

## BIDDER AGREEMENT

1. The Bidder Agreement shall only be applicable to and binding upon the invited supplier that participating in the Request for Proposal (“RFP”) and/or “Competitive Bidding Event” (“CBE”).
2. By submitting the Bid Price at the stage of RFP and the non-refundable administrative charges of an amount stated in the RFP and Auction, the supplier shall be deemed to have read, understand and agree to accept and observe: -
  - (a) the terms and conditions governing the online bidding, **CBE**, including without limitation this Bidder Agreement, once the supplier is selected by the Company to be qualified to participate in the CBE;
  - (b) the terms and conditions stipulated in the Supply Agreement that have been made available by the Company together with this Bidder Agreement once the tender is awarded to the successful bidder.
3. Each bidder shall upon acceptance of this Bidder Agreement, pay a sum of an amount as stated in the RFP (the “**Deposit**”) via Company Cheque payable to Genting Malaysia Berhad as security for due observance and performance of this Bidder Agreement. The Deposit will be refunded Free of Interest no later than 6 months after the date of the CBE unless the Deposit is forfeited based on any one or more of the following grounds: -
  - (a) the relevant bidder defaults or breaches any of the terms and conditions of this Bidder Agreement, the RFP and/or all other documents and appendixes prepared or to be prepared in relation to the on-line bidding and/or the Licence Agreement with Ariba Inc. (“**Ariba**”), the independent contractor appointed by the Company to conduct the CBE or the rules and regulations determined by the Company and/or Ariba;
  - (b) Qualified bidder fails to participate or withdraw from the CBE for whatever reasons;
  - (c) the successful bidder declines or refuses to accept the Company’s award of the tender for whatever reasons.
4. Notwithstanding the bidding price is one of the important factors in the award decision, the Company reserves its right to award the tender to Bidder that have been selected by the Company in good faith and in its sole opinion, most appropriate based on the parameters that have been determined by the Company.
5. Terms and Conditions with Ariba: -
  - (a) Each bidder shall prior to the CBE, reads, understands, agrees, observes and abides by the terms and conditions stipulated in the following documents: -
    - (i) the applicable Online Event Information (OEI) available on the website known <http://rwb.supplier.ariba.com/> (including its amendments that may be notified by Ariba and/or the Company in such manners as Ariba and/or the Company shall deem fit) (the “**OEI**”).

- (ii) the license agreement relating to the Quicksource® software provided by Ariba to Bidder together with this Bidding Agreement (the "**License Agreement**") which upon acceptance of this Bidder Agreement, shall form the separate agreement entered between each Bidder and Ariba respectively.

6. Terms and Conditions on the Bidding Procedures: -

- (a) Only the qualified bidder is entitled to participate in the CBE. The bidding procedures shall be governed by the procedures stipulated in the applicable OEI and all bids shall be submitted in accordance with the procedures stipulated therein and such other relevant rules and regulations that may be determined by the Company and Ariba at the material time, if any.
- (b) The starting price shall be the price submitted by the relevant Bidder in the RFP and each Bidder shall only be entitled to bid for the lot(s) that have been selected by the bidder in the RFP.
- (c) Each bid submitted shall be lower than the preceding bid and the percentage of reduction shall always higher than the percentage determined by the Company.
- (d) Bids shall only be submitted via online bidding mechanism provided by Ariba. Any bids that are submitted via any other mechanism including, but not limited to, post, courier, fax, E-mail, or orally shall not be entertained or accepted by the Company unless Bidder has obtained written approval from the Company prior to the CBE date.
- (e) All prices bided shall be genuine, honest and deliverable on the part of the relevant bidder.
- (f) While the Company and Ariba will use their best endeavour to prevent any unethical behavior among the bidders, bidders shall immediately notify Ariba and/or the Company if they witness practices that are counter-productive to the fair operation of the CBE.
- (g) Any Bidder experiencing difficulties during a CBE must notify Ariba immediately. "Difficulties" include any event or problem, which interferes with the relevant bidder's ability to participate in the CBE, and may include, but is not limited to data entry errors, software problems, or hardware problems. Bidders will have ten (10) minutes after a lot goes into "Pending" status for Ariba to identify any problems. If Ariba judges that any party has been disadvantaged by a problem, Ariba will correct the problem and may return the lot to "Open" status.
- (h) Result of the CBE shall be announced on the date determined by the Company and the successful bidder shall immediately execute the Supply Agreement upon receipt of the Company's notification and produce a certified true copy of the insurance policy and receipt as required under clause 4.27 of the General Terms and Conditions of Purchase Order for Services and/or Products ("**General Terms and Conditions**").

7. General Terms and Conditions Governing the CBE: -

- (a) Bidder shall keep its password and user identity in safe custody. All bids submitted during the CBE shall be final, legal valid quotations without qualification (except for data entry errors which may be rectified within the stipulated time) and binding on the relevant Bidder (irrespective if the bid is submitted by other third party other than the bidder itself).

- (b) The Company and/or Ariba reserve their rights to suspend, cancel, postpone or withdraw the CBE at any time without prior notification and for whatever reasons as the Company and/or Ariba shall deem fit at its absolute discretion (including but not limited to technical problems, defaults on the part of the relevant Bidder etc.) and in such event, shall not be liable to the Bidders for whatever costs and expenses that have been incurred for participating in the CBE.
- (c) The Company and/or Ariba shall be entitled to disallow or expel any of the bidders from participating in the CBE at any time (including but not limited during the on-line bidding process) via such manner as the Company and/or Ariba shall reasonably deem fit if the bidder: -
  - (i) breaches or defaults in observing any of the terms and conditions of this Agreement and/or the rules and regulations determined by the Company and/or Ariba;
  - (ii) the Company and/or Ariba is of the opinion that the bidder is not fit to participate the CBE for whatever reasons.
- (d) The Company does not bind itself to accept or consider all or any part of any bids and the Company shall be entitled to conduct a re-tender for all or any of the Lot and Auction without assigning any reasons.
- (e) In addition to any other remedies available to Ariba and/or the Company, the Company and/or Ariba may exclude Bidder from participating in future CBEs that may be held by the Company and for Ariba, including future CBEs that may be conducted by Ariba for third parties other than the Company due to Bidder's breach of any of the obligations and/or procedures contained in this Bidder Agreement or the License Agreement
- (f) Limited Liability: -

The Company and/or Ariba shall not be liable to any losses, damages, claims or demands (either direct or indirect) that may be suffered by the bidders in connection with its participating in the CBE and the Bidders hereby releases the Company and Ariba from any liability with respect to the CBE; including without limitation any conduct of the Company, Ariba or the other bidders in the CBE, regardless of whether such liability arises under contract, tort or any other cause of actions. To the extent permitted by law, the Company's liability to the Supplier in connection with this Agreement is limited to the lesser of the amount paid by the Bidder and RM1,000.00

- (g) Confidentiality: -

Bidder shall keep all user names and passwords, the OEI package, other confidential materials provided by the Company and Ariba, and all bids provided by itself or another bidder in confidence and shall not disclose the foregoing to any third party for whatever purposes without prior written consent of the Company and Ariba. Bidder shall also keep all software, manuals and documentation provided by Ariba in confidence and if requested shall return the same to Ariba at the conclusion of the CBE.

- (h) Any representation or statement by the Company (including without limitation the quantity forecast) is for reference purposes and the Company shall not be liable for any losses or damages that may be suffered by the bidder in furtherance to any decision that may be made by the Bidder in reliance on such representation or statement.

- (i) The Company reserves its rights to amend the terms and conditions stipulated herein by posting the amendments on the website and the bidder shall be deemed to have read, understood and agreed to such amendments upon its participation in the CBE.
- (j) This Bidder Agreement shall be governed by the law of Malaysia.
- (k) The bidder shall not transfer or assign any of their rights or obligations under this Agreement, including but not limited its right to participate in the CBE.
- (l) If any portion of this Agreement is held to be invalid or unenforceable for any reason by a court or governmental authority of competent jurisdiction, then such portion will be deemed to be stricken and the remainder of this Agreement shall continue in full force and effect.
- (m) Time wherever mentioned shall be of the essence of this Agreement.
- (n) The headings of this Agreement are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Agreement.
- (o) This Agreement shall be binding upon the respective heirs, personal representatives, executors and successors in title of the parties hereto.
- (p) Failure by either party to enforce at any time any of the provisions of this Agreement shall not be construed as a waiver of any continuing breach of any provision of any other provision of this Agreement or as a waiver of any rights under this Agreement.
- (q) Each of the parties undertakes with each other to do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Agreement.
- (r) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**ACKNOWLEDGMENT AND ACCEPTANCE**

We, [\_\_\_\_\_] (Company Registration No. \_\_\_\_\_) hereby expressly declare and acknowledge that we have read and fully understand and we further confirm our agreement and acceptance of all the terms and conditions as above stated.

We hereby covenant and undertake that we will comply strictly with and observe all the terms and conditions as above stated.

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(Signatory)  
Name of Authorised Signatory & Designation:  
Company stamp:  
Date: