

ARTICLES OF AGREEMENT

THIS AGREEMENT is made on the day of,

BETWEEN.....

[Name of Employer]

of

[Address of Employer]

(hereinafter called the “**Employer**”) of the one part;

AND.....

[Name of Contractor]

of

[Address of Contractor]

(hereinafter called the “**Contractor**”) of the other part.

Subject to the terms and conditions of this Agreement, the parties shall perform their respective obligations in this Agreement in a collaborative manner.

WHEREAS:

- (1) The Employer is desirous that certain Works should be designed (to the extent required by the Contract), executed and completed by the Contractor, namely,

.....
[Brief description of the Works]
.....
.....

(hereinafter called the “**Works**”) at

[Location or address of the Site]
.....
.....

and has caused Drawings, Specifications and Bills of Quantities (if Option Module A applies) showing and describing the Works to be executed, to be prepared by or under the direction of the Superintending Officer.

- (2) The Employer has accepted a Tender by the Contractor for the design (to the extent provided for by the Contract Documents), execution and completion of the Works and the remedy of Defects.

NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1

In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor will upon and subject to the Contract Documents carry out the design (to the extent required by the Contract), execute and complete the Works shown upon and described by or referred to in the Contract Documents and remedy the Defects in accordance with the Conditions of Contract.

Article 2

The Employer will pay to the Contractor for the design (to the extent required by the Contract) execution and completion of the Works and the remedy of Defects the sum of Malaysian Ringgit:

.....
..... (RM)

Only or such sum as may become payable under the provisions of the Contract (hereinafter called the “**Contract Sum**”) at the times and in the manner prescribed by the Contract.

Article 3

The following Contract Documents (in order of priority) shall be deemed to form and be read and construed as part of the Contract: -

- (1) The Articles of Agreement;
- (2) The Letter of Award;
- (3) The Conditions;
- (4) The Addenda Nos ;
- (5) The Drawings;
- (6) The Specifications;
- (7) The Schedule of Works or Bills of Quantities (if Option Module A applies); and
- (8) Other documents (if any) stated below:
 - (a)
 - (b)
 - (c)
 - (d)

Article 4

The term “Superintending Officer” in this Contract shall mean
[Name of person,]

of
[Address of Superintending Officer]

or in the event of his death or ceasing to be the Superintending Officer for the purpose of the Contract, such other person as the Employer shall nominate and appoint within 30 days a succeeding Superintending Officer for that purpose. Provided that during the continuance of the Contract the person succeeding as the Superintending Officer shall not disregard or overrule any decision, approval or instruction given to the Contractor in writing by his predecessor unless he is satisfied that such action will not cause any pecuniary loss to the Contractor or unless such action be ordered as a Variation under the Conditions of Contract.

Article 5

The term “Architect” in the Contract shall mean
[Name of person]

of
[Address of the Architect]

or in the event of his death or ceasing to be the Architect for the purpose of the Contract, such other person as the Employer shall nominate and appoint within 30 days a succeeding Architect for that purpose.

Article 6

The term “Civil and Structural Engineer” in the Contract shall mean

.....
[Name of person]

of
[Address of Civil and Structural Engineer]

.....
or in the event of his death or ceasing to be the Civil and Structural Engineer for the purpose of the Contract, such other person as the Employer shall nominate and appoint within 30 days a succeeding Civil and Structural Engineer for that purpose.

Article 7

The term “Mechanical and Electrical Engineer” in the Contract shall mean

.....
[Name of person]

of
[Address of Mechanical and Electrical Engineer]

.....
or in the event of his death or ceasing to be the Mechanical and Electrical Engineer for the purpose of the Contract, such other person as the Employer shall nominate and appoint within 30 days a succeeding Mechanical and Electrical for that purpose.

Article 8

The term “Quantity Surveyor” in the Contract shall mean

.....
[Name of person]

of
[Address of Quantity Surveyor]

Article 10

If any dispute or difference shall arise in connection with or out of the Contract or the execution of the Works, such dispute or difference shall be resolved in accordance with the provisions of Clause 47 of the Conditions of Contract.

Article 11

In these Articles of Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract annexed hereto.

IN WITNESS WHEREOF

*The hand of the **EMPLOYER** has been hereunto set the day and year first above written in the presence of:

} Signature
}
}
} Name
}
} Designation

Signature of Witness
Name
Identity Card No

* The Common Seal of
..... was hereunto
affixed in the presence of:

Signature
Name
Director

Signature
Name
Director/Secretary*

IN WITNESS WHEREOF

*The hand of the **CONTRACTOR** has been hereunto set the day and year first above written in the presence of:

} Signature
}
}
} Name
}
} Designation

Signature of Witness
Name
Identity Card No

* The Common Seal of
..... was hereunto
affixed in the presence of:

Signature
Name
Director

Signature
Name
Director/Secretary*

* *Delete as appropriate*

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CONDITIONS OF CONTRACT

1 INTERPRETATION

1.1 Definitions

Definitions

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

<i>Word or phrase</i>	<i>Meaning</i>
All Risks Insurance	<p>the insurance which provides cover against any physical damage, loss or injury to work executed and Equipment, materials or goods and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical damage, loss or injury but excluding the cost necessary to repair, replace or rectify:</p> <ul style="list-style-type: none">(a) property which is defective due to:<ul style="list-style-type: none">(i) wear and tear,(ii) obsolescence,(iii) deterioration, rust or mildew;(b) any work executed or any Equipment, materials or goods damaged, lost or injured as a result of its own defect in design, plan, specification, material or workmanship or any work executed which is damaged, lost or injured in consequence thereof where such work relied for its support or stability on such work which was defective;(c) damage, loss or injury caused by or arising from any of the Excepted Risks
Appendix	the appendix to these Conditions
Articles of Agreement	the Articles of Agreement duly executed by the parties and to which the- Conditions are attached
Certificate of Extension of Time	see Clause 32.6(b)(ii)

Certificate of Making Good Defects	see Clause 27.6
Certificate of Non-Completion	see Clause 26.1
Certificate of Practical Completion	see Clause 20.2
Certificate of Determination Cost	see Clause 44.4
CIDB	Lembaga Pembangunan Industri Pembinaan Malaysia (Construction Industry Development Board Malaysia)
Conditions	all the provisions comprised in (in order of priority): (a) the Particular Conditions (if any); (b) the Appendix; (c) Option Modules specified in the Appendix; and (d) the-Conditions.
Construction Plant	all plant, tools, appliances or things of whatever nature required for the construction, completion of the Works or rectification of Defects, but does not include Equipment, materials or goods or other things intended to form or forming part of the Works.
Contract or Contract Documents	the documents specified in Article 3 of the Articles of Agreement and agreed by the parties as forming part of the Contract.
Contract Sum	the sum set out in the Letter of Award and Article 2 of the Articles of Agreement, and which shall be a fixed sum subject only to adjustments expressly provided for in the Conditions.
Contractor	the party whose Tender has been accepted by the Employer and includes the Contractor's legal successors or personal representatives and any person to whom the rights of the Contractor have been assigned or transferred with agreement in writing of the Employer under Clause 40.1

Contractor's Representative	the person duly appointed pursuant to Clause 13.2.
Date of Commencement	the date fixed pursuant to Clause 17.1.
Date of Practical Completion	the date stated in the Certificate of Practical Completion issued pursuant to Clause 20.2.
Date of Tender	the date of closing of the Tender or the date of the Contractor's latest amendment or revision of the Tender prior to the date of the Letter of Award, whichever is the later.
Day	a calendar day according to the Gregorian calendar.
Defects	any part of the Works not executed properly or completed in accordance with the Contract and where the Contractor is responsible for the design of any part of the Works, any fault in such design. For the avoidance of doubt and without limiting the generality of the expression the term shall be taken to include any item of Equipment, material, goods or work whether or not incorporated or used in the Works which does not conform to the relevant quality standards or pass the tests prescribed in or to be inferred from the Contract.
Defects Liability Period	<p>the Defects Liability Period set out in the Appendix, calculated from:</p> <p>(a) the Date of Practical Completion of the Works as certified by the Superintending Officer in accordance with Clause 20.2; or</p> <p>(b) in the event of more than one Certificate of Practical Completion having been issued by the Superintending Officer under Clause 20.2, the respective Dates of Practical Completion so certified.</p>
Drawings	the drawings referred to in the Contract including such drawings which have been prepared by the Contractor and accepted by the Superintending Officer pursuant to Clause 4.4 and such other drawings as may from time to time be issued or accepted in writing by the Superintending Officer pursuant to Clause 4.7.

Early Warning Register	see Clause 24.3
Employer	the party named as such in the Articles of Agreement and includes the Employer's legal successors or personal representatives and any person to whom the rights of the Employer have been assigned or transferred with agreement in writing of the Contractor under Clause 40.2.
Equipment	the equipment, machinery, apparatus, systems and the like intended to form or forming part of the Works.
Excepted Risks	<p>Insofar as they occur and directly affect the execution of the Works:</p> <ul style="list-style-type: none"> (a) war (whether war be declared or not), hostilities, invasion, act of foreign enemies; (b) rebellion, revolution, insurrection or military or usurped power or civil war; (c) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his sub-contractors or suppliers and arising in connection with the execution of the Works; (d) ionisation, radiation, or contamination by radio activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component; (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (f) natural disasters including epidemics and pandemics.

Final Certificate	the document issued by the Superintending Officer under sub-clause 42.8(e)
Force Majeure	means an exceptional event or circumstance which: <ul style="list-style-type: none"> (a) is beyond a party's control; (b) such party could not reasonably have provided against before entering into the Contract; (c) having arisen, such party could not reasonably have avoided or overcome; and (d) is not substantially attributable to the other party; and may include but not limited to Exceptional Events.
Government	the Government of Malaysia
Interim Certificate	any one of the certificates to which Clause 42.2 refers.
Letter of Award	the formal acceptance by the Employer of the Tender
Month	a calendar month according to the Gregorian calendar
Option Module	the Option Module appearing at the end of these Conditions
Particular Conditions	any Particular Conditions attached to these Conditions or the Letter of Award
Payment Bond	the security deposit to be provided by the Employer to the Contractor in accordance with the provisions of Option Module E (if applicable)
Performance Security Deposit	the security deposit to be provided by the Contractor to the Employer in accordance with the provisions of Option Module F (if applicable).
Practical Completion	completion of the Works including Test on Completion under the Contract and where the Works include Equipment which requires a license for its operation, then completion so as to render such Equipment eligible for issuance of a licence in respect of its operation. Provided however the existence of minor outstanding works and defects, which do not affect the functional use of the Works shall not

affect Practical Completion.

Prime Cost or P.C. Sum	a sum provided in the Contract for works or services to be executed by a Nominated Sub-Contractor or for any Equipment, materials or goods to be supplied by a Nominated Supplier (in which case the provisions of Option Module C shall apply).
Provisional Sum	a sum provided in the Contract for work to be executed or for the supply of any Equipment, materials or goods which cannot be entirely foreseen, defined or detailed at the date of submission of Tender and such sum shall only be expended or used upon instruction in writing by the Superintending Officer who may decide that the sum may be expended or used in whole or in part in favour of any person or not at all.
Public Holiday	the weekly day of rest or any Day which is a public holiday by virtue of any enactment of the Government or of a State Government in which State the Site is located
Rates for the Works	those rates in the Schedule of Rates or the rates and prices contained in the Bills of Quantities, whichever is applicable, including any modifications or additions to the same agreed in writing by the Superintending Officer and the Contractor.
Retention Monies	the sum of the amount retained in accordance with Clause 42.3.
Retention Percentage	the percentage stated in the Appendix under reference to Clause 42.3.
Safety Requirements	see Clause 14.1.
Schedule of Rates	the schedule comprising of Rates for the Works (Schedule of Rates shall not apply if Option Module A is applicable).
Schedule of Works	the schedule comprising items of Works in elemental form or according to type of works including the prices which form the basis of Contract Sum. (Schedule of Works shall not apply if Option Module A is applicable).
Site	the place and places provided or made available by the Employer where the Works are to be executed or carried out and any other places as may be designated in the Contract as forming part of the Site.

Specifications	all specifications contained in the Contract including modifications or additions to the same as may from time to time be issued or approved in writing by the Superintending Officer.
State Government	the Government of the State within Malaysia in which the Site is located.
Superintending Officer	<p>the person named in Article 4 for the purposes of the Contract who shall be:</p> <p>(a) an individual, or (b) the principal of a sole proprietorship, or (c) a partner of a partnership, or (d) a director of a corporation;</p> <p>provided that such individual, principal, partner or director is a full member of a professional body connected to the construction industry.</p>
Superintending Officer's Representatives	the Architect named in Article 5, the Civil and Structural Engineer named in Article 6, the Mechanical and Electrical Engineer named in Article 7, the Quantity Surveyor named in Article 8, or the Specialist Consultant named in the Article9 or any other person appointed from time to time by the Employer or the Superintending Officer under Clause 2.2.
Statutory Requirements	see Clause 10.1.
Tender	the Contractor's priced offer to the Employer for the design (to the extent required by the Contract), execution and completion the Works.
Temporary Works	all the works of a temporary nature of every kind (other than the Construction Plant) required or provided for the execution of the Works and the rectification of Defects.
Test on Completion	see Clause 21.
Time for Completion	time for the completion of the Works or any section of the Works as set out in the Letter of Award and/or Appendix, subject to such extension or extensions of time (if any) as the Contractor may be entitled to under the Contract.
Variation	see Clause 28.1.

Week a period of 7 consecutive Days.

Works the Works described in the Contract which are to be designed (to the extent required by the Contract), executed and completed under the Contract, including Variations.

1.2 Singular, Plural and Gender

**Singular,
Plural and Gender**

- (a) Words importing the singular also include the plural and vice versa where the context requires.
- (b) Words indicating one gender include all genders.

1.3 Headings and Marginal Notes

**Headings and
Marginal Notes**

The headings and marginal notes in the Conditions shall not be deemed to be part of the Conditions or be taken into consideration in the interpretation or construction of the Conditions or of the Contract.

1.4 Persons, Firms or Corporation

Words importing persons shall include firms and corporations.

1.5 Language of communication

All communications and documents prepared under this Contract shall be in the language or languages specified in the Appendix.

2 SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER'S REPRESENTATIVE

2.1 Superintending Officer's Duties and Authority

Superintending Officer's Duties and Authority

- (a) The duties and authority of the Superintending Officer shall be those stated in or necessarily to be implied from the Contract. Limitations (if any) on the authority of the Superintending Officer are set out in the Appendix.
- (b) Except where expressly stated in the Contract, the Superintending Officer shall have no authority to relieve the Contractor of any of his obligations under the Contract.
- (c) The Superintending Officer shall act reasonably and timeously in carrying out all or any of his duties and exercising his authority under the Contract.

2.2 Superintending Officer's Representatives

Superintending Officer's Representatives

- (a) The Employer or Superintending Officer may from time to time appoint any number of suitably qualified persons as Superintending Officer's Representatives as he deems fit. The Superintending Officer's Representatives shall be responsible to the Superintending Officer and shall carry out such duties and exercise such authority as may be delegated to him by the Superintending Officer under Clause 2.3. The names and details of the Superintending Officer's Representatives shall be notified in writing to parties immediately upon appointment thereof.
- (b) References to Superintending Officer in the Contract shall include references to the Superintending Officer's Representatives duly appointed pursuant to this Clause 2.2.

2.3 Superintending Officer's Authority to Delegate

Superintending Officer's Authority to Delegate

- (a) The Superintending Officer may from time to time delegate to the Superintending Officer's Representatives any of the duties or authority vested in the Superintending Officer pursuant to Clause 2.1, other than those listed in the Appendix, and he may at any time revoke such delegation.
- (b) Any such delegation or revocation shall be in writing and shall not take effect until a copy of the notice of such delegation or revocation has been delivered to the Contractor. Any act done by the Superintending Officer's Representatives in accordance with such delegation shall have the same effect as though it had been done by the Superintending Officer.

- (c) Provided that:
 - (i) any failure of the Superintending Officer's Representatives to disapprove any Equipment, material, goods or work shall not prejudice the authority of the Superintending Officer to disapprove such Equipment, materials, goods or work and to give instructions for the rectification of any such Equipment, materials, goods or work; and
 - (ii) if the Contractor disputes any act of the Superintending Officer's Representatives, he shall refer the matter to the Superintending Officer who shall confirm, reverse or vary (as the case may be) the act or decision of the Superintending Officer's Representatives; and
 - (iii) if the Contractor does not dispute any act of the Superintending Officer's Representatives within 7 Days of such act, then the Contractor shall be deemed to have accepted the same.

2.4 **Appointment of Assistants**

Appointment of Assistants

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

3 SUPERINTENDING OFFICER'S INSTRUCTIONS

3.1 Compliance with the Superintending Officer's Instructions

**Compliance with
the
Superintending
Officer's
Instructions**

- (a) The Contractor shall forthwith comply with all instructions issued to him by the Superintending Officer in regard to any matter in respect of which the Superintending Officer is expressly empowered by the Conditions to issue instructions, provided that:
 - (i) if by its nature and extent an instruction of the Superintending Officer is reasonably capable of being implemented within 14 Days, then the Contractor shall implement to completion the said instruction within 14 Days;
 - (ii) if by its nature and extent an instruction of the Superintending Officer is not capable of being implemented within 14 Days, then the Contractor shall take steps to commence the implementation of the said instruction within 14 Days of receiving the said instruction and shall thereafter proceed with the implementation and complying with the instruction with due diligence and expedition in order to complete the same within such time as may be specified by the Superintending Officer.
- (b) If the Contractor, after receipt of an instruction from the Superintending Officer, fails to comply with it within 14 Days (or within such period as may be specified in the instruction pursuant to sub-clause 3.1(a) (ii) above), then the Employer may employ and pay other persons to do whatsoever as may be necessary to give effect to such instruction. All direct cost, loss, expense and damage incurred or suffered in connection with such employment may be recovered by the Employer under Clause 48.
- (c) For the avoidance of doubt, the instructions from the Superintending Officer under this provision excludes any instruction for Variation provided under Clause 28.

3.2 Provisions Empowering Instructions

**Provisions
Empowering
Instructions**

- (a) Upon receipt of what purports to be an instruction issued to him by the Superintending Officer the Contractor may request the Superintending Officer to specify in writing the provision of the Conditions which empowers the issue of the said instruction.
- (b) The Superintending Officer shall forthwith comply with any such request, and if the Contractor shall thereafter comply with the said instruction (neither party before such compliance having given to the other a notice of his intention to refer the matter to dispute resolution under Clause 47.2 in order that it may decide whether or not the provision specified by the Superintending Officer empowers the issue of the said instruction), then the issue of the same shall be deemed for all the purposes of the Contract to have been empowered by the provisions of the Contract specified by the Superintending Officer in answer to the Contractor's request.

3.3 Instructions to be in Writing

**Instructions to be in
Writing**

- (a) All instructions issued by the Superintending Officer shall be in writing.
- (b) Any instruction issued by the Superintending Officer otherwise than in writing shall be of no effect.
- (c) The provisions of this Clause 3.3 shall equally apply to instructions given by the Superintending Officer's Representatives appointed pursuant to Clause 2.2 and assistants of the Superintending Officer or the Superintending Officer's Representatives appointed pursuant to Clause 2.4.

3.4 Instructions to Nominated Sub-Contractor or Nominated Supplier

All instructions issued by the Superintending Officer directly to a Nominated Sub-Contractor or Nominated Supplier as may be permitted in the relevant sub-contract (if Option Module C is applicable), shall be copied to the Contractor and such instructions shall be deemed instructions issued by the Superintending Officer to the Contractor.

3.5 Urgent Repairs

Urgent Repairs

- (a) Notwithstanding Clause 3.1, if by reason of any accident or failure or other event occurring to or in connection with the Works, either during the execution of the Works or during the Defects Liability Period, any remedial or other work shall in the opinion of the Superintending Officer be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Superintending Officer may instruct the carrying out of such remedial or other work by a person other than the Contractor.
- (b) If the remedial or other work so instructed by the Superintending Officer is work which in the opinion of the Superintending Officer the Contractor was liable to do or for which he is otherwise responsible under the Contract, the amount of any cost, loss and expense or damage incurred by the Employer in carrying out the same shall be recoverable by the Employer from the Contractor under Clause 48.

4 CONTRACT DOCUMENTS

4.1 Contract Documents to be Mutually Explanatory

Contract Documents to be Mutually Explanatory

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

- (a) The Articles of Agreement;
- (b) The Letter of Award;
- (c) The Conditions;
- (d) The Addenda listed in Article 3 of the Articles of Agreement;
- (e) The Drawings;
- (f) The Specifications;
- (g) The Bills of Quantities or Schedule of Works (whichever is applicable);
- (h) Other documents listed in Article 3 of the Articles of Agreement.

4.2 Custody of Contract Documents

Custody of Contract Documents

The original Contract Documents shall remain in the custody of the Employer and shall be produced as and when required by the Contractor. Immediately upon the execution of the Contract, a duplicate of the Contract Documents shall be furnished to the Contractor free of charge.

4.3 Supply of Drawings by Superintending Officer

Supply of Drawings by Superintending Officer

- (a) The Superintending Officer shall, in addition to the duplicate of the Contract Documents referred in Clause 4.2, provide free of charge to the Contractor:
 - (i) two sets of the Drawings; and
 - (ii) two copies of the Specifications and unpriced Schedule of Works or Bills of Quantities (whichever is applicable).
- (b) The Contractor may obtain from the Superintending Officer at his own cost any further copies of the said documents required by him.

4.4 Supply of Drawings by the Contractor

Supply of Drawings by the Contractor

- (a) Unless otherwise prescribed elsewhere in the Contract Documents, the Contractor shall supply to the Superintending Officer copies of all drawings (other than as-built drawing Under Clause 4.10) including shop drawings detailing any work, specifications and other documents prepared and submitted by the Contractor and accepted by the Superintending Officer in the quantities as prescribed in the Appendix
- (b) The Contractor shall supply at the Employer's cost any further copies of such drawings, specifications and other documents as the Superintending Officer may request in writing.

4.5 Drawings to be Kept on Site

Drawings to be Kept on Site

One copy of the Drawings and Specification provided to the Contractor under Clause 4.3 and one copy of the drawings and specifications supplied by the Contractor under Clause 4.4, shall be kept on Site by the Contractor and the same shall at all reasonable times be available for inspection and use by the Superintending Officer and by any other person authorised by the Superintending Officer in writing

4.6 Need for Further Drawings

Need for Further Drawings

- (a) The Contractor shall give adequate notice in writing to the Superintending Officer:
 - (i) of any further drawing, specification or other information which the Superintending Officer is required to provide under the Contract;
 - (ii) of any drawing, specification, instruction or other information which is required by any specific time, whenever the planning or execution of the Works is likely to be delayed or disrupted by its non-availability, and whether or not the need for it is shown on any programme accepted by the Superintending Officer under Clause 5.
- (b) The Superintending Officer shall on receipt of the notice comply with its requirements, provided that it is given in sufficient time for the Superintending Officer to reasonably prepare and issue the drawings, specifications, or information required.

4.7 Supplementary Drawings and Instructions

Supplementary Drawings and Instructions

The Superintending Officer shall issue to the Contractor from time to time such supplementary or revised drawings, specifications or instructions as may, in his opinion, be necessary for the execution and completion of the Works. The Contractor shall carry out and be bound by the same.

4.8 Consequences of Delay in Supplying Further Drawings

**Consequences of
Delay in Supplying
Further Drawing**

If:

- (a) the Contractor has duly given the notice pursuant to Clause 4.6 and the Superintending Officer has not complied with any of its requirements; or
- (b) the Superintending Officer has not issued or delayed in issuing any supplementary or revised drawing, specifications, or instruction as required by Clause 4.7,

and if the progress or completion of the Works or any part of the Works has been materially affected by such failure on the part of the Superintending Officer then the Superintending Officer shall, subject to Clause 42, certify any loss and expense which the Contractor has incurred and, subject to Clause 32, grant the Contractor an extension of time.

4.9 Confidentiality and Limitation of Use of Documents

**Confidentiality
and Limitation of
Use of Documents**

- (a) The Contractor shall treat the Contract and everything contained in the Contract as private and confidential. None of the Contract Documents mentioned in Clause 4 shall be used by the Contractor for any purpose other than for the Contract. In particular, the Contractor shall not divulge (unless otherwise required under at law) any information, drawing or photograph concerning the Works and shall not use the Works or the Site for the purpose of advertisement except with the written consent of the Superintending Officer and subject to such conditions as he may prescribe.
- (b) Neither the Employer nor the Superintending Officer, nor his authorised representatives shall divulge or use, except for the purpose of the Contract, any of the rates in the Schedule of Rates or Bills of Quantities (whichever is applicable).

