

**CONSULTANCY SERVICES**

**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 Quantity Surveyors Malaysia Registration No. If foreign companies specify its registration number in its country** **.....)**

## Table of Contents

1.0	DEFINITIONS AND INTERPRETATIONS.....	6
1.1.	<b>Definitions</b> .....	6
1.1.	<b>Interpretations</b> .....	7
1.2.	<b>Entire Agreement</b> .....	8
2.0	APPOINTMENT AND CONSIDERATION .....	9
3.0	EFFECTIVE DATE AND DURATION OF THIS AGREEMENT .....	9
3.1.	<b>Contract Period</b> .....	9
3.2.	<b>Extension of Contract Period</b> .....	9
4.0	CQS'S REPRESENTATIONS AND WARRANTIES .....	10
5.0	CQS'S OBLIGATIONS.....	11
5.1.	<b>Quality of Services</b> .....	11
5.2.	<b>Timeliness of Services</b> .....	11
5.3.	<b>Consequences of Delay</b> .....	11
5.4.	<b>Instructions by The Government</b> .....	12
5.5.	<b>Tender Document and Final Account Services</b> .....	12
5.6.	<b>CQS's Personnel</b> .....	13
5.7.	<b>Information and Records</b> .....	14
5.8.	<b>Liability</b> .....	14
5.9.	<b>Indemnity</b> .....	14
5.10.	<b>Insurance</b> .....	15
5.11.	<b>Professional Indemnity Insurance</b> .....	15
5.12.	<b>Emergency and Accident</b> .....	16
5.13.	<b>Confidentiality</b> .....	17
5.14.	<b>Notice of Delay</b> .....	18
5.15.	<b>Assistance in Arbitration Inquiry or Litigation</b> .....	18
5.16.	<b>Situation Beyond Control Of CQS</b> .....	19
5.17.	<b>Prohibition on Association</b> .....	19
5.18.	<b>Prohibition on Conflicting Activities</b> .....	19
5.19.	<b>Independent Consultant</b> .....	19
5.20.	<b>Technology and Knowledge Transfer</b> .....	19
5.21.	<b>Intellectual Property Rights</b> .....	20
6.0	GOVERNMENT'S OBLIGATIONS.....	21
6.1.	<b>Appointment of GR</b> .....	21
6.2.	<b>Obligation to give instructions, decisions, etc. without delay</b> .....	21
6.3.	<b>Obligation to Supply Relevant Information and Assistance</b> .....	21
6.4.	<b>Payment to the CQS for Services</b> .....	22
6.5.	<b>Withholding Payment</b> .....	23

7.0	GOVERNMENT'S RIGHTS.....	24
7.1.	<b>Proprietary Rights of The Government in Relation to Documents.....</b>	<b>24</b>
8.0	DISPUTE RESOLUTION.....	24
8.1.	<b>Dispute Resolution by Government Representative.....</b>	<b>24</b>
8.2.	<b>Dispute Resolution Committee.....</b>	<b>25</b>
8.3.	<b>Arbitration.....</b>	<b>25</b>
9.0	SUSPENSION.....	26
9.1.	<b>Suspension and Resumption of Services.....</b>	<b>26</b>
9.2.	<b>Extension of Time.....</b>	<b>27</b>
9.3.	<b>Consequences of Mutual Termination.....</b>	<b>27</b>
10.0	TERMINATION BY THE GOVERNMENT.....	27
10.1.	<b>Withholding Payment.....</b>	<b>27</b>
10.2.	<b>Default by the CQS.....</b>	<b>27</b>
10.3.	<b>Events of Default.....</b>	<b>28</b>
10.4.	<b>Consequences of Termination by the Government.....</b>	<b>28</b>
11.0	TERMINATION BY THE CQS.....	29
11.1.	<b>Consequences of Termination by the CQS.....</b>	<b>30</b>
12.0	TERMINATION ON NATIONAL INTEREST.....	30
13.0	TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES.....	31
14.0	FORCE MAJEURE.....	31
14.1.	<b>Events.....</b>	<b>31</b>
14.2.	<b>Notification of Force Majeure.....</b>	<b>32</b>
14.3.	<b>Termination by Force Majeure.....</b>	<b>32</b>
14.4.	<b>Consequences of Termination due to Event of Force Majeure.....</b>	<b>32</b>
14.5.	<b>Delay.....</b>	<b>32</b>
14.6.	<b>Restoration.....</b>	<b>33</b>
14.7.	<b>Insurance.....</b>	<b>33</b>
15.0	AMENDMENT.....	33
16.0	NOTICES.....	33
17.0	GOVERNING LAW.....	34
18.0	COMPLIANCE WITH LAWS AND REGULATIONS.....	34
19.0	SEVERABILITY.....	34
20.0	RELATIONSHIP OF THE PARTIES.....	34
21.0	ADVERTISEMENT.....	34
22.0	TIME.....	34
23.0	COSTS AND STAMP DUTY.....	35
24.0	INCOME TAX.....	35
25.0	SCHEDULES AND APPENDICES.....	35
26.0	WAIVER.....	35
27.0	CUSTODY OF AGREEMENT.....	35
28.0	SUCCESSORS BOUND.....	36
	SPECIAL PROVISIONS.....	36
	SIGNATORIES TO THE AGREEMENT.....	37
	PART A : SCHEDULE OF SERVICES.....	38
1.0	TYPES OF PROFESSIONAL SERVICES.....	38
2.0	BASIC PROFESSIONAL SERVICES.....	39

