

GOVERNMENT CONTRACT TEMPLATE

This Contract is made on the day of 2006

BETWEEN

THE GOVERNMENT OF MALAYSIA, who for the purpose of this Contract is represented by Ketua Setiausaha Perbendaharaan, Perbendaharaan Malaysia, Kementerian Kewangan Malaysia (which hereinafter is referred to as the "Government") of the one part;

AND

Company Name (Company No:), a company incorporated in Malaysia under the Companies Act 1965 and having its registered office at **Company Address** (which hereinafter is referred to as the "Contractor") of the other part.

The Government and the Contractor may individually be referred to as "the Party" or collectively as "the Parties".

WHEREAS the Government is desirous of purchasing and obtaining services from the Contractor for the supply, delivery, installation, testing, commissioning and maintenance of the equipment specified in Schedule II for Bahagian Dasar Saran, Wang Awam Dan Khidmat Pengurusan (BSWP) Kementerian Kewangan Malaysia. The Contractor agrees to accept the appointment as mentioned in the Letter of Acceptance dated **(date)** specified as Schedule I.

IT IS HEREBY AGREED as follows:

1.1 DEFINITION

For the purpose of this Contract, the following words and expression shall have the meanings hereby assigned to them except where the context otherwise requires:

- “Business Day” means 7:30am to 5:30pm Monday to Friday excluding public holidays in the Federal Territories of Putrajaya;
- “Commissioning” means the Equipment has been successfully installed, tested, accepted and ready for use.
- “Date of Final Acceptance” means the date of the issuance of the certificate of final acceptance by the Government to the Contractor.
- “Date of Installation” means the date of installation, commissioning and functioning of the Equipment according to specifications.
- “Date of Provisional Acceptance” means the date of the issuance of certificate of provisional acceptance by the Government to the Contractor.
- “Delivery Date” means the date the Equipment is delivered to the Installation Site.
- “Equipment” means hardware, software, the machine and/or their features, model conversions, machine elements and accessories as identified and specified in Schedule II unless the Contract requires individual reference.
- “Final Acceptance” means the acceptance of the Equipment after fourteen (14) days satisfactory performance of the Equipment from the date of provisional acceptance.
- “Government” means the Government of Malaysia, and for the purpose of this Contract, the Government is represented by Ketua Setiausaha Perbendaharaan, Perbendaharaan Malaysia, Kementerian Kewangan Malaysia, or his authorized representatives.
- “Installation Site” means Bahagian Dasar Saraan, Wang Awam Dan Khidmat Pengurusan (BSWP) Kementerian Kewangan Malaysia, Pusat Pentadbiran Kerajaan Persekutuan, Presint 2, Putrajaya.
- “Provisional Acceptance” means the provisional acceptance of the Equipment after fourteen (14) days from the date of installation.

- “Contractor” means **Company Name. (Company No.)** and its agents and shall include its heirs, administrators, assignees, successors and duly appointed representatives.
- “System Down Time” means the period during which the Equipment cannot be utilized due to a system breakdown.
- “This Contract” means this agreement and shall include the Schedules hereto.

1.2 INTERPRETATION

For the purpose of this Contract, unless the context otherwise requires:

- 1.2.1 words importing any gender shall include any other gender;
- 1.2.2 words importing the singular shall include the plural and vice versa;
- 1.2.3 words “hereof”, “herein”, “hereby”, “hereto”, “hereunder” and words of similar import when used in this Contract, shall refer to this Contract as a whole and not to any particular provision of this Contract;
- 1.2.4 references herein to Clauses and Schedules are to be construed as references to Clauses and Schedules of this Contract unless otherwise specified;
- 1.2.5 words applicable to natural persons include any body of persons, company, corporation, firm or partnership incorporated or unincorporated;
- 1.2.6 the headings and sub headings in this Contract are inserted for convenience of reference only and shall not affect the interpretation and construction thereof;
- 1.2.7 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”;

1.2.8 any technical term not specifically defined in this Contract shall be construed in accordance with the usage or definition commonly accepted by those in that profession in Malaysia; and

1.2.9 any reference to "writing" or cognate expressions, include any communication, electronic mail or other comparable means.

2 SCOPE OF CONTRACT

2.1 The Government appoints the Contractor and the Contractor accepts the appointment on the terms and conditions as provided under this Contract. It is agreed and accepted that the Contractor shall carry out and complete the supply, delivery, installation, testing, commissioning and maintenance of the Equipment as specified in Schedule II.

