



Ref: SBMY01 / 247 Rev 0

Date: 05 July 2016

Winteco Corporation  
#1301 Beak Sang Tower, 60-17  
Gasam Dong, Geumcheon-Gu,  
Seoul, Korea - 08511

Kind Atten.: Mr Rikrik (Mob: +62818180893)

Subject: Purchase Order for execution of Tank Erection Package (S1 Group) as per the RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev B for Package-22 at Rapid Project., Petronas Refinery Tank Farm, Pengerang, Johor Bharu Malaysia.

This Purchase Order serves to confirm the award of SUBCONTRACT for Execution of Tank Erection Package (S1 Group) as per the RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev B for Package-22 at Rapid Project by Punj Lloyd Sdn Bhd (hereinafter referred to as "PLSB/CONTRACTOR") to M/s Winteco Corporation (Korea) (herein after referred to as "SUBCONTRACTOR").

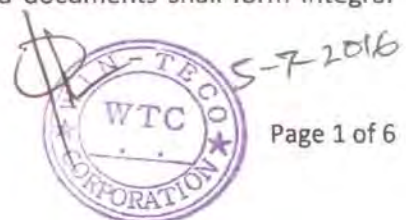
#### REFERENCE

- a) RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev B along with BOQ and Technical Specifications, Technical Queries duly accepted by SUBCONTRACTOR.
- b) SUBCONTRACTOR's initial proposal vide email dated 15 Mar 2016.
- c) Reverse Auction dated 13 May 2016.
- d) Commercial Query vide email dated 11 May 2016.
- e) SUBCONTRACTOR's final Tank wise price break-up vide email dated 17 June 2016.
- f) All correspondence and confirmation from SUBCONTRACTOR before formal acceptance on this Purchase Order.

#### 1. APPLICABLE DOCUMENTS / CORRESPONDENCES

Terms & Conditions in this Purchase Order shall bear reference from SUBCONTRACTOR's quotation dated 17 June 2016 for execution of Tank Erection Package (S1 Group) as per the RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev B (Attachment-2 to this Purchase Order) and all the email correspondence & confirmations from SUBCONTRACTOR before formal acceptance on this Purchase Order.

This Subcontract shall be governed by the terms & conditions as stated in this Purchase Order, Technical specifications, Technical documents which were part of the RFQ documents, General Conditions of Subcontract (GCS), Special Conditions of Subcontract (SCS), Deviations to and any other mutually agreed terms in writing. The above mentioned documents shall form integral





part of this Purchase order.

Formal Work Order with detailed Terms & Conditions shall follow to this Purchase Order.

## **2. SUBCONTRACT PRICE**

The Subcontract Price, for the tanks under S1 group, shall be as per unit rate basis with a basic total order value of USD 11,082,531.00 (USD Eleven Million Eight Two Thousand Five Hundred Thirty One Only) excluding GST@6%. Contractor shall reimburse GST 6% against each invoice as per Malaysian Law and Malaysian Government Tax System. Tank Wise Price break-up is enclosed with this Purchase Order as attachment-1. Detailed Billing Break-up with respective weightages shall be discussed during the Kick-Off meeting and shall be agreed upon by both CONTRACTOR & SUBCONTRACTOR.

The SUBCONTRACT PRICE shall remain fixed and firm for the referred scope of works and shall not be subjected to any kind of escalation throughout the duration of the SUBCONTRACT, including currency and oil price fluctuations.

The SUBCONTRACT PRICE shall include any and all costs, including any risk, contingencies, overhead, profit, duties, levies; fees of any kind, all other expense and charges required for fulfilling all obligations arising from execution of the SUBCONTRACT WORKS and shall only be adjusted in accordance with the SUBCONTRACT.

The Subcontractors performance in the Tank Erection S1 shall be evaluated in terms of schedule & quality and if Contractor finds favourable in this case Contractor may consider to enhance scope by awarding all (or) part of the tanks under S2 Group at the price offered by Subcontractor vide email dated 31 May'16 and 17 Jun'16.

## **3. TERMS OF PAYMENT**

The payment Terms for this SUBCONTRACT works shall be as per the following:-

- a) 5% Advance Payment shall be made against submission of Advance Bank Guarantee, for equivalent amount, in format acceptable to CONTRACTOR. Advance paid shall be recovered from the Progress claims / Running account Bills on prorata basis. Subcontractor shall submit the said ABG from a Malaysian Bank acceptable to CONTRACTOR or PLSB from an International Bank routed through their counter-part bank in Malaysia.
- b) 85% of total SUBCONTRACT value shall be paid against progress claims / Running Account Bills. (Weightage / Billing Break Up / Payment Breakdown Schedule shall be mutually agreed upon during the Kickoff Meeting).
- c) 5% of total SUBCONTRACT value shall be paid against 100% completion of NDT duly accepted by Contractor, on prorata basis.



3-7-2016





d) 5% as of Total SUBCONTRACT Value shall be paid against successful completion of Hydro Test duly accepted by Contractor, on prorata basis.

e) 5% of gross value of each Progress claim/RA bill shall be deducted towards retention money. The aforesaid deducted amount shall be returned to SUBCONTRACTOR within 30 days from the date of Final Acceptance Certificate issued by Contractor after successful handing-over of Subcontract Works (As per the Purchase Order ref.: SBMY01 / 247 Rev 0)

f) SUBCONTRACTOR shall provide, to CONTRACTOR, a duly issued, on-demand, unconditional, irrevocable and enforceable Performance Bank Guarantee (PBG) in a format acceptable to CONTRACTOR. Subcontractor shall submit the said PBG from a Malaysian Bank acceptable to PLSB Or from an International Bank routed through their counter-part bank in Malaysia. SUBCONTRACTOR to provide their Counter Part Bank details. The PBG shall not be less than 10% of the SUBCONTRACT Price and shall be submitted within 20 days from the date of this Purchase Order. The PBG shall be in full force and effect from the date of its issue and valid till the successful completion of the Defects Liability Period. Payment to CONTRACTOR under such performance bank guarantee shall be without reference to the SUBCONTRACTOR. All costs associated with such Bank Guarantee shall be to the SUBCONTRACTOR's account.

g) Notwithstanding the release / payment of bills by CONTRACTOR to the SUB-CONTRACTOR, the SUB-CONTRACTOR shall ensure that the payment of wages and other statutory payments within time limit. There shall not be linkage between release / payment of bill by CONTRACTOR to the SUB-CONTRACTOR and the payment of wages / other dues by the SUB-CONTRACTOR to his workers.

#### 4. EFFECTIVE DATE

This SUBCONTRACT shall be effective from the date of this Purchase Order i.e, 05 July 2016. Thereon SUBCONTRACTOR is authorized to make all necessary arrangements to pursue with and actually commence the SERVICES subject to the terms of this Purchase Order. Any delay due to failure of the SUBCONTRACTOR to sign the SUBCONTRACT in time shall be considered as delay on the part of the SUBCONTRACTOR.

#### 5. SCOPE OF WORK

The Scope of Work with respect to this Purchase Order shall be as specified but not limited to in Request for Quotation (RFQ) Ref No: RFQ-RAPID-P0022-PUNJ-CVS-RFQ-0001-0011 Rev: C, Technical Specifications, Drawings and all Technical Queries' duly accepted by SUBCONTRACTOR read in conjunction with deviations and qualifications agreed upon by both the CONTRACTOR and SUBCONTRACTOR.



PLSB shall provide all paint consumable pricing and shall include any overhead charges if applicable after finalization of Painting Order by PLSB and the same shall become an integral part of this Purchase Order.

## 6. MOBILIZATION TIME AND SCHEDULE

1. The SUBCONTRACTOR shall mobilize all the required resources at Project Site within 90 days from the date of issue of this Purchase Order and any delays in this regards shall be at risk and cost of SUBCONTRACTOR. CONTRACTOR shall issue all the drawing and relevant documents to the SUBCONTRACTOR during Kick-off meetingKOM to fixed 7 days after issue of this Purchase Order.
2. The start date of Subcontract Works shall be 05<sup>th</sup> July 2016 and all the works as per the RFQ (Ref No: RFQ-RAPID-P0022-PUNJ-CVS-RFQ-0001-0011 Rev: C) shall be completed within 14 months upon mobilization period of 90 days from the date of this Purchase Order.
3. CONTRACTOR shall provide accommodation facility for SUBCONTRACTOR's Staff & Workmen & Supervisors. Transportation & Food for the Workers, Supervisors and all other staff shall be arranged by Subcontractor. (Reference to TQ-3 dated 04 March 2016).
4. CONTRACTOR shall provide to SUBCONTRACTOR schedule, tank hand-over (foundation) dates, tank plates (FIM) handover dates, quantity and delivery schedule of FIM equipment (Jacks + Automatic welding machine) of S1 Group Tanks.
5. CONTRACTOR to provide SUBCONTRACTOR all AFC drawings & approved WPS during Kick-off Meeting.

## 7. CORRESPONDENCE ADDRESS

While corresponding with PLL, SUBCONTRACTOR shall make reference to this Purchase Order Ref. No. i.e. SBMY01 / 247 Rev 0 and shall be addressed to-

Punj Lloyd SdnBhd  
Suite 1001, 10<sup>th</sup> Floor Menara Amcorp,  
18 Jalan Persiaran Barat, 46200 Petaling Jaya  
Selangor Darul Ehsan, Malaysia  
Attention: Project Director







## 8. APPLICABLE LAW

This Purchase Order is governed, construed and effected in accordance with the Laws of Malaysia.

SUBCONTRACTOR shall comply with all applicable laws, rules and regulations for obtaining Regulatory authorities' approval, licenses, permits etc for the performance of the SUBCONTRACT.

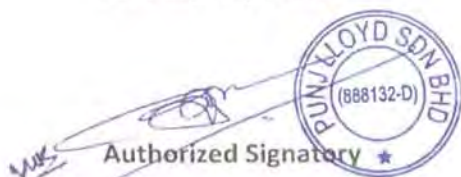
## 9. DEFINED TERMS

The terms defined herein shall have the same meaning as assigned to them in the SUBCONTRACT unless otherwise provided herein

## 10. ACKNOWLEDGEMENT

Please acknowledge receipt of this Purchase Order and return one duplicate original to us within three (3) working days from the date of this Purchase Order.

Thanking You,  
Yours faithfully,  
For Punj Lloyd SdnBhd

A handwritten signature in blue ink is written over a circular purple stamp. The stamp contains the text 'PUNJ LLOYD SDN BHD' around the perimeter and '(888132-D)' in the center. Below the signature and stamp, the words 'Authorized Signatory' are printed.

Accepted by  
Winteco Corporation (Korea)

A handwritten signature in blue ink is written over a circular purple stamp. The stamp contains the text 'WINTECO CORPORATION' around the perimeter and 'WTC' in the center. Below the signature and stamp, the words 'Authorized Signatory' are printed.


### ENCLOSURE forming the integral part of the SUBCONTRACT:

1. Final price offer dated 17June 2016 for execution of Tank Erection Package (S1 Group) as per the RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev B agreed b/w CONTRATOR and SUBCONTRACTOR.
2. RFQ Ref: RFQ: RAPID-P0022-PUNJ-PUR-RFQ-0001-0012 Rev, Technical Specifications, Drawings and Technical Queries' duly accepted by SUBCONTRACTOR
3. General conditions of SUBCONTRACT duly agreed by the SUBCONTRACTOR
4. Special Conditions of SUBCONTRACT duly agreed by the SUBCONTRACTOR
5. Annexure "Prescribed SUBCONTRACT Terms" duly agreed by the SUBCONTRACTOR
6. Technical Bid Evaluation and any technical Deviations Duly Agreed between CONTRACTOR and SIBCONTRACTOR.
7. Following documents are required by SUBCONTRACTOR, forming the integral part of this SUBCONTRACT:



- A. PLSB to provide all paint consumable pricing and to include any overhead charges if applicable as part of this LOA
- B. PLSB to provide schedule & tank hand-over (foundation) dates to respective S1 tanks.
- C. PLSB to provide tank plates (FIM) handover dates to respective S1 tanks.
- D. PLSB to provide quantity and delivery of FIM equipment (Jacks + Automatic welding machine) respective to S1 tanks with delivery dates.
- E. PLSB to provide all AFC drawings & approved WPS during KOM.



 <b>Punj Lloyd</b>	General Conditions of Subcontract (GCSC)	Document Number: PLL/Subcontract/GCSC/000 Rev 1
		Date: 23 <sup>rd</sup> January 2015

## PUNJ LLOYD LIMITED

### General Conditions of Subcontract


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This document is the property of Punj Lloyd Limited and is neither transferable nor to be used by the recipient for any purpose other than, it is supplied for.


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## 1. DEFINITIONS

In this Subcontract, unless the context otherwise requires, the following words shall have the following meanings:

**"Affiliate"** means with respect to any Person (the "reference Person"), any other Person directly or indirectly controlling, controlled by, or under direct, indirect or common control with such reference Person;

**"Appendices"** means appendices attached to the Subcontract Order and Appendix means any one of them;

**"Applicable Law"** means all laws, brought into force and effect by government of the country where the Project is undertaken including rules, regulations and notifications made there under, and judgements, decrees, injunctions, writs and orders of any court of record, or any other guidelines or byelaws which have the force of law in the country where the Project is executed and which are in force or are reasonably foreseeable as likely to have the force of law during the currency of the Subcontract order, or those laws which are no longer in force but which may have retrospective effect and application on the proceedings of the Subcontract, or any part thereof;


**"Applicable Permits"** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, erection, transportation and maintenance of the Project;

**"Arbitration Act"** means the Indian Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

**"Authorized Person"** means such Person who may be authorized in writing by the Subcontractor to exercise any rights or performs and fulfill any obligations of the Subcontractor under the Subcontract;

**"Beneficiary"** includes each and every one of the following for their respective interests: Employer, Owner, Programme Manager, Lender, Purchaser and any other person in whose favour the Contractor is required by the Main Contract to procure a collateral warranty, from the Subcontractor;

**"Conditions"** means the conditions set out in this General Conditions of Subcontract / Special Conditions of Subcontract / Schedule / Appendices (including any schedule or annexure to it) and (unless the context

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otherwise requires) includes any supplementary conditions agreed in writing between the Contractor and the Subcontractor;

**"Commencement Date"** means the date which is the later of the date specified in the Subcontract order or the Effective Date;

**"Commissioning"** means provisional acceptance of all works, activities and tests associated with start-up, performance tests, and operation of the Installations , other facilities as detailed in the Main Contract;

Awarding entity to be changed in LOA & PO to PLL-PLSB JV

**"Contractor"** means Punj Lloyd Ltd-Punj Lloyd SDN BHD JV (Identification No. Punj Lloyd Ltd (55-33314) & Punj Lloyd (Malaysia) SDN. BHD. (888132-D) ) whose address is "PLL-PLSB Joint Venture, C/O Punj Lloyd Sdn Bhd., Suite 1006, 10<sup>th</sup> floor Menara Amcorp,18, Jalan Persiaran Barat,46200 Petaling Jaya, Selangor Darul Ehsan, Malaysia."

**"Contractor Indemnified Parties"** means Contractor and its Affiliates that are affected by the performance of the Subcontract Works together with the Contractor appointed subcontractors, engineers, vendors, and other associated persons carrying out Works in connection with Project or carrying out Works within the Project area;

**"Contractor's Programme"** means the programme prepared by or on behalf of the Contractor for the Main Contract Works as may be amended from time to time;


**"Contractor's Representative"** means the authorized representative of the Contractor to be informed in writing to the Subcontractor;

**"Collateral Warranty"** means a collateral warranty from the Subcontractor and/or its sub-subcontractors and subconsultants in the form of contained in the Appendix- 1;

**"Defects Liability Period"** means the period specified in the Subcontract Order / Special Conditions of Contract;

**"Dispute"** means any matter or issue arising between the Parties with respect to their rights and obligations or other terms under this Agreement which has not been resolved mutually between the Parties within 30 days of its referral from one party to another, or in respect of which either Party has failed or refused to participate in such resolution and shall include any Disputes referred to Adjudication or Arbitration hereunder.



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**“Effective Date”** means the date on which Subcontract order comes into force, and shall be date specified in the Letter of Intent (LOI) / Letter of Appointment (LOA) / Subcontract order;

**“Employer”** means the Owner under the Main Contract;

**“Employer Indemnified Parties”** shall mean Owner and its Affiliates affected by the performance of Subcontract Works together with the Owner appointed project management consultants, licensors, contractors, engineers, vendors or other subcontractors carrying out work(s) in connection with Project or carrying out Works within the Project area of the subcontract;

**“Final Acceptance Certificate”** means the certificate issued by the authorized representative of the Contractor which may be issued to the Subcontractor upon receipt of a similar certificate by the Contractor from the Owner;

**“Force Majeure”** shall have the meaning as described in this document in article no. 28.

**“Installations”** means the permanent facilities of the Works as described in the Main Contract;

**“Main Contract”** means the contract between the Contractor and the Employer for the completion of the Works;


**“Mechanical Completion”** means the compliance and successful completion of construction and any other Items envisaged in the Subcontract Works in accordance with the conditions stipulated in the Main Contract under ***“PACKAGE 22-RAPID TANK FARM; PART II; CONDITIONS OF CONTRACT; ARTICLE 1-DEFINITIONS”***

**“Mechanical Completion Certificate(s)”** means the certificate(s) signed by the Employer and issued to the Contractor confirming Mechanical Completion of Work (s) and which shall signify the Mechanical Completion of Subcontract Work(s) as confirmed in writing by the Contractor to the Subcontractor;

**“Other Consultant”** means any other consultant engaged by the Contractor in relation to the Works;

**“Other Subcontractor”** means any other subcontractor engaged by the Contractor in relation to the Works;

**“Pre-Commissioning”** means the stage when all activities up to and including ready for commissioning have been completed;

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**"Project"** shall be as specified in the Special Conditions of Contract;

**"Provisional Acceptance Certificate"** means the certificate that shall be issued by the Contractor to the Subcontractor upon receipt of a similar certificate by the Contractor from the Employer;

**"Performance Bank Guarantee "** means a performance guarantee in a sum equal to as defined in Special Conditions of Contract from a bank acceptable to the Contractor and in the form of the draft contained in the Appendix - 2;

**"Programme"** means the programme for the Works including any variation to such programme made by the Contractor from time to time;

**"Retention Money"** shall mean the amount equal to as defined in Special Conditions of Contract and retained by the contractor through the Interim Payment certificates as certified by the Contractor;


**"SCC"** means the Special Conditions of Contract

**"Schedules"** means schedules attached to the Subcontract Order and Schedule means any one of them;

**"Site"** means the site described in the Subcontract Order or the SCC and shall be the land and other places on, under, over, or in or through which Subcontract Works or any part(s) of Subcontract Works are to be executed;

**"Statutory Requirements"** means (a) any act of parliament, statutory instrument, rule or order made under any act of parliament; (b) any proclamation, regulation, rule of court, directions or guidance or bye law or approved code of practice of any local authority, statutory undertaker or of any public or private utility or undertaking or other body which has jurisdiction with regard to the Works; (c) the terms of any planning permission, building regulation approval or other consent or approval required for the execution of the Works and the Development; (d) any enforceable community right within the meaning of the local laws in force; and (e) any applicable judgement of a relevant court of law which is a binding precedent in the country of the Project;

**"Subcontract"** means the Subcontract Order, these Conditions, the Special Condition of Subcontract, the form of enquiry, the form of tender and the Appendices, the Schedule, and any documents incorporated into the Subcontract by its terms or by reference therein.