4.10 As-built Drawings

As-built Drawings

Unless otherwise prescribed elsewhere in the Contract Documents, the Contractor shall supply to the Employer without additional charge the following documents in such quantities prescribed in the Appendix:

- (a) such drawings describing the Works or any section of the Works as-built not later than 3 months from the Date of Practical Completion of the Works (or the Date of Practical Completion in respect of the relevant section of the Works, in the case of completion in sections); and
- (b) manuals concerning the operations and maintenance of the Works or any section of the Works, including any installation comprised in the Works or section of the Works not later than the Date of Practical Completion of the Works (or the Date of Practical Completion in respect of the relevant section of the Works, in the case of completion in sections).

5 WORKS PROGRAMME AND METHOD STATEMENT

5.1 Submission of Works Programme and Method Statement

Submission of Programme and Method Statement

Following the Letter of Award, and without prejudice to any requirement to do so earlier in his Tender or the other Contract Documents, the Contractor shall, not later than Date of Commencement submit for the approval of the Superintending Officer:

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

5.2 Works Programme and Method Statement not Part of Contract Document

Works Programme and Method Statement not Part of Contract Document

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

5.3 Approval

Approval

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

5.4 Disapproval

Disapproval

In the event the works programme and/or method statement is disapproved by the Superintending Officer then the Contractor shall make revised/further submissions as may be required until such approval is obtained.

5.5 Start of Work Without Approval

**Start of Work
Without Approval**

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

5.6 Modification or Revision to Works Programme and/or Method Statement

**Modification or
Revision to Works
Programme
and/or Method
Statement**

- (a) The Contractor shall from time to time during the progress of the Works make modification or revision to the works programme and/or method statement to take into account any changed circumstances or event affecting the progress and/or the execution of the Works.
- (b) Such modified or revised works programme and/or method statement shall be subject to approval by the Superintending Officer pursuant to provisions of Clause 5.3.

6 GENERAL OBLIGATIONS OF THE EMPLOYER

6.1 Employer's General Responsibilities

Employer's General Responsibilities

- (a) The Employer shall give the Contractor right of access to and possession of the Site in accordance with Clause 17.2.
- (b) Before the Date of Commencement, the Employer shall obtain development or planning approvals, building plan and such other necessary approvals from the relevant authorities with regards to the Works.
- (c) The Employer shall, within 14 Days of a request from the Contractor, provide the Contractor with reasonable evidence that the Employer has made and is maintaining financial arrangements which will enable the Employer to pay the Contract Sum. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.
- (d) The Employer shall pay the Contractor in accordance with Clause 42.
- (e) The Employer shall not obstruct or interfere with the performance of the Contract by the Contractor, except where expressly provided in the Contract.
- (f) The Employer shall not interfere with or influence or obstruct the issue of any certificate by the Superintending Officer under the Contract.
- (g) In the event of the death of the Superintending Officer or his ceasing to be the Superintending Officer for the purpose of the Contract, the Employer shall nominate and appoint such other person as a succeeding Superintending Officer for that purpose.

7 GENERAL OBLIGATIONS OF THE CONTRACTOR

7.1 Contractor's Registration with CIDB

- (a) The Contractor warrants and undertakes that they, and their personnel, are duly and properly registered with CIDB, and such registration shall remain valid for the duration of the Contract

**Contractor's
General
Responsibilities**

7.2 Contractor's General Responsibilities

- (a) The Contractor shall, with due care and diligence, design (to the extent required by the Contract), execute and complete the Works and remedy Defects to the satisfaction of the Superintending Officer in accordance with the provisions of the Contract.
- (b) The Contractor shall provide all supervision, labour, Construction Plant, Equipment, materials, goods and all other things, whether of a temporary or permanent nature required in and for such design (to the extent required by the Contract), execution and completion of the Works and remedying of Defects.

7.3 Site Operations and Methods of Construction

- (a) The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction. Provided that the Contractor shall not be responsible (except otherwise stated in the Contract or as may be otherwise agreed in

**Site Operations
and Methods of
Construction**

writing between the Employer and the Contractor) for the design of the Works or for the design of any Temporary Works not prepared by the Contractor or by his sub-contractors or suppliers.

- (b) Where the Contract expressly provides for part of the Works to be designed by the Contractor (in which case Option Module D applies), he shall be fully responsible for the design of that part of the Works, notwithstanding any approval by the Superintending Officer.

7.4 Contractor's Responsibility for Sub-contractors

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

**Contractor's
Responsibility for
Sub-contractors**

7.5 Responsibility for Identifying the Discrepancy

**Responsibility for
Identifying the
Discrepancy**

- (a) If the Contractor shall find any ambiguity, discrepancy, conflict, inconsistency, error or omission (hereinafter referred to as the “Discrepancy”) in or between any of the Contract Documents he shall forthwith notify the Superintending Officer of the same.
- (b) The Superintending Officer shall then explain and adjust the Discrepancy and issue to the Contractor an instruction so as to resolve the Discrepancy subject always to Clause 4.1.
- (c) If an instruction issued by the Superintending Officer to resolve the Discrepancy results in addition to and/or reduction from the Contract Sum, such addition and/or reduction shall be deemed a Variation.

7.6 Sufficiency of Contract Sum

**Sufficiency of
Contract Sum**

The Contractor shall be deemed to have satisfied himself that the Contract Sum covers all his obligations under the Contract and all matters and things necessary for the proper design (to the extent required by the Contract), execution and completion of the Works and the remedying of Defects.

8 NOTICES

8.1 Serving of Notices

Serving of Notices

- (a) Unless otherwise stipulated elsewhere in the Contract, notices to be given under the terms of the Contract shall be in writing and

shall be deemed to have been served by either party upon the other if it shall have been sent to the address of such party as set out in the Articles of Agreement:

- (i) by hand delivery or courier, in which case it shall be deemed to have been served upon an acknowledgement of receipt being obtained; or
 - (ii) by post in which case it shall be deemed to have been served 7 Days after posting; or
 - (iii) any other means as prescribed in the Appendix hereto.
- (b) Either party may change the address set out in the Articles of Agreement by giving 14-Day notice to the other party and the Superintending Officer and in the case of the Superintending Officer by giving 14-Day notice to both parties

9 PATENT RIGHTS, TRADEMARKS, ROYALTIES

9.1 Patent Rights and Other Intellectual Property Rights

Patent Rights and Other Intellectual Property Rights

- (a) The Contractor shall defend and indemnify the Employer from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any patent rights, design trademarks or name or other intellectual property rights in respect of any Construction Plant, Equipment, materials, goods or design (submitted by the Contractor pursuant to his obligations under the Contract) used for or in connection with or for incorporation in the Works, except where such infringement results from compliance with an instruction, the design or Specifications provided by the Superintending Officer.
- (b) Where such infringement results from compliance with an instruction, the design or Specifications provided by the Superintending Officer, any royalties, damages or other monies which the Contractor may be liable to pay to the persons entitled to such patent rights or intellectual property rights shall be reimbursed by the Employer.

9.2 Royalties

Royalties

Except where otherwise provided for in the Contract, the Contractor shall pay all tonnage, royalties, rent and any other payments or compensation whatsoever for getting stone, sand, gravel, clay or other materials required for the Works.

10 COMPLIANCE WITH STATUTORY REQUIREMENTS

10.1 Statutory Requirements

- (a) The Contractor shall comply in all respects (including the giving of all notices and the paying of all fees required) with any law, regulation or by-law, or any order or directive issued by any statutory authority, public authority or public service company (hereinafter referred to as “**Statutory Requirements**”), relating to the Works or, in the case of a public authority or public service company, with whose systems the same are or will be connected. Such compliance shall include the payment of levies imposed by CIDB. The Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statutory Requirements.
- (b) Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and for any capital contribution and security deposit to any such public authority or public service company for the permanent connection to their systems.
- (c) The Employer shall be liable for any default or delay by any statutory authority, public authority or public service company in the enforcement or implementation of the Statutory Requirements provided always that the Contractor shall have fulfilled his contractual obligations and taken all actions for compliance with the Statutory Requirements.

10.2 Variation arising from Compliance

- (a) If the Contractor is required to comply with Clause 10.1 and such compliance involves a Variation, he shall notify the Superintending Officer of the Variation required with reasons for such Variation. The Superintending Officer shall issue such instructions as may be necessary for such compliance. If the Superintending Officer does not issue any instruction within 7 Days from the date of the receipt of the said notification, the Contractor shall proceed with the works required to conform to the Statutory Requirements.
- (b) Any Variation necessitated under this Clause 10 shall be deemed a Variation unless it pertains to matters within the obligations of the Contractor under the Contract (including where applicable, any deficiency or fault in the design of any part of the Works for which the Contractor is responsible under the Contract) which could have been reasonably foreseen by an experienced contractor at the Date of Tender.

10.3 Change in Statutory Requirements

If after the Date of Tender there is any change in the Statutory Requirements including any issuance of Statutory Orders relating to the

Works or, in the case of a statutory authority or public authority or public service company, with whose systems the same are or will be connected which causes additional or reduced cost to the Contractor, in the design (to the extent required by the Contract) or execution of the Works, beyond that which was reasonably contemplated by an experienced contractor, such additional or reduced cost shall be certified by the Superintending Officer and added to or deducted from the Contract Sum with a copy of the certificate given to each of the parties.

11 ENVIRONMENTAL MATTERS

11.1 Compliance with Environmental Quality Act 1974

Compliance with Environmental Quality Act 1974

The Contractor shall comply with all Statutory Requirements relating to the protection and preservation of the environment, including the Environmental Quality Act 1974 and any subsequent amendments to or re-enactment of the said Act and thereto or any Statutory Orders in relation thereto. The Contractor shall give due consideration to the preservation and social implications of water and air quality, soil, flora and fauna (if any) within the Site during the execution of the Works. All measures taken by the Contractor in compliance with this Clause 11 shall be deemed to be included in the Contract Sum.

12 SETTING OUT

12.1 Accurate Setting Out

Accurate Setting Out

- (a) The Superintending Officer shall be responsible to provide the original reference points, lines and levels necessary for the Contractor to set out the Works at ground level.
- (b) The Contractor shall be entitled to rely on the original reference points, lines and levels given by the Superintending Officer for setting out but shall be responsible for:
 - (i) the accurate setting out of the Works;
 - (ii) the correctness of the position, levels, dimensions and alignment of all parts of the Works; and
 - (iii) the provision of all necessary instruments, equipment, apparatus and labour in connection with the setting out.

12.2 Errors in Setting Out

Errors in Setting Out

- (a) If at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor shall rectify such error to the satisfaction of the Superintending Officer. The time and cost implications of such rectification shall be borne by:
 - (i) the Employer if such rectification is due to the reference points, lines and levels provided by the Superintending Officer pursuant to sub-clause 12.1(a); or
 - (ii) the Contractor if such rectification is due to errors in setting out referred to in sub-clause 12.1(b).

- (b) Notwithstanding sub-clause 12.2(a)(ii), if the Contractor is responsible for the error in setting out but in the opinion of the Superintending Officer it will be impracticable or inconvenient to the Employer to have the Contractor to rectify, the Superintending Officer may give an instruction that such error be not remedied, in which case the provisions of Clause 27.4 shall apply.

13 SITE ADMINISTRATION

13.1 Days and Hours of Working

Days and Hours of Working

- (a) Unless otherwise stated elsewhere in the Contract, no work shall be carried out during the night or on Public Holidays without the written permission of the Superintending Officer except when such work is rendered unavoidable or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall inform the Superintending Officer at the earliest possible opportunity of the same.
- (b) When any such written permission is granted by the Superintending Officer pursuant to sub-clause 13.1(a), it shall be the Contractor's responsibility to comply with all the Statutory Requirements and shall bear all costs in compliance with the same.
- (c) For the purpose of this Clause 13.1, the term "night" shall mean the period from 7.00 p.m. to 7.00 a.m.

13.2 Contractor's Representative

Contractor's Representative

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

and shall not thereafter employ him again on the Site in any capacity and shall replace him by another Contractor's Representative approved by the Superintending Officer.

13.3 Removal of Workmen and Other Personnel

**Removal of
Workmen and
Other Personnel**

- (a) The Contractor shall employ for the execution of the Works such persons as are of good character, careful, skilled and experienced in their respective vocations and trades.
- (b) The Superintending Officer shall be at liberty to object to and require the Contractor to remove immediately from the Site any person employed by the Contractor in or about the execution of the Works who in the opinion of the Superintending Officer misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such person shall not again be employed for the Works without the prior written permission of the Superintending Officer.

13.4 Access for Superintending Officer

**Access for
Superintending
Officer**

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

14 SAFETY AT THE SITE

14.1 Compliance with Safety Requirements

Compliance with Safety Requirements

The Contractor shall comply and shall secure compliance by his personnel and workmen and by his sub-contractors at all times during the execution of the Works with all of the following:

- (a) Occupational Safety and Health Act, 1994;
- (b) All other relevant safety-at-work requirements imposed by any Statutory Requirements and any subsequent amendments to or re-enactment of the same; and
- (c) Any directive or order by the relevant authorities and/or the Superintending Officer relating to safety requirements;

hereinafter collectively referred to as the "**Safety Requirements**".

14.2 Submission of Safety Programme

Submission of Safety Programme

- (a) Within 14 Days of the Letter of Award, the Contractor shall submit to the Superintending Officer a safety programme to ensure that all construction activities required for the execution of the Works are carried out in a safe manner and in compliance with the Safety Requirements.
- (b) The safety programme shall be subject to the approval of the Superintending Officer. The submission to and approval by the Superintending Officer of the safety programme shall not relieve the Contractor of any of his obligations under the Contract.

14.3 Safety Officer and Personnel

Safety Officer and Personnel

- (a) The Contractor shall appoint a suitably qualified and experienced person as safety officer who shall be responsible for compliance with Safety Requirements and all safety matters relating to the Works. The Contractor shall, from time to time, provide such other personnel and resources as may be required to ensure the effective implementation of the safety programme on Site.
- (b) The Contractor shall provide information and conduct training programmes for all workmen, including workmen of his sub-contractors and those under his direction, for compliance with the Safety Requirements.

14.4 **Safety Measures**

Safety Measures

- (a) The Contractor shall ensure that the Construction Plant together with all other tools and equipment, Temporary Works and other items used in the execution of the Works are in a safe, sound and good condition, provide maintenance and procedures for dealing with emergencies and that such are capable of performing the functions for which they are intended.
- (b) Without limiting his liability under the Contract, the Contractor shall provide at his own expense all workmen on Site including all under his direction with the necessary safety equipment including but not limited to safety boots, safety helmets and protective clothing.

15 QUALITY IN CONSTRUCTION

15.1 **Equipment, Materials, Goods and Workmanship**

**Equipment,
Materials, Goods
and
Workmanship**

All Equipment, materials, goods and workmanship shall be:

- (a) the respective kinds and quality described in the Contract or required by the Superintending Officer in accordance with the provisions of the Contract; and
- (b) subjected from time to time to such tests at their place of manufacture, fabrication or preparation, or on the Site or at such other places described in the Contract or required by the Superintending Officer in accordance with the provisions of the Contract.

15.2 **Quality Assurance and Quality Control**

**Quality Assurance
and Quality
Control**

- (a) Within 14 Days of the Letter of Award, the Contractor shall submit to the Superintending Officer a quality plan, including any quality assessment tool, to ensure that the Works are designed (to the extent required by the Contract), executed and completed in accordance with the Contract.
- (b) The said quality plan shall be subject to the approval of the Superintending Officer. The submission to and approval by the Superintending Officer of the quality plan shall not relieve the Contractor of any of his obligations under the Contract.

15.3 **Supply of Samples**

**Supply of
Samples**

The Contractor shall supply at his own cost samples of materials or goods, before incorporation into the Works for selection or testing as described in the Contract or required by the Superintending Officer in accordance with the provisions of the Contract. Unless otherwise

provided in the Contract, all samples shall be supplied or prepared by the Contractor at his own cost.

15.4 **Cost of Test**

Cost of Test

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

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

- (c) Where the cost of tests is to be borne by the Employer pursuant to sub-clause 15.4(b), the carrying out of such test shall be deemed a Variation.

15.5 **Examination and Measurement of Works before Covering Up**

- (a) No part of the Works shall be covered up or put out of view without the approval of the Superintending Officer and the Contractor shall afford full opportunity for the Superintending Officer to examine and measure such part of the Works which is about to be covered up or put out of view.
- (b) The Contractor shall give due notice to the Superintending Officer whenever any part of the Works is ready or about to be ready for examination and the Superintending Officer shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor in writing accordingly, attend such examination and measurement of such part of the Works.
- (c) If the Contractor fails and/or neglects to comply with the provisions of Clause 15.5:

Ø the Superintending Officer may require the Contractor to

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

15.6 Uncovering and Making Openings

**Uncovering and
Making Openings**

- (a) The Contractor shall uncover any part of the Works or make openings in or through the same as the Superintending Officer may from time to time instruct and shall reinstate and make good such part of the Works to the satisfaction of the Superintending Officer.
- (b) If any such part of the Works has been covered up or put out of view after compliance with the requirements of sub-clauses 15.5(a) and 15.5(b) and is found to be executed in accordance with the Contract then, such work carried out by the Contractor shall be deemed a Variation.

15.7 Defects during the Progress of the Works

**Defects during the
Progress of the
Works**

- (a) If the Superintending Officer finds Defects during the progress of the Works, notwithstanding any previous test or interim payment for the Works or part of the Works, he may instruct the Contractor to do any or all of the following:
 - (i) to demolish and reconstruct any work to meet the requirements of the Contract.
 - (ii) to substitute such defective Equipment, materials or goods with proper and suitable replacements of the same.
 - (iii) to remove from or not to bring to the Site any Equipment, materials or goods which in the opinion of the Superintending Officer do not meet the requirements of the Contract and to replace such Equipment, materials or goods with those which meet the requirements of the Contract.
- (b) The Superintending Officer's instruction may specify the time within which the Contractor is to comply with the instruction. If the Contractor defaults in carrying out such instruction within the time specified by the Superintending Officer, the Employer shall be entitled to employ and pay other persons to carry out the same and the amount of any loss, expense, costs or damages suffered or incurred by the Employer shall be recoverable from the Contractor under Clause 48.
- (c) Notwithstanding sub-clause 15.7(a), if the Defects which the Contractor would otherwise have been liable to rectify at his own cost is such that in the opinion of the Superintending Officer it will be impracticable or inconvenient to the Employer to have the Contractor to rectify, the Superintending Officer may give an instruction that the Defects be not remedied in which case the provisions of Clause 27.4 shall apply.

16 LABOUR

16.1 Engagement of Workmen and Labour

Engagement of Workmen and Labour

- (a) The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all workmen and labour, local or other, and for their remuneration, housing, welfare and transport in accordance with the relevant Statutory Requirements.
- (b) In case foreign workmen or labour are engaged, the Contractor shall be responsible to obtain and maintain their work permits (including payment of the relevant fees, levies and insurances) in compliance with relevant Statutory Requirements.

16.2 Returns of Labour

Returns of Labour

The Contractor shall, if required by the Superintending Officer, deliver to the Superintending Officer a detailed return in such form and at such intervals as the Superintending Officer may prescribe, showing the numbers of the several classes of workmen or labour from time to time employed by the Contractor on the Site.

17 COMMENCEMENT OF WORKS AND POSSESSION OF SITE

17.1 Date of Commencement

- (a) The Contractor shall, subject to the fulfilment of the conditions precedent stated in sub-clause 17.1(b), commence the Works, or such sections of the Works, on the Date of Commencement, that is:
 - (i) on the date specified in the Letter of Award or the Appendix; or
 - (ii) where no date is specified in the Letter of Award or the Appendix, on the date specified in an instruction for commencement (which, unless otherwise agreed, shall not be less than 14 Days after the date of the instruction) from the Superintending Officer.

Thereafter the Contractor shall proceed with due diligence and expedition and without delay in accordance with the Contract and by reference to the works programme and/or method statement or any revised or modified works programme and/or method statement accepted by the Superintending Officer pursuant to Clause 5. The Time for Completion shall run from the Date of Commencement which is fixed pursuant to this Clause 17.1.

**Date of
Commencement**

- (b) The conditions precedent to the commencement of the Works, or such sections of the Works are:
 - (i) the submission of the Performance Security Deposit in accordance with Option Module F (if applicable); and
 - (ii) the deposition of the insurance policies as required by Clause 36, 37 and Clause 38A (if applicable). Provided that for the purposes of this sub-clause 17.1(b), and no other, the submission of the original cover notes of the said insurance policies and the receipts of premium paid to the Superintending Officer is sufficient discharge of the Contractor's obligation under this sub-clause 17.1(b); and
 - (iii) the submission of the Code Numbers and Social Security Numbers of all the workmen registered under SOCSO pursuant to Clause 37.1.

17.2 Possession of Site

Possession of Site

- (a) Unless the Contract otherwise provides, the Contractor shall be entitled to and be given on or before the Date of Commencement access to and possession of the Site or such part of the Site to enable the Contractor to commence the Works. The Contractor's access to and possession of the Site or such part of the Site shall not be exclusive but shall be subject to the Employer's rights under Clause 18 in respect of other contractors.
- (b) The requirement for possession of the Site and Date of Commencement to be given for sections of the Works and any other restrictions upon the possession of Site and commencement of any section of the Works shall be as stated in the Appendix or in the Contract Documents.

17.3 No Date of Commencement or Failure to Give Possession

**Failure to Give
Possession**

- (a) Where no Date of Commencement is specified in accordance with sub-clause 17.1 (a)(i) or (ii) then the Contractor shall notify the Superintending Officer requiring the Date of Commencement to be stipulated. If the Superintending Officer:
 - (i) fails to stipulate such date within the period specified in respect of Clause 19.2 in the Appendix as calculated from the date of the Contractor's notification (hereinafter referred to as the "Suspension Period"); or
 - (ii) stipulates a date which is after the expiry of the Suspension Period;

then the Contractor shall be entitled to deem the Works as having been suspended pursuant to the Superintending Officer's instruction under Clause 19.1.

- (c) Where there is delay in the giving of possession of the Site or any part of the Site as provided in Clause 17.2 then, the Superintending Officer shall, subject to Clause 42 certify any loss and expense which the Contractor had incurred by reason of such delay and, subject to Clause 32, grant the Contractor an extension of time.
- (d) Where the delay in giving possession of Site is in excess of the Suspension Period specified in respect of Clause 19.2 in the Appendix then the Contractor shall be entitled to deem the Works as having been suspended pursuant to the Superintending Officer's instruction under Clause 19.1.

17.4 Rights of Way or Access

Rights of Way or Access

- (a) The Employer shall provide the Contractor with the main right of way or access to the Site.
- (b) The Contractor shall at his own expense be responsible for obtaining any other right of way or access (including rights of easement) that may be required by him for the purposes of execution and completion of the Works.
- (c) The Contractor shall also provide at his own cost and expense any additional accommodation, land or facilities outside the Site required by him for the purpose of the Works.

18 OTHER CONTRACTORS

18.1 Employer's Right to Employ Other Contractors

Employer's Right to Employ Other Contractors

- (a) The Employer reserves the right to employ any person or contractor to carry out on the Site work which does not form part of the Contract, whether or not information in respect of such work is provided in the Contract. Every person or contractor so employed shall be deemed to be a person or contractor for whom the Employer is responsible for and not as a sub-contractor.
- (b) The Contractor shall permit the execution of any work by such person or contractor employed by the Employer.

18.2 Inspection of Work Done by Other Contractors

Inspection of Work Done by Other Contractors

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

- (b) Failure of the Contractor to report to the Superintending Officer of any apparent discrepancies or Defects in such work shall constitute acceptance by the Contractor of the work of such persons or contractors as fit and proper for the purposes of proceeding with the execution of the Works.

