

GOVERNMENT OF MALAYSIA

STANDARD FORM OF CONTRACT FOR FACILITIES MANAGEMENT & MAINTENANCE

PWD Facilities Management & Maintenance Form (2016)

Hak Cipta Terpelihara Kerajaan Malaysia

This form has been approved by Attorney General's Chamber

BETWEEN

GOVERNMENT OF MALAYSIA

AND

[.....]

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FACILITIES MANAGEMENT & MAINTENANCE SERVICES (FMM)

FMM CONTRACT NO: _____ of 20_____

EXPENDITURE to be met from Head _____ **Year of** _____

Sub-head _____

THIS CONTRACT is made on the _____ day _____ of 20_____

BETWEEN

THE GOVERNMENT OF MALAYSIA as represented by _____
and _____ having _____ its _____ address _____ at _____
_____ (hereinafter referred to as the "**Government**") of the one part;

AND

_____ (Company No.: _____), a company incorporated in Malaysia under the Companies Act 1965 [Act 125] and having its registered office at _____

_____ (hereinafter referred to as the "**Contractor**") of the other part;

The Government and the Contractor shall hereinafter individually be referred to as the "Party" and collectively as the "Parties".

WHEREAS—

A. The Government is desirous of obtaining the FMM Services (hereinafter defined) from the Contractor for the building and / or infrastructure known as _____.

B. The Contractor has agreed to carry out the FMM Services and has the relevant knowledge, skill, experience and expertise necessary to undertake the performance of such FMM Services subject to the terms and conditions of this Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires, the following words and phrases shall have the following meanings:

“Authority” means any governmental authority or entity, any quasi-government and/or other statutory authorities, departments, agencies or bodies and/or any other privatised corporation whose consent or approval is necessary and/or required for the implementation of the FMM Services;

"Commencement Date" means the date of commencement of the FMM Services as provided in Clause 2.1;

“Contract” means this Contract and the appendices attached thereto;

“Contract Documents” means the documents forming the tender and acceptance thereof including–

- (a) this Contract;
- (b) Form of Tender as specified in Appendix 1;
- (c) Letter of Acceptance of Tender as specified in Appendix 2;

- (d) Summary of Tender as specified in Appendix 3;
- (e) Schedule of Price as specified in Appendix 4;
- (f) Appendix to the Conditions of Contract as specified in Appendix 5;
- (g) Treasury's Instructions as specified in Appendix 6;
- (h) Government Requirements as specified in Appendix 7 comprising the following:
 - (i) FMM Technical Specifications as specified in Appendix 7A; and
 - (ii) Performance Requirement as specified in Appendix 7B;
- (i) Site Information and Asset Inventories as specified in Appendix 8;
- (j) Performance Bond as specified in Appendix 9;
- (k) Scope of FMM Services as specified in Appendix 10;
- (l) ...; and
- (m) ...,¹

and all of these documents shall be complementary to one another;

¹To add or delete where relevant.

- “Contract Expiry Date”** means the date of expiry of the Contract Period as set out in Clause 2.1;
- “Contract Period”** means the period referred to in Clause 2.1;
- “Contract Sum”** means the sum as stipulated in Clause 4;
- “Existing Management Information System”** means a management information system already in existence as at the Commencement Date to store and process information in all aspect of management, operation and maintenance activities;
- “Facilities Management and Maintenance Services” or “FMM Services”** means the management, administration, supervision, operation and maintenance of the Site to be carried out by the Contractor in accordance with this Contract and as specified in the FMM Technical Specifications in Appendix 7A;
- “Facility Manager”** means the person appointed by the Contractor pursuant to Clause 12;
- “Facility Superintending Officer” or “FSO”** means^{2*}and his successors in office as appointed by the Government under Clause 23 to act on behalf of the Government for matters stipulated in this Contract;
- “FSO’s Representative”** means any person appointed by the FSO pursuant to Clause 24 to perform any of the duties and exercise any of the rights of the FSO;

² State the official designation of the officer responsible.

“Government’s Intellectual Property”	means all data and information, designs, plans, design calculations, drawings, records, Management Information System and all other relevant documents provided to the Contractor pursuant to this Contract;
“Government’s Representative”	means any person delegated by the Government to perform any or all of the duties of the Government as specified in Clause 34;
"Letter of Acceptance of Tender"	means the Letter of Acceptance of Tender dated issued by the Government to the Contractor as stipulated in the Letter of Acceptance of Tender in Appendix 2;
“Management Information System”	means a system developed by the Contractor to store and process information on all aspects of management, operation and maintenance activities as specified in the FMM Technical Specifications in Appendix 7A;
"On-Cost Charges”	means any cost and expense reasonably incurred by the Government as specified in Appendix 5;
“Performance Requirement”	means the standard of performance of the FMM Services required to be performed by the Contractor as specified in Appendix 7B;
“Provisional Sum”	means a sum for FMM Services which cannot be defined or detailed at the time the tender documents are issued but shall be subject to be expended in accordance with the procedure set out in Clause 30.3;
“Site”	means the land area and other places on, above, under, in or through which the FMM Services are to be carried out

including building(s), facilities and the area covered as specified in the Site Information and Asset Inventories as specified in Appendix 8;

“Site Office” means the Contractor’s operation office and store located within or adjacent to the Site;

“Working Day” means a day other than—

- (a) [Saturday and/or Sunday] [Friday and/or Saturday];³
and
- (b) any other day declared by the Federal or State Government as a public holiday in the Federal Territory of Putrajaya or in the state in which the FMM Services are performed.

1.2 Interpretation

In this Contract, except to the extent that the context otherwise requires—

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) words denoting any gender shall include all genders;
- (c) words denoting persons shall include a body of persons, corporate or unincorporated;
- (d) any reference to clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs shall be a reference to the clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs of this Contract;

³ To delete where necessary.

- (e) reference to any party referred to in this Contract shall include its successors or permitted assigns;
- (f) reference to any document shall include references to such document as amended, novated, supplemented, varied or replaced from time to time;
- (g) reference to any legislation or to any provisions of any legislation shall include subsidiary legislation and any amendment, modification or re-enactment of that legislation and subsidiary legislation, and statutory instruments issued under such legislation or provision of any statutory modification or re-enactment of, or any legislative provision substituted for such legislation and statutory instruments issued under such legislative provision;
- (h) headings are for convenience only and shall not affect the interpretation and construction hereof;
- (i) the appendices, annexures, and schedules shall be taken, read and construed as an essential and integral part of this Contract. In the event of any conflict or inconsistency between the terms of this Contract and the terms of the appendices, annexures and schedules, the terms of this Contract shall prevail to the extent of such conflict or inconsistency;
- (j) any reference to an “amendment” includes any variation, deletion or addition and “amend” or “amended” shall be construed accordingly;
- (k) any reference to “indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;
- (l) any reference to “law” include any constitution, decree, judgment, legislation, order, ordinance, regulations, rules, statute, treaty, by-law or other legislative measure applicable in Malaysia;

- (m) any reference to a “day”, “week”, “month” or “year” is to that day, week, month or year in accordance with the Gregorian calendar;
- (n) if any period of time is specified from a given day or a day of a given act or event, it is to be calculated exclusive of that day and if any such specified period of time or a day of a specified given act or event falls on a day which is not a Working Day, then such period of a specified time or a specified day of a given act or event is deemed to be on the next Working Day; and
- (o) any reference to “pay” or its cognate expressions includes payments made in cash or by way of bank draft (drawn on a bank licensed to carry on banking business under the provisions of the Financial Services Act 2013 [Act 758] and Islamic Financial Services Act 2013 [Act 759] or effected through inter-bank transfers to the account of the payee giving the payee immediate access to available funds.

1.3 Notices, Consents, Approvals, etc.

Wherever provision is made in this Contract for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be made in writing and the words “notify”, “approval”, “certify” or “determine” shall be construed accordingly.

1.4 Time Period

Wherever there shall appear any reference to a time within which or a date by which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as if including the expression “or any period or date, as the case may be, agreed between the Parties from time to time”.

1.5 Resolution of ambiguities, discrepancies and/ or inconsistencies

1.5.1 If the Contractor shall find any discrepancy in or divergence between any two or more of the Contract Documents including a discrepancy or divergence between parts of any one of them, it shall immediately give to the FSO a written notice specifying and explaining the discrepancy or divergence. The FSO shall explain and resolve the discrepancy and thereupon issue to the Contractor appropriate instructions.

1.5.2 Any increase in the cost of performing the FMM Services as a result of the resolution of any ambiguity, discrepancy and/or inconsistency in the Contract Documents which has been decided by the FSO shall be borne by the Contractor. Any reduction in the cost of performing the FMM Services as a result of the resolution of any ambiguity, discrepancy and/or inconsistency in this Contract as decided by the FSO shall be deducted accordingly from the Contract Sum.

2. CONTRACT PERIOD

2.1 Contract Period

This Contract shall be for a period of years (hereinafter referred to as the “Contract Period”) commencing from[*insert date of commencement*] (hereinafter referred to as the “Commencement Date”) and shall expire on.....[*insert date of expiry*] (hereinafter referred to as the “Contract Expiry Date”) unless terminated in accordance with the terms and conditions provided in this Contract.

2.2 Consequences of Expiry of Contract Period

Upon expiry of the Contract Period –

(a) The Contractor shall –

(i) cease to carry out all FMM Services;

- (ii) at no cost to the Government, vacate the Site and remove all the Contractor's equipment within fourteen (14) days from the Contract Expiry Date, failing which the Government may (but without being responsible for any loss or damage) remove and sell any such equipment, holding the proceeds, less all costs incurred, to the credit of the Contractor, employees, agents and sub-Contractors from the Site;
 - (iii) co-operate with the Government to ensure a smooth transition of the FMM Services to the Government or any third party engaged by the Government;
 - (iv) return to the Government any machinery, equipment, appliance, material, article, process, tool, record, document, manual, data and/or software application in the Contractor's possession that belong to the Government;
 - (v) hand over to the Government the Existing Management Information System or the Management Information System together with its data in relation to the FMM Services under this Contract in good and working condition; and
 - (vi) at no cost to the Government, hand over to the Government all plans, designs, specifications and other relevant documents relating to the FMM Services.
- (b) the Government shall pay to the Contractor all monies due and payable as at the Contract Expiry Date PROVIDED THAT the Government shall be entitled to deduct any sum due to the Government from the Contractor pursuant to the provisions of this Contract.

3. SCOPE OF FMM SERVICES

- 3.1 The Contractor shall carry out the FMM Services as described in the scope of FMM Services in Appendix 10 according to the Performance Requirement in Appendix 7B and shall comply with the terms and conditions of this Contract.
- 3.2 Notwithstanding Clause 3.1, the FSO may, from time to time, request the Contractor to provide services falling outside the scope of the FMM Services PROVIDED THAT such request are made in the manner provided in Clause 29.

4. CONTRACT SUM

- 4.1 Subject to the Contractor’s compliance with the terms and conditions of this Contract, the Government shall pay to the Contractor in consideration for the FMM Services a sum of Ringgit:
.....
(RM.....) only (hereinafter referred to as the “Contract Sum”).