<b>2.1</b>	<b>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</b>	39
3.0	ADDITIONAL PROFESSIONAL SERVICES	40
3.1.	<b>Additional professional services during pre-contract</b>	40
3.2.	<b>Additional professional services during post-contract</b>	40
PART B : SCHEDULE OF FEES		42
1.0	PAYMENT FOR PROFESSIONAL SERVICES	42
2.0	PAYMENT ON THE BASIS OF SCALE OF FEES	42
2.1	<b>Definition Of Cost Of Works</b>	42
2.2	<b>Scale of Fees for Basic Professional Services for Building Works</b>	44
2.3	<b>Scale of Fees for Basic Professional Services for Civil Engineering Works</b>	46
2.4	<b>Fees for more than one category of buildings in building works or civil engineering works</b>	48
2.5	<b>Fees payable for Mechanical and Electrical works</b>	48
2.6	<b>Fees Payable For Interior Design Works And Landscaping Works</b>	48
2.7	<b>Additional Fees For Contracts Based On Provisional Bills of Quantities</b>	48
2.8	<b>Fees for CQS appointed for partial services</b>	49
3.0	PAYMENT ON THE BASIS OF TIME COST	49
4.0	DISBURSEMENTS / REIMBURSIBLES	50
5.0	OTHER PAYMENTS	50
5.1.	<b>Payment for re-measurement of works due to alteration or modification of design</b>	50
5.2.	<b>Payment when works are damaged or destroyed</b>	50
5.3.	<b>Payment Following Termination Or Suspension By The Government</b>	50
5.4.	<b>Payment following termination by the CQS</b>	52
6.0	STAGES OF PAYMENTS OF FEES	52
APPENDIX 1 : TERMS OF REFERENCE		54
APPENDIX 2 : TECHNICAL DOCUMENTS FOR PROJECT IMPLEMENTATION		55
APPENDIX 3 : LETTER OF ACCEPTANCE		56
APPENDIX 4 : CERTIFICATE OF REGISTRATION WITH PROFESSIONAL BOARD		57
APPENDIX 5 : DELIVERABLES		58
APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST		59
APPENDIX 6B : CONSULTING FEES		60
APPENDIX 6C : OUT OF POCKET EXPENSES		61
APPENDIX 7 : SCHEDULE OF AGREED ITEMS		62
APPENDIX 8 : SERVICES IMPLEMENTATION SCHEDULE		63
APPENDIX 9 : CQS'S PERSONNEL		64
APPENDIX 10 : CQS'S PERSONNEL TIME INPUT SCHEDULE		65
APPENDIX 11 : CQS'S SERVICES TAX LICENSE		66
APPENDIX 12 : SCHEDULE OF PAYMENT		67

**CONTRACT NO. :** Specify contract number

**“RECITALS”**

THIS AGREEMENT is made on Date (day)...day of Month and year...

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA** as represented by Name of Government Agency.....  
whose address is at Specify full address.....(hereinafter referred to as “the **Government**”)  
of the first part;

**AND**

Name of the sole proprietorship/partnership/body corporate, (whichever is applicable)  
Suruhanjaya Syarikat Malaysia Registration No./ Ministry of Finance Registration No..... and Board of Quantity  
Surveyors Malaysia Registration No. Specify registration number....., a sole proprietorship or  
partnership registered in Malaysia or a body corporate incorporated under the  
Companies Act 1965 (whichever is applicable) and practising as a Quantity  
Surveying Consultancy Practice, having its registered office at  
Specify full address  
.....hereinafter referred to as “**CQS**”) of the other part.

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

**WHEREAS -**

- (A) The Government intends to construct and complete Specify full name of project  
(hereinafter referred to as “**the Project**”) and is desirous of obtaining  
(hereinafter referred to as “**the Services**”) from the CQS in connection with  
the Specify field of the consultancy service.....(hereinafter referred to as “**the Works**”).
- (B) The CQS has submitted its proposal to the Government on the scope for the  
Services and both Parties have agreed on the scope of Services as per the  
Terms of Reference specified in **Appendix 1** and Technical Documents in  
**Appendix 2** of this Agreement.
- (C) In furtherance of such intention, the Government has agreed to appoint the  
CQS and the CQS has agreed to such appointment to provide the Services  
necessary for the effective implementation of the Project. A copy of the Letter  
of Acceptance dated Date issued by Government... is attached in **Appendix 3** of this  
Agreement.

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

**PART A**

**GENERAL**

**1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1. Definitions**

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 Government 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 1965 [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 Government 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 4**;
- (d) "Contractor" means any sole proprietorship, partnership or company engaged by the Government under a contract for the Project or to supply goods in connection with the Project or both and includes sub-contractors;
- (e) "Contract Price" means the ceiling of total consulting fee and ceiling out of pocket expenses as specified under clause 2.0;
- (f) Contract Period means the contract period as prescribed under Clause 3.1 herein;
- (g) "Cost of Works" means the cost incurred by the Government for the Works as particularly specified under the Schedules of this Agreement (Part B -Schedule of Fees);