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**"Subcontractor's Programme"** means the programme prepared by or on behalf of the Subcontractor for the Subcontract Works or any part in accordance with the Subcontract and which shall at all times be compatible with and not in conflict with the Contractor's Programme;

**"Subcontractor's Persons"** means any subsubcontractor, subconsultant, supplier, agent or any other person engaged or authorised by the Subcontractor;

**"Subcontract Order"** means the order issued by the Contractor for the Subcontract Works including all the Conditions and documents associated with it;

**"Subcontract Amount"** means the subcontract amount set out in the Subcontract Order;

**"Subcontract Works"** means the works briefly described in the Subcontract Order including the Conditions, the form of enquiry, form of tender, subcontractor purchase order, the Appendices, the Schedule and any documents incorporated into this Subcontract by its terms;

**"Subcontractor"** means an agency, engaged by the Contractor for performing any portion of Work entrusted to him including design & engineering, procurement, fabrication, load out, sea fastening, transportation, material handling, installation, hook up, pre-commissioning and commissioning of the Project work;


**"Supplementary Conditions"** means those additional conditions which shall apply to any particular Order and are appended to such Order;

**"Specifications "** means the specifications, data sheets, drawings, P&IDs, PFDs, isometrics, plot plans, general arrangements, schedules and procedures as set forth in the Subcontract or the Main Contract including any modifications or additions thereto as may from time to time be approved in writing by the Contractor or the Employer;

**"Third Party Agreements"** any agreement between the Employer and/or the Contractor and a third party (including, without limitation, any Beneficiary but excluding the Sub-Contractor) which concerns or affects the Works;

**"Variation"** means (but only where and to the extent that the same is required under an instruction of the Contractor) any addition, omission, substitution, alteration or modification of the Subcontract Works or any



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works outside of the scope of the Subcontract and does not arise from any negligence, omission or default of the Subcontractor and/or its agents, employees, sub-subcontractors or suppliers;

**“Warranty”** means an undertaking by the Subcontractor to preserve and maintain the specified performance of Subcontract Works so executed by the Subcontractor and make good any deficiency that may be observed therein;

**“Warranty Period”** means period between the Final Acceptance Certificate and the Provisional Acceptance Certificate issued by the Employer in respect of Works or any specified part(s) thereof, during which Subcontractor shall warrant Subcontract Works in accordance with the provisions of the Subcontract;

**“Works”** means the works (including the Subcontract Works, permanent and temporary works) described in the Main Contract and the Subcontract.

## 2. INTERPRETATION

2.1. Any reference to a statutory provision shall include such provisions as is from time to time modified or re-enacted or consolidated so far as such modifications or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;


2.2. The words singular shall include plural and vice versa, words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity), words denoting the masculine shall include the feminine, and vice versa;

2.3. The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of the Subcontract order;


2.4. The words “include” and “including” are to be construed without limitation;

2.5. Reference to “construction” includes, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, material handling, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

2.6. Any reference to any period of time shall mean a reference to that according to the local standard timings of the country of the Project;

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- 2.7. Any reference to day shall mean reference to a calendar day of the Gregorian calendar;
- 2.8. Any reference to a month shall mean a reference to a calendar month;
- 2.9. The Schedule / Appendix (s) to the Subcontract shall form an integral part of the Subcontract and will be in full force and effect as though they were expressly set out in the body of the Subcontract; terms defined in the Schedule / Appendix shall have the meaning throughout the Subcontract;
- 2.10. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified, or suspended at the time of such reference as intimated from time to time;
- 2.11. Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party in this behalf and not otherwise;
- 2.12. Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates;
- 2.13. The damages payable by the Subcontractor as set forth in this Subcontract order, whether on per diem basis or otherwise, are genuine pre-estimated loss and damage likely to be suffered and incurred by the Contractor and are not by way of penalty (the “Damages”);
- 2.14. All Subcontract order documents, all correspondences and communications to be given or received pursuant thereto, and all documentations to be prepared and supplied under this Subcontract order shall be written in English, and the Subcontract order shall be construed and interpreted in English language. If any of the Subcontract documents, correspondences or communications executed pursuant thereto are prepared in any language other than English, the English translation of such Subcontract documents, correspondences or communications shall prevail in matters of interpretation. Subcontractor shall bear all costs and risks of the accuracy of such translations;
- 2.15. All measurements and calculations shall be in metric system and calculations done to 3 decimal places, with the fourth digit of 5 or above being rounded up and below 5 being rounded down;


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2.16. All capitalized words unless defined in this agreement shall bear the same meaning as ascribed to in the Subcontract.


### 3. General

- 3.1. The Subcontractor has thoroughly examined the documents comprising the Subcontract order and the Main Contract and is satisfied that there are no ambiguities, discrepancies, inconsistencies, divergence or design or construction impracticability within and between such documents and that such documents are accurate and sufficient in all respects for the purposes of the design, and execution of the Works. If, notwithstanding the Subcontractor's examination, ambiguities, discrepancies, inconsistencies, divergence or design or construction impracticalities within the Subcontract order come to the attention of either Party, that Party shall forthwith notify the other Party and which notification shall be accompanied by its proposals for overcoming the ambiguities, discrepancies, inconsistencies, divergence or design or construction impracticalities (as the case may be).
- 3.2. The Contractor shall be entitled to withhold any payment due to the Subcontractor until the Subcontract Order executed by the Subcontractor has been received by the Contractor.
- 3.3. The Subcontractor is only bound by official written orders (or variation in contractual terms) signed by the Contractor's Representative (which have been acknowledged in writing to the Subcontractor).
- 3.4. The Subcontractor shall use the Contractor's official Subcontract Order number on all forms, contracts and correspondence.
- 3.5. The Subcontractor acknowledges that the Contractor shall have no obligation to pay any amount greater than the amount payable by the Contractor in the Subcontract Order, subject to any deductions or adjustments provided for in the Subcontract order and in any event the Subcontractor's aggregate liability shall not exceed the Subcontract Sum original or revised. The Contractor shall not be liable to the Subcontractor (whether by reason of any negligence by the Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, an express or implied warranty, condition or other term, breach of statutory duty, under the terms of any indemnity given by the Contractor, or otherwise) for any loss of profits; or damage to reputation; or loss of business opportunities; or loss of contracts; or claim, action or demand made against the Subcontractor by any third party; or any indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with this Subcontract.



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- 3.6. The Subcontract shall constitute the entire agreement and understanding, and shall supersede any previous agreement(s), between the parties in connection with the subject matter of this Subcontract. The Subcontractor acknowledges that it has not been induced to enter into this Subcontract in reliance upon, and in connection with this Subcontract does not have any remedy in respect of, any representation or other statement or promise of any nature whatsoever other than as expressly set out in this Subcontract.
- 3.7. Nothing in these Conditions confers or purports to confer any rights on any person who is not a party to it, save for any assignee of these Conditions to whom the same shall be expressly assigned, and the provisions of the subcontracts shall be of no effect in respect of these Conditions.
- 3.8. Acceptance of the Order indicates acceptance of these Conditions and of any other express conditions contained in the Order. In the event of any inconsistency or conflict between these Conditions and any such express conditions then such express conditions shall prevail.
- 3.9. These Conditions override any other conditions in the Subcontractor's quotations and/or proposals to carry out the Works or which the Subcontractor may subsequently seek to impose. No conduct by the Contractor shall be deemed to constitute acceptance of any terms put forward by the Subcontractor. The Contractor is only bound by official written orders that it produces upon its authorised documentation.
- 3.10. The Subcontractor is deemed to have identified prior to entering into this Subcontract any conflicts or divergences between and/or discrepancies and/or insufficiencies or technical errors within any of the Subcontract order and/or any conflicts or divergences between the Subcontract order the resolution of any of which will have a bearing on the Subcontractor's obligations under, pursuant to or arising from this Subcontract and/or the cost to the Contractor of performing the same and, without prejudice to this clause, to have allowed for the same.
- 3.11. In the event of any such conflict, divergence and/or discrepancy and/or insufficiency or technical error being discovered, the Contractor shall be entitled, in its absolute discretion, to direct the Subcontractor as to which of the conflicting, divergent and/or discrepant provisions are to prevail and which are to be disregarded and the Subcontractor shall comply with such direction and for the avoidance of doubt shall not be entitled to any additional payment (whether by way of adjustment to the Subcontract Sum or otherwise) or to an extension of time for compliance with the same.
- 3.12. Without prejudice to Clause 3.9 above, the Subcontractor shall be responsible for the Subcontractor's proposals, any Variation and all drawings, documents, reports, investigations, information and surveys

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(including any drawings, details, documents or information produced by the Subcontractor) ("Other Documents") used for or in connection with the Subcontract Works. Where there is any mistake, inaccuracy, discrepancy or omission in or between the Subcontractor's proposals and/or other documents and/or any Variation and/or between any such Other Documents and the Statutory Requirements, the Subcontractor shall inform the Contractor in writing of his proposed amendment to remove the same, the Contractor shall decide how to proceed and the Subcontractor shall comply with the decision or acceptance without cost to the Contractor. The Subcontractor shall not have or make any claim for an extension of time, where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended is for any such discrepancy, mistake, inaccuracy or omission as is referred to in this clause or any failure by the Subcontractor to provide necessary drawings or documents in due time.

- 3.13. Subcontractor acknowledges and accepts that the Employer shall be entitled to step into this Subcontract order, in its sole discretion, in substitution of the Contractor in the event of Termination or Suspension (if as defined in the Main Contract).


#### 4. PRIORITY OF DOCUMENT

In case of discrepancies between the schedule of quantities / Bill of Quantity, the Specifications and / or drawings, Special Condition of Contract, General Conditions of Contract, Schedules the following order of preference shall be followed:


- a) Subcontract Order ~~/PO~~
- b) Special Condition of Contract and its Schedules;
- c) General Conditions of Contract;
- d) Specifications;
- e) Drawings;
- f) Description of Bill of Quantity;
- g) Other documents.

#### 5. EXECUTION OF SUBCONTRACT WORKS

- 5.1. The Subcontractor shall do everything necessary to carry out and complete the Subcontract Works in good and workmanlike manner and in accordance with: the Subcontract; Main Contract; all drawings; specifications; bills of quantities; (where applicable) and/or written instructions issued to it by the Contractor, all statutory requirements; consents, permissions; and to the Contractor's satisfaction.

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- 5.2. No admission, appraisal, instruction, comment, direction approval whether express or implied, inspection, testing, or review nor any omission to appraise, comment, instruct, direct, inspect, test, approve or review on the part of the Contractor, the Employer or any party or person for or on the Employer's behalf shall relieve the Subcontractor of its responsibilities or liabilities under the Subcontract.
- 5.3. Where required by the Contractor's Representative, the Subcontractor shall provide a method statement and risk assessment for the carrying out of the Subcontract Works and shall, as and when requested by the Contractor, provide such further method statements and risk assessments and in such detail as the Contractor shall consider necessary.
- 5.4. To the extent that the Contractor shall have made available to the Subcontractor, such data on climate, hydrological and general conditions relating to the Project site as shall have been obtained by or on behalf of the Contractor from investigations undertaken relevant to the Works and / or the Project site, the Contractor shall have no responsibility for or in relation to such data whether as to its accuracy or howsoever otherwise arising.
- 5.5. Without limitation to any other provisions of the Subcontract, the Subcontractor shall be deemed prior to executing the Subcontract, to have, and warrants that it has:
- 5.5.1. Inspected and examined to its satisfaction the Project site and its surroundings and where, applicable, any existing works on, over or under the project site;
- 5.5.2. Satisfied itself as to:
- a) The nature of the climate, hydrological, ecological, environmental (including without limitation all hazards and the potential for any contamination of the Project site or the sub-soil by any noxious or hazardous substance) sub-soil and general conditions of the Project site;
  - b) The form and nature of the Project site and the adequacy for the purposes of execution of the Works;
  - c) The risk of injury or damage to property adjacent to the Project site and to occupiers of such property;

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- d) The extent and nature of the design, work, plant and materials necessary for the design and execution of the Works;
- e) The means of communication with and access to the Project site, the accommodation it may require and the adequacy of the rights of access set out in the Subcontract for those purposes;
- f) The possibility of interference by persons (other than the Contractor and the Employer) with access to or use of or possession of the Project site;
- g) The precautions and the times and methods of working necessary to prevent any nuisance, whether public or private, being caused to any third parties;
- h) The whereabouts of existing services and mains;
- i) The nature and extent of restrictions upon access, possession or use of the Project site as may be contained in the Main Contract;
- j) Conditions affecting shipping and transportation of goods, material handling, plant and materials to the Project site;
- k) Availability of quality of labour, water and electrical power for the Works;
- l) Local laws, regulations and customs and any law; and
- m) Any design or works carried out by other contractors on the Project site, which design or works the Subcontractor has taken over in the Project site or where the design for Execution of the Works is required to intergrate.

5.5.3. Thoroughly examined, checked and satisfied itself as to the adequacy, correctness and suitability of all data made available to the Subcontractor by or on behalf of the Contractor prior to the execution of the Subcontract and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect such design requirements and the Works to be performed by the Subcontractor and any facts which could affect its decision to enter into the Subcontract or the terms on which it would do so.



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5.6. At any time during the currency of the Subcontract, the Contractor shall have the right at its own discretion to increase or decrease the scope of Subcontract Works. In such case Subcontract price and schedule will be adjusted in accordance with the provisions of the Subcontract.

5.7. Subcontractor shall be responsible for transportation, material handling and safe keeping of all on-site material and equipment issued by the Contractor or related to the Works of the Contractor, unless specified otherwise.


5.8. Subcontractor shall be responsible for employment and compensation of labour and staff with establishment & maintenance of staff and labour camps, provision and construction of utilities, infrastructure, fences, safety, security etc. at the site in strict compliance of all applicable requirements/regulations of the Employer and the applicable laws besides payment of all municipality levies etc. Subcontractor shall be deemed to have factored due allowance in its Subcontract price to comply with above requirements in accordance with the requirements of the Employer and the applicable laws of the Country. If in the event, any of aforesaid requirement remains unfulfilled, Contractor may carry out the same at the risk and cost of the Subcontractor.

## 6. MAIN CONTRACT

6.1. The Subcontractor acknowledges that it has had an opportunity to read and consider all provisions of the Main Contract (except the Contractor's prices) and any other Third Party Agreements (as necessary) on or before the date of the Subcontract. The Subcontractor is deemed to have full knowledge of and, in so far as they are applicable to the Subcontract Works, shall comply with the provisions of the Main Contract and any relevant Third Party Agreements. If there is any conflict between the provisions of the Subcontractor Terms and Conditions of the Main Contract, any relevant Third Party Agreement and the terms of the Subcontract, the terms of the Subcontract shall prevail.

6.2. The Subcontractor shall carry out and complete the Subcontract Works and perform its duties and obligations under the Subcontract in such manner and so as to comply with and so as not to cause or contribute to any breach by the Contractor and/or the Employer or failure by the Contractor and/or the Employer to comply with the Main Contract or any Third Party Agreement.


6.3. The Subcontractor shall indemnify the Contractor against any liability that the Contractor may incur to any other person whatsoever and against all claims, demands, proceedings, costs (including professional fees and interest) and expenses made against or incurred by the Contractor by reason of any breach by the Subcontractor of the Subcontract.

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6.4. Without prejudice to Clause 6.3, the Subcontractor shall indemnify and hold harmless the Contractor against and from any breach, non observance or non performance by the Subcontractor and any Subcontractor's Persons; and any act or omission of the Subcontractor and any Subcontractor's Persons; which involves the Contractor incurring any liability and/or expense and/or costs and/or suffering any loss and/or damage under or arising out of; the Main Contract; and/or other subcontracts entered into by the Contractor in relation to the Main Contract Works; and/or any Third Party Agreements notified to the Subcontractor.

## 7. PROGRESS AND COMPLETION

- 7.1. The Subcontractor shall commence the Subcontract Works on the commencement date. Subject to clause 7.3 (if applicable) the Subcontract Works and any section of the Subcontract Works and any part shall be carried out and completed in accordance with the Subcontractor's Programme, subject as regards construction but not design, upon receipt by the Subcontractor of notice to commence work.
- 7.2. The Subcontract Works are required to be completed in parts (including but not limited to allow following other sub-contractors of the Contractor to progressively commence and carry out their works).
- 7.3. A part of the Subcontract Work is any part of the Subcontract Works specified in the form of enquiry and/or any part separately identified or shown in any approved Subcontractor's Programme, if no such approved Subcontractor's Programme is provided, as identified in the Contractor's Programme.
- 7.4. The Subcontractor shall not have uninterrupted access or exclusive possession to any part of the Site and shall recognize and make due allowance for sharing work areas with and for the freedom of other contractors and consultants employed on the Project and shall not unreasonably impede such other constructors and consultants. The Contractor does not guarantee continuity of working. The Contractor makes no guarantee of continuity of work on the Project and reserves the right to phase, omit, suspend or stop the Works, or amend the Contractor's Programme and/or the Subcontractor's Programme. The right to phase, omit, suspend, or stop the Subcontract Works or amend the Contractor's Programme may be exercised by the Employer. The Contractor shall be entitled to require the Subcontractor to resume work in accordance with the terms of the Subcontract within two (2) Working Days of being given notice in writing so to do by the Contractor. The Contractor shall not be liable to the Subcontractor for any loss or damage suffered as a result of any phasing, omission, suspension or stopping of the Subcontract Works.
- 7.5. The Subcontractor acknowledges that failure by the Subcontractor to comply with the provisions of Clause 7.1 may cause delay and/or disruption to the Works and/or any part thereof and/or may cause

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the Contractor to suffer costs, loss and/or damage. The Subcontractor shall plan, carry out and complete all parts of the Subcontract Works and any section of the Subcontract Works and any part in such manner and at such times and within such periods as will not delay, disrupt or contribute to any delay or disruption to any part of the Works.

7.6. The Subcontractor shall complete the Subcontract Works within the duration set out in the Subcontract Order or in accordance with the completion date(s) set out in any notice issued by the Contractor.

7.7. Where the Subcontractor cannot complete the Subcontract Works within the duration set out in the Subcontract Order by the completion date(s) due to Variation instruction by the Contractor an/or an act of prevention or delays caused by the Contractor, the completion period shall be extended by the period of such delay provided always that the Subcontractor shall not become entitled to any extension of time for the completion of the Subcontract Works or any part of the Subcontract Works on account of any circumstance arising by reason of any act, negligence or default of the Subcontractor or the Subcontractor's Persons.


7.8. If, for any reason which does not entitle the Subcontractor to an extension of time for completion of the Sub-Contract Works or any section or any part, the rate of progress of the Subcontract Works or any section or any part is at any time in the opinion of the Contractor too slow to ensure practical completion of the Subcontract Works or a section or any part within the period or periods for completion stated in the Subcontract Order or in the Contractor's Programme or any revised period or periods fixed under clause the Contractor shall notify the Subcontractor in writing accordingly ("the Clause 7.7 Notice") and the Subcontractor shall thereupon take such steps as are necessary and to which the Contractor may consent to expedite the progress of the Subcontract Works or the section of the Subcontract Works or the relevant part so as to complete the Sub-Contract Works or section or relevant part within the said period or periods (or revised period or periods) for completion. The Subcontractor shall not be entitled to any payment or extension of time for taking such steps. If the Sub-Contractor fails to take such steps within 4 days of the date of service of the Clause 7.7 Notice, then the Contractor may employ and pay other persons to take such steps (or the Contractor may take such steps himself) and all costs and/or expenditure incurred and/or loss and/or damage and/or expense suffered in connection therewith shall be recoverable by the Contractor from the Subcontractor as a debt or may be deducted from any monies otherwise due (or to become due) to the Subcontractor under the Subcontract.

7.9. The Subcontract Works are to be carried out regularly and diligently and in such manner, performance and time as the Contractor may direct. The Subcontractor shall give all requisite notices and pay the fees or charges payable by law under the Statutory Requirements and the necessary consents. The Sub-

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Contractor acknowledges that failure by the Sub-Contractor to comply with the provisions of Clauses 7.2 and 7.3 may cause delay and/or disruption to the Works and/or any part thereof and/or may cause the Contractor to suffer costs, loss and/or damage. The Subcontractor shall plan, carry out and complete all parts of the Subcontract Works and any section of the Subcontract Works and any part in such manner and at such times and within such periods as will not delay, disrupt or contribute to any delay or disruption to any part of the Works.


- 7.10. The Subcontractor's Programme shall show the order in which the Subcontractor proposes to carry out the Subcontract Works and any section of the Subcontract and any part and the critical path through the planned sequence of activities which comprise the Subcontract Works and any section of the Subcontract Works and any part with a network diagram showing the sequence and inter-relationship of the activities comprising the Subcontract Works and any section of the Subcontract Works and any part and their relationship to the Works and/or any section of the Works and/or any part of the Works.
- 7.11. The Subcontractor shall assess and demonstrate the impact on the Subcontractor's Programme of any change that may be under consideration, including appropriate re-scheduling to minimise or negate any such impact prior to any decision on the implementation of the change being made.
- 7.12. Whenever requested by the Contractor, the Subcontractor shall provide to the Contractor the current version of the Subcontractor's Programme, together with the Subcontractor's own assessment of his progress on each activity shown in the Subcontractor's Programme as at the date of submission by reference to the identified critical path and network diagram referred to in clause 7.10. The Subcontractor shall also provide a report explaining in detail any changes to the Subcontractor's Programme from that previously submitted, together with recommendations as to how to recover any delay in the critical path. The Subcontractor shall promptly deliver to the Contractor three copies of any revised Subcontractor's Programme, or such other number of copies as the Contractor may reasonably require.
- 7.13. Without prejudice to any other rights and remedies of the Contractor, if actual progress of the Subcontract Works or any section of the Subcontract Works or any part does not comply with Clause 7.2 and 7.3 the Contractor shall be entitled to require the Subcontractor to produce a revised programme and network diagram and proposals as may be necessary to ensure completion of the Subcontract Works or any section of the Subcontract Works or any part in accordance with clause 7.2 and/or 7.3.
- 7.14. Without prejudice to any other rights and remedies of the Contractor, if actual progress of the Subcontract Works or any section of the Subcontract Works or any part does not comply with Clause 7.2 and/or 7.3 or the Subcontractor fails to produce any programme required under this Clause or the

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Subcontractor's Programme is not compatible with the Contractor's Programme then the Contractor's Programme shall apply in relation to the Subcontract Works and/or any section of the Subcontract Works and/or any part of the Subcontract Works.

- 7.15. Without prejudice to any other right or remedy which the Contractor may possess, if the Subcontractor is, in the Contractor's opinion (such opinion to be final and conclusive) in breach of the foregoing provisions of this Clause, then the Contractor may introduce additional labour and other resources onto the Subcontract Works and any costs expenses or losses which the Contractor incurs as a result may be deducted from any monies due or to become due to the Subcontractor or may be recoverable from the Subcontractor as a debt.
- 7.16. As and when reasonably requested to do so by the Contractor, the Subcontractor (and Subcontractor shall procure that it's servants, agents, suppliers) as may from time to time be reasonably required by the Contractor shall attend meetings convened by the Contractor in connection with the Project at such times and locations as the Contractor may reasonably require.
- 7.17. The Subcontractor shall keep full and proper records of all meetings and negotiations attended or conducted by the Subcontractor and shall keep any other information as requested by the Contractor and shall make the same available for inspection and audit by the Contractor on request and without any monetary or time claim .
- 7.18. The Subcontractor shall maintain a presence at the Site at all times during the normal working hours applicable to the Site.
- 7.19. If in the opinion of the Contractor the Subcontractor is failing to carry out the Subcontract Works or any section or any part in accordance with this clause , the Contractor may, upon giving notice to the Subcontractor and without prejudice to any of the Contractor's other rights and remedies:
- 7.19.1. perform the Subcontract Works or any section or the relevant part, whether by itself or by others, and/or;
- 7.19.2. issue instructions to the Subcontractor for removing the relevant parts of the Subcontract Works or section or part from the Subcontract, and may employ others to carry out those parts; and in such event the price for the Subcontract Works shall be reduced by the value of the removed parts, and any additional costs and/or expenditure incurred or loss and damage suffered by the Contractor in doing so shall be recoverable from the Subcontractor as a debt



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or may be deducted from any monies due or to become due to the Subcontractor under the Subcontract.

## 8. DESIGN AND WORKMANSHIP

8.1. Without prejudice to any implied warranties or conditions, the Subcontractor acknowledges warrants and agrees with the Contractor that:

8.1.1. it has full responsibility for all aspects of the design and design development of the Subcontract Works which the Subcontractor is required to design (including any design for such parts contained in the Subcontract Order (whether or not prepared by or on behalf of the Employer and/or the Contractor), by any provision of the Subcontract;

8.1.2. it is experienced in carrying out work of a similar type, nature and complexity to the Subcontract Works;

8.1.3. it has and will execute the design of the Subcontract Works using all the reasonable skill, care and diligence reasonably to be expected of a skilled and competent architect, engineer or other appropriate professional designer holding itself out as competent to take on design work for work of a similar type, nature and complexity to the Subcontract Works;


8.1.4. it will execute the design and construction of the Subcontract Works to the complete satisfaction of the Contractor and the Employer and in accordance:

8.1.4.1. with good up to date practice taking account of all prevailing codes of practice, Standards manufacturers recommendation; and

8.1.4.2. with the Construction Phase Plan;

8.1.5. the Subcontract Works when completed will comply with the Statutory Requirements, the Necessary Consents, all environmental requirements and any performance specification or requirement included in or reasonably to be inferred from the Subcontract or from any change to the same.

8.1.6. it is deemed to have included for all things necessary to complete the Subcontract Works whether set out in the Subcontract or otherwise;

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8.1.7.the Subcontract Sum is inclusive of all works whether permanent or temporary, materials and expenditure, which will be necessary to complete the Subcontract Works as described in or to be inferred from the Subcontract;

8.1.8.it shall carry out the Subcontract Works (including any design of the Subcontract Works for which it is responsible) without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the Project (save as may have been agreed in writing with the Contractor) insofar as details of the same have been made known to the Subcontractor;

8.1.9.it shall carry out the Subcontractor Works (including any design of the Subcontract Works for which it is responsible) to ensure proper integration, coordination and compatibility of the various components and elements that make up and comprise the Subcontract Works one with the other and with the other parts of the Development.


8.2. The Contractor shall have a exclusive, perpetual, royalty-free irrevocable licence for the copyright and other intellectual property and design rights in all drawings, models, plans, elevations, sections, perspectives, design reports, specifications, bills of quantities, calculations and other works, information and documents (including those in computer generated form) produced or to be produced by or on behalf of the Subcontractor pursuant to the Subcontract Works ("the Documents") for all purposes in connection with the Works or its operation or use. The Subcontractor shall not be liable for the consequences of any use of the Documents for any purpose other than those for which the Subcontractor produced them.

8.3. The licence referred to in clause 9.2 shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of these Conditions.

8.4. The Subcontractor agrees and undertakes that it hereby irrevocably waives any rights it may have and upon reasonable request from the Contractor at any time shall obtain a written waiver from the Subcontractor's employees or sub-consultants of any rights that they may have in respect of the same.

8.5. The Subcontractor shall supply to the Contractor on request (after as well as before the termination of the Subcontract under these Conditions) copies of all the Documents.

8.6. If the provision of the Subcontract Works by the Subcontractor leads to or would lead to the infringement of any patent, copyright, design or other proprietary right or any other intellectual property right of any

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third party the Subcontractor shall indemnify the Contractor and the Employer and their respective sublicensees and transferees against all resulting costs, claims, demands, actions or damages.

## 9. ANCILLARY DOCUMENTS

- 30 days  
~~15 days~~
- 9.1. The Sub-Contractor shall, within ~~15 days~~ of the Contractor's written request, execute and deliver to the Contractor a Performance Bank Guarantee.
- 9.2. The Subcontractor shall within seven days of the Parties entering into the Subcontract, or within seven days of any request made by the Contractor from time to time as the case may be, deliver to the Contractor Collateral Warranties duly executed by the Sub-Contractor in favour of each and every Beneficiary in the relevant form(s) referred to in or annexed to the Subcontract or the Main Contract, or in such varied or similar terms as the Contractor may reasonably require or agree.
- 9.3. Notwithstanding any other provision of the Sub-Contract, in the event that the Sub-Contractor fails to provide any Collateral Warranty and/or and/or Performance Bank Guarantee under this Clause and such Collateral Warranty, or Performance Bond, has still not been delivered to the Contractor by the final due date for the next payment due to the Sub-Contractor, the final date for all or any such payment and all further payments shall be postponed and there shall be no release of Retention Money to the Subcontractor until the Sub-Contractor has provided all of the outstanding, duly executed Collateral Warranty and/or and/or Performance Bond (as the case may be) to the Contractor.

## 10. DEFECTS AND MAINTENANCE

- 10.1. The Subcontractor shall maintain and protect the Subcontract Works at its own expense and shall make good at its own expense any defects, shrinkages and/or other faults in, or damage to the Subcontract Works to the Contractor's satisfaction. The Subcontractor shall make good such defects, shrinkages and/or other faults and/or damage within such time period as required by the Contractor.
- 10.2. The Subcontractor shall make good any such defects, shrinkages or faults referred to in Clause 10.1 so as to cause as little disturbance as possible to any occupier of premises comprised within the Project and subject to any restrictions and within any period of time in the Subcontract and/or the Main Contract.
- 10.3. Failure by the Subcontractor to commence and complete the rectification of defects, shrinkages and/or other faults and/or damage to the Subcontract Works within the time periods required by the Contractor shall entitle the Contractor to carry out the rectification themselves or nominate others to do so and

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deduct the total costs incurred plus overheads from monies due to the Subcontractor or recover the total cost from the Subcontractor as a debt.

## **11. SUBCONTRACT EMPLOYEES**

- 11.1. The Subcontractor shall supply labour, plant and equipment of sufficient quality to carry out and complete the Subcontract Works in accordance with the Subcontract. The Subcontractor shall at the Contractor's request cease to employ on the Subcontract Works any one or more of its employees to whom the Contractor may object and shall replace such employee or employees immediately with others to whom there is no objection.
- 11.2. The Subcontractor will be responsible for the payment of Income Tax, Insurance and any other statutory deductions for all of its employees employed on the Subcontract Works. The Contractor shall have no responsibility for the non-payment of any such sums.

## **12. ON-SITE FACILITIES/SERVICES**


- 12.1. The Subcontractor shall at its own risk in common with other Subcontractors and others engaged upon the Site have the reasonable and free use and maintenance of such amenities, facilities and services provided by the Contractor and specified in the Special Condition of Contract.

## **13. LOSS & DAMAGE TO PLANT AND MATERIALS OF OTHERS, AND WASTAGE**

- 13.1. The Subcontractor shall be responsible for all loss or damage to any plant, tools, equipment or materials supplied to it for the Subcontract Works or for loss or damage to the plant, tools, equipment or materials of others that is caused by the Subcontractor's or the Subcontractor's Persons' act, omission, negligence, breach or default. The Contractor shall be entitled to deduct from monies due to the Subcontractor under the Subcontract or any other agreement between the Contractor and the Subcontractor or to be paid as a debt due all costs that the Contractor may incur.

## **14. BACKGROUNDS AND PREVIOUS WORK BY OTHERS**

- 14.1. The Subcontractor shall satisfy itself before commencing the Subcontract Works as to the position, dimensions and suitability of any previous work which may in any way affect the Subcontract Works, (including without restriction any surface or background to which the Subcontractor is to fix or lay its work) and shall immediately advise the Contractor in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable.

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14.2. The Subcontractor shall make good at its own expense any damage caused to any pipes, wires, cables, drains, ducts, services or other obstructions or obstacles and shall indemnify the Contractor in respect of the same.

14.3. The Subcontractor shall have no claim or right of action against the Contractor arising from work previously carried out by others unless any discrepancy in position or dimension or other reason for unsuitability of the work or surfaces has been notified to the Contractor by the Subcontractor pursuant to Clause 14.1 prior to the Subcontractor commencing the Subcontract Works.

## 15. INDEMNITIES AND INSURANCES - INJURY TO PERSONS AND PROPERTY

15.1. The Subcontractor shall indemnify the Contractor against and from all claims, causes of action made or brought against the Contractor and all costs, loss and expense whatsoever incurred by the Contractor in respect of:

15.1.1. personal injury or death of any person or injury or damage to any property real or personal arising out of or in the course of or caused by any works executed by the Subcontractor and/or the execution of such works (including but not restricted to the use of any plant, equipment or facilities whether in connection with such execution or otherwise);

15.1.2. any negligence or breach of duty on the part of the Subcontractor and/or the Subcontractor's Persons;


15.1.3. any breach or non-performance or non-observance by the Subcontractor and/or the Subcontractor's Persons of the provisions of the Main Contract insofar as they relate or apply to the Subcontract Works;

15.1.4. any act, omission, default or neglect of the Subcontractor, its servants or agents which involved the Contractor in any liability under the Main Contract; and

15.1.5. any injury to any person in the employment of or under the control of the Subcontractor.

15.2. The Subcontractor shall adequately insure its and the Contractor's liability in respect of any claims, causes of action, costs, losses and expenses in respect of any of the matters referred to in Clause 15.1 above, with insurers of good repute licensed to transact business in the country where the Project is being executed. Such insurance shall be not less than the amount set out in the Special Conditions of Contract or given in writing by the Contractor and shall be subject to approval by the Contractor. The



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Subcontractor shall ensure that the Contractor has the benefit of such insurance. The Subcontractor shall produce to the Contractor adequate evidence of such insurance at least Thirty (30) days prior to commencement on Site. If the Subcontractor fails to adequately insure as required, the Contractor has the right to affect such insurance as deemed necessary and to set-off the cost of doing so against any sums due under the Subcontract or to recover the same from the Subcontractor as a debt.

15.3. The Subcontract Works, and all of the Subcontractor's materials, tools, Plant, scaffolding, machinery and buildings the subject of or used in connection with the Subcontract whether on Site or elsewhere, shall in every respect be at the Subcontractor's risk.

Not applicable


15.4. Where the Subcontractor is responsible for carry out any design works under the Subcontract:

15.4.1. The Subcontractor undertakes to the Contractor to maintain with reputable insurers carrying on business in the country of the Project, from the date of commencement of the Subcontract Works and for a period expiring no earlier than 12 years after the date of practical completion of the Works and notwithstanding the determination for any reason of the Subcontractor's employment under the Subcontract, professional indemnity insurance to cover each and every professional liability which it may incur under the Subcontract with the Limit of Liability in respect of each and every claim, provided always that such insurance continues to be available in the country of the Project upon reasonable terms and at commercially reasonable premium rates.

15.4.2. Such insurance shall be subject to such conditions and excesses as may be usual from time to time in the country of the Project and in particular (but without limitation) shall not include any condition which may adversely affect the right of the Contractor to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties.

15.4.3. As and when it is reasonably required to do so by the Contractor, the Subcontractor shall produce for inspection by the Contractor documentary evidence that insurance referred to in clause 16.4.1 is being properly maintained.


15.4.4. The Subcontractor shall notify the Contractor immediately if such insurance referred to in clause 16.4.1 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Subcontractor is unable to continue to maintain such insurance.

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- 15.5. The Subcontractor shall not compromise, settle or waive any claim which it may have under insurance in respect of any liability which it may incur under the Subcontract without the prior written consent of the Contractor provided that nothing in the Subcontract shall preclude the Subcontractor's insurers from taking over (in the name of the Subcontractor) the defence of any claim made by the Contractor under the Subcontract and (in that capacity) from conducting and settling it as they see fit.
- 15.6. The Subcontractor shall at all times prevent any trespass or public or private nuisance (including any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the right of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker or any other contractor engaged on the Project arising out of the carrying out of the Subcontract Works or of any obligation pursuant the Subcontract agreement.
- 15.7. The Subcontractor shall be liable for and shall indemnify the Contractor and the Employer against any expense, liability, loss, claim or proceedings in respect of any trespass to any adjoining property or any nuisance insofar as such trespass or nuisance arises out of or in the course of or by reason of the carrying out of the Subcontract Works or any other obligations of the Subcontractor under the Subcontract and to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the Subcontractor or any person for whom the Subcontractor is responsible.

## 16. SUBCONTRACT SUM


- 16.1. In consideration of the complete and satisfactory performance of Subcontract Works, Contractor shall make payments for quantities of Subcontract Works actually executed as per the Bill of Quantities or the payment mechanism agreed between the parties.
- 16.2. Subcontract Sum shall be firm, fixed and not subject to any escalation till completion of all Subcontract Works, including additional quantities and extended Completion Schedule, if any, except for if so provided in the Special Conditions of Contract. The subcontract amount shall include and deemed to have included, all costs, taxes, duties, including custom duty, excise duty or any other tax / duties / cess/ fee as applicable, and cost of any and all authorizations, approvals, licenses, customs clearance, permits, etc., for compliance with all applicable laws, rules and regulations, for performance of the Subcontract. The price shall be provided in the required format of the technical specifications or as given by or asked for or agreed by the Contractor. Breakup of the Unit Rates shall be provided by the Subcontractor for the offshore and onshore or other components, as applicable or asked for by the Contractor, for the purpose of evaluation or for reference during adjustment for statutory variation.

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- 16.3. It is agreed that initial Subcontract Sum is the amount worked out on the basis of estimated quantities and the unit rates provided in the Bill of Quantity or the Payment mechanism. The final Subcontract Sum shall be worked out on the basis of actual quantities executed by the Subcontractor and accepted by the Contractor and the applicable unit rates. It is clearly understood and agreed that the initial Subcontract Sum shall not be construed as any minimum guaranteed compensation to the Subcontractor. It is agreed that the quantities or the Subcontract Sum can vary to any extent, and the Subcontractor shall have no claim against the Contractor due to such variation.
- 16.4. Subcontractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the prices and unit rates specified in the Subcontract, which except in so far as expressly otherwise provided in the Subcontract, shall cover all its obligations, liabilities, risks, contingencies and any other cost either expressed or implied from the Subcontract so as to ensure the complete and proper performance of the Subcontract. Subcontractor shall not be entitled for any claim on the ground of any revision of an unit rate by way of addition of new element(s) on the grounds that the same were not included earlier in the said unit rate. In an event that an element of work is required to be executed for completing the said item of Subcontract Work, but is not separately included in Bill of Quantity or Pricing mechanism, the cost of executing such element shall be deemed to have been included in the said unit rate.
- 16.5. The Subcontractor agrees that the unit rate in the Bill of Quantity or the Pricing mechanism shall hold good equally for executing the Subcontract Works in large or small quantities, regardless of location, time of day or night, on a holiday or a normal day, any shaped section & slopes, in open or confined spaces, in difficult or easy situations, at any elevation or depth or in any situation the Subcontract Works are being undertaken.
- 16.6. Any increase or decrease in quantities from estimated quantities specified in the Bill of Quantity shall not be treated as variation but be only subject to re-measurement and in such an event Subcontractor shall be paid at unit rate specified in the Subcontract.
- 16.7. No claims shall be payable to Subcontractor except where corresponding variation orders are accepted by the Employer in terms of the Main Contract and paid for to the Contractor. Any change desired or required by the Contractor or the Employer shall be honored by the Subcontractor.

## 17. PAYMENT

- 17.1. Subject to proper performance of the obligations under the Subcontract, the Contractor shall pay to the Subcontractor the Subcontract Sum in accordance with this clause. The Subcontract Sum agreed for the Works is fixed and shall not be adjusted unless otherwise agreed by the Contractor. The Subcontractor

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warrants and undertakes to the Contractor that the Subcontract Sum is inclusive of all works whether permanent or temporary, goods, materials, plant, equipment and expenditure, which will be necessary to complete the Subcontract Works as described in or to be inferred from the Subcontract Order.

17.2. Unless otherwise stated in the documentation forming part of the Subcontract, applications for payment shall be rendered in accordance with this Clause and in accordance with the Payment Timetable.

17.3. The Subcontractor shall submit monthly application for payment in arrears to the Contractor quoting the Subcontract title, the Subcontract Order number and any supporting evidence the Contractor may require. The applicable taxes and duties shall be invoiced / billed separately and at actual in the form of invoices/payment requests supported by documentary evidence. The Subcontractor shall not be entitled to submit more than one application for payment in any one month and any further application for payment which is submitted shall not be valid.


17.4. The Contractor shall assess and certify the Subcontractor's application for payment in accordance with the Payment Mechanism agreed between the parties. The Subcontractor shall submit their Tax Invoice as per the format approved by the Contractor. Upon submission of the same the Contractor shall ascertain the quantities executed and payable and thus derive the ascertained amount. The Subcontractor shall within seven (7) days from the date of receipt of the Contractor's ascertainment amount issue to the Contractor a valid tax invoice of the amount ascertained. Payments will become due to the Subcontractor sixty <sup>30 days</sup> ~~(60) days~~ (or such other period as agreed between the parties or specified in the Special conditions of the Contract) after receipt by the Contractor of the Subcontractor's tax invoice. The amount due for payment after adjustment of any dues, taxes, levies and other withholding required to be deducted or withheld by Contractor under applicable laws, shall be the amount certified by the Contractor which may be:-

17.4.1. the total value of work properly executed calculated in accordance with the rates and prices in the Subcontract; and

17.4.2. the amount of any additions to the Subcontract Sum ascertained under the Subcontract to the extent that such additions are in respect of work already executed by the Subcontractor; up to and including the date of the application, less:


17.4.3. all amounts previously stated as due in any notification as to payment previously issued by the Contractor under this Clause; and

17.4.4. any Retention amount applicable and any discounts as stated within the Subcontract.

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- 17.5. Payments shall be subject to deduction of retention and any discounts stated in this Subcontract. Subject to the Contractor's right to set-off or withhold, such retention shall be released to Subcontractor in accordance with the Subcontract Order. Without prejudice to the foregoing, the retention shall be released to the Subcontractor only after making good of all defects, shrinkages and/or other faults in the Works.
- 17.6. All interim payments shall be on account only and shall not imply approval by the Contractor and/or the Employer or any party or person for or on the Employer's behalf of the whole or any part of the Subcontract Works nor shall any final payment prejudice any claim the Contractor may have in respect of any defects, shrinkages and/or other faults in the Subcontract Works whenever such defects may appear.
- 17.7. If:
- 17.7.1. the Subcontractor causes the Contractor loss by breach of the Subcontract or any other contract or by any act or breach of statutory duty giving rise to a claim for damages or indemnity or contribution by the Contractor against the Subcontractor; or
- 17.7.2. The Contractor shall become entitled to payment from the Subcontractor under the Subcontract or any other contract between the parties, without prejudice to and pending the final ascertainment or agreement between the parties as to the amount of such loss, indemnity, contribution or payment, the Subcontractor shall pay or allow to the Contractor such sum as the Contractor shall in good faith estimate as the amount of such loss, indemnity, contribution or payment and such sum may be deducted from any monies due or to become due to the Subcontractor or may be recovered from the Subcontractor as a debt. Such estimate is to be binding and conclusive upon the Subcontractor until final ascertainment or agreement.
- 17.7.3. Notwithstanding anything to the contrary in the Subcontract, if the Employer or any other person payment by whom is (directly or indirectly) a condition of payment of the Contractor by the Employer is insolvent, the Contractor shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt.
- 17.8. The Subcontractor shall comply with all tax legislation (including any sub-ordinate legislation, rules, codes of practice). No payment shall become due under the Subcontract if the Subcontractor fails to comply with its obligations under this Clause until such breach is rectified.




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## 18. WORKING HOURS


- 18.1. The Subcontract Works shall be carried out during normal site working hours and to suit any construction programme that the Contractor shall issue from time to time.

## 19. ADDITIONAL WORKS

- 19.1. The Subcontractor shall comply with all instructions and directions issued by the Contractor's Representative relating to the Subcontract Works.
- 19.2. The Contractor may issue an instruction requiring a Variation. No Variation required by the Contractor shall vitiate the Subcontract.
- 19.3. The Contractor shall not be obliged to pay the Subcontractor for any Variation, unless the Subcontractor has first obtained the prior written approval of the Contractor, in order that it may undertake such Variation.
- 19.4. The Subcontractor shall within seven (7) days of receipt of a Variation instruction provide in writing to the Contractor a quotation setting out details of:
- 19.4.1. an assessment of the cost and expense plus any tax associated with such Variation which costs and expense shall include:
  - 19.4.2. any delays to the Completion Date arising as a result of undertaking such Variation
- 19.5. Without prejudice to the Subcontractor's obligations to carry out a Variation, the Subcontractor shall notify the Contractor in writing within 28 days that a Variation may arise pursuant to any Instruction or otherwise and in any event before carrying out any Instruction which would give rise to a Variation. Where any extension of time, amount of loss and expense, addition or deduction from the Contract Sum and any other amount agreed to be payable is agreed in writing at any time, then such agreement shall apply to the Variation in question and no further extension of time shall be given and no further increase to the Subcontract Sum or payment in respect of loss and expense shall be made or entitlement to claim for extension of time shall arise.
- 19.6. If the Subcontractor fails to comply with its obligations under this Clause, the Subcontractor shall not be entitled to claim any extension of time, loss and expense or addition to the Subcontract Sum or any other additional payment in respect of the Variation.

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- 19.7. The Subcontractor and the Contractor shall thereupon take reasonable steps to agree the Subcontractor's quotation within 21 days from the date of receipt of the Subcontractor's quotation. Any agreements so reached shall be final and binding on the Subcontractor and the Contractor and shall not thereafter be the subject of any review. If agreement is reached on all matters referred to in this Clause the Subcontractor shall then execute the Variation in accordance with the Contractor's instruction.
- 19.8. If agreement cannot be reached within a reasonable time (as determined by the Contractor) on all or any of the matters set out in clauses 19.7 then:
- 19.8.1. the Contractor may nevertheless issue an instruction requiring the Subcontractor to execute the Variation in which case the provisions of Clause 19.11 of the Subcontract shall apply to any matters not so agreed; or
- 19.8.2. the Contractor may instruct the Subcontractor not to execute the Variation, in which case the Subcontractor will have no claim whatsoever in respect of any matters so agreed or otherwise at all.
- 19.9. The Subcontractor shall undertake such confirmed Variation in a good and workmanlike manner with good quality and sound materials and in accordance with the Subcontract.
- 19.10. Effect shall be given to a valuation of such work by addition to or deduction from the Contract Sum.
- 19.11. Any adjustments to the Subcontract Sum for Variations, shall:
- 19.11.1. be valued using the rates and prices set out in the Subcontract if, in the reasonable opinion of the Contractor, the varied work is of similar character executed under similar conditions as the work to which those rates and prices relate; or
- 19.11.2. be valued using fair and reasonable rates and prices (valued by the Contractor if the Subcontractor's valuation is not agreed) if the varied work is not of a similar character or is not executed under similar conditions as the work to which the rates and prices set out in the Subcontract relate provided that:
- 19.11.3. the valuation of items omitted shall be in accordance with the rates and prices set out in the Subcontract;

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19.11.4. no loss of profit, overheads, supervision, insurances or other preliminary items shall be recoverable by the Subcontractor in respect of any instruction to omit the work.

19.12. The Contractor may instruct the Subcontractor for execution of any "Provisional" Items. No loss or profit will be allowed in respect of such instructions and the Subcontract Sum will be deemed to include all supervision, plant, insurance and other preliminary and general items in respect of such work which is the subject of any Provisional Item except where the same have been declared by the Subcontractor in the Subcontract to have been included in the unit prices used in the calculation of the Subcontract Sum.

19.13. The Subcontract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of the Subcontract.

19.14. In the event that the Subcontractor does not comply with its obligations pursuant to this Clause the Contractor shall be entitled to engage alternative subcontractors to undertake such variations and/or modifications and shall be entitled to recover all costs and/or expenses associated with so doing from the Subcontractor pursuant to the provisions of clause 19 insofar as such costs exceed the sums which would have been payable to the Subcontractor in respect of such work.

## 20. REMOVAL OF RUBBISH AND CLEANING UP

20.1. The Subcontractor shall at its own expense clear away regularly all rubbish resulting from the execution of the Subcontract Works to a designated area on Site or off-Site and shall keep access to the Subcontract Works clear at all times. If the Subcontractor fails to comply with its obligations under this Clause, the Contractor may carry out such work at the Subcontractor's costs which costs and risk shall be recoverable as a debt.


## 21. HEALTH AND SAFETY

21.1. The Subcontractor shall (and ensure that the Subcontractor's Persons shall):

21.1.1. observe and comply with all safety, health and environmental legislation;

21.1.2. comply with the Contractor's rules, regulations and requirements of Safety Health and Environment (SHE) and shall;

21.1.3. comply with the Contractor's construction phase plan (including health and safety training) and other Contractor's requirements relating to the SHE;

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- 21.2. Notwithstanding any other provision of the Subcontract, the Subcontractor and/or the Subcontractor's Persons shall not be entitled to access of any part of the Site until such person has completed a Site SHE Induction in accordance with this Clause.
- 21.3. and provided always that no adjustment shall be made to the Subcontract Sum and no extension of time shall be given as a result of such denial of access.
- 21.4. The Subcontractor shall provide a safe system of work including all appropriate personal protection equipment and health, safety and welfare facilities for its employees and the Subcontractor's Persons.
- 21.5. The Subcontractor shall be required to attend any safety training arranged by the Contractor from time to time during the currency of the Subcontract. All costs whatsoever incurred by the Subcontractor in attending any health and safety training shall be borne by the Subcontractor.
- 21.6. The Subcontractor shall ensure it delivers, and that each of the Subcontractor's Persons shall deliver to the Contractor during the Site SHE Induction.
- 21.7. As requested by the Contractor, the Subcontractor shall participate in the Contractor's safety, health and environmental inspections and/or audits that are carried out on site from time to time provided always that no adjustment shall be made to the Subcontract Sum.

## 22. ASSIGNMENT AND SUB-LETTING

- 22.1. The Subcontractor shall not assign, transfer or charge (whether in whole or in part and including, for the avoidance of doubt, the factoring of any debt arising under it), the benefit of the Subcontract nor sublet (whether in whole or any part) the Subcontract Works.

## 23. INFORMATION AND CO-ORDINATION

- 23.1. The Contractor shall not be liable to the Subcontractor in respect of or in relation to any disruption or delay caused to the Subcontractor arising from or in connection with the late receipt or non-receipt by the Subcontractor of any instructions, drawings, levels, or other information. The Subcontractor acknowledges that it shall not have exclusive possession of the Site and it shall share the Site with other contractors and consultants.
- 23.2. The Subcontractor shall comply with any procedures set out in the Subcontract, which allow the Contractor to comment on such documents, drawings, levels or other information. The Subcontractor

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shall ensure that the Subcontract Works are undertaken so as to cause the minimum disturbance, delay or disruption to the Contractor, its Other Subcontractors, Other Consultants and any other party.

23.3. The Subcontractor shall:

23.3.1. co-ordinate and integrate the Subcontract Works with that of the Contractor and the Other Subcontractors or Other Consultants engaged on the Site and in relation to the Works, so that the Subcontract Works are executed with due regard to other works taking place and in a manner that ensures satisfactory construction, performance and progress of the Subcontract Works;

23.3.2. take account of any work being undertaken by the Contractor or other subcontractors so that proper co-ordination between the Subcontract Works and other works is achieved;

23.3.3. when requested, prepare and submit to the Contractor a draft detailed programme of the Subcontract Works to be used as a basis for discussion and incorporation into the Main Contract programme;


23.3.4. not be entitled to an extension of time or additional payment for delays caused to the Subcontract Works due to the Subcontractor's failure to co-ordinate and integrate its own work and the works of the Subcontractor's Persons with that of the Contractor or other subcontractors; and

23.3.5. pay or allow the Contractor any additional costs resulting from delay and/or disruption to the Works or to the works of other subcontractors engaged by the Contractor caused by the Subcontractor's failure properly to co-ordinate the Subcontract Works.

23.4. Without in any way detracting from or affecting the particular notice requirements relating to the Subcontract Works the Subcontractor will promptly warn the Contractor in writing of any matter or concern of which it becomes aware which in the Subcontractor's reasonable opinion is likely to affect the cost or programme or the quality or performance of the Subcontract Works.

23.5. If the Subcontractor fails to comply with its obligations under Clause 23.4, without prejudice to any other rights or remedies the Subcontractor may have whether under pursuant to or arising out of the Subcontract at common law, under statute or otherwise, any liability for damages the Subcontractor may have to the Contractor as a result of any breach of the Subcontract shall be assessed as though the Subcontractor had complied with its obligations under clause 23.4 and the Subcontractor had had



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sufficient time to able to take all appropriate measures to mitigate against any delay in the progress of the Works and/or any loss and/or expense suffered or incurred.

## 24. GOODS, MATERIALS AND WORKMANSHIP

- 24.1. The Subcontractor shall use goods and materials and workmanship of quality and standard specified in the Subcontract save that where no such quality and standard is so specified such quality and standard shall be to the satisfaction of the Contractor.

The Subcontract shall not substitute anything so described or defined without prior consent of the Contractor and in any case shall not be held to relieve the Subcontractor of its obligations under the Subcontract. The Contractor shall not be liable to the Subcontractor for any upward variation of prices of materials. Delivery of goods to the Site for use by the Subcontractor and storage of those goods shall be the responsibility of the Subcontractor.


- 24.2. Title in any goods, materials, plant and equipment procured by the Subcontractor for the purpose of the Subcontract Works or for incorporation into the Subcontract Works shall vest in the Contractor immediately upon it vesting in the Subcontractor but the Subcontractor shall remain responsible for any loss or damage caused to or by such goods, materials, plant and equipment. The Subcontractor shall ensure that, if stored off-site, that such goods, materials, plant and equipment are marked appropriately to identify them as the Contractor's property.

## 25. QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)

- 25.1. All requirements of Quality Control/Quality Assurance, Inspection, Approvals, Coordination Procedures, Safety, Material Certificates, Reporting, and Documentation, etc. shall be as per SCS or any other document of Subcontract, and shall be fully complied with by Subcontractor any and all requirement under the Main Contract.

- 25.2. Within <sup>30 days</sup>~~15 (fifteen)~~ calendar days after the Commencement Date of the Subcontract, the Subcontractor shall submit to the Contractor for review and comments, Subcontractor's Quality Assurance/Quality Control (QA/QC) program covering the inspection and testing of all the works to be performed by Subcontractor under Subcontract.

- 25.3. The QA/QC Program shall include, but not be limited to, a detailed description of each item or part of work to be inspected or tested, the nature and frequency of the inspection and testing, the type and size of samples to be taken, if any, the means and method of recording the inspection and testing data, the

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name and specific responsibility of any proposed testing or inspection agency and all other information necessary or required to be performed under Subcontract.

25.4. Subcontractor's QA/QC program as reviewed and commented by Contractor shall be revised by the Subcontractor and used for the inspection and testing of Subcontract Works and shall be revised and resubmitted for Contractor's review, if Subcontractor desires to change the sequence, method or nature of the inspection and testing.


25.5. Neither Contractor's review of, nor failure to review Subcontractor's QA/QC Program shall relieve the Subcontractor of its responsibility for the inspection, testing and performance of Subcontract Works as required under the Subcontract.

25.6. Subcontractor acknowledges and agrees that quality requirements are essential to the performance of Subcontract. In the event that such requirements may have been prejudiced, are prejudiced or may in future be prejudiced by the improper performance of Subcontract Works and should Subcontractor have failed to correct such improper performance of Subcontract Works within a reasonable period of time, Contractor shall be entitled without any discharge of Subcontractor's obligations, to enforce such corrective actions as may be necessary or expedient to meet the said quality requirements. The cost incurred in implementing any corrective actions along with <sup>5%</sup> 25% Contractor's management fee, shall be recovered from Subcontractor.

## 26. INSPECTION, TESTING AND REJECTION

26.1. All Materials and workmanship shall be of the respective kinds specified in the Subcontract and in accordance with the Contractor's instructions and shall be subjected from time to time to such tests and inspections as Contractor may direct at the place of construction, manufacture or fabrication or on Site or at such other place or places as may be specified in Subcontract or as Contractor or Employer may require. Subcontractor shall provide all such assistance, instruments, machines, labour and materials required for examining, measuring and testing any Works and the quality of any Material used and shall supply samples of Materials, before incorporation in the Subcontract Works, for testing as may be selected and required by the Contractor. Subcontractor shall be responsible for ensuring that all samples are truly representative of Subcontract Works under consideration.

26.2. The cost of conducting any test including supply of samples shall be borne by the Subcontractor unless otherwise provided in the Subcontract.

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26.3. If the Subcontractor fails to remedy the deficiencies or replace defective Materials and Equipment rejected by Contractor or Employer after being notified, Contractor shall be entitled to rectify, remove or replace the same and all expenses consequent thereon or incidental thereto along with ~~25%~~<sup>5%</sup> Contractor's management fee, shall be recoverable from Subcontractor's and may be deducted by the Contractor from any monies due or which may become due to the Subcontractor, or alternatively from the any Guarantee submitted by the Subcontractor.

## 27. PLANT AND EQUIPMENT

27.1. Where the Subcontractor is supplying services or hiring equipment or plant to the Contractor:

27.1.1. it shall indemnify the Contractor, its employees, agents and the Employer against any loss or damage to person or property caused (due to negligence or otherwise) by itself or its agents or employees.


27.1.2. it will immediately repair or replace or take away any non-functioning or defective plant or equipment when notified by the Contractor and the Contractor will not be liable for any fees or charges or payment after notification of deficiency, damage or loss. The Subcontractor will be liable to the Contractor for direct and consequential damage or loss resulting there from (including additional labour costs, loss of running time).

27.1.3. the plant and equipment supplied shall be fit for the purpose specified.

27.1.4. the Contractor shall not be liable for any loss or damage whatsoever to plant or equipment unless it caused by its wilful negligence in the event of a claim for loss or damage arising from the Contractor's negligence the Contractor must be given 14 days written notice for inspection before repairs or replacement are effected. In any or all cases liability will be restricted to the written down book value of the damage or list plant net of any discounts in rebates in respect of that plant.

## 28. FORCE MAJEURE

- i) Force Majeure means an exceptional event or circumstance which is beyond a Party's control, or which such Party could not reasonably have provided for, before entering into the subcontract, which having arisen, such party could not reasonably have avoided or overcome and which is not substantially attributable to the other Party;
- ii) Force Majeure may include but is not limited to, exceptional events or circumstances of the kind listed below:

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- a) War, hostilities, invasion, act of foreign enemies;
- b) Insurrection, military or usurped power, or civil war;
- c) Disorder within country by persons other than Subcontractor's personnel and other employees;
- d) Munitions of war, ionizing radiation or contamination by-radioactivity, except as may be attributable to Subcontractor's use of such munitions, radiation or radioactivity; and
- e) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity

## 29. TERMINATION AND SUSPENSION

29.1. The Contractor may at any time without prejudice to any other of its rights or remedies terminate the Subcontractor's employment in respect of the whole or any portion of the Subcontract Works:


29.1.1. by giving a written notice of not less than 1 (one) day.

29.1.2. immediately where the Subcontractor:

- 29.1.2.1. has a distress or execution levied against its property; or
- 29.1.2.2. asserts or makes or offers to make any arrangement or composition of debts or schedule of arrangement approved in accordance with the Insolvency Act ; or
- 29.1.2.3. has an application made under the Insolvency Act to the court for the appointment of an administrator or has any corporate action or other procedure taken in relation to the appointment of an administrator; or
- 29.1.2.4. becomes bankrupt or has a winding-up resolution or order other than for the purpose of a bona fide reconstruction or amalgamation passed or made (whether compulsory or voluntary); or
- 29.1.2.5. has a liquidator, receiver, administrative receiver or manager appointed;
- 29.1.2.6. committing any fraud or any other unlawful or criminal act in respect of its performance of the Subcontract Works;
- 29.1.2.7. upon occurrence of a default by the Subcontractor under the Subcontract and failure of Subcontractor to cure such default within the period specified in the notice to such effect, or where no time period is stipulated, within a period of 7 days from receipt of such notice.

29.1.3. by giving a written notice of not less than 15 (fifteen) days:

- 29.1.3.1. assigns the Subcontract or sub-lets the whole of Subcontract without the prior written consent of the Contractor; or
- 29.1.3.2. has abandoned Subcontract; or


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- 29.1.3.3. has suspended the progress of Subcontract and has not resumed it within 3 (three) calendar days after receiving notice from Contractor to resume; or
- 29.1.3.4. persistently and materially disregards or violates Applicable Laws or Applicable Permits, if any; or
- 29.1.3.5. fails to comply with Subcontractor's obligations stipulated under Health, Safety, Security and Environment hereto or any action or inaction by Subcontractor that may have an adverse impact in respect of Health, Safety, Security and Environment requirements under Contract or Subcontract; or
- 29.1.3.6. defaults in the performance of any other obligation to be performed by Subcontractor in accordance with the provisions of Subcontract, and in particular those obligations relating to quality, safety and Subcontract Works schedule, and has not remedied, or agreed with Contractor a plan to remedy such default within 3 (three) calendar days after receiving notice from Contractor of the default; or
- 29.1.3.7. fails to perform any provision of Subcontract and thereby prejudices in anyway (including any action Subcontractor may take on Site) Contractor's ability to receive continued payments for Contract; or
- 29.1.3.8. persistently allows construction defects to exist; or
- 29.1.3.9. Contractor believes, in good faith, that Subcontractor has violated the provisions of Business Ethics hereof.

29.2. Upon termination of its employment, the Subcontractor:


- 29.2.1. shall not be entitled to compensation for determination of its employment under this Clause;
- 29.2.2. shall not remove any of its Plant, materials or property from the Site;
- 29.2.3. shall not be entitled to any further payment until completion of the Subcontract Works by the Contractor or by others (notwithstanding anything contained elsewhere in the Subcontract);
- 29.2.4. shall allow the Contractor free use of its Plant, materials and property on the Site and any materials or fabricated work lying at the Subcontractor's works or workshops which have been bought or fabricated for the Subcontract Works;
- 29.2.5. shall have no claim against the Contractor for fair wear and tear of any equipment plant or materials referred to under Clause 29.2.4; and
- 29.2.6. vacate the Project peacefully within 3 days of such termination.

- 29.3. the Contractor shall use reasonable endeavours to notify the Subcontractor in writing of completion within 60 days of completion of the Subcontract Works.

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- 29.4. The Subcontractor shall within 14 days of notice given under Clause 29.3, submit an application for payment for works executed by it up to the date of termination. Such application shall be treated in all respects as if it were an application submitted by the Subcontractor and the procedures set out in Payment shall apply in respect of such an application.
- 29.5. The Contractor shall be entitled to recover from the Subcontractor all losses, expenses, costs and damages suffered or which may be suffered by the Contractor by reason of termination and shall be entitled to set-off any such losses, expenses, costs and damages from any amounts which would otherwise be payable to the Subcontractor.
- 29.6. If the Contractor's employment under the Main Contract is terminated for any reason, the employment of the Subcontractor shall terminate from the same date that the Main Contract was terminated without the requirement for Notice under Clause 29.1. Subject to Clause 29.4, the Subcontractor's entitlement to payment shall be as specified in Clauses 29.3 and 29.4.
- 29.7. The Contractor's may at its sole discretion in circumstances in which it would be entitled to determine the Subcontractor's employment, take over part of the Subcontract Works and may, by itself or others complete and maintain such part. The Contractor in such circumstances shall be entitled to its reasonable costs plus overheads of carrying out the work and may deduct such amounts from sums becoming due to the Subcontractor or may recover the same from the Subcontractor as a debt.
- 29.8. The Contractor may by written notice at any time require the Subcontractor to suspend the performance of all or any part of the Subcontract Works. The Subcontractor shall take necessary steps to ensure a safe conclusion of the suspended Subcontract Works and shall be paid for those Subcontract Works properly undertaken in accordance with the Subcontract up to the date of suspension notice.
- 29.9. The Subcontractor shall resume the performance of any suspended Subcontract Works within 14 days from the date of receipt of the Contractor's notice or such other period as agreed by the parties if instructed by the Contractor. In such event, any payment made under Clause 29.8 shall rank as payment on account towards payments due to the Subcontractor under the Subcontract.
- 29.10. If a suspension lasts more than six months the Contractor may terminate the Subcontractor's employment under the Subcontract immediately.
- 29.11. The Contractor shall have no liability to the Subcontractor (whether by reason of any negligence by the Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, breach of statutory duty, or otherwise) for any: loss of profits; or damage to reputation; or loss




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of anticipated revenues or savings; or loss of business opportunities; or loss of contracts; or loss of goodwill; or loss or corruption of any data; or claim, action or demand made against the Subcontractor by any third party; or indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with suspension and/or termination under this Clause.

### 30. DISPUTES

- 30.1. The Subcontract shall be subject to and construed in accordance with ~~Indian~~ <sup>Malaysian</sup> Law.
- 30.2. Either party shall be entitled to refer any dispute or difference arising under the Order to adjudication in accordance with the rules set out in the ~~Indian Arbitration and Conciliation Act 1996~~ <sup>International Arbitration Act 1974</sup>. However, before referring the Dispute to Arbitration the parties shall attempt to resolve the dispute amicably by referring the matter to the chief executives of the both the parties or their authorized representative, failing which it shall be attempted to be resolved by a third party mediator agreeable to both the parties (cost of the mediator to be shared equally by both the parties).
- 30.3. Subject to Clause 30.2, any dispute between the parties in relation to any matter arising under the Subcontract shall be referred to the exclusive jurisdiction of the court in ~~Delhi, India~~ <sup>Singapore</sup> which shall have the power to consider any matter in relation hereto.
- 30.4. The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings
- 30.5. The seat for the arbitration shall be ~~Delhi~~ <sup>Singapore</sup> for all Disputes.
- 30.6. The Disputes shall be decided by a Sole arbitrator to be appointed by the Contractor whose cost shall be shared equally by the parties. However, other costs related with the dispute resolution process shall be borne by each party individually;
- 30.7. The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act;
- 30.8. Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under the Subcontract order without prejudice to a final adjustment in accordance with such award.

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### 31. NON WAIVER

31.1. Without implying limitation, none of the following shall modify, release, diminish or in any other way affect any of the liabilities and/or obligations and/or warranties of the Subcontractor to the Contractor whether arising at common law (whether under, pursuant to or arising from the Subcontract or otherwise) pursuant to Statutory Requirements or otherwise and none of the following shall be deemed a waiver of any of the Contractor's rights and/or remedies (including any resultant liabilities) in respect of any prior or subsequent breach of any such obligations and/or warranties and/or any negligent act, omission or error by the Subcontractor:

- 31.1.1. failure or delay by the Contractor to insist upon strict performance of any of the Subcontract; or
- 31.1.2. failure or delay by the Contractor to exercise any rights or remedies at common law (whether under, pursuant to arising from the Subcontract or otherwise) and/or pursuant to statute or otherwise; or
- 31.1.3. approval and/or acceptance by the Contractor of any working methods used by the Subcontractor; or
- 31.1.4. any review of or appraisal or failure to review or appraise the Subcontract Works by the Contractor; or
- 31.1.5. any approval of or failure to approve any matter in connection with the Subcontract Works by the Contractor and/or any third party; or
- 31.1.6. any inspection of or enquiry into or failure to inspect or enquiry into the Subcontract Works by the Contractor or by any independent firm or any party whosoever appointed by the Contractor; or
- 31.1.7. any sanction, consent, comment, direction or instruction or failure to issue any sanction, consent, comment, direction or instruction by the Contractor; or
- 31.1.8. any payment by the Contractor of any monies to the Employer under, pursuant to or arising from the Subcontract or otherwise; or
- 31.1.9. execution of the Subcontract by the Contractor.

### 32. MISCELLANEOUS


32.1. Business Ethics: Each of the parties agrees and undertakes to the other to act at all times in a manner which is consistent with the highest ethical standards and business practices in respect of the execution of Subcontract and not to violate any of the Applicable Laws or the Laws of any country having jurisdiction over them in connection with the execution of Subcontract. Each party shall indemnify each other and hold harmless the other Party and its Affiliates from any and all costs, claims, expenses, suits, actions, fines, penalties and liabilities arising from a breach of the terms of this provision.

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32.2. Severability: If any part of Subcontract is held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of Subcontract shall not be affected and every part of Subcontract shall be severable and separately valid and enforceable. The part so severed shall be replaced and re-effectuated by a legally binding, valid and enforceable part with the mutual, written consent of both the Parties.

### 32.3. Back Charges


- a) If Subcontractor is notified in writing by Contractor to take corrective action for any default, deficiency or insufficiency related to the performance of the Subcontract Works and Subcontractor fails to take or it becomes evident that it is unable or unwilling to proceed with the corrective action within the time stipulated in such notice, Contractor shall be entitled upon the expiration of such written notice, proceed immediately to execute by itself or get the same executed by others, or to take the corrective action and to back charge to Subcontractor, the actual costs incurred by Contractor plus an overhead of twenty five percent <sup>5%</sup>~~(25%)~~ towards supervision charges of Contractor. The said back charges shall be deducted from payments or other monies due, or which may become due, to Subcontractor or shall be recovered from the Bank Guarantees provided by Subcontractor and if such amounts falls insufficient to cover such charges, recover them as debt from Subcontractor. However, prior to Contractor making such deductions, Contractor shall notify the Subcontractor as aforesaid and provide a statement of back charge items in respect of which the deduction/recovery is being made. It is expressly agreed that for Back Charges, no further documentary evidence of any sort shall be required to be furnished by the Contractor.
  
- b) Withholding by Subcontractor, of payments due to its sublet subcontractors or suppliers who are directly associated with the Subcontractor for the Subcontract Works, without due cause and legitimate basis shall also be deemed to be a Subcontractor default for purpose of this Article thereby entitling the Contractor to also recover such monies as back charges and directly pay such creditors of the Subcontractor, at Contractor's sole discretion.
  
- c) Contractor in carrying out such work, or by engaging others shall not be required to take cognizance of the original unit rates of Subcontractor during the back charge but it shall be at full risk and cost of the Subcontractor, as aforesaid. However, Contractor shall be bound by what is considered as reasonable market rates at the time such work / remedies are executed. However, the manner of carrying out the risk and cost shall be entirely at the discretion of the Contractor.

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- d) The performance of any back charge works whatsoever, executed either by Contractor or others on any of the above accounts, and shall not relieve Subcontractor of any of its responsibilities or liabilities under the Subcontract.

32.4. Care and Custody: Subcontractor shall be responsible for the Subcontract Works, all materials and equipment supplied by the Contractor or the Company in its custody until Provisional Certificate / Completion Certificate as the case be without any cost implication on the Contractor.

32.5. Retention of Documents: Subcontractor shall, at no additional cost to Contractor, retain all Project documents for a minimum period of five (5) years from the date of the Final Acceptance Certificate by Employer to Contractor or from the date of termination of the Main Contract by the Employer, whichever is earlier, without any cost implication on the Contractor.

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## APPENDIX-1

### COLLATERAL WARRANTY

among


[ ]

And

[ ]

And

[ ]

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## FORMAT COLLATERAL WARRANTY

### AMONG:

[ ] having its principal offices at [ ] ("the **Beneficiary**" which expression shall include its successors in title or permitted assignees under this Agreement and/or the Beneficiary's appointee);

and

[ ], a company incorporated in [ ] under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] (the "**Contractor**" which expression shall include its successors in title or permitted assignees under this Agreement).


and

[ ], a company incorporated in [ ] under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] (the "**Subcontractor**").

### WHEREAS:

- A. The Beneficiary and Contractor have entered into an agreement for the [ ] (the "**Works**") for the [ ] ("Project") on or about the date hereof ("the [ ] **Agreement**").
- B. The Contractor has entered or intends to enter into an agreement with the Subcontractor whereby the Subcontractor will perform the full/[ ] part of the Works ("**Subcontracted Works**") in connection with the Project (the "**Subcontract**") as more particularly described herein.
- C. It is a condition of the Subcontract that the Subcontractor enters this Agreement with the Beneficiary.



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- D. The Beneficiary shall be entitled to rely and is deemed to have relied on the Subcontractor's reasonable skill, care and diligence in respect of all matters covered by this Agreement insofar as they relate to the Subcontracted Works/Works provided by the Subcontractor under the Subcontract.


**NOW IT IS AGREED as follows:**

**1. WARRANTY AND UNDERTAKING**

- 1.1 The Subcontractor warrants and undertakes to the Beneficiary that it has complied and will continue to comply with all the terms and obligations under or arising out of the Subcontract on the Subcontractor's part to be performed and observed and shall complete the Subcontracted Works in accordance with the Subcontract.
- 1.2 Without prejudice to anything otherwise contained in the Subcontract Agreement, the Subcontractor further warrants and undertakes to the Beneficiary that:
- 1.2.1 it has exercised and will continue to exercise all the due skill, care and diligence to be expected from a properly qualified and competent Subcontractor experienced in providing design Subcontracted Works on projects similar in nature, size and complexity to the Project in:
- (a) the [design] of the Subcontracted Works;
  - (b) the specification of goods and materials for the Subcontracted Works, and in particular in ensuring that it has not and will not specify for use in relation to the Subcontracted Works any products or materials not in conformity with relevant standards or Codes of Practice or which are at the time of specification generally known within [country of work] to an experienced designer of such as the Subcontracted Works to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and
  - (c) the performance of the Subcontracted Works to the Contractor under the Subcontract;
  - (d) the final [design] and all materials and goods specified therein will correspond as to description, quality and condition with the requirements of the Main Contract;
  - (e) the final [design] will at practical completion or its equivalent under the Main Contract, as the case may be, comply with all relevant legislation and Good Industry Practice.

**2. INSURANCE**

- 2.1 The Subcontractor shall maintain throughout the duration of provision of the Subcontracted Works and for a period of [ ] years after the date of completion or its equivalent under the [ ] **Agreement**, or if earlier the date of termination of the Subcontract, professional indemnity insurance in an amount of not less than (Rs/USD [ ]) on an each and every claim basis and for any one occurrence or series of occurrences arising out of any one event with insurer of good repute carrying on business in India.
- 2.2 In determining whether or not insurance is available as aforesaid, the financial characteristics and claims' record of the Subcontractor shall be ignored.
- 2.3 The Subcontractor shall immediately inform the Beneficiary if such insurance ceases to be available at rates which are commercially reasonable in order that the Subcontractor and the Beneficiary can consider alternative means of best protecting their respective positions in respect of the Works in the absence of

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such insurance provided that the Beneficiary shall be entitled to require the Subcontractor to maintain such lesser amount of professional indemnity insurance as is available to the Subcontractor at rates which are commercially reasonable.


- 2.4 As and when it is reasonably requested to do so by the Beneficiary the Subcontractor shall produce for inspection documentary evidence satisfactory to the Beneficiary (acting reasonably) that its professional indemnity insurance is being maintained.
- 2.5 The Subcontractor confirms that this Agreement has been disclosed to and has been approved by the Subcontractor's professional indemnity insurers or underwriters.
- 2.6 Should the Subcontractor be in breach of any of its obligations under this Clause 2 (*Insurance*), the Beneficiary may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Subcontractor as damages or a debt.

### 3. **COPYRIGHT**

- 3.1 The Subcontractor hereby grants to the Beneficiary or its appointee and all those authorised by the Beneficiary an irrevocable, transferable, non-exclusive and royalty-free licence (which shall be capable of assignment) to use and reproduce all information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents, work or things including all applicable passwords or access codes whatsoever provided or to be provided by the Subcontractor in connection with the Subcontracted Works (the "**Documents**") for such purposes as the Beneficiary may at its sole discretion require.
- 3.2 Such licence shall carry the right to grant sub-licences and shall subsist notwithstanding that the Subcontract is terminated or the obligations and duties there under have been completed. For the avoidance of doubt, the grant of such licence or sub-licences shall not impose any additional liability on the Subcontractor.
- 3.3 The Subcontractor shall on reasonable demand provide to the Beneficiary or its appointee and those authorised by the Beneficiary additional copies of any documents on receipt of reasonable copying costs. The Subcontractor will not be liable for any use by the Beneficiary or any appointee or sub-licensee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Subcontractor or for any improper or negligent use by the Beneficiary or any appointee or sub-licensee.
- 3.4 The Subcontractor agrees to indemnify and keep indemnified the Beneficiary from and against all loss, damage, cost, expense, liability or claim in respect of breach of the copyright or other intellectual property rights of any third party caused by or arising out of the carrying out of the Subcontracted Works or the use of the licence.

### 4. **ASSIGNATION**

- 4.1 This Agreement may be assigned in whole or in part by the Beneficiary to any successor to the Beneficiary's interest in the Works or any part thereof without the consent of the Subcontractor being required and such assignment shall be effective upon written notice thereof being given to the Subcontractor. No assignment of this Agreement by any other party shall be permitted.
- 4.2 The Subcontractor agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no less or a different loss has been suffered by such assignee.

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## 5. NO WAIVER OR VARIATION

- 5.1 No failure, approval, act or forbearance on the part of the Beneficiary in respect of any right of the Beneficiary pursuant to this Agreement shall constitute any waiver of any right of the Beneficiary under or arising out of this Agreement nor relieve the Subcontractor of any of its duties or obligations under or arising out of this Agreement.
- 5.2 The Subcontractor will not seek to modify or vary any of the obligations for which it is responsible under the Subcontract in any respect if that modification or variation will be detrimental to the Beneficiary or affects the Beneficiary's rights or obligations under the Works Agreement or affects the Subcontractor's obligations under this Agreement.

## 6. EQUIVALENT RIGHTS

The obligations of the Subcontractor under this Agreement shall be no greater in extent or quantity than if the Beneficiary had been named as joint employer with the Contractor under the Subcontract. The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as it would have against the Contractor under the Subcontract (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).


## 7. NOTICES

- 7.1 Any notice, consent or demand to be given or made by any party under this Agreement (hereinafter called a "Notice") shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post or sent by fax to the following address and marked for the attention of the following person in the case of each party:

Party	A	Fax Number	Person
The Beneficiary	[●]	[●]	[●]
-----	[●]	[●]	[●]
The Contractor	[●]	[●]	[●]
The Subcontractor	[●]	[●]	[●]


Any party may by Notice to the other party/parties change its address, fax number or the title of the person for whose attention Notices are to be given or made pursuant to this Clause. Any such Notice shall be deemed to have been received:

- 7.1.1 if delivered personally, at the time of delivery;
- 7.1.2 in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting; and
- 7.1.3 in the case of a fax, at the time of transmission.
- 7.2 If any Notice is delivered or faxed after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.

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- 7.3 For the purposes of this Clause 7 (*Notices*), “Business Day” means any day which is not a Saturday, a Sunday or a public holiday in Scotland. In proving service it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter, or that such Notice was transmitted by fax to the correct fax number of the relevant party (as demonstrated by the transmission slip). For the avoidance of doubt, Notices shall not be validly served if sent by e-mail.
8. The definitions of words and phrases used in this Agreement shall be those set out in the Main Contract and Subcontract except where expressly defined in this Agreement.
9. This Agreement shall be governed by and construed in accordance with Scots Law and the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.
10. Save to the extent expressly provided in this Agreement no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party, and without prejudice to the generality of the foregoing, there shall not in any circumstances be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding [ ] pages is executed as follows:

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**APPENDIX-2**  
**FORMAT FOR PERFORMANCE BANK GUARANTEE**

No..... dated .....20 - -

To

[ Name of the Contractor],

[ Address] ,


**Bank Guarantee No. .... Dated..... 20- - for Rs.....**

Sub: (Mention the Project for which the Guarantee is to be given)

In accordance with Letter of Award (“LOA”) dated ----- between \_\_\_\_ (“Contractor”) and \_\_\_\_\_ **[Name of the Subcontractor/ /Company along with the complete address ]** for undertaking, inter alia, the **[Details of the Project to be given here]** (the “Works”)

WHEREAS the Contractor desired to carry out certain Works through Subcontractors, and invited bids from various Subcontractors and pursuant to the bid submitted by ----- (Name of the Subcontractor), a company incorporated under the Companies Act 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as “Subcontractor”) the Contractor vide letter \_\_\_\_\_ (Fill in the relevant LOA No.) dated --- (hereinafter referred to as “Order”) placed an order on the Subcontractor for the execution and completion of such Works and to remedy any defects therein, on terms and conditions in accordance in the Conditions of Contract attached thereto.

WHEREAS, pursuant to the Order, the Subcontractor has to undertake such work and has to furnish a Performance Security by a Recognized Bank and as acceptable by the Contractor for the sum specified therein as security for compliance with the obligations in accordance with the Subcontract pursuant to Clause --- (Fill in the clause as per the LOA) of the General Conditions of Subcontract / Special Conditions of Subcontract.

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AND WHEREAS we \_\_\_\_\_(bank or financial institution) have agreed to give the Subcontractor such a Bank Guarantee.

NOW THEREFORE we, \_\_\_\_\_ hereby affirm that we are the Guarantor and responsible to you, on behalf of the Subcontractor, upto a total of Rs. \_\_\_\_\_ /- (Rupees \_\_\_\_\_ only ) such sum being payable in Indian Rupees in which the Subcontract Price is payable, and we undertake to pay you, upon your first written demand forthwith and without cavil or without demur or without argument, any sum or sums within the limits of Rs. \_\_\_\_\_/- as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debit from the Subcontractor before presenting us with the demand.


We further agree that no change or addition to or other modification of the terms of the Subcontract or of the works to be performed there under or of any of the Subcontract documents which may be made between you and the Subcontractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition or modification.

We further agree that you can assign this Guarantee in favour of any persons with a notice to us and we shall be obligated to consider such Assignee of this Bank Guarantee, upon your intimating us of the said assignment.

Our liability under this Bank Guarantee shall not exceed Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only )

This Bank Guarantee shall be valid upto \_\_/\_\_/200\_ and



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We are liable to pay the guaranteed amount or any part thereof / under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before \_\_/\_\_/200\_ [this date ought to be till the end of the month].

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**Notwithstanding anything contained herein:**

- (i) Our liability under this Guarantee shall not exceed the guaranteed amount Rs..... (Rupees .....)
- (ii) This guarantee shall be valid upto ..... (expiry date ) and
- (iii) We shall be liable to pay the guaranteed amount under this guarantee only and only if we receive a written claim or demand from the Contractor before the..... (Expiry date) as mentioned above or any other extended date.

**IN WITNESS WHEREOF we have executed this guarantee on this .....  
.....20 --**


 <b>Punj Lloyd</b>	Special Conditions of Subcontract (SCSC)	Document Number: PLL/Subcontract/SCSC/000 Rev 1
		Date: 21 <sup>st</sup> July 2015

## PUNJ LLOYD LIMITED

### SPECIAL CONDITIONS OF SUBCONTRACT

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 <b>Punj Lloyd</b>	Special Conditions of Subcontract (SCSC)	Document Number: PLL/Subcontract/SCSC/000 Rev 1
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## **SPECIAL CONDITIONS OF SUBCONTRACT**

The following Special Conditions of SUB-CONTRACT (SCS) shall supplement the General Conditions of SUB-CONTRACT, specifications, drawings and/or any other document forming part of the SUBCONTRACT. In respect of terms & conditions, not explicitly provided in this SCS, provisions of General Conditions of SUB-CONTRACT shall be applicable. Wherever there is a conflict, the provisions in SCS shall prevail over those in the GCC.

### **1. Scope of Work:**


Scope of Work includes TANK ERECTION WORKS Package S1 including all associated activities as per approved Drawing/Specifications/approved method statements as mentioned in the Request for Quotation RFQ No RAPID-P0022-PUNJ-PUR-RFQ-0001-0012.

### **2. Schedule of Rates:**

Applicability of rates shall be on Lumpsum basis. Variations shall be adjusted as per the Unit rate / Per MT rate agreed upon by both the CONTRACTOR and SUBCONTRACTOR. The rates mentioned in the priced bill of quantities include cost of supply of approved materials, consumables, labour, tools and tackles, construction equipment & machinery, applicable testing instruments, safety appliances for workmen, temporary works, setting out, water, power, supervision, transport, insurance, taxes and duties and any other work not specifically mentioned herein but necessary for performance and successful completion of Work under the SUBCONTRACT, unless specifically excluded from SUBCONTRACTOR's scope. Water for Hydro-Testing shall be provided by the CONTRACTOR.

### **3. Mobilization Time & Schedule:**

- a) The SUBCONTRACTOR shall mobilize required resources at Project Site immediately in consultation with CONTRACTOR's Representative, and any delays in this regard shall be at the risk and cost of SUBCONTRACTOR.

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- b) The period of completion of Work shall be 14 months + 90 days Mobilization Period. The start date shall be considered from the date of issue of this Purchase Order. Any delay due to failure of the SUBCONTRACTOR to provide securities for advance payments or failure to sign the SUBCONTRACT in time shall be considered as delay on the part of the SUBCONTRACTOR.

#### 4. Mobilization Advance:

5% Advance Payment shall be made against submission of **Advance** Bank Guarantee, for equivalent amount, in format acceptable to CONTRACTOR. Advance paid shall be recovered from the Progress claims / Running account Bills on prorata basis. Subcontractor shall submit the said ABG from a Malaysian Bank acceptable to CONTRACTOR or PLSB from an International Bank routed through their counter-part bank in Malaysia. Advance payment shall be paid within 14 days upon submission of Advance Bank Guarantee (ABG) by SUBCONTRACTOR.

#### 5. Security Deposit & Retention Money:

- a) The SUBCONTRACTOR shall provide to CONTRACTOR a duly issued, on-demand, unconditional, irrevocable and enforceable performance bank guarantee in a form and by a bank acceptable to CONTRACTOR. The performance bank guarantee shall not be less than 10% of the CONTRACT Price. Payment to CONTRACTOR under such performance bank guarantee shall be without reference to the SUBCONTRACTOR. The performance bank guarantee shall be in full force and effect from the date of its issue through and until the date of expiry of the defects liability period. All costs associated with such bank guarantee shall be to the SUBCONTRACTOR's account.
- b) 5% of gross value of each RA bill shall be deducted towards retention money. The aforesaid deducted amount shall be returned to SUBCONTRACTOR after satisfactory completion of defect liability period.

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#### **6. Price Escalation:**

The prices mentioned in this SUBCONTRACT shall not be subjected to escalation or increased on any account whatsoever. No escalation / overrun compensation shall be paid for extended duration of CONTRACT.


#### **7. Extra Items:**

The SUBCONTRACTOR shall when ordered in writing by the CONTRACTOR's Representative, perform extra work and furnish extra equipment and materials, not covered by the specifications and not included in the Schedule of Quantities and Bids but required for completion of Work. Such extra works, equipments and materials shall be paid for at such lump sum or unit rates as mutually agreed by CONTRACTOR and SUBCONTRACTOR. The rates of the extra item shall first be derived from the nearest items of the SUBCONTRACT.

When there are two or more nearer items in the SUBCONTRACT, the lowest rate derived from these will only be payable for the extra items. If no related items exist in the CONTRACT agreement the rate shall be derived on actual cost basis plus 10% (ten percent) overheads & profits. For the purpose of determining the actual cost of extra item, the SUBCONTRACTOR's Representative may prescribe the manner in which account of all labor, materials, equipment etc., which are relevant to the actual cost, materials, equipment etc., shall be kept by the SUBCONTRACTOR. However, in all cases the onus of satisfying the CONTRACTOR's Representative as to the correctness and genuineness of accounts kept in respect of the extra items shall be on the SUBCONTRACTOR.

