

SECTION 4: Contract Terms and Conditions

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BPC Contractor Handbook

THIS CONTRACT ("Contract") is made on the _____ ("Contractual Date")

BETWEEN

BERAKAS POWER COMPANY SDN BHD, a company incorporated in Brunei Darussalam under the Companies Act (Cap 39 of the laws of Brunei Darussalam) whose business address is at Berakas Power Station, Lebuhraya Rimba / Jalan Utama Terunjing, Kg. Terunjing Baru, Berakas BB1514, Brunei Darussalam ("**Client**").

AND

[BIDDER'S COMPANY NAME] a company incorporated in [COUNTRY], whose business address is at [BUSINESS ADDRESS] ("**Contractor**").

hereinafter collectively referred to as the "**Parties**", individually referred to as a "**Party**" unless otherwise described.

WHEREAS the Client requires the Contractor to undertake the **Engineering Design and Structural Strengthening of Existing Reinforced Concrete Floor Slab for Additional 66kV GIS Equipment at BPC Facilities** in accordance with the terms and conditions of this Contract, and has accepted the Contractor's Bid for the execution and completion of the Contract Scope and the remedying of any defects therein.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATIONS, DEFINITIONS AND LANGUAGE

1.1. Interpretation

In this Contract unless the context requires otherwise:

- a. References to "Clauses" and "Schedules" are to clauses and schedules within this Contract.
- b. The Schedules shall form an integral part of this Contract.
- c. Headings to the Clauses and Schedules are inserted for ease of reference and shall not affect the interpretation and construction of this Contract.
- d. Words denoting the singular shall include the plural and vice versa; references to a gender shall include all genders; and references to a person shall include a natural person, company, partnership, firm, unincorporated association or any other legal entity whether acting as trustee or otherwise.
- e. "In writing" means any printed or emailed communication that result in a permanent record.
- f. References to day shall mean calendar day.
- g. References to time shall mean that time in GMT +8:00.
- h. References to public holiday shall mean public holiday in Brunei Darussalam.
- i. Reference to a month or year are according to the Gregorian calendar.
- j. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- k. This Contract shall bind the Parties' legal representatives, successors and permitted assigns.

1.2. Definitions

In this Contract, unless the context otherwise requires, the following terms shall have the meanings assigned to them:

"Bid" means the Contractor's submitted offer to the Client for the execution and completion of the Contract Scope.

“**Completion Time**” is as defined in **Schedule 1**.

“**Contract**” means the agreement between the Client and the Contractor for the provision of the Contract Scope including all referenced documents establishing the Parties’ rights and obligations.

“**Contract Scope**” means all design, engineering, procurement, construction, testing, commissioning, works, materials and to be provided and completed by the Contractor under this Contract, as described in **Schedule 1**, for the successful completion of the civil works.

“**Contract Period**” means the period from Contractual Date until the end of the Defects Liability Period of the last station.

“**Contract Price**” means the amount stated by the Contractor in the Contract Bill of Quantities and payable by the Client for the performance and completion of the Contract Scope. The Contract Price shall be deemed to include all costs and expenses, including shipping, packing, freight, insurance, local transportation, wharfage, customs handling charges, duties, taxes, Brunei withholding tax (if applicable).

“**Contractor’s Liaison**” means the person appointed by the Contractor to be the central contact, available twenty-four hours a day, including weekends and public holidays, and who shall be responsible for liaison among the Parties.

“**Contractual Date**” means the commencement date of this Contract.

“**Defects Liability Period**” means the **twelve (12) months** from date of Practical Completion Certificate signed by the Client for each station.

“**Parties**” means the Client and the Contractor.

“**Practical Completion Certificate**” means the certificate to be issued by the Client upon successful for signing by the Client to signify acceptance of completion of the works for each station.

“**Specification**” means the drawings, procedures, codes, standards, project requirements, technical specifications and documentation (Scope of Work) as guaranteed by the Contractor for Contract Scope in **Schedule 1**.

“**Supervisor**” means a competent Contractor’s personnel assigned to supervise the site works on a full-time basis.

1.3. **Language**

The official language for all communications, documentation and correspondence under this Contract shall be English.

2. **CONTRACT SCOPE**

- 2.1. The Contractor agrees to perform, execute and complete the Contract Scope within the Contract Price and Completion Time as set out in **Schedule 1**. The Contractor warrants that it has the necessary experience, expertise, resources and capability to carry out and complete the Contract Scope.
- 2.2. The Contractor warrants that no part of the works or services will be subcontracted, except minor work (i.e. engineering design, SHENA registered WSHC personnel, transportation logistics, testing services, minor concrete works). Failure to comply may result in termination of this Contract under **Clause 8**.

