

**FOR** ..... Specify full name of project .....

**CONTRACT NO. :** ..... Specify contract number .....

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

..... Name of consultancy firm .....

**(COMPANY NO. :** ..... Company registration no with Suruhanjaya Syarikat Malaysia (local company) or Board of Architects Malaysia Registration No. If foreign companies specify its registration number in its country .....**)**

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CONTRACT NO. : .....

**“RECITALS”**

**THIS AGREEMENT** is made on day of .....  
(hereinafter referred as this **“Agreement”**)

**BETWEEN**

The **GOVERNMENT OF MALAYSIA** who for the purpose of this Agreement is represented by....., having its address at ..... (“Government”) of the one part;

**AND**

**(NAMA PEMILIK PERUNDING) (IC NO: .....)** practicing as **(NAMA PERUNDING)**, having its address at **(ADDRESS)** (Land Surveyors Board of Peninsular Malaysia Registration No. LJT ..... ) (“LLS”) of the other part.

The Government and the LLS may individually be referred to as “Party” or collectively referred as “Parties”.

**WHEREAS –**

- (A) The Government is desirous of obtaining professional land surveying services (“Services”) (as defined therein) for **(TAJUK PROJEK)** (“Works”) and has issued a letter of intent together with the terms of reference for the Services (“Terms of Reference”) to the LLS as in Appendix 1 of this Agreement for a sum totaling **Ringgit Malaysia ..... Thousand ..... Hundred ..... and Cents ..... Only (RM .....)** including the Sales and Service Tax (“SST”) of six percent (6%) charged based on Sales and Service Tax Act 2018 [Act 762] is **Ringgit Malaysia ..... Thousand ..... Hundred and ..... and Cents ..... Only (RM .....)** for the package successfully surveyed (hereinafter referred to as “the cost per package”) subject to the terms and conditions hereinafter provided.
  
- (B) The LLS on ..... has agreed on the Agreed Scope of Services together with the fees as provided in Appendix 2 of this Agreement.
  
- (B) Thereafter, the Letter of Acceptance dated ..... as in Appendix 3 of this Agreement was issued to the LLS for the Services of the Works and the LLS agreed to accept the appointment subject to the terms and conditions of this Agreement.

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

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires the following words and expressions shall have the meanings ascribed to them below: -

“Agreed Scope of Services” means the scope of services agreed by Parties as specified in Appendix 2 of this Agreement;

“Approved Scale of Fees” means the Scale of Fees for Cadastral Surveying under the Thirteenth Schedule, Scale Of Fees For Title Surveys, Licensed Land Surveyor Regulation 2011, P.U.(A) 331 as described in Appendix 7;

“Board” means The Land Surveyor Board establish under the provision of section 3, Licensed Land Surveyors Act 1958 (Act 458);

"Boundary Mark" means any mark authorised by law for the purpose of marking boundaries;

“Department Quality Assurance Process” means the process in which the submission of each survey file is subject to computational check and verification by the State Department of Survey and Mapping through the Department’s quality assurance procedures;

“JUPEM ASCII” means digital data contain all surveyed data as stipulated in Director General of Survey and Mapping Circular 6/2009;

“GR” means the Government Representative as provided in **Clause 14** of this Agreement;

“LLS” means a person whose name has been placed upon the Register of Licensed Land Surveyors kept in accordance with Licensed Land Surveyors Act 1958 (Act 454) (Revised 1991) and to whom a license to practice as a licensed land surveyor in Peninsular Malaysia has been issued under the Act by the Land Surveyors Board Peninsular Malaysia. In the case of Sabah, a license to practise is issued under the Surveyors Ordinance 1960 by the Sabah Surveyors Board; while for Sarawak it is issued under the Land Surveyors Ordinance 2001 by Land Surveyors Board Sarawak;

“Licensed Land Surveyor” means whom this Agreement is entered into for provision to the Government of cadastral lot survey services and includes his administrators, assignees, successors and duly appointed representatives or agents;

“Professional Licensed Surveying Services” means services referred to in Schedule 1 of Appendix 4 of this Agreement;

“Query” means when a survey file being subjected to checks through the Assurance Process and JUPEM ASCII data to the Quality Assurance Systems checking process and found to contain error, is returned to the Licensed Land Surveyor for correction and rectification;

“Quality Assurance System” means a computerized Quality Assurance System developed, owned and maintained by the Government in the respective State Department of Survey and Mapping;

“Requisition for Survey Plan” means a plan prepared to show the area extent, dimension and other information of the Work site for which Services are to be rendered by the LLS;

“Schedule” means the Schedules in Appendix 4 of this Agreement;

“Services” means the professional land surveying services in connection to the Works which the Government has engaged the LLS to perform as described in the Agreed Scope of Services provided in Appendix 2 of this Agreement and may comprises services mentioned in Schedule 1 of Appendix 4 of this Agreement;

"Survey Plan" means the plan showing the situation of the land, the position of its boundaries as so determined and of the boundary marks placed thereon and the area and lot number thereof;

“Variation” means any alteration to the Agreed Scope of Services; and

“Works” means the works described briefly in Recital (A) of this Agreement.

