



 A Tenaga Nasional Subsidiary

**GENERAL CONDITIONS OF CONTRACT
FOR SUPPLY, INSTALL AND COMMISSIONING**

CONTENTS

1. DEFINITIONS	4
2. INTERPRETATIONS.....	8
3. TERM	9
4. THE CONTRACTOR TO INFORM ITSELF FULLY	9
5. JOINT VENTURE.....	9
6. THE EXECUTION OF THE WORKS	10
7. COMPLETION TIME FOR THE WORKS	11
8. TAKING OVER BY ALLO.....	11
9. PARTIAL TAKING OVER BY ALLO	11
10. EQUIPMENT PACKAGING, LOSS AND DAMAGE	13
11. TITLE RISK AND LOSS	13
12. TROPICALISATION	14
13. QUALITY ASSURANCE.....	14
14. DEFECTS LIABILITY AND CERTIFICATE OF MAKING GOOD DEFECTS.....	15
15. LIABILITY AND INDEMNITY	16
16. VARIATION ORDER.....	19
17. RIGHT OF ACCESS.....	21
18. WORKING COMMITTEE.....	21
19. SUB-CONTRACTORS	23
20. CONTRACTOR'S PERSONNEL	23
21. PAYMENT OF THE CONTRACT SUM	24
22. PERFORMANCE BOND.....	26
23. THE CONTRACTOR'S GENERAL WARRANTIES AND REPRESENTATIONS.....	27
24. CONTRACTOR'S GENERAL DUTIES.....	30
25. ALLO'S GENERAL DUTIES.....	31
26. DELAY IN THE EXECUTION OF THE WORKS.....	31
27. INTELLECTUAL PROPERTY RIGHTS	32
28. ALLO GROUP.....	35
29. REPORTING	36
30. AUDITING.....	36
31. HSSE REQUIREMENTS	37
31. SPARE PARTS.....	38
32. EXPORT AND IMPORT LICENCES	39
33. DEFAULT BY THE CONTRACTOR.....	40
34. DEFAULT BY ALLO.....	41
35. TERMINATION FOR CONVENIENCE	42
36. RIGHTS AND LIABILITIES UPON TERMINATION OR EXPIRY	42
37. SUSPENSION OF THE WORKS.....	45
38. EXIT MANAGEMENT	45
39. TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES	46
40. INSURANCE	46
41. EVENTS OF FORCE MAJEURE	47
42. DISPUTE RESOLUTION	48
43. PROTECTION OF DATA.....	48

44. CONFIDENTIALITY OF INFORMATION.....	49
45. NON WAIVER.....	52
46. SEVERABILITY.....	52
47. NOTICES.....	52
48. AMENDMENTS.....	53
49. ASSIGNMENT.....	53
50. PUBLICITY AND BRANDING.....	53
51. RELATIONSHIP OF THE PARTIES.....	54
52. COSTS.....	54
53. SUCCESSORS BOUND.....	54
54. INDEPENDENT CONTRACTOR.....	54
55. FURTHER ASSURANCE.....	54
56. ENTIRE AGREEMENT.....	55
57. COUNTERPARTS.....	55
58. ANTI-BRIBERY AND INTEGRITY.....	55
59. ELECTRONIC SIGNATURE.....	56

1. DEFINITIONS

1.1 In this COC, the following expressions shall have the following meanings, unless the context otherwise requires: -

“**Affiliate**” means in relation to Allo, an entity:

- (a) that Controls Allo;
- (b) that is Controlled by Allo; or
- (c) that is Controlled by an entity that also Controls such party;

“**Agreement**” means the Letter of Award, this COC and its Appendix, the tender documents and any other documents which are listed in the Letter of Award;

“**Allo**” means Allo Technology Sdn. Bhd, its successor or its permitted assigns;

“**Allo Group**” means Allo’s Subsidiary and Affiliate;

“**Allo IP**” shall have the meaning ascribed to it in Clause 26.1(a) of this COC;

“**Allo Requirements**” means the specifications, performance criteria, business requirements and other requirements specified by Allo including the requirements specified in the Agreement;

“**Allo HSSE Requirements**” means the health, safety, security and environment requirements of Allo as set out in the Agreement;

“**Authorisations**” includes any authorisation, approval, consent, licence, permit, permission, filing, registration, waiver, resolution, direction, declaration and/or exemption;

“**Commencement Date**” refers to the date on which the Works are scheduled to begin, as specified in the Letter of Award issued by Allo;

“**Conditions of Contract**” or “**COC**” means the terms and conditions as stipulated herein;

“**Certificate of Practical Completion**” means the certificate to be issued by Allo to the Contractor upon the successful supply and delivery of the agreed quantity of Equipment, as confirmed by the Allo Personnel;

“**Certificate of Making Good Defects**” means a certificate issued by Allo upon expiry of the Warranty Period.

"Confidential Information" shall have the meaning ascribed to it in Clause 43.1 of this COC;

"Confirmation on Completion" means the confirmation provided by Allo Personnel, as specified in this COC, for the successful completion and delivery of the Works, prior to the Works being taken over by Allo.

"Contractor" means the party named in the Letter of Award awarded by Allo and the legal successors in title to this party, or permitted assigns;

"Contract Sum" means the sum payable by Allo to the Contractor based on the agreed price offered by Allo for the Works, determined by the quantity of Equipment to be supplied and delivered as specified in each Purchase Order issued by Allo and received by the Contractor from time to time, all within the Term as specified in this COC;

"Control" means in relation to any party, direct or indirect control through the ownership of, or the power to vote, more than fifty per cent (50%) of the voting shares or interest in the company or business or economic undertaking;

"Disclosing Party" shall have the meaning ascribed to it in Clause 43.1(a) of this COC.

"Documentation and Manuals" means the documents and manuals set out in the Agreement, where applicable.

"Effective Date" means the Commencement Date as stipulated in the Letter Award issued to the Contractor;

"Equipment" means the entirety of items, materials, goods or components, including any part, portion, or accessory thereof, that the Contractor is required to supply, deliver and commission under the Agreement, or particularly as specified in the Purchase Order;

"Event of Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Agreement impossible or illegal or so impractical as to be considered impossible under the circumstances for the purpose of the Agreement including, without limitation, Acts of God, fire, flood, storms, earthquake, typhoon, tidal wave, plague or other epidemics or pandemic, governmental laws, orders, regulations, sanctions or restrictions, war, acts of terrorism, armed conflict or the serious threat of the same, hostilities mobilisation, blockade, embargo, detention, revolution, riot, looting, lockout, strike or any other labour dispute, unavailability of transportation or severe economic dislocation;

"Government" means the Government of Malaysia or any public officer duly authorised by the Government of Malaysia in writing.

"Government Authorities" means the Government, government departments and regulatory, statutory and other entities, committees, bodies and agencies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Agreement or relating to the Works and **"Government Authority"** shall be construed accordingly.

"HSSE" shall have the meaning ascribed to it in Clause 30 of this COC.

"Indemnified Party" shall have the meaning ascribed to it in Clause 14.2 of this COC.

"Indemnifying Party" shall have the meaning ascribed to it in Clause 14.2 of this COC.

"Intellectual Property Infringement" shall have the meaning ascribed to it in Clause 26.3(a) of this COC.

"Intellectual Property Rights" means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and rights in confidential information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction.

"Laws" means any written law of Malaysia including all statutes, legislation, subordinate legislation, orders, rules, regulations, by-laws, ordinances, executive orders, decrees, policies, judgments, notifications or other similar directives made pursuant thereto, consents or the requirements of any Government Authority and as the same may be amended from time to time and includes any change in law.

"Letter of Award" refers to the formal letter of acceptance signed by Allo for the purpose of the Works.

"MACCA" means the Malaysian Anti-Corruption Commission Act 2009 and includes its subsidiary legislation and guidelines.

"MTTR" means Mean Time To Restore;

"Parties" means Allo and the Contractor collectively and **"Party"** refers to each of them individually.

"Performance Bond" means the irrevocable guarantee issued or to be issued in favour of Allo in accordance with Clause 21 of this COC, if applicable.

"Permitted Purpose" shall have the meaning ascribed to it in Clause 43.2(a) of this COC;

"Purchase Order" refers to a formal document issued by Allo to the Contractor, detailing the types, quantities, and agreed prices of the Equipment, goods or services to be supplied, delivered and commissioned, and serving as a legally binding contract upon acceptance by the Contractor;

"Relative" has the same meaning as in the MACCA;

"Receiving Party" shall have the meaning ascribed to it in Clause 43.1(a) of this COC;

"Site" means the locations for the execution of the Works which are set out in the Agreement or the Purchase Order, whichever is applicable;

"Staff Vetting Procedures" shall have the meaning ascribed to it in Clause 19.5 of this COC;

"Subsidiary" has the meaning ascribed to it in the Companies Act 2016;

"Tax" means all forms of taxation including:

- (a) any charges, taxes, duties and levies, on income, profits, chargeable gains or interest in land or any other property or supplies or other transactions;
- (b) income tax, corporation tax, capital gains tax, stamp duty, capital duty, customs and other import duties;
- (c) any liability for sums equivalent to any such charges, taxes, duties, levies, fines or rates or for any related penalties, surcharges, costs, fines or interest incurred thereby; and
- (d) any deductions or withholdings (including, any interest or penalty) including any Tax Authority charges, impositions, contributions, duties, fines and levies;

which is assessed, levied, imposed or collected by any Tax Authority;

"Tax Authority" means the Royal Customs and Excise Department of Malaysia, the Inland Revenue Board of Malaysia and any other Federal or State Government agency or regulatory body or appointed body;

"Term" has the meaning ascribed to it in Clause 3 of this COC;

“Termination Date” means the effective date of termination of the Agreement by Allo and/or the Contractor;

“Time for Completion” means the time for completing the Works as stated in the Letter of Award;

“Variation Proposal” means the Engineering Variation Proposal described in Clause 15.2(d) of this COC;

“Warranty Period” means the minimum period of two (2) years for notifying defects, non-conformance or omission in the Equipment, with such period commencing from the issuance date of the Certificate of Practical Completion;

“Working Committee” means a committee established between Allo and the Contractor for the purpose of monitoring the development and implementation of the Works comprising of personnel nominated by Allo and the Contractor, who are subject matter experts but the majority of whom shall be the nominees of Allo;

“Working Day” means any day other than:

- (a) Saturday and Sunday; and
- (b) any other day declared by the Federal or State Government of Selangor as a public holiday;

“Works” refers to the supply, deliver, install, commission and testing of Equipment, as outlined in the Agreement, to be performed by the Contractor in accordance with the terms specified in this COC and the Purchase Order.

2. INTERPRETATIONS

2.1 In this COC, except where the context requires otherwise:

- (a) words indicating singular shall include the plural and vice versa;
- (b) provisions including the word “agree”, “agreed” or “contract” require it to be recorded in writing;
- (c) the words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

- (e) wherever reference is made to "days" such number shall refer to working days; and
- (f) the headings are for convenience and reference purposes only and do not affect in any way the meaning or the interpretation of this COC.

3. TERM

- 3.1 The Contractor shall commence Works from the Commencement Date. This Contract is deemed to take effect from the Commencement Date and shall continue until the expiry of the Warranty Period, unless terminated earlier in accordance with the terms of the Agreement ("**Term**"). For avoidance of doubt, the Agreement does not constitute an obligation to ALLO to issue any Purchase Order to the Contractor.

