOSTILITIES

Determination by Employer or Contractor

- 31.1 If during the currency of this Contract there is an outbreak of hostilities (whether war is declared or not) in which Malaysia is involved on a scale involving the general mobilisation of the Armed Forces of the Government in the State or States of Malaysia in which the Works are to be carried out, then either the Employer or Contractor may at any time by written notice to the other Party, determine the employment of the Contractor under this Contract. Such notice shall be sent by hand delivery or email transmission to the other Party, with a copy to the CA.

Notices of Determination

- 31.2 Such notice of determination shall be given either:
- 31.2(a) before the expiration of twenty-eight (28) Days from the date on which the order is given for general mobilisation as aforesaid; or
 - 31.2(b) after Practical Completion of the Works unless the Works or any part thereof have sustained war damage as defined in Clause 32.3.

CA's Instructions Regarding Protective Work

- 31.3 31.3(a) After a notice under Clause 31.1 has been given by either the Contractor or the Employer, the CA may within fourteen (14) Days issue a CA's Instruction to the Contractor requiring the execution of protective work for any full or partial progress of the Works and the materials and goods for the purposes of the Works. The Contractor shall comply with the CA's Instruction.
- 31.3(b) If the Contractor for reasons beyond his control is prevented from executing or completing the said protective works within three (3) Months from the date on which the instruction was issued, he shall notify the CA in writing and may thereupon abandon such work.

Payment Resulting from Determination

- 31.4 Upon the expiration of fourteen (14) Days from the date on which a notice of determination has been given by the Contractor or the Employer under Clause 31.1, or where the Works are required by the CA under Clause 31.3, or abandonment of such work under Clause 31.3, the provisions of Clause 26.4 shall apply subject to the Employer's rights with regard to Liquidated Damages (if any), set-off and/or deductions under the Contract prior to the determination.

32.0 WAR DAMAGE

Procedures following War Damage to Works, Materials and Goods

- 32.1 Where the Works or any part thereof or any unfixed materials or goods intended for, delivered to and placed on or adjacent to the Works sustain war damage, then notwithstanding anything expressed elsewhere in this Contract:
- 32.1(a) the occurrence of such war damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract;
 - 32.1(b) the CA may issue a CA's Instruction requiring the Contractor to remove and/or dispose of any debris and/or damaged work and/or to execute such protective work as specified;
 - 32.1(c) the Contractor shall reinstate or make good such war damage and shall proceed with the carrying out and completion of the Works, and the CA shall grant to the Contractor a fair and reasonable EOT for the completion of the Works; and
 - 32.1(d) the removal and disposal of debris or damaged work, the execution of protective works and the reinstatement and making good of such war damage shall be deemed to be a Variation required by the CA under Clause 11.0.

Employer's Entitlement to Compensation in Respect of War Damage

- 32.2 The Employer shall be entitled to any compensation which may at any time become payable out of monies provided by Parliament or the Government in respect of war damage sustained by the Works or any part thereof or any unfixed materials or goods intended for the Works which shall at any time become the property of the Employer.

Definition of "War Damage"

- 32.3 The expression "war damage" means:
- 32.3(a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy, or in repelling an attack by the enemy;
 - 32.3(b) damage occurring (whether accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequence of such damage as aforesaid;
 - 32.3(c) accidental damage occurring as the direct result of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy or of precautionary or preparatory measures involving the doing of work and taken under proper authority in any way in anticipation of enemy action being in either case measures involving a substantial degree of risk to property.

33.0 FOSSILS, ETC.

Fossils, etc. Found to be Property of Employer

- 33.1 Any fossil, coin, article of value or antiquity, or structure and other remains or item of geological or archaeological interest found on the Site during the progress of the Works shall become the property of the Employer. Upon discovery of such findings the Contractor shall forthwith cease work and shall not disturb the findings and take all necessary precautions to preserve the findings in the exact position and condition as they were discovered. He shall immediately notify the CA of the discovery and the CA shall issue relevant CA's Instruction in this regard to what has to be done.

Contractor's Loss and/or Expense in Compliance with CA's Instructions

- 33.2 If in the opinion of the CA compliance with his instructions in regard of what has to be done involves the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract, then the CA shall ascertain the amount of such loss and/or expense and any amount from time to time so ascertained shall be added to the Contract Sum. If an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such certificate.

