

SCHEDULE B CONTRACT TERMS

1. DEFINITIONS

Agreement	comprising request for quotation (if any), Tender Document, Tender Proposal, minutes of meeting, clarifications and deviations documents, letter of award and/or purchase order (collectively, " Binding Documents ") which shall include any written supplemental to the Agreement as may be executed by the parties and be in force from time to time. For the avoidance of doubt, this contract terms (as set out in this Schedule including any mutually agreed deviation) shall prevail over contract terms attached in the purchase order;
Contractor	as set out in the purchase order and/or letter of award;
Contractor's personnel	means all personnel whom the Contractor utilises on the Power Plant and/or Site or otherwise in connection with the Works including but not limited to the Contractor's employees, representative, agents, subcontractors, consultants, advisers including their staff, labour, employees, management and administration staff and any other personnel assisting the Contractor in the execution of the Works;
Contract Period	shall be from the commencement until the completion of the Works or if applicable, until the expiry of the Defects Liability Period or Extended Defects Liability Period, whichever is later;
Employer	as set out in the purchase order and/or letter of award;
Initial Defects Liability Period	as set out in the Tender Document, agreed deviations documents, letter of award or purchase order, whichever is applicable;
Extended Defects Liability Period	as set out in the Tender Document, agreed deviations documents, letter of award or purchase order, whichever is applicable;
Intellectual Property	as defined in the Agreement;
Works	as set out in the Agreement; and
Work Completion Certificate	means the works completion certificate issued by the Employer in accordance with Clause 2.27 .

2. TERMS AND CONDITIONS

2.1 Interpretation

In the Agreement, unless the context otherwise requires:

- (i) the appendices in this Agreement shall be taken, read and construed as part and parcel of this Agreement PROVIDED ALWAYS that in the event of any conflict between the provisions of the Agreement and the schedules to this Agreement, the provisions of this Agreement shall prevail;
- (ii) words importing the singular number include the plural and vice versa;
- (iii) words denoting the masculine gender shall include the feminine and neuter gender and vice versa;
- (iv) headings and sub-headings to the provisions and appendices in this Agreement are inserted for convenience of reference only and shall not affect the interpretation and construction thereof;
- (v) references to a law, statute or a provision of a statute include any statute or provision of a statute amending, consolidating or replacing it for the time being in force;
- (vi) reference to clauses and appendices are to be construed as references to clauses and appendices in this Agreement;
- (vii) words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to permit infringement of the restriction;
- (viii) references to "liability" include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses;
- (ix) where an act is required to be done within a specified number of days after or from a specified date, the period is inclusive of and begins from the date so specified;
- (x) a period of a month from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (xi) words applicable to natural persons include any body of persons, company, corporation, firm or partnership incorporated or unincorporated and vice versa;
- (xii) where any word or expression is defined in the Agreement, the definition shall extend to all grammatical variations and cognate expressions of the word or expression so defined;
- (xiii) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the parties from time to time";
- (xiv) wherever in the Agreement provision is made for the giving or issuance of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly;
- (xv) any technical term not specifically defined in the Agreement shall be construed in accordance with the general practice of such relevant professions in Malaysia;
- (xvi) no rule of construction shall apply to the disadvantage of a party because that party was responsible for the preparation or drafting of the Agreement or any part thereof. The parties acknowledge that the Agreement and all terms and conditions contained therein have been fully reviewed and negotiated by the parties;
- (xvii) any reference to a "day", "week", "month" or "year" is a reference to that day, week, month or year in accordance with the Gregorian calendar;
- (xviii) any reference to a "Working Day/Weekday" is to a day other than:
 - (a) Saturday and Sunday; and
 - (b) any other date declared by the Government as a public holiday or a non-working day; and
- (xix) any reference to "normal business hours" means the hours between 8.30 a.m. to 5.30 p.m. on a Working Day.

2.2 **Validity Period:**

The Agreement shall be valid and enforceable throughout the Contract Period.

2.3 Scope of Work:

As set out in the Agreement.

2.4 Error in the Employer's Requirements:

2.4.1 The Contractor shall be deemed to have scrutinised the Employer's requirements prior to the execution of this Agreement. The Contractor shall be responsible for the execution of the Works and for the accuracy of the Employer's requirements.

2.4.2 The Employer shall not be responsible for any reasonable error, inaccuracy or omission of any kind in the Employer's requirements as originally included in this Agreement and shall not be deemed to have given any representation of the accuracy or completeness of any data or information, except as stated herein. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from its responsibility for the design and/or execution of the Works.

2.5 Commencement of the Works

2.5.1 The Contractor shall, subject to **sub-clause 2.8.4** and **sub-clause 2.8.5**, commence the execution of the Works on the works commencement date, and shall then proceed with the Works with due expedition and without delay. The parties agree that time shall be of the essence.

2.6 Contract Price

2.6.1 Unless otherwise expressly stated in the Agreement, the contract price and/or all the rates and units shall be as set out in the Agreement. Save and except arising from variation in accordance with the terms of this Agreement, the Employer shall not be liable to pay more than the contract price and/or all the rates and units set out in the Agreement.

2.6.2 The Contractor shall be deemed to:

- (i) have satisfied itself as to the correctness and sufficiency of the contract price and/or all the rates and units specified in the Agreement, and its ability to achieve the completion of the Works by the works completion date based on the agreed contract price and/or all the rates and units specified in the Agreement; and
- (ii) have based the contract price and/or all the rates and units specified in the Agreement on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Agreement.

2.6.3 Unless otherwise stated in this Agreement, the contract price and/or all the rates and units specified in the Agreement covers all the Contractor's obligations under this Agreement and all things necessary for the proper design, execution and completion of the Works and if applicable, remedying of any defects.

2.7 Mandatory Requirements for the Works

2.7.1 The Contractor shall have the required, relevant and necessary expertise, skill, experience, abilities and good track records to undertake the Works.

2.7.2 The Contractor must be registered with relevant authorities and/or regulatory bodies in accordance with the requirements of the Agreement.

2.7.3 The Contractor shall execute the Works in accordance with the requirements of the Agreement, applicable law and any relevant and prevailing best industry practice.

2.8 Performance of the Works

2.8.1 Contractor's Representative

- (i) The Contractor shall appoint a competent, efficient, suitably qualified and experienced person as the Contractor's representative who shall be acquainted with the Works and has the authority to, among others:
 - (a) administer the Works, and act on behalf of the Contractor;
 - (b) agree upon procedures for coordinating the Contractor's employees, contractors, consultants, agents and authorised representatives; and
 - (c) furnish information to the Employer as and when required.
- (ii) The Contractor's representative shall be of good character and capable of receiving instructions and communicating in Bahasa Malaysia and/or English.
- (iii) Subject to a prior written notice to the Employer, the Contractor is entitled to replace and substitute the Contractor's representative at any time during the Contract Period.
- (iv) Subject to a reasonable ground and prior written notice, the Employer is entitled to require the Contractor to change the Contractor's representative.
- (v) If the Contractor's representative is to be temporarily absent from the Power Plant and/or Site during the execution of the Works, a suitable replacement person shall be appointed, subject to immediate prior written notice to the Employer.

2.8.2 Unless otherwise expressly stated in the Agreement, the Contractor shall obtain all permits and/or approvals for the purpose of the Works, at its own cost and expense. **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this sub-clause 2.8.2.

2.8.3 The Contractor shall be responsible for the safety and security of all its equipment and materials at the Power Plant and/or Site. The Contractor's equipment and materials brought to the Power Plant and/or Site shall be used solely for the purpose of the Works.

2.8.4 Notice/Instruction to Proceed:

The Contractor's access to the Power Plant and/or Site and the commencement of the Works shall be subject to the full compliance to the Employer's conditions prior to the commencement of the Works and/or issuance of written instruction from the Employer to commence the Works and full compliance to HSSE's requirements. For the avoidance of doubt, the Contractor will not be entitled to an extension of time if access right is not granted due to the Contractor's failure to comply with the Employer's conditions prior to the commencement of the Works and/or any part of the HSSE's requirements.

2.8.5 Conditions Precedent to the Commencement of the Works:

Unless otherwise expressly provided, conditions precedent to the commencement of the Works shall include but not limited to, the acceptance of the purchase order or letter of award, submission of the Performance Security, Insurances, evidence satisfactory to the Employer that the Contractor has obtained all authorisation, consent and/or permit required to be obtained in the name of the Contractor which are necessary for the execution of the Works.

2.8.6 Co-ordination, Cooperation with Others and Avoidance of Interference

- (i) The Contractor is aware of the existence of other works/services on/at the Power Plant and/or Site, whether or not employed by the Employer, constraints related to the environment, and the Power Plant and/or Site conditions in which the Contractor may encounter in carrying out and completing the Works. Pursuant thereto, the Employer

shall not be bound to make available any part of the Power Plant and/or Site exclusively to the Contractor.

- (ii) The Contractor shall allow appropriate opportunities for carrying out work/services to:
 - (a) the Employer's personnel and authorised representative;
 - (b) any other contractors, service provider and supplier employed by the Employer; and
 - (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Power Plant and/or Site of any form of work not included in the Agreement or required to be on or near the Power Plant and/or Site.

- (iii) The Contractor shall be responsible for its activities on the Power Plant and/or Site and shall coordinate its own activities with those of other contractors, service provider and supplier.
- (iv) The Contractor shall be deemed to have allowed adequate allowance in the contract price for its obligation to co-ordinate and co-operate under this sub-clause and for any interference with the progress of the Works caused by the concurrent and sequential works by the Employer and/or others and for all costs and expenses arising of or in relation to the provision of such facilities access, attendance and/or services.
- (v) The Contractor shall not be entitled to any extension to the works completion date and/or additional payment pursuant to this sub-clause 2.8.
- (vi) **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this sub-clause 2.8.6.

2.8.7 Avoidance of Interference

- (i) The Contractor shall not interfere unnecessarily or improperly with:
 - (a) the Employer's operations and business at the Power Plant and/or Site;
 - (b) the convenience of the public; and
 - (c) the access, use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.
- (ii) In the event that any part of the Works affects the public's use or the Employer's use of any roads, footpaths or any other route of access, the Contractor shall make available alternative access roads and/or footpaths which shall be convenient and safe to the users of such roads and/or footpaths.
- (iii) The Contractor shall use every reasonable means to prevent any roads or bridges communicating with or on the routes to the Power Plant and/or Site from being damaged or destroyed by any traffic of the Contractor or any of its subcontractors or pollution/ disruption to waterways. The Contractor or its subcontractors shall select routes, choose and/or use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of any plant, materials, the Contractor's equipment or any other goods and equipment or part thereof from and to the Power Plant and/or Site shall be limited, as far as reasonably possible, and so that no unnecessary damage may be occasioned to such roads, bridges and waterways.
- (iv) If any damage occurs to any bridges or roads or pollution/disruption occurs to the waterways arising from the transport of any plant, materials, the Contractor's equipment or any other goods and equipment or part thereof for the purposes of the execution of the Works, the Contractor shall notify the Employer, as soon as it becomes aware of such damage and/or pollution or as soon as it receives any claim from the relevant authority entitled to make such claim. The Contractor shall negotiate the settlement of, and pay all amounts due in respect of such claim at its own cost and expense.

- (v) **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this sub-clause 2.8.7.

2.8.8 Access Right

Subject to the Contractor's strict compliance to the terms and conditions of this Agreement including but not limited to the HSSE's requirements, the Contractor shall have a right of access to the Power Plant and/or Site which shall be restricted only for the purpose of the Works and defect rectification works (if applicable). The Contractor's access right during the Defect Liability Period (if applicable) shall subject to:

- (i) the Contractor shall request access by giving a written notice to the Employer, describing the reason of such access, the parts of the Works to be rectified, and the Contractor's preferred date for access;
- (ii) such notice shall be given in reasonable time in advance of the preferred date for access, taking due regard of all relevant circumstances including the Employer's security restrictions; and
- (iii) within a reasonable period after receiving the Contractor's notice, the Employer shall give a written notice to the Contractor either:
 - (a) stating the Employer's consent to the Contractor's request; or
 - (b) proposing reasonable alternative date(s), with reasons.

The Contractor's right of access to the Power Plant and/or Site or any part thereof shall not be exclusive and unrestricted, and such access shall not be treated as tenancy granted in any way, nor shall it confer any right or title of ownership in or over the Power Plant and/or Site to the Contractor. For the avoidance of doubt, the Contractor will not be entitled to an extension of time if access right is not granted due to the Contractor's failure to comply with the Employer's conditions prior to the commencement of the Works and/or any part of the HSSE's requirements.

- 2.8.9 The Contractor shall not alter the Works without the express instruction in writing of the Employer. The Contractor shall inform the Employer as soon as reasonably practicable on becoming aware of any matter that affects the satisfactory execution of the Works. To the extent that such matter requires the Works to be amended, the Employer shall issue an instruction in accordance with **Clause 2.31 (Variations to the Employer's Requirements and Adjustment)**.

- 2.8.10 The Employer shall have the right to conduct regular joint inspection with the Contractor for the purpose of inspecting the Works whenever the Employer may deem necessary. The Contractor shall comply with all reasonable requests of the Employer for, and assist in arranging, any such observation and inspection visits to the Works. Such visits to the Works shall not be construed:
- (i) as an endorsement by the Employer that the Works is in accordance with the terms of the Agreement nor as a warranty or waiver by the Employer of the safety, durability or reliability of the Works; or
 - (ii) as an endorsement or warranty or waiver by the Employer of any aspect of compliance of the Contractor or relieve the Contractor from conducting its own examinations for compliance with the applicable laws and the terms of this Agreement.

2.8.11 Performance Requirement and Assessment (Service Level)

If no performance requirement and assessment, this sub-clause shall not apply.

- (i) Throughout the Contract Period, the Contractor shall carry out the Works in accordance with the service description, frequency, parameter value and within the

time period set out in the Agreement ("**Service Level**").