3 CONTRACT PERIOD

3.1 This Contract shall be for a period of **three (3) years** commencing from the date of signing of this Contract.

4 REPRESENTATION AND WARRANTY

4.1 The Contractor represents and warrants to the Government that-

- (a) it is a corporation validly existing under the laws of Malaysia;
- (b) it has the corporate power to enter into and perform its obligations under this Contract and to carry out the transactions and to carry on its business as contemplated by this Contract;
- (c) it has taken all necessary corporate actions to authorize the entry into and performance of this Contract and to carry out the transactions as contemplated by this Contract;
- (d) as at the execution date, neither the execution nor performance by it of this Contract nor any transactions contemplated by this Contract will violate in any respect any provision of-
 - (i) its Memorandum and Articles of Association, or
 - (ii) any other document or agreement which is binding upon it or its asset;

- (e) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse affect upon it or its ability to perform its financial or other obligations under this Contract;
- (f) this Contract constitutes a legal, valid and binding obligation of the Contractor and is enforceable in accordance with its terms and conditions; and
- (g) it has the necessary financial and technical capability to perform the terms of this Contract.

5 CUSTODY OF CONTRACT DOCUMENTS

- 5.1 The Contract and Schedules aforesaid shall remain in the custody of the Government and shall be produced as and when required by the Contractor. The Government shall furnish to the Contractor one (1) copy of the signed Contract and Schedules.

6 DESCRIPTION OF EQUIPMENT

- 6.1 The Equipment to be supplied by the Contractor to the Government under this contract shall be as specified in Schedule II.
- 6.2 The Equipment shall be new, genuine and unused (except for the purposes of quality control test) and shall be of the model specified in Schedule II and of current production.

7 QUANTITY AND PRICES

- 7.1 In consideration of the Contractor performing its obligations under this Contract, the Government shall pay to the Contractor the contract price of a sum of Ringgit Malaysia (amount)(RM ???) only.
- 7.2 The quantities and price of equipment are stated in Schedule III of this Contract.

- 7.3 The Contract price shall include delivery, installation, commissioning, testing and maintenance of the Equipment and training to Government nominated employees.
- 7.4 The Contract price of the Equipment does not include any duties and/or taxes. All local duties and/or taxes if applicable in Malaysia shall be borne by the Government. All other duties and/or taxes payable outside Malaysia shall be borne by the Contractor.

8 PERFORMANCE BOND

- 8.1 The Contractor shall within seven (7) days from the date of signing of the Letter of Acceptance provide a performance bond for the sum of Ringgit Malaysia (amount)(RM ???) only being five (5%) per cent of the Contract price in the form of a Bank Guarantee. The performance bond shall be issued by an approved licensed bank or financial institution incorporated in Malaysia. Such performance bond shall remain valid for a period of twelve (12) months after the expiry of the warranty period of the Equipment. A copy of the performance bond is in Schedule VI.
- 8.2 Notwithstanding anything contained in this Contract, the Government shall be entitled at any time to call upon the performance bond, wholly or partially, in the event that the Contractor fails to perform or fulfill its obligations under this Contract and such failure is not remedied in accordance with this Contract.
- 8.3 If a payment is made to the Government pursuant to any claim under the performance bond, the Contractor shall issue to the Government further security in the form of additional performance bond or bonds for an amount not less than the amount so paid to the Government on or prior to the date of such payment so that the total sum of the performance bond shall be maintained at all times at the value specified before.

9 TERMS OF PAYMENT

- 9.1 Payment of the Contract price shall only be paid in accordance with Schedule IV of this Contract. Payment shall only be made within thirty (30) days from the date of receiving the commercial invoice from the Contractor and upon completion of delivery and

installation of the Equipment, issuance of certificates of Provisional Acceptance Test (PAT) and Final Acceptance Test (FAT) by the Government.

- 9.2 Notwithstanding anything stated above, the Government shall only make the final payment after the date of the Final Acceptance.
- 9.3 Notwithstanding any other rights available to the Government under this Contract, the Government shall be entitled to deduct any such payment, any money which are certified by the Government to be due to the Government by reason of any default or breach of this Contract by the Contractor.
- 9.4 All form of payments to the Contractor shall be made payable to:-

Company Name
Company Address

10 SET OFF

The Government may deduct whatever money that is due to be paid by the Contractor under this Contract or any other Contract irrespectively, whether the said Contract is in writing or otherwise or partly in writing and partly otherwise, from whatever money that is due to be paid by the Government to the Contractor under this Contract. If the money due to be paid to the Contractor is insufficient and for the purpose of deducting money owing from the Contractor to the Government, the Government may claim the balance from the Contractor and the Contractor shall make the necessary payment within one (1) month of receiving the said claim. In the event the Contractor fails to make payment within the said period, then the Government shall deduct the money due to it from any other existing contract(s) between the Government and the Contractor.