- 4.2 The Contract Sum shall not be subjected to any increase save for such increase as approved by the Government in accordance with the provisions of this Contract.

5. TERMS OF PAYMENT

- 5.1 The Parties agree that the payment for the FMM Services shall be on a monthly basis and shall be based on the FMM Services done and properly performed and executed by the Contractor.
- 5.2 For the purpose of payment in Clause 5.1, the Contractor shall submit to the FSO, at such times and in such form as the FSO may prescribe, a written application for the FMM Services monthly payments. The application for payment shall be accompanied by documents evidencing the following:
 - (a) the value of FMM Services properly executed for that particular month based on the Schedule of Price as specified in Appendix 4;

- (b) the amount of any valuation of variations as instructed by the FSO under Clause 29.1 (if any);
 - (c) the amount in regards to the expenditure of Provisional Sum executed or expended;
 - (d) the reports required by the FSO pursuant to Clause 11.2 and particularly as described in Appendix 7A, which shall include the amount of ascertained performance deduction in accordance with the calculation specified in the Performance Requirement in Appendix 7B (if any); and
 - (e) all relevant documents including Site measurements, working diagrams, delivery orders, relevant invoices, as-built drawings, shop drawings relevant tests and environmental impact assessment of the works or other relevant documents as the FSO may require, to substantiate the Contractor's written application for the FMM Services monthly payments.
- 5.3 The Contractor shall submit the reports as specified in the FMM Technical Specifications in Appendix 7A for the purpose of FMM Services monthly payments. In the event the Contractor fails to submit such reports, the FSO shall make the valuation of the FMM Services based on the available documents submitted by the Contractor for the purpose of issuance of an interim payment certificate.
- 5.4 The FSO shall within fourteen (14) days from the date of receipt of the application for the FMM Services monthly payment, inspect, evaluate and verify the application for payment of the FMM Services carried out by the Contractor. Upon completion of such inspection, valuation and verification, the Government shall issue an interim payment certificate stating the amount due to the Contractor from the Government for carrying out the FMM Services for that particular month.
- 5.5 The amount stated as due in the interim payment certificate pursuant to Clause 5.4 shall be the total value of the FMM Services done and properly executed by the Contractor for that particular month.

5.6 The Government shall pay the Contractor the amount certified as due to the Contractor in the said interim payment certificate within thirty (30) days of the issuance of such interim payment certificate,

6. PERFORMANCE BOND

6.1 The Contractor shall, prior to the Commencement Date, provide to the Government an irrevocable Performance Bond issued or to be issued in favour of the Government by an approved licensed bank or financial institution incorporated in Malaysia for a sum equivalent to five percent (5%) of the Contract Sum amounting to Ringgit (RM) to secure the due performance of the Contractor's obligations under this Contract.

6.2 The Performance Bond shall remain valid and effective until twelve (12) months after the expiry of the Contract Period.

6.3 Notwithstanding anything contained in this Contract, the Government shall be entitled at any time to forfeit the Performance Bond, wholly or partially, if the Contractor fails to perform or fulfil its obligations under this Contract and such failure is not remedied in accordance with this Contract.

6.4 If a payment is made to the Government pursuant to any claim under the Performance Bond, the Contractor shall issue to the Government further security in the form of additional performance bond or bonds for an amount not less than the amount so paid to the Government on or prior to the date of such payment so that the total sum of the Performance Bond shall be maintained at all times at the value specified in Clause 6.1.

7. OBLIGATIONS OF THE CONTRACTOR

During the Contract Period, the Contractor shall—

- (a) carry out the FMM Services in accordance with the terms and conditions of this Contract and particularly as described in the Scope of FMM Services in Appendix 10;
- (b) carry out its obligations as specified in the facilities management plan (hereinafter referred to as “FMP”);
- (c) perform the FMM Services in a proper manner and in accordance with the best management and industry practices and to the best advantage of the Government in order to protect the interest of the Government;
- (d) at all times perform its obligations under this Contract in such manner as will always safeguard and protect the Government’s interest and take all necessary and proper steps to prevent abuse of the Site and in accordance with the provisions of this Contract;
- (e) take all appropriate measures in carrying out the FMM Services in accordance with the best industry practice;
- (f) perform the FMM Services and discharge its obligations according to this Contract by exercising professional judgment and good practice, with requisite skill, care and diligence;
- (g) provide the standard operating procedures in the form as agreed by the FSO for reporting and co-ordination purposes;
- (h) at all times perform the FMM Services in such manner and take all necessary and proper steps to prevent abuse or uneconomical use of facilities, if any, made available by the Government to the Contractor;
- (i) immediately inform the Government in writing of the occurrence of any factor or event, which is likely to affect the FMM Services but such notification shall not be construed as a discharge of any of the Contractor’s obligations under this Contract;

- (j) in the event of any emergency, accident or failure due to any cause in connection with the FMM Services, immediately report the emergency, accident or failure to the FSO and submit a report with recommendations for remedial action in accordance with the terms and conditions of this Contract and to the approval of the FSO;
- (k) provide and maintain adequate numbers of workmen who are efficient, suitably qualified and experienced in accordance with the minimum requirement as specified in the FMM Technical Specifications in Appendix 7A to perform the FMM Services;
- (l) provide and maintain at its own cost and expense all equipment, machinery, appliances, materials, articles, processes and tools necessary for the proper and effective performance of the FMM Services; and
- (m) instruct and supervise its workmen in carrying out the FMM Services.

8. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

8.1 Contractor's representations and warranties

The Contractor hereby represents and warrants to the Government that as at the Commencement Date —

- (a) it is a company validly existing under the laws of Malaysia;
- (b) it has the corporate power to enter into and perform its obligations under this Contract and to carry out the transactions and to carry on its business as contemplated by this Contract;
- (c) it has taken all necessary corporate actions to authorize the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract;

- (d) this Contract constitutes a legal, valid and binding obligation of the Contractor and is enforceable in accordance with its terms and conditions;
- (e) neither the execution nor performance by the Contractor of this Contract nor any transactions contemplated by this Contract will violate in any respect, any provision of—
 - (i) its Memorandum and Articles of Association; or
 - (ii) any other document or agreement which is binding upon it and its assets;
- (f) no litigation, arbitration, tax claim, winding up, dispute or administrative proceeding is subsisting, pending or to its knowledge threatened, which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under this Contract;
- (g) no corruption, unlawful or illegal activities or practices have been used to secure this Contract;
- (h) it has the necessary financial capability to undertake and complete the FMM Services; and
- (i) it has the technical capability to carry out the FMM Services and fulfil all its obligations in and arising out of this Contract,

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

8.2 Continuing representations

The Contractor further represents and warrants to the Government that the representations and warranties set out in Clause 8.1 shall remain true and correct in all respects throughout the Contract Period save and except Clause 8.1(f).

9. FACILITIES MANAGEMENT PLAN

- 9.1 Within fourteen (14) days from the Commencement Date, the Contractor shall submit its FMP in the form and manner as specified in the FMM Technical Specifications in Appendix 7A to the FSO or FSO Representative.
- 9.2 The FSO or FSO's Representative shall within [fourteen (14) / twenty-eight (28)]⁴ days after the receipt of the FMP—
- (a) reject the FMP in writing;
 - (b) accept the FMP in writing with or without modification; and/or
 - (c) request the Contractor to supply further information to clarify or substantiate the programme specified in the FMP or to satisfy the FSO or FSO's Representative as to its reasonableness having regard to the Contractor's obligations under the Contract,

PROVIDED THAT if none of the actions in Clause 9.2(a), 9.2(b), and/or 9.2(c) is taken within the period of fourteen (14) days from the date of receipt of the FMP, the FSO or FSO's Representative shall be deemed to have accepted the FMP as submitted.

- 9.3 The Contractor shall, upon receipt from the FSO or FSO's Representative for any request under Clause 9.2(b) and/or 9.2(c), submit a modified FMP or provide further information as requested for FSO or FSO's Representative's approval. If no action is taken by the FSO or FSO's Representative within fourteen (14) days from the date of receipt of such further information or modified FMP from the Contractor, the FSO or FSO's Representative shall be deemed to have accepted the modified FMP.
- 9.4 For the avoidance of doubt, the FMP accepted by the Government pursuant to Clause 9.2 shall form part of this Contract.

⁴ Delete where necessary.

9.5 The Contractor shall carry out its obligations as stipulated in the accepted FMP during the transition period(s) within the time period as specified therein.

9.6 For the purpose of this clause:

“transition period(s)” means the period of transition between the Contractor and the new contractor to execute the activity specified in the transition management.

9.7 Notwithstanding any other rights of the Government under this Contract, if at any time it should appear to the FSO or the FSO’s Representative that the performance of FMM Services by the Contractor does not conform to the FMP or the FSO or the FSO’s Representative is of the view that the FMP requires to be updated, the Contractor shall submit, at the request of the FSO or the FSO’s Representative a revised FMP showing the modifications to the accepted FMP. The revised FMP as accepted by the FSO or the FSO’s Representative shall take precedence over the previously accepted FMP from the date it is accepted by the FSO or the FSO’s Representative.

10. INSPECTION OF SITE

10.1 The Contractor shall be deemed to have inspected and examined the Site and its surrounding and to have satisfied itself before submitting the tender as to the following:

- (a) the condition of the Site;
- (b) the facilities and equipment at the Site;
- (c) the means of communication with and access to the Site;
- (d) the accommodation he may require;
- (e) the existing Management Information System at the Site (if any); and

- (f) in general to have obtained for himself all necessary information as to risks, contingencies and all circumstances influencing and affecting the tender.

10.2 Any information or document forwarded by the Government to the Contractor shall not relieve the Contractor of its obligations under the provisions of this clause.

11. PERFORMANCE REQUIREMENT

11.1 Level of performance

The Contractor shall perform the FMM Services according to the terms and conditions of this Contract and comply with the standards specified by the Government in the Performance Requirement in Appendix 7B.

11.2 Submission of reports

11.2.1 The Contractor shall prepare and submit the reports as specified in the FMM Technical Specifications in Appendix 7A in accordance with the time period specified therein for purposes of FSO's records and/or information and valuation of the Contractor's performance which shall also form the basis of the calculation for ascertained performance deduction under Clause 11.3.

11.2.2 The Contractor shall submit such reports under Clause 11.2.1 for the FMM Services monthly payments which the Contractor shall be entitled to pursuant to Clause 5. The Parties agree that in the event the Contractor fails to submit such reports, the FSO shall make the valuation of the FMM Services based on available documents submitted to him for the purpose of issuance of interim payment certificate.

11.3 Ascertained Performance Deduction

The Parties agree that the Government shall have the right to deduct a sum calculated in accordance with the formula specified in the Performance Requirement in Appendix 7B in the form of ascertained performance deduction in

the event that the performance of the FMM Services fails to meet the key performance indicator as specified in the Performance Requirement in Appendix 7B. The Contractor hereby agrees that the Government shall have the right to deduct the ascertained performance deduction from any monies due or becoming due to the Contractor under this Contract and failing which such deductions shall be recovered from the Performance Bond or as a debt due from the Contractor.

