



JKR SARAWAK
FORM OF CONTRACT

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JKR SARAWAK

FORM OF CONTRACT

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FORM OF CONTRACT

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1 DEFINITION OF TERMS

1.1 Definition

In the Contract Documents (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

“Appendix” means the Appendix to the Form of Contract;

“CIDB” means Lembaga Pembangunan Industri Pembinaan Malaysia (Construction Industry Development Board Malaysia);

“Contract Documents” means the several documents specified in the Form of Agreement agreed by the parties as forming part of the Contract;

“Contract Sum” means the sum specified in the Form of Agreement and subject only to adjustment expressly provided for or allowed under this Contract;

“Contractor” means the person or persons, firm or company whose tender has been accepted by the Employer and referred to as such in the Form of Agreement and includes the Contractor’s personal representatives, successor, administrator, receiver, liquidator or permitted assigns;

“Day” means a calendar day according to the Gregorian calendar and includes public holiday;

“Defects” means any part of the Works not executed properly or completed in accordance with the Contract, including any Defects whatsoever which may become apparent during the Defects Liability Period, and where the Contractor is responsible for the design of any part of the Works, any fault, difficulty or error in such design. Without limiting the generality of the expression the term shall be taken to include any item of material, goods, Equipment or work incorporated or used in the Works which does not conform to the requisite quality standards or pass the tests prescribed in or to be inferred from the Contract;

“Drawings” means the drawings referred to in the Contract including such drawings which have been prepared by the Contractor and accepted by the Superintending Officer pursuant to Clause 30.1 and such other drawings as may from time to time be issued or accepted in writing by the Superintending Officer;

“Employer” means the Government of Sarawak or Malaysia;

“Equipment” means the machinery, apparatus and the like intended to form or forming part of the Works;

“In writing” means in any written form signed by the authorised person;

“Practical Completion” means completion of the Works including where required the commissioning of any part of such Works, and where the Works include Equipment which requires a license for its operation, then completion so as to render such Equipment eligible for issuance of a license for its operation or use. Provided however the existence of minor outstanding works and defects, which do not affect the functional use of the Works shall not affect Practical Completion;

“Schedule of Rates” means the schedule comprising items and rates of Works as described in the current version of JKR Sarawak’s Schedule of Rates as stated in the Contract Documents;

“Site” means the land and other places on, under or through which the Works are to be executed and any other lands or places provided or approved by the Employer for working space or any other purpose for the execution of the Contract including any other place as may be designated in the Contract as forming part of the Site;

“Specifications” means all specifications contained in the Contract including modifications or additions to the same as may from time to time be issued or approved in writing by the Superintending Officer;

“Superintending Officer” means the person indicated by name or by office in the letter accepting the tender and his successors in office or any other person from time to time appointed in writing by the Employer and notified in writing to the Contractor as Superintending Officer for the purposes of this Contract;

“Temporary Works” means all the works of a temporary nature of every kind required or provided for the execution of the Works and the remedy of Defects;

“Time for Completion” means the time for the completion of the Works or any sections of the Works set out in the Appendix subject to any extension or extensions of time as the Contractor may be entitled under the Contract;

“Variation” means any increase, decrease, deletion, addition, substitution, alteration or change of the form, quality, quantity, character, kind, position, dimension, level, or line of the works, and any changes in the sequence, method or timing of construction, instructed by the Superintending Officer, or any other matter specifically referred to under this Contract as being a valid variation. It shall exclude works or requirements implied, shown or set down in any of the Contract Documents; and

“Works” means the works specified in the Contract Documents, including all variations provided for under this Contract, which by this Contract is to be handed over to the Employer, and include all or any portion of the works, materials, goods and Equipment wherever the same are manufactured or prepared which are to be used in the execution of this Contract and whether the same may be on the Site or not.

1.2 Approved , Endorsed and Directed

The term “approved”, “endorsed” and “directed” wherever used in this Contract means approved, endorsed or directed in writing by the Superintending Officer (including subsequent confirmation of previous verbal approval, endorsement or direction by the Superintending Officer) and “approval”, “endorsement” or “direction” means approval, endorsement or direction in writing.

1.3 Singular and Plural Terms

Words importing the singular only also include the plural and vice versa where the context requires.

1.4 Headings or Notes

The headings in this Form of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of this Contract.

1.5 Reference to Clauses

All reference to clauses unless otherwise stated, means the clauses in this Form of Contract.

2 SCOPE OF CONTRACTUAL OBLIGATION

2.1 Scope

The Contractor shall exercise all reasonable care, skill and diligence in carrying out and complete the Works in accordance with this Contract in every respect in accordance with the directions and to the satisfaction of the Superintending Officer and shall provide everything necessary for the completion of the Works whether or not shown in the Contract Drawings and/or described by or referred to in the Specifications or the Superintending Officer's Instructions, provided that it can reasonably be inferred therefrom.

2.2 Adequacy of Contract Sum

The Contractor shall be deemed to have satisfied himself that the Contract Sum covers all his obligations under the Contract and all matters and things necessary for the proper design (to the extent required by the Contract), execution and completion of the Works and the remedying of Defects. No additional payment shall be due to the Contractor on the grounds of lack of knowledge of any or all matters whatsoever at the time of tendering.

2.3 Recovery of Sums Due

The Employer shall be entitled at all time to deduct any monies owing from the Contractor to the Employer under this Contract from any sum which may become due or is payable to the Contractor under this Contract or other contracts to which the Employer and the Contractor are parties thereto. Such sum may in any event be recovered by the Employer as a debt.

2.4 Deduction from Money due to Contractor

The Employer or the Superintending Officer on its behalf shall be entitled to deduct any money owing from the Contractor to the Employer under this Contract from any sum which may become due or is payable to the Contractor under this Contract or any other contracts to which the Employer and the Contractor are parties thereto. The Superintending Officer in issuing any interim certificate, shall have regard to any such sum so chargeable against the Contractor, provided always that this provision shall not affect any other remedy to which the employer may be entitled for the recovery of such sums.

3 INSPECTION OF SITE

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his tender as to the nature of the ground and subsoil, the form and nature of the Site, the extent and nature of the Works, materials, goods and Equipment necessary for the completion of the Works, the means of communication with and access to the Site, the accommodation he may require and in general to have obtained for himself all necessary information as to risks, contingencies and all circumstances influencing and affecting his tender. Any information or document given or forwarded by the Employer to the Contractor shall not relieve the Contractor of his obligations under the provisions of this clause. The Employer gives no warranty for the information or document either as to the accuracy or sufficiency or as to how the same should be interpreted or otherwise howsoever and the Contractor shall make use of and interpret the same entirely on his own risk.

4 CONTRACT DOCUMENTS

4.1 Custody of Contract Documents

The original Contract Documents shall remain in the custody of the Employer and shall be produced as and when required by the Contractor.

4.2 Contract Documents to be Mutually Explanatory

The several documents forming the Contract are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between the documents forming the Contract, the priority shall be as follows unless stated otherwise:

- (a) Form of Agreement
- (b) Letter of Acceptance
- (c) Correspondence and/or Minutes of Meetings referred to in that Letter of Acceptance
- (d) Form of Tender
- (e) Addenda
- (f) Conditions of Tendering
- (g) Form of Contract
- (h) Drawings
- (i) Specifications of Particular Application or Special Specification
- (j) Standard Specifications
- (k) Bill of Quantities/ Schedule of Rates
- (l) Summary of Tender

4.3 Copies of Contract Documents

Immediately upon the execution of the Contract, the Employer shall furnish without charge to the Contractor with:

- (a) One (1) duplicate of the original Contract Documents
- (b) Three (3) sets of the Contract Drawings and Specifications/unpriced Bill of Quantities

4.4 Documents to be kept on Site

The Contractor shall keep on Site one (1) copy of the Contract Drawings, the Specifications (if any), unpriced Bill of Quantities which shall at all reasonable times be available for inspection and use by the Superintending Officer and by any other person authorised by the Superintending Officer in writing.

4.5 As-built Drawings

Unless otherwise prescribed elsewhere in the Contract Documents the Contractor shall supply to the Employer, not later than three (3) months from the date of Practical Completion of the Works (or the date of Practical Completion in respect of the relevant section of the Works, in the case of completion in sections), without additional charge three (3) copies, duly verified by the Superintending Officer, of:

- (a) as-built Drawings describing the Works or any section of the Works; and
- (b) manuals concerning the operations and maintenance of the Works or any section of the Works, including any installation.

4.6 Return of Documents

Before the issue of the Final Certificate under Clause 39, the Contractor shall, if so requested by the Superintending Officer, return to the Superintending Officer all Drawings, details, Specifications, Bill of Quantities and other documents of like nature.

4.7 Restriction in Use

The Contractor shall treat the Contract and everything contained in the Contract as private and confidential. None of the documents mentioned above shall be used by the Contractor for any purpose other than this Contract.

5 GENERAL OBLIGATIONS OF EMPLOYER

- (a) The Employer shall give the Contractor right of access to and possession of the Site in accordance with Clause 13.
- (b) The Employer shall obtain development or planning approvals, building plan and such other necessary approvals from the relevant authorities with regards to the Works.
- (c) The Employer shall pay the Contractor in accordance with Clause 33.
- (d) The Employer shall not obstruct or interfere with the performance of the Contract by the Contractor, except where expressly provided in the Contract.
- (e) In the event of the disability of the Superintending Officer or his ceasing to be the Superintending Officer for the purpose of the Contract, the Employer shall within thirty (30) days nominate and appoint such other person as a succeeding Superintending Officer for that purpose.

6 GENERAL OBLIGATIONS OF CONTRACTOR

6.1 Contractor's General Responsibilities

- (a) The Contractor shall, with due care and diligence, design (to the extent required by the Contract), execute and complete the Works and remedy Defects to the satisfaction of the Superintending Officer in accordance with the provisions of the Contract.
- (b) The Contractor shall provide all supervision, labour, construction plant, materials, goods and Equipment and all other things, whether of a temporary or permanent nature required in and for such design (to the extent required by the Contract), execution and completion the Works and remedying of Defects.
- (c) The Contractor shall pay all requisite levy to CIDB.
- (d) The Contractor shall keep the Site clean and comply with all local authority By-Laws and any other laws for maintenance of cleanliness, safety and environmental protection and rectification measures to be taken at the Site.

6.2 Site Operations and Methods of Construction

- (a) The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction. Provided that the Contractor shall not be responsible (except otherwise stated in the Contract or as may be otherwise agreed in writing between the Employer and the Contractor) for the design of the Works or for the design of any Temporary Works not prepared by the Contractor or by his sub-contractors or suppliers.
- (b) Where the Contract expressly provides for part of the Works to be designed by the Contractor as in Clause 30, he shall be fully responsible for the design of that part of the Works, notwithstanding any approval and endorsement by the Superintending Officer.

6.3 Contractor's Responsibility for Sub-contractors

Unless the Contract otherwise provides, the Contractor shall make good any damage, loss or injury suffered by the Employer by reason of any breach of contract, repudiation, default or failure on the part of his sub-contractors or suppliers whether nominated or privately engaged by the Contractor, and shall indemnify the Employer against all and any loss, expense, costs, damages, liability or claim arising from such breach of contract, repudiation, default or failure.

6.4 Notification of Discrepancy, etc.

- (a) If the Contractor shall find any ambiguity, discrepancy, conflict, inconsistency, divergence, error or omission (hereinafter referred to as the "discrepancy") in or between any of the Contract Documents he shall forthwith notify the Superintending Officer of the same in writing.
- (b) The Superintending Officer shall then explain and adjust the discrepancy and issue to the Contractor an instruction so as to resolve the discrepancy, provided always that such discrepancy shall not vitiate the Contract.
- (c) If an instruction issued by the Superintending Officer to resolve the discrepancy results in addition to or reduction from the Contract Sum, such addition or reduction shall be deemed a Variation.

7 QUALITY OF MATERIALS AND WORKMANSHIP

7.1 Quality Assurance and Quality Control

- (a) Within fourteen (14) days of the issue of the Letter of Acceptance, the Contractor shall submit to the Superintending Officer a quality plan to ensure that the Works are designed (to the extent required by the Contract), executed and completed in accordance with the Contract.
- (b) The quality plan shall be subject to the endorsement of the Superintending Officer. The submission to and endorsement by the Superintending Officer of the quality plan shall not relieve the Contractor of any of his obligations under the Contract.

7.2 Quality of Materials, Goods, Equipment and Workmanship

All materials, goods, Equipment and workmanship shall be the best of the respective kinds and standards described in the Contract Documents. The Contractor shall upon the request of the Superintending Officer furnish him with vouchers and/or manufacturer's test certificates to prove that the materials, goods and Equipment comply therewith, but despite such certification the Superintending Officer reserves the right to require such materials, goods, Equipment or workmanship to be tested.

7.3 Samples

The Superintending Officer shall be at liberty to call for submission of samples of materials or the execution of samples of workmanship for approval, and for further samples as are required until the samples submitted or executed are, in his opinion, in accordance with the Contract Documents. The Contractor shall provide such samples and goods entirely at his own costs.

7.4 Notification Times

Where testing, inspections or approvals by the Superintending Officer are specified or directed, the Contractor shall provide reasonable and adequate notice to enable the Superintending Officer to arrange such testing, inspections or approvals, taking into account any travel requirements and the like. However, such notice shall be no less than twenty-four (24) hours, unless otherwise agreed by the Superintending Officer. The Superintending Officer may delegate inspection and testing to an independent inspector, who shall have the same right of entry as the Superintending Officer.

7.5 Licenses, Permits, Rights and Royalties

The Contractor shall obtain all necessary licenses, permits and the like, allow for all time delays associated therewith, and pay all charges due on account of patent rights, royalties and other rights in respect of any materials, plant or processes used in or in connection with the Works.

7.6 Superintending Officer's Right to Test, etc.

The Superintending Officer shall have the right, but is not obliged to, carry out or order to be carried out, any tests of any materials, construction or workmanship.