4. THE CONTRACTOR TO INFORM ITSELF FULLY

- 4.1 The Contractor acknowledges that it has been supplied with Allo Requirements and that it has made all appropriate enquiries to enable it to undertake and perform the Works in accordance with the Agreement. The Contractor shall immediately bring to the attention of Allo's project manager any matter which is not adequately specified or defined in Allo Requirements. The Contractor shall be deemed to have obtained at its own expenses any additional information which it considers necessary for the undertaking of the Works.
- 4.2 If the Contractor fails to clarify or seek clarification or misinterprets Allo Requirements or fails to notify Allo of any required remedial actions in accordance with Clause 4.1 of this COC, then the Contractor shall not be entitled to recover any additional costs or expenses from Allo and Allo will not be liable for any cost and expense incurred by the Contractor for work relating to any inadequacy or deficiency or incompleteness or ambiguity of Allo Requirements.
- 4.3. The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Sum.

5. JOINT VENTURE

- 5.1 If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons:
 - (a) these persons shall be deemed to be jointly and severally liable to Allo under the Agreement;

- (b) the Contractor shall provide evidence of such formation by submitting a duly executed agreement detailing out the terms and conditions of the formation;
- (c) these persons shall notify Allo of the lead entity that has the authority to bind each of persons constituting the Contractor; and
- (d) the Contractor shall not alter its composition or legal status without the prior written consent of Allo.

6. THE EXECUTION OF THE WORKS

6.1 The Contractor shall execute and complete the Works in accordance with the scope of works outlined in the Agreement and the respective Purchase Order issued by Allo from time to time.

6.2 Scope of Works

6.2.1 The Contractor shall carry out the scope of works as outlined in the Agreement which mainly consists of the followings:-

(a) Supply, Deliver, Install, Commission and Testing of Equipment

- (i) The Contractor shall supply the Equipment listed in the Contract and deliver and install such Equipment to Allo at the Site within the Time for Completion stated in this COC.
- (ii) The Contractor shall commission and perform the required upgrading of software of OLT or any part required for the Equipment functionality as per requirement.
- (iii) The contractor shall perform the validation and functionality test of the Equipment as required by Allo as part of acceptance.
- (iv) Each item of Equipment must be fit for the purpose for which it is to be used and shall be of the best and most suitable quality to meet the Allo Requirements.
- (v) Each item of Equipment must be newly manufactured, unused and must not have been previously installed or used in any manner other than for the purpose of testing and certification.
- (vi) Each item of Equipment must be genuine, free from defects in design

and material and free from all liens, options, reservations of title, security interests, and any form of encumbrances and any third parties' rights and claims of whatever nature.

7. COMPLETION TIME FOR THE WORKS

7.1 The Contractor shall complete the Works within the Time for Completion as set out in the Agreement other than the defects liability, which must be completed at the end of the Warranty Period.

8. TAKING OVER BY ALLO

8.1 The Works may only be taken over by Allo when the Confirmation on Completion is given and such taking-over shall be in accordance with Clause 8.2 of this COC. Subject to the foregoing, assessment, evaluation, inspection and testing by Allo shall not be construed or be deemed as a take-over of the Works by Allo.

8.2 Upon receiving the Confirmation on Completion from Allo Personnel, the Contractor may apply for the Certificate of Practical Completion by giving notice to Allo fourteen (14) days before the Works will be ready for taking over. Allo has thirty (30) days from the receipt of the Contractor's application:

- (a) to issue the Certificate of Practical Completion, stating the date on which the Works were completed in accordance with the Agreement; or
- (b) to reject the application, giving reasons and specifying the Works required to be done by the Contractor for completion. The Contractor shall then complete the said Works before issuing a further application under this Clause 8.2.

8.3 The Works shall not be deemed to have been taken over in the event of any delay in the issuance of the Certificate of Practical Completion, which delay is not a delay occasioned by Allo exercising the option in Clause 8.2(b) above.

9. PARTIAL TAKING OVER BY ALLO

9.1. If at any time before the whole Works have reached practical completion pursuant to Clause 8 above, Allo shall, with the consent of the Contractor (which consent shall not be unreasonably withheld), take possession of and occupy any part or parts of the same (any such part being hereinafter in this Clause referred to as '**the relevant part**'), then notwithstanding anything expressed or implied elsewhere in this Contract:-

Certificate of Partial Completion

- a) Within thirty (30) days from the date on which Allo shall have taken possession of the relevant part, Allo shall issue a Certificate of Partial Completion in respect of the relevant part stating the estimated value of the said relevant part, and for all the purposes of this Clause (but for no other) the value so stated shall be deemed to be the total value of the said relevant part;

Defects Liability Period

- b) for the purposes of Clauses 8 and 14 hereof, the relevant part shall be deemed to have reached practical completion and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which Allo shall have taken possession and occupied thereof;

Certificate of Making Good Defects

- c) at the end of the Defects Liability Period of the relevant part and if in Allo's opinion of any defect, imperfection, shrinkage or any other fault whatsoever in respect of the relevant part which the Contractor may have required to be made good under Clause 14 of this COC, have been made good by the Contractor, then Allo may issue a certificate to that effect;

Reduction of Liquidated Ascertained Damages

- d) Should a Certificate of Practical Completion be issued for any part of the Works or any section thereof prior to the completion of the entire Works or relevant section, the rate of liquidated and ascertained damages for any delay in completing the remaining portion of the Works or that section shall, for any period of delay occurring after the date specified in the Certificate of Practical Completion, be proportionally reduced based on the value of the part so certified in relation to the total value of the Works or the relevant section, as applicable.

Insurance of the Works

- e) Notwithstanding the partial occupation by Allo of the relevant part the Contractor shall insure and keep insured the Works in the manner as stipulated under Clause 40 and the Contractor shall give notice to the insurer of such partial occupation; and

Performance Bond Not Affected (if any)

- f) it is expressly agreed that nothing contained in the preceding paragraphs shall entitle

the Contractor to the release of the Performance Bond or any part thereof deposited by him under Clause 22 hereof, the intention being that the said Performance Bond or any part thereof shall be released or refunded only upon the completion of making good all defects, imperfections, shrinkages or other faults which may appear during the Defects Liability Period and upon the giving of the Certificate of Completion of Making Good Defects for the whole of the Works under Clause 14 hereof.

10. EQUIPMENT PACKAGING, LOSS AND DAMAGE

- 10.1 In the event any Equipment is damaged or lost prior to issuance of the Certificate of Practical Completion, the Contractor shall replace the damaged or lost Equipment within fourteen (14) Working Days. The costs of such replacement including for services shall be borne solely by the Contractor.
- 10.2 The Contractor shall ensure among other things that the Equipment shall be adequately and appropriately packed and secured in such a manner as to:
- (a) withstand rough handling during transportation;
 - (b) reach their destination in good condition, working order and fit for the purpose for which it was purchased; and
 - (c) facilitate the storage, handling and normal use at the Site.

11. TITLE RISK AND LOSS

- 11.1 Title to and possession of Equipment shall pass to Allo on the date of issue of the Certificate of Practical Completion.
- 11.2 The Contractor shall be responsible for and shall bear all risk of loss or damage to the Equipment prior to the date of issue of the Certificate of Practical Completion.
- 11.3 The Parties agree that the Contractor shall bear the risk of loss of or damage to the Site or to any materials and/or equipment owned or provided by Allo at the Site, due to the Contractor's negligence, wilful default, or breach of its obligation. The Contractor shall at its own cost and expense make good any loss or damage to the Site and to the materials and/or equipment owned or provided by Allo at the Site at the Contractor's sole cost and expense, unless the loss or damage is a consequence of an Event of Force Majeure, Allo's gross and wilful negligence, default or breach of its obligations under the Agreement. Where either Party's acts or omissions contribute to the loss or damage, the contributing Party shall be responsible for making good such loss or damage to the extent that it was caused by such Party.

12. TROPICALISATION

12.1 All Equipment supplied by the Contractor shall be guaranteed to be fully tropicalised to withstand climatic conditions in Malaysia for the life span of the Equipment.

13. QUALITY ASSURANCE

13.1 The Contractor will regularly conduct quality assurance activities to help ensure that the Works are executed with a high degree of professional quality and reliability. The quality assurance activity of the Contractor shall be subject to audit by Allo at any time upon Allo giving seven (7) Working Days written notice to the Contractor.

13.2 Compliance

- (a) The Contractor will comply and execute the quality assurance and quality management requirements set out by Allo.
- (b) Allo has the right to reject any part of the Works that do not meet the Allo Requirements.

13.3 Minimum Requirements

- (a) The Contractor's quality assurance activities will have a statistical process control system in which key process activities and measurements to be used are agreed with Allo. The results of that system will be reported to Allo or its personnel on a quarterly basis.
- (b) The Contractor will have overall responsibility for the quality function.
- (c) The quality assurance and management program must provide clear procedures for all aspects of quality management within the Contractor's organisation and responsibilities that are delegated to all of the Contractor's personnel who are in control of the functions that affect quality.
- (d) The Contractor will cause incidents of defective execution of Works to be analysed, and the results of such defects to be updated into the Contractor's quality assurance systems.
- (e) The Contractor's quality assurance procedures will be reinforced by, and cross-referenced with, adequate engineering procedures.

14. DEFECTS LIABILITY AND CERTIFICATE OF MAKING GOOD DEFECTS

14.1 The Contractor represents and warrants to Allo that:

- (a) the Equipment shall be genuine, new and unused and shall not be manufactured more than twelve (12) months prior to date of delivery;
- (b) the title to any portions of or rights to supply the Equipment and any portions thereof conveyed to Allo by the Contractor shall be legal, good and free from any and all encumbrances created by the Contractor, any of its sub-contractors, manufacturers, suppliers and lenders;
- (c) the Equipment, shall operate and the Works shall be performed in accordance with the Agreement and in a good and workmanlike manner.;
- (d) the import, supply, provision and installation of the Equipment or any part and the carrying out the Works will not infringe any laws of any other country;
- (e) it has the requisite technology, skill, personnel and ability to enable it to perform all of its obligations under the Agreement;
- (f) its performance of the Works is and shall continue to be in accordance with standards of care and diligence normally found within the industry;
- (g) all insurance policies to be procured by the Contractor shall be in place and remain in force in accordance with the requirements of the Agreement;
- (h) it has obtained or will obtain all necessary Intellectual Property Rights to allow Allo to own, use, operate and maintain the Equipment free of any claim, cost or encumbrance;
- (i) as at the date of the Letter of Award, no third party has commenced any action in court in any country where the Equipment is currently owned or used or available, on the basis that the Equipment or any part thereof, as owned or used or intended for use or will be used by Allo, may or will infringe a third party's Intellectual Property Right;
- (j) the materials, documents, and other information provided by the Contractor shall be true, correct, and complete. In case of a breach of this warranty, the Contractor shall at its sole expense promptly cure such breach.

14.2 If Allo notifies the Contractor in writing of any defects, deficiencies and errors discovered in or to the Equipment or Works at any time during the Warranty Period, the Contractor shall

immediately remedy or make good the defects, deficiencies and errors to the Equipment.

- 14.3 The issuance of the Certificate of Making Good Defects shall nevertheless be without prejudice to any claim of Allo in respect of any defects, deficiencies, and errors to the Equipment which may subsequently become apparent or be discovered. Any Equipment replaced or defective parts repaired and/or replaced and any Works rectified during the Warranty Period shall itself be subject to a further twelve (12) months warranty from the date of such replacement or repair or rectification. Thereafter, if the replaced parts or rectified Works are found to be defective during the twelve (12) months period, the Contractor shall replace the defective parts or rectify the defective Works without any further warranty.
- 14.4 The Contractor shall bear all costs for rectifying any defects, deficiencies, and errors during the Warranty Period of the Equipment. The Contractor shall also indemnify and render Allo harmless from and against all losses, costs, damages, and expenses which Allo may suffer, incur or sustain by reason of faulty, defective design, modification, fundamental and/or inherent faults in or to or of the Equipment or Works or due to the breach of the Contractor's obligations.
- 14.5 In the event that any Equipment is to be replaced, the Contractor shall do so with the least disruption to Allo's business operations and to the satisfaction of Allo.
- 14.6 Allo will issue the Certificate of Making Good Defects within thirty (30) days after the expiry of the Warranty Period if all recorded and/or reported defects, deficiencies and errors to the Equipment have been successfully rectified by the Contractor to the satisfaction of Allo. The Certificate of Making Good Defects shall be deemed to constitute the final acceptance for Completion of the Works by Allo.
- 14.7 The Contractor shall submit the Contract Completion Report within one (1) month after the Warranty Period started.

