



**LEMBAGA JURUUKUR BAHAN MALAYSIA
BOARD OF QUANTITY SURVEYORS, MALAYSIA**

MEMORANDUM OF AGREEMENT

BETWEEN

THE CLIENT

AND

THE CONSULTING QUANTITY SURVEYOR

FOR

PROFESSIONAL QUANTITY SURVEYING SERVICES

PRIVATE EDITION 2018

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SECTION I – ARTICLES OF AGREEMENT

ARTICLES OF AGREEMENT

THIS AGREEMENT

is made on the day of

BETWEEN..... whose registered address is
.....
(hereinafter called “the Client”) of the one part

AND..... whose registered address is
.....
(hereinafter called “the Consulting Quantity Surveyor – (CQS)” which expression includes the legal representatives, successors in title and permitted assigns) of the other part.

WHEREAS the Client intends to construct and complete (description of intended Project)
.....
.....
.....
(hereinafter called “the Project”)

AND WHEREAS the Client is desirous of appointing the CQS to provide professional quantity surveying services for the Project.

NOW IT IS HEREBY AGREED as follows:

- 1.0 The Client hereby appoints the CQS to provide the professional quantity surveying services for the Project subject to and in accordance with the Conditions of Engagement hereinafter set out and the CQS hereby accepts the appointment for the purpose of providing services for the same subject to and in accordance with the Conditions of Engagement.
- 2.0 This Articles of Agreement, the General Conditions of Engagement and the Schedule of Fees shall together constitute the Agreement between the Client and CQS. Any obligations specified in the above-mentioned documents shall form part of the CQS’s Agreement.
- 3.0 In consideration of the CQS providing the professional basic and/or additional services required the Client hereby agrees to pay the CQS in accordance with the Schedule of Fees Part B.
- 4.0 In the addition to the above, the Client shall pay the CQS the payments for reimbursable described in the Schedule of Fees Part C.
- 5.0 The CQS shall be paid in accordance with the Schedule of Fees Part B – clause 6 (Breakdown of Percentage (%) of Fees) in the proportion of the services rendered within each stage or the full amount upon satisfactory completion of each stage of the services commencing from the date of the CQS’s appointment.

IN WITNESS WHEREOF

*The hand of the Client has been hereunto set the day and year first above written }

Signature:.....

Name:.....

Director

for and on behalf of

*The Stamp/Common Seal of

..... was hereunto affixed in the presence of: (witness)

Signature:

Name:

Director/Secretary*

IN WITNESS WHEREOF

The hand of the CQS has been hereunto set the day and year first above written }

Signature:.....

Name:.....

Principal/Partner/Director*

for and on behalf of

The Stamp/Common Seal of

..... was hereunto affixed in the presence of (witness)

Signature.....

Name:

Partner/Director/Secretary*

**Delete whichever inapplicable*

NOW IT IS HEREBY AGREED as follows:

PART A

GENERAL

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Under this Agreement, 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) "Associated Consultant" means other consultant(s) engaged by the CQS upon request and approval by the Client to carry out services for any part of the Project;
- (c) "CQS" means the consulting quantity surveyors named in the Recitals of this Agreement, (a sole proprietorship, partnership or body corporate (whichever is applicable)) which is established or incorporated under the laws of Malaysia (for a body corporate – "Companies Act 1956 [Act 125]") and registered with the Board of Quantity Surveyors Malaysia (BQSM) under the Registration of Quantity Surveyors Act 1967 [Act 487] and engaged to provides professional quantity surveying consultancy services to the Client under this Agreement and shall include its personnel, servants, agents, heirs, assigns, administrators, successors and duly appointed representatives. A copy of the Certificate of Registration under the Registration of Quantity Surveyors Act 1967 [Act 117] is attached in **Appendix 1**;
- (d) "Contractor" means any sole proprietorship, partnership or company engaged by the Client under a contract for the Project or in connection with the Project or both and includes sub-contractors;
- (e) Contract Period means the contract period as prescribed under Clause 2.1 herein;
- (f) "Cost of Works" means the cost incurred by the Client for the Works as particularly specified under the Schedules of this Agreement (Part B - Schedule of Fees)

- (g) “Defects Liability Period” is as provided in the contract between the Client and Contractor;
- (h) Client’s Representative (“CR”) means the person named in Clause 5.1(a) or such other person as may be appointed from time to time by the Client and notified in writing to the CQS to carry out the duties of the CR and the person so designated or appointed may be described by position;
- (i) “Services” means the professional consultancy services for the project which the Client has engaged the CQS to perform under this Agreement;
- (j) “Professional Indemnity Insurance” means the insurances taken and maintained by the CQS covering its liability in respect of any negligence, error or omission acts of CQS and its employees under Clause 4.2;
- (k) “Project” means the project of which the Works form a part;
- (l) “Works” means the works in connection with which the client has engaged the CQS to perform professional services.

1.2 Interpretations

Under this Agreement, except to the extent that the context otherwise requires:

- (a) references to any law, legislation or to any provisions of any law and legislation shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or statutory instruments issued under the legislation or provisions;
- (b) references to clauses, appendices, and schedules are references to Clauses, Appendices, and Schedules of this Agreement;
- (c) words denoting the singular shall include the plural and vice versa;
- (d) words denoting individuals shall include corporations and vice versa;
- (e) recitals and headings are for convenience only and shall not affect the interpretation thereof;
- (f) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as being references to sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (g) the Appendices hereto and any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement PROVIDED HOWEVER that in the event of any conflict

between the clauses and the Appendices of this Agreement, the clauses shall prevail;

- (h) the expression of "this Agreement" or any similar expression shall include any supplemental written agreement thereto as may be executed and be in force from time to time or any time;
- (i) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an "approval" is a reference to an approval in writing; and "approved" shall be construed accordingly;
- (l) any reference to an "amendment" includes any variation, deletion or additions, and "amend" or "amended" shall be construed accordingly;
- (m) any technical term not specifically defined under this Agreement shall be construed in accordance with the general practice of such relevant profession in Malaysia;
- (n) for the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of, and time begins to run from, the date so specified;
- (o) wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression "or any other period agreed in writing between the Parties from time to time";
- (p) 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.

1.3. Entire Agreement

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, inducements or conditions, express or implied, oral or written.

2.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

2.1 Contract Period

This Agreement shall be for a period of..... **Specify duration of consultancy period (week/month/year)**..... as (hereinafter referred to as the “**Contract Period**”) commencing from(hereinafter referred to as “**Commencement Date**”) and shall expire on..... (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

2.2 Extension of Contract Period

- (a) The CQS shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Client for the approval of extension of the Contract Period. The CQS shall further furnish to the Client 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 Client.
- (b) The Client shall have the absolute discretion whether or not to consider such application. In the event the Client agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension **Specify period**..... prior to the Contract Expiry Date. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

PART B

3.0 CQS’S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

3.1 CQS’S Representations And Warranties

The CQS hereby represents and warrants to the Client that –

- (a) it is a body corporation validly existing under the laws of Malaysia;
- (b) the CQS is a body corporate or partnership or sole-proprietorship registered under the Registration of Quantity Surveyors Act 1967 [Act 117] and exists validly under the laws of Malaysia;
- (c) the CQS shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;

- (d) the CQS 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 CQS 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 CQS 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 CQS 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 CQS acknowledges that the Client has entered into this Agreement in reliance on its representations and warranties as aforesaid.

4.0 CQS'S Obligations

4.1 Quality of Service

- (a) The CQS shall exercise all reasonable skill, care and diligence in the discharge of the professional services. The CQS shall prepare Bills of Quantities in accordance with the principles of the current edition of the Standard Method of Measurement of Building Works approved by the Board of Quantity Surveyors.
- (b) The CQS shall not divulge any confidential information communicated to or acquired by him in the course of carrying out the work, duties and obligations under the terms of this Agreement. Such information shall not be used by the CQS on other projects without the written approval of the Client.

- (c) The CQS shall not have any direct or indirect major interest in any of the construction or supply contracts for the Works which are the subject of this Agreement without first divulging his interests to the Client and obtaining the written approval of the Client.
- (d) Except as the Client shall otherwise specifically agree in writing, the CQS shall not permit his staff to engage in any activities related to the Works other than the specified professional services.
- (e) The CQS shall obtain the written approval of the Client before commencing additional services as specified herein.
- (f) The CQS shall not accept any tender in respect of the project unless the Client shall have given him instruction in writing to do so and any acceptance so made by the CQS on the instruction of the Client shall be on behalf of the Client.
- (g) The CQS shall, further to the services specified in the Schedule of Fees, do and perform all acts, matters and things which are usually done and performed by CQS according to the practice of their profession in relation to the Project.
- (h) The CQS shall at all times in the execution of his obligations and duties under this Agreement comply with the relevant procedures of the Client as published or made known officially to the CQS provided that such procedures do not contravene the Quantity Surveyors Act and Rules and/or affect the professional practice and procedures of the CQS.

4.2 Professional Indemnity Insurance

- (a) The CQS warrants that the CQS has taken and is maintaining its own cost and expense a professional indemnity insurance covering its liabilities in respect of any act of negligence, error or omission of the CQS, its employees, partners, servants and any persons under its supervision in the course of providing the Services under this Agreement. The professional indemnity insurance shall be valid and irrevocable not less than twelve (12) months after the expiry of the Defect Liability Period.
- (b) The CR may at any time request the CQS to produce a copy of the insurance policy as evidence that the insurances required under this clause are being maintained and remain valid not less than twelve (12) months after the expiry of the Defect Liability Period.

4.3 Emergency and Accident

- (a) Where any accident, failure or other event occurs due to any cause whatsoever to, in or in connection with the Services provided for the Works or any part thereof either during the execution of the Works or during the Defect Liability Period or the period thereafter, the CQS shall

immediately report to the Client of the accident, failure or event together with the CQS's proposal on any interim measures required to be taken. The Client then shall decide as to the next course of action and issue a written instruction to the CQS where necessary.

- (b) In the event that the Client decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Client, its employee or any person or body appointed or authorized by the Client, the CQS shall give full co-operation and render all necessary assistance and facilities including the giving of access to all specifications, designs, records and other available information relating to the Works as may be required by the Client, its employee or such authorized person or body at no additional cost.
- (c) If the accident, failure or event occurred is not due to the negligence, error, omission, default or poor supervision of the CQS, then the Services provided by the CQS hereto during the Defect Liability Period shall be construed as Additional Professional Services not included in Basic Professional Services and be paid accordingly by the Client and any services required from a third party for works not within the scope of Basic Professional Services of this Agreement shall also be paid accordingly by the Client.
- (d) If the investigation reveals that the accident, failure or event which occurred is due to the negligence, error, omission, default or poor supervision of the CQS, and its negligence, error, omission, default or poor supervision had resulted in injury, damage or loss of any person or property, then the CQS shall be responsible for the injury, damage or loss caused to any person or property and shall undertake to—
 - (i) pay any person for the injury, damage or loss suffered by any person or his property; and
 - (ii) repair, replace or make good all injury, damages and/or pay all expenses and costs pertaining to injury and loss suffered by that person or his property.
- (e) In the event that the CQS fails to comply with clause 5.12(g) and the Client is held liable for damages to any person for injury, damage or loss suffered, or has to repair or make good such damages and/or losses, such payment shall be deducted from any payment due to the CQS under this Agreement or shall be claimed from the CQS as a debt due to the Client.

4.4 Confidentiality

- (a) Except with the prior written consent or the instructions of the Client, the CQS shall not at any time communicate to any person or body or entity any confidential information disclosed to the CQS for the purpose of the provision of the Services or discovered by the CQS 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 CQS without restriction before the date of receipt from the other party subject to the right of the Client to re-classify certain information as confidential.
- (c) In the event that the CQS 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 CQS shall not constitute a violation of this Agreement provided that-
 - (i) the CQS promptly notifies the Client of the existence, terms and circumstances surrounding such request;
 - (ii) the CQS consults with the Client on the advisability of taking available legal steps to resist or narrow, such request; and
 - (iii) the CQS 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.

4.5 Assistance in Arbitration Inquiry or Litigation

The CQS shall, if so required by the Client, within the period of work before completion, assist and advise the Client with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Client shall attend and give evidence or otherwise assist the Client before any court or in any arbitration or at any inquiry dealing with any matter arising from or in connection with the execution of the Services. In the event of arbitration or other proceedings arising after the completion of Services, if so required by the Client, the CQS shall assist in any manner whatsoever and advise the Client under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

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

4.6 Situation Beyond Control Of CQS

- (a) The CQS shall immediately inform the Client in writing of any situation or the occurrence of any event beyond the reasonable control of the CQS, which makes it impossible for the CQS to carry out its obligations hereunder.
- (b) If the Client agrees in writing that such situation or event exists, the Client 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 CQS in accordance with clause 10.0 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 CR for a decision.

4.7 Prohibition on Association

The CQS agrees that during and after the conclusion or termination of this Agreement, the CQS 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 Client may otherwise agree or request the CQS.

4.8 Prohibition on Conflicting Activities

No Personnel of the CQS assigned to the Services under this Agreement nor the CQS'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 CQS's Personnel be so engaged directly or indirectly, either in his name or through the CQS in any such other conflicting business or professional activities.

4.9 Independent Consultant

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

4.10 Technology and Knowledge Transfer

- (a) If the CQS appoints foreign professionals, the CQS shall endeavour to ensure that the employees of the Client are trained or exposed to the expertise of such foreign professionals pursuant to a programme for technology and knowledge transfer.
- (b) Pursuant to clause 4.11(a) above, the CQS shall provide training for a minimum of*Specify number of Client officer*.....officials nominated by the Client to be competent and conversant in the implementation of the Project.
- (c) The CQS shall allow the employees of the Client to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

4.11 Copyright and Copies of The Document

- (a) Copyright in Bills of Quantities and other documents prepared by the CQS is reserved to the CQS and the Client shall not without the prior written consent of the CQS make use of such documents for the carrying out of any work other than for the purpose of the Works which such documents have been prepared for.
- (b) If the Client wishes to make use of such documents for carrying out repeat works at other sites then prior written consent of the CQS should be obtained and for which the CQS shall be paid an agreed copyright royalty for use of such documents by the Client.
- (c) The CQS may, with the prior written consent of the Client, publish alone or in conjunction with any other person any article, photographs or other illustrations relating to the Project.

PART C

CLIENT'S OBLIGATIONS AND RIGHTS

5.0 CLIENT'S OBLIGATIONS

5.1 Appointment of Client Representative ("CR")

- (a) The Client shall appointor other persons from time to time as the CR to carry out its obligations and to exercise its right under this Agreement, and the CR shall have the power to carry out such obligations and exercise such rights on behalf of the Client, except for the provisions under clause 8 which is expressly reserved to
- (b) The CQS shall comply with all instructions issued by the CR in regard to matters expressly empowered to the CR to issue under this Agreement.

5.2 Obligation to give instructions, decisions, etc. without delay

- (a) All instructions, notifications, consent or approval issued by the Client or the CR shall be in writing. However the CR 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 by either party.
- (b) If the CQS requires a decision from the Client for the performance of its Services under this Agreement, the CQS shall submit its request in writing to the CR and the CR shall give its decision within seven (7) days after receipt of the request.

5.3 Obligation to Supply Relevant Information and Assistance

- (a) The CQS may request all the necessary and relevant information which are in the possession of the Client required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Client shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Client to the CQS pursuant to clause 5.3(a) of this Agreement shall not relieve the CQS of any of the CQS's obligations under this Agreement.
- (c) The Client gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information. If such data, report map, photograph, plan, drawing, record or information given or forwarded by the Client to the CQS pursuant to

sub-clause (b) of this clause is found to be not accurate or sufficient and if the CQS is not negligent in discharging his professional services, any services rendered by the CQS for the purpose of remedying the inaccuracy or insufficiency shall be construed as Additional Professional Services not included in the Basic Services and be paid for by the Client.

- (d) Where necessary, the Client shall assist the CQS to obtain, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Client shall not be responsible for any damage to such land or any property thereon resulting from such access.
- (e) Obligation of the Client to ensure other Consultants provides all necessary information and data for the CQS to prepare final account.

5.4 Types Of Services And Payments

- (a) The CQS may be engaged for the performance of any/all of the professional services as specified in the Schedule of Fees.
- (b) For the purpose of determining the payment due to the CQS under the Schedule of Fees Part B – clause 6.0 following the termination or suspension by the Client of the Works in which it is necessary to assess the payment to be made by reference to the cost of the Works, then to extent that such cost is not known, the assessment shall be made upon the basis of the CQS's latest cost estimate submitted to the Client prior to the termination or suspension.
- (c) All sums due to the CQS in accordance with the terms of this Agreement, unless disputed or questioned by the Client in writing, shall be paid within thirty (30) days of the submission by the CQS of his accounts to the Client.
- (d) If any item or part of an item of an account rendered by the CQS is disputed or subject to question by the Client in writing, the payment by the Client in respect of the undisputed amount shall not be withheld on those grounds and provisions of sub-clause 5.4(c) shall apply to such amount.
- (e) In the event where the Final Contract Sum is agreed by the Client and the Contractor through negotiations, the fees due and payable to the CQS shall not be affected by such sum but in all cases shall be in accordance with the Schedule of Fees Part B and the "Cost of Works" as described under clause 2.1 (b).
- (f) All professional fees due under this Agreement exclude Service Tax or similar Tax imposed under Law. Such Service Tax or similar Tax shall be paid by the Client to the CQS at the rate and in the manner as

prescribed by law on production of the relevant documentary proof by CQS.

5.5 Arrangements For Additional/Other Professional Services And Fees

- (a) Where any of the professional services other than those described in the Schedule of Fees Part A – clause 2.0 are in the opinion of the CQS necessary, the CQS shall obtain the prior written approval of the Client to the arrangements which he proposes to make on the Client's behalf for the appointment of Associated Consultants for such professional services. The Client shall be responsible to any Associated Consultants for the cost thereof. The fees for such professional services shall be the fees as prescribed by the recognized bodies or institutions governing the profession of such consultants.
- (b) If at the request of the Client the CQS provides any services in addition to those provided under the Schedule of Fees hereof, the Client shall pay the CQS for such additional services, such amount as may be reasonable in all circumstances.
- (c) The CQS shall be entitled to be paid by the Client for any additional work and expenses necessarily incurred in the performance of his services caused by reasons beyond the CQS's control whether they be (but not limited to) changes in the Client's instructions, delay by the Client, delay by the Client's Consultants and/or Contractors in providing information, delays in building operations, delays resulting from defects or deficiencies in the work of any Contractor, sub-contractor or supplier, default, bankruptcy or liquidation of any Contractor, sub-contractor or supplier or where the timing and/or scope of the Works is varied or for any other cause which is beyond the CQS's control.
- (d) The CQS shall in addition be entitled to be paid by the Client for any additional services not normally necessary, such as (but not limited to) those arising as a result of the termination of a contract before completion, liquidation, fire damage to the buildings, services in connection with arbitration, litigation, investigation of the validity of Contractor's claims, where the Client specifically instructs the CQS to perform these services.

PART D

DISPUTE RESOLUTIONS

6.0 SETTLEMENT OF DISPUTES

6.1 Any dispute or differences arising under, out of or in connection with this Agreement shall be settled by an amicable settlement.

6.2 Any such dispute or differences which cannot be resolved amicably may be referred to Mediation.

Upon the dispute or differences being resolved in the Mediation, such resolution shall be recorded in a settlement agreement and the parties shall give effect to this agreement accordingly.

6.3 Any dispute or differences arising under, out of or in connection with this Agreement shall upon failure of Mediation be decided by Arbitration.

6.4 Arbitration

(a) The appointment of Arbitrator(s) shall be agreed upon by all parties, but where all parties have failed to agree on the choice of the Arbitrator(s), the appointing authority shall be the Director for the time being of the Asian International Arbitration Centre, Kuala Lumpur:

(i) the number of arbitrator(s) shall be agreed upon by all parties; Failing which there will be a sole arbitrator.

(ii) the place of arbitrator shall be in Kuala Lumpur, Malaysia or other place(s) in Malaysia as determined by the arbitrator(s);

(iii) the law applicable to this Agreement shall be the applicable laws in Malaysia;

(iv) the language(s) to be used in arbitration proceedings shall be Bahasa Malaysia or English Language determined by the arbitrator(s); and

(v) the decision of the arbitrator(s) shall be binding on all parties.

(vi) the arbitration shall be governed by the Arbitration Act 1952 or any other current Act governing domestic arbitration.