- (h) “Defects Liability Period” is as provided in the contract between the Government and Contractor;
- (i) “Deliverables” means all deliverables (including designs, drawings, details, plans, calculations and reports) as specified in **Appendix 5** to be submitted to the Government by the CQS as particularly specified in the Terms of Reference in **Appendix 1** of this Agreement;
- (j) “Government’s Representative (“GR”) means the person under item 5 in **Appendix 7** or such other person as may be appointed from time to time by the Government and notified in writing to the CQS to carry out the duties of the GR and the person so designated or appointed may be described by position;
- (k) “Services” means the professional consultancy services for the project which the Government has engaged the CQS to perform in accordance with the Terms of Reference, Technical Documents and Deliverables as specified in **Appendices 1, 2 and 5**;
- (l) “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 5.11;
- (m) “Project” means the project of which the Works form a part;
- (n) “Works” means the works described briefly in Recital (A) of this Agreement which the Government has engaged the CQS to perform professional services and which may comprise those as specified under the Schedules of this Agreement (Part A - Schedule of Services).

### 1.1. 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.

## **1.2. 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 APPOINTMENT AND CONSIDERATION

The Government hereby appoints the CQS and the CQS accepts the appointment to provide the Services for a consideration of Ringgit ..... only (RM.....) as the ceiling contract amount (hereinafter referred to as the “**Contract Price**” and specified in **Appendix 6A** of this Agreement) which consists of Ringgit Malaysia ..... only (RM.....) as the ceiling consulting fee (as specified in **Appendix 6B** of this Agreement) and Ringgit ..... only (RM.....) as the ceiling out of pocket expenses (as specified in **Appendix 6C** of this Agreement) subject to the terms and conditions set forth in this Agreement as per the Letter of Acceptance dated ..... (as specified in **Appendix 3** of this Agreement).

## 3.0 EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

### 3.1. Contract Period

This Agreement shall be for a period of ..... as specified under item 2 in **Appendix 7** (hereinafter referred to as the “**Contract Period**”) commencing from ..... (hereinafter referred to as “**Commencement Date**”) and shall expire on the date as specified under item 3 in **Appendix 7** (hereinafter referred to as the “**Contract Expiry Date**”) unless terminated earlier in accordance with the provisions of Part E of this Agreement.

### 3.2. Extension of Contract Period

- (a) The CQS shall, upon it becoming reasonably apparent that the progress of the Services is delayed, apply in writing to the Government for the approval of extension of the Contract Period. The CQS shall further furnish to the Government relevant information as to the causes of delay together with a revised Services Implementation Schedule and estimated revised cost (if any), for the approval of the Government.
- (b) The Government shall have the absolute discretion whether or not to consider such application. In the event the Government agrees to extend the contract period, the Parties may, as soon as reasonably practicable, negotiate the terms and conditions of such extension ..... prior to the Contract Expiry Date as specified under item 4 in **Appendix 7**. If the Parties fail to reach an agreement, this Agreement shall automatically expire on the Contract Expiry Date.

## PART B

### CQS'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

#### 4.0 CQS'S REPRESENTATIONS AND WARRANTIES

The CQS hereby represents and warrants to the Government that –

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it is registered as a consultancy firm with the Ministry of Finance Malaysia (MOF);
- (c) the 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;
- (d) the CQS shall keep current all such registrations and ensure their validity throughout the duration of this Agreement;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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 Government has entered into this Agreement in reliance on its representations and warranties as aforesaid.

## **5.0 CQS'S OBLIGATIONS**

### **5.1. Quality of Services**

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

### **5.2. Timeliness of Services**

- (a) The CQS shall prepare a draft services implementation schedule incorporating the key dates specified for carrying out the Services which shall be in accordance with the requirements of the Terms of Reference, for the approval of the Government.
- (b) The agreed draft service implementation schedule as approved by the Government shall be the Service Implementation Schedule as in **Appendix 8**; which shall be amended only with the approval of the Government. Any subsequent changes or amendments approved by the Government shall form part and be read together with the Service Implementation Schedule.
- (c) The CQS shall provide to the Government scheduled progress reports in such form and details as prescribed in the Terms of Reference.
- (d) The CQS shall keep the GR informed on a day to day basis of all instructions, variations and design changes made or authorized by the CQS.

### **5.3. Consequences of Delay**

- (a) If the CQS fails to deliver any Deliverables by the due date(s) agreed by both parties as specified in **Appendix 5** of this Agreement without reasonable cause, the CQS shall pay Liquidated and Ascertained Damages (LAD) to the Government for the delay. The period of delay shall be calculated beginning from the scheduled delivery date and ending on the actual date as delivered and submitted to the Government.

- (b) The LAD shall be computed on a daily basis for each day of delay at every stage of deliverables based on the formula specified under item 9 in **Appendix 7** of this Agreement.

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

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

#### **5.5. Tender Document and Final Account Services**

- (a) Where the CQS is required by the Government to provide tender document for the Works, the CQS shall guarantee to the Government the adequacy and completeness of the documents and that the documents have been prepared in accordance with sound industry practice.
- (b) 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 published by the Institution of Surveyors Malaysia (ISM) and other established method of measurement sanctioned by the ISM.
- (c) The CQS shall endeavour to strictly comply with the project brief and approved ceiling project cost as specified under the Terms of Reference.
- (d) All specification, bills of quantities or other documents, matters or things prepared by the CQS for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the GR. No such approval shall affect the responsibility of the CQS in connection with the Services.
- (e) Where the CQS is required by the Government to finalise account of the Works, the CQS shall complete the Statement of Final Account and deliver the Statement of Final Account to the GR within the period specified under item 8 in **Appendix 7** of this Agreement.