## **1.2 Interpretations**

In this Agreement, except to the extent that the context otherwise requires-

- (a) reference to any law, legislation or to any provisions of any law and legislations shall include any statutory modification or re-enactment of, or any legal or legislative provision substituted for and all legal or legislation and 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) this Agreement, Schedules and the Appendices are to be read as a whole and the effect or operation of any of this clause in this Agreement or item



in or entry in the Appendices shall, unless otherwise specifically stated, be read subject to any qualification or modification in Appendices;

- (d) words denoting the singular number shall include the plural and vice versa;
- (e) words denoting individuals shall include corporations and vice versa;
- (f) recitals and headings are for convenience only and shall not affect interpretation thereof;
- (g) reference to clauses shall be read in the case of sub-clauses, paragraphs and sub-paragraphs as may be appropriate;
- (h) reference 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;
- (i) reference to any party to this Agreement or any other document or agreement shall include its successors or permitted assigns;
- (j) words denoting any gender shall include all genders;
- (k) any reference to an “approval” is a reference to an approval in writing; and “approval” 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 reference to “indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money; and

- (n) any reference to “law” includes any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, by-law or other legislative measure in Malaysia.

## **2. REPRESENTATION, WARRANTIES AND UNDERTAKINGS**

### **2.1 Representations and Warranties**

The LLS hereby represents and warrants to the Government that-

- (a) the LLS is a Licensed Land Surveyor registered under the Licensed Land Surveyors Act 1958 (Act 458) (Revised 1991) and exists validly under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the LLS 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;
- (d) the LLS 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;
- (e) as at the execution date, neither the execution nor performance by the LLS 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 asset;
- (e) 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;
- (f) this Agreement constitutes a legal, valid and binding obligation of the LLS and is enforceable in accordance with its terms and conditions;
- (g) it has the necessary financial, technical, and professional capability and expertise to provide the Services under this Agreement,

and the LLS acknowledges that the Government has entered into this Agreement in reliance on its representations and warranties as aforesaid.

## **2.2 Warranties and Undertakings of LLS**

The LLS warrants and undertakes that-

- (a) in carrying out its duties under this Agreement it shall use due skill, care and diligence expected of suitably qualified and experienced surveyors;
- (b) the LLS shall comply with all applicable statutory requirement, standards and guidelines, regulating or relating to the conduct, trade, business or profession of a surveyor and shall be fully and solely liable for the provisions of the Services;
- (c) the LLS shall comply with the relevant circulars issued by Government from time to time;

- (d) the LLS shall pay all taxes as may be imposed on the profit made in respect of this Agreement in accordance with the applicable laws;
- (e) the LLS shall ensure that all his employees, including non-Malaysian personnel, comply with all relevant laws to which they are subject to, including payment of income tax, which in respect thereto the LLS shall make such deductions from the salaries of his employees as may be lawfully imposed by the relevant authority; and
- (f) LLS shall be solely responsible for the entire costs and expenses of the Services and make all necessary arrangement for the provisions of finance for the Services.

### **3. DURATION OF SERVICES**

- 3.1 The duration of Services shall be for a period of **12 months** commencing from the date stated in the Letter of Acceptance as appended in Appendix 3 of this Agreement ("Date of Commencement") and deposited the total agreement price with the board whichever is later and shall end on **9 MAY 2020**.
- 3.2 The warranty of project shall be for a period of **3 months** commencing from the date on **9 May 2020** until **9 Julai 2020**.
- 3.3 Unless the Services of the LLS is earlier terminated under **Clause 18** of this Agreement, LLS's appointment and Services under this Agreement shall cease when the Government issues the final certificate authorizing the final payment to the LLS and furnishes a copy of the final certificate to the LLS ("Date of Completion of Services"). For the purposes of this Agreement, the final certificate authorizing the value of the final payment means the final account showing the detail value of the Services carried

out by the LLS or after the satisfactory attendance by the LLS of any technical query from the Government, whichever is the later.

## 4. DELAY OF JOB COMPLETION

4.1 If the LLS fails to submit survey documents and JUPEM ASCII data within the stipulated time as specified in **Clause 3**, the Government may, at its sole discretion, terminate the Agreement.