PART E

SUSPENSION AND TERMINATION

7.0 SUSPENSION

7.1 Suspension and Resumption of Services

- (a) The CR may at any time instruct the CQS to suspend part or all of the Services by giving the CQS notice in writing.
- (b) Upon receipt of such instruction, the CQS 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 CQS 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 CR may instruct the CQS to resume the Services at any time thereafter. Upon receipt of such instruction the CQS shall resume the Services and the parties shall jointly examine the Services affected by the suspension. The CQS shall make good any deterioration or defect in or loss of the Services which has occurred during the suspension. The CQS shall also take all necessary actions to mitigate the expenses incurred.

7.2 Extension of Time

- (a) If the CQS suffers delay and/or incurs expenses in complying with the instruction under clause 7.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the CQS, the CQS shall give notice for extension of time. PROVIDED THAT the CQS shall not be entitled to such extension if the suspension is due to a cause attributable to the CQS and the CQS shall not be entitled to payment of loss and expenses if the CQS–
 - (i) fails to take measures specified in clause 7.1(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.

7.3 Consequences of Mutual Termination

- (a) If this Agreement is mutually terminated under this clause-
 - (i) clause 9.3 (b) shall apply; and
 - (ii) payment obligations including all costs and expenditure incurred by the Client and the CQS shall be ascertained in accordance with clause 10.

8.0 TERMINATION BY THE CLIENT

8.1 Default by the CQS

- (a) In the event the CQS without reasonable cause –
 - (i) suspends the implementation of the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
 - (ii) fails to execute the Services in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
 - (iii) defaults in performing the duties under this Agreement; or
 - (iv) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Client shall give notice in writing to the CQS specifying the default and requiring the CQS to remedy such defaults within fourteen (14) days from the date of such notice. If the CQS fails to remedy the relevant default within such period or such other period as may be determined by the Client, the Client shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

8.2 Events of Default

- (a) If at any time during the Contract Period-
 - (i) the CQS goes into liquidation or a receiver is appointed over the assets of the CQS or the CQS makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
 - (ii) any of the CQS's director is prosecuted for any offences; or

- (iii) any other condition which has arisen, which in the opinion of the Client, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

then the Client shall have the right to terminate this Agreement forthwith by giving notice to that effect.

8.3 Consequences of Termination by the Client

- (a) Upon termination of this Agreement under clause 8.1 or 8.2 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The CQS shall hence forth –
 - (i) cease all the Services;
 - (ii) submit to the Client the detailed reports of the costs of the Services and other payments which has become due and owing from the Client prior to the termination for verification and approval by the Client;
 - (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Client save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advice, opinion or report that the CQS may provide; and
 - (iv) allow a qualified third party to enter into an agreement with the Client for the purpose of carrying out or completing the Services.

PROVIDED THAT the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

9.0 TERMINATION BY THE CQS

9.1 Defaults by the Client

- (a) If the Client without reasonable cause fails to perform or fulfil any of its obligations which adversely affects the CQS's obligations under this Agreement, then the CQS may give notice in writing to

the Client specifying the default and the Client 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 Client fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CQS shall be entitled to terminate this Agreement at any time by giving notice to that effect.

9.2 Events of Default

- (a) If at any time during the Contract Period-
 - (i) the Client goes into liquidation or a receiver is appointed over the assets of the Client or the Client makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debt; or
 - (ii) any of the Client's director is prosecuted for any offences; or
 - (iii) any other condition which has arisen, which in the opinion of the CQS, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

then the CQS shall have the right to terminate this Agreement forthwith by giving notice to that effect.

9.3 Consequences of Termination by the CQS

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

- (a) The Client shall, after receiving the detailed reports of the costs of the Services and other payments which has become due and owing to the CQS, pay the CQS all costs incurred in accordance with this Agreement.
- (b) The CQS shall
 - (i) cease to provide the Services to the Client;
 - (ii) at its own costs and expense, vacate and remove from the Project Management Team's office any equipment, machineries and materials belonging to the CQS, its employees, servants and agents and make good all damage caused by such removal or such detachment; and

- (iii) at no cost, deliver to the Client all documents relevant to the Project as are in the possession of the CQS who shall be permitted to retain copies of any documents so delivered to the Client.

10.0 FORCE MAJEURE

10.1 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), pandemic, 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 CQS 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 CQS to perform its obligations under this Agreement.

10.2 Notification 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 CR for a decision.

10.3 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) month then the Parties may mutually terminate this Agreement.

10.4 Consequences of Termination due to Event of Force Majeure

If this Agreement is terminated pursuant to clause 10.3, 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.

10.5 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 10.2 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 clause 6.0 for a decision.
- (b) Notwithstanding clause 10.5(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.

10.6 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 CQS 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 CQS is able to demonstrate that it has incurred substantial costs affecting the Services, the CQS may apply to the Client for such remedies to enable it to recover the costs of such restoration.

PART F

GENERAL PROVISIONS

11.0 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 authorised 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.

12.0 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 Client or the CQS, as the case may be, stated in Appendix 2 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.
- (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).

13.0 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.

14.0 COMPLIANCE WITH LAWS AND REGULATIONS

The CQS 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 it's profession and shall be fully and solely liable for the provisions of the Services

15.0 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.

16.0 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.

17.0 ADVERTISEMENT

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

18.0 TIME

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

19.0 STAMP DUTY

Each party shall pay its own respective legal charges in respect of this Agreement but the stamp duty thereon shall be borne and paid by the Client.

20.0 INCOME TAX

- (a) The CQS 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 Client 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 Client agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

21.0 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 CR and CQS shall reach a mutual understanding to resolve the ambiguity or discrepancy.

22.0 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.

23.0 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 Client and shall be made available at all reasonable times for the inspection of the CQS. The duplicate copy shall be kept by the CQS.

24.0 SUCCESSORS BOUND

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

PART G

SPECIAL PROVISIONS

[NOTE : insert Special Provisions where necessary)

- 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)(Signature).....
THE CLIENT) (Name, Designation & Department's Seal)

In the presence of:

.....
Name of witness :
NR IC No. :

SIGNED for and on behalf of)(Signature).....
THE CQS) (Name, Designation & Company's Seal)

In the presence of:

.....
Name of witness :
NR IC No. :

PART A : SCHEDULE OF SERVICES

1.0 TYPES OF PROFESSIONAL SERVICES

- (a) The professional services to be provided by the CQS shall consist of any or a combination of the following:
- (i) Basic Professional Services
 - For building works
 - For civil engineering works
 - For mechanical and electrical works
 - (ii) Basic Professional Services
 - For interior design works
 - For landscaping works
 - (iii) Additional Professional Services
 - During pre-contract and/or **(pindaan 22/5)** during post-contract
- (b) The CQS shall provide basic professional services for any of the following types of works:

TABLE I: BUILDING WORKS

Category A	Residential – Terrace and link houses, Semi Detached houses, Detached houses, Cluster houses not exceeding 4 levels, Shop houses not exceeding 4 ½ levels inclusive of mezzanine floor, Flats not exceeding 5 levels
Category B	All other buildings not included in Category A, including but not limited to - Residential – Condominiums, Hotels, Motels, Palaces, etc Commercial and Office – Multi storey car parks, Office, Cinemas, etc Educational - Hostel, Schools, Universities, Colleges, Museums, etc Transportation – Airport terminals, Hangars, Marinas, etc Production – Warehouses, Factories, Abattoirs, etc Sports – Sports Complex, Stadiums, etc Religious – Mosques, Crematoriums, Churches, Temples, etc Medical – Hospitals, Medical Centres, Clinics, etc

	Military & Security – Army Camps, Police stations, etc Any other buildings of exceptional character and complexity
Category C	Extension, alterations, adaptation, modifications, renovation, conservation and restoration and associated demolition works.