Contractor to Submit Necessary Details

- 33.3 The Contractor shall submit to the CA such details of such direct loss and/or expense as are reasonably necessary for the ascertainment under Clause 33.2 of this Condition.

34.0 DISPUTE AND ARBITRATION

Agreement to refer Disputes to DAAB

- 34.1 34.1(a) If the Employer or the Contractor is dissatisfied with the CA's decision under these Conditions in whole or in part ("Disputes"), the Employer or the Contractor shall be entitled to refer the Disputes to DAAB as stated in Clause 34.2.
- 34.1(b) The reference of Disputes to the DAAB shall be in writing, with copies to the other Party and the CA.
- 34.1(c) If the DAAB is of the opinion that the particulars submitted by the Parties are insufficient for its assessment of the Disputes, the DAAB shall within fourteen (14) Days from the date of receipt of the reference to DAAB, inform the Parties of any deficiency in his submission and require the Parties to provide such further particulars within such period of time as may be stated by the DAAB in writing. If the Parties fail to submit the required further particulars within the time as instructed by the DAAB, the DAAB may determine the Disputes based on whatever information which is in the possession of the DAAB. The DAAB shall complete and give its decision within:

- (i) 90 days after receiving the reference or when the Parties submitted the further particulars as instructed by the DAAB, whichever is later; or
 - (ii) such period as may be proposed by the DAAB and agreed by both Parties.
- 34.1(d) The DAAB's determination shall be binding upon the Contractor and the Employer until and unless it is determined in arbitration or Court.
- 34.1(e) Unless the Contract has already been abandoned or the Contractor's employment has been determined, the Parties shall continue to perform their obligations in accordance with the Contract.

Constitution of the DAAB

- 34.2 34.2(a) The Parties shall jointly appoint the member(s) of the DAAB within the time stated in the Appendix (if not stated, 28 days) after the date the Contractor receives the Letter of Acceptance.
- 34.2(b) The DAAB shall comprise, either sole member or three members. If the number is not so stated, and the Parties do not agree otherwise, the DAAB shall comprise three members.
- 34.2(c) The member(s) of the DAAB shall be selected from those named in the list in the Appendix, other than anyone who is unable or unwilling to accept appointment to the DAAB.
- 34.2(d) If the DAAB is to comprise three members, each Party shall select one member. The Parties shall consult both these members and shall agree to the third member, who shall be appointed to act as chairperson.
- 34.2(e) The DAAB shall be deemed to be constituted on the date that the Parties and the sole member or the three members (as the case may be) of the DAAB have all signed a DAAB Agreement.
- 34.2(f) Terms, remuneration, and replacements are agreed upon between the Parties and the DAAB.
- 34.2(g) Unless otherwise agreed by both Parties, the term of the DAAB (including the appointment of each member) shall expire either:
 - (i) on the expiry of the Period of Honouring Certificate for the Final Certificate; or
 - (ii) 28 days after the DAAB has given its decision on all Disputes, referred to it under Clause 34.

whichever is later.
- 34.2(h) However, if the Contractor's employment is determined by the Employer or by its own under any clause of these Conditions or otherwise, the term of the DAAB (including the appointment of each member) shall expire 28 days after:
 - (i) the DAAB has given its decision on all Disputes, which were referred to it (under Sub-Clause 34.4 [Obtaining DAAB's Decision]) within 28 Days after the date of termination; or

- (ii) the date that the Parties reach a final agreement on all matters (including payment) in connection with the determination of the Contractor's employment whichever is earlier.

Failure to Appoint DAAB Member(s)

- 34.3 If the Parties are unable to agree on the appointment of DAAB member(s), the entity named in the Appendix shall appoint the DAAB member(s).

No DAAB in Place

- 34.4 Where Disputes arise and there is no DAAB in place (or no DAAB is being constituted), whether by reason of the expiry of the DAAB's appointment or otherwise, the Contractor or the Employer may refer the Disputes directly to arbitration under Clause 34.7 without prejudice to any other rights the Contractor or the Employer may have.

Agreement to refer Disputes or Differences to Arbitration

- 34.5 34.5(a) Any dispute, controversy or claim 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 i-Arbitration Rules.
- 34.5(b) The seat of arbitration shall be Kuala Lumpur, Malaysia.