15. LIABILITY AND INDEMNITY

15.1 General Principle

Save to the extent that another provision of the Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this Clause 14 shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, willful or deliberate breach or any other cause) of a Party to the other Party under and in relation to the Agreement and in relation to any act, omission or event relating to or arising out of the Agreement.

15.2 **Damage to Property**

Subject to Clause 14.5 below, either Party ("**Indemnifying Party**") shall indemnify and hold the other Party ("**Indemnified Party**") safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any tangible property beneficially and/or absolutely owned by the Indemnified Party arising out of any act or omission of the Indemnifying Party, its servants or agents in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out the Works.

15.3 **Death and Personal Injury**

Subject to Clause 14.5 below, the Indemnifying Party shall be absolutely liable for, and hereby indemnifies the Indemnified Party from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the Indemnified Party arising out of any act or omission of the Indemnifying Party, its servants or agent.

15.4 **Third Person Indemnity**

The Indemnifying Party shall indemnify and hold the Indemnified Party safe and harmless from and against all costs, expenses and claims in respect of:

- (a) all injuries to, including death of; and/or
- (b) loss of or damage to property of, third parties arising out of or in connection with or in the course of or by reason of the Indemnifying Party's breach or when due to any acts, omission or default of the Indemnifying Party, its servants and/or agents in the carrying out of any of the Works.

15.5 **Exclusion of Liability**

- (a) Neither Party excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.
- (b) Subject to Clause 14.4 above, neither Party shall be liable to the other Party or any other third party nor shall either Party be liable to indemnify the other Party for any claims, proceedings or actions brought or made by a third party against the other Party, howsoever arising, including but not limited to any claims, proceedings or actions brought or made against the other Party by any person pursuant to a contractual relationship with the other Party provided always that the Contractor shall be liable to indemnify Allo for any acts or omissions of any suppliers, agents, sub-contractors, licensors and any third party engaged by the Contractor to supply or perform any part of the Works.

- (c) Subject to Clause 14.1 above, in no event will either Party's liability under the Agreement exceed the Contract Sum in the aggregate for all claims for any accident or occurrence, in connection with the Agreement provided always that with respect to fraud, death, personal injury, damage to property and breach of the Intellectual Property Rights of third parties, the liability of the Indemnifying Party under the Agreement shall not be limited.

For the purposes of this Clause 14.5(c), fraud shall have the meaning prescribed in Section 17 of the Contracts Act 1950.

- 15.6 In no event will either Party be liable to the other Party for loss of profits, loss of revenue, loss of business, loss of opportunity, loss of use of data, special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of the Agreement or any termination or suspension of the Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if a Party has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of a Party arising out of the Agreement.
- 15.7 Allo shall in its discretion give the Contractor conduct of the defence to any claim, action, proceeding or demand brought against Allo and arising as a result of entering into the Agreement or performance of the Works by the Contractor and/or its sub-contractors including any defamatory actions taken by any third party and shall not (unless Allo takes back the conduct of the defence (which it shall be permitted to do if it does not believe the Contractor is conducting the same competently)) at any time admit liability or otherwise attempt to settle the said claim, action, proceeding or demand subject to the Contractor providing to Allo's reasonable satisfaction security for any costs or liabilities Allo may incur by reason of the Contractor's conduct of such defence.
- 15.8 In relation to the conduct of the defence by the Contractor as set out in Clause 14.7, Allo:
 - (a) will be permitted to enter appearance in court and, thereafter, give the Contractor written notice of such action, claim, proceeding and/or demand;
 - (b) will provide all assistance reasonably requested by the Contractor at the Contractor's cost and expense in connection with the action, claim, proceeding, and/or demand;
 - (c) allows the Contractor at its own cost and expense to have sole control of the defence and related settlement negotiations provided that in respect to any matter, decision, action or settlement which:
 - (i) affects Allo's rights and remedies; and/or

- (ii) would involve or result in Allo admitting a breach, infringement or guilt; and/or
- (iii) would involve Allo having to incur any cost or expense or pay any sum as royalties, license fees, compensation, damages or otherwise,

the Contractor shall first obtain the prior written consent of Allo.

16. VARIATION ORDER

16.1 Definitions

- (a) The term 'Variation' means a change in the Agreement which necessitates alteration or modification of the design, quality and quantity to the Works as described by or referred to therein and affects the Contract Sum including:
 - i) the addition, omission, or substitution of any work;
 - ii) the alteration of the kind or standard of materials and Works to be used in the Works;
 - iii) the removal from Site of any work executed or materials and Works for the purpose of the Works, other than work, materials and Works which are not in accordance to the terms outlined in the Agreement.
- (b) Any variation made under this clause shall not relieve the Contractor from his obligation under Clause 6 of this COC.

16.2 Variation Order Request by Allo

- (a) Allo may, at any time place a request in writing with the Contractor to incorporate additional features into the Works beyond the features in the Contract.
- (b) Upon receipt of a variation order request from Allo under Clause 15.2(a), the Contractor shall immediately within such period as may be agreed between the Parties from the date of receipt thereof, notify Allo in writing of the time and cost needed to investigate the implications of implementing the proposed variation.
- (c) The investigation referred to in Clause 15.2(b) above shall be carried out only with Allo's prior written instruction. Following the investigation, if any, the Contractor shall give a written quotation showing the increase or decrease in the Contract Sum and any related effect on other terms and conditions of the Agreement, should the proposed

variation be implemented.

- (d) If the variation requested does not impact the Contract Sum, the Contractor shall prepare an Engineering Variation Proposal ("**Variation Proposal**") for Allo's approval and authorisation. If the variations requested impact the timeline for execution of the Works and the Contract Sum, the Variation Proposal together with any request for variation shall be submitted to the Working Committee for approval.
- (e) The Contractor shall, to its best endeavour, ensure that its quotation or estimate is given within the agreed period from the date of receipt of Allo's written instruction referred to in Clause 15.2(c).
- (f) Should Allo wish to proceed with the proposed variation, it shall instruct the Contractor in writing of its wish as soon as reasonably practicable after receipt of the written quotation. The parts of the Agreement affected by the variation shall then be amended accordingly.
- (g) Upon receipt of the written notice, the Contractor shall, within seven (7) Working Days or any extended period agreed by Allo and the Contractor, provide a written response to Allo's request and offer to make variations to the Works or any part thereof, in order to conform with any requirements, objectives or intended or envisaged capabilities of the completed Works.
- (h) The Contractor shall incorporate the variation into the Works and into any documentation where the variation calls for modification and shall give revised copies of the documentation to Allo.
- (i) Until any variation is agreed in writing between Allo and the Contractor, the Contractor shall continue to carry out the Works in accordance with the scope of work as if the variation had not been proposed.

16.3 **Variation Order Request by the Contractor**

The Contractor may, submit a variation order request to Allo containing details of additional costs and expenses needed to complete the Works. The Parties shall discuss but the implementation of any such variation is subject to the Parties reaching mutual agreement.

16.4 **Work Excluded from Variation Order Request**

For the avoidance of doubt and unless expressly agreed otherwise in writing by Allo and the Contractor, the Parties hereby expressly agree that for the purposes of the Agreement, the following shall not be treated as a variation order request and shall be deemed to be included within the scope of the Works as if such services, functions or responsibilities were specifically

required and described in the Agreement at no additional cost and expense to Allo:

- (a) all Works within the ambit of the scope of Works in the Contract;
- (b) any Works which are incidental, ancillary, inherent, and necessary to be part of the Works and are required for the proper implementation of the Works;
- (c) all Works required to effectively remedy any breaches and/or defects malfunction, error or flaw in the Works that are escalated by Allo to the Contractor but which have not been successfully rectified by the Contractor;
- (d) any amendment, modification or alteration effected in relation to the Works to the extent that it arises as a consequence of any breach on the part of the Contractor in performing its obligations hereunder;
- (e) any Works which had been agreed to but which have been inadvertently omitted by the Contractor; and
- (f) any upgrade to the Works as required by Allo at any time during or prior to the expiry of the Warranty Period to ensure that the Contractor meets Allo Requirements.

17. RIGHT OF ACCESS

- 17.1 The Contractor shall be responsible to obtain all rights of way and rights of use of the Sites from the relevant authorities and any other person for the purpose of carrying out the Works and on terms and conditions which are acceptable to Allo.
- 17.2 The cost and expense of obtaining the said rights of way and rights of use shall be borne solely by the Contractor and all such rights shall be for the benefit and in the name of Allo for such period being no less than the lifespan of the Equipment.

18. WORKING COMMITTEE

- 18.1 The development of the Works shall be monitored by the Working Committee. The membership and structure of the Working Committee shall be as described in the Contract, where applicable.
- 18.2 The functions of the Working Committee include, without limitation, the following:
- (i) to determine the overall direction and policies with regard to the Works;
 - (ii) to approve and endorse major decisions pertaining to the execution of the Works;

- (iii) to propose suggestions to the project manager of the Contractor;
- (iv) to ensure the execution of the Works meets Allo Requirements and scope of Works;
- (vi) to review, consider and approve the execution of the Works;
- (vii) to resolve disputes pertaining to the Works;
- (viii) to review any variations to the Works and propose any variations (if needed);
- (ix) to approve the variation order plan and activities if a variation order request is submitted by the Contractor pursuant to Clause 15.3;
- (x) to review the commencement, weekly, monthly, ad-hoc, mid-term and completion reports on the execution of the Works submitted by the Contractor; and
- (xi) to review the weekly progress report on training submitted by the Contractor.

18.3 The Contractor shall:

- (i) attend all weekly progress meetings held by the Working Committee; and
- (ii) prepare and submit minutes of the progress meetings and weekly progress reports to Allo for rectification, approval and sign-off.

18.4 **Meetings**

- (a) Prior to commencement of the Works, meetings of the Working Committee shall be by way of use of telephone conferencing facilities.
- (b) From commencement of the Works, all meetings of the Working Committee shall be held at Allo's office or such other location notified by Allo.
- (c) The Contractor's project manager and quality control manager shall attend all progress meetings held by the Working Committee.

18.5 Notwithstanding the functions and roles played or performed by the Working Committee, the Contractor shall be solely responsible in ensuring that the Works meet the requirements stipulated in the Agreement.

19. SUB-CONTRACTORS

- 19.1 The Contractor shall not sub-contract any of its obligations under the Agreement without Allo's prior written consent.
- 19.2 The Contractor shall ensure that each agreement with sub-contractors shall include:
- (a) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Contract to Allo;
 - (b) a provision requiring sub-contractors to enter into a direct confidentiality agreement with Allo on the same terms as set out in Clause 43 of this COC;
 - (c) a provision requiring sub-contractors to comply with protection of data requirements pursuant to Clause 42 of this COC; and
 - (d) a provision requiring sub-contractors to comply with Allo's internal policies and requirements pertaining to corruption, unlawful activities and giving of gifts.
- 19.3 Despite the Contractor's right to sub-contract pursuant to this Clause 18, the Contractor shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 19.4 The Contractor shall at all times comply with its responsibilities in respect of its sub-contractors, consultants and/or agents as set out in the Contract.