TABLE II: CIVIL ENGINEERING WORKS

Category I	General civil engineering works e.g. roads, drains, earthworks, water reticulation etc.
Category II	Reinforced concrete works, structural steelwork and building forming part of the civil engineering contract e.g. bridges, jetties, ports etc

TABLE III: MECHANICAL AND ELECTRICAL WORKS

Mechanical and Electrical Works	Works normally included as part of the building works or civil engineering e.g. Electrical low tension and high tension, Telephone and communication system, Air conditioning and ventilation, Lift, Fire protection, Security system, CCTV, Hospital equipment, Audio visual, IT system etc
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2.0 BASIC PROFESSIONAL SERVICES

2.1 Basic Professional Services For Building Works, Civil Engineering Works And Mechanical and Electrical Works, Interior Design Works or Landscaping Works Which Are Included In One Tender

The basic professional services for building works, civil engineering works and mechanical and electrical works, interior design works or landscaping works which are included in one tender to be provided by the CQS shall be as follows:

- (a) preparing preliminary estimates and cost plans including up to 4 revisions of preliminary estimates and cost plans due to amendments to layout and scope of works;
- (b) preparing bills of quantities and other tender documents necessary for the calling of tenders excluding mechanical and electrical works, interior design works or landscaping works (The specifications of the works to be incorporated in the tender documents shall be prepared and submitted by the respective consultant to the CQS);
- (c) preparing tender reports and contract documents, including pricing of bills of quantities or pricing and agreeing schedule of rates, in collaboration with mechanical and electrical consultants, interior designers or landscape consultants for their respective works;

- (d) valuing works in progress for interim valuations/certificates including measurement of variations excluding mechanical and electrical works, interior design works or landscaping works and including the verifications and incorporation of the amounts recommended by the consultants for their respective works; and
- (e) preparing final accounts for the whole works including the incorporation of the final accounts prepared by the mechanical and electrical consultants, interior designers or landscape consultants for their respective works.

3.0 ADDITIONAL PROFESSIONAL SERVICES

3.1. Additional professional services during pre-contract

The additional professional services to be provided by the CQS during pre-contract shall be any or a combination of the following:

- (a) preparing feasibility studies including income/expenditure cash flow;
- (b) preparing preliminary estimates and cost plans beyond the fourth revision;
- (c) preparing documents and reports for pre-qualification of contractors;
- (d) redrafting conditions of contract to meet requirements of the Client;
- (e) pricing of bills of quantities for negotiated tenders including pricing and agreeing schedule of rates if the CQS is not appointed to undertake the basic professional services for the same project;
- (f) preparing and analysing of prices and attending negotiation meeting;
- (g) preparing cost analysis based on the accepted contract sum;
- (h) preparing tender price index based on the accepted contract sum; or
- (i) any other professional services provided for in this agreement.

3.2. Additional professional services during post-contract

The additional professional services to be rendered by the CQS during post-contract shall be any or a combination of the following:

- (a) Re-measuring the whole or part of the building and associated works due to re-planning of internal layout arising from a change of use, repositioning of the building (if re-measuring is required) and redesign of the structural elements in the works;

- (b) Re-measuring works for contracts based on provisional bills of quantities;
- (c) specific contractual advice on conditions of contract;
- (d) services for management contracting;
- (e) services arising out of determination of the contractor's employment;
- (f) continuing professional services on a protracted basis (after DLP);
- (g) attending post-contract meetings beyond the original completion date of the project (Contractor's Extension of Time and Liquidated And Ascertained Damages period);
- (h) evaluating loss and expense and other contractual claims submitted by the contractor;
- (i) preparing bills of quantities and other tender documents for defects and outstanding works to be carried out by a separate contractor and valuation of defective works to be omitted from the contract sum of the defaulting contractor;
- (j) professional services for making good of works damaged by fire etc;
- (k) preparing costs analysis based on the final contract sum;
- (l) resident quantity surveying site staff as agreed by the Client; or
- (m) verifying payments for financing purposes
- (n) any other professional services provided for in this agreement.

PART B : SCHEDULE OF FEES

1.0 PAYMENT FOR PROFESSIONAL SERVICES

The CQS in performing the Services described in Part A shall be paid in accordance with any or all of the following modes of payment:

- (a) Payment On the Basis Of Scale of Fees (Payment depending upon the Cost of Works)
 - For Basic Professional Services (for Building Works, Civil Engineering Works and Mechanical & Electrical Engineering Works)
- (b) Payment On The Basis Of Time Cost (Payment depending upon time spent)
 - For Basic Professional Services (for Interior Design Works and Landscaping Works)
 - For Additional Professional Services
- (c) Disbursements / Reimbursable
- (d) Other Payments

2.0 PAYMENT ON THE BASIS OF SCALE OF FEES

The CQS in performing the Basic Professional Services described in Part A sub-paragraph 1.0 (a) (i) shall be paid in accordance with the Scale Of Fees, which amount shall be derived from the product of the total cost of the Works times the percentage determined from the Scale of Fees for the relevant works.

2.1 Definition Of Cost Of Works

- (a) "Cost of Works" means the total cost incurred by the Client for the Works, however incurred, of all builders works, all specialists' or sub-contractors works, services, installations and equipment designed, specified or allowed for and forming an integral part of the Project including:
 - (i) a market value of any labour, materials, manufactured goods, machinery or other facilities provided by the Client;
 - (ii) the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Contractor in Bills of Quantities and other documents prepared by the CQS is reserved to the CQS and the Client shall not without the prior written consent of the CQS make use of such documents for the

carrying out of any work other than for the purpose of the Works which such documents have been prepared for.

If the Client wishes to make use of such documents for carrying out repeat works at other sites then prior written consent of the CQS should be obtained and for which the CQS shall be paid an agreed copyright royalty for use of such documents by the Client.