19 SUSPENSION

19.1 Suspension of Work

Suspension of Work

- (a) The Contractor shall on an instruction of the Superintending Officer, suspend the execution of the Works or any part of the Works for such time and in such manner as the Superintending Officer may consider necessary and shall during such suspension, properly protect and secure the Works or such part of the Works so far as is necessary or in accordance with the instruction of the Superintending Officer.
- (b) Subject to Clause 19.2, Clause 32 and Clause 42, the Superintending Officer shall certify any loss and expense which the Contractor had incurred in giving effect to the instruction and, subject to Clause 32, may grant the Contractor an extension of time unless such instruction, loss and expense or extension is:
 - (i) otherwise provided for in the Contract; or
 - (ii) necessary by reason of some default or breach of contract of the Contractor or is caused by an event which was or would have been the Contractor's responsibility to have overcome; or
 - (iii) necessary for the proper execution of the Works or for the safety of the Works or any part of the Works.

19.2 Prolonged Suspension

Prolonged Suspension

If the carrying out of the whole or any part of the Works is suspended due to:

- (a) *force majeure*; or
- (b) one or more of the Excepted Risks; or
- (c) the Contractor not having received from the Superintending Officer within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice has been given by the Contractor in accordance with Clause 4.6; or
- (d) An instruction from the Superintending Officer to resolve a Discrepancy in or between any of the Contract Documents pursuant to Clause 7.5; or

- (e) ordering of test by the Superintending Officer which is not intended by or provided for in the Contract pursuant to Clause 15.4 and the uncovering or making openings for inspection of any work which is not intended by or provided for in the Contract pursuant to Clause 15.6, unless the test or inspection shows that the Works, Equipment, materials, goods or workmanship were not in accordance with the provisions of the Contract; or
- (f) failure of the Employer to give possession of the Site or any part of the Site to the Contractor as required by Clause 17.2; or
- (g) acts or omissions of other persons or contractors employed by the Employer in executing work not forming part of the Contract; or
- (h) subject to Sub-Clause 19.1(b), an instruction by the Superintending Officer to suspend any work; or
- (i) damage, loss or injury to the Works or part of the Works caused by any one or more of the risks covered by the insurance policies referred to in Clause 38A, 38B or 38C, whichever is applicable; or
- (j) the issue of an instruction by the Superintending Officer in respect of antiquities and fossils pursuant to Clause 39;

(hereinafter individually referred to as the “**Specified Suspension Event**”) for more than the Suspension Period specified in the Appendix, the Contractor may serve a notice to the Superintending Officer for permission to recommence the suspended Works or part of the Works within 14 Days of receipt by the Superintending Officer of the notice.

19.3 Effects of Prolonged Suspension

Effects of Prolonged Suspension

If the Specified Suspension Event continues or permission to proceed with the Works is not granted by the Superintending Officer pursuant to Clause 19.2 on the expiry of the said 14-Day period then, the Contractor may:

- (a) in the case where such suspension affects the whole or substantially the whole of the Works, be entitled to determine his own employment in accordance with Clause 45.1;
- (b) in the case where such suspension affects only a part of the Works, elect to treat such suspended part as an omission under Clause 28.

20 TIME FOR COMPLETION

20.1 Contractor to Complete on Time

Contractor to Complete on Time

Subject to extension of time granted pursuant to Clause 32.6(b)(ii), the Contractor shall complete the Works within the Time or Times for Completion stated in (in order of priority):

- (a) the Letter of Award; or
- (b) the Appendix; or
- (c) elsewhere in the Contract Documents;

as the case may be.

20.2 Certificate of Practical Completion

Certificate of Practical Completion

- (a) When the Contractor considers that the Works have achieved completion sufficient to enable the successful completion of the Test on Completion pursuant to Clause 21, he may notify the Superintending Officer in writing to that effect.
- (b) Within 14 Days of receipt of such notice, the Superintending Officer shall carry out an inspection of the Works and the carrying out the Test on Completion pursuant to Clause 21 and as prescribed under the Contract. Pursuant to such inspection and test the Superintending Officer shall do either one of the following:
 - (i) Issue to the Contractor a Certificate of Practical Completion if in his opinion the whole of the Works have achieved Practical Completion and have satisfactorily passed any Test on Completion pursuant to Clause 21 and prescribed under the Contract, subject to the Contractor giving a written undertaking to complete any minor outstanding works after issuance of Certificate of Practical Completion but within the stipulated time during the Defects Liability Period. Provided always that such 'minor outstanding works' shall not affect the intended use and occupation of the Works and shall be determined solely by the Superintending Officer. The Superintending Officer shall state in the said Certificate of Practical Completion the date on which the Works have achieved Practical Completion and handed over to the Employer; or
 - (ii) Give instructions to the Contractor specifying all the works which in his opinion are required to be completed by the Contractor before the issue of a Certificate of Practical Completion.
- (c) If the Superintending Officer has given instructions pursuant to sub-clause 20.2(b)(ii), the Contractor shall not be entitled to the Certificate of Practical Completion until the works specified in the said instructions have been completed to the satisfaction of the Superintending Officer.

20.3 **Access for Remedial Work**

**Access for
Remedial Work**

The Contractor's possession of the Site shall cease on the Date of Practical Completion, provided that the Contractor shall, upon giving reasonable notice in writing to the Superintending Officer, be permitted to enter the Site to carry out any outstanding work and the rectification of Defects during the Defects Liability Period.

21 TEST ON COMPLETION

21.1 **Notice of Tests and Test Reports**

**Notice of Tests
and Test
Reports**

- (a) The Contractor shall carry out the Test on Completion in accordance with the requirements of the Contract.
- (b) The Contractor shall give notice to the Superintending Officer as to when he will be ready to carry out the Test on Completion and the Superintending Officer shall within 14 Days after the receipt of the Contractor's notice appoint a time for the carrying out of such Test on Completion.
- (c) The Contractor shall provide to the Superintending Officer all test reports required by the Contract.

21.2 **Failure to Appoint Time for Test**

**Failure to
Appoint Time for
Test**

If the Superintending Officer fails to appoint a time within 14 Days after the receipt of the Contractor's notice in accordance with sub-clause 21.1(b) or fails to attend at any time or place duly appointed for carrying out the said test, the Contractor shall be entitled to proceed with the test in his absence but he shall inform the Superintending Officer that he has so proceeded and shall thereafter supply him with all test reports.

21.3 **Facilities for Test on Completion**

**Facilities for Test
on Completion**

- (a) The Contractor shall at his own expense provide everything including such labour, materials, power, fuel, water, consumables, and apparatus as may be required to carry out the Test on Completion.
- (b) Provided that where the permanent connection for any of the utilities to the Works are completed by the relevant authority or public utility company, the Employer shall, on a written request of the Contractor, make available such utilities to the Contractor for the purpose of Test on Completion.
- (c) The cost of using any such utilities which is provided by the Employer for the use of the Contractor for the purpose of Test on Completion shall be reimbursed by the Contractor to the Employer or may be recoverable by the Employer under Clause 48.

21.4 Repeat Tests

Repeat Tests

Any part of the Works which fails to pass the Test on Completion and any replacement item required under sub-clause 15.7(a) shall upon the instruction of the Superintending Officer be tested again at the Contractor's expense within a reasonable time after the instruction until the successful completion of the Test on Completion.

22 SECTIONAL COMPLETION

22.1 Completion in Sections

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

- (i) Clause 20.2 (Certificate of Practical Completion);
- (ii) Clause 20.3 (Access of Remedial Works);
- (iii) Clause 31, 32 (Compensation Event);
- (iv) Clause 26 (Non-Completion and Damages for Delay in Completion);
- (v) Clause 27 (Defects Liability After Completion);
- (vi) Clause 38 (Insurance of the Works); and
- (vii) Clause 42.3 (Retention Monies)

but not Option Module F (Performance Security Deposit), if applicable, and Clause 42.8 (Final Account and Final Certificate) shall, in the absence of any express provision to the contrary in any part of the Contract Documents apply as if each such section was the subject of a separate and distinct contract between the Employer and the Contractor.

(b) Unless otherwise agreed and stated in the Appendix, nothing contained in sub-clause 22.1(a) shall entitle the Contractor to the release of the whole or any part of the Performance Security Deposit deposited by him pursuant to Option Module F (if applicable), and the Performance Security Deposit (if applicable) shall be released or refunded only upon the issue of the Certificate of Practical Completion of the whole of the Works or in respect of the last section of the Works, as the case may be.

23 PARTIAL OCCUPATION BY THE EMPLOYER

23.1 Occupation of Part with Consent

Occupation of Part with Consent

(a) The Employer may with the consent of the Contractor, before Practical Completion of the Works in accordance with Clause 20.2, take possession of any part of the Works (any such part in the Contract hereinafter referred to as “**the Occupied Part**”).

- (b) Within 14 Days from the date the Employer has taken possession of the Occupied Part the Superintending Officer shall issue a Certificate of Practical Completion in respect of the Occupied Part and certify the estimated value of the Occupied Part which value shall for the purposes of this Clause 23 be deemed the total value of the Occupied Part.

23.2 Consequential Effects

Consequential Effects

- (a) The following provisions shall apply to the Occupied Part as from the Date of Practical Completion in respect of the Occupied Part until the completion of the remainder of the Works:
 - (i) Release to the Contractor in the next Interim Certificate after the date of the Employer's possession of the Occupied Part of a proportion of the first half of the Retention Monies under Clause 42 in respect of the Occupied Part, based upon the total value of the Occupied Part relative to the value of the whole of the Works.
 - (ii) The provisions of Clause 27 (Defects After Completion) shall apply as if the Occupied Part was the subject of a separate and distinct contract between the Employer and the Contractor
 - (iii) The Contractor may reduce the value of the Works insured under Clause 38A (if applicable) by the total value of the Occupied Part as from the Date of Practical Completion of the Occupied Part, from which date the Contractor's obligations under Clauses 34 and 38A (if applicable) shall cease in relation to the Occupied Part (except for any outstanding works in the Occupied Part until such time as their completion by the Contractor has been certified by the Superintending Officer.)
 - (iv) The rate of Liquidated Damages for delay pursuant to Clause 26 shall be reduced proportionately based upon the total value of the Occupied Part relative to the total value of the whole of the Works.
 - (v) On the expiry of the Defects Liability Period of the Occupied Part or upon the issue of the Certificate of Making Good Defects of the Occupied Part, whichever is the later, the Contractor shall be paid the second half of the Retention Monies calculated on the same basis as the first half. The Limit of Retention under Clause 42.3 shall be reduced by the amount of Retention Monies so released under this Clause 23.

- (b) For the avoidance of doubt, nothing contained in sub-clause 23.2(a) shall entitle the Contractor to the release of the whole or any part of the Performance Security Deposit deposited by him pursuant to Option Module F (if applicable). The Performance Security Deposit (if applicable) shall be released or refunded only upon the issue of the Certificate of Practical Completion for the whole of the Works or in respect of the last section of the Works, as the case may be.

23.3 Occupation of Part without Consent

**Occupation of
Part without
Consent**

- (a) The Employer may enter and occupy such part of the Works prior to the completion of the whole of the Works without the consent of the Contractor pursuant to Clause 23.1 provided that:
 - (i) the completion of the Works has been delayed and a Certificate of Non-Completion which has been issued by the Superintending Officer under Clause 26.1 is currently operative; and
 - (ii) such entry and occupation of such part of the Works by the Employer can be effected without any unreasonable disturbance to the Contractor's arrangements for completing the remainder of the Works.
- (b) The Contractor shall upon the instruction of the Superintending Officer remove his Construction Plant or Temporary Works from the relevant part and permit the Employer to occupy the same and the provisions of Clause 23.1 and 23.2 shall apply in the same manner as if the Contractor had consented to the Employer taking possession of such part.

24 EARLY WARNING

- 24.1 The Contractor and the Superintending Officer may provide an early warning by notifying the other as soon as either becomes aware of any matter which could:
 - (a) increase the Contract Sum or the Contractor's total cost,
 - (b) delay the Time for Completion,
 - (c) delay meeting a key date or milestone as set out in the works programme,
 - (d) impair the performance of the Contract or the Works.
- 24.2 The Superintending Officer shall enter such early warning matters at Clause 24.1 in the Early Warning Register. Early warning of a matter which is a compensation event pursuant to Clause 31 that has previously been notified under Clause 32, is not required .
- 24.3 The 'Early Warning Register' is a register of matters notified by the Superintending Officer or the Contractor as early warning matters. It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.

Early Warning

**Early Warning
Register**

24.4 The Superintending Officer shall prepare the form of Early Warning Register and issue it to the Contractor within two weeks after the Date of Commencement.

24.5 The Superintending Officer shall instruct the Contractor to attend a first early warning meeting within two weeks of the Date of Commencement. Later early warning meetings shall be held at the interval prescribed in the Appendix and at such other times as may be notified by the Superintending Office or the Contractor. The Superintending Officer or Contractor may instruct other people to attend an early warning meeting if the other so agrees. A subcontractor is required to attend an early warning meeting if its attendance would assist in deciding the actions to be taken.

Early Warning Meetings

24.6 At an early warning meeting, those who attend shall co-operate in:

- (a) making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced;
- (b) seeking solutions that will bring advantage to all those who will be affected by an early warning matter;
- (c) deciding on the actions which will be taken and who, in accordance with the Contract, will take them;
- (d) deciding which matters can be removed from the Early Warning Register; and
- (e) reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the Contract, will take them.

24.7 The Superintending Officer shall revise the Early Warning Register pursuant to the decisions made at each early warning meeting and shall issue the revised Early Warning Register to the Contractor within two weeks of the relevant early warning meeting. If a decision necessitates a change to the scope of the Works, the Superintending Officer shall issue an instruction for such change together with the revised Early Warning Register.

25 EXPEDITING PROGRESS OF WORKS

25.1 Notification to Expedite

Notification to Expedite

- (a) If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section of the Works is at any time, in the opinion of the Superintending Officer, too slow to achieve completion by the Time for Completion of the Works or any section of the Works, the Superintending Officer shall instruct the Contractor accordingly.

- (b) The Contractor shall upon the receipt of such instruction take such steps as are necessary to expedite progress and to complete the Works or any section of the Works in accordance with the said instruction. Such steps shall include, if required by the Superintending Officer, the preparation of a revised or modified Works programme for acceptance pursuant to Clause 5.
- (c) Unless the Superintending Officer shall issue an instruction for Variation in accordance with Clause 28, the Contractor shall not be entitled to any additional payment whatsoever for taking the steps referred to in sub-clause 25.1(b).

25.2 Work to Expedite Progress

Work to Expedite Progress

If as a result of any instruction given by the Superintending Officer under Clause 25.1, the Contractor considers that it is necessary to do any work at night or on Public Holidays, he shall seek the consent of the Superintending Officer in accordance with the provisions of Clause 13.1.

26 NON-COMPLETION AND DAMAGES FOR DELAY IN COMPLETION

26.1 Certificate of Non-Completion

Certificate of Non-Completion

- (a) If the Works have not been completed within the Time for Completion or any revised Time for Completion or extended time granted pursuant to Clause 32.6(b)(ii) and the Superintending Officer is of the opinion the same ought reasonably so to have been completed, the Superintending Officer shall issue a certificate to that effect. Such certificate shall be referred to as the “**Certificate of Non-Completion**”. The Certificate of Non-Completion shall be issued to the Contractor with a copy to:
 - (i) the Employer, and
 - (ii) where it involves a Nominated Sub-Contractor or Nominated Supplier (if Option Module C applies) then to the said Nominated Sub-Contractor or Nominated Supplier.

Provided always the Certificate of Non-Completion shall not be issued unreasonably or vexatiously.

- (c) If, under sub-clause 32.6(c), the Superintending Officer revises/fixes a later Time for Completion, then any Certificate of Non-Completion previously issued shall cease to be of effect and the Superintending Officer shall issue such further Certificate of Non-Completion as may be necessary. The Employer shall then pay or repay to the Contractor any amounts recovered or allowed or paid under Clause 26.2 for the period up to such later Time for Completion.

26.2 Damages for Non-Completion

**Damages for
Non-Completion**

Upon the receipt of a Certificate of Non-Completion the Employer shall be entitled to recover from the Contractor Liquidated Damages calculated at the rate stated in the Appendix for the period from the Time for Completion or any extended Time for Completion where applicable to the Date of Practical Completion, provided always that the total amount of Liquidated Damages recovered by the Employer under this Clause shall not exceed the amount stated in the Appendix as the Limit of Liquidated Damages. The Employer may deduct such Liquidated Damages, whether in whole or in part, from any payment due or to become due to the Contractor under the Contract or recover such amount as a debt due from the Contractor.

- (a) The payment or deduction of such Liquidated Damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.
- (b) In the event the Limit of Liquidated Damages is reached, the Employer shall have the right may to terminate the Contract and the provisions of Clause 44.3 shall apply.

26.3 Employer's Rights for Damages at Law

**Employer's
Rights for
Damages at Law**

In the event that the Employer for whatever reason shall not be entitled at law to recover Liquidated Damages, the Employer shall remain entitled to recover such loss, expense, costs or damages as he would have been entitled at law.

26.4 Extension of Time During Delay Period

**Extension of
Time During
Delay Period**

- (a) After the issue of the Certificate of Non-Completion, if the execution of the Works is subsequently delayed by any of the compensation events set out in sub-clauses 31.1(1), (5) to (21) inclusive, the Employer's right to Liquidated Damages shall not be affected by such delaying events but subject to compliance by the Contractor of Clause 32, the Superintending Officer shall grant an extension of time that is fair, reasonable and necessary pursuant to Clause 32.
- (b) Such extension of time shall be added to the Time for Completion for the Works or any section of the Works.
- (c) The Employer shall then pay or repay the Contractor any amounts of Liquidated Damages recovered, allowed or paid under Clause 26.2 for the said extension of time.

27 DEFECTS LIABILITY AFTER COMPLETION

27.1 Completion of Minor Outstanding Work and Remedying Defects

Completion of Outstanding Work and Remedying Defects

- (a) The Contractor shall, during the Defects Liability Period complete with due expedition or within such time as may be specified by the Superintending Officer, any minor outstanding work at the Date of Practical Completion (whether or not the Contractor has undertaken to do so).
- (b) The Superintending Officer may at any time during the Defects Liability Period or within 14 Days after its expiration instruct the Contractor to execute and complete any minor outstanding works, all works of reconstruction and remedying of any Defects. The Contractor shall complete all such works with due expedition or within such time as may be specified by the Superintending Officer.
- (c) The obligation of the Contractor to comply with this Clause 27 shall not in any way prejudice the Employer's rights under the provisions of any guarantees and/or warranties relating to the Works or any section of the Works provided in accordance with the Contract including those provided by sub-contractors and suppliers, whether nominated or otherwise.

27.2 Cost of Completion of Minor Outstanding Works and Remedying Defects

Cost of Remedying Defects

All works referred to in sub-clauses 27.1(a) and (b) shall be executed by the Contractor at his own cost.

27.3 Default in Remedying Defects

Default in Remedying Defects

If the Contractor defaults in carrying out his obligations pursuant to sub-clauses 27.1(a) and/or (b) then the Employer shall be entitled to employ and pay other persons to carry out the same. The Superintending Officer shall evaluate and certify the reasonable sum consequent on or incidental to carrying out such work. Such sum certified shall be recoverable from the Contractor by the Employer and may be recoverable by the Employer under Clause 48.

27.4 Diminution in Value of Works

- (a) If the Defects which the Contractor would otherwise have been liable to rectify at his own cost or any minor outstanding works is such that in the opinion of the Superintending Officer it will be impracticable or inconvenient to the Employer to have the Contractor to rectify or to execute the same, the Superintending Officer shall ascertain an amount of reduction from the Contract Sum representing the diminution in the value of the Works to the

- (b) Employer due to the existence of such Defects or minor outstanding works. In determining the diminution in the value of the Works, the Superintending Officer may take into account any savings in cost to the Contractor which he would otherwise incur if he was to rectify the Defects or complete the minor outstanding works.
- (c) The amount of such reduction shall be recoverable by the Employer from the Contractor under Clause 48.

Diminution in Value of Works

27.5 Contractor to Search

Contractor to Search

- (a) If Defects appear at any time prior to the expiration of the Defects Liability Period, the Superintending Officer may instruct the Contractor to search under his direction for the cause of the Defects.

- (b) If the Contractor is liable for such Defects under the Contract, the cost of the work carried out such searching shall be borne by the Contractor and the Contractor shall in such case remedy such Defects at his own cost.
- (c) If the Contractor is not liable for such Defects under the Contract then such work of searching and remedy carried out by the Contractor shall be at the Employer's cost.

27.6 Certificate of Making Good Defects

Certificate of Making Good Defects

- (a) At the expiry of the Defects Liability Period and when all the Defects and minor outstanding works notified by the Superintending Officer to the Contractor under this Clause 27 have either been made good or completed by the Contractor in compliance with the Superintending Officer's instructions, or have been dealt with by the Superintending Officer under Clause 27.4, the Superintending Officer shall issue a certificate to that effect. Such certificate shall be referred to as the "**Certificate of Making Good Defects**".
- (b) The Certificate of Making Good Defects shall be issued to the Contractor with a copy to:
 - (i) the Employer, and
 - (ii) where it involves a Nominated Sub-Contractor or Nominated Supplier (if Option Module C applies) then to the said Nominated Sub-Contractor or Nominated Supplier.
- (c) Subject to Clause 27.6(a), in the event the Superintending Officer fails to issue the Certificate of Making Good Defects within 14 Days from the date of receipt of the Contractor's request for the same, the Certificate of Making Good Defects shall be deemed to be issued on the last day of that said period.
- (d) The Certificate of Making Good Defects shall finally discharge the Contractor from any physical attendance upon the Works for the purpose of remedying Defects, but shall not prejudice any other rights of the Employer in regard to latent Defects or other breaches of the Contract.

27.7 Liability at Law

Liability at Law

The provisions of Clauses 27.1 to 27.6 shall not derogate in any way whatsoever from the Contractor's liability under the Contract or otherwise at law.

28 VARIATION

28.1 The term “Variation” means any change in the original Contract intention as deduced from the Contract Documents as a whole describing or defining the Works to be carried out and shall include but is not restricted to:

- (a) changes intended to alter the use to which the Works will be put;
- (b) an increase and/or decrease in the quantity of any part of the Works;
- (a) an addition to or omission from the Works (but not if the omitted work is to be carried out by the Employer or by another contractor);
- (b) a change in the character, quality and/or nature of any part of the Works, including the goods and materials;
- (c) a change in the levels, elevations, layout and dimensions of any part of the Works;
- (d) the demolition of or removal of any part of the Works, Equipment, materials or goods no longer desired by the Employer or the Superintending Officer;
- (e) a change in the Contractor’s Temporary Work and/or method of working and/or Construction Plant imposed by the Employer or the Superintending Officer;
- (f) any limitation of working hours, working space, access to or utilization of any specific part of the Site;
- (g) the execution and completion of the work in any specific order;
- (h) the postponement of any part of the Works desired by the Employer;
- (i) a requirement to complete the Works or any part or section of the Works by a date earlier than the Time for Completion.

For the avoidance of doubt the term “Variation” shall include changes which may be intended to alter the use to which the Works will be put, but shall exclude any instruction which has arisen due to or is necessitated by or intended to cure any default of or breach of contract by the Contractor.

28.2 **Power to Order Variations**

**Power to Order
Variations**

- (a) The Superintending Officer may at any time issue an instruction in writing requiring a Variation, subject always to the issuance of SO Notification pursuant to Clause 32.1(a). Provided that (where Option Module A is applicable) no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause 28.2, but is the result of the remeasurement of provisional quantities stated in the Bills of Quantities.
- (b) No such Variation shall in any way invalidate the Contract, but the effect, if any, of all such Variations shall be valued in accordance with Clause 29 provided that where the issue of an instruction to vary the Works is necessitated by some default or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.
- (c) If or to the extent that an instruction does not state that it constitutes a Variation but the Contractor considers that it does, then the Contractor shall comply with the said instructions and proceed in accordance with Clause 32.1(b).
- (d) Notwithstanding any dispute with regard to whether or not any work instructed by the Superintending Officer constitutes a Variation, the Contractor shall, unless otherwise instructed by the Superintending Officer, forthwith give effect to the said instruction subject to Clause 28.2(e). For the avoidance of doubt, the Contractor's compliance with the instruction given by the Superintendent Officer shall be without prejudice to any rights and/or remedies of the Contractor with regard to the same.
- (e) The Contractor shall carry out with due diligence and expedition all Variations pending the valuation of the Variation by the Superintending Officer as a compensation event pursuant to Clause 31 and subject to the issuance of SO Notification to the Contractor pursuant to Clause 32.1(a). , .If the Contractor cannot readily obtain the goods, materials, plant or equipment required for the Variation, the Contractor shall promptly give notice to the Superintending Officer, together with supporting particulars. Upon receiving this notice, the Superintending Officer may cancel, confirm or vary the instruction.

