

**CONSULTANCY SERVICES**

**FOR KAJIAN PERANCANGAN KEMUDAHAN TAPAK PERKUBURAN ISLAM  
DAN LAIN-LAIN AGAMA NEGERI PULAU PINANG**

**CONTRACT NO : KST/PMPP/23/10**

**BETWEEN**

**THE STATE GOVERNMENT OF PENANG**

**AND**

**XXXXXXXXXXXXXXXXXXXXXXX**

**“RECITALS”**

THIS AGREEMENT is made on **XXXXXXXXXXXX**

**BETWEEN**

STATE OF PENANG as represented by PLANMalaysia @Pulau Pinang whose address is at Tingkat 54 & 57, Kompleks Tun Abdul Razak (KOMTAR), 10000 Pulau Pinang (hereinafter referred to as” the Government”) of the first part;

**AND**

**XXXXXXXXXXXX**-(hereinafter referred to as “Consultant”) of the other part.

The Government and the Consultant shall individually be referred as the **“Party”** and collectively referred to as the **“Parties”**.

**WHEREAS**

- (A) The Government is desirous of obtaining consultancy services (hereinafter referred to as “the services”) necessary for Kajian Perancangan Kemudahan Tapak Perkuburan Islam Dan Lain-Lain Agama Negeri Pulau Pinang (hereinafter referred to as **“the project”**)
- (B) The Consultant has submitted its proposal to the Government on the scope for the Services and both Parties have agreed on the scope of Services as per Terms of Reference specified in **Appendix 1** and Technical Documents in **Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the Consultant and the Consultant has agreed to such appointment to provide the Services necessary for the effective implementation of the Project.  
A copy of the Letter of Acceptance dated ~~xxxxxxx~~ is attached in **Appendix 3** of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

## **PART A**

### **GENERAL**

#### **1.0 DEFINITIONS AND INTERPRETATIONS**

##### **1.1 Definitions**

In this Agreement, including the appendices, unless the context otherwise requires the following words and expressions used under this Agreement shall have the following meanings:

- (a) "Agreement" means this document and shall comprise the clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (b) "Consultant" means a company incorporated under the Companies Act 1965 in Malaysia and having its registered address at Suites 06-01, D' Bayu Business Centre, Jalan Serambi, U8/24, Bukit Jelutong, 40150, Shah Alam Selangor;
- (c) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (d) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (e) "Deliverables" means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 4** to be submitted to the Government by the Consultant as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (f) "Government's Representative ("GR") means the person under item 5 in Appendix 6 or such other person as may be appointed from time to time by the Government and notified in writing to the Consultant to carry out the duties of the GR and the person so designated or appointed may be described by position;

- (g) “Services” means the professional consultancy services for the project which the Government has engaged the Consultant to perform in accordance with the Terms of reference, technical Documents and Deliverables as specified in **Appendices 1, 2 and 4**;
- (h) “Steering Committee” means the committee, comprising of Government officials whose main function is to provide directions, review, consider and approve the Deliverables;
- (i) “Technical Committee” means the committee, comprising of Government officials who will monitor the progress and implementation of the Services and provide input and feedback to the findings or recommendations of the Consultant.

## **1.2 Interpretations**

In this Agreement, including the appendices/schedules/annexures, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- (a) Words denoting the singular number shall include the plural and vice versa
- (b) Words denoting any gender shall include all genders
- (c) Words denoting persons shall include a body of persons, corporate or unincorporated
- (d) Any reference to clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs shall be a reference to the clauses, sub-clauses, appendices, annexures, schedules, paragraphs and sub-paragraphs of this Agreement;
- (e) Reference to any party referred to in this Agreement shall include its successors or permitted assigns;
- (f) Reference to any document or agreement shall include reference to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) Reference to any legislation or any provision of any legislation shall include statutory modification and any amendment, modification or any legislation or re-enactment of that legislation or any legislative provisions substituted for and all regulations and statutory instruments

issued under such legislation or provision;

- (h) Recital headings are for convenience only and shall not affect the interpretation and construction hereof;
- (i) The recitals and appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement and in the event of any inconsistency between the terms of any of the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices;
- (j) Any reference to an “amendment” includes any variation, deletion or addition and “amend” or “amended” shall be construed accordingly;
- (k) Any reference to “design” includes technical specifications, design drawings and any other relevant documentation;
- (l) any reference to “law” includes any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, by-law or other legislative measure in Malaysia;
- (m) any reference to a “day”, “week”, “month” or “year” is a reference to that day week, month or year in accordance with the Gregorian calendar;
- (n) if any period of time is specified from a given day or a day of a given act or event, it is to be calculated exclusive of that day and if any such specified period of time or a day of a specified given act or event falls on a day which is not a Working Day, then such period of a specified time or a specified day of a given act or event is deemed to be on the next Working Day

- (o) any reference to “pay” or its cognate expressions includes payment made in cash or by way of bank draft (drawn on a bank licensed to carry on banking business under the provisions of the Financial Services Act 2013 [Act 758] and Islamic Financial Services Act 2013 [Act 759]) or effected through inter-bank transfers to the account of the payee giving the payee immediate access to available funds; and
- (p) the recitals and appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement and in the event of any inconsistency between the terms of the appendices and the terms of this Agreement, the terms of this Agreement shall prevail over those appendices.