12. FACILITY MANAGER

12.1 The Contractor shall appoint a Facility Manager to manage the FMM Services on Site and to liaise with the FSO whenever necessary. The Facility Manager shall have the following criteria:

- (a) competent, efficient, suitably qualified and experienced in the relevant industry;
- (b) of good character; and
- (c) able to communicate and receive instructions in Bahasa Malaysia and English.

12.2 The Contractor shall ensure that the Facility Manager appointed pursuant to Clause 12.1 shall be at the Site at all times. If the Government is of the view that the Facility Manager appointed by the Contractor does not fulfil the criteria as specified in Clause 12.1, upon written notification from the Government, the Contractor shall provide an immediate replacement of the Facility Manager and all wages and other expenses in connection with the employment of such replacement shall be borne by the Contractor. Any directions, explanations or instructions given to such Facility Manager by the FSO shall be deemed to have been given to the Contractor.

13. EMPLOYMENT OF WORKMEN

13.1 The Contractor shall provide workmen of skilled, qualified, experienced and competent in the industry in carrying out the FMM Services.

- 13.2 The Contractor shall employ only Malaysian citizens as its workmen and they shall possess the basic qualifications and relevant experience as specified in the FMM Technical Specifications in Appendix 7A.
- 13.3 Notwithstanding Clause 13.2, if any particular trade or skill is required to perform the FMM Services and the Contractor is able to demonstrate to the satisfaction of the FSO that Malaysian citizens are not available, the Contractor may employ non-Malaysian citizens subject to the approval of the Government.
- 13.4 The Contractor shall on the Commencement Date, furnish to the Authority, the relevant document or particulars in respect of the workmen employed by it for the performance of the FMM Services in accordance with the requirements under the Employment Act 1955 [Act 265], Employment (Restriction) Act 1968 [Act 353], National Wages Consultative Council Act 2011 [Act 732] and other relevant laws or any subsequent modification or re-enactment thereof.
- 13.5 The Contractor shall maintain on the Site at all times throughout the Contract Period an up-to-date register containing particulars of all workmen employed by the Contractor.
- 13.6 The Contractor shall ensure that if any post shall fall vacant, it shall provide qualified workmen that will be deployed immediately to fill the said post subject to the provisions of Clause 13.1, 13.2 and 13.3.
- 13.7 If the FSO is of the opinion that the Contractor's workmen has not performed its obligations in accordance with the terms and conditions of this Contract, the FSO may instruct the Contractor to redeploy the Contractor's equipment and its workmen at the Contractor's own cost and expense. The Contractor shall accordingly execute the instructions of the FSO within seven (7) days from the date of receiving the FSO's instructions. Any instruction of redeployment by the FSO shall not relieve the Contractor of its obligations under this Contract.
- 13.8 If the FSO is of the view that any workmen is acting to the detriment of the Government or is not skilled, qualified, experienced and competent in carrying out

the FMM Services or any of the Contractor's obligations under this Contract, the FSO may instruct the Contractor to replace such workmen. The Contractor shall comply with the instructions of the FSO within seven (7) days from the date of receiving the FSO's instructions. All costs and expenses incurred for the employment and replacement of the workmen under this clause shall be borne by the Contractor.

14. COMPLIANCE WITH THE EMPLOYMENT ACT 1955, ETC.

14.1 Employment legislation

In employing the workmen to carry out the FMM Services, the Contractor shall comply and shall cause its sub-contractors (including 'labour only' sub-contractors) to comply with all the requirements of the Employment Act 1955 [Act 265], Employment (Restriction) Act 1968 [Act 353], Employees Provident Fund Act 1991 [Act 452], the Industrial Relations Act 1967 [Act 177], the Occupational Safety and Health Act 1994 [Act 514], the National Wages Consultative Council Act 2011 [Act 732] and any other law relating to the employment of workmen PROVIDED THAT the Contractor shall not be entitled to claim for any additional cost and expense whatsoever in respect of its compliance with this clause.

14.2 Employees Provident Fund

14.2.1 The Contractor shall ensure that all contributions under the Employees Provident Fund Act 1991 [Act 452] or other applicable laws in respect of its workmen are paid until the expiry of the Contract Period.

14.2.2 The Contract Sum shall not be increased to account for any contribution under the Employees Provident Fund Act 1991 [Act 452] in respect of its workmen in carrying out the FMM Services.

15. INDEMNITY

15.1 The Contractor shall perform all of its obligations under this Contract at its own risk and releases, to the fullest extent permitted by law, the Government and its

servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from the carrying out the FMM Services except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Government or its servants. The Contractor expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death;

15.2 The Contractor shall indemnify and keep the Government fully indemnified from and against—

- (i) all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from –
 - (a) the negligent use, misuse or abuse by the Contractor, workmen, or the Contractor's personnel, servants, agents or employees appointed by the Contractor;
 - (b) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the FMM Services to any person and not caused by the negligence or wilful act, default or omission of the Government or its servants; or
 - (c) any loss, damage or injury from any cause whatsoever to property or persons affected by the FMM Services to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Contractor, workmen or the Contractor's personnel, servants, agents or employees; and
- (ii) any actions, suits, claims, proceedings, losses, damages, compensation, cost (including legal cost), charges and expenses made by any sub-

contractor(s) appointed by the Contractor as a result of the Contractor's own act, omission, breach and/or default for the implementation of this Contract.

15.3 The obligations of the Contractor under this clause shall continue after the expiry or earlier termination of this Contract in respect of any act, deed, matter or thing happening before such expiration or termination of this Contract.

16. WORKMEN'S COMPENSATION ACT 1952 [ACT 273]

Notwithstanding the Contractor's obligations to indemnify the Government under Clause 15, the Contractor shall effect and maintain throughout the Contract Period Workmen's Compensation Insurance or any other applicable insurance for its workmen required under the laws of Malaysia at its own cost and expense.

17. CONTRACTOR TO PAY ANY OTHER STATUTORY CONTRIBUTIONS

The Contractor shall be required to pay any other statutory contributions not expressly mentioned in this Contract in respect of workmen or the performance of the FMM Services. The Contract Sum shall not be varied by reason of any such statutory contributions or increase in such statutory contributions.

18. INSURANCE FOR FMM SERVICES

18.1 Taking of Insurance

18.1.1 The Contractor shall take out and maintain, in the joint names of the Government and the Contractor, insure against loss and damage by fire, lightning, explosion, storm tempest, flood, ground subsidence, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, burglary, vandalism, professional indemnity, all work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the FMM Services and intended therefore (but excluding temporary buildings,

machinery, 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 to the Conditions of Contract in Appendix 5 or elsewhere in the Contract Documents) and shall keep the FMM Services, materials and goods so insured until the completion of the whole of the FMM Services. Such insurance policy or policies shall provide expressly for payment in the first place to the Government of any insurance monies due under the policy or policies.

18.1.2 The said insurance with or without an excess clause as specified in the Appendix to the Conditions of Contract in Appendix 5 shall be effected with an insurance company approved by the FSO and it shall be the duty of the Contractor to produce to the FSO the said policy or policies and the receipts in respect of the premium paid. Where an excess clause is specified in the Appendix to the Conditions of Contract in Appendix 5, the Contractor shall bear the amount of such excess.

18.2 Payment of Insurance in the Event of Any Loss and / or Damage

Upon the occurrence of any loss and/or damage to the FMM Services and/or unfixed materials and goods prior to the Contract Expiry Date, the Contractor shall, notwithstanding that settlement of any insurance claim has not been completed, 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 FMM Services. All monies if and when received from the insurance under Clause 18 shall be paid to the Government and then (less any such amounts as are specifically required in the Appendix to the Conditions of Contract in Appendix 5 or elsewhere in the Contract Documents) be released to the Contractor by instalments on the certificate for payment issued by the FSO, calculated as from the date of receipt of the money in proportion to the extent of the restoration, replacement or repair and the removal and disposal of debris previously carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of the restoration, replacement or repair and the removal and disposal of debris other than the money received under the said insurance.

18.3 Cancellation of Insurance Policy

The Contractor shall ensure that any insurance policy affected hereto shall only be cancelled by the insurer after the expiry of thirty (30) days from the date of receipt by the Government of a written notice from the insurer advising of such impending cancellation.

18.4 Default in Insuring

If the Contractor fails to effect or renew such insurances as are required to be effected and maintained under this Contract, the Government or the FSO on its behalf may effect or renew such insurance and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and On-Cost Charges (calculated by applying the percentage for On-cost Charges to the premiums paid), from any money due or become due to the Contractor under this Contract or to recover the same from the Performance Bond or as a debt due from the Contractor.

19. INSURANCE AGAINST PERSONAL INJURIES AND DAMAGE TO PROPERTY

19.1 Taking of Insurance

19.1.1 Without prejudice to its liability to indemnify the Government under Clause 15, the Contractor shall, as a condition precedent to the commencement of any work under this Contract, effect and maintain the insurance policy against personal injuries and damage to property whether with or without an excess amount as specified in the Appendix to the Conditions of Contract in Appendix 5 as are necessary to cover the liability of the Contractor and all sub-contractors, whether nominated or otherwise.

19.1.2 Such insurance shall be for the purpose of personal injuries or death, damage or loss to property, movable or immovable, arising out of, or in the course of, or by reason of the execution of the FMM Services and caused by any negligence, omission, breach of contract or default of the

Contractor or any sub-contractor, whether nominated or otherwise, or of any servants or agents of the Contractor or of any such sub-contractor, whether nominated or otherwise. Where an excess amount is specified in the Appendix to the Conditions of Contract in Appendix 5, the Contractor shall bear the amount of such excess.

19.1.3 Such insurance as referred to under Clause 19.1.1 shall be effected with an insurance company licensed under the Financial and Services Act [Act 758] and approved by the Government and maintained in the joint names of the Government and Contractor and all sub-contractors, whether nominated or otherwise. Such insurance shall cover from the period of the date of possession of the Site until the Contract Expiry Date for any claim occasioned by the Contractor or any sub-contractor in the course of any operations carried out by the Contractor or any sub-contractor.

19.2 **Production of Policies**

It shall be the duty of the Contractor to produce and shall deposit the relevant policy or policies of the insurance together with receipts in respect of premiums paid to the FSO, whether demanded or not.

19.3 **Default in Insuring**

If the Contractor fails to effect or renew such insurances as are required to be effected and maintained under this Contract, the Government or the FSO on its behalf may effect or renew such insurance and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and On-Cost Charges (calculated by applying the 'Percentage for On-cost Charges' stated in the Appendix to the Conditions of Contract in Appendix 5), from any money due or become due to the Contractor under this Contract or to recover the same from the Performance Bond or as a debt due from the Contractor.

19.4 Cancellation of Insurance

19.4.1 The Contractor shall not at any time permit or cause to be done any act, matter or thing which may result in any insurance effected by virtue of this Contract being vitiated or rendered void or voidable or whereby the rate of the premium on any insurance effected shall be liable to be increased.

