

GOVERNMENT OF MALAYSIA

STANDARD FORM OF CONTRACT PWD FORM 203N (Revised 1/2010)

**For Nominated Sub-Contractor
Where The Main Contract Is Based Upon
PWD Form 203 Or 203A**

Table of Contents

Clauses	Page
1.0 DEFINITIONS AND INTERPRETATION.....	5
1.1 Definitions.....	5
1.2 Interpretation	6
2.0 SUB-CONTRACT DOCUMENTS.....	6
3.0 CONSIDERATION	7
4.0 MAIN CONTRACT.....	7
5.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE SUB- CONTRACTOR.....	7
6.0 NOMINATED SUB-CONTRACTOR'S LIABILITIES.....	8
7.0 EXECUTION OF THE SUB-CONTRACT WORKS.....	9
8.0 PROVISION OF WATER, <i>ETC</i>	9
9.0 STORAGE ACCOMMODATION	9
10.0 TEMPORARY WORKSHOPS, <i>ETC</i>	9
11.0 USE OF SCAFFOLDING.....	9
12.0 INTERFERENCE WITH PROPERTY OF THE OTHER.....	10
13.0 NOMINATED SUB-CONTRACTOR'S PLANT, TOOLS, <i>ETC</i>	10
14.0 ACCESS TO THE SUB-CONTRACT WORKS.....	10
14.1 Making site available to the Nominated Sub-Contractor	10
14.2 Access to the Sub-Contract Works.....	10
15.0 EMPLOYMENT OF WORKMEN	10
16.0 COMPLIANCE WITH EMPLOYMENT ACT 1955, <i>ETC</i>	11
17.0 WAGES BOOKS AND TIME SHEETS	11
18.0 DEFAULT IN PAYMENT OF WAGES	11
19.0 DISCHARGE OF WORKMEN	12
20.0 VARIATIONS	12
21.0 VALUATION OF VARIATIONS.....	12
22.0 DEFECTS LIABILITY	12
22.1 Making good of defects in Sub-Contract Works.....	12
22.2 Defects which the Nominated Sub-Contractor is liable	13
22.3 Defects due to defects in Main Contract Works	13
23.0 SUB-CONTRACTING.....	13

24.0	INSURANCE AGAINST PERSONAL INJURIES AND DAMAGE TO PROPERTY..	14
24.1	Indemnities to both Contractor and Government.....	14
24.2	Taking of insurance	14
24.3	Production of policies	14
24.4	Default in renewing insurance	14
25.0	WORKMEN'S COMPENSATION.....	14
25.1	Indemnities to Contractor and Government.....	14
25.2	Taking of Insurance	15
25.3	Production of policies	15
26.0	EMPLOYEE'S SOCIAL SECURITY ACT 1969	15
26.1	Registration with SOCSO	15
26.2	Contribution to SOCSO	15
27.0	INSURANCE OF SUB-CONTRACT WORKS.....	16
27.1	Contractor's responsibility	16
27.2	Compensation for loss and damage	16
27.3	Insurance of Sub-Contract Works	16
27.4	Observance by Nominated Sub-Contractors	16
28.0	PERFORMANCE BOND	16
28.1	Condition precedent	16
28.2	Application of Performance Bond.....	17
29.0	COMMENCEMENTS AND COMPLETION	17
29.1	Commencement	17
29.2	Completion	17
30.0	DELAYS AND EXTENSION OF TIME	18
30.1	Notice of delays.....	18
30.2	Extension of time	18
30.3	Dispute on failure of S.O. to grant extension of time	18
31.0	DAMAGES FOR NON-COMPLETION.....	18
32.0	SUSPENSION OF SUB-CONTRACT WORKS.....	19
32.1	Suspension and Resumption of Sub-Contract Works	19
32.2	Extension of time	18
32.3	Consequences of mutual termination.....	20
33.0	TERMINATION OF NOMINATED SUB-CONTRACTOR'S EMPLOYMENT.....	20
33.1	Events of Default.....	20
33.2	Termination.....	20
33.3	Consequences of Termination	20
33.4	General Default.....	21
33.5	Consequence of Termination	21
34.0	TERMINATION OF THE CONTRACTOR'S EMPLOYMENT UNDER THE MAIN CONTRACT.....	22
35.0	PAYMENT TO NOMINATED SUB-CONTRACTOR.....	22
36.0	DISPUTES AS TO PAYMENT	22
37.0	FINAL PAYMENT	22
38.0	CONTRACTOR'S RIGHT TO SET-OFF	23

39.0	NOMINATED SUB-CONTRACTOR'S CLAIM TO RIGHTS AND BENEFIT UNDER THE MAIN CONTRACT.....	24
40.0	ARBITRATION	24
41.0	STAMP DUTY	25
42.0	COMPLIANCE WITH THE LAW	25
43.0	FORCE MAJEURE	25
44.0	GOVERNING LAWS.....	26
45.0	NOTICES	27
46.0	SEVERABILITY	27
47.0	AMENDMENT	28
48.0	WAIVER.....	28
49.0	SUCCESSORS BOUND.....	28
50.0	TIME.....	28
	APPENDIX.....	29
	PART I 29	
	PARTICULARS OF MAIN CONTRACT	29
	PART II 31	
	PARTICULARS OF SUB-CONTRACT	31

**STANDARD FORM OF SUB-CONTRACT
FOR
NOMINATED SUB-CONTRACTOR (PWD 203N)**

THIS SUB-CONTRACT is made the day of 20.....

BETWEEN

..... of (or whose registered
office is situated at)
.....
(hereinafter referred to as "Contractor") of the one part;

AND

..... of (or whose registered
office is situated at)
.....
(hereinafter referred to as "Nominated Sub-Contractor") of the other part;

The Contractor and the Nominated Sub-Contractor may individually be referred to as "Party"
or collectively as "Parties".

WHEREAS:

- A. The Contractor has entered into a Contract No: made the
..... day of 200..... (hereinafter referred to as "Main Contract")
between the Government of Malaysia (hereinafter referred to as "the Government") of
the one part and the
..... (to insert
Contractor's name and number) (hereinafter referred to
as "Contractor") of the other part for the
..... (hereinafter
referred to as "Main Contract Works") and particulars of which are as set out in **Part I
of the Appendix** to this Sub-Contract.
- B. The Contractor is desirous of having the execution and completion of the
..... (hereinafter referred to as "Sub-
Contract Works") which form part of the Main Contract Works, in accordance with the
Main Contract.
- C. The Nominated Sub-Contractor has had reasonable opportunity to examine and have
full knowledge of all the provisions of the Main Contract (except the details of the
prices included therein).

NOW IT IS HEREBY AGREED by the Parties as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Sub-Contract (as hereinafter defined) the following words and expressions shall have the meaning hereby assigned to them below except where the context otherwise requires:

"Contractor" means..... (**Insert name of the Contractor as per Main Contract (Co. No.)* and includes its heirs, executors, administrators, successors and permitted assignees;

"Drawing" means the drawings for the purposes of the Sub-Contract Works as attached to this Sub-Contract;

"Main Contract" means the Contract entered into between the Government and the Contractor, particulars of which are set out in **Part I of the Appendix** hereto;

"Main Contract Works" means the works as defined by the Main Contract;

"Nominated Sub-Contractor" means (**insert name of Nominated Sub-Contractor signing (Co. No.)*) and includes its heirs, executors, administrators, successors and permitted assignees;

"S.O." means the Superintending Officer who shall be (**Insert the official designation*) and his successors in office;

"S.O.'s Representative" means any person or persons delegated or authorized in writing by the S.O. to perform any of the duties of the S.O. as may be from time to time notified in writing to act on his behalf for the purpose of the supervision of the Sub-Contract Works;

"Site" means the land and other places on, above, under, in or through which the Works are to be executed and any other land or places provided or approved by the Government for working space or any other purposes as may be specifically designated in this Sub-Contract;

"Specification" means the specifications for the purposes of the Sub-Contract Works as attached to this Sub-Contract; and

"Sub-Contract" means:

- (i) this Sub-Contract (including its Appendices)
- (ii) Form of Tender (PWD203N1);

- (iii) Conditions of Tendering and General Information (PWD203N2);
 - (iv) Letter of Acceptance of Tender (PWD203N4);
 - (v) Drawings;
 - (vi) Specifications;
 - (vii) Letter of Indemnity (PWD203N6 and PWD203N7) to the Government; and
 - (viii) Bill of Quantities/Schedules of Prices/Summary of Tender*
- (* Delete if not applicable)

"Sub-Contract Sum" means the sum of Ringgit Malaysia.....(RM.....); and

"Sub-Contract Works" means..... and as described in **Part II of the Appendix** hereto;

1.2 Interpretation

- (a) The terms "approved" or "approval" and "directed" or "direction" wherever used in this Sub-Contract shall be in writing.
- (b) Words importing singular only also include the plural and vice versa where the context requires.
- (c) The shoulder notes in this Sub-Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of this Sub-Contract.
- (d) The appendices hereto and any document herein referred to shall be taken, read and construed as an essential and integral part of this Sub-Contract and in the event of conflict between the terms of any of the appendices and the terms of this Sub-Contract, the terms of this Sub-Contract shall prevail over those of the appendices.

2.0 SUB-CONTRACT DOCUMENTS

The following documents shall be deemed to form and be read and construed as part of this Sub-Contract:

- (a) this Sub-Contract (including its Appendices);
- (b) Form of Tender (PWD203N1);
- (c) Conditions of Tendering and General Information (PWD203N2);
- (d) Letter of Acceptance of Tender (PWD203N4);
- (e) Drawings;
- (f) Specification;
- (g) Letter of Indemnity (PWD203N6 and PWD203N7); and

- (h) Bill of Quantities/Schedules of Prices/Summary of Tender*.

(*Delete if not applicable)

3.0 CONSIDERATION

- (a) In consideration of the payments to be made by the Contractor to the Nominated Sub-Contractor as hereinafter mentioned, the Nominated Sub-Contractor hereby covenants with the Contractor to execute and complete the Sub-Contract Works in conformity in all respects with the provisions of this Sub-Contract.
- (b) The Contractor hereby covenants to pay the Nominated Sub-Contractors, in consideration of the execution and completion of the Sub-Contract Works, the Sub-Contract Sum or such other sum as shall become payable at the times and in the manner specified in this Sub-Contract.

4.0 MAIN CONTRACT

The Nominated Sub-Contractor shall be deemed to have examined the Main Contract or a copy thereof and to have full knowledge of all the provisions of the Main Contract except the details of the prices included therein.

5.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE SUB-CONTRACTOR

5.1 Representations and Warranties

The Sub-Contractor hereby represents and warrants to the Contractor that—

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it has obtained a valid registration with the Construction Industry Development Board;
- (c) it has the corporate power to enter into and perform its obligations under this Contract and to carry out the transactions and to carry on its business as contemplated by this Contract*;
- (d) it has taken all necessary corporate actions to authorize the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract*;
- (e) as at the execution date, neither the execution nor performance by it of this Contract nor any transactions contemplated by this Contract will violate in any respect any provision of—
- (i) its Memorandum and Articles of Association; or
- (ii) any other document or agreement which is binding upon it or its asset*;
- (f) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this Contract;

(g) this Contract constitutes a legal, valid and binding obligation of the Contractor and is enforceable in accordance with its terms and conditions;

(h) it has necessary financial and technical capability to undertake the Works;

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

5.2 Undertakings of the Sub-Contractor

The Sub-Contractor undertakes that-

- (a) it shall comply with all requirements, statutory or otherwise, regulating or relating to the conduct, trade, business or profession of a contractor, and the Sub-Contractor shall be fully and solely liable for all costs incurred thereby;
- (b) it shall pay all taxes that may be imposed on the profits made in respect of this Contract in accordance with the applicable laws; and
- (c) it shall ensure that all his employees, including non-Malaysian personnel, comply with all relevant laws to which they are subject to including payment of income tax, which in respect thereto the Sub-Contractor shall make such deductions from the salaries of his employees as may be lawfully imposed by the relevant authority.

6.0 NOMINATED SUB-CONTRACTOR'S LIABILITIES

6.1 Compliance with the provisions of the Main Contract

- (a) The Nominated Sub-Contractor shall observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be observed, performed and complied with in so far as they relate and apply to the Sub-Contract Works (or any portion of the same) and are not repugnant to or inconsistent with the express provision of this Sub-Contract as if all the same were severally set out herein.

6.2 Indemnity to Contractor

- (b) The Nominated Sub-Contractor shall indemnify and save harmless the Contractor, against and from-
 - (i) any breach, non-observance or non-performance by the Nominated Sub-Contractor, his servants or agents of the said provisions of the Main Contract or any of them;
 - (ii) any act or omission of the Nominated Sub-Contractor, his servants or agents which involve the Contractor in any liability to the Government under the Main Contract;
 - (iii) any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Nominated Sub-Contractor, his servants or agents (including any wrongful use by him or them of the scaffolding referred to in clause 10 of this Sub-Contract or other property belonging to or provided by the Contractor); and
 - (iv) any loss or damage resulting from any claim under any statute in force for the time being by an employee of the Nominated Sub-Contractor in respect of personal injury arising out of or in the course of his employment.

PROVIDED ALWAYS THAT nothing in this Sub-Contract shall impose any liability on the Nominated Sub-Contractor in respect of any negligence or breach of duty on the part of the Government, the Contractor, his other sub-contractors of their respective servants or agents nor create any privity of Contract between the Nominated Sub-Contractor and the Government or any other sub-contractor.

7.0 EXECUTION OF THE SUB-CONTRACT WORKS

The Nominated Sub-Contractor shall execute and complete the Sub-Contract Works so as to enable the Contractor to discharge his obligations under the Main Contract in so far as they relate and apply to the Sub-Contract Works or to any portion of the same in accordance with this Sub-Contract and in all respects to the reasonable satisfaction of the Contractor and of the S.O. or S.O.'s Representative and in conformity with all the reasonable directions and requirements of the Contractor including all reasonable rules of the Contractor (so far as they may apply) for the time being regulating the due carrying out of the Main Contract Works.

8.0 PROVISION OF WATER, ETC

If and so far as it is so provided in the Main Contract (but not otherwise), the Contractor shall supply at his own cost all necessary water, lighting, power, security and attendance for the purpose of the Sub-Contract Works. Notwithstanding thereto, the Nominated Sub-Contractor shall make all necessary provisions in regard to the said matters if such provisions are specifically stated in this Sub-Contract.

9.0 STORAGE ACCOMMODATION

Unless otherwise provided in the Specification or elsewhere under this Sub-Contract, the Contractor shall provide suitable storage place on the Site for the proper storage of materials or goods delivered to the site for use in the Sub-Contract Works and it shall be the Contractor's sole responsibility to indemnify the Nominated Sub-Contractor against any loss or damage of the same.

10.0 TEMPORARY WORKSHOPS, ETC

Save as otherwise provided in the Main Contract, the Nominated Sub-Contractor shall, at his own cost and expense, provide and erect all necessary workshops, sheds or other buildings for his employees and workmen at such places on the Site as the Contractor shall appoint and the Contractor agrees to give all reasonable facilities to the Nominated Sub-Contractor for such erection.

11.0 USE OF SCAFFOLDING

The Nominated Sub-Contractor, his employees and workmen together with all other persons having the same rights shall, for the purposes of the Sub-Contract Works (but not further or otherwise), be entitled to use any scaffolding belonging to or provided by the Contractor while it remains so erected upon the Site.

PROVIDED THAT such use as aforesaid shall be on the express condition that no warranty or other liability on the part of the Contractor or of his other sub-contractors shall be created or implied in regard to the fitness, suitability or other conditions of the said scaffolding.

12.0 INTERFERENCE WITH PROPERTY OF THE OTHER

In carrying out their statutory duties or contractual duties under this Sub-Contract or under the Main Contract, the Contractor and the Nominated Sub-Contractor, their servants or agents shall not wrongfully use or interfere with the plant, ways, scaffolding, temporary works, appliances or other property belonging to or provided by either of them and shall not breach or infringe any written laws or by-laws, regulations, order or rules made under the same or by any competent authority.

13.0 NOMINATED SUB-CONTRACTOR'S PLANT, TOOLS, ETC

The plant, tools, equipment or other property belonging to or provided by the Nominated Sub-Contractor, his servants or agents (other than materials and goods properly delivered on the Site for use in the Sub-Contract Works) shall be at the sole risk of the Nominated Sub-Contractor and any loss or damage to the same or caused by the same shall be the sole liability of the Nominated Sub-Contractor or against any loss or damage caused by the same or claim or proceedings in respect arising there from. Any insurance against any such loss or claim shall be the sole concern of the Nominated Sub-Contractor.

14.0 ACCESS TO THE SUB-CONTRACT WORKS

14.1 Making site available to the Nominated Sub-Contractor

The Contractor shall from time to time make available to the Nominated Sub-Contractor such part or parts of the Site and Main Contract Works and such means of access thereto within the Site as shall be reasonably necessary to enable the Nominated Sub-Contractor to execute the Sub-Contract Works but the Contractor shall not be bound to give to the Nominated Sub-Contractor possession or exclusive control of any part of the Site or the Main Contract Works.

14.2 Access to the Sub-Contract Works

The Nominated Sub-Contractor shall permit the S.O., S.O.'s Representative and the Contractor, his servants or agents during normal working hours to have access to the Sub-Contract Works or any work and/or any workshop or other places where the Sub-Contract Works or any part thereof is being prepared for or will be utilized in the Sub-Contract Works.

15.0 EMPLOYMENT OF WORKMEN

- (a) The Nominated Sub-Contractor shall employ, in the execution of this Sub-Contract, only Malaysian citizens as workmen.
- (b) If in any particular trade or skill required to complete the Sub-Contract Works, the Nominated Sub-Contractor can show to the satisfaction of the S.O. that

Malaysian citizens are not available, then the Contractor may employ non-Malaysian citizens subject to the approval of the Government.

- (c) The Nominated Sub-Contractor shall, on the commencement of the Sub-Contract Works, furnish to the Jabatan Tenaga Kerja of the State in which this Sub-Contract is performed, all particulars connected with this Sub-Contract and such returns as may be called for from time to time in respect of labour employed by him on for the execution of this Sub-Contract Works, in accordance with the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, and Internal Security (Registration of Labour) Regulation 1960 or any subsequent modification or re-enactment thereof.
- (d) The Nominated Sub-Contractor shall maintain on the Site, at all times during the progress of the Sub-Contract Works, an up to date register containing particulars of all workers employed by him.

16.0 COMPLIANCE WITH EMPLOYMENT ACT 1955, ETC

In the employment of workmen for the execution of this Sub-Contract, the Nominated Sub-Contractor shall comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employee's Provident Fund Act 1951, the Industrial Relations Act 1967 and any other law relating to the employment of workmen, or any subsequent modification or re-enactment thereof.

PROVIDED THAT the Nominated Sub-Contractor shall not be entitled to any claim for additional costs and payments whatsoever in respect of his compliance with this clause.

17.0 WAGES BOOKS AND TIME SHEETS

- (a) The Nominated Sub-Contractor shall keep proper wages books and time sheets showing the amount of wages paid to and the number of hours worked by every workmen employed by him and his sub-contractors as aforesaid in and for the performance of this Sub-Contract.
- (b) The Nominated Sub-Contractor shall produce such wages books and time sheets on demand for inspection by the S.O., S.O.'s Representative or the Contractor.
- (c) The Nominated Sub-Contractor shall furnish to the S.O, S.O.'s Representative or the Contractor such information relating to the wages and conditions of employment of such workmen as the S.O., S.O. Representative or the Contractor may from time to time require.

18.0 DEFAULT IN PAYMENT OF WAGES

- (a) In the event of default being made in the payment of –
 - (i) wages; and/or
 - (ii) Employee's Provident Fund Contributions,

of any workmen employed by the Nominated Sub-Contractor in and for the performance of this Sub-Contract, then the S.O., having satisfied himself with the proof thereof furnished to him, shall, upon the failure of the Nominated Sub-Contractor to pay the said money, procure that payment shall be made

directly to the Director-General of Labour and/or Employee's Provident Fund Board.

- (b) Such payment made by the S.O. under clause 17(a) shall be deducted from any money due or to become due to the Nominated Sub-Contractor under this Sub-Contract and failing which such payment shall be recovered from the Performance Bond.

19.0 DISCHARGE OF WORKMEN

- (a) The Nominated Sub-Contractor shall employ and shall cause his sub-contractors, only to employ such technical staff, site agent, artificers and labourers on the Sub-Contract Works as are thoroughly efficient and of good character.
- (b) If in the sole opinion of the S.O., any person employed by the Nominated Sub-Contractor misconduct himself, the S.O. shall instruct the Contractor to direct the Nominated Sub-Contractor to remove such person. The Nominated Sub-Contractor, when so direct by the Contractor in writing, shall at once remove such person from the Sub-Contract Works and he shall not again be employed on the Sub-Contract Works without the written permission of the S.O.

PROVIDED THAT the Nominated Sub-Contractor shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the S.O. under this clause.

20.0 VARIATIONS

- (a) The Nominated Sub-Contractor shall comply with and carry out any variations required or authorized in writing by the Contractor and approved by the S.O. or S.O.'s Representative. Save as aforesaid, no variation of the Sub-Contract Works shall be made or allowed by the Nominated Sub-Contractor.
- (b) The expression "variation" shall have the same meaning assigned to it as in the Main Contract.

