

CONTRACT FORM

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ARTICLE 1 - DEFINITIONS AND INTERPRETATIONS

The following definitions shall apply to this CONTRACT except where the context otherwise requires:

- 1.1 **"Affiliates"** means any company or other entity that directly or indirectly through one or more intermediary controls or is controlled by or is under common control with a Party to this CONTRACT. "Control" in this context means ownership of more than fifty percent (50%) of the voting stock of the controlled company or the direct or indirect right to determine its actions by contract or otherwise.
- 1.2 **"Change Order"** means a document in the form shown in **EXHIBIT 9 – ADMINISTRATIVE PROCEDURES** to be issued by NIPPON which sets forth changes in the SERVICES and adjustments to the CONTRACT PRICE and rates or both, and which sets forth the basis on which CONTRACTOR will be compensated for the change, if applicable.
- 1.3 **"CONTRACT"** means the terms and conditions of this CONTRACT FORM and EXHIBITS, references and documents attached hereto or incorporated by references as may mutually be amended from time to time in accordance with the terms of this CONTRACT.
- 1.4 **"CONTRACT PRICE"** means the agreed compensation to be paid to the CONTRACTOR in a prescribed method as specified and qualified in **EXHIBIT 3 – CONTRACT PRICE SCHEDULE**.
- 1.5 **"CONTRACTOR"** means the Party entering into the CONTRACT with NIPPON for the performance of the SERVICES or part thereof as set forth in the CONTRACT and includes the CONTRACTOR personnel, representatives, successors and such other persons or body of persons to whom the CONTRACTOR has assigned this CONTRACT.
- 1.6 **"Co-Venturers"** means PETRONAS CARIGALI SDN. BHD., and/or any other Parties having a legal interest in the operation of NIPPON to which this CONTRACT or part thereof relate.
- 1.7 **"Documentation"** refers to manuals, handbooks, maintenance libraries, and other publications in whatever form listed in CONTRACTOR's quotation or supplied in connection with SERVICES.
- 1.8 **"External Software"** refers to stand-alone, off-the-shelf application software packages listed in CONTRACTOR's quotation which are licensed or leased to NIPPON in accordance with the CONTRACT by the applicable third party software vendors. Such third party software vendors are third party beneficiaries to the CONTRACT with NIPPON and shall have the right to enforce the terms and conditions of the CONTRACT to the extent that they apply to External Software.
- 1.9 **"NIPPON"** means JX Nippon Oil & Gas Exploration (Malaysia) Limited, its consultants, agents, officers and employees.

- 1.10 **"PETRONAS"** means Petroliaam Nasional Berhad, the National Oil Company of Malaysia incorporated under the Companies Act 1965 and having its registered office at Tower 1, PETRONAS Twin Towers, Kuala Lumpur City Centre, 50088 Kuala Lumpur.
- 1.11 **"Products"** refers to items listed in CONTRACTOR's quotation to NIPPON, including but not limited to the Software.
- 1.12 **"Proprietary Information"** refers to, without limitation: Software (including all enhancements, updates, corrections, derivative SERVICES and other modifications thereto), Documentation, diagnostic software, equipment or other materials used by CONTRACTOR in the performance of installation, warranty work or services; Software design information; CONTRACTOR supplied printed materials; visually transmitted information; and any modifications or components thereof, whether made by CONTRACTOR or NIPPON.
- 1.13 **"SERVICES"** means all duties to be performed rendered by CONTRACTOR or its SUB-CONTRACTOR as expressly set forth in the CONTRACT and all of CONTRACTOR's activities that are reasonably inferable from the description of the SERVICES as described in **EXHIBIT 1 – SPECIAL PROVISIONS AND SCOPE OF WORK**.
- 1.14 **"SOFTWARE"** refers to software identified in CONTRACTOR's quotation to NIPPON including, without limitation, application software, systems software, External Software, microcode and firmware, and, where included, documentation and manuals related thereto. For Software, the term "purchase" or "sale" means "license" or "right to use".
- 1.15 **"SUB-CONTRACTOR"** means any third party, as approved in writing by NIPPON, having an agreement with the CONTRACTOR for the performance of any part of the work in this CONTRACT.
- 1.16 **"Writing(s)"** means all printed or hand-written documentation including but not limited to all cables and similar items. All requests, approvals, notices and agreements required under this CONTRACT shall be in writing.
- 1.17 All headings, indexes, titles, subtitles, subheadings, words that are bold, italic, capitalised or otherwise emphasised are for ease of reference only and such emphasis should not be taken into consideration in the interpretation or construction of this CONTRACT.
- 1.18 Words importing the singular only also include the plural and vice verse where the context so requires.
- 1.19 The following documents together constitute this CONTRACT:

FORM OF AGREEMENT

CONTRACT FORM - ARTICLES 1 to 40

SPECIAL TERMS AND CONDITIONS (If any)

EXHIBIT 1 SPECIAL PROVISIONS AND SCOPE OF WORK

EXHIBIT 2 EQUIPMENT, MATERIALS SUPPLY & SERVICES [NOT APPLICABLE]

EXHIBIT 3 CONTRACT PRICE SCHEDULE

EXHIBIT 4 CONTRACTOR PERSONNEL

EXHIBIT 5 SUMMARY OF ROLES AND RESPONSIBILITIES

EXHIBIT 6 HEALTH, SAFETY AND ENVIRONMENT

EXHIBIT 7 BANK GUARANTEE FORMAT

EXHIBIT 8 PERFORMANCE GUARANTEE FORMAT
EXHIBIT 9 ADMINISTRATIVE PROCEDURES
EXHIBIT 10 ANTI-BRIBERY AND ANTI-CORRUPTION POLICY

In the event of any ambiguity, inconsistency or conflict between the provisions of the **CONTRACT FORM** and **EXHIBITS** listed above, the **CONTRACT FORM** shall take precedence and prevail over the **EXHIBITS**.