4.2 If the cause of the delay is beyond the reasonable control of the LLS, the Government may grant upon application by the LLS an extension of time deemed reasonable under the circumstance to complete the surveying service. In the event of this happening, all accepted contractual dates would be rescheduled accordingly. Failing to complete the surveying services within the extended time will cause the Agreement to be terminated.

4.3 It is a prerequisite of the preceding paragraph that the LLS shall give sufficient notice in writing to the Government stating the cause of the delay and the request for the extension of time.

## 5. SCOPE OF SERVICES

### **Agreed Scope of Services**

It is hereby agreed that the Government appoints the LLS to perform the Agreed Scope of Services as defined in **Clause 1.1** and Appendix 2 of this Agreement and the LLS shall be fully and solely responsible for carrying out the Services in accordance with terms and condition of this Agreement.

## 6. AGREEMENT PRICE

### **Payment for Professional Licensed Land Surveyor Services**

The Agreement Price has been determined by the amount calculated for each survey file for the package awarded based on the approved scale of fees as mentioned in Appendix 7 of this Agreement. This sum, so determined, shall be due to the LLS after the successful completion of the service and all obligations in this Agreement fulfilled by the LLS.

## 7. DEPOSIT WITH THE BOARD

Upon signing of the Letter of Acceptance, the Government shall deposit the total Agreement Price with the Board in accordance with sub-regulation 26 (2) of the Licensed Land Surveyor Regulation 2011 (P.U.(A)331).

## 8. DISBURSEMENT BY THE BOARD

8.1 Subject to the conditions as specified in **Clause 3** the LLS shall be entitled to full payment of the sum due for the services rendered on full completion of the surveying service and having fully completed all queries raised by the State Department of Survey and Mapping.

8.2 The completion of the surveying means the completion of each survey file in the allotted Package, in which the survey files submitted have satisfactorily undergone the Department Quality Assurance Process.

- 8.3 Payment will be made based on the actual survey files successfully completed according to the amount calculated in **Appendix 5**.
- 8.4 Upon fulfillment of all obligations stipulated in this Agreement, the LLS may submit a request for payment in writing to the Board accompanied with a certification of completion by the State Department of Survey and Mapping.
- 8.5 There shall not arise any further claims apart from the Agreement Price.

## **9. CUSTODY AND SUPPLY OF AGREEMENT, AND AMBUIGUITY**

### **9.1 Custody of Agreement**

This Agreement shall be prepared in both original and certified duplicate copy. The original copy 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 LLS. The duplicate copy shall be kept by the LLS.

### **9.2 LLS to supply certified copies of Agreement**

Immediately after the execution of this Agreement, the LLS shall supply at LLS's own cost four (4) certified true copies of this Agreement to the Government.

### **9.3 Ambiguity or discrepancy**

All Appendices of this Agreement 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, then the Government shall explain and resolve the ambiguity or discrepancy.

## **10. OBLIGATIONS OF LLS**

### **General Obligations**

- 10.1 The LLS shall, without additional cost to the Government, immediately after signing the Letter of Acceptance, establish facilities for effective management of all of the LLS's obligations under this Agreement.
- 10.2 The LLS must provide at his own cost and expense all labor, materials, equipment and everything necessary for the performance of the cadastral lot survey service within the terms and conditions of this Agreement.
- 10.3 When requested by the Government, the LLS shall supply at no charge monthly progress reports to the Government. These reports will be in a form and in such detail as is specified by the Government and will provide information on the status of this Agreement, and major difficulties encountered and the steps being taken to overcome these difficulties. These reports will be required until all of the surveying activities are successfully completed. Each report must be submitted not later than three (3) normal working days after the last day of the period it covers. The LLS must pay particular attention to delivery schedules and warn of any impending slippage in delivery dates.



- 10.4 Formal meetings as required by the Government may be held between representatives of the Government and the LLS. For these meetings the LLS must submit such progress reports as are required by the Government. Attendance at these meetings and the provision of reports by the LLS shall be at no charge to the Government.
- 10.5 The LLS shall supply at his own cost all items such as printing paper, ribbons, disk packs and other similar data storage media and related items for use in the process of carrying out the surveying activities until the completion of the service.
- 10.6 The LLS shall ensure that survey documents and digital data submitted comply with the format and meet the standards of the Department of Survey and Mapping Malaysia.

