

PURCHASE ORDER



Vendor : 106270
IEZZPRO INCORPORATION SDN BHD

Address : NO.34A, JALAN PP 2/4,
TAMAN PUTRA PRIMA,
PUCHONG 47100
MY

Contact Person :

PO Reference : 5200098037

PO Date : 31.10.2018

Print Date : 14.11.2018

Currency : MYR - Malaysian Ringgit

Contract No : 9000002522

Department : NETWORK OPERATIONS

LCMS No : CW2237738

We are pleased to award you this order for the following Items/Services based on the terms & conditions mentioned herein.

PR	Item No	Material Description	Quantity	UoM	Unit Price	Item Value	Item Discount	Amount
	10/10	2002341 - Supply & install CPRI x 1 Run >50 M EWPCM-NORT-03244- KGRAMBAI-500029465	1.000	EA	852.00	852.00	0.00	852.00
Loc ID: A00286-KGRAMBAI					FL:			
	20/10	2006092 - Transportation <70km-ground-PS	1.000	EA	200.00	200.00	0.00	200.00
Loc ID: A00286-KGRAMBAI					FL:			
	Value							1052.00
	Header Discount PO							0.00
	Total Value							1,052.00

Delivery Address

Northern-Celcom (M) Bhd
Bangunan KWSP,
Jalan Sultan Ahmad Shah,
Pulau Pinang 10050
Malaysia

Header Text :

Payment Instruction :

Invoice To : Account Payable, Level 28, Menara Celcom PJ
Sentral, 6 Persiaran Barat, Seksyen 52, 46200
Petaling Jaya, Selangor.

Payment Terms : 45 Days Credit

Copy Invoice To :

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PURCHASE ORDER



PO Reference : 5200098037

PO Date : 31.10.2018

The General Terms and Conditions as attached to this Purchase Order and any attachments thereto, including the Appendix, the Special Terms and Conditions of Contract, and any other document specifically incorporated into the Contract by reference in the Purchase Order or the Appendix (all of which are collectively referred to as "Contract Documents" as defined in the General Terms and Conditions of Contract), shall govern the purchase transaction(s) as contemplated by this Purchase Order. Celcom is not bound by and hereby expressly rejects Supplier's general conditions of sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Supplier.

If a separate applicable Master, Frame or other Agreement between Celcom and the Supplier regarding the purchase of any product, goods and/or services exists, or is intended for this purchase ("Separate Agreement"), then the terms and conditions of such Separate Agreement shall apply to this Purchase Order regarding such purchase of product, goods and/or services.

Unless otherwise stated in the Contract Documents, all invoices shall be submitted within 30 days after Acceptance of Goods and/or Services. Supplier acknowledges and agrees that Celcom shall be entitled to reject any invoice submitted by Suppliers beyond such prescribed duration. Celcom shall not then be liable to pay for those Goods delivered and/or Services rendered to Celcom by Supplier, and the Supplier agrees to waive all its rights for payment under the law and the Contract for invoices submitted to Celcom beyond such prescribed duration after Acceptance of Goods and/or Services.

In addition, Supplier shall agree not to make deliveries of Goods and/or perform any Services more than the value as stated in the Purchase Order ("Purchase Order Value"). Celcom disclaims any obligation to reimburse Supplier for any sum of money that exceeds the Purchase Order Value unless varied in the manner described in the Contract Documents.

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PO Reference

: 0200090037

PO Date

: 31.10.2018

Item No	Material No	Description
010	2002341	Text:Interface of Radio Base Station between the Radio Equipment Control and Radio Equipment/(CPRI length >50 Meter per run)

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**CELCOM'S GENERAL TERMS AND CONDITIONS
ATTACHED TO PURCHASE ORDER (version 2014-1)**



RECITALS

Celcom wishes to procure and the Supplier wishes to supply Goods and/or Services and/or Works on the terms and conditions of this Contract.

1. CONTRACT

1.1 Contract Formation

The Contract Documents will form a contract upon the occurrence of any of the following:

- (a) any confirmation of acceptance by Supplier of the Contract or the Purchase Order, in writing or otherwise, to Celcom's Authorised Person;
- (b) the conduct of Supplier, including but not limited to, the delivery of Goods and the commencement of Services and/or Works; or
- (c) the failure to communicate a specific rejection of the Contract or Purchase Order to Celcom by Supplier within two (2) days from the date of the Purchase Order. For the avoidance of doubt, all rejections of the Contract or Purchase Order must be made in writing and sent to Celcom's Authorised Person with an acknowledgment of receipt by said Authorised Person. Any failure to do so would be deemed an acceptance of the Contract and the applicable terms and conditions by Supplier.

1.2 No Other Terms or Conditions

Any terms and conditions set forth in any document issued by Supplier either before or after issuance of this Contract are hereby explicitly rejected and will be disregarded by Celcom, and any such terms and conditions shall be wholly inapplicable to any procurement made by Celcom and shall not be binding in any way on Celcom.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

As used in this Contract, the following terms shall have the meanings set out below.

"Acceptance" means acceptance by Celcom at its absolute discretion, of an item of Deliverable or Service, following the Acceptance Procedure for that Deliverable or Service, denoting that at the date of the issuance of the Acceptance Certificate, the Deliverable or Service which is the subject of the Acceptance Certificate was in apparent compliance with Specifications relating to it.

"Acceptance Certificate" means a document signed by an Authorised Person certifying Celcom's satisfaction with the outcome of the Acceptance Procedure and Celcom's acceptance of the Deliverable or Service that was subjected to the Acceptance Procedure.

"Acceptance Procedure" means the procedure set out in writing and/or adopted by Celcom to determine the compliance of any Deliverable with the Specifications or other Contract obligation applicable to that Deliverable.

"Accepted" in respect of any Deliverable means accepted in accordance with the Acceptance Procedure.

"Affiliate" means any entity or person, as the case may be, directly or indirectly (through one or more intermediaries) controlling, controlled by or under the same control as any other entity or person. For the purpose of this definition, the term "control" shall mean the power and authority to manage such entity, whether directly or indirectly, through the holding of shares with voting rights, through contracts or otherwise.

"Appendix" means the appendix attached (if one is attached) to the General Terms and Conditions or Special Terms and Conditions (as the case may be).

"Authorised Person" means a person approved or assigned by Celcom to perform the specific duties in this Contract.

"Business Day" in any place where Goods, Services and/or Works are to be supplied means a day on which ordinary banks are open for business.

"Cardholder Data" means any number assigned by a credit or debit card issuer that identifies the cardholder's account or other information of a cardholder acquired by the Supplier in connection with its performance of its obligations under this Agreement.

"Celcom" means any one of the following companies named in the Purchase Order and their respective successors and/or assigns: CELCOM AXIATA BERHAD (Company No. 167469-A), CELCOM MOBILE SDN BHD (Company No. 27910-A), CELCOM NETWORKS SDN BHD (Company No. 195821-V), CELCOM RETAIL SDN BHD (Company No. 758521-H), ESCAPE AXIATA SDN BHD (Company No. 240867-U).

"Celcom Data" means

(a) data, information and other materials provided to, or obtained or generated by, the Supplier relating to Celcom or any of its operations, administration, facilities, suppliers, customers, Personnel, strategic or marketing plans, assets and programs (including Personal Information) **(Raw Data)**; and

(b) data, information and other materials in any format whatever generated, stored, processed, retrieved, printed or produced by or on behalf of the Supplier utilising the Raw Data.

"Celcom Information" means

(a) Confidential Information in respect of which Celcom is the Disclosing Party;

(b) Celcom's customers' information which includes customers' or individuals' name, phone number and any other data capable of identifying the customers and/ or individuals, or can be reasonably ascertained, from the information or opinion and any materials or information that contains, or is based on, any Celcom Information, whether prepared by Celcom, Supplier or any other person.

"Celcom Payment Card Industry Data Security Standards" means Celcom's requirements for Cardholder Data as amended by Celcom from time to time.

"Celcom Policies" means the policies and standards of Celcom and any of its documentation and amended by Celcom from time to time.

"Change Notice" means the form of document by that name developed by Celcom to document variations to Contracts.

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"Confidential Information" means Information obtained by Supplier (**"Receiving Party"**) from Celcom (**"Disclosing Party"**) or a third party acting for the Disclosing Party and without prejudice to the generality of the foregoing, shall include:

- (a) any Information ascertainable by the inspection or analysis of samples,
- (b) the information set out in this Contract, and
- (c) Information relating to the Disclosing Party's operations, Personnel, strategies, plans, predictions, present or future products, market opportunities, financial affairs, customers and business affairs, but shall exclude Information which
 - (a) is in or comes into the public domain in any way without breach of this Contract by the Receiving Party;
 - (b) the Receiving Party can show was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence;
 - (c) the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the Disclosing Party; or
 - (d) is hereafter furnished by the Disclosing Party to a third party without restriction on disclosure or use.

"Contract" means the representations, warranties, terms and conditions of contract set out in the Contract Documents.

"Contract Documents" means the Purchase Order and the General Terms and Conditions and, if attached to the General Terms and Conditions, any one or more of the following:

- (a) the Appendix;
- (b) the Special Terms and Conditions of Contract; and
- (c) any other document specifically incorporated into the Contract by reference in the Purchase Order or the Appendix..

"Day(s)" or "Date(s)" means, unless otherwise agreed, references to a 24-hour calendar day in the Gregorian calendar with "year" meaning 365 days under that calendar, unless it is a 366-day leap year. Periods of time are calculated from the day after receipt of the relevant instruction or other action requiring an activity to commence.

"Deliverable" means the Goods, and/or Work-product and/or Works (or, as applicable, any part, section or phase thereof) described in the Purchase Order or Appendix or any item that Supplier is required to deliver to Celcom under this Contract.

"Delivery Location" means the location specified in the Contract Document for delivery of Goods and/or performance of Work and/or Services.

"Delivery Order" in respect of Goods delivered by Supplier to Celcom means an order given by the Supplier to the carrier or warehouseman of the Goods, directing the carrier to deliver the Goods to Celcom.

"Disclosing Party" has the meaning assigned in the definition of "Confidential Information".

"Exhibit(s)" means the attachments to the Appendix to the GTC or STC, as the case may be.

"Firmware" means the data that resides as read-only Software that is embedded within Hardware.

"General Terms and Conditions" or **"GTC"** means the representations, warranties, terms and conditions of contract set out from clause 1 to clause 49 herein.

"Goods" means

- (a) goods, appliances, apparatus, equipment, machinery, vehicles, devices and Hardware, and
- (b) Software

to be delivered pursuant to this Contract independently, or forming part of the Works.

"Good Industry Practices" means the exercise of that degree of skill, diligence, judgment, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar conditions.

"Hardware" means the physical parts or components of a computer, required to store and execute Software including monitor, keyboard, data storage, hard disk drive, mouse and the central processing unit.

"Information" means data, summaries, analyses, reports, predictions, trade secrets, know-how, plans, lists, summaries, processes and procedures, approaches, formulae, designs, drawings, software and hardware configurations, ideas, concepts, methods, techniques, commercial or legal terms or conditions whether represented in writing or communicated electronically, orally, visually or otherwise.

"Normal Working Hours" means 8.30a.m. to 5.30p.m. on a Business Day.

"Party" refers to either Celcom or Supplier and **"Parties"** refers both Celcom and Supplier collectively.

"Payment Milestones" means the milestones set out in the Contract Documents setting out the dates, time(s) or circumstances when Supplier is entitled to issue invoices for payment of the Price or any part of it.

"Payment Card Industry Data Security Standards" means the requirements for Cardholder Data prescribed by the PCI Security Standards Council from time to time.

"Personal Data" shall have the meaning as prescribed in the Personal Data Protection Act 2010.

"Personnel" of a Party means the officers, employees, contractors (including service providers, subcontractors and their personnel) and agents of that party and its Affiliate.

"Price" means the price and/or fee and/or royalty or license fee payable for the supply of the Goods, Services and/or Works, and the due performance of this Contract, whether expressed as a lump-sum, unit price, daily rate or otherwise.

"Purchase Order" means the document identified by that name (to which these General Terms of Contract are attached) issued by Celcom setting out the description of the Goods, Services or Works to

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be supplied by the Supplier to Celcom.

"Receiving Party" has the meaning assigned in the definition of "Confidential Information".

"Schedule" means the schedule for supply of Goods and/or Services and/or Works and the performance of this Contract, including any part, section or phase thereof, set out in the Contract.

"Services" or "Service" means, as described in the Contract Documents, any service to be performed, including vocational, professional, management, consulting and training as well as installation, integration, testing and commissioning of Goods and/or Software and/or development of Software.

"Service Levels" means the assessments, measures or indicators of Services, their performance or the outcomes of their performance, set out in the Appendix.

"Software" means the machine-readable instructions that direct a computer's processor to perform specific operations, including Software Programs and Firmware.

"Software Media" means the media on which the Software is recorded or stored.

"Software Program" means systems or applications Software.

"Software Source Code" means Software in the form of human-readable instructions

"Spare Parts" means components forming part of the assembly of Goods that are ordinarily used to repair defective Goods.

"Special Terms and Conditions of Contract" or "STC" means the terms and conditions of contract accompanying the Purchase Order and these GTC, setting out further or more detailed terms and conditions of the Contract.

"Specifications" means the quantity, quality and description of the Goods, Services and/or Works that is detailed in the Contract Documents, including

- (a) design, functional and performance specifications as described (as the case may be) in the Appendix or Purchase Order; and/or
- (b) the Scope of Work;
- (c) the Service Levels to be achieved; and
- (d) any instructions given by Celcom from time to time during the performance of the Contract that are not inconsistent with the foregoing (a),(b) or (c) or any part thereof;

"Scope of Work" means the detailed description of Services and/or Works to be performed and/or supplied for/to Celcom as set out in the Contract.

"Supplier" means the individual or entity supplying the Goods and/or Services and/or Works to Celcom.

"System" means collectively all Goods and Software supplied or commissioned under this Contract working in combination to achieve the functions or facilities set out in the Specifications, including all associated peripherals, facilities and components necessary to make the system operate, whether specifically listed in the Contract or not. any antecedent breaches by the Supplier).

"Warranty Period" in respect of a Deliverable or Service means period of 12 months from the date of Acceptance of that Deliverable or Service.

"Works" as described in the Purchase Order and any Appendix means the tangible Work-product, including Goods and Services incorporated therein or forming part thereof and also including a System.

"Work-product" means anything to be produced as a result of or incidentally to the performance of Services.

2.2 Interpretation

In this Contract, unless the context otherwise requires:

- (a) words importing the singular only also include the plural and vice versa;
- (b) words importing persons include firms, companies and corporations and vice versa;
- (c) the headings are for descriptive purposes only, and shall not control or alter the meaning of the Contract, and do not in any way limit or amplify the terms of the Contract;
- (d) the contra proferentum rule shall not apply to the interpretation of the Contract;
- (e) references to any document being in agreed terms are to that document in the terms agreed between the Parties and signed by or on behalf of the Parties;
- (f) references in this Contract mean this Contract as amended or modified from time to time with Celcom's agreement and references to any other agreement, deed, instrument or document (each a "document") is to such document as in effect at the date of execution of this Contract provided that where that document has been subsequently amended or modified, such references shall for the purposes of this Contract be deemed to be to that document as so amended or modified;
- (g) any undertaking by a Party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing; and
- (h) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall be read as if followed by the words "without limitation".