### **1.3 Entire Agreement**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, between the Parties in relation to such matter. The Parties hereby acknowledge that in entering into this Agreement, it has not relied on any representation or warranty save as expressly set out herein or in any document expressly referred to herein.

### **2.0 APPOINTMENT AND CONSIDERATION**

The Government hereby appoints the Consultant and the Consultant accepts the appointment to provide the Services for a consideration of **xxxxxxxxxxxxx** as the ceiling contract amount (hereinafter referred to as the “**Contract Price**” and specified in **Appendix 5A** of this Agreement).

### **3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT**

#### **3.1 Contract Period**

This Agreement shall be for a period of **(12 months)** as specified under item 2 in Appendix 6 (hereinafter referred to as the “Contract Period”) commencing from **xxxxxxxxxx** (hereinafter referred to as “**Commencement Date**”) and shall expire on the date stated under item 3 in Appendix 6 (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

#### **3.2 Extension of Contract Period**

- (a) The Consultant shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The Consultant shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the Contract Period, the Government shall inform the CA in writing pertaining to the period of extension. Provided that the extension on the Contract Period shall not affect the Contract Price as specified in clause 2.0.

## PART B

### CONSULTANT'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

#### 4.0 CONSULTANT'S REPRESENTATIONS AND WARRANTIES

The Consultant hereby represents and warrants to the Government that-

- (a) It is a corporation validly existing under the laws of Malaysia;
- (b) It is registered as a consultancy firm with the Ministry of Finance Malaysia (MoF);
- (c) The Consultant shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (d) the Consultant has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the Services as contemplated by this Agreement;
- (e) the Consultant has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the Services contemplated by this Agreement;
- (f) as at the execution date, neither the execution nor performance by the Consultant of this Agreement nor any transactions contemplated by this Agreement will violate in any respect any provision of –
  - (i) its Memorandum and Articles of Association; or
  - (ii) any other document or agreement which is binding upon it or its assets;
- (g) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this Agreement;
- (h) no corruption or unlawful or illegal activities or practices have been used to secure this Agreement;
- (i) this Agreement constitutes a legal, valid and binding obligation of the Consultant and is enforceable in accordance with its terms and conditions;
- (j) it has the necessary financial, technical, and professional capability



and expertise to provide the Services under this Agreement, and the Consultant acknowledges that the Government has entered into this Agreement in reliance on its representations and warranties as aforesaid.

## **5.0 CONSULTANT'S OBLIGATIONS**

### **5.1 Quality of Services**

- (a) The Consultant shall maintain a professional standard of service and competence and shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed under this Agreement in the best interests of the Government and, in so far as their duties are discretionary, shall act fairly between the Government and any third party.
- (b) The Consultant shall have sufficient knowledge of the project and other regulations relating to the project and shall advise the Government accordingly in matters affecting the implementation of the project.

### **5.2 Timeliness of Services**

- (a) The Consultant shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 7**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The Consultant shall provide the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The Consultant shall undertake to provide status updates through

reports and presentations relevant to the Services as required by the Government and attend all deliberations and meetings of the Technical Committee and Steering Committee

- (e) The Consultant shall take remedial action as advised by the Technical Committee and Steering Committee as deemed appropriate and shall prepare the final reports, incorporating the issues raised for the consideration and approval of the Steering Committee.

### **5.3 Consequences of Delay**

- (a) If the Consultant fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in Appendix 4 of this Agreement without reasonable cause, the Consultant shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.
- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 10 in **Appendix 6** of this Agreement.

### **5.4 Instructions by The Government**

- (a) The Consultant shall comply with all instructions issued by the Government in regard to matters expressly empowered under this Agreement. The Consultant shall follow the Government procedures so far as possible and shall obtain prior approval in writing from the Government of any departures from such procedures. Nothing in this clause shall be deemed to affect the responsibilities of the Consultant in connection with the Services.
- (b) The Consultant shall attend or be represented at all meetings convened by the Government to which the Consultant may be summoned and shall advise and assist the Government on all matters relating to the Services.

### **5.5 Consultant's Personnel**

- (a) The Consultant shall provide efficient, suitably qualified and

experienced Personnel and acceptable to the Government to carry out the Services.

- (b) The Services shall be carried out by the Consultant's Personnel as specified under **Appendix 8** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 7**.
- (c) The Project Manager of the Consultant as specified in Appendix 8 shall be responsible for the management of the Consultant's Personnel for the Services as well as to act as liaison between the Consultant and the Government.
- (d) The Consultant shall ensure the Personnel are dedicated to the Services and give priority to the performance of their respective portions of the Services assigned to them over any other works, tasks and assignments in relation to other existing or future projects.
- (e) No Personnel shall be engaged by the Consultant or its affiliates for other work or project without the prior written consent of GR.
- (f) There shall be no changes or substitutions in the Consultant's Personnel set forth in **Appendix 8** without the prior written approval of the Government. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Consultant's Personnel, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.
- (g) No Personnel shall be engaged by the Consultant or its affiliates for other work or project without the prior written consent of GR.
- (h) In the event the number of Consultant's Personnel as specified in Appendix 8 is reduced without the prior written approval of the Government, the Government shall have the right to deduct the Consulting Fee based on Consultant's Personnel Time Input Schedule as specified in Appendix 9.
- (i) The Consultant shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

- (j) Notwithstanding clause 5.5(f), the GR may at any time request the Consultant to reduce the number of the Personnel according to the progress of the Works.
- (k) The GR may with the agreement of the Consultant, direct the Consultant, within a time frame of not less than fourteen (14) days, to remove any Personnel who, in the opinion of the GR, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent.

## **5.6 Information and Records**

- (a) The Consultant shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The Consultant shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (c) In the event of failure occurring after the completion of the Project, the Consultant may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

## **5.7 Liability**

The Consultant agrees that it shall provide the Services under this Agreement in good faith and hereby warrants that the Services provided under this Agreement meet the professional standards for consultancy in the relevant field.

## **5.8 Indemnity**

The Consultant agrees with the Government that-

- (a) the Consultant shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and

shall indemnify and keep the Government and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from carrying out of the Services except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Government or its agents and servants and the Consultant expressly agrees that in the absence of any such act, omission or negligence as aforesaid the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

- (b) the Consultant shall indemnify and keep the Government indemnified from and against all actions, suits, claim or demands, proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from
  - (i) the negligent use or act, misuse or abuse by the Consultant or the Consultant's Personnel, servants, agents or employees appointed by the Consultant in the performance of the Services; or
  - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out the Services by the Consultant to any person and not caused by the negligence or willful act, default or omission of the Government, its agents or servants; or
  - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Services to the extent to which the same is occasioned or contributed to by the act, error, omission, neglect, breach or default of the Consultant or the Consultant's Personnel, servants, agents or employees; and
- (c) the obligations under this clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed,

matter or thing happening before such expiration or termination of this Agreement.

## **5.9 Confidentiality**

- (a) Except with the prior written consent or the instructions of the Government, the Consultant shall not at any time communicate to any person or body or entity any confidential information disclosed to the Consultant for the purpose of the provision of the Services or discovered by the Consultant in the course of this provision and performance of the Services; nor make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Services; nor make or cause to be made any press statement or otherwise relating to the Services; nor make use of the Deliverables for the purposes other than that stipulated in this Agreement and the foregoing obligations shall not be rendered void by suspension, termination or expiry of this Agreement for whatsoever cause.
  
- (b) This sub-clause shall not apply to information which:
  - (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
  
  - (ii) is already known to the other party to whom it is disclosed to, at the time of disclosure;
  
  - (iii) is independently developed without benefit of the confidential information of the other party;
  
  - (iv) is in possession of the Consultant without restriction before the date of receipt from the other party subject to the right of the Government to re-classify certain information as confidential.
  
- (c) In the event that the Consultant receives a request to disclose all or any part of any confidential information under the terms of a valid and effective subpoena or order issued by a court of competent

jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the Consultant shall not constitute a violation of this Agreement provided that

- (i) the Consultant promptly notifies the Government of the existence, terms and circumstances surrounding such request;
- (ii) the Consultant consults with the Government on the advisability of taking available legal steps to resist or narrow, such request; and
- (iii) the Consultant exercises its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the information to be disclosed.

- (d) This clause continues in force notwithstanding the termination of this Agreement for any reason.

#### **5.10 Notice of Delay**

In the event the Consultant encounters any delay in obtaining the required assistance and information set forth in clause 5.6(a), the Consultant shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

#### **5.11 Assistance in Inquiry or Litigation**

The Consultant shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of proceedings arising after the completion of Services, if so required by the Government, the Consultant shall assist in any manner whatsoever and advise the Government under the same conditions of

engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the Consultant to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and
- (b) the right of the Consultant to take appropriate measures to safeguard and protect its interest.

#### **5.12 Situation Beyond Control of Consultant**

- (a) The Consultant shall immediately inform the Government in writing of any situation or the occurrence of any event beyond the reasonable control of the Consultant, which makes it impossible for the Consultant to carry out its obligations hereunder.
- (b) If the Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the Consultant in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in Appendix 6 for a decision.

#### **5.13 Prohibition on Association**

The Consultant agrees that during and after the conclusion or termination of this Agreement, the Consultant shall limit its role for the Project to the provision of the Services and hereby disqualifies itself from the provision of goods or services in any capacity for the Project including bidding for any part of the Project except as the Government may otherwise agree or request the Consultant.

#### **5.14 Prohibition on Conflicting Activities**

No Personnel of the Consultant assigned to the Services under this Agreement nor the Consultant's staff, subsidiary or associate shall engage, directly or indirectly, either in his name or through his then employer, in any



business or professional activities connected to the Services or Project and neither shall the Consultant's Personnel be so engaged directly or indirectly, either in his name or through the Consultant in any such other conflicting business or professional activities.

#### **5.15 Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government and the Consultant the relationship of master and servant or principal and agent. The position of the Consultant performing the Services is that of an independent Consultant.

