**FRAMEWORK AGREEMENT**

**between**

**BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS SDN BHD**

**and**

**[INSERT COMPANY NAME]**

**for**

**THE SUPPLY AND DELIVERY OF MEDICINAL PRODUCTS FOR BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS SDN BHD FOR ONE PLUS ONE (1+1) YEARS**

**Tender Batch: BELTS/MSC/PROC/MP/2024/10**

**TABLE OF CONTENTS**

|  |  |  |
| --- | --- | --- |
| 1. | DEFINITION AND INTERPRETATION | 4 |
| 2. | COMMENCEMENT AND DURATION | 7 |
| 3. | BASIS OF CONTRACT | 7 |
| 4. | SUPPLY OF GOODS | 9 |
| 5. | SECURITY OF SUPPLY AND STOCK LEVEL | 10 |
| 6.  7. | ADDITIONAL QUOTA  LABELLING, SHELF-LIFE AND EXPIRY DATE | 11  11 |
| 8. | PACKING AND STORAGE | 12 |
| 9. | DELIVERY OF GOODS | 12 |
| 10. | QUALITY INSPECTION OF GOODS DELIVERED | 13 |
| 11. | ACCEPTANCE OF GOODS | 14 |
| 12.  13. | SUPPLY CONSTRAINT OF GOODS  DISCONTINUED GOODS | 14  15 |
| 14. | PRODUCT RECALL | 16 |
| 15. | WITHDRAWN GOODS | 17 |
| 16. | DEFECTIVE GOODS | 18 |
| 17.  18.  19.  20. | CHARGES AND PAYMENT  PROJECT MANAGEMENT  KEY PERFORMANCE INDICATORS  BREACH BY THE SUPPLIER | 18  19  20  21 |
| 21. | TITLE AND RISK | 22 |
| 22. | PERFORMANCE BOND | 22 |
| 23. | BELTS’ REMEDIES | 24 |
| 24. | SUPPLIER’S OBLIGATIONS | 25 |
| 25. | ASSIGNMENT, NOVATION AND SUB-CONTRACTOR | 26 |
| 26. | INTELLECTUAL PROPERTY RIGHTS | 26 |
| 27. | INTELLECTUAL PROPERTY RIGHTS INDEMNITY | 27 |
| 28. | CHANGES OR VARIATION TO THIS AGREEMENT | 27 |
| 29. | LIABILITY | 28 |
| 30. | INDEMNITY | 29 |
| 31. | RELEASE OR WAIVER | 31 |
| 32. | CONFIDENTIALITY | 31 |
| 33. | FORCE MAJEURE | 32 |
| 34. | TERMINATION | 32 |
| 35. | NOTICES | 33 |
| 36. | GIFTS | 34 |
| 37. | INSURANCE | 34 |
| 38. | EXPENSES | 34 |
| 39. | ENTIRE AGREEMENT | 35 |
| 40. | AMENDMENT AND VARIATION | 35 |
| 41. | CONTINUTING EFFECT OF AGREEMENT | 35 |
| 42. | WAIVER | 35 |
| 43. | TIME OF THE ESSENCE | 35 |
| 44. | COUNTERPARTS | 35 |
| 45. | SEVERABILITY | 35 |
| 46. | PAYMENT OF STAMP DUTIES | 35 |
| 47. | GOVERNING LAW | 36 |
| 48. | DISPUTE RESOLUTION | 36 |
| SCHEDULE A – MEDICINAL PRODUCTS | | 38 |
| SCHEDULE B – PURCHASE ORDER | | 39 |
| SCHEDULE C – PERFORMANCE BOND | | 41 |
| SCHEDULE D – KEY PERFORMANCE INDICATORS  SCHEDULE E – SPECIFICATIONS FORM | | 42  44 |

**This FRAMEWORK AGREEMENT (this “Agreement”) is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BETWEEN**:

1. **Brunei Engineering, Logistics and Training Solutions Sdn Bhd** (Company No. AG/RC/2742)], a company incorporated in Brunei Darussalam under the Companies Act (Cap 39 of the laws of Brunei) and having its registered address at Level 6, Setia Kenangan Complex, Kampong Kiulap, Bandar Seri Begawan BE1518, Brunei Darussalam (“**BELTS**”); and
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company Registration number: ), a company incorporated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and having its registered address at (the “**Supplier**”)

(collectively, “**Parties**” and each, a “**Party**”).

**WHEREAS**:

1. BELTS has released a tender (Tender Batch:\_\_\_\_\_\_) inviting participation from interested parties to submit their Technical and Commercial proposal for the project titled “The Supply and Delivery of Medicinal Products to BELTS for a Period of One (1) Year” (hereinafter “**Medicinal Products Project**” or “**the Project**”).
2. The Supplier is in the business of supplying medicinal products and have submitted their Technical and Commercial proposal to BELTS as part of the tender process for the Project.
3. In reliance of the Proposal received and evaluated, BELTS is desirous to appoint the Supplier to supply the Goods (defined below) to BELTS and the Supplier agrees to the appointment, subject to the terms and conditions hereinafter appearing.

**NOW IT IS HEREBY AGREED** as follows:

1. **DEFINITION AND INTERPRETATION**

* 1. In this Agreement, unless the context otherwise requires:
     1. “**Adverse Event(s)**” means any untoward medical occurrence that may be present during treatment with a medicine but which does not necessarily have a causal relationship with this treatment;
     2. “**Applicable Law(s)**” means at any time any such applicable law, policy, framework or measures in force in Brunei Darussalam as such law is generally interpreted and generally applied in practice at that time in Brunei Darussalam as amended from time to time;
     3. **“Batch Release Certificate**” means a certificate issued by a relevant authority to certify that the issued Goods are suitable for release for sale/or supply;
     4. “**Business Day**” means a day other than a Saturday, Sunday or public holiday in Brunei Darussalam, when banks in Brunei Darussalam are open for business;
     5. “**Business Hours**” means the period from 7.45am to 4.30pm on any Business Day except for Friday, of which the period shall be from 7.45am to 11.30am and 2.30pm to 4.30pm;
     6. “**Charges**” means the unit prices payable for the Goods as set out in **Schedule A**;
     7. “**Change Request”** means any change to the terms and conditions as set out in this Agreement by either Parties during the Term;
     8. “**Consequential Loss**” means

(a) any special, indirect, incidental, consequential, punitive or exemplary Loss; or

(b) interruption to business, loss of revenue, loss of sales, loss of profits, loss of business, loss of production, loss of reputation, loss of anticipated savings, loss of management time, loss of opportunity, loss of entitlement to special damages or credit, loss of goodwill or any other economic loss;

* + 1. “**Delivery**” means the delivery of the Goods to BELTS at the Delivery Location;
    2. “**Delivery Date**” means the date specified in the Purchase Order or if none is specified, within seven (7) Business Days of the date of the Purchase Order, or such extended date as may be granted by BELTS in writing;
    3. “**Delivery Location**” means the State Medical Store or such other location as set out in the Purchase Order or as instructed by BELTS before Delivery;
    4. “**Delivery Order**” has the meaning assigned to it in **Clause 9.1.3**;
    5. **“Effective date”** means \_\_\_\_\_\_\_\_\_\_ notwithstanding the date of this Agreement;
    6. “**Goods**” means the medicinal products which are made available to BELTS by the Supplier as more particularly set out in **Schedule** **A** which shall from time to time be updated as agreed in writing between the Parties;
    7. “**Good Distribution Practice**” means the practice of ensuring that the quality and integrity of the Goods is maintained by means of adequate control of the numerous activities which occur during the distribution process as set out by the Applicable Laws of Brunei Darussalam;
    8. “**Good Storage Practice**”mean the practice of ensuring that the quality of the Goods is maintained by means of adequate control throughout storage in the Supplier’s store, warehouse or premises in accordance to as what is set out by the Laws of Brunei Darussalam;
    9. “**Losses**” means losses, liabilities, damages, costs and expenses (including legal fees and disbursements, reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties whether arising in contract), from harm, breach of Applicable Law or decrees or otherwise;
    10. “**Medicinal Products**” means the medicinal products (or any part of them), as set out in **Schedule A** which shall from time to time be updated as agreed in writing between the Parties;
    11. “**Performance Bond** or **PB Requirement**” means the Performance Bond as specified in **Clause 22.1** and the Performance Bond Adjustment as specified in **Clause 22.2**;
    12. “**Purchase Order**” means the official purchase order agreed between the Parties listing out all the relevant information relating to the Purchase substantially in the form set out in **Schedule B** in accordance with **Clause 3.3**;
    13. “**Purchase**” means the purchase of the Goods by BELTS from the Supplier by way of a Purchase Order;
    14. “**Proposal**” means the tender offer submitted by the Supplier to BELTS with respect to the Medicinal Products Project;
    15. “**Point of Contact**” has the meaning ascribed to it in **Clause 18.2**;
    16. “**BELTS’ Representative**” has the meaning ascribed to it in **Clause 18.2.2**;
    17. **“Expiry Date**” means the date placed on the container label of a drug product designating the time prior to which a batch of the product is expected to remain within the approved shelf-life specification if stored under defined conditions;
    18. **“Shelf-life**” means the time period during which a drug product is expected to remain within the approved shelf-life specification, provided that it is stored under the conditions defined on the container label;
    19. “**Specifications**” means the specifications of the Goods required by BELTS as may be stated in the Purchase Order and/or as per **Schedule E**;
    20. “**Term**” means the period specified in **Clause 2.1**;
    21. “**Total Purchase Value**” means the total value of the Goods to be supplied to BELTS by the Supplier under this Agreement which shall include the value of the Goods stated in the Purchase Orders issued by BELTS to the Supplier and the value of additional Goods from time to time awarded by BELTS to be supplied by the Supplier.

1.2 Reference herein to Clauses and Schedules are to clauses in and schedules to this Agreement.

1.3 The Schedules to this Agreement shall be deemed to form part of this Agreement.

1.4 Headings to the Clauses and Schedules are inserted for the purpose of reference only and shall not affect the interpretation or construction of this Agreement.

1.5 The words importing the singular include the plural and vice versa, and words importing gender include every gender and words denoting person shall include a natural person, company or firm, unincorporated association or any other legal entity whether acting as trustee or not.

1.6 Any reference to a Party to this Agreement includes a reference to its personal representatives, successors-in-title and permitted assigns.

1.7 Any agreement by a Party not to do anything includes an obligation not to permit or suffer that thing to be done by another person expressly or by implication with his authority and under his control.

1.8 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

1.9 In the event of any conflict or inconsistency between the provisions of this Agreement and the terms of any Purchase Order, the following order of priority shall prevail:

1. The terms of this Agreement;
2. Schedule A;
3. the other appendices, annexes, schedules, and attachment of this Agreement; and
4. Purchase Order.

# **COMMENCEMENT AND DURATION**

Notwithstanding the date of this Agreement, the term of this Agreement shall commence on (dd/mm/yyyy) and will remain in full force and effect for a period of **one (1) year, with an option to extend for a further one (1) year**, subject to BELTS’ discretion **(the “Term”)**, unless terminated earlier in accordance with **Clause 34** **(Termination)** of this Agreement.

# **BASIS OF CONTRACT**

* 1. In consideration of BELTS appointing the Supplier for the Project, the Supplier undertakes to supply Goods:
     1. of the exact quality, type and any other Specification stated in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage, unless otherwise stated in **Clauses 13** **(Discontinued Goods)**, **14** **(Product Recall)** and **15** **(Withdrawn Goods)**;
     2. at the contract price calculated in accordance with the Commercial Proposal (**Schedule B** of the proposal) as submitted to BELTS by the Supplier during Tender Submission stage, which shall be valid until the end of the Term of this Agreement; and
     3. that are made available throughout the Term and shall efficiently manage its sourcing of Goods specified in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. As and when BELTS requires the Goods, BELTS will issue a Purchase Order in accordance with **Clause 3.3** below. BELTS may during the Term of this Agreement place any number of Purchase Orders as and when required by BELTS.
  3. Each Purchase Order shall set out:

###### the Purchase Order number;

###### the Goods to be procured and the Specifications;

###### the Expected Delivery Date and quantity of Goods to be delivered on the Delivery Date;

###### the Delivery Location;

###### the Charges;

###### any other special delivery instructions; and

###### any such information deemed necessary by the Parties.

* 1. Prior to the issuance of a Purchase Order, BELTS shall inform the Supplier in writing that it intends to purchase one or more of the Goods from the Supplier in accordance with the Product Forecast as specified in **Clause 5.1**;

* 1. The Supplier warrants to provide BELTS with the following information below before acceptance of a Purchase Order in writing: -
     1. the Expected Delivery Date of the Goods arriving at the Delivery Location, taking into consideration necessary approvals for the import of Goods, customs clearance and Quality Inspection;
     2. any delay expected in delivering the Goods on time pursuant to the Expected Delivery Date specified in the Purchase Order which may be due to factors beyond the Supplier’s control including but not limited to supply chain issues, as soon as reasonably made known to the Supplier’s knowledge;
     3. inform BELTS if any of the Goods are delivered in instalments, its quantity, and the Expected Delivery Date of outstanding balance of Goods to be Delivered.
  2. Pursuant to **Clause 3.5.1**, BELTS reserves the right to request in writing, the Supplier to expedite or defer the delivery of Goods at the Delivery Location.
  3. In acceptance of the Supplier’s Expected Delivery Date and the details set out in **Clause 3.5.2**:
     1. BELTS shall submit a Purchase Order to the Supplier; and
     2. the Supplier shall within three (3) Business Days of the submission of the Purchase Order accept the Purchase Order by way of acknowledgment in writing to BELTS.
  4. Once the Purchase Order has been accepted in accordance with **Clause 3.7.2**, no amendment shall be made to it except in accordance with **Clause 40 (Amendment and Variation**). Each Party shall co-operate with, and provide reasonable assistance to, the other Party, and act reasonably and act in good faith, in connection with the signing of the Purchase Order.
  5. Each Purchase Order once signed by both Parties shall be deemed to form part of this Agreement and shall not form a separate agreement to it.
  6. Unless otherwise issued a Purchase Order by BELTS, the Supplier acknowledges that:
     1. there is no obligation of BELTS to purchase any Goods from the Supplier during the Term;
     2. no undertaking or any form of statement, promise, representation or obligation has been made by BELTS in respect of the total quantities or value of the Goods to be ordered pursuant to this Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation;
     3. in entering this Agreement, no form of exclusivity has been granted by BELTS to the Supplier; and
     4. BELTS are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all Goods, which are the same as or similar to the Goods.

# **SUPPLY OF GOODS**

* 1. The Supplier shall ensure that the Goods shall:

* + 1. comply with the terms and conditions of the Purchase Order;
    2. comply with the requirements of all Applicable Laws;
    3. correspond with their description and any applicable Specifications;
    4. be of good quality and fit for purpose held out by the Supplier or made known to the Supplier by BELTS;
    5. comply to the shelf-life requirements as stated in **Clause 7.3** of this Agreement;
    6. are delivered in full quantity as specified in the Purchase Order unless otherwise agreed by BELTS, in writing as stated in **Clause 3.5**;
    7. where they are manufactured products, be at all times free from defects in quality and standards and shall remain so even after Delivery to the Delivery Location specified in the Purchase Order;
    8. where applicable, if they contain substances specified in the Poison List under the Poisons Act (Cap 114), comply with all the legal requirements under the said Act or any other Applicable Laws, as amended from time to time; and
    9. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
  1. The Supplier and / or manufacturer of the Goods (if the Supplier itself is not the manufacturer of the Goods) shall be jointly responsible and are deemed to warrant the safety, efficacy and quality of the Goods supplied under this Agreement. The Supplier and/ or the manufacturer shall ensure that the Goods are:

4.2.1 manufactured in accordance with the World Health Organization (WHO) Good Manufacturing Practices Guidelines currently in force; and

4.2.2 where applicable, in compliance with the requirements of any Applicable Laws or such guidelines as are issued by the Ministry of Health, Brunei Darussalam from time to time.

* 1. Where the Supplier is not the manufacturer of the Goods, the Supplier will obtain the manufacturer’s written agreement to the obligations of **Clause 4.2** and furnish it to BELTS.
  2. The Supplier acknowledges that it has been supplied with sufficient information and that it has made all appropriate enquiries, to enable it to carry out its obligations in accordance with this Agreement. The Supplier shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement because of any misinterpretation by the Supplier of any fact relating to the Purchase and/or this Agreement. The Supplier shall promptly bring to BELTS’ attention any matter which is not adequately specified or defined by BELTS.

# **SECURITY OF SUPPLY AND STOCK LEVEL**

Product Forecast

* 1. The Product Forecast provided by BELTS shall form as a reference of the quantity and delivery schedule i.e., months where the Goods are required and should be delivered to BELTS under this Agreement throughout the Term, in which the lump sum shall tally to the Estimated Annual Quantity specified in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. Notwithstanding the provisions in **Clause 5.1** and unless issued a Purchase Order, BELTS shall be under no obligation to purchase the whole quantity of Goods stated in the Product Forecast throughout the Term of this Agreement. The Parties agree that the Product Forecast are for reference and/or forecasting purposes only and BELTS shall have no liability whatsoever to the Supplier in relation to anything arising from the Product Forecast.

Security of Supply

* 1. The Supplier warrants that they will ensure that throughout the Term, the supply of Goods is made available for BELTS to order and be timely delivered in accordance with the Purchase Order provided by BELTS, unless otherwise specified in **Clauses 13** **(Discontinued Goods)**, **14** **(Product Recall)** and **15** **(Withdrawn Goods)**.
  2. BELTS reserves the rights under this Agreement to request from the Supplier to expedite or defer the forecast of Goods without specifying any reasons. In consideration to the lead time in supplying such Goods, the Supplier is obligated to ensure availability of Buffer Stock to avoid any disruption to the continuity of stock kept by BELTS.

# Notwithstanding the provisions in **Clauses 13 (Discontinued Goods)**, **14 (Product Recall)** and **15 (Withdrawn Goods)**, the Supplier warrants that it shall secure sufficient supply of Goods from its Manufacturers throughout the Term and meet the forecast schedule as specified in the Product Forecast. Failure to do so may lead to BELTS carrying out any one or more of its remedies specified in **Clause 23 (BELTS Remedies)**.

Buffer Stock

* 1. During the Term, the Supplier shall keep twenty per cent (20%) of the total estimated quantity specified in the Product Forecast as Buffer Stock for BELTS’ immediate Purchase at any time at BELTS’ sole discretion. BELTS reserves the right to carry out audits to verify that the requirements of Buffer Stock are complied to.

In the event where the Buffer Stock has been utilized before the end of the Term, BELTS may require the Supplier to restock the same initial quantity of Goods. Such requests shall be done in writing from BELTS.

* 1. Notwithstanding the provisions in **Clause 5.6** and unless issued a Purchase Order, BELTS shall be under no obligation to purchase any or the whole of the Buffer Stock throughout the Term of this Agreement and BELTS shall have no liability whatsoever to the Supplier in relation to anything arising from the Buffer Stock.

The Supplier is required to provide an inventory update of the Buffer Stock to BELTS on a weekly basis, including details of Goods in transit and in hand.

* 1. The Supplier's non-compliance with the above requirements regarding the size of the stock and build-up of stock may, as the case may be, constitute material breach of this Agreement.

# **ADDITIONAL QUOTA**

# Pursuant to **Clauses 3.4 and 5.2**, in the event where BELTS has issued Purchase Order(s) to purchase the total quantity of Goods as specified in the Product Forecast before the expiry of the Term, BELTS may request for additional quota to the Supplier in writing by giving ten (10) Business Days in notice before issuance of a new Purchase Order. Such notice shall be acknowledged by the Supplier within three (3) Business Days upon receipt.

# Upon acknowledgement by the Supplier, BELTS shall provide the subsequent Product Forecast as specified in **Clauses 5.1 and 5.2**.

# For the avoidance of doubt, all the terms and conditions set out in this Agreement shall prevail for any additional quota requested by BELTS until the end of Term.

# **LABELLING, SHELF-LIFE AND EXPIRY DATE**

Labelling

* 1. All Goods shall be labelled in English and, where applicable, in Malay and shall comply with the statutory and regulatory requirements of Applicable Laws.
  2. The labels on the Goods (whether on the boxes, blisters, strips, ampoules, items, etc) shall (amongst others) contain the following information:

###### generic name and description of the Goods;

###### Specifications;

###### shelf-life and expiry date;

###### batch number and quantity per batch; and

###### storage and/or handling instructions.

Where the Goods are packed in outer cartons, in addition to the information required in **Clause 7.2 (a) to (e)** above, the Supplier shall include the Purchase Order number on the labels of the outer cartons for easy identification of the Goods by BELTS.

Shelf-Life

* 1. All Goods supplied to BELTS at the point of delivery shall have a shelf-life of not less than two (2) years from the Delivery Date.
  2. Goods with a shelf-life of less than two (2) years from the Delivery Date shall be informed to BELTS in writing and only once accepted, to deliver such Goods to the Delivery Location. A Short-Expiry Acceptance Form shall be issued by BELTS with details of the Goods specified in **Clause 7.2**, to be signed by both Parties and warrants that in acceptance of such Goods by BELTS, the Supplier shall collect and replace any unused Goods upon expiry with fresh stock, or may choose to supply BELTS with a credit note equivalent to the value of such Goods, at the request of BELTS in writing. The Supplier shall collect any remaining expired Goods within ten (10) Business Days upon instruction to do so from BELTS.
  3. Goods that have a shelf-life of more than two (2) years shall have an expiry date of not less than eighteen (18) months from the Delivery Date.
  4. Notwithstanding the provisions in **Clauses 7.4 and 7.5**, BELTS may accept or reject such Goods at BELTS’ sole discretion without incurring any liability to the Supplier for any losses the Supplier may incur if such Goods are rejected by BELTS.

# **PACKING AND STORAGE**

# The Supplier shall at no additional cost to BELTS ensure that all Goods supplied under this Agreement are properly and adequately packed so as to:

(a) ensure that they reach the Delivery Location intact, undamaged and in good condition; and

(b) to facilitate the efficient loading and unloading of the Goods at the Delivery Location.

* 1. Any other requirements on packing explicitly specified in the Purchase Order and/or this Agreement shall be complied with, and such labour and material costs incurred thereby shall be borne by the Supplier. The Supplier shall immediately replace any Goods found, on reaching the Delivery Location, to have been damaged due to inadequate packing.
  2. The Supplier shall at all times prior to Delivery to the Delivery Location, store the Goods in a temperature-controlled room or refrigerator or freezer, in accordance with the manufacturer’s recommended requirements.
  3. Where the Goods are heat sensitive, the Supplier shall ensure that the cold chain of such Goods is maintained at all times.
  4. Any Goods that break in cold chain upon regulatory inspection shall entitle BELTS to carry out its remedies as stated in **Clause 23 (BELTS’ Remedies**).
  5. The packing and storage of the Goods by the Supplier shall comply with the statutory and regulatory requirements of Applicable Laws.

# **DELIVERY OF GOODS**

# The Supplier shall ensure that:

# the Goods are delivered in full quantity as stated in the Purchase Order issued by BELTS;

* + 1. the Goods are properly packed and secured in such manner as specified in **Clause 7**;
    2. each Delivery is accompanied by a Dispatch Form, Quality Inspection Form, Invoice and Delivery Order. The Delivery Order should show (amongst others) the date of the Purchase Order, the Specifications as stated in the Specifications Form as per **Schedule E**, (including but not limited to the code number of the Goods (where applicable), special storage instruction of the Goods (if any);
    3. it states clearly on the Delivery Order any requirement for BELTS to return any packaging material(s) for the Goods to the Supplier. Any such packaging shall only be returned to the Supplier at the cost of the Supplier;
    4. where applicable, a certified copy of the certificate of analysis (COA) of the Goods must accompany each delivery of the Goods and where the Goods are or comprise of blood products, a certified copy of the Batch Release Certificate of the blood products must accompany each Delivery; and
    5. it shall be responsible for the transportation and any related costs associated with the delivery of the Goods to the Delivery Location and unloading of the Goods at that location.
  1. The Supplier shall ensure that the Goods are ready for Delivery:
     1. on or before the Expected Delivery Date;
     2. at the Delivery Location; and
     3. during BELTS’ Business Hours, or at any time instructed by BELTS.
  2. The Supplier shall not cause the Goods to be delivered in instalments without BELTS’ prior written consent as specified in **Clause 3.5.3**. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver remaining Goods specified in a Purchase Order shall entitle BELTS to the remedies set out in **Clause 23 (BELTS’ Remedies).**

# **QUALITY INSPECTION OF GOODS DELIVERED**

* 1. Prior to acceptance of any Goods or Delivery of Goods to the Delivery Location as requested by BELTS, it is mandatory for the Goods to undergo Quality Inspection by BELTS representatives to ensure conformity with the Purchase Order, Delivery Order and Specifications. A Quality Inspection Form shall be issued by the Supplier following the template provided by BELTS for each of the Goods Delivered. The Quality Inspection Form shall be a basis to document the approval or rejection of Quality Inspection status prior to acceptance of Goods.
  2. To facilitate inspection of the Goods by BELTS pursuant to **Clause 10.1**, the Supplier shall ensure that all Goods are neatly and clearly labelled on the visible side of the Goods in accordance with **Clause 7.1 and 7.2.**
  3. If the Goods satisfies the Quality Inspection requirements upon inspection by BELTS, the Quality Inspection Form shall be signed by BELTS representative and BELTS receiving team shall sign the Delivery Order and return a copy to the Supplier immediately.
  4. BELTS reserves the right to reject the Goods or any part thereof if they do not conform to the Specifications, the general standard quality as specified in the Specifications and/or Purchase Order or where BELTS deems the conditions of the Goods as a concern in the safety of its use.
  5. Pursuant to **Clause 10.4**, any Goods or any part thereof that are rejected shall not be considered as being Delivered under the terms of this Agreement and the Supplier shall be responsible to replace the rejected Goods at its own expense within five (5) Business Days from the date of notification of rejection. Alternatively, BELTS shall have the right to obtain the said Goods from an alternative supplier(s) at the expense of the Supplier.
  6. The acceptance of the Goods by BELTS pursuant to **Clause 10.3** shall not be construed as BELTS having waived its rights to make any claims against the Supplier for any claims or remedies that BELTS has or may have against the Supplier under this Agreement or otherwise.

# **ACCEPTANCE OF GOODS**

# Unless otherwise agreed between the Parties in writing, Delivery shall be completed in the following manner:

# 11.1.1 the Suppliers’ fulfilment of its obligations as specified in **Clause 9 (Delivery of Goods)** and **Clause 10 (Quality Inspection of Goods Delivered)**;

# if the Delivery Location requested by BELTS is to the State Medical Store, the Supplier shall submit all supporting documentations with the correct information for each Delivery including Dispatch Form, Invoice and Delivery Order for BELTS representative’s signature as acceptance of Goods; or

# if the Delivery Location requested by BELTS is any other than the State Medical Store, the Supplier shall obtain signatory of the Dispatch Form from the Authorized Person as proof of delivery. The signed Dispatch Form as well as unsigned Invoice and Delivery Order shall be submitted to BELTS within one (1) Business Day after Delivery has been made.

# if the supporting documents in **Clauses 11.1.2** and **11.1.3** are deemed incomplete or incorrect by BELTS, the Supplier shall refurnish the revised document(s) within three (3) Business Days from the date of initial issuance of the incorrect/incomplete document.

# **SUPPLY CONSTRAINT OF GOODS**

* 1. In the event that any of the Goods supplied to BELTS are facing supply constraints from the Manufacturer or Distributor during the Term (“**Supply Constraint of Goods**”), the Supplier shall inform BELTS of such events as soon as reasonably possible. BELTS may cancel orders for such Goods facing supply constraints without any compensation to the Supplier and without prejudice to BELTS’ other rights and remedies.
  2. As preliminary remedy towards mitigating Supply Constraint of Goods, the Supplier warrants to seek the same Goods from other Manufacturers, Distributors or alternative Suppliers to its best ability as instructed by BELTS. If Goods are available, the Supplier shall seek approval from BELTS to proceed with such purchases in writing.
  3. In the event where BELTS deems unsatisfactory the outcome of preliminary remedy carried out by the Supplier, BELTS at its own discretion may contact any alternative Suppliers or Distributors to confirm the availability of Goods as existing stock or available outside of the country. If the Goods are found to be available as existing stock or outside of the country which takes shorter lead time to be delivered to Brunei by the alternative Supplier, BELTS shall be entitled at its own discretion:
     1. to purchase any Goods impacted due to supply constraint from other Manufacturers, Distributors or alternative Suppliers and the Supplier shall be responsible for the costs and expenses of such Goods. The Goods shall be offset with any remaining deliveries and written consent shall be given by BELTS. Necessary approvals for the import of Goods shall be done by the Supplier at their cost;

# if Goods are not available with other Manufacturers, Distributors or alternative Suppliers, BELTS shall seek a written proposal from the Supplier for the supply of alternative Goods. The alternative Goods offered shall be submitted to BELTS for approval within three (3) Business Days of receipt of BELTS’ request. For the ease of Suppliers’ reference, the alternative Goods should at least be listed in the Registered Medicinal Products provided by the Ministry of Health, where applicable. If there no alternative Goods in the list, the offer should at least be registered in benchmark countries which are Australia, Canada, Malaysia, Singapore, United Kingdom and the United States of America;

# Should the goods offered not meet the requirements of BELTS, the Supplier shall submit another proposal unless otherwise informed so by BELTS; or

# BELTS may cancel orders for such Goods facing supply constraints without any compensation to the Supplier and without prejudice to BELTS’ other rights and remedies.

* 1. Failure of the Supplier to comply to **Clauses 12.2** and **12.3** may result in BELTS’ exercising its right to claim damages from the Supplier or termination of this Agreement.

# **DISCONTINUED GOODS**

* 1. In the event that any of the Goods are no longer in production during the Term (“**Discontinued Goods**”), the Supplier shall submit to BELTS for confirmation in writing from the manufacturer within three (3) Business Days from the date of issuance stated in the letter. If the Supplier itself is the manufacturer, then the written confirmation shall come from the Supplier to notify BELTS as soon as reasonably made known to the Supplier’s knowledge. BELTS may cancel orders for such Discontinued Goods without any compensation to the Supplier and without prejudice to BELTS’ other rights and remedies.
  2. For the avoidance of doubt, BELTS at its own discretion may contact other Manufacturers, Distributors or alternative Suppliers to confirm that the Goods are globally discontinued and not only from the Suppliers’ source of manufacturer or distributor. If the Goods are found to still be produced and supplied by other Manufacturers, Distributors or alternative Suppliers, BELTS shall be entitled at its own discretion:
     1. to obtain replacements of the Discontinued Goods from other Manufacturers, Distributors or alternative Suppliers and the Supplier shall be responsible for the costs and expenses of such replacements; or

# to seek a written proposal from the Supplier for the supply of alternative goods. The alternative goods offered shall be submitted to BELTS for approval within three (3) Business Days of receipt of BELTS’ request. For the ease of Suppliers’ reference, the alternative Goods should at least be listed in the Registered Medicinal Products provided by the Ministry of Health, where applicable. If there no alternative Goods in the list, the offer should at least be registered in benchmark countries which are Australia, Canada, Malaysia, Singapore, United Kingdom and the United States of America. Should the goods offered not meet the requirements of BELTS, the Supplier shall submit another proposal unless otherwise informed so by BELTS, which may lead BELTS to resort to;

# requiring the Supplier to give BELTS a credit note equivalent to the value of the Discontinued Goods.

* 1. In the event the Discontinued Goods shall no longer form part of the Goods to be supplied by the Supplier to BELTS, this Agreement shall be varied in accordance **with Clause 40 (Amendment and Variation)** to reflect the removal of the Discontinued Goods from **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. Any alternative goods proposed only once accepted by BELTS to replace the Discontinued Goods shall be deemed to form part of this Agreement and this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation**) to reflect the addition of the alternative goods in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.

13.5 Any costs or expenses incurred by BELTS in relation to the Discontinued Goods (including but not limited and where applicable to disposal, handling, transportation, etc) shall be borne solely by the Supplier.

# **PRODUCT RECALL**

* 1. If either Party is the subject of a request, court order or other directive of a governmental or regulatory authority to recall any Goods from the market (“**Recall Notice**”) for evaluation purposes (whether temporary or otherwise), it shall immediately notify the other Party in writing enclosing a copy of the Recall Notice.
  2. If any Goods is subject to a Recall Notice (“**Recalled Goods**”), BELTS may cancel orders for such Goods without any compensation to the Supplier and without prejudice to BELTS’ other rights and remedies. In addition, BELTS shall be entitled at its own discretion:

14.2.1 to obtain replacements of the Recalled Goods from other Manufacturers, Distributors or alternative Suppliers and the Supplier shall be responsible for the costs and expenses of such replacements; or

* + 1. to seek a written proposal from the Supplier for the supply of alternative goods. The alternative goods offered shall be submitted to BELTS for approval within three (3) Business Days of receipt of BELTS’ request. For the ease of Suppliers’ reference, the alternative Goods should at least be listed in the Registered Medicinal Products provided by the Ministry of Health, where applicable. If there no alternative Goods in the list, the offer should at least be registered in benchmark countries which are Australia, Canada, Malaysia, Singapore, United Kingdom and the United States of America. Should the goods offered not meet the requirements of BELTS, the Supplier shall submit another proposal unless otherwise informed so by BELTS, which may lead BELTS to resort to; or
    2. requiring the Supplier to give BELTS a credit note equivalent to the value of the Recalled Goods.
  1. In the event the Recalled Goods shall no longer form part of the Goods to be supplied by the Supplier to BELTS, this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation)** to reflect the removal of the Recalled Goods from **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. Any alternative goods proposed to replace the Recalled Goods shall be deemed to form part of this Agreement and this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation**) to reflect the addition of the alternative goods in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  3. Unless required by law, BELTS may not undertake any recall without the written permission of the Supplier and only then in strict compliance with the Supplier’s instructions about the process of implementing the recall. Any costs or expenses (including but not limited to disposal, handling, transportation, etc) incurred by BELTS in relation to the Recalled Goods shall be borne solely by the Supplier.

# **WITHDRAWN GOODS**

* 1. If either Party is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market permanently for any reason whatsoever (“**Withdrawal Notice**”), it shall immediately notify the other Party in writing enclosing a copy of the Withdrawal Notice.
  2. If any Goods are subject to a Withdrawal Notice (“**Withdrawn Goods**”), BELTS may cancel orders for such Goods without any compensation to the Supplier and without prejudice to BELTS’ other rights and remedies. In addition, BELTS shall be entitled at its own discretion:
     1. to obtain replacements of the Withdrawn Goods other Manufacturers, Distributors or alternative Suppliers and the Supplier shall be responsible for the costs and expenses of such replacements; or

# to seek a written proposal from the Supplier for the supply of alternative goods. The alternative goods offered shall be submitted to BELTS for approval within three (3) Business Days of receipt of BELTS’ request. For the ease of Suppliers’ reference, the alternative Goods should at least be listed in the Registered Medicinal Products provided by the Ministry of Health, where applicable. If there no alternative Goods in the list, the offer should at least be registered in benchmark countries which are, Australia, Canada, Malaysia, Singapore, United Kingdom and the United States of America. Should the goods offered not meet the requirements of BELTS, the Supplier shall submit another proposal unless otherwise informed so by BELTS, which may lead BELTS to resort to;

# requiring the Supplier to give BELTS a credit note equivalent to the value of the Withdrawn Goods.

* 1. In the event the Withdrawn Goods shall no longer form part of the Goods to be supplied by the Supplier to BELTS, this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation)** to reflect the removal of the Withdrawn Goods from **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. Any alternative goods proposed to replace the Withdrawn Goods shall be deemed to form part of this Agreement and this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation**) to reflect the addition of the alternative goods in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.

* 1. Unless required by law, BELTS may not undertake any withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier’s instructions about the process of implementing the withdrawal. Any costs or expenses (including but not limited to disposal, handling, transportation, etc.) incurred by BELTS in relation to the Withdrawn Goods shall be borne solely by the Supplier.

# **DEFECTIVE GOODS**

* 1. In the event of defective, damaged Goods or complaints (“**Defective Goods**”) received from BELTS in respect of the Goods, the Supplier shall immediately arrange for replacement of the Defective Goods to be replaced by the Supplier at the Supplier’s own costs and expenses.

16.2 The Supplier shall within three (3) Business Days provide an incident report to BELTS to record the date and time of the receipt of the notification or complaints and the consequential actions taken by the Supplier as a result of this.

* 1. In the event the Supplier fails to provide a replacement of the Defective Goods to the satisfaction of BELTS, BELTS shall be entitled at its own discretion:

###### to obtain replacements of the Defective Goods from other Manufacturers, Distributors or alternative Suppliers and the Supplier shall be responsible for the costs and expenses of such replacements; or

16.3.2 require the Supplier to give BELTS a credit note equivalent to the value of the Defective Goods.

* 1. In the event the Defective Goods shall no longer form part of the Goods to be supplied by the Supplier to BELTS, this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation)** to reflect the removal of the Defective Goods from **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.

* 1. Any alternative goods proposed to replace the Defective Goods shall be deemed to form part of this Agreement and this Agreement shall be varied in accordance with **Clause 40 (Amendment and Variation)** to reflect the addition of the alternative goods in **Schedule C** (Specification and Requirement) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. Any costs or expenses (including but not limited to disposal, handling, transportation, etc) incurred by BELTS in relation to the Defective Goods shall be borne solely by the Supplier.

# **CHARGES AND PAYMENT**

# The Charges for the Goods payable by BELTS under each Purchase Order shall be paid at the contract price calculated in accordance with **Schedule B** (Commercial Proposal) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage;

* 1. The Charges shall be inclusive of the costs of manufacturing, packaging, packing materials, addressing, labelling, shipping, licensing, loading, delivery to and unloading at the Delivery location and any expenses arising from import administration of the Goods. No extra charges shall be effective unless agreed in writing and signed by BELTS.
  2. The Supplier shall invoice BELTS for the Charges under a Purchase Order on or at any time after completion of Delivery under such Purchase Order. Where it is agreed that the Goods under a Purchase Order are to be delivered by instalments pursuant to **Clause 3.5.3**, they may be invoiced and paid for separately on or at any time after completion of Delivery under each instalment.
  3. Subject to **Clause 11 (Acceptance of Goods)**, BELTS shall pay the invoiced amount within sixty (60) Calendar Days from date of invoice to BELTS subject to receiving the following documents from the Supplier:
     + 1. the Supplier’s original invoice;
       2. the relevant Purchase Order;
       3. the relevant Delivery Order; and
       4. such additional supporting documents/information as may be required by BELTS to verify the accuracy of the invoice.
  4. All payments under this Agreement shall be made in Brunei Dollars (BND) and be made to the bank account nominated in writing by the Supplier and stated on the invoice.
  5. If BELTS disputes any invoice or other statement of monies due, BELTS shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. Each Party shall provide all evidence as may be reasonably necessary to the other Party to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within thirty (30) Business Days of BELTS giving notice to the Supplier, the dispute shall be resolved in accordance with **Clause 48 (Dispute Resolution)**. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in **Clause 17.4**. The Supplier’s obligations under this Agreement shall not be affected by any payment dispute.
  6. In the event of any overpayment by BELTS to the Supplier for the Goods, the Supplier, will provide a credit note to BELTS for the same amount, against any liability of BELTS to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. Any exercise by BELTS of its rights under this Clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

# **PROJECT MANAGEMENT**

* 1. BELTS’ representative
     1. BELTS shall appoint a person to supervise and liaise with the Supplier for the purpose of this Agreement (the “**BELTS’ Representative**”) and such person may designate others to assist him in such matters.
     2. BELTS’ Representative may at its sole discretion assist the Supplier to make necessary appointments and/or arrangements for the purpose of carrying out the Purchase.
  2. Point of Contact and other personnel
     1. The Supplier shall designate a Point of Contact and the Point of Contact shall primarily be responsible for directing and coordinating the Project and all the obligations which are to be performed by the Supplier under this Agreement. The Point of Contact shall be deemed to be the Supplier's representative and contact person in all dealings with BELTS and all actions of the Point of Contact shall be binding on the Supplier.
     2. BELTS’ Representative shall have direct access to the Point of Contact at all times during the performance of this Agreement and if the Point of Contact is absent from Brunei Darussalam for any duration or unable to perform its duties, the Supplier shall designate another suitably qualified employee to perform his duties and functions and shall promptly inform BELTS of such change of Point of Contact and the duration of this change in Point of Contact.

# **KEY PERFORMANCE INDICATORS**

# 19.1 The Supplier shall perform all its obligations under this Agreement to meet the performance indicators from time to time set by BELTS (“Key Performance Indicator”) as stipulated in **Schedule D (Key Performance Indicators)**.

# The Parties agree that the Key Performance Indicator is implemented to assess the performance of the Supplier during the first year of the Term under this Agreement. If the Supplier’s performance is deemed satisfactory by BELTS, this Project and terms provided in this Agreement shall continue to be in effect, including any extensions to the Term granted to the Supplier by BELTS, unless otherwise stated by BELTS in writing.

* 1. Any failure by the Supplier to meet a Key Performance Indicator shall be taken into account by BELTS for purposes of assessing the overall performance of the Supplier in this Project. The Supplier may at its own costs and expense implement any corrective measures as advised by BELTS so as to avoid such failure from occurring and/or recurring. If the Supplier is deemed to have failed in meeting the performance of this Agreement after discussions with BELTS, each Party reserves the right to terminate this Agreement pursuant to **Clause 34** (**Termination**).

# Actual or potential failure of Key Performance Indicators

# If the Supplier becomes aware of an actual or potential Key Performance Indicator failure, the Supplier shall forthwith notify BELTS in writing to specify:

* + 1. the cause of the actual or potential Key Performance Indicator failure;
    2. the likely impact of the actual or potential Key Performance Indicator failure;
    3. the reasonable steps that can be taken to avoid the actual or potential Key Performance Indicator failure and/or minimise any adverse impacts; and
    4. take all reasonable steps to avoid the actual or potential Key Performance Indicator failure and minimise any adverse impacts.
  1. The Supplier shall notify BELTS’ Representative of any expected delay in the performance of this Agreement. The Supplier shall refer immediately to the BELTS’ Representative any matter likely to impede the progress of the Project.

Performance Reporting and Review Meeting

* 1. The Supplier shall deliver to BELTS’ Representative progress reports (which shall amongst others include the progress of the Performance Indicator) in the format to be agreed between Parties on a monthly basis (or as and when required by BELTS). The submission and acceptance of these progress reports shall not in any way prejudice the rights of BELTS to make any claims against the Supplier.
  2. The Parties shall have regular meetings for at least three (3) times throughout the Term to discuss matter arising generally under this Agreement, where applicable, and review the performance of the Supplier’s Key Performance Indicators (“Progress Meetings”). BELTS’ Representative may as and when deemed necessary by BELTS, call for additional Progress Meetings during the one (1) year period, during which the Point of Contact shall attend and report to BELTS’ Representative on the progress of this Project and all other related matters. The Progress Meetings shall be held at the site or venues chosen by BELTS’ Representative.
  3. BELTS shall take minutes of each review meeting and shall circulate to the Supplier within ten (10) Business Days after the meeting is convened. The Supplier shall inform BELTS in writing of any suggested amendments to the minutes within five (5) Business Days of receipt. If the Supplier does not respond within the stated period, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach an agreement. If an agreement cannot be reached, the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in **Clause 48** (**Dispute Resolution**).
  4. Pursuant to **Clause 19.7**, each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operations in managing the obligations under this Agreement.

# **BREACH BY THE SUPPLIER**

Delayed Delivery

* 1. Time is of the essence in this Agreement. If the Goods or any part thereof are not Delivered by the Expected Delivery Date, BELTS shall be entitled, without prejudice to and in addition to any of its other rights and remedies under this Agreement, to claim from the Supplier by way of liquidated damages for **each Business day or part day of delay**, a sum equal to **two per cent (2%)** of the Charges for the Goods as stated in the Purchase Order in respect of the delayed delivery or failed obligations up to a maximum of **twenty per cent (20%)** of the Charges for the Goods. Liquidated damages imposed under this clause shall be paid to BELTS in Brunei Dollars (BND) no later than ten (10) Business Days from BELTS’ written notification to the Supplier informing the Supplier of the liquidated damages payable. If the Supplier fails to pay the said liquidated damages, BELTS may deduct the amount due from any monies due or which may become due from BELTS to the Supplier under this Agreement and other agreements/contracts between the Parties or recover the same as a debt due from the Supplier. BELTS and the Supplier hereto acknowledge and agree that the sums payable under this **Clause 20.1** shall constitute liquidated damages and not penalties and are in addition to all other rights that BELTS may have against the Supplier. The Parties further acknowledge that (1) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate; and (2) the amounts specified in this **Clause 20.1**bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by the Supplier in connection with this Agreement; and (3) the terms and conditions of this Agreement are negotiated by Parties at arm’s length.
  2. This clause shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
  3. BELTS’ rights and remedies under this Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

Back Order

* 1. If the Supplier fails to deliver the Goods on time without notice to BELTS, the Supplier shall be deemed to be on Back Order.
  2. The Supplier shall immediately inform BELTS in writing if a backorder situation is encountered in writing as soon as the Supplier foresees or should have foreseen potential delivery problems and thereby a backorder situation. It should include in writing of the cause of the back order and the expected duration of the backorder period.
  3. Unless BELTS or the Supplier expressly agree otherwise in writing, the Supplier shall be deemed to be on backorder until the Supplier is once again able to deliver Goods on time in accordance to the Expected Delivery Date stated in the Purchase Order and has built up the Buffer Stock as described in **Clause 5.6** above.
  4. In the event where the Back Order **exceeds two (2) delivery schedules** as stated in the Purchase Order, BELTS shall be entitled at its own discretion to obtain the Goods and its quantity affected by the Back Order from other manufacturers, distributor or suppliers and the Supplier warrants to bear the costs and expenses incurred. The Back Orders purchased by the Supplier from other manufacturers, distributor or suppliers shall be offset with any pending deliveries to BELTS.

# **TITLE AND RISK**

Title

* 1. The Supplier warrants that:
     1. it has full, clear and unencumbered title to the Goods;
     2. at the Delivery Date, it shall hold unencumbered title in the Goods;
     3. at the Delivery Date, it will have full and unrestricted right, power and authority to sell, transfer and deliver the Goods to BELTS.
     4. Title to the Goods shall pass to BELTS upon delivery by the Supplier and BELTS’ acceptance.

Risk

* 1. Subject to other relevant provisions stated herein this Agreement, the risk in the Goods shall remain with the Supplier until:
     1. the Goods are delivered to the Delivery Location; and
     2. the Goods are found by BELTS to be in accordance with the Specifications and the provisions of this Agreement and BELTS have duly signed the Delivery Order.

# **PERFORMANCE BOND**

* 1. As security for the due performance of the Supplier’s obligations under this Agreement, the Supplier shall thirty (30) Business Days from the date of signing of this Agreement furnish or deposit with BELTS an amount in a range of 2% to 3% of the total value of Estimated Annual Quantity of the Goods for the Term of this Agreement (“Performance Bond”) as specified under this Clause 22.1. For avoidance of doubt, the Performance Bond is only required if the total value of the Annual Estimated Quantity of the Goods is more than BRUNEI DOLLARS: ONE MILLION ONLY (BND1,000,000.00) and shall be subject to any requirements under this **Clause 22**. The Performance Bond shall be issued by a reputable bank in Brunei Darussalam acceptable to BELTS and shall be in the form provided in **Schedule C (Performance Bond)**.
  2. In the event of any contract variation(s) to this Agreement which affects the total value of the Estimated Annual Quantity of the Goods for the Term of this Agreement, the Performance Bond shall be adjusted (the “Performance Bond Adjustment”). The Performance Bond Adjustment shall be calculated as the difference between the new Performance Bond value (arising from the contract variation) to the Performance Bond value previously issued (if applicable) by the Supplier under this Agreement.
  3. The value of the Performance Bond required is subject to the total value of the Estimated Annual Quantity of the Goods and any contract variation as stated in **Clause 22.2** above which shall be additionally subject to the Performance Bond rate as specified in the table below:

|  |  |
| --- | --- |
| **Performance Bond Requirement.** | |
| **Total value of Estimated Annual Quantity (BND)** | **Rate (%)** |
| BND1,000,000.00 and below  up to BND3,000,000.00  more than BND3,000,000.00 | Exempted.  2%  3% |

* 1. If the total value of the Estimated Annual Quantity value of the Goods is varied under this **Clause** **22** which results in the requirement for Performance Bond Adjustment where:-

22.4.1 where there is an increase in the Performance Bond value - the Supplier shall, within ten (10) Business Days from the date of such variation, furnish to BELTS such additional sum as may be required by BELTS to fulfil the Performance Bond requirement; or

22.4.2 Where there is a decrease in the Performance Bond value- the Supplier shall, within ten (10) Business Days from the date of such variation, furnish to BELTS a new Performance Bond for an amount equivalent to the Performance Bond required under this **Clause 22**. Should the Supplier choose not to reissue a new Performance Bond under this clause, the Supplier may notify BELTS of the same in writing.

* 1. All costs and expenses associated with the Performance Bond and any requirements under this **Clause 22** shall be borne solely by the Supplier.
  2. The proceeds of the Performance Bond shall be payable to or may be taken by BELTS in deduction of any sum(s) that are or may become payable by the Supplier to BELTS or for which the Supplier is or may become liable to BELTS under this Agreement or as compensation for the Supplier’s breach of any term of this Agreement or failure to complete or fulfil any of its obligations under this Agreement.
  3. BELTS’ rights under **Clause 22.6** shall be without prejudice and in addition to BELTS’ right to claim further damages without limitation and/or equitable remedies against the Supplier for any breach or failure by the Supplier as aforesaid.
  4. The Performance Bond shall be maintained by the Supplier at its full amount from the Effective Date of this Agreement and shall have full force and effect until the expiry of six (6) months after the expiration of this Agreement or such other dates to be notified by BELTS. Upon the expiry of the Performance Bond, BELTS shall return the Performance Bond to the Supplier for cancellation.
  5. If at any time during the term of this Agreement, any sum(s) shall be taken or deducted by BELTS from the Performance Bond, the Supplier shall immediately arrange to replace or restore the Performance Bond to its full amount.
  6. If the Supplier fails to furnish the Performance Bond to BELTS within the time stipulated in **Clause 22.1**, BELTS shall be entitled by notice in writing to the Supplier to forthwith terminate this Agreement.

# **BELTS’ REMEDIES**

* 1. If the Supplier fails to deliver the Goods by the Delivