MODEL TERMS OF CONSTRUCTION CONTRACT

between

CONTRACTOR and SUBCONTRACTOR

for

SUBCONTRACT WORK

2007
Disclaimer

The model terms are a set of general terms of contract intended to form part of a subcontract. By design it is generic in nature. By necessity every subcontract must have its own specific provisions to suit the project. Care must be taken when using these model terms as part of a subcontract. If necessary, advice must be sought for any particular project. CIDB and members of the CICC assume no liability whatsoever in contract, tort, or otherwise, if any party chooses to use these model terms to be part of a subcontract and suffers damages.
MODEL TERMS OF CONSTRUCTION CONTRACT FOR SUBCONTRACT WORK

Construction work and subcontracting

Much of construction work is subcontracted. The CIDB records show that over the last five years, an average of 5000 main contracts exceeding RM 500,000.00 each are entered into each year. It is common practice in the construction industry that for each main contract awarded, many more subcontracts are let out to ‘domestic’ subcontractors. ‘Domestic’ subcontracts are contracts where the contractors contract with subcontractors of their own choice.

Whilst there are various standard terms of construction contracts published for main contracts and the corresponding ‘nominated’ subcontracts, before this publication, there were no published standard terms of contract for ‘domestic’ subcontract work in Malaysia. As a result, many subcontracts are entered into based on various in-house contracts drafted by main contractors. A significant number are let out on an ad-hoc and often incomplete basis. And many are let out entirely orally.

Standardizing contracts

The construction industry now has a choice of using the published *Model Terms of Construction Contract for Subcontract Work*. The publication is timely and in line with the strategic recommendations in the Construction Industry Master Plan, CIMP 2006-2015 to enhance professionalism and improve standards in the construction industry.

There are many benefits of having standardized terms of contracts. The advantages include:

1. It becomes more economical as there is no need to draft new terms of contract everytime a contract is let out.
2. It provides more certainty when tendering.
3. Familiarity makes it easier and quicker to be priced.
4. It creates the possibility of a more balanced allocation of risk between the contracting parties.
5. There is a higher chance of avoiding unwarranted disputes in court or arbitration.

The use of the model terms as part of a ‘stand alone’ subcontract

*The Model Terms of Construction Contract for Subcontract Work* is intended to be used as part of a generally ‘stand alone’ subcontract and not ‘back-to-back’ to any one specific main contract. The generic drafting style means it can be used as subcontract terms with any main contract whether a ‘one-off’ contract or published ‘standard form’ such as the PWD 203A and 203 contracts, PWD Design & Build / Turnkey contract, PAM, IEM, CIDB, FIDIC, JCT, or other contracts published in relevant jurisdictions. It is also flexible enough that it can be made to be ‘back-to-back’ with any particular main contract quite easily by incorporating reference to specific main contract provisions using the provisions in the appendix in the subcontract terms - if the parties choose to.
ACKNOWLEDGEMENT

The drafting of the model terms of construction contract for subcontract work was led by Sr Noushad Ali Naseem Ameer Ali, President, The Institution of Surveyors Malaysia (ISM), 2006/2007.

The draft was deliberated across a broad spectrum of the industry including relevant professional, trade, government, and academic institutions. CIDB Malaysia led several wide consultation sessions through workshops and forums to deliberate the policies and concepts. The key people who helped facilitate the workshops and forums include:

Ir C K Khoo
Ir Oon Chee Kheng
Ir Steven K H Ng
Lam Ko Luen
Michael Mc Iver
Nazir Muhamad Nor
Prof Sr Dr Khairuddin Abdul Rashid
Saniah Abdul Karib
Sr Eddie Wong Weng Hong
Sr Lim Chong Fong
Sr Noridah Shaffii
Sr Noushad Ali Naseem Ameer Ali
Sr S Ramar
Sr Shariza Sabri
Sr Wan Maimun Wan Abdullah
Tan Swee Im
Tan Teng Khoon

The Construction Industry Contracts Committee (CICC)

The final outcome of the workshops and forums was a general consensus on concepts and policies. The draft was also endorsed by the CIDB Procurement Policy Advisory Committee. What has now been published is a generally industry consensual document published as the Model Terms of Construction Contract for Subcontract Work endorsed by key players in the construction industry. Following consensus, the Construction Industry Contracts Committee (CICC) was formed.

For the purposes of the Model Terms of Construction Contract for Subcontract Work, CICC comprises:

Lead : Construction Industry Development Board Malaysia (CIDB)

- Association of Consulting Engineers Malaysia (ACEM)
- Dewan Bandaraya Kuala Lumpur (DBKL)
- Jabatan Kerja Raya Malaysia (JKR)
- Malaysian Air-Conditioning and Refrigeration Association (MACRA)
- Malaysian Fire Protection Association (MFPA)
- Malaysian Lift and Escalator Association (MALEA)
- Master Builders Association Malaysia (MBAM)
- Persatuan Kontraktor Melayu Malaysia (PKMM)
- Pertubuhan Arkitek Malaysia (PAM)
- Real Estate and Housing Developers’ Association (REHDA)
- The Chartered Institute of Building Malaysia (CIOB)
- The Electrical and Electronics Association of Malaysia (TEEAM)
- The Institution of Engineers Malaysia (IEM)
- The Institution of Surveyors Malaysia (ISM)
AGREEMENT AND TERMS OF CONSTRUCTION CONTRACT
FOR SUBCONTRACT WORK

between

________________________
[Contractor]

and

________________________
[Subcontractor]

for

________________________
[Short title of subcontract work]

comprising part of

________________________
[Short title of overall project]
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PART A – AGREEMENT AND DEFINITIONS

1 Contract for subcontract work and date of contract

This is a construction contract between the Contractor and Subcontractor for subcontract work. The date of this contract is stated in C.1.

2 Parties to this contract – Contractor and Subcontractor

The parties to this contract are Contractor and Subcontractor. Their signatures confirming their agreement to this contract, witnesses to their signatures, organization names, and other details are stated in C.2.

3 Contract Administrator

The Contract Administrator administers this contract. The Contract Administrator’s name and details are stated in C.3.

4 Client

The work by the Subcontractor under this contract is part of the overall project the Contractor has contracted with the Client. The Client’s name and details are stated in C.4.

5 Overall project

The overall project is what the Contractor has contracted with the Client. A short title of the overall project is stated in C.5.

6 Subcontractor’s work

This contract as a whole sets out the full scope of the work by the Subcontractor. A short title of the Subcontractor’s work under this contract is stated in C.6. This contract is independent of the contract between the Contractor and the Client except for provisions that are specifically incorporated into this contract, if any.

7 Contract documents

The following documents form this contract:

(i) Part A: Agreement and definitions
(ii) Part B: Terms of contract
(iii) Part C: Appendix to Part A (Agreement and definitions) and Part B (Terms of contract)
(iv) Breakdown of work and prices [if any]
(v) Bills of quantities [if any]
(vi) Schedule of rates [if any]
(vii) Drawings [if any]

(viii) Specifications [if any]

(ix) Other documents stated in C.7 [if any]

8 Date for starting the work

The Subcontractor must start the work on the date stated in C.8. If a date is not stated, the Contract Administrator must inform the Subcontractor the date for starting the work in writing.

9 Date for completing the work

The Subcontractor must complete the work not later than the date stated in C.9. The date for completing the work may be adjusted according to provisions in this contract.

10 Price for the work

The price for the Subcontractor’s work is stated in C.10. This is the sum payable by the Contractor to the Subcontractor for the work by the Subcontractor. If the price is not stated, the Contract Administrator must calculate the price for the Subcontractor’s work based on the breakdown of work and prices for the Subcontractor’s work. If there is no breakdown of work and prices, then the Contract Administrator must calculate the price for the Subcontractor’s work based on the actual work done using rates in the following order of priority:

(i) rates in the bills of quantities; if there are none then,

(ii) rates in the schedule of rates; if there are none then,

(iii) fair market rates.

11 Singular and plural

In this contract all words in the singular include the plural and words in the plural include the singular, as the context requires.

12 Law governing this contract

The law stated in C.11 governs this contract.
PART B - TERMS OF CONTRACT

1  General obligations

1.1  The Contractor’s general obligations

1.1.1 The Contractor’s general obligations include the following:

(i)  To give timely access to the relevant parts of the project site to the Subcontractor;

(ii) To provide all relevant information and facilities in a timely manner to enable the Subcontractor to complete the work;

(iii) To pay the Subcontractor according to provisions in this contract; and

(iv) To name a Contract Administrator to administer this contract and to name a replacement whenever necessary.

1.2  The Subcontractor’s general obligations

1.2.1 The Subcontractor’s general obligations include the following:

(i)  To complete the work not later than the date for completing the work provided in this contract;

(ii) To complete the work based on all the provisions in this contract;

(iii) To pay the stamping fees for this contract; and

(iv) To give a collateral warranty to the Client, if requested by the Contract Administrator. A collateral warranty is a warranty given by the Subcontractor directly to the Client giving the Client rights that are similar to the Contractor’s rights under this contract. The collateral warranty may provide a similar or lesser obligation to that given by the Subcontractor to the Contractor under this contract. It must not provide a higher obligation than that provided in this contract. The Client may assign the collateral warranty to others.
1.3 *The Contractor’s and Subcontractor’s general obligations*

1.3.1 The Contractor’s and Subcontractor’s general obligations include the following:

(i) To cooperate with each other and all others involved in the overall project and not to disrupt anyone or cause anyone to incur any of the following:

   (a) physical injury to persons or damage to property;
   
   (b) financial loss or expense.