- (ii) Details of the performance assessment on the Service Level shall be as set out in the Agreement including but not limited to the assessment period and the minimum performance requirement.
- (iii) If the Contractor fails and/or neglects to carry out the Works or the Works carried out not in accordance with the Employer's requirements on the Service Level the Employer shall be entitled to enforce its right in accordance with the terms of the Agreement including but not limited to impose liquidated ascertained damages (if any).

2.9 Contractor's General Obligations

- 2.9.1 The Contractor shall obtain all necessary approvals, design, execute, complete and remedy the defects in the Works in accordance with this Agreement. When the Works are completed, the Works shall be suitable and fit for the purposes for which the Works are intended as set out in this Agreement.
- 2.9.2 The Contractor shall commence and complete the Works within the timeline specified in the agreed schedule and/or Agreement and parties agree that time is of the essence.
- 2.9.3 The Contractor shall provide the Contractor's personnel, equipment, materials, consumables and other things and services, whether of a temporary or permanent nature, required in and for the purpose of the Works.
- 2.9.4 The Works shall include any works, supply or services in relation to the Works which is necessary to satisfy the Agreement, or is implied by this Agreement, and all works, supply or services in relation to the Works which (although not mentioned in this Agreement), are necessary for the completion of the Works which shall include safe and proper operation of the Works.
- 2.9.5 The Contractor shall carry out the Works:
 - (i) in a good workmanlike manner;
 - (ii) in accordance with the scope, specifications and requirements stipulated in the Agreement and ensure that the Works meet and conform to the purpose intended by the Employer as envisaged, in this Agreement;
 - (iii) in accordance with the terms and provisions of this Agreement, the approvals, consents and permits issued by any relevant authority as obtained by the Employer (if any) and the Contractor, and the applicable laws of Malaysia;
 - (iv) with due care and diligence, and with the highest level of competence, knowledge, qualification and skill expected of an experienced contractor with good track records to undertake the Works;
 - (v) in the most expeditious and economical manner consistent with the best interests of the Employer, and shall take all reasonable steps to avoid cost escalation and keep all expenses to a minimum level consistent with sound economic, engineering and related professional practices; and
 - (vi) in accordance with good engineering and construction practices and/or any other relevant best industry practices, standards and/or guidelines including but not limited to standards and/or guidelines set by the Tenaga Nasional Berhad ("**TNB**"), Energy Commission ("**EC**") and International Electrotechnical Commission ("**IEC**"). All implied warranties provided under the laws shall apply and shall not be capable of being excluded by the parties.
- 2.9.6 The Contractor shall be responsible for the adequacy, stability and safety of the Works, safety of the Site operations and of all methods adopted for the Works.

- 2.9.7 The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer.
- 2.9.8 The Contractor shall, subject to the provisions of this Agreement, and with due skill, care and diligence, execute the Works and carry out its other obligations under and/or in relation to and/or reasonably to be inferred from this Agreement. The Contractor shall provide all the Contractor's personnel and labour, including the supervision thereof, transport to and from the Power Plant and/or Site, materials, offices, workshops, tools, machinery, the Contractor's equipment and all other resources and things, whether of a temporary or permanent nature, required in or for such design and the execution of the Works and for the carrying out of such obligations.
- 2.9.9 The parties agree that the principal objective of this Agreement is the economic and timely completion of the Works.
- 2.10 **Physical Conditions at the Power Plant/ Site**
- 2.10.1 Except as otherwise provided in this Agreement, all physical conditions at the Power Plant and/or Site shall not be considered as unforeseen and shall be at the Contractor's risk. For the purpose of this clause, "physical conditions" means all reasonably foreseeable natural physical conditions, man-made and other physical obstructions, contamination or hazardous substances/conditions on the Power Plant and/or Site or its surroundings.
- 2.10.2 The Contractor hereby agrees that:
- (i) the Contractor shall be deemed to have obtained all necessary information as to the risks, contingencies and other circumstances which may influence or affect the Works;
 - (ii) by executing this Agreement, the Contractor accepts total responsibility and risks for having foreseen all difficulties and costs of successfully completing the Works;
 - (iii) the contract price and the works completion date shall not be adjusted to take into account of any unforeseen circumstances, difficulties or costs; and
 - (iv) the Contractor has reviewed, and taken into account the requirements of the Agreement and acknowledges the provisions and requirements of the Agreement including the time periods contemplated under the Agreement;
 - (a) within which the counterparties are required to comply with their obligations and/or respond to notices and requests;
 - (b) before the expiry of which no claim for any payment, compensation, extension or allowance of time or any other relief is permitted,

and all such provisions, requirements and time-periods shall be deemed reasonably foreseeable by the Contractor and, notwithstanding any other provision of this Agreement, no claim for payment, compensation, extension or allowance of time or other relief shall be permitted in respect thereof.
- 2.11 **Submission of Reports (if applicable)**
- If no requirement for submission of reports (technical or otherwise), this sub-clause shall not apply.*
- 2.11.1 The Contractor shall submit all reports required under the Agreement, in accordance with the agreed timeline for submission. The Contractor shall comply with the agreed timeline for submission and time is of the essence.

2.12 Contractor's Operation and/or Activities at Power Plant and/or Site

- 2.12.1 The Contractor shall confine its operations and/or activities to the Power Plant and/or Site, and to any areas as agreed by the Employer. The Contractor shall take all necessary precautions to keep the Contractor's equipment /materials and the Contractor's personnel within the areas approved by the Employer, and to keep them off adjacent and/or restricted area.
- 2.12.2 During the execution of the Works, the Contractor shall keep the Power Plant and/or Site reasonably free from all unnecessary obstructions and shall store or dispose of any of the Contractor's equipment and surplus materials and clear away and remove from the Power Plant and/or Site any wreckage, accumulated waste materials, residues and rubbish that are no longer required for the Works in accordance with the law and/or conditions imposed by the relevant authority and/or the Employer.
- 2.12.3 The Contractor shall be responsible for keeping unauthorised persons from entering the Power Plant and/or Site. For the avoidance of doubt, authorised persons shall be limited to the Contractor's personnel and/or sub-contractors (as approved by the Employer).
- 2.12.4 Upon the issuance of the Work Completion Certificate for the Works in accordance with the terms of the Agreement, the Contractor shall clear away and remove, from that part of the Power Plant and/or Site and the Works, all of the Contractor's equipment, surplus material, wreckage, rubbish and any temporary works. The Contractor shall leave that part of the Power Plant and/or Site and the Works in a clean and safe condition.
- 2.12.5 **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.12**.

2.13 Contractor's Undertaking

- 2.13.1 The Contractor undertakes that the Contractor's proposal, the engineering, the construction, the execution and the completed Works will be in accordance with:
- (i) the applicable laws in Malaysia, the conditions, requirements and standards, imposed or set out by any rules, regulations or the relevant authorities;
 - (ii) the terms, requirements, specifications, conditions and standards set out in the documents forming this Agreement, as altered or modified pursuant to the terms of this Agreement;
 - (iii) the specifications and accompanying data submitted to the Employer under the Contractor's proposal; and
 - (iv) sound engineering and construction practices.
- 2.13.2 The Contractor covenants that the Works:
- (i) will be completed in a good and workmanlike manner, only with materials and equipment that are brand new and unused, and suitable for their intended use;
 - (ii) shall be in all material respects, in accordance with sound engineering practices; and
 - (iii) that the completed Works shall be capable of meeting the standards and requirements set out in the Agreement.

2.14 Technical Standards and Regulations

- 2.14.1 The Contractor's proposal, the execution and the completed Works shall comply and be in accordance with Malaysian technical standards (unless otherwise specified), building, construction and environmental laws, laws applicable to the product being produced from the Works, and other standards specified in the Employer's requirements, applicable to the Works, or defined by the applicable laws.

2.14.2 All these laws and requirements shall, in respect of the Works, be those prevailing when the Works are completed. References in this Agreement to the published standards shall be understood to be references to the edition applicable on the date of this Agreement.

2.15 **Training(s) (if applicable)**

If no requirement for training(s), this sub-clause shall not apply.

2.15.1 The Contractor shall carry out the training(s) of the Employer's personnel in the operation and maintenance of the Works to the extent specified in the Employer's requirements and/or Agreement. Unless otherwise expressly stated in the Agreement, where this Agreement specifies training(s) which is to be carried out before taking over, the Works shall not be considered to be completed for the purposes of taking over until this training(s) has been completed.

2.16 **Indemnities**

2.16.1 The Contractor shall indemnify and keep the Employer fully indemnified from and against all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Employer shall or may become liable in respect of or arising from:

- (i) any act, omission, negligence, breach and/or default of the Contractor and/or the Contractor's personnel, agents, representatives, consultants, advisors, subcontractors or employees appointed and/or engaged by the Contractor in carrying out its obligations under this Agreement. The Contractor shall be responsible for the works of the Contractor's personnel, agents, representatives, consultants, advisors, subcontractors and employees, for managing and coordinating with them, and for the acts or defaults of any of the Contractor's personnel, agents, representatives, consultants, advisors, subcontractors or employees including their agents and representatives, as if they were the acts or defaults of the Contractor;
- (ii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Works to the extent to which the same is occasioned or contributed to by the act, omission, negligence, breach or default of the Contractor or the Contractor's personnel, agents, representatives, consultants, advisors, subcontractors or employees;
- (iii) any loss, damage or injury of whatsoever nature and kind and however or wherever sustained or caused or contributed to any person by carrying out of the Works by the Contractor, and not caused by the sole negligent or wilful act, default or omission of the Employer or the Employer's personnel, agents, representatives, consultants, advisors, subcontractors or employees; or
- (iv) any fines, penalties or levies imposed upon the Employer due to the failure by the Contractor to comply with the requirements of any applicable laws, regulations, by-laws, policies and/or directives in undertaking the Works.

2.16.2 **Procedures for Claim**

- (i) If the Employer considers itself to be entitled to a claim under this Clause 2.16, the Employer shall give notice to the Contractor describing the event or circumstance giving rise to the claim.
- (ii) The notice shall be given as soon as practicable after the Employer becomes aware, or should have become aware, of the event or circumstance.
- (iii) Thereafter, parties shall in good faith discuss and finalise the claim.
- (iv) In the event of dispute, either party shall be entitled to invoke dispute resolution provisions in **sub-clause 2.42.2** and **sub-clause 2.42.3**.

- (v) The Employer shall keep such records as may be necessary to substantiate any claim, either on the Power Plant and/or Site or at another location.

2.17 **Employer's Use of Contractor's Documents**

- 2.17.1 As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's documents and other design documents made by (or on behalf of) the Contractor for the purpose of the Works which does not form part of deliverables under the Agreement.
- 2.17.2 The Contractor shall be deemed (by signing the Agreement) to give to the Employer a non-terminable irrevocable non-exclusive royalty-free licence to copy, use and communicate the Contractor's documents for an agreed purpose between the parties. The Contractor shall have no liability for any use of the Contractor's documents other than for the purposes for which it was originally intended.
- 2.17.3 The Employer shall defend and indemnify the Contractor from and against all reasonable claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any Intellectual Property rights except where such infringement results from the non-compliance by the Contractor.

2.18 **Contractor's Use of Employer's Documents**

- 2.18.1 As between the Parties, the Employer shall retain the copyright and other Intellectual Property rights in the Employer's documents and other documents made by (or on behalf of) the Employer. The Contractor may, at the Contractor's cost, copy and communicate these documents for the purposes of the Works.
- 2.18.2 These documents (in whole or in part) shall not, without the Employer's prior consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Works and subject always to the strict compliance to the confidentiality provision in this Agreement.
- 2.18.3 **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.18**.

2.19 **Payment Terms**

- 2.19.1 The payment for the Works shall be made on the basis stated in the Agreement, subject to adjustments and/or deductions in accordance with the Agreement.
- 2.19.2 Unless otherwise expressly stated in the Agreement, the Contractor shall pay all taxes, duties and fees required to be paid by the Contractor under the Agreement, and the contract price shall not be adjusted for any of these costs.
- 2.19.3 The payment obligation under the Agreement is subject to the Contractor's compliance to the terms of this clause and the Agreement including but not limited to the performance of the Works in accordance with the terms of the Agreement.
- 2.19.4 The payment of the contract price shall be made in accordance with the procedure set out in this clause which shall include the following:
 - (a) The Contractor shall have **one (1)** dedicated account, the details of which shall be provided to the Employer in writing, as soon as possible upon the execution of this Agreement;

- (b) When the Contractor considers that it has achieved the required milestone for payment:
 - (i) the Contractor shall submit invoice in a form acceptable to the Employer;
 - (ii) the invoice shall be in one paper original and/or one electronic copy; and
 - (iii) the invoice shall show in detail the amounts to which the Contractor considers that the Contractor is entitled, with supporting documents which shall include sufficient detail for the Employer to investigate these amounts together with the relevant reports and/or documents required; and
- (c) Subject to the Contractor's full compliance with the provisions of this clause, the Employer shall make payment within the period of **45 days** from the date of receipt of the invoice by the Employer.

2.19.5 No amount will be paid to the Contractor until the Contractor has fulfilled conditions precedent for payments as set out in the Agreement.

2.19.6 Subject to prior written notice to the Contractor, the Employer may withhold payment due and payable to the Contractor in the event that:

- (a) if anything supplied or work done by the Contractor is not in accordance with the Agreement, the estimated cost of rectification or replacement may be withheld until rectification or replacement has been completed;
- (b) if the Contractor was or is failing to perform any work, service or obligation in accordance with the Agreement, the value of this work, service or obligation may be withheld until the work, service obligation has been performed. In this event, the Employer shall as soon as reasonably practicable give a notice to the Contractor describing the failure and with detailed supporting particulars of the value withheld;
- (c) if the Employer finds any significant error, mistakes or discrepancy in the invoice or supporting documents provided, the amount of the payment may take into account of the extent to which this error or discrepancy has prevented or prejudiced proper investigation of the amounts in the invoice until such error or discrepancy is corrected;
- (d) if the Contractor is liable to pay liquidated ascertained under Agreement, the Employer shall have the absolute right to withhold any payment to the Contractor under this Agreement until the Contractor makes full payment of such liquidated ascertained damages; and/or
- (e) if the Contractor fails to provide or extend the Performance Security and/or the Insurances, the value of the Performance Security or premium payable for the Insurances may be withheld until full compliance to the requirement on the Performance Security and/or Insurances,

and such withholding shall not be considered as late payment on the part of the Employer. The Contractor shall have no right to suspend the Works in the event of such withholding of payment by the Employer under this sub-clause 2.19.6. The sum withhold shall be released by the Employer upon the finalisation of the dispute in accordance with **Clause 2.42** (*Governing Laws and Dispute Resolution*).

2.19.7 Notwithstanding anything stated in the Agreement but subject to prior written notice, the Employer shall be entitled to deduct any money owing from the Contractor to the Employer under the Agreement from any sum which may become due or is payable to the Contractor under the Agreement.

2.19.8 The Contractor and the Employer agree to assist each other for any matter in respect of taxes imposed pursuant to the applicable taxation law paid or payable for the provision of the Works.

- 2.19.9 In the event that the Employer's obligation to make payment falls on any of the public holiday or weekend (Saturday and Sunday), the obligation shall commence on the next Business Day.

Advance Payment

If no amount of advance payment, this sub-clause shall not apply.

- 2.19.10 Subject to the following provisions of this sub-clause 2.19.10, the Employer shall make an advance payment, as an interest-free loan for mobilisation etc. The amount of the advance payment shall be in accordance with the terms of the Agreement.

2.19.11 Advance Payment Guarantee

- (a) If required by the Employer, the Contractor shall, at its own cost and expense, obtain and submit an advance payment guarantee in amounts equal to the advance payment to the Employer. This guarantee shall be an irrevocable and unconditional guarantee issued by an entity to which the Employer gives consent, and shall be based on the sample form provided by the Employer.
- (b) The Contractor shall ensure that the advance payment guarantee is valid and enforceable until the advance payment has been repaid.
- (c) If the terms of the advance payment guarantee specify its expiry date, and the advance payment has not been repaid by fourteen (14) days before the expiry date:
 - (i) the Contractor shall extend the validity of this guarantee until the advance payment has been repaid;
 - (ii) the Contractor shall immediately submit evidence of this extension to the Employer; and
 - (iii) if the Employer does not receive this evidence seven (7) days before the expiry date of this guarantee, the Employer shall be entitled to claim under the guarantee the amount of advance payment which has not been repaid.

2.19.12 Advance Payment

The Employer shall make advance payment within an agreed period after the Employer has received both the Performance Security and the advance payment guarantee in accordance with the terms of the Agreement.

2.19.13 Repayment of Advance Payment

Unless otherwise expressly agreed by the Employer, the advance payment shall be repaid through an agreed percentage deduction in payments to the Contractor.

2.20 **Performance Security (if applicable)**

If no requirement for Performance Security (as defined hereinafter), this sub-clause shall not apply.

- 2.20.1 Within the time period stipulated in the Agreement and as part of the conditions precedent to the commencement of the Works, the Contractor shall provide an **unconditional and irrevocable on-demand** performance security substantially in form provided in **Schedule B1 (Form of Performance Security)** ("**Performance Security**") and shall be in a sum as set out in the Agreement. For the avoidance of doubt, the Contractor will not be entitled to an extension of time if it is due to the Contractor's failure to provide the Performance Security within the time period stipulated in the Agreement.

- 2.20.2 Unless otherwise expressly agreed by the Employer, the Performance Security **shall remain valid** throughout the Contract Period as defined in the Agreement ("**PB Validity Period**").
- 2.20.3 If the terms of the Performance Security specify its expiry date, and the expiry date is prior to the expiry of the Contract Period (as expressly agreed by the Employer):
- (a) the Contractor shall extend the validity of this guarantee in accordance with the terms of the Agreement **fourteen (14) days** prior to its expiry;
 - (b) the Contractor shall immediately submit the evidence of this extension to the Employer; and
 - (c) if the Employer does not receive this evidence **seven (7) days** before the expiry date of this guarantee, the Employer shall be entitled to withhold any payment due and payable to the Contractor in accordance with the terms of the Agreement until the Contractor's submission of the evidence of the extension to the Employer.
- 2.20.4 Unless otherwise approved by the Employer, the Performance Security shall be issued by an approved licensed bank or financial institution incorporated in Malaysia.
- 2.20.5 All costs and expenses incurred for the Performance Security shall be fully borne by the Contractor.
- 2.20.6 If the Contractor commits any breach of its obligations under the Agreement or if the Agreement is terminated due to the Contractor's default, the Employer shall have the absolute right to call and claim the full amount of the Performance Security without any need to prove actual losses and damages suffered by the Employer.
- 2.20.7 In the event of non-termination and the Performance Security has been called by the Employer, the Contractor shall replace the Performance Security within **fourteen (14) days** from the date of the Performance Security is called ("**Replaced Performance Security**"), failing which the Employer shall have the right to either call and forfeit the remaining sum of the Performance Security and terminate the Agreement. The Replaced Performance Security shall be in the original sum as set out in Agreement and valid throughout the PB Validity Period. The value of the Replaced Performance Security shall be equivalent to the value of the original Performance Security ("**Original Performance Security**") and it shall remain valid throughout the PB Validity Period.
- 2.20.8 The Original Performance Security shall be returned to the Contractor as soon as reasonably practicable upon the expiry of the Agreement or termination not due to the Contractor's default.
- 2.21 **Insurance (if applicable)**
- If no requirement for Insurances (as defined hereinafter), this sub-clause shall not apply.*
- 2.21.1 Types of Insurances
- (i) Without limiting or reducing the Contractor's liability and responsibilities under this Agreement, the Contractor shall, at its own cost and expense, procure the insurance policies as set out in this Agreement, and maintain the validity of the same from the works commencement date until the expiry of the Contract Period ("**Insurances**"), unless otherwise expressly agreed by the Employer. The Insurances shall be procured in accordance to the coverage and limit as may be prescribed by the Employer and/or by law, or otherwise in the coverage and limit that the Contractor deems appropriate and sufficient to reduce the Employer's exposure to any risk whatsoever.
 - (ii) The Contractor shall provide a copy of the insurance policies within the period specified in the Agreement or such longer period as may be agreed by the Employer.

- (iii) Within the time period stipulated in the Agreement and as part of the conditions precedent to the commencement of the Works, the Contractor shall provide the Insurances in accordance with the terms of this Agreement. In the event that the Contractor fails to procure the required insurances within the time period set out in the Agreement, the Employer shall have the right to procure the required insurances on behalf of the Contractor and all costs and expenses incurred by the Employer including but not limited to the insurance premiums paid shall be fully reimbursed by the Contractor, in accordance with the Employer's written notice. In the event that the Contractor fails to reimburse the Employer in accordance with the Employer's written notice, the Employer shall have the right to deduct from any money due or to become due to the Contractor or recover from the Performance Security, or as a debt due from the Contractor. For the avoidance of doubt, the Contractor will not be entitled to an extension of time if it is due to the Contractor's failure to provide the Insurances within the time period stipulated in the Agreement.

2.21.2 Insurer

The Insurances referred herein shall be taken out with a reputable insurer licensed and operating in Malaysia and approved by the Employer.

2.21.3 Copies

The Contractor shall procure full and complete duplicate or certified copies of the policies, renewal certificates and endorsement slips and lodge the same with the Employer immediately upon receipt of the same by the Contractor.

2.21.4 Premiums

The Contractor shall punctually pay or cause to be paid all premiums and other sums payable in respect of each insurance policy to be effected under this clause upon such sums being due and payable and shall, in respect of any such insurance policies, promptly produce for the inspection of the Employer as proof of payment, the receipts for the payment of premiums payable in respect of such policy and for any other monies payable thereunder (or other proof of payment to the Employer's satisfaction).

2.21.5 Information

The Contractor undertakes to give true and particular information to the officer or company with which the said insurances are effected, of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys thereunder.

2.21.6 Cancellation

Without limiting or reducing the Contractor's liability and responsibilities under **sub-clause 2.21.1**, the Contractor shall notify the Employer in writing if the insurance company cancels the Insurances together with reasons for such cancellation.

2.21.7 Insurance Not to Be Vitiating

The Contractor shall not at any time knowingly permit or suffer to be done any act, matter or thing whereby any insurance required under this Agreement may be vitiated or rendered void or voidable.

2.21.8 Destruction

If the Works or any part thereof or any of the temporary works, plant, materials, equipment or other things on the Power Plant and/or Site is damaged or lost by any risk insured against under this clause, the Contractor will fully utilise from the proceed of the insurance available and to the extent that the same may be insufficient, from its own moneys, repair, replace and make good such damage or loss.

2.21.9 Waiver of Subrogation

Without affecting any other rights or remedies of the Employer under this Agreement, the Contractor hereby releases and relieves the Employer, and waives its entire right to recover damages against the Employer, for all losses and/or damages to its property or asset arising out of or incident to the Works required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required. The Contractor shall ensure its insurer waives any right to subrogation that the insurer may have against the Employer and its insurer.

2.21.10 Deductibles

The Contractor warrants that all deductibles with respect to any insurance claim shall be fully borne by the Contractor.

2.21.11 English Language

The Insurance policies procured shall be in the English language.

2.22 **Liquidated Ascertained Damages**

If no requirement for liquidated ascertained damages, this sub-clause shall not apply.

2.22.1 Without prejudice to the Employer's right to terminate the Agreement, the Employer shall have the rights to impose liquidated ascertained damages as set out in the Agreement, if the Contractor fails to commence or complete the Works by the works commencement date or the works completion date (whichever applicable).

2.22.2 The Contractor shall pay liquidated ascertained damages (for commencement and/or completion) to the Employer in the amount calculated in accordance with formula set out in the Agreement. Such liquidated ascertained damages shall be paid for each day or part thereof which shall elapse between the relevant works commencement/completion date and the actual commencement/completion date.

2.22.3 The parties agree and acknowledge that the amount and calculation specified in Agreement have been calculated by the parties to represent the genuine, good faith, and reasonable estimate of fair compensation for the losses to the Employer that may be reasonably anticipated as a result of the Contractor's breach, and such amount constitutes liquidated ascertained damages and are not a penalty. Such liquidated ascertained damages shall also be payable to the Employer without the need of the Employer to prove its actual damage or loss.

2.22.4 Notwithstanding the Contractor's payment of the liquidated ascertained damages, such damages shall not relieve the Contractor from its obligations to commence or complete the Works, or from any other duties, obligations or responsibilities which it may have under this Agreement.

2.22.5 The Employer may deduct the amount of such liquidated ascertained damages from any monies due, or to become due, to the Contractor or to claim from the Performance Security.

2.22.6 If this provision requiring the payment of the liquidated ascertained damages is for any reason found to be void, invalid, a penalty or otherwise unenforceable, such that the Employer is unable to enforce its entitlement to payment of the same, then the Employer shall be entitled to claim damages under general law in lieu of liquidated ascertained damages provided that the Employer's entitlement to the damages shall not exceed the amount the Employer would have been entitled to claim in respect of that breach or failure of performance had the liquidated ascertained damages been valid or enforceable.

2.23 **Step-In Rights of the Employer**

2.23.1 Right to Undertake the Works

- (i) Without prejudice to any rights of the Employer under this Agreement or at law, including but not limited to the Employer's right to terminate, the Employer shall have the right but under no circumstances the obligation, to undertake the Works either on its own or to appoint any third party in the event of the Contractor's breach or failure to discharge any of its obligation under this Agreement.
- (ii) For the purpose of the foregoing clause, the Employer will serve a step-in notice to the Contractor prior to exercising such right to step-in.
- (iii) **Clause 2.16 (Indemnities)** shall apply and the Contractor shall be liable to all costs and expenses incurred by the Employer arising from the exercise of the step-in right, which shall include but not limited to the cost to undertake the Works or the remaining part thereof, the legal fees and administrative fees in connection thereto.

2.23.2 No Transfer

In no event shall the Employer's election to step-in as provided under this clause be deemed to be a transfer of the Contractor's obligations under this Agreement to the Employer, and the Contractor shall remain liable for all its obligations under this Agreement, and for the Works executed by the Contractor.

2.23.3 No Liability

During such period the Employer is exercising its right to step-in (hereinafter referred to as "**Step-In Period**"), the Employer shall not be liable for any claims, demands, losses, actions, suits, compensation, costs (including legal costs), charges and expenses of any kind whatsoever arising from the exercising of the Employer's right to step-in.

2.23.4 Return of Responsibilities

The Employer shall have the right to require the Contractor to take over the Works from the Employer at any time during the Step-In Period and thereafter, the Employer's exercise of its right to step-in for that particular Step-In Period shall forthwith cease.

2.23.5 Co-Operation

The parties shall co-operate with each other and execute and deliver such documents as may be requisite and necessary for the Employer to effectively exercise its rights under this clause.

2.24 **Staff and Labour**

2.24.1 Engagement of Staff and Labour

- (i) Except as otherwise stated in the Agreement, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- (ii) The Contractor shall employ staff and labour with appropriate qualifications and highest skills, competence and experience in or about the performance of the Works in accordance with the terms of the Agreement.
- (iii) The Contractor shall obtain all necessary visas, work permits, employment permits, dependents' permits, licences and other permits for all the Contractor's personnel and other people involved with, engaged and/or appointed by the Contractor for the Works as required under this Agreement.

2.24.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out or as prescribed under the laws related to the employment. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by the employers whose trade or industry is similar to that of the Contractor.

2.24.3 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's personnel.

2.24.4 Labour Laws

- (i) The Contractor shall comply with all the relevant labour laws applicable to the Contractor's personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (ii) The Contractor shall require its employees to obey all applicable laws, including those concerning safety at work.

2.24.5 Working Hours

- (i) The Contractor shall comply with the requirement of the applicable laws with regards to the working hours and obtain the Employer and the relevant authority's prior written approval in the event that the Contractor deems necessary to execute any Works outside the approved working hours.
- (ii) Additionally, in the event that the Employer's personnel are required to be present at the Power Plant and/or Site outside the working hours, the Contractor shall notify and obtain the Employer's prior written approval.
- (iii) For the avoidance of doubt, the Contractor shall not be entitled to any extension of time to the works completion date in the event that the approval is not granted by the Employer and the relevant authority.

2.24.6 Facilities for Staff and Labour

- (i) Except as otherwise stated in the Agreement, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's personnel.
- (ii) The Contractor shall not permit any of the Contractor's personnel to maintain any temporary or permanent living quarters within the Power Plant and/or Site.

2.24.7 Health and Safety

- (i) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's personnel in accordance with the requirement of the applicable laws. The Contractor shall ensure that first aid facilities is available at all times at the Power Plant and/or Site and at any accommodation for the Contractor's personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics, including but not limited to the provision of personal protective equipment ("**PPE**").
- (ii) If required by the Employer, the Contractor shall send to the Employer, details of any accident at the Power Plant and/or Site as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.

2.24.8 Contractor's Superintendence

- (i) Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.
- (ii) Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications specified in the Agreement and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

2.24.9 Contractor's Personnel

- (i) The Contractor's personnel shall be qualified, skilled and experienced in their respective trades or occupations. The Employer shall have the rights to require the Contractor to remove (or cause to be removed) any person employed on the Power Plant and/or Site or Works, including the Contractor's representative if applicable, who:
 - (a) persists in any misconduct or lack of care,
 - (b) carries out duties incompetently or negligently;
 - (c) fails to conform with any provisions of this Agreement; or
 - (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
- (ii) In such event, the Contractor shall promptly appoint (or cause to be appointed) a suitable replacement person.

2.24.10 Records of the Contractor's personnel and equipment

The Contractor shall submit, to the Employer, details showing the supervisory staff and the numbers of each class of the Contractor's personnel and labour, and of each type of the Contractor's equipment, goods and/or materials on the Power Plant and/or Site.

2.24.11 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's personnel, and to preserve peace and protection of persons and property on and near the Power Plant and/or Site.

2.24.12 Liability

The Contractor shall be responsible for the works, supply or services in relation to the Works of the Contractor's personnel, and for the acts or defaults of any of the Contractor's personnel, as if they were the acts or defaults of the Contractor.

2.24.13 Indemnities

Clause 2.16 (*Indemnities*) shall apply if the Contractor fails to comply with its obligations under this **Clause 2.24**.

2.25 **Manner of Execution and Quality of Materials**

2.25.1 The Contractor shall carry out the Works:

- (i) in the manner (if any) specified in this Agreement;
- (ii) in a proper workmanlike and careful manner, in accordance with recognised good practice, sound engineering and construction practices;
- (iii) with properly equipped facilities, plant, machineries, equipment and non-hazardous materials, except as otherwise specified in this Agreement;
- (iv) by providing manpower that are qualified, skilled and experienced in their respective trades or occupations with high integrity for the provision of the Works, in accordance with the Employer's requirements. The Contractor shall not engage/employ any interns or students as core personnel driving and carrying out the Works; and
- (v) consistent with the Employer's requirements.

2.25.2 Quality of Plant and Materials

The Contractor shall ensure that all materials used and/or supplied for the Works are:

- (i) new, original and corresponds with the Employer's requirements;
- (ii) not infringing Intellectual Property rights of any third party;
- (iii) of a suitable grade or quality for its intended use;
- (iv) free from any defects and any form of encumbrances;
- (v) fit for purpose and with merchantable quality;
- (vi) safe, in good operational conditions, and in accordance with the requirement of the applicable laws;
- (vii) not infringing Intellectual Property rights of any third party; and/or
- (viii) in accordance with the Agreement, good engineering and construction practices and/or any other relevant best industry practices, standards and/or guidelines including but not limited to standards and/or guidelines set by TNB, EC and IEC. For the avoidance of doubt, all implied warranties provided under the laws shall apply and shall not be capable of being excluded by the parties.

2.25.3 Inspection

- (i) The Employer's personnel shall at all times:
 - (a) have full access to all parts of the Power Plant and/ or Site including but not limited to the work area; and
 - (b) during execution of the Works, be entitled to examine, inspect, measure and test the materials and workmanship forming part of the Works.
- (ii) The Contractor shall give the Employer's personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment (if

required). No such activity shall relieve the Contractor from any obligation or responsibility.

2.25.4 Rejection

- (i) If, as a result of an examination, inspection, measurement or testing, any materials, design or workmanship is found to be defective or otherwise not in accordance with the terms of this Agreement, the Employer may reject the materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the terms of this Agreement.
- (ii) If the Employer requires such materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall pay these costs to the Employer.

2.25.5 Remedial Works

- (i) Notwithstanding any previous test or certification, the Employer may instruct the Contractor to:
 - (a) remove from the Power Plant and/or Site and replace any materials which is not in accordance with this Agreement;
 - (b) remove and re-execute any other work which is not in accordance with this Agreement; and
 - (c) execute any work which is urgently required for the safety of the Works.
- (ii) The Contractor shall comply with the instruction within the time specified in the instruction (or within a reasonable time if not so specified therein), or immediately if urgency is specified in Employer's notice.
- (iii) If the Contractor fails to comply with any such instruction, the Employer shall be entitled to engage any third party to carry out the work, and the costs incurred by the Employer for such purpose shall be fully borne by the Contractor. For the avoidance of doubt, **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **sub-clause 2.25.5**.

2.25.6 Ownership of Plant and Materials (*if applicable*)

- (i) Each item of the equipment, goods and materials forming part of deliverables under the Agreement shall, to the extent consistent with the applicable laws, become the property of the Employer free from liens and other encumbrances, when it is delivered to the Power Plant and/or Site.
- (ii) Notwithstanding the passing of title of the materials to the Employer under **sub-clause 2.25.6(i)** above, the risk to such the materials shall remain with the Contractor until acceptance by the Employer of the Works in accordance with the terms of the Agreement.

2.26 **Completion and Expiry**

2.26.1 The parties agree that time shall be of the essence. Pursuant thereto, the Contractor shall complete the whole of the Works by the agreed completion date for the Works, including:

- (i) achieving all the required tests on completion as specified in the Agreement;
- (ii) completing all works which are stated in the Agreement as being required for the Works to be considered to be completed for the purpose of the taking over by the Employer under the Agreement; and

- (iii) if applicable, achieving all the milestones for completion of each element of the Works as specified in works schedule.

2.26.2 Extension of Time

A. Events

- (i) The Contractor shall only be entitled to an extension of the agreed completion date if and to the extent that the completion for the purposes of taking over under the Agreement is or will be delayed by any of the following causes:
 - (a) a variation by the Employer;
 - (b) a cause of delay giving an entitlement to extension under a provision of this Agreement; or
 - (c) any delay, impediment or prevention directly caused by or attributable to the Employer, the Employer's personnel, or the Employer's other contractors on the Power Plant and/or Site.
- (ii) Any delay arising as a result of a Force Majeure Event shall be subject to the provisions on Force Majeure and not this clause.

B. Procedures for Extension of Time

- (i) If the Contractor considers itself to be entitled to an extension to the works completion date, the Contractor shall give notice to the Employer describing the event or circumstance giving rise to the claim.
- (ii) The notice shall be given as soon as practicable after the Contractor becomes aware, or should have become aware, of the event or circumstance.
- (iii) If the Contractor fails to give notice of a claim in accordance with **sub-clause 2.26.2(B)(ii)**, the works completion date shall not be extended, the Contractor shall not be entitled to any additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions under this sub-clause 2.26.2(B) shall apply.
- (iv) The Contractor shall also submit any other notices which are required under this Agreement (if any) or by the Employer, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (v) Thereafter, parties shall in good faith discuss and finalise the claim.
- (vi) In the event of dispute, either party shall be entitled to invoke dispute resolution provisions in **sub-clause 2.42.2** and **sub-clause 2.42.3**.
- (vii) The Contractor shall keep records as may be necessary to substantiate any claim. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

2.26.3 Rate of Progress

- (i) If, at any time actual progress of the Works is too slow to complete by the works completion date other than as a result of a cause for which an extension is permitted under **sub-clause 2.26.2(A)**, then the Employer may instruct the Contractor to submit a revised Works schedule and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite the progress and complete the Works by the works completion date.
- (ii) Unless the Employer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's personnel and/or goods, equipment and materials, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs,

the Contractor shall pay these costs to the Employer. For the avoidance of doubt, the Contractor shall not be entitled to extension of time in such circumstances.

2.26.4 Not Applicable

2.26.5 Suspension

A. Suspension of Work

- (i) The Employer may at any time instruct the Contractor to suspend the progress of any part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.
- (ii) The Employer may also notify the cause for such suspension. If and to the extent that the cause is notified and is the responsibility and/or at the risk of the Contractor, the following sub-clauses on "**Consequences of Suspension**", "**Prolonged Suspension**" and "**Resumption of Works**" shall not apply.

B. Consequences of Suspension

- (i) If the Contractor suffers delay and/or incurs cost from complying with the Employer's instructions under this **sub-clause 2.26.2(A)** and/or from resuming the work, the Contractor shall give notice to the Employer and shall be entitled, subject always to its compliance to **sub-clause 2.26.2(B)**, to:
 - (a) an extension of time for any such delay, if completion is or will be delayed and the extended time granted shall correspond to the period of suspension by the Employer; and/or
 - (b) payment of reasonable costs, subject to the Employer's assessment, which shall be added to the contract price.

For the avoidance of doubt, **sub-clause 2.26.2(B)** shall mutatis mutandis apply.

- (ii) For the avoidance of doubt, the Contractor shall not be entitled to an extension of time, or to the payment of cost incurred in, making good the consequences of the Contractor's default including but not limited to faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with this sub-clause.

C. Prolonged Suspension

- (i) If the suspension under **sub-clause 2.26.5(A)** has continued for more than thirty (30) days, the Contractor may request the Employer's permission to proceed.
- (ii) If the Employer does not provide its permission within seven (7) days after being requested by the Contractor, the Contractor may, by giving notice to the Employer, either:
 - (a) to treat the suspension as an omission under Variations' provision of the affected part of the Works; or
 - (b) if the suspension affects the whole of the Works, to propose on the termination for convenience of this Agreement by the Employer.

D. Resumption of Work

After the permission or instruction to proceed is given by the Employer to the Contractor pursuant to a suspension under this sub-clause, the parties shall jointly examine the Works affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works, which has occurred during the suspension.

2.27 Employer's Taking Over (Completion) and Defects Liability**(A) Employer's Taking Over****2.27.1 Application for Work Completion Certificate**

The Contractor shall make a written application to the Employer for the issuance or execution of the Work Completion Certificate for the Works upon the successful completion of the Works in accordance with the terms of the Agreement.

2.27.2 Conditions for Taking Over

The issuance or execution of the Work Completion Certificate by the Employer for the Works shall always be subject to the fulfilment of the following:

- (i) the Works have been completed for their intended purpose and in accordance with the terms of the Agreement with no works (minor or otherwise) remain outstanding;
- (ii) if applicable, the Contractor has successfully completed all required tests;
- (iii) if applicable, all permits, licences, approvals or other governmental authorisations required by the relevant authorities and under the applicable laws for the operation of the Works have been obtained by the Contractor and are in full force and effect;
- (iv) if applicable, all relevant consultants in connection with the Works have certified that the Works have been completed in accordance with the terms of this Agreement;
- (v) if applicable, the Contractor has submitted the operations and maintenance programme and manuals for the Works;
- (vi) if applicable, all approvals, requirements, conditions and certifications required for the taking over of the Works as stated under the Agreement have been obtained and satisfied by the Contractor;
- (vii) the Works shall be made available to the Employer in a condition which is safe and fit for its intended purpose, whereby the Works can immediately be safely placed in operation;
- (viii) if applicable, the Contractor has submitted to the Employer all required documents;
- (ix) if applicable, all Intellectual Property rights have been obtained for the operation of the Works;
- (x) if applicable, the Contractor has supplied the spare parts, consumables and special tools required to be delivered prior to the issuance of the Work Completion Certificate; and
- (xi) if applicable, the Contractor has completed its training obligations to the Employer's personnel or other nominees of the Employer.

2.27.3 Verification of the Works

- (i) Upon the Employer's receipt of the Contractor's application for the Work Completion Certificate, the Employer shall as soon as reasonably practicable from the receipt of such application, hold a joint inspection in the presence of the Employer's and the Contractor's authorised representatives to verify that the Works have been completed in accordance with the terms of this Agreement. If the Employer is satisfied that the Works have been completed in accordance with the terms of this Agreement, then the

Employer shall, as soon as reasonably practicable, issue or execute the Work Completion Certificate.

- (ii) If during the verification the Employer is not satisfied that the Works have been completed in accordance with the terms of this Agreement the Employer shall have the right to reject the Works until full compliance to the terms of the Agreement.

2.27.4 Issuance of the Work Completion Certificate

- (i) Upon satisfaction of the Employer pursuant to the joint inspection under **sub-clause 2.27.3(i)** or upon completion of the rectification works as specified in the non-conformance list under **sub-clause 2.27.3(ii)(a)** above, the Employer shall issue or execute the Work Completion Certificate to the Contractor as soon as reasonably practicable.
- (ii) The date stated in the Work Completion Certificate issued or executed shall be deemed to be the date for the actual completion of the Works, and such date shall signify the commencement of the Initial Defects Liability Period.