- (iii) The CQS may, with the prior written consent of the Client, publish alone or in conjunction with any other person any article, photographs or other illustrations relating to the project. which the Client has required to be used in the execution of the Works;
 - (iv) the market value of materials, manufactured goods and machinery incorporated in the Works;
 - (v) price variations arising from fluctuation of prices; and
 - (vi) approved Contractor's claims for additional preliminaries due to the extension of time which have been derived from the priced preliminaries but shall not include:
 - operating equipment or machinery that are not an integral or essential part of the Works;
 - administrative expenses incurred by the Client;
 - all consultancy fees incurred by the Client;
 - interest on capital incurred during construction;
 - the costs of raising money required for the construction of the Works; and
 - costs of land and way leaves.
- (b) The cost of works for the purpose of calculating the fees shall be derived as follows:
- (i) for works which have not been tendered, the costs of works shall be the latest estimate of costs prepared by the CQS and accepted by the Client;
 - (ii) for works tendered but not executed, the lowest *bona fide* tender received less contingency sum, prime cost and/or provisional sums for architectural, structural and civil works which do not require the CQS to carry out any measurements; and one third (1/3) of the prime costs and/or provisional sums for the works under the Mechanical and Electrical included in the tender documents; provided that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees;

- (iii) for works tendered and executed, the original contract sum, less contingency items and one third (1/3) of the prime costs and/or provisional sums for the works under the Mechanical and Electrical included in the tender documents; provided that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees; and
- (iv) for completed works, the cost of works shall be the final cost of works as per the final account or the original contract sum including variations whichever is the greater (except those variations incurred as a result of deficiency or default in services by the CQS); and in both cases to deduct one third (1/3) of the costs of the works under the Mechanical and Electrical, provided that in any event the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees.
- (v) In addition to (iv) above, for works executed by a subsequent contractor arising from the determination of the employment of the previous contractor, the cost of works for calculation of fees in respect of Stage (2) of Basic Services - Preparation of Bills of Quantities and other tender documents and Stage (3) of Basic Services – Preparation of tender report and preparation of contract documents, shall be based on the net value of the uncompleted portion of partially completed sections or elements of the works which have been re-measured due to the determination of the employment of the previous Contractor.

(ii) Scale of Fees for Basic Professional Services for Building Works

- (a) The fees payable to the CQS for basic professional services for building works shall be in the tables as follows:

TABLE IV: FEE PAYABLE FOR BUILDING WORKS (CATEGORY A)

No. of units of same design	Fee Payable
1 st	RM1,000 or 1.5% of total cost of works of each unit whichever is higher
2 nd to 10 th	1.25% of total cost of works
11 th to 50 th	1.00% of total cost of works
51 st to 100 th	0.95% of total cost of works
101 st and above	0.90% of total cost of works

TABLE V: FEE PAYABLE FOR BUILDING WORKS (CATEGORY B)

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 Or 3.00% of total costs of works whichever is higher
RM1,000,001 – RM3,000,000	RM30,000 + 2.75% in excess of RM1 million
RM3,000,001 – RM5,000,000	RM85,000 + 2.50% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM135,000 + 2.15% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM188,750 + 1.80% in excess of RM7.5 million
RM10,000,001 – RM20,000,000	RM233,750 + 1.55% in excess of RM10 million
RM20,000,001 – RM50,000,000	RM388,750 + 1.30% in excess of RM20 million
RM50,000,001 – RM100,000,000	RM778,750 + 1.25% in excess of RM50 million
RM100,000,001 – RM250,000,000	RM1,403,750 + 1.10% in excess of RM100 million
Over RM250 million	RM3,053,750 + 1.00% in excess of RM250 million

TABLE VI: FEE PAYABLE FOR BUILDING WORKS (CATEGORY C)

Total cost of works	Fee Payable
RM1,000,000 and below	RM17,500 or 3.50% of total costs of works whichever is higher
RM1,000,001 – RM3,000,000	RM35,000 + 3.25% in excess of RM1 million
RM3,000,001 – RM5,000,000	RM100,000 + 3.00% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM160,000 + 2.75% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM228,750 + 2.50% in excess of RM7.5 million
RM10,000,001 – RM15,000,000	RM291,250 + 2.25% in excess of RM10 million
RM15,000,001 – RM25,000,000	RM403,750 + 2.00% in excess of RM15 million
Over RM25 million	RM603,750 + 1.75% in excess of RM25 million

- (b) Where consultants are appointed by the Client for Mechanical and Electrical works, for the purpose of calculating the fees of the CQS, no deduction whatsoever shall be made on the cost of works where measurement is required for such professional services. If no measurement is required, a reduction of one third (1/3) of the cost of those works under Mechanical and Electrical works shall be made for the cost of works in calculating the fees of the CQS, provided that in any event, the total fees of the CQS shall not be reduced by more than one sixth (1/6) of the CQS's total fees.
- (c) For Categories B and C, where there is more than one unit of buildings of the same design in all respects to be repeated in the construction of subsequent units on the same site and under a single building contract for which standard type of drawings, specifications and bills of quantities and other documents are used,

the fees payable for the Stage (2) - Preparation of Bills of Quantities and other tender documents shall be reduced as follows:

**TABLE VII: FEE PAYABLE FOR REPETITIVE BUILDINGS
(CATEGORY B&C)**

Building unit for the	Fees payable
original unit	full fees
2 nd unit	65% of full fees
3 rd unit	55% of full fees
4 th unit	45% of full fees
5 th unit and subsequent units	40% of full fees

- (i) The calculation of full fees for preparation of bills of quantities and other tender documents for original unit of repetitive buildings shall be as follows:

$$\text{FFOU} = \frac{\text{Cost of RB}}{\text{no. of RB}} \times \frac{\text{FBPS}}{\text{Cost of Works}} \times \text{PBQ}$$

Where,

- (a) FFOU is full fees of original unit for preparation of bills of quantities and other tender documents for original unit of repetitive buildings;
 - (b) Cost of RB is cost of repetitive buildings **inclusive of original unit** (excluding works under the Mechanical and Electrical Consultants);
 - (c) No. of RB is total units of repetitive buildings inclusive of original unit;
 - (d) FBPS is fees for full basic professional services;
 - (e) PBQ is percentage breakdown of fees for preparation of bills of quantities and other tender documents;
- (ii) The definition of buildings of ‘same design in all respects’ shall mean that the buildings are same in design, shape, size, storey height and total height;
- (iii) The reduced fees for repetitive buildings shall be applicable for repetitive buildings in a project as defined;
- (iv) The reduced fees for repetitive buildings is only applicable to the Stage (2) - Preparation of Bills of Quantities and other tender documents as in Part B –Schedule of Fees as the case maybe whereas fees payable for other stages of professional services shall be paid in full.

