

SUB-CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into the _____ day of _____, 2024.

BETWEEN

_____ (hereinafter referred to as “the Main-Contractor”) (Company No.: _____), a company incorporated in Malaysia and having its business office at _____

_____ of the first party;

AND

_____ (hereinafter referred to as “the Sub-Contractor”) (Company No.: **XXXXXX-X**), an entity registered in Malaysia and having its business office at _____

_____ of the second party;

WHEREAS:

(A) the First Party has been awarded a contract (hereinafter referred to as “the Main-Contract”) by Government of Malaysia acting through **Jabatan Kerja Raya Malaysia** (hereinafter referred to as “JKR”) via a letter of acceptance (hereinafter referred to as “the Letter of Acceptance”) dated _____ 2013 to construct, complete and maintain the works (hereinafter referred to as “the Works”) for a project known and referred to as _____ “_____” (hereinafter referred to as “the Project”).

(B) the Second Party is desirous to be appointed as the Sub-Contractor and agrees to accept the appointment to undertake the execution of the Works which are briefly set out in the Letter of Acceptance **Ringgit Malaysia:** _____ (RM _____) only (hereinafter referred to as “the Sub-Contract Sum”) only or any sum which may be determined by the provisions of this Sub-Contract Agreement.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

1. The following documents (together with this Sub-Contract Agreement) shall form and be read and construed as parts of this Agreement all of which are complimentary to each other, namely:
 - a) The **Letter of Acceptance** attached herein Appendix A; and
 - b) All documents forming the Main Contract.

2. The Sub-Contractor shall provide everything necessary for the proper execution and completion of the Works subject to and in accordance with this Sub-Contract Agreement in all respects to the reasonable satisfaction, directions and requirements of the Superintending Officer (hereinafter referred to as "Superintending Officer" or "S.O.") appointed by JKR.
3. The Sub-Contractor shall observe, perform and comply with all the provisions of the **Letter of Acceptance** on the part of **the First Party** to be observed, performed and complied with as if all the same were severally set out herein.
4.
 - a) The Works shall be executed in accordance with the provisions of the Sub-Contract.
 - b) The Works carried out by the Sub-Contractor shall be executed and completed in reasonable time and quality so as to enable **the First Party** to discharge its obligations under the Sub-Contract to the satisfaction of the JKR and/or the S.O.
 - c) The Sub-Contractor shall comply with all instructions issued by **the First Party** and/or the S.O. relating to the Sub-Contract Works.
5. All defects, imperfections or any other faults in the Works shall be made good by the Sub-Contractor at its own cost within seven (7) days after receipt of instructions from JKR which said instructions shall be binding on the Sub-Contractor without contest.
6. It shall be an essential condition of this Sub-Contract, and to facilitate Sub-Contractor's execution the Works that **the First Party** shall grant to the Sub-Contractor an irrevocable power of attorney for the Sub-Contractor to act on behalf of **the First Party** including but not limited to issuing letters, accepting instructions, negotiating for all contractual and commercial matters, accepting all cheques issued by JKR, bank in the cheques collected into the Project Account (as hereinafter defined) and others on behalf of **the First Party** and the power of attorney mentioned herein shall also include the authority to transact all matters relating to and concerning the Project Account (as hereinafter defined). The said power of attorney shall be in the form and manner as set out in Appendix B.
7. The terms and conditions of the Main Contract shall apply to the Sub-Contractor to the extent that they relate to the Works as if the Sub-Contractor were a permitted assignee of all **the First Party's** duties and obligation, liabilities, rights, interests, benefits and claims entitled under the Main Contract or that the Sub- Contractor were a party to the Main Contract. However, nothing herein shall be construed as creating any privacy between the Sub-Contractor and Government of Malaysia.
8.
 - a) The Sub-Contractor shall construct and complete the Works on or before or within such extended completion date as may be granted to **the First Party**. If the Sub-Contractor shall fail to complete the Sub-Contract Works within the period specified or any extended period or periods as hereinafter provided he may be charged a liquidated and ascertained damages at the same rate as that in the Main Contract provided always that **the First Party**

itself must have been imposed with such liquidated and ascertained damages by JKR.