21.0 VALUATION OF VARIATIONS

The value of all authorized variations shall be determined by the S.O. in accordance with the applicable provisions laid down in the Main Contract save that where this Sub-Contract contains a schedule of prices for measured work, such prices shall be allowed to the Nominated Sub-Contractor in determining the value of authorized variations in substitution for any prices which would otherwise be applicable under this Sub-Contract.

22.0 DEFECTS LIABILITY

22.1 Making good of defects in Sub-Contract Works

All defects, imperfections, shrinkages or any other faults whatsoever in the Sub-Contract Works which the Contractor (whether at his own cost or not) shall be liable to make good under the Main Contract shall be made good by the Nominated Sub-Contractor within a reasonable time but not exceeding three (3) months after the

receipt by him from the Contractor of instructions by the S.O. or S.O.'s Representative.

22.2 Defects which the Nominated Sub-Contractor is liable

If the Contractor (whether by himself or any other sub-contractor) shall execute any work (whether permanent or temporary) to the Main Contract Works or to any part of the same required by the S.O or S.O.'s Representative, or rendered necessary by reason of defects imperfections shrinkages or any other faults whatsoever in the Sub-Contract Works due to materials or workmanship not being in accordance with this Sub-Contract, then Nominated Sub-Contractor shall pay to the Contractor the cost of the execution of such work.

PROVIDED THAT if the Contractor or the Nominated Sub-Contractor fails to make good any defects, imperfections, shrinkages or any other faults whatsoever in the Sub-Contract Works, the Contractor shall pay the Government of the cost of the execution of such works.

22.3 Defects due to defects in Main Contract Works

If the Nominated Sub-Contractor shall execute any work to or in connection with the Sub-contract Works (whether permanent or temporary) required by the S.O. or S.O.'s Representative or rendered necessary by reason of any defects, imperfections, shrinkages or any other faults whatsoever in the Main Contract Works due to materials or workmanship not being in accordance with the Main Contract, then the Contractor shall pay to the Nominated Sub-Contractor the cost of the execution of such work.

PROVIDED THAT if instead the Nominated Sub-Contractor actually executing such Works and in satisfaction of the same, the Contractor pays to the Government the value of or other agreed sum (not exceeding such cost as aforesaid) in respect of such work, then the Contractor shall indemnify the Nominated Sub-Contractor against any claim damage or loss in respect of failure to execute such work.

23.0 SUB-CONTRACTING

- (a) The Nominated Sub-Contractor shall not without the prior written consent of both the Contractor and the S.O., sub-contract the whole or any part of the Sub-Contract Works nor assign the obligation to carry out and the right to receive payment for any part of the works to be carried out under this Sub-Contract, provided that the consent of the Contractor and the S.O. shall not be unreasonably withheld and that in case of any difference of opinion between the Contractor and the S.O., the opinion of the S.O. shall prevail.
- (b) Such consent, if given, shall not relieve the Nominated Sub-Contractor from any liability or obligation under this Sub-Contract and he shall be responsible for the due observance by such sub-contractors, of all the terms, stipulations and conditions under this Sub-Contract. The Nominated Sub-Contractor shall also be responsible for the acts, defaults or neglects of any sub-contractor (including in this instance, 'labour only' sub-contractors), his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Nominated Sub-Contractor, his agents, servants or workmen.

PROVIDED ALWAYS THAT the provision of labour on a piecework basis shall not be deemed to be a Sub-Contract under this clause.

24.0 INSURANCE AGAINST PERSONAL INJURIES AND DAMAGE TO PROPERTY

24.1 Indemnities to both Contractor and Government

The Nominated Sub-Contractor shall be liable and shall indemnify both the Contractor and the Government against any damage, expenses, liability, loss, claim or proceedings whatsoever whether arising at common law or by statute in respect of injury to or death of any person and/or in respect of injury or damage to any property, arising out of or in the course of execution of this Sub-Contract Works, unless due to any negligent or willful act of the Contractor or the Government or of any persons for whom the Contractor or the Government is liable.

24.2 Taking of insurance

Without prejudice to his liability to indemnify the Contractor and the Government under clause 23(1) hereof, the Nominated Sub-Contractor shall, as a condition precedent to the commencement of any work under this Sub-Contract, subject to clause 26(1) hereof, effect and maintain such insurance necessary to cover the liabilities of the Nominated Sub-Contractor, Contractor and the Government under any common law or statute in respect of injury to or death of any person and/or in respect of injury or damage to property, arising out of or in the course of the execution of the Sub-Contract Works.

24.3 Production of policies

- (a) Such insurance as referred to under clause 23(2) hereof shall be effected and maintained in the joint names of the Nominated Sub-Contractor, the Contractor and the Government for the whole period the Sub-Contract Works are being executed and in such manner that the Government, the Contractor and the Nominated Sub-Contractor are also covered during the course of any operations carried out by the Nominated Sub-Contractor for the purpose of complying with the provisions of clause 21 hereof.
- (b) It shall be the duty of the Nominated Sub-Contractor to produce and shall deposit the relevant policy or policies of insurance together with the receipts in respect of premium paid to the S.O., whether demanded or not, and a copy of the same to the Contractor.

24.4 Default in renewing insurance

If the Nominated Sub-Contractor fails to effect or renew such insurance as are necessary under this Sub-Contract, the Contractor may effect or renew such insurance as aforesaid and may deduct a sum equivalent to the amount paid in respect of premiums from any monies due or to become due to the Nominated Sub-Contractor or to recover the same from the performance bond or as a debt due from the Nominated Sub-Contractor.

25.0 WORKMEN'S COMPENSATION

25.1 Indemnities to Contractor and Government

The Nominated Sub-Contractor shall indemnify and keep indemnified both the Contractor and the Government and its officers from all liabilities arising out of claims by any and every workmen employed in and for the performance of this Sub-Contract for payment of compensation under or by virtue of the Workmen's Compensation Act 1952, or any other law amending or replacing such law and from all costs and expenses incidental and consequential hereto.

25.2 Taking of Insurance

Without prejudice to his liability to indemnify the Contractor and the Government under clause 24(1) hereof, the Nominated Sub-Contractor shall forthwith and as a condition precedent to the commencement of any work under this Sub-Contract, take out at his own expense with an insurance company approved by the S.O. in writing a policy or policies of insurance in the joint name of the Nominated Sub-Contractor, the Contractor and the Government to cover their liabilities in respect of workmen employed by the Nominated Sub-Contractor for the performance of this Sub-Contract.

25.3 Production of policies

The insurance policy shall be appropriately endorsed, deposited with the S.O. and a copy to the Contractor and subject to all the conditions detailed in the Main Contract relating thereto.

26.0 EMPLOYEE'S SOCIAL SECURITY ACT 1969

26.1 Registration with SOCSO

Without prejudice to his liability to indemnify the Government and the Contractor under clause 24 hereof, the Sub-Contractor shall 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 ("the SOCSO Scheme") in accordance with the Employee's Social Security Act 1969 or any subsequent modification or re-enactment of the said Act. For the purpose of clauses 24 and 25, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.