11 DELIVERY

- 11.1 The Contractor shall provide the delivery of the Equipment in accordance with the time specified in Schedule V of this Contract.
- 11.2 The Equipment shall be delivered to the Installation Site within (no.) (?) weeks upon receipt of written instruction of the

purchase order from the Government.

12 INSTALLATION

- 12.1 The Contractor shall install the Equipment at the Installation Site in accordance with the time specified in Schedule V.
- 12.2 The Contractor shall give written advice, instructions and assistance within a reasonable period prior to the installation of the equipment to enable the Government to prepare the Installation Site for the said installation as well as to provide the required environmental and operational condition for the efficient operation and maintenance of the Equipment.
- 12.3 The Contractor shall notify the Government of any changes required. If the Contractor fails to inspect the Installation Site prior to the delivery, the Installation Site shall be deemed to have been approved by the Contractor and the Contractor shall be liable for remedying any deficiency later discovered.
- 12.4 The Government shall provide the Contractor reasonable access, to the Installation Site for the purpose of carrying out the installation of the Equipment subject to any security measures applicable. The Contractor shall at its own expense, install the Equipment at the site and shall ensure that the Equipment is in proper condition for operation.
- 12.5 In the event that the installation of some features and model conversions involve the removal of parts, the Contractor shall notify the Government of such removal and shall provide a list of the parts removed to the Government.
- 12.6 The Contractor shall be responsible for the installation of the Equipment including the installation of all connection with power, utilities and communication services.

13 TESTING OF EQUIPMENT

- 13.1 Testing of the Equipment shall be carried out in two phases, namely, the Provisional Acceptance Test and Final Acceptance Test.

13.1.1 Provisional Acceptance Test (PAT)

- (a) The Government shall carry out the test on the Equipment within fourteen (14) days from the date of installation of the Equipment.
- (b) The Government reserves the right to reject the Equipment, or extend the period, if any defect in the Equipment, inherent or otherwise, is detected or the Equipment supplied fails to comply with the specification specified in Schedule II.
- (c) In the event the Equipment is rejected, the Government may, at its option, request a replacement or terminate the Contract. Any cost incurred to replace the Equipment shall be borne by the Contractor.
- (d) The Government shall issue a Certificate of Provisional Acceptance to the Contractor upon the satisfactory performance of the Equipment, which includes a System Down Time of not greater than five percent (5%), in accordance with the specification specified in Schedule II.

13.1.2 Final Acceptance Test (FAT)

- (a) The Government shall carry out the test on the Equipment within fourteen (14) days from the Date of Provisional Acceptance.
- (b) In the event the Equipment fails to meet the standard of performance specified in Schedule II within the period referred to in paragraph (a) the Government may, at its option, reject and request a replacement of the Equipment or terminate the Contract. Any costs incurred to replace the Equipment shall be borne by the Contractor.
- (c) The Government shall issue a Certification of Final Acceptance to the Contractor upon the satisfactory performance of the Equipment, which includes a System Down Time of not greater than one percent (1%), in accordance with the specification specified in Schedule II.

14 REJECTION AFTER DELIVERY

- 14.1 Any acceptance by the Government or delivery of and payment for any Equipment shall not prevent the rejection of such Equipment by the Government at any subsequent time should the Equipment at any such time before the expiry of the warranty period, be found defective, damaged or inferior in quality or performance to or differing in form or material from the specifications stipulated in Schedule II which was not discovered upon reasonable prior inspection. The Government shall notify the Contractor of the defects within thirty (30) days after discovery of such defects.
- 14.2 If upon inspection by the Government's duly authorised representative(s) as stipulated in Clauses 13 and 14.1 or at any such time before the expiry of the warranty period, any Equipment is found incomplete, damaged, defective or inferior in quality or performance to or differ in form or material from the specifications stipulated in Schedule II of this Contract, the Contractor shall replace or make good the rejected Equipment at its own cost and expense within a period of thirty (30) days after receipt of notification of such rejection, which notification shall be issued by the Government. PROVIDED ALWAYS that the Government shall ensure that the Equipment have been properly kept and stored and have not been subjected to any unauthorised alterations or that the damage has not been caused wilfully or by accident on the part of the Government and or its servants
- 14.3 In the event the Government discovers defects and/or discrepancies in the quality of the Equipment as compared to the specifications stated in Schedule II, the Government shall immediately notify the Contractor by fax or email (followed by a letter of confirmation) detailing the particulars and character of the defects and/or discrepancies. The Contractor shall, upon receipt of such notification, within fourteen (14) days thereof send their authorised technical experts together with the Government's authorised technical experts, to establish the actual state of facts. The Government shall allow the Contractor or his duly authorized representatives free entry during normal working hours into the Installation Site in which the Equipment is install for the purpose of inspection and verification. If within the time limit the Contractor's experts fail to turn up and assess the finding, then the Government's findings shall be final and binding on the Contractor. Should the experts of both parties fail to reach an agreement, the issue shall be finally settled by arbitration in

accordance with Clause 21 of this Contract.

- 14.4 Equipment so rejected after delivery shall be removed by the Contractor at his own expense within thirty (30) days from the date of notice of the rejection as specified in Clause 14.2. In the event of the Contractor's failure to remove such Equipment or any of them within such period as aforesaid the Government shall be at liberty to return the rejected Equipment or any of them at the Contractor's risk and costs, and any costs so incurred shall be recoverable from the Contractor.
- 14.5 Failure to replace or make good the rejected Equipment within the period specified above shall be deemed to constitute a delay in the completion of supply and/or delivery of the Equipment and the Contractor shall pay liquidated damages to the Government as set out in Clause 19.
- 14.6 The Contractor shall bear the cost of transportation and insurance of the Equipment for replacement.

15 MAINTENANCE SERVICES

- 15.1 Notwithstanding any contained in Schedule II of this contract, The Contractor shall provide the following maintenance services which include :

- 15.1.1 Remedial Maintenance

The Contractor shall provide remedial maintenance services which cover parts, labour and onsite warranty for three (3) years with the exception for thumb drive is for one (1) year. The response time for remedial maintenance from receipt of notice from the Government by fax or email of any problems regarding the Equipment shall be two (2) hours. The Contractor shall repair the Equipment within twenty four (24) hours from receipt of notice from the Government. After 24 hours if the equipment complained of is still not functioning properly, the Contractor shall provide a replacement or loan unit of the equipment with the same minimum specification. After 72 hours from the receipt of notice, if the equipment is still not functioning and the Contractor fails to provide a replacement or loan unit, the Government shall exercise its rights under Clause 19.1 against the Contractor.

15.1.2 Preventive Maintenance

The Contractor shall provide preventive maintenance twice (2) a year for notebook as per Schedule VII.

15.1.3 Software Support Service

The Contractor shall provide support services for all the software under this Contract including operating system.

15.1.4 Hotline

The Contractor shall provide Hotline facilities 24 hours a day and 7 days a week via its hotline number **03-20316288** for the purpose of this clause. The Contractor shall notify the Government immediately of any other hotline number.

15.1.5 Support Email

The Contractor shall provide a support email address which shall be **info@companyhelpdesk.com** for the purpose of this clause.

16 PERSONNEL

16.1 Adequate personal particulars and details of relevant experience and qualifications of all personnel the Contractor proposes to employ in the implementation of the Project must be provided to the Government. Such personnel must be competent to install, test, troubleshoot and carry out maintenance services for the Equipment. The Government reserves the right to reject any personnel regarded as incompetent and unsuitable without giving any reason.

16.2 All persons employed by the Contractor under this Contract shall exhibit high standards of work performance and conduct. If any personnel is rejected by the Government in accordance with Clause 16.1, the Contractor may be required at the option of the Government to promptly replace any person so rejected.

17 CONTRACTOR NOT TO COMMIT TRESPASS

17.1 The Contractor shall take all reasonable steps to ensure that no injury, damage or trespass on person or persons, or property is committed arising out of or in connection with work under this

Contract by the Contractor.

17.2 The Government shall assist the Contractor in obtaining security clearance at the Installation Site and any other premises as directed by the Government in connection with the Project under this Contract.