In the event of any ambiguity, inconsistency or conflict between the provisions of the **EXHIBITS**, NIPPON shall decide the order of prevalence amongst the **EXHIBITS**.

ARTICLE 2 - DURATION OF CONTRACT

- 2.1 Subject to the termination provision provided under this CONTRACT, the duration of this CONTRACT shall commence on the Effective Date for a period as stipulated in the FORM OF AGREEMENT.
- 2.2 NIPPON shall have the right to extend the duration of this CONTRACT for a period as stipulated in the FORM OF AGREEMENT. ("**Extension Period**") under the same terms and conditions including pricing and rates as the Primary Period.
- 2.3 NIPPON shall notify CONTRACTOR of its intention to exercise its right to extend the duration of the CONTRACT within thirty (30) days written notice prior to the expiry of the Primary Period.

ARTICLE 3 - CONTRACT PRICE

- 3.1 NIPPON shall pay CONTRACTOR the amounts detailed in **EXHIBIT 3 – CONTRACT PRICE SCHEDULE** for the satisfactory performance of the SERVICES in accordance with this CONTRACT.
- 3.2 Except as expressly provided in this CONTRACT, the CONTRACT PRICE shall be firm throughout the duration of this CONTRACT and shall not be revised for any reason whatsoever, unless agreed to in writing between NIPPON and CONTRACTOR.

ARTICLE 4 - PRODUCT LICENCE

CONTRACTOR grants to NIPPON a non-transferable, non-exclusive licence to use the Product for the duration of this CONTRACT and in accordance with **EXHIBIT 1 – SPECIAL PROVISIONS AND SCOPE OF WORK**.

ARTICLE 5 - MAINTENANCE AND SUPPORT

CONTRACTOR shall provide maintenance and support of the Product to NIPPON as specified in **EXHIBIT 1 – SPECIAL PROVISIONS AND SCOPE OF WORK**.

ARTICLE 6 - TAXES AND DUTIES AND SALES AND SERVICE TAX

- 6.1 The CONTRACTOR shall be responsible for and pay at its own expense, when due and payable, all taxes, Customs duties, assessments, royalties and any other charges levied by any government authorities of any countries relating to the SERVICES performed. The term "Customs duties" used in this Article shall include all applicable import duties, surtax, sales tax and all other statutory imposts but in exclusion of equipment or goods imported in NIPPON's name and which is on the current "Master List of Materials and Equipment for Upstream Petroleum Operations Exempted from Customs Duties and Sales Taxes" (hereinafter referred to as the "Master Exemption List" or "MEL").
- 6.2 The CONTRACTOR shall indemnify NIPPON against any claims, demands and cause of action arising out of any actual or alleged failure by the CONTRACTOR to make timely payment of any taxes or duties for which the CONTRACTOR is liable for or any actual or alleged failure by the CONTRACTOR to comply with applicable reporting, return or other procedural requirements with respect to importation of goods into Malaysia. This indemnity shall include, without limitation to, all penalties, awards and judgements, court and arbitration costs, attorneys' fees, and other reasonable expenses associated with such claims, demands, and causes of action.
- 6.3 NIPPON shall have the right to withhold payment due to the CONTRACTOR under this CONTRACT to the extent that such withholdings is required by the Government of Malaysia or any relevant authorities thereof, or by the government of any other country and payment by NIPPON to the respective governmental office of the amount of money so withheld shall relieve NIPPON from any further obligation to the CONTRACTOR with respect to the amount so withheld.
- 6.4 Any Sales and/or Service tax payable on the lump sums, fixed rates and any other prices set forth in this CONTRACT must be specified and separately stated in EXHIBIT 3 CONTRACT PRICE SCHEDULE.
- 6.5 When an invoice is due for payment, NIPPON shall reimburse CONTRACTOR the amount of Sales Tax for any taxable goods manufactured and supplied in Malaysia by the CONTRACTOR under the CONTRACT provided always Contractor shall provide NIPPON with a copy of Sales Tax notification letter issued by the Royal Malaysian Custom Department ('Custom Department') confirming that CONTRACTOR is licensed under the Sales Tax Act 2018 as a taxable person supplying taxable goods.
- 6.6 When an invoice is due for payment, NIPPON shall reimburse CONTRACTOR the amount of Service Tax for any taxable services rendered in Malaysia by the CONTRACTOR under the CONTRACT provided always Contractor shall provide NIPPON with a copy of Service Tax notification letter issued by the Custom Department confirming that CONTRACTOR is licensed under the Service Tax Act 2018 as a taxable person providing taxable services.
- 6.7 In each of the above invoices, the Sales Tax and Service Tax amount shall be separately stated from the price and/or rates, shall be separately itemised and must state the SST registration number in the invoice accordingly.

- 6.8 In each of the above invoices, the equivalent amount in Ringgit Malaysia for the purpose of calculating the Sales and Services Tax (“SST”) amount in accordance with Sales Tax Act 2018 and Service Tax Act 2018 shall be stated in the invoice. The exchange rate to be used to calculate the equivalent amount in Ringgit Malaysia shall be in compliance with the requirements under the law, regulations or guidelines issued by the Royal Malaysian Customs.
- 6.9 CONTRACTOR shall defend, protect and indemnify and hold NIPPON GROUP safe and harmless from any and all claims or liability for income, excess profits, royalty and other taxes assessed or levied by the Government of Malaysia or by any relevant authorities thereof or by the government of any other country against CONTRACTOR or any SUBCONTRACTOR or against NIPPON on account of any payment made to or earned by CONTRACTOR or any SUBCONTRACTOR. CONTRACTOR further shall protect and hold NIPPON GROUP harmless from all taxes assessed or levied against or on account of wages, salaries or other benefits paid to or enjoyed by employees of CONTRACTOR or any SUBCONTRACTOR, and all taxes assessed or levied against or on account of any property or equipment of CONTRACTOR or any SUBCONTRACTOR.