29 VALUATION OF VARIATIONS

29.1 Valuation Method

Valuation Method

All Variations shall be valued in accordance with the following valuation methods:

- (a) Where the varied work is of a similar character to, is executed under similar conditions as, and does not significantly change the quantity of the work described in the Contract Documents, the Rates for the Works as set out in the Contract shall be used for the valuation; or
- (b) Where the varied work is of a similar character to the work described in the Contract Documents and/or is not executed under similar conditions and/or involves significant changes in the quantity of such work described in the Contract Documents, the Rates for the Works as set out in the Contract shall be basis for the valuation but with a fair allowance for any differences in conditions and/or changes in quantity; or
- (c) Where paragraphs (a) and (b) above do not apply, then by valuation at fair market rates and prices; or
- (d) Where none of the above methods is applicable or appropriate in the circumstances of that particular varied work, the valuation shall be based on Daywork rates and prices of necessary Plant, materials or goods, labour and any additional Construction Plant necessary for the execution of the varied work subject to the following:
 - (i) As a condition precedent to any right to any payment under this paragraph, the Contractor shall have received from the Superintending Officer an instruction and/or acceptance of quote authorising that the varied work be executed on Dayworkbasis.
 - (ii) Unless otherwise specified the Contractor shall be entitled to additional 15 per cent on the Daywork rates which percentage shall be deemed to compensateadequately the Contractor in respect of all supervision, the use of Construction Plant (except for additional Construction Plant necessary for the execution of the varied work), overheads, profit and all other loss, expense, costs or damages incurred in or connected with the execution of the varied work.
 - (iii) The Contractor to maintain proper daily records specifying the time spent by each workman of the relevant trade (and if required by the Superintending Officer, specifying the workmen's names), any Construction Plant employed and Equipment, materials or goods used in the execution of the varied work, and the relevant vouchers, delivery orders or receipts.

- (e) The Rates for the Works as set out in the Contract shall be used for the valuation of work omitted; provided that if the omission varies the conditions under which any remaining work are carried out, the values for such remaining work shall be determined in accordance with sub-clauses 29.1(b) or (c) or (d) as the case may be.

30 MEASUREMENT

30.1 Contractor to Attend Measurement

**Contractor to
Attend
Measurement**

The Superintending Officer shall give reasonable notice to the Contractor when he requires any part of the Works to be measured. The Contractor shall then:

- (a) forthwith attend or send a properly qualified and authorised representative to take jointly with the Superintending Officer any measurements of the Works that may be necessary for the purposes of any valuation, including the valuation of any compensation event; and
- (b) supply documents and information for the taking or calculation of any measurement and all other particulars that may be reasonable required by the Superintending Officer for the purposes of such valuation.

30.2 Contractor to Provide Assistance

**Contractor to
Provide
Assistance**

The Contractor shall at his own cost provide the Superintending Officer with assistance and with adequate personnel and appliances for measuring the Works.

30.3 Record of Measurements

**Record of
Measurements**

- (a) Any measurement taken jointly shall be recorded at the time and signed by the representatives of the Contractor and the Superintending Officer.
- (b) If the Contractor does not attend or send a representative to take the measurements jointly with the Superintending Officer or sign the measurements taken, the measurements made by the Superintending Officer and notified to the Contractor shall, in the absence of any manifest error, be taken to be correct and shall be final and binding on the Contractor.

30.4 **Failure to Agree Measurements**

Failure to Agree Measurements

- (a) If the Contractor attends or sends a representative but there is no agreement on the whole or part of the measurements, the Contractor shall notify in writing the Superintending Officer within 14 Days of the date upon which the measurements were taken his disagreement regarding the part of measurements taken by the Superintending Officer. Such notice shall set out in detail the measurement in question and supported by relevant documents and other information.
- (b) The Superintending Officer shall within 14 Days of the receipt of such documents or information submitted by the Contractor, notify the Contractor of his decision by either confirming his measurement previously made or amending the whole or any part of the same.

31 COMPENSATION EVENT

31.1 The following are compensation events for the purposes of the Contract:

- (1) The Superintending Officer gives an instruction for Variation of the Works under Clause 28 (except where such change was made in order to accept defect of the Works or arises from, necessitated by or intended to cure any default or breach of contract by the Contractor);
- (2) Exceptionally inclement weather;
- (3) Industrial action by workmen, strikes, lock-outs or embargoes affecting any of the trades employed upon the Works or in the preparation, manufacture or transportation of any Equipment, materials or goods for the Works and provided that the same are not due to any unreasonable act or default of the Contractor or of any sub-contractor or supplier. Provided that this event shall only apply if the industrial action by workmen, strike, lock-out or embargo causing delay is in Malaysia;
- (4) One or more of the Excepted Risks (time only);
- (5) The Contractor not having received from the Superintending Officer within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice has been given by the Contractor in accordance with Clause 4.6 or the supplementary or revised drawing, specifications, or instruction as required by Clause 4.7;
- (6) An instruction from the Superintending Officer to resolve a Discrepancy in or between any of the Contract Documents pursuant to Clause 7.5;
- (7) Compliance with Statutory Requirements for which the Employer

is responsible under Clause 10.1 or which results in a Variation pursuant to Clause 10.2;

- (8) Ordering of test by the Superintending Officer which is not intended by or provided for in the Contract pursuant to Clause 15.4 and the uncovering or making openings for inspection of any work which is not intended by or provided for in the Contract pursuant to Clause 15.6, unless the test or inspection showed that the work, the Equipment, materials, goods or workmanship were not in accordance with the provisions of the Contract;
- (9) Failure of the Employer to give possession of the Site or any part of the Site to the Contractor as required by Clause 17.2;
- (10) Acts or omissions of or disruption caused by other persons or contractors employed by the Employer in executing work not forming part of the Contract;
- (11) Subject to sub-clause 19.1(b) an instruction by the Superintending Officer to suspend any work;
- (12) Damage, loss or injury to the Works or part of the Works caused by any one or more of the risks covered by the insurance policies referred to in Clause 38A, 38B or 38C, whichever is applicable. For this compensation event, only change of Date or Time for Completion is allowed;
- (13) The issue of an instruction by the Superintending Officer in respect of antiquities and fossils under Clause 39;
- (14) The issue of an instruction by the Superintending Officer in relation to a Prime Cost or P.C or Provisional Sum item which gives rise to a Variation of the work described under the Prime Cost or P.C. or Provisional Sum item in the Contract Documents;
- (15) If Option Module C applies, delays on the part of Nominated Sub-Contractors or Nominated Suppliers for the same reasons asset out in sub-clauses 31.1(2) to 31.1(14) above, provided that the same are not due to any act, negligence, default or breach of contract by the Nominated Sub-Contractors or Nominated Suppliers or any of their respective servants or agents;
- (16) An event which stops the Contractor from completing the whole of the Works either by the Date for Completion or at all, and which:
 - (a) neither Party could prevent;
 - (b) an experienced contractor would have judged at the Contract date to have such a small chance of occurring that it would have been unreasonable to have allowed for it; and
 - (c) is not one of the other compensation events stated in the Contract;
- (17) If physical condition(s) which is within the Site (not pertaining exceptionally inclement weather) and where an experienced contractor would have judged at the Contract date to have such a

small chance of occurring that it would have been unreasonable to have allowed for it. Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing this compensation event;

- (18) The Superintending Officer notifies the Contractor of a correction to an assumption which the Superintending Officer stated about a compensation event;
- (19) A breach of Contract by the Employer which is not one of the other compensation events in the Contract;
- (20) The Superintending Officer notifies the Contractor that a quotation for a proposed instruction is not accepted.

32 COMPENSATION EVENTS PROCEDURE

32.1 Notification of compensation events

- (a) For a compensation event which arises from the Superintending Officer giving an instruction or notification, issuing a certificate or changing an earlier decision, the Superintending Officer shall notify the Contractor of the compensation event at the time of that communication (“**SO Notification**”). The SO Notification shall include the instruction to the Contractor to submit quotation(s) unless the compensation event arises from the Contractor’s fault or has no effect upon the Contract Sum, completion of the Works or meeting the Date/Time for Completion.
- (b) The Contractor shall notify the Superintending Officer of a compensation event if the Contractor believes that an event which has happened or is expected to happen is a compensation event and no SO Notification under sub-clause 32.1(a) is given (“**Contractor’s Notification**”). If the Contractor does not provide the Contractor’s Notification within 30 Days of becoming aware of such event, the Contract Sum or Time for Completion shall not be adjusted unless such event arises from the Superintending Officer giving an instruction or notification, issuing a certificate or changing an earlier decision.
- (c) The Superintending Officer shall reply to the Contractor's Notification under sub-clause 32.1(b) within 14 Days from receipt of the same or such longer period to which the Contractor agrees. Subject to sub-clause 32.1(d), if the Superintending Officer determines that the event is a compensation event, the Superintending Officer shall notify the Contractor accordingly and include in his reply an instruction to the Contractor to submit quotation(s).
- (d) If:
 - (i) the compensation event arises from a fault of the Contractor;
 - (ii) the event has not happened and is not expected to happen;
 - (iii) the Contractor has not notified the Superintending Officer of the event within the time period set out in the Conditions;

- (iv) the compensation event has no effect upon the Contract Sum, completion of the Works or achievement of the Time for Completion;
- or
- (v) the event is not a compensation event under Clause 31.1;

the Superintending Officer shall notify the Contractor that the Contract Sum or /Time for Completion is not adjusted and state the reason in its reply.

- (e) If the Superintending Officer fails to reply to the Contractor's Notification under sub-clause 32.1(b) within 14 Days from receipt of the same or such longer period to which the Contractor agrees, the Contractor may notify the Superintending Officer in writing of that failure (“**Failure Notice**”). If the failure continues for a further 7 Days after the Failure Notice, it is deemed that the event is a compensation event and the Contractor shall proceed to submit quotation(s) to the Superintending Officer. For the avoidance of doubt, an event shall only be deemed as a compensation event unless the Contractor provides the Failure Notice.
- (f) If the Superintending Officer decides that the Contractor did not give an early warning of a compensation event which an experienced contractor could have given, the Superintending Officer shall state this in its instruction to the Contractor to submit quotation(s).
- (g) If the effect of a compensation event is too uncertain to be forecast reasonably, the Superintending Officer can state assumptions about the compensation event in its instruction to the Contractor to submit quotation(s) and these assumptions shall be taken into account in the assessment of the event.. If any of the assumptions is later found to be wrong, the Superintendent Officer shall notify the Contractor of a correction.
- (h) A compensation event shall not be notified by the Superintendent Officer or the Contractor after the Works have achieved Practical Completion or after the Time for Completion, whichever is earlier.

32.2 Quotation for compensation events

- (a) After discussing with the Contractor different ways of dealing with the compensation events which are practicable, the Superintending Officer may instruct the Contractor to submit alternative quotations. The Contractor shall submit the required quotations to the Superintending Officer and may submit quotations for other methods of dealing with the compensation event which it considers practicable.
- (b) Quotations for a compensation event shall include the Contractor’s assessment of proposed changes to the Contract Sum and any delay to the Time for Completion and any key dates. If the works programme for remaining work is altered by the compensation event, the Contractor shall include the alterations to the works programme in the quotations.
- (c) The Contractor shall submit quotations within 21 Days of being instructed to do so by the Superintending Officer. The Superintending

Officer shall reply within 14 Days of receipt of the Contractor's submission of quote to:

- (i) accept the quotation;
 - (ii) instruct the Contractor to submit a revised quotation; or
 - (iii) notify that the Superintending Officer will be making the assessment.
- (d) The Superintending Officer can only instruct the Contractor to submit a revised quotation after explaining the reasons for doing so to the Contractor. The Contractor shall submit such revised quotation within 21 Days of being instructed to do so.
- (e) The Superintending Officer and the Contractor may mutually agree to the extension of time for:
- (i) the Contractor to submit quotations for a compensation event; or
 - (ii) the Superintending Officer to reply to a quotation;
- provided such agreement is made before the due date under sub-clause 32.2(c). The Superintending Officer shall inform the Contractor of the extension which has been mutually agreed.
- (f) If the Superintending Officer does not reply to a quotation within the time provided under sub-clause 32.2(c), the Contractor may provide a notice to the Superintending Officer of that failure. If the Contractor submitted more than one quotation for the compensation event, the notice shall state which quotation the Contractor proposes is to be used. If the failure continues for a further 7 Days after the Contractor's said notice of failure, the quotation submitted is deemed accepted by the Superintending Officer. For the avoidance of doubt, the Superintending Officer shall not be deemed to have accepted a quotation unless the Contractor has provided a notice of failure in accordance with this sub-clause.

32.3 Assessing compensation events

- (a) The change to the Contract Sum in respect of a compensation event under Clause 31.1(1) which is not a Variation under Clause 28 is assessed as the effect of the compensation event upon:
- (i) the actual cost of the work done by the *relevant date*,
 - (ii) the forecast cost of the work not done by the *relevant date*, and
 - (iii) any administrative fee resulted by the change.
- (b) The '*relevant date*' for a compensation event that arises from the Superintending Officer giving an instruction or notification, issuing a certificate or changing an earlier decision is the '*date of the communication*'. The '*relevant date*' for any other compensation events is the '*date of the notification of the compensation event*'.
- (c) The Superintending Officer and the Contractor may agree on rates or lump sums to assess the change to the Contract Sum for compensation event in relation to Variations under Clause 28, subject to valuation pursuant to Clause 29.

- (c) The Contract Sum shall not be reduced unless the compensation event will result in the reduction of the cost of executing the Works and the compensation event is:
 - (i) a change to the scope of Works (other than a change to the scope instructed by the Employer) which the Contractor proposed and the Superintending Officer accepted; or
 - (ii) a correction to an assumption stated by the Superintending Officer for assessing an earlier compensation event.

- (d) A delay to the Date for Completion is assessed as the length of time that, due to the compensation event, planned completion is later than planned completion as shown on the works programme current at the *relevant date*. The Superintending Officer shall also take into account the following:
 - (i) any extension to the Time for Completion previously made;
 - (ii) the effect or extent of any work omitted or (where Option Module A is applicable) decrease in the quantity of any work as a result of the remeasurement of provisional quantities stated in the Bill of Quantities under the Contract;
 - (iii) any delays which may affect the critical path or operate concurrently with the delay due to the event or events in question, including those which are due to acts or defaults of the Contractor.

- (e) When assessing delay, only those operations which the Contractor has not completed and are affected by the compensation event are to be changed in such assessment.

- (f) The Employer's and the Contractor's only rights in respect of a compensation event is their right to adjustments of the Contract Sum and Time for Completion.

- (g) If the Superintending Officer has stated in the instruction to submit quotations that the Contractor did not give an early warning of the event which an experienced contractor could have given, the compensation event shall be assessed as if the Contractor had given the early warning.

- (h) The assessment of the effect of a compensation event is based upon the assumptions that the Contractor reacts competently and promptly to the event and that any cost and time due to the event are reasonably incurred.

- (i) A compensation event which is an instruction to change the scope of Works in order to resolve an ambiguity or inconsistency is assessed as if the Contract Sum, the Time for Completion and the key dates (if any) were for the interpretation most favourable to the party which did not provide the said scope of Works.

- (j) If a change to the scope of Works makes the description of the

condition for a key date incorrect, the Superintending Officer shall correct the description. This correction is taken into account in assessing the compensation event for the change to the said scope of Works.

32.4 Superintending Officer's Assessment

- (a) The Superintending Officer shall assess a compensation event:
 - (i) if the Contractor has not submitted the quotation and details of its assessment within the time allowed under Clause 32.2;
 - (ii) if the Superintending Officer decides that the Contractor has not assessed the compensation event correctly in the quotation and has not instructed the Contractor to submit a revised quotation;
 - (iii) if the Contractor submits quotation for the compensation event but did not submit a programme or alterations to the works programme under sub-clause 32.2(b); or
 - (iv) if the Contractor submits quotations for the compensation event but the Superintending Officer has not accepted the Contractor's latest works programme for one of the reasons stated in the Contract.
- (b) The Superintending Officer shall assess the latest approved works programme for the remaining Works and uses it in his assessment of a compensation event if the Contractor has not submitted a programme or alterations to the works programme for acceptance as required by the Contract; or the Superintending Officer has not accepted the Contractor's latest works programme for one of the reasons stated in the Contract.
- (c) The Superintending Officer shall notify the Contractor of his assessment of a compensation event and gives details of the assessment within the period allowed for the Contractor's submission of its quotation for the same compensation event. This period commences when the need for the Superintending Officer's assessment becomes apparent.
- (d) If the Superintending Officer does not assess a compensation event within the time allowed, the Contractor may notify the Superintending Officer of that failure. If the Contractor submitted more than one quotation for the compensation event, the notification states which quotation the Contractor proposes is to be used. If the failure continues for a further 7 Days after the Contractor's said failure notification, the quotation is deemed accepted by the Superintending Officer.

32.5 Proposed Instructions

- (a) The Superintending Officer may instruct the Contractor to submit a quotation for a proposed instruction. The Superintending Officer shall state in the instruction the date by which the proposed instruction may

be given. The Contractor shall not put the proposed instruction into effect.

- (b) The Contractor shall submit quotation for the proposed instruction within 21 Days of being instructed to do so by the Superintending Officer. The quotation is assessed as a compensation event. The Superintending Officer shall reply to the Contractor's quotation by the date when the proposed instruction may be given. The reply shall be:
 - (i) an instruction to submit a revised quotation including the reasons for doing so;
 - (ii) the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation; or
 - (iii) a notification that the quotation is not accepted.
- (c) If the Superintending Officer does not reply to the quotation within the time stipulated, the quotation is not accepted.
- (d) If the quotation is not accepted, the Superintending Officer may issue the instruction, notify the instruction as a compensation event and instruct the Contractor to submit a revised quotation.

32.6 Implementing compensation events

- (a) A compensation event is implemented when:
 - (i) the Superintending Officer notifies the Contractor of the acceptance of the Contractor's quotation;
 - (ii) the Superintending Officer notifies the Contractor of an assessment made by the Superintending Officer; or
 - (iii) a Contractor's quotation is deemed as accepted by the Superintending Officer pursuant to sub-clause 32.4(d).
- (b) When a compensation event is implemented, the Contract Sum and/or the Time for Completion are changed accordingly, and
 - (i) any change to the Contract Sum including any amount thereon shall be included/incorporated in interim certificates issued by the Superintending Officer pursuant to Clause 42;
 - (ii) any change to the Time for Completion shall be notified by the Superintending Officer to the Contractor in a certificate (hereinafter referred to as the “**Certificate of Extension of Time**”), a copy of which shall also be extended to:
 - (1) the Employer; and
 - (2) where it involves a Nominated Sub-Contractor or Nominated Supplier (if Option Module C applies) then to the said Nominated Sub-Contractor or Nominated Supplier.
- (c) The Superintending Officer may revise his assessment of Time for Completion of an implemented compensation event made by extending the Time for Completion at any time prior to the issuance of the Final Certificate under Clause 42.8 if in his opinion, the

granting of such is fair and reasonable.

- (d) The assessment of an implemented compensation event is not revised except as stated in the Conditions

33 CONSTRUCTION PLANT, TEMPORARY WORKS, MATERIALS AND GOODS

33.1 Exclusive Use for the Works

**Exclusive Use
for the Works**

- (a) All Construction Plant, Temporary Works, Equipment, materials and goods provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works.
- (b) The Contractor shall not without the written consent of the Superintending Officer remove such Construction Plant, Temporary Works, Equipment, materials or goods or any part of the same except for the purpose of moving it within the Site. Provided that the consent of the Superintending Officer shall not be required for vehicles engaged in transporting any staff, labour, Construction Plant, Equipment, materials or goods to and from the Site.

33.2 Passing of Property and Vesting

**Passing of
Property and
Vesting**

- (a) Property in Equipment, materials or goods shall pass to the Employer when payment is made for the same in accordance with Clause 42.
- (b) Construction Plant and Temporary Works, owned by the Contractor, or by any company which the Contractor has controlling interests, shall, when on the Site, be deemed to be the property of the Employer. Provided always that the vesting of such property in the Employer shall not prejudice the right of the Contractor to the sole use of the Construction Plant and Temporary Works, for the purpose of the Works nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.

33.3 Employer Not Liable for Damage

**Employer not
liable for
Damage**

The Employer shall not be liable for loss or damage to any of the Construction Plant, Temporary Works, Equipment, materials or goods nor for any loss, expense, costs, damages, liability or claim arising from the presence or use of the Construction Plant, Temporary Works, Equipment, materials or goods due to Excepted Risks or except and to the extent that the same is caused by any act or neglect of the Employer or of any person for whom the Employer is responsible.

33.4 Conditions for Hire of Construction Plant

With a view to securing the continued availability for the purpose of executing the Works in the event of determination of the Contractor's employment under Clause 44, of any hired Construction Plant or Temporary Works, the Contractor shall not bring on to the Site any hired Construction Plant or Temporary Works unless there is an agreement for the hire of such Construction Plant or Temporary Works (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner of such

Construction Plant or Temporary Works will:

- (a) on request in writing made by the Employer within 14 Days after the date on which the determination of the Contractor's employment has become effective, and
- (b) on the Employer undertaking to pay the hire charges in respect of such Construction Plant or Temporary Works from such date,

hire such Construction Plant or Temporary Works to the Employer on the same terms in all respects as the same was hired to the Contractor provided that the Employer shall be entitled to permit the use of such Construction Plant or Temporary Works by any other contractor employed by the Employer for the purpose of executing and completing the Works and remedying Defects under Clause 27.

33.5 Re-vesting and Removal

Re-vesting and Removal

- (a) Upon the removal from the Site, with the consent of the Superintending Officer under Clause 33.1, of any such Construction Plant, Temporary Works, Equipment, materials or goods as have become or been deemed to have become the property of the Employer under Clause 33.2, the property in such Construction Plant, Temporary Works, Equipment, materials or goods shall re-vest in the Contractor,
- (b) Upon the completion of the Works and the making good of all Defects, the property in the remainder of such Construction Plant, Temporary Works, Equipment, materials or goods shall, subject to Clause 44 (Determination by Employer), re-vest in the Contractor.

33.6 Incorporation of Clause in Sub-contracts

Incorporation of Clause in Sub-contracts

The Contractor shall, where entering into any sub-contract for the execution of any part of the Works, incorporate in such sub-contract (by reference or otherwise) the provisions of this Clause 33 in relation to Construction Plant, Temporary Works, Equipment, materials or goods brought on to the Site by the sub-contractor.

34 GENERAL RESPONSIBILITIES OF THE CONTRACTOR

34.1 Care of the Works

Care of the Works

- (a) From the Date of Commencement of the Works until the Date of Practical Completion (or the latest Date of Practical Completion if more than one) certified by the Superintending Officer pursuant to Clause 20.2, the Contractor shall take full responsibility for the care of the whole or any section of the Works as well as Equipment, materials or goods intended for or connected with the Works and all Construction Plant, Temporary Works and any other things of whatsoever nature required by the Contractor for the purposes of the Contract.
- (b) The Contractor shall take full responsibility for the care of any outstanding work which he has undertaken or shall be obliged to complete during the Defects Liability Period until such outstanding work has been completed to the satisfaction of the Superintending Officer.

34.2 Responsibility to Rectify Damage, Loss or Injury

Responsibility to Rectify Damage, Loss or Injury

- (a) In the event of any damage, loss or injury to the Works arising from any cause whatsoever (other than the Excepted Risks), the Contractor shall at his cost, make good with all reasonable expedition such damage, loss or injury to the satisfaction of the Superintending Officer and shall notwithstanding such damage, loss or injury proceed with the construction and completion of the Works in all respects in accordance with the Contract.
- (b) In the event of any damage, loss or injury to the Works arising from any of the Excepted Risks, the Contractor shall, if and to the extent required by any instruction of the Superintending Officer, rectify and make good the same.
- (c) In the event of any damage, loss or injury to the Works arising from an Excepted Risk and also from a risk for which the Contractor is responsible under Clause 34.1, the Superintending Officer shall, when certifying the amount of loss and expense under Clause 32, make a fair apportionment of the costs so that the Employer shall not be obliged to pay costs for which the Contractor is otherwise responsible under the Contract.

35 INDEMNITY PROVISIONS

35.1 Injury to Persons

Injury to Persons

The Contractor shall be liable for and shall indemnify the Employer against any loss, expense, costs, damages, liability or claim whatsoever whether arising at contract or at law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or by reason of the execution of the Works, subject always to Clause 35.3.