- b) **the First Party** shall in the event that it is granted extension of time by the Superintending Officer grant to the Sub-Contractor such corresponding extension of time. Provided always that the Sub-Contractor shall give to **the First Party** written notice of the circumstances or occurrences which are delaying him within such time and such manner as would enable **the First Party** to comply with the requirements of the relevant provisions of the Main Contract to claim and qualify for extension of time.
 - c) Notwithstanding anything contrary stated in Clause 9(b) above,
 - i) the Sub-Contractor's period of time extended for his benefit shall equal **the First Party's** right to the same;
 - ii) the Sub-Contractor shall not be entitled to any claims for losses and expense incurred by the Sub-Contractor as a result of causes of the delay for which no claim is made against any party; and
 - iii) if, **the First Party** is awarded loss and expense pursuant to any extension of time granted by JKR, the entire benefits of such loss and expense shall revert to the Sub-Contractor.
9. a) No variation shall vitiate this Agreement. Variations are to be executed as soon as practicable after the written instruction has been issued by JKR or the S.O.
- b) All quantities or rates agreed between **the First Party** and the Superintending Officer shall be deemed to be acceptable to the Sub-Contractor.
- c) The profits of any variation works instructed by JKR and duly and properly executed by the Sub-Contractor shall be apportioned between **the First Party** and **the Sub-Contractor** in the proportion 0%:100%; the profits herein shall refer to the net figure of the awarded sum of the variation and the Sub-Contractor's cost in executing the corresponding variation.
- d) Notwithstanding the provisions herein contained, the parties hereto agree that if the variation works are measured on a day works basis, it shall then be agreed between **the First Party** and **the Sub-Contractor** that the full amount of such a variation shall be retained by the Sub-Contractor.
10. The Sub-Contractor shall provide all site facilities required for the construction and completion of the Works. The site shall be kept clean at all times and debris and rubbish shall be removed upon completion of the Works.
11. a) The Sub-Contractor shall subject to and in accordance with this Sub-Contract Agreement from time to time and on behalf of **the First Party** make application for payment for the amount which fairly represents

the total value of the Sub-Contract Works and/or any variation authorised and executed.

b) **the First Party** shall open or cause to be opened a bank account (“the Project Account”) from a licensed bank operating in Malaysia and shall inform and direct JKR that all proceeds or payment from Government regarding and relating to the Works shall be deposited into the Project Account. For the avoidance of doubt, **the First Party** shall irrevocably authorize the Sub-Contractor to accept and deposit all payments received from the Government into the Project Account. **The First Party** further undertakes that it shall not accept any payment from Government/JKR other than in the form of a cheque in the name of **MESRA MODULAST SDN BHD (881684-P)**. **The First Party** shall cause a letter to be written to JKR to this effect, the letter shall be substantially in the form as set out in Appendix C.

12. **The First Party** shall also confirm with the bank from where the Project Account is opened an irrevocable standing instruction directing that all payments deposited into the Project Account shall be automatically and forthwith further transferred to another bank account (hereinafter referred to as “the Nominated Account”) to be nominated by the Sub-Contractor. The form of the standing instruction shall be in the form and manner or substantially in the form and manner as set out in Appendix D annexed herein.

13. The Sub-Contractor undertakes that it shall pay to a sum equal to **Ten Percent per centum (10.0%)** of the total payments received from the Government/JKR at the times and in the manner as follows:

(a) Simultaneously with the execution of this Sub-Contract Agreement, the Sub-Contractor shall pay the sum of **Ringgit Malaysia:** _____

_____ (RM _____) **Only to the First Party** or the person/body authorized by **the First Party** or other manner as per instructed by **the First Party** or as the manner stipulated hereof, and the receipt of which **the First Party** hereby acknowledges. The payment will only be released after **the first payment** is released by the Government/JKR as a payment to the related project. The amount of the related payment shall not be more than **Ringgit Malaysia:**

_____ (RM _____) **Only including the deposit which is amounting (Ringgit Malaysia: Fifty Thousand Only (RM50,000.00)).**

14. For the avoidance of doubt, it is agreed that the total payments to be received by **the First Party** pursuant to this Sub-Contract Agreement **Ringgit Malaysia:**

_____ (RM _____) **Only** of the Sub-Contract Sum as may be determined by JKR in accordance with the Sub-Contract (the amounts for variations and loss and expense if any shall not be taken into account in such determination by JKR).

15. **the First Party** will not entertain any contractual claims for payment on

additional/variation works to the Sub-Contractor unless **the First Party** has received payment from JKR on such additional/variation works.

16. If for any reason **the First Party's** employment under the Sub-Contract is determined (whether by **the First Party** or by JKR and whether due to any default of **the First Party**), this Sub-Contract shall also be automatically determined and the Sub-Contractor shall be entitled to be paid:
 - i) the value of the Works completed at the date of such determination;
 - ii) the value of works begun and executed but not completed at the date of such determination; and
 - iii) any reasonable cost of removal from site of his temporary plant, machinery appliances, goods and materials.
17. The Sub-Contractor hereby agrees that if JKR shall terminate the Main Contract through no fault of **the First Party** but which termination is directly caused by the breach of the provisions by the Sub-Contractor of the provisions of the Main Sub-Contract, the Sub-Contractor shall indemnify **the First Party** for the losses that **the First Party** may suffer provided always that such losses shall not exceed the losses that the First Party is liable to JKR under the Main Contract.
18. For the avoidance of doubt the parties hereto expressly agree that the payment mechanism set out in Clauses 11 to 14 above (inclusive) are fundamental terms of this Sub-Contract Agreement and any deviation or breach of the said provisions by **the First Party** shall entitle **the Sub-Contractor** to forthwith determine this Sub-Contract Agreement by notice to **the First Party**.
19.
 - a) **The Sub-Contractor** shall register his employees and contribute under the Social Security Scheme (SOCSSO) of the Employees' Security Act 1969 as amended or pursuant to Workmen's Compensation Act 1952 whichever is applicable.
 - b) **The Sub-Contractor** in the execution of the Works shall comply with all the provisions of the Employee's Provident Fund Act 1991 as amended and with the provisions of all regulations and rules from time made hereinafter and shall particular be responsible for payment into the Employee's Provident Fund of all contributions required in respect of all persons employed by the Sub-Contractor for the performance of the Sub-Contract Works.
20.
 - a) Any dispute, controversy or claim arising out of this Sub-Contract Agreement or breach or termination thereof shall failing amicable settlement be settled by arbitration before a sole arbitrator in accordance with the Arbitration Act 2005.
 - b) Arbitration proceedings shall not be commenced before the completion or alleged completion of the Works or the termination of this Sub- Contract Agreement.
 - c) Both **the First Party** and **the Sub-Contractor** shall agree on the choice of

arbitrator and failing such agreement, the appointor of arbitrator shall be the Director of Kuala Lumpur Regional Centre for Arbitration.

21. This **Sub-Contract Agreement** shall be governed by and be construed in accordance with the laws of Malaysia.
22. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between any of the parties hereto and none of them shall have any authority to bind the other in any other way except as provided for in this Sub-Contract Agreement.
23. No party shall be liable for failure to perform its obligations under this Sub-Contract Agreement if and to the extent the failure is due to causes beyond its reasonable control such as but not limited to fire, flood, insurrection, war (undeclared or declared), embargoes, blockages, legal prohibitions, riots or governmental restriction.
24. Any term, condition, stipulation, provision, covenant or undertaking contained herein this Agreement which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, voidness, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any such term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.
25. This Sub-Contract Agreement shall be binding upon the heirs, representative, successors-in-title and assigns of the parties hereto.
26. This Sub-Contract Agreement and the Power of Attorney granted to the Sub-Contractor pursuant to Clause 6 above constitute the whole understandings and intents of the parties and any representations and documents evidencing any understandings and intents of the parties shall not be deemed to form part of this Agreement unless and to the extent that such representations and documents are expressly incorporated in this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF authorised signatories of each Party have hereunto set their respective hands.

Signed for and on behalf of _____ (_____)

Director

Name :
NRIC :
Date :

Director/Company Secretary

Name :
NRIC :
Date :

Signed for and on behalf of
ABC SDN BHD

Director

Name :
NRIC :
Date :

**Director/Company
Owner/Secretary**

Name :
NRIC :
Date :

APPENDIX A
The Letter of Acceptance and its Appendices

APPENDIX B
Proforma of the Irrevocable Power of Attorney

THIS **POWER OF ATTORNEY** is made on _____ day of _____, 2013 by us, _____ (hereinafter referred to as "the Main-Contractor") (Company No. _____), an entity registered in Malaysia and having its business office at _____

_____.

The Main-Contractor has been awarded a sub-contract (hereinafter referred to as "the Main-Contract") by Government of Malaysia acting through **Jabatan Kerja Raya Malaysia** (hereinafter referred to as "JKR") via a letter of acceptance (hereinafter referred to as "the Letter of Acceptance") dated _____ 2013 to construct, complete and maintain the works (hereinafter referred to as "the Works") for a project known and referred to as "**PROJEK PENYELENGGARAAN FASILITI: PROPOSED REFURBISHMENT OF WASHROOM AT AMHALLAH BILAL FOR THE INTERNATIONAL ISLAMIC UNIVERSITI MALAYSIA, GOMBAK, SELANGOR DARUL EHSAN**" (hereinafter referred to as "the Project").

By a sub-contract agreement ("the Sub-Contract Agreement") executed between the Main-Contractor and **MESRA MODULASI SDN BHD** (Company No.: **881684-P**) (hereinafter referred to as "the Sub-Contractor", a company incorporated in Malaysia and having its business office at **No. F066, Tingkat 1, Block Season Square, Jalan 10/3C, Damansara Damai, 47830 Petaling Jaya, Selangor**, where, the Main-Contractor appoints the Sub-Contractor to undertake, construct and complete the Works in accordance with the provisions of the Sub-Contract Agreement.

1. We jointly appoint the Sub-Contractor as our attorney to do all things and to execute all documents mentioned below for us in relation to the Letter of Acceptance and the Works in our name and on our behalf.
2. We authorise our attorney to open and operate any banking account ("the Project Account") on our behalf and in our name for the purpose of the Works and the Main Contract and to accept any cheque issued by Government/JKR of Malaysia in relation to the Works and the Main Contract.
3. Our attorney may check balance, issue instructions to the bank from where the Project Account is opened, and may operate and do all things as if the account is owned by our attorney itself.
4. Our attorney may perform and carry out all our obligations under the Letter of Acceptance and in relation to the Sub-Contract Works and to represent us in respect of the execution of the Sub-Contract Works including but not limiting to the following:
 - (i) issuing all letters on our behalf to JKR,
 - (ii) attending all meetings on our behalf with JKR;
 - (iii) accepting all letters issued by JKR;
 - (iv) negotiate all matters and liaise with JKR;
 - (v) perform all our obligations;

and generally to do all things necessary and incidental to the proper execution and performance of our obligations under the Main Contract Agreement with Government of Malaysia/JKR and extend to all rights now or in the future owned by us or vested in us.

5. Generally, our attorney may act in relation to the subject of this Power of Attorney as fully and effectually in all respects as we could act ourselves.
6. This Power of Attorney is made with consideration and shall be irrevocable and shall remain in force as long as the Sub-Contract Agreement between the us and the Sub-Contractor shall subsist.
7. This Power of Attorney shall be governed by and construed in accordance with the laws of Malaysia.

Made and executed by us as a DEED and our company's stamp is hereby affixed.

The common seal of _____ (_____)
is hereto affixed in the presence of

.....
Director

Name :

NRIC :

.....
Director/Company Secretary

Name :

NRIC :

[Attestation clause of the solicitors]

APPENDIX D
Form of Standing Instruction

[To be Issued on Main contractor's Letterhead]

Our Ref.

Date : February, 2024

The Manager,
(Proposed Bank Name)
(Proposed Bank Address)

Dear Sirs,

Account No. ("the Said Account")
Irrevocable Standing Instruction

We refer to the Said Account which has been opened by us.

Please be informed that we _____, (Company No.: _____), a company incorporated in Malaysia and having its business office at _____

_____ is the lawful attorney of _____ (Company No: **XXXXXXX-X**) to deal with all matters in relation to the Said Account. We append herewith the duly executed power of attorney in relation of the same.

We further confirm that in addition to the grant of the said power of attorney, we hereby give the following irrevocable standing instruction in dealing with all matters relating to the Said Account:

1. All amounts deposited to the Said Account except for a balance sum of Ringgit Malaysia: One thousand (RM1,000.00) only shall immediately upon their clearance be transferred to another account as follows:
 - (i) [Details of account]
2. This standing instruction shall remain irrevocable at all times.
3. All future instructions (if any) shall only be valid if and only if it is given by us _____ (_____), as the lawful attorney of _____ **(the Sub-contractor)** _____ **(XXXXXXX-X)**.
4. We append herewith a duly certified copy of the Sub-Contract agreement confirming the contents herein as well as a certified true copy of the power of attorney.

Thank you

Yours sincerely,

The common seal of

_____ (_____)
Is hereto affixed in the presence of

.....
Director

Name :

NRIC :

.....
Director/Company Secretary

Name:

NRIC :

Attachments:

1. Sub-Contract Agreement
2. A duly certified copy of the said Power of Attorney c.c.

_____ (others)