20. CONTRACTOR'S PERSONNEL

- 20.1 Allo may refuse admission to the Site and/or direct the Contractor to end the involvement in the Works of any of the Contractor's personnel whom Allo reasonably believes represents a security risk. The decision of Allo to refuse admission to the Site and/or direct the Contractor to end the involvement any the Contractor's personnel in the Works must be supported by reasons and submitted to the Contractor and, if required, the Parties shall meet to discuss in good faith the security risk issues and the mitigating steps with the view to ensuring the Works are not unnecessarily delayed.
- 20.2 The Contractor shall use all best endeavours to replace the affected personnel but, in any event, no later than fourteen (14) Working Days of the decision of Allo.
- 20.3 The Contractor shall secure all approvals, Authorisations and permits for its foreign personnel

involved in the Works prior to such personnel being assigned to undertake any work in Malaysia in respect to the Works and shall provide to Allo a copy of each such Authorisations. The Contractor shall indemnify Allo against all costs, expenses, fines, penalties, imposts, damages suffered or incurred by Allo due to the failure by the Contractor to secure all Authorisations for its foreign personnel involved in the Works prior to such personnel being assigned to undertake any work in Malaysia.

20.4 **Convictions**

The Contractor shall ensure that no person who discloses that he has a previous or pending conviction for any breach of cyber security laws and regulations including the PDPA 2010, or who is found by the Contractor to have any conviction (other than for traffic offences), is employed or engaged in the provision of any part of the Works without Allo's prior and express written consent.

20.5 **Staffing Security**

The Contractor shall comply with Allo's procedures and departmental policies for vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures of Allo ("**Staff Vetting Procedures**") in respect of all the Contractor's personnel employed or engaged in the Works. The Contractor confirms that all Contractor's personnel employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

21. PAYMENT OF THE CONTRACT SUM

- 21.1 Allo shall pay the Contract Sum in consideration of the Works rendered by the Contractor in compliance to the terms and conditions of the Agreement based on the schedule of payments as accordance in the Letter of Award. Allo shall pay the Contract Sum within forty-five (45) days from the date of receipt of the invoice. For the avoidance of doubt, the Contract Sum shall include any applicable Taxes.
- 21.2 The Contractor shall bear all expenses including but not limited to out-of-pocket expenses, lodging, transportation incurred in relation to the Agreement and such other costs and expenses stated to be borne by the Contractor under the Agreement.
- 21.3 The Contract Sum shall be adjusted to take into account any increase or decrease resulting from change in Laws with regards to Taxes (other than tax on the income of the Contractor) (including introduction of new laws and the repeal or modification of existing laws) or in the judicial or governmental interpretation of such laws after the Effective Date that relate directly to the performance of the Works.

- 21.4 The Contractor shall submit the invoices to Allo accompanied by proper supporting documents, showing the deliverables that the Contractor considers being entitled to payment for the execution of the Works. The invoices shall include the following items (but not limited to):
- (a) the contract value of the Works executed, delivered and performed; and
 - (b) any deductions which may have become due under the Agreement or otherwise.
- 21.5 The Contractor shall be entitled for payment of the Purchase Order after Allo issues the certificate of its acceptance of each stage of the Works as accordance in the Letter of Award.
- 21.6 Allo has fifteen (15) days from the date it receives the invoice to review the said documents and if Allo agrees, the payment will be made within forty five (45) days from the date Allo certifies the invoice. However, Allo may upon receipt of the invoice raise a written query in respect of the invoice which in Allo's reasonable opinion does not reflect the actual Works rendered. Upon receipt of such a query, the Contractor shall, within fourteen (14) days of the issue of the query, explain and clarify the matter in question. In the event Allo is not satisfied with the explanation and clarification by the Contractor, Allo may submit such dispu for resolution pursuant to Clause 42 of this COC.
- 21.7 Notwithstanding any other provisions of this COC, Allo has the right to withhold payment in following situations:
- (a) if Contractor fail to return Letter of Award duly signed and submit to Allo the Performance Bond and relevant insurance policies as required under the Agreement (if any); or
 - (b) if the Equipment supplied did not comply to Allo Requirements; or
 - (c) if the Works are performed otherwise than in accordance with the Agreement or the remedying of any defects, deficiencies or errors in relation to the Works are not done to the satisfaction of Allo; or
 - (d) if the Contractor commits any breach or default in the execution of its obligations under the Agreement; or
 - (e) if the Contractor caused an unreasonable delay or is likely to cause delay in the execution of the Works.

Allo will only pay the Contractor if the Contractor has rectified or remedied the situation listed above to the satisfaction of Allo.

- 21.8 Allo shall be entitled to set off by deducting any money owing from the Contractor to Allo in respect of the Liquidated Ascertained Damages or any other sum due or payable under the Agreement from any sum which may become due or is payable to the Contractor provided that this provision shall not affect any other remedy to which Allo may be entitled for the recovery of such sums.
- 21.9 The Parties hereby agree that Allo shall be entitled to retain a sum equivalent to ten percent (10%) of the Contract Sum upon the issuance of Certificate of Practical Completion ("**Retention Sum**").
- 21.10 The Contractor shall be entitled for payment of the entire Retention Sum after Allo issues the Certificate of Making Good Defects.

22. PERFORMANCE BOND

- 22.1 The Contractor shall furnish Performance Bond as stipulated in the Appendix to the Conditions of Contract to guarantee its performance of the Works. The Performance Bond shall be in the form of bank guarantee and to be issued by a locally domiciled bank. The Performance Bond shall be delivered to Allo at the address as stated in Clause 46 of this COC.
- 22.2 Allo reserves the right to suspend and withhold any payment due if the Performance Bond is not received within the stipulated time.
- 22.3 The Contractor shall before the Date of Commencement of the Works, submit to Allo the Performance Bond and shall be valid and enforceable from the Date of Commencement until three (3) months after the Time for Completion.
- 22.4 In the event the Works is not completed within the validity of the Performance Bond, the Contractor has the obligation to extend the validity of the Performance Bond upon request by Allo, failing which Allo has the right to claim the full amount of the Performance Bond. Allo may also make a claim under the Performance Bond in the event of:
- (a) failure by the Contractor to remedy an error, deficiency or default under the Agreement within the stipulated time stated in the Agreement or where none is stated within such time as stipulated by Allo; and/or
 - (b) failure of the Contractor to make any payment due to Allo, as either agreed by the Contractor or as stipulated under the Agreement; and/or
 - (c) termination by Allo under Clause 33, provided that notice of termination has been given.

- 22.5 Allo shall return the Performance Bond within thirty (30) days after the lapse of the validity period of the Performance Bond provided that no demand or call has been made by Allo or Allo has no right to make a demand or call. All costs relating to the issuance, maintenance and renewal of the Performance Bond shall be borne by the Contractor.
- 22.6 Allo shall be entitled to call or make a demand on the Performance Bond in the event of a breach by the Contractor of the terms and conditions of the Agreement in respect to the performance of the Works.
- 22.7 Following each call or demand is made by Allo of the Performance Bond, the Contractor shall provide a new Performance Bond to ensure that the Performance Bond held by Allo remains equal to the original sum at all times, up to the expiry of three (3) months after the expiry of the Time for Completion.
- 22.8 In the event Contractor fails to provide or maintain the validity of Performance Bond in accordance with this clause, Allo shall be entitled to withhold or deduct an amount equal to the Performance Bond from any payment due or become due to the Contractor.

23. THE CONTRACTOR'S GENERAL WARRANTIES AND REPRESENTATIONS

- 23.1 The Contractor represents warrants and undertakes to and with Allo that:
- (a) it has all the necessary power and authority to execute the Agreement and the execution of its obligations under the Agreement, has been duly authorised by all necessary action on its part and the Agreement constitutes its legal, valid and binding obligation enforceable against the Contractor in accordance with its terms;
 - (b) it is not in default under any agreement to which it is a party or by which it is bound and/or no litigation, arbitration or administrative proceedings are currently present or pending or threatened which might affect the ability of the Contractor to enter into and/or to perform its obligations under the Agreement;
 - (c) it has not been wound-up and no petition has been presented for its winding-up nor has it agreed to any scheme of arrangement for the benefit of its creditors or assigned its assets for the benefit of its creditors nor has it appointed a judicial manager nor has a receiver or receiver and manager been appointed or proposed to be appointed by it or any creditor over it;
 - (d) the Contractor shall not directly or indirectly, negligently do or fail to take action which would have the effect of putting Allo in breach of any obligations to a third party of which the Contractor is aware of at the time of execution of the Works or of which the Contractor should reasonably be expected to be aware of at the time of execution of

the Works or to expose Allo to liability to any third party;

- (e) the Contractor shall not use any information and/or materials supplied to it by Allo in a manner which will be or is likely to be detrimental to Allo, Allo Group and their businesses;
- (f) the Contractor shall act at all times so as to protect the interests of Allo and shall take all reasonable steps to keep all costs and expenses to a minimum consistent with sound economic and engineering practices.
- (g) the Works will be performed by the Contractor's personnel who have the requisite skill, expertise and experience and the Works shall be performed in accordance with the highest standard of care and diligence and in any event shall not be less than that normally found within the industry for services and Works similar to Works;
- (h) the performance of the Works shall comply with Laws;
- (i) the Contractor shall, in undertaking the Works act honestly and fairly;
- (j) the Contract shall provide Allo with true and accurate information on the Works, progress of the Works and any matter relating to the execution of the Works;
- (k) the Contractor shall comply with Allo's position on anti-corruption, along with any guidelines on ethics and integrity communicated by Allo and made available on Allo's official website;
- (l) the Contractor shall not offer or provide, directly or through any intermediaries, any bribe, gift, hospitality, entertainment, donation, consideration, reward, favour, any material or immaterial benefit or other gratification, commission, fee, brokerage or inducement to an employee, director or other representative of Allo and/or member of Allo Group, for the purpose of improperly influencing a business decision to act contrary to Allo's or relevant member of Allo Group's interest or for the purpose of obtaining any advantage in the implementation of the Agreement;
- (m) the Contractor shall not offer or provide any gratification which might be considered a bribe under either local or international legislation to a government official, either in Malaysia or any other country;
- (n) the Contractor shall not collude with other parties interested in the Agreement to preclude or compromise the implementation of the Agreement. The Contractor also undertakes to report to Allo, through its official reporting channels, any such attempts made by others to involve the Contractor in acts of collusion against Allo and/or any member of Allo Group;

- (o) the Contractor shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information which may reasonably be regarded as confidential and is provided by Allo and/or any member of Allo Group as part of the business relationship, including plans, technical proposals and business details including information contained or transmitted electronically;
- (p) the Contractor shall not to give any gratification to a public official, in order to expedite a process in relation to work carried out for Allo and/or any member of Allo Group;
- (q) the Contractor shall not participate in any other criminal activity, such as extortion, embezzlement, money laundering, or any similar or equivalent improper act or practice;
- (r) the Contractor shall take all measures to prevent corrupt practices, unfair means and illegal activities at all times while carrying out its contractual obligations for or on behalf of Allo and/or any member of Allo Group;
- (s) the Contractor shall inform Allo and/or any relevant member of Allo Group if the Contractor has any knowledge that an employee or a director of the Contractor or any person acting on behalf of the Contractor, either directly or indirectly, is a Relative of any of employee or director of Allo, or alternatively, if any employee or director of Allo or their relative has any interest, financial or otherwise, in the Contractor;
- (t) the Contractor shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly with any employee or director of Allo;
- (u) the Contractor shall ensure that staff and other representatives of the company dealing with Allo, or acting on behalf of Allo in servicing a contract, are aware of the provisions above; and
- (v) the Contractor shall immediately notify Allo in writing, if it is aware of any breach of this provision, or if it becomes reasonably suspicious that this provision may have been breached.

23.2 Allo and the Contractor must do all things reasonably necessary to ensure that they cooperate as fully as possible with each other in the performance of their obligations in the Agreement which require consultations between them or determinations to be made by either of them including without limitation:

- (a) all co-operation and assistance required or requested by either Party and any of their suppliers and service providers in connection with Works;
- (b) all information necessary and appropriate for either Party and any of their suppliers

and service providers to perform the work or services assigned to them; and

- (c) any other co-operation or assistance as either Party and any of their suppliers and service providers may reasonably require,

without obstruction or delay.

23.3 Where Allo has reasonable concerns regarding behaviour involving gratification on behalf of the Contractor, Allo shall have the right to:

- (a) direct the Contractor to investigate the matter, and the Contractor shall carry out its investigations in the manner as directed by Allo; and/or
- (b) conduct its own investigation into the matter, and the Contractor shall provide all reasonable assistance, information and documentation to Allo, in respect of the conduct of investigations.

23.4 The Contractor hereby acknowledges and understands that the warranties and representations stated in this COC are to be strictly adhered to and therefore further acknowledges that in order to ensure the high standards of performance and conduct of the Agreement, Allo reserves the right to request for or on its own accord, inspect, examine (including but not limited to) all documents, correspondence, records, paperwork, computer software or accounts of the Contractor that relates to the Agreement at any time Allo so wishes throughout the Term by giving the Contractor reasonable prior written notice. Allo will comply with the security and confidentiality policy of the Contractor generally applicable to all third parties and of which prior notice in writing has been given to Allo.

24. CONTRACTOR'S GENERAL DUTIES

24.1 Execution of Works

- (a) The Contractor shall act as consultants, at no additional cost to Allo, on all aspects of the Works.
- (b) The Contractor shall provide all technical expertise, labour, installation equipment, storage areas, tools, consumables, materials and equipment and all other things necessary for the efficient and timely execution of the Works.
- (c) In performing the Works, the Contractor shall ensure that it has sufficient personnel available so that the Contractor can flexibly and responsively perform its obligations under the Agreement by deploying such personnel as may be required to ensure the efficient and timely execution of the Works.

- (d) The Contractor shall give Allo full access, approval and permission to inspect, to examine and to check the progress of the Works. If Allo finds any defect, deficiency or non-conformity as a result of the said inspection or examination, Allo reserves the right to instruct the Contractor to take the following steps stated below with the cost and risks to be borne by the Contractor:
 - (i) to remove from the Site and/or rectify and/or replace any Equipment which is not in accordance with the terms stipulated in the Agreement; and/or
 - (ii) to re-execute any other Works which is not in accordance with the terms stipulated in the Agreement.
- (e) Notwithstanding any instruction or direction that may be made or given by Allo, the Contractor will verify the correctness of such instruction and direction and advise Allo if such instruction or direction is incorrect.

25. ALLO'S GENERAL DUTIES

25.1 Training and Technology Transfer, if applicable.

- (a) Allo shall provide adequate facilities for the conduct of the training courses and transfer of technology as stipulated in the Purchase Order.
- (b) Allo shall ensure that its personnel are at all times available for the training courses and transfer of technology referred to in Clause 24.1(a) above.

26. DELAY IN THE EXECUTION OF THE WORKS

26.1 Liquidated Ascertained Damages

- (a) If the Contractor fail to complete the Works within the Term or within any extended time granted by Allo, Allo shall be entitled to recover to the Contractor Liquidated Ascertained Damages calculated at one percent (1%) from the Contract Sum, to a maximum of twenty percent (20%) from the Contract Sum.
- (b) Allo may recover such sum as debt or deduct from any money due or become due to the Contractor or from the Performance Bond. Allo shall inform the Contractor in writing of such deduction. If no amount is due to the Contractor, the Liquidated Ascertained Damages will be a debt due from the Contractor to Allo and must be paid within twenty (20) working days from the date of debit note. Allo reserves the right to take further action in the event the Contractor failed to pay the said sum. For the

avoidance of doubt, the Contractor shall only be liable for Liquidated Ascertained Damages where the delay is attributable to the Contractor.

- (c) The Liquidated Ascertained Damages are Allo's genuine pre-estimate loss for the delay and not a penalty and shall not be the sole and exclusive remedy of Allo under the Agreement or Laws for the delay. The Contractor by entering the Agreement agrees to pay to Allo the said amount(s) without the need of Allo to prove his actual damage or loss.
- (d) The Liquidated Ascertained Damages shall not relieve the Contractor from its obligation to complete the Works or from any other duties, obligations, or responsibilities it has under the Agreement.

26.2 Request for Extension

- (a) The Contractor may submit a written notice to request for an extension of time for completion of the Works to Allo together with initial estimate of the extension of time they may require supported with all particulars and/or documents of the cause of delay. The giving of such written notice shall be a condition precedent to an entitlement of extension of time. Allo may (and is not under any obligation to) consider such request and where reasonable, grant such extension to the Contractor.
- (b) The Contractor shall be entitled to an extension of the time for completion if the Works are or will be delayed by any of the following causes:
 - (i) a variation request by Allo not necessitated by any act or omission by the Contractor; or
 - (ii) any delay or impediment solely caused or attributable to Allo.

PROVIDED ALWAYS THAT the Contractor have taken all reasonable steps to avoid or reduce such delay and shall do all that may reasonably be required to the satisfaction of Allo to proceed with the Works.

- (c) PROVIDED FURTHER that the Contractor shall not be entitled to any extension of time where the instructions or acts of Allo are necessitated by or intended to remedy any default of or breach of contract by Contractor.

27. INTELLECTUAL PROPERTY RIGHTS

- 27.1 The Contractor warrants that it has obtained all necessary intellectual property rights to allow Allo to implement any proposals and/or recommendations as advised by the Contractor under the Works, free of any claim, cost or encumbrance and the use by Allo of such rights will not constitute an infringement of any of those rights belonging to any other entity and/or person.

Any associated cost for the procurement of such intellectual property rights shall be borne by the Contractor, if applicable.

27.2 **Allo IP**

- (a) All tangible and intangible assets (i.e., information, data, documentation and software) provided to, or accessed by, Contractor which were owned by, leased or licensed to Allo prior to being provided to, or accessed by, the Contractor in the context of the provision or performance of its obligations under the Agreement or otherwise as well as all tangible and intangible assets owned or created by or leased or licensed to Allo during the course of the Agreement whether or not for the purpose of the Agreement ("**Allo IP**") shall remain the property of Allo.
- (b) All intellectual property and any proprietary rights relating to Allo IP of which the Contractor becomes aware of or which are used by the Contractor in the context of the provision or performance of its obligations hereunder are solely owned by Allo.
- (c) Save as otherwise stated in the Agreement, no Party will gain by virtue of the Agreement any rights of ownership of any Intellectual Property Rights owned by the other at the Effective Date.

27.3 **Warranties and Representations**

- (a) In addition to any other warranty expressed or implied in the Agreement or by statute, the Contractor hereby represents and warrants to Allo that:
 - (i) the Works do not and will not infringe any Intellectual Property Rights or any other right of any other nature of any person and shall not subject Allo to any claim for infringement of any proprietary rights of any third party;
 - (ii) it has all appropriate licences of, or title to, all Intellectual Property Rights that is required by it for the purpose of the supply, installation, testing and commissioning of the Equipment and the performance of the Works;
 - (iii) it has the authority to assign or license (as the case may be) all Intellectual Property Rights granted to Allo under the Agreement;
 - (iv) none of the:
 - A. provision or performance of the Contractor's obligations under the Agreement, nor anything arising from the provision or performance of the Contractor's obligations under the Agreement; or

B. the supply, installation, testing, commissioning and operation of the Equipment and the performance of the Works,

infringes or will infringe any rights, including any Intellectual Property Rights, of any third party;

- (v) there are no security interests, and it will not allow any security interests to be created, over any Intellectual Property Rights it contributes to the Works;
- (vi) the ownership, possession, use and of the Equipment and the receiving of the benefit of the Works in accordance with or as contemplated by the Agreement by Allo or any person authorised by Allo in accordance with or as contemplated by the Agreement will not infringe any Law, Intellectual Property Rights and or other protected rights of any person; and
- (vii) it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any claims that the Equipment or the undertaking of the Works or ownership, possession, use and operation of the Equipment in accordance with or as contemplated by the Agreement infringe or will infringe any rights, including any Intellectual Property Rights and any proprietary rights of any third party.

27.4 **Intellectual Property Rights Indemnity**

- (a) Without prejudice to any other rights and remedies of Allo under the Agreement, the Contractor shall at its own expense indemnify and hold harmless Allo, Allo Group or their successors and assigns (and their officers, directors, employees, sublicensees, customer and agents) in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including attorney's fees and court costs on a solicitor-client basis) which Allo, Allo Group or their successors and assigns (and their officers, directors, employees, sublicensees, customer and agents) pays, suffers, incurs or is liable for, which arise directly or indirectly out of or in connection with:
 - (i) any breach of the representations and warranties in Clause 26.3 or any of the representations or warranties being false or inaccurate;
 - (ii) any claim that the materials (including the Equipment, Documentation and Manuals and Works) provided by the Contractor to Allo pursuant to the Agreement infringes at any time the Intellectual Property Rights of any third partywheresoever and howsoever arising; or
 - (iii) any claim that the ownership, possession use by Allo of the Documentation and Manuals, Equipment and Works infringes at any time the Intellectual Property

Rights and proprietary of any third party wheresoever and howsoever arising.

("Intellectual Property Infringement").

- (b) Allo shall in its discretion give the Contractor conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and shall not (unless Allo takes back the conduct of the defence (which it shall be permitted to do if it does not believe Contractor is conducting the same competently)) at any time admit liability or otherwise attempt to settle the claim or action and granting to the Contractor conduct of the defence for Allo is subject to the Contractor providing to Allo's reasonable satisfaction security for all costs, expenses, damages, loss and liabilities Allo may incur or suffer.
- (c) In the event of any Intellectual Property Infringement, the Contractor shall, at Allo's option immediately and in a manner that minimises any disruptions to Allo's and Allo Group's operations, procure for Allo and Allo Group the right to continue its use of such infringing items free of charge or forthwith make without charge to Allo such alterations, modification or adjustments to such infringing items (without reducing or adversely affecting the functionality or performance thereof) as shall be necessary and acceptable to Allo to make them non-infringing.
- (d) If Allo and Contractor agree that none of these alternatives are available, Allo agrees to return the infringing item to the Contractor, and Allo shall be entitled to make a claim against the Contractor for all costs, expenses, losses and damages suffered without prejudice to any other rights or remedies available to Allo including termination.
- (e) Without prejudice to the other provisions of this Clause 26, any Intellectual Property Infringement shall be deemed to be a material breach of a condition of the Agreement and shall entitle Allo to terminate the Agreement forthwith upon written notice to Contractor.

28. ALLO GROUP

- 28.1 Allo may allow any or all other members of Allo Group to use, or otherwise enjoy, the benefit of the Works.
- 28.2 The Contractor acknowledges that Allo is liable to the other members of Allo Group for any loss, damage, cost, and expense incurred or suffered by those other members of Allo Group as a result of a breach of any of the terms of the Agreement (to the extent that those losses, damages, costs and expenses would have been recoverable by Allo from the Contractor under the Agreement, if they had been suffered by Allo) and the Contractor acknowledges that Allo

shall be entitled to claim from the Contractor for losses, costs, damages and expenses suffered by members of Allo Group as a result of any breach of the Agreement by the Contractor.

29. REPORTING

29.1 The Contractor must provide regular (and at minimum weekly) written reports as requested by Allo as to the performance of the Works in a format approved by the Allo

29.2 The reports must contain at a minimum details of:

- (a) the Works performed during the period since the last report;
- (b) Works to be performed and/or Works that has been performed;
- (c) any risks to the timely and successful completion of the Works and recommendations as to how to overcome or minimise those risks;
- (d) any defects, deficiencies and errors identified and the status of any efforts to correct the defects, deficiencies and errors encountered;
- (e) any comments of Allo's project manager that Allo's project manager specifies to be included.

30. AUDITING

30.1 Duty to keep records

The Contractor shall ensure that proper books, accounts, systems, documents, records relating to the Works are properly kept and maintained at all times in electronic and hardcopy form, for a period of seven (7) years from the date the Works completed.

30.2 Access by Allo to Conduct Audit

- (a) Allo shall have access to the Contractor's premises or any Worksite at which the Contractor's personnel or independent subcontractor appointed by the Contractor are performing the Works for the purpose of carrying out an audit to:
 - (i) view, examine, inspect and investigate any books, documents, records, equipment, system, data, accounts, products and machinery in relation to the

Works;

- (ii) observe the carrying out of the Works; and
 - (iii) request and obtain any information with regard to the Works, by giving the Contractor prior written notice or as required under Clause 29.5.
- (b) Allo may at its own cost and expense appoint an independent person duly authorised in writing to carry out the audit on its behalf.

30.3 **Result of the Audit**

If the audit reveals that the Works are not being properly or being effectively carried out, managed and operated by the Contractor in accordance with the terms and conditions of the Agreement, the Parties shall mutually cooperate to improve the performance of the management and operation of the Works within an agreed timeline to the satisfaction of Allo. If performance of the management and operation of the Works is not completed within the agreed timeline, Allo has the right to terminate the Agreement.

30.4 **Assistance**

The Contractor will provide reasonable co-operation to Allo and its internal and external auditors (at no additional cost to Allo) during the period of execution of the Works.

30.5 **Conduct of Audit**

- (a) Any exercise of Allo's rights must be conducted only for audit and in a manner that will result in a minimum of inconvenience and disruption to the Contractor's business operations (including execution of the Works). Audits may only be conducted (unless otherwise agreed by the Parties, each acting reasonably):
- (i) during the Contractor's normal business hours;
 - (ii) on not less than fourteen (14) days' prior written notice; and
 - (iii) no more frequently than annually unless there is a breach of the Agreement by the Contractor in which case, audits may be performed at such frequency as determined by Allo.

31. **HSSE REQUIREMENTS**

31.1 Allo places importance on health, safety, security and environment ("**HSSE**") requirements

and the Contractor shall comply with the industry's best practices and standards regarding HSSE and Allo's HSSE Requirements set out in the Agreement and any rules, requirements and policies regarding HSSE made known to the Contractor from time to time by Allo.

- 31.2 The Contractor shall deliver the highest HSSE standards in all aspects of the performance of the Works including ensuring that no person's safety is adversely affected or put at risk in the performance of the Works by implementing proper traffic management plans (which shall include the provision of adequate warning signages) at the Sites.
- 31.3 The Contractor shall and shall procure that the independent subcontractor appointed by the Contractor to perform the Works shall at all times comply with the requirements of this Clause 30. The Contractor shall ensure that its personnel and the personnel of the independent subcontractor appointed by the Contractor shall inform themselves of and understand and comply with the industry's best practices and standards regarding HSSE and Allo's HSSE Requirements and any rules, requirements and policies regarding HSSE made known to them from time to time by Allo.
- 30.4 To the extent that any personnel of the Contractor and the independent subcontractor appointed by the Contractor attend any site owned or controlled or occupied by Allo or any member of Allo Group for any reason, such personnel shall inform themselves of, understand and comply with all HSSE regulations, requirements, procedures, practices, systems and policies applicable at such sites from time to time. Allo and any member of Allo Group reserve the right to demand the immediate withdrawal of any personnel of the Contractor or the independent subcontractor appointed by the Contractor not complying with the foregoing.
- 30.5 In addition, Allo or any member of Allo Group may require the Contractor or the independent subcontractor appointed by the Contractor to comply in the performance of the Works with any other Allo's or Allo Group's HSSE regulations, requirements, procedures, practices, systems or policies that are issued by Allo or any member of Allo Group from time to time.
- 30.6 Allo shall have the right to inspect and audit the records of the Contractor and any independent subcontractor appointed by the Contractor (the Contractor shall ensure that this right of inspection and audit is incorporated in all contracts with the independent subcontractor appointed by the Contractor) as may be necessary in the opinion of Allo to verify compliance by the Contractor and the independent subcontractor appointed by the Contractor with the HSSE obligations and commitment to implementing mitigation action plans. Such inspections and audit may be carried out at any time from the Effective Date.

31. SPARE PARTS

- 31.1 The Contractor shall guarantee and be responsible for the adequate supply of all spare parts, including all protective elements and components required for the satisfactory performance

of the Works during the Term.

- 31.2 The spare parts supplied shall be the original spare parts or those which are functionally equivalent, capable of direct substitution and that which will not cause any downtime.
- 31.3 In the event that there have been changes in the model of any Equipment comprised in the Works, the Contractor shall supply Allo with such spare parts, the quality of which shall be equivalent to, or better than the original parts.
- 31.4 If such spares are not available for any Equipment which is not manufactured by the Contractor, the Contractor shall supply Allo with spares, the quality of which shall be equivalent to or better than the original parts.
- 31.5 In the event that the design of any item of the Equipment is to be replaced, modified or its manufacture is to be ceased, the Contractor shall at its own costs ensure a proper substitute is available in place thereof. The substituted parts in place thereof shall comply essentially in all aspects with the Agreement applicable to the part being replaced and must be identical thereto or directly compatible therewith.
- 31.6 Where no items are available due to cessation of production of the items, the Contractor shall provide a replacement of such items or compatible equivalent items.
- 31.7 In the event where the production of parts of any Equipment is to be ceased either by the Contractor or by a third party, an official notice shall be issued to Allo by the Contractor at least twelve (12) months prior to the discontinuation of such production to enable Allo to plan its future requirements. The Contractor shall, unless otherwise agreed, replace any operational Equipment with the latest equivalent product at no charge to Allo if the operational Equipment is obsolete or technical support and spares will be absent before the end of its life span and the replacement product shall inter-operate seamlessly with the existing Equipment.
- 31.8 The price payable by Allo for spare parts shall be calculated using the formula to be mutually agreed by the Parties.
- 31.9 The provisions of this Clause 31 shall survive the expiration or termination of the Agreement for any reason whatsoever.

32. EXPORT AND IMPORT LICENCES

- 32.1 The Contractor shall be responsible for obtaining export and import clearance, export and import license and/or any other Authorisations if so required by the Government or Laws. All the costs arising therefrom including but not limited to costs of application for the export and import clearance, export and import license and/or any other Authorisations, incidental

thereto or otherwise, and customs duties imposed by any country other than Malaysia shall be borne by the Contractor. Allo may in its sole discretion assist in obtaining the relevant approvals if so required. Customs duties imposed by the Government on the import of the Equipment shall be borne solely by Allo. For the avoidance of doubt, if the Contractor is required to pay the Government customs duties secure the release of the Equipment, the Contractor shall pay the customs duties imposed by the Government and then claim for reimbursement of the customs duties (free of interest) from Allo.

- 32.2 Without limiting the Contractor's obligations under Clause 32.1, the Contractor shall assist Allo in obtaining export and import clearance and all necessary approvals, authorisations and permits in the event that any Equipment is to be exported out of Malaysia for the purposes of repair and/or reimported back into Malaysia. All the costs arising there from including but not limited to costs of application for the approvals, authorisations and permits incidental thereto or otherwise and customs duties shall be borne by the Contractor.
- 32.3 All Equipment imported shall be in compliance with all Laws. The Contractor shall be responsible for making the applications for obtaining the Authorisations required except in cases where Allo has the responsibility for making the application in which case the Contractor shall have the duty to assist Allo in making such an application. Equipment imported/exported found to be not in compliance with relevant Laws and/or Allo Requirements shall be rejected by Allo. All costs arising therefrom and incidental thereto or otherwise and customs duties shall be borne by the Contractor.

33. DEFAULT BY THE CONTRACTOR

33.1 Events of Default

If the Contractor:

- (a) is in breach of the terms of the Agreement which breach it has failed to remedy within seven (7) Working Days from the date of Allo's written notice;
- (b) is in breach of the terms of the Agreement which breach is irremediable;
- (c) passes a resolution for its winding up or a court of appropriate jurisdiction makes an order for it to be wound up or dissolved or the Contractor is otherwise dissolved;
- (d) an administrator or a receiver or receiver and manager or administrative receiver or encumbrancer is appointed to take possession of or sell the whole or substantial part of its undertaking, assets or business;
- (e) enters into an arrangement, compromise or composition in satisfaction of its debts

with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of appropriate jurisdiction for protection from its creditors; or

- (f) is or is deemed unable to pay its debts as they fall due unless such debts are contested by the Contractor in good faith,

then Allo may issue a written notice of termination to the Contractor.

33.2 Termination

If the Contractor fails to remedy the relevant default within such period if any that is provided herein or such period as may be granted by Allo, termination shall take effect on the date specified in such notice.

33.3 No Compensation for Contractor's Breach

The Parties agree that the Contractor shall not be entitled to claim any form of losses including without limitation loss of profit, loss of goodwill, loss of revenue, loss of opportunity, damages or compensation, claims or whatsoever for its breach of the Agreement. Subject to Clause 35 of this COC, the Parties further agree that the payment by Allo of all valid invoices issued by the Contractor for Works completed prior to the Termination Date shall constitute full and final settlement between the Parties.

34 DEFAULT BY ALLO

34.1 Events of Default

If Allo:

- (a) fails to make payment to the Contractor pursuant to the Agreement;
- (b) passes a resolution for its winding up or a court of appropriate jurisdiction makes an order for it to be wound up or dissolved or Allo is otherwise dissolved;
- (c) an administrator or a receiver or receiver and manager or administrative receiver or encumbrancer is appointed to take possession of or sell the whole or substantial part of its undertaking, assets, rights and revenue;
- (d) enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of appropriate jurisdiction for protection from its creditors; or

- (e) is or is deemed unable to pay its debts as they fall due unless such debts are contested by Allo in good faith,

then the Contractor may issue a written notice to Allo specifying the default and requiring Allo to remedy the same within seven (7) Working Days from the date of receipt of such notice PROVIDED THAT where the default by Allo is under Clause 34.1(a), the Contractor shall provide a second written notice to Allo requiring Allo to remedy within forty five (45) Working Days from the date of receipt of the second notice.

34.2 Termination

- (a) If Allo fails to remedy the relevant default specified in Clause 34.1(a) within such period as stipulated herein, therefor the termination shall take effect thirty (30) Working Days after the last date of the expiry of the second notice.
- (b) If Allo fails to remedy the relevant default in Clause 34.1 above (other than Clause 34.1(a)) within such period, if any, as may be agreed by the Parties, then the Contractor may bywritten notice to Allo terminate the Agreement and termination shall take effect thirty (30) Working Days from the date of receipt of written notice.

35. TERMINATION FOR CONVENIENCE

- 35.1 Allo may terminate this Agreement for convenience at any time on giving thirty (30) Working Days written notice to the Contractor.
- 35.2 Subject to any obligation in accordance with an exit management plan as described in the Contract, if any, the Contractor's obligation under the Agreement shall end on the date set outin Allo's written notice set out in Clause 35.1 above.