Contractor's Responsibilities, Site Safety and Conduct

2.3. The Contractor shall:

- 2.3.1. provide all supervision, labour, plant, equipment, tools, materials, Contractor's equipment, scaffolding, lifting equipment, whether temporary or permanent, required for the execution, completion of the works and remedying any defects under the Contract Scope;
- 2.3.2. be responsible for tracking and updating the works schedule and promptly notify the Client of any anticipated delay;
- 2.3.3. arrange and lead site meetings, as required, to discuss all matters relating to the works and the works schedule;
- 2.3.4. designate and maintain an area for waste storage and remove waste on a daily basis;
- 2.3.5. take all precaution to ensure no damage is caused to the Client's property, equipment, materials and machinery during execution of works. The Contractor shall be fully responsible for any damage caused by the Contractor;
- 2.3.6. ensure all plant, equipment, machinery, tools, surplus materials and temporary works are removed from the site upon completion of the works, and leave the site in a clean and tidy condition;
- 2.3.7. remove any worker considered disorderly, disruptive, unsatisfactory or in breach of the Client's HSE procedures, and provide replacement at no cost to the Client;
- 2.3.8. comply with all safety rules and regulations implemented by Client and relevant authorities;
- 2.3.9. remedy all defects during the Defects Liability Period; and
- 2.3.10. ensure security of the site until formal handover to the Client.

2.4. The Contractor's responsibilities shall include the following:

- 2.4.1. compliance with all relevant safety rules and regulations implemented by the Client (BPC Safety Rules & System Operating Regulations, BPC Health and Safety Policies and Procedures, BPC Contractors Handbook .e.g. HSE002 Lifting Operations & Lifting Equipment, HSE004 PPE, HSE006 Reporting of accidents, incidents and near misses, HSE008 RAMS, HSE011 Fork Lift Trucks, etc). Contractor shall sign and acknowledge the BPC Contractors Handbook prior to works commencement. Any personnel who demonstrate non-compliance to HSE may be removed from the site and the Contractor shall replace that personnel at its own cost. The Client has the right to stop work should there be any non-compliance of HSE procedures by the Contractor;
- 2.4.2. compliance to all relevant safety rules and regulations implemented by the relevant Government Authorities (i.e. Ministry of Development Health Safety & Environment Manual, Workplace Safety and Health Act, and all its subsequent regulations, etc);
- 2.4.3. take full responsibility for the adequacy, stability and safety of all site operations, all its personnel and subcontractor personnel on site, of all methods of construction and of all the works, irrespective of any approval or consent by the Client;

- 2.4.4. carry out his duties in accordance with good and generally acceptable practices and procedures of his trade or profession and in accordance with the professional and ethical standards of his trade or profession;
- 2.4.5. attendance by all its personnel working on-site, of a safety induction briefing to be conducted by the Client, prior to commencement of work;
- 2.4.6. ensure that his personnel are competent to manage the HSE procedures and have completed HSE trainings prior to worksite deployment. Any personnel who demonstrate non-compliance to HSE may be removed from the site and the Contractor shall replace that personnel at its own cost;
- 2.4.7. ensure that all equipment and accessories used are fit for purpose and certified for use as described in BPC HSE Procedures. Certifications must be available at time of use for viewing by the Client. Otherwise, the Client has the right to reject delivery or commencement of works until such evidence is shown, and the Contractor shall be responsible for the resulting delay. Operators must be competent, trained and certified with valid license. Where a non-routine/complex activity (e.g., lift) is identified, a detailed plan must be completed and provided to the Client in advance;
- 2.4.8. ensure that scaffold to be utilized are fit for purpose and is compliant to BS EN39:2011;
- 2.4.9. provision of full time SHENA registered WSHC personnel on site when works are being undertaken;
- 2.4.10. ensure that the Contractor's equipment, tools and PPE used are fit for purpose and used in compliance with BPC HSE Procedures, and approved as fit for use by the Client. Prior to commence of work, the Client shall inspect the Contractor's Equipment and PPE. The Contractor shall replace any equipment or PPE that does not comply with BPC HSE Procedures;
- 2.4.11. ensure that for any hazardous substances/chemicals supplied by the Contractor for use during the works, the Contractor shall provide a copy of the MSDS (Manufacturers Safety Data Sheet) to the Client in advance;
- 2.4.12. use proper PPE (Personal Protective Equipment);
- 2.4.13. take full responsibility for the security of the area where works are undertaken and the safety of its personnel, and provide reasonable measures to control and limit access for the protection and safety of the works and personnel;
- 2.4.14. where Contractor requires to undertake work under a BPC Permit, the Contractor shall nominate a person(s)-in-charge (PIC), who shall attend the required BPC training for assessment of their ability to be issued with a permit;
- 2.4.15. notify the Client immediately whenever accidents, incidents or near miss incidents occur;
- 2.4.16. responsible for making all arrangements for its personnel for undertaking the services and works, including travel, work permit, work pass, professional visit pass, etc;
- 2.4.17. carry out his duties in accordance with good and generally acceptable practices and procedures of his trade or profession and in accordance with the professional and ethical standards of his trade or profession;
- 2.4.18. full compliance with **Schedule A**: Contractor HSE Guidelines and Contractor Handbook where applicable;

- 2.4.19. full compliance with BPC HSE procedures HSE001 & 029 for working at height and attendance of required related training;
- 2.4.20. The Contractor shall provide where applicable or as requested by BPC, copies of:
- a. the Contractor's Health and Safety policy, plan and procedures;
 - b. certification for site plant, machinery, equipment and tools;
 - c. calibration and inspection certificates where applicable;
 - d. training certification for personnel;
 - e. specific personal certification for specialist work (e.g. welders, riggers, plant operators, electricians, technicians etc.);
 - f. records of any accidents, incidents or near misses that occur during the work;
 - g. records of any on site health and safety training or instruction;
 - h. site inspections, visits, or audits undertaken;
 - i. Material Safety Data Sheets for any chemicals and/or hazardous substances; and
 - j. waste transfer and consignment notes where required, for disposal of any hazardous waste off site.
- 2.4.21. The Contractor shall ensure at the work site, there is adequate provision of:
- a. suitably trained and qualified first aid personnel;
 - b. first aid equipment as required;
 - c. Personal Protective Equipment (PPE), that meets the minimum requirements set out in BPC HSE procedures;
 - d. the correct safe tools and equipment;
 - e. supervisory personnel;
 - f. a trained, qualified competent HSE person on-site; or suitable off-site support for HSE advice where it is agreed with BPC that onsite personnel are not required;
 - g. approved safety signage for the scope of work;
 - h. proper storage facilities for flammable gases;
 - i. welfare and toilet facilities; unless provision has been agreed with BPC;
 - j. fall arrest equipment when working outside a stable platform at height; and
 - k. ladders, step ladders and access equipment.

Risk Assessment and Method Statement (RAMS)

- 2.5. The Contractor shall submit the Risk Assessment & Method Statement (RAMS) to the Client for review and approval within **three (3) weeks** of the Contractual Date.

Consutant's Personnel

- 2.6. The Contractor warrants that all personnel assigned to the Contract Scope possess the necessary experience, expertise, skills and capability to perform the works effectively. One of the Contractor's personnel shall be designated as the PIC (Person-in-Charge) and shall be stationed on-site on a full-time basis during the execution of the works. The Contractor's personnel shall not be removed from their assignment without the prior written approval of the Client, such approval shall not be unreasonably withheld.

Supervisor During Works

- 2.7. The Contractor shall provide, on a full-time basis, a competent Supervisor on-site to supervise the execution of the works ("Supervisor"). The Supervisor shall attend regular meetings and shall not be removed from his assignment without the prior written approval of the Client, such approval shall not be unreasonably withheld. The Supervisor shall be responsible for ensuring that all Contractor personnel and subcontractor personnel comply fully with all HSE requirements. In the event the Supervisor fails to ensure compliance with the HSE requirements on more than five (5) occasions, the Contractor shall, upon **three (3) days'** notice from the Client, replace the Supervisor at no additional cost to the Client.

Access to Site

- 2.8. Once the Contractor has submitted the required documentation to the Client (e.g. RAMS) and permission to proceed with the works has been granted, the Client shall ensure that the

Contractor has unobstructed, unrestricted access to the site at all times prior to completion of the works.

3. CONTRACT PRICE AND PAYMENT TERMS

- 3.1. The Contract Price for the Contract Scope amounts to:
BND.....
Total Brunei Dollars.....
(**"Contract Price"**)
- 3.2. The Contractor shall submit progress claims based on the value of the works completed under the Contract Scope, accompanied by all relevant supporting documents.
- 3.3. The Client shall make payment within **thirty (30) days** of receipt of invoice. The Contract Price shall be increased or decreased based on additions or omissions in the Contract Scope as determined from time to time by the Client, and as agreed between the Parties in accordance with **Clause 10 Amendments and Variations**.
- 3.4. If any item rendered by Contractor is subject to question by the Client, the Contractor shall provide in writing a detailed explanation of the item, within **one (1) week** of the Client's enquiry. The Parties shall endeavour to resolve this within **three (3) weeks** of receiving the Contractor's explanation. No payment on the item shall be made until the issue is resolved.
- 3.5. Any bank charges imposed by the Contractor's banker as a result of the electronic bank transfer will be borne by the Contractor. The Client shall only bear charges from the Client's banker for the transaction made on the part of the Client.
- 3.6. Any other costs whatsoever incurred by the Contractor associated with the Contract Scope is deemed to have been accounted for by the Contractor in its Contract Price, and hence is not to the account of the Client.
- 3.7. Payments to the Contractor shall be made into the following account:
Account Name: Account Number:..... Bank Name:
.....

Retention Amount

- 3.8. The Client shall retain a "Retention Sum" of **seven-point five percent (7.5%)** from each progress payment certified and payable to the Contractor. The Retention Sum shall be released for each station upon expiry of **twelve (12) months** period from the date of signing of the Practical Completion certificate for that station, provided that all defects notified during such period have been satisfactorily rectified.
- 3.9. The Client shall be entitled to apply or set off against the Retention Sum any amounts due and payable by the Contractor under the Contract, including in the following circumstances:
- 3.9.1. failure by the Contractor to pay any amount due to the Client, whether agreed or determined under **Clause 7 Warranty, Clause 8 Failure to Perform and Clause 16 Resolution of Disputes**, within **thirty (30) days** of such agreement or determination;
- 3.9.2. failure by the Contractor to remedy any default within **thirty (30) days** after receipt of the Client's noticed requiring such remedy, or
- 3.9.3. circumstances entitling the Client to terminate the Contract under **Clause 9 Termination**, whether or not a notice of termination has been issued.

4. DEFECTS LIABILITY PERIOD

- 4.1. The Contractor represents and warrants that the works, equipment, tools and materials supplied under the Contract Scope shall be free from defects or failures arising from faulty materials, workmanship, or any act or omission of the Contractor. The Contractor further warrants that all equipment, tools and materials supplied shall be free from any encumbrances, liens, security interests, or other defects in title. All equipment and materials supplied shall be new, and all works shall be carried out in a competent and professional workmanlike manner.
- 4.2. In the event of any breach of the warranties under **Clause 4.1**, the Contractor shall, upon receipt of written notice from the Client or upon becoming aware of such breach, promptly and at its own cost rectify such defect, or where applicable, defend and clear title to the affected equipment, tools or materials.
- 4.3. The Defects Liability Period ("DLP") shall be **twelve (12) months** from the date of Practical Completion Certificate signed by the Client.
- 4.4. During the DLP, the Contractor shall, at its own cost, rectify and make good any defects in the works, including defects in workmanship, materials, equipment or installation. Such rectification shall include, without limitation, repair, adjustment, or replacement of defective parts, removal and reinstallation, and the provision of new materials or equipment, together with all associated costs including transportation, delivery, unloading, handling, and applicable duties and taxes.
- 4.5. If the Contractor fails to rectify any defects within **thirty (30) days** of receipt of written notice from the Client, the Client may, without further notice, carry out or procure the necessary remedial works and recover all costs and expenses incurred from the Contractor, either by direct payment or by deduction from the Retention Sum.

5. RISK OF LOSS & DAMAGE AND TITLE

- 5.1. Risk of loss and/or damage to the site, property and existing equipment shall transfer from the Client to the Contractor on the date of site handover.
- 5.2. Notwithstanding **Clause 5.1**, the Contractor shall bear the risk of loss of or damage to any Client-owned equipment, materials or property while under the Contractor's care, custody or control for the purpose of performing the works until the issuance of the Practical Completion Certificate for the relevant station. The Contractor shall be responsible for any such loss or damage and shall promptly repair or replace the same at no cost to the Client.
- 5.3. Risk of loss and/or damage of all materials, equipment and works forming part of the Contract Scope shall transfer from the Contractor to the Client upon the date of Practical Completion Certificate signed by the Client.

6. INSURANCE

- 6.1. The Contractor shall arrange and maintain sufficient marine and in-land transportation insurance cover for the equipment and materials. It is the duty of the Contractor to repair/replace any equipment or materials which is damaged/lost without additional costs to the Client irrespective of whether the sum received from the insurance is sufficient or not.
- 6.2. The Contractor shall have insurance for workmen compensation and common law/employer's liability for the Contractor's personnel and his subcontractor's personnel undertaking the works. The Contractor shall provide certificates evidencing such coverage to the Client upon request.

- 6.3. The Client shall arrange and maintain insurance for All Risk coverage for site works and shall have the Contractor named on the policy. The All Risk coverage shall also cover the Contractor's first tier subcontractors who are approved by the Client in accordance with **Clause 13**. Should there be any second tier subcontractors, it is the Contractor's responsibility to obtain All Risk insurance coverage to cover the second tier subcontractors' scope and BND1,000,000 third party legal liability insurance and provide certificates evidencing such coverage to the Client.

7. FAILURE TO PERFORM AND EXTENSION

Failure to Perform

- 7.1. Time shall be of the essence in respect of the Contractor's obligations. The Contractor acknowledges that the Client is relying on the Contractor to achieve completion of the works within the Completion Time. The Parties agree that, in view of the difficulty in accurately quantifying loss arising from delay, any delay damages payable by the Contractor under this Clause constitute a genuine pre-estimate of loss and are not a penalty.
- 7.2. If the Contractor fails to achieve Completion Time, the Contractor shall pay delay damages as follows:
- 7.2.1. Completion Delay: For failure to meet the Completion Time, delay damages shall be payable at the amount of **zero point three percent (0.3%)** of the Contract Price for the relevant station for each day of delay from the Completion Time until the actual date of Practical Completion certificate signed by the Client.
- 7.3. Payment of delay damages does not relieve the Contractor of its obligation to complete the works, or of any of its other duties, obligations or responsibilities under this Contract, nor does it limit any rights or remedies available to the Client under this contract or at law.
- 7.4. Once delay damages payable under this Clause reach **ten percent (10%)** of the Contract Price, the Client shall be entitled to terminate the Contract.
- 7.5. Within **thirty (30) days** of the expiry of the Completion Time, the Contractor shall include and clearly reflect any applicable delay damages in its invoices, and ensure that all such invoices are submitted net of such delay damages. If the Contractor fails to do so, the Client may, without prejudice to any other rights, deduct or set off the applicable delay damages from any amounts due or to become due to the Contractor, including from any invoice or the Retention Sum.

Extension

- 7.6. The Contractor may apply for an extension of Completion Time by submitting a written application to the Client as soon as practicable after the occurrence of the delaying event, providing full particulars and supporting evidence.
- 7.7. The Client shall notify the Contractor in writing of its determination of the application. Any extension of time shall be effective only if expressly approved in writing by the Client.
- 7.8. If an extension of time is not granted, the Contractor shall continue to perform its obligations and use all endeavours to meet the original Completion Time at its own cost and risk. The Contractor shall not be entitled to any additional payment or compensation arising from such delay unless expressly agreed in writing by the Client.

8. TERMINATION

8.1. Either Party can terminate this Agreement:

- 8.1.1. if the other Party commits a breach of its terms of this Contract, and such breach if capable of remedy, has not been remedied within **thirty (30) days** following a written notice having been served on the breaching Party; or
- 8.1.2. in the circumstances mentioned in **Clause 11 Force Majeure**; or
- 8.1.3. any Party passing a resolution for its winding up or a court of competent jurisdiction has made an order for any Parties' winding up or dissolution; or
- 8.1.4. if any Party suspend or threaten to suspend its operation; or
- 8.1.5. an administrative or receiving order has been made in relation to any of the Parties including if any Party files a petition for bankruptcy, civil rehabilitation, corporate reorganization or similar insolvency proceedings, or any Party is unable to make payments when they become due and payable without any justification; or
- 8.1.6. if any Party ceases to carry on business.

Termination by Client

8.2. The Client shall be entitled to terminate the Contract immediately by written notice to the Contractor if any of the following events occur:

- 8.2.1. the Contractor fails to achieve satisfactory acceptance of RAMS by the Client's HSE Department within **two (2) months** from the Contractual Date;
- 8.2.2. the Contractor's performance is unsatisfactory in providing the works/services required to fulfil the Client's intended purpose;
- 8.2.3. the Contractor fails to comply with the Contract Scope;
- 8.2.4. the Contractor persistently fails to supply sufficiently skilled personnel, proper materials, or suitable equipment;
- 8.2.5. the Contractor repeated fails to comply with BPC HSE procedures and has been issued **three (3) written notices** by the Client regarding such non-compliance;
- 8.2.6. the Contractor abandons the works or otherwise clearly demonstrates an intention not to continue performing its obligations under the Contract;
- 8.2.7. the Contractor subcontracts any part of the works without obtaining the prior written approval of the Client;
- 8.2.8. the Contractor assigns any part of the Contract without obtaining the prior written approval of the Client; or
- 8.2.9. the Contractor fails to achieve completion within the Completion Time as guaranteed by the Contractor, the maximum delay threshold under **Clause 7 Failure to Perform and Extension** has been reached, and no extension of time has been granted by the Client.

Consequence of Termination

8.3. Upon termination of this Contract:

- 8.3.1. all obligations, duties and liabilities of the Parties shall immediately cease, except for any rights, obligations, liabilities or duties that accrued prior to the effective date of termination, including any warranties provided by the Contractor; and.
- 8.3.2. if the termination is due to the Contractor's default, the Contractor shall reimburse or pay to the Client all costs, expenses and amounts incurred by the Client to correct any defective, incomplete or non-conforming works. In addition, the Contractor shall be liable for any additional damages suffered by the Client as a result of the Contractor's failure to perform, including but not limited to costs arising from delays, additional labor, and material expenses incurred by the Client in order to complete the works or mitigate any loss. The Contractor acknowledges that such reimbursement is fair and represents the Contractor's failure to complete the work or breach of the terms or conditions of this Contract.

9. LIABILITY

- 9.1. No Party shall be responsible to the other Party for any indirect or consequential damages, including but not limited to loss of profit, loss of production or loss of Contract.
- 9.2. The limitation of liability of the Contractor to the Client shall not exceed the Contract Price, or aggregate Contract Price, should there be additional variations, if any.
- 9.3. For damages to persons, the Contractor shall be liable to the extent provided by the relevant laws.
- 9.4. This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

10. AMENDMENTS AND VARIATIONS

Any and all technical or financial variations or amendments to the Contract must be mutually agreed upon by both Parties and documented through a written Variation Order. No variations to the Contract or to any equipment or works listed in the Contract Scope shall be deemed valid or enforceable without the prior written approval of the Client, and any work performed or equipment supplied without such approval shall be at the Contractor's sole risk and expense.

11. FORCE MAJEURE

- 11.1. Force Majeure means an exceptional event or circumstance defined as follows:
 - 11.1.1. which is beyond a Party's control;
 - 11.1.2. which that Party could not have reasonably have provided against before entering into the Contract;
 - 11.1.3. which having arisen, that Party could not reasonably have avoided or overcome; and
 - 11.1.4. which is not substantially attributable to the other Party.
- 11.2. Force majeure, may include but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions in **Clause 11.1** are satisfied:
 - 11.2.1. acts of God;
 - 11.2.2. war, hostilities, invasion, act of foreign enemies;

- 11.2.3. rebellion, terrorism, revolution, insurrection, civil war, riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and its sub-contractors;
- 11.2.4. natural catastrophes such as serious flooding, plague or other epidemics.
- 11.3. The affected Party shall promptly upon occurrence of any such cause, inform the other Party in writing, stating that cause has delayed or prevented its performance (and the likely duration) and shall take all reasonable steps to overcome the delay or non-performance and shall with due diligence furnish relevant information as is available concerning the event and give an estimate of the period of time required to remedy. A statement in writing by a competent, authoritative independent body such as the local Chamber of Commerce, confirming the veracity of a Force Majeure event claimed by any of the Parties shall be accepted as conclusive evidence thereof.
- 11.4. If the Party claiming the Force Majeure Event has complied with **Clause 11.3**, its performance under this Contract shall be suspended for the period that the Force Majeure Event continues and the Party shall have an extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage. For such delay or stoppage:
 - 11.4.1. any costs arising from the delay or stoppage shall be borne by the Party incurring those costs;
 - 11.4.2. if the delay or stoppage continues for more than **thirty (30) continuous days**, either Party may terminate this Contract with immediate effect on giving written notice to the other and neither Party shall be liable to the other for such termination.

12. INDEMNITY

The Parties shall indemnify and hold harmless from each other against any loss, damage or liability whatsoever arising in respect of loss or damage of property, personal injury or death of any persons caused by or arising out of any act, neglect, omission or default of its own, agents or servants.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1. The Contractor shall not assign or transfer any of its rights, obligations or interests under this Contract without the prior written consent of the Client. Any attempt to assign or transfer rights, whether voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or otherwise, is strictly prohibited. For purposes of this **Clause 13**:
 - 13.1.1. a change in control of the Contractor shall be deemed an assignment of rights; and
 - 13.1.2. a merger shall refer to any corporate merger in which the Contractor is a party, regardless of whether it is the surviving or disappearing entity.
- 13.2. If the Contractor assigns its rights or obligations under this Contract without obtaining the Client's prior written consent, the Client shall have the right to terminate this Contract immediately. Termination shall take effect as of the date the unauthorized assignment occurred. Any termination under this Clause shall be without prejudice to the Client's claim for damages for any loss or inconvenience incurred as a result of such unauthorized assignment.
- 13.3. The Contractor may as security in favour of a bank or financial institution, assign its rights to any moneys due, or to become due, under the Contract.

- 13.4. The Contractor may only subcontract part of the works as specified in **Clause 2.2** with the prior written consent of the Client. The Contractor must submit a written request for subcontracting, including full details of the proposed subcontractor, the scope of work and the proposed start date, to the Client at least **two (2) weeks** prior to the proposed commencement of such subcontracted work. The Client shall provide a written response to the Contractor's request within **one (1) week**. The Contractor remains fully responsible for the acts, omissions, or defaults of any subcontractor as if they were the acts or defaults of the Contractor. The Contractor shall ensure that no subcontractor further subcontracts any portion of the work to others.
- 13.5. The Contractor may not delegate any of its obligations or performance under this Contract.
- 13.6. Any assignment of rights or delegation of performance in violation of this **Clause 13** shall be deemed null and void and shall have no effect.

14. RESOLUTION OF DISPUTES

- 14.1. If at any time any question, dispute or difference shall arise between the Client and the Contractor (Dispute) in connection with or arising out of the Contract including any question regarding its existence, validity, termination or its performance then every effort shall be made to reach a settlement amicable by the affected Parties.
- 14.2. If the Parties are unable to amicably resolve any dispute within **thirty (30) days** from the date when such dispute arose, either Party shall require that the dispute be referred for resolution by arbitration in accordance with the provisions of the Arbitration Order, 2009.
- 14.3. The Arbitration Tribunal shall consist of a single arbitrator, such person to be agreed between the Parties, or failing agreement, to be nominated in accordance with the Arbitration Order, 2009. The applicable rules of Arbitration shall be the UNCITRAL Rules of Arbitration.
- 14.4. The seat and place of arbitration shall be in Brunei Darussalam and the language of the arbitration shall be English.
- 14.5. All rights and obligations of the Parties under this Agreement shall continue in full force and effect pending the final outcome of such arbitration.
- 14.6. Any reference to arbitration under this **Clause 14** shall be a submission to arbitration within the meaning of the Arbitration Order, 2009 for the time being in force in Brunei Darussalam.
- 14.7. The application of Part II of the International Arbitration Order, 2009, and the Model Law referred thereto, to this Agreement is hereby excluded.
- 14.8. The arbitral award shall be substantiated in writing. The arbitral tribunal shall decide on the matter of costs of the arbitration and on the allocation of expenditure among the respective parties to the arbitration proceedings.

15. ANTI-CORRUPTION

The Parties represent and warrant that they are in full compliance with all applicable laws, including all anti-corruption and anti-bribery laws, and will remain in compliance with all such applicable laws throughout the duration of this Agreement. The Parties further represent and warrant that they have not made, authorised or offered to make payments, gifts or other transfers of value, directly or indirectly, to any government official or private individual with the intent to (a) improperly influence any act, decision or failure to act by that official or individual, (b) improperly induce that official or individual to use their influence with any government or business entity to affect any act or decision by such government or entity or (c) secure any improper advantage.

16. CONFIDENTIALITY

- 16.1. For the purposes of this Contract, it will be necessary or desirable from time to time for either Party ("Disclosing Party") to disclose to the other Party ("Receiving Party") certain Confidential Information.
- 16.2. The Receiving Party shall not disclose (and shall procure its staff and sub-contractors, not to disclose) any Confidential Information to third parties without the Disclosing Party's written consent.
- 16.3. 'Confidential Information' means any and all information, whether or not marked 'confidential' and disclosed by the Disclosing Party to the Receiving Party, whether pictorial, written, oral, electronic, visual or any other form or medium, and including any Documents, investigations, information, data, specifications, reports and other materials:
 - 16.3.1. relating to the site and works;
 - 16.3.2. obtained from the Disclosing Party, whether owned by the Disclosing Party or not; and
 - 16.3.3. obtained from any third party which relates to the performance of the works regardless of whether or not it is subject to a separate confidentiality undertaking to the third party.
- 16.4. Notwithstanding the foregoing, obligations of Confidential Information shall not be applicable in the following circumstances:
 - 16.4.1. information or documents that are now or subsequently become generally available to the public through no fault on the Receiving Party's part; or
 - 16.4.2. information or documents that were already lawfully in the Receiving Party's possession before date of this Contract; or
 - 16.4.3. information or documents that are independently developed by the Receiving Party or received from a third party which is not an agent of the Disclosing Party and which has the right to transfer or disclose them; or
 - 16.4.4. information or documents which the Disclosing Party has confirmed in writing to the Receiving Party is not confidential; or
 - 16.4.5. information required or requested to be disclosed under applicable law, rule or regulation or by Brunei government authorities or agencies.
- 16.5. Where the Contractor has proprietary methods, know-how or processes relating to the performance of the works, the Contractor shall notify the Client in advance of such prior to any such work being undertaken at the site, especially on days where visitors to the site are expected. The Client shall on a best endeavour basis, inform its personnel to avoid recording the work or any part thereof, whether by photographic, video or audio devices, unless requested and approved by the Contractor in writing.
- 16.6. The Receiving Party shall ensure its staff and their sub-contractors, are aware of and comply (to the same extent and scope as the Receiving Party is bound with the Disclosing Party) with the confidentiality and non-disclosure provisions contained in this Contract and the Receiving Party shall be responsible to and indemnify the Disclosing Party in respect of any loss or damage which the Disclosing Party may sustain or incur as a result of breach of confidence by such persons.

17. NOTICE

- 17.1. All notice and other communication to be given under or in connection with this Agreement shall be in writing, and shall be delivered or sent to the following address or electronic mailing address:

To the Client:

Chief Executive Officer,
Berakas Power Company Sdn Bhd,
Berakas Power Station,
Lebuhraya Rimba / Jalan Utama Terunjing,
Kg. Terunjing Baru, Berakas BB1514,
Brunei Darussalam
Email:

To the Contractor:

Designation:
Contractor Company name:
Address:
Email.:

or to such other address or email as a Party may from time to time notify the other Party in writing.

- 17.2. Any notice required to be given hereunder shall be given to the relevant Party by personal delivery, email or registered post at the above mentioned address or email address. Any notice sent by:
- (a) personal delivery shall be deemed to have been received by the addressee at the time of delivery;
 - (b) email shall be deemed to have been duly given, sent or served upon transmission of the email to the current email address of such person; or
 - (c) registered post shall be deemed to have been received by the addressee on the second (2nd) working day after it is posted.
- 17.3. Any notice shall be deemed to be effective from the time of service or on the notice's effective date, whichever is the later.

18. ENTIRE AGREEMENT

This Contract, including its Schedules, constitutes the entire agreement between the Parties and supersedes all prior agreements, discussions or understandings, whether written or oral, between the Parties with respect to the subject matter hereof.

19. WAIVER

No delay or failure by either Party to exercise any of its powers, rights or remedies under this Contract shall be deemed as a waiver of such powers, rights or remedies. Similarly, no single or partial exercise of any power, right or remedy shall preclude any further or other exercise of such powers, rights or remedies. Any waiver of a breach or default under this Contract shall only be effective if made in writing and signed by the Party granting such waiver.

20. SEVERABILITY

If any term, provision, or part of a term or provision of this Contract is found to be invalid, unlawful or otherwise unenforceable to any extent, such term or provision shall be deemed severed from the

remainder of the Contract. The remaining terms and provisions of this Contract shall continue in full force and effect, and the Parties shall make reasonable effort to replace any invalid or unenforceable provision with a valid one that reflects the original intent as closely as possible.

21. CHANGE IN LEGISLATION

In the event of any changes, amendments or additions to applicable laws or regulations in Brunei Darussalam after the date of this Contract that result in alteration to the cost or duration of the works/services, the agreed remuneration and/or time for completion shall be subject to adjustment. Such adjustments shall be made in writing, based on mutual agreement between the Parties.

22. GOVERNING LAW

The Contract shall be governed by and construed in accordance with Laws of Brunei Darussalam.