ARTICLE 7 - ACCEPTANCE OF SERVICES

- 7.1 NIPPON shall, without prejudice to its rights under **ARTICLE 23 – TERMINATION** have the right to monitor and review, from time to time, the CONTRACTOR’s performance of the SERVICES under this CONTRACT and CONTRACTOR’s compliance with its obligations hereunder.
- 7.2 NIPPON shall have the right to reject the SERVICES or parts of SERVICES which do not comply with this CONTRACT.

ARTICLE 8 - WARRANTY

- 8.1 CONTRACTOR warrants and guarantees that the SERVICES will be performed in a professional manner in accordance with good and sound applicable practices and with the requirements and conditions of this CONTRACT.
- 8.2 If NIPPON discovers any defects in the SERVICES, NIPPON shall notify CONTRACTOR of the defects. At NIPPON’s option, NIPPON may instruct CONTRACTOR to repair or replace or remedy the defective SERVICES at no charge to NIPPON.

ARTICLE 9 - INVOICING AND PAYMENTS

- 9.1 CONTRACTOR shall invoice NIPPON for the SERVICES performed as soon as possible as specified in **EXHIBIT 3 – CONTRACT PRICE SCHEDULE**. All invoices shall be prepared on CONTRACTOR’S official letterhead in accordance with **EXHIBIT 9 – ADMINISTRATIVE PROCEDURES** and the original shall be verified and signed by CONTRACTOR’S authorised personnel prior to submission to NIPPON.

- 9.2 Any charges made by CONTRACTOR for items reimbursable at actual cost under this CONTRACT or for payments made on NIPPON's behalf shall be properly itemised and shall be net of all discounts and allowances, whether or not taken by CONTRACTOR. Invoices must be supported by sufficient original documentation to fully support such reimbursement and permit verification thereof by NIPPON. Supporting documents include original service ticket, time sheet and/or man-hour reports verified by NIPPON's authorised personnel, third party invoices and/or other supporting data or information as is required or reasonably necessary to support the charges.
- 9.3 All invoices for SERVICES performed shall be submitted in duplicate, one (1) original and one (1) softcopy copy, each complete with the necessary original supporting documentation verified by the NIPPON's authorised personnel and shall indicate the CONTRACT number and title, location where SERVICES is performed or materials routed to, the name of NIPPON's authorised personnel authorising the services to be performed or materials to be purchased and shall be supported by relevant documentation to permit verification thereof. Invoicing currency shall be indicated on the invoice.
- 9.4 Invoices shall be addressed to: -
- (a) for original invoices:
- JX NIPPON OIL & GAS EXPLORATION (MALAYSIA) LIMITED**
Level 15, Menara Prestige
No.1, Jalan Pinang
50450 Kuala Lumpur
Attn.: Manager, Finance & Accounting Department
- (b) Softcopy of the invoices in PDF file format (in black & white copy) shall be emailed to the email address as stated in **EXHIBIT 9 - ADMINISTRATIVE PROCEDURES**
- 9.5 Payments of correct and undisputed invoiced items shall be made on or before the thirtieth (30th) day after receipt of the completed invoice. If the thirtieth (30th) day falls on Saturday, Sunday or a gazetted public holiday, the next working day shall be deemed to be the due date for payment.
- 9.6 NIPPON may dispute an invoice and shall withhold payment for incorrect invoice(s) without the appropriate supporting documentation required by NIPPON. NIPPON shall inform CONTRACTOR of the disputed item(s) within thirty (30) days of the receipt by NIPPON of the particular invoice.
- 9.7 In the event that NIPPON disputes any invoice, NIPPON shall be entitled to withhold from payment the invoice until the settlement of the dispute by mutual agreement.
- 9.8 Payment due to CONTRACTOR may be withheld by NIPPON on account of the following:
- 9.8.1 breach of CONTRACT and/or due to unsatisfactory performance of the CONTRACT;
- 9.8.2 the filing of claims against the NIPPON caused by acts or omissions of the CONTRACTOR or failure of the CONTRACTOR;

- 9.8.3 failure to submit and/or maintain the Bank Guarantee (including renewals), and/or Performance Guarantee, if required under the CONTRACT;
- 9.8.4 failure to submit and/or maintain valid insurance policies; or
- 9.8.5 failure of the CONTRACTOR to pay amounts when due for labour, facilities or goods used by CONTRACTOR in performing the SERVICES or amounts due to SUBCONTRACTOR on the SERVICES.
- 9.9 If and when the cause or causes for withholding any such payment has/have been remedied or removed by CONTRACTOR and satisfactory evidence of such remedy or removal has been presented to NIPPON, the payments withheld shall be made forthwith by NIPPON.
- 9.10 If CONTRACTOR fails to take appropriate remedial action or refuses to remedy or remove any cause for withholding such payments after delivery of written notice to CONTRACTOR by NIPPON, NIPPON shall be entitled to cause the same to be remedied or removed on its own and may deduct the cost including the expenses thereby incurred by NIPPON from any amounts due or owing or which may become due or owing to CONTRACTOR under the CONTRACT provided always that this provision shall not affect any other remedy to which NIPPON may be entitled to for the recovery of such sums.
- 9.11 All payments to CONTRACTOR by NIPPON under the terms of this CONTRACT shall be in **Ringgit Malaysia**. Malaysian laws and regulations established by Bank Negara Malaysia place restrictions on payments in other currencies. If CONTRACT Price is expressed in a foreign currency other than Ringgit Malaysia then, for the purpose of converting a foreign currency to enable payment to be made in Ringgit Malaysia, the rate of exchange to be used shall be the prevailing exchange rate on the day of payment quoted by MUFG bank (Malaysia) Berhad or any other bank as agreed by NIPPON. In the event that on such date the foreign exchange market is in a state of suspension due to official declaration of the Government of Malaysia or an appropriate agency thereof, the rates quoted immediately before such suspension shall be used. All bank charges pertaining to the payment shall be borne by the CONTRACTOR.
- 9.12 Upon notification of any erroneous billings made by or payments made to CONTRACTOR by NIPPON, CONTRACTOR shall within fourteen (14) days, make appropriate adjustments therein and reimburse to NIPPON any amounts of overpayment still outstanding as reflected by the said adjustments, notwithstanding the fact that a temporary withholding or a correction of discrepancy may have been effected previously. Notwithstanding the foregoing, NIPPON shall be entitled to deduct such amount from payment due to CONTRACTOR. Accordingly, NIPPON shall pay CONTRACTOR any amount of underpayment subject to verification thereof.
- 9.13 Payment made by NIPPON under this CONTRACT shall not preclude the right of NIPPON to thereafter dispute any of the items invoiced and shall not constitute an admission by NIPPON as to the performance by CONTRACTOR of its obligations hereunder and in no event shall any such payment affect the warranty obligations by CONTRACTOR. Any payments withheld shall be without prejudice to any other rights or remedies available to NIPPON.