- (f) All documents in relation to the Services to be provided by the CQS to the Government shall be endorsed and signed by the CQS's Principal.
- (g) If any defect, insufficiency or inadequacy in the documents shall be apparent, or if there shall arise a need for any variation to the Works as a result of any defect, fault, insufficiency or inadequacy in the documents prepared by the CQS, the Government shall issue to the CQS a notice specifying the default and requiring the CQS to remedy the same within the period specified by GR at the CQS's own cost and expense. If the same is not remedied, the Government shall be entitled, without prejudice to any other rights or remedies it may possess against the CQS under this Agreement or at law, to claim and recover from the CQS any payment for any loss and/or damages suffered or any other expenses incurred as a result thereof.
- (h) Notwithstanding Clause 4.5(g), the Government may elect to remedy the defect, insufficiency or inadequacy in the documents as at the time such defect, insufficiency or inadequacy is established and the Government shall be entitled to deduct the amount up to the limit of sum certified by the GR to be the sum required to remedy the same from any money due or to become due to the CQS under this Agreement, failing which such sum shall be recovered from the Professional Indemnity Insurances taken by the CQS or as a debt from the CQS.

#### **5.6. CQS's Personnel**

- (a) The CQS shall provide efficient, suitably qualified and experienced Personnel and acceptable to the Government to carry out the Services.
- (b) The Services shall be carried out by the CQS's Personnel as specified under **Appendix 9** hereof within the time and stage as specified in the Service Implementation Schedule in **Appendix 8**.
- (c) The Project Manager of the CQS as specified in **Appendix 9** shall be responsible for the management of the CQS's Personnel for the Services as well as to act as liaison between the CQS and the Government.
- (d) There shall be no changes or substitutions in the CQS's Personnel set forth in **Appendix 9** without the prior written approval of the Government. If for any reason beyond the reasonable control of the CQS, it becomes necessary to replace any of the CQS's Personnel, the CQS shall forthwith provide as a replacement, a person of equivalent or better qualification and experience to the Government at no additional cost to the Government of which the Government shall consider without undue delay.
- (e) In the event the number of CQS's Personnel as specified in **Appendix 9** is reduced without the prior written approval of the Government, the

Government shall have the right to deduct the Consulting Fee based on CQS's Personnel Time Input Schedule as specified in **Appendix 10**.

- (f) The CQS shall ensure that any changes, substitution or replacement of Personnel shall not affect the term and the implementation for the provision of the Services.

#### **5.7. Information and Records**

- (a) The CQS shall furnish the Government such information in relation to the Services as the Government may from time to time reasonably request.
- (b) The CQS shall keep accurate, systematic and up-to-date records and accounts in respect of the provision of the Services in such form and details as is customary in the profession or as may be required by the Government from time to time as shall be sufficient to establish accurately that the costs and expenditure referred to in **Appendix 6A, Appendix 6B and Appendix 6C** of this Agreement have been duly incurred.
- (c) The CQS shall permit the GR from time to time to inspect their records and accounts relating to the Services and to make copies thereof and shall permit the Government or any person authorized by the Government, from time to time, to audit such records and accounts during the performance of the Services.
- (d) In the event of failure occurring after the completion of the Project, the CQS may be required by the Government to submit a report detailing probable cause and remedial action. References shall be made to all kept records and accounts.

#### **5.8. Liability**

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

#### **5.9. Indemnity**

The CQS agrees with the Government that –

- (a) the CQS shall perform all of its obligations under this Agreement at its own risk and releases, to the fullest extent permitted by law, and shall indemnify and keep the Government and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from carrying out of the Services except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Government

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

## **5.10. Insurance**

The CQS shall its own cost and expense effect and maintain all necessary insurance including insurances for its professional quantity surveyor, graduate quantity surveyor, sub-professional staff and employees. The insurance shall be valid until the expiry of the Defect Liability Period.

## **5.11. Professional Indemnity Insurance**

- (a) The CQS warrants that the CQS has taken and is maintaining its own cost and expense a profesional 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 that twelve (12) months after the expiry of the Defect Liability Period.

- (b) The GR 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.

## 5.12. 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 Government of the accident, failure or event together with the CQS's proposal on any interim measures required to be taken.
- (b) The CQS shall conduct a full investigation on the accident, failure or event if directed in writing by the Government in order to determine the cause or reason for the accident, failure or event and submit a report of the investigation to the Government together with the CQS's proposals for remedial works in respect thereof.
- (c) If the Government directs the CQS to carry out any remedial works as specified under clause 5.12 (b), the CQS shall carry out the remedial works within fourteen (14) days from the date of the written direction.
- (d) The CQS shall immediately obtain the approval of the Government before giving any instruction for any variation of works required if an accident, failure or event had occurred and any delay in carrying out the variation will cause claims against the Government or involve danger to life or property.
- (e) In the event that the Government decides that the investigation in relation to the accident, failure or event which occurred should be carried out by the Government, its employee or any person or body appointed or authorized by the Government, 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 Government, its employee or such authorized person or body at no additional cost.
- (f) 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 Government and any services required from a third party for works not within the scope of Basic Professional Services described in **Appendix 1** of this Agreement shall also be paid accordingly by the Government.