36. RIGHTS AND LIABILITIES UPON TERMINATION OR EXPIRY

- 36.1 Upon the termination of the Agreement by Allo pursuant to Clause 33.2 or 39.1 or any applicable Clause of this COC:
 - (a) the rights and authority granted and the obligations under the Agreement shall terminate immediately;
 - (b) Allo:
 - (i) shall have the right to call upon the Performance Bond;

- (ii) shall be entitled to appoint a third party to carry out the Works that have not been completed as Allo deems fit;
- (iii) may claim and recover from the Contractor any payment for losses or damages suffered as a result of termination of the Agreement to the extent that such losses or damages exceed the sum demanded under the Performance Bond;
- (iv) shall pay the Contractor all the monies due and payable to the Contractor under the Agreement as at the Termination Date and which have not been paid for in respect of Works completed as at the Termination Date PROVIDED ALWAYS THAT Allo shall be entitled to set off by deducting any money owing from the Contractor to Allo in respect of the Liquidated Ascertained Damages and any other amount payable under the Agreement; and
- (v) shall be entitled to claim back or get a refund of amounts paid in advance for Works that have not been completed or performed as at the Termination Date.

(c) the Contractor shall:

- (i) forthwith cease all operations on the Works and deliver up to Allo, Allo's Confidential Information and cease use of Allo IP; and
- (ii) submit to Allo detailed reports, information, records and documents, that have been completed and necessary data in relation to the Works to enable Allo to continue with the provision of the Works by a third party;
- (iii) ensure that Allo shall be able to use the Equipment paid for by Allo free of any lien, security interest, options, third party interest and encumbrances of whatever nature and any claim by the Contractor and any third party; and
- (iv) deliver to Allo, Equipment that it has paid for or where not paid, the Contractor shall deliver to Allo the Equipment that Allo pays for within the time periods stated in the Implementation Plan.

36.2 If the Agreement is terminated by the Contractor pursuant to Clause 33.2 or by Allo pursuant to Clause 34.2 or by either Party pursuant to Clause 37.2 or Clause 39:

(a) Allo shall:

- (i) shall pay the Contractor all the monies due and payable to the Contractor under the Agreement as at the Termination Date for Works completed and which have not been paid PROVIDED ALWAYS THAT Allo shall be entitled to set off by deducting any money owing from the Contractor to Allo in respect of the

Liquidated Ascertained Damages and any other amounts payable under the Agreement; and

- (ii) at its option, pay the value of all orders for Equipment placed by the Contractor with its suppliers save and except for termination pursuant to Clause 41 of this COC, where Allo shall only pay the price charged to the Contractor by its suppliers and upon payment, the title to the Equipment shall vest in Allo and the Contractor shall deliver the Equipment within the time periods stated in the Implementation Plan; and
- (iii) save and except for termination pursuant to Clause 41, pay reasonable demobilisation costs related to the Works.

(b) the Contractor shall:

- (i) ensure that Allo shall be able to use the Equipment paid for free of any lien, option, security interest, third party interest and encumbrances of whatever nature and any claim of the Contractor and any third party;
- (ii) deliver to Allo the Equipment that it has paid for or where not paid, the Contractor shall deliver to Allo the Equipment that Allo pays for within the time periods stated in the Implementation Plan;
- (iii) cease use of Allo IP and deliver Allo's Confidential Information; and
- (iv) refund to Allo all sums paid in advance for Works which have not been completed as at the Termination Date.

36.3 Notwithstanding Clause 36.2 and unless Allo otherwise requires, during the time between service of a notice of termination of the Agreement and such termination exercise taking effect, the Contractor shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which it may incur as a result of the termination.

36.4 The expiry or termination of the Agreement shall not affect the rights and liabilities of the Parties which have accrued as at the Termination Date.

36.5 Notwithstanding anything contained in the Agreement, any provisions of the Agreement which, by their sense and context, are intended to survive performance by either or both Parties shall also survive the completion, expiry or early termination of the Agreement.

37. SUSPENSION OF THE WORKS

37.1 The Parties reserve the right to suspend the performance of the Works under the Agreement upon the occurrence of any of the following events:

- (a) Event of Force Majeure under Clause 41; or
- (b) by Allo's written instruction to suspend the Works for a certain period of time.

37.2 Allo may at any time following a suspension ordered pursuant to Clause 37.1(b), give notice to the Contractor to continue with the performance of the relevant part or all parts of the Works provided that in the event the suspension ordered pursuant to Clause 37.1(b) exceeds the period of six (6) months, either Party shall have the right to terminate the Agreement. Allo may extend the Time for Completion for a period the Works have been suspended under this Clause 37.

37.3 Upon termination of the Agreement pursuant to Clause 37.2 above by Allo, Allo shall:

- (a) pay all outstanding amounts due and owing to the Contractor for the Works completed;
- (b) where the suspension of the Works is not due to the fault of the Contractor, pay the value of all orders for Equipment placed by the Contractor with its suppliers PROVIDED ALWAYS THAT the Contractor shall deliver the Equipment to Allo and all terms and conditions applicable to delivered Equipment shall apply; and
- (c) where the suspension of the Works is not due to the fault of the Contractor, pay the Contractor the value of such other items as mutually agreed.

PROVIDED ALWAYS THAT the payment by Allo to the Contractor pursuant to this Clause 37.3 shall not prejudice Allo's rights under the Agreement.

38. EXIT MANAGEMENT

38.1 Upon the termination of the Agreement, the Parties shall comply with the exit management plan mutually agreed between the Parties, if any. The Contractor shall comply with its obligations contained in the exit management plan, if any. Allo agrees to pay the Contractor such amounts as agreed with the Contractor for undertaking the exit management plan. Notwithstanding the foregoing, the Contractor shall not be entitled to payment for undertaking the exit management plan where termination of the Agreement is pursuant to Clauses 33.2, 39.1 and 41.

38.2 In undertaking the exit management plan, the Contractor shall provide access during normal

working hours to Allo and/or its appointed representatives to:

- (a) such information relating to the Works as remains in the possession or control of the Contractor; and
- (b) the Contractor's personnel who have been involved in the Works for purposes relating to completing the Works.

39. TERMINATION ON CORRUPTION, UNLAWFUL OR ILLEGAL ACTIVITIES

39.1 The Contractor shall comply with all applicable anti-corruption laws, regulations and rules as well as Allo's internal policies and requirements pertaining to corruption, unlawful activities and giving of gifts. Without prejudice to any other rights of Allo, if the Contractor and/or its personnel is convicted by a court of law for corruption or unlawful or illegal activities in relation to the Agreement or any other Contract that the Contractor may have with Allo, Allo shall be entitled to terminate the Agreement at any time, by giving immediate written notice to that effect to the Contractor.

39.2 Upon such termination under Clause 39.1, the consequences specified in Clause 36.1 shall be applicable.

40. INSURANCE

40.1 The Contractor shall as condition precedent to commencement of any work under the Agreement, to ensure the Works are adequately insured, to cover any potential liability, loss or damage relevant to the performance of the Contractor's obligations throughout the Term.

40.2 The Contractor shall at its own cost and expense, effect and maintain throughout Term, insurances on the terms as approved by Allo. Upon request, the Contractor shall furnish certificates of insurance satisfactory and acceptable to Allo.

40.3 The Contractor is required to procure all relevant insurance policies, including but not limited to, the followings (whichever is applicable) prior to the commencement of the Works:-

- (a) Construction or Erection All Risks:

Section 1 – Material Damage: Sum insured to include value of the capital Works (materials, equipment and contract Works costs)

Section 2 – Third Party Liability: Limit of liability of RM1,000,000.00 anyone Accident and Unlimited for the Period of the policy.

The policy will have a Defective Liability Period (Extended maintenance Period) of 365 days upon completion of the Works.

- (b) Workmen's Compensation (WC) / Employer Liability (EL);
The Contractor shall maintain a Workmen Compensation Policy (WC) for workmen defined under Workmen Compensation Act 1952. The sum insured shall be declared as 15% of the Contract Sum. For employees not covered under Workmen Compensation Act, the Contractor shall maintain an Employer Liability Policy (EL), with a limit of RM5million.
- (c) Comprehensive General Liability (CGL); and/or
- (d) The necessary insurance coverage for the Works.

Nothing in this Clause 40 limits the obligations, liabilities or responsibilities of the Contractor under the other terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor in accordance with the obligations, liabilities or responsibilities under the Agreement.

41. EVENTS OF FORCE MAJEURE

41.1 Events

Neither Allo nor the Contractor shall be in breach of its obligations under the Agreement if it is unable to perform or fulfil any of its obligations under the Agreement (or any part thereof) as a result of the occurrence of an Event of Force Majeure.

41.2 Notification of Event of Force Majeure

If any Event of Force Majeure occurs by reason of which any of the Parties is unable to perform any of its obligations under the Agreement that Party so affected shall immediately notify the other in writing of the occurrence of the Event of Force Majeure applicable to its obligations under the 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.

41.3 Termination Due to Event of 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 the Agreement.

41.4 **Consequences of Termination due to Event of Force Majeure**

If the Agreement is terminated pursuant to Clause 41.3 above, all rights and obligations hereunder shall forthwith terminate and neither Party shall have a claim against each other save and except in respect of any antecedent breach and claims stated in Clause 36.2 of this COC.

41.5 **Delay**

- (a) Provided that the Party to the Agreement affected by the Event of Force Majeure has complied with the requirement to provide notice in accordance with Clause 41.2 above, the Party affected by the Event of Force Majeure shall not be liable for any delay in performing its obligations under the Agreement to the extent that such delay has been caused by one or more Events of Force Majeure and the time for completion of any obligation under the Agreement shall be extended by a mutually agreed period having regard to the course of action agreed to be undertaken.
- (b) Notwithstanding Condition 41.5(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, the Parties shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives and shall, if appropriate, give consideration to any amendment of the Agreement and the terms and conditions of such amendments.

42. DISPUTE RESOLUTION

42.1 **Resolution of Disputes**

The Parties agree that the terms of the Agreement and the provisions hereof shall be construed in accordance with the laws of Malaysia and the Parties agree to submit to the jurisdiction of the courts of Malaysia.

43. PROTECTION OF DATA

- 43.1 Both Parties agree to comply and have adequate measures in place to ensure compliance at all times with the provisions and obligations contained in all applicable laws and regulations in Malaysia, including but not limited to the Personal Data Protection Act 2010 ("**PDPA 2010**"), its subsidiary legislation and associated code of practice as amended from time to time in order to collect, use, process, record, hold, store, share and/or disclose any or all information related to the performance and obligations under the Agreement.

- 43.2 Each Party shall not transfer any personal data of a data subject to a place outside Malaysia without the prior written consent of the other Party, or the firstmentioned Party shall ensure that place in force any legislation that serves the same purposes or which is at least equivalent to the level of protection afforded by the Malaysian PDPA 2010.
- 43.3 Each Party shall implement adequate technical and organisational security measures to protect personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.
- 43.4 Each Party shall have the obligation to securely dispose of all personal data whether in written, electronic or other form or media given by the other Party and shall certify in writing to the other Party that such personal data has been disposed of securely upon request by the other Party at any time during the term or upon termination of the Agreement, if it is no longer required for the purpose for which it was to be processed. For avoidance of doubt, PDPA 2010 does not override other applicable laws in Malaysia that allows the retention of documents for a specified period, upon the expiry or termination of the Agreement.
- 43.5 The Party in breach of its obligations under this Clause 43 shall be liable for and shall indemnify (and keep indemnified) the other Party against each and every action, proceeding, liability, cost, claim, loss, expense (including legal fees and disbursements on a solicitor client basis) and demands incurred by the aggrieved Party which arise directly or in connection with the processing of personal data pursuant to the Agreement by the Party in breach, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non-compliance with any part of PDPA 2010 by the Party in breach or its employees, servants, agents or representatives.