- 9.14 All invoices, financial statements / settlements, and billings by CONTRACTOR to NIPPON shall reflect properly the facts relating to all activities and transactions handled for NIPPON's account.
- 9.15 CONTRACTOR shall submit the last invoices not later than ninety (90) calendar days after SERVICES has been completed.
- 9.16 CONTRACTOR shall advise NIPPON the CONTRACT payment details to facilitate payment under this ARTICLE.

ARTICLE 10 - CHANGES

NIPPON shall have the right, at any time, to make any change but such change shall in no way affect the rights or obligations of the Parties hereto except as provided in a written Change Order. All provisions of this CONTRACT shall apply to all changes. Such changes may include, but are not limited to, additions, deletions, substitutions, change of specifications, alterations, and modifications to this CONTRACT. The CONTRACTOR shall not proceed with any change prior to receipt of a Change Order.

ARTICLE 11 - ASSIGNMENT

The CONTRACTOR shall not assign or sub-contract this CONTRACT or any part thereof or any benefit or interest hereunder without obtaining NIPPON's prior written approval. NIPPON shall be entitled, at its absolute discretion, to approve or disapprove any assignment or sub-contract. Any purported assignment or sub-contract without the written approval of NIPPON shall be absolutely void against NIPPON and NIPPON in such event shall have no obligation whatsoever to the purported assignee or sub-contractors/SUBCONTRACTORS. Any assignment or sub-contract approved by NIPPON shall not release or relieve the CONTRACTOR of any of its obligations hereunder. NIPPON may assign this CONTRACT, including all rights and obligations hereunder, to any of its Affiliates, PETRONAS, or any contractor of PETRONAS, performing work in Malaysia under any of its Production Sharing Contracts at any time without approval by CONTRACTOR but prior written notification of the assignment must first be given to CONTRACTOR.

ARTICLE 12 - WAIVERS

The failure of NIPPON, at any time, or from time to time to enforce, or to require the strict adherence and performance of any of the terms and conditions of this CONTRACT, to exercise any option, right, or privilege hereunder, or to demand compliance as to any obligation or covenant, shall not constitute a waiver of any such terms and conditions and/or affect or impair such terms or conditions in any way, or the right, privilege, or option of NIPPON, or of the strict performance of the CONTRACTOR thereof unless an express waiver is properly executed and evidenced in writing. Waivers by NIPPON of any breach or non-observance by the CONTRACTOR of any of the terms and conditions of this CONTRACT shall not constitute or be construed as a waiver of any succeeding breach or non-observance of the same or any other terms or conditions.

ARTICLE 13 - ACCESS AND AUDIT RIGHTS

NIPPON shall have the right of access to audit all the CONTRACTOR's and its SUB-CONTRACTORS' documents and records related to this CONTRACT. Such right and documents and records shall remain in force and be retained for a period of not less than three (3) years after the expiry of this CONTRACT or any termination thereof.

ARTICLE 14 - SAFETY

The CONTRACTOR shall be responsible for the safety of all persons engaged on the SERVICES and all persons who may be affected by activities of the CONTRACTOR and shall comply with all the safety law and regulations. Additionally, CONTRACTOR shall strictly adhere to NIPPON's safety manual (a copy of which is available from NIPPON's office) at all times in the execution of the CONTRACT.

ARTICLE 15 - NOTICES

- 15.1 All instructions, notifications, agreements, authorizations, approvals and acknowledgments shall be in writing (letter, e-mail or facsimile) and sent to the other Party's respective designated representative at the address as per **EXHIBIT 9 – ADMINISTRATIVE PROCEDURES**.

Written notice or instruction shall be deemed to have been received:

- a) At time of delivery if delivered by hand
- b) At time of confirmed receipt if sent by e-mail or facsimile.
- c) At time of receipt or recorded delivery if sent by registered mail or courier service.

If the time of such deemed receipt is not during customary hours of business, notice shall be deemed to have been received at 10.00 a.m. on the first customary day of business thereafter.

- 15.3 Either Party may change the person or address to which notice shall be sent by giving the other Party written notice of such change.

ARTICLE 16 - BANK GUARANTEE AND PERFORMANCE GUARANTEE

- 16.1 CONTRACTOR shall furnish to NIPPON an irrevocable and unconditional first call Bank Guarantee in the form and content set out in **EXHIBIT 7 – BANK GUARANTEE FORMAT** of this CONTRACT issued by a major international commercial bank acceptable to NIPPON, within thirty (30) days of the award of this CONTRACT, by way of guarantee for the due performance by the CONTRACTOR of its obligations under this CONTRACT. The Bank Guarantee shall remain valid until sixty (60) days after the end of the duration of this CONTRACT, or any extension thereto or three (3) months after early termination of the CONTRACT, and its value shall be as stipulated in the FORM of Agreement. The aforesaid guarantee shall be binding on the CONTRACTOR notwithstanding any variations, alterations or extensions of time as may be made, given,

conceded or agreed upon under this CONTRACT. The costs and expenses of preparing, completing and stamping such document shall be borne by CONTRACTOR.