18 PURCHASE FROM OTHER SOURCE

In the event the Contractor fails to supply, replace or make good the rejected Equipment as stipulated in Clause 14, the Government shall take all necessary action to purchase from other sources the quantity of the Equipment not supplied, rejected or under supplied. If the price of the Equipment so purchased by the Government from such other source is higher than the price under this Contract, the Contractor shall pay to the Government the difference in price. The liability of the Contractor to pay the difference between the two prices shall be in addition to its liability to make payment under Clause 19 except that no liquidated damages shall be imposed after the date of purchase and that the Contractor is under no further obligation to supply or replace such Equipment. In addition to the above the Contractor shall also be liable to pay one percent (1%) of the value of the Equipment so purchased as administrative charges to the Government.

19 LIQUIDATED DAMAGES

19.1 Time whenever mentioned shall be deemed to be of the essence of this Contract. If there is a delay in delivery or incompleteness of supply of the Equipment is not due to any of the causes mentioned in Clause 20.1 above, the Contractor shall pay liquidated damages at the rate of one percent (1%) of the value of such Equipment(s) for every day of the delay.

19.2 In the event of delay exceeding six (6) months, the Government shall further have the right to terminate this Contract or to treat this Contract as still subsisting and require the Contractor to continue to fulfil all its obligations under this Contract including the reimbursement by the Contractor of any extra costs incurred by the Government in purchasing similar equipment from other manufacturers which correspond with or are approximate to the capacity or function ability of the Contractor's Equipment. In addition to the above the Contractor shall also be liable to pay one percent (1%) of the value of the Equipment so purchased as administrative charges to the Government.

20 FORCE MAJEURE

20.1 Neither the Government nor the Contractor shall be in breach of its obligations under this Contract if it is unable to perform its obligations under this Contract (or any part of them), other than the payment obligations as a result of the occurrence of an Event of Force Majeure. An "Event of Force Majeure" shall mean –

- (a) war (whether declared or not), hostilities, invasion, act of foreign enemies;
- (b) insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;
- (c) natural catastrophes including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;
- (d) nuclear explosion, radioactive or chemical contamination or radiation;
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (f) riot, commotion or disorder, unless solely restricted to employees of the Contractor or its personnel, servants or agents.

20.2 If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligations under this Contract (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that Event of Force Majeure with full particulars thereof and the consequences thereof.

20.3 If either Party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Contract, then the Parties may agree that this Contract may be terminated upon mutual consent of the Parties.

20.4 If this Contract is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the

Parties under this Contract shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.

20.5 Neither Party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an Event of Force Majeure has not occurred.

20.6 For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

21 ARBITRATION

21.1 If any matter, dispute or claim arising out of or relating to this Contract or the breach or termination hereof which cannot be agreed upon by the Parties or which cannot be settled amicably by the Parties, that matter, dispute or claim shall be referred to an arbitrator to be agreed between the Parties, or, failing such agreement, to be nominated on the application of either Party the Director general of the Regional Centre for Arbitration in Kuala Lumpur. Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1952. The decision of the arbitrator shall be final and binding on each of the Parties hereto.

21.2 The arbitration proceedings shall be heard at the Kuala Lumpur Regional Centre of Arbitration using the facilities and systems available at the Centre or at such other venue as may be specified by the arbitrator and agreed by the Parties.

21.3 All disputes referred to arbitration pursuant to Clause 21.1 shall be settled in accordance with the Arbitration Act 1952.

21.4 Pending the award of arbitration, the obligations of both parties shall continue to be in full force and effect.

21.5 Each party shall bear its own incidental costs and expenses incurred in and its relation to the arbitration proceeding.

22 TERMINATION OF CONTRACT BY THE GOVERNMENT

22.1 In the event the Contractor without reasonable cause :

- (a) suspends the Services and fails to proceed regularly and diligently with the performance of its obligations under this Contract;
- (b) fails to execute the Services in accordance with this Contract or persistently neglects to carry out its obligations under this Contract;
- (c) defaults in performing the duties under this Contract; or
- (d) breaches any of its obligations or fail to comply with any other terms and conditions of this Contract,

then the Government may give notice in writing to the Contractor specifying the default and requiring the Contractor to remedy such default within thirty (30) days after the date of the notice. If the Contractor 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 Contract at any time thereafter by giving notice that effect.