### **Sub-let of Agreement**

- 10.7 The LLS shall not sublet the whole or any part of this Agreement, nor shall it assign its rights or obligations (including its rights to payment of monies) under this Agreement. The LLS shall be responsible for performance of this Agreement according to its tenure.
- 10.8 The Government reserves the right to terminate this Agreement if the LLS is found to have breached the condition as in **Clause 10.7** above.

## **11. DOCUMENTS AND SECURITY**

- 11.1 The LLS shall be fully responsible for the confidentiality, security, damage or loss of any document, file and related information entrusted to LLS. Every effort must be made by the LLS to ensure that information is not being divulged to third parties unless expressly agreed by the Government.

- 11.2 The LLS shall upon the completion of the surveying service, return all documents supplied to him by the State Department of Survey and Mapping pursuant to this Agreement.
- 11.3 The LLS shall, upon the completion of the surveying service, delete all survey data stored in his computers and other data storage media in relation to this Agreement.
- 11.4 The LLS shall provide a full written report in the case of any damage or loss of any document, file and related information entrusted to him.
- 11.5 The LLS who breach the conditions of the preceding paragraphs shall be liable to have his registration with the *Kementerian Kewangan Malaysia* suspended.

## **12. SUBMISSION OF SURVEY DOCUMENTS AND JUPEM ASCII DATA**

- 12.1 The LLS shall submit survey documents and JUPEM ASCII data for each file in each Package to the State Department of Survey and Mapping.
- 12.2 The whole Package should be completed and submitted to the State Department of Survey and Mapping in the manner and within the time specified in this Agreement.
- 12.3 Notwithstanding **Clause 3** of this Agreement, the LLS shall complete the whole surveying service together with all queries and return all files within the whole Package to the State Department of Survey and Mapping within permitted by the Government, failing which no payment shall be made for any survey document submitted after this date.

- 12.4 Where possible, the LLS shall progressively submit or spread out the submission of the completed survey files earlier than the stipulated five (5) months period.
- 12.5 The State Department of Survey and Mapping reserves the right to reject any submission if initial inspection of the survey documents and JUPEM ASCII data reveals any discrepancy. In such cases, the files are deemed not submitted by the LLS.
- 12.6 Each submission by the LLS shall be in accordance with the procedures as specified in the Director General of Survey and Mapping Circular 6/2009 and other related circulars and complying with the department's Survey Regulations.

### **13. QUALITY ASSURANCE OF SURVEY DOCUMENTS, DATA AND QUERY**

- 13.1 The LLS shall ensure that all surveys are complete and accurate as well as satisfying all survey regulations. The LLS shall provide the necessary verification checks and control for his purpose.
- 13.2 The LLS shall ensure that all surveys submitted meet all survey requirements. Consideration for future award will be based on the quality or work submitted; queries may render the LLS not being considered for subsequent Packages.
- 13.3 The State Department of Survey and Mapping shall subject all submitted survey documents and JUPEM ASCII data to the basic checking process and digital data to the quality assurance checks and shall forward any query to the LLS for correction and rectification.

- 13.4 If any part of the submitted survey documents and JUPEM ASCII data found to be incorrect or inaccurate, the whole file shall be returned to the LLS for correction and rectification.
- 13.5 The LLS shall attend to all queries and make them necessary correction and rectification and resubmit the survey documents and JUPEM ASCII data to the State Department of Survey and Mapping after performing the said correction and rectification.
- 13.6 The LLS shall correct, rectify and resubmit the first query within fourteen (14) working days from the date the query is sent by the State Department of Survey and Mapping. The second query on the same survey file shall be corrected, rectified and resubmitted by the LLS within seven (7) working days from the date the query is sent by the State Department of Survey and Mapping. In the event any of the query is not corrected, rectified and resubmitted within the stipulated time the LLS shall be subjected to conditions as specified in **Clause 3**.
- 13.7 The LLS shall be subjected to condition in **Clause 3** for any subsequent query or queries after the second query.

## **14. GOVERNMENT REPRESENTATIVE (GR)**

### **Appointment of GR**

- 14.1 Within 7 days from the Date of Commencement the Government shall appoint the person or any other person(s) from time to time as the GR to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the powers to carry out such obligations and exercise such rights on behalf of the Government.

### **GR's instructions**

14.2 The LLS shall comply with all instructions issued by GR in regard to matter expressly empowered to the GR to issue under this Agreement.

14.3 All instructions, notifications, consent or approval issued by GR shall be in writing. However, the GR may where necessary issue oral instructions, notifications, consent or approvals and such oral instruction, notifications, consent or approvals shall be followed in writing not later than seven (7) days thereafter.

## 15. GOVERNMENT'S OBLIGATION

### **Obligation to supply Relevant Information and assistance**

15.1 Upon written request from the LLS, the Government shall within a reasonable time supply to the LLS all necessary and relevant information, which are in the possession of the Government required for purposes of carrying out of its Services under this Agreement.