#### **5.16 Technology and Knowledge Transfer**

- (a) If the Consultant appoints foreign professionals, the Consultant shall endeavor to ensure that the employees of the Government are trained or exposed to the expertise of such foreign professionals pursuant to a programmed for technology and knowledge transfer.
- (b) Pursuant to clause 5.16(a) above, the Consultant shall provide training for a minimum of (specify number of Government officer officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The Consultant shall allow the employees of the Government to be involved in the study and implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

#### **5.17 Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The Consultant shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.

- (b) The Consultant agrees to grant to the Government free from all royalties, fees and other charges, all licenses in respect of intellectual property rights now or hereafter owned or controlled by the Consultant or in respect of which the Consultant has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The Consultant shall defend and indemnify the Government from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any intellectual property rights in respect of any design, plans, calculations, drawings, documents, plant, equipment, machinery, material, methods or processes developed or used for or incorporated in the Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the Consultant may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## **PART C**

### **GOVERNMENT'S RIGHTS AND OBLIGATIONS**

#### **6.0 GOVERNMENT'S RIGHTS AND OBLIGATIONS**

##### **6.1 Appointment of GR**

- (a) The Government shall appoint the person under item 5 in **Appendix 6** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0

and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].

- (b) The Consultant shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

## **6.2 Obligation to give instructions, decisions, etc. Without delay**

- (a) All instructions, notifications, consent or approval issued by the Government or the GR shall be in writing. However, the GR may, where necessary issue oral instructions, notifications, consent or approvals and such oral instructions, notifications, consents or approvals shall be followed in writing not later than seven (7) days thereafter.
- (b) If the Consultant requires a decision from the Government for the performance of its Services under this Agreement, the Consultant shall submit its request in writing to the GR and the GR shall give its decision within the period stipulated under item 6 in **Appendix 6** of this Agreement.

## **6.3 Obligation to Supply Relevant Information and Assistance**

- (a) The Consultant may request all the necessary and relevant information which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the Consultant pursuant to clause 6.3(a) of this Agreement shall not relieve the Consultant of any of the Consultant's obligations under this Agreement.
- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the

same should be interpreted and the Consultant, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the Consultant's obligation under this Agreement.

- (d) Where necessary, the Government shall assist the Consultant to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### **6.4 Payment to the CONSULTANT for Services**

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the Consultant –
  - (i) the Contract Price consist of the fixed ceiling consulting fee as specified in **Appendix 6 B** (“Fixed Ceiling Consulting Fees”) and the ceiling out of pocket expenses as specified in **Appendix 6 C** (“Ceiling Out of Pocket Expenses”). If the actual costs incurred in the performance of the Services does not exceed the Fixed Ceiling Consulting Fee and the Ceiling Out of Pocket Expenses, downward adjustments can be made in accordance with **Appendix 6A**, **Appendix 6B** and **Appendix 6C**. The payment shall include amongst others the Government Service Tax, which amount shall be paid by the Government to the Consultant upon the Consultant giving proof of the registration of the Service Tax Act 2018 with the Royal Customs Department of Malaysia. A copy of the registration of Government Service Tax with the Royal Customs Department of Malaysia is attached in **Appendix 11** of this Agreement.
  - (ii) Notwithstanding clause 6.4(a)(i), the Fixed Ceiling Consulting Fees as specified in **Appendix 6B** is fixed and cannot be adjusted throughout the Contract Period even if the Contract

Sum for the Works exceeds the Estimated Contract Sum for Works or there is a change of the scope of Service or increase in the value of Works.

- (iii) However, the Fixed Ceiling Consulting Fees as specified in **Appendix 6 B** shall be adjusted and reduced proportionately according to the following formula if the Contract Sum for the Works is less than the Estimated Contract Sum for Works or there is a change of the scope of Service or reduce in the value of Works:

$$\frac{\text{Contract Sum for the Works}}{\text{Estimated Cost for the Works}} \times \text{Ceiling of the Consulting Fee}$$

- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in Appendix 12 upon the Consultant furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the Consultant shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the Consultant and be deposited to the account of the Consultant as specified under item 7 in **Appendix 7**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the Consultant is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the Consultant in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.
- (e) Except as otherwise agreed between the Government and the Consultant, payments in respect of all fees and expenses incurred by the Consultant shall be made in Ringgit Malaysia.
- (f) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the Consultant and approved as satisfactory by the

Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the Consultant to the Government within thirty (30) days after receipt by the Consultant of notice thereof.

## **6.5 Withholding Payment**

- (a) The Government may by giving written notice to the Consultant and without prejudice to any other rights the Government may have under this Agreement, withhold payments to the Consultant under this Agreement, upon the occurrence and continuance of any of the following events:
  - (i) The Consultant commits any breach of the terms and conditions of this Agreement or
  - (ii) The progress of the Services fails to measure up to the aggregate payment made to date or
  - (iii) Any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Project or the accomplishment of the purposes of this Agreement; or
  - (iv) Any failure of the Consultant to deliver the Services to the satisfaction of the Government.
- (b) The Consultant may apply to the Government, within fourteen (14) days after receiving notice referred to in clause 6.5(a) to review the decision to withhold payments by submitting documents and other evidence to substantiate its claims that the Services is compatible to the payments received. The Government's decision on the application shall be final and conclusive.