19.4.2 The Contractor shall ensure that any insurance policy to be effected hereto shall only be cancelled by the insurer after the expiry of thirty (30) days from the date of receipt by the Government of a written notice from the insurer advising of such impending cancellation.

19.5 Loss or Damage Occasioned by Insured Risk

In the event of any damage or loss occurring during the performance of this Contract, the Contractor shall repair, replace or make good such damage or loss from the amount of insurance claimed, if sufficient, or if insufficient, using its own resources.

20. RESTRICTION AND PROCEDURE ON USE OF IMPORTED MATERIALS, GOODS

20.1 The Contractor shall use local goods/materials as listed in the '*Senarai Bahan/Barangan Buatan Tempatan*' issued by IKRAM QA Services Sdn. Bhd. and/or issued by SIRIM QA Services Sdn. Bhd., and comply with the Treasury's Instruction as specified in Appendix 6 or any other Government circulars, whichever is relevant. If the Contractor fails to comply with this requirement, the Government may reject the goods/materials which are found to be not in compliance with this requirement.

20.2 For local goods/materials not listed under Clause 20.1, such goods/materials may be allowed if prior testing and certification from IKRAM QA Services Sdn. Bhd. or SIRIM QA Services Sdn. Bhd., whichever is relevant, has been obtained. Where such testing cannot be carried out by IKRAM QA Services Sdn. Bhd. or SIRIM QA

Services Sdn. Bhd. the Contractor may, with the FSO's prior approval, have the testing done by another agency.

- 20.3 The Contractor shall, under no circumstances be permitted to incorporate or supply imported materials, machinery, equipment, vehicles or other goods into the FMM Services or forming part of the scope of the FMM Services except those approved by the Government, prior to the execution of this Contract. The Contractor shall at its own cost entirely substitute any materials, machinery, equipment, vehicles or other goods proposed to be imported but not approved by the Government, with suitable local materials, machinery, equipment, vehicles or other goods as approved by the Government.
- 20.4 The Contractor shall ensure that the procurement of approved imported materials, machinery, equipment, vehicles or other goods are obtained directly from the country of origin based on Free On Board or other similar basis. The transportation and insurance of such imported materials, machinery, equipment, vehicles or other goods from the country of origin to the Site shall be arranged by the Contractor through the Government's Multi Modal Transport Operators (herein referred to as "MTO") in accordance with the Treasury's Instructions as stipulated in Appendix 6. The Contractor shall allow in the tender all costs and time required in complying with the requirements of Clause 20 including the cost required for the services provided by the MTO.
- 20.5 The Contractor shall submit documentary evidence of compliance with Clause 19 to the FSO within one (1) month from the date of each delivery to the Site of such materials, machinery, equipment, vehicles or other goods.

21. PROVISIONS OF EQUIPMENT

- 21.1 The Contractor shall pay all port dues including (but not by way of limitation) wharfage dues, pilotage fees, anchorage, berthage and mooring fees, quarantine dues, loading portage and overtime fees for materials, machinery, equipment, vehicles or other goods or use directly in connection with the construction,

completion of the works brought into and despatched from Malaysia by the Contractor (or in its name by agents).

- 21.2 The Contractor shall furnish to the FSO all such shipping documents, invoices and other documentation as may be required by the customs authorities in connection with the importation of materials, machinery, equipment, vehicles or other goods.
- 21.3 In the case of materials, machinery, equipment, vehicles or other goods imported on the Contractor's behalf by importing agents and the like, both the shipping documents and the invoices of the original suppliers or manufacturers must indicate clearly that the consignment is for the Contractor's account.
- 21.4 The procedure in respect of the requirements of the foregoing shall be determined by the Authority. The Contractor shall make written application to the FSO and shall provide the relevant documentation of all materials, machinery, equipment, vehicles or other goods to be imported into Malaysia not less than forty-five (45) days before the arrival of the said materials, machinery, equipment, vehicles or other goods.
- 21.5 The Contractor shall pay all charges and other expenses in connection with the landing and shipment of all materials, machinery, equipment, vehicles or other goods and other things of whatsoever nature brought into or despatched from Malaysia for the purpose of this Contract.
- 21.6 The Contractor shall make its own arrangement and on its own cost in obtaining clearance from the Authority of the materials, machinery, equipment, vehicles or other goods.
- 21.7 The Contractor shall be required to furnish all lists of materials, machinery, equipment, vehicles or other goods to the FSO whether the materials, machinery, equipment, vehicles or other goods are hired or acquired.
- 21.8 The Contractor shall ensure that any warranties or guarantees in respect of materials, machinery, equipment, vehicles or other goods incorporated by the

Contractor into the Site are transferred to the Government before the expiry or termination of this Contract.

21.9 For the avoidance of doubt, any materials, machinery, equipment, vehicles or other goods that are incorporated into the Site by the Contractor which have been paid by the Government, shall belong to the Government at the expiry or termination of the Contract. The Contractor shall ensure that such materials, machinery, equipment, vehicles or other goods are free from any charges and/or encumbrances.

22. MANAGEMENT INFORMATION SYSTEM

22.1 Contractor's Obligation

22.1.1 The Contractor shall, within three (3) months from the Commencement Date, develop, procure, manage and maintain the Management Information System which shall be compatible with and able to integrate with the Government's asset management information system;

22.1.2 If there is an Existing Management Information System, the Contractor shall manage, maintain, amend, upgrade and update the Existing Management Information System accordingly.

22.1.3 The Contractor shall integrate the Management Information System or the Existing Management Information System with the Government's asset management information system at its own cost and expense.

22.2 Asset Inventory and Data Management

The Contractor shall—

- (a) ensure all asset inventory and data management comply with the Government's asset policies and guidelines;

- (b) manage, maintain and upgrade all assets coding and tagging to comply with the Government's asset policies and guidelines;
- (c) establish the appropriate method and/or manner of asset inventory and data management and submit to FSO for its approval before it is implemented;
- (d) comply with the Official Secrets Act 1972 [*Act 88*], *Arahan Keselamatan Kerajaan* and any relevant Government directives regarding any Government official information, data, records and reports, etc;
- (e) ensure the accuracy, validity and integrity of the data in the Management Information System; and
- (f) indemnify the Government for any loss, damage or leakage of any data in the Management Information System.

23. FACILITY SUPERINTENDING OFFICER

23.1 Appointment of FSO

The Government shall appoint a FSO to act on behalf of the Government for matters stipulated in Clause 23.5 of this Contract.

23.2 FSO's Instructions

23.2.1 Save for the instructions and/or notice to be issued by the Government's Representative –

- (a) the FSO shall issue written instructions to the Contractor as he deems fit to ensure that the FMM Services are performed by the Contractor in accordance with the terms and conditions of this

Contract and the Contractor shall comply with the instructions issued by the FSO; and

- (b) whenever necessary, the FSO may issue oral instructions to the Contractor and the oral instructions shall be confirmed in writing by the FSO within seven (7) days from the date of such oral instructions being given.

23.2.2 If within seven (7) days after the receipt of a written notice from the FSO, requiring compliance of an instruction and the Contractor does not comply therewith, then the FSO may, without prejudice to any other rights or remedies available to the Government under this Contract, undertake the work departmentally or appoint a third party to carry out any work which may be necessary to give effect to such instruction. All costs and expenses incurred by the Government in connection with such appointment (including On-Cost Charges), shall be deducted from any money due or would become due to the Contractor under this Contract. In the event the money due or would become due to the Contractor under this Contract is insufficient for the purpose of such deduction, such amount shall be recovered from the Performance Bond or as a debt due from the Contractor.

23.3 FSO's instructions on safety and security aspects of the Site

The FSO shall from time to time give further instructions to the Contractor as the FSO deems fit on safety and security aspects of the Site and the Contractor shall comply with such instructions at the Contractor's own cost and expense.

23.4 FSO's notifications, etc., in writing

Notwithstanding Clause 23.2.1(b), all notifications, directions or approvals issued by the FSO to the Contractor pursuant to this Contract shall be in writing.

23.5 FSO's duties

The duties of the FSO shall include—

- (a) overseeing, monitoring, supervising, giving instructions and regulating the FMM Services carried out by the Contractor in all aspects pertaining to this Contract;
- (b) providing all relevant information, drawings and records pertinent to the provision of the FMM Services to the Contractor except where such information, drawings and records that the Government considers to be confidential in nature and cannot be disclosed; and
- (c) providing any assistance to the Contractor for the purpose of obtaining all approvals and consents from the Authority in respect of matters necessary for the performance of the Contractor's obligations hereunder PROVIDED ALWAYS that the Contractor has complied with all statutory requirements. For the avoidance of doubt, the FSO and/or the Government shall not be liable if the approval of the Authority is not forthcoming.

24. FSO'S REPRESENTATIVE

24.1 The FSO may from time to time appoint such number of FSO's Representative as he deems fit and may change the FSO's Representative by giving the Contractor notice in writing of such change.

24.2 The FSO's Representative shall –

- (a) assist the FSO in carrying out the FSO's duties including overseeing, monitoring, supervising and regulating the FMM Services carried out by the Contractor;
- (b) have the powers and duties of the FSO that have been delegated to him in writing by the FSO; and

(c) be responsible to the FSO in all aspect pertaining to this Contract.

25. GOVERNMENT’S RIGHT TO RENOVATE THE SITE

25.1 The Government may, at any time during the Contract Period, appoint any third party to carry out any renovation and/or modification to the Site or any part of the Site at the Government’s cost and expense. The Contractor shall render any assistance required by the third party appointed by the Government for the purpose of carrying out any renovation and/or modification to the Site or any part of the Site at no cost to the Government.

25.2 Notwithstanding Clause 25.1, the Contractor hereby agrees that any renovation and/or modification to the Site or any part of the Site carried out by the Government shall not relieve the Contractor of its obligations in carrying out the FMM Services under this Contract.

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Ownership of Intellectual Property Rights

All intellectual property rights arising out of designs, plans, calculations to support the designs, bill of quantities or drawings, drawings, software, records, reports, data, literary and artistic materials, documents, information compiled, used, developed and incorporated into the FMM Services shall vest in and become the sole property of the Government, free and clear from all liens, claims and encumbrances (herein referred to as “Government’s Intellectual Property”). The Contractor shall not at any time during the Contract Period or after the expiry or termination of this Contract, in any way question or dispute the ownership of the Government’s Intellectual Property. Upon expiry or termination of this Contract, the Contractor shall forthwith discontinue such use, without any right of compensation for such discontinuation.

26.2 License to use Government's Intellectual Property

The Government hereby grants to the Contractor the right to use the Government's Intellectual Property (on a non-assignable and non-exclusive basis) strictly for the purposes of discharging the Contractor's obligations hereunder in accordance with the terms hereof. The Contractor further acknowledges that it has no proprietary interest or other rights whatsoever in or in relation to any Government's Intellectual Property and shall not acquire any proprietary interest or other rights whatsoever in or in relation to any such Government's Intellectual Property.