2.27.5 Events After Completion

- (i) the Contractor shall remove (i) its employees, subcontractors, agents and representatives; and (ii) its equipment and material from the Plant/Site at its own cost and expense;
- (ii) deliver all documents as required by the Employer pursuant to the provision of the Agreement at its own cost and expense;
- (iii) the Contractor shall pay all monies owed to the Employer including but not limited to LAD imposed (if any);
- (iv) subject to the terms of the Agreement, any remaining payment due and payable to the Contractor shall be released to the Contractor accordingly; and
- (v) bear all liabilities, obligations, claims, suits or proceedings whatsoever existing prior to the expiry of the Agreement arising out or in connection with:
 - (a) the Works rendered;
 - (b) any other agreement and/or arrangement entered into by the Contractor in relation to its obligations under this Agreement;
 - (c) any act or default, omission or negligence of the Contractor, its employee, agents or servants; and
 - (d) the Employer shall not be liable in respect of such liabilities, obligations, claims, suits or proceedings.

2.27.6 Each party shall remain liable for the fulfilment of any obligation which remains unperformed/unfulfilled at that time of expiry.

2.27.7 The expiry or termination of the Agreement does not affect any claim or obligation that the Contractor or the Employer may have against each other prior to the expiry or termination of the Agreement.

(B) Defects Liability

If no requirement for Defects Liability, this entire sub-clause on Defect Liability shall not apply.

2.27.8 The Defects Liability Period shall comprise:

- (i) Initial Defects Liability Period which shall commence from the Works completion date stated in the Work Completion Certificate; and

- (ii) Extended Defects Liability Period which shall commence from the date of repair and/or replacement of any part of the Works during the Initial Defects Liability Period, due to defects and/or damage resulting in the Works not being able to be used for its intended purpose(s),

and hereinafter collectively referred to as “**Defects Liability Period**”.

2.27.9 Remedying Defects

In order that the Works shall be in the condition required by this Agreement (fair wear and tear excepted) by the expiry date of the relevant Defects Liability Period, the Contractor shall execute all work required to remedy any defects, imperfections, shrinkages, damage, or any other fault whatsoever in the Works, as may be notified in writing by the Employer on or before the expiry of the Defects Liability Period for the Works. If any defects, imperfections, shrinkages, damage or any other fault whatsoever appear during the Defects Liability Period, the Employer shall promptly notify the Contractor accordingly in writing, and the defects shall be rectified within the period stated in the Employer's notice.

2.27.10 Cost of Remedying Defects

All remedial works referred to in **sub-clause 2.27.9** shall be executed at the risk and cost of the Contractor, if and to the extent that the remedial works are attributable to:

- (i) if applicable, the design of the Works;
- (ii) the plant, materials or workmanship not being in accordance with the terms of this Agreement; or
- (iii) failure by the Contractor to comply with any other obligation under this Agreement.

2.27.11 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within the period specified by the Employer pursuant to **sub-clause 2.27.9**, and such remedial work was to be executed at the Contractor's cost pursuant to **sub-clause 2.27.10** above, the Employer may, at its option, carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, and **Clause 2.16 (Indemnities)** shall apply.

2.27.12 Further Tests (if applicable/any)

- (i) If the work of remedying of any defect or damage may affect the performance of the Works and such defect is at the Contractor's cost under **sub-clause 2.27.10** above, the Employer may require the repetition of any of the tests described in this Agreement, including tests on completion specified in the Agreement. The requirement shall be made by notice as soon as reasonably practicable after the defect or damage is remedied.
- (ii) These tests shall be carried out in accordance with the terms applicable to the previous tests, and shall be carried out at the risk and cost of the Contractor.

2.28 Termination Due to Default

2.28.1 Either party shall have the right to terminate the Agreement in accordance with the following:

- (i) In the event of breach of the terms and conditions of the Agreement by the defaulting party, it shall be lawful for the non-defaulting party at any time thereafter to serve a notice requiring the defaulting party to remedy the breach or default within a reasonable

period of time ("**Default Notice**") to be determined by the non-defaulting party at its sole discretion based on the nature of breach or default and urgency of the situation for the breach or default to be immediately remedied.

- (ii) If:
- (a) either party fails to remedy breach in accordance with the Default Notice;
 - (b) the liquidated ascertained damages (if any) has reached its maximum threshold;
 - (c) either party commits an act of bankruptcy or becomes a bankrupt (*applicable for individual*);
 - (d) either party has any judgment obtained against the other party remains unsatisfied for more than fourteen (14) days or either party has its property seized under any distress or execution process, makes any arrangements with or assignment for the benefit of its creditor;
 - (e) either party being a company becomes insolvent;
 - (f) either party being a company, has a winding up order against the filed by or against either party pursuant to the provisions of the Malaysian Companies Act 2016;
 - (g) a provisional liquidator, receiver or manager of either party's business or undertaking has been duly appointed, or possession has been taken by or on behalf of creditors or debenture holders secured by a floating charge of any property of either party comprised in or is a subject of the said floating charge; or
 - (h) either party has any reason to believe that the other party or anyone employed by it or acting on its behalf, whether with or without the other party's knowledge, is engaged or has engaged in corrupt practice in connection with the Works,

then without prejudice to any other rights or remedies that either party may have at law and in equity against the other party, the Agreement shall be forthwith terminated with an issuance of termination notice ("**Termination Notice**").

2.28.2 Without prejudice to any rights that the non-defaulting party may have at law or in equity, the following consequences of termination shall apply in the event that the Agreement is terminated in accordance with this Clause:

- (i) the Contractor shall terminate all third-party contracts entered into by the Contractor for the purposes of the Agreement and allow such third party to enter into a contract with the Employer for the purpose of completing the Works, at the Employer's sole discretion. For the avoidance of doubt, the Employer shall not be obliged to pay any third party for any part of or all of the Works rendered for the purposes of the Agreement (whether before or after the date of termination) for which the Contractor has failed to make payment to the third party;
- (ii) the Employer shall be entitled to appoint any other party to undertake the Works;
- (iii) if so required by the Employer, the benefit of any agreement for the Works shall be assigned to the Employer at no cost or expense to the Employer;
- (iv) non-defaulting party shall be entitled to recover from the defaulting party any losses and damages suffered or to be suffered arising from the breach and/or termination;
- (v) the Contractor shall not be released from any of its obligations or liabilities under the Agreement and shall remain liable at all times for all claims, losses or damages of whatsoever nature arising out of the Works that have been performed by the Contractor prior to the termination of the Agreement and shall indemnify and keep the Employer fully indemnified against all claims, losses or damages arising therefrom;

- (vi) the Contractor shall pay all monies owed to the Employer including but not limited to liquidated ascertained damages imposed (if any);
- (vii) the Contractor shall hand over to the Employer within **seven (7) days** from the date of the Termination Notice, all relevant documents in relation to the Works, whether completed or in process, accumulated by the Contractor in the performance of the Works; and
- (viii) subject to **sub-clause 2.19.6**, the Employer shall pay any amounts due and payable to the Contractor under the Agreement.

Neither the existence nor exercise of the foregoing powers by the Employer nor anything else contained in the Agreement shall create a privity of contract between the Employer and the Contractor's advisers, sub-contractors, suppliers and any third party appointed by the Contractor or shall render the Employer liable to any of them.

- 2.28.3 Unless otherwise expressly stated in the Agreement, neither party shall be liable to the other party for any indirect, incidental, consequential or punitive damages as a result of the performance or non-performance of the obligations imposed pursuant to this Agreement. The parties hereby agree that the liquidated ascertained damages provided for in this Agreement shall not constitute such indirect, incidental, consequential or punitive damages.

2.29 Termination for Convenience

- 2.29.1 Subject to **thirty (30) days** (or any other period to be determined by the Employer at its sole discretion) prior written notice to the Contractor, the Employer shall have the absolute right to forthwith terminate this Agreement, without any need to assign any reason whatsoever ("**Notice of Termination for Convenience**"). After the Contractor's receipt of such notice from the Employer, and except as otherwise directed by the Employer, the Contractor shall:

- (a) cease all works under this Agreement on the date and to the extent specified in the Notice of Termination for Convenience;
- (b) pay to the Employer any monies due and payable to the Employer under this Agreement as at the termination date;
- (c) unless otherwise instructed by the Employer, cancel all orders for any plant, materials, goods and equipment and place no further orders or sub-contract except as may be necessary for the completion of any part of the Works under this Agreement that has not been terminated, if any;
- (d) if applicable, transfer title to the Employer and deliver up as directed by the Employer, the completed or partially completed plans, drawings, schedules, information, and other property that would be required to be furnished to the Employer under this Agreement, except that this requirement shall not apply to goods for which the Contractor has not been paid;
- (e) if the Employer so instructs, assign and/or novate to the Employer or, at the Employer's direction, its nominee, the benefit of any agreement which the Contractor may have entered into for the purpose of or connected with the performance of the Works or that part in respect of which the Contractor's performance has been terminated and the Contractor shall ensure that any sub-contract entered into by it, contains an express right of assignment and/or novation to the Employer or its nominee; and
- (f) if applicable, complete the performance of any part of the Works that has not been terminated by the Notice of Termination for Convenience.

- 2.29.2 Under this circumstance, the parties shall in good faith discuss, negotiate and agree or determine the termination amount to be paid by the Employer to the Contractor for the early termination of this Agreement in accordance with **Clause 2.42 (Governing Laws and Dispute Resolution)**.

- 2.29.3 The basis of calculation shall be based on the actual Works done as assessed and verified by the Employer up to the date of termination as specified in the Notice of Termination for Convenience, and shall include any outstanding amount remaining to be paid to the Contractor prior to the termination date and any other charges, costs and expenses reasonably incurred by the Contractor due to the early termination by the Employer. The Contractor shall not be entitled to claim for any indirect, incidental, consequential or punitive damages as a result of termination under this clause.
- 2.29.4 The termination payment shall be deemed as a full and final settlement for all claims arising from the early termination and the Contractor shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement under this **Clause 2.29**.
- 2.30 **Force Majeure**
- 2.30.1 If a party's obligations under the Agreement is materially and adversely affected, delayed, hindered, interfered with or prevented by reason of the occurrence of any event as more particularly described in **sub-clause 2.30.5** below ("**Force Majeure Event**"), the affected party shall give written notice to the other party within **seven (7) days** after the party becomes aware, or should have become aware, of the relevant event or circumstances constituting Force Majeure Event. The Force Majeure notice shall specify the event constituting the Force Majeure Event ("**Force Majeure Notice**"), obligations and/or performance of which is or will be prevented due to the Force Majeure Event, consequences of such occurrence and estimated time of delay due to the occurrence of the Force Majeure Event, together with supporting documents to evidence the same. For the avoidance of doubt, "**Force Majeure Event**" means an event or circumstance which:
- (i) is beyond a party's control;
 - (ii) the party could not reasonably have provided against before entering into the Agreement;
 - (iii) having arisen, such party could not reasonably have avoided or overcome; and
 - (iv) is not attributable to the other party's default.
- 2.30.2 Without affecting the parties' right and obligations under the Agreement, within fourteen (14) days from the other party's receipt of the Force Majeure Notice, the parties shall amicably discuss on the Force Majeure Event raised in the Force Majeure Notice. Pending discussion, the parties shall continue to perform their obligations that are unaffected by the Force Majeure Event. Following the amicable discussion, the receiving Party shall have the right to dispute the Force Majeure Notice if the receiving Party has reasons to believe that the Force Majeure Event does not occur. The dispute shall then be resolved in accordance with the dispute resolution provisions under **Clause 2.42 (Governing Laws and Dispute Resolution)**. Pending the resolution of such dispute, the parties shall continue to perform their obligations that are unaffected by the Force Majeure Event. Either party shall have the right to revoke the Force Majeure Notice if it considers the Force Majeure Event has ceased to exist by giving fourteen (14) days prior written notice.
- 2.30.3 Subject to the full compliance of the requirements set out in this clause, both parties shall be excused from further performance of their contractual obligations under the Agreement for as long as the Force Majeure Event prevents it from performing them and neither party shall be liable for any loss, damage, delay or breach due to or arising from its failure to perform/ fulfil any of its obligation under the Agreement during the period.
- 2.30.4 Notwithstanding **sub-clause 2.30.2**, each party shall at all times use all reasonable efforts to minimise any delay in the performance of this Agreement as a result of a Force Majeure Event and mitigate the effects of a Force Majeure Event.

2.30.5 The Force Majeure Event may comprise but not limited to any of the following events or circumstances provided that conditions in **sub-clauses 2.30.1(i) to (iv)** above are satisfied:

- (a) war (declared or undeclared), preparation of war, armed conflict, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, insurrection of military or usurped power or civil war, acts of piracy, blockade;
- (c) riot, commotion, disorder, strike, lockout, sabotage, declaration of state of emergency or coup d'état trade embargo or other industrial action by persons other than personnel and other employees of the affected party, its subcontractors or its suppliers and which affect a substantial or essential part of the Works;
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the affected party's use of such munitions, explosives, radiation or radio-activity;
- (e) acts of God or force of nature, natural catastrophes such as landslide, lightning, earthquake, hurricane, typhoon, volcanic activity, fire, explosion, storm or storm warning, flood, fire, explosion, tsunami, tidal wave, cyclone, subsidence and/or other natural physical disaster; ionizing, radiation or contaminating by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion or nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or chemical contamination;
- (f) shipwreck and perils to navigation, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed, maritime or aviation disasters;
- (g) pandemic or restrictions of movement control order declared by the authority, ministry or governmental body of the country(ies) of the parties or of the country of operation which delays, suspend or disrupt the performance of the Agreement;
- (h) embargoes, mandates or laws of a governmental body having jurisdiction over party(ies) or the country of operation prohibiting and/or preventing performance of the Agreement; or
- (i) denial, revocation or failure to issue required licenses, permits or governmental consents required for the performance of the Agreement provided that it is not due to the fault (including negligence) of the party seeking relief from performance,

For the avoidance of doubt, economic downturn and financial difficulties encountered by the Contractor shall not be considered as the Force Majeure Event.