(ii) To take up the following insurance:

   (a) insurance that must be taken under the laws at the place where the work is done; and

   (b) insurance stated in this contract to be taken by each party, if any.

(iii) To comply with all laws at the place where the work is done.
2 Administration and changes to the work

2.1 Contract administration

2.1.1 The Contract Administrator must provide all relevant information to the Subcontractor in a timely manner to enable the Subcontractor to complete the work.

2.1.2 Except where stated differently elsewhere in this contract, the Contract Administrator must make all decisions under this contract. These include decisions on quality, quantity, financial, time, and contractual issues under this contract.

2.1.3 The Contract Administrator must administer this contract and make all decisions based on provisions in this contract. The Contract Administrator must make all decisions and carry out certification functions impartially and in a timely manner.

2.1.4 The Contract Administrator may delegate powers provided to the Contract Administrator under this contract to others. The Contract Administrator must inform the Subcontractor of any delegation of powers in writing.

2.2 Instructions, decisions, certificates, and notices

2.2.1 The Contract Administrator may issue instructions to the Subcontractor on matters relating to the work.

2.2.2 All Contract Administrator’s instructions, decisions, and certificates must be:

(i) in writing;

(ii) dated; and

(iii) clearly identified as the Contract Administrator’s instruction, decision, and certificate respectively.

2.2.3 The Subcontractor must comply with all instructions issued by the Contract Administrator in a timely manner.

2.2.4 The Contractor and Subcontractor must comply with all decisions and certificates issued by the Contract Administrator in a timely manner.

2.2.5 All notices given by the Contract Administrator, Contractor, and the Subcontractor, and all claims made under this contract must be in writing, dated, and submitted in a timely manner.
2.2.6 Communication among the Contractor Administrator, Contractor, and the Subcontractor may be by post, e-mail, or fax but all instructions, decisions, certificates, and notices must be:

(i) sent by registered post; or

(ii) delivered by hand with acknowledgement by the receiving party or office.

2.3 Changes to the work

2.3.1 The Contract Administrator may issue instructions to change the work.

2.3.2 If:

(i) following an instruction, the Contract Administrator decides there is a financial effect on the Subcontractor’s original price; and

(ii) the instruction is not given as a result of any breach of contract or breach of the law by the Subcontractor,

the Contract Administrator must certify the value of changed work in payment certificates.
3 Time obligations

3.1 Date for starting the work

3.1.1 The Subcontractor must start the work on the date stated in C.8.

3.1.2 If a date is not stated, the Contract Administrator must inform the Subcontractor in writing of the date for starting the work.

3.2 Work programme

3.2.1 The Contractor must give the Subcontractor an up-to-date programme for the overall project.

3.2.2 The Subcontractor must give the Contract Administrator a work programme showing a breakdown of the work to be done by the Subcontractor and when each part of the work is planned to be done.

3.2.3 Both the Contractor and Subcontractor must update their own work programmes whenever there are significant changes which affect their work programmes. Whenever one party to this contract updates any programme, a copy must be given to the other party to this contract and to the Contract Administrator.

3.3 Work progress

3.3.1 The Subcontractor must progress with the work in a timely manner, taking into account:

   (i) the Subcontractor’s date for completing the work;

   (ii) progress of the Contractor’s work; and

   (iii) any disruption incurred.

3.4 Date for completing the work

3.4.1 The Subcontractor must complete the work not later than the date stated in C.9. The date for completing the work may be adjusted according to provisions in this contract.

3.5 Starting and completing the work in sections

3.5.1 If the work is to be started and completed in sections:

   (i) the description of the sections of the work and the dates for starting and completing the various sections of the work must be stated in C.8 and C.9, or elsewhere in this contract; and

   (ii) all provisions in this contract will apply to each section of the work adjusted accordingly.
3.6 **Adjusting the date for completing the work**

3.6.1 The Subcontractor must notify the Contract Administrator in writing immediately:

(i) if the Subcontractor cannot start the work on the date for starting the work and progress of the work is affected; or

(ii) whenever there is any disruption to the Subcontractor’s work and progress of the work is affected.

3.6.2 The Subcontractor must also state the causes of disruption and show the impact of all disruptions on:

(i) the Subcontractor’s work programme;

(ii) the work to be done by the Subcontractor; and

(iii) the Subcontractor’s date for completing the work.

3.6.3 The Contract Administrator must assess the impact of all disruptions on:

(i) the Subcontractor’s work programme;

(ii) the work to be done by the Subcontractor; and

(iii) the Subcontractor’s date for completing the work.

3.6.4 If the Contract Administrator decides that any date for completing the work by the Subcontractor is affected and is directly caused by any of the following events, the Contract Administrator must adjust the date for completing the work:

(i) the act or failure to act by any one or more of the following persons or anyone within their control:

(a) the Client;

(b) the Contractor;

(c) the Contract Administrator;

(d) other parties engaged by the Client; or

(e) other parties engaged by the Contractor.
(ii) exceptionally inclement weather occurring at the place where the project is;

(iii) exceptionally adverse natural environmental event beyond the control of the parties occurring at the place where the project is;

(iv) an action of government authority, provided the action is not done as a result of any breach of contract or breach of the law by the Subcontractor; or

(v) if the Subcontractor suspends the work based on provisions in this contract.

3.6.5 The Contract Administrator may adjust any date for completing the work to be earlier or later than a previous date for completing the work, but the adjusted date must not be earlier than the original date for completing the work stated in C.9.

3.6.6 As an alternative to adjusting the date for completing the work to be later than an earlier date, the Contract Administrator may, if agreed by the Subcontractor, maintain the earlier date for completing the work and assess the extra cost incurred by the Subcontractor in accelerating the work. The Contract Administrator must then certify the extra cost of acceleration in payment certificates.

3.6.7 The Contract Administrator must decide all adjustments to the date for completing the work in a written certificate clearly identified as an adjustment of time certificate.

3.7 Practical completion and practical completion certificate

3.7.1 The Subcontractor must complete the work based on the provisions in this contract.

3.7.2 The Subcontractor must inform the Contract Administrator in writing 7 days prior to the Subcontractor’s estimated date for practically completing the work.

3.7.3 The Contract Administrator must decide whether and when the Subcontractor achieves practical completion.

3.7.4 When the Contract Administrator decides the Subcontractor has achieved practical completion, the Contract Administrator must immediately certify the date when the Subcontractor achieves practical completion. This must be done in a written certificate clearly identified as a practical completion certificate.
3.8 **Final completion certificate**

3.8.1 The Contract Administrator must issue a certificate clearly identified as a final completion certificate;

(i) when all breaches of the provisions of this contract which are instructed by the Contract Administrator to be rectified under this contract are rectified, or

(ii) on the date or at the end of the period stated in C.12,

whichever is later.

3.9 **Compensation for completing late**

3.9.1 If the Subcontractor does not complete the work by the date for completing the work provided in this contract, the Subcontractor must pay financial compensation for the delay to the Contractor.

3.9.2 Financial compensation for delay is calculated for delay between when the Subcontractor’s work should have been completed (the current date for completing the work) and when the work is actually completed (as confirmed by the Contract Administrator in a practical completion certificate).

3.9.3 The rate for financial compensation for delay may be pre-specified as liquidated damages. This, if any, is stated in C.13 or it may be stated elsewhere in this contract.

3.9.4 If a pre-specified rate for financial compensation as liquidated damages for delay is not stated anywhere in this contract, the Contract Administrator must assess and certify in payment certificates a reasonable amount of compensation for direct financial loss and expense incurred by the Contractor due to the Subcontractor’s delay.

3.9.5 The Contractor may waive the right to financial compensation for delay but this must be done in writing.
4 Payment

4.1 Timing – payment claims, payment certificates, and payment

4.1.1 At the end of each month, the Subcontractor must submit a payment claim for the work done and all other claims as provided in this contract.

4.1.2 By the 15th of the following month, the Contract Administrator must value and certify the work done and all other amounts to be adjusted as provided in this contract, in a payment certificate.

4.1.3 If the parties agree to other payment arrangements such as fortnightly payments or stage payments, the timing, stages and prices must be clearly stated and attached as part of this contract. The Contract Administrator must then still issue payment certificates, but must certify based on the other payment arrangements.

4.1.4 The Contractor must pay the Subcontractor the amount due as stated in the payment certificate not later than the time stated in C.14.

4.2 Contents of payment certificates

4.2.1 Except if agreed differently, all payment certificates must include all relevant items stated below.

4.2.2 Additions. The values of the following items which are relevant during the preparation of a payment certificate must be added:

(i) Cumulative value of the work properly done. The Contract Administrator must value the cumulative value of the work done based on the actual work done using the breakdown of work and prices for the Subcontractor’s work. If there is no breakdown of work and prices, then the work must be valued based on the actual work done using rates in the following order of priority:

(a) rates in the bills of quantities; if there are none then using,

(b) rates in the schedule of rates; if there are none then using,

(c) fair market rates.

(ii) The net value of the changed work including additions and omissions properly instructed by the Contract Administrator and properly done by the Subcontractor. If the changed work is similar to that provided in this contract, the Contract Administrator must value the changed work based on the breakdown of work and prices for the Subcontractor’s work. If there is no breakdown of work and prices, then the Contract Administrator must value the changed work using rates in the following order of priority:
(a) rates in the bills of quantities; if there are none then using,
(b) rates in the schedule of rates; if there are none then using,
(c) fair market rates.

If the changed work is not similar to that provided in this contract, the Contract Administrator must value the changed work using:

(d) fair market rates; and if the work cannot be measured then,
(e) fair market daywork rates based on a breakdown of rates for materials, labour, plant, equipment, overheads and profits.

(iii) A percentage, stated in C.15, of the value of materials for the work delivered to the project site.

(iv) A percentage, stated in C.16, of the value of materials for the work stored outside the project site, provided the materials are properly insured, clearly labeled, and are to be used for the work.

(v) The extra cost incurred by the Subcontractor in accelerating the work as provided in this contract, if any.

(vi) Compensation for direct financial loss and expense, if claimed by the Subcontractor, valued by the Contract Administrator, if any one or more of the following persons or anyone within their control cause the Subcontractor to incur direct financial loss or expense:

(a) the Client;
(b) the Contractor;
(c) the Contract Administrator;
(d) other parties engaged by the Contractor; or
(e) other parties engaged by the Client.

The Contract Administrator must take into account all reasons for the direct financial loss and expense incurred by the Subcontractor. Any financial loss or expense incurred due to the Subcontractor’s own fault must be excluded.
(vii) Compensation for direct financial loss and expense incurred by the Subcontractor, if any, valued by the Contract Administrator following suspension of the work or termination of the Subcontractor’s employment as provided in this contract.

4.2.3 Deductions. Deduct the total of all the following:

(i) The cumulative value certified under previous payment certificates.

(ii) Compensation for delayed completion by the Subcontractor as provided in this contract.

(iii) The adjustment in the value of the completed work due to a breach of the provisions of this contract by the Subcontractor which is not required by the Contract Administrator to be rectified by the Subcontractor.

(iv) The cost of rectifying a breach of the provisions of this contract by the Subcontractor, which the Contract Administrator got others to rectify as provided in this contract.

(v) Compensation for direct financial loss and expense incurred by the Contractor, if any, valued by the Contract Administrator following termination of the Subcontractor’s employment as provided in this contract.

(vi) A percentage, as stated in C.17, of the sum of the total additions for the payment certificate as a retained amount.

4.2.4 Net amount due

The net amount due is the total additions minus total deductions. The net amount due must be stated in all payment certificates. This is the amount the Contractor must pay to the Subcontractor.

4.3 Release of retained amount and final payment certificate

4.3.1 The Contract Administrator must certify the release of half of the retained amount in a payment certificate issued not later than 7 days after the practical completion certificate is issued.

4.3.2 The Contract Administrator must certify the release of the second half of the retained amount in a final payment certificate after the final accounts are completed.

4.3.3 The final payment certificate must be issued not later than 7 days after the final completion certificate is issued.

4.3.4 If however, there is a net amount due from the Subcontractor to the Contractor, then the Contract Administrator must certify any of the retained amounts to be set off against amounts due to the Contractor.
5 Quality, safety, health, and environmental obligations

5.1 Quality

5.1.1 The Subcontractor must complete the work based on the provisions in this contract.

5.2 Breach of contract provisions relating to quality of work

5.2.1 If the Subcontractor breaches any provision in this contract relating to the quality of the work, the Subcontractor must rectify the breach immediately. If the breach is not rectified immediately, the Contract Administrator must do one of the following:

(i) Instruct the Subcontractor to rectify the breach, clearly identifying the breach in writing. If the Subcontractor does not rectify the breach within 14 days from the date the Subcontractor receives the instruction, the Contract Administrator may get others to rectify the breach. The Contract Administrator must then charge the Subcontractor the cost of rectifying the breach in payment certificates; or

(ii) Write to the Subcontractor instructing the breach not to be rectified. The Contract Administrator must then adjust the value of the work done, taking into account the breach, in payment certificates.

5.2.2 The Contract Administrator may continue to act on any breach by the Subcontractor relating to the quality of work throughout the contract until the final completion certificate is issued.

5.3 Safety, health, and environment

5.3.1 Both the Contractor and the Subcontractor must:

(i) keep their part of the project site clean and safe at all times;

(ii) comply with all safety, health, and environmental provisions in this contract; and

(iii) comply with all laws relating to safety, health, and environment.
6 Legal rights and termination

6.1 Legal rights

6.1.1 The parties’ rights and obligations provided under this contract are additional to the parties’ rights and obligations in law generally.

6.2 Termination of the Subcontractor’s employment under this contract by the Contractor

6.2.1 If the Subcontractor:

(i) does not proceed with the work in a regular and timely manner; or

(ii) persistently does not comply with the Contract Administrator’s instructions,

the Contract Administrator may give a written notice to the Subcontractor stating clearly what the breach is. The notice must also instruct the Subcontractor to rectify the breach and must warn the Subcontractor of the possibility of a termination if the breach is not rectified.

6.2.2 If the Subcontractor does not rectify the breach within 14 days from the date the Subcontractor receives the notice, the Contractor may then terminate, in writing, the Subcontractor’s employment under this contract within 7 days following the end of the 14 day notice period.

6.2.3 If the Subcontractor commits the same breach again, the Contractor may terminate, in writing, the Subcontractor’s employment within 7 days from the date of the breach without giving further notices.

6.3 Suspension and termination of the Subcontractor’s employment under this contract by the Subcontractor

6.3.1 If the Contractor does not pay the Subcontractor in accordance with the provisions of this contract, the Subcontractor may give a written notice to the Contractor for the breach to be rectified. The notice must warn the Contractor of the possibility of a termination or suspension or both if the breach is not rectified.

6.3.2 If following the notice the Contractor does not rectify the breach within 14 days from the date the Contractor receives the notice, the Subcontractor may then either:

(i) suspend the work by giving a written notice to suspend within 7 days following the end of the 14 day notice period; or

(ii) terminate, in writing, the Subcontractor’s employment under this contract within 7 days following the end of the 14 day notice period.
6.4 **Termination of the Contractor’s employment and termination of contract with the Client**

6.4.1 If:

(i) the Contractor’s employment under the contract with the Client is terminated; or

(ii) the contract between the Client and the Contractor is terminated,

the Subcontractor’s employment under this contract is terminated automatically. The Contract Administrator must immediately inform the Subcontractor in writing, of the termination of the Subcontractor’s employment under this contract.

6.5 **Compensation following termination**

6.5.1 Following suspension of the work or termination of the Subcontractor’s employment, the party who breaches this contract must compensate the other party for all direct financial loss and expense incurred by the other party.

6.5.2 If:

(i) the Subcontractor’s employment under this contract is terminated automatically following the Contractor’s employment or contract with the Client being terminated, and

(ii) this was not caused by the Subcontractor’s fault,

the Contractor must compensate the Subcontractor for all direct financial loss and expense incurred by the Subcontractor.

6.5.3 The Contract Administrator must certify all compensation for direct financial loss and expense following suspension of the work or following termination of the Subcontractor’s employment in payment certificates.

6.6 **Procedures following termination of the Subcontractor’s employment under this contract**

6.6.1 Following termination of the Subcontractor’s employment under this contract:

(i) the Contract Administrator must continue to administer this contract as provided in this contract;

(ii) the Contract Administrator must decide and issue instructions on all plant, equipment, materials and labour that are to be retained on the project site and those that are to be removed from the project site. The instructions must be issued within 7 days from the date of termination of the Subcontractor’s employment under this contract;
(iii) the Subcontractor must then demobilize from the project site within 7 days from the date of the Contract Administrator’s instructions;

(iv) the Contractor and Subcontractor must submit claims provided under this contract to the Contract Administrator within 30 days from the date of termination of the Subcontractor’s employment under this contract;

(v) the Contract Administrator must, not later than the subsequent 30 days, prepare a payment certificate based on the provisions in this contract; and

(vi) the Contractor and Subcontractor must submit all final claims under this contract as soon as possible to enable the Contract Administrator to close the accounts and issue a final payment certificate.
7 Disagreement and resolution of disagreement

7.1 Disagreement, negotiation, and mediation

7.1.1 If either the Contractor or Subcontractor disagrees with the other on any issue relating to this contract (including any decision or certification by the Contract Administrator), the parties are encouraged to negotiate and reach a settlement. The parties may also refer the disagreement to the highest authorities within each organization for the matter to be amicably resolved.

7.1.2 The parties may also agree to opt for mediation and get the help of a third party (a mediator) in their negotiations to reach a settlement.

7.1.3 If the parties agree to use mediation but cannot agree on a mediator, they may then request the person named in C.18 to recommend a mediator.

7.1.4 If the parties agree on a mediator, the parties and the mediator may proceed using any mediation procedures that they may agree on. If they cannot agree, the mediator may decide on the procedures to be used.

7.1.5 If at any time a settlement agreement is made, both parties are bound by the terms of the settlement agreement. The Contract Administrator, adjudicator, and arbitrator must also follow the agreements made by the parties to this contract.

7.1.6 If the terms of the settlement agreement are not complied with, either party may refer the matter to adjudication or arbitration as provided in this contract.

7.2 Adjudication

7.2.1 At any time during this contract, either the Contractor or Subcontractor may request in writing for any disagreement arising under this contract to be resolved through adjudication. The written request must state what the disagreements are.

7.2.2 The parties may agree on an adjudicator, failing which, either party may write to the person named in C.19 for an adjudicator to be nominated.

7.2.3 Once an adjudicator accepts a nomination, the adjudicator is considered appointed. Both parties must comply with all instructions, procedures and rules decided by the adjudicator.

7.2.4 The adjudicator must act impartially between the two parties and must give a written decision based on this contract and the law in not more than 30 days from the date of the appointment. Upon the request of either party or the adjudicator, a further 30 days to give a written decision is automatically allowed. If both the Contractor and Subcontractor agree in writing, further extensions are allowed. Beyond these timeframes, the entire adjudication on the issues referred ends automatically and any adjudicator’s decision does not bind any party.
7.2.5 The adjudicator may revise the Contract Administrator’s decisions and
certificates. The adjudicator may also make decisions and prepare any
certificate that should have been done by the Contract Administrator but was
not done.