3. GOODS, SERVICES AND/OR WORKS

Supplier hereby agrees to supply the Goods and/or Services and/or Works in accordance with the Specifications and the Schedule, subject to the terms and conditions (including the representations and warranties) set forth in this Contract.

4. TERM

This Contract shall come into force as per the Purchase Order date, unless otherwise provided in the Appendix (the **"Effective Date"**), and shall continue in force for a period of 12 months from the Effective Date (the **"Fixed Period"**). At the end of the Fixed Period, if there remains any unperformed obligation, this Contract may continue for any further period to complete the obligations (without prejudice to Celcom's rights and remedies under the Contract or at law pursuant to any antecedent breaches by the Supplier).

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Bill of Lading, the Delivery Order relating to the Goods; and

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5. DELIVERY SCHEDULE

5.1 Time of Essence

Supplier shall execute this Contract with due diligence and dispatch to ensure that the Goods and/or Services and/or Works are delivered or performed on or before the dates or time periods set out in the Schedule in the Contract Documents.

Time is of the essence with respect to the performance of this Contract.

5.2 Liquidated Damages Late Delivery

Without prejudice to Celcom's other rights arising from delay of the Supplier in performing its obligations under this Contract, any delay attributable to the Supplier in delivering the Goods, Services or Works shall be subject to liquidated damages of one percent (1%) of the value of the Purchase Order issued for the Goods, Services or Works, for each day of the delay, up to a maximum of thirty percent (30%) of the value of the Purchase Order issued. The Supplier acknowledges that the aforementioned liquidated damages are a reasonable pre-estimate of the loss likely to be suffered by Celcom as a result of the Supplier's acts or omissions and shall not be construed as a penalty.

6. DELIVERY, TRANSPORTATION & SHIPPING

6.1 Incoterm

Unless otherwise expressly stated in this Contract, and subject to Clause 7 of this GTC in respect of transfer of risk and title in Goods, Supplier sells the Goods to Celcom on the basis of DAP (Delivered At Place) (Incoterms 2010) Delivery Location (if applicable).

6.2 Delivery of Goods

Goods must be delivered to the Delivery Location. Goods will not be considered delivered to Celcom unless the Bill of Lading or, if there is no Bill of Lading, Delivery Order relating to the Goods has been presented to Celcom.

6.3 Packing and Transportation

Supplier is responsible for

(a) packing, marking and delivering or shipping Goods in the manner directed by Celcom and in accordance with any applicable laws or regulations; and

(b) routing delivery or shipments as Celcom instructs.

6.4 Compliance with Strategic Trade Act

Supplier shall also ensure strict compliance of all relevant laws and regulations, including but not limited to, the Strategic Trade Act 2010 when delivering, transporting and/or shipping the Goods.

6.5 Good Title

Supplier warrants good title to all Goods (save for Software) and Works supplied by it hereunder, and that title and that ownership thereto shall pass and vest in Celcom free and clear of any and all liens, claims, charges, security interests, encumbrances and rights of sub-contractors.

7. TRANSFER OF RISK AND TITLE

7.1 Title

Unless otherwise agreed, title in

(a) Goods (except Software) shall transfer to Celcom upon delivery of the Goods to Celcom together with the Bill of Lading or if there is no

(b) Works other than Goods shall transfer to Celcom upon Acceptance of such Works.

7.2 Risk

Unless otherwise agreed, risk in Goods and Works shall transfer to Celcom upon Acceptance of the Goods and Works.

8. PRICE AND PAYMENT TERMS

8.1 Price Inclusive of Taxes, Charges

The Price shall be as set out in the Purchase Order, and unless otherwise stated, shall be inclusive of all applicable taxes, duties, levies and other charges that may be imposed by a governmental or regulatory authority on the importation, transportation, sale, provision, performance and use of the relevant Goods, Services or Works or the payment or remittance of the Price therefor and the cost of packaging, packing, shipping, carriage, insurance and delivery. Parties may discuss and review the Price in the event there is change in Malaysian law either by an introduction of new tax by the relevant Malaysian authorities (including but not limited to "Good and Service Tax#) or the abolishment of the current applicable tax and such changes affects the cost of providing the Goods, Services or Works. If Goods and Services Tax ("GST#) is imposed on Goods or Services supplied under this Contract ("GST Law#), the Supplier shall comply with such relevant tax provisions including but not limited to the following:-

(a) register with the relevant Malaysian authorities to enable it to collect such GST;

(b) include the appropriate GST in each invoice at the time of issuance of the invoice; and

(c) each invoices shall comply with the relevant GST Law.

The Parties shall agree to use reasonable efforts to do everything required to enable or assist CELCOM to claim or verify any input tax credit, set off, rebate or refund in respect of any GST paid or payable in connection with the Contract.

8.2 Invoicing

Form of Invoice

Invoices shall be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by Celcom.

Preparation of Invoice

The Supplier shall deliver invoice(s) and Celcom shall pay based on the invoice(s), which shall be prepared and delivered at the time(s) and upon the terms set out in the Contract Document.

8.3 Payment Terms

Any payment of invoices shall be made within 45 days from receipt of a properly submitted invoice unless otherwise stated in Contract Documents.

8.4 No Payment Until Deliverable Accepted

Unless otherwise agreed in writing in the Contract, Celcom will not be obliged to pay any Invoice for any Deliverable until that Deliverable has been Accepted.

8.5 Withholding of Taxes by Celcom

If Celcom is required by law to make any deduction or withholding from any sum otherwise payable to Supplier under this Contract, Celcom Remedies for Non-Compliance with Contract

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shall be entitled to deduct or withhold such amount and effect payment thereof to the tax authority. Celcom will, upon request from Supplier, provide Supplier official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

9. INSPECTION / ACCEPTANCE / COMMISSIONING

9.1 Deliverables subject to Acceptance

No Service or Deliverable will be considered Accepted by Celcom until it has complied with the Acceptance Procedure. In the absence of a specific Acceptance Procedure in the Appendix (as the case may be), a Service or Deliverable will be considered Accepted only after it is so signified in writing by an Authorised Person.

9.2 Acceptance of Software

The delivery of Software Media or Hardware purported to contain Software shall not by itself constitute delivery of the Software in the Software Media or Hardware to Celcom or Acceptance of the Software by Celcom.

9.3 Acceptance Procedure

Supplier must, at its expense, if requested by Celcom, write an Acceptance Procedure for each Deliverable or Service for adoption by Celcom. The Acceptance Procedure shall include

- (a) documenting appropriate Specifications for the Deliverable or Service;
- (b) developing written step-by-step plans and a schedule to be used by Celcom to determine the compliance of the Deliverable or Service with the relevant Specifications; and
- (c) developing written checklists to be used by Celcom in carrying out the Acceptance Procedure.

Unless otherwise agreed by the Parties, Acceptance Procedures must be carried out by or in the presence of Celcom's Authorized Person.

9.4 Issuance of Acceptance Certificate

If upon conducting the Acceptance Procedure, a Deliverable or Service is found to be in full compliance with the Specifications relating to it, Celcom will issue the Acceptance Certificate for that Deliverable or Service within 14 Business Days after the successful completion of the Acceptance Procedure.

9.5 Acceptance not Waiver

For the avoidance of doubt, "Acceptance" shall not operate as a form of waiver of any claim which either party may have against the other.

9.6 Rectification Following Acceptance Procedure

Issuance of Notice of Failure

If Celcom considers following the conduct of an Acceptance Procedure that a Deliverable or Service is unable to comply with Specifications or other Contract obligation for that Deliverable or Service, Celcom will advise Supplier of that within 14 Business Days after the completion of the relevant Acceptance Procedure ("**Notice of Failure**"). Upon receipt of a Notice of Failure, Supplier will remedy the failure specified in the Notice of Failure in a manner that will not delay the supply of the Deliverable or Service.

If a Deliverable or Service cannot be rectified so that it complies with Specifications or other Contract obligations relating to it, Celcom may:

- (a) accept the Deliverable or Service in whole or part for a reduction in the Price agreed by the Parties; or
- (b) accept the Deliverable or Service "as is" subject to Supplier completing, at its own cost, a set of procedures (e.g. workarounds) acceptable to Celcom to make the Deliverable or Service comply with this Contract; or
- (c) reject the Deliverable or Service, and if the Deliverable or Service represents a material part of the Purchase Order terminate the Contract for material breach of its terms in accordance with Clause 19 below.

10. VARIATIONS

10.1 Variation

Celcom may instruct Supplier to materially vary the Contract (any such variation being a "**Variation**") on the following terms and conditions:

- (a) The Supplier will not commence performance of a Variation until Celcom and Supplier have agreed in writing in the form of a Change Notice on the terms of the Variation, including the obligations being varied, the nature and amount of variation to the Price, the variation to the Schedule, the variation to the Specifications, and other relevant terms and conditions.
- (b) Any variation to the Price shall be reasonable and commensurate, taking into consideration the Price originally agreed between the parties, including unit prices for Goods and Services.

10.2 Effect of Variation

Upon agreement of the Parties to a Variation pursuant to Clause 10.1 and issuance of a Purchase Order by Celcom to effect the Variation ("**Variation PO**"), the representations, warranties, terms and conditions of contract governing the supply of the Goods, Services or Works described in the Variation PO shall be the representations, warranties, terms and conditions of contract governing the Contract that has been varied, subject only to the variations set out in the Appendices hereto.

11. INTELLECTUAL PROPERTY

11.1 IP in Original Deliverables and Specifications

All intellectual property in

- (a) Deliverables developed originally or specifically for Celcom; and
 - (b) Specifications,
- shall be the exclusive property of Celcom and shall be deemed works for hire, and to the extent they may not be works for hire, Supplier assigns to Celcom all present and future rights, title and interest in and to such items, subject only to payment of the Price. Supplier shall take all such actions as instructed by Celcom, at Supplier's cost, to transfer or assign the intellectual property in such items to or otherwise acknowledge the ownership thereof by Celcom.

11.2 Supplier's Pre-existing Material

In the event Deliverables incorporate, attach to or cannot reasonably be used without reference to Supplier's pre-existing Material and/or any

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third party's Material, Supplier shall grant to Celcom or as the case requires, procure the grant to Celcom, a perpetual, nontransferable, (except for transfer to Celcom's Affiliates), non-exclusive paid-up right and license to use, copy, modify and prepare derivative works on the said Supplier's pre-existing Material and/or third party's Material in the Deliverables.

For the purpose of this Clause 11, Materials shall mean Work-Product and other materials, including, reports, documents, templates, studies, software programs in both source code and object code, specifications, business methods, tools, methodologies, processes, techniques, solution construction aids, analytical frameworks, algorithms, know-how, processes, products, documentation, abstracts and summaries thereof.

11.3 IP in Deliverables Generally

In respect of Deliverables other than Deliverables described in Clause 11.1(a), Supplier grants to Celcom upon Acceptance of the Deliverables, a License to Use.

For the purposes of Clause 11, "License to Use" shall mean fully paid up, irrevocable, perpetual, non-transferable, (except for transfer to Celcom's Affiliates), non-exclusive, worldwide unrestricted right and license for Celcom and its Affiliates to use a Deliverable and/or Material, and to modify and make copies thereof, and to sub-license the use of the Deliverable and/or, subject only to the restrictions, terms and conditions set out in the Appendix.

11.4 IP Warranty

The Supplier warrants that it owns or lawfully possesses all intellectual property rights, including patents, trademark, brand, utility model, industrial design, copyright, license, franchise and permits necessary to perform its obligations under this Contract and to enable Celcom to use the Deliverables and Services as intended under this Contract. The Supplier shall be liable for and shall indemnify and hold harmless Celcom, its directors, employees, and agents from and against any costs, expenses, claims, demands, damages, losses or liability (including legal fees incurred in procuring legal advice) that the indemnified persons may suffer, sustain and/or incur, on a full indemnity basis, arising from any alleged or actual infringement, whether or not under laws of Malaysia, of any third party's intellectual property rights arising out of the performance of this Contract or the use by Celcom or its customers of any Deliverables or Services.

Supplier waives any claim against Celcom that any such infringement arose out of compliance with Celcom's specifications.

12. HEALTH AND SAFETY

The Supplier shall ensure that all equipment, tools, facilities and other items used by its personnel in the execution of the Services and/or Works shall be in a safe, sound, good and working condition and shall be safely and competently operated. The Supplier shall at its own expense provide the necessary safety equipment, protective equipment and clothing, footwear, head gear and such other appliances as may

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be necessary in the circumstances or required by law or regulation for the proper and safe execution of the Works, and shall ensure that the same is used or worn by the Supplier's Personnel at all times when works are carried out. The Supplier shall be responsible for any violation by it of any safety or health standard, and shall immediately remedy any condition giving rise to such violations, and shall defend and hold Celcom harmless from any penalty, fine or liability in connection therewith. Inability of the Supplier to remedy such violations or breaches immediately or within the stipulated agreed period with Celcom staff shall constitute a breach of this Contract and Celcom may, in addition to and without prejudice to any other rights, suspend or terminate the Contract accordingly. Nothing in the foregoing shall relieve the Supplier of its obligations to comply with the Occupational Safety and Health Act 1994 and Supplier hereby indemnifies and holds harmless Celcom against all claims, losses, fines and damages relating to Supplier's non-compliance with the said Act.

13. FORCE MAJEURE

Neither Supplier nor Celcom is liable for failure to perform any of its obligation insofar as it proves:

- (a) its failure to perform was caused by an impediment beyond its reasonable control;
- (b) it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the Contract; and
- (c) it could not reasonably have avoided or overcome the effects of the impediment.

In such an event, the affected party shall give written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences may include:

- (a) war (whether declared or not), armed conflict or the serious threat of the same (including, without limitation, hostile attack, blockade or military embargo), hostilities, invasion, act of a foreign enemy, and/or extensive military mobilisation;
- (b) civil war, riot, rebellion, revolution, military insurrection, armed civil commotion or disorder, and/or mob violence;
- (c) act of terrorism affecting a substantial portion of the population;
- (d) act of God, plague, epidemic, natural disaster including, without limitation, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami.

For the avoidance of doubt, Suppliers obligations which are not affected by an event of force majeure shall continue in full force and effect, and Supplier must continue to discharge its obligations accordingly. In the event a force majeure event occurs for a continuous period of ninety (90) days, Celcom shall be entitled to terminate this Contract by giving notice to Supplier, upon which the relevant provisions of Clause 19 below shall apply.

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REPRESENTATIONS AND WARRANTIES

14.1 General

Supplier represents and warrants that

- (a) it has the full power and authority necessary to enter into this Contract;
- (b) this Contract has been duly authorised by all necessary action on the part of Supplier and has been duly executed and delivered by it;
- (c) it has not entered into any agreement with any other entity that contains restrictive provisions regarding confidentiality and/or non-competition that may impair its ability to perform its obligations under this Contract;
- (d) the execution by Supplier of this Contract and the performance of its obligations hereunder will not breach or violate any other agreement to which it is a party;
- (e) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its obligations under this Contract;
- (f) Supplier has, and will maintain throughout the term of this Contract, all permits, licences, certifications and the like necessary to perform its obligations under the Contract; and
- (g) any representation to Celcom regarding its experience and expertise including those set out in the Appendix (if any) under heading **"Supplier Experience and Expertise"** is true and accurate.