Powers of Arbitrator

- 34.6 The arbitrator shall, without prejudice to the generality of his powers, have the power as provided in the AIAC i-Arbitration Rules and the Arbitration Act 2005, including any amendments thereto currently in place at the time of commencement of the arbitration proceeding.

Commencement of Arbitration

- 34.7 34.7(a) Unless otherwise agreed in writing by the Parties, such arbitration may be commenced before or 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 except on:
- (i) the question of whether or not the issuance of an instruction by the CA is empowered by these Conditions;
 - (ii) any dispute or difference under Clauses 31.0 or 32.0;
 - (iii) whether or not a certificate has been improperly withheld or otherwise not in accordance with these Conditions; or
 - (iv) whether or not a payment to which the Contractor may claim to be entitled has been properly withheld in accordance with these Conditions.
- 34.7(b) The obligations of the Parties and the CA shall not be altered by reason of any arbitration being conducted during the progress of the Works.

CA as Witness

- 34.8 Nothing shall disqualify the CA from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute referred to arbitration.

Arbitration Award to Be Final and Binding

- 34.9 The arbitration award shall be final and binding on the Parties.

35.0 MEDIATION

Mediation Under AIAC Mediation Rules

- 35.1 Notwithstanding Clause 34.1, the Employer and the Contractor, or either of them, may refer their dispute as to any matter arising under or out of or in connection with the carrying out of the Works and whether in contract or in tort, or as to any direction or instruction or certificate of the CA or as to contents of or granting or refusal of or reasons for any such direction, instruction or certificate, for mediation in accordance with the AIAC Mediation Rules.

Prior Reference to Mediation Does Not Prejudice the Parties Rights to Arbitration

- 35.2 For the avoidance of doubt, prior reference of the dispute to mediation under Clause 35.1 shall not be a condition precedent for its reference to arbitration by either the Contractor or the Employer, nor shall any of their rights to refer the dispute to arbitration pursuant to Clause 34.0 be in any way prejudiced or affected by this Clause.

Reference of Disputes to Mediation at Any Time

- 35.3 The Party may refer any dispute for mediation pursuant to Clause 35.1 at any time, whether before or during any arbitration proceeding under Clause 34.0, or any litigation or other proceeding in relation to any dispute between the Parties arising from and/or in connection with the Works and/or the Contract.

36.0 SERVICE OF NOTICES OR DOCUMENTS UNDER CONTRACT AND CIPAA

Service of Notices or Documents under Contract

- 36.1 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:
- 36.1(a) hand, in which case, the notice or document shall be deemed to have been duly served at the time of delivery;
 - 36.1(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;

36.1(c) email, facsimile transmission, in which case, it shall be deemed to have been duly transmitted at the time of successful transmission; or

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

Service of Notices or Documents under CIPAA

36.2 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

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

37.0 PERFORMANCE BOND/PERFORMANCE GUARANTEE SUM

Submission of Performance Bond

37.1 37.1(a) The Contractor shall before the Date of Commencement of the Works, submit to the Employer a Performance Bond for a sum equivalent to the percentage stated in the Appendix 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.

37.1(b) If the Contractor fails to submit the said Performance Bond as specified in Clause 37.1(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 37.7 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.

Form of the Performance Bond

37.2 The Performance Bond shall be in the form issued in the terms and conditions specified in the Contract or otherwise approved by the Employer, and issued by an approved licensed bank, insurance company or financial institution incorporated in Malaysia.

Validity of the Performance Bond

37.3 The Performance Bond submitted by the Contractor shall remain valid until three (3) Months after the Completion Date. Where the Works would not be completed by the Completion Date, whether or not an EOT has been granted, the Contractor shall, at least two (2) Months prior to the expiry of the Performance Bond, extend the duration of the Performance Bond to expire three (3) Months after the projected date of Practical Completion of the Works, or such further date as may be instructed by the CA.

Failure to Extend the Validity

- 37.4 If the Contractor fails to provide or maintain the validity of the Performance Bond in accordance with this Clause, then without prejudice to any other rights and remedies which the Employer may possess, the Employer may withhold or deduct an amount equal to the Performance Bond from any payment due or to become due to the Contractor. The Employer may retain such amount until such time that a Performance Bond for the remaining required period is provided, or the Performance Bond is no longer required by the provisions of the Contract.