7.7 Cost of Test

- (a) The cost of carrying out any test shall be borne by the Contractor if such test is:
 - (i) intended by or provided for in the Contract, or
 - (ii) additional tests required by the Superintending Officer in consequence of some prior failure or breach of contract or other default of the Contractor.
- (b) The cost of carrying out any test shall be borne by the Employer if such test is:
 - (i) not so intended by or provided for in the Contract, or
 - (ii) though so intended by or provided for in the Contract but required by the Superintending Officer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials, goods or Equipment tested.

Provided always if such test shows the materials, goods, Equipment or workmanship are not in accordance with the Contract or do not meet the requirements of the Superintending Officer in accordance with the provisions of the Contract then the cost of such test shall be borne by the Contractor.

- (c) Where the cost of tests is to be borne by the Employer pursuant to Clause 7.7(b), the carrying out of such test shall be deemed a Variation.

7.8 Defects during the Works

- (a) If the Superintending Officer finds Defects during the progress of the Works, notwithstanding any previous test or interim payment for the Works or part of the Works, he may instruct the Contractor to do any or all of the following:
 - (i) to demolish and reconstruct any work to meet the requirements of the Contract;
 - (ii) to substitute such defective materials, goods or Equipment with proper and suitable replacements of the same; and/or
 - (iii) to remove from or not to bring to the Site any materials, goods or Equipment which in the opinion of the Superintending Officer do not meet the requirements of the Contract and to replace such materials, goods or Equipment with those which meet the requirements of the Contract.
- (b) The Superintending Officer's instruction may specify the time within which the Contractor is to comply with the instruction. If the Contractor defaults in carrying out such instruction within the time specified by the Superintending Officer, the Employer shall be entitled to have the work of replacement, removal or correction carried out departmentally or employ and pay other persons to carry out the same and the amount of any loss, expense, costs or damages suffered or incurred by the Employer shall be recoverable from the Contractor and may be deducted by the Employer from any payment due or to become due to the Contractor, failing which such monies shall be recovered from the Performance Security or as a liquidated demand in money.

- (c) Notwithstanding Clause 7.8 (a), if the Defects which the Contractor would otherwise have been liable to rectify at his own cost is such that in the opinion of the Superintending Officer it will be impracticable or inconvenient to the Employer to have the Contractor to rectify, the Superintending Officer may give an instruction that the Defects be not remedied in which case the provisions of Clause 37.4 shall apply.

8 BASIS OF CONTRACT

Clause 8.1 shall apply for Contract based on Bills of Quantities and Clause 8.2 shall apply for Contract based on Drawings and Specifications. The clause applicable shall be stated in the Appendix.

8.1 Contract based on Bills of Quantities

(a) Definitions and Interpretations

- (i) The term “Bills of Quantities” means the priced Bills of Quantities included in the Contract subject to modifications, deductions and additions to the same as may be made by letter or letters of amendment issued by the Employer which forms part of the Contract.
- (ii) The Bills of Quantities shall form part of the Contract. Subject to Clauses 2, 3 and 4, the quantity and quality of the Works to be executed under the Contract shall be deemed to be that set out in the Bills of Quantities which shall be the basis of the Contract Sum.

(b) Adjustment of Prices and Rates

- (i) Prices and rates in the Bills of Quantities as submitted by the Contractor shall be subject to the agreement of the Employer as to their reasonableness and shall before the signing of this Contract be so rectified and adjusted as the Employer may reasonably require.
- (ii) Any adjustment of the prices or rates in the Bill of Quantities required under Clause 8.1(b)(i) above and any arithmetical error or omission in the Bills of Quantities shall be so rectified and adjusted that when correctly calculated, the total amount in the Summary of the Bills of Quantities shall represent the same amount as the tender amount in the Form of Tender.
- (iii) The tender amount shown in the Form of Tender shall remain unaltered but the nett aggregate amount of the difference between the total adjusted amount in the Summary of the Bills of Quantities and the tender amount shown in the Form of Tender, whether a nett deduction or nett addition, shall be calculated as a percentage of the total adjusted amount shown in the Summary of the Bills of Quantities and all prices or rates throughout the Bills of Quantities shall be subject to such percentage discounts or premiums as the case may be. Provided always that Provisional and Prime Cost Sums shall be excluded from such calculation and shall not be subject to such percentage discount or premium.

(c) **Methods of Measurement**

Unless stated otherwise, the Bills of Quantities shall be deemed to have been prepared in accordance with the current edition of the Malaysian Standard Method of Measurement of Building Works published by the Institution of Surveyors, Malaysia or Malaysian Standard Method of Measurement for Civil Engineering Works published by CIDB, Malaysia. Any deviation from the said Standard Method of Measurement shall be specified in the Bills of Quantities or elsewhere in the Contract Documents.

8.2 Contract based on Drawings and Specifications

- (a) (i) Subject to Clauses 2, 3 and 4, the quality and quantity of the Works included in the Contract Sum shall be deemed to be that which is shown in the Contract Drawings or described in the Specifications and the Summary of Tender.
- (ii) Where items of work are shown or implied on the Drawings or in the Specifications as being a requirement under the Contract, or are obviously required to satisfactorily complete the Works, but are not specifically covered by the item descriptions in the Summary of Tender, such work shall be deemed to be covered by related items in the Summary of Tender, and in any event in the tendered lump sum.
- (b) (i) The Summary of Tender shall form part of this Contract and shall be the basis of the Contract Sum. The items set in the Summary of Tender are aimed at breaking up the tendered lump sum into identifiable components and they shall, except in so far as may be otherwise expressly provided for in the Contract, be deemed to cover all of the Contractor's liabilities and obligations set or implied in the Contract, and matters and things necessary for the proper construction, completion and maintenance of the Works, including any Temporary Works, trials, tests, samples, overheads and profits and the like.
- (ii) Prices in the Summary of Tender as submitted by the Contractor shall be subject to the prior consent of the Employer as to their reasonableness. Such prior consent and any subsequent adjustment to the prices in the Summary of Tender shall be made before the signing of this Contract.
- (iii) Any adjustment of the prices in the Summary of Tender in Clause 8.2(b)(ii) above and any arithmetical error in the prices or calculations of the Contractor in the Summary of Tender shall be so adjusted and rectified that the total amount in the Summary of Tender shall correspond and represent the same amount as the tender amount in the Form of Tender.

9 SERVICE OF NOTICES ETC.

9.1 Method and Time of Serving

- (a) Any document shall be deemed to be sufficiently issued or given to or served upon the Contractor, or the Employer or the Superintending Officer, as the case requires, if:
- (i) it is handed to the Contractor or his representative, or the Employer's designated representative or the Superintending Officer and an acknowledgement of receipt obtained, or

- (ii) is sent by post in which case it shall be deemed to have been served seven (7) days after posting by registered mail or courier or
 - (iii) is left at the latest advised address of the Contractor or the address of the Employer's designated representative or of the Superintending Officer.
- (b) Either party may change the address set out in the Form of Agreement by giving fourteen (14) days notice to the other parties and in the case of the Superintending Officer by giving fourteen (14) days notice to both parties.

9.2 Particular Form of Communication

Where elsewhere in this Contract a particular form of communication or transmission is specified for the service of a notice or instruction, such particular form shall apply in exclusion to any other form.

9.3 Other Documents

The application of this clause shall extend to include drawings and any other documents relating to this Contract.

10 PERFORMANCE SECURITY

10.1 Due Performance

The Contractor shall at his own expense provide a Performance Security amounting to five (5) percent of the original Contract Sum for the due performance of the Contract. The Performance Security shall be in either of the following forms:

- (a) a bond with a licensed bank or such other institution(s) acceptable to the Employer and shall be in the form and terms approved by the Employer; or
- (b) a cash deposit.

10.2 Application

If the Contractor shall fail within one (1) month of signing this contract to provide the Performance Security, the Employer may deduct the amount thereof from any sums otherwise payable to the Contractor and shall retain that amount as a cash deposit in accordance with Clause 10.1 above, until the required surety is provided or until such deposit is due to be refunded.

10.3 Validity

The validity of the Performance Security shall be maintained by the Contractor at all times until the issuance of the Final Certificate. If at any time, the Performance Security should expire before the Final Certificate is issued, the Employer may withhold payment due to the Contractor, deduct from any sum due or determine the Contractor's employment.

10.4 No Early Release of Performance Security

For the avoidance of doubt, nothing contained in the Contract Documents and Clause 35 hereof shall entitle the Contractor to the release of the whole or any part of the Performance Security deposited by him. The Performance Security shall be released only upon the issue of the Final Certificate.

11 SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER'S REPRESENTATIVES

11.1 Duties of Superintending Officer and Superintending Officer's Representatives

- (a) The Superintending Officer shall be responsible for the overall supervision and direction of the Works. All questions regarding any work under this Contract shall be referred up by the Contractor to the Superintending Officer.
- (b) The Superintending Officer shall act reasonably and be timely in carrying out all or any of his duties under the Contract.
- (c) Notwithstanding Clause 11.1(a) above, the Superintending Officer may from time to time in writing delegate to such number of Superintending Officer's Representatives, as he deem fit, any of the powers and authorities vested in the Superintending Officer and shall furnish to the Contractor a copy of all such written delegation of powers and authorities. Any instruction or approval given by the Superintending Officer's Representatives to the Contractor within the terms of such delegation shall bind the Contractor and the Employer as though it had been given by the Superintending Officer provided always that:
 - (i) failure of the Superintending Officer's Representatives to disapprove any work, materials, goods or Equipment shall not prejudice the power of the Superintending Officer thereafter to disapprove such work, materials, goods or Equipment and to order the pulling down, removal or breaking up;
 - (ii) if the Contractor shall be dissatisfied by reason of any decision of the Superintending Officer's Representatives he shall be entitled to refer the matter to the Superintending Officer within seven (7) days of the receipt of such decision, and the Superintending Officer shall thereupon confirm, reverse or vary such decision within seven (7) days failing which the decision of the Superintending Officer's Representatives shall apply.
- (d) The Superintending Officer's Representatives shall be responsible to the Superintending Officer and his duties are to inspect and supervise the Works and to test and examine any materials, goods or Equipment to be used or workmanship employed in connection with the Works.

11.2 Appointment of Assistant(s) to the Superintending Officer

- (a) The Superintending Officer or the Superintending Officer's Representatives may appoint such number of persons to assist the Superintending Officer's Representatives in carrying out such duties and exercise such authority (if any) as he deems fit.
- (b) The Contractor shall be notified in writing of the names, duties and authority (if any) of such assistant(s). Such assistant(s) shall have no authority to issue any instructions to the Contractor except for such instructions as may be necessary to enable them to carry out their duties and to ensure that the work, materials, goods or Equipment are in accordance with the Contract.

11.3 Superintending Officer's Instructions

- (a) Subject to Clause 11.4, the Superintending Officer may at his discretion and from time to time issue further drawings, details and/or written instructions, written directions and written explanations (all of which are collectively referred to as "Superintending Officer's Instructions") in regard to:
- (i) the variation or modification of the design, quality or quantity of the Works or the addition or omission or substitution of any work;
 - (ii) any discrepancy in or divergence between the Contract Documents;
 - (iii) the removal from the Site of any materials, goods or Equipment brought by the Contractor and the substitution of any other materials, goods or Equipment;
 - (iv) the removal and/or re-execution of any works executed by the Contractor;
 - (v) the slowing down, postponement or suspension of any work to be executed under the provisions of this Contract;
 - (vi) the dismissal from the Works of any person employed;
 - (vii) the opening up for inspection of any work covered up;
 - (viii) the amending and making good of any Defects under Clause 37; and
 - (ix) other matter affecting the Works.
- (b) If any instructions, directions or explanations involving a Variation are given to the Contractor or his representative upon the Works by the Superintending Officer's Representative or verbally by the Superintending Officer such instructions, directions or explanations shall be confirmed in writing by the Contractor to the Superintending Officer within seven (7) days, and if not dissented from in writing by the Superintending Officer to the Contractor within a further seven (7) days shall be deemed to be Superintending Officer's Instructions. The Contractor shall forthwith comply with all Superintending Officer's Instructions. Provided always that electronic messages shall be treated as verbal instructions, directions or explanations.
- (c) If compliance with Superintending Officer's Instructions involves any Variation, such Variation shall be dealt with under Clause 32.1 and the value thereof shall be added to or deducted from the Contract Sum provided that the Superintending Officer's authority to approve Variation under this clause shall be subject to Clause 11.4
- (d) If within seven (7) days after receipt of a written notice from the Superintending Officer requiring compliance with Superintending Officer's Instructions the Contractor does not comply therewith, then the Employer may himself execute or pay another contractor or person to execute any work whatsoever which may be necessary to give effect to such instructions and all costs incurred in connection therewith shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any sums otherwise payable to the Contractor.

- (e) If in compliance with the Superintending Officer's instruction as aforesaid involves expenses or loss beyond that reasonably contemplated by the Contractor for which the Contractor would not be reimbursed by a payment made under any other provision in this Contract, then unless the same were issued owing to some breach of this Contract by the Contractor, the Contractor shall give notice in writing of his intention to claim for such expense or loss to the Superintending Officer together with an estimate of the amount of such expense and/or loss, in accordance to Clause 43.1

11.4 Limitation of Superintending Officer's Powers

Notwithstanding any provision in this Contract, it is hereby agreed that:

- (a) The Superintending Officer shall seek and obtain the prior approval of the Employer and give due consideration thereto, before exercising any of his functions or conveying any decisions to the Contractor, where such affect the Employer, and that he shall seek and obtain the prior approval of the Employer in respect of the functions listed below:

<u>Description of Function/Decision/ Action</u>	<u>Clause</u>
• Variation to the Contract	11
• Nominated Sub Contractors and Nominated Suppliers	26, 27
• Expend Provisional Sums	28
• Provisional Quantities	29
• Practical Completion	34
• Issue Certificates	33, 39
• Taking over Sections of Works	35
• Defects after Completion	37
• Damages for non-completion	40
• Extension of time	41
• Claims, Disputes and Dispute Resolution	42, 43
• Initiate Determination of Contract	44

- (b) The right to give opinion or approval on behalf of the Employer in respect of the matters relating to Clause 11.4(a) is expressly reserved to the relevant officer(s) named in the Appendix.
- (c) No act or failure to act, on the part of the Superintending Officer shall be deemed to prejudice the right of the Employer pursuant to this Contract.

11.5 Approval by Superintending Officer

No verbal or written approval by the Superintending Officer of any material, goods, Equipment, workmanship, plant, proposed method of construction or any other matter shall of itself be conclusive evidence that it is in accordance with any requirement of the Contract other than that such approval shall be obtained, and shall not relieve the Contractor of any responsibility in connection therewith.

12 CONTRACTOR'S REPRESENTATIVE

- (a) The Contractor shall appoint a competent person (hereinafter referred to as the "Contractor's Representative"), who must be capable of receiving instructions in Bahasa Malaysia or English and who shall be authorized to represent him and shall notify the Employer and the Superintending Officer in writing the name of such person.
- (b) The Contractor's Representative shall be constantly on the Site during normal working hours and shall give his whole time to the supervision of the Works including the remedying of Defects after the date of Practical Completion.
- (c) Any instructions, directions, explanations or notices given to the Contractor's Representative by the Superintending Officer shall be deemed to have been given to the Contractor.
- (d) The Superintending Officer may object to the appointment or request the removal of any person appointed or employed as the Contractor's Representative, provided always that the Superintending Officer shall not issue such notice of objection or removal unreasonably or vexatiously. Upon receipt from the Superintending Officer of a notice of objection or removal in writing, the Contractor shall forthwith remove him from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another Contractor's Representative approved by the Superintending Officer.

13 POSSESSION OF SITE AND COMMENCEMENT OF WORK

13.1 Possession of Site

Possession of the Site, as complete as may reasonably be possible but not so as to constitute a tenancy, shall be given on or before the date of possession of Site which date, unless otherwise provided for in the Contract Documents, shall be four (4) weeks from the date of the Letter of Acceptance.

Provided always that:

- (a) possession of the Site may be given in sections or in parts, and subject to any other restrictions as stated in the Appendix or in the Contract Documents; and
- (b) possession of the Site or part thereof shall only confer on the Contractor a right to such use and control as shall be necessary to enable him to execute the Works in accordance with this Contract; and
- (c) the Employer may, at any time or from time to time, after reasonable notice, take possession of any portion of the Site for the purpose of carrying out any other work or for any purpose whatsoever, and the Contractor shall fully co-operate with the Employer or the Superintending Officer and shall carefully co-ordinate his work with those other work carried out by the Employer.

- (d) in the event:
 - (i) of delay in giving the Contractor possession of the Site, or parts thereof; and/or
 - (ii) that the Contractor is prevented from entering the Site or parts thereof, to carry out his work, and such event(s) being due to an act, omission, or default of the Employer or the Superintending Officer;
 - (iii) that the Contractor is prevented access to any section(s) of the Site as a result of land blockages due to disputes under the Land Code (Chapter 81) and:
 - (aa) lasts in excess of two (2) months after the date of notification of the land blockage; each land blockage shall be treated individually for the purpose of these requirements;
 - (bb) such increased access delay period is considered, by the Superintending Officer, to delay the Contractor in achieving Practical Completion by the specified Time for Completion; and
 - (cc) such delay can not be prevented or reduced by reprogramming of the works;

the delay or impediment shall be deemed not to constitute a breach of contract, but may be a ground for an extension of the Time for Completion pursuant to Clause 41.

13.2 Commencement of Work

- (a) The Contractor shall commence work on Site within fourteen (14) days after the Employer has given to the Contractor sufficient possession of the Site for commencement of such work by him, or within such further time as approved by the Superintending Officer, and the Contractor shall thereafter execute the work under the Contract regularly and diligently and in accordance with the Contract and shall complete the same within the Time for Completion.
- (b) The Contractor shall, not less than seven (7) days before commencing work on the Site, give the Superintending Officer notice in writing of the proposed commencement date.
- (c) The Contractor shall not commence work unless and until such insurance policies as specified under Clause 25 together with receipts of the premiums paid, shall have been deposited with the Superintending Officer.

13.3 Occupation or Use of or Relevant Rights Over any Land

The Contractor shall procure for himself and at his own costs, the occupation or use of or relevant rights over any land in addition to the Site, which he may deem requisite or necessary for the execution of the Works under this Contract or for the purpose of this Contract and shall provide the Superintending Officer with copies of the written agreements of the landowners concerned. As a condition precedent to the issue of the Final Certificate, if so required by the Superintending Officer, the Contractor shall provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner, occupier or from any other persons having an interest in such land.

14 WORKS PROGRAMME AND METHOD STATEMENT

14.1 Submission of Works Programme and Method Statement

Following the Letter of Acceptance, and without prejudice to any requirement to do so earlier in his tender or the other Contract Documents, the Contractor shall, not later than thirty (30) days from the date of possession of Site, submit for the endorsement by the Superintending Officer:

- (a) a works programme related to the Time for Completion clearly identifying the sequence, logic and critical path in which he proposes to carry out the Works including the various work activities and milestones to be achieved; and
- (b) a method statement describing the arrangement, sequence and method of construction of the Works including Temporary Works.

14.2 Works Programme and Method Statement not Part of Contract Documents

- (a) The works programme and method statement shall not constitute part of the Contract Documents.
- (b) The submission to and endorsement by the Superintending Officer of such works programme and method statement shall not relieve the Contractor of his obligations under the Contract.

14.3 Endorsement

- (a) Endorsement of the works programme and the method statement by the Superintending Officer shall signify his concurrence with the proposed order or sequence of working in the works programme and method of construction in the method statement.
- (b) The endorsed works programme or method statement may be taken into account in any dispute for determining a reasonable order or sequence for supplying any outstanding information or details to the Contractor, or for giving possession of the Site by the Employer, but shall not otherwise change the contractual obligations of either party in relation to the Time for Completion, or as to a reasonable time for giving or receiving further information, or for giving possession of the Site.
- (c) In the event of the Superintending Officer's failure to respond within fourteen (14) days from the date of receipt of the Contractor's submission then the works programme and/or method statement shall be deemed to have been endorsed by the Superintending Officer.

14.4 Non-Concurrence

In the event the works programme or method statement is not concurred by the Superintending Officer then the Contractor shall make such further submissions as may be required until endorsement is obtained.

14.5 Start of Work Without Endorsement

The Contractor may commence execution of the Works pending endorsement of the works programme or method statement by the Superintending Officer. However the grounds of any non-concurrence may be taken into account in determining any dispute as to a reasonable sequence, or order for giving possession of the Site, or for supplying supplementary drawings or details or information.

14.6 Modification or Revision

- (a) The Contractor shall from time to time during the progress of the Works make modification or revision to the works programme and/or method statement to take into account any changed circumstances or event affecting the progress and/or the execution of the Works.
- (b) Such modified or revised works programme and/or method statement shall be subject to endorsement by the Superintending Officer pursuant to provisions of Clause 14.3

15 ENGAGEMENT OF WORKMEN AND LABOUR

15.1 Compliance with Labour Ordinance, etc.

The Contractor shall be deemed to have notice of, and shall comply with all orders, notices or instructions which may be lawfully issued from time to time by the Director of Labour, and the Contractor shall comply with the provisions of the Labour Ordinance (Chapter 76) or any other written law, and any amendments or subsidiary legislation made from time to time to or under that Ordinance or other written law.

15.2 Engagement of Workmen and Labour

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all workmen and labour, local or other, and for their remuneration, housing, welfare and transport. In case foreign workmen or labour are engaged the Contractor shall be responsible to obtain their work permits in compliance with relevant laws and regulations.

15.3 Default in Payment of Wages, etc.

In the event of the default being made in the payment of any money in respect of wages, a claim of which has been filed in an office of the Department of Labour, and/or payment in respect of Employee's Provident Fund contributions of any workmen employed by the Contractor or his sub-contractors (including "labour only" sub-contractors) and nominated sub-contractors in and for the performance of this Contract, then the Superintending Officer having satisfied himself with the proof thereof furnished to him may, upon the failure of the Contractor to pay the said money, make payment of such claim to the Director of Labour and/or Employee's Provident Fund Board, as the case may be, and such payment shall be deducted from any monies due or to become due to the Contractor under this Contract and failing which such payment shall be recovered from the Performance Security or as a liquidated demand in money.

16 REMOVAL OF WORKMEN AND OTHER PERSONNEL

- (a) The Contractor shall employ in and about the execution of the Works only such persons as are of good character, careful, skilled and experienced in their respective vocations and trades.
- (b) The Superintending Officer shall be at liberty to object to and require the Contractor to remove immediately from the Site any person employed by the Contractor in or about the execution of the Works who in the opinion of the Superintending Officer misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such person shall not again be employed upon the Works without the prior written permission of the Superintending Officer.
- (c) Any person so removed from the Works shall be replaced without delay by a competent substitute approved by the Superintending Officer provided that the Contractor shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the Superintending Officer under this clause.

17 DAYS AND HOURS OF WORKING

17.1 No Work to be Done

No work shall be done on:

- (a) the weekly day of rest;
- (b) any public holiday where this Contract is being carried out; or
- (c) between the hours of six (6) in the evening and six (6) in the following morning;

without the written permission of the Superintending Officer provided that when such written application of the Contractor is approved by the Superintending Officer, the Contractor shall comply fully with all the requirements of the Labour Ordinance (Chapter 76) in regard thereto or any subsequent modification or re-enactment thereof and shall bear any costs for compliance therewith and any extra costs incurred by the Employer in connection with the supervision of the Works.

17.2 Exception to No Work

No work shall be carried out outside those approved working hours except where:

- (a) such work is necessary in the interest of safety of the Works or to protect life or property, in which event the Contractor shall inform the Superintending Officer of the circumstances as early as possible; or
- (b) prior written approval is obtained from the Superintending Officer, in which event the Contractor shall provide two (2) days notice to the Superintending Officer (unless the Superintending Officer agrees to a shorter notification period). Such requests shall not be unreasonably denied in relation to plant maintenance or similar work not forming part of the permanent works and/or not requiring supervision by the Superintending Officer, but shall be dependant on the availability of the Superintending Officer, and/or conditions imposed by the Superintending Officer for work requiring such supervision.

18 UNFIXED MATERIALS, GOODS AND EQUIPMENT

Unfixed materials, goods and Equipment delivered to and placed on the Site or approved other secure location, and intended for incorporation in the Works, shall not be removed except for use upon the Works, unless the Superintending Officer has consented in writing to such removal. Where the Superintending Officer has included the value of such materials, goods or Equipment in any certificate in accordance with Clause 33, under which the Contractor has received payment, such materials, goods and Equipment shall become the property of the Employer, but the Contractor shall remain responsible for loss or damage to the same.

19 PLANT

No plant, machinery, appliances or scaffolding brought onto the Site by the Contractor may be removed without the written consent of the Superintending Officer; provided that such consent shall not be unreasonably withheld to the prejudice of the Contractor.

20 SETTING OUT OF WORKS

20.1 Accurate Setting Out

- (a) Unless otherwise stated in the Contract Documents, the Superintending Officer shall be responsible to provide the original reference points, lines and levels necessary for the Contractor to set out the Works at ground level.
- (b) The Contractor shall be entitled to rely on the original reference points, lines and levels as shown in the Contract Documents and shall be responsible for:
 - (i) the accurate setting out of the Works;
 - (ii) the correctness of the position, levels, dimensions and alignment of all parts of the Works; and
 - (iii) the provision of all necessary instruments, equipment, apparatus and labour in connection with the setting out.
- (c) The Contractor shall carefully protect and preserve all benchmark, sight rails, pegs and other things used in the setting out of the Works.

20.2 Errors in Setting Out

If at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor shall rectify such error to the satisfaction of the Superintending Officer. The time and cost implications of such rectification shall be borne by:

- (a) the Employer if such rectification is due to the reference points, lines and levels provided by the Superintending Officer pursuant to Clause 20.1(a); or
- (b) the Contractor if such rectification is due to errors in setting out referred to in Clause 20.1(b)

21 INSPECTION OF WORK

21.1 Examination and Measurement of Works before Covering Up

- (a) No part of the Works shall be covered up or put out of view without the approval of the Superintending Officer and the Contractor shall afford full opportunity for the Superintending Officer to examine and measure such part of the Works which is about to be covered up or put out of view.
- (b) The Contractor shall give due notice to the Superintending Officer whenever any part of the Works is ready or about to be ready for examination and the Superintending Officer shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor in writing accordingly, attend such examination and measurement of such part of the Works.

21.2 Failure to Comply

If the Contractor fails and/or neglects to comply with the provisions of Clause 21.1:

- (a) the Superintending Officer may require the Contractor to uncover or make openings in or through any part or parts of the Works or to do all such things as are necessary for the Superintending Officer to inspect such part or parts of the Works as constructed; and
- (b) the cost of such uncovering or making openings and subsequent reinstating and making good of the same shall be borne by the Contractor whether or not such part or parts uncovered are found to be executed in accordance with the Contract; and
- (c) the Contractor shall not be entitled to any extension of time for any delay caused by such failure or neglect; and
- (d) the additional cost of any measures or requirements carried out by or directed by the Superintending Officer shall be borne by the Contractor.

21.3 Uncovering and Making Openings

- (a) The Contractor shall uncover any part of the Works or make openings in or through the same as the Superintending Officer may from time to time instruct and shall reinstate and make good such part of the Works to the satisfaction of the Superintending Officer.
- (b) If any such part of the Works has been covered up or put out of view after compliance with the requirements of Clause 21.1 and is found to be executed in accordance with the Contract then, such work carried out by the Contractor shall be deemed a Variation.

22 ACCESS TO WORKS ETC.

- (a) The Superintending Officer and any person authorized by the Superintending Officer shall at all reasonable times have access to the Works and to the factories, workshops or other places of the Contractor or nominated sub-contractor or of any sub-contractor or supplier where any work, materials, goods or Equipment are being manufactured, fabricated, assembled, prepared or stored for the Contract.

- (b) Where any such work, materials, goods or Equipment are being manufactured, fabricated, assembled, prepared or stored in the factories, workshops or other places of a nominated sub-contractor or sub-contractor or supplier, the Contractor shall by a term in the sub-contract secure a similar right of access to those factories, workshops or other places for the Superintending Officer and any person authorized by the Superintending Officer, and shall take reasonable steps required of him by the Superintending Officer to enforce or assist in enforcing such right.

23 ASSIGNMENT AND SUB-CONTRACTING/SUB-LETTING

23.1 Consent of Employer for Assignment

The Contractor shall not assign the whole or any part of the Contract or any benefit or interest or works to be carried out or the obligation to carry out or the right to receive payment for the whole or any part of the Contract Sum without the prior written consent of the Employer.

23.2 Void Assignment

Any assignment or purported assignment of all the rights or works under this Contract or any part thereof or the obligation to carry out or the right to receive payment for the whole or any part of the works under this Contract or the right to receive the whole or any part of the Contract Sum without the prior written consent of the Employer, shall not bind the Employer, and such assignment shall, in so far as the Employer is concerned, be deemed to be void and ineffective, and the intended assignee shall have no claim, right, remedy or cause of action whatsoever against the Employer. Provided always that there shall be no assignment of any sum or amount due or certified for payment to a nominated sub-contractor or nominated supplier.

23.3 Consent of Employer for Sub-contracting/Sub-letting

Except where otherwise provided in the Contract, the Contractor shall not sub-contract/sub-let the whole or part of the works without the prior written consent of the Employer (which shall not be unreasonably withheld) and such consent if given shall not lessen or relieve the Contractor's liability or obligations under the Contract, and he shall be responsible for the acts, omissions, defaults and neglects of any of his sub-contractors, agents, servants or workmen as if they were the acts, omissions, defaults or neglects of the Contractor.

23.4 Further Conditions for Assignment or Sub-contracting/Sub-letting

- (a) Save that where the Employer consents to any assignment or sub-contracting/sub-letting under this clause, the Employer may, in addition to any condition stipulated herein, impose such further terms and conditions to such assignment or sub-letting as he may consider fit.
- (b) It shall be a condition in any sub-contract, the consent of which has been granted, that upon the determination of the Contractor's employment under the Contract, the employment of the sub-contractor under the Contract shall be determined immediately, unless the Employer exercises his right for the assignment of benefit of the sub-contract to him under Clause 44.3

24 INDEMNITY FOR INJURY TO PERSONS AND PROPERTY DAMAGE

24.1 Injury to Persons

The Contractor shall take all reasonable care to prevent personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works, and shall be solely liable for and shall indemnify the Employer against any loss, liability, claim or proceedings whatsoever arising under any Law or by statute in respect of such injury or death, unless due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

24.2 Damage to Property

The Contractor shall take all reasonable care to prevent or minimize any damage whatsoever to any property real or personal arising out of or in the course of or by reason of the execution of the Works (including any property of the Employer other than the Works) and shall be solely liable for and shall indemnify the Employer against any loss, liability, claim or proceedings in respect of such damage provided always that the same is due to any negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor or nominated sub-contractor.

24.3 Interference

The Contractor shall carry out all operations in connection with the execution of the Works so as not to interfere unnecessarily or improperly with the public convenience or the use and occupation of public or private roads, footpaths or properties, whether in the possession of the Employer or of any other person, and the Contractor shall be liable for and shall indemnify the Employer against any loss, liability, claim or proceedings in respect of any such matters, provided always that the same is due to any negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor or nominated sub-contractor.

24.4 Indemnities

The indemnities given by the Contractor under Clause 24.1, 24.2 and 24.3 above shall not be defeated or reduced by reason of any negligence or omission of the Employer or the Superintending Officer or their representatives in failing to supervise or control the Contractor's site operations or methods of working or Temporary Works, or to detect or prevent or remedy defective work, or to ensure proper performance of any other obligations of the Contractor under the Contract.

24.5 Injury to Workmen

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor, nominated sub-contractor or any sub-contractor, save and except an accident or injury resulting from any act or default of the Employer, its agents, or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

24.6 Notification of Claims

- (a) Any claim received by the Employer or Superintending Officer in respect of matters in which the Contractor is required under the Contract to indemnify the Employer will be passed to the Contractor who shall likewise inform the Superintending Officer of any such claim which is submitted directly to him by a claimant.
- (b) The Contractor shall do everything necessary, including notifying the insurers of claims received, to ensure that all claims are settled properly and expeditiously and shall keep the Superintending Officer informed as to the progress made towards settlement, failing which the Employer shall be entitled to make direct payment to claimants of all outstanding amounts due to them in the Employer's opinion and without prejudice to any other method of recovery to deduct by way of set-off the amount so paid from any sums due or which become due from the Employer to the Contractor.
- (c) If the Contractor receives a claim which he considers to be in respect of matters in which he is indemnified by the Employer under the Contract, he shall immediately pass such claim to the Employer.

24.7 Environmental Protection

The Contractor shall safeguard the environment, and shall:

- (a) not form any new roads or tracks, alter existing roads or tracks, erect camps, fell trees, remove or clear vegetation, cut fences or water courses or do anything that may effect the environment to a significant extent, other than the minimum required to carry out the Works, without the prior approval of the Superintending Officer.
- (b) not light any fires without the prior approval of the Superintending Officer.
- (c) be responsible for the proper, safe and tidy disposal of all solid, liquid or gaseous wastes in accordance with any statutory requirements and without detriment to the Site and its environment. Refuse shall be removed from Site.
- (d) take such steps as are necessary to prevent erosion of the adjacent properties, pollution of adjacent fishponds or damage to adjacent property as a result of silt deposits, water flows and the like.
- (e) take all practicable steps to minimize dust nuisance from the works to traffic, property or the public.
- (f) minimize the amount of noise caused by carrying out the works and siting any pumps, generators and noisy equipment so as to cause least possible nuisance to adjacent properties, and the public.
- (g) complete, backfill, and reinstate excavations, holes and trenches as soon as possible after such excavation, holes and trenches are no longer required, and to the approval of the Superintending Officer.
- (h) dispose of all rubbish and material when it is no longer required on the Site.

24.8 Work Through Private Land

- (a) Where any part of the Works are to be constructed on, over, under, in or through private land the Contractor shall ensure that his methods of working cause the minimum of disturbance to such land and to its owners and occupiers. This may require the completion of individual sections of work as far as possible before moving onto the next section.
- (b) The Contractor shall not start work on any such part of the Works without prior written permission from the Superintending Officer which permission will not be unreasonably withheld.

25 INSURANCE

25.1 Insurance for Workmen

(a) Employee's Social Security Scheme for Local Workmen

- (i) Without prejudice to his liability to indemnify the Employer under Clause 24, the Contractor shall before commencement of any Work under the Contract, register or cause to register all local workmen employed in the execution of the Works and who are subject to registration under the Employee's Social Security Scheme (hereinafter referred to as "SOCSO") in accordance with the Employee's Social Security Act, 1969 or any subsequent modification or re-enactment of the said Act.
- (ii) The term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.
- (iii) The Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the said Scheme to the Superintending Officer for verification and make payment of all necessary contributions from the date of possession of Site until the date of Practical Completion of the Works. It shall be the duty of the Contractor to produce to the Superintending Officer contribution statement or payment vouchers as evidence of payment of such contributions, whether demanded or not.

(b) Workmen's Compensation Insurance for Local Workmen not Subject to SOCSO

- (i) Without prejudice to his liability to indemnify the Employer under Clause 24, the Contractor shall before commencement of any Work under the Contract, take out and maintain an insurance policy for local workmen who are not subject to registration under SOCSO in accordance with the Employee's Social Security Act, 1969 or any subsequent modification or re-enactment of the said Act.
- (ii) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the date of possession of Site until the date of Practical Completion and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of Works and rectification of Defects pursuant to Clause 37.

(c) Workmen's Compensation Insurance for Foreign Workers

- (i) Without prejudice to his liability to indemnify the Employer under Clause 24, the Contractor shall before commencement of any Work under the Contract, take out and maintain a Workmen's Compensation Insurance Policy for all foreign workers under the Workmen's Compensation Act 1952, Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 1998 or any subsequent modification or re-enactment of the said Act or Order.
- (ii) Provided that, in relation to foreign workers employed by any sub-contractor, the Contractor's obligations to insure under this clause shall be satisfied if the sub-contractor has insured against the liability in respect of such foreign workers in such manner that the Employer and the Contractor is indemnified under the policy, but the Contractor shall require such sub-contractor to produce to the Employer, when required, such policy of insurance and the receipts in respect of premiums paid under such policy or policies.
- (iii) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the date of possession of Site until the date of Practical Completion and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 37.

25.2 All Risks Insurance

- (a) Without limiting his obligations or responsibilities under Clause 24, the Contractor shall before commencement of any work under the Contract take out and maintain an All Risks Insurance policy to 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, all works executed and all unfixed materials, goods and Equipment, delivered to, placed on or adjacent to the Works and intended for or connected with the Works and Temporary Works (but excluding tools and construction plant owned or hired by the Contractor or any Sub-contractors) to the value of not less than the Contract Sum plus any amount which may be specifically stated in the Appendix.
- (b) The third party liability in respect of personal injuries or death or damage to property real or personal (other than the Works) arising out of or in course of or by reason of the carrying out of the Works shall be subject to the minimum limitations as to the extent of liability for any one accident or any one period as set out in the Appendix.
- (c) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and the sub-contractors from the date of possession of Site until the date of Practical Completion of the whole of the Works, notwithstanding any arrangement for sectional completion or partial occupation by the Employer under this Contract, and in such manner that the Employer, the Contractor, nominated sub-contractors and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 37 or the date of determination of the employment of the Contractor under Clause 44 or termination of the Contract under Clause 45, whichever is the earlier.

25.3 Contractor Liable for Insurance Excesses

The Contractor shall be fully responsible and liable for any insurance excess stipulated in the insurance policy or policies provided under this clause, provided that the Contractor's liability for such excess shall be reduced in proportion to the extent to which any act or neglect of the Employer or of any person for whom the Employer is responsible, has contributed to the said damage, loss or injury.

25.4 Damage, Loss or Injury to the Works, etc.

- (a) If any damage, loss or injury affecting the whole or any part of the Works or any materials, goods or Equipment is occasioned by any one or more of the risks covered by the insurance policy or policies referred to in this clause then, upon discovering the said damage, loss or injury, the Contractor shall immediately give notice in writing to the Superintending Officer of the extent, nature and location of such damage, loss or injury.
- (b) The occurrence of such damage, loss or injury shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the Contract.
- (c) After any inspection required by the insurers or other persons authorized by the insurers in respect of a claim under the said insurance policy referred to in this clause has been completed, the Contractor shall subject to Clause 24 proceed immediately and with due diligence to make good with all reasonable expedition such damage, loss or injury including removal and disposal of any debris to the satisfaction of the Superintending Officer and proceed with the construction and completion of the Works.
- (d) The Contractor and any sub-contractors who are recognized as insured under the said insurance policy referred to in this clause shall authorize the insurers to pay all monies from such insurance in respect of the damage, loss or injury referred to in this clause to the Employer. Any monies, if and when received shall be released to the Contractor (less only the said percentage for professional fees, if any) by installments on the Interim Certificates issued by the Superintending Officer.
- (e) The amounts released under this clause shall be calculated as from the date of receipt of the monies in proportion to the extent of work of restoration, replacement or repair carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of such work of restoration, replacement or repair and the removal and disposal of debris other than the monies received under the said insurance policy or policies.

25.5 Other Requirements

- (a) The insurance referred to in this clause shall be effected with an insurer and on terms approved by the Superintending Officer.
- (b) Each policy taken out pursuant to this clause shall provide expressly for the payment in the first place to the Employer of any insurance money due under the policy.
- (c) The Contractor shall deposit with the Superintending Officer the original of each of the relevant policy or policies of insurance and the receipts in respect of premiums paid under such policy or policies.

25.6 Default in Insuring/Renewing Insurance

In the event the Contractor defaults in taking out or maintaining the insurance policy or policies as stipulated in this clause, the Employer (without prejudice to any rights or remedies available) may himself take out and/or maintain the necessary insurance policy or policies and the amount paid by him in respect of premiums shall be recoverable from the Contractor or deducted from any payment due or to become due to the Contractor under the Contract.

26 NOMINATED SUB-CONTRACTORS

26.1 Prime Cost (P.C.) Sums

The Prime Cost (P.C.) Sums in respect of works executed completely by nominated sub-contractors are at the complete disposal of the Superintending Officer who may deduct the same wholly or in part from the Contract Sum and nominate such persons as the Employer selects to execute the works to which these P.C. Sums apply. The Contractor is deemed to have included in his tender price or as separately indicated in the Contract Documents, the profit inclusive of establishment charges and for attendance as described hereafter.