26.3 Modification of Government's Intellectual Property

The Contractor shall not without the prior written consent of the Government reformat or make any modification, alteration or change otherwise change the Government's Intellectual Property in any manner which may or may not affect the copyright of the Government in the Government's Intellectual Property. The Contractor shall not merge or combine the Government's Intellectual Property with other property in such a way that the Government's Intellectual Property ceases to be readily identifiable.

26.4 Government's Intellectual Property to remain confidential

The Contractor and its successor in title shall ensure that all Government's Intellectual Property obtained during the course of this Contract shall remain confidential and protected at all times.

26.5 Integrity of Government's Intellectual Property

The Contractor shall take all reasonable steps to maintain, protect and preserve the integrity of all Government's Intellectual Property, including, without limitation, taking all reasonable physical and system security measures to prevent loss or unauthorised use of or access to the Government's Intellectual Property. In the event of any loss or unauthorised use of or access to the Government's

Intellectual Property, the Contractor shall promptly notify the FSO in writing and at the Contractor's own cost and expense, take all steps necessary forthwith to restore the loss of Government's Intellectual Property and/or cease the unauthorised use of or access to the Government's Intellectual Property concerned.

26.6 Indemnity against infringement of Intellectual Property Right

26.6.1 The Contractor shall indemnify, protect and defend at its own cost and expense the Government and its agents and servants from and against all actions, claims and liabilities arising out of acts done by the Contractor in the performance of this Contract including the use or violation of any copyright work or literary property or patented invention, article or appliance. The Contractor shall be responsible for any claim that the equipment supplied infringes a patent, copyright or registered design.

26.6.2 The Government shall not be liable in contract, tort or otherwise for any direct, indirect or consequential loss or damage sustained by the Contractor for any use of the Government's Intellectual Property or storing the same on the Contractor's database management system.

26.6.3 The Contractor shall indemnify the Government fully against all loss or damages suffered as a result of a breach of this clause by the Contractor, the Contractor's employees, agents and sub-contractors.

26.6.4 Clause 26 shall survive early termination or expiry of this Contract.

27. USAGE OF GOVERNMENT EMBLEM

The Contractor shall not during or after the expiry of the Contract Period or earlier termination of this Contract, without the prior written consent of the Government, use or adopt or permit the use or adoption by its employees, agents and sub-contractors of any specified name or specified emblem, or any colourable imitation thereof, trade mark, trade name, trading style or commercial designation that

includes or is similar to or may be mistaken for the whole or any part of any or any colourable imitation thereof, logo, trade mark, trade name, trading style or commercial designation used by the Government.

28. LICENSE

28.1 The Contractor shall obtain in the name of the Government, licences from the relevant proprietor or holder of intellectual property rights in any software used to perform the FMM Services under this Contract to lawfully enable and authorize the use of the said software for the performance of the FMM Services. In the event the Contractor fails and/or neglects to obtain licences for the said software for the Government, then the Government may apply for such licences and any cost incurred by the Government shall be deducted from any monies due to the Contractor or which may become due to the Contractor or from the Performance Bond or as a debt due from the Contractor under this Contract.

28.2 In the event of termination or expiry of the Contract Period, the licences obtained pursuant to Clause 28.1 shall vest in the Government.

29. VALUATION AND VARIATION

29.1 Upon request or recommendation from the Contractor for a variation under this clause and subject to Clause 29.4, the FSO may issue written instructions requiring a variation to the FMM Services in the form of a "variation order". Pending the issuance of the variation order from the FSO, the Contractor shall continue to perform its obligations under this Contract as if such variation has not been requested or recommended. Upon the issuance of such variation order, the Contractor shall forthwith comply with the variation order issued.

29.2 The term "variation" means a change in the Technical Specification which necessitates the alteration or modifications of the FMM Services, quality or quantity of the FMM Services as described by or referred to therein and which may affect the Contract Sum including —

- (a) the addition, omission or substitution of any FMM Services;
- (b) a change to the nature of the facilities, the Site and the user area distribution; or
- (c) a change to the Government Requirements on the scope of FMM Services, in so far as it requires a change in the FMM Services so as to meet the required performance and standard specified in the Performance Requirement in Appendix 7B.

29.3 For the avoidance of doubt, the power of the FSO to issue a variation order under Clause 29.1 shall be subject to the financial limits as set out in Appendix 5 hereto. If the instruction for a variation under this clause exceeds the financial limits as set out in the Appendix 5, the FSO shall obtain the prior written approval of the relevant authorities of the Government.

29.4 Upon receipt of request for variation from the Contractor in Clause 29.1 and before issuance of the variation order, the FSO shall measure and evaluate each request for variation in accordance with the following rules, unless previously or otherwise agreed in writing by the FSO:

- (a) the rates in the Schedule of Price as specified in Appendix 4 after adjustment, if necessary, as provided for in Clause 30 hereof, shall determine the valuation of work of similar character and executed under similar conditions as work priced therein;
- (b) the said rates, where work is not of similar character or executed under similar conditions as aforesaid, shall be the basis of rates for the same, so far as may be reasonable, failing which a fair valuation thereof shall be made by the FSO; and/or
- (c) the rates in the Schedule of Price as specified in Appendix 4 shall determine the valuation of items omitted, PROVIDED THAT if the omissions substantially vary the conditions under which any remaining items of work

are carried out, the rates of such remaining items shall be valued under Clause 29.4(b).

- 29.5 In the event the variation cannot be properly measured or valued by the FSO pursuant to Clause 29.4, the FSO may allow day work price as specified in the Schedule of Price in Appendix 4 unless otherwise provided in the Schedule of Price and the day work prices for the purpose of this Contract shall be taken to mean the actual net cost to the Contractor of its materials, machinery and labour for the work concerned. The Contractor shall be paid day work rate, plus fifteen percent (15%), which shall include the cost of all ordinary machinery, tools, scaffolding, supervision and profit. PROVIDED ALWAYS that as a condition precedent to any right to any payment, the Contractor shall produce vouchers, receipts and wage books specifying the time for labour and machinery employed and materials used to the FSO not exceeding seven (7) days after the FMM Services shall have been carried out.
- 29.6 The amount of variations shall be certified by the FSO and added to or deducted from the Contract Sum, as the case may be, and the amount shall be adjusted accordingly in accordance with the rules as provided under Clause 29.5.
- 29.7 The variation instructed under this clause shall not in any way vitiate or invalidate this Contract nor shall it relieve the Contractor of its obligations under this Contract.

30. SCHEDULE OF PRICE

30.1 Basis of Contract Sum

- 30.1.1 The quality and the description of the FMM Services as set out in the Schedule of Price in Appendix 4 shall be the basis of the Contract Sum. Any error in description or omission of the FMM Services from the said Schedule of Price shall not vitiate this Contract but shall be rectified and the amount in respect of such rectification shall be added to or deducted from the Contract Sum as the case may be.

- 30.1.2 The Government reserves the right to adjust the prices and rates in the Schedule of Price submitted by the Contractor to ensure their reasonableness before acceptance of tender and the decision of the Government shall be final.
- 30.1.3 Any adjustment of the prices and/or rates in the schedule of price required under Clause 30.1.2 and any arithmetical error or omission in the prices or rates and/or calculations of the Contractor in the Schedule of Price shall before the signing of this Contract be so rectified and adjusted that when correctly calculated, the total amount in the Summary of Tender as specified in Appendix 3 shall represent the same amount as the tender amount in the Form of Tender in Appendix 1. The tender amount shown in the Form of Tender in Appendix 1 shall remain unaltered. PROVIDED ALWAYS that the Provisional Sum shall be excluded from such calculation.

30.2 **Provisional Quantities**

- 30.2.1 Where the quantities of FMM Services are stated as “provisional” in the Schedule of Price as specified in Appendix 4, such quantities are the estimated quantities which shall not be taken as the actual and correct quantities of works to be executed by the Contractor in the fulfilment of its obligations under the Contract. The amount to be paid to the Contractor in respect of such FMM Services upon expiry of the Contract Period shall be ascertained by re-measurement of the work as it is actually executed. The rates in the “provisional” bills of quantities in the Schedule of Price shall determine the valuation of the FMM Services of similar character and executed under similar conditions as work priced therein. The said rates, where work is not of similar character or executed under similar conditions as aforesaid, shall be the basis of rates for the same so far as maybe reasonable, failing which a fair valuation thereof shall be made by the FSO.

30.2.2 For the purpose of Clause 30.2.1, the amount to be paid to the Contractor shall be set off against the amount for such work in the bills of quantities in the Schedule of Price, and the balance shall be added to or deducted from the Contract Sum as the case may be.

30.3 **Provisional Sums**

The Provisional Sum may be expended at such times and in such amounts as the FSO may direct. Such sum if not used either wholly or in part shall be deducted from the Contract Sum. The value of works which are executed by the Contractor in respect of Provisional Sums shall be ascertained in accordance with Clause 30.1.3. The said value of such work executed by the Contractor shall be set off against all such Provisional Sums and the balance shall be added to or deducted from the Contract Sum as the case may be.

31. **GOVERNMENT'S RIGHT TO SET OFF**

31.1 The Government or the FSO on its behalf shall have the right to set-off by deducting any money owing from the Contractor to the Government under this Contract from any sum which may become due or is payable to the Contractor under this Contract or any other contract to which the Government and Contractor are parties thereto. The Government or the FSO on its behalf, when issuing any interim payment certificate under Clause 5, shall have regard to any such sums so claimable against the Contractor PROVIDED ALWAYS that this provision shall not affect any other remedy under this Contract or in law to which the Government may be entitled for the recovery of such sums.

31.2 For the avoidance of doubt, the Government's rights to set-off in Clause 31.1 shall be in addition to any rights to set-off that the Government may have against the Contractor in law.

32. FINAL ACCOUNT AND FINAL CERTIFICATE

32.1 Application for Final Account

32.1.1 The Contractor shall submit to the FSO, at such times and in such form as the FSO may prescribe, a written application for final payment of the value of the FMM Services showing the amounts which in the Contractor's opinion are due under the Contract.

32.1.2 Submission of the written application by the Contractor to the FSO pursuant to Clause 32.1.1 shall be accompanied with—

- (a) all documentation substantiating the amounts which in the Contractor's opinion are due under the Contract; and
- (b) the return of all drawings, details, specifications, reports and management plans.

32.2 Final Certificate

32.2.1 Within three (3) months after receipt of the Contractor's application for the final account pursuant to Clause 32.1, the FSO shall issue a final certificate based on his determination of the final account. The FSO's determination of the final account and final certificate will be based on the Contractor's application for the final account made pursuant to Clause 32.1 (in so far as the FSO deems it relevant to his determination) and/or such other information and documentation that the FSO deems fit. The final certificate shall state the amount to be paid under this Contract by the Government to the Contractor or otherwise, as the case may be, after deducting all amounts previously paid to the Contractor by the Government and all sums to which the Government is entitled under this Contract and/or in law.