44. CONFIDENTIALITY OF INFORMATION

- 44.1 For the purpose of the Contract, "**Confidential Information**" means:
- (a) information of whatever nature relating to each of the Parties and its business which is disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") in written, pictorial, electronic or in any other form, from or pursuant to discussions with any of the officers, employees, agents or advisers of the Disclosing Party; and/or
 - (b) information of whatever nature relating to the business of the Disclosing Party obtained during the execution of the Works or by observation during visits (if any) to its premises; and/or
 - (c) analysis, compilations, studies and other documents prepared by the Disclosing Party or the Disclosing Party's advisers which contain or otherwise reflect or are generated from

the information specified in paragraphs (a) or (b) above.

Without limiting the generality of the foregoing, the expression Confidential Information shall also include all facts, data, Allo Requirements, the Appendices, the Purchase Order, drawings, reports, accounts, expressions of views, board papers, processes, formulae, matters of a technical nature, research and development information, business records, notes, products, know-how, trade secrets, secret information, engineering, manufacturing, planning, employee details or other documents and things whether in written, oral, pictorial, electronic or in any other form disclosed and/or supplied by the Disclosing Party, its officers, employees, agents or advisers to the Receiving Party.

44.2 In consideration of the receipt and disclosure of the Confidential Information by the Receiving Party, the Disclosing Party hereby undertakes to the Receiving Party that:

- (a) The Disclosing Party shall maintain the Confidential Information in confidence and use it for the purpose of executing its obligations under the Agreement ("**Permitted Purpose**") and not for any other purpose. Without prejudice to the generality of the foregoing, the Disclosing Party undertakes that it:
 - (i) shall not make use of any Confidential Information in any manner other than for a Permitted Purpose;
 - (ii) shall not use or disclose any Confidential Information in whatsoever manner for the benefit of itself or any third party and shall not permit or disclose or assist any third party to make use of the same;
 - (iii) shall not use the Confidential Information in any manner detrimental to the Receiving Party or its group of companies;
 - (iv) the Disclosing Party shall not copy and/or reproduce any Confidential Information or extracts of documents containing Confidential Information in any way or duplicate Confidential Information whether by machine or otherwise or reduce it to writing including through scanning or any other digital means any part hereof except as may be reasonably and practicably necessary for the purpose of completing and performing the Works. Any copies, reproductions or reductions of the Confidential Information to writing shall be the property of the Receiving Party;
 - (v) the Disclosing Party shall not disclose any Confidential Information except for the Permitted Purpose and in confidence to such of its employees or directors who are required in the course of their duties to receive the same; and

- (vi) the Disclosing Party shall keep the Confidential Information separate from all other documents and information the Disclosing Party may hold.

The Disclosing Party shall ensure that proper protection is provided for the Confidential Information, which shall not be less than the same degree of care, which the Receiving Party uses to prevent the unauthorized use, dissemination or publication of its own most valuable confidential and proprietary information.

- 44.3 The Disclosing Party's obligations under Clause 44.2 above shall not apply to information:
- (a) which is or becomes public knowledge other than by a breach of an obligation of confidentiality by the Disclosing Party; or
 - (b) which is required to be disclosed by Law, by order of court of a competent jurisdiction or regulatory authority.

For clarity, the foregoing exception shall not apply to information relating to any combination of features or any combination of items of information merely because information relating to one or more of the relevant individual features or one or more of the relevant items (but not the combination itself) falls within any one or more of such exceptions under Clause 44.3. All Confidential Information disclosed shall remain the property of the Disclosing Party and the Receiving Party obtains no right of any kind to any Confidential Information disclosed to it.

- 44.4 Upon a written request from the Disclosing Party for the return of the Confidential Information by the Receiving Party, the Receiving Party shall as soon as possible return all documents and materials supplied by the Disclosing Party whether it is in written, electronic, graphic or physical form and all copies or reproductions thereof, containing all the Confidential Information to the Receiving Party and where applicable shall delete all Confidential Information from any computer, word processor or other device containing it. The Receiving Party shall certify in writing to the Disclosing Party that it has complied with the requirements of this Clause 44.5.
- 44.5 In the event that the Receiving Party is required by Law, by order of court of competent jurisdiction or by a regulatory authority to disclose all or any part of the Confidential Information, the Receiving Party may make such disclosure provided that the Receiving Party shall give the Disclosing Party immediate notice prior to such disclosure and shall consult with the Disclosing Party prior to such disclosure with a view of avoiding such disclosure. The Receiving Party undertakes to fully cooperate and take all lawful measures with the Disclosing Party in the event that the Disclosing Party, where legally permissible, elects to challenge the validity of such requirements to disclose.
- 44.6 The Parties agree that this Clause 44 shall continue to be in effect for a period of seven (7) years from completion of the Works or termination of the Agreement or such other period

of time prescribed by Law, whichever is later. In the event of breach or termination of the Agreement for whatever reason, the Contractor shall immediately return all the Confidential Information to the Disclosing Party in accordance with the provisions of Clause 44.5.

- 44.7 The Disclosing Party shall be entitled to seek equitable relief including seeking specific performance or injunctive relief in the event of any breach of this Clause 44 by the Receiving Party. Such remedies shall not be deemed exclusive to the Agreement and shall be additional to all other remedies available at law or equity. The Receiving Party shall indemnify the Disclosing Party for any costs, claims, demands or liabilities of whatsoever nature arising directly or indirectly out of a breach of the Receiving Party's obligations under this Clause 44 provided that there is no negligence, fraud or wilful default on the part of the Disclosing Party.

45. NON WAIVER

- 45.1 No failure or delay on the part of any Party in exercising nor any omission to exercise any right, power, privilege or remedy accruing to the other Party under the Agreement upon any default on the part of the other Party shall impair any right, power, privilege or remedy or be construed as a waiver thereof or any acquiescence in such default; nor shall any action by any Party in respect of any default or any acquiescence in any such default affect or impair any right.

46. SEVERABILITY

- 46.1 If any provision hereof is held to be illegal, invalid or unenforceable under the present or future laws of any applicable jurisdiction, such provision shall be fully several for that jurisdiction; and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised as part hereof. In lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part hereof a provision, as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is legal, valid and enforceable so as to give effect to the intent of the Parties hereunder.

47. NOTICES

- 47.1 Any notice, approval, consent, request, placement or orders or other communication required or permitted to be given or made under the Agreement shall be given by a Party in writing in the English language and delivered to the other Party's address or sent to the other Party's facsimile number as set out below and shall be deemed to be duly given or made in the case of delivery in person, when delivered to the other Party at such address or by facsimile transmission, when the other Party's facsimile number is shown on the sender's print-out for the transmission regarding the date, time and transmission of all pages:

To Allo

Allo Technology Sdn. Bhd.

Level 3, Left Wing, NOVA Building, Universiti Tenaga Nasional (UNITEN), 43000 Kajang, Selangor.

Attention : Chief Executive Officer

Fax No : 03-8800 5221

To the Contractor

As per Appendix to the Conditions of Contract.

48. AMENDMENTS

48.1 No amendment or modification to the Agreement shall be valid or binding upon the Parties unless it is made in writing by way of a supplementary contract specifically referring to the Agreement 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 the Agreement which shall remain in full force and effect as between both Parties.

49. ASSIGNMENT

49.1 Neither the Contractor nor Allo shall assign, transfer or novate the Agreement or any part of it or any benefit or interest conferred by the Agreement to any third party without prior written consent from the other Party.

49.2 Notwithstanding Clause 49.1, Allo may assign, transfer or novate the Agreement to:

- (a) a member of Allo Group which, as at the date of the assignment, has the financial capability to perform the obligations under the Agreement; and
- (b) upon prior written notice to the Contractor.

50. PUBLICITY AND BRANDING

50.1 The Contractor shall not, (without the prior written consent of Allo (which shall not be unreasonably withheld or delayed):

- (a) make any announcements or publicise the Agreement or its contents in any way; or
- (b) use Allo's name or brand in any promotion or marketing activities of the Service

Provider's products or services.

- 50.2 The Contractor acknowledges to Allo that nothing in the Agreement either expressly or by implication constitutes an endorsement by Allo of any products or services of the Contractor and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

51. RELATIONSHIP OF THE PARTIES

- 51.1 Nothing in the Agreement shall be construed as establishing or creating a partnership or a relationship of employer and employee between any of the Parties and none of them shall have any authority to bind the others in any way nor shall the Agreement be construed to constitute any Party the agent of the other Party.

52. COSTS

- 52.1 Each Party shall bear and pay its own legal fees and expenses in respect of the preparation and finalization of this COC. However, all stamp duties payable in relation thereto shall be borne by the Contractor.

53. SUCCESSORS BOUND

Subject to any provision to the contrary, the Agreement shall inure to the benefit of and be binding on the Parties and their successors-in-title and permitted assigns.

54. INDEPENDENT CONTRACTOR

- 54.1 The Contractor hereby acknowledges and agrees that it is appointed by Allo to perform the obligations under the Agreement as an independent contractor at the fees and upon the terms and conditions of the Agreement and pursuant thereto.

55. FURTHER ASSURANCE

- 55.1 The Parties shall at all times and from time to time do all such further acts and execute all such further deeds, documents and instruments as may be necessary or desirable in order to give full effect to and carry out the terms and conditions of the Agreement.

56. ENTIRE AGREEMENT

56.1 This Contract including all appendices hereto constitutes the entire agreement between the Parties with respect to the matters contained herein, supersedes any and all previous agreements and understandings between the Parties with respect to such matters and binds and ensures to the benefit of the Parties, their successors and assigns.

57. COUNTERPARTS

57.1 This Contract may be executed in counterparts by the Parties, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same Contract, provided that the Agreement will be of no force and effect until the counterparts are exchanged.

58. ANTI-BRIBERY AND INTEGRITY

58.1 Each Party agrees that, in connection with this Agreement, it will:

- (a) strictly comply with laws and regulations relating to anti-corruption including but not limited to the Malaysian Anti-Corruption Commission Act 2009 ("**MACCA**");
- (b) not engage in any action or omission which may violate laws and regulations relating to anti-corruption including but not limited to the MACCA throughout the term of this Agreement;
- (c) take all measures to prevent corrupt practices, unfair means and illegal activities at all times throughout the term of this Agreement;
- (d) immediately terminate this Agreement by way of written notice when it was found that the other Party is convicted by a court of law for corrupt practices, unfair means and illegal activities;
- (e) be entitled from the other Party to claim all losses, costs, damages and expenses (including any incidental costs and expenses) incurred arising from termination under Clause 58.1(d) above; and
- (f) not be held liable against the other Party to any form of losses including loss of profit, damages, claims or other items whatsoever upon termination under Clause 58.1(d) above.

59. ELECTRONIC SIGNATURE

59.1 The Parties may sign and deliver the Agreement electronically. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in the Agreement are intended to authenticate this writing and to have the same force and effect as physically signing the Agreement. Such electronic signatures shall signify the Parties' acceptance to the terms of the Agreement and the Agreement shall be legally binding to the Parties thereafter. Delivery of a copy of the Agreement or any other document contemplated by the Agreement, bearing:-

- (i) an original manual signature; or
- (ii) electronic signature (1) by facsimile transmission (including a facsimile delivered via the Internet); (2) by electronic mail in "Portable Document Format" ("PDF") or similar format intended to preserve the original graphic and pictorial appearance of a document; or (3) through the use of electronic signature software;

shall have the same effect as physical delivery of the paper document bearing an original signature.

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