### **No warranty on the Relevant Information**

15.2 (a) Any necessary and relevant information supplied by the Government to the LLS pursuant to **Clause 15.1** of this Agreement shall not relieve LLS of any of LLS's obligations under this Agreement.

(b) 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 LLS, 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 15.1** 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 LLS's obligation under this Agreement.

## **Obligation to give instructions, decisions, etc. without delay**

- 15.3 If the LLS requires a decision from the Government for the performance of its Services under this Agreement, the LLS shall submit its request in writing to the GR and GR shall give its decision within the period 7 days.

## **16. CONFIDENTIALITY OF INFORMATION**

- 16.1 The LLS hereby covenants on behalf of his servants and agents:
- (a) The LLS and his employees, agents and suppliers shall strictly observe the priorities and restrictions of the Official Secrets Act 1972 and shall not disclose or divulge to any third person or persons or party any information or document discovered or obtained by him or disclosed to him in the cause of the services under this Agreement, without prior written permission of the Government.
  - (b) During the period or after the completion of this Agreement, not without the prior written consent of the Government to disclose or permit the disclosure of any confidential information obtained as a result of this Agreement or the implementation thereof concerning the affairs of the Government to any person or body not otherwise authorized to receive such information.

- (c) To take all reasonable precautions in dealing with any information, documents and papers provided by the Government to prevent any unauthorized person from having access to such information documents or papers.

16.2 It shall be a term of this Agreement that the LLS, his servants and agents, prior to executing their duties under this Agreement, to sign a declaration of confidentiality and the duty not to disclose or divulge any information obtained to any person or persons in the course of their duties.

16.3 The LLS, his servants and/or agents shall not make any public statement in relation to this Agreement or to the awarding of any order or entering into any agreement pursuant to this Agreement without the prior written permission of the Government.

## **17. PROPRIETARY RIGHTS OVER DOCUMENTS AND DATA**

All documents supplied by the Government to the LLS, data and all other information derived therefore pursuant to this Agreement shall remain the property of the Government.

## **18. TERMINATION OF AGREEMENT**

18.1 The Government after giving at least fifteen (15) days prior notice to the LLS, shall have the right to terminate this Agreement if the LLS:

- (a) commit any breach of his obligations under the provisions of this Agreement;

- (b) it is discovered that the LLS or his agents, or any person employed by him or acting on his behalf, has engaged in any illegal means/malpractice for doing or forborne to do any act in relation to the obtaining or executing of this or any other Agreement with the Government of Malaysia;
- (c) fails to commence or proceed at a rate of progress strictly in accordance with Agreement;
- (d) assigns its right or obligations under this Agreement, or sub-lets the whole or any part of the Agreement;
- (e) passes a resolution to wind-up his company or if a court of competent jurisdiction makes an order that the LLS company be wound up or goes into liquidation or receivership or if a receiver and manager on behalf of a creditor is appointed in respect of this LLS;
- (f) makes default in the performance or observance of any covenant, condition or stipulation contained in this Agreement;
- (g) abandons or refuses to proceed with the work after having commenced the same; or
- (h) is no longer a practicing LLS due to his license to practice being suspended or nullified by the Board.

18.2 The Government shall be at liberty, by written notice to the LLS, terminate this Agreement or any part thereof, and the Government may also in any such notice declare all sums of money otherwise due to the LLS, which may damages which have accrued due to the Government at the date of such notice, shall vest in or became payable to the Government as the



case may be, provided that no action taken by the Government under the provisions of the **Clause 18.1** shall operate to the prejudice of the right of the Government to recover from the LLS any sums payable to the Government to deduct those from any monies that may be, or become, payable by the Government to the LLS under this Agreement or on any other account whatsoever be, in the hands of the Government to be forfeited, whereupon such sums of money so declared forfeited, and all sums named herein as liquidated.

- 18.3 In the event that the Government terminates this Agreement for any of the reasons described in **Clause 18.1** above, the LLS may upon written notice from the Government be required to return all documents, data and information related to this Agreement to the Department of Survey and Mapping Malaysia.
- 18.4 Whenever and so often as the Government has become entitled to give notice of termination mentioned in **Clause 18.1** above, the Government shall be entitled to recover from the LLS any damages, losses, costs and expenses which the Government may sustain or incur in consequence of such default or occurrence. All such damages, losses, costs and expenses which are or become so recoverable under this Agreement, together with any sum payable by the LLS as liquidated damages or otherwise, may be deducted from any money that may then be due to the LLS and if the money then due to the LLS under this Agreement is not sufficient for that purpose, the balance remaining unpaid shall be a debt due by the LLS to the Government and may be set off against any monies which may be or become due to the LLS by the Government or may be recovered from the LLS in any Court of competent jurisdiction.
- 18.5 In addition to the rights described in **Clause 18.1** above, the Government may at any time upon giving notice in writing to the LLS terminate this Agreement or any part or further part thereof, and upon such notice being

given, the LLS shall forthwith do everything possible to mitigate losses consequent thereto. Without being under liability so to do, the Government will at the earliest possible time inform the LLS if circumstances arise which make it likely that the Government will exercise its right pursuant to this **Clause**.

- 18.6 In the event of the LLS not being able to complete the survey service due to death, the Agreement shall automatically be terminated and the Government reserves the right to appoint another LLS to undertake and continue to complete the work.
- 18.7 In the event that the Government terminates this Agreement for the reason described in **Clause 18.6** above, the Government may consider making payment or an equitable sum calculated on the portion of the survey service carried out by the deceased. The LLS being appointed to continue the work shall be paid the remainder of the amount calculated for the package.
- 18.8 The Government shall not be liable to pay under the provisions of this clause any sums which is additional to any sums paid or due or becoming due to the LLS under this Agreement which exceeds the full price of the completed work payable under this Agreement.
- 18.9 Where the provisions of the above clauses are invoked as to any part of this Agreement the provisions thereof shall prevail over all other provisions of this Agreement inconsistent herewith in respect to those parts so effected.

## 19. TERMINATION ON NATIONAL INTEREST

### 19.1 Termination

- (a) Notwithstanding any provision of this Agreement, the Government may terminate this Agreement by giving not less than thirty (30) days written notice to that effect to the LLS, without any obligation to give any reason thereof if the Government considers that such termination is necessary for national interest, national policy or national security.
- (b) For the purpose of this clause, what constitutes “national interest”, “national policy” and “national security”, shall be solely made and determined by the Government and such determination shall for all intent and purposes be final and conclusive and shall not be open to any challenge whatsoever.

### 19.2 Consequences of Termination

- (a) If this Agreement is terminated under **Clause 19.1**, the LLS shall:
  - (i) forthwith cease its Services;
  - (ii) remove its staffs or employees from the site;
  - (iii) allow 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;
  - (iv) at no cost to the Government, hand over to the Government all documents, data and information relating to the Services;

- (v) pay to the Government for any losses and damages as a result of termination of this Agreement in the manner provided under **Clause 20**; and
  - (vi) not be released from any of its obligations under the Agreement.
- (b) Upon such termination of this Agreement under **Clause 19.1** of this Agreement-
- (i) payment obligations including all costs and expenditure incurred by the Government and the LLS shall be ascertained in accordance with **Clause 22** of this Agreement; and
  - (ii) nothing in **Clause 20** or anything contained in this Agreement shall render the Government in any way liable for payments upon termination.

## **20. TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES**

### 20.1 Termination

- (a) Without prejudice to any other rights of the Government, if the Government is satisfied that the LLS, its personnel, servants, agents or employees is or are involved in corruption or unlawful activities in relation to this Agreement or any other agreements that the LLS 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 LLS.

## 20.2 Consequences of Termination

- (a) Upon such termination under **Clause 20.1** of this Agreement-
  - (i) 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;
  - (ii) **Clause 19.2 (a)** shall apply; and
  - (iii) nothing in **Clause 20** or anything contained in this Agreement shall render the Government in any way liable for payments upon termination.

## 21. SURVIVING RIGHTS

Any termination under this Agreement shall not affect the liability of either Party hereto for any of its acts or omissions during the period of the Agreement and both Parties shall thereafter continue to be so liable and shall keep the other Party hereto indemnified and hold harmless in respect of any claims arising therefrom.

## 22. PAYMENT UPON TERMINATION

- 22.1 If this Agreement is suspended or terminated under **Clause 18**, **Clause 19** or **Clause 20**, the amount to be paid in so far as such amounts or items have not already been covered by payments on account made to the LLS shall be the value of all Services carried out up to date of suspension or termination.

PROVIDED THAT such amount to be paid by the Government shall be confined only to the payment as are clearly and expressly stated in the above.

22.2 Upon suspension or termination of this Agreement, the LLS shall within the period of 14 days submit to the Government a statement of final account and supporting documentation showing details of the value of Services carried out in accordance with this Agreement.