22.2 If at any time during the contract period :

- (a) an order is made or a resolution is passed for the winding-up of the Contractor, except for the purpose of reconstruction or amalgamation not involving the realisation of assets in which the interest of creditors are protected;
- (b) the Contractor goes into liquidation or a receiver is appointed over the assets of the Contractor or the Contractor 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 debts; or
- (c) execution is levied against a substantial portion of the Contractor's assets, unless it has instituted proceedings in good faith to set aside such execution,

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

22.3 Upon termination of this Contract under Clause 22.1 or 22.2 :-

- (a) the powers and rights granted by and the obligations in this Contract shall terminate immediately;
- (b) the Contractor shall –
 - (i) forthwith cease all the Services;
 - (ii) submit to the Government the detailed reports of the cost 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 its own cost and expense, vacate and remove from the Installation Site all of its equipment, machineries and materials not required by the Government and its contractor, subcontractors, workmen, employees, agents or servants within thirty (30) days of the termination notice and make good all damage caused by such removal or detachment;
 - (iv) terminate all third party contracts entered into by the Contractor in respect of carrying out the Services.
- (c) the Government shall :
 - (i) forthwith be entitled to call upon the performance bond;
 - (ii) claim against the Contractor for any losses and damages suffered as a result of the termination of this Contract; and
 - (iii) be entitled to appoint another Contractor to perform the Services and the Contractor shall pay to the Government all costs and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to the Contractor to complete the Services had this Contract 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 Contract and the obligations under this Contract shall continue even after the termination of this Contract in respect of any act, deed, matter or thing happening prior to such termination of this Contract.

23 TERMINATION ON NATIONAL INTEREST

23.1 Notwithstanding any provisions of this Contract, the Government may terminate this Contract by giving not less than thirty (30) days notice to that effect to the Contractor (without any obligation to give any reason thereof) if it considers that such termination is necessary for national security or for the purposes of Government policy or public policy.

23.2 For the purposes of this Clause, what constitutes "national interest", "interest of national security", "Government policy" and "public policy" shall be solely made and determined by the Government and such determination by the Government shall for all intent and purposes be final and conclusive and shall not be open to any challenge whatsoever.

24 TERMINATION ON CORRUPTION

24.1 Without prejudice to any other rights, if the Government is satisfied that the Contractor, its personnel, servants, agents or employees is or are involved in corruption in relation to this Contract, the Government shall be entitled to terminate this Contract at any time by giving immediate written notice to that effect to the Contractor.

24.2 Upon such termination, 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.

25 INDEMNITY

25.1 The Contractor shall at its own risk carry out this Contract in accordance with the conditions of this Contract and in so doing

shall comply with the provisions of all Statutes, Regulations, Ordinances or By-laws and the requirements of any local or other authorities under or pursuant thereto.

25.2 The Contractor shall be liable for loss or damage to property or injury (including injury whether or not resulting in death) suffered by the Government, its officers, servants or agents, arising from the fault or negligence of the Contractor or which may be brought or made against him by any person in respect of or by reason of or arising out of :

25.2.1 any negligence or other wrongful act or wrongful omission of the Contractor or his respective servants, employees or agents or of any other persons for whose negligence or wrongful act or wrongful omission the Contractor is vicariously liable;

25.2.2 any negligence or other wrongful act or wrongful omission of the visitors, invitees or licensees of the Contractor; and

25.2.3 death, injury, loss or damage of or to the Contractor or his respective servants, employees, agents or visitors,

in each case in, or in connection with, or in the course of the performance, or any breach of this Contract. Any monies due by the Contractor to the Government under this Clause may be deducted from monies due or becoming due or may be recovered otherwise from the Contractor.

25.3 The Contractor shall indemnify and keep indemnified the Government from and against all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Government shall or may be or become liable arising out of acts done by the Contractor in the performance of this Contract including the use or violation of any copyright works or literary property or patented invention, article or appliances or other intellectual proprietary rights.

25.4 The obligations under this clause shall continue after the expiry or earlier termination of this Contract, in respect of any act, deed, matter or thing happening before such expiration or termination of

this Contract.

26 AMENDMENT

No modification, amendment or waiver of any of the provisions of this Contract shall be effective unless made by mutual consent and made in writing by way of Supplementary Agreement specifically referring to this Contract and duly signed by the Parties.

27 SALE AND AVAILABILITY OF SPARES

The Contractor shall take reasonable actions to ensure the supply of spares similar to the specifications stated in Schedule II to the Government for at least five (5) years from the date of the Final Acceptance of the Equipment.

28 WARRANTY

28.1 The Contractor warrants all the Equipment sold by it to the Government under this Contract to be free from defects in material and workmanship under normal operational use and maintenance. The warranty shall be provided on-site for a period of thirty-six (36) months from the date of Final Acceptance of the Equipment covering parts and labour including preventive maintenance for (item).

28.2 The Contractor hereby warrants that the Equipment supplied under this Contract shall be new, genuine and unused (except for the purpose of quality control test).