- 32.2.2 If the Contractor does not submit an application for the final account in accordance with Clause 32.1 within three (3) months from the expiry of the Contract Period, the FSO may give instruction in writing to the Contractor stating that if the application for the final account is not submitted by the Contractor within two (2) months from the date of the written instruction, the FSO may himself prepare the final account and final certificate without reference to the Contractor.
- 32.2.3 No certificate of the FSO or any approval, written or otherwise, by the FSO or the Government or payment by the Government under any provision of this Contract shall be considered as conclusive evidence as to the sufficiency of the FMM Services nor shall it relieve the Contractor from any or all of its obligations under this Contract and/or its liability to amend and make good all defects, imperfections, shrinkages, or any other faults whatsoever as provided by this Contract. No certificate issued by the FSO shall be final and binding in any dispute between the Parties if the dispute is brought before an arbitrator.
- 32.2.4 No final payment due to the Contractor shall be made unless and until the Contractor shall have satisfied the FSO by means of a statutory declaration made by or on behalf of the Contractor that the workmen who have been employed by the Contractor on the FMM Services, including workmen employed by sub-contractor have received all wages due to them in connection with such employment, and that all dues or contributions under the Employment Act 1955 [Act 265], the Employee's Social Security Act 1969 [Act 4], the Employee's Provident Fund Act 1991 [Act 452] and any other laws relevant to the employment of workmen, have been paid.
- 32.2.5 For the purpose of the final account of the Contract, unless the Contractor disputes the final certificate within thirty (30) days of receiving it from the FSO, it shall be deemed to accept the accuracy of the said certificate.

32.3 Contractor's unfulfilled obligations

Notwithstanding the issuance of the final certificate under Clause 32.2, the Contractor shall remain liable for the fulfilment of any obligations arising under the provisions of this Contract which remain unfulfilled prior to the issuance of such final certificate.

33. INVESTIGATION AND AUDIT BY THE GOVERNMENT

33.1 Government's right to inspect, investigate and audit

The Government or any officer or person authorized in writing by the Government at any time during the Contract Period, shall have the right to—

- (a) inspect and investigate the Site, components and any standard or equipment therein used in the implementation of the FMM Services;
- (b) audit or monitor the performance of the FMM Services;
- (c) inspect and investigate all records and documents and make copies thereof in relation to the implementation of the FMM Services which are required to be kept at the Site;
- (d) request and obtain any information with regard to the FMM Services; and
- (e) carry out audits on the operational, contractual and financial matters pertaining to the Contract.

33.2 Contractor's role during inspection, investigation and auditing

The Contractor shall provide all necessary and appropriate information, facilities and cooperation during any inspection, investigation and auditing of the FMM Services conducted by the Government.

34. GOVERNMENT'S REPRESENTATIVE

Notwithstanding any provision in this Contract, the right to act on behalf of the Government in respect of any matter which arises out of the provisions of Clauses 35, 36, 37, 39 and 40 shall be exercised by the Government's Representative who is an officer named in the Appendix to the Conditions of the Contract in Appendix 5.

35. SUSPENSION OF FMM SERVICES

35.1 Suspension and Resumption of FMM Services

35.1.1 The Government may at any time issue a written instruction to the Contractor to suspend the whole or any part of the FMM Services ("Suspension Order").

35.1.2 Upon receipt of the Suspension Order pursuant to Clause 35.1.1, the Contractor shall suspend the whole or any part of the FMM Services for such time and in such manner as specified in the Suspension Order and shall duly protect, store and secure the FMM Services or such part of the FMM Services against any deterioration, defect, loss or damage.

35.1.3 During the suspension period, the Contractor shall continue to perform its obligations under this Contract, which are not affected by the Suspension Order, including the obligation to effect and maintain the insurances and Performance Bond.

35.1.4 The Government may, by written instruction, instruct the Contractor to resume the FMM Services at any time thereafter. Upon receipt of such

instruction, the Contractor shall resume the FMM Services and the Parties shall jointly examine the FMM Services affected by the suspension. The Contractor shall make good any deterioration or defect in or loss or damage of the FMM Services which has occurred during the suspension.

- 35.1.5 Where the Suspension Order is issued by the Government due to—
- (a) any provisions under any laws; or
 - (b) any offence committed by the Contractor or its workmen under any laws,

the Government shall not be liable to compensate the Contractor in respect of any cost for making good any deterioration or defect in or loss of the FMM Services which occurred during the suspension. The Contractor shall comply and ensure compliance with the provisions of the aforesaid laws without any entitlement to cost and time.

- 35.1.6 Where the Suspension Order is issued by the Government due to reasons other than mentioned in Clause 35.1.5, the Government shall compensate the Contractor in respect of any cost for making good any deterioration or defect in or loss of the FMM Services which occurred during the suspension in accordance with Clause 35.1.8 PROVIDED THAT such deterioration, defect or loss of the FMM Services is not due to the default of Contractor.

- 35.1.7 Notwithstanding Clause 35.1.5 and Clause 35.1.6, the Contractor shall take all necessary steps and ensure its workmen take the same necessary steps to mitigate any such cost incurred due to any suspension order or instruction issued pursuant to Clause 35.1.1.

- 35.1.8 If the FMM Services has been materially affected due to the suspension pursuant to Clause 35.1.1 and the Contractor has incurred direct loss and/or expense for which the Contractor would not be reimbursed by a

payment made under any other provision in this Contract, the Contractor shall within thirty (30) days of the occurrence of such instruction, give notice in writing to the FSO of its intention to claim for such direct loss or expense together with an estimate of the amount of such loss and / or expense, subject always to Clause 35.1.9.

- 35.1.9 As soon as is practicable but not later than ninety (90) days after receiving instruction pursuant to Clause 35.1.4 to resume the FMM Services, the Contractor shall submit full particulars of all claims for direct loss or expense under Clause 35.1.8 together with all supporting documents, vouchers, explanations and calculations which may be necessary to enable the direct loss or expense to be ascertained by the Government. The amount of such direct loss or expense as ascertained by the Government shall be paid to the Contractor within (.....) days from the day the Government has instructed the Contractor to resume the FMM Services.
- 35.1.10 If the Contractor fails to comply with Clause 35.1.8 and Clause 35.1.9, it shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.
- 35.1.11 Subject to Clause 35.1.10 and for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever other than stipulated under Clause 35.1.9. The Parties further agree that any payment for direct loss or expense incurred by the Contractor shall constitute as a full and final settlement between the Parties.
- 35.1.12 In the event such suspension shall continue for a period exceeding six (6) months, the Parties may mutually terminate this Contract or suspend the FMM Services for a further period.

35.2 Consequences of Mutual Termination pursuant to Clause 35.1.12

If this Contract is mutually terminated pursuant to Clause 35.1.12—

(a) the Contractor shall—

- (i) cease to carry out the FMM Services and all rights conferred to the Contractor under this Contract shall revert to, vest in and remain vested with the Government;
- (ii) at no cost to the Government, vacate the Site and remove all the Contractor's equipment within fourteen (14) days from the date of mutual termination, failing which the Government may (but without being responsible for any loss or damage) remove and sell any such equipment, holding the proceeds, less all costs incurred, to the credit of the Contractor, workmen, employees, agents and sub-contractors from the Site; and
- (iii) hand over to the Government the Management Information System together with its data, license, hardware and software in good and working condition at no cost to the Government.

(b) the Government shall—

- (i) be entitled to carry out and complete the FMM Services on its own or appoint any third party to carry out and complete the FMM Services; and
- (ii) pay to the Contractor the due and payable payment as follows:
 - (aa) value of the FMM Services rendered up to the date of termination;
 - (bb) amounts payable in respect of any preliminary items so far as the FMM Services comprised therein has been carried out or

performed and a proper proportion of any such items which have been partially carried out or performed;

(cc) cost of materials or goods purchased by the Contractor for the FMM Services which payment has been made and the materials or goods have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery. Such materials or goods shall become the property of the Government upon such payment being made to the Contractor;

(dd) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the FMM Services in so far as such expenditure has not been recovered by any other payments referred to in this sub-clause; and

(ee) a sum being the amount of any expenditure reasonably incurred by the Contractor for the protection of the Site and removal of equipment and site facilities.

(c) for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever other than stipulated under Clause 35.2(b)(ii). The Parties further agree that the payment stipulated in Clause 35.2(b)(ii) shall constitute as a full and final settlement between the Parties.

36. TERMINATION BY THE GOVERNMENT

36.1 Default by the Contractor

36.1.1 Event of Default

Without prejudice to any other rights or remedies which the Government may possess under this Contract or under the law, if during the Contract Period, the Contractor—

- (a) fails to commence the FMM Services at the Site in accordance with Clause 9.5;
- (b) wilfully suspends or abandons the carrying out of the FMM Services or any part thereof;
- (c) fails to proceed regularly or diligently with the performance of its obligations under this Contract;
- (d) fails to execute the FMM Services in accordance with the terms and conditions of this Contract;
- (e) persistently neglects to perform its obligations under this Contract;
- (f) fails to comply with any of the FSO's and / or the Government's Representative's instructions;
- (g) fails to maintain the validity of the Performance Bond until twelve (12) months after the expiry of this Contract; and/or
- (h) fails to perform the FMM Services in accordance with the Performance Requirement,

then, the Government may give written notice to the Contractor specifying the default and requiring the Contractor to remedy such default within the period determined by the Government (hereinafter referred to as the "Notice to Remedy"). If the Contractor fails to remedy the default specified in the Notice of Remedy, the Government shall have the right to forthwith terminate this Contract by giving a written

notice to that effect to the Contractor (hereinafter referred to as the “Notice of Termination”).

36.1.2 **Consequences of termination**

If this Contract is terminated pursuant to Clause 36.1.1—

- (a) the Contractor shall—
 - (i) cease to carry out the FMM Services at the date of receipt of the Notice of Termination and all rights conferred to the Contractor under this Contract shall revert to, vest in and remain vested with the Government;
 - (ii) at no cost to the Government, vacate the Site and remove all the Contractor's equipment within fourteen (14) days of the receipt of the Notice of Termination, failing which the Government may (but without being responsible for any loss or damage) remove and sell any such equipment, holding the proceeds, less all costs incurred, to the credit of the Contractor, workmen, employees, agents and sub-contractors from the Site;
 - (iii) require its workmen, employees, agents and sub-contractors to co-operate with the Government to ensure a smooth transition of the FMM Services performed by the Contractor to the Government or by a new contractor engaged by the Government;
 - (iv) return to the Government any material, machinery, equipment, vehicle, appliance, article, process, tool, record, document, manual, data and/or software application in the Contractor's possession that belongs to the Government;

- (v) hand over to the Government the Management Information System together with its data in relation to the FMM Services under this Contract in good and working condition;
- (vi) terminate all third party contracts entered into by the Contractor for the purposes of this Contract PROVIDED THAT the Government shall have the right to enter into contract with the said third party for the purposes of completing the FMM Services. The Government shall not be responsible to pay the said third party for any materials or goods delivered for the purposes of this Contract (whether before or after the date of termination). In addition thereto, the Contractor shall indemnify and keep indemnified the Government from and against all actions, suits, claims, proceedings, losses, damages, compensation, cost (including legal cost), charges and expenses made by the said third party as a result of the Contractor's act, omission, breach and/or default in relation to the implementation of this Contract;
- (vii) assign to the Government, at no cost or expense to the Government, the benefit of any contract or the supply of any materials or goods and/or for the execution of the FMM Services for the purposes of this Contract;
- (viii) at no cost to the Government, hand over to the Government all plans, designs, specifications and other relevant documents relating to the FMM Services; and
- (ix) pay to the Government any cost and expense (including any incidental cost and expense) paid or incurred by the Government arising from such default including actual cost

and expense incurred by the Government in having to complete the FMM Services; and

- (b) the Government shall—
 - (i) forfeit the Performance Bond;
 - (ii) carry out and complete the FMM Services on its own or employ any other person to carry out and complete the FMM Services;
 - (iii) have the right to claim against the Contractor for any loss, cost, expense and damages suffered as a result of termination of this Contract; and
 - (iv) pay to the Contractor the value of services carried out up to the date of termination which is still not paid to the Contractor, and
- (c) for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract under Clause 36.1. The Parties further agree that payment made by the Government (if any) under Clause 36.1.2(b)(iv) shall constitute as a full and final settlement between the Parties.