- (g) 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.
- (h) In the event that the CQS fails to comply with clause 5.12(g) and the Government 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 Government.

### **5.13. Confidentiality**

- (a) Except with the prior written consent or the instructions of the Government, 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 Government 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 Government of the existence, terms and circumstances surrounding such request;
  - (ii) the CQS consults with the Government 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.

#### **5.14. Notice of Delay**

In the event the CQS encounters any delay in obtaining the required assistance and information set forth in clause 5.7(a), the CQS shall notify the Government of such delay and its duration and the Government, at its absolute discretion, may grant an appropriate extension of time and other consideration appropriate for provision of the Services.

#### **5.15. Assistance in Arbitration Inquiry or Litigation**

The CQS shall, if so required by the Government, within the period of work before completion, assist and advise the Government with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation and if and when so required by the Government shall attend and give evidence or otherwise assist the Government before any court or in any 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 Government, the CQS shall assist in any manner whatsoever and advise the Government under the same conditions of engagements as are applicable generally to this Agreement, subject always to –

- (a) the right of the CQS to recover its time and cost in attending to this request, such time and cost to be negotiated separately with the Government; and

- (b) the right of the CQS to take appropriate measures to safeguard and protect its interest.

#### **5.16. Situation Beyond Control Of CQS**

- (a) The CQS shall immediately inform the Government 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 Government agrees in writing that such situation or event exists, the Government may terminate this Agreement by giving not less than thirty (30) days written notice and shall pay all fees and payments due and outstanding to the CQS in accordance with clause 14.0 within thirty (30) days from the date of termination of this Agreement.
- (c) In the event of disagreement between the Parties as to the existence of such situation or event, the matter shall be referred to the GR as specified under item 5 in **Appendix 7** for a decision.

#### **5.17. 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 Government may otherwise agree or request the CQS.

#### **5.18. 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.

#### **5.19. Independent Consultant**

Nothing contained herein shall be construed as establishing or creating between the Government 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.

#### **5.20. Technology and Knowledge Transfer**

- (a) If the CQS appoints foreign professionals, the CQS shall endeavour to ensure that the employees of the Government are trained or exposed

to the expertise of such foreign professionals pursuant to a programme for technology and knowledge transfer.

- (b) Pursuant to clause 5.20(a) above, the CQS shall provide training for a minimum of .....**Specify number of government officer**.....officials nominated by the Government to be competent and conversant in the implementation of the Project.
- (c) The CQS shall allow the employees of the Government to be involved in the implementation of the Project commencing from the Commencement Date of this Agreement until the Contract Expiry Date.

### **5.21. Intellectual Property Rights**

- (a) Any intellectual property rights arising out of design, plans, calculations, drawings, developed or used for or incorporated in the Services shall vest in and become the sole property of the Government free and clear of all liens, claims and encumbrances. The CQS shall not during or at any time after completion on the Services or after the expiry or termination of this Agreement, in any way, question or dispute the ownership of the Government.
- (b) The CQS agrees to grant to the Government free from all royalties, fees and other charges, all licenses in respect of intellectual property rights now or hereafter owned or controlled by the CQS or in respect of which the CQS has or will have the right to grant licenses of any design, plans, calculations, drawings, developed or used for or incorporated in the Services or any part thereof.
- (c) The CQS shall defend and indemnify the Government from and against all claims, costs, damages, charges and proceedings whatsoever for or on account of infringement of any intellectual property rights in respect of any design, plans, calculations, drawings, documents, plant, equipment, machinery, material, methods or processes developed or used for or incorporated in the Services except where such infringement results from compliance with the Government's instructions in accordance with this Agreement.
- (d) Where any infringement results from compliance with the Government's instructions in accordance with this Agreement, any royalties, damages or other monies which the CQS may be liable to pay to the persons entitled to such intellectual property rights shall be reimbursed by the Government.

## PART C

### GOVERNMENT'S OBLIGATIONS AND RIGHTS

#### 6.0 GOVERNMENT'S OBLIGATIONS

##### 6.1. Appointment of GR

- (a) The Government shall appoint the person under item 5 in **Appendix 7** of this Agreement or other persons from time to time as the Government Representative ("GR") to carry out its obligations and to exercise its right under this Agreement, and the GR shall have the power to carry out such obligations and exercise such rights on behalf of the Government, except for the provisions under clause 10.0, 12.0 and 13.0 which are expressly reserved to the officer authorized as named in the signatories to this Agreement or any other officer authorized under section 2 of the Government Contracts Act 1949 [ Revised 1973].
- (b) The CQS shall comply with all instructions issued by the GR in regard to matters expressly empowered to the GR to issue under this Agreement.

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

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

##### 6.3. 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 Government required for purposes of carrying out of its Services under this Agreement. Notwithstanding the request, the Government shall have the discretion to supply the necessary information it deems relevant.
- (b) Any necessary and relevant information supplied by the Government to the CQS pursuant to clause 6.3(a) of this Agreement shall not relieve the CQS of any of the CQS's obligations under this Agreement.

- (c) The Government gives no warranty in any manner whatsoever for the data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted and the CQS, when he makes use of and interprets the same, shall do so entirely at his own risk and it shall not constitute a breach of obligation on the part of the Government under clause 6.3(a) of this Agreement if such data, report, map, photograph, plan, drawing, record or information is not accurate or sufficient for the purpose of performing the CQS's obligation under this Agreement.
- (d) Where necessary, the Government 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 Government shall not be responsible for any damage to such land or any property thereon resulting from such access.