## **7.0 GOVERNMENT'S RIGHTS**

### **7.1 Proprietary Rights of The Government in Relation to Documents**

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the Consultant in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter.

The Government shall have the sole and exclusive right, title and ownership to the documents.

- (b) The Consultant shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The Consultant shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the Consultant's quality performance review processes.
- (c) The Consultant shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

#### **8.0 DISPUTE RESOLUTION**

##### **8.1 Dispute Resolution by Government Representative**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavor to achieve the best possible solution for the Parties.
- (c) If the Consultant:

- (i) Fail to receive a decision from the GR within seven (7) days after being requested to do so; or
  - (ii) Is dissatisfied with any decision of the GR
- Then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen (14) days.

## **8.2 Dispute Resolution Committee**

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (hereinafter referred to as the "Dispute Resolution Committee"), comprising –
  - (i) A Chairman to be mutual appointed by the Parties;
  - (ii) One (1) representative to be appointed by the Government and
  - (iii) One (1) representative appointed by the Consultant
- (b) The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavor to achieve an amicable settlement between the Parties in respect of any matter referred to it.

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

##### **9.1 Suspension and Resumption of Services**

- (a) The GR may at any time instruct the Consultant to suspend part or all of the Services by the giving the Consultant due notice in writing.
- (b) Upon receipt of such instruction, the Consultant shall suspend part or all of the Services for such time and in such manner as specified in the instruction and shall duly protect, store and secure the Services against any deterioration, loss or damage.
- (c) During the suspension period, the Consultant shall continue to perform his obligations under the Agreement which is not affected by



the instruction to suspend, including the obligation to effect and maintain insurance.

- (d) The GR may instruct the Consultant to resume the Services at any time thereafter. Upon receipt of such instruction the Consultant shall resume the Services and the Parties shall jointly examine the Services affected by the suspension. The Consultant shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The Consultant shall also take all necessary actions to mitigate the expenses incurred.

## **9.2 Extension of Time**

- (a) If the Consultant suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the Consultant, the Consultant shall give notice for extension of time. PROVIDED THAT the Consultant shall not be entitled to such extension if the suspension is due to a cause attributable to the Consultant and the Consultant shall not be entitled to payment of loss and expenses if the Consultant—
  - (i) Fails to take measures specified in clause 9.1(b) and
  - (ii) Fails to take all necessary action to mitigate the expenses incurred
- (b) In the event such suspension shall continue for a period of more than twelve (12) months, the Parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3 Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause—
  - (i) Clause 11.1 (b) shall apply and
  - (ii) All costs and expenditure incurred by the Government and the Consultant shall be determined by the Government.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1 Withholding Payment**

If any of the conditions referred to in clause 6.5(a) shall have happened and be continuing for a period of fourteen (14) days after the Government has given written notice of withholding of payments to the Consultant under this Agreement, the Government may by written notice to the Consultant terminate this Agreement.

### **10.2 Default by the CONSULTANT**

- (a) In the event the Consultant without reasonable cause-
- (i) Suspends the implementation of the Services
  - (ii) Fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
  - (iii) Fails to execute the Services in accordance with this Agreement
  - (iv) Persistently neglects to carry out its obligations under this Agreement
  - (v) Defaults in performing the duties under this Agreement; or
  - (vi) Breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement

(hereinafter referred to as the “Consultant Default”), then the Government shall give notice in writing (hereinafter referred to as the “Default Notice”) to the Consultant specifying the default and requiring the Consultant to remedy such defaults within fourteen (14) days from the date of issuance of the Default Notice (hereinafter referred to as the “Remedy Period”) if the Consultant fails to remedy the relevant default within the Remedy Period or such other period as may be determined by the Government, the Government shall have the right terminate this Agreement at any time thereafter by giving notice to that effect to the CONSULTANT.

### **10.3 Events of Default**

- (a) If any time during the Contract Period
- (i) The Consultant goes into liquidation or compounds with or

- enter into an arrangement or compositions with its creditors;
- (ii) An order is made, or resolution is effectively passed for winding up of the Consultant (except for the purpose of restructuring or amalgamation with the written consent of the Government, which consent shall not be unreasonably withheld);
  - (iii) A provisional liquidator, receiver or manager of its business or undertaking is appointed or possession taken by or on behalf of the creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge over the assets Consultant; or
  - (iv) Execution is levied against a substantial portion of the Consultant's assets or
  - (v) The Consultant assigns the whole or any part of this Agreement or
  - (vi) The CA did not obtain prior written approval from the Government for any sale or transfer of company's equity throughout the contract period
  - (vii) Any of the CQ's director is prosecuted for any offences or
  - (viii) Any other condition which has arisen, which in the opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,
- then the Government shall have the right to terminate this Agreement forthwith by giving notice to that effect.

#### **10.4 Consequences of Termination by the Government**

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by the Government to the Consultant and the obligations in this Agreement shall terminate immediately.
- (b) The Consultant shall-
  - (i) Cease all the Services immediately;
  - (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and

owing from the Government prior to the termination for verification and approval by the Government;

- (iii) forthwith, at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the Consultant, its Personnel, employees, servants and agents and make good all damage caused by such removal or such detachment;
- (iv) at no cost, hand over all plans, reports, records, documents, specifications, drawings including intellectual property rights and similar materials to the Government;
- (v) terminate all the third-party contract entered into by the Consultant in relation to the Project on or before the date of termination and the Government shall not be liable for any termination costs arising thereby and shall be indemnified and held harmless by the Consultant in respect hereof;
- (vi) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services;
- (vii) bear all liabilities, obligations, claims, suits or proceedings whatsoever existing prior to and as at the date of termination arising out of or in connection with-
  - (A) any other agreement entered by the Consultant in relation to its obligation under this Agreement or
  - (B) any act of default, omission or negligence of the Consultant, its Personnel, employers, agents or servants,and the Government shall not be liable in respect of such liabilities, obligations, claims, suits or proceedings and
- (viii) pay to the Government not later than six (6) months after the date of termination the aggregate of-
  - (A) all amounts at that time which may be owing by the Consultant to the Government under this Agreement;and

- (B) any costs and expenses (including any incidental costs and expenses) paid or incurred by the Government arising from such default including any additional costs incurred by the Government in having to engage third party to complete the Service in excess of the costs and expenses which would have been incurred by Consultant in completing the Services
- (c) The Government shall-
  - (i) pay the Consultant part of the consulting fees in proportion to the amount of the Services performed up to the date of termination;
  - (ii) be entitled to claim against the CONSULTANT for any losses and/or damages suffered as a result of the termination; and
  - (iii) be entitled to appoint another Consultant to perform the Services
- (d) For the avoidance of doubt, the Parties hereby agree that the Consultant shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than those stipulated under clause 10.4 (c)(i) (if any). The Parties further agree that the payment made by the Government under clauses 10.4 (c)(i) shall constitute as a full and final settlement between the Parties.

## **11.0 TERMINATION BY THE CONSULTANT**

- (a) If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the Consultant's obligations under this Agreement, then the Consultant may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the Consultant shall be entitled to terminate this Agreement at any time by giving notice to that effect.

## 11.1 Consequences of Termination by the Consultant

Upon such termination, the Consultant shall accept the following undertaking by the Government as full and complete settlement of all claims for payment under or arising out of this Agreement:

- (a) the powers and rights granted by the Government to the Consultant and the obligations in this Agreement shall terminate immediately.
- (b) The Consultant shall-
  - (i) cease all the Services immediately
  - (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for varication and approval by the Government;
  - (iii) forthwith, at its own costs and expense, vacate and remove from the Project Management Teams's office any equipment, machineries and materials belonging to the Consultant, its Personnel, employees, servants and agents and make good all damage caused by such removal or such detachment;
  - (iv) at no cost, hand over all plans, drawings, reports, records, documents, specifications, drawings including intellectual property rights and similar materials to the Government;
  - (v) terminate all the third-party contract entered into by the Consultant in relation to the Project on or before the date of termination and the Government shall not be liable for any termination costs arising thereby and shall be indemnified and held harmless by the Consultant in respect hereof;
  - (vi) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services;
  - (vii) bear all liabilities, obligations, claims, suits or proceedings whatsoever exiting prior to and as at the date of termination arising out of or in connection with-
    - a. Any other agreement entered by the Consultant in relation to its obligation under this Agreement; or

b. Any act default, omission or negligence of the Consultant, its Personnel, employers, agents or servants,

AND the Government shall not be liable in respect of such liabilities, obligations, claims, suits or proceedings and

(viii) pay to the Government not later than six (6) months after the date of termination the aggregate of all amounts at that time which may be owing by the Consultant to the Government under this Agreement.

(c) The Government shall-

- (i) Pay the Consultant part of the consulting fees in proportion to the amount of the Services performed up to the date of termination;
- (ii) Be entitled to appoint another consultant to perform the Services.

(d) For the avoidance of doubt, the Parties hereby agree that the Consultant shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever other than those stipulated under clause 11.1 (c)(i) shall constitute as a full and final settlement between the Parties.

## **12.0 TERMINATION ON NATIONAL INTEREST**

(a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days' notice to that effect to the Consultant (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the of national security or for the purposes of Government policy or public policy.

(b) Upon such termination-

- (i) Clause 11.1(b) shall apply; and
- (ii) The Parties hereby agree that the Consultant shall not be entitled to any other form of losses including of profut, damages, claims or whatsoever other than those stipulated under clause 11.1(c)(i). The Parties further agree that the payment made by the

Government under clause 11.1 (c)(i) shall constitute as a full and final settlement between the Parties.

### **13.0 TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES**

- (a) Without prejudice to any other rights of the Government, if the Consultant, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the Consultant may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to the Consultant.
- (b) Upon such termination –
  - (i) Clauses 10.4(b) and (c) be applicable;
  - (ii) The Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.
  - (iii) For avoidance of doubt, the Parties hereby agree that, subject to 13 (b)(i), the Consultant shall not be entitled to any other form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### **14.0 PAYMENT UPON SUSPENSION AND TERMINATION**

- (a) In the event of the termination of this Agreement (unless such termination shall have been occasioned by the default of the Consultant) or the suspension of the Project by the Government, the Consultant shall be paid the following sums (less the amount of payments previously made to the Consultant):
  - (i) A sum deducible from the stage of Services completed at the time of termination or suspension and

provided that the Consultant shall accept the said payments by the Government as full and complete settlement of all his claims for payment under or arising out of this Agreement.