35.2 Damage to Property

Damage to Property

Without prejudice to his general obligations to design (to the extent required by the Contract), execute and complete the Works under Clause 7.2, the Contractor shall be liable for and indemnify the Employer against any loss, expense, costs, damages, liability or claim due to injury or damages of any kind to any property real or personal (including any property of the Employer other than the Works) insofar as such injury or damage arises out of or in the course of or by reason of the execution of the Works, subject always to Clause 35.3.

35.3 Contribution

Contribution

- (a) The Contractor's liability to indemnify the Employer under Clauses 35.1 and 35.2 shall be reduced in proportion to the extent to which any act or neglect of the Employer or of any person for whom the Employer is responsible, has contributed to the said death, injuries or damage.
- (b) The indemnities given by the Contractor under Clauses 35.1 and 35.2 shall not be defeated or reduced by reason of any negligence or omission of the Employer or the Superintending Officer or any person for whom they are responsible in failing to supervise or control the Contractor's site operations or methods of working or Temporary Works, or to detect or prevent or remedy defective work, or to ensure proper performance of any other obligations of the Contractor under the Contract.

35.4 Contractor to Rectify Damage

**Contractor to
Rectify Damage**

- (a) Without prejudice to the provisions of Clause 35.2, where damage, loss or injury of any kind arises to any property out of or in the course of or by reason of the execution of the Works, the Superintending Officer shall be entitled to instruct the Contractor to rectify any such damage, loss or injury at any time before the issue of the Certificate of Practical Completion pursuant to Clause 20.2 and the Contractor shall upon receipt of such an instruction forthwith comply with the same.
- (b) If the Contractor's liability is reduced under sub-clause 35.3(a) then the proportion for which the Employer is liable shall be treated as a Variation.

35.5 Damage to Property of Employer or Relevant Authority

**Damage to
Property of
Employer or
Relevant
Authority**

- (a) If the Contractor fails to comply with the instruction of the Superintending Officer under Clause 35.4 then the Employer shall be entitled to employ and pay other persons to carry out the same.
- (b) Where the damage, loss or injury is to property belonging to the Government or any other statutory body or local authority (herein referred to as "the relevant authority") then the Employer may pay the requisite amount to the relevant authority.
- (c) The Superintending Officer shall evaluate and certify the reasonable sum consequent on or incidental to such damage, loss or injury, which sum shall be recoverable from the Contractor by the Employer under Clause 48.
- (d) Provided that where payment is made to the relevant authority, the Employer shall furnish to or procure for the Contractor such evidence of payment made and such discharge or release as the Contractor may reasonably require.

36 INSURANCE FOR PERSONAL INJURY AND PROPERTY DAMAGE

36.1 Taking of Third Party Liability Insurance

Taking of Third Party Liability Insurance

- (a) Without prejudice to his liability to indemnify the Employer under Clause 35, the Contractor shall, before commencement of any work under the Contract, take out and maintain such insurance policy or policies as are necessary to cover the liability of the Contractor in respect of personal injuries or death or damage to property real or personal (other than the Works) arising out of or in the course of or by reason of the carrying out of the Works. Such insurance policy or policies shall be subject to such limitations as to the extent of liability for any one accident as may be set out in the Appendix. Where an excess is specified by the insurance policy or policies, it shall be the Contractor's responsibility to bear the amount of such excess.
- (b) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the Date of Commencement until the Date of Practical Completion and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 27.
- (c) The said insurance policy or policies shall include a "cross liability" provision such that the insurance shall apply to the Contractor and the Employer as separate insurers.
- (d) The insurance referred to in this Clause 36.1 shall be placed with an insurer approved by the Employer or the Superintending Officer.

36.2 Deposition of the Policies

Deposition of the Policies

The Contractor shall deposit with the Superintending Officer the original of each of the relevant policy or policies of insurance and the receipts in respect of premiums paid under such policy or policies.

36.3 Default in Insuring

Default in Insuring

Should the Contractor default in taking out or maintaining the insurance policy or policies as stipulated in Clause 36.1, the Employer (without prejudice to any rights or remedies available) may himself take out and/or maintain the necessary insurance policy or policies and the amount paid by him in respect of premiums shall be recoverable from the Contractor under Clause 48.

37 INSURANCE FOR WORKMEN

37.1 Employee's Social Security Scheme for Local Workmen

Employee's Social Security Scheme for Local Workmen

- (a) Without prejudice to his liability to indemnify the Employer under Clause 35.1, the Contractor shall register or cause to register all local workmen employed in the execution of the Works and who are subject to registration under the Employee's Social Security Scheme (hereinafter referred to as "SOCSO") in accordance with the Employees' Social Security Act, 1969 or any subsequent modification or re-enactment of the said Act.
- (b) For the purpose of Clause 37, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.
- (c) The Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the said Scheme to the Superintending Officer for verification and make payment of all necessary contributions from the Date for Commencement until the Date of Practical Completion of the Works. It shall be the duty of the Contractor to produce to the Superintending Officer contribution statement or payment vouchers as evidence of payment of such contributions, whether demanded or not.

37.2 Workmen's Compensation Insurance for Foreign Workers

Workmen's Compensation for Foreign Workers

- (a) Without prejudice to his liability to indemnify the Employer under Clause 35.1, the Contractor shall take out and maintain a Workmen's Compensation Insurance Policy for all foreign workers under the Workmen's Compensation Act 1952, Workmen's Compensation (Foreign Workers Compensation Scheme) (Insurance) Order 1998 or any subsequent modification or re-enactment of the said Act or Order.
- (b) Provided that, in relation to foreign workers employed by any subcontractor, the Contractor's obligations to insure under this Clause 37.2 shall be satisfied if the subcontractor has insured against the liability in respect of such foreign workers in such manner that the Employer and the Contractor is indemnified under the policy, but the Contractor shall require such subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.
- (c) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the Date of Commencement until the Date of Practical Completion and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 27.

- (d) Any such insurance as is referred to in Clause 37.2 shall be placed with an insurer approved by the Superintending Officer.
- (e) The Contractor shall deposit with the Superintending Officer the original of each of the relevant policy or policies of insurance and the receipts in respect of premiums paid under such policy or policies.

37.3 Insurance for Local Workmen not Subject to SOCSO

**Insurance for
Local Workmen
not Subject to
SOCSO**

- (a) Without prejudice to his liability to indemnify the Employer under Clause 35.1, the Contractor shall take out and maintain an insurance policy for local workmen who are not subject to registration under SOCSO in accordance with the Employees' Social Security Act, 1969 or any subsequent modification or re-enactment of the said Act.
- (b) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the Date of Commencement until the Date of Practical Completion and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 27.
- (c) Any such insurance as is referred to in Clause 37.3 shall be placed with an insurer approved by the Superintending Officer.
- (d) The Contractor shall deposit with the Superintending Officer the original of each of the relevant policy or policies of insurance and the receipts in respect of premiums paid under such policy or policies.

37.4 Default in Compliance

**Default in
Compliance**

If the Contractor defaults in complying with the provisions of Clause 37.1, 37.2 or 37.3, the Employer (without prejudice to any other rights or remedies available) may pay such premiums or contributions as they become due and remain unpaid and recover the amount of such premiums or contributions from the Contractor under Clause 48.

38 INSURANCE OF THE WORKS

38.1 Alternative Clauses

Alternative Clauses

Clause 38A or Clause 38B or Clause 38C shall apply whichever clause is stated to apply in the Appendix.

38A INSURANCE OF THE WORKS - BY THE CONTRACTOR

38A.1 All Risks Insurance

All Risks Insurance

- (a) Without limiting his obligations or responsibilities under Clause 34, the Contractor shall before commencement of any work under the Contract take out and maintain an All Risks Insurance policy in respect of the whole of the Works as well as Equipment, materials or goods intended for or connected with the Works and Temporary Works (but excluding tools and Construction Plant owned or hired by the Contractor or any sub-contractors) to the value of not less than the Contract Sum plus the percentage for professional fees and the amount for removal of debris (if any) as stated in the Appendix.
- (b) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and the sub-contractors from the Date of Commencement until the Date of Practical Completion or the date of determination of the employment of the Contractor under Clause 44 (Determination by Employer), or Clause 45 (Determination by Contractor), or termination of the Contract under Clause 46, whichever is the earlier.

38A.2 Deposition of Insurance

Deposition of Insurance

- (a) The insurance referred to in Clause 38A.1 shall be effected with an insurer and on terms approved by the Superintending Officer.
- (b) Each policy taken out pursuant to Clause 38A shall provide expressly for the payment, in the first place, to the Employer of any insurance money due under the policy.
- (c) The Contractor shall deposit with the Superintending Officer the original of each of the relevant policy or policies of insurance and the receipts in respect of premiums paid under such policy or policies.

38A.3 Default in Insuring

Default in Insuring

In the event the Contractor defaults in taking out or maintaining the insurance policy or policies as stipulated in Clause 38A.1, the Employer (without prejudice to any rights or remedies available) may himself take out and/or maintain the necessary insurance policy or policies and the amount paid by him in respect of premiums shall be recoverable from the Contractor under Clause 48.

38A.4 Maintenance of Independent General Policy

Maintenance of Independent General Policy

- (a) If the Contractor independently of his obligations under the Contract maintains a policy or policies of insurance with insurers approved by the Superintending Officer covering works which includes the Works under the Contract against the insured risks referred to in Clause 38A.1, and in like terms as to the sum insured (inclusive of the percentage for professional fees and amount for the removal of debris (if any) stated in the Appendix) and payment of insurance money to the Employer, then the maintenance by the Contractor of such policy or policies shall be a discharge of the Contractor's obligations to insure in the joint names of the Contractor and Employer, provided that the Employer's interest is endorsed on the same.
- (b) In such a case, the production by the Contractor of current certificates of insurance from the insurers confirming the existence and continuance of the relevant cover required by this Clause 38A with the appropriate endorsement of the Employer's interest on the same shall be sufficient discharge of the Contractor's obligation to deposit the policy or policies and receipts for premiums paid with the Employer.
- (c) Such certificates shall state expressly any exclusions or limitations of liability or insurance excesses under the policy.

38A.5 Contractor liable for Insurance Excesses

Contractor liable for Insurance Excesses

The Contractor shall be fully responsible and liable for any insurance excess stipulated in the insurance policy or policies provided under Clause 38A, provided that the Contractor's liability for such excess shall be reduced in proportion to the extent to which any act or neglect of the Employer or of any person for whom the Employer is responsible, has contributed to the said damage, loss or injury.

38A.6 Damage, Loss or Injury to the Works

Damage, Loss or Injury to the Works

- (a) If any damage, loss or injury affecting the whole or any part of the Works or any Equipment, materials or goods is occasioned by any one or more of the risks covered by the insurance policy or policies referred to in Clause 38A.1 then, upon discovering the said damage, loss or injury, the Contractor shall immediately give notice in writing to the Superintending Officer of the extent, nature and location of such damage, loss or injury.
- (b) The occurrence of such damage, loss or injury shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the Contract.
- (c) After any inspection required by the insurers or other persons authorised by the insurers in respect of a claim under the said insurance policy referred to in Clause 38A.1 has been completed, the Contractor shall subject to sub-clause 34.2(c) proceed immediately and with due diligence to make good with all reasonable expedition such damage, loss or injury including removal and disposal of any debris to the satisfaction of the Superintending Officer and proceed with the construction and completion of the Works.
- (d) The Contractor and any sub-contractors who are recognised as insureds under the said insurance policy referred to in Clause 38A.1 shall authorise the insurers to pay all monies from such insurance in respect of the damage, loss or injury referred to in sub-clause 38A.6(a) to the Employer. Any monies, if and when received shall be released to the Contractor (less only the said percentage for professional fees, if any) by instalments on the Interim Certificates issued by the Superintending Officer.
- (e) The amounts released under sub-clause 38A.6(d) shall be calculated as from the date of receipt of the monies in proportion to the extent of work of restoration, replacement or repair carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of such work of restoration, replacement or repair and the removal and disposal of debris other than the monies received under the said insurance policy or policies.

38B INSURANCE OF THE WORKS - BY THE EMPLOYER

38B.1 All Risks Insurance

All Risks Insurance

- (a) The Employer shall take out and maintain an All Risks Insurance policy in respect of the whole of the Works as well as Equipment, materials or goods intended for or connected with the Works and Temporary Works (but excluding tools and Construction Plant owned or hired by the Contractor or any sub-contractors) to the value of not less than the Contract Sum plus the percentage for professional fees and the amount for removal of debris (if any) as stated in the Appendix.
- (b) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and the sub-contractors from the Date of Commencement until the Date of Practical Completion or the date of determination of the employment of the Contractor under Clause 44 (Determination by Employer), or Clause 45 (Determination by Contractor), or termination of the Contract under Clause 46, whichever is the earlier.
- (c) The Employer shall maintain of the said insurance and produce a copy of such insurance policy and receipt for the premium paid to the Contractor.
- (d) Prior to the date of Tender the Employer shall make known to the Contractor the terms of the said policy or policies including any limitations or exclusions of liabilities or insurance excess and the Contractor shall be deemed to have noted the same without affecting the Contractor's liability pursuant to Clause 34.
- (e) The Contractor may take out such additional insurance as he considers necessary, including any insurance in respect of his liability for excess under Clause 38B.3 and for tools and Construction Plant owned or hired by the Contractor or any sub-contractors.
- (f) Each policy taken out pursuant to Clause 38B shall provide expressly for the payment in the first place to the Employer of any insurance money due under the policy

(g)

38B.2 Default by the Employer to Insure

If the Employer shall at any time fail to take out or maintain a policy of insurance pursuant to Clause 38B.1, the Contractor may take out or maintain the same on behalf of the Employer and upon the production of the receipt of any premium paid by him shall be entitled to have the amount added to the Contract Sum.

**Default by the
Employer to
Insure**

38B.3 Contractor liable for Insurance Excesses

The Contractor shall be fully responsible and liable for any insurance excess stipulated in the insurance policy or policies provided under Clause 38B, provided that the Contractor's liability for such excess shall be reduced in proportion to the extent to which any act or neglect of the Employer or of any person for whom the Employer is responsible, has contributed to the said damage, loss or injury.

**Contractor
liable for
Insurance
Excesses**

38B.4 Damage, Loss or Injury to the Works

Damage, Loss or Injury to the Works

- (a) If any damage, loss or injury affecting the whole or any part of the Works or any Equipment, materials or goods is occasioned by any one or more of the risks covered by the insurance policy or policies referred to in Clause 38B.1 then upon discovering the said damage, loss or injury, the Contractor shall immediately give notice in writing to the Superintending Officer of the extent, nature and location of such damage, loss or injury.
- (b) The occurrence of such damage, loss or injury shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the Contract.
- (c) After any inspection required by the insurers or other persons authorised by the insurers in respect of a claim under the said insurance policy referred to in Clause 38B.1 has been completed, the Contractor shall subject to sub-clause 34.2(c) proceed immediately and with due diligence to make good with all reasonable expedition such damage, loss or injury including removal and disposal of any debris to the satisfaction of the Superintending Officer and proceed with the construction and completion of the Works.
- (d) The Contractor and any sub-contractors who are recognised as insureds under the said insurance policy referred to in Clause 38B.1 shall authorise the insurers to pay all monies from such insurance in respect of the damage, loss or injury referred to in sub-clause 38B.4(a) to the Employer. Any monies, if and when received shall be released to the Contractor (less only the said percentage for professional fees, if any) by instalments on the Interim Certificates issued by the Superintending Officer.
- (e) The amounts released under sub-clause 38B.4(d) shall be calculated as from the date of receipt of the monies in proportion to the extent of work of restoration, replacement or repair carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of such work of restoration, replacement or repair and the removal and disposal of debris other than the monies received under the said insurance policy or policies.
- (f) The restoration, replacement or repair of such damage, loss or injury and the removal and disposal of debris shall be treated as if they were a Variation required by an instruction of the Superintending Officer under Clause 28.2.

38C INSURANCE OF EXISTING BUILDING OR STRUCTURE – BY THE EMPLOYER

38C.1 Risks to be Insured

Risks to be Insured

- (a) The Employer shall insure against all damage, loss or injury from whatever cause arising in respect of the existing building or structure within which the Works are to be executed together with the contents in the existing building or structure owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of such damage, loss or injury to such existing building or structures.
- (b) The Employer shall take out and maintain an All Risks Insurance policy in respect of the whole of the Works as well as Equipment, materials or goods intended for or connected with the Works and Temporary Works (but excluding tools and Construction Plant owned or hired by the Contractor or any sub-contractors) to the value of not less than the Contract Sum plus the percentage for professional fees and the amount for removal of debris (if any) as stated in the Appendix.
- (c) Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and the sub-contractors from the Date of Commencement until the Date of Practical Completion or the date of determination of the employment of the Contractor under Clause 44 (Determination by Employer), or Clause 45 (Determination by Contractor), or termination of the Contract under Clause 46, whichever is the earlier.
- (d) Prior to the Date of Tender the Employer shall make known to the Contractor the terms of the said policy or policies including any limitations or exclusions of liabilities or insurance excess and the Contractor shall be deemed to have noted the same without affecting the Contractor's liability pursuant to Clause 34.
- (e) The Contractor may take out such additional insurance as he considers necessary, including any insurance in respect of his liability for excess under Clause 38C.3 and for tools and Construction Plant owned or hired by the Contractor or any sub-contractors.
- (f) The Employer shall maintain the said insurance and produce a copy of such insurance policy or policies and receipts for the premium paid to the Contractor.
- (g) Each policy taken out pursuant to Clause 38C shall provide expressly for the payment, in the first place, to the Employer of any insurance money due under the policy.

38C.2 Default by the Employer to Insure

**Default by the
Employer to
Insure**

If the Employer shall at any time fail to take out or maintain a policy of insurance pursuant to Clause 38C.1, the Contractor may take out or maintain the same on behalf of the Employer and upon the production of the receipt of any premium paid by him shall be entitled to have the amount added to the Contract Sum.

38C.3 Contractor liable for Insurance Excesses

**Contractor
liable for
Insurance
Excesses**

The Contractor shall be fully responsible and liable for any insurance excess stipulated in the insurance policy or policies provided under Clause 38C, provided that the Contractor's liability for such excess shall be reduced in proportion to the extent to which any act or neglect of the Employer or of any person for whom the Employer is responsible, has contributed to the said damage, loss or injury.

38C.4 Damage, Loss or Injury to the Works

**Damage, Loss or
Injury to the
Works**

- (a) If any damage, loss or injury affecting the whole or any part of the Works or any Equipment, materials or goods is occasioned by any one or more of the risks covered by the insurance policy or policies referred to in Clause 38C.1 then upon discovering the said damage, loss or injury, the Contractor shall immediately give notice in writing to the Superintending Officer of the extent, nature and location of such damage, loss or injury.
- (b) The occurrence of such damage, loss or injury shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the Contract.
- (c) After any inspection required by the insurers or other persons authorised by the insurers in respect of a claim under the said insurance policy referred to in Clause 38C.1 has been completed, the Contractor shall subject to sub-clause 34.2(c) proceed immediately and with due diligence to make good with all reasonable expedition such damage, loss or injury including removal and disposal of any debris to the satisfaction of the Superintending Officer and proceed with the construction and completion of the Works.
- (d) All monies from such insurance in respect of the damage, loss or injury referred to in sub-clause 38C.4(a) paid to the Employer shall be released to the Contractor (less only the said percentage for professional fees, if any) by instalments on the Interim Certificates issued by the Superintending Officer.
- (e) The amounts released under 38C.4(d) shall be calculated as from the date of receipt of the monies in proportion to the extent of work of restoration, replacement or repair carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of such work of restoration, replacement or repair and the removal and disposal of debris other than the monies received under the said insurance policy or policies.

- (f) The restoration, replacement or repair of such damage, loss or injury and the removal and disposal of debris shall be treated as if they were a Variation required by an instruction of the Superintending Officer under Clause 28.2.

39 ANTIQUITIES AND FOSSILS

39.1 Property and Protection of Discovery

Property and Protection of Discovery

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

40 ASSIGNMENT AND SUB-CONTRACTING

40.1 Assignment by Contractor

Assignment by Contractor

The Contractor shall not, without the prior consent of the Employer (which consent shall be at the sole discretion of the Employer), assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, otherwise than by:

- (a) a security in favour of the Contractor's bankers or any financial institution or corporation of any payment due or to become due under the Contract; or
- (b) assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief from any other party liable.

40.2 Assignment by Employer

Assignment by Employer

The Employer shall not, without the written consent of the Contractor assign (whether in whole or in part) his rights, interests or benefits under the Contract, otherwise than by a security in favour of the Employer's bankers or any financial institution or corporation. The Contractor shall not withhold such consent unreasonably provided that the Employer has produced reasonable evidence that the assignee will fulfil the provisions of Option Module E (if applicable) in place of the Employer.

40.3 Documents on Assignment

Documents on Assignment

The Employer and the Contractor each undertakes to execute within a reasonable time following written request by the other those documents necessary to effect such assignment pursuant to Clause 40.1 or Clause 40.2.

40.4 Sub-contracting

Sub-contracting

- (a) The Contractor shall not sub-contract the whole of the Works. Except where otherwise provided in the Contract, the Contractor shall not sub-contract any part of the Works without the prior consent of the Superintending Officer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- (i) the provision of labour;
 - (ii) the purchase of materials which are in accordance with the standards specified in the Contract; or
 - (iii) the sub-contracting of any part of the Works for which the Sub-contractor is nominated under the Contract.
- (b) It shall be a condition in any sub-contract the consent of which has been granted, that upon the determination of the Contractor's employment under the Contract the employment of the sub-contractor under the sub-contract shall determine immediately unless the Employer exercises his right for the assignment of benefits of the sub-contract to him under Clause 44.3.

41 PRIME COST AND PROVISIONAL SUMS

41.1 Prime Cost Sum

Prime Cost Sum

- (a) In respect of any and every Prime Cost or P.C. Sum provided in the Contract, the amount due to the Contractor shall be determined by deducting the said Prime Cost or P.C. Sum and the relevant profit and/or attendance charges from the Contract Sum and substituting for the same with the actual amount due to the relevant Nominated Sub-Contractor or Nominated Supplier as valued in accordance with the relevant sub-contract and the sums due to the Contractor by way of profit and/or attendance charges at the rates or prices stipulated in the Contract Documents (if any).
- (b) Where the Contractor in the ordinary course of his business directly carries out works or supplies of any Equipment, materials or goods for which Prime Cost or P.C. Sums are provided in the Contract Documents and where such works are set out in the Appendix and the Employer is willing to invite tenders from the Contractor for such work or supplies then, the Contractor shall be allowed to submit a tender for the said work or supplies provided that it is without prejudice to the Employer's right to reject the lowest or any tender. If the tender of the Contractor in respect of any of the Prime Cost or P.C. Sum items is accepted by the Employer such tender shall be held to include the profit and attendance charges and the Contractor shall not be entitled to the profit and attendance charges as contained in the Contract Documents notwithstanding the provision of sub-clause 41.1(a).

41.2 Provisional Sums

Provisional Sums

- (a) In respect of every Provisional Sum the Superintending Officer shall have the authority to issue instructions for the execution of any work or for the supply of any Equipment, materials or goods or services by the Contractor, in which case the Contractor shall be entitled to an amount in accordance with the valuation determined under Clause 29 (Valuation of Variations).
- (b) The Superintending Officer may, at his absolute discretion, treat any Provisional Sum included in the Contract as a Prime Cost or P.C. Sum item, in which case the provisions of sub-clause 41.1(a) and Option Module C shall apply. If the sub-contract in respect of the work or supplies is undertaken by a Nominated Sub-Contractor or Nominated Supplier then, the Superintending Officer shall unless otherwise specified in the Contract allow to the Contractor the appropriate profit and attendance charges based on the rates or prices for other Prime Cost Sum items included in the Contract.

42 PAYMENT

42.1 Statement of Work Done

Statement of Work Done

The Contractor shall submit to the Superintending Officer, at such intervals as may be specified in the Appendix, a statement (hereinafter referred to as the “**Statement of Work Done**”) in such form as the Superintending Officer may from time to time prescribe. The Statement of Work Done shall show the amounts to which the Contractor considers himself to be entitled up to the last Day of the relevant interval in respect of:

- (a) the value of the works properly executed (including work executed pursuant to Superintending Officer’s instructions under Clause 28) subject to any agreement between the parties as to stage payments for the Works or any part of the Works stipulated in the Appendix;
- (b) any other items shown and separately priced in the Contract including those for Construction Plant, Temporary Works and the like;
- (c) the percentage (as stated in the Appendix) in respect of the value of any Equipment, materials or goods delivered by the Contractor on the Site for incorporation in the Works;
- (d) any other sums to which the Contractor may consider himself to be entitled under the Contract with itemisation of such sums with reference to relevant provisions of the Contract; and
- (e) any amount due to the Contractor under an Option Module.

42.2 Valuation and Interim Certificates

Valuation and Interim Certificates

- (a) Within 21 Days of receiving the Statement of Work Done, the Superintending Officer shall, subject to sub-clauses 42.2(c) and (d) issue an Interim Certificate to the Employer (with a copy to the Contractor) stating the amounts in his opinion to which the Contractor is entitled under the Contract in respect of each of the amounts in the Statement of Work Done, less:
 - (i) Retention Monies under Clause 42.3;
 - (ii) any amount previously certified under this Clause 42; and
 - (iii) any deduction allowed under the Contract.

- (b) The Interim Certificate shall only include the value of any Equipment, materials or goods delivered by the Contractor to the Site for incorporation in the Works from such time as they are reasonably, properly and not prematurely brought to the Site and are adequately protected against damage, loss or injury.
- (c) Subject to Clause 42.1 and sub-clause 42.2(d), Interim Certificates shall be issued by the Superintending Officer at such intervals as may be specified in the Appendix up to the Date of Practical Completion (or the Date of Practical Completion in respect of the last section of the Works, in the case of completion in sections). After the issue of the Certificate of Practical Completion, Interim Certificates shall be issued as and when further amounts are ascertained by the Superintending Officer as payable to the Contractor from the Employer, provided that the Superintending Officer shall not be required to issue such Interim Certificate within one month of having issued a previous Interim Certificate.
- (d) Except for the Penultimate Certificate under Clause 42.6 or the Final Certificate under Clause 42.8, the Superintending Officer is not obliged to but may at his discretion issue any Interim Certificate under sub-clause 42.2(a) if either:
 - (i) the total amounts to which the Contractor considers himself entitled in the Statement of Work Done; or
 - (ii) the total amounts which the Superintending Officer in his opinion considers the Contractor to be entitled, is less than the minimum amount stated in the Appendix.
- (e) If the Superintending Officer decides not to issue an Interim Certificate he shall notify the Contractor in writing within 21 Days of receiving the Statement of Work Done.

42.3 **Retention Monies**

Retention Monies

- (a) Subject to sub-clause 42.3(d), the Retention Monies referred to in Clause 42.2 shall be calculated by applying the Retention Percentage to the amounts to which the Superintending Officer has certified in respect of items listed in Clause 42.1.
- (b) When the sum of the amounts so certified for retention equals or exceeds the amount stated in the Appendix as Limit of Retention Monies or that amount is reduced pursuant to Clause 22 or 23 (as the case may be) then no further amounts shall be certified for retention by virtue of this Clause 42.3.

- (c) The amount retained by virtue of Clause 42.3 shall be subjected to the following rules:
- (i) The Employer's interest in the amount so retained shall be fiduciary as trustee for the Contractor (but without the obligation to invest).
 - (ii) The Employer shall at the time of payment in respect of each Interim Certificate place the Retention Monies (until the Limit of Retention is reached) in a separate banking account which shall be designated as being held by the Employer on trust. The Employer shall provide a statement of this separate banking account to the Contractor when making payments in respect of each Interim Certificate. The Employer shall be entitled to the full benefit of any interest accrued in the separate banking account and shall be under no duty to account for such interest to the Contractor.
 - (iii) The Contractor's beneficial interest in the Retention Monies shall be subject to the Employer's right of deduction for payment of any amounts as the Superintending Officer may certify that the Employer is entitled to deduct from such Retention Monies. When the Employer exercises such right of deduction he shall inform the Contractor in writing of the reason for such deduction. The Employer's right of deduction shall only arise after the Retention Monies are due for release to the Contractor in accordance with Clause 42.3 or after determination of the Contractor's employment under the Contract.
 - (iv) Upon the issue of the Certificate of Practical Completion under Clause 20.2 and subject to Employer's right of deduction under sub-clause 42.3(c)(iii), the Contractor shall be entitled to the release of one half of the total amount of the Retention Monies. The Superintending Officer shall within 14 Days following the issue of the Certificate of Practical Completion issue an Interim Certificate under Clause 42 certifying such release.
 - (v) On the expiration of the Defects Liability Period or the issue of the Certificate of Making Good Defects pursuant to Clause 27, whichever is the later, and subject to Employer's right of deduction under sub-clause 42.3(c)(iii), the Contractor shall be entitled to the release of the residual amount of the Retention Monies. The Superintending Officer shall within 14 Days following the issue of the Certificate of Making Good Defects issue an Interim Certificate certifying such release or include the same in the Final Certificate under Clause 42.8 (whichever is appropriate).

- (d) The Retention Percentage referred to in sub-clause 42.3(a) shall not apply to the following:
 - (i) royalties, damages or other monies payable under Clause 9.1;
 - (ii) fees paid in compliance with Statutory Requirements under Clause 10.1;
 - (iii) amounts payable to the Contractor under Clauses 15.4, 15.6 and / or 27.5 notwithstanding it is deemed a Variation;
 - (iv) loss and expense; and
 - (v) proceeds from any insurance policy or policies under Clause 38A, 38B or 38C, whichever is applicable.

42.4 Correction of Certificates

**Correction of
Certificates**

- (a) The Superintending Officer may by any Interim Certificate make any correction or modification in respect of any error whether arithmetical or otherwise in any previous Interim Certificate which has been issued by him and make such adjustments as may be necessary in the amount of payment due and payable to the Contractor to take into account any over or under valuation in any previous Interim Certificate.
- (b) Where the amount paid by the Employer to the Contractor pursuant to any error in a previous Interim Certificate exceeds any amount due and payable to the Contractor under any subsequent Interim Certificate or the Final Account Certificate, such excess shall be recoverable by the Employer from the Contractor under Clause 48.

42.5 Statement at Completion

**Statement at
Completion**

- (a) Within 3 months of Date of Practical Completion (or the Date of Practical Completion in respect of the last section of the Works, in the case of completion in sections), the Contractor shall submit to the Superintending Officer a statement (hereinafter referred to as the "Statement at Completion") in the form prescribed by the Superintending Officer.
- (b) The Statement at Completion shall set out in detail the final amounts to which the Contractor considers himself to be entitled in respect of all matters set out in Clause 42.1 showing all adjustments made to the Contract Sum together with a complete set of documents in support of such entitlement.

- (c) If the Contractor fails to provide such complete set of documents or the Superintending Officer considers that the documents provided are inadequate then the Superintending Officer may nevertheless make such assessment, valuation and certification as shall be fair and reasonable on the basis of the information available to him.

42.6 Penultimate Certificate

Penultimate Certificate

Within 6 months of receiving the Statement at Completion pursuant to Clause 42.5 the Superintending Officer shall issue a certificate (hereinafter referred to as the “Penultimate Certificate”) stating the estimated final amount due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be.

42.7 Final Claim Statement

Final Claim Statement

- (a) Within 30 Days of the issue of the Certificate of Making Good Defects (or the Certificate of Making Good Defects in respect of the last section of the Works, in the case of completion in sections), the Contractor shall submit in writing to the Superintending Officer a statement (hereinafter referred to as the “Final Claim Statement”) in such form as the Superintending Officer may prescribe.
- (b) The Final Claim Statement shall set out in detail the final amounts to which the Contractor considers himself to be entitled in respect of all matters set out in Clause 42.1
- (c) Insofar as documents in support of any claim has not been previously provided then the Contractor shall provide such supporting documents with the Final Claim Statement. If the Contractor fails to provide such supporting documents or the Superintending Officer considers that the documents provided are inadequate then the Superintending Officer may nevertheless make such assessment, valuation and certification as shall be fair and reasonable on the basis of the information available to him.
- (d) If the Contractor does not submit the Final Claim Statement within the 30 Day period referred to in sub-clause 42.7(a) the Employer may on the expiry of the said 30 Days give notice in writing to the Contractor that if the Final Claim Statement is not submitted by the Contractor within a further 30 Days from the date of the written notice the Superintending Officer may proceed to prepare the Final Account (as defined in Clause 42.8) based on the information available to him in accordance with Clause 42.8.

- (a) The Superintending Officer shall not later than 90 Days after the issue of the Certificate of Making Good Defects (or the Certificate of Making Good Defects in respect of the last section of the Works, in the case of completion in sections) provide the Contractor with the final account (hereinafter referred to as the “Final Account”).
- (b) The Final Account shall show:
 - (i) the adjustments which the Superintending Officer considers should be made to the Contract Sum;
 - (ii) the amounts to which the Superintending Officer considers that the Contractor is entitled under the express provisions of the Contract;
 - (iii) the amounts to which the Superintending Officer considers that the Employer is entitled under the express provisions of the Contract.
- (c) Within 30 Days of the receipt by the Contractor of the Final Account, the Contractor shall notify the Superintending Officer as to whether or not the amounts set out in the Final Account are accepted by him. If the Contractor does not accept the amount, he shall submit his grounds of disagreement in writing to the Superintending Officer within the said 30 Days.
- (d) The Superintending Officer may, subsequent to the receipt of the grounds of disagreement amend the amount disagreed and issue to the Contractor a notice of amendment to the Final Account or, if he decides not to issue a notice of amendment to the Final Account, he shall inform the Contractor accordingly. The provisions of sub-clause 42.8(c) shall apply to the notice of amendment to the Final Account.
- (e) The Superintending Officer shall issue a Final Certificate (and inform each Nominated Sub-Contractor, if applicable) of the date of its issue within 30 Days:
 - (i) of acceptance by the Contractor of the Final Account or of the amendment to the Final Account, whichever is the later; or
 - (ii) after the expiry of the 30 Day period following the receipt by the Contractor of the Final Account during which no notification of disagreement has been received from the Contractor; or
 - (iii) after the Superintending Officer has informed the Contractor of the amendment to the Final Account and / or that he would not issue a notice of amendment to the Final Account (as the case may be) pursuant to sub-clause 42.8(d).

- (f) The Final Certificate shall stipulate the difference between:
 - (i) the Contract Sum as set out in the Final Account; and
 - (ii) the amount so far certified for payment (whether or not paid),

and the difference shall be a debt payable by the Employer to the Contractor or by the Contractor to the Employer as the case may be.

- (g) For the avoidance of doubt, the Superintending Officer shall not be obliged to issue the Final Certificate before the Certificate of Making Good Defects referred to in Clause 27.6 (or the Certificate of Making Good Defects in respect of the last section of the Works, in the case of completion in sections) is issued, and the issue of the Final Account before the issue of the said Certificate of Making Good Defects shall not relieve the Contractor from his obligations and liabilities arising during the Defects Liability Period.

42.9 Period of Honouring Certificate

Period of Honouring Certificate

- (a) The amount due to the Contractor under any certificate issued by the Superintending Officer pursuant to Clause 42 or any other term of the Contract shall (subject to the Employer's right of recovery under Clause 48) be paid by the Employer to the Contractor within 21 Days or such other time period as may be stipulated in the Appendix after the date of such certificate (hereinafter referred to as "Period of Honouring Certificate")
- (b) In the event that the Employer fails to make the whole or any part of the payment due to the Contractor within the Period of Honouring Certificate, the Employer shall pay to the Contractor in addition to the amount certified, simple interest at the rate stated in the Appendix in respect of any sum unpaid from the date by which the same should have been paid until the payment of such sum.
- (c) The Contractor's right to interest under sub-clause 42.9(b) shall be without prejudice to his rights in relation to the Payment Bond if Option Module E is applicable, or to his rights of suspension of the performance of his obligations under the Contract to the Employer pursuant to Clause 42.10, or to his rights of determination of his own employment pursuant to Clause 45.1.

42.10 Suspension for Non Payment

Suspension for Non Payment

- (a) If the Employer fails or neglects to make payment of any amount due to the Contractor within the Period of Honouring Certificate (unless and to the extent that under the terms of the Contract the said Interim Certificate has been corrected or modified by a later Interim Certificate which has been issued pursuant to Clause 42.4 or the Employer may be empowered by the provisions of the Contract either not to pay, or to make deductions from, the sums shown as due in the certificate) and such failure or neglect shall continue for 14 Days from the date by which the same should have been paid, then the Contractor may give notice of his intention to suspend the execution of the Works. If the Employer shall continue such default for 14 Days after thereceipt of such notice, then the Contractor may suspend wholly or partly the execution of the Works or reduce the rate of execution of the Works.
- (b) If the Contractor suspends work or reduces the rate of work under sub-clause 42.10(a) and if the Contractor has not exercised his right of determination under Clause 45, and the Employer subsequently pays the amount due including interest pursuant to sub-clause 42.9(b) the Contractor's entitlement under sub-clause 42.10(a) shall lapse, and the Contractor shall resume normal working as soon as is reasonably possible.
- (c) If the Contractor suspends work in accordance with the provisions of sub-clause 42.10(a), the following provisions shall apply:
 - (i) The Contractor shall protect and secure the Works during the period of suspension;
 - (ii) The Time for Completion shall be deemed to be extended by the period of such suspension and reasonable period for resumption of normal working; and
 - (iii) If the Contractor incurs Loss and Expense arising from such suspension and resumption including that incurred pursuant to sub-clause 42.10(c)(i) then subject to Clause 32 the amount of such Loss and Expense shall be ascertained by the Superintending Officer and added to the Contract Sum.
- (d) The Contractor's right to suspend work under Clause 42.10 is without prejudice to the right of determination under Clause 45 or any other right or remedy which the Contractor may possess under the Contract nor a condition precedent to the right of determination under Clause 45.

42.11 Deemed Payment

Deemed Payment

In the event the Employer exercising his right of recovery in respect of any payment due to the Contractor in accordance with this Clause 42, the amount so recovered or deducted by the Employer shall be deemed as payment made by the Employer to the Contractor under this Clause 42.

42.12 Delay in Certification

Delay in Certification

The Employer shall be liable to pay to the Contractor damages, whether by way of interest or otherwise, in the event of any failure or delay by the Superintending Officer in certifying any payment due or payable to the Contractor pursuant to the provisions of Clause 42.

42.13 Effect of payment other than payment of Final Certificate

Effect of payments other than payment of Final Certificate

Other than payment pursuant to the Final Certificate under Clause 42.8, no payment by the Employer shall of itself be conclusive evidence that any design (to the extent required by the Contract), works executed, or any Equipment, materials or goods to which it relates are in accordance with the Contract.

43 EFFECT OF SUPERINTENDING OFFICER'S CERTIFICATE

43.1 Certificate Not Conclusive

Certificate Not Conclusive

Subject to Clause 43.2, no certificate of the Superintending Officer under any provision of the Contract shall be considered as conclusive evidence as to the sufficiency of any design (to the extent required by the Contract), works executed, or any Equipment, materials or goods to which it relates, nor shall it relieve the Contractor from his liability to amend or make good Defects.

43.2 Effect of Final Certificate

Effect of Final Certificate

- (a) Notwithstanding Clause 43.1, the Final Certificate when it is issued by the Superintending Officer shall, except as provided in sub-clauses 43.2(b) and (c), have effect in any proceedings arising out of or in connection with the Contract (whether by mediation, arbitration or other proceedings pursuant to Clause 47) as conclusive evidence that:
- (i) where it is stated in the Contract Documents that the quality of works executed, or any Equipment, materials or goods are to be to the reasonable satisfaction of the Superintending Officer and/or the Employer the same are to such satisfaction; and
 - (ii) all and only such revised Date for Completion or extension of time (if any) as are due under Clause 32 have been given; and
 - (iii) that the reimbursement of Loss and Expense, if any, to the Contractor is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any of the matters whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- (b) If any mediation, arbitration or other proceedings pursuant to Clause 47 have been commenced by either party prior to the issue of the Final Certificate under Clause 42.8, the said Final Certificate shall have the same effect as stipulated in sub-clause 43.2(a) after either:
- (i) such proceedings have been concluded, whereupon the Final Certificate shall be subject to and incorporate the terms of any agreement, award or judgement in or settlement of such proceedings; or
 - (ii) a period of 12 months during which neither party has taken any further step in such proceedings, whereupon the Final Certificate shall be subject to any terms agreed in partial settlement of the said proceedings (if any);
- whichever is the earlier.
- (c) Unless a formal notice of mediation, arbitration or other proceedings pursuant to Clause 47 have been issued by either party within 30 Days after the Final Certificate has been issued, the Final Certificate shall have effect as conclusive evidence of all matter except only in respect of those matters to which these proceedings relate.

44 DETERMINATION BY EMPLOYER

44.1 Determination Due to Default By Contractor

Determination Due to Default By Contractor

- (a) Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor defaults in any or more of the following respects:
- (i) without reasonable cause he fails to commence the Works in accordance with the Contract; or
 - (ii) he fails to provide the Performance Security Deposit (if Option Module F is applicable) in accordance with Clause F1; or
 - (iii) without reasonable cause he wholly suspends the carrying out of the Works before completion; or
 - (iv) he fails to proceed with the design (to the extent required by the Contract) and/or the execution and completion of the Works with due diligence and expedition; or
 - (v) he persistently refuses or neglects to comply with a notice or an instruction from the Superintending Officer under Clause 15.7 requiring him to remove work or Equipment, materials or goods which are defective or do not meet the requirements of the Contract; or
 - (vi) he fails to comply with the provisions of Clause 40.1 and/or 40.4; or
 - (vii) he persistently refuses or fails to comply with a instruction from the Superintending Officer which the Superintending Officer is empowered to give under the Contract;

then the Superintending Officer shall give a notice specifying the default or defaults (hereinafter referred to as the “Specified Contractor’s Default”).

- (b) If the Contractor continues with the Specified Contractor’s Default for 14 Days from the receipt of the notice under sub-clause 44.1(a), then the Employer without prejudice to any other rights or remedies may within 10 Days from the expiry of the said 14 Day period by further notice to the Contractor determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such further notice.

- (c) If:
 - (i) the Contractor ends the Specified Contractor's Default, or
 - (ii) the Employer does not give the further notice referred to in sub-clause 44.1(b),

and the Contractor repeats the Specified Contractor's Default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Employer without prejudice to any other rights or remedies may by a further notice determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such further notice.

- (d) A notice of determination under Clause 44.1 shall not be given unreasonably or vexatiously.

44.2 Determination Due to Bankruptcy or Insolvency

Determination Due to Bankruptcy or Insolvency

In the event the Contractor:

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

then the Employer may without prejudice to any other rights or remedies by notice forthwith determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such notice.

44.3 Effects of Determination of Contractor's Employment

In the event of the determination of the Contractor's employment under Clause 44.1 or 44.2, whether or not the validity of such determination is contested by the Contractor, the following shall be the respective rights and duties of the Employer and the Contractor:

- (a) The Employer shall be entitled to repossess the Site and the Contractor shall immediately cease all operations on the Works, remove his personnel and workmen from and yield uppossession of the Site leaving any Construction Plant, Temporary Works, temporary buildings, structures, tools, goods and all unfixed Equipment, materials or goods left on the Site, except only such as he may at any time be specifically instructed by the Superintending Officer to remove from the Site.
- (b) If the Contractor fails to comply with the instruction to remove the Construction Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and all unfixed Equipment, materials or goods within a reasonable time after such instruction has been issued pursuant to sub-clause 44.3(a) then the Employer may remove and sell any of the same which are deemed the property of the Employer under Clause 33.2 and apply the proceeds of sale in or towards the satisfaction of any sums due or becoming due to him from the Contractor under the Contract.
- (c) The Employer may carry out and complete the Works himself or through the employment of other contractors and he or they may use any of the Construction Plant, Temporary Works, temporary buildings, structures, tools, goods and any unfixed Equipment, materials or goods left on the Site –
 - (i) which are deemed the property of the Employer under Clause 33.2; and / or
 - (ii) in respect of which the Employer has exercised his right under Clause 33.4 to take over the hire of such Construction Plant or Temporary Works;

and may purchase all other Equipment, materials or goods necessary for the carrying out and completion of the Works.

- (d) The Contractor shall, if so required by the Employer, assign to the Employer without payment the benefit of any agreement for the supply of any Equipment, materials or goods and/or for the execution of any work for the purpose of the Contract. In any case, the Employer shall have the power, but shall not be obliged, to pay any supplier or sub-contractor, whether nominated or directly engaged by the Contractor, for any Equipment, materials or goods and/or any work executed for the purpose of the Contract (whether before or after the date of determination) for which the Contractor has failed to make payment. The Contractor shall allow or pay to the Employer all such payments made under this sub-clause 44.3(d).
- (e) The Superintending Officer shall, as soon as may be practicable after such repossession of the Site by the Employer pursuant to this Clause 44.3, ascertain what amount (if any) had at the time of such repossession been reasonably earned by or would reasonably accrue to the Contractor in respect of:
 - (i) work then properly done by him under the Contract,
 - (ii) the value of any of the unfixed or partially fixed Equipment, materials or goods,
 - (iii) the value of any Construction Plant, Temporary Works, temporary buildings, structures, or tools which have been deemed to become the property of the Employer under Clause 33.2; and
 - (iv) the amount received from any proceeds of sale under sub-clause 44.3(a).
- (f) No sum shall be certified as due to the Contractor nor shall the Employer be liable to pay to the Contractor any sum, whether or not certified by the Superintending Officer (including damages and amounts for which the Employer was liable at the date of determination) in respect of the Contract until the expiry of the Defects Liability Period of the whole of the Works and thereafter until the Superintending Officer has issued the Certificate of Determination Costs in accordance with Clause 44.4.

44.4 Determination Cost

- (a) As soon as the arrangement for the completion of the Works made by the Employer enables the Superintending Officer to make a reasonably accurate assessment of the ultimate cost to the Employer of completing the Works following the determination of Contractor's employment and the engagement of other contractors, and the amount of direct loss and/or damage caused to the Employer due to the determination has been ascertained by the Superintending Officer, the Superintending Officer shall issue a certificate (hereinafter referred to as the "**Certificate of Determination Cost**") stating the Completion Cost (hereinafter defined) and the Final Contract Sum (hereinafter defined). This Certificate of Determination Costs provided always that such Certificate of Determination Cost shall be issued within the time period stated in the Appendix.

- (b) The Completion Cost comprises the following sums, costs or expenditure:
 - (i) the sums previously paid to the Contractor by the Employer,
 - (ii) the sums paid or payable to other contractors engaged by the Employer to complete the Works,
 - (iii) any sums paid to sub-contractors or suppliers under sub-clause 44.3(d)
 - (iv) any other direct costs or expenditure incurred or to be incurred by the Employer in completing the Works; and
 - (v) the amount of direct loss and/or damage caused to the Employer due to the determination.

- (c) The Final Contract Sum comprises the following amounts or sums:
 - (i) the amount which would have been payable under the Contract on completion in accordance with the Contract, allowing for any Variations or other matters which would have resulted in the adjustment of the original Contract Sum; and
 - (ii) any other sums which the Employer might be entitled under the Contract to deduct from the original Contract Sum,had the Contractor's employment not been determined.

- (d) The Certificate of Determination Cost shall state the difference between the Final Contract Sum and the Completion Costs. If the Final Contract Sum is less than the Completion Cost, the difference shall be a debt payable by the Contractor to the Employer and if greater the difference shall be a debt payable by

the Employer to the Contractor.

44.5 Notices under Clause 44

**Notices under
Clause 44**

Any notice or further notice under Clause 44 shall be given by:

- (a) hand delivery or courier and an acknowledgement of receipt obtained; or
- (b) registered post in which case it shall be deemed to have been received 7 Days after the date of posting.

45 DETERMINATION BY THE CONTRACTOR

45.1 Determination by Contractor with Notice

Determination by Contractor with Notice

- (a) If the Employer defaults in any or more of the following respects:
- (i) he does not pay to the Contractor the amount due on any certificate within the Period of Honouring Certificate stated in the Appendix (unless and to the extent that under the terms of the Contract the said Interim Certificate has been modified or corrected by a later Interim Certificate or the Employer may be expressly empowered either not to pay, or to make deductions from, the sum shown as due in the Interim Certificate); or
 - (ii) he interferes with or influences or obstructs the issue of a certificate by the Superintending Officer; or
 - (iii) he does not within 30 Days of the death of the Superintending Officer or his ceasing to be the Superintending Officer appoint a succeeding Superintending Officer for the purposes of the Contract;

then the Contractor may give a notice specifying the default or defaults (hereinafter referred to as the “Specified Employer’s Default”).