- 16.2 Should the expiry date of the Bank Guarantee required to be furnished pursuant to this Article occur before the expiry period mentioned above, the CONTRACTOR shall provide at least fourteen (14) days before the date of expiry, a fresh guarantee in the form similar to and in the same amount as that previously provided, except for a revised date of expiry which shall not be earlier than sixty (60) days after the end of the duration of this CONTRACT or any extension thereof. Should CONTRACTOR fail to provide the fresh guarantee as required, NIPPON shall without prejudice to all its other rights under the CONTRACT or the law, invoke the Bank Guarantee referred to in Article 16.1 or otherwise have the right to withhold any payments due or becoming due after the date of such failure by CONTRACTOR up to the amount of the required Bank Guarantee as referred to in Article 16.1.
- 16.3 If the Bank Guarantee to be furnished pursuant to Article 16.1, is not duly furnished by CONTRACTOR to NIPPON within the above prescribed period, NIPPON may at its option and without prejudice to any rights or claims it may have against CONTRACTOR by reason of CONTRACTOR's non-compliance with any of the provisions of this Article, terminate this CONTRACT by notice in writing to CONTRACTOR or otherwise have the right to withhold any payments that is due or becoming due to CONTRACTOR.

NIPPON shall thereupon not be liable for any claim or demand from CONTRACTOR under the provisions of this CONTRACT in respect of anything that has already been done or furnished, or in respect of any matter or thing whatsoever in connection with or relating to this CONTRACT, but NIPPON shall be entitled to be repaid by CONTRACTOR, in the event of termination, all out-of-pocket expenses incurred by NIPPON in obtaining a new contractor to perform the SERVICES.

- 16.4 NIPPON reserves the right to instruct CONTRACTOR to revise the Bank Guarantee amount to correspond to any increase in the CONTRACT Price. Failure to revise the Bank Guarantee value shall constitute a failure by CONTRACTOR to perform its contractual obligation, entitling NIPPON to make an immediate call on the Bank Guarantee.
- 16.5 If requested by NIPPON, CONTRACTOR shall furnish NIPPON with a Performance Guarantee duly executed by the parent, principal or associate NIPPON of CONTRACTOR in the format as set out in the **EXHIBIT 8 – PERFORMANCE GUARANTEE FORMAT** hereof.

ARTICLE 17 – INTELLECTUAL PROPERTY INDEMNITY

The CONTRACTOR shall indemnify and hold NIPPON, its Affiliates, Co-Venturers and PETRONAS harmless against all losses, claims, demands, proceedings, costs, damages, charges, and expenses that may arise by reason of any alleged or actual infringement of any patent, registered design, copyright, trademark or violation of process or other protected rights of any person or entity arising out of the CONTRACTOR performing its obligations in this CONTRACT or by reason of the manner in which the same is performed, or through the use by the CONTRACTOR of any patented device.

ARTICLE 18 - LIABILITIES AND INDEMNITIES

CONTRACTOR shall in the performance of the SERVICES be responsible for and shall protect, indemnify, save and hold NIPPON harmless from and against any claims, demands, and causes of action for property damage and/or injury arising out of the act or omission to act, negligent or otherwise, of CONTRACTOR.

ARTICLE 19 - LIMITATION OF LIABILITY

Neither Party shall be responsible to the other for any indirect or remote losses of any kind including but not limited to loss of revenue or anticipated profits, loss of production, loss of business opportunity or business interruption, regardless of cause and even if caused by negligence or breach of contract resulting from the carrying out of the operations or the exercise of rights by the Parties under this CONTRACT.

ARTICLE 20 - INSURANCE

- 20.1 Without prejudice to the CONTRACTOR's liability and responsibility as contained elsewhere in this CONTRACT, the CONTRACTOR shall procure and maintain at its own cost and expense during the performance of this CONTRACT any insurance(s) which may be relevant and/or which is required by law which the CONTRACTOR is subject to.
- 20.2 The CONTRACTOR shall cause the insurers thereof to waive any and all rights of subrogation against NIPPON, its Co-Venturers, their Affiliates, consultants and their respective agents, officers and employees.
- 20.3 The CONTRACTOR shall furnish to NIPPON upon request Certificates of Insurance evidencing the insurance coverages required in Article 20.1 including certified copies of official receipts evidencing payment of full premium thereof.

ARTICLE 21 – DEFAULT OF CONTRACTOR

- 21.1 In the event of the refusal or the inability or other failure of the CONTRACTOR to perform any part of the SERVICES in a safe, efficient, workmanlike, skillful and careful manner or with the required promptness and diligence, or in the event of the failure or refusal or inability of the CONTRACTOR to comply with any of the requirements of the CONTRACT, NIPPON may give written notice to the CONTRACTOR stating the details of such failure. If the CONTRACTOR does not within seven (7) calendar days after the receipt of such notice commence, and having commenced, continuously proceed with action satisfactory to NIPPON to remedy such failure, NIPPON may, at its option and regardless of the stage of completion of the SERVICES, notify the CONTRACTOR of any claim which NIPPON may have hereunder, and NIPPON shall have the right to immediately suspend part or all of the SERVICES, or terminate the CONTRACT by giving the CONTRACTOR notice in accordance with **ARTICLE 23 - TERMINATION**, or issue a notice of suspension in accordance with **ARTICLE 22 – SUSPENSION** hereof, at the sole discretion of NIPPON.