Payments from the Performance Bond

- 37.5 The Employer may, in addition to the rights and remedies he may possess, call on the Performance Bond and utilise any payments from the Performance Bond:
- 37.5(a) under any express provision in the Conditions which allows the Employer to utilise payments from the Performance Bond, provided always that there is no or insufficient certified sum due and payable to the Contractor under the Contract from which the Employer is able to deduct; and/or
- 37.5(b) upon determination of the Contractor's employment under the Contract under Clause 25.0. In which event, the Employer may utilise payments from the Performance Bond for the completion of and/or rectification of the Works and reimbursement of loss and/or expense suffered by the Employer. On completion of the Works, any balance of monies remaining from the Performance Bond shall be refunded to the Contractor without interest.

Return of Performance Bond

- 37.6 If the Contractor determines his own employment under Clause 26.0, the Employer shall within twenty-eight (28) Days thereof return the Performance Bond to the Contractor for cancellation.

Performance Guarantee Sum

- 37.7 The Contractor may opt for a Performance Bond in the form of Performance Guarantee Sum, whereby deductions of ten percent (10%) shall be made from the first interim payment and subsequent interim payments until the total amount deducted aggregate to a sum equivalent to the amount as set out in the Appendix. The amount deducted shall be retained by the Employer until three (3) Months after the issuance of the Certificate of Practical Completion.

38.0 GOVERNING LAW

Laws of Malaysia Shall Apply

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

39.0 WAIVER

Waiver

- 39.1 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

	Clause	
Method of Measurement	13.1	
Defects Liability Period [If none is stated, is twelve (12) Months from the day stated in the Certificate of Practical Completion of the Works]	15.3	.....
Insurance cover for accidental bodily injury to or illness of third-parties (whether fatal or not), accidental loss of or damage to property (the aggregate liability of the insures shall be limited by twice the limit of indemnity caused by any one occurrence) [If none stated the insured liability shall be not less than RM1 million]	19.1	RM (Details)
Amount of Insurance Cover for Works, Materials and Goods [if not stated, in the Contract Sum as stated in the Articles plus 15%]	20.0	RM (Details)
Insuring Party	20.0	Contractor/Employer* (delete as may be appropriate)
Insurance deductible amount [if none stated shall be not more than RM50,000 an occurrence]	19.1 and, 20.0	RM
Date of Commencement	21.0	.....
Completion Date	21.0	.....
Liquidated Damages	22.0	At the rate of RM (per Day)
Limit of Liquidated Damages [if none stated means there is no cap on the amount of Liquidated Damages]	22.1(a)	..... % of the Contract Sum
Period of Delay [if none states is a continuous period of three (3) Months]	21.0 and 26.0	.....
Interim Claim Interval	30.1	.....
Period of Honouring Certificates [if none stated is twenty-one (21) Days from the date of presentation of the required Tax Invoice with the relevant Certificate (if the Contractor is a taxable person under the relevant applicable tax legislation currently in force), or the date of issuance of the relevant Certificate (if the Contractor is not a taxable person under the relevant applicable tax legislation currently in force), as the case may be]	30.1, 30.6 and 30.14	.....

	Clause	
Percentage of Value of materials and goods included in the Certificate [if none stated, is 100%]	30.2	.....
Percentage of Certificate 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]	30.5	.....
Limit of Retention Fund [if none stated, is 5% of the Contract Sum]	30.5(b)	RM
Period to complete the Final Account [if none stated, shall be twelve (12) Months from the date of Practical Completion]	30.10(c)	.....
Time for appointment of DAAB	34.1	.....
The DAAB shall comprise	34.2	.....members
List of proposed members of DAAB	34.2	
– proposed by Employer		1. 2. 3.
– proposed by Contractor		1. 2. 3.
Appointing entity (official) for DAAB Members (Unless otherwise stated here, it shall be the Director of the AIAC or a person appointed by the Director)	34.2	.....
Amount of Performance Bond/Performance Guarantee Sum [if none stated, is 5% of the Contract Sum]	37.1	RM

Sectional Completion (*)

Brief Description of Section of the Work	Date of Commencement (Clause 21.0)	Completion Date (Clause 21.0)	Liquidated Damages at the rate of (Clause 22.0)
1	RM (per Day)
2	RM (per Day)
3	RM (per Day)

(*) This is to be used when there are different Completion Dates for identified Sections.

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