#### **6.4. Payment to the CQS for Services**

- (a) In consideration for the performance of the Services, the Government shall pay or reimburse to the CQS the Contract Price subject to the ceiling consulting fee, the ceiling out of pocket expenses or any other agreed and approved amount as revised from time to time, and in situation where the actual costs incurred in the performance of the Services does not exceed the ceiling consulting fee and the ceiling out of pocket expenses, downward adjustments can be made in accordance with **Appendix 6A**, **Appendix 6B** and **Appendix 6C**. The payment shall exclude the Government Service Tax, which amount shall be paid by the Government to the Royal Malaysian Customs Department through the CQS upon the CQS giving proof of the Service Tax License. A copy of the Service Tax License is attached in **Appendix 11** of this Agreement.
- (b) Payments under this Agreement shall be made progressively in stages/phases in accordance with the Schedule of Payment as in **Appendix 12** upon the CQS furnishing to the Government all relevant drawings, design, reports, records and data when submitting request for payment.
- (c) Payment to the CQS shall be made within thirty (30) days upon receiving the proper invoices, vouchers and other appropriate supporting materials from the CQS and be deposited to the account of the CQS as specified under item 7 in **Appendix 7**.
- (d) If any item or part of an item of an account/claims/invoices rendered by the CQS is reasonably disputed or reasonably subject to question by the Government, the Government shall within thirty (30) days after receipt of the invoice by the GR inform the CQS in writing of all items under dispute or subject to question. Payment by the Government of the remainder of the invoice shall not be withheld on such grounds.

- (e) Except as otherwise agreed between the Government and the CQS, payments in respect of all fees and expenses incurred by the CQS shall be made in Ringgit Malaysia.
- (f) If the CQS intends to claim any additional payment pursuant to any clause of this Agreement, the CQS shall within ninety (90) days of the occurrence of such event or circumstances or instructions give notice in writing to the GR of its intention for such claim and submit full particulars of the claims together with supporting documents, for the approval of the Government. If the CQS fails to comply with this clause, the CQS shall not be entitled to such claim and the Government shall be discharged from all liability in connection with the claim.
- (g) Final payment of the Contract Price shall be made only after the final Deliverables and a final account, identified as such, have been submitted by the CQS and approved as satisfactory by the Government. Any amount which the Government has paid or caused to be paid in excess of the costs actually incurred shall be reimbursed by the CQS to the Government within thirty (30) days after receipt by the CQS of notice thereof.

#### **6.5. Withholding Payment**

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

## **7.0 GOVERNMENT'S RIGHTS**

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

- (a) All reports and relevant data such as plans, statistics and supporting records or material compiled or prepared by the CQS in the course of this Agreement shall be the absolute property of the Government throughout their preparation and at all times thereafter. The Government shall have the sole and exclusive right, title and ownership to the documents.
- (b) The CQS shall deliver all the plans, statistics and supporting records or material compiled or prepared in the course of this Agreement to the Government upon the Contract Expiry Date or earlier termination of this Agreement. The CQS shall not use any information in the documents for purposes unrelated to this Agreement without the prior written consent of the Government save and except where the same is required by law or any other regulatory authority or for the purposes of the CQS's quality performance review processes.
- (c) The CQS shall not publish alone or in conjunction with any other person any articles, photographs or other illustration relating to the Services unless with the prior written consent of the Government.
- (d) The Government reserves the right to make use of all documents including drawings and specifications relating to the Services at any time and for any purpose it so wishes.

## **PART D**

### **DISPUTE RESOLUTIONS**

## **8.0 DISPUTE RESOLUTION**

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

- (a) Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) which are not capable of being amicably resolved between the Parties may be referred to the appointed GR.
- (b) The GR who is appointed for such purposes shall undertake to resolve such dispute with all fairness and endeavour to achieve the best possible solution for the Parties.
- (c) If the Consultant:
  - (i) fail to receive a decision from the GR within seven days (7) days after being requested to do so; or

- (ii) is dissatisfied with any decision of the GR.

then such dispute or difference shall be referred to Dispute Resolution Committee within fourteen days (14) days.

## **8.2. Dispute Resolution Committee**

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

## **8.3. Arbitration**

- (a) If any matter, dispute or claim which is referred to the Dispute Resolution Committee cannot be agreed by the relevant Parties within forty five (45) days after the date of referral, then such dispute or difference 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 Kuala Lumpur Regional Centre for Arbitration 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.
- (b) Such reference shall not be commenced until after the completion or alleged completion of the Project or determination or alleged determination of the Consultant's employment under this Contract, or abandonment of the Project, unless with the written consent of the Government and the Consultant.
- (c) In the event that such consent has been obtained in accordance with clause 8.3(b), the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any 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 Contract.

- (d) 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, award and paid.
- (e) The award of the Arbitrator shall be final and binding on the Parties.
- (f) In the event of the death of the arbitrator or his unwillingness or inability to act, then the Government and the Consultant upon agreement shall appoint another person to act as the arbitrator, and in the event the Government and the Consultant fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Kuala Lumpur Regional Centre for Arbitration.
- (g) this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- (h) The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

## **PART E**

### **SUSPENSION AND TERMINATION**

#### **9.0 SUSPENSION**

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

- (a) The GR may at any time instruct the CQS to suspend part or all of the Services by the giving the CQS due 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 GR 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.