- 21.2 In the event of the CONTRACTOR becoming bankrupt or making arrangement with its creditors or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) having a resolution for its voluntary winding-up passed or having a provisional liquidator, receiver or manager of its business or undertaking appointed, or having possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the Floating Charge, NIPPON shall have the right to immediately terminate the CONTRACT by giving the CONTRACTOR notice of termination in accordance with **ARTICLE 23 - TERMINATION** hereof.
- 21.3 In the event of NIPPON giving the CONTRACTOR notice of suspension, or of termination, NIPPON shall pay to the CONTRACTOR the amount calculated in accordance with **EXHIBIT 3 – CONTRACT PRICE SCHEDULE** for the part of the SERVICES satisfactory completed at the date of the suspension or termination, which payment shall be reduced by any additional costs incurred by the NIPPON as a result of the default of the CONTRACTOR. These additional costs, which shall include any costs incurred by NIPPON in having the SERVICES completed by another contractor in excess of the amount provided in the CONTRACT as payable by NIPPON had the CONTRACTOR completed the SERVICES may be billed to CONTRACTOR or offset by NIPPON against any monies due or which may become due to the CONTRACTOR from NIPPON.
- 21.4 If NIPPON terminates for cause only part of the SERVICES, then CONTRACTOR shall cease its activities on the terminated part and continue on the remaining SERVICES, with appropriate adjustments to the CONTRACT PRICE and scheduled completion date(s).
- 21.5 Notwithstanding the foregoing, in the event of default by CONTRACTOR, NIPPON may, at NIPPON's sole discretion, invoke the Bank Guarantee and/or Performance Guarantee for completion of the SERVICES or as compensation for the losses suffered by NIPPON as a result of the default of CONTRACTOR.

ARTICLE 22 - SUSPENSION

- 22.1 At any time, NIPPON may elect at its sole option to suspend all or any part of the remaining SERVICES for any reason whatsoever and shall give notice to CONTRACTOR specifying the part of the SERVICES to be suspended and the effective date of suspension. CONTRACTOR shall cease performance of the said suspended part of the SERVICES on the effective date of suspension. CONTRACTOR shall continue to perform the unsuspended part of the SERVICES. CONTRACTOR shall be given sufficient time for orderly removal of personnel and items not required during suspension.
- 22.2 CONTRACTOR shall do whatever is necessary to preserve and protect the SERVICES already in progress and to minimise all costs to NIPPON and CONTRACTOR resulting from such suspension.
- 22.3 Notwithstanding anything to the contrary, no payment shall be made to the CONTRACTOR if such suspension is due to a default, negligence, omission or breach of the CONTRACT by the CONTRACTOR or any SUBCONTRACTORS or any other person for whose act any of them may be liable.

- 22.4 NIPPON shall not be liable to the other Party for loss of anticipated profits or consequential loss sustained on account of any suspension of the SERVICES or part thereof.
- 22.5 During such suspension period, NIPPON may opt at its sole discretion to compensate CONTRACTOR either in accordance with the applicable price schedule specified in **EXHIBIT 3 – CONTRACT PRICE SCHEDULE** or at any other mutually agreed rate.
- 22.6 NIPPON may, at any time, authorise resumption of all or any part of the suspended SERVICES by giving notice to CONTRACTOR specifying the SERVICES to be resumed and the effective date of withdrawal of suspension. The SERVICES shall be resumed by CONTRACTOR immediately after receipt of such notice, where applicable.

ARTICLE 23 - TERMINATION

- 23.1 Subject to provision provided under **ARTICLE 23 – DEFAULT OF CONTRACTOR** hereof, NIPPON shall have the right to terminate for cause, the CONTRACT by giving notice in writing specifying the effective date of termination. In either event, NIPPON shall have available to all rights and remedies provided in law or equity. Should NIPPON terminate this CONTRACT for cause, CONTRACTOR shall proceed to stop performance of the SERVICES at the first opportunity it becomes safe to do so.
- 23.2 In addition to NIPPON's rights to terminate as may be provided herein, NIPPON shall be entitled to terminate this CONTRACT under the following provisions:-
- 23.2.1 Notwithstanding any other provision in this CONTRACT, NIPPON shall have the right at its option to terminate this CONTRACT at any time and without giving the reason therefore by giving fourteen (14) days prior written notice of termination to CONTRACTOR. Such termination shall be effective on the date specified in the notice.
- 23.2.2 In the event of Force Majeure continuing for fourteen (14) days as specified in this CONTRACT, NIPPON shall be entitled to terminate this CONTRACT forthwith.
- 23.3 In the event of the termination of this CONTRACT under the provisions of this ARTICLE, CONTRACTOR shall only be entitled to receive payments for SERVICES performed up to the date of such termination as specified in the notice.

ARTICLE 24 - FORCE MAJEURE

- 24.1 Where any Force Majeure event renders impossible or hinders or delays the performance of any obligation under this CONTRACT, then the failure or omission of NIPPON or the CONTRACTOR to perform such obligation shall not be treated as failure or omission to comply with this CONTRACT.
- 24.2 Upon the occurrence of any Force Majeure event, the Party so affected in the discharge of its obligation shall promptly give written notice of such event to the other Party. The affected Party shall make every reasonable effort to remove or remedy the cause of such

Force Majeure or mitigate its effect as quickly as may be possible. If such occurrence results in the suspension of work under this CONTRACT for fourteen (14) days, the Parties shall meet and determine the appropriate measures to be taken.

- 24.3 The events falling within Force Majeure include but are not limited to acts of God or force of nature, landslide, lightning, earthquake, flood, fire, explosion, storm or storm warning, tidal wave, shipwreck and perils to navigation, act of war (declared or undeclared) or public enemy, strike (excluding strikes, lockouts or other industrial disputes or action solely amongst employees of the CONTRACTOR or its SUB-CONTRACTORS), act or omission of sovereign or those purporting to represent sovereign states, blockade, embargo, pandemic, quarantine, public disorder, sabotage, accident, or similar events beyond the control of the Parties or either of them.

However, Force Majeure shall not include occurrence as follows:-

- a) late delivery of SERVICES caused by congestion at CONTRACTOR's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; or
 - b) late performance by the CONTRACTOR and/or its SUB-CONTRACTORS caused by unavailability of equipment, supervisors, or labour, inefficiencies or similar occurrence; or
 - c) mechanical breakdown of any item of CONTRACTOR's or its SUB-CONTRACTORS' equipment, plant, or machinery; or
 - d) financial distress of the CONTRACTOR or its SUB-CONTRACTORS.
- 24.4 Upon the occurrence of any Force Majeure event and, if in the opinion of NIPPON, the CONTRACTOR cannot deliver the Products or should any act of Force Majeure causes suspension of SERVICES under this CONTRACT for a continuous period of at least fourteen (14) days and continuation of this CONTRACT will adversely affect NIPPON's SERVICES, then NIPPON shall have the option either to terminate this CONTRACT, in which case neither Party shall have any further obligation or liability hereunder.
- 24.5 Any delay or failure in performance by either Party thereto shall not constitute default hereunder or give rise to any claims for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure.
- 24.6 In the event of Force Majeure, the CONTRACTOR shall not be entitled to any compensation for suspension caused by Force Majeure.

ARTICLE 25 - LIENS AND CLAIMS

CONTRACTOR shall indemnify and hold NIPPON harmless from all liens, claims, assessments, fines and levies created, caused or committed by CONTRACTOR or by its SUB-CONTRACTORS and all costs, damages and expenses incidental thereto, including without limitation all court and arbitration costs, attorney's fees and other reasonable expenses.

ARTICLE 26 - ACTIONS ON BEHALF OF NIPPON

- 26.1 The CONTRACTOR is an independent CONTRACTOR and neither CONTRACTOR nor CONTRACTOR's employees are deemed to be agents or employees of NIPPON. CONTRACTOR shall take no action on behalf of NIPPON which would subject either Party to liability or penalty under any laws, rules, regulations or decrees of any relevant authority.
- 26.2 The CONTRACTOR shall have no authority to and shall not make any statements, representations or commitments of any kind or to take action which shall be binding upon NIPPON, except as provided for herein or otherwise authorised in writing by NIPPON.

ARTICLE 27 - CONFLICT OF INTEREST

- 27.1 The CONTRACTOR shall exercise care and diligence to prevent any actions being taken or conditions from arising which could result in a conflict with NIPPON's best interest. This obligation shall apply to the activities of the employees and agents of the CONTRACTOR in their relations with NIPPON's employees and their families, or with SUBCONTRACTORS and third parties, arising from this CONTRACT or related to the performance of the work hereunder. The CONTRACTOR's efforts shall include, but not be limited to, establishing precautions to prevent the CONTRACTOR its employees, officers or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations for the purpose of influencing individuals to commit acts contrary to NIPPON's best interest.
- 27.2 The Parties herein agree that the Malaysian Anti-Corruption Commission Act 2009 (Act 694) (**MACC Act**), as may be amended from time to time, is applicable and shall be referred to in this CONTRACT, which provisions are deemed to be incorporated by reference in this **ARTICLE**. CONTRACTOR states that it is familiar with and shall comply with the MACC Act.
- 27.3 CONTRACTOR shall comply at all times with all laws (whether international, national, state or otherwise) and regulations pertaining to anti-bribery and anti-corruption regulations, which are applicable to the WORK, and requirements as may be required by the Malaysian Government or other authorities having jurisdiction and otherwise as set forth by NIPPON in its Anti-Bribery and Anti-Corruption Policy and procedures and any other requirements (if any) stipulated in **EXHIBIT 10 – ANTI-BRIBERY AND ANTI-CORRUPTION POLICY**.
- 27.4 CONTRACTOR shall have a written policy on Anti-Bribery and Anti-Corruption which is of a standard comparable to NIPPON's Anti-Bribery and Anti-Corruption Policy and which has been signed and dated and is actively supported and endorsed by CONTRACTOR's management. The policy shall be written in English and/or Bahasa Malaysia language. CONTRACTOR's policy shall include a description of CONTRACTOR's responsibilities including adequate measures to counter CONTRACTOR's corporate liability under Section 17A MACC Act.
- 27.5 CONTRACTOR shall maintain records of all transactions relating to the performance of this CONTRACT, including, without limitation, the spending of money, any other disposition of assets and the incurrence of liabilities, expenses and contractual

obligations, in accordance with applicable laws. Such records shall fairly and accurately reflect the transactions undertaken by CONTRACTOR in the performance of this CONTRACT.

- 27.6 CONTRACTOR represents that it has not done any act or attempt to corruptly solicit or receive or agree to receive, or give, promise or offer, or agreed to give or offer, accept or obtain, or agreed to accept or attempt to obtain, any gratification from and/or to any person, which includes but not limited to, any officer of a public body or foreign public official (as defined under the MACC Act), in connection with this CONTRACT as an inducement or reward for doing or forbearing to do any act or to secure any improper advantage or benefit in relation to the matters contemplated by this CONTRACT, either directly or indirectly through a third party, and further, CONTRACTOR represents that it will not so act in the future.
- 27.7 In recognition of the principles of the MACC Act, CONTRACTOR represents and agrees that it will not, directly or indirectly, in connection with this CONTRACT and the matters resulting therefrom, corruptly solicits or receives or agrees to receive, or gives, promises or offers, or agrees to give or offer, accepts or obtains, or agrees to accept or attempts to the matters resulting therefrom, corruptly solicits or receives or agrees to receive, or gives, promises or offers, or agrees to give or offer, accepts or obtains, or agrees to accept or attempts to obtain any gratification from and/or to any person, which includes but not limited to, any officer of a public body or foreign public official (as defined under the MACC Act), as an inducement or reward for doing or forbearing to do any act or for the purpose of influencing the act, decision or omission to obtain or retain business related to this CONTRACT, to direct business related to this CONTRACT to any person, or to obtain any improper advantage or benefit. If CONTRACTOR should become aware of any breach, or possible breach, of the provisions of this **ARTICLE**, it shall at the earliest promptly notify NIPPON thereof in writing, including complete details thereof and lodge a report at the nearest office of the Malaysian Anti-Corruption Commission or police station.
- 27.8 CONTRACTOR covenants that should NIPPON notify it of any concerns that there has been a breach of the provisions of this **ARTICLE**, it shall cooperate in good faith with NIPPON in determining whether such a breach has occurred. If such a breach has occurred or CONTRACTOR has taken any action that would create a material risk of liability for NIPPON under any applicable law, it shall be entitled to treat the breach as an event of default by CONTRACTOR and to exercise any rights it may have under this CONTRACT upon the occurrence of an event of default by CONTRACTOR, without regard to any waiting periods or cure periods (if any) specified in this CONTRACT.

ARTICLE 28 - CONFIDENTIALITY

The CONTRACTOR shall obtain written approval from NIPPON prior to disclosing or making any publicity release, public statements or announcement, by way of press or other media, regarding this CONTRACT. The CONTRACTOR shall at all times hold confidential all information pertaining to this CONTRACT, which is not already part (unless through the breach of CONTRACTOR of its confidentiality obligations hereunder) of the public domain. The CONTRACTOR shall ensure that the provisions of this **ARTICLE** are adhered to by its employees and, its SUB-CONTRACTORS' and SUB-CONTRACTORS' employees and shall promptly notify NIPPON upon discovery of any

instances where any of the requirements of this **ARTICLE** have not been complied with. Upon receipt by the CONTRACTOR of NIPPON's notification of termination, the CONTRACTOR shall return to NIPPON all documents, drawings and data provided to the CONTRACTOR by NIPPON. This **ARTICLE** shall continue in force notwithstanding the completion or earlier termination of this CONTRACT.

ARTICLE 29 - ARBITRATION

Any dispute between the Parties as to the performance of this CONTRACT or the rights or liabilities of the Parties herein, or any matter arising out of the same or connected therewith, which cannot be settled amicably shall be settled by arbitration in accordance with the rules of the Asian International Arbitration Centre (AIAC) before a board of three (3) arbitrators. Each of the Parties hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator. In the event agreement upon the third arbitrator cannot be reached, the third arbitrator shall be appointed by the Director of AIAC. It is agreed, however, that no one who is an employee of either Party or who is in anyway financially interested in this CONTRACT shall be appointed to act as an arbitrator. Such arbitration shall be held in the English language at Kuala Lumpur, Malaysia. The award of the arbitrators shall be final and binding upon the Parties. The costs of the arbitration, shall be borne by the Party whose contention was not upheld by the arbitration tribunals, unless otherwise provided in the arbitration award.

ARTICLE 30- COMPLIANCE WITH LAW

- 30.1 In the performance of this CONTRACT, the CONTRACTOR and its SUBCONTRACTORS shall be subject to all applicable laws. For the purpose of this **ARTICLE**, "laws" includes any laws; national, state, municipal, local or others and any requirements, ordinances, rules or regulations of any relevant authority or agency; national, state, municipal, local or other.
- 30.2 The CONTRACTOR shall, at CONTRACTOR's own expense, defend, indemnify and hold NIPPON harmless from all forms of penalty which may be imposed on NIPPON by reason of any alleged or violation of law by the CONTRACTOR or its SUB-CONTRACTOR and also from all claims, suits, or proceedings that may be brought against NIPPON arising under, growing out of, or by reason of the performance of this CONTRACT with respect to such alleged or violation of law whether brought by employees of the CONTRACTOR or its SUB-CONTRACTOR or by third parties or by any relevant authority.
- 30.3 CONTRACTOR's obligations under this **ARTICLE** shall include, without limitation, obtaining all necessary or appropriate import licences, Customs clearances or permits wherever applicable.
- 30.4 If the CONTRACTOR or its SUBCONTRACTORS perform any part of the SERVICES hereunder in breach of the law, then the CONTRACTOR shall bear any additional costs resulting from the said violation and correction thereof. The CONTRACTOR shall not enter into negotiations with any relevant authority or agency to develop acceptance to exemption, composition, variation, or revision to law in connection with this CONTRACT without NIPPON's prior written approval.

ARTICLE 31 - GOVERNING LAW AND LANGUAGE

- 31.1 The validity and interpretation of this CONTRACT and the legal relations of the Parties to it shall be governed by and construed according to the laws of Malaysia.
- 31.2 All documents produced by the CONTRACTOR in the performance of this CONTRACT as well as all written communications between NIPPON and the CONTRACTOR shall be in the English language which is hereby designated the governing language of this CONTRACT.

ARTICLE 32 - ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements related to this CONTRACT, either written or oral, including NIPPON's bid document and CONTRACTOR's proposals except to the extent they are expressly incorporated into this CONTRACT. No changes, alterations, or modifications to this CONTRACT shall be effective unless in writing, and executed by the authorised signatories of NIPPON and the CONTRACTOR.

ARTICLE 33 - NON-EXCLUSIVE AGREEMENT

This CONTRACT is non-exclusive and NIPPON reserves the right to engage other contractors to perform similar or identical SERVICES at any time during the duration of this CONTRACT.

ARTICLE 34 – ELECTRONIC SIGNATURE

Parties acknowledge and agree that this CONTRACT may be executed and delivered by email or by means of any other electronic signature by any of the Parties, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature subject to the Electronic Commerce Act 2006.

The receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature or signatures delivered by email.

END OF ARTICLES