26.2 Contribution to SOCSO

- (a) The Nominated Sub-Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the SOCSO scheme to the S.O. for verification. The Nominated Sub-Contractor shall make payment of all contribution from time to time on the first contribution day on which the same ought to be paid and until the completion of this Sub-Contract and it shall be the duty of the Nominated Sub-Contractor to produce to the S.O. contribution statement or payment vouchers as evidence of payment of such contribution, whether demanded or not.
- (b) The Nominated Sub-Contractor shall make payment of all contributions from time to time on the first day on which the payment is due and until the end of Defects Liability Period and it shall be the duty of the Nominated Sub-Contractor to produce to the S.O. and the Contractor, the contribution cards or stamp vouchers as evidence of payment of such contributions, whether demanded or not.
- (c) If The Nominated Sub-Contractor fails to comply with the terms of this clause, the Contractor may without prejudice to any other remedy available to the Contractor for breach of any terms of this Sub-Contract:
 - (i) withhold an amount from any money which would otherwise be due to the Nominated Sub-Contractor under this Sub-Contract and which in the opinion of the S.O. will satisfy any claims for compensation by workmen that would have been borne by SOCSO Scheme had the Nominated Sub-Contractor not made default in maintaining the contribution; and/or

- (ii) pay such contributions as have become due and remain unpaid and deduct the amount of such contributions from any money due or to become due to the Nominated Sub-Contractor under this Sub-Contract, and failing which such contributions shall be recovered from the Performance Bond or as a debt due from the Nominated Sub-Contractor.

27.0 INSURANCE OF SUB-CONTRACT WORKS

27.1 Contractor's responsibility

The Sub-Contract Works (including materials and goods of the Nominated Sub-Contractor properly delivered on the Site for use in the Sub-Contract Works) shall as regards loss or damage by fire (whether such fire be caused by the negligence of the Nominated Sub-Contractor or those for whose actions the Nominated Sub-Contractor is responsible or otherwise), lightning, explosion, storm, tempest, flood, ground subsidence, bursting and overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped there from riot and civil commotion be at the sole risk of the Contractor.

27.2 Compensation for loss and damage

In the event of any loss or 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 being caused to the Sub-Contract Works (including any of the materials and goods of the Nominated Sub-Contractor properly delivered on the Site for use in the Sub-Contract Works) the Contractor, to the extent of such loss or damage, shall pay to the Nominated Sub-Contractor the full value of the same.

27.3 Insurance of Sub-Contract Works

The Contractor shall, for the benefit of himself, the Government and the Nominated Sub-Contractor at all material times, insure for the full value of the Sub-Contract Works (including materials and goods of the Nominated Sub-Contractor properly delivered on the Site for use in the Sub-Contract Works) and keep or have them kept insured against loss or 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.

27.4 Observance by Nominated Sub-Contractors

The Nominated Sub-Contractor shall observe and comply with the conditions contained in the policy or policies of insurance of the Contractor against loss or 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.

28.0 PERFORMANCE BOND

28.1 Condition precedent

The Nominated Sub-Contractor shall, as a condition precedent to the commencement of any work under this Sub-Contract, deposit with the Contractor a performance bond in cash or in the form of a Banker's Draft or an approved Banker's or Insurance

Guarantee equivalent to five (5 %) per cent of the Sub-Contract Sum to secure the due performance of the obligations under this Sub-Contract by the Nominated Sub-Contractor and such performance bond shall remain valid and effective until twelve (12) months after the expiry of the Defect Liability Period or the issuance of the Certificate of Completion of Making Good Defects, whichever is the later.

28.2 Application of Performance Bond

- (a) If the Nominated Sub-Contractor fails to carry out this Sub-Contract or commits any breach of his obligations under this Sub-Contract, the Contractor may utilize and make payments out of or deductions from the said performance bond, provided that the Contractor shall not be entitled to utilise such Performance Bond unless the S.O. shall have issued to the Contractor (with a duplicate copy to the Nominated Sub-Contractor) a certificate in writing stating in his opinion that the Nominated Sub-Contractor has been in default as aforesaid.
- (b) If a payment is made to the Contractor pursuant to any claim under the performance bond, the Nominated Sub-Contractor shall issue to the Contractor further security in the form of additional performance bond or Bonds for an amount not less than the amount so paid to the Contractor on or prior to the date of such payment so that the total sum of the performance bond shall be maintained at all times at the value specified in clause 27(1).
- (c) The performance bond or any balance thereof remaining for the credit of the Nominated Sub-Contractor shall be released or refunded to the Nominated Sub-Contractor on the completion of making good of all defects, imperfections, shrinkages or any other faults whatsoever for the whole of the Works under the Main Contract and upon the Contractor's receipt of the Certificate of Making Good Defects under the Main Contract.
- (d) Notwithstanding the above, in the event that the Sub-Contract is terminated under clause 32 hereof, the said performance bond or any balance thereof shall be forfeited.

29.0 COMMENCEMENTS AND COMPLETION

29.1 Commencement

The Nominated Sub-Contractor shall commence the Sub-Contract Works within the time as stipulated in the Form of Tender for this Sub-contract after the receipt by him of an order in writing under this Sub-Contract from the Contractor to that effect and shall proceed with the same with due diligence and expedition.

PROVIDED that no work under this Sub-Contract shall commenced unless and until the Performance Bond under clause 27 is submitted to the Contractor and such insurance policies as specified under clauses 23 and 24 hereof shall have been deposited with the S.O.

29.2 Completion

The Nominated Sub-Contractor shall complete the Sub-Contract Works and each section thereof within the period or periods specified in **Part II of the Appendix** hereto or within such extended period or periods as may be granted pursuant to clause 29 hereof.

30.0 DELAYS AND EXTENSION OF TIME

30.1 Notice of delays

Upon it becoming reasonably apparent that the progress of the Sub-Contract Works is delayed, the Nominated Sub-Contractor shall forthwith give written notice of the cause of the delay in the progress or completion of the Sub-Contract Works or any section thereof to the Contractor who shall immediately inform the S.O. thereof and of any representations made to him by the Nominated Sub-Contractor as to such cause of delays as aforesaid.

30.2 Extension of time

(a) If, on receipt of such notice and representations as aforesaid, the S.O. is of the opinion that the completion of the Sub-Contract Works or any section thereof is likely to be or has been delayed beyond the period or periods stated in **Part II of the Appendix** hereto or beyond any extended periods previously fixed under this Condition –

(i) by reason of any of the matter specified in clause 19 hereof or by any act or omission of the Contractor, his other sub-contractors or their respective servants or agent; or

(ii) for any reason (provided and to the extent that the delay is not due to any act, negligence, default or breach of the Sub-Contract by the Nominated Sub-Contractor) for which the Contractor could obtain an extension of time for completion under the Main Contract;

then the Contractor shall, but not without the written consent of the S.O., grant a fair and reasonable extension of the said period or periods for completion of the Sub-Contract Works or each section thereof (as the case may be) and such extended period or periods shall be the period of periods for completion of the same respectively and this Sub-Contract shall be read and construed accordingly.

30.3 Dispute on failure of S.O. to grant extension of time

PROVIDED ALWAYS THAT if the Nominated Sub-Contractor is aggrieved by a failure of the S.O. to give his written consent to the Contractor granting an extension of the said period or periods for the completion of the Sub-Contract Work or any section thereof, then, subject to the Nominated Sub-Contractor giving to the Contractor such indemnity and security as the Contractor may reasonably require, the Contractor shall allow the Nominated Sub-Contractor to use the Contractor's name and if necessary will join with the Nominated Sub-Contractor as plaintiff in any arbitration proceedings by the Nominated Sub-Contractor in respect of the said complaint of the Nominated Sub-Contractor.

31.0 DAMAGES FOR NON-COMPLETION

(a) If the Nominated Sub-Contractor fails to complete the Sub-Contract Works or any section thereof within the period or periods specified in **Part II of the Appendix** hereto or any extended period or periods as may be granted pursuant to clause 29 hereof, he shall pay to the Contractor a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the Nominated Sub-Contractor as aforesaid.

- (b) The Contractor shall at the earliest opportunity give reasonable notice to the Nominated Sub-Contractor that loss or damage as aforesaid is being or has been suffered or incurred.

PROVIDED THAT the Contractor shall not be entitled to claim any loss or damage under this Condition unless the S.O. shall have issued to the Contractor (with a duplicate copy to the Nominated Sub-Contractor) a Certificate of Non-Completion under the Main Contract.

32.0 SUSPENSION OF SUB-CONTRACT WORKS

32.1 Suspension and Resumption of Sub-Contract Works

- (a) The S.O. may at any time instruct the Contractor to suspend part or all of the Works.
- (b) Upon receipt of such written instruction, the Contractor shall instruct the Nominated Sub-Contractor to suspend part or all of the Sub-Contract Works for such time and in such manner as specified in the instruction and the Nominated Sub-Contractor shall duly protect, store and secure the Sub-Contract Works or such part of the Sub-Contract Works against any deterioration, loss or damage.
- (c) During the suspension period, the Nominated Sub-Contractor shall continue to perform his obligations under this Sub-Contract, which are not affected by the instruction to suspend, including the obligation to effect and maintain insurances and performance bond.
- (d) The Government may instruct the Contractor to resume the Works at any time thereafter. Upon receipt of such instruction the Contractor shall instruct the Nominated Sub-Contractor to resume the Sub-Contract Works and the Parties shall jointly examine the Sub-Contract Works affected by the suspension. The Nominated Sub-Contractor shall make good any deterioration or defect in or loss of the Sub-Contract Works which has occurred during the suspension. The Nominated Sub-Contractor shall also take all necessary actions to mitigate the expenses incurred.
- (e) request for S.O.'s instruction to omit relevant section or part of the Works from the Contract. If the S.O. agrees to such request then the relevant section or part of the Works shall be duly omitted and deemed to be a variation to the Contract. Such variation shall not vitiate this Contract. If the S.O. does not agree to such request as aforesaid, then the Contractor shall be entitled to claim for any loss and/or expenses caused by and in respect of such delay beyond ninety (90) days as aforesaid.

32.2 Extension of time

- (a) If the Nominated Sub-Contractor suffers delay and/or incurs expenses in complying with the instruction under clause (a), and in resumption of the Works, and if such delay and/or expenses was not foreseeable by the Nominated Sub-Contractor, the Nominated Sub-Contractor shall give notice for extension of time under clause 29 and the provisions thereof shall apply accordingly. PROVIDED THAT the Nominated Sub-Contractor shall not be entitled to such extension if the suspension is due to a cause attributable to the Nominated Sub-Contractor and the Nominated Sub-Contractor shall not be entitled to payment of loss and expense if he -
 - (i) fails to take measures specified in clause (b); and
 - (ii) fails to take all necessary action to mitigate the expenses incurred.

- (b) In the event such suspension shall continue for a period exceeding 12 months, the Parties shall then discuss whether to mutually terminate the Contract or suspend the Sub-Contract Works for a further period.

32.3 Consequences of mutual termination

- (a) If this Sub-Contract is mutually terminated under this clause, the provision of clause 32(3) shall apply.

33.0 TERMINATION OF NOMINATED SUB-CONTRACTOR'S EMPLOYMENT

33.1 Events of Default

- (a) In the event the Nominated Sub-Contractor-
 - (i) fails to commence the Sub-Contract Works at the Site within two (2) weeks after the receipt by him of an order in writing from the Contractor to that effect;
 - (ii) suspends or abandons the carrying out of the Sub-Contract Works or any part thereof before the completion of the Sub-Contract Works.
 - (iii) fails to proceed regularly and diligently with the performance of his obligations under this Sub-Contract.
 - (iv) fails to carry out the Sub-Contract Works in accordance with this Sub-Contract;
 - (v) persistently neglects to carry out his obligations under this Sub-Contract;
 - (vi) refuses or persistently neglects to comply with a written notice from the Contractor in relation to any defective Sub-Contract Works, equipment, materials or goods or which do not meet the requirements of this Sub-Contract; or
 - (vii) fails to comply with any terms and conditions of this Sub-Contract;

then the Contractor may give to him a notice by registered post specifying the default and requiring the Nominated Sub-Contractor to remedy such default within fourteen (14) days of the receipt of such notice .

33.2 Termination

If the Nominated Sub-Contractor fails to remedy the breach within such period, the Contractor shall have the right to forthwith terminate this Sub-Contract by giving a written notice to that effect unless S.O. give prior written approval.

33.3 Consequences of Termination

- (a) If this Sub-Contract is terminated under Clause 32(1) –

- (i) the Nominated Sub-Contractor shall forthwith cease all operations of the Sub-Contract Works;
- (ii) the Nominated Sub-Contractor shall remove his personnel and workmen from the Site;
- (iii) the Nominated Sub-Contractor shall immediately vacate the Site and leave all temporary buildings, plants, tools, equipment, goods and unfixed materials and goods delivered on Site for use in the Sub-Contract Works on the Site save only such as he may be specifically directed by the Contractor to remove therefrom;
- (iv) the Contractor may, with the written consent of the S.O., employ and pay another sub-contractor or other persons to carry out and complete the Sub-Contract Works or himself undertake to do so and use all plants, tools equipment, materials and goods delivered on Site for use in the Sub-Contract Works and may purchase all materials and goods necessary for the carrying out and completion of the Sub-Contract Works;
- (v) no further payment shall be made to the Nominated Sub-Contractor including payments which have been previously certified but not yet paid, until after the completion of the Sub-Contract. The Contractor shall only be liable to the Nominated Sub-Contractor for the value of any work actually and properly executed and not paid for at the date of such termination, and for the value of any unfixed materials and goods delivered on the Site for use in the Sub-Contract Works, the property in which has passed to the Government under the terms of the Main Contract and for no other sum or sums whatsoever; and
- (vi) the Contractor shall have the right to deduct or set off against any amount due or which may become due to the Nominated Sub-Contractor or to recover as debt from the Nominated Sub-Contractor the amount of damage suffered and/or of loss and expense including any extra expense in the completion of the Sub-Contract Works incurred by him by reason of the termination of the employment of the Nominated Sub-Contractor under this Sub-Contract.

33.4 General Default

- (a) If at any time during the contract period,
 - (i) the Nominated Sub-Contractor commits an act of bankruptcy;
 - (ii) the Nominated Sub-Contractor becomes insolvent or compounds with or makes arrangement with his creditors;
 - (iii) being a company, an order is made or resolution is effectively passed for the winding-up of the Nominated Sub-Contractor (except for the purpose of reconstruction or amalgamation with the written consent of the Government, which consent shall not be unreasonably withheld);
 - (iv) the Nominated Sub-Contractor is unable to pay its debt as and when they fall due, within the meaning of the Companies Act 1965; or
 - (v) the Nominated Sub-Contractor is levied with any distress or execution against him and the same is not satisfied or discharged by

the Contractor within thirty (30) days of such distress or execution proceedings,

then the Contractor shall have the right to forthwith terminate this Sub-Contract by giving notice to that effect.

33.5 Consequence of Termination

- (a) In the event the termination of this Sub-Contract under clause 32(4) takes place, clause 32(3) shall apply.
- (b) Nothing in clause 32 or anything else in this Sub-Contract shall render the Contractor in any way liable for payments upon termination.

34.0 TERMINATION OF THE CONTRACTOR'S EMPLOYMENT UNDER THE MAIN CONTRACT.

If for any reason the Contractor's employment under the Main Contract is terminated, then the employment of the Nominated Sub-Contractor under this Sub-Contract shall thereupon also be terminated.

35.0 PAYMENT TO NOMINATED SUB-CONTRACTOR

Subject to clause 37 hereof, the amount certified as due to the Nominated Sub-Contractor in any Interim Certificate issued by the S.O. in accordance with the relevant provisions in the Main Contract shall within the period for honouring payment certificates stipulated in the Main Contract be paid by the Government direct to the Nominated Sub-Contractor.

PROVIDED THAT nothing in this clause or anything else contained in this Sub-Contract shall render the Government in any way liable to the Nominated Sub-Contractor.

36.0 DISPUTES AS TO PAYMENT

If the Nominated Sub-Contractor is not satisfied with by the amount certified by the S.O. for payment or by his failure to certify, then subject to the Nominated Sub-Contractor giving to the Contractor such indemnity and security as the Contractor shall reasonably require, the Contractor shall allow the Nominated Sub-Contractor to use the Contractor's name and if necessary will join with the Nominated Sub-Contractor as claimant in any arbitration proceedings by the Nominated Sub-Contractor in respect of the said matters complained of by the Nominated Sub-Contractor.

37.0 FINAL PAYMENT

- (a) Within a reasonable time after the completion of the Sub-Contract Works, the Nominated Sub-Contractor shall submit to the Contractor the final account in respect of the Sub-Contract Work together with all particulars, details or information in support thereof, so as to enable the Contractor to prepare and submit the Final Account in respect of the Main Contract Works under the terms of the Main Contract.
- (b) Subject to clause 37 hereof, the amount certified as due to the Nominated Sub-Contractor in the Final Certificate issued by the S.O. in accordance with

the relevant provisions in the main Contract shall be paid by the Government direct to the Nominated Sub-Contractor.

PROVIDED ALWAYS THAT no final payment shall be made to the Nominated Sub-Contractor unless and until the Nominated Sub-Contractor has –

- (i) given undertaking as to the completion of making good any defects or as to any warranty of the Sub-Contract Works which the Contractor has been required to give to the Government or to procure the Nominated Sub-Contractor to give the same to the Government under the terms of the Main Contract; and
- (ii) satisfied the Contractor or the S.O. by means of either a Statutory Declaration made by or on behalf of the Nominated Sub-Contractor, or a certificate signed by or on behalf of the Director-General of Labour to the effect that the workmen who have been employed by him have received all wages due to them in connection with such employment and that all dues or contributions under the Employment Act 1955, the Employee's Social Security Act 1969, the Employee's Provident Fund Act 1951 and any other laws relevant to the employment of workmen have been paid.

38.0 CONTRACTOR'S RIGHT TO SET-OFF

- (a) The Contractor shall be entitled to be paid and the Government may pay to the Contractor out of any money due to the Nominated Sub-Contractor any amount the Government or S.O. on its behalf in exercise of any right under the Main Contract has deducted from any money due to the Contractor and such deduction is in respect of some act or default solely of the Nominated Sub-Contractor, his servants or agents.
- (b) The Contractor shall be entitled to be paid and the Government may pay to the Contractor out of any amount otherwise due to the Nominated Sub-Contractor as due to the Contractor and/or any amount awarded in arbitration or litigation in favour of the Contractor and which arises out of or under this Sub-Contract.

PROVIDED ALWAYS THAT the Contractor shall have notified the S.O. of any such agreed amount or award (together with a copy of the consent or agreement of the Nominated Sub-Contractor or the award) not less than fourteen (14) days before the date of the issue by the S.O. of the Interim or Final Certificate under the provisions of the Main Contract.

- (c) The Contractor shall be entitled to be paid and the Government may pay to the Contractor out of any money otherwise due to the Nominated Sub-Contractor the amount of any claim for loss and/or expense actually incurred by the Contractor by reason of any breach or failure to observe the provisions of the Sub-Contract by the Nominated Sub-Contractor.

PROVIDED ALWAYS THAT:

- (i) the amount of such loss and/or expense shall have been quantified in detail and with reasonable accuracy by the Contractor; and
- (ii) the Contractor shall have given to the Nominated Sub-Contractor notice in writing with a copy to the S.O. specifying the breach or failure and the amount quantified in clause 37(c)(i) hereof, not less

than forty five (45) days before the issue by the S.O. of any Interim or the Final Certificate under the provisions of the Main Contract; and

- (d) If there is any dispute as regards to the payment to be made under this clause, it shall be settled in accordance with clause 39.
- (e) Any amount paid to the Contractor in accordance with this clause shall be deemed to be payment to the Nominated Sub-Contractor under this Sub-Contract.

39.0 NOMINATED SUB-CONTRACTOR'S CLAIM TO RIGHTS AND BENEFIT UNDER THE MAIN CONTRACT.

- (a) The Contractor will, in so far as he lawfully can at the request and cost of the Nominated Sub-Contractor, obtain for him any rights or benefits of the Main Contract so far as the same are applicable to the Sub-Contract Works but no further or otherwise.
- (b) Whenever the Contractor is required by the terms of the Main Contract to give any particulars or notices to the S.O. or the Government, the Nominated Sub-Contractor shall, in relation to this Sub-Contract, give such particulars or notices or such other information in writing as will enable the Contractor to comply with such terms of the Main Contract and shall do so in sufficient time to enable the Contractor to comply with such terms punctually.

40.0 ARBITRATION

- (a) If any dispute or difference shall arise between the Contractor and the Nominated Sub-Contractor out of or in connection with this Sub-Contract, then Parties shall refer such matter, dispute or difference to the S.O. for a decision.
- (b) The S.O.'s decision shall be in writing and shall subject to clause 39(d) hereof, be binding on the Parties until the completion of the Sub-Contract Works and shall forthwith be given effect to by the Nominated Sub-Contractor who shall proceed with the Sub-Contract Works with all due diligence whether or not notice of dissatisfaction is given by him.
- (c) If the Parties –
 - (i) fails to receive a decision from the S.O. within forty-five (45) days after being requested to do so; or
 - (ii) is dissatisfied with any decision of the S.O.,

then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur on the application of either Party hereto. Such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration and shall be conducted in accordance with the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration using the facilities and the system available at the Centre.