#### **8. Liquidated Damages:**

- a) Without prejudice to any other rights or remedies available to the CONTRACTOR under the SUBCONTRACT or in law, if SUBCONTRACTOR, for any reason other than Force Majeure, suspension of work by CONTRACTOR in terms of the SUBCONTRACT, fails to achieve the targets specified in the Progress Schedule by their due date or fails to complete the Work in accordance with the Completion Period, SUBCONTRACTOR shall be liable to pay to CONTRACTOR, as ascertained and agreed liquidated damages not amounting to penalty, an amount equivalent to

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1% of the Total CONTRACT Value for each week of delay or part thereof subject to a maximum of 5% of the Total Contract Value.

- b) CONTRACTOR may, at its sole discretion, and without prejudice to its right to recover any or all of the liquidated damages by any other method of recovery, deduct the amount of such liquidated damages from any money due or which may become due to SUBCONTRACTOR.
- c) The payment or recovery of sums hereunder shall not relieve SUBCONTRACTOR from any of its other obligations and liabilities under the CONTRACT.


#### **9. Defect Liability Period:**

Defect liability period applicable for this CONTRACT shall be 12 months from the date of completion of work. The completion of Works shall be Mechanical completion of this Subcontract Works and/or as per the scope of works mentioned in (RFQ Ref No: RFQ-RAPID-P0022-PUNJ-CVS-RFQ-0001-0011 Rev: C).

#### **10. Payment Terms:**

- a) CONTRACTOR shall effect payment within 30 days from the date of approval of the invoice supported with all relevant documents at Project Department / Quantity Survey Department. Payment shall be made on the basis of quantities certified by CONTRACTOR's Representative. The number of payments to be made to the SUBCONTRACTOR shall be restricted to one in each calendar month. The payment shall be made after deduction of, Advance Payment, retention money, applicable taxes / duties / levies.
- b) Notwithstanding the release / payment of bills by CONTRACTOR to the SUBCONTRACTOR, the SUBCONTRACTOR shall ensure that the payment of wages and other statutory payments within time limit. There shall not be linkage between release / payment of bill by CONTRACTOR to the SUBCONTRACTOR and the payment of wages / other dues by the SUBCONTRACTOR to his workers.




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- c) The first payment would be released after the CONTACTOR has fulfilled its primary responsibilities of obtaining labour license and maintaining records in compliance to Applicable Laws and as per GCC.

## 11. Other Terms & Conditions

SUB-CONTRACTOR must comply with all the mandatory requirements of OWNER. Some of the mandatory requirements are listed below:

- a. All SUB-CONTRACTOR personnel must attend the full induction requirement of OWNER before entry to the site. To plan for Induction requirement SUB-CONTRACTOR will be required to submit following details to owner in specified form:
  - i. Colour Photo copy of IC for Malaysian.
  - ii. Colour Photo copy of Passport and work permit for foreigners.
  - iii. Colour Photo copy of CIDB Card.
  - iv. Copy of the medical certificate endorsed by an Occupational Health Doctor only who are registered with Department of Occupational safety & Health of Malaysia.
- b. The induction has an assessment which requires 70% score to pass. PETRONAS will print out the access card for those who successfully pass the assessment. Personnel will need to carry access card for site entry.
- c. PPE requirement as specified by OWNER before entry the site are to be completed.
- d. All the Vehicles, before entering the site, will require inspection and approval from OWNER.
- e. Authorization by IPMT before start of work is required. Permit to work procedure of OWNER is to be followed in totality.

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- f. Before commencement of work, work specific JSA and procedure for the work are to be submitted and approved by OWNER/IPMT.
- g. SUB-CONTRACTOR will need to provide temporary site facilities for its own use as well as for CONTRACTOR and OWNER/IPMT personnel.
- h. SUB-CONTRACTOR personnel shall be present throughout the work execution.
- i. CONTRACTOR / OWNER / IPMT personnel also may be present during work execution as per requirement.
- j. SUB-CONTRACTOR shall provide copy of "All Risks Physical Damage Insurance" to cover full replacement value of loss of or damage to SUB-CONTRACTOR equipment which shall include third party liability as per the requirement of CONTRACT between CONTRACTOR & OWNER.
- k. CONTRACTOR has arranged MARINE open cover for all the project material to be imported into Malaysia for "RAPID TANK FARM for the RAPID PROJECT" which will form part of permanent facilities. All the material, being imported into Malaysia, under this policy shall be invoiced in the name of "PRPC Refinery and Cracker Sdn. Bhd.
- l. Sub-contractor shall provide Motor Vehicle Liability Insurance for the vehicle being deployed by the SUB-CONTRACTOR in accordance with applicable LAW for vehicles used in connection with the subject work
- m. For all other materials, if imported by SUB-CONTRACTOR into Malaysia for the subject work, SUB-CONTRACTOR shall arrange for the required insurance.
- n. SUB-CONTRACTOR shall arrange Professional Indemnity Insurance covering the liability of SUB-CONTRACTOR for the performance of any professional activities and duties which arise in connection with the work with a minimum cover of not less than RM 10,000,000/= per claim.



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**PETRONAS RAPID PROJECT**  
**(REFINERY TANK FARM)**



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**PRESCRIBED SUB-CONTRACT TERMS**



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## (REFINERY TANK FARM)

### PRESCRIBED SUB-CONTRACT TERMS

Each SUB-CONTRACT shall contain the following mandatory terms and conditions. All Prescribed Terms except #6(f) to (i) and #10, shall apply to purchase orders with VENDORS.

Capitalized terms in this document shall have the corresponding meaning defined in Prescribed Term #20 and words importing the singular shall include the plural and vice versa.

#	Prescribed Terms
1.	<b>Representation and warranties</b>
	<p>SUB-CONTRACTOR shall perform the work and services, and supply the equipment and materials, as applicable, under the SUB-CONTRACT ("<b>Work</b>"):</p> <ul style="list-style-type: none"> <li>(a) in accordance with the SUB-CONTRACT and the OWNER'S REQUIREMENTS;</li> <li>(b) in compliance with the SCHEDULE and SITE MANAGEMENT RULES;</li> <li>(c) so as to be fully compliant with all applicable LAWS and PERMITS;</li> <li>(d) so as not to cause or contribute to any breach by OWNER, CONTRACTOR, TIER 2 SUB CONTRACTORS or OTHER CONTRACTOR of any LAW or PERMIT;</li> <li>(e) in accordance with GOOD ENGINEERING PRACTICE, the standards required under applicable CODES and STANDARDS and in accordance with all applicable professional duties;</li> <li>(f) in accordance with VENDORS' recommendations and warranty requirements; and</li> <li>(g) so as not to interfere with or delay CONTRACTOR or OTHER CONTRACTORS in carrying out the WORK.</li> </ul>
2.	<b>LAWS, PERMITS and Code of Conduct</b>
	<p>SUB-CONTRACTOR shall comply with all applicable LAWS and PERMITS, and with Petronas' Code of Conduct and Business Ethics and Country Supplement, which can be found at: <a href="http://www.petronas.com.my/about-us/governance/Pages/governance/code-of-conduct-business-ethics.aspx">http://www.petronas.com.my/about-us/governance/Pages/governance/code-of-conduct-business-ethics.aspx</a>.</p>



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#	Prescribed Terms
3.	<b>Equipment and materials (1)</b>
	<p>Equipment and materials supplied by SUB-CONTRACTOR shall be:</p> <ul style="list-style-type: none"> <li>(a) brand new, of first class standard and, at a minimum, comply with all applicable CODES and STANDARDS;</li> <li>(b) of a standard greater than or equal to that required by the OWNER'S REQUIREMENTS and in accordance with GOOD ENGINEERING PRACTICE;</li> <li>(c) fit for their intended purpose as part of the PROJECT; and</li> <li>(d) free from DEFECTS (latent or otherwise).</li> </ul> <p>SUB-CONTRACTOR shall ensure, if required by OWNER or CONTRACTOR, that the personnel and nominees of CONTRACTOR and OWNER have:</p> <ul style="list-style-type: none"> <li>(a) full access to all places where its equipment and materials are being assembled, designed, fabricated, manufactured or tested, or from which they are sourced (or a combination thereof); and</li> <li>(b) an entitlement to examine, inspect, measure and test the equipment and materials and workmanship thereof to check progress of the design, procurement, manufacture or assembly.</li> </ul>
4.	<b>Equipment and Materials (2)</b>
	<p>Ownership of and title to all items of equipment and materials supplied by SUB-CONTRACTOR shall vest in CONTRACTOR, or in OWNER if OWNER pays SUB-CONTRACTOR directly, at whichever is the earliest of:</p> <ul style="list-style-type: none"> <li>(a) when CONTRACTOR (or OWNER, if applicable) has made any payment in relation to such items; or</li> <li>(b) When any item is delivered to the WORKSITE or RAPID SITE (as applicable).</li> </ul> <p>SUB-CONTRACTOR warrants good title to all items of equipment and materials supplied by SUB-CONTRACTOR, which shall be free from all encumbrances, liens or other ownership or security interest in favour of third parties.</p> <p>SUB-CONTRACTOR shall ensure that:</p> <ul style="list-style-type: none"> <li>(c) it takes all steps necessary to ensure the good title of CONTRACTOR (or OWNER, if applicable) and the exclusion of any such liens and other ownership or security interests is brought to the express notice of VENDORS</li> </ul>



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#	Prescribed Terms
	<p>and other persons dealing with or transporting any such items; and</p> <p>(d) it immediately arranges the release of any judgment, lien or other third party ownership or security interest attached to the Work, any equipment and materials, or any part thereof, after ownership and title has vested in (or should have vested in) CONTRACTOR (or OWNER, if applicable).</p> <p>Where ownership of land title to any item of equipment or materials to be supplied by SUB-CONTRACTOR passes to CONTRACTOR (or OWNER, if applicable) prior to</p> <p>Delivery thereof to the WORKSITE or RAPID SITE (as applicable), SUB-CONTRACTOR shall ensure that the applicable item is set aside and marked as the property of CONTRACTOR (or OWNER, if applicable).</p>
5.	<p><b>NOMINATED SCOPE OF WORK</b></p> <p>Where the Work involves the procurement of goods or services (as applicable), or equipment or materials, within the NOMINATED SCOPE OF WORK, SUB- CONTRACTOR shall procure such goods or services, or equipment or materials, from the NOMINATED SUB-CONTRACTORS or NOMINATED VENDORS, as applicable.</p>
6.	<p><b>Personnel</b></p> <p>SUB-CONTRACTOR shall:</p> <ul style="list-style-type: none"> <li>(a) provide sufficient, skilled, experienced and qualified personnel including supervisory personnel who are comprehensively fluent in English;</li> <li>(b) not engage or seek or offer to engage any employee or personnel of OWNER, its related entities, other owners of projects within the RAPID PROJECT, CONTRACTOR or any OTHER CONTRACTOR;</li> <li>(c) ensure all its personnel, employees and other labour have the safety and job related skills, training, accreditations and registrations required by LAW, PERMITS and the OWNER'S REQUIREMENTS prior to starting work on the PROJECT;</li> <li>(d) ensure that TIER 2 SUB-CONTRACTORS comply with the requirements of paragraph (c) in respect of their own personnel, agents, contractors, employees and other labour;</li> <li>(e) as and when required by OWNER, provide evidence of all such skills, training, accreditations and registrations;</li> <li>(f) keep and maintain at the WORKSITE a register including evidence of valid work permits held by all its personnel, employees and other labour, including those of TIER 2 SUB-CONTRACTORS, engaged in Work at the WORKSITE and shall make available the register including evidence of valid work permits at all times for inspection by OWNER or authorized representatives of government agencies;</li> </ul>

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#	Prescribed Terms
	<p>(g) remove and replace (at its own cost) any personnel who, in OWNER's or CONTRACTOR's opinion, are incompetent, disorderly or unsatisfactory;</p> <p>(h) obtain undertakings from its non-Malaysian employees that they will not associate or support any Malaysian political organization or express opinions or views on Malaysian political, religion or sensitive matters; and</p> <p>(i) Ensure its employees on the RAPID SITE take Drug and Alcohol Screen Tests on request of CONTRACTOR or OWNER and are immediately dismissed if they are in possession of or under the influence of any illegal drug or alcohol on the RAPID SITE.</p>
	<p><b>TIER 2 SUB-CONTRACTORS</b></p> <p>SUB-CONTRACTOR must obtain warranties from its TIER 2 SUB-CONTRACTORS and VENDORS:</p> <p>(a) for at least the relevant period required [in the OWNER'S REQUIREMENTS]; or</p> <p>(b) If no period is required in the OWNER'S REQUIREMENTS, the TIER 2 SUB- CONTRACTOR's or VENDOR's most favourable warranty period for the relevant work, services, equipment or materials.</p> <p>7. SUB-CONTRACTOR must use its best endeavours to obtain such warranties on the best available terms and ensure such warranties are directly enforceable by CONTRACTOR and OWNER (severally). If such a warranty is not directly enforceable by CONTRACTOR and OWNER (severally), SUB-CONTRACTOR shall enter into a collateral warranty in a form satisfactory to CONTRACTOR and OWNER.</p> <p>SUB-CONTRACTOR must ensure that TIER 2 SUB-CONTRACTS incorporate (mutatis mutandis) all the PRESCRIBED SUB-CONTRACT TERMS.</p>
	<p><b>Attendance</b></p> <p>8. SUB-CONTRACTOR shall on seven (7) calendar days' notice from CONTRACTOR attend at the offices of OWNER to discuss any aspect of the work or the SUB-CONTRACT</p>

#	Prescribed Terms
	<p><b>Local Content</b></p> <p>SUB-CONTRACTOR shall:</p> <p>(a) use reasonable commercial endeavours to employ suitably qualified Malaysian nationals and residents and produce evidence of such on request; and</p> <p>(b) maximize sourcing of its equipment in Malaysia and not import equipment Without prior written approval of CONTRACTOR.</p> <p>9.</p>





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10.	<b>Industrial Relations</b>
	<p>SUB-CONTRACTOR shall maintain:</p> <ul style="list-style-type: none"> <li>(a) good industrial relations practices at the WORKSITE and at the RAPID SITE; and</li> <li>(b) good relations with the various authorities and regulatory bodies, owners of the OTHER PROJECTS, OTHER CONTRACTORS (and their subcontractors) and the public.</li> </ul>
11.	<b>Payment</b>
	<p>SUB-CONTRACTOR shall provide statutory declarations to CONTRACTOR with its invoices stating that:</p> <ul style="list-style-type: none"> <li>(a) Its employees have received their wages, salaries, allowances, contributions, other benefits or entitlements due to them under applicable LAWS and that all other related amounts and taxes due have been paid no later than the 7th working day of each month; and</li> <li>(b) SUB-CONTRACTOR has paid to each of its TIER 2 SUB-CONTRACTORS all sums due and owing to them.</li> </ul>
12.	<b>CIPAA</b>

#	Prescribed Terms
.	<ul style="list-style-type: none"> <li>i. all notices and supporting documents served, including to or from the adjudicator or other person in connection with the appointment of the adjudicator;</li> <li>ii. any order, decision, award or procedure given by the adjudicator, in connection with the adjudication; and</li> <li>iii. Any order of the High Court (as defined in CIPAA) or any other court or tribunal with competent jurisdiction.</li> </ul>
13.	<b>Tax</b>
	<p>SUB-CONTRACTOR covenants and warrants that it shall:</p> <ul style="list-style-type: none"> <li>(a) provide all assistance, information and documentation reasonably required by CONTRACTOR or OWNER to ensure that OWNER (or the PROJECT, or both) is eligible for, and receives the benefit of, all available TAX exemptions or incentive schemes;</li> <li>(b) pay when due all TAXES (including stamp duty) payable or assessed on the SUB-CONTRACT, or in connection with its execution or enforcement; and</li> <li>(c) comply with procedures and directions issued by OWNER or CONTRACTOR in relation to importation of equipment and materials, including in relation to the requirements of Malaysian government agencies and customs charges.</li> </ul>



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14.	<b>Termination of CONTRACT</b>
	<p>SUB-CONTRACTOR consents to notation of the SUB-CONTRACT or assignment of CONTRACTOR's rights under the SUB-CONTRACT to OWNER or its nominee (at OWNER's direction) on termination of the CONTRACT including, in particular, the assignment of SUB-CONTRACTOR's performance securities to OWNER or its nominee.</p> <p>Where the CONTRACT is terminated, and OWNER does not direct notation or assignment of the SUB-CONTRACT, the SUB-CONTRACT shall also terminate on the same date as the CONTRACT</p>
15.	<b>Termination of SUB-CONTRACT</b>
	Upon termination of the SUB-CONTRACT, where the CONTRACT is still in force, SUB-CONTRACTOR shall:

	<b>Prescribed Terms</b>
	<p>(a) deliver to CONTRACTOR all drawings, specifications, and other data, documentation or information prepared or supplied to SUB-CONTRACTOR in connection with the Work;</p> <p>(b) deliver to CONTRACTOR an inventory of all equipment and materials (hired or owned) and such equipment and materials as requested by OWNER or CONTRACTOR; and</p> <p>(c) do all things necessary to enable CONTRACTOR or OWNER to take over the Work so far completed.</p>
16.	<b>Intellectual Property Rights</b>
	<p>Ownership of all intellectual property rights in all drawings, specifications, requisitions, calculations and other documents produced and supplied by SUB-CONTRACTOR to CONTRACTOR for or in connection with the Work shall vest in CONTRACTOR, with no restrictions on CONTRACTOR's right to transfer the same to OWNER.</p> <p>SUB-CONTRACTOR shall grant a non-exclusive, royalty free, irrevocable and transferable license to CONTRACTOR and OWNER to use, reproduce, modify and sub-license all intellectual property in connection with the Work which was developed or obtained by SUB-CONTRACTOR prior to entering into the SUB-CONTRACT.</p> <p>SUB-CONTRACTOR shall promptly notify CONTRACTOR and OWNER if it becomes aware of any claim or allegation that any aspect of the Work infringes the intellectual property rights of a third party.</p>