- (b) On suspension or termination, the Consultant shall be paid all fees and expenses commensurate with the Services performed by the Consultant up to the date of suspension or termination which may then be due. The payments made for fees and expenses shall be deemed as full and final payment for the Services up to the date of suspension or termination.
- (c) If this Agreement is resumed, any payment of fees under this clause, except in respect of abortive work that has to be re-done, shall be taken as payment on account towards the fees payable under this Agreement.
- (d) Upon suspension or termination of this Agreement, the Consultant shall within the period specified under item 8 in Appendix 6 of this Agreement submit to the GR a statement of final account and supporting documentation showing in details the value of Services carried out in accordance with this Agreement.
- (e) Within the period specified under item 9 in Appendix 6 of this Agreement, the GR shall verify the statement of account and its supporting documentation and evaluate the Services carried out and shall issue the final account for the Services.
- (f) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the Consultant shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

## **15.0 FORCE MAJEURE**

### **15.1 Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An “Event of Force Majeure”

shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity 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 thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the Consultant or its employees, which causes, or can reasonably be expected to cause either Party to fail to comply with its obligations,

PROVIDED THAT Event of Force Majeure shall not include economic downturn, non-availability or insufficient of fund or lack of financing on the part of the Consultant to perform its obligations under this Agreement.

## **15.2 Notifications of Force Majeure**

If any Event of Force Majeure occurs which renders a Party unable to perform or fulfil any of its obligations under this Agreement, the Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this Agreement giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If either Party does not agree that an Event of Force Majeure has occurred, then the dispute shall be referred to the GR for a decision.

### **15.3 Termination by Force Majeure**

If an Event of Force Majeure has occurred and either Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than six (6) months, then the Parties may mutually terminate this Agreement.

### **15.4 Consequences of Termination due to Event of Force Majeure**

If this Agreement is terminated pursuant to clause 15.3, all rights and obligations hereunder shall forthwith terminate and neither Party shall have any claims against each other save and except in respect of any antecedent breach.

### **15.5 Delay**

- (a) Any Party to this Agreement affected by the Event of Force Majeure who has complied with the requirement to provide notice in accordance with clause 15.2 shall not be liable for any delay in performing its obligation under this Agreement to the extent that such delay has been caused by one or more of Event of Force Majeure and the time for completion of any obligation under this Agreement shall be extended by the amount of the delay caused by such Event of Force Majeure. If the Parties do not agree as to the duration of the delay, the disagreement shall be referred to the GR for a decision.
- (b) Notwithstanding clause 15.5(a), if the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties hereto, the Parties hereto shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives of this Agreement in such circumstances and shall, if appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

### **15.6 Restoration**

Notwithstanding any other provision in this Agreement, if an Event of Force Majeure occurs and this Agreement is not terminated then in any case where

the delivery of the Services or any part thereof has been affected, the Consultant shall restore such Services to what it was immediately prior to the occurrence of that Event of Force Majeure at its own expenses. Where as a result of such restoration the Consultant is able to demonstrate that it has incurred substantial costs affecting the Services, the Consultant may apply to the Government for such remedies to enable the Company to recover the costs of such restoration.

#### **15.7 Insurance**

Notwithstanding any other Clause, the Consultant shall ensure that whenever reasonably practicable insurance is affected (whether by itself or by its contractors) to cover the occurrence of Events of Force Majeure, PROVIDED THAT such Events of Force Majeure are reasonably and practicably insurable.

## **PART F**

### **GENERAL PROVISIONS**

#### **16.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorized representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

#### **17.0 NOTICES**

(a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the Consultant, as the case may be, shown below or to such other

addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages, as specified under item 11 in **Appendix 6** of this Agreement.

- (b) It shall be the duty of the Parties to notify the other if there is a change of address or entity by giving a written notice within fourteen days (14).

## **18.0 GOVERNING LAW**

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

## **19.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The Consultant shall comply with all applicable laws and regulations in Malaysia and all statutory requirements, standards and guidelines, regulating or relating to the conduct, trade, business of its profession and shall be fully and solely liable for the provisions of the Services.
- (b) The Consultant shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **20.0 SEVERABILITY**

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

## **21.0 ASSIGNMENT**

The Consultant shall not assign, transfer or novate this Agreement or any part of it or any benefit or interest conferred by this Agreement to any third party.

## **22.0 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties and none of them shall have any authority to bind the other in any way nor shall this Agreement be construed to constitute any party the agent of the other party.

## **23.0 ADVERTISEMENT**

No advertisement in respect of this Agreement shall be published by the Consultant or with the Consultant's authority in the newspaper, magazine or in any forms of advertisement without prior written approval of the Government.

## **24.0 TIME**

Time wherever mentioned, shall be of the essence of this Agreement.

## **25.0 COSTS AND STAMP DUTY**

The Consultant shall solely bear the stamp duties, legal costs and fees in the preparation and execution of this Agreement and anything incidental thereto.