28.3 Any part or component replaced by the Contractor pursuant to Clause 14 shall be guaranteed by it against faulty material or faulty workmanship for a similar period as stated in Clause 26.1 commencing from the date the replacement part is received by the Government.

- 28.4 The Contractor also warrants that the material, metals, chemicals, paints, packing pieces, etc. used in the make up of the Equipment and all its packing and packaging are fully tropicalised and stable under tropical conditions. Any damage arising from inadequate tropicalisation curing shall be deemed an inherent defect of manufacture and the provisions of Clause 28.1 herein shall apply.
- 28.5 The warranties set forth in this clause do not affect the right of the Government to invoke any other warranties arising by operation of law.

29 PATENTS AND COPYRIGHT INDEMNITY

- 29.1 The Contractor shall be solely responsible for any claim that the Equipment or parts thereof supplied infringes a patent or copyright, trade secrets, trademarks and other intellectual property rights which affects the performance of this Contract.
- 29.2 If the Government use or possession of the Equipment is likely to constitute an infringement, then the Contractor shall promptly and at its own expenses procure for the Government the right to continue using and possessing the equipment so as to advise the infringement (in which event the Contractor shall compensate the Government for the amount of any direct loss or damage sustained or incurred by the Government during such modification or replacement).
- 29.3 if the alternatives in 29.2 above are not available the Contractor shall remove the Equipment from the Installation Site and refund the purchase price to the Government.
- 29.4 The expiry or earlier termination of this Contract shall not affect the liability of the Government and shall be kept indemnified and held harmless in respect of any claim arising there from.

30 CLASSIFIED INFORMATION

Government data and operational information as supplied by the Government to the Contractor under this Contract shall not be disclosed by the Contractor to a third party. The Contractor undertakes to comply with the security grading related to any classified information passed on to the Contractor, and shall treat such information as confidential. This Clause shall continue to be in force notwithstanding the termination of this

Contract for any reason.

31 NON-WAIVER

The failure of the Government and/or the Contractor to exercise or enforce any right, remedy or provision contained in this Contract at any time or for any period of time shall not constitute a waiver of such right, remedy or provision or any other rights, remedies or provisions of this Contract.

32 COMMISSIONS

The Contractor warrants that no agent or broker has been retained or paid a commission or brokerage or contingent fee for the sole purpose of securing or obtaining and or the execution and or the implementation of this Contract, provided however that this warranty shall not apply with respect to employees of the Contractor or established commercial or marketing organization retained by the Contractor. For any established breach of this warranty the Government shall have the sole right to deduct the actual amount of any such commissions or fee paid by the Contractor in violation of this warranty from the amounts due to the Contractor under this Contract and the Government shall have the right to determine this Contract forthwith, without prejudice to any other rights the Government may have under this Contract.

33 ASSIGNMENT

Neither of the parties hereto shall be entitled, without the other party's written consent, to assign or transfer to a third party all or part of the benefit or obligation of this Contract.

34 ADVERTISEMENT

No advertisement in respect of this Contract shall be published by the Contractor or with the Contractor's authority in any newspaper, magazines or in any other forms of advertisement without the prior written approval of the Government.

35 APPLICATION OF LAWS

This Contract shall be governed by and construed in accordance with the laws of Malaysia. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.

36 TECHNICAL DOCUMENT

36.1 The Contractor shall, at its own expense supply to the Government at least two (2) copies of all the technical documents required for the operation and maintenance of the Equipment.

36.2 Any amendments or revision to the technical documents shall be supplied by the Contractor to the Government free of charge.

37 INSURANCE AND RISK OF LOSS OR DAMAGE

37.1 Prior to the Date of Final Acceptance of the Equipment, the Equipment shall be insured by the Contractor against risk of loss or damage. Insurance for the Equipment shall be purchased from insurance companies registered with Kementerian Kewangan, Malaysia.

37.2 The Contractor and its insurers shall relieve the Government from all risk of loss or damage to the Equipment during the entire time the Equipment is within the premises of the Installation Site before the Date of Final Acceptance of the Equipment at the Installation Site.

37.3 On the Date of Final Acceptance of the Equipment, the Government will assume full responsibility for the safekeeping of the Equipment supplied by the Contractor under this Contract.

37.4 The Contractor shall insure and keep itself and all associated agents insured for the duration of this contract with an insurance approved by the Government to the full extent against its liability

to the employees engaged in the performance of this Contract under all relevant laws of Malaysia relating to Workers' Compensation and shall on demand produce to the Government satisfactory evidence of such insurance.