- (b) If:
- (i) the Employer continues with the Specified Employer’s Default for 14 Days from the receipt of the notice under sub-clause 45.1(a); or
 - (ii) the Specified Suspension Event under Clause 19.2 continues or permission to proceed with the Works is not granted by the Superintending Officer on the expiry of the 14-Day notice period given by the Contractor,

then the Contractor without prejudice to any other rights or remedies may on, or within 10 Days from, the expiry of the said 14-Day notice period by further notice to the Employer determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such further notice.

- (c) If:
 - (i) the Employer ends the Specified Employer's Default referred to in sub-clause 45.1(a), or
 - (ii) the Specified Suspension Event referred to in Clause 19.2 ceases, or
 - (iii) the Contractor does not give the further notice referred to in sub-clause 45.1(b),

and the Employer repeats a Specified Employer's Default (whether previously repeated or not) or the Specified Suspension Event is repeated for whatever period (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Contractor may without prejudice to any other rights or remedies by a notice to the Employer determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such further notice.

- (d) A notice of determination under Clause 45.1 shall not be given unreasonably or vexatiously.

45.2 Determination by Contractor Without Notice

**Determination by
Contractor
Without Notice**

If the Employer:

- (a) Becomes bankrupt or insolvent or makes a composition or arrangement with his creditors; or
- (b) becomes insolvent or compounds with or makes arrangement with his creditors; or
- (c) being a company, is having a winding up order (other than for the purpose of amalgamation or reconstruction) made against it; or

- (d) is having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge;

then the Contractor may without prejudice to any other rights or remedies by notice forthwith determine the employment of the Contractor under the Contract. Such determination shall take effect on the date of the receipt of such notice.

45.3 Effects of Determination

Effects of Determination

In the event of the determination of the Contractor's employment under Clause 45.1 or 45.2, whether or not the validity of such determination is contested by the Employer and without prejudice to the accrued rights or remedies of either party the following shall be the respective rights and liabilities of the Contractor and the Employer:

- (a) The Contractor shall with all reasonable dispatch remove from the Site all his Construction Plant, Temporary Works, temporary buildings, tools, equipment, materials or goods and shall give facilities for his sub-contractors to do the same (subject always to sub-clause 45.3(b)(iv)) and indemnify the Employer in respect of injury, death or damage caused by such removal to the extent of his liability under Clause 35.
- (b) The Superintending Officer shall subject to compliance by the Contractor with Clause 32 and within the time period stated in the Appendix certify payment to the Contractor in respect of the following items, after taking into account amounts previously paid to the Contractor under the Contract:
 - (i) The total value of work properly completed at the date of determination, such value to be computed as if it were a valuation in respect of the amounts to be stated as due in an Interim Certificate issued under Clause 42 but after taking account of any amounts referred to in sub-clauses 45.3(b)(iii) to (vi);
 - (ii) The total value of work begun and executed but partially completed at the date of determination, the value being ascertained in accordance with Clause 29 as if such work were a Variation required by the Superintending Officer under Clause 28 but after taking account of any amounts referred to in sub-clauses 45.3(b)(iii) to (vi);
 - (iii) Any sum ascertained in respect of Loss and Expense under Clause 32 (whether ascertained before or after the date of determination);

- (iv) The total cost of Equipment, materials or goods properly ordered for the Works for which the Contractor has paid or for which the Contractor is legally bound to pay, and on such payment by the Employer any Equipment, materials or goods so paid shall become the property of the Employer;
 - (v) The reasonable cost of removal under sub-clause 45.3(a);
 - (vi) any other direct loss and/or damage caused to the Contractor arising out of or in connection with or by consequence of such determination.
- (c) In addition to all other remedies available to the Contractor, the Contractor may upon such determination take possession of and shall have a lien upon all unfixed Equipment, materials or goods, which may have become the property of the Employer under Clause 33 until the Employer has settled all payment due to the Contractor.

45.4 Notices under Clause 45

Notices under Clause 45

Any notice or further notice under Clause 45 shall be given by:

- (a) hand delivery or courier and an acknowledgement of receipt obtained; or
- (b) registered post in which case it shall be deemed to have been received 7 Days after the date of posting.

46 TERMINATION WITHOUT DEFAULT

46.1 Right of the Employer to Terminate

Right of the Employer to Termination

- (a) The Employer may at any time terminate the Contract by giving 30-Days notice, provided always that the Employer shall not terminate the Contract under this Clause in order to execute the Works himself or to appoint another contractor to execute or complete the Works.
- (b) Upon the expiry of 30 Days from the receipt of such notice the Contract shall be terminated.
- (b) A termination under sub-Clause 46.1(a) shall not be made in bad faith, unreasonably or vexatiously.

46.2 Effects of Termination

Effects of Termination

In the event of termination under Clause 46.1 the provisions of Clause 45.3 shall apply.

47 SETTLEMENT OF DISPUTES

47.1 Reference to the Superintending Officer

Reference to the Superintending Officer

- (a) Subject to Clause 43.2 and Clause 47.7, if a dispute or difference of whatsoever kind shall arise between the Employer or the Superintending Officer and the Contractor in connection with or arising out of the Contract or, whether during the execution of the Works or after their completion and whether before or after any determination of the Contractor's employment, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer, it shall in the first place be referred by either party to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause 47.1 and a copy shall be sent to the other party to the Contract.
- (b) No later than the expiry of 14 Days after the date upon which the Superintending Officer has received such reference, the Superintending Officer shall give his decision in writing to the Employer and to the Contractor which shall be final and binding on the parties to the Contract unless, as hereinafter provided, either party requires that the decision should be referred to Dispute Resolution Board under Clause 47.2.
- (c) Unless the Contract has already been repudiated or the employment of the Contractor determined or the execution of the Works completed, the Contractor shall, in case of any reference, continue to proceed with the Works in accordance with his obligations under the Contract and the Contractor and the Employer shall give effect forthwith to every decision by the Superintending Officer unless and until the same shall be revised by the Dispute Resolution Board under Clause 47.2 or by a tribunal of competent jurisdiction under Clause 47.7.

47.2 Reference to Dispute Resolution Board

- (a) If the Superintending Officer fails to give his decision by the expiry of the 14 Days period from the date the Superintending Officer received the reference to him of any dispute or difference, or if either party be dissatisfied with any decision of the Superintending Officer under Clause 47.1 (such dissatisfaction shall be deemed a dispute), then the Employer or the Contractor may after the expiration of the said period or after receiving the Superintending Officer's decision (as the case may be) provided it is within 30 Days therefrom, give notice to the other party with a copy to the Superintending Officer and the Dispute Resolution Board of his intention

to refer the dispute or difference to the Dispute Resolution Board for a decision (hereinafter referred to as the “**Request to DRB**”).

- (b) The Dispute Resolution Board shall be deemed to have received the Request to DRB on the date when the sole DRB Member or chairman of the Dispute Resolution Board, as the case may be, receives the Request to DRB.
- (c) Both Parties shall promptly make available to the Dispute Resolution Board all such information, access to the Site, and appropriate facilities, as the Dispute Resolution Board may require for the purposes of making a decision on such dispute. The Dispute Resolution Board will assist parties in resolving disputes and shall not be deemed to be acting as arbitrators.
- (d) The Dispute Resolution Board may visit the Site and inspect the Works, review all potential disputes and/or disputes and facilitate settlement of the same, and make recommendations.

47.3 Appointment of the Dispute Resolution Board

- (a) The Dispute Resolution Board shall consist of the person stated and as named in the Appendix or such number of person(s) appointed by the parties by the date stated in the Appendix (“**DRB Members**”).
- (b) If the Dispute Resolution Board consists of three (3) DRB Members, each party shall nominate one member for the approval of the other party. The parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman. However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the Dispute Resolution Board.
- (c) The remuneration of the DRB Members, including the remuneration of any expert whom the Dispute Resolution Board shall be mutually agreed between the parties when agreeing the terms of appointment of the said DRB Member/expert whichever applicable. Each party shall bear one-half of the said remuneration.
- (d) A member of the Dispute Resolution Board shall not be sued and/or called as a witness in any proceedings.
- (e) The parties may, at any time they so agree, jointly refer a matter to the Dispute Resolution Board for it to give its opinion or decision. Neither party shall consult the Dispute Resolution Board on any matter without the agreement of the other party.
- (f) The parties may, at any time they so agree, appoint a suitably qualified person or persons to replace (or to be available to replace) any one or more of the DRB Members. Unless the

parties agree otherwise, such appointment will come into effect if a DRB Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment.

- (g) If no such replacement is available, a replacement shall be appointed in accordance with Clause 47.3.
- (h) The appointment of any DRB Member may be terminated by mutual agreement of both parties. Unless otherwise agreed by both parties, the appointment of the Dispute Resolution Board (including each DRB Member) shall expire upon issuance of Practical Completion or termination of the Contract, as applicable.

47.4 Failure to Agree on Dispute Resolution Board

- (a) If any of the following conditions apply, namely:
 - (i) either party fails to nominate a DRB Member (for approval by the other party) by such date,
 - (ii) the parties fail to agree upon the appointment of the third DRB Member (to act as chairman) (if applicable) by such date, or
 - (iii) the parties fail to agree upon the appointment of a replacement person within 14 days after the date on which the DRB Member or one of the three DRB Members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,then the Chairman of CIDB shall, upon the request of either or both of the parties and after due consultation with both parties and within 7 Days, appoint the DRB Member. This appointment shall be final and conclusive. Each party shall be responsible for paying the costs of such appointment by the appointing entity or official.

47.5 Decision of Dispute Resolution Board

- (a) No later than the expiry of 21 Days after receiving such reference or within such other period as agreed between the Dispute Resolution Board and parties, the Dispute Resolution Board shall give its decision in writing or recommendation to resolve a dispute which shall be final and binding on the parties to the Contract unless, as hereinafter provided, either party requires that the decision should be referred a tribunal of competent jurisdiction under Clause 47.7.
- (b) Unless the Contract has already been repudiated or the employment of the Contractor determined or the execution of the Works completed, the Contractor shall, in case of any reference, continue to proceed with the Works in accordance with his obligations under the Contract and the Contractor, Superintending Officer and the Employer shall give effect forthwith to every decision made by the Dispute Resolution Board unless and until the same shall be revised by mediation under Clause 47.6 or a tribunal of competent jurisdiction under Clause 47.7.

47.6 Reference to Mediation

- (a) Parties may refer dispute or difference of whatsoever kind between the Employer or the Superintending Officer and the Contractor in connection with or arising out of the Contract or, whether during the execution of the Works or after their completion and whether before or after any determination of the Contractor's employment, to mediation by way of notice to the other party with a copy to the Superintending Officer of his intention to refer disputes or difference to mediation (hereinafter referred to as "**Request for Mediation**").
- (b) Upon service of a Request for Mediation, the dispute or difference shall be subjected to mediation between the parties in accordance with the *CIDB Mediation Rules* in force at the material time and with the appointment of *CIDB Accredited Mediator*.
- (c) Upon the dispute or difference being resolved in mediation, such resolution shall be recorded in a settlement agreement and the parties shall give effect to this agreement accordingly. A copy of the settlement agreement shall be given to Superintending Officer who shall take notice of the same and where applicable give effect to the terms of the settlement agreement in discharging his duties and authority under the Contract.
- (d) If the parties fail to achieve any settlement at the mediation, either party may refer the dispute or difference to a tribunal of competent jurisdiction under Clause 47.7.

47.7 Reference to Tribunal of Competent Jurisdiction

47.7.1 Alternative Clauses

Clause 47.7.2 or Clause 47.7.3 shall apply as prescribed in the Appendix.

47.7.1A Reference to Arbitration

- (a) If the Dispute Resolution Board fails to give his decision by the date stated in Clause 47.5(a), or if either party be dissatisfied with any decision of the Dispute Resolution Board, the Employer or the Contractor may, give notice to the other party with a copy to the Superintending Officer of his intention to refer the dispute or difference to arbitration (refer the dispute or difference to arbitration (hereinafter referred to the "**Notice of Arbitration**") and the final decision of an arbitrator is binding. For the avoidance of doubt, a party shall not refer disputes to arbitration unless such dispute has first been referred to the Dispute Resolution Board to be determined.
- (b) The arbitrator shall be agreed upon by the parties and where the parties fail to agree on such appointment within 14 Days of the Notice of Arbitration, then either party may request the Appointer of Arbitrator named in the Appendix to appoint an arbitrator.

- (c) Subject to Clause 47.8, arbitration proceedings shall not, without the other party's consent in writing, be initiated before the Date of Practical Completion of the Works or alleged Date of Practical Completion (or if there is more than one such Date of Practical Completion, the latest) or the determination or alleged determination of the Contractor's employment under the Contract except on the question of:
 - (i) whether or not the issue of an instruction is empowered by the Contract; or
 - (ii) whether or not a payment has been improperly withheld; or
 - (iii) whether a payment is not in accordance with the Contract; or
 - (iv) whether either party has withheld or delayed a consent where such consent is not to be unreasonably withheld or delayed.
- (d) The Notice of Arbitration under this Clause 47.7 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2005 or any amendment or re-enactment of the said Act and the arbitration rules as stated in the Appendix.
- (e) The arbitrator shall have power to –
 - (i) open up, review and revise any certificate, opinion, decision, requisition or notice including decision by the Dispute Resolution Board;
 - (ii) determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with sub-clause 47.7(a) in the same manner as if no such certificate, opinion, decision, requisition or notice had been given; and
 - (iii) award damages including interest or financing charges for the period before and after the date of the award at such rate as he may in his discretion consider to be appropriate.
- (f) Upon every or any such reference the costs incidental to the arbitration and award shall be the discretion of the arbitrator who may determine the amount of costs, or direct the amount to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in whatmanner the same shall be borne and paid.
- (g) The award of the arbitrator shall be final and binding on the parties.

- (h) In the event of:
 - (i) death of the arbitrator; or
 - (ii) refusal or incapability of the arbitrator to act; or
 - (iii) removal of the arbitrator by the court or by mutual agreement of the parties;

the parties shall mutually agree on a replacement. If the parties fail to agree on a replacement within 14 Days of any of the said events then either party may request the Appointer of Arbitrator named in the Appendix to appoint such replacement.

- (i) The place of arbitration shall be the place named in the Appendix.

47.7.1B Submission to Court Jurisdiction

- (a) If the Dispute Resolution Board fails to give his decision by the date stated in sub-clause 47.5(a), or if either party is dissatisfied with any decision of the Dispute Resolution Board, either party may refer the same to be determined by the Courts. In this regard, the Employer and the Contractor irrevocably submit to the exclusive jurisdiction of the courts of Malaysia for the purpose of any action or proceedings arising out of the Contract. For the avoidance of doubt, a party shall not commence such Court proceedings unless the dispute has first been referred to the Dispute Resolution Board to be determined.
- (b) Subject to Clause 47.7.1B, any party shall not without the other party's consent in writing, initiate Court proceedings before the Date of Practical Completion of the Works or alleged Date of Practical Completion (or if there is more than one such Date of Practical Completion, the latest) or the determination or alleged determination of the Contractor's employment under the Contract except on the question of:
 - (i) whether or not the issue of an instruction is empowered by the Contract; or
 - (ii) whether or not a payment has been improperly withheld; or
 - (iii) whether a payment is not in accordance with the Contract; or
 - (iv) whether either party has withheld or delayed a consent where such consent is not to be unreasonably withheld or delayed.

47.8 Settlement of Dispute in the Event of Determination

- (a) Notwithstanding Clause 47.1, if the dispute or difference concerns

the determination of the employment of the Contractor or the termination, repudiation or abandonment of the Contract by either party, such dispute or difference shall not be referred to the Superintending Officer and/or Dispute Resolution Board for decision pursuant to Clause 47.1 and Clause 47.2 respectively but shall be referred to dispute resolution under Clause 47.7 or may be referred to mediation pursuant to Clause 47.6.

48 RECOVERY BY THE EMPLOYER

48.1 Employer's Right To Recovery

Employer's Right To Recovery

Wherever the Contract provides for the Employer to recover any amount from the Contractor, such amount may be deducted from any sum due or to become due at any time thereafter from the Employer to the Contractor in accordance with the provisions of the Contract. Such sums may in any event be recovered by the Employer from the Contractor as a debt due from the Contractor.

49 GOVERNING LAW

49.1 Law

Law

The law governing the Contract shall be the laws of Malaysia.

50 TAXES AND DUTIES

50.1 Payment of Custom Duties and Taxes

Payment of Custom Duties and Taxes

- (a) The Contractor shall be required to pay all duties and taxes, including customs duties and sales tax, required under any Statutory Requirements in respect of:
- (i) all Equipment, materials or goods for incorporation in the Works; and
 - (ii) Construction Plant or Temporary Works for use in connection with the Works.
- (b) The Contractor will be required to pay all taxes payable by himself or his agents and sub-contractors and suppliers as are chargeable under the laws of Malaysia for the time being in force. The Contract Sum shall be deemed to include for payment of all such taxes by the Contractor.

51 MISCELLANEOUS PROVISIONS

51.1 Business Ethics

Business Ethics

The Contractor, his servants or agents and his sub-contractors are not expected or authorised to take any action on behalf of the Employer which violate applicable laws. All financial statements, reports, billings and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of the Employer.

51.2 Declaration Against Waiver

Declaration Against Waiver

The condonation by the Employer or the Superintending Officer of any breach or breaches by the Contractor or his sub-contractor of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Employer's rights, powers and remedies under the Contract in respect of any other breach or breaches of the Contract.

51.3 Notice of Garnishment

Notice of Garnishment

The Contractor shall not cause permit or suffer to be issued in satisfaction of any decree judgment or other order given or to be given against the Contractor any notice of garnishment binding any property of the Contractor which is in the possession of the Employer.

51.4 Stamp Duties

Stamp Duties

The proper Stamp Duty, if any, on the Contract shall be borne by the Employer.

APPENDIX

CLAUSE

OPTION MODULES	1.1	
Option Module A		Applicable/Not Applicable*
Option Module B		Applicable/Not Applicable*
Option Module C		Applicable/Not Applicable*
Option Module D		Applicable/Not Applicable*
Option Module E		Applicable/Not Applicable*
Option Module F		Applicable/Not Applicable*
		(*Strike out as appropriate)
LANGUAGE	1.5	.....
(English if none stated)		
LIMITATIONS ON THE AUTHORITY OF THE SUPERINTENDING OFFICER	2.1	..........
NO. OF COPIES OF DRAWINGS TO BE SUPPLIED	4.4(a)	.....
NO. OF COPIES OF DRAWINGS TO BE SUPPLIED	4.10	.....
OTHER METHOD OF SERVICE OF NOTICES	8.1(a)(iii)	.....
DATE OF COMMENCEMENT	17.1	
Whole of the Works		.....
<u>Section of the Works:</u>		<u>Date of Commencement:</u>
.....	
.....	
.....	
REQUIREMENTS/RESTRICTIONS FOR POSSESSION OF SITE (For Sections Only)	17.2(b)	.....

SUSPENSION PERIOD (3 months if none stated)	19.2	.....
TIME FOR COMPLETION	20	
Whole of the Works		.....
<u>Section of the Works:</u>		<u>Time for Completion:</u>
.....	
.....	
.....	
Sectional Completion –	22.2(b)	.....
% of Performance Security Deposit to be reduced upon Sectional Completion (if Option Module F is applicable).		.....
EARLY WARNING		
The following matters will be included in the Early Warning Register	24.3	.....
	
	
Early warning meetings are to be held at intervals no longer than [] If none is stated, early warning meeting shall be held on a monthly basis	24.5	.....
LIQUIDATED DAMAGES	26.2	
Whole of the Works		.....

Section of the Works:

Liquidated Damages:

.....	
.....	
.....	
LIMIT OF LIQUIDATED DAMAGES (10% if none is stated)	26.2(a)	..... or.....% of the Contract Sum
DEFECTS LIABILITY PERIOD (12 months if none stated)	27	.....
LIMITATIONS ON EXTENT OF		.....
LIABILITY FOR ANY ONE ACCIDENT	36.1	.....
INSURANCE EXCESS	36.1	.....
INSURANCE OF THE WORKS	38A 38B 38C	Applicable/Not Applicable* Applicable/Not Applicable* Applicable/Not Applicable* (*Strike out as appropriate)
AMOUNT TO BE ADDED TO CONTRACT SUM AS INSURED AMOUNT:	38A.1 or 38B.1 or 38C.1	
Percentage in respect of Professional Fees		.....
Amount for removal of Debris		.....
P C SUM ITEM FOR WHICH CONTRACTOR IS ALLOWED TO TENDER	41.1	.....
INTERVAL FOR SUBMISSION OF STATEMENT OF WORK DONE (1 month if none stated)	42.1
STAGE PAYMENTS:	42.1(a)	

Stage:

Percentage:

.....	
.....	
.....	

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.....
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.....
.....

VALUE OF EQUIPMENT,
MATERIALS AND GOODS
INCLUDED IN INTERIM
CERTIFICATE: 42.1 (c)

Equipment, Materials and Goods:

Percentage of the Total Value:

.....
.....
.....
.....
.....
.....

(75% if none stated)

MINIMUM AMOUNT FOR INTERIM
PAYMENT 42.2(d)

First Interim Payment

Subsequent Interim Payment

RETENTION MONIES 42.3

Retention Percentage
(10% if none stated)

Limit of Retention Monies
(5% of Contract Sum if none stated)

PERIOD FOR HONOURING
CERTIFICATE 42.9(a)
(21 Days if none stated)

RATE OF INTEREST UPON UNPAID
SUM 42.9(b)
(2% above prevailing base lending rate of
Maybank Berhad, if none stated)

CERTIFICATE OF DETERMINATION
OF COSTS 44.4
.....
(within [] months from issuance of Notice
of Determination, 6 months if none is stated)

Certification of payment
(within [] months from issuance of Notice
of Determination, 6 months if none is stated) 45.3(b)

DISPUTE RESOLUTION BOARD	47.3(a)	.....
Names of DRB Members		.....
Or		.....
No. of DRB Members and Date by which the members shall be appointed (if none stated, is the Date of Commencement of the Works)		..... .....
Reference to Tribunal of Competent Jurisdiction	47.7.1A	Applicable/Not Applicable*
	47.7.1B	Applicable/Not Applicable*
		(*Strike out as appropriate)
		Should none is elected, the applicable provision is Cl. 47.71A.
APPOINTER OF ARBITRATOR (Director of Asian International Arbitration Centre, if none stated)	47.7.1A(b) ,47.7.1A(h) )	.....
ARBITRATION RULES (AIAC Arbitration Rules, if none stated)	47.7.1A(d)	.....
PLACE OF ARBITRATION (Kuala Lumpur, if none stated)	47.7.1A(i)	.....
PAYMENT BOND (if Option Module E is applicable) (5% of Contract Sum, if none stated)	E1	.....
AMOUNT OF PERFORMANCE SECURITY DEPOSIT (if Option Module F is applicable) (5% of Contract Sum, if none stated)	F1	.....

OPTION MODULE A BILLS OF QUANTITIES

A1. Definitions and Interpretations

Definitions and Interpretations

The term “Bills of Quantities” means the priced Bills of Quantities included in the Contract subject to modifications and additions to the same as may be made by letter or letters of amendment issued by the Employer or Superintending Officer which forms part of the Contract.

A2. Quantities and Description

Quantities and Description

- (a) The Bills of Quantities shall form part of the Contract. Subject to Clause 4, the quantity of the Works to be executed under the Contract shall be deemed to be that set out in the Bills of Quantities which shall be the basis of the Contract Sum.
- (b) Any error in description or in quantity or in omission of items from the Bills of Quantities shall not vitiate the Contract but shall be corrected by the Superintending Officer and such correction shall be deemed to be a Variation.

A3. Provisional Quantities

Provisional Quantities

- (a) Where quantities set out in the Bills of Quantities are indicated as “Provisional”, such quantities are the estimated quantities of the work and shall be subject to remeasurement upon the completion of the Works. For the avoidance of doubt no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is the result of the remeasurement of provisional quantities stated in the Bill of Quantities and shall be deemed to be a Variation required by the Superintending Officer.
- (b) Where the Works measured are as described in the Bills of Quantities the valuation of such Works shall, subject to Clause 29, be at the Rates for the Works stated in the Bills of Quantities irrespective of the actual remeasured quantities.