## **26.0 INCOME TAX**

- (a) The Consultant and Personnel, including any expatriate personnel and/or foreign Associated Consultant(s) for the Services shall submit the necessary tax returns as required by the Director-General of Inland Revenue in respect of their income in order that tax can be assessed.
- (b) The Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated

Consultant(s) any excess payment in income tax.

## **27.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another.

However, if there is any ambiguity or discrepancy –

- (a) between the Appendices with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall prevail over the Appendices; or
- (b) in the Appendices of this Agreement, the GR and Consultant shall reach a mutual understanding to resolve the ambiguity or discrepancy

## **28.0 WAIVER**

Failure by any party to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of its right to enforce the breach of such provision or any of the provision in this Agreement or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement.

## **29.0 CUSTODY OF AGREEMENT**

This Agreement shall be prepared in both original and certified duplicate copy. The original of this Agreement shall remain in the custody of the Government and shall be made available at all reasonable times for the inspection of the Consultant. The duplicate copy shall be kept by the Consultant.

## **30.0 SUCCESSORS BOUND**

This Agreement shall be binding upon each of the Parties hereto and their respective successors in title.

## **PART G**

### **SPECIAL PROVISIONS**

*[ NOTE : WHERE THERE IS A NEED FOR SPECIAL CONDITIONS OVER AND ABOVE THE GENERAL CONDITIONS, THIS SECTION IS TO BE INSERTED BY THE RELEVANT AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE LEGAL ADVISORS. OTHERWISE THIS PAGE TO BE LEFT AS SUCH ABOVE ]*

- None-



**SIGNATORIES TO THE AGREEMENT**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and the year first hereinbefore appearing.

SIGNED for and on behalf of ) .....  
**THE GOVERNMENT** ) (Name, Designation & Department's Seal)

In the presence of:

.....

Name of Witness:

IC No :

SIGNED for and on behalf of ) .....  
**THE CONSULTANT** ) (Name, Designation & Department's Seal)

In the presence of:

.....

Name of Witness:

IC No :

**APPENDIX 1: TERMS OF REFERENCE**

*[REFER TO ATTACHMENT]*

## **APPENDIX 2**

### **APPENDIX 2: TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION**

[CONSULTANT'S TECHNICAL DOCUMENTS FOR PROJECT  
IMPLEMENTATION- TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 3: LETTER OF ACCEPTANCE**

*[REFER TO ATTACHMENT]*

## APPENDIX 4: DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

Year	Deliverable Stage	Detail	Percent (%) Consultant Payment	Preparation Period
2023	Phase 1	Laporan Pendekatan Kajian (LPK)	20%	Two (2) month
2023	Phase 2	Laporan Teknikal Dan Inventori	20%	Four (4) month
2024	Phase 3	Laporan Awal	20%	Two (2) month
2024	Phase 4	i. Laporan Akhir  ii. GPP Tapak Perkuburan Islam dan Agama Selain Islam Negeri Pulau Pinang  iii. Laporan Inventori Dan Pangkalan Data (SMARTPLAN)  iv. Laporan Ringkasan Eksekutif	30%	Two (3) month
2024	Phase 5	Laporan Akhir, Laporan Ringkasan Eksekutif, Laporan GIS dan Garis Panduan Perancangan	10%	One (1) month

**APPENDIX 5A**

**APPENDIX 5A: SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 5B**

**[DETAILED BREAKDOWN/CALCULATION OF FEES- TO BE INSERTED BY  
RELEVANT AGENCY]**

**APPENDIX 5C: OUT OF POCKET EXPENSES**

[DETAILED BREAKDOWN/CALCULATION OF OUT OF  
POCKET EXPENSES- TO BE INSERTED BY RELEVANT  
AGENCY]



APPENDIX 6

APPENDIX 6: SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date	
2.	3.1	Contract period	
3.	3.1	Contract Expiry date	
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract period	
5.	1.1(c), 5.12(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	Director PLANMalaysia@Pulau Pinang
6.	6.2(b)	Period for the Government to give decision	
7.	6.4(c)	Consultant's bank account details for purposes of payment	
8.	14(d)	Period for Consultant to submit statement of final account for the Services and supporting documentation to GR	
9.	14(e)	Period for GR to verify the statement of account and supporting documentation.	
10.	5.3(b)	Formula for calculation of Liquidated and Ascertained Damages: $\text{LAD} = \frac{\% \text{ BLR}}{100} \times \frac{\text{Fees}}{365}$ (subject to a minimum of RM100/- per day)	

11.	17(a)	a) <u>For the Government</u>  b) <u>For the Consultant</u>	
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## **APPENDIX 7**



**APPENDIX 9**

**APPENDIX 9: CONSULTANT'S PERSONNEL TIME  
INPUT SCHEDULE (IF APPLICABLE)**

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Name of Personnel Involved in each stages	Total Time Input by each personnel and according to deliverable stages	Start Date (work commenced by each personnel)	End Date (work ended by each personnel)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 10**

**APPENDIX 10: CONSULTANT'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 11**

**APPENDIX 11: SCHEDULE OF PAYMENT**