2.30.6 In the event that the Force Majeure Event continues to occur for a period exceeding **fourteen (14) days** from the date of the Force Majeure Notice, the Employer and the Contractor hereby agree to engage into a good faith discussion and negotiation in order to find a practical and reasonable solution, failing which **sub-clause 2.30.6** below shall apply.

2.30.7 In the event that the Force Majeure Event continues to occur, prolongs and be of such severity and the parties are unable to find a practical and reasonable solution, then the parties may:

- (a) suspend the contractual obligations for a period as mutually agreed by the parties with no cost impact to the Employer;
- (b) mutually agree on an extension of time ("**EOT**") for the completion of the performance of obligations of both parties under the Agreement with no cost impact to the Employer (EOT without cost); or
- (c) mutually agree to terminate the Agreement upon terms and conditions to be agreed upon.

2.30.8 Neither the Employer nor the Contractor shall be liable to any claims for damages or losses, or have any right to claim for any cost and/ or expenses arising from the subsistence of and

throughout the occurrence of the Force Majeure Event for failure to perform any of the parties' obligations under this Agreement, and the parties shall in no event be treated as defaulting or non-performance with their obligations under this Agreement, save and except any antecedent breach and any payment, compensation or outstanding sum due and/or owing to the Contractor for the work performed up to the date of suspension or termination due to the occurrence of a Force Majeure Event.

- 2.30.9 On the occurrence of the Force Majeure Event, neither the failure nor omission of the parties to perform their obligations under the Agreement shall be treated as failure or omission to comply with the Agreement. Any delay or failure of performance by either party herein shall not constitute a default hereunder or give rise to any claims for damages or loss. Save and except for antecedent breach and any payment, compensation or outstanding sum due and/or owing to either party under the Agreement, no party shall have claim against the other in the event that the Agreement is terminated due to the Force Majeure Event, and the affected party is excluded from any liability in relation to late delivery or non-performance of obligations under the Agreement.

2.31 Variations to the Employer's Requirements and Adjustment

- 2.31.1 Variations may be initiated by the Employer at any time prior to the Employer's taking over (completion) for the Works, either by an instruction effecting such variation ("**Variation Order**"), or by requesting the Contractor to submit proposal. A variation may include without limitation, the following alterations and modifications:

- (i) any addition, omission and/or substitution of any part of the Works; and
- (ii) the alteration of the design, quality, quantity or standard of any of the design, plant, materials, goods, or equipment to be used in the Works.

- 2.31.2 The Contractor shall forthwith comply and be bound by a Variation Order, unless the Contractor promptly gives written notice to the Employer with supporting particulars that:

- (i) the Contractor is unable to readily obtain manpower, plant, materials, goods and equipment required for the variation;
- (ii) the variation will reduce safety or suitability of the Works; or
- (iii) the variation will have an adverse impact on the achievement of the performance guarantees/Service Level requirement under the Agreement (if any),

and in such event, upon the Employer's receipt of such notice from the Contractor, the Employer shall cancel, confirm or vary the Variation Order.

2.31.3 Value Engineering

- (i) The Contractor may at any time, submit to the Employer a written proposal which in its opinion, will if adopted:
 - (a) accelerate the completion of the Works;
 - (b) reduce the cost to the Employer in executing, maintaining or operating the Works;
 - (c) improve the efficiency or value to the Employer of the completed Works; or
 - (d) otherwise be of any benefit to the Employer.
- (ii) The proposal under **sub-clause 2.31.3(i)** above shall be prepared at the cost of the Contractor and shall include the items listed in **sub-clause 2.31.5(i)** below.
- (iii) The Employer at its sole discretion, may approve or reject the Contractor's proposal under this **sub-clause 2.31.1** and failure by the Employer to respond within a

reasonable period of time from the date of receipt of the Contractor's proposal shall be deemed to be a rejection.

- (iv) If approved by the Employer, a Variation Order may be issued in accordance with this clause. The application of this sub-clause 2.31.3 shall in no way permit the Contractor to suspend or delay its performance of the Works or any part thereof pending the Employer's review of the Contractor's proposals.

2.31.4 Variation Procedure

- (i) If the Employer requests for a proposal prior to instructing a Variation Order, the Contractor shall respond in writing within the period specified by the Employer, either by giving reasons why the Contractor is unable to comply, or by submitting a proposal at its own cost and expense which shall include:
 - (a) a description of the proposed design and/or work to be performed and a programme for its execution;
 - (b) the Contractor's proposal for any necessary modifications to the existing Works schedule and to the works completion date; and
 - (c) the Contractor's adjustment to the contract price, if any.
- (ii) The Employer shall as soon as practicable after receiving the Contractor's proposal under sub-clause **sub-clause 2.31.4(i)** above, respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.
- (iii) Each Variation Order to execute a variation shall be issued by the Employer to the Contractor, who shall acknowledge receipt.
- (iv) Upon instructing or approving a variation, the Employer shall proceed to determine any adjustments to the contract price and/or works completion date, taking into account the Contractor's proposal under this sub-clause and the valuation rules specified in **sub-clause 2.31.5** below. Notwithstanding any Variation Order issued by the Employer, the Contractor shall continue without delay, its other works and obligations under this Agreement.

2.31.5 Valuation of Variation

- (i) The valuation of variations, unless previously or otherwise agreed, shall be made in accordance with the following rules:
 - (a) the rates in the schedule of the contract price shall determine the valuation of work of similar character as work priced therein;
 - (b) the rates in the schedule of contract price shall determine the valuation of work omitted, provided that if the omission involves a whole omission of any item of work in the summary of contract price, the price of such item of work in the summary of contract price shall be the basis of valuation of the item omitted; and
 - (c) where work cannot be properly measured or valued, the Employer may at its absolute discretion, make a fair valuation thereof based on fair and reasonable market value.
- (ii) The amount to be allowed in respect of variations, as ascertained under **sub-clause 2.31.5(i)** above, shall be added to or deducted from the contract price, as the case may be.

2.31.6 Nature of Variation

- (i) Notwithstanding anything else in this Agreement:

- (a) any variation or other change, modification, addition or deletion to, in or from the Employer's requirements or the Contractor's proposals, the Works or the Contractor's conditions and methods of working made necessary due to any default of the Contractor in the performance of its obligations under this Agreement shall not result in any additional payment, positive adjustment of the contract price, extension of time or other relief; and
 - (b) implementation of any variation shall not derogate from the Contractor's obligations under this Agreement.
- (ii) No variation instructed by the Employer shall in any way vitiate or invalidate this Agreement, but a fair and reasonable value (if any) of all such variations shall be taken into account in ascertaining the amount of the new contract price based on the valuation rules in **sub-clause 2.31.5** above, unless such variation is necessitated by the Contractor's default.
 - (iii) Any Variation Order issued shall not relieve the Contractor from its obligations under this Agreement. For the avoidance of doubt, the Variation Order shall be in writing by the Employer, failing which the same shall be deemed void and unenforceable. The Contractor shall have the obligation to confirm and ensure that the Variation Order has been issued by the Employer.

2.31.7 Adjustment for Changes in Costs

The contract price shall not be adjusted for any changes in, or rises or falls in, the cost of labour, plant, materials and any other goods or other inputs to the Works.

2.32 **Contractor's Undertaking on Foreign Workers (if applicable)**

If no foreign workers involved, this sub-clause shall not apply.

2.32.1 Foreign Workers

- (a) For the purpose of the Works, the Contractor shall comply with all requirements of the applicable law in relation to foreign workers including but not limited to all guidelines and directives issued by the government from time to time. For the avoidance of doubt, ignorance of the applicable law, guidelines and/ or directives at the time of submission quotation, proposal and/ or award shall not be an acceptable reason for any form of variation order or variation to the contract price.
- (b) The Contractor undertakes that:
 - (i) it shall comply with all laws, regulations, orders, directives and guidelines issued by relevant authorities pertaining to the employment of foreign workers in the performance or provision of the Works, at its own cost and expense;
 - (ii) it shall ensure that every foreign worker employed for the Works has a valid passport and work permit issued by the relevant authorities and it shall promptly provide the Employer with a certified true copy of the same upon the Employer's request, at its own cost and expense; and
 - (iii) it shall promptly provide the Employer with relevant documents and/or information in relation to any foreign workers employed for the performance or provision of the Works, upon the Employer's request,

failing which, the Employer shall have the following rights against the Contractor:

- A. the Employer shall have the absolute right to deny any of the Contractor's foreign workers' entry to the Power Plant and/or Site until the said default has been fully remedied by the Contractor and the Employer shall be fully absolved

from all forms of liabilities or obligations of whatsoever nature arising therefrom;

- B. **Clause 2.16** (*Indemnities*) shall apply if the Contractor fails to comply with its obligations under this **Clause 2.32**; and/or
- C. the Employer shall have the right to terminate the Agreement and the breach shall be considered as material breach under the Agreement

- (c) In the event that the Contractor employs foreign workers, the Contractor shall have a relevant permit(s) registered under its name issued by the relevant Government agency(ies) **PRIOR** to the commencement of the Works.
- (d) A copy of the work permit(s) and any other relevant documents to evidence compliance to the requirements of this clause shall be submitted to the Employer not later than **one (1) week** prior to the commencement of the Works.

2.33 Damages Due to Breach

- 2.33.1 When the Agreement has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the Agreement, compensation for any loss or damage caused to it thereby, which naturally arose in the usual course of things from the breach, or which the parties knew, when they made the Agreement, to be likely to result from the breach of it.
- 2.33.2 Neither party shall be liable to any remote and indirect loss or damage sustained by reason of breach.

2.34 Intellectual Property

- 2.34.1 To the extent permitted under the law and unless provided otherwise in the Agreement, any Intellectual Property rights arising out of any design, plans, calculations, drawings, documents, methods or processes developed or used for or incorporated in the Works (except for those which are non-transferrable for which **sub-clause 2.34.3** shall apply), shall vest in and become the sole property of the Employer free and clear of all liens, claims and encumbrances.
- 2.34.2 The Contractor shall not during or at any time after the completion of the Works or after the expiry or termination of this Agreement, in any way, question or dispute ownership of the Employer over the Intellectual Property rights.
- 2.34.3 The Contractor agrees to grant to the Employer free from all royalties, fees and other charges, an irrevocable, royalty-free, non-exclusive licence licences in respect of any other Intellectual Property rights (including those which are non-transferrable) now or hereafter owned or controlled by the Contractor or in respect of which the Contractor has or will have the right to grant licences of any design, plans, calculations, drawings, documents, plant, equipment, machinery, materials, methods or processes developed or used for or incorporated in the Works.
- 2.34.4 All royalties or other sums payable in respect of the design, plans, calculations, drawings, documents, plant, equipment, machinery, materials, methods or processes developed or used for or incorporated in the Works which are subject to Intellectual Property right (other than the design, plans, calculations, drawings, documents, Plant, equipment, machinery, materials, methods or processes provided by the Employer), shall be deemed to have been included in the contract price.
- 2.34.5 In the event of infringement by the Contractor of any Intellectual Property right, the Employer shall have the right to:

- (i) require the Contractor to remove, modify or replace the affected materials, plant, equipment or any part thereof so it becomes non-infringing;
- (ii) procure for the Employer the right to continue using the affected materials, plant, equipment or any part thereof; and
- (iii) keep the Employer harmless against any consequences arising thereof, at the Contractor's own cost and expenses.

2.34.6 The Contractor shall defend and indemnify the Employer from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any Intellectual Property rights except where such infringement results solely from the non-compliance by the Employer.

2.34.7 The Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expense which may be brought or made against the Employer as a result of the use of such Intellectual Property rights or infringement by the Contractor of the same, provided always that in case of any claim of infringement, the Employer shall without delay notify the Contractor and afford the Contractor with every possibility to defend itself against the claim of infringement.

2.34.8 **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.34**.

2.34.9 For the purpose of this clause, "**Intellectual Property**" means any and all current and future intellectual and industrial property rights and interests, including:

- (i) any patents, registered and unregistered designs, copyrights, trade secrets, trademarks, inventions, discoveries, know-how, software and improvements;
- (ii) applications for, or right to apply for registration of any of the above in paragraph (i);
- (iii) rights under licences and consents in relation to any of the above in paragraph (i); and
- (iv) other forms of protection of a similar nature or having equivalent or similar effect to any of the above in paragraph (i),

in Malaysia, and the world, whether registered or unregistered, or registrable or not.

2.35 **Contractor's Representations and Warranties**

2.35.1 The Contractor hereby represents and warrants that:

- (i) it is a corporation validly existing under the laws of Malaysia or the country of its origin;
- (ii) it has obtained the necessary licence(s), permit(s) or certification(s) from the Construction Industry Development Board or any other relevant Government Agency or Ministry to enable the Contractor to undertake the Works;
- (iii) it has the corporate power to enter into and perform its obligations under the Agreement and to carry out the transaction contemplated by the Agreement and to carry on its business as now conducted or contemplated;
- (iv) as at the effective date of the agreement neither the execution and performance by it nor any transaction contemplated under the Agreement will violate in any respect any provision of:
 - (a) its memorandum and articles of association or its constitution (where applicable); or
 - (b) any other document or agreement which is binding upon it or its assets;
- (v) no litigation, arbitration, tax claim, dispute or administrative proceedings is presently subsisting or pending or, to its knowledge, threatened or which is likely to have a

material adverse effect upon it or its ability to perform all of its obligations under the Agreement;

- (vi) no corruption or unlawful or illegal practices have been used to secure the Agreement;
- (vii) it is not aware of anything within its reasonable control which may or will adversely affect its liability to perform its obligations under the Agreement;
- (viii) it has the necessary experience, skills, financial and technical capability to undertake the Works;
- (ix) all information and documents provided to the Employer including during request for quotation or tender exercise (whichever is applicable) are genuine and original documents duly executed by an authorised person; and
- (x) it is a registered person under the applicable taxation laws.

2.35.2 The Contractor further represents and warrants to the Employer that:

- (i) it shall execute the Works and its obligations under this Agreement promptly and competently using all reasonable skills, care and diligence, which is expected from a reputable and highly skilled contractor undertaking works of a similar nature to the Works to be executed by the Contractor;
- (ii) it is fully experienced in the design, construction, testing, commissioning, and training in respect of works of a similar scope, complexity, size and technical sophistication to the Works and that the Contractor possesses the highest level of skills and expertise commensurate with that experience;
- (iii) it shall ensure that the personnel, employees, servants, agents, suppliers and/or sub-contractors employed or engaged by the Contractor for the Works shall have the requisite licence(s), permit(s) and certificate(s), skills, competence and experience;
- (iv) it shall ensure at all times that the Works are executed in accordance with the specifications and requirements set out in the Agreement, prudent utility practices and under the laws, and that it shall be fit for the purpose intended by the Employer and that safety precautions are observed at all times to prevent any danger and damage to any persons and property at the Power Plant or Site;
- (v) it shall not breach any copyright and Intellectual Property rights of any persons; and
- (vi) it shall comply with MCB Group Vendor Code of Conduct and MCB Group Anti-Bribery Policy

2.35.3 The Contractor acknowledges and agrees that the Employer has entered into the Agreement in reliance upon the Contractor's representations and warranties set out in this sub-clause 2.35.3 and breach of the foregoing terms shall be considered as material breach. Such representations, warranties and undertakings shall be separate and independent of each other and shall not be limited by reference to any other paragraph therein or by anything in this Agreement.

2.35.4 **Clause 2.16 (Indemnities)** shall apply if the Contractor breaches any of its representations and warranties under this **Clause 2.35**.

2.36 **Health, Safety, Security and Environment (HSSE)**

2.36.1 In addition to strict compliance to the applicable law, the Contractor shall at all times throughout the Contract Period and during the performance of the works, supply or services in relation to the Works, comply with the following statutory requirements and non-compliance shall be considered as material breach:

- (a) Environmental Quality Act 1974 ("**EQA**") and all subsidiary legislation made thereunder, including but not limited to guidelines and directives issued by the relevant authority pursuant to the provision of EQA;

- (b) Occupational Safety and Health Act 1994 ("**OSHA**") and all subsidiary legislation made thereunder, including but not limited to guidelines and directives issued by the relevant authority pursuant to the provision of OSHA; and
 - (c) Factory & Machinery Act 1967 ("**FMA**") and all subsidiary legislation made thereunder, including but not limited to guidelines and directives issued by the relevant authority pursuant to the provision of FMA.

- 2.36.2 The Contractor shall at all times throughout the Contract Period and during the performance of the works, supply or services in relation to the Works, comply with the Employer's HSSE general and specific requirements set out in the Agreement, failing which the Employer shall have the absolute rights to impose penalties set out in Malakoff Penalties for HSSE Offences Procedure (MCSS2-14) including any amendment made thereof. The Contractor shall have the obligation to enquire from the Employer on the applicable Employer's HSSE general and specific requirements and to obtain the MCSS2-14 from the Employer prior to the commencement of the works, supply or services in relation to the Works.

- 2.36.3 The Employer shall have the absolute right to prohibit the commencement of the works, supply or services in relation to the Works or to issue stop work order in the event that the Contractor's equipment and machinery are found to be unsafe or not in compliance with the requirement of the applicable law including but not limited to guidelines and directives issued by the Government of Malaysia OR if the Contractor fails to ensure safe condition of the work area OR in the event of breach of the requirement of this clause. Without prejudice to any other rights that the Employer has under the Agreement, the Employer shall not be liable to all costs and expenses incurred by the Contractor arising from the late commencement of the works, supply or services in relation to the Works or the issuance of the stop work order. The Contractor shall not be entitled to any extension of time from the Employer.

- 2.36.4 The Contractor shall have the obligation to ensure its employees, agents, contractors, suppliers, transporters and representatives strict compliance to the requirement of the applicable law including but not limited to guidelines and directives issued by the Government of Malaysia with regards to the HSSE's requirements including but not limited to the compliance to the following requirements prior to the commencement of the works, supply or services in relation to the Works at the Power Plant or Site:
 - (a) shall have valid work permit(s) from the Immigration Department of Malaysia or any other relevant government agencies;
 - (b) possess valid NIOSH Tenaga Safety Passport (NTSP) or Oil & Gas Safety Passport (OGSP) or Malakoff Safety Passport (MSP); and
 - (c) any other relevant permits and/or approvals as required by the Employer in **Schedule A** (*Scope, Job Specification and Requirements*) or by the relevant authorities,

failing which it shall be considered as a material breach.

- 2.36.5 The Employer shall have the right to issue stop work order if there is immediate threat to the safety of any person or hazardous situation occurs at the Power Plant or Site. In the event that the immediate threat or the hazardous situation occurs due to the Contractor's default, without prejudice to any other rights that the Employer has under the Agreement, the Employer shall not be liable to all costs and expenses incurred by the Contractor arising from the issuance of the stop work order and the Contractor shall not be entitled to any extension of time from the Employer.

- 2.36.6 The Contractor acknowledges and represents that, where applicable, it shall conduct on-site inspection and made available a comprehensive Hazard Identification, Risk Assessment and Risk Control (HIRARC) for all the relevant activities within the scope of the works, supply or services in relation to the Works. The Employer shall have the rights to prohibit commencement of the works, supply or services in relation to the Works or to issue stop work order in the event

that the Contractor fails to comply with the requirement of this clause. The Employer shall have the right, but not an obligation, to inspect the work area at any time as it deems fit without any need to provide prior written notice to the Contractor.

- 2.36.7 The Contractor shall submit all relevant documents (manual, procedures, work instructions, JSA, HIRARC, plans etc.) to the Employer for review prior to the commencement of the works, supply or services in relation to the Works.
- 2.36.8 The Contractor shall ensure its employees, agents, contractors, suppliers, transporters and representatives understand specific emergency response plan applicable for specific work area. The emergency response plan shall be provided to the Contractor during safety induction session conducted by the Employer or to be procured by the Contractor from the Employer prior to the commencement of the works, supply or services in relation to the Works.
- 2.36.9 The Contractor shall have the obligation to ensure that all its vehicles to be used at the Power Plant or Site shall be roadworthy, comply with the requirements of the Road Transport Department of Malaysia and be driven by a person with valid license.
- 2.36.10 The Contractor shall provide its employees, agents, contractors, suppliers, transporters and representatives with safe working equipment and machinery, safety equipment, firefighting equipment, materials, tools and personal protection equipment including but not limited to safety helmets, safety boots/shoes, safety glasses and proper working attire, i.e. working jacket or coverall. The equipment shall meet the acceptable quality standards. If any of the equipment is found to be unsafe by the Employer (at its sole discretion), the Contractor shall forthwith repair and/or replace the same at its sole cost and expense. If the Employer provides any safety items to the Contractor for the benefit of the Contractor's employees, agents, contractors, suppliers, transporters and representatives, the Contractor shall be solely liable to make sure that the safety items are fit for its intended use and are in good working condition. Pursuant to the Contractor's obligation under this clause, should the equipment have been found damaged, the Contractor shall be responsible to repair or replace the same at its sole cost and expense. Loan of common and personal safety equipment to the Contractor is prohibited. The Contractor shall also ensure that the Contractor's personnel wear the required PPE at all times when entering designated areas (areas where PPE is compulsory). In the event that the Contractor fails to comply with the requirement under this clause, the Employer shall have the right to impose penalty in accordance with Malakoff Penalties for HSSE Offences Procedure (MCSS2-14).
- 2.36.11 Report of Accidents
- (a) The Contractor shall within twenty-four (24) hours notify the Employer about the occurrence of any accidents including near miss involving its employees, agents, contractors, suppliers, transporters and representatives during the performance of the works, supply or services in relation to the Works;
 - (b) The Contractor shall immediately (without any delay) report accidents resulted in fatality, lost time (LTI), dangerous occurrence and occupational disease or illness to the Employer; and
 - (c) The Contractor shall report all accidents, dangerous occurrence, occupational disease or illness to DOSH in accordance with the requirements of OSHA and provide the Employer with a copy of the report within forty-eight (48) hours from the time the report being lodged.
- 2.36.12 For any works, supply or services in relation to the Works involving the use of equipment/tools where there is a need for the equipment/tools to be calibrated, verified and certified, the Contractor shall provide the relevant certificates prior to the commencement of the works, supply or services in relation to the Works. These certificates shall be traceable to specific regulatory requirements.

- 2.36.13 All work in confined space shall be performed in accordance with the Industry Code of Practice for Safe Working in a Confined Space 2010 and any other applicable law, rules, regulation, guidelines, directive and code of practice. All work in confined space shall be authorized by the Employer through Permit-To-Work ("**PTW**"). All personnel involved shall undergo AESP and AGTES trainings or any other relevant trainings as required by the code and/ or the Employer.
- 2.36.14 Where applicable, the Contractor shall provide adequate barricades, covers, guardrails, signage, signal flag persons or other appropriate devices to protect its employees, agents, contractors, suppliers, transporters and representatives from hazardous operations or overhead work.
- 2.36.15 No scaffold shall be erected or be substantially altered or be dismantled except under the supervision of a designated person as defined in Regulation 74(1) of Building Operations and Service of Engineering Construction (Safety) Regulation 1986. Every scaffold erector shall be registered with DOSH.
- 2.36.16 All hot work activities (welding, flame cutting etc.) shall be authorized by the Employer through PTW. The Contractor shall ensure only the Contractor's competent and authorized personnel are allowed to engage in this type of works. All equipment used for the works shall be maintained and calibrated in accordance with an acceptable industry practice. For each location of hot work, a dedicated and competent fire watcher shall be provided to continuously monitor the works. The Employer shall have the right to assign a single fire watcher to monitor the works.
- 2.36.17 Where applicable, prior to any part of the plant being taken out of normal operations, Lock-Out/Tag-Out (LOTO) system and power isolation shall be carried in accordance with Malakoff Safety from The System Procedure MCSS2-18. The work shall be authorized through PTW approval process.
- 2.36.18 The Contractor shall ensure good housekeeping throughout the execution of the works, supply or services in relation to the Works including but not limited to proper disposal of scrap material, tidiness, and clear access ways and emergency exits.
- 2.36.19 All chemical delivered to the Employer or used for the works, supply or services in relation to the Works shall comply with the provisions of Classification, Labelling and Safety Data Sheet of Hazardous Chemicals Regulation 2013 (CLASS Regulation) under OSHA. This shall include packaging, delivery, handling and labelling of such chemicals.
- 2.36.20 The Employer shall have the absolute right to formulate and lay policies and requirements, whether general or specific, on matters concerning HSSE and the Contractor shall comply with the same throughout the Contract Period.
- 2.36.21 **Exclusion of Liability**
- The Contractor and its employees, agents, contractors, suppliers, transporters and representatives and/ or any third party (including their employees, agents and/ or representatives) (collectively, "**Contractor's Visitor**") entering the Employer's premises or the work site shall possess relevant authorisation from the Employer. The Contractor shall indemnify the Employer in accordance with **Clause 2.16 (Indemnities)** from and against all actions, proceedings and claims whatsoever brought against the Contractor, and/or costs, expenses, loss and damages incurred by the Employer arising from the non-compliance by the Contractor's Visitor to the HSSE's requirements including but not limited to:
- (i) loss of life or personal injury to any Contractor's Visitor;
 - (ii) loss or damage to the property of any Contractor's Visitor;

- (iii) loss of life or personal injury to any person, which may be directly or indirectly attributable to the negligence of any Contractor's Visitor; or
- (iv) loss or damage to the property of any person, which may be directly or indirectly attributable to the negligence of any Contractor's Visitor.

2.37 Execution of Works within the Power Plant or Site

- 2.37.1 The Contractor shall ensure that there will be no damage caused to the Power Plant and/or Site and/or disruption to the operations of the Power Plant or the Employer's business at the Site during the execution of the Works.
- 2.37.2 In the event of non-compliance to this clause and without prejudice to the Employer's rights and remedies under the Agreement, at law and in equity, the Employer shall have the right to suspend the Works at any time by giving **two (2) days** prior written notice to the Contractor ("**Suspension Notice**") and the Contractor shall forthwith comply with the Suspension Notice.
- 2.37.3 Pursuant to **sub-clause 2.37.2**, the Employer shall conduct necessary investigation on the cause of the damage and/or disruption. In the event that the result of the investigation proves that the damage and/ or disruption have been caused by the Contractor's default or failure to exercise due diligence during the execution of the Works, all losses and damages suffered by the Employer including but not limited to all costs and expenses incurred for the rectification of the damages and/ or removal of the disruption shall be fully borne by the Contractor.
- 2.37.4 Pursuant to **sub-clause 2.37.3**, in the event that the result of the investigation proves that the damage and/ or disruption is not attributable to the Contractor's default or failure to exercise due diligence during the execution of the Works, the Contractor may be entitled to the EOT and/ or reasonable suspension costs (if any and to be determined by the Employer at its sole discretion based on actual losses suffered (if any)).
- 2.37.5 Without prejudice to the Employer's rights under the Agreement and upon receipt of a written notice from the Employer, the Contractor shall execute rectification works in order to rectify the damage and/or removal of the disruption caused by the Service Provider at its own costs and expenses, failing which the Employer shall have the right to terminate the Agreement.
- 2.37.6 **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.37**.

2.38 Confidentiality and PDPA

(A) Confidentiality

*If parties executed non-disclosure agreement or confidentiality agreement (collectively, "**Confidentiality Agreement**") and the Confidentiality Agreement remain enforceable throughout the Contract Period of this Agreement, this sub-clause shall not apply.*

- 2.38.1 All documents, including reports, plans, charts, graphs and tables provided to the Contractor and/or by either party in relation to the provision of the Works and all data and information made available to be collated by either party pursuant to the Agreement (collectively, "**Confidential Information**") shall be strictly confidential and under no circumstances shall either party divulge the Confidential Information to any third party directly or indirectly without the affected party prior written consent.
- 2.38.2 If the Contractor appoints any specialist firm, then it may disclose the Confidential Information to such firm subject to such firm agreeing to be bound by the terms not less stringent than the terms of this clause and the term of the Confidentiality Agreement (*if any*). The Contractor shall

return or destroy the Confidential Information or data within **seven (7) days** from the date of the Employer's written notice.

2.38.3 The Employer shall have the right to require the Contractor to execute a Confidentiality Agreement in a form as provided by the Employer. In the event of the execution of the Confidentiality Agreement, the terms of the Confidentiality Agreement shall be read harmoniously with the terms of this clause, and in the event of conflict, the terms of the Confidentiality Agreement shall prevail over the terms of this **Clause 2.38(A)**.

2.38.4 Confidential Information does not include information:

- (a) is already known to the Contractor and is not subject to a duty of confidentiality as at the date of disclosure under this Agreement;
- (b) is already in the public domain or becomes available to the public other than through any act or omission of the Contractor which constitutes a breach of this **Clause 2.38(A)**;
- (c) is required to be disclosed under applicable law by any court, governmental agency, authority or by a governmental order, decree, regulation, rule or similar process. To the extent it is legally permitted to do so, the Contractor shall promptly provide the Employer with a notice of such request and take into account the reasonable requests of the Employer in relation to the content of such disclosure; or
- (d) is received independently from a third party that has the right to disseminate such information otherwise than pursuant to a duty of confidentiality at the time it is received by the Contractor.

2.38.5 The term of this clause shall survive the expiry and/or any rescission or termination for a period of **ten (10) years** from the date of termination or expiry of the Agreement (*whichever is later*).

2.38.6 The Contractor shall not make any announcement or grant any interviews whatsoever relating to this Agreement or its subject matter without the prior written consent of the Employer except where required by applicable law or pursuant to the requirements of any stock exchange on which the shares of the Contractor and/or its affiliates are listed for trading and quotation or by any legal or regulatory authority, in which event the Contractor and/or its affiliates required to disclose will, where reasonably practicable, immediately notify the Employer of such requirement and obtain its consent (which consent will not be unreasonably withheld, delayed or conditioned) prior to such disclosure.

2.38.7 The parties acknowledge and agree that damages may be an inadequate remedy for breach of the terms of this **Clause 2.38(A)** and accordingly:

- (a) a disclosing party will be entitled to seek injunctive relief to prevent breach of, restrain continuing breach of or compel specific performance of the relevant receiving party's obligations under this Agreement; and
- (b) **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.38(A)**.

(B) Personal Data Protection Act 2010

2.38.8 To ensure compliance with any applicable laws as well as the Personal Data Protection Act 2010 ("**PDPA**") (as may be revised from time to time), both parties shall ensure that the confidential information pertaining to personal data shall be collected, stored, retained, processed, used or otherwise dealt with (collectively, "**Process**") solely for the purpose of the Agreement and shall be in full compliance with the applicable laws and/or PDPA. In so complying with the applicable laws and/or PDPA, both parties shall ensure that the Process shall not result in the violation or contravention of the applicable laws and/or PDPA. **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this

sub-clause 2.38.8.

2.39 Genuine Information and Original Documents

2.39.1 The Contractor undertakes that all information and documents provided to the Employer pursuant to/under the Agreement are genuine and original documents duly executed by an authorised person. In the event that the Employer obtains prima facie evidence that the information or documents provided are forged documents or the documents executed by an unauthorised person, the Employer shall have the absolute right to terminate the Agreement or invoke **Clause 2.16 (Indemnities)** depending on the gravity of the breach.

2.40 Joint Venture/Consortium (if applicable)

If the Contractor is not a joint venture or consortium, this sub-clause shall not apply.

2.40.1 Each of the entities constituting the Contractor for the Works and their permitted assignees or transferees (if any) shall be jointly and severally liable for the performance of and/or discharge of all the Contractor's obligations and liabilities under the Agreement.

2.40.2 The Employer shall have the right to enforce the observance and performance of all and any such obligations and liabilities of the Contractor against all such persons jointly or against each such person individually without enforcing or seeking to enforce the observance and performance of all or any of such obligations and liabilities of the Contractor against any other persons or against all such persons jointly.

2.41 Assignment, Novation and Sub-Contracting

2.41.1 The Contractor shall not assign or novate in whole or in part any rights and obligations in the Agreement without prior written consent from the Employer.

2.41.2 The Contractor shall not subcontract the whole or any part of the Agreement without prior written consent of the Employer. If the Employer grants written consent, the Contractor shall be responsible for the works, supply or services in relation to the Works of its subcontractors, for managing and coordinating all its subcontractors works, and for the acts or defaults of any of its subcontractors including their agents and representatives, as if they were the acts or defaults of the Contractor.

2.41.3 The Employer shall have the right to assign or novate the Agreement or assign or transfer to a third party all or any of its benefits or obligations under the Agreement and the Contractor is hereby deemed to provide express consent for any novation, assignment or transfer to a third party all or any of its benefits or obligations thereof.

2.42 Governing Laws and Dispute Resolution

2.42.1 The Agreement shall be governed by and construed in accordance with the laws of Malaysia.

2.42.2 All disputes arising from the Agreement shall be amicably resolved between the parties through good faith negotiations within **thirty (30) days** from the date of written notification from either party, failing which **sub-clause 2.42.3** shall apply. No amicably resolved disputes shall be effective unless made by mutual consent and made in writing specifically referring to this Agreement and duly signed by the parties.

2.42.3 The parties hereby agree to:

- (a) submit to the exclusive jurisdiction of the Courts of Malaysia in respect of any controversy, dispute or claim whatsoever arising out of or in connection with a matter

contained in the Agreement which by virtue of the express provisions of any applicable written laws, by-laws, rules or regulations mandatorily require the parties to refer such controversy, dispute or claim to the Courts of Malaysia only;

- (b) waive any objection on the grounds of venue or forum of non-convenience or any similar grounds; and
- (c) consent to the service of legal process in respect of any matter arising out of the Agreement by forwarding a copy of such legal process by prepaid registered post to their last known address or in any other manner permitted by the relevant law.

2.43 **Stamp Duty**

- 2.43.1 All stamp duty payable for the Agreement shall be borne by the Contractor. **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.43**.

2.44 **Compliance with the Laws and Regulations**

- 2.44.1 The Contractor shall, in performing this Agreement, comply with all applicable laws, rules and regulations in force in Malaysia.
- 2.44.2 The Contractor shall comply with applicable guidelines and directives issued by the relevant government authority.
- 2.44.3 The Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the laws in relation to the execution and completion of the Works and the remedying of any defects.
- 2.44.4 **Clause 2.16 (Indemnities)** shall apply if the Contractor fails to comply with its obligations under this **Clause 2.44**.

2.45 **Rights and Remedies**

- 2.45.1 The rights and remedies provided in the Agreement are cumulative and are not exclusive of any rights or remedies of the parties provided at law, and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy shall affect or impair any such right or remedy.
- 2.45.2 The rights and remedies given to the parties under the Agreement shall not prejudice any other rights or remedies that the parties have under the Agreement or at law or in equity or the right of action or other remedy of the parties under any other contract between the Employer and the Contractor.

2.46 **Right to Audit Records Relating to the Works**

- 2.46.1 The Employer shall have the right to audit any and all records of the Contractor relating to Works provided hereunder.
- 2.46.2 Notwithstanding the foregoing and save and except it is permitted under the applicable law, the Contractor shall have the right to exclude any trade secrets, formulas or processes from the inspection.
- 2.46.3 The Contractor further agrees to maintain its books and records relating to the Works provided hereunder for a period of **two (2) years** from the expiry of the Works completion date and to make same available to the Employer at any time or times during the period.

2.47 **Conflict of Interest**

2.47.1 During the subsistence of the Agreement, the Contractor shall at all times avoid any form of conflict of interest.

2.47.2 The Contractor shall inform the Employer if there is any conflict of interest exists in the transaction.

2.48 **Counterparts**

2.48.1 The Agreement (including any amendments, restatements, additions, modifications, variations and/or supplements hereto or waivers granted in respect hereof) may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement (or amendment, restatement, addition, modification, variation, supplement and/or waiver, as applicable).

2.49 **Compliance with Anti-Corruption and Anti-Bribery Laws**

2.49.1 The Contractor represents and warrants that it has not exercised corruption and bribery and has not provided any commissions, payments, gifts, kickbacks, lavish or extensive entertainment or other things of value to any of the Employer's employee or agent in order to procure the award for the Works. The Contractor shall have the obligation to notify the Employer's management in the event that there is participation or solicitation by the Employer's employees or agents.

2.49.2 The Contractor hereby agrees, covenants and undertakes to:

- (a) strictly comply with laws and regulations relating to anti-corruption including but not limited to the Malaysian Anti-Corruption Commission Act 2009 ("**MACCA**");
- (b) not engage in any action or omission which may violate laws and regulations relating to anti-corruption including but not limited to the MACCA throughout the term of this Agreement; and
- (c) take all appropriate measures to prevent corrupt practices and illegal activities on its part at all times throughout the term of this Agreement.

2.49.3 The Contractor acknowledges and agrees that the breach of the clause is a material breach which shall result in termination of the Agreement.

2.50 **Survival of Obligations**

2.50.1 Notwithstanding the complete performance of the Agreement or the termination of the Agreement, the Agreement shall remain in full force and effect between the Employer and the Contractor in so far as such terms and conditions shall remain unfulfilled or relevant.

2.50.2 Pursuant thereto, obligations under **Clause 2.16 (Indemnities)**, **Clause 2.17 (Employer's Use of Contractor's Documents)**, **Clause 2.18 (Contractor's Use of Employer's Documents)**, **Clause 2.34 (Intellectual Property)** and **Clause 2.38 (Confidentiality and PDPA)** shall continue even after the expiry or earlier termination of this Agreement.

2.51 **Notice and Language**

2.51.1 Every request or other communication (administrative in nature) which both shall be limited to day-to-day business operation, may be given or made in writing to the other party by hand, mail, registered email and/or facsimile.

- 2.51.2 Save and except for the request or communication referred in **sub-clause 2.51.1**, the parties hereby agree that all notices under the Agreement or demands of any kind whatsoever (other than those mentioned in **sub-clause 2.51.1**) under the Agreement shall be made in writing to the other party and delivered to its last known address by hand or registered mail only and it shall be addressed to the party at its last known address, and for registered mail it shall be deemed to have been communicated/ received **two (2) days** after being deposited in the post office.
- 2.51.3 All verbal forms of communication or communication by any unauthorised representative of either party shall be considered invalid and legally unenforceable.
- 2.51.4 All correspondences with the Employer shall be in **English or Bahasa Malaysia**. For the avoidance of doubt, **English** shall be the prevailing language in case of a conflict between English and Bahasa Malaysia.
- 2.52 **Waiver, Knowledge and Acquiescence**
- 2.52.1 Failure or delay by any of the parties to enforce at any time any provision of the Agreement or any indulgence or extension of time given by one party to the other shall not be construed as a waiver of its right to the enforcement of such provision unless expressly waived in writing by the relevant party, or as a waiver of any continuing, succeeding or subsequent breach of any such provision of the Agreement or any other provision of the Agreement or as a waiver of any right hereunder.
- 2.52.2 Knowledge or acquiescence of either party hereto of or in any breach of any of the conditions or covenants herein contained shall not operate as or be deemed to be a waiver of such conditions or covenants or of any of them and notwithstanding such knowledge or acquiescence, each party hereto shall be entitled to exercise its respective rights under the Agreement and to require strict performance by the other party of the terms and conditions herein.
- 2.53 **Invalidity and Severability**
- 2.53.1 If any provision of the Agreement is or may become invalid under any written law, or is found by any court or administrative body or competent jurisdiction to be illegal, void, invalid, prohibited or unenforceable then:
- (i) such provision shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability;
 - (ii) the remaining provisions of the Agreement shall remain in full force and effect; and
 - (iii) the parties shall use their respective best endeavours to negotiate and agree on a substitute provision which is valid and enforceable and achieve to the greatest extent possible the economic, legal and commercial objectives of such illegal, void, invalid, prohibited or unenforceable term, condition, stipulation, provision, covenant or undertaking.
- 2.54 **Entire Agreement**
- 2.54.1 The Binding Documents shall be complementary to one another and shall constitute as a binding agreement between the Employer and the Contractor and shall supersede all previous agreements and correspondences between the Employer and the Contractor in relation to the Agreement unless expressly stated otherwise. In the event of conflict between any of the Binding Documents, the most stringent or superior requirements/ specifications/ provisions as determined by the Employer shall prevail and be applicable for the Works and shall be deemed to be included in the contract price.

2.55 **Successors in Title and Assigns Bound**

2.55.1 The Agreement shall be binding upon and shall inure for benefit of the respective legal representatives, receivers and/or managers, liquidators, successors in title and permitted assigns of the parties hereto.

2.56 **Amendments**

2.56.1 No modification, amendment or waiver of any provisions of this Agreement shall be effective unless made by mutual consent and made in writing specifically referring to this Agreement and duly signed by the parties.

(END OF SCHEDULE B – EMPLOYER'S CONTRACT TERMS)