36.2 General Default of the Contractor

36.2.1 Event of Default

If at any time during the Contract Period—

- (a) an order is made by any court of competent jurisdiction or a resolution is passed for the winding-up of the Contractor, except for the purpose of reconstruction or amalgamation not involving the realization of assets in which the interest of creditors are protected;
- (b) the Contractor goes into liquidation or a receiver is appointed over the assets of the Contractor;
- (c) the Contractor makes an assignment for the benefit of its creditors or enters into an arrangement or composition with its creditors or stops payment of its debts or is unable to pay its debts;
- (d) a provisional liquidator, receiver or manager of its business or undertaking is appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge; or
- (e) execution is levied against a substantial portion of the Contractor's assets, unless it has instituted proceedings in good faith to set aside such execution,

the Government shall have the right to terminate this Contract immediately by giving written notice to that effect to the Contractor.

36.3 Consequences of Termination

In the event of termination of this Contract under Clause 36.2.1, the provision in Clause 36.1.2 shall apply *mutantis mutandis*.

37. TERMINATION BY THE CONTRACTOR

37.1 Event of default by the Government

- 37.1.1 If the Government without any reasonable cause fails to perform or fulfil any of its obligations which adversely affects the FMM Services, then the Contractor may issue a notice specifying the default by the Government and requiring the Government to remedy the same within the period specified therein taking into account the nature of the remedy to be carried out by the Government or such other period as may be agreed by both Parties from the date of receipt of such notice.
- 37.1.2 If the Government fails to remedy the default period specified in such notice issued under Clause 37.1.1 within the stipulated period time therein or such other period as may be agreed by the Parties, the Contractor shall have the right to forthwith terminate this Contract by giving a written notice to that effect (hereinafter referred to as the "Notice of Termination").

37.2 Consequences of Termination

- 37.2.1 If this Contract is terminated by the Contractor pursuant to Clause 37.1.2-
- (a) the Government shall—
 - (i) pay to the Contractor the value of the FMM Services rendered up to the date of termination;
 - (ii) pay to the Contractor the amounts payable in respect of any preliminary items so far as the FMM Services has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
 - (iii) pay to the Contractor a sum being the amount of any expenditure reasonably incurred by the Contractor in so far

as such expenditure has not been recovered by any other payments referred to in this sub-clause; and

(iv) have the right to carry out and complete the FMM Services on its own or appoint any third party to carry out and complete the FMM Services; and

(b) the provisions in Clauses 36.1.2(a)(i) to (viii) and Clause 36.1.2(b) (ii) shall be applicable.

37.2.2 For the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract pursuant to Clause 37.1.2. The Parties further agree that payment made by the Government under Clause 37.2.1(a) shall constitute as full and final settlement between the Parties.

38. CERTIFICATE OF TERMINATION COST

38.1 The FSO may issue a certificate (hereinafter referred to as the “Certificate of Termination Cost”) stating the Completion Cost and the Final Contract Sum, as soon as-

(i) the arrangements for the completion of the FMM Services made by the Government enable the FSO to make a reasonably accurate assessment of the ultimate cost to the Government for completing the FMM Services following the termination of the Contractor’s employment and the engagement of other contractors or persons; and

(ii) the amount of loss and/or damage caused to the Government due to the termination has been ascertained by the FSO.

38.2 For the avoidance of doubt, the term “Completion Cost” comprises the following sums, costs or expenditure:

- (a) the sums previously paid to the Contractor by the Government;
- (b) the sums paid or payable to other person engaged by the Government to complete the FMM Services;
- (c) any cost or expenditure incurred or to be incurred including On-Cost Charges incurred by the Government in completing the FMM Services; and
- (d) the amount of loss and/or damage caused to the Government due to the termination.

38.3 For the purpose of computing the sum, cost or expenditure in Clause 38.2(c) above, the sum, cost or expenditure shall include whatever cost of supervision, interest and depreciation on and all other usual overhead charges and profit as would be incurred if the FMM Services were completed by other third party.

38.4 For the avoidance of doubt, the term "Final Contract Sum" comprises the following amounts or sums:

- (a) the amount which would have been payable under the Contract on completion in accordance with the Contract, allowing any variations or other matters which would have resulted in an adjustment of the original Contract Sum; and
- (b) any other sums which the Government might be entitled under the terms of the Contract to deduct from the original Contract Sum,

had this Contract not been terminated.

38.5 The Certificate of Termination Cost shall state the difference between the Final Contract Sum and the Completion Cost. If the Final Contract Sum is less than the Completion Cost, the difference shall be a debt payable by the Contractor to the Government.

38.6 The Certificate of Termination Cost shall be binding and conclusive on the Contractor as to the amount of such loss or damage specified therein.

39. TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES

39.1 Termination

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

39.2 Consequences of Termination

39.2.1 In the event this Contract is terminated pursuant to Clause 39.1 the Contractor shall comply with the consequences of termination in Clause 36.1.2.

39.2.2 For the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract other than stipulated in Clause 36.1.2. The Parties further agree that the payment made by the Government under Clause 36.1.2 shall constitute as a full and final settlement between the Parties.

40. TERMINATION ON NATIONAL INTEREST

40.1 Termination

- 40.1.1 Notwithstanding any provision of this Contract and without prejudice to the Government's other rights under this Contract and at law, the Government may terminate this Contract by giving not less than thirty (30) days' notice to that effect to the Contractor (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, national security or public policy.
- 40.1.2 For the purposes of this Contract, what constitutes "national interest", "national security" and "public policy" shall be solely determined by the Government and such determination shall for all intents and purposes be final and conclusive and shall not be open to any challenge whatsoever.

40.2 **Consequences of Termination**

Upon termination of this Contract pursuant to Clause 40.1—

- (a) the Contractor shall cease to carry out the FMM Services and all rights conferred to it under this Contract shall be vested in the Government;
- (b) the Government shall pay to the Contractor, the due and payable payment as follows:
 - (i) value of the FMM Services carried out up to the date of termination;
 - (ii) amounts payable in respect of any preliminary items so far as the FMM Services comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
 - (iii) cost of materials or goods reasonably ordered for the FMM Services which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or

goods becoming the property of the Government upon such payment being made to the Contractor);

- (iv) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the FMM Services in so far as such expenditure has not been recovered by any other payments referred to in this sub-clause; and
 - (v) reasonable cost of any protection of the Site and removal of equipment and site facilities;
- (c) the provisions in Clause 36.1.2(a)(i) to (viii) and Clause 36.1.2(b)(ii) shall apply; and
- (d) for the avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever other than stipulated under Clause 40.2(b)(i) – (v). The Parties further agree that the amount agreed above by the Government shall constitute as a full and final settlement between the Parties.

40.3 The Parties hereby agree that termination of this Contract pursuant to Clause 40.1.1 and any payment due to the Contractor pursuant to Clause 40.2(b) shall be subjected to any rights that the Government may have against the Contractor under this Contract or in law, including, but not limited to, the rights to set-off.

41. FORCE MAJEURE

41.1 Events

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

- (a) war (whether declared or not), hostilities, invasion, act of foreign enemies, insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;
- (b) ionizing radiation or contamination from any nuclear waste, from combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear thereof;
- (c) pressure waves caused by aircraft or other aerial devices travelling, at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; or
- (e) riot, commotion and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Contract) which are not the fault of the Contractor or its contractors, or the Government which causes, or can reasonably be expected to cause any Party to fail to comply with its obligations,

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

41.2 Notification of Force Majeure

If an Event of Force Majeure occurs by reason of which any of the Parties is unable to perform any of its obligations under this Contract, the affected Party shall immediately notify the other Party in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this Contract giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event.

41.3 Determination of Force Majeure

Neither Party shall be entitled to rely upon the provisions of Clause 41.1 if the Parties reasonably determine that an Event of Force Majeure has not occurred. In the event of any dispute as to whether any particular event constitutes an Event of Force Majeure, the dispute shall be referred to the Dispute Resolution Committee under Clause 42.

41.4 Termination by Force Majeure

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

41.5 Consequences of Termination due to Event of Force Majeure

If this Contract is terminated pursuant to Clause 41.4, all rights and obligations hereunder shall forthwith terminate and neither Party shall have a claim against each other save and except in respect of any antecedent breach.

41.6 Delay

41.6.1 The Party affected by the Event of Force Majeure shall not be liable for any delay in performing its obligation under this Contract to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Contract and the Contract Period shall be extended by a period equal to the delay arising as a consequence of the Event of Force Majeure PROVIDED THAT the Party affected by the Event of Force Majeure has complied with the requirement to provide notice in accordance with Clause 41.2. If the Parties do not agree as to the term of extension, the

dispute shall be referred to the Dispute Resolution Committee under Clause 42.

41.6.2 Notwithstanding Clause 41.6.1, if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties, the Parties shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives and shall, if appropriate, give consideration to any amendment of this Contract and the terms and conditions of such amendments.

41.7 Restoration

Notwithstanding any other provision in this Contract, if an Event of Force Majeure occurs and this Contract is not terminated then in any case where the Site or any part thereof has been destroyed or substantially damaged, the Contractor shall restore such damaged parts of the Site to the condition in which it was immediately prior to the occurrence of that Event of Force Majeure at its own expense. Where as a result of such restoration the Contractor is able to demonstrate that it has incurred substantial cost affecting the Site, the Contractor may apply to the Government for an extension of the Contract Period as the case may be.

41.8 Insurance

Notwithstanding any other clause, the Contractor shall, wherever practicable ensure that insurance is to be effected to cover the occurrence of any Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are insurable.