A4. Methods of Measurement

Methods of Measurement

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

OPTION MODULE B
UNFIXED EQUIPMENT MATERIALS OR
GOODS
STORED OFF SITE

B1. Certification and Payment

**Certification and
Payment**

The amount stated as due in an Interim Certificate under Clause 42 may at the discretion of the Superintending Officer and provided that the same is claimed by the Contractor, include the percentage value (as stated in the Appendix) of unfixed Equipment, materials or goods before delivery to the Site, subject always to the conditions precedent stipulated in Clause B2.

B2. Conditions Precedent

**Conditions
Precedent**

The conditions precedent referred to in Clause B1 are:

- (a) The invoices and receipts of payment for such Equipment, materials or goods are submitted with the Statement of Work Done required under Clause 42.1;
- (b) The Equipment, materials or goods are intended for incorporation into the Works;
- (c) The Equipment, materials or goods are in accordance with the Contract;
- (d) The Equipment, materials or goods are in Malaysia, have obtained all necessary customs clearance and have been and are either set apart at the premises where they have been manufactured or assembled or are suitably stored and in any case visibly marked or identified in a manner as directed by the Superintending Officer and properly protected from loss and damage;
- (e) The progress of the Contract is such that the Superintending Officer is satisfied that the Equipment, materials or goods cannot at the time of certification be fully and properly incorporated into the Works;
- (f) The Superintending Officer is satisfied that the Equipment, materials or goods are not prematurely delivered and there is inadequate storage space at the Site or such Equipment, materials or goods if brought to the Site cannot be adequately protected against damage, loss or injury;

- (g) The Contractor provides the Superintending Officer with reasonable proof that the Equipment, materials or goods are insured against damage, loss or injury for their full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect all risks (save only the Excepted Risks) referred to in Clause 38 during the period commencing with the transfer of the property in the Equipment, materials or goods to the Contractor until they are delivered to the Site;
- (h) Property in the Equipment, materials or goods shall pass to the Employer when payment is made for the same in accordance with Clause 42;
- (i) The Employer shall not at any time be liable for damage, loss or injury to any of the said Equipment, materials or goods except and to the extent that the same is due to Excepted Risks or any act or neglect of the Employer or of any person for whom the Employer is responsible; and
- (j) If any Equipment, materials or goods for which payment has been made by the Employer have been removed from the place of manufacture, assembly or storage to another destination other than the Site or should the Contractor fail to deliver any Equipment, materials or goods for which payment has been made by the Employer to the Site as and when directed by the Superintending Officer without reasonable cause or have an intent to deceive or defraud the Employer, such amount paid by the Employer for any such Equipment, materials or goods moved or delivered shall be recoverable from the Contractor.

OPTION MODULE C
NOMINATED SUB-CONTRACTORS
AND/OR NOMINATED SUPPLIERS

C1. Nominated Sub-Contractors and/or Nominated Suppliers

**Nominated Sub-Contractors
and/or Nominated
Suppliers**

- (a) A Nominated Sub-Contractor means a person or specialist contractor with whom the Contractor is required by:
 - (i) the Contract to enter into a contract for the execution of any work designated as “Prime Cost” or “P.C.” Sum items; or
 - (ii) an instruction from the Superintending Officer to enter into a contract for the execution of any work designated as “Prime Cost” or “P.C.” Sum items; or
 - (iii) an instruction from the Superintending Officer in regard to the expenditure of a Provisional Sum to treat such sum as a Prime Cost or P.C. Sum item for the execution of any work by a Nominated Sub-Contractor.

- (b) A Nominated Supplier means a person with whom the Contractor is required by:
 - (i) the Contract to enter into a contract for the execution of any work designated as “Prime Cost” or “P.C.” Sum items; or
 - (ii) an instruction from the Superintending Officer to enter into a contract for the supply of any Equipment, materials or goods designated as “Prime Cost” or “P.C.” Sum items; or
 - (iii) an instruction from the Superintending Officer in regard to the expenditure of a Provisional Sum to treat such sum as a Prime Cost or P.C. Sum item for the supply of any Equipment, materials or goods by a Nominated Supplier.

- (c) All Prime Cost or P.C. Sum items designated in the Contract shall be reserved for execution or supply by a person to be nominated in such ways on such terms and for such amount as may be instructed by the Superintending Officer in accordance with the provisions of this Option Module C. The Contractor shall not without the instruction of the Superintending Officer order execution of any work or supply of any Equipment, materials or goods under such Prime Cost or P.C. Sum items or Provisional Sum.

C2. Nomination

Nomination

- (a) The Superintending Officer or the Contractor if so instructed by the Superintending Officer shall obtain tenders or quotations for the execution of any work or the supply of any Equipment, materials or goods in respect of which Prime Cost or P.C. Sums or Provisional Sum are included in the Contract. Subject to sub-clause C2 (b) the Contractor shall on the instruction of the Superintending Officer enter into a sub-contract with the Nominated Sub-Contractor or Nominated Supplier, as the case may be, and such sub-contract shall unless otherwise prescribed in the Contract be on the CIDB Standard Form of Sub-Contract for Nominated Sub-Contractor or Nominated Supplier (whichever is applicable).

- (b) Subject to sub-clauses C2 (c) and (d) the Contractor is not required to enter into a sub-contract with any Nominated Sub-Contractor or Nominated Supplier against whom the Contractor has made an objection:
 - (i) on the ground that the financial standing or solvency or technical competence of the Nominated Sub-Contractor or Nominated Supplier is such that a prudent contractor would not appoint, having regard to the nature and extent of the work or the Equipment, materials or goods and their possible effect on the remainder of the Works; or
 - (ii) on the ground that the Nominated Sub-Contractor or Nominated Supplier declines to enter into a sub-contract on the terms and conditions of the form prescribed providing:
 - (1) that the Nominated Sub-Contractor or Nominated Supplier shall in respect of the sub-contract, duly observe all the terms stipulations and Conditions of the Contract;
 - (2) that the Nominated Sub-Contractor or Nominated Supplier shall indemnify the Contractor against claims in respect of negligence, omission or default by the Nominated Sub-Contractor or Nominated Supplier, his servants or agents arising out of the design (to the extent required by the Sub-Contract) or the execution of the work or the supply of the Equipment, materials or goods, as the case may be;

- (3) that payment due to the Nominated Sub-Contractor or Nominated Supplier less any deductions in accordance with the sub-contract shall be made by the Contractor within 7 Days after the Period of Honouring Certificate or after the Contractor has received payment, whichever is the earlier, under any Interim Certificate issued by the Superintending Officer pursuant to Clause 42 which includes the value of any such sub-contract works or supply of any Equipment, materials or goods;
 - (4) that if the Nominated Sub-Contractor or the Nominated Supplier fails to complete the sub-contract works or the delivery of any Equipment, materials or goods in accordance with the sub-contract, he shall be liable for all loss, expense and damages for delay which are attributable to him having regard to the Contractor's own liability for delay under the Contract; and
 - (5) that the Nominated Sub-Contractor or Nominated Supplier shall provide a Performance Security Deposit (if Option Module F is applicable under the Contract) as and by way of security for the due performance and of observance by the Nominated Sub-Contractor or Nominated Supplier of his obligations under the sub-contract. The said Performance Security Deposit shall be in the form of cash, banker's draft, a banker's bond or an insurer's bond reasonably approved by the Superintending Officer and the Contractor for the amount stated in the Appendix.
- (c) Notwithstanding any reasonable objections raised by the Contractor under sub-clause C2 (b), the Superintending Officer may require the Contractor to enter a sub-contract with the Nominated Sub-Contractor or Nominates Supplier; provided that the Employer shall indemnify the Contractor against any loss, expense, costs, damages, liability or claim incurred by him arising as a direct result of a matter or matters reasonably objected to by the Contractor. In such case the Superintending Officer shall, subject to Clauses 32 and 42, certify any loss and expense which the Contractor had incurred and, subject to Clause 32, grant the Contractor an extension of time.
- (d) Notwithstanding sub-clause C2 (b), no objection to the nomination shall be considered if:
- (i) the sub-contractor or supplier is nominated in the documents provided by the Employer upon which the Tender is based; or

- (ii) the Superintending Officer and the Contractor have agreed on the list of selected sub-contractors or suppliers prior to invitation to tender for the execution of the work or supply of any Equipment, materials or goods, the subject of Prime Cost or P. C Sums or Provisional Sums under the Contract;

unless there has been a material change in the circumstances of the said sub-contractor or supplier between the Date of Tender or agreement of the list of selected sub-contractors or suppliers and the date of nomination by the Superintending Officer.

- (e) If pursuant to sub-clause C2 (b) the Contractor is not required to enter into a sub-contract with a sub-contractor or supplier nominated by the Superintending Officer then the Superintending Officer shall do one or more of the following:
 - (i) Nominate an alternative sub-contractor or supplier, as the case may be, in which case sub-clauses C2 (b) and (c) shall apply;
 - (ii) Arrange in accordance with sub-clause 41.1(b) for the Contractor to execute such work or to supply such Equipment, materials or goods, as the case may be;
 - (iii) By an instruction under Clause 28 vary the Works or the work, Equipment, materials or goods, which is the subject of Prime Cost or P. C. Sums or Provisional Sums under the Contract, including, if necessary, the omission of any such work, Equipment, materials or goods so that they may be provided by other persons, contractors or suppliers, engaged by the Employer directly either concurrently with the Works or at some other time.

C3. Payment to Nominated Sub-Contractor or Nominated Supplier

- (a) In any application for payment pursuant to Clause 42, the Contractor shall include amounts claimed by the Nominated Sub-Contractor or Nominated Supplier in respect of any work executed or any Equipment, materials or goods delivered under the respective sub-contracts for which they are entitled to payment.

**Payment to
Nominated Sub-
Contractor or
Nominated
Supplier**

- (b) In addition to each of the certificates issued pursuant to Clause 42, the Superintending Officer shall certify separately the amounts due to each of the Nominated Sub-Contractors or Nominated Suppliers in respect of the work executed or the Equipment, materials or goods delivered. Such separate certificates shall be given to the Nominated Sub-Contractor or Nominated Supplier by the Superintending Officer with a copy to the Contractor.
- (c) Within 7 Days after the Period of Honouring Certificate or after the Contractor has received payment from the Employer, whichever is the earlier, the Contractor shall pay to the Nominated Sub-Contractor or Nominated Supplier the amount stated as due to them in the said separate certificate referred to in sub-clause C3(b). Provided always the Contractor is entitled to deduct or set-off any amounts due to him from the Nominated Sub-Contractor or Nominated Supplier under the sub-contract.
- (d) Before issuing each Interim Certificate under Clause 42.2 (except the first Interim Certificate) and the Final Certificate under Clause 42.8, the Superintending Officer shall be entitled to request from the Contractor reasonable proof that all amounts included in previous Interim Certificates in respect of amounts due to the Nominated Sub-Contractors or Nominated Suppliers (less any amounts due from the Nominated Sub-Contractor or Nominated Supplier to the Contractor) have been paid or otherwise discharged by the Contractor pursuant to sub-clause C3(c). In the event of default by the Contractor to provide such reasonable proof, the Employer shall be entitled, but not obliged, to pay direct to such Nominated Sub-Contractor or Nominated Supplier the amounts due but which have not been paid by the Contractor under the current or previous Interim Certificates issued by the Superintending Officer under Clause 42.2. The amounts so paid direct to the Nominated Sub-Contractors or Nominated Suppliers by the Employer pursuant to this sub-clause C3(d) shall be deducted from any payment due or which may become due from the Employer to the Contractor.
- (e) If the Superintending Officer wishes to make final payment to any Nominated Sub-Contractor or Nominated Supplier before final payment is due to the Contractor, and if the Nominated Sub-Contractor or Nominated Supplier has:
 - (i) in the opinion of the Superintending Officer and the Contractor made good any Defects which have appeared and which the Nominated Sub-Contractor or Nominated Supplier is bound to make good under the sub-contract;

- (ii) sent through the Contractor to the Superintending Officer all documents necessary for the final adjustment of the sub-contract sum; and
- (iii) satisfactorily indemnified the Contractor against any latent Defects;

then the Superintending Officer may in an Interim Certificate include an amount to cover the said final payment, and the Contractor shall pay to such Nominated Sub-Contractor or Nominated Supplier in accordance with the provisions of sub-clause C3(c)

- (f) Upon such final payment in accordance with sub-clause C3 (e):
 - (i) the amount stated in the Appendix as Limit of Retention shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contract sum to the Contract Sum; and
 - (ii) except for latent Defects, the Contractor shall be discharged from the liability for the work, Equipment, materials or goods executed or supplied by such Nominated Sub-Contractor or Nominated Supplier (as the case may be) under the sub-contract.
- (g) Neither the existence nor the exercise of powers pursuant to sub-clauses C3 (d) and (e) nor anything else under this Clause C3 shall create a privity of contract between the Employer and the Nominated Sub-Contractors or Nominated Suppliers or render the Employer liable to any of them.

C4. Contractor’s Responsibilities

Contractor’s Responsibilities

- (a) Except for Nominated Sub-Contractors or Nominated Suppliers nominated pursuant to sub-clause C2 (c), once the Contractor has entered into a sub-contract with a Nominated Sub-Contractor or Nominated Supplier, he shall be fully responsible for the performance of the Nominated Sub-Contractor or Nominated Supplier under the sub-contract and shall be fully responsible for the acts, defaults or breach of any terms or conditions of the Contract by the Nominated Sub-Contractor or Nominated Supplier on their part in the same way as for his own or those of other sub-contractors or suppliers employed by himself, and the Employer shall in no circumstances be liable to the Contractor for the default of any Nominated Sub-Contractors or Nominated Suppliers.

- (b) The Contractor shall not determine or assign any sub-contract with the Nominated Sub-Contractor or Nominated Supplier without the prior written consent of the Employer.
- (c) In the event of repudiation or abandonment of his sub-contract by any Nominated Sub-Contractor or Nominated Supplier, or the determination by the Contractor of the employment of the Nominated Sub-Contractor or Nominated Supplier for any reason whatsoever under the sub-contract, the Contractor shall do one of the following:
 - (i) with the consent of the Superintending Officer (such consent shall not be unreasonably withheld) employ another competent sub-contractor or supplier to complete the sub-contract; or
 - (ii) himself undertake to complete the sub-contract.
- (d) Subject to sub-clause C2 (c) if the sub-contract is determined or assigned, the Employer shall not be required to pay the Contractor any greater sums than would have been payable if the determination or assignment had not occurred.

C5. Sub-Contractor's Design

**Sub-Contractor's
Design**

Where any design is required to be carried out by the Nominated Sub-Contractor by the express terms of the sub-contract or as may be reasonably inferred from the same then the provisions of Option Module D shall apply in the same manner as if such design is provided by the Contractor.

OPTION MODULE D

WORKS DESIGNED BY THE CONTRACTOR

D1. Contractor's Design Responsibility

Contractor's Design Responsibility

- (a) Where the Contract expressly provides that a part or parts (but not the whole) of the Works shall be designed by the Contractor, he shall be fully responsible for the suitability, adequacy, integrity, durability and practicability of the design as set out in the Drawings, Specifications, manuals, calculations and other information submitted for the acceptance of the Superintending Officer under Clauses D.2 and D.3 including any subsequent amendment of such design.

- (b) Insofar as the Contractor is responsible for the design of any part of the Works, he shall have in respect of Defects or insufficiency in such design the like liability to the Employer, whether under statute or otherwise, as would an architect, or as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, had supplied such design for or in connection with works to be carried out and completed by a contractor not being the supplier of the design.

- (c) Any references to the design which the Contractor has prepared or shall prepare or issue for the works shall include a reference to any design which the Contractor has caused or shall cause to be prepared or issued by others.

- (d) The Contractor shall obtain from all his professional consultants direct warranties for the adequacy and suitability of the designs. The direct warranties shall be given by the Contractor's professional consultants in favour of the Employer.

D2. Submission of Documents Prior to Commencement

Submission of Documents Prior to Commencement

- (a) In respect of any part of the Worked designed by the Contractor:
 - (i) the Employer shall clearly set out the requirements for which the design is intended (the "Employer's Requirements");

 - (ii) the Contractor shall proceed with the design to meet the Employer's Requirements.

Provided however the Contractor shall not proceed with the execution of the same until he has submitted to the Superintending Officer in accordance with Clause 4.4 such Drawings, Specifications, manuals, calculations and other information as shall be necessary to demonstrate the suitability, adequacy, integrity, durability and practicality of such design to meet the Employer's Requirements (hereinafter collectively called "the Design Documents") and the Superintending Officer has issued his acceptance in writing of such design.

- (b) Without prejudice to his rights under Clause D4, the Superintending Officer shall be entitled to approve or otherwise any of the Design Documents submitted in accordance with sub-clause D2(a). The Superintending Officer shall approve or otherwise any such Design Documents within 14 days from the date of receipt of the same. The Superintending Officer shall signify by a notice:
 - (i) his "approval"; or
 - (ii) his "approval with correction" or
 - (iii) his requirement to "resubmit";

and return 1 copy to the Contractor. If the Superintending Officer fails to give notice within the period of 14 days or such other longer period as be mutually agreed, the Design Documents so submitted shall be deemed to be approved by the Superintending Officer.

- (c) The Superintending Officer's notes "approved" or "approved with corrections" will give the Contractor authorisation to proceed on the basis of the Design Document(s) provided that the required corrections, if any, are made.
- (d) Where any of the Design Document is marked "resubmit", the same shall be corrected and re-submitted and the procedure for obtaining approval set out in this Clause D2 shall apply to the resubmitted Design Document.
- (e) Acceptance by the Superintending Officer of such submission shall not relieve or in any way limit the responsibility of the Contractor under Clause D1.
- (f) Notwithstanding anything contained in this Clause D2 if the Contractor considers that the comments and amendments of the Superintending Officer in respect of the Design Documents submitted involve a change to the Employer's Requirements then the Contractor shall inform the Superintending Officer in writing of the same requiring a Variation instruction and the provisions of Clause 28 shall apply.

- (g) For the avoidance of doubt the Superintending Officer may instruct Variations in respect of Works designed by the Contractor to the same extent as for other works by way of changes to the Employer's Requirements in which case the provisions of Clause 28 shall apply.

D3. Submission of Documents After Completion

Submission of Documents After Completion

Upon the Date of Practical Completion (or the latest Date of Practical Completion if there is more than one Date of Practical Completion), the Contractor shall submit to the Superintending Officer in accordance with Clause 4.10 the operation and maintenance manuals together with Drawings of the Works or any part of the Works designed by the Contractor as completed in sufficient details to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Works incorporating such design.

D4. Amendment and Modification of Accepted Design

Amendment and Modification of Accepted Design

- (a) The Superintending Officer may instruct the Contractor at any time, before, during or after the execution or completion of the Works to amend or modify the design provided by the Contractor in respect of any deficiency of any kind or nature discovered by the Superintending Officer and to carry out such work as necessary to give effect to such amended or modified design in accordance with the Superintending Officer's instruction. All work necessary (including re-design work) or Variations required as a result of such an instruction and their costs or damages for delay to the completion of the Works shall be the entire responsibility of and shall be borne by the Contractor.
- (b) The Contractor may with the written consent of the Superintending Officer (such consent shall not be unreasonably withheld or delayed) amend or modify the design provided. Provided that where such amendment or modification involves a Variation, the following provisions shall apply:
 - (i) any extra cost shall be borne by the Contractor;
 - (ii) any savings resulting from such Variation shall accrue to the Employer.

OPTION MODULE E PAYMENT BOND

E1. Submission of Payment Bond

Submission of Payment Bond

The Employer shall within 14 days of the date of the Letter of Award submit to the Contractor a security deposit (hereinafter called “the Payment Bond”) in the form of a banker’s bond or insurer’s bond in the amount stated in the Appendix for the due performance and observance by the Employer of his obligations under the Clause 42.

E2. Validity of Payment Bond

Validity of Payment Bond

- (a) The Contractor is entitled to hold the Payment Bond until the final payment is made by the Employer pursuant to the Final Certificate issued under Clause 42.8. The Employer shall ensure that the Payment Bond is valid and effective until the said final payment.
- (b) In the event of any extension of time properly granted by Superintending Officer in accordance with Clause 32, the Employer shall ensure that the validity of the Payment Bond is accordingly extended.
- (c) Provided that the Employer shall not be obliged to extend the validity of the Payment Bond if the delay is due any default or breach of contract by the Contractor.

E3. Use of Payment Bond

Use of Payment Bond

Provided that the Payment Bond is valid and effective, if the Employer fails to pay the Contractor any amount pursuant to any certificate under Clause 42 the Contractor may utilize and make payments out of or deductions from the Payment Bond.

E4. Release of Payment Bond

Release of Payment Bond

The Payment Bond shall be released to the Employer upon the receipt by the Contractor of the final payment from the Employer pursuant to the Final Certificate issued under Clause 42.8.

OPTION MODULE F PERFORMANCE SECURITY DEPOSIT

F1. Submission of Performance Security Deposit

Validity of the Performance Security Deposit

- (a) The Contractor shall within 14 Days of the Letter of Award (but in any event before the commencement of the Works) deposit with the Employer the Performance Security Deposit equal to the amount stated in the Appendix as and by way of security for the due performance and observance by the Contractor of his obligations under the Contract.
- (b) The Performance Security Deposit may be in the form of cash, banker's draft, a banker's bond or an insurer's bond in the format required by the Contract or otherwise approved by the Employer.
- (c) *If the Contractor is a subsidiary of another company, the Contractor may provide the Employer the Performance Security Deposit in Clause F.1(a) from the ultimate holding company of the Contractor.*
- (d) *The Contractor may also propose to the Employer for its acceptance, an alternative guarantor (or provider for the Performance Security Deposit in Clause F.1) who is owned by the ultimate holding company. A reason for the Employer in not accepting the guarantor/provider may be that its commercial position is not strong enough to carry/provide the guarantee.*

F2. Validity of the Performance Security Deposit

- (a) The Employer is entitled to hold the Performance Security Deposit until the issue of the Certificate of Practical Completion by the Superintending Officer pursuant to Clause 20.2.
- (b) If the Performance Security Deposit is in the form of a banker's bond or insurer's bond, it shall be the Contractor's responsibility to ensure that such bond is valid and effective until the issuance of the Certificate of Practical Completion, notwithstanding the expiry of the Time for Completion or the expiry date stated in the banker's bond or insurer's bond. If the Contractor shall fail to effect and maintain the validity of such banker's bond or insurer's bond, then without prejudice to any other rights and remedies the Employer may possess, the Employer shall be entitled to withhold an amount equal to the amount of the Performance Security Deposit stated in the Appendix from any payment due or to become due to the Contractor and such amount shall be withheld until the issue of the Certificate of Practical Completion.

F3. Utilisation of Performance Security Deposit by Employer

**Utilisation of
Performance
Security Deposit
by Employer**

- (a) If the Contractor fails to execute the Contract or commits any breach of his obligations under the Contract, the Employer may utilize and make payments out of or deductions from the Performance Security Deposit subject to sub-clauses F3(b) and F3(c).
- (b) A notice of default from the Superintending Officer to the Employer with a copy to the Contractor is the condition precedent to the Employer's entitlement to demand or utilisation of the Performance Security Deposit.
 - (a) The notice of default shall state:
 - (i) that the Contractor has failed to execute the Work or committed a breach of his obligations under the Contract;
 - (ii) in what manner the Contractor has failed to execute the Works or breached his obligations under the Contract and
 - (iii) an estimate of the cost, damage, loss or injury due or payable to the Employer by the Contractor arising out of such default by the Contractor.
 - (b) Provided that the amount which may be recovered by the Employer from the Performance Security Deposit shall not exceed the amount of the said estimated cost, damage, loss or injury referred to in sub-clause F3(c)(iii) after taking into account the amount certified as due to the Contractor pursuant to Clause 42 but remaining unpaid by the Employer (unless and to the extent that under the terms of the Contract the Employer may be empowered not to pay or to make deductions in respect of such amount certified).

F4. Release of the Performance Security Deposit

**Release of
the Performance
Security Deposit**

The Performance Security Deposit (or any balance of the same remaining to the credit of the Contractor) shall be released or refunded to the Contractor on the completion of the whole of the Works and the issue of the Certificate of Practical Completion by the Superintending Officer pursuant to Clause 20.2. In the case of a bank bond or insurer's bond, the said bond shall have no force or effect after the issue of the Certificate of Practical Completion irrespective of whether or not the said banker's bond or insurer's bond is released to the Contractor.