## **9.2. Extension of Time**

- (a) If the CQS suffers delay and/or incurs expenses in complying with the instruction under clause 9.1 and in resumption of the Services, and if such delay and/or expenses was not foreseeable by the 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 9.1(b); and
  - (ii) fails to take all necessary action to mitigate the expenses incurred.
- (b) In the event such suspension shall continue for a period of more than twelve (12) months, the parties shall then discuss whether to mutually terminate the Agreement or suspend the Services for a further period.

## **9.3. Consequences of Mutual Termination**

- (a) If this Agreement is mutually terminated under this clause–
  - (i) clause 11.1 (b) shall apply; and
  - (ii) payment obligations including all costs and expenditure incurred by the Government and the CQS shall be ascertained in accordance with clause 14.

## **10.0 TERMINATION BY THE GOVERNMENT**

### **10.1. Withholding Payment**

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

### **10.2. 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 Government 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 Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

### **10.3. 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 Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement,

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

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

- (a) Upon termination of this Agreement under clause 10.1, 10.2 or 10.3 the powers and rights granted by and the obligations in this Agreement shall terminate immediately.
- (b) The CQS shall hence forth –
  - (i) cease all the Services;

- (ii) submit to the Government the detailed reports of the costs of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;
  - (iii) at no cost, hand over all plans, drawings, reports, records, documents, specifications and similar materials to the Government save and except its own working papers and archival copy of any advice, reports or opinion of which are retained to support any advise opinion or report that the CQS may provide; and
  - (iv) allow a third party to enter into an agreement with the Government or any person deemed necessary by the Government for the purpose of carrying out or completing the Services.
- (c) The Government shall hence forth –
- (i) be entitled to claim against the CQS for any losses and/or damages suffered as a result of the termination; and
  - (ii) be entitled to appoint another consultant to perform the Services and the CQS shall pay to the Government all cost and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the CQS to complete the Services had this Agreement not been terminated.

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.

## **11.0 TERMINATION BY THE CQS**

- (a) If the Government 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 Government specifying the default and the Government shall remedy the relevant default within fourteen (14) days after receipt of such notice or such extended period as agreed by the Parties.
- (b) If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the CQS shall be entitled to terminate this Agreement at any time by giving notice to that effect.

### **11.1. Consequences of Termination by the CQS**

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

- (a) The Government 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 Government;
  - (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 Government 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 Government.
- (c) FOR THE AVOIDANCE OF DOUBT, the Parties hereby agree that the CQS shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Agreement.

### **12.0 TERMINATION ON NATIONAL INTEREST**

- (a) Notwithstanding any provisions of this Agreement, the Government may terminate this Agreement by giving not less than fourteen (14) days notice to that effect to the CQS (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purposes of Government policy or public policy.
- (b) Upon such termination –
  - (i) clause 11.1(b) shall apply; and
  - (ii) the CQS shall be entitled to compensation in accordance with clause 14 which shall be determined by an independent auditor appointed by the Government after due consultation with the CQS in respect of the appointment of the independent auditor.
- (c) For the purposes of this clause, what constitutes “national interest”, “interest of national security”, “the Government policy” and “public policy” 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.

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

- (a) Without prejudice to any other rights of the Government, if the CQS, its personnel, servants or employees, is convicted by a court of law for corruption or unlawful or illegal activities in relation to this Agreement or any other agreement that the CQS 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 CQS.
- (b) Upon such termination –
  - (i) clauses 10.4(b) and (c) shall apply; and
  - (ii) the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.

### **14.0 FORCE MAJEURE**

#### **14.1. Events**

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations thereunder as a result of the occurrence of an Event of Force Majeure. An “Event of Force Majeure” shall mean an event, not within the control of the Party affected, which that Party is unable to prevent, avoid or remove, and shall be –

- (a) war (whether declared or not), hostilities, invasion, armed conflict, acts of foreign enemy, insurrection, revolution, rebellion, military or usurped power, civil war, or acts of terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subterranean spontaneous combustion or any operation of the force of nature, lightning and exceptionally inclement weather; and
- (e) riot and disorders, criminal damage, sabotage, strike, lock out, labour unrest or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the 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.

#### **14.2. 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 GR for a decision.

#### **14.3. Termination by Force Majeure**

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

#### **14.4. Consequences of Termination due to Event of Force Majeure**

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

#### **14.5. Delay**

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

appropriate, give consideration to any amendment of this Agreement and the terms and conditions of such amendments.

#### **14.6. 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 Government for such remedies to enable the Company to recover the costs of such restoration.

#### **14.7. Insurance**

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

### **PART F**

#### **GENERAL PROVISIONS**

#### **15.0 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.

#### **16.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing in Bahasa Malaysia or English language and delivered to the address or facsimile number of the Government or the CQS, as the case may be, shown below or to such other addresses, or facsimile numbers as either party may have notified the sender and shall unless otherwise specified herein deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address or by facsimile transmission, when the recipient's facsimile number is shown on the sender's print-out for the transmission

regarding the date, time and transmission of all pages, as specified under item 10 in **Appendix 7** of this Agreement.