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17.	<b>Insurance</b>
	<p>SUB-CONTRACTOR shall take out and maintain throughout the term of the SUB-CONTRACT, including the warranty period, the following insurances:</p> <ul style="list-style-type: none"> <li>(a) Workmen's compensation and employers liability insurance with the scope and limits as required by LAW;</li> <li>(b) Motor vehicle liability insurance in accordance with applicable LAW for vehicles used in connection with the Work;</li> <li>(c) Comprehensive General Liability Insurance with a limit of liability of not less than Ringgit Malaysia Five Million (RM 5,000,000) for any one event or series of connected events in respect of personal injury (including death) to any person and loss of or damage to any property, including OWNER's property, arising out of or in connection with the Work;</li> <li>(d) "all risks" physical damage insurance to cover the full replacement value of loss of or damage to SUB-CONTRACTOR's equipment;</li> </ul>

	<ul style="list-style-type: none"> <li>(e) "All Risks" Cargo Insurance to cover the movement of all SUB-CONTRACTOR'S equipment and materials from the warehouse, or other point of supply until Arrival at the WORKSITE. Such insurance shall include provision for the insurer to pay fifty percent (50%) of the claim in the event of any loss or damage being discovered after arrival at the WORKSITE of the relevant equipment and materials where it is not possible to ascertain whether such loss or damage occurred prior to the said arrival or subsequently;</li> <li>(f) professional indemnity insurance covering the liability of CONTRACTOR for the performance of any professional activities and duties which arise in connection with the WORK with a minimum coverage of not less than Ringgit Malaysia Ten Million (RM 10,000,000) per claim; and</li> <li>(g) Any other insurance which may be required under LAW in connection with the Work.</li> </ul> <p>SUB-CONTRACTOR shall furnish to CONTRACTOR certified copies of its certificates of insurance evidencing the insurance policies within ten (10) working days of execution of the SUB-CONTRACT and upon renewal or extension of the policies.</p> <p>Additional insurance requirements for subcontractors are as per Annexure A.</p>
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18.	<b>Audit rights</b>
	<p>SUB-CONTRACTOR shall maintain a complete and confidential set of records in Connection with the performance of the Works to be maintained for seven (7) years after completion of the PROJECT or, if there is a DISPUTE (including where SUBCONTRACTOR is not a party to the DISPUTE) for as long as the DISPUTE remains unresolved.</p> <p>During execution of the Works and until expiry of the above period, SUB-CONTRACTOR shall allow and consents to OWNER and any other persons authorized by OWNER full and free access (to use or reproduce or both) to such records and record keeping systems (at WORKSITE or otherwise).</p>
19.	<b>CONFIDENTIALITY</b>
	<p>CONTRACTOR and SUB-CONTRACTOR shall preserve the confidentiality of the SUBCONTRACT and all other CONFIDENTIAL INFORMATION, and must not disclose the same to any other person without the prior consent of OWNER, except to the extent that limited disclosure is permitted, as follows:</p>

	<b>Prescribed Terms</b>
	<p>(a) disclosure required by LAW or PERMIT, or otherwise to satisfy the lawful requirements of a government or government agency;</p> <p>(b) disclosure required by applicable stock exchange listing rules;</p> <p>(c) disclosure to lawyers or other professional advisers (including auditors) under a duty of confidentiality;</p> <p>(d) disclosure to OWNER or OWNER's financiers (or authorized representatives thereof); or</p> <p>(e) disclosure to a RELATED ENTITY solely for the purpose of performing the Work, provided that, in the case of disclosure by CONTRACTOR under ARTICLES (a), (b) or (e), SUB-CONTRACTOR must as soon as practicable notify CONTRACTOR of the disclosure or intended disclosure and details of the information disclosed or to be disclosed.</p> <p>SUB-CONTRACTOR undertakes to take precautions to safeguard all CONFIDENTIAL INFORMATION from unauthorized access. SUB-CONTRACTOR may, with the written approval of CONTRACTOR, make copies of CONFIDENTIAL INFORMATION only to the extent that they are necessary for effectively carrying out the Work. On completion of the Work, SUB-CONTRACTOR shall return all such CONFIDENTIAL</p>



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	<p>INFORMATION to CONTRACTOR or, at CONTRACTOR's direction, destroy such CONFIDENTIAL INFORMATION.</p> <p>SUB-CONTRACTOR shall, where directed by CONTRACTOR or OWNER, enter into written agreements with third parties, covenanting, amongst other things to preserve the confidentiality of all information which those third parties agree to disclose or make available to SUB-CONTRACTOR in connection with the Work or the PROJECT.</p>
	<p><b>Mandatory Requirement</b></p>
20.	<p>SUB-CONTRACTOR must comply with all the mandatory requirements of OWNER. Some of the mandatory requirements are listed below:-</p> <ol style="list-style-type: none"> <li>1. All SUB-CONTRACTOR personnel must attend the full induction requirement of OWNER before entry to the site. To plan for Induction requirement SUB-CONTRACTOR will be required to submit following details to owner in specified form: <ul style="list-style-type: none"> <li>(a) Colour Photo copy of IC for Malaysian.</li> <li>(b) Colour Photo copy of Passport and work permit for foreigners.</li> <li>(c) Colour Photo copy of CIDB Card.</li> <li>(d) Copy of the medical certificate endorsed by an Occupational Health Doctor only who are registered with Department of Occupational safety &amp; Health of Malaysia.</li> </ul> </li> </ol>



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	<ol style="list-style-type: none"> <li>1. The induction has an assessment which requires 70% score to pass. PETRONAS will print out the access card for those who successfully pass the assessment. Personnel will need to carry access card for site entry.</li> <li>2. PPE requirement as specified by OWNER before entry the site are to be completed.</li> <li>3. All the Vehicles, before entering the site, will require inspection and approval from OWNER.</li> <li>4. Authorization by PMC before start of work is required. Permit to work procedure of OWNER is to be followed in totality.</li> <li>5. Before commencement of work, work specific JSA and procedure for the work are to be submitted and approved by OWNER/PMC.</li> <li>6. SUB-CONTRACTOR will need to provide temporary site facilities for its own use as well as for CONTRACTOR and OWNER/PMC personnel.</li> <li>7. SUB-CONTRACTOR personnel shall be present throughout the work execution.</li> <li>8. CONTRACTOR / OWNER / PMC personnel also may be present during work execution as per requirement.</li> <li>9. Sub-contractors shall provide copy of "All Risks Physical Damage Insurance" to cover full replacement value of loss of or damage to sub-contractor equipment which shall include third party liability as per the requirement of CONTRACT between CONTRACTOR &amp; OWNER.</li> <li>10. CONTRACTOR has arranged MARINE open cover for all the project material to be imported into Malaysia for "RAPID TANK FARM for the RAPID PROJECT" which will form part of permanent facilities. All the material, being imported into Malaysia, under this policy shall be invoiced in the name of "PRPC Refinery and Cracker Sdn. Bhd.</li> <li>11. Sub-contractor shall provide Motor Vehicle Liability Insurance for the vehicle being deployed by the sub-contractor in accordance with applicable LAW for vehicles used in connection with the subject work</li> <li>12. For all other materials, if imported by sub-contractor into Malaysia for the subject work, sub-contractor shall arrange for the required insurance.</li> <li>13. Sub-contractor shall arrange Professional Indemnity Insurance covering the liability of sub-contractor for the performance of any professional activities and duties which arise in connection with the work with a minimum cover of not less than RM 10,000,000/= per claim.</li> </ol>



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	<p><b>CLAIM</b> includes any adjudication, arbitration, cause of action, demand, dispute, investigation or prosecution by any government agency, litigation, proceeding, suit or other claim (including by way of contribution or indemnity).</p> <p><b>CODES and STANDARDS</b> means all codes and standards (excluding LAW) which by their content, scope or objectives are applicable to the Work, or will apply to the PROJECT, or any component of either, including as to design, functionality, quality, methods or specification. Applicable code or standard may be issued by an industry body, standards organisation, government agency, quasi-government agency, multi-government agency or other organization whose charter includes the development of codes or standards.</p> <p><b>COMMON CONSTRUCTION INFRASTRUCTURE</b> means infrastructure (which may include port and jetty facilities, cables, pipeline and other infrastructure) within the RAPID SITE that is made available by or on behalf of OWNER for use in connection with the WORK, the use of which must be shared and coordinated.</p> <p><b>CONFIDENTIAL INFORMATION</b> means any information in any form which is disclosed or made available, by or on behalf of OWNER, CONTRACTOR OR SUB-CONTRACTOR, in connection with the CONTRACT OR THE SUB-CONTRACT (including negotiation thereof), but excluding any information which is:</p> <ul style="list-style-type: none"> <li>(a) expressly provided or made available on a non-confidential basis; or</li> <li>(b) in the public domain, other than as a result of a breach of confidentiality; or</li> <li>(c) lawfully obtained or independently developed by the receiving person in circumstances not involving any breach of confidentiality</li> </ul> <p><b>CONTRACT</b> means the agreement between OWNER and CONTRACTOR for the engineering, procurement, construction and commissioning of the PROJECT.</p> <p><b>CONTRACTOR</b> means the party the OWNER has engaged to undertake and complete the WORK forming part the PROJECT and who is engaging the SUB-CONTRACTOR under the SUB-CONTRACT.</p>





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	<p><b>DEFECTS</b> means any:</p> <ul style="list-style-type: none"> <li>(a) defect, shrinkage, movement, error, omission, deficiency or other imperfection in the Work or any equipment and materials supplied by the SUB- CONTRACTOR, arising from any cause including design, materials or workmanship;</li> <li>(b) aspect of the Work or the functionality thereof, which is not in accordance with the SUB- CONTRACT or the OWNER'S REQUIREMENTS; or</li> <li>(c) Damage to any part of the Work resulting from any of the matters referred to in (a) or (b) above.</li> </ul>
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	<p><b>Prescribed Terms</b></p> <p><b>DISPUTE</b> means any controversy, dispute, difference or issue under or arising out of or in connection with the CONTRACT or the SUB-CONTRACT, or the breach, termination, invalidity or subject matter of the same, including CLAIMS in tort, in equity, or of any other non-contractual kind or nature.</p> <p><b>GOOD ENGINEERING PRACTICE</b> means those practices, techniques, methods, standards and procedures and that degree of skill, diligence, prudence and foresight, as upgraded from time to time, which would be expected to be observed or adopted by a first-class, diligent, professional, skilled and experienced contractor of good international repute engaged in carrying out activities the same as or substantially similar to the Work under the same or substantially similar circumstances (taking into account particular conditions in Malaysia).</p> <p><b>Law</b> means, without limitation, all statutes, ordinances, rules, regulations, legally binding requirements and any rules, regulations, requirements, instructions or</p> <p>Directions or other similar directives, whether in effect now or at any time in the future, of any national, regional, state, territorial or municipal government, ministry, government agency, department, commission, board, instrumentality, executive, legislative or administrative body, official or public or statutory person having jurisdiction over any of the SUB-CONTRACT, the PROJECT or the WORK, OWNER, OTHER CONTRACTORS or CONTRACTOR.</p> <p><b>NOMINATED SCOPE OF WORK</b> means that part of the Work to be carried out by SUB-CONTRACTOR engaging the NOMINATED VENDORS or NOMINATED SUB-CONTRACTORS, as applicable, as specified and described in the SUB-CONTRACT</p>
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	<p><b>NOMINATED SUB-CONTRACTOR</b> means those TIER 2 SUB-CONTRACTORS which SUB-CONTRACTOR must engage for performance of the applicable component of the NOMINATED SCOPE OF WORK, as stipulated in the SUB-CONTRACT.</p> <p><b>NOMINATED VENDORS</b> means those VENDORS which SUB-CONTRACTOR must engage for performance of the applicable component of the NOMINATED SCOPE OF WORK, as stipulated in the SUB-CONTRACT.</p> <p><b>OTHER CONTRACTORS</b> means any person performing works or services, other than the Work, which:</p> <ul style="list-style-type: none"> <li>(a) are necessary for, or related to, the completion of the PROJECT, OTHER PROJECTS or the RAPID PROJECT;</li> <li>(b) maybe performed or undertaken by OWNER or third parties or by public or private utilities or statutory or other authorities; and</li> </ul>
	<b>Prescribed Terms</b>
	<ul style="list-style-type: none"> <li>(c) May be performed at, on, over or adjacent to the WORKSITE and RAPID SITE and be concurrent or sequential with the Work or be inter-related with the Work.</li> </ul> <p><b>OTHER PROJECT</b> means any other project or facility forming part of the RAPID PROJECT, but not including the PROJECT.</p> <p><b>OWNER</b> means the owner of the PROJECT as identified in the SUB-CONTRACT.</p> <p><b>OWNER'S REQUIREMENTS</b> means OWNER's requirements for the WORK as set out in the CONTRACT which shall be provided by CONTRACTOR to SUB-CONTRACTOR (in whole or such parts as are related to the Work).</p> <p><b>PERMITS</b> means any authorization, permission, consent, approval, registration, easement, license, lease, ruling, permit, exemption, order, judgment, decree or Publication required for, or relating to, the Work. It includes the requirements of any gas, oil, water, electricity, telecommunications or other utility company, agency or department.</p>



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	<p><b>PRESCRIBED SUB-CONTRACT TERMS</b> means the mandatory terms and conditions stipulated in this document which must be incorporated into any sub-contract.</p> <p><b>Project</b> means the project comprising execution of the work in accordance with the contract.</p> <p><b>RAPID PROJECT</b> means the project to design, construct and commission a world Class integrated refinery and petrochemical complex at pengerang, johor comprising a refinery of 300,000 barrels per stream day capacity, naphtha steam cracker of 1.28 million tons of ethylene per year capacity, petrochemical units, utilities and infrastructure. .</p> <p><b>RAPID SITE</b> means the site of the rapid project.</p> <p><b>RELATED ENTITY</b> means, in relation to a given entity, an entity which is:</p> <ul style="list-style-type: none"> <li>(a) A holding company of the first-mentioned entity; or</li> <li>(b) A subsidiary of the first-mentioned entity; or</li> <li>(c) A subsidiary of a holding company of the first-mentioned entity.</li> </ul> <p><b>SCHEDULE</b> means the schedule approved by owner under the contract with such amendments as may be implemented in accordance with the contract.</p> <p><b>SITE MANAGEMENT RULES</b> means the rules and procedures specified by owner for the purposes of regulating co-activity on the rapid site, use of common construction infrastructure, allocation of specific infrastructure and other related activities.</p> <p><b>SUB-CONTRACT</b> means the agreement to be entered into by contractor and subcontractor based on these prescribed sub-contract terms.</p> <p><b>SUB-CONTRACTOR</b> means the party entering into the sub-contract to perform the work.</p>
	<p><b>Prescribed Terms</b></p> <p><b>TAX OR TAXES</b> means any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty, by whatever name called, levied, imposed or assessed under law whether in Malaysia or elsewhere, and includes all income, profit, withholding, franchise, excess profits, royalty and other taxes, taxes on the supply of goods and services, personal property taxes, stamp duty, land tax, excise duties and customs duties, employment taxes, and any penalties, interest, fines and fees in respect thereof.</p> <p><b>TIER 2 SUB-CONTRACTS</b> means the agreements to be entered into by subcontractor and a tier 2 sub-contractor or between two tier 2 subcontractors.</p> <p><b>TIER 2 SUB-CONTRACTORS</b> means persons whom the sub-contractor has engaged to undertake any part</p>

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	<p>of the work, and any person to whom that first-mentioned person in turn sub-contracts part of the work to, and so on to include all tiers of sub-contractors.</p> <p><b>VENDORS</b> mean a person from whom CONTRACTOR or SUB-CONTRACTOR has ordered or shall order a supply of equipment and materials which may include.</p> <p><b>WORK</b> means each part f the work to be designed, engineered, procured, Constructed, erected, commissioned and tested, and each other activity performed or to be performed by the CONTRACTOR under and in accordance with the CONTRACT.</p> <p><b>WORKSITE</b> means the area within the RAPID SITE made available by OWNER to CONTRACTOR for the WORK, including such parts which shall be made available to SUB-CONTRACTOR as described and specified in the SUB-CONTRACT.</p>
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### ANNEXURE A

#### **ADDITIONAL INSURANCE REQUIREMENTS FOR SUBCONTRACTORS TO ARTICLE 17 OF ANNEXURE 10 AS PER CONTRACT.**

Article of Annexure to special conditions of subcontract	Type of insurances	SUBCONTRACTOR shall ensure that in the insurance policies specified in ARTICLES 17(c) and 17(e) of Annexure to special conditions of subcontract, CONTRACTOR, OWNER, OWNER'S REPRESENTATIVE and LENDERS are named as additional insured				
		SUBCONTRACTOR shall ensure that in the insurance policies specified in ARTICLES 17(c) and 17(e) of Annexure to special conditions of subcontract, the insurer must provide CONTRACTOR and OWNER with not less than thirty (30) calendar days of cancellation or amendment				
17(a)	Workmen's Compensation Insurance &	-	-	-	Required	Required
	Employer's Liability Insurance	-	-	-	Required	Required
17(b)	Motor Vehicle Liability Insurance	-	-	-	Required	Required
17(c)	Comprehensive General Liability Insurance	Required	Required	Required	-	Required

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17(d)	"All Risks" Physical Damage Insurance	-	-	-	Required	Required
17(e)	"All Risks" Cargo insurance	Required	Required			Required
17(f)	Professional Indemnity Insurance				Required	Required
17(g)	Any other Insurance as required by the LAW.	As Required				