(iii) Scale of Fees for Basic Professional Services for Civil Engineering Works

The fees payable to the CQS for basic professional services for civil engineering works shall be as follows:

TABLE VIII: FEE PAYABLE FOR CIVIL ENGINEERING WORKS (CATEGORY I)

Total cost of works	Fee Payable
RM1,000,000 and below	RM12,500 or 2.50% of total costs of works whichever is higher
RM1,000,001 – RM3,000,000	RM25,000 + 2.25% in excess of RM1 million (pindaan 22/5)
RM3,000,001 – RM5,000,000	RM70,000 + 2.00% in excess of RM3 million
RM5,000,001 – RM7,500,000	RM110,000 + 1.65% in excess of RM5 million
RM7,500,001 – RM10,000,000	RM151,250 + 1.35% in excess of RM7.5 million
RM10,000,001 – RM20,000,000	RM185,000 + 1.15% in excess of RM10 million
RM20,000,001 – RM50,000,000	RM300,000 + 1.00% in excess of RM20 million
Over RM50 million	RM600,000 + 0.90% in excess of RM50 million

TABLE IX: FEE PAYABLE FOR CIVIL ENGINEERING WORKS (CATEGORY II)

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 or 3.00% of total costs of works whichever is higher
RM1,000,001 - RM3,000,000	RM30,000 + 2.75% in excess of RM1 million
RM3,000,001 - RM5,000,000	RM85,000 + 2.50% in excess of RM3 million
RM5,000,001 - RM7,500,000	RM135,000 + 2.15% in excess of RM5 million
RM7,500,001 - RM10,000,000	RM188,750 + 1.80% in excess of RM7.5 million
RM10,000,001 - RM20,000,000	RM233,750 + 1.50% in excess of RM10 million
RM20,000,001 - RM50,000,000	RM383,750 + 1.30% in excess of RM20 million
Over RM50 million	RM773,750 + 1.20% in excess of RM50 million

- (a) Where the CQS is engaged to provide quantity surveying professional services for building works (including external works) in

a civil engineering project the respective scale of fees for building works shall apply.

- (b) Where more than one category of civil engineering works are involved then the scale of fees for the category of civil engineering works with the highest total value shall be applicable.
- (c) Where the CQS is engaged to provide quantity surveying professional services for the whole of a civil engineering project, the fee in respect of any building works and including related external works of which the bills of quantities is prepared based on the approved standard method of measurement of building works (SMM) recognized by the Board of Quantity Surveyors for building works shall be based on the scale of fees for building works.

(iv) Fees for more than one category of buildings in building works or civil engineering works

Where there is more than one category of buildings in either building works or civil engineering works, the scale of fees for the category of buildings with the highest total value shall be applicable.

(v) Fees payable for Mechanical and Electrical works

Where the CQS is appointed to provide full basic professional services for Mechanical and Electrical works on its own, the fees payable shall be as follows:

TABLE X: FEE PAYABLE FOR MECHANICAL AND ELECTRICAL WORKS

Total cost of works	Fee Payable
RM1,000,000 and below	RM15,000 or 3.00% of total costs of works whichever is higher
RM1,000,001 - RM3,000,000	RM30,000 + 2.50% in excess of RM1 million
RM3,000,001 - RM5,000,000	RM80,000 + 2.25% in excess of RM3 million
RM5,000,001 - RM7,500,000	RM125,000 + 2.00% in excess of RM5 million
RM7,500,001 - RM10,000,000	RM175,000 + 1.85% in excess of RM7.5 million
RM10,000,001 - RM20,000,000	RM221,250 + 1.55% in excess of RM10 million
Over RM20 million	RM376,250 + 1.25% in excess of RM20 million

(vi) Fees Payable For Interior Design Works And Landscaping Works

Where the CQS is appointed to provide full basic professional services for landscaping works and interior design works on its own, the fees payable shall be on the basis of time cost or cost of work which ever is the higher.

(vii) Additional Fees For Contracts Based On Provisional Bills of Quantities

- (a) Where provisional bills of quantities have to be prepared for the calling of tenders and the bills of quantities for the original scope of works and normal variation under the contract have to be re-measured, the fees for Stage (2) - Preparation of Bills of Quantities and other tender documents shall be increased by 35%.
- (b) The entitlement for the additional fees due to the re-measurement of the provisional bills of quantities is subject to the following:
 - (i) the CQS is appointed for full basic professional services;
 - (ii) before commencing on the measurements of provisional bills of quantities, the CQS must obtain written approval from the Client since the Client has to bear the additional fees.

(viii) Fees for CQS appointed for partial services

- (a) If a CQS is appointed for pre-contract professional services only stage (1), (2) & (3), the total fees is 65% of the total fees for full basic professional services.
- (b) If a CQS is appointed for post contract professional services only stage (4) & (5), the total fees is 35% of the total fees for full basic professional services.
- (c) In addition to the provision in sub-paragraph (b) above, the CQS shall be paid an additional 10% of the total fees for full basic professional services for the preparatory works prior to commencement of his professional services.
- (d) If a CQS is appointed for stage (5) preparation of final accounts which may also involve part of stage (4) valuation of works in progress including variation works, the total fees is 25% of the total fees for full basic professional services.

3.0 PAYMENT ON THE BASIS OF TIME COST

The CQS who has rendered any of the Basic Professional Services or the Additional Services described in Part A sub-paragraph 1.0(a)(ii) and (iii) shall be paid in accordance with Payment On The Basis Of Time Cost as follows:

- (a) Remuneration shall be determined on the basis of time actually spent and a rate specified in respect of the CQS's personnel, where such rate shall be calculated based on basic salary times an appropriate multiplier as approved by the Client.

- (b) The Client shall not be responsible for payment of the above remuneration to the CQS's Personnel who are on annual leave or sick leave.
- (c) The CQS shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in the CQS's office.
- (d) The CQS shall be entitled for other payments, where applicable, as described in paragraph 4.0 and 5.0.

4.0 DISBURSEMENTS / REIMBURSIBLES

The CQS shall in all cases be reimbursed by the Client for the disbursements actually as approved by the Client.

5.0 OTHER PAYMENTS

5.1. Payment for re-measurement of works due to alteration or modification of design

- (a) If after the completion by the CQS of his basic professional services under paragraph 2 of Part A –Professional Services at any time after execution of an agreement between the CQS and the Client, any measurement whether completed or in progress or any specification or other document prepared in whole or in part by the CQS required to be modified or revised by reason of instructions received by the CQS from the Client or others acting on behalf of the Client or by reason of circumstances which could not have been reasonably foreseen by the CQS, the CQS shall be paid an additional payment by the Client for making any necessary modification or revision and for any consequential reproduction of documents and the fees due will be based on paragraph 6.0 Stage (2) Part B – Schedule of Fees as the case may be, of the gross value of measured omissions and on the gross value of measured additions, both gross values added to the cost of works to calculate the fees provided such modification or revision be limited to the following:
 - (i) Re-measurement of the whole or part of the works due to either re-planning of internal layout or repositioning of the structure or due to change of use of building or structure; and
 - (ii) Re-design of any structural element in the works.

5.2. Payment when works are damaged or destroyed

If at any time before completion of the Works, any part of the Works or any materials, plant or equipment whether incorporated in the Works or not are damaged or destroyed, resulting in additional services being required by the

Client to be carried out by the CQS, provided always such damage was not due to the negligence on the part of the CQS, then the CQS shall be paid by the Client payment on the basis of time cost for the additional works together with any reimbursements as provided in paragraphs 3.0 and 4.0 of this Schedule.

5.3. Payment Following Termination Or Suspension By The Client

- (a) In the event of the termination of this Agreement (unless such termination shall have been occasioned by the default of the CQS) or the suspension of the Project by the Client, the CQS shall be paid the following sums (less the amount of payments previously made to the CQS):
- (i) a sum deductible from the percentage of work completed up till the time of termination or suspension; and
 - (ii) amounts due to the CQS under any other paragraph of this Schedule.

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

- (b) In the event that the CQS is required to recommence its Services for the Project suspended by the Client, the CQS shall be paid for the performance of its Services the sum payable to the CQS under paragraph 2.0 and/or paragraph 3.0 of this Schedule, whichever may be applicable, the payments under sub-paragraphs 5.3(a)(i) and (ii) of this Schedule being treated as payments on account.
- (c) Where the tendering of the Project (or any part thereof) is likely to be delayed for more than twelve (12) months or postponed at the request of the Client, the CQS shall be paid according to the Scale of fees described paragraph 2.0 of this Schedule but the cost of works applicable shall be the estimated cost of works (or any relevant part thereof) and agreed to by the Client at the time of completion of the particular stage of professional services.
- (d) Where the Project is suspended or postponed after the tenders have been called the fees payable to the CQS shall be computed based on the lowest *bona fide* tender received.
- (e) Where tenders are recalled and the Project is subsequently resumed, the fees payable to the CQS shall be as follows:
- (i) for stages of professional services under sub-paragraph 6.0(a) Stage (1), (2) and (3) under Part B – Schedule of Fees as the case may be; the fees shall be as computed in sub-paragraph 5.3(d) of this Schedule, and

- (ii) for stages of professional services under sub-paragraph 6.0(a) Stage (4) and (5) listed under Part B – Schedule of Fees to be computed based on the contract sum for the works at the time of resumption and in accordance with the definitions of “cost of works”.
- (f) If the CQS is required to provide any additional professional services in connection with the resumption of his professional services in accordance with sub-paragraph (b) above, the CQS shall be paid in respect of the performance of such additional professional services on the basis of Time Cost and any appropriate reimbursement in accordance with paragraph 4.0 of this Schedule.

5.4. Payment Following Termination by the CQS

If there is a termination by the CQS of his Services (unless the termination had been occasioned by the default or negligence of the CQS), the CQS shall be entitled to be paid the sums specified in sub-paragraphs 5.3(a)(i) and (ii) of this Schedule less the amount of payments previously made to the CQS.

6.0 STAGES OF PAYMENTS OF FEES

- (a) The fees payable to the CQS for every stage of basic professional services, shall be as follows:

TABLE XI: STAGE OF CQS BASIC PROFESSIONAL SERVICES

Stage of basic professional services		Fee payable
1	Preparation of preliminary estimates and cost estimates and cost plans	10%
2	Preparation of bills of quantities and other tender documents	48%
3	(i) Preparation of tender reports (ii) Preparation of contract documents	3% 4%
4	Valuation of works in progress for interim valuation/ certificates including measurement of variations	20%
5	Preparation of final accounts	15%
FULL BASIC PROFESSIONAL SERVICES		100%

- (i) The CQS shall be entitled to payments at intervals to be mutually agreed upon by the CQS and the Client in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the stages shall be equal to the percentages as set out in Table XI.
- (ii) Unless otherwise specified or mutually agreed beforehand between the Client and the CQS in this Agreement, the fee apportioned to each stage shall be paid in full, even if, under the circumstances in a particular case, the CQS is not required to

perform some of the Services listed under that stage in Paragraph 2.0 in Part A - Schedule of Services.

- (b) Where the payment is based on Time Cost, the proportions of the total fee for the Works to be paid to the CQS shall be based on the completion of deliverables or on a pro-rated monthly basis or any other agreed stages of payment.
- (c) Payment for resident quantity surveying site staffs shall be paid on a monthly basis.
- (d) Payment for disbursement / reimbursable shall be made on a monthly basis upon submission of receipts and invoices where applicable.

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APPENDIX 1 : TERMS OF REFERENCE

[TO BE INSERTED BY RELEVANT AGENCY]

To Include at least :

1. Project Brief
2. List & Mode of Deliverables
3. Scope of Services
 - (a) Basic Services
 - (b) Additional Services
 - (c) Site Supervision (if applicable)

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

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

APPENDIX 3

APPENDIX 3 : LETTER OF ACCEPTANCE

[THE LETTER OF ACCEPTANCE SHALL INCLUDE THE SIGNING PAGE AND EXECUTED BY THE CQS - TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL
BOARD**

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 5

APPENDIX 5 : DELIVERABLES

[TO BE INSERTED BY RELEVANT AGENCY]

No.	Deliverables Stages	Details	Due Date of Submission
1.			
2.			

APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 6B : CONSULTING FEES

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

APPENDIX 6C : OUT OF POCKET EXPENSES

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

APPENDIX 7

APPENDIX 7 : SCHEDULE OF AGREED ITEMS

Item	Clause of Agreement	Description	Remarks
1.	3.1	Commencement date date to be inserted by Agency
2.	3.1	Contract period week/month/year
3.	3.1	Contract Expiry date date to be inserted by Agency
4.	3.2(b)	Period for negotiation of the terms and condition for extension of the contract periodweek/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Client's Representative (CR) designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Client to give decision days to be inserted by Agency
7.	6.4(c)	CQS's bank account details for purposes of payment	Name: Account No.:..... Bank Address:.....
8.	5.5(e)	Period for CQS to submit statement of final account for the Services and supporting documentation to GRmonths after the expiry of DLP ormonths after the issuance of certificate of making good defects (CMGD) whichever is later
9.	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)	RM...../day
10.	16(a)	a) <u>For the Client</u> b) <u>For the CQS</u>	a) Official Designation: Address: Fax No. : Tel. No : Email : b) Name of Firm :

Item	Clause of Agreement	Description	Remarks
			Address : Fax No. : Tel No.: Email :

APPENDIX 8

APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE

[TO INCLUDE DUE DATE(S) OF SPECIFICALLY IDENTIFIED DELIVERABLES-
TO BE INSERTED BY RELEVANT AGENCY]

No	Deliverable stages	List of activities	Period of Implementations according to activities	Start Date (according to activities)	End Date (according to activities)

OR

GANTT CHART

APPENDIX 9

APPENDIX 9 : CQS'S PERSONNEL

[TO BE INSERTED BY RELEVANT AGENCY]

No	Name of Personnel (inclusive of owner & principal)	Role in Team	Number of Years of Working Experience	Age	Employment Status with the firm (Permanent/Temporary)	Full Name of Highest Academic Qualification (specify name of university)	Professional Certificates (list name of certificate and membership no. (if any))

**APPENDIX 10 : CQS'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)
Deliverable Stage XX				
1				
etc				
Deliverable Stage XX				
etc				
Deliverable Stage XX				
etc				

APPENDIX 11 : CQS'S SERVICES TAX LICENSE

[TO BE INSERTED BY RELEVANT AGENCY]

APPENDIX 12 : SCHEDULE OF PAYMENT

[BREAKDOWN OF SCHEDULED PAYMENT BY STAGES/PHASES OR MONTHS-
TO BE INSERTED BY RELEVANT AGENCY]