26.2 Effecting Prime Cost Sums

- (a) The Employer or the Superintending Officer if instructed by the Employer, shall obtain tenders for the nominated sub-contractors' work or services of which Prime Cost Sums are included in the Contract Documents and the Contractor shall on the written instruction of the Superintending Officer enter into such sub-contracts with the nominated sub-contractors in the terms and conditions provided by the Employer.
- (b) The Employer shall not nominate as a sub-contractor in connection with the Works:
 - (i) A person against whom the Contractor objects in writing within fourteen (14) days of the date of receipt of the Superintending Officer's instruction (sent by registered mail) and if the Superintending Officer considers the objection to be reasonable; or
 - (ii) A person who will not enter into a sub-contract with the term and conditions as stated in Clause 26.2
- (c) If pursuant to Clause 26.2(b) above, the Contractor is not required to enter with a sub-contract with a nominated sub-contractor, the Employer shall:
 - (i) nominate an alternative sub-contractor in which case Clause 26.2(b) shall apply;
 - (ii) vary the Works or the work or services, materials, goods or Equipment, the subject of Prime Cost Sums including if necessary the omission of any such work or services, materials, goods or Equipment so that they may be provided by workmen, contractors or suppliers as the case may be employed by the Employer either concurrently with the Works or at some other date; or
 - (iii) instruct the Contractor to execute such work or services pursuant to Clause 11.3

26.3 Responsibility of Contractor

- (a) The Contractor will be fully responsible for all nominated sub-contractors and any delay or damage thereby occasioned and will be responsible for the supervision and administration of all sub-contracts and will be required to arrange a programme schedule with each of the nominated firms. These schedules will be subjected to the approval of the Superintending Officer. The Contractor is deemed to have included in his tender price or to price where indicated in the Bill of Quantities or Summary of Tender for providing attendance services to nominated sub-contractors and such attendance shall include for the following:
- (i) ascertaining from sub-contractors all particulars relating to their works in regard to sizes and positions in which chases, holes, mortices and similar items are required to be formed or left. (The Contractor will be responsible for any additional cost incurred as a result of any omission on his part in this respect);
 - (ii) affording free and full use of standing scaffolding, messrooms, sanitary accommodation and welfare facilities;
 - (iii) erecting, maintaining and removal on completion temporary office and storage accommodation for the sub-contractor;
 - (iv) providing all artificial lighting and water for sub-contractor's work;
 - (v) supplying all setting out information;
 - (vi) giving all necessary dimensions and taking responsibilities for all their accuracy;
 - (vii) making available temporary power supplies required for the execution of the works including bringing the supplies to a point on the site convenient for the connection by the sub-contractor in accordance to Clause 26.4(b);
 - (viii) clearing away rubbish from Site;
 - (ix) taking responsibility for and covering and protecting against all loss or damage to all executed and part executed sub-contractor's work.
- (b) In and for the purpose of this Contract, the Contractor shall be fully responsible to ensure that the nominated sub-contractor shall conform with the terms and conditions of this Contract and shall be fully responsible for the acts, defaults or breach of any terms or conditions by the nominated sub-contractors on their part in the same way as for his own or those of the other sub-contractors engaged by himself, and the Employer shall in no circumstances be liable to the Contractor for the default of any nominated sub-contractors.
- (c) In the event of repudiation or abandonment of his sub-contract by any nominated sub-contractor, or the determination by the Contractor of the employment of the nominated sub-contractor for any reason whatsoever under the sub-contract, the Contractor shall do one of the following:
- (i) With the consent of the Superintending Officer (such consent not to be unreasonably withheld) employ another competent sub-contractor to complete the sub-contract; or

- (ii) Himself undertaking to complete the sub-contract.

Provided that in any of such events the Contractor is entitled to be paid the same sum for the work or services to be executed, or materials, goods or Equipment to be supplied, as would have been payable had the original nominated sub-contractor completed the sub-contract without any defaults on his part.

26.4 Costs included in Sub-Contract Sum

The Contractor shall note that the nominated sub-contractor will include in the sub-contract sum, inter alia, the costs in connection with the following:

- (a) unloading, getting in, storing and all handling and hoisting of his materials plant and tools into required positions;
- (b) connection to temporary power supplies, made available by the Contractor for the execution of the Works and paying all current consumed by him;
- (c) the provision of all fuel, gas or steam and all other services that may be required for the test running, testing, balancing of installations;
- (d) taking full responsibility for any loss of, or damage to his own plant, tools, Equipment and other property on the Site. However, safe guarding all his executed and part executed works is the full responsibility of the Contractor;
- (e) effecting all relevant insurance policies as required under the Contract except insurance against loss or damage caused by fire of his executed works, materials, goods or Equipment on Site which is the responsibility of the Contractor.

26.5 Payment to Nominated Sub-Contractor

The Superintending Officer, when issuing an interim certificate under Clause 33, shall state therein separately the amount of interim or final payment due to each nominated sub-contractor as to value of their work, materials, goods or Equipment carried out or delivered up to the relevant date shown in the certificate. Such amount so certified to be due to a nominated sub-contractor shall be paid by the Contractor to the nominated sub-contractor within fourteen (14) days from date of receipt by the Contractor of the amount due under the interim certificate from the Employer, or subject to Clause 26.6(a) be paid directly by the Employer to the nominated sub-contractor.

26.6 Proof of Payment and Direct Payment

- (a) The Superintending Officer may before the issue of an interim certificate under Clause 33 demand from the Contractor a certificate or evidence given by a nominated sub-contractor, that all amounts included and specified in previous interim certificates have been paid or discharged or settled by the Contractor, failing which, the Employer shall be entitled to pay any amount certified due under any interim payment certificate direct to the nominated sub-contractor but which have not been paid by the Contractor, subject to the Employer retaining and holding as stakeholder, any amount representing any claim, cross-claim or set off, defense or counterclaim, as between the Contractor of the one part and the nominated sub-contractor of another which have been notified in writing to the Employer by either the nominated sub-contractor or Contractor, pending final judgement or award in any dispute between them relating thereto.

- (b) The Contractor shall be deemed to have received all amounts certified in any interim or final payment certificate as due to a nominated sub-contractor which have been paid by the Employer directly to a nominated sub-contractor under the preceding sub-paragraph or retained by the Employer pursuant thereto, and a nominated sub-contractor shall have no claim against the Contractor under the terms of the sub-contract for any amounts so paid directly by the Employer in pursuance of Clause 26.6(a) above, or retained in accordance with the provisions of this sub-clause.
- (c) The amounts retained by the Employer pursuant to Clause 26.6(a) above shall be held by the Employer until the resolution of any dispute between the Contractor and the nominated sub-contractor, and be dealt with in accordance with any judgement or award given by any court or arbitration tribunal in the resolution of such dispute or in accordance with any settlement or compromise or joint instructions in writing between or from the Contractor or nominated sub-contractor as the case may be.

26.7 Final Payment to Nominated Sub-Contractor

If the Superintending Officer desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the Superintending Officer may in a certificate under Clause 33 include an amount to cover the said final payment, and thereupon the Contractor shall pay to such sub-contractor the amount so certified and the limit of retention money stated in Clause 33 and/or the Appendix shall be reduced in proportion to the amount so certified and the Contractor shall be discharged from all liability for the work or materials covered by such certificate except for any latent defects.

26.8 No Contractual Relationship

Neither the existence nor the foregoing powers nor anything else contained in this Contract shall create a privity of contract or create any contractual relationship or obligations between the Employer and any nominated sub-contractor or render the Employer liable to any of them.

27 NOMINATED SUPPLIERS

- (a) Where Prime Cost Sums are included in the Contract in respect of any materials, goods or Equipment to be fixed by the Contractor, such sums shall be paid to such persons who supply the materials, goods or Equipment, and all specialists, merchants, tradesmen or others who have been nominated or selected by the Superintending Officer to supply such materials, goods or Equipment are hereby declared to be suppliers to the Contractor and are referred to in this Form of Contract as nominated suppliers.
- (b) The provisions of Clause 26.2, 26.3 and 26.8 shall similarly apply to the Contractor and the nominated supplier.
- (c) All payments by the Contractor to a nominated supplier shall, unless the Superintending Officer should otherwise direct, be in accordance with the provisions of Clause 26.5, 26.6 and 26.7

28 PROVISIONAL SUMS

28.1 Definition and Payment

- (a) At the commencement of this Contract, the value of all Provisional Sums shall be deducted from the Contract Sum. Thereafter, from time to time, as the relevant work is authorized or directed, and certified by the Superintending Officer, the amount so certified shall be added to the Contract Sum.
- (b) The term “Provisional Sum” provided in the Contract Documents shall mean a sum for work or for the supply of materials, goods or Equipment which cannot be entirely foreseen, defined or detailed at the time the tender documents are issued and such sum may be paid and expended at such times and in such amounts in favour of such persons as the Superintending Officer may direct. Such sum if not used either wholly or in part shall as to the amount not used 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 32. At the settlement of the accounts the said value of such works 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.

28.2 Conversion of Provisional Sum to Prime Cost Sum

Any work to be executed or materials, goods or Equipment to be supplied for which Provisional Sums are provided in the Contract Documents may, if the Superintending Officer so decides, be treated as Prime Cost Sum items and shall be dealt in accordance with Clause 26.

29 PROVISIONAL QUANTITIES

- (a) At the commencement of this Contract, the value of all provisional quantities shall be deducted from the Contract Sum. Thereafter, from time to time, as the relevant work is authorized or directed and certified by the Superintending Officer, the amount so certified shall be added to the Contract Sum.
- (b) In respect of any work for which quantities are stated as “Provisional”, such quantities are the estimated quantities of the work and shall be subject to re-measurement upon the completion of the Works and shall be calculated at the rate for that provisional quantities item. Provided that if the actual quantity involved exceeds twenty (20) percent of the provisional quantities item, then a fair valuation may be made by the Superintending Officer.
- (c) The Contractor shall have no claim upon any portion of the provisional quantity items, and shall [other than as covered by Clause 41.5(a)(xii)] have no entitlement to claim, whether pursuant to this Contract or otherwise, as a result of:
 - (i) the final sums or quantities so expended being to a greater or lesser extent than scheduled, or such sums not being expended at all; or
 - (ii) work covered by such sums being deleted in whole or in part from this Contract.
- (d) The Contractor shall obtain the Superintending Officer’s prior direction before proceeding with any such provisional quantities work and assist with, or carry out where so specified or directed, any required testing or other preparatory work, measurement, etc.

30 CONTRACTOR'S DESIGN OF WORK

30.1 Submission of Drawings and/or Design Documents

Where the Contractor, either by himself or by his servant, agent, sub-contractor or supplier, nominated sub-contractor or nominated supplier is required under this Contract to undertake the design of any part of the Works, he shall in accordance with this Contract, or as required by the Superintending Officer, submit drawings and/or other design documents relating to that part of the Works. The Contractor shall submit such drawings and/or other design documents far enough in advance of when such work is required to be constructed or supplied, so as to allow the Superintending Officer adequate time [taking into account the number and complexity of the documents so supplied, but no less than two (2) weeks] to review such drawings and/or other design documents. The Contractor shall allow for such in his programme, and shall not commence any work to which such drawings and/or design documents relate without prior endorsement from the Superintending Officer. The Contractor shall not alter the design without the further written endorsement of the Superintending Officer.

30.2 Contractor's Liability to Employer

The Contractor's liability to the Employer in respect of any defect or insufficiency in any design undertaken by the Contractor himself or by his servant, agent, sub-contractor or supplier, nominated sub-contractor or nominated supplier shall be the same as would have applied to a Superintending Officer or other appropriate professional designer who had held himself out as competent to take on work for such design and who acted independently under a separate contract with the Employer and supplied such design for, or in connection with, the Works to be carried out and completed by the Contractor not being the supplier of the design.

30.3 Endorsement of Superintending Officer

The endorsement of the Superintending Officer under Clause 30.1 hereof shall not relieve the Contractor of any liability which he would otherwise have in respect of the design in accordance with Clause 30.2

31 INDEPENDENT CONTRACTORS

31.1 Employer's Right to Engage Other Contractors

- (a) The Employer reserves the right to engage any person or contractor to carry out on the Site, work which does not form part of the Contract, whether or not information in respect of such work is provided in the Contract.
- (b) The Contractor shall permit and shall afford all reasonable facilities for the execution of such work by other contractor, artists, tradesmen or others engaged by the Employer. Every person or contractor so engaged shall be deemed to be a person or contractor for whom the Employer is responsible for and not to be a sub-contractor.

31.2 Inspection of Work Done by Other Contractors

- (a) If any part of the Works depends on the prior proper execution of or results from the work of any other persons or contractors employed by the Employer, the Contractor shall inspect and promptly report in writing to the Superintending Officer any apparent discrepancies or Defects in such work that may materially and adversely affect his execution of the Works. The Superintending Officer shall then issue instructions to the Contractor to resolve the discrepancies or Defects.
- (b) Failure of the Contractor to report to the Superintending Officer of any apparent discrepancies or Defects in such work shall constitute acceptance by the Contractor of the work of such persons or contractors as fit and proper for the purposes of proceeding with the execution of the Works.

32 VALUATION OF VARIATIONS

32.1 Variations

- (a) Subject to Clause 11.3(c) and 11.4(a), the Superintending Officer may at his discretion issue an instruction requiring a Variation and he may confirm in writing pursuant to Clause 11.3(b), any verbal instruction requiring a Variation to the Works. No Variation issued by the Superintending Officer or subsequently confirmed by him shall vitiate this Contract.
- (b) The Contractor shall not make any Variation without an instruction from the Superintending Officer. Provided that no instruction shall be required for an increase or decrease in any stated provisional quantity, where such increase or decrease is the result of carrying out the work covered by the provisional quantity items in order to achieve the specified or directed line, levels, quality or standard of the original extent of the Works.
- (c) If the Contractor considers that an instruction or direction given by the Superintending Officer although not expressly identified as a Variation, is a Variation (including instructions to remedy or re-execute defective work or materials which the Contractor is of the opinion complies with the Contract) then the Contractor shall, within fourteen (14) days of the receipt of such instruction or direction, notify the Superintending Officer of such.
- (d) The Contractor shall carry out with due diligence and expedition all Variations pending the valuation of the Variation by the Superintending Officer.

32.2 Measurement and Valuation for Contract based on Bill of Quantities

- (a) All Variations authorized or subsequently confirmed by the Superintending Officer in writing in accordance with Clause 11.3(b), shall be measured and valued by the Superintending Officer.
- (b) Unless where the quantities of the Works or any part thereof are stated as “Provisional” in the Bills of Quantities, such quantities are conclusive and not subject to re-measurement. For purposes of valuation of Variations in respect of the said Works or part thereof where the quantities are conclusive, unless previously or otherwise agreed, such valuation shall be made in accordance with the following rules:
 - (i) The rates in the Bills of Quantities after adjustment if necessary as provided in Clause 8.1, shall determine the valuation of work of similar character and executed under similar conditions as work priced therein;
 - (ii) 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 Superintending Officer;
 - (iii) The rates in the Bills of Quantities shall determine the valuation of items omitted, provided that if the omission substantially vary the conditions under which any remaining items of work are carried out, the rates of such remaining items shall be valued under rule (ii) of this sub-clause.

- (c) Where the quantities of the Works or any part thereof are stated as “Provisional” in the Bills of Quantities the amount to be paid to the Contractor in respect of the said Works or part thereof upon the completion of this Contract shall be ascertained by re-measurement and valuation of the Works including any Variation authorized or subsequently confirmed by the Superintending Officer in writing under Clause 11, as they are actually executed. The valuation of such re-measured works including any variation shall be in accordance with rules (a) and (b)(ii) above, subject always to Clause 29(b).

32.3 Measurement and Valuation for Contract based on Drawings and Specification.

- (a) All Variations authorized or subsequently confirmed by the Superintending Officer in writing in accordance with Clause 11.3(b), shall be measured and valued by the Superintending Officer.
- (b) The valuation of Variations, unless previously or otherwise agreed, shall be made in accordance with the following rules:
 - (i) The rates in the Schedule of Rates shall determine the valuation of work [other than work involving a whole addition of any item of work priced in the Summary of Tender, which shall be valued in accordance with rule (iii) hereof] of similar character and executed under similar conditions as work priced therein;
 - (ii) The said rates, where work is not of a 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 Superintending Officer;
 - (iii) Where work involves a whole addition of any similar item of work and executed under similar conditions as work priced in the Summary of Tender, the price of such item of work in the Summary of Tender shall be the basis of the valuation of the said item of work;
 - (iv) The rates in the Schedule of Rates shall determine the valuation of work omitted; provided that if omission involves a whole omission of any item of work in the Summary of Tender, the price of such item of work in the Summary of Tender shall be the basis of valuation of the item omitted.

32.4 Dayworks

Where work cannot properly be measured or valued, the Contractor shall be allowed dayworks price for the work concerned. Provided always that as a condition precedent to any right to any payment, the Contractor shall have received from the Superintending Officer an instruction authorizing that the varied work be executed on dayworks basis and the Contractor shall produce vouchers, receipts and wage books specifying the time for labour and plant employed and materials used to the Superintending Officer not exceeding seven (7) days after the work have been done. Unless otherwise provided in the Schedule of Rates, the dayworks price for the purpose of this Contract shall be taken which include for the cost of all materials, labour, plant, tools, scaffolding, supervision and profit.

32.5 Variation Proposal from Contractor

If the Contractor proposes or submits a Variation to the Superintending Officer for approval (which term shall include agreement and the like), the Superintending Officer may do so in writing. Such approval may be conditional, and unless otherwise directed by the Superintending Officer, the Contractor shall not be entitled to any extension of time, nor any extra payment but subject to deduction if applicable in respect of such Variation, or anything arising out of such Variation which would not have arisen had such Variation not been approved. The Superintending Officer is not obliged to approve such a proposed or submitted Variation.

32.6 Notice for Measurement

The Superintending Officer shall when he requires any part or parts of the Works to be measured give reasonable notice to the Contractor who shall attend to assist the Superintending Officer or the Contractor's Representative in making such measurement and shall furnish all particulars required by the Superintending Officer. Should the Contractor or the Contractor's Representative not attend then the measurement made by the Superintending Officer or approved by him shall be taken to be the correct measurement of the work which shall be final and binding on the Contractor. The Contractor shall be supplied with a copy of the measurements in respect of the said part or parts of the Works.

32.7 Adjustment to Contract Sum

The amount to be allowed in respect of Variations, as ascertained under the provisions of this Contract shall be added to or deducted from the Contract Sum as the case may be.

33 INTERIM CERTIFICATES AND PAYMENT TO CONTRACTOR

33.1 Interim Certificate and Payment to Contractor

At the period of interim certificates stated in the Appendix, the Contractor shall, subject to Clauses 10, 15.3, 25 and 26.6 be entitled to the issue by the Superintending Officer of a certificate stating the amount due to the Contractor from the Employer, and shall be entitled to payment within thirty (30) days from the issue of any such certificate. Where payments are delayed beyond this period, such delay shall not be a breach of Contract, nor a ground for an extension of time.

Provided that:

- (a) the Superintending Officer shall not be required to issue such certificate until fourteen (14) days after receipt from the Contractor of a detailed written application therefor; and
- (b) the Superintending Officer shall not be required to issue any such certificate if the amount due is less than the minimum stated in the Appendix.

33.2 Amount Due for Payment

The amount so due shall, subject to Clause 32 and to any agreement between the parties as to interim payments, be the total value of the work properly executed and of the materials, goods and Equipment delivered upon the site for use in the Works up to and including a date not more than seven (7) days before the date of the said written application, less the amounts to be retained or deducted by the Employer and less any amounts previously paid under this clause.

The amount stated as due in the interim certificate pursuant to Clauses 32.7 and 29(a) shall be paid up to seventy-five (75) percent where the amount due is not yet certified and approved by the Employer, who has expressly reserve this to the relevant officer(s) named in the Appendix;

- (a) Provided that such certificate shall only include the value of the said materials, goods and Equipment as and from such time as they are reasonably, properly and not prematurely brought upon the Site and then only if adequately stored and/or protected against weather or other casualties. The amount stated as due in the interim certificate for the value of the unfixed materials, goods and Equipment shall be up to seventy-five (75) percent of their value, as stated in the Contract Documents or as valued by the Superintending Officer;
- (b) Provided always that :
 - (i) articles supplied and delivered had been paid by the Contractor with proof of payment via invoices and receipts before a subsequent payment is made; and
 - (ii) articles used for Temporary Works are not payable.

34 COMPLETION OF WORKS

34.1 Date for Completion

Subject to any requirements as to the completion of any section or part of the Works under Clauses 35 and 36 before the completion of the whole of the Works, the Contractor shall bring the whole of the Works to Practical Completion on or before the date for Completion or such extended time as may be allowed under Clause 41. The date for Completion shall be calculated from the date of possession of Site pursuant to Clause 13 and the Time for Completion stated in the Appendix.

34.2 Notification in Writing

When the Contractor considers that the Works have achieved Practical Completion, he shall notify the Superintending Officer in writing to that effect.

34.3 Inspection of Works

Within fourteen (14) days of receipt of such notice, the Superintending Officer shall carry out an inspection of the Works and shall do either one of the following:

- (a) issue to the Contractor a Certificate of Practical Completion if in his opinion the whole of the Works have achieved Practical Completion. The date of such completion shall be certified by the Superintending Officer and such date shall be the date of the commencement of the Defect Liability Period as provided in Clause 37, or

- (b) give instructions to the Contractor specifying all the works which in his opinion are required to be completed by the Contractor before the issue of a Certificate of Practical Completion. The Contractor shall not be entitled to the Certificate of Practical Completion until the works specified in the said instructions have been completed to the satisfaction of the Superintending Officer.

35 SECTIONAL COMPLETION

35.1 Where Stated in Contract

Where different Times for Completion for different sections of the Works are stated in the Appendix and a different and separate Liquidated and Ascertained Damages are provided for each such section of the Works, the provision of the Contract in regard to:

- (a) Clause 34 (Completion of Works);
- (b) Clause 37 (Defects After Completion);
- (c) Clause 38 (Retention Money);
- (d) Clause 40 (Damages for Non-Completion); and
- (e) Clause 41 (Delay and Extension of Time);

shall, in the absence of any express provision to the contrary elsewhere in the Contract Documents apply “mutatis mutandis” as if each such section or part was the subject of a separate and distinct contract between the Employer and the Contractor.

35.2 Where Agreed by Employer

Where the Employer agrees to accept a section or part of the Works which has reached Practical Completion, but which section or part is not so stated or identified in the Contract Documents, such section or part (being hereinafter referred to as the occupied part) shall then be treated in accordance with Clause 35.1, with the Liquidated and Ascertained Damages for the remaining works to which the occupied part belongs being reduced in the proportion which the value of the occupied part bears to Contract Sum for the remaining work.

36 PARTIAL OCCUPATION BY EMPLOYER

36.1 Partial Occupation with Consent

If at any time or times before the whole of the Works have reached Practical Completion, the Employer with the consent of the Contractor shall take possession of and occupy any part or parts of the same (any such part being hereinafter referred to as the occupied part), then notwithstanding anything expressed or implied elsewhere in this Contract:

- (a) within fourteen (14) days from the date on which the Employer shall have taken possession of the occupied part the Superintending Officer shall issue a Certificate of Partial Occupation stating the estimated value of the said occupied part, and for all the purposes of this Contract (but for no other) the value so stated shall be deemed to be the total value of the said occupied part;

- (b) for the purposes of Clauses 34, the occupied part shall be deemed to have reached Practical Completion and the Defects Liability Period in respect of the occupied part shall be deemed to have commenced on the date on which the Employer shall have taken possession and occupied thereof.

36.2 Consequential Effect

- (a) At the end of the Defects Liability Period of the occupied part and if in the opinion of the Superintending Officer any Defects whatsoever in the occupied part which he may have required to be made good under Clause 37, shall have been made good by the Contractor, the Superintending Officer shall issue a certificate to that effect.
- (b) Notwithstanding the partial occupation by the Employer of the occupied part the Contractor shall insure and keep insured the Works in the manner as stipulated under Clause 25 and the Contractor shall give notice to the insurer of such partial occupation.
- (c) The Liquidated and Ascertained Damages specified under Clause 40 for any period of delay after such certification of the Practical Completion of the occupied part under this clause, shall be reduced in the proportion which the total value of the occupied part bear to the Contract Sum.

36.3 Occupation of Part without Consent

- (a) The Employer may enter and occupy such part of the Works prior to the completion of the whole of the Works without the consent of the Contractor pursuant to Clause 36.1 provided that:
 - (i) the completion of the Works has been delayed, and
 - (ii) such entry and occupation of such part of the Works by the Employer can be effected without any unreasonable disturbance to the Contractor's arrangements for completing the remainder of the Works.
- (b) The Contractor shall upon the instruction of the Superintending Officer remove his construction plant or Temporary Works from the occupied part and permit the Employer to occupy the same and the provisions of this clause shall apply in the same manner as if the Contractor had consented to the Employer taking possession of such part.

37 DEFECTS AFTER COMPLETION

37.1 Defects Liability Period

At any time during the Defects Liability Period as stated in the Appendix (or if none stated the period is twelve (12) months from the date of Practical Completion of the Works), any Defects whatsoever which may appear and which are due to materials, goods, Equipment or workmanship not in accordance with this Contract, shall be notified by the Superintending Officer in a written instruction to the Contractor who shall, within a reasonable time to be specified therein by the Superintending Officer make good such Defects at the Contractor's own costs.

37.2 Schedule of Defects

Notwithstanding Clause 37.1 above, any Defects which may appear during the Defects Liability Period and requires to be made good by the Contractor, shall be specified by the Superintending Officer in writing to the Contractor in the Schedule of Defects, not later than fourteen (14) days after the expiration of the Defects Liability Period. The Defects specified in the schedule of Defects shall be made good by the Contractor at his own costs and are to be completed within a reasonable time specified therein but in any case not later than three (3) months after the receipt of the said Schedule. Provided that the Superintending Officer shall not be allowed to issue any further instruction requiring making good of any Defects after the issue of the said schedule of Defects or after fourteen (14) days from the expiration of the said Defects Liability Period, whichever is the later, except those instructions relating to the Contractor's remedial work, and such earlier remedial work for which a Defects liability still applies pursuant to Clause 37.5.

37.3 Default of Contractor

If the Contractor shall fail to comply with either Clause 37.1 or 37.2 or both within the time so specified, the Works so affected may be made good in such manner as the Superintending Officer may think fit, in which case the costs thereby incurred shall be deducted from any money due or to become due to the Contractor under this Contract and failing which such costs shall be recovered from the Performance Security or as a liquidated demand in money.

37.4 Diminution in Value of Works

If any Defects whatsoever be such that, in the opinion of the Employer, it shall be impracticable or inconvenient to the Employer to have the Contractor to remedy the same, the Superintending Officer shall ascertain the diminution in the value of the Works due to the existence of such Defects (including but not limited to loss of functionality) and deduct the amount of such diminution from any money due or to become due to the Contractor under this Contract, and failing which such diminution shall be recovered from the Performance Security or as a liquidated demand in money.

37.5 Defects Liability Period for Remedial Works

If it becomes necessary for the Contractor under Clauses 37.1 and 37.2 above to execute any remedial work, the provisions of this Contract relating to the Works shall apply to the remedial work as if it were the Works and the Defects Liability Period for such remedial work shall be the Defects Liability Period or, as the case may be, to the separable part of the Works on which the remedial work is completed and accepted, all as stated in the Appendix (if none is stated, it shall be deemed to follow Clause 37.1).

37.6 Certificate of Completion of Making Good Defects

Subject to Clause 37.5, when in the opinion of the Superintending Officer the Contractor has made good the Defects which he is required to make good under Clauses 37.1 or 37.2, or both, the Superintending Officer shall issue a Certificate of Completion of Making Good Defects and the date named in such certificate shall be the date on which the Contractor has completed making good such Defects.

37.7 Remedial Work not to interfere with Usage of Facility

The remedial work shall be carried out with the minimum interference to the usage of the facility, with the method and programming of such remedial work to be agreed by the Superintending Officer, prior to the commencement of such work.

37.8 Testing of Remedial Work

If any remedial work is of such a character as may affect the efficiency or adequacy of the Works the Superintending Officer may, within one (1) month after completion of that remedial work, notify the Contractor that further tests are to be made in accordance with Clause 7. The costs of such further tests shall be borne by the Contractor.

37.9 Contractor's Right of Access

Until the Certificate of Completion of Making Good Defects is issued, the Contractor and his duly authorized representatives whose names have been previously communicated in writing to the Superintending Officer shall, for the purposes of carrying out any remedial work or making any tests or inspections and subject to the approval and requirements of the Superintending Officer, have the right of entry in so far as it may be necessary for all or any of those purposes, at the Contractor's own risk and costs and at all reasonable times to the Works. Any action taken by the Contractor for any of the purposes expressed in this clause shall not disrupt or inconvenience the normal activities of the users of the Works.

37.10 Use of the Works by Employer

Subject to Clauses 37.7 and 37.9 above and to any restrictions on the use of the Works that the Superintending Officer may determine to be necessary for the execution of remedial work by the Contractor, the Employer and any person or persons authorized by the Employer (which shall be deemed to include the users of the facility) shall have the full, free and unrestricted use of the Works without interference on the part of the Contractor during the Defects Liability Period specified in this Contract. Such use of the Works by the Employer and any person or persons so authorized by him shall not relieve the Contractor from any liability or obligation under this Contract.

37.11 Unfulfilled Obligations

Notwithstanding the issue of the Certificate of Completion of Making Good Defects under Clause 37, the Contractor and the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the said certificate which remains unfulfilled at the time such certificate is issued and, for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties hereto.

38 RETENTION MONEY

38.1 Amount Retained

The amount which may be retained by the Employer by virtue of this clause shall be ten (10) percent of the value of the work and materials, goods and Equipment as in Clause 33.2 and up to the amount stated in the Appendix as Limit of Retention Money. Provided that where in accordance with Clauses 35 and 36, the Works are taken over in sections that limit shall be reduced for each section so taken over in proportion to the value of that section or as stated in the Appendix.

38.2 Release of Retention Money

On Practical Completion of the Works in accordance with Clause 34 or of any section thereof in accordance with Clauses 35 and 36, the Superintending Officer shall issue a certificate for one half of the amount so retained in respect of the Works or of that section thereof, and the other half shall be included in the Superintending Officer's Final Certificate.

39 FINAL CERTIFICATE

39.1 Issue of Final Certificate

Within three (3) months after the expiry of the Defects Liability Period for the whole of the Works or three (3) months after the issue of the Certificate of Completion of Making Good Defects under Clause 37, whichever is the later, the Superintending Officer shall issue the Final Certificate, subject to Clause 4.6, 13.3, 15.3 and the following sub-clauses.

39.2 Final Certificate shall be Conclusive Evidence

- (a) The Final Certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under Clause 43 or otherwise) that the Works have been properly carried out and completed, properly and accurately measured and valued in accordance with this Contract, save as regards any matter in respect of which notice in writing shall have been given in accordance with Clauses 43 before the Final Certificate has been issued and save in so far it is proven in the said proceedings that any sum mentioned in the said certificate is erroneous by reason of:
- (i) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said certificate; or
 - (ii) any defect (including any omission) in the Works which reasonable inspection or examination at any reasonable time during the course of the execution of the Works or before the issue of the said certificate would not have disclosed; or
 - (iii) any accidental inclusion or exclusion of any work, material or figure in any computation or any mathematical error in any computation.
- (b) Except for Clause 39.2(a) above, no certificate of the Superintending Officer shall of itself be conclusive evidence either that any work or materials to which it relates are in accordance with this Contract, or of the value thereof, and any amount included in any interim certificate may be revised or omitted in any subsequent certificate.

39.3 Submission of Claim Documents for Final Certificate

As soon as is practical but not later than three (3) months after Practical Completion of the Works, the Contractor shall submit full particulars of all claims made by him under Clause 43 together with any documents, supporting vouchers and any explanations and calculations including documents relating to the accounts of nominated sub-contractors or nominated suppliers, which may be necessary to enable the final account to be prepared by the Superintending Officer. Provided always the Contractor had given the notice and details of claims in writing within the stipulated time or times in the said provisions.

39.4 Sums Certified in the Final Certificate

The Final Certificate shall be supported by documents showing the Superintending Officer's final valuation of Works in accordance with the terms of this Contract and after setting out or allowing for all payments or other expenditure of the Employer or any permitted deductions made by the Employer or the Superintending Officer on its behalf, shall state any final balance due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be, which shall thereupon become the debt payable. Such certificate shall also take account of any outstanding permitted deductions not yet made by the Employer under the terms of this Contract whether by way of Liquidated and Ascertained Damages or otherwise.

Provided always that no payment due to the Contractor under the Final Certificate shall be made unless and until the Contractor shall have satisfied the Superintending Officer by means of either:

- (a) a statutory declaration made by or on behalf of the Contractor, or
- (b) a certificate signed by or on behalf of the Director of Labour

to the effect that the workmen who have been employed by the Contractor on the Works, including workmen employed by sub-contractors, whether nominated or otherwise (including "labour only" sub-contractors) have received all wages due to them in connection with such employment, and that all dues or contributions under the Labour Ordinance, the Employee's Social Security Act (1969), the Employee's Provident Fund Act (1991) and any other laws relevant to the employment of workmen, have been paid.

40 DAMAGES FOR NON-COMPLETION

40.1 Deduction for Liquidated and Ascertained Damages

If the Contractor fails to complete the Works within the Time for Completion stated in the Appendix or within any extended time fixed under Clause 41, the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said Appendix as Liquidated and Ascertained Damages for the period during which the said Works shall so remain or have remained incomplete, and the Employer may deduct such damages from any sums otherwise payable to the Contractor.

40.2 Liquidated and Ascertained Damages Reduction for Works Taken Over in Sections

Provided that where in accordance with Clause 35, the Works are taken over in sections, the rate of Liquidated and Ascertained Damages shall be reduced for each section so taken over as provided by the Contract Documents or as decided by the Employer.

41 DELAY AND EXTENSION OF TIME

41.1 Condition Precedent Notice

Where the progress of the Works is delayed by any cause or causes in such a manner which might reasonably be expected to result in delay in the Works reaching Practical Completion within the relevant time referred to in Clause 34, it is a condition precedent that the Contractor shall, as soon as practicable and (other than for exceptionally inclement weather as covered below) in any event not later than seven (7) days after the cause of the delay first arose, give a notice in writing to the Superintending Officer:

- (a) stating, with as much detail as is possible, the nature of the cause of the delay and, where possible, the extent of the delay; and
- (b) stating the steps being taken to alleviate and otherwise deal with the delay and the cause thereof.

41.2 Details Required after Notice

As soon as practicable and in any event not later than thirty (30) days after giving the notice under Clause 41.1, the Contractor shall, where he wishes to claim an extension of time, give a further notice in writing to the Superintending Officer stating a fair and reasonable time by which in his opinion the time for Practical Completion of the Works should be extended and also:

- (a) stating all relevant details of the nature of the cause of the delay and the extent of the delay claimed;
- (b) making reference to the critical activities of the construction works programme and clearly showing how the delay involves an activity which is critical to the maintenance of progress in the execution of the Works so as to achieve Practical Completion within the relevant time referred to in Clause 34; and
- (c) stating the effect of the steps which have been taken to alleviate and otherwise deal with the delay and the cause thereof.

41.3 Decision by Superintending Officer

Subject to compliance with Clauses 41.1 and 41.2, unless otherwise decided by the Superintending Officer, and subject to the Contractor having provided the Superintending Officer with such other information and material as the Superintending Officer may request in order to demonstrate and support the effect on the critical path of the Works and the delay in the Works reaching Practical Completion, he shall, as soon as practicable after the delay has terminated and the Contractor has provided such other information and material as the Superintending Officer may have requested and subject to Clause 11.4, determine what, if any, extension of time for Practical Completion of the Works shall be granted to the Contractor and shall thereupon notify the Contractor in writing accordingly.

41.4 Separable Part of Works

Where the Contract specifies that a separable part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date provided for Practical Completion of the Works the provisions of this clause shall apply to, and with respect to, the extension of time for Practical Completion of that separable part of the Works; and for that purpose reference in this clause to the Works shall be read as references to that separable part of the Works.

41.5 Causes of Delay

The Contractor shall only be entitled to an extension of time for Practical Completion of the Works where such delay satisfies the following:

- (a) The cause of the delay arises only out of one or more of the following:-
 - (i) by force majeure;
 - (ii) by reasons of any exceptionally inclement weather;
 - (iii) by reasons of directions given by the Superintending Officer consequential upon disputes with neighbouring owners provided the same is not due to any act, negligence or default of the Contractor or any sub-contractor, nominated or otherwise;
 - (iv) by reason of loss or damage occasioned by any one or more of the contingencies referred to in Clause 25 (provided and to the extent that the same is not due to any act, negligence, default or breach of contract by the Contractor or any sub-contractor, nominated or otherwise, whether in failing to take reasonable steps to protect the Works or otherwise), and excluding work or actions which the Contractor is required to have allowed for in his tender;
 - (v) by reason of Superintending Officer's instructions issued under Clause 11.3, provided that such instructions are not issued due to any default or breach of contract by the Contractor or sub-contractor, nominated or otherwise;
 - (vi) by reason of the Contractor not having received in due time necessary instructions, drawings, levels or instructions in regard to the nomination of sub-contractors and/or suppliers provided in this Contract, from the Superintending Officer and for which he shall have specifically applied in writing on a date which, having regard to the date for Completion stated in the Appendix or to any extension of time then fixed under this Contract, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;

- (vii) by reason of delay in giving possession of the Site as provided under Clause 13;
 - (viii) by reason of any action due to local combination of workmen, strike, or lockout affecting any of the trades employed upon the Works, provided the same are not due to any unreasonable act, neglect or default of the Contractor or of any sub-contractor, nominated or otherwise;
 - (ix) by delay on the part of independent contractors or others engaged by the Employer in executing work not forming part of this Contract;
 - (x) by the Contractor's inability for reason beyond his control and which he could not reasonably have foreseen at the date of closing of tender of this Contract to secure such goods and/or materials and/or Equipment as are essential to the proper carrying out of the Works;
 - (xi) by reason of any action due to civil disturbance;
 - (xii) where in relation to any work items under this Contract for which a Provisional Sum and/or provisional quantity has been allowed, the final aggregated value of all such work items is more than twenty (20) percent greater than the aggregated value allowed for all such work items, owing to increased scope of work or quantities; or
 - (xiii) by delay on the part of nominated sub-contractor and/or nominated suppliers of their works, and such delay shall be caused by the same reasons affecting their work as stated above in sub-clauses (i) to (xii) inclusive (provided that the same are not due to any act, negligence, default or breach of supplier and/or the Contractor, or any of the servants or agents of such nominated sub-contractor or nominated supplier or the Contractor);
- (b) the delay is not due to, or concurrent with, any act, negligence, default or breach of contract by the nominated sub-contractor and/or nominated supplier and/or the Contractor, or any of the servants or agents of such nominated sub-contractor or nominated supplier or the Contractor, and, other than that related to exceptionally inclement weather under sub-clause (a)(ii) above, occurs during approved working hours as defined by Clause 17; and
- (c) the Contractor has:
- (i) complied strictly with the provisions of Clause 41.1, and in particular has given the required notices strictly in the manner and within the times stipulated therein, unless otherwise decided by the Superintending Officer;
 - (ii) complied with any reasonable instructions of the Superintending Officer with respect to the cause of the delay;
 - (iii) taken all proper and reasonable steps necessary and within his control both to preclude the occurrence of the cause of the delay and/or to avoid or minimize the consequences thereof and shall have demonstrated this to the satisfaction of the Superintending Officer;
 - (iv) demonstrated to the satisfaction of the Superintending Officer that the delay has occurred on the critical path of the Works and will cause or has caused the Contractor to be delayed in reaching Practical Completion of the Works as a whole; and
 - (v) the delay is not concurrent with any other extension of time already, or being, granted.

Provided always the Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Superintending Officer to proceed with the Works. The certificate issued by the Superintending Officer under this clause shall be referred to as the Certificate of Delay and Extension of Time.

41.6 Exceptionally Inclement Weather

Extension of time for exceptionally inclement weather shall, subject to the requirement of Clause 41.5 be limited to the increase in “unworkable days” for each month, when compared with the “normal average unworkable days” computed from the last 5 years rainfall data of the specified Drainage and Irrigation Department (DID) rainfall station, (or nearest to the Site if not specified), for the same month, with such increase in “unworkable days” for the month being the entitlement for an extension of the contract period in calendar days.

An “unworkable day” is one where more than 10 mm rainfall was recorded for that day.

The Contractor shall be deemed to have allowed in his tender and in the programming of the Works for all other delays relating to non-exceptionally inclement weather and its effect, and no claims additional to the above shall be entertained.

42 CLAIMS OF LOSS AND EXPENSE CAUSED BY DELAY

If the regular progress of the Works or any part thereof has been materially affected by reasons as stated under Clause 41.5 (a)(iii), (vi) and (ix) (and no other), and the Contractor has incurred direct loss and/or expense beyond that reasonably contemplated and for which he would not be reimbursed by a payment made under any other provisions in this Contract, then the Contractor shall make his claim for such loss and/or expense in accordance with Clause 43, except that in the case of ongoing delays, the time limit for the provision of the substantiated claim shall apply from when the cause of the delay has ceased, or such other time as agreed by the Superintending Officer.

43 CLAIMS, DISPUTES AND DISPUTE RESOLUTION

43.1 Contractor’s Claims and Conditions Precedent

The Contractor shall not have any right to submit any claims, initiate any action or proceedings against the Employer, whether in contract or tort (including negligence), unjust enrichment or, in so far as legally possible, pursuant to any other principle of law in respect of any matter, fact or thing whatsoever arising out of or in connection with or under this Contract or the Works (hereinafter referred to as “the event”), unless:

- (a) the Contractor has given the Superintending Officer written notice of his intention to claim not later than fourteen (14) days after the Contractor could reasonably have been aware of the event;
- (b) the Contractor lodges the claim within thirty (30) days after giving the notice in writing pursuant to the preceding paragraph, the form of the claim complying with Clause 43.1 (c) below and when lodging the claim, the Contractor provides the Superintending Officer with sufficient detailed particulars to enable the Superintending Officer to make an informed decision in respect of the claim; and

- (c) each claim is in writing and specifies:
 - (i) the basis for the claim, whether based on a term of the contract or otherwise, and if based on a term of the contract, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the claim in sufficient detail to permit verification; and
 - (iii) details of the quantification of the sums or amounts claimed, sufficient to show clearly the sums or amounts claimed in respect of the claim and the manner in which they have been calculated.

Subject to Clause 11.4, the Superintending Officer shall thereafter determine the amount considered to be due to the Contractor, if any, and advise the Contractor of his assessment, and the Contract Sum shall be adjusted accordingly.

43.2 Employer's Claims

Where the Employer considers he has valid claim(s) against the Contractor, he shall notify the Contractor and the Superintending Officer of such claim, together with details thereof, at least two (2) months before the issue of the Final Certificate, (unless such claim be related to any of the conditions stated in Clause 39 which release the Final Certificate from its conclusiveness), EXCEPT that in the case of the application of Liquidated and Ascertained Damages and other deductions for costs and the like as permitted under this Contract, the inclusion of such deductions in the interim certificates shall be sufficient notification.

43.3 Disputes and Dispute Resolution

(a) Dispute Resolution Stages

If any dispute or difference shall arise between the Employer and/or the Superintending Officer and the Contractor, either during the progress or after completion of the Works, or after the determination of the Contractor's employment, or breach of this Contract, as to:

- (i) the construction of this Contract; or
- (ii) any matter or thing of whatsoever nature arising under this Contract; or
- (iii) the withholding by the Superintending Officer of any certificate to which the Contractor may claim to be entitled,

subject nevertheless to Clause 43.1, then such dispute or difference shall be decided as follows:

- (aa) the Contractor shall, not later than fourteen (14) days after the dispute or difference arises, submit the matter at issue in writing, by hand or by registered mail, specifying with detailed particulars the matter at issue (which in the case of claims covered by Clause 43.1 shall be limited to the particulars notified by the Contractor under that clause), to the Superintending Officer for decision, and the Superintending Officer shall, as soon as practicable thereafter, give his decision to the Contractor;

- (bb) if the Contractor is dissatisfied with the decision given by the Superintending Officer pursuant to (aa) above, he may, not later than fourteen (14) days after the decision of the Superintending Officer is served, submit the matter at issue in writing by hand or by registered mail specifying with detailed particulars the matter at issue, to the Employer for decision and the Employer shall, as soon as practicable thereafter, give its decision to the Contractor in writing. Provided that the detailed particulars of the matter at issue shall be limited to those particulars which the Contractor provided under (aa) above;
- (cc) if the Contractor is dissatisfied with the decision given by the Employer pursuant to (bb) above, he may, not later than twenty-eight (28) days after the decision of the Employer is served, give notice in writing by hand or by registered mail to that effect;
- (dd) the parties shall then, within a further twenty-eight (28) days (or extended time as agreed) seek to agree upon an alternative dispute resolution process to resolve the whole or part of the dispute or difference by means other than litigation or arbitration, including agreement upon:
 - I. the procedure and timetable for any exchange of documentation and other information relating to the dispute or difference;
 - II. procedural rules, timetable and venue for the conduct of the selected mode of proceeding;
 - III. a procedure for the selection and compensation of a neutral person who may be employed by the parties for assisting in resolving the dispute; and
 - IV. whether the parties should seek the assistance of a dispute resolution organization.

(b) Works to Proceed

Notwithstanding the succeeding provisions of this clause, the Contractor shall if the Works under this Contract has not been completed, at all times (subject as otherwise provided for in this Contract) proceed without delay to continue to execute the Works under this Contract and perform his obligations under this Contract and in so doing shall comply with all directions issued or given to or served or made upon the Contractor under or pursuant to the provisions of this Contract either by the Employer in writing or by the Superintending Officer.

(c) Precondition to Arbitration and Litigation

Unless and until a party has complied with the stated conditions, notices and submissions that party may not with respect to any dispute or difference commence proceedings whether by way of arbitration or litigation.

(d) Reference to Arbitration

After the expiration of the time established by, or agreed under, Clause (dd) above for agreement on a dispute resolution process, any party which has otherwise complied with the provisions of this clause, may in writing delivered by hand or by registered mail, terminate the alternative dispute resolution process provided for and thereafter give notice to the other party requiring that such dispute or difference be referred to arbitration and final decision of a person to be agreed between the parties to act as the arbitrator. Such reference to arbitration shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 1952 (Revised 1972) or its current version and the following conditions shall apply:

- (i) the arbitration shall be held at a location to be agreed;
- (ii) the arbitrator's jurisdiction in relation to the arbitration proceedings shall be limited to a determination of those matters which were identified in the original notice provided pursuant to (aa) above, and that in making his determination, the arbitrator shall only be entitled to have regard to those particulars concerning the dispute provided pursuant to (aa) above;
- (iii) the party issuing the notice pursuant to (aa) above shall be absolutely barred from raising or relying upon any particulars other than those provided in such notice;
- (iv) such reference, except on any difference or dispute under Clause 44 hereof, shall not be commenced until after the completion or alleged completion of the Works or determination or alleged determination of the Contractor's employment under this Contract, or abandonment of the Works, unless with the written consent of the Employer and the Contractor;
- (v) upon every or any such reference the costs of such incidental to the reference and award shall be in the discretion of the arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in what manner the same be borne and paid;
- (vi) the award of the arbitrator shall be final and binding on the parties; and
- (vii) in the event of the disability of the arbitrator or his unwillingness or inability to act, then the Employer and the Contractor upon agreement shall appoint another person to act as the arbitrator, and in the event the Employer and the Contractor failing to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of Regional Centre for Arbitration, Kuala Lumpur.

Except that in the case of claims by the Employer pursuant to Clause 43.2, if the Contractor disagrees with the Employer's claim, he shall, not later than fourteen (14) days after the dispute or difference arises, submit the matter at issue in writing, by hand or by registered mail, to the Employer specifying with detailed particulars his defence to the matter at issue, and the Employer shall as soon as practicable thereafter give its decision to the Contractor. If the Contractor is still dissatisfied with such decision, Clause 43.3(a) and (d) above shall apply.

44 DETERMINATION OF CONTRACTOR'S EMPLOYMENT

44.1 Default for Determination

Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects:

- (a) he without reasonable cause suspends the carrying out of the whole or any part of the Works before completion; or
- (b) he fails to proceed regularly and diligently with the Works; or
- (c) he fails to execute the Works in accordance with this Contract or persistently neglects to carry out his obligations under this Contract; or
- (d) he refuses or persistently neglects to comply with a written notice from the Superintending Officer to remove and replace any defective work or improper materials, goods or Equipment; or
- (e) he fails to comply with the provisions of Clauses 10.3, 23, 26 or 27; or
- (f) he persistently refuses or fails to comply with an instruction from the Superintending Officer, which the Superintending Officer is empowered to give under the Contract;

the Superintending Officer may give to him a notice by registered post or by courier service specifying the default, and if the Contractor shall either continue such default for fourteen (14) days after such notice has been sent, or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer may thereupon, by a notice sent by registered post or by courier service determine the employment of the Contractor under this Contract.

44.2 Other Defaults for Determination

If the Contractor:

- (a) commits an act of bankruptcy; or
- (b) becomes insolvent or compounds with or makes arrangement with his creditors; or
- (c) being a company, is having a winding up order made against it; or
- (d) is having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge;

then and in any such event, without prejudice to any other rights it may possess, the Employer may by a notice sent by registered post determine the employment of the Contractor under this Contract.

44.3 Effect of Determination

In the event of the Contractor's employment under this Contract being determined under Clause 44.1 or 44.2 irrespective of the validity of such determination:

- (a) the Employer shall be entitled to repossess the Site and the Contractor shall immediately cease all operations on the Works, remove his personnel and workmen therefrom and yield up possession of the Site leaving all temporary buildings, plant, tools, Equipment, goods and unfixed materials belonging to him upon the Site, save only such as he may at any time be specifically instructed in writing by the Superintending Officer to remove therefrom;
- (b) the Employer may carry out and complete the Works departmentally or employ and pay a contractor or other persons to carry out and complete the Works and he or they may enter upon the Works and use all temporary buildings, plant, tools, Equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works, and may purchase all materials and good necessary for the carrying out and completion of the Works;
- (c) the Contractor shall if so required by the Superintending Officer assign to the Employer without payment the benefit of any agreement for the supply of materials, goods or Equipment for the execution of any work for the purposes of this Contract. In any case the Employer shall have power, but shall not be obliged, to pay any supplier or sub-contractor, whether nominated or privately engaged by the Contractor, for any materials, goods or Equipment delivered or any work executed for the purposes of this Contract (whether before or after the date of determination) for which the Contractor has failed to make payment. The Employer's rights under this paragraph are in addition to its rights to pay nominated sub-contractors and/or nominated suppliers, under Clause 26 and 27. The Contractor shall allow or pay to the Employer all such payments made under this paragraph;
- (d) the Contractor shall as and when required remove from the Site any temporary buildings, plant, tools, materials, goods and Equipment belonging to or hired by him within such reasonable time as the Superintending Officer may specify in a written notice to him and in default the Employer may (but without being responsible for any loss or damage) remove and sell any such property belonging to the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor;
- (e) the Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any loss and/or damage caused to the Employer by the determination of his employment under this Contract. If or as soon as the arrangements for the completion of the Works made by the Employer enable the Superintending Officer to make a reasonably accurate assessment of the ultimate costs to the Employer of completing the Works following the determination of the Contractor's employment and the engagement of other contractors or persons, the Superintending Officer may issue a certificate stating the amount of such loss and/or damage caused to the Employer by such determination of the Contractor's employment. Such certificate shall state separately the sums previously paid to the Contractor by the Employer, the sums paid or due or to become due to other contractors or persons engaged by the Employer to complete the Works, any sums paid to sub-contractors or suppliers under Clause 44.3(c) above and any costs or expenditure incurred by the Employer in completing the Works, (all such costs herein referred as "Completion Costs"). The certificate shall also state the final Contract Sum which, allowing for any Variations or other matters which would have resulted in an adjustment of the original Contract Sum and for any other sums, which the Employer might be entitled under the terms of this Contract to deduct therefrom, would have been payable under this Contract had the Contractor's employment not been determined and if the final Contract Sum is less than the Completion Costs, the difference shall be a debt payable by the Contractor to the Employer. The certificate shall be binding and conclusive on the Contractor as to the amount of such loss and/or damage specified therein; and

- (f) in the event of the completion of the Works being undertaken departmentally, allowance shall be made, when ascertaining the amount to be certified as costs or expense incurred by the Employer, for cost of supervision, interest and depreciation on plant and all other usual overhead charges and profit as would be incurred if the Works were completed by a Contractor or other persons.

44.4 Determination Due to Corrupt Acts

The Employer shall be entitled to determine the employment of the Contractor under this Contract and to recover from the Contractor the amount of any loss resulting from such determination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Employer, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to this Contract or any other contract with the Employer the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Anti-Corruption Act, 1977 (Act 575) or its current version.

45 TERMINATION BY THE EMPLOYER

- (a) If during the performance of this Contract a state of war in which, the Employer is involved or any earthquake arises or exists which, in the opinion of the Employer, has rendered the fulfillment of this Contract impossible, the Employer shall be entitled to terminate the Contract by giving fourteen (14) days notice to the Contractor.
- (b) The Employer shall also be entitled to terminate the Contract without default by the Contractor by giving fourteen (14) days notice to the Contractor.
- (c) Upon termination by the Employer, the Contractor shall be entitled to payment, if any, as provided under Clause 39.4.
- (d) Any dispute by the Contractor arising from this clause shall be settled through dispute resolution as provided in Clause 43.

46 CUSTOMS AND IMPORT DUTIES

46.1 No Exemption

The Contractor shall pay all customs duties and levies payable in respect of any materials, plant, Equipment or any other goods imported into Sarawak by him for the purposes of this Contract, and shall make all entries and pay all other fees and stamp duties in connection therewith. No exemption from duties and levies is granted by virtue of this being a Government Contract, neither is any rebate granted in respect of plant, etc. re-exported after use.

46.2 Subsequent Changes in Duties Payable

The Contract Sum shall be deemed to have been based upon the current rates of Customs import duties and levies on the tender closing date. If during the progress of the Works there is any variation in such rates or in the classes of goods subject to duty and levy then the net increase or decrease in the amount of duty and levy payable by the Contractor and attributed thereto shall be added to or deducted from the Contract Sum, as the case may be, and shall be paid to or allowed by the Contractor accordingly by adjustment of the amounts due under Clauses 8 and 33.

46.3 Limitation

This clause shall only apply to plant, materials, goods or Equipment required to be incorporated in the Works, and shall not apply to Temporary Works, fuel, plant, materials, goods or Equipment used in connection with the Works but not incorporated therein.

47 ANTIQUITIES AND FOSSILS

- (a) All fossils, coins, articles of value, antiquities, structures and other remains, or things of geological, historical or archaeological interest discoveries on the Site of the Works be deemed to be the absolute property of the Employer.
- (b) The Contractor shall take all reasonable precautions to prevent his workmen or any other persons from removing or damaging any such fossils, coins, articles or things and shall, immediately upon discovery and before removal of such fossils, coins, articles or things, inform the Superintending Officer of such discovery and carry out the Superintending Officer's instructions for dealing with the same.
- (c) Any work carried out by the Contractor in accordance with such instructions shall be deemed a Variation, provided that he has the consent of the Employer.

48 FLUCTUATION OF PRICE

The amount payable by the Employer to the Contractor upon the issue by the Superintending Officer of an interim certificate under Clause 33 hereof shall allow for the increase or decrease in accordance with the Special Provisions to the Form of Contract for Fluctuation of Price if so contained in this Contract.

49 GOVERNING LAW

The law governing the Contract shall be the law of Malaysia, and the parties hereby submit to the jurisdiction of the Malaysian Courts for the purpose of any action or proceedings arising out of the Contract.

Appendix to the Form of Contract

Clause

- | | | |
|---------|-------------------------------------------------------------------------------|----------------------------|
| 8.1 | Bill of Quantities | Applicable/ Not-applicable |
| 8.2 | Drawings and Specifications | Applicable/ Not-applicable |
| 11.4 | Officer(s) empowered to take action on behalf of the Employer in respect of : | |
| | Clause 26, 27, 29, 33, 34, 37, 39 | _____ |
| | Clause 11, 28, 35, 40, 41, 42, 43, 44 | _____ |
| 25.2(a) | (i) Percentage of Professional Fees (if Applicable) | _____ |
| | (ii) Removal of debris (if applicable) | RM _____ |
| | (iii) Materials/equipments supplied by the Employer (if applicable) | RM _____ |
| 25.2(b) | Minimum Insurance Cover for: | |
| | (i) any one accident | RM _____ |
| | (ii) any one period | <u>Unlimited</u> |
| 33.1 | Period of Interim Certificates | <u>Monthly</u> |
| 33.1 | Minimum amount in Interim Certificate | RM _____ |
| 33.2 | Officer(s) empowered to certify and approve | _____ |
| 34 | Time for Completion | _____ |
| 35.1 | Sectional Completion (if applicable) | |

Identification of sections or parts	Time for Completion (Clause 34)	Liquidated and Ascertained Damages (Clause 40)

- 37.1 Defects Liability Period _____
- 37.5 Defects Liability Period for Remedial Works _____
- 38.1 Limit of Retention Money Five (5) percent of
Original Contract Sum
- 40.1 Liquidated and Ascertained Damages At the rate of
RM _____
per _____
or part thereof.
- 45 Officer (s) empowered to terminate the
Contract _____