7.2.6 The adjudicator’s written decision, if made within the allowed period,
including decisions on who pays for the adjudicator’s fees and reimbursables
relating to the adjudication, binds both parties.

7.2.7 Both the Contractor and Subcontractor must comply with all decisions made
by the adjudicator. The Contract Administrator must also comply with all
decisions made by the adjudicator when administering the contract.

7.2.8 Only an arbitrator or the courts can review or overrule the adjudicator’s
decisions.

7.3 **Arbitration**

7.3.1 Apart from the parties choosing to resolve any disagreement through other
provisions of this contract such as negotiation, mediation, adjudication, or by
agreement, all disagreements relating to this contract must be referred to
arbitration. Any disagreement on a settlement agreement and any issues decided
by the adjudicator to be reviewed or overruled must also be referred to
arbitration.

7.3.2 All requests to refer a disagreement to arbitration must be in writing, stating
what the disagreements are.

7.3.3 An arbitration may however, only be started and continued following any one
of the following events:

(i) When the work is certified to be practically complete by the Contract
Administrator;

(ii) If one party thinks all that party’s obligations under this contract have
been completed;

(iii) When one of the parties acts like that party is not bound by this
contract;

(iv) If the Subcontractor’s employment under this contract has been
terminated;

(v) If this contract has been terminated; or

(vi) If both parties agree to go to arbitration at any time even before any of
the events above.
7.3.4 The parties may agree on an arbitrator, failing which, either party may write to the person named in C.20 for an arbitrator to be nominated.

7.3.5 Once an arbitrator accepts a nomination, the arbitrator is considered appointed. Both parties may agree on the procedures and rules to be adopted in the arbitration, failing which the arbitrator will decide the procedures and rules.

7.3.6 Both parties must comply with all instructions and directions given and all decisions made by the arbitrator.

7.3.7 If the Contractor requests the Subcontractor to agree to an arbitrator already appointed under a related disagreement between the Contractor and any other party involved in this project, the Subcontractor must agree to this arbitration being heard together or consolidated with the other arbitration with the arbitrator already appointed under the other contract.

7.3.8 The arbitrator must be independent and must act impartially between the parties. The arbitrator’s written award must be based on the provisions of this contract and the law. The arbitrator may revise the adjudicator’s decisions and the Contract Administrator’s decisions and certificates. The arbitrator may also make decisions and prepare any certificate that should have been done by the Contract Administrator but was not done.

7.3.9 The arbitrator’s written award including decisions on costs of reference, costs of award and who pays for the arbitrator’s fees and reimbursables relating to the arbitration, and in what proportion, is final and binds both parties.