- (d) Such reference, except on the question of payments shall not be commenced until after the completion or alleged completion of the Sub-Contract Works or determination or alleged determination of the Nominated Sub-Contractor's

employment under this Sub-Contract, or abandonment of the Sub-Contract Works, unless with the written consent of the Contractor and the Nominated Sub-Contractor.

- (e) In the event that such consent has been obtained in accordance with clause 39(d), the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this Sub-Contract.
- (f) In any arbitration proceedings conducted pursuant to clause 39(c) above, the Parties may make any counter claim in relation to any dispute or difference arising from this Sub-Contract.
- (g) The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with clause 39(c) aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given.
- (h) 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, award and paid.
- (i) The award of the arbitrator shall be final and binding on the parties.
- (j) In the event of the death of the arbitrator or his unwillingness or inability to act, then the Contractor and the Nominated Sub-Contractor, upon agreement, shall appoint another person to act as the arbitrator, and in the event the Contractor and the Nominated Sub-Contractor fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur.
- (k) In this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- (l) The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

41.0 STAMP DUTY

The Nominated Sub-Contractor shall solely bear the stamp duties and anything incidental thereto.

42.0 COMPLIANCE WITH THE LAW

The Parties shall comply with all applicable laws and with all directions, orders, requirements and instructions given to the Parties by any authority competent to do so under any applicable law.

43.0 FORCE MAJEURE

- (a) Neither the Contractor nor the Nominated Sub-Contractor shall be in breach of its obligations under this Sub-Contract (or any part of them), other than the payment obligations as a result of the occurrence of an Event of Force Majeure. An "Event of Force Majeure" shall mean:
- (i) war (whether declared or not), hostilities, invasion, act of foreign enemies;
 - (ii) insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;
 - (iii) natural catastrophes including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;
 - (iv) nuclear explosion, radioactive or chemical contamination or radiation;
 - (v) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and
 - (vi) riot, commotion or disorder, unless solely restricted to employees of the Nominated Sub-Contractor or its personnel, servants or agent.
- (b) If an Event of Force Majeure occurs by reason of which either party is unable to perform any of its obligations under this Sub-Contract (or any part thereof), the party shall inform the other party immediately of the occurrence of that Event of Force Majeure with full particulars thereof and the consequences thereof.
- (c) If either party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Sub-Contract, then the Parties may agree that this Sub-Contract may be terminated upon mutual agreement of the Parties.
- (d) If this Sub-Contract is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the Parties under this Sub-Contract shall forthwith be terminated and neither party shall have any claim against the other party and neither party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.
- (e) Neither party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an Event of Force Majeure has not occurred.
- (f) For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

44.0 GOVERNING LAWS

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

45.0 NOTICES

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Sub-Contract shall be in writing in Bahasa Melayu or the English language and delivered to the address, or facsimile numbers of the Contractor or Nominated Sub-Contractor, as the case may be, shown below or to such other address, or facsimile numbers as either party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person or by facsimile transmission, when delivered to the recipient at such address or facsimile number which is duly acknowledged:

to the Contractor

Address:

Facsimile No.:

to the Nominated Sub-Contractor

Address:

Facsimile No.:

- (b) Any notice under this clause shall be affected by:
- (i) personal service or courier and an acknowledgement of receipt obtained;
 - (ii) leaving the notice at the registered office or site office of the Nominated Sub-Contractor in which case it shall be deemed to have been duly delivered; or
 - (iii) registered post in which case it shall be deemed to have been received seven (7) days after the date of posting.
- (c) It shall be the duty of the Parties to notify the other if there is a change of address or entity by giving a written notice within fourteen (14) days. In the event of the Nominated Sub-Contractor failing to notify the Contractor of such an address or any change in his address, such written notices and instructions shall be deemed to have been served upon the Nominated Sub-Contractor if they are sent in the manner stated above to the address stated in this Sub-Contract or to the Nominated Sub-Contractor's site office.

46.0 SEVERABILITY

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

47.0 AMENDMENT

No modification, amendment or waiver of any of the provisions of this Sub-Contract shall be effective unless made by mutual consent and made in writing by way of supplementary contract specifically referring to this Sub-Contract and duly signed by the Parties.

48.0 WAIVER

Nor failure or delay on the part of any party in exercising nor any omission to exercise any right, power, privilege or remedy accruing to the other party under this Sub-Contract, upon any default on the part of the other party, shall impair any such right, power, privilege or remedy or to be construed as a waiver thereof or any acquiescence in such default; nor shall any action by any party in respect of any default or any acquiescence in such default affect or impair any right, power, privilege or remedy of the other party in respect of any other or subsequent default. Any waiver made under this Sub-Contract shall only be valid if it is made in writing and signed by the Parties to this Sub-Contract or their respective authorised representatives.

49.0 SUCCESSORS BOUND

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

50.0 TIME

Time, whenever mentioned, shall be of the essence of this Sub-Contract.

APPENDIX

PART I

PARTICULARS OF MAIN CONTRACT

(A) GENERAL INFORMATION

1. Location of Site:
2. Access to Site:
3. Approximate date of commencement of Sub-Contract:
4. Unloading *etc*: by
5. Storage accommodation: by
6. Standing scaffolding: by
7. Plant and hoisting: by
8. Materials to be provided free by the Contractor other than water and lighting for the purpose of the Sub-Contract Works:
.....
.....
9. Power for the Sub-Contract Works: by
10. Caring and protection of the Sub-Contract Works: by

(B) INFORMATION ON MAIN CONTRACT

- (a) The Main Contract (except details of the prices included therein) may be inspected at the office of
- (b) The following are extracts from the provision of the Main Contract but they shall in no way absolve the Nominated Sub-Contractor's responsibilities to examine and to have full knowledge of all the provisions of the Main Contract:
 - (1) Contract No.: Dated :
 - (2) Contract for:
 - (3) Date for Completion (clause 39):
 - (4) Liquidated and Ascertain Damages for Non-Completion at the rate of RM per (clause 40)
 - (5) Sectional Completion (clause 41)
 - (6) Defects Liability Period (clause 48)

(7) Payment:

(a) valuation of Interim Certificates (clause 28(b))

.....

(b) issue of Interim Certificate (clause 28(c))

.....

(c) period of honouring of Interim Certificate (clause 28(d))

.....

PART II

PARTICULARS OF SUB-CONTRACT

1. Description of Sub-Contract Works (or any part thereof)
.....
.....
.....
.....
.....
.....
2. Date of commencement (clause 28.1):
3. Date of completion (clause 28.2):

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands the day and year first above written.

.....
Signature of Contractor

(Name in full :.....)

I.C. No. :.....

In the capacity of

duly authorized to sign for and on behalf of

.....
Contractor's Chop or Seal

.....
Witness

(Name in full :.....)

I.C. No. :.....

Occupation :.....

Address :
.....
.....

.....
Signature of Nominated Sub-Contractor

(Name in full :.....)

I.C. No. :.....

In the capacity of

duly authorized to sign for and on behalf of

.....
Nominated Sub-Contractor's Chop or Seal

.....
Witness

(Name in full :.....)

I.C. No. :.....

Occupation :.....

Address :
.....
.....



JKR Malaysia,
Jalan Sultan Salahuddin
50580 Kuala Lumpur