38 TITLE

38.1 The title to the Equipment shall remain with the Contractor until the Contract price for the Equipment has been paid.

38.2 Upon the payment of the total Contract price for the Equipment, the Government shall acquire title to the Equipment free from all liens and encumbrances.

39 NOTICES

39.1 Any notices, approval, consent, request or other communication required or permitted to be given or made under this Contract shall be in Bahasa Melayu or the English language and delivered to the address or facsimile number of the Government or the company, as the case may be, shown below or to such other address, or facsimile numbers as either Party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person or facsimile transmission, when delivered to the recipient at such address or facsimile number which is duly acknowledged:

(a) to the Government :

Ketua Setiausaha Perbendaharaan,
Perbendaharaan Malaysia,
Kementerian Kewangan Malaysia
Kompleks Kementerian Kewangan
Precint 2, Pusat Pentadbiran Kerajaan Persekutuan
62592 Putrajaya

Tel : 03-88823633

Fax : 03-88823872

(b) to the Company:

Company Name (Co. Number)
Company Address

Tel: 03- ???

Fax: 03- ???

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

40 SERVICE OF NOTICE

Any notice, consent, approval, request or other communication which may be given to or served upon the Contractor under this Contract shall be deemed to have been duly given or served if it is in writing, signed by, except as otherwise stipulated in this Contract, the Government, and it is either delivered by hand, or posted, or faxed to the Contractor at the registered office of the Contractor, or to the Contractor's place of business in Malaysia and any notice or other communication which the Contractor may desire to give or serve upon the Government, shall be deemed to have been duly given or served, if it is in writing signed by the Contractor and is either delivered by hand or posted or faxed to the Government at its address given in this Contract or such other address as may be notified for the time being in writing by the Government to the Contractor. A notice posted or faxed shall be deemed to have been given at the time when in due course of transmission it would have been delivered at the address to which it is sent.

41 WAIVER

41.1 Any waiver of any of the rights of the Government under this Contract shall not be valid unless it is made in writing and signed by Ketua Setiausaha Perbendaharaan, Perbendaharaan Malaysia, Kementerian Kewangan Malaysia, or by an officer specifically authorized by him.

41.2 Any waiver of any of the rights of the Contractor under this Contract shall not be valid unless it is made in writing and signed by an authorized person on behalf of the Contractor.

42 LANGUAGE

All notices and other communications under or in connection with this Contract shall be either in the English Language or in Bahasa Melayu. If any such notice or other communications is translated into Bahasa Melayu or English Language, as the case may be, then in the event of any conflict between the original text and the translated text, the original text shall prevail.

43 TIME

Time wherever mentioned shall be of the essence of this Contract.

44 SEVERABILITY

If any provision of this Contract or any part thereof is rendered void, illegal or unenforceable by any legislation to which it is subjected, it shall be rendered void, illegal or unenforceable to that extent and no further. Such provision which is rendered void, illegal or unenforceable shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties hereto in accordance with the applicable law and the remainder of this Contract shall remain in full force and effect as if this Contract had been entered into without the void, illegal or unenforceable portion.

45 COSTS AND STAMP DUTIES

All costs incidental to the preparation and completion of this Contract shall be borne and paid for by the Contractor.

46 COMING INTO FORCE

This Contract shall come into force from the date of signing of this Contract by both Parties and shall expire upon full performance of this Contract by both parties or four (4) years from the signing of this Contract, whichever is the earlier, unless terminated earlier.

47 OPTIONAL PURCHASE

The Government shall have the right to purchase additional quantities of any of the Equipment within this Contract from the date of signing of this Contract on the same terms and conditions including the price.

48 ADMINISTRATION OF CONTRACT

Ketua Setiausaha Perbendaharaan, Perbendaharaan Malaysia, Kementerian Kewangan Malaysia or his authorized representatives is hereby authorised to administer this Contract; however any modification to this Contract must be approved by Ketua Setiausaha Perbendaharaan, Perbendaharaan Malaysia, Kementerian Kewangan Malaysia or his authorised representatives.

(The Remaining Part of this page is intentionally left blank)

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

SIGNED for and on behalf)
)
THE GOVERNMENT OF MALAYSIA)
)

in the presence of :)
)
)
)

SIGNED for and on behalf)
)
(Company Name) (Co. No.))
)
)
)

in the presence of :)
)
)
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