22.3 Within period of 14 days, the Government 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.

## **23. FORCE MAJEURE**

23.1 Neither the Government nor the LLS shall be in breach of its obligation under this Agreement if it is unable to perform its obligations under this Agreement (or any part of them), other than the payment obligations as a result of the occurrence of an event of *force majeure*.

23.2 An “event of *force majeure*” shall mean-

- (a) war (whether declared or not), hostilities, invasion, act of foreign enemies;
- (b) insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;
- (c) natural catastrophes including but not limited to earthquakes, tsunami, floods and subterranean spontaneous combustion or any operation of the forces of nature against which an experienced

surveyor could not reasonably have been expected to take precautions;

- (d) nuclear explosion, radioactive or chemical contamination or radiation;
- (e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and
- (f) riot, commotion or disorder, unless solely restricted to employees of the LLS or its personnel, servants or agents.

23.3 If an event of *force majeure* occurs by reason of which either Party is unable to perform any of its obligations under this Agreement (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that event of *force majeure* with full particulars thereof and the consequences thereof.

23.4 If either party to this Agreement is temporarily unable by reason of *force majeure* to meet any of its obligation under the Agreement, and if such party gives to the other party written notice of the event within fourteen (14) days after its occurrence, such obligations of the party which gives notice shall be suspended for as long as the inability continues.

23.5 If either Party considers the event of *force majeure* to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Agreement, then the Parties may mutually agree that this Agreement be terminated.

23.6 Neither Party shall be liable to the other Party for loss, damage or delays sustained by such other party arising from any event of *force majeure*.

- 23.7 If this Agreement is terminated by an event of *force majeure* pursuant to the above clause, all rights and obligations of the Parties under this Agreement shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the event of *force majeure*.
- 23.8 Neither Party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an event of *force majeure* has not occurred.
- 23.9 For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an event of *force majeure* and such obligations shall, pending the outcome of this clause continue in full force and effect.

## **24. MODIFICATION**

No modification, amendment or waiver of any of the provisions or any part of this Agreement shall be effective unless made by mutual consent and made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties. The provisions or part in respect of such amendment, variation or modification thereof shall be supplemental to and be read as integral part of this Agreement which shall remain in full force and effect as between both Parties.

## **25. INDEMNITY**



## 25.1 The LLS agrees with the Government that-

- (a) the LLS shall perform all of its obligations under this Agreement at its own risk and hereby releases, to the fullest extent permitted by law, 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 the 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 LLS 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 LLS shall indemnify and keep indemnified the Government 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 LLS or its personnel, servants, agents or employees appointed by the LLS in the performance of the Services;
  
  - (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 of the Services by the LLS 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 person 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 LLS or 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.

25.2 The LLS shall indemnify, protect and defend at its own cost and expense the Government and its agents and servants from and against all actions, claims and liabilities arising out of acts done by the LLS in the performance of this Agreement including the use or violation of any copyright works or literary property or patented invention, article or appliances.

## **26. ARBITRATION**

26.1 If any matter, dispute or claim arising out of or relating to the Agreement or the breach or termination here of which cannot be agreed upon by the Parties hereto or which cannot be settled amicably by the Parties, the matter, dispute or claim shall be referred to arbitration within forty five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur on the application of either party hereto. Such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration and shall be conducted in accordance with the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration using the facilities and the system available at the Centre.

- 26.2 Such reference, except on any difference or dispute under **Clause 23** hereof shall not be commenced until after the completion or alleged completion of the Services or determination or alleged determination of the LLS's employment under this Agreement, or abandonment of the Works, unless with the written consent of the Government and the LLS.
- 26.3 In the event that such consent has been obtained in accordance with **Clause 26.2**, the reference of any matter, dispute or difference to arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the Parties to perform their respective obligations under this Agreement.
- 26.4 In any arbitration proceedings conducted pursuant to **Clause 26.3** above, the Parties may make any counter claim in relation to any dispute or difference arising from the Agreement.
- 26.5 The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice, and any decision of the GR, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with **Clause 26.3** aforesaid, in the same manner as if no certificate, opinion, decision, requisition or notice had been given.
- 26.6 Upon every or any such reference the costs of such incidental to the reference and award shall be in the discretion of the Arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and client or as between party and party and shall direct by whom and to whom and in what manner the same be borne, awarded and paid.
- 26.7 The award of the Arbitrator shall be final and binding on the Parties.