14.2 Warranties for Goods/Works

Supplier warrants and guarantees to Celcom, and its customers that for the Warranty Period, the Goods and Works supplied under this Contract will

- (a) comply with the Schedule;
- (b) conform to Specifications;
- (c) conform to all samples, descriptions, brochures and manuals furnished by Supplier or Celcom, including those furnished prior to the Contract;
- (d) be merchantable;
- (e) be newly manufactured (that is, not second hand, reconditioned and/or used goods) of good quality, good material and workmanship;
- (f) be free from defect in design, material and workmanship;
- (g) be of quality that is consistent with the highest industry standards applicable at the time of purchase; and
- (h) be fit and sufficient for the particular purposes held out by the Seller or made known to the Seller prior to or within the Contract.

14.3 Warranties for Services/Works

Supplier warrants and guarantees to Celcom, and its customers that the Services and/or Works performed under this Contract will

- (a) comply with the Schedule;
- (b) be in accordance with the scope of work and all obligations stipulated in the Contract Documents;
- (c) be performed to the best of Supplier's ability and in a good and workmanlike manner consistent with the highest standards of care, skill, judgment and diligence used by persons who are skilled, trained

and experienced with respect to the relevant areas involved in performing the Services and/or Works;

- (d) comply with Good Industry Practices;
- (e) be suitably experienced in the supply of the items forming the Deliverables;
- (f) perform its obligations in an expeditious and economical manner and in the best interests of Celcom;
- (g) be performed by Personnel that are properly skilled, competent, trained and experienced, having regard to the nature and extent of the Services and/or Deliverables, and who receive appropriate supervision and guidance;
- (h) to the extent that Supplier provides any consultation, advice or recommendations, be commercially and financially prudent; and
- (i) comply with the applicable Service Levels.

14.4 Warranty Period

If within the Warranty Period for any Deliverable or Service, Celcom does not notify Supplier of a non-compliance with any of the Warranties outlined in Clauses 14.2 or 14.3 in respect of that Deliverable or Service, then that Deliverable or Services will be deemed without defect and to conform to the Warranties.

14.5 Remedies

If the Supplier breaches any of the Warranties outlined in Clauses 14.2 or 14.3, without prejudice to Celcom's other rights under the Contract or under the applicable law, Celcom shall be entitled at Supplier's cost and expense to

- (a) require Supplier to repair or replace the Deliverables or re-perform the Services so that they comply with the Contract; and/or
- (b) receive payment of the agreed damages in the form of cash or applicable service credits ; and/or
- (c) at Celcom's sole option, and whether or not Celcom has previously required the Supplier to repair or replace the Deliverables or re-perform the Services, to treat the Contract as discharged by the Supplier's breach (without prejudice to Celcom's rights and remedies under the Contract or at law pursuant to any antecedent breaches by the Supplier).

In the event Celcom exercises its option to treat the Contract as discharged by the Supplier's breach (without prejudice to Celcom's rights and remedies under the Contract or at law pursuant to any antecedent breaches by the Supplier), Supplier shall indemnify Celcom against any liability, loss, damage, cost or expense (including court costs and legal fees and disbursements) which Celcom incurs by reason of Supplier's breach of any of the warranties outlined in Clauses 14.2 or 14.3 or in connection with any claim by a third party alleging facts that would constitute a breach of any such warranties. Such liability, loss, damage, cost or expense includes those suffered or incurred by Celcom and/or its customers that arise from or are connected with delay in the supply of the Deliverables or Services (including procuring the delayed Deliverables or Services on an urgent basis from another supplier); procuring the inspection, survey or review of the Deliverables or Services to determine compliance with Specifications or the Contract; procuring the packing and transportation

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of the relevant Deliverables or Services to return them to Supplier; damage to property or injury or death to persons; acquiring the equivalent Deliverables or Services from a third party to replace Deliverables or Services that do not conform to the Contract; payment fines or judgments made against Celcom; refund of the Price of defective goods or services, compensation payments to Celcom's customers and solicitors fees (and disbursements) and other third parties' costs incurred in or relating to any of the foregoing.

14.6 Manufacturer's Warranties

To the extent that any Deliverable is manufactured or supplied by a third party and the third party has warranted the compliance of the Deliverable with Specifications, the Supplier shall, entirely at the Supplier's cost, ensure the the third party's warranty is available to Celcom on a back-to-back basis, including making available after-sales support, collecting and packing non-conforming items, transporting them to the third party and transporting repaired or replacement items to Celcom and/or repairing the items at the third party's or Celcom's site.

15. OBSOLESCENCE

The Supplier undertakes to ensure that all items of Hardware shall not become obsolete as a result of any new Release by the Supplier. In this clause "obsolete" means that the loading and use of such compulsory new Release onto such Hardware would be impracticable due to incompatibility or loss of functionality, performance or capacity with the result that such Hardware or any part thereof would have to be swapped out and/or written off by Celcom. Whereas "Release" means a uniquely defined software release which has been or will be supplied by the Supplier for use on or with Hardware supplied pursuant to the Contract. In the event the Supplier breaches this undertaking and Hardware or any part thereof supplied to Celcom needs to be swapped out and/or written off then the Supplier shall at its own cost provide Celcom with replacement Hardware and implementation services necessary to install the replacement Hardware and to implement the new Release.

16. SPARE PARTS AND REPAIR FOR GOODS

Without limiting or prejudicing the warranties provided under this Contract or any repair or maintenance agreements entered between the Parties, Supplier agrees to

- (a) sell Spare Parts for all Goods; and
- (b) provide prompt repair services for all Goods

at a reasonable price and lead-time until the end of 2 years after the published end-of-life of the Goods or if there is no published end-of-life date, 3 years after the last item of Goods is delivered to Celcom.

17. INSOLVENCY

17.1 Insolvency of Supplier

In the event the Supplier commits an act of insolvency or experiences an insolvency event, Celcom may immediately terminate this Contract without any liability to the Supplier. For the avoidance of doubt, an insolvency event includes:

- (a) the filing of a bankruptcy petition by or against Supplier;
- (b) the inability of the Supplier to pay its debts as they fall due;
- (c) the filing of a winding up petition by or against the Supplier, voluntary or otherwise;
- (d) appointment of a receiver or trustee for Supplier,
- (e) execution of an assignment for the benefit of creditors by Supplier, or
- (f) any accommodation by Celcom, financial or otherwise, not contemplated by this Contract, that are necessary for Supplier to meet its obligations under this Contract.

In such an event, Supplier will reimburse Celcom for all costs Celcom incurs in connection with any of the foregoing whether or not this Contract is terminated, including, but not limited to, all attorney or other professional fees.

17.2 Insolvency of Manufacturer

If the Supplier is a re-seller of the Goods to Celcom and the manufacturer of the Goods suffers an insolvency event in the manner described above in respect of Supplier, Celcom reserves its right to terminate this Contract in accordance with the Clause 17 below.

18. STEP-IN RIGHTS

(a) If any default or non-performance by Supplier under this Contract substantially prevents, hinders, degrades or delays the performance of any Services or Works deemed by Celcom in its sole and absolute opinion to be critical ("**Affected Services**") for more than 10 Business Days, Celcom may, at Celcom's sole discretion, provide Supplier with written notice that Celcom proposes to exercise its step-in right and must provide Supplier with 5 Business Days in which to remedy such default or non-performance. If Supplier fails to remedy such default or non-performance within 5 Business Days from receiving the notice, Celcom may take any action as is reasonably necessary to restore the Affected Services, including without limitation by engaging a third party to provide such services. Celcom must return the control of the Affected Services to Supplier as soon as possible after the default or non-performance has been cured. These step-in rights may be exercised by Celcom without prejudice to Celcom's other rights arising from the Supplier's default.

(b) Supplier must co-operate fully with Celcom and any third party and provide all reasonable assistance and access at no charge to Celcom to restore the Affected Services as soon as possible.

(c) Supplier will not receive payment of the Price relating to any work it is unable or unwilling to perform or which is delayed in its performance, and which is performed by Celcom or a third party pursuant to the above-mentioned step-in procedure.

19. TERMINATION

19.1 Termination for Breach

Celcom may suspend the performance of the Contract (or part thereof) or terminate the Contract (or part thereof) upon the occurrence of a material breach of contract by Supplier, and in the event the breach is capable of remedy, if Supplier fails to remedy it during the period of fourteen (14) days starting on the date of receipt of notice from Celcom.

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Notice of suspension under this clause must be given at least seven (7) days prior to the first day of suspension. Notice of termination must be given at least fourteen (14) days prior to the date of termination. Without limiting the generality of the foregoing, each of the following constitutes a material breach by Supplier

- (a) breach of any representation or warranty;
- (b) threat or failure to deliver Goods or perform Services or Works;
- (c) failure to follow the Schedule;
- (d) without Celcom's prior written consent:
 - (i) Supplier assigns the Contract;
 - (ii) Supplier sub-contracts any of Supplier's obligations;
 - (iii) Supplier sells, or offers to sell, a material portion of its assets;
 - (iv) control of Supplier passes from one person to another; and
 - (v) Supplier's failure to effect, have in place or otherwise maintain, or provide evidence of, insurance as required in Clause 26 below.

19.2 Termination for Convenience

(a) In addition to any other rights of Celcom to terminate this Contract, Celcom may immediately terminate all or any part of this Contract, at any time and for any reason, by notifying Supplier in writing, provided that Celcom pays

- (i) the Price for all items of Goods, Services and Works that have been Accepted by Celcom; and
- (ii) compensation for costs and expenses reasonably and actually incurred and Goods and materials purchased by Supplier in the performance of the Contract that cannot be recovered or used by Supplier in the usual course of the Supplier's business, provided that such compensation is substantiated to Celcom's satisfaction. .

(b) Supplier shall deliver to Celcom, all Deliverables and materials that Celcom has Accepted up to the date of termination effected pursuant to Clause 19.2(a). In no event will Celcom be required to pay any amount in excess of the Price.

19.3 Effects of Termination

In the event this Contract is terminated howsoever:-

- (a) the Supplier shall return to Celcom all Celcom Information, which are in the possession, custody or control of the Supplier; or destroy all Celcom Information in its possession by shredding or incineration of all documents and other materials in its possession, custody or control and/or irretrievably delete the same if stored on electronic or magnetic media and certifying to Celcom that this has been done within **fourteen (14) days** from the date of termination notice;
- (b) the Supplier shall transfer the ownership, if so required by Celcom, without further payment, of the Goods, Works or Services Accepted by Celcom;
- (c) the Supplier shall assign, if so required by Celcom, (subject only to Clause 19.2(a)(ii) in respect of termination for convenience) all rights and benefits in and to Goods, Works and Services that have not been Accepted by Celcom; and
- (d) the Supplier shall take immediate steps to cease delivery of the Goods, Works or Services in a prompt and orderly manner, discontinue making commitments, and shall proceed to cancel all existing orders

and terminate all works under this Contract.

19.4 Deduction from Monies Due

In the event of termination for breach by Supplier, without prejudice to Celcom's other rights under the Contract or under the applicable law, Celcom shall be entitled to deduct from any moneys due to Supplier under the Contract all costs, damages or expenses incurred by Celcom as a result of Supplier's breach.

20. MANUALS AND TRAINING

20.1 Manuals

Supplier shall provide Celcom at no extra charge with at least 2 copies of manuals containing reasonably sufficient information for the proper operation of all Deliverables. If Celcom requires further copies of such manuals then these will be provided by Supplier in accordance with its standard scale of charges from time to time in force.

20.2 Training

Unless otherwise agreed in the Contract, Supplier shall at no extra charge, provide training for Celcom's personnel sufficient to enable Celcom's personnel to use the Deliverables as intended under this Contract.

21. TECHNICAL INFORMATION

21.1 Information Disclosed by Supplier

Supplier warrants that all information (including information of a technical and health and safety nature) disclosed and provided to Celcom about the Goods is (a) accurate in every particular at the date of the disclosure and the date of this Contract; (b) the most up-to-date information about the Goods that is available. Supplier further warrants that such technical information will not be subject to any user or disclosure restrictions except as provided in Clause 21.2 below.

21.2 Waiver of Claims

Supplier agrees not to assert any claim (other than a claim for patent infringement) against Celcom, Celcom's customers or their respective suppliers with respect to any information that Supplier shall have disclosed, or may hereafter disclose, in connection with the Deliverables covered by this Contract.

22. INDEMNIFICATION

22.1 General Indemnity

Without prejudice to any other right or remedy available to Celcom under the Contract or at law, Supplier shall indemnify and hold Celcom and its directors, employees and agents harmless against any costs, expenses, claims, demands, damages, losses or liabilities (including legal fees incurred in advising on or defending any claim and including further loss of revenue, loss of reputation, loss of business, loss of profits, loss of anticipated savings, loss of contract, depletion of goodwill, provided such loss is foreseeable and reasonable) sustained, incurred or paid by Celcom on a full indemnity basis, arising directly or indirectly from:

- (a) any breach or non-performance (or alleged breach or non-performance) by Supplier of its representations, warranties and

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obligations under the Agreement. Supplier shall further indemnify Celcom against any loss suffered by Celcom;

(b) any claims of infringement of intellectual property (including patent, trademark, copyright, industrial design or other proprietary right) arising from Celcom's or Celcom's intended customers' use of Deliverables;

(c) any breach by Supplier of law, code or regulation relating to the Goods, Works or Services; and

(d) all taxes payable by the Supplier including but not limited to the Supplier's income taxes, contributions to the employees of the Supplier or any of its sub-contractor which may become due by reason of the execution of or performance under the Contract or sub-contract hereunder.

22.2 Activities on Celcom's Premises

Supplier will defend, hold harmless, and indemnify Celcom from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any Service or Work by Supplier or its employees, agents, representatives and subcontractors on Celcom's or Celcom's customer's premises or the use of the property of Celcom or any customer of Celcom, except to the extent such liability is solely caused by the negligence or wilful misconduct of Celcom or Celcom's customer.

22.3 Product Liability

Supplier will defend, hold harmless, and indemnify Celcom from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the Deliverable supplied by Supplier (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), except to the extent such injury, damage or loss results from Celcom's specifications as to design or materials or from alteration or improper repair, maintenance or installation by any party other than Supplier.

23. LIMITATION OF LIABILITY

(a) To the fullest extent permitted by law, and notwithstanding any other provision of this Contract, but subject to Clause 23(b), the total liability, in the aggregate, of one Party to the other, for any and all claims, losses, costs or damages, and costs or claims expenses resulting from or in any way related the Contract or from any cause or causes shall not exceed the total Price.

(b) It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, other than those arising from any claim under the indemnities given by the Supplier under this Contract, including but not limited to the indemnities in Clauses 11.4, 14.5, 22, 24 and 31, unless otherwise prohibited by law.

With respect to any such insurance coverage, Supplier will furnish to

24. INGREDIENTS AND HAZARDOUS MATERIALS

If Celcom requests, Supplier will promptly furnish to Celcom, in such form and detail as Celcom directs: (a) a list of all ingredients in the goods, (b) the amount of all ingredients, and (c) information concerning any changes in or additions to the ingredients. Prior to, and together with, the shipment of the goods, Supplier will furnish to Celcom and all carriers sufficient written warning and notice (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Celcom and all carriers of any applicable legal requirements and to best allow Celcom and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing.

25. COMPLIANCE WITH LAW

Supplier shall comply and cause its personnel to comply, with all statutes, laws, regulations, ordinances, rules, orders, conventions, judgments, permits and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Goods, Works or Services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, import and export of equipment and telecommunication safety. Neither Supplier nor any of its subcontractors will utilize any form of forced or involuntary labor in the supply of Goods or Services under this Contract. Upon Celcom's request, Supplier will certify in writing its compliance with the foregoing. Supplier will defend, hold harmless and indemnify Celcom from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to Supplier's noncompliance with this Clause. In addition to the above requirements, the Supplier shall comply and shall secure compliance by its personnel and workmen and by its sub-contractors at all times during the execution of the services and delivery of the goods with Factories and Machinery Act, 1967, Occupational Safety and Health Act, 1994 and all other relevant safety-at-work requirements imposed by law including any subsequent amendments to or re-enactment of the said law.

26. INSURANCE

The Supplier shall effect or cause to be effected and maintain, throughout the performance of its obligations under this Contract, at its own expense, insurance coverage as required by applicable law or as reasonably requested by Celcom for the purpose of performing its obligation under this Contract with carriers reasonably acceptable to Celcom. The insurance policy conditions shall comply with good international standards and shall contain all terms and conditions and endorsements as are customarily available in the insurance market.

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Celcom either a certificate evidencing satisfaction of the above-mentioned insurance requirements under this Contract or certified copies of all insurance policies within ten (10) days after Celcom requests. The certificate must provide that Celcom will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. These policies, as may be notified by Celcom should include Celcom as additional insured, cross liability clause (provision indemnifying each other against claims made on it by the other jointly insured) and waiver of subrogation clause for the benefit of Celcom. The furnishing of certificates of insurance and purchase of insurance will not limit or release Supplier from Supplier's obligations or liabilities under this Contract.

27. PERFORMANCE BOND

Within 14 days from the date of the Purchase Order, Supplier will procure the issuance from a reputable bank acceptable to Celcom, an irrevocable, on-demand performance bond to secure the due performance of this Contract. The terms of the performance bond shall include:

- (a) validity period commencing on the Effective Date and concluding on the date 6 months after the date for Acceptance as set out in the Appendix;
- (b) total amount payable under the bond, being an amount equivalent to 10% of the Price ("**Aggregate Bond Amount**");
- (c) the Aggregate Bond Amount must be maintained at the amount equivalent to 10% of the Price;
- (d) payment will be made 15 days after a written demand duly signed by the Authorised Person, stating that Services or Deliverables under the Contract have not been properly and completely performed; and
- (e) multiple demands may be made during the validity period provided that the total amount paid does not exceed the Aggregate Bond Amount.

28. CONFIDENTIALITY

28.1 Confidentiality Obligation

Supplier agrees and undertakes to Celcom that it will not disclose such Confidential Information to any third party other than sub-contractors appointed pursuant to the provisions of this Contract and employees of the Supplier who require such disclosure for the proper performance of their duties and who will individually comply with all obligations of confidentiality imposed upon the Supplier by the provisions of this Clause 28.1. The Supplier further agrees and undertakes to take all reasonable steps to minimise the risk of disclosure of Confidential Information by such advisers, officers and employees, and shall take all reasonable steps to restrict them from divulging or communicating any Confidential Information.

physically secured where there is a risk of theft, compromise or misuse of Celcom Data or Celcom's systems; and

- (ii) on Celcom's premises, is secured (including physically secured) when unattended; and

28.2 No Advertising

Supplier will not, in any manner, advertise or publish that Supplier has contracted to furnish Celcom the Goods, Services or Works covered by this Contract or use any trademarks or trade names of Celcom in Supplier's advertising or promotional materials unless Celcom consents in writing.

29. NON SOLICITATION

Supplier shall not solicit, offer work to, employ or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any director, employee or contractor of Celcom during the time when this Contract is in effect and for a period of 12 months thereafter.

30. SECURITY POLICY

30.1 Authorised Person

The Supplier may, by providing notice in writing to Celcom, request authorisation for a member of the Supplier's personnel to access Celcom Data, Celcom's systems or Celcom premises or facilities ("**Celcom Assets**"). Celcom may in its sole discretion

- (a) authorise a member of Supplier's Personnel to access one or more Celcom Assets by providing notice in writing to Supplier within ten (10) Business Days of receiving a request by the Supplier; and
- (b) at any time, permanently revoke or temporarily suspend any authorisation granted, by providing notice in writing to the Supplier.

30.2 Access to Celcom Assets and security requirements

The Supplier must, and must ensure that each of its Personnel:

- (a) Implement, maintain and enforce security procedures and safeguards (both physical and logical) which:
 - (i) comply with, or create an environment that complies with, all Celcom Policies or directions relating to information security, including security of Celcom Assets; and
 - (ii) to the extent that the Supplier is involved in the collection, processing or storage of Cardholder Data, comply with, or create an environment that complies with, the Celcom Payment Card Industry Data Security Standard and the Payment Card Industry Data Security Standard requirements for Cardholder Data whichever is the most onerous standard;
- (b) comply with all Celcom Policies relating to security of Celcom Assets at all times;
- (c) ensure that only Authorised Persons have access to, and are able to access, the Celcom Data, the media or storage devices on which that Celcom Data is stored or any other Celcom Assets;
- (d) only access Celcom Assets:
 - (i) in accordance with Celcom's reasonable directions; and only for the purposes of this Contract;
 - (ii) keep passwords and other user identification information or security keys required to access Celcom Data and Celcom's systems confidential;
- (e) ensure that any item which stores, contains or can otherwise be used to access, Celcom Data or any Celcom system which is used:
 - (i) outside Celcom premises, is not left unattended and is

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(f) do all things necessary to allow Celcom to supervise and monitor the activities of the Supplier and any of its Personnel as and when required by Celcom from time to time.

31. PERSONAL DATA PROTECTION

31.1 Supplier Compliance with PDPA

In the event that pursuant to this Contract, Supplier receives any Personal Data from Celcom, Supplier shall ensure that it fully complies with the provisions of the Personal Data Protection Act 2010 ("PDPA") and only deals with the Personal Data to fulfil its obligations under the Contract. The Supplier shall indemnify Celcom for any breach of the PDPA that renders Celcom liable for any costs, claims or expenses.

31.2 Systems to Comply with PDPA

In fulfillment of its obligations under the PDPA, the Supplier shall have such systems in place to ensure:-

- (a) full compliance with the PDPA, including but not limited to, compliance with the Security Principle which deals with the security of Personal Data and requires the taking of practical steps to protect data from any loss, misuse, modification, unauthorised or accidental access or disclosure; and
- (b) the reliability of all its employees who may be involved in processing the Personal Data.

31.3 Contractors and Agents to Comply with PDPA

The Supplier shall take all reasonable steps to ensure that all its partner contractors and agents comply with this clause where they are processing any Personal Data on behalf of Celcom.

32. LANGUAGE

All Deliverables, documents, data, descriptions, books catalogues, diagrams, instructions, invoices and correspondences shall be in the English Language

33. NOTICES AND SERVICE

33.1 Modes of Delivery/Service

Any notice, request, correspondence or other information required or authorized by this Contract to be given shall be given in the English Language by:-

- (a) delivering it by hand;
 - (b) sending it by post (or airmail in the case of notices to any party outside Malaysia); or
 - (c) sending it by telex, cable, facsimile transmission, electronic mail or comparable means of communication;
- to the relevant Parties at the addresses given in this Contract.

33.2 Posting

Any notice or information given by post in the manner provided by clause 33.1(b) which is not returned to the sender as undelivered shall

other party of any provision of this Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision. No failure or

be deemed to have been given on the 3rd day after it was posted if the address is within Malaysia and on the 7th day after it was posted if the address is outside Malaysia; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender shall be sufficient evidence that the notice or information has been duly given.

33.3 Facsimile Transmission, Email, etc.

Any notice, request, correspondence or information sent by facsimile transmission, email or comparable means of communication shall be deemed to have been duly sent on the date of transmission. In the case of email communication, a confirming copy of the notice, request, correspondence or information should be sent as provided in clause 33.1(b) to the relevant Parties within 24 hours after transmission.

33.4 Service

Service of any document for the purposes of any legal proceedings concerning or arising out of this Contract shall be effected by any Party by causing it to be delivered to the relevant Party at its registered or principal office, or to such other address as may be notified to it by the Party in writing from time to time.

34. REMEDIES AND INJUNCTIVE RELIEF

The rights and remedies (including indemnities) reserved to Celcom in this Contract are cumulative with, and in addition to, all other or further remedies provided in law or equity. Celcom strictly reserves its rights to exercise specific performance or seek injunctive relief (whether inter-partes or ex-parte) as the case may require.

35. CELCOM'S RECOVERY RIGHT

With respect to any monetary obligations of Supplier or Supplier's affiliates to Celcom or Celcom's affiliates, including, without limitation, liability under any indemnity, liability to compensate Celcom for direct and indirect losses, costs and damages arising from Supplier's failure to supply Goods or Services or Works in accordance with the Schedule or the warranties set out in this Contractor failure to comply with any other term or condition of this Contract, Celcom may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are, or will become, owing, due or payable to Supplier or Supplier's affiliates by Celcom.

36. CONSEQUENTIAL DAMAGES

In no event will Celcom be liable for any of the Supplier's loss of profit, savings, customers, contracts, revenue, interest or goodwill (unless specifically covered under an indemnity) or for any consequential, indirect, incidental or special loss, damage or expenses even if it has been advised of their possible existence and even if such loss damage or expense is caused by the negligence of Celcom, its servants, agents or contractors.

37. NO IMPLIED WAIVER

The failure of either party at any time to require performance by the

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delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Supplier's obligations under this Contract.

38. ASSIGNMENT AND CHANGE IN CONTROL

Celcom may assign its rights and obligations under this Contract without Supplier's prior written consent. Supplier may not assign or delegate this Contract or its rights or obligations under this Contract without prior written consent from Celcom.

39. RIGHT TO AUDIT AND INSPECT

Celcom, at its expense, has the right to audit and review all relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Supplier's administrative and accounting policies, guidelines, practices and procedures, in order to (i) substantiate any charges and other matters under this Contract and (ii) assess Supplier's ongoing ability to perform its obligations under the Contract. Supplier will maintain and preserve all such documents for a period of seven (7) years following final payment under this Contract. Supplier will provide Celcom with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Celcom. Celcom strictly reserves its rights to conduct an audit of the Supplier's compliance with its obligations under this Contract. Without prejudice to any other right or remedy available to Celcom, if an audit identifies any breach which may compromise Celcom or any Celcom assets, the Supplier must at its own cost, do all things necessary to remedy that breach.

40. NO INDUCEMENT, GIFTS, CANVASSING OR SOLICITING OF CONFIDENTIAL INFORMATION

The Supplier shall not under any circumstances give or at any time offer to give or agree to give any person, including any Personnel employed by Celcom or acting on its behalf, any gift, commission or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the supply of Goods or Services entered pursuant thereto or forbearing to show favour or disfavour to any person in relation to the terms set out herein or any Purchase Order. For the avoidance of doubt, without limitation, Supplier shall not directly or indirectly exchange, offer any gift, bribe, commission, provide rebate, consideration, personal service, indulge in unusual hospitality of any kind as an inducement or reward for any act or omission by Celcom's personnel in relation to any events related to Celcom's purchase or intended purchase or Purchase Order. Supplier is further refrained from soliciting Confidential Information from any Celcom personnel for

signed by both parties. Notwithstanding anything to the contrary contained herein, Celcom explicitly reserves, and this Contract will not constitute a waiver or release of, any rights and claims against Supplier arising out of, or relating to, any fraud or duress in connection with the

unethical or illegal advantage, engage and collude with other suppliers to fix prices, perform any services, conduct any work or deliver any goods to Celcom without a valid purchase order with the expectation of unfair gain, profit or advantage. In the event that Celcom has reasonable grounds to believe that Supplier has not complied with this clause then Celcom may at its own discretion (a) terminate this Agreement and; or (b) seek such remedies available to it under the law including injunctive relief.

41. RELATIONSHIP OF PARTIES

Supplier and Celcom are independent contracting parties. Nothing in this Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party. Supplier alone will be responsible for the supervision, compensation and provision of benefits to its personnel. Supplier will indemnify Celcom against any liability and hold Celcom harmless from and pay any loss, damage, cost or expense (including legal fees and disbursements and court costs) arising out of or in connection with any claim by any Supplier personnel.

42. GOVERNING LAW

This Contract shall be governed by and construed in every respect in accordance with the laws of Malaysia.

43. DISPUTE RESOLUTION

All claims, differences or disputes ("**Disputes**") arising out of or in connection with the Contract shall be submitted by both parties to the exclusive jurisdiction of the Courts of Malaysia at Kuala Lumpur. Subject to Celcom's agreement in writing, the Disputes may be resolved by arbitration in Kuala Lumpur in accordance with the Arbitration Rules of the Kuala Lumpur Regional Arbitration Centre ("KLRA Rules").

44. SEVERABILITY

If any provision of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Contract will remain in full force and effect.

45. SEVERAL LIABILITY

If more than one party is referred to as the Supplier, then their obligations and liabilities shall be joint and several.

46. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between Supplier and Celcom with respect to the matters contained in this Contract and supersedes all prior oral or written representations and agreements. This Contract may only be modified by a written contract amendment

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formation of this Contract or any breach or anticipatory breach of any previously existing contract between Celcom and Supplier (whether or not such previously existing contract related to the same or similar goods or subject matter as this Contract).

47. ORDER OF PRECEDENCE

47.1 Between Contract Documents

The Contract Documents must be read together and interpreted as mutually explanatory of one another. If there is a direct inconsistency in specific obligations, then for the purposes of resolving the inconsistency, the Contract Documents and the provisions therein shall be given the following order of precedence:

- (a) (highest order of precedence) Appendix excluding Exhibits to the Appendix;
- (b) Special Terms and Conditions;
- (c) General Terms and Conditions;
- (d) Purchase Order;
- (e) Exhibits to the Appendix; and
- (f) (lowest order of precedence) Any other documents specifically incorporated into the Contract by reference in the Purchase Order or the Appendix.

47.2 Between Variation Contract and Original Contract

If a Variation is effected pursuant to Clause 10 the Contract Documents comprised in the Variation ("**Variation Contract Documents**") shall be read together with the Contract Documents comprising the Contract that has been varied ("**Original Contract Documents**"), and if there is a direct inconsistency in specific obligations, then for the purposes of resolving the inconsistency, the Variation Contract Documents shall have precedence over the Original Contract Documents.

48. SURVIVAL

The provisions of this Contract that, by their sense and context, are intended to survive performance by either or both parties shall also survive the completion, expiration or termination of this Contract.

49. COUNTERPARTS

This Contract may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so execute and delivered shall be an original.

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