7.3.10 Arbitration under this contract is governed by the Arbitration Act stated in C.21.
<table>
<thead>
<tr>
<th>Item</th>
<th>Reference to Part A (Agreement and definitions) and Part B (Terms of contract) and description</th>
<th>Particulars (Refer to other documents or add extra sheets if space is not sufficient)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.1</td>
<td>A.1</td>
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<tr>
<td></td>
<td>Date of this contract:</td>
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<tr>
<td>C.2</td>
<td>A.2</td>
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<tr>
<td></td>
<td>Contractor's and Subcontractor's signatures and details</td>
<td>Contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subcontractor</td>
</tr>
<tr>
<td>C.2 (i)</td>
<td>Authorised signature:</td>
<td></td>
</tr>
<tr>
<td>C.2 (ii)</td>
<td>Name of person who signs this contract:</td>
<td></td>
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<tr>
<td>C.2 (iii)</td>
<td>Identification card or passport number:</td>
<td></td>
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<tr>
<td>C.2 (iv)</td>
<td>Designation in organisation:</td>
<td></td>
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<tr>
<td>C.2 (v)</td>
<td>Name of organisation:</td>
<td></td>
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<tr>
<td>C.2 (vi)</td>
<td>Address for correspondence:</td>
<td></td>
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<tr>
<td>Item</td>
<td>Reference to Part A (Agreement and definitions) and Part B (Terms of contract) and description</td>
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<tr>
<td>C.2 (vii)</td>
<td>Telephone number:</td>
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<tr>
<td>C.2 (viii)</td>
<td>Fax number:</td>
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<tr>
<td>C.2 (ix)</td>
<td>E-mail address:</td>
<td></td>
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<tr>
<td>C.2 (x)</td>
<td>Signature of witness:</td>
<td></td>
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<tr>
<td>C.2 (xi)</td>
<td>Name of witness:</td>
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<tr>
<td>C.2 (xii)</td>
<td>Identification card or passport number:</td>
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<tr>
<td>C.2 (xiii)</td>
<td>Address of witness:</td>
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<tr>
<td>Item</td>
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<tr>
<td>C.3</td>
<td>A.3</td>
<td>Contract Administrator’s details</td>
</tr>
<tr>
<td>C.3 (i)</td>
<td>Name of Contract Administrator:</td>
<td></td>
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<tr>
<td>C.3 (ii)</td>
<td>Name of organisation:</td>
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<td>C.3 (iii)</td>
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<td>C.3 (v)</td>
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<td>C.3 (vi)</td>
<td>E-mail address:</td>
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<tr>
<td>C.4</td>
<td>A.4</td>
<td>Client's details</td>
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<td>Name of organisation:</td>
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<td>C.4 (ii)</td>
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<td>C.4 (iii)</td>
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<td>C.4 (iv)</td>
<td>Fax number:</td>
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<td>C.4 (v)</td>
<td>E-mail address:</td>
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<tr>
<td>C.5</td>
<td>A.5</td>
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<tr>
<td></td>
<td>Short title of the overall project which the Contractor has contracted with the Client:</td>
<td></td>
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<tr>
<td>C.6</td>
<td>A.6</td>
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<tr>
<td></td>
<td>Short title of the Subcontractor’s work under this contract:</td>
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<tr>
<td>C.7</td>
<td>A.7 (ix)</td>
<td></td>
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<tr>
<td></td>
<td>Other documents, apart from those already listed in A.7 (i) to (viii) which form this contract (if any):</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Reference to Part A (Agreement and definitions) and Part B (Terms of contract) and description</td>
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<tr>
<td>C.8</td>
<td>A.8, B.3.1.1, and B.3.5.1</td>
<td>Date for starting the work:</td>
</tr>
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<tr>
<td>C.9</td>
<td>A.9, B.3.4.1, B.3.5.1, and B.3.6.5</td>
<td>Date for completing the work:</td>
</tr>
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<tr>
<td>C.10</td>
<td>A.10</td>
<td>Ringgit Malaysia:</td>
</tr>
<tr>
<td></td>
<td>Price for the Subcontractor’s work:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>(RM __________________________ )</td>
</tr>
<tr>
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<tr>
<td>C.11</td>
<td>A.12</td>
<td>Law governing this contract:</td>
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<td>If not stated, the law where the project is.</td>
</tr>
<tr>
<td>C.12</td>
<td>B.3.8.1</td>
<td>Date or period provided in B.3.8.1 for issuing the final completion certificate:</td>
</tr>
<tr>
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<td>State date:</td>
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<td>Or</td>
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<td>State period:</td>
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<td></td>
<td></td>
<td>If not stated, 12 months from the date the Subcontractor completes the work as stated in the practical completion certificate.</td>
</tr>
<tr>
<td>C.13</td>
<td>B.3.9.3</td>
<td>Financial compensation rate for delay by the Subcontractor, pre-specified as liquidated damages (if any):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>RM ______________ a day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not stated here or anywhere else in this contract, the Contract Administrator must assess and certify in payment certificates a reasonable amount of compensation for direct financial loss and expense incurred by the Contractor due to the Subcontractor’s delay.</td>
</tr>
<tr>
<td>Item</td>
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</tr>
<tr>
<td>C.14</td>
<td>B.4.1.4</td>
<td>Not later than _____ days from the date of a payment certificate. If not stated, not later than 30 days from the date of a payment certificate.</td>
</tr>
</tbody>
</table>
| C.15 | B.4.2.2 (iii)                                                                                      | Percentage of value of materials delivered to the project site to be included in payment certificates:  
|      |                                                                                                     | __________________________ %  
|      |                                                                                                     | If not stated, 75%. |
| C.16 | B.4.2.2 (iv)                                                                                       | Percentage of value of materials stored outside the project site to be included in payment certificates:  
|      |                                                                                                     | __________________________ %  
|      |                                                                                                     | If not stated, 0%. |
| C.17 | B.4.2.3 (vi)                                                                                       | Percentage of retention:  
|      |                                                                                                     | __________________________ %  
<p>|      |                                                                                                     | If not stated, 5% of the sum of the total additions under B.4.2.2. |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>C.18</td>
<td>Person who recommends a mediator:</td>
<td>If not stated, the Chief Executive or other authorized person from the Construction Industry Development Board Malaysia.</td>
</tr>
<tr>
<td>C.19</td>
<td>B.7.2.2</td>
<td>Person who nominates an adjudicator:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not stated, the Chief Executive or other authorized person from the Construction Industry Development Board Malaysia.</td>
</tr>
<tr>
<td>C.20</td>
<td>B.7.3.4</td>
<td>Person who nominates an arbitrator:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not stated, the Director or other authorized person from the Kuala Lumpur Regional Centre for Arbitration.</td>
</tr>
<tr>
<td>C.21</td>
<td>B.7.3.10</td>
<td>Act governing arbitration:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not stated, the prevailing Arbitration Act in Malaysia.</td>
</tr>
</tbody>
</table>