- 26.8 In the event of death of the arbitrator or his unwillingness or inability to act, then the Government and the LLS upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the LLS fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur.
- 26.9 In this clause, “reference” shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- 26.10 The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

## **27. LAWS APPLICABLE**

- 27.1 This Agreement shall be governed by the laws of Malaysia and no suit or other proceedings relating to this Agreement shall be brought or filed in any court other than a court of competent jurisdiction in Malaysia, which shall have exclusive jurisdiction to hear and determine all suits or proceedings arising out of this Agreement and the LLS and its personnel, servants, agents or employees hereby submit to the jurisdiction of the Malaysian Court for the purpose of any suits or proceedings.
- 27.2 The LLS binds himself to acknowledge and accept as final in all respects within the country of domicile of the LLS or elsewhere, any decision or award of the arbitrator(s) or judgment in any Malaysian Court in relation to any dispute between the Parties under this Agreement whether in respect of payments to be made there under or in other matters. This undertaking is valid in all respects whenever any such decision, award or judgment is to be enforced in the courts of the country of domicile of the LLS or elsewhere in any manner.

## **28. GOVERNING LAW AND JURISDICTION**

28.1 This Agreement shall be governed by the laws of Malaysia and no suit or other proceedings relating to this Agreement shall be brought or filed in any court other than a court of competent jurisdiction in Malaysia, which shall have exclusive jurisdiction to hear and determine all suits or proceedings arising out of this Agreement and the LLS and its personnel, servants, agents or employees hereby submit to the jurisdiction of the Malaysian Court for the purpose of any suits or proceedings.

28.2 The LLS binds himself to acknowledge and accept as final in all respects within the country of domicile of the LLS or elsewhere, any decision or award of the arbitrator(s) or judgment in any Malaysian Court in relation to any dispute between the Parties under this Agreement whether in respect of payments to be made there under or in other matters. This undertaking is valid in all respects whenever any such decision, award or judgment is to be enforced in the courts of the country of domicile of the LLS or elsewhere in any manner.

## **29. NOTICE**

29.1 Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be made in writing in Bahasa Malaysia or the English language and delivered to the address or facsimile number of the Government or the LLS, as the case may be, shown below or to such other address, or facsimile numbers as either Party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person or by facsimile transmission, when delivered to the

recipient at such address or facsimile number which is duly acknowledged:

-

## To the Government

Address: Kementerian Perumahan Dan Kerajaan Tempatan  
Bahagian Pembangunan Dan Pelaksanaan Projek  
Cawangan Pengurusan Projek  
No. 51, Aras 5-8,  
Persiaran Perdana, Presint 4,  
62100 Putrajaya

Telephone No: +603-8891 5000

Facsimile No: +603-8891 4088

## To the LLS

Address: (ALAMAT PERUNDING)

Telephone No: +.....

Facsimile No: +.....

- 29.2 Either Party may change the address set out herein by giving fourteen (14) days notice to the other Party. In the event of the LLS fails to notify the Government of such an address or any change in his address, such written notices and instructions shall be deemed to have been served upon the LLS if they are sent in the manner stated above to the address stated in this Agreement or to the LLS's office.

## **30. TIME**

Time whenever mentioned shall be of the essence of this Agreement.

## **31. STAMP DUTY**

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

## **32. 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.

## **33. 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 other provision in this Agreement or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement.

## **34. SUCCESSORS BOUND**

This Agreement shall be binding upon the respective successors-in-title of the Parties.

## **35. SCHEDULES AND APPENDICES**

All schedules and appendices herewith shall form an integral part of this Agreement.

- (a) Appendix 1 – Terms of References
- (b) Appendix 2 – Agreed Scope of Services
- (c) Appendix 3 – Surat Setuju Terima
- (d) Appendix 4 – Spesifikasi Perkhidmatan
- (e) Appendix 5 – Remuneration
- (f) Appendix 6 – Requisition for Survey Plan
- (g) Appendix 7 – Thirteenth Schedule, Scale of Fees for Title Surveys, Licensed Land Surveyor Regulation 2011, P.U.(A) 331
- (h) Appendix 8 – Surat Akuan Perunding Yang Dilantik
- (i) Appendix 9 – Sijil Pendaftaran Kementerian Kewangan
- (j) Appendix 10 – Sijil Pendaftaran Lembaga Profesional
- (k) Appendix 11 – Lesen Cukai Perkhidmatan



**IN WITNESS WHEREOF** the Parties have hereunto set their hands on the day and year first above written.

For and on behalf of:

**THE GOVERNMENT OF MALAYSIA**

By,

Name :

Designation :

Department's Seal & Chop :

In the presence of,

Name :

I.C. No :

For and behalf of,

**(NAMA PERUNDING)**

By,

Name :

Company's Seal & Chop :

Registration Number with Land Surveyors Board of Peninsular Malaysia :

Registration Number with Ministry of Finance, Malaysia :

In the presence of:

Name :

I.C. No :