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

## **17.0 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.

## **18.0 COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) 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 its profession and shall be fully and solely liable for the provisions of the Services.
- (b) The CQS shall comply with relevant policies, procedures and regulations of the Government in carrying out the Services.”.

## **19.0 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.

## **20.0 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.

## **21.0 ADVERTISEMENT**

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

## **22.0 TIME**

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

## **23.0 COSTS AND STAMP DUTY**

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

## **24.0 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 Government shall deduct tax from all payments due to any expatriate personnel and/or foreign Associated Consultant(s) at the rate prescribed under the withholding tax laws in effect in Malaysia.
- (c) The Government agrees to reimburse the foreign Associated Consultant(s) any excess payment in income tax.

## **25.0 SCHEDULES AND APPENDICES**

All Schedules and Appendices herewith shall form an integral part of this Agreement and are to be taken as mutually explanatory of one another. However, if there is any ambiguity or discrepancy –

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

## **26.0 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.

## **27.0 CUSTODY OF AGREEMENT**

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

## **28.0 SUCCESSORS BOUND**

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

### **PART G**

#### **SPECIAL PROVISIONS**

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

- None -

**SIGNATORIES TO THE AGREEMENT**

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

SIGNED for and on behalf of ) .....(Signature).....  
**THE GOVERNMENT** ) (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 during post-contract
- (b) The CQS shall provide basic professional services for any of the following types of works:

**TABLE I: BUILDING WORKS**

<b>Category A</b>	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
<b>Category B</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
<b>Category C</b>	Extension, alterations, adaptation, modifications, renovation, conservation and restoration and associated demolition works.

**TABLE II: CIVIL ENGINEERING WORKS**

<b>Category I</b>	General civil engineering works e.g. roads, drains, earthworks, water reticulation etc.
<b>Category II</b>	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**

<b>Mechanical and Electrical Works</b>	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
--	--

## **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 Government;
- (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 analyzing 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 Government; or
- (m) 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 Government 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 Government;
  - (ii) the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Government which the Government has required to be used in the execution of the Works;

- (iii) the market value of materials, manufactured goods and machinery incorporated in the Works;
  - (iv) price variations arising from fluctuation of prices; and
  - (v) 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 Government;
    - all consultancy fees incurred by the Government;
    - 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 Government;
  - (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.

## 2.2 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 <sup>st</sup>	RM1,000 or 1.5% of total cost of works <b>of each unit</b> whichever is higher
2 <sup>nd</sup> to 10 <sup>th</sup>	1.25% <b>of total cost of works</b>
11 <sup>th</sup> to 50 <sup>th</sup>	1.00% <b>of total cost of works</b>
51 <sup>st</sup> to 100 <sup>th</sup>	0.95% <b>of total cost of works</b>
101 <sup>st</sup> and above	0.90% <b>of total cost of works</b>

**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 Government 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 <sup>nd</sup> unit	65% of full fees
3 <sup>rd</sup> unit	55% of full fees
4 <sup>th</sup> unit	45% of full fees
5 <sup>th</sup> 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.

### 2.3 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
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 standard method of measurement of building works (SMM) published by the Institution of

Surveyors, Malaysia for building works shall be based on the scale of fees for building works.

## 2.4 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.

## 2.5 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

## 2.6 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.

## 2.7 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 Government since the Government has to bear the additional fees.

## **2.8 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 Government.
- (b) The Government 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 Government for the disbursements actually as approved by the Government.

#### **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 Government, 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 Government or others acting on behalf of the Government 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 Government for making any necessary modification or revision and for any consequential reproduction of documents and the fees due will be based on subparagraph 6.1 (a) 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 Government 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 Government 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 Government**

- (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 Government, 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 Government 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 Government, 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 Government, 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 Government 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 consulting Quantity Surveyor 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 6.1(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 6.1(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 2 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%
<b>FULL BASIC PROFESSIONAL SERVICES</b>		<b>100%</b>

- (i) The CQS shall be entitled to payments at intervals to be mutually agreed upon by the CQS and the Government 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 Government 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.

[THIS PAGE IS INTENTIONALLY LEFT BLANK]

## APPENDIX 1

### 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**

**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**

**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]

<b>No.</b>	<b>Deliverables Stages</b>	<b>Details</b>	<b>Due Date of Submission</b>
1.			
2.			

**APPENDIX 6A**

**APPENDIX 6A : SUMMARY OF TOTAL CONSULTING COST**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 6B**

**APPENDIX 6B : CONSULTING FEES**

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

**APPENDIX 6C**

**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 period	.....week/month/year prior to Contract Expiry Date
5.	1.1(i), 5.16(c), 6.1(a) & 8.1(a)	Government's Representative (GR)	..... designation/(s) to be inserted by Agency
6.	6.2(b)	Period for the Government 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 GR	.....months after the expiry of DLP or .....months 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 Government</u>  b) <u>For the CQS</u>	a) Official Designation: Address: Fax No. : Tel. No : Email :  b) Name of Firm : 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**

**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)
<b>Deliverable Stage XX</b>				
1				
etc				
<b>Deliverable Stage XX</b>				
etc				
<b>Deliverable Stage XX</b>				
etc				

**APPENDIX 11**

**APPENDIX 11 : CQS'S SERVICES TAX LICENSE**

[TO BE INSERTED BY RELEVANT AGENCY]

**APPENDIX 12**

**APPENDIX 12 : SCHEDULE OF PAYMENT**

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