42. RESOLUTION OF DISPUTE

42.1 Dispute Resolution Committee

Any matter, dispute or claim between the Parties in respect of any matter under this Agreement shall be settled amicably through mutual consultation or negotiation between the Parties. Should the Parties fail to achieve an amicable settlement, the matter, dispute or claim may be referred by either Party to a dispute resolution committee (the “Dispute Resolution Committee”) consisting of:-

- (i) Ketua Pengarah Kerja Raya Malaysia or his representative as Chairman;
- (ii) two (2) representatives appointed by the Government; and
- (iii) two (2) representatives appointed by the Contractor.

42.2 Independent Expert

The Dispute Resolution Committee may appoint an independent expert in the relevant field or in each of the relevant fields (if there is more than one field) to advise it on any matter to it and all costs, fees and expenses of any independent expert so appointed shall be borne equally by the Parties.

42.3 Determination of Procedures

- (i) The Dispute Resolution Committee shall determine its own procedures.
- (ii) The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any dispute referred to it.
- (iii) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the Parties hereto within thirty (30) days or any extended days as the Dispute Resolution Committee may determine after the date of referral, any Party may refer the matter, dispute or claim to arbitration pursuant to Clause 43.

43. ARBITRATION

43.1 Reference to Arbitration

Save in respect of Clauses 39, 40, and 41, any matter, dispute or claim arising out of or relating to this Contract or the breach or termination hereof which cannot be agreed upon by Parties, or cannot be settled amicably by the Parties, that matter, dispute or claim shall be referred to an arbitrator to be agreed between the Parties or failing agreement, to be nominated on the application of either Party by the Director General of the Regional Centre for Arbitration in Kuala Lumpur and such reference shall be deemed to be a submission for arbitration within the meaning of the Arbitration Act 2005 [Act 646]. The decision of the arbitrator shall be final and binding on each of the Parties.

43.2 Venue

Any such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as the "Centre") using the facilities and systems available at that Centre and in accordance with the Centre's rules for Arbitration.

43.3 Continuing Obligations

The reference of any matter, dispute or claim and/or the continuance of any arbitration proceedings shall in no way operate as a waiver of the obligations of the Parties to perform their respective obligations under this Contract.

44. STEP IN RIGHTS OF THE GOVERNMENT

44.1 In the event of the occurrence of a matter which the Government considers affects the national interest, national security, public policy, or a serious risk exists which affect the health or safety of persons or property or the environment of the Site, the Government shall have the right to step in and carry out or continue all or any part of the FMM Services in place of the Contractor for such period as deemed fit by the Government.

- 44.2 For the purposes of this Clause, except for “serious risk” which is to be interpreted and determined in accordance with the Occupational Safety and Health Act 1994 [Act 514], what constitutes “national interest”, “national security”, and “public policy” shall be solely determined by the Government and such determination shall for all intents and purposes be final and conclusive and shall not be open to any challenge whatsoever.
- 44.3 In no event shall the Government’s exercise any of its rights pursuant to Clause 44.1 shall be deemed to be a transfer of the Contractor’s obligations under this Contract to the Government.
- 44.4 During such period as described in Clause 44.1—
- (a) the Government shall not be liable to the Contractor—
 - (i) for any payment of the FMM Services;
 - (ii) for any claims or demands of any kind resulting from any accident, damage, injury or death arising from the FMM Services; and
 - (iii) for any actions, suits, claims, demands, proceedings, losses, damages, compensation, cost (including legal cost), charges and expenses whatsoever in respect of or arising from the FMM Services; and
 - (b) the Contractor shall continue to perform its obligations under this Contract, which are not affected by the decision of the Government pursuant to Clause 44.1, including the obligation to effect and maintain insurances and Performance Bond.
- 44.5 The Government shall have the right to allow the Contractor to resume carrying out the portion of FMM Services taken over by the Government or a third party appointed by the Government pursuant to Clause 44.1 at any time before the expiry of the Contract Period or termination of the Contract.

44.6 For the purpose of Clause 44.1, the Contractor shall co-operate with the Government in all matters necessary for the Government to exercise its step in right or to carry out or continue all or any part of the FMM Services.

45. SUB-CONTRACTING AND ASSIGNMENT

45.1 Sub-Contracting and assignment

The Contractor shall not, without the prior written approval of the FSO, sub-contract the whole or any part of the FMM Services. Where the FSO consents to any sub-contracting under this clause such consent shall not in any way absolve and release the Contractor of its obligations under this Contract. The Contractor shall also be responsible for the acts, omissions, defaults and/or negligence of any of its sub-contractors, and their agents, servants or employees as fully as if they were the acts, omissions, defaults and/or negligence of the Contractor.

45.2 Determination of Sub-Contract

It shall be a condition in all the Contractor's sub-contracts that upon termination or expiry of this Contract, the Contractor shall terminate its arrangement with the sub-contractors and no claim whatsoever shall be made by the sub-contractors against the Government in the event of the termination or the expiry of the Contract and sub-contracts.

45.3 Assignment of benefits

The Contractor shall not assign any of its rights, interest, benefits in and arising out of this Contract without the prior written consent of the FSO.

45.4 No privity of this Contract

Nothing in this Contract shall create any privity of contract between the Government and any sub-contractors engaged by the Contractor for the purposes of carrying out the FMM Services under this Contract.

45.5 Removal of Contractor's sub-contractors

45.5.1 In the event the FSO is not satisfied with the performance of any of the Contractor's sub-contractor in respect of the FMM Services performed under this Contract, the FSO may require the Contractor to—

- (a) terminate its sub-contractor;
- (b) replace the sub-contractor; or
- (c) replace any employee or agent of the said sub-contractor.

45.5.2 Any cost or expense incurred in respect of terminating any sub-contractor, or replacing any sub-contractor or replacing a sub-contractor's employees or agents pursuant to this Clause shall be borne by the Contractor.

45.5.3 For the avoidance of doubt, the rights of the Government in this Clause shall be without prejudice to the Government's other rights against the Contractor under this Contract or in law.

46. CONFIDENTIALITY

46.1 Non-disclosure

This Contract and all such drawings, records, data, books, reports, Management Information System and all matters pertaining hereto shall be considered as confidential matter and shall not be disclosed to any third party without prior mutual agreement except where –

- (a) the disclosure of such information is necessary for purposes of raising finance;
- (b) the disclosure of such information is made to the Contractor or advisors for purposes of performance of their duties under this Contract; or
- (c) the disclosure of such information is required by law or by any Government agency for the performance of any obligation under this Contract.

46.2 Non-disclosure by Third Parties

Where any information has been disclosed to third parties pursuant to Clauses 46.1 (a) or (b), the Contractor shall undertake to ensure that the third parties shall not disclose the information to any other third party.

46.3 Survival

The restrictions contained in this clause shall survive the termination or expiry of this Contract and shall continue to bind both Parties without limit in point of time.

47. SURVIVING RIGHTS

The expiry or termination of this Contract shall not affect—

- (a) the liability of either Party for any of its acts or omissions prior to the expiry or termination of this Contract; and
- (b) the accrued rights of either Party acquired before the expiry or termination of this Contract.

48. COMPLIANCE WITH LAWS

The Contractor shall comply with the provisions of any written law including any Act, Enactment or Ordinance, or any By-Laws, Rules, Regulations or other subsidiary legislation under any such Act, Enactment or Ordinance, or any direction, order, requirement or instructions whatsoever given by the Government or any authority competent to do so under any written law.

49. STAMP DUTY, ETC.

All costs for and incidental to the preparation and completion of this Contract, including stamp duties and legal fees, shall be borne and paid by the Contractor.

50. AMENDMENT

No modification or amendment shall be valid or binding upon the Parties unless it is made in writing by way of a supplementary agreement specifically referring to this Contract and duly signed by the Parties or its duly authorised representatives.

51. NOTICES

51.1 Any notice, approval, consent, request or other communication required or permitted to be given or made under this Contract shall be in writing in Bahasa Malaysia or the English language and delivered to the address or sent to the facsimile number of the Parties, as the case may be, shown below or to such other address, facsimile number as the party may have notified the sender and shall be deemed to be duly given or made in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages—

To the Government

Address :

Facsimile no. :

To the Contractor

Address :

Facsimile no. :

51.2 Such notice shall be effected by—

- (a) hand delivery or courier and an acknowledgement of receipt obtained;
- (b) leaving the notice at registered office and Site Office in which case it shall be deemed to have been duly delivered; or
- (c) registered post in which case it shall be deemed to have been received seven (7) days after the date of posting.

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

52. TIME OF THE ESSENCE

Time wherever mentioned in this Contract shall be of the essence.

53. APPLICABLE LAWS

This Contract shall be governed by and construed in accordance with the laws of Malaysia and the Parties hereby submit to the exclusive jurisdiction of the Malaysian courts.

54. WAIVERS

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

55. FURTHER ASSURANCES

The Parties shall at all times and from time to time do all such further acts and execute all such further deeds, documents and instruments as may be necessary or desirable in order to give full effect to and carry out the terms and conditions of this Contract.

56. RELATIONSHIP OF THE PARTIES

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

57. SEVERABILITY

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

58. TAXES

The Contractor shall pay all taxes and duties including but not limited to income and corporation taxes payable by the Contractor in accordance with the laws of Malaysia.

59. APPENDICES

All appendices and/or schedule to this Contract shall form part of this Contract.

60. ENTIRE CONTRACT

This Contract constitutes the entire agreement between the Parties with respect to the matters dealt with herein and supersedes any previous agreement or understanding between the Parties in relation to such matters. The Parties hereby acknowledge that in entering into this Contract, it has not relied on any representation or warranty save as expressly set out herein or in any document expressly referred to herein.

61. SUCCESSORS BOUND

This Contract shall be binding upon the Parties hereto and their respective successors-in-title and permitted assigns.

62. CUSTODY OF DOCUMENT

This Contract shall be executed in two (2) original copies which shall remain in the custody of the Government and the Contractor.

End of clauses

IN WITNESS WHEREOF this Contract has been executed by the duly authorised representatives of the Parties on the day and year first above written.

Signed for and on behalf of)
THE GOVERNMENT OF MALAYSIA)
)
)

.....

in the presence of

.....

Common Seal of the Contractor)
(Company No: ...))
was hereunto affixed in the presence of)

.....

Director

.....

Director/Secretary

APPENDIX 5

APPENDIX TO THE CONDITIONS OF CONTRACT (FMM2016)

Clause

34 Officer(s) empowered to take action on behalf of the Government in respect of:
35,36,37,39, and 40

29.3 Officer empowered to approve instructed variations according to the limits as set out in Treasury's Instructions No. 202 as amended

Financial Limits	Officer

6 Performance Bond
Amount of Guarantee RM
Guarantor Bank/Insurance Company
Guarantee No

18. Amount to be added to full value of Contract Sum as the insured sum RM
Total Amount Insured RM
Policy No
Period of insurance

18.1.2 Amount of excess RM

APPENDIX 5

Clause

19	Minimum insurance cover for any one accident or series of accidents arising out of one event	RM
	Policy No
	Period of insurance
19.1.2	Amount of excess	RM
18.4		
19.3		
23.2.2	Percentage of on-cost charges	5%
38.2(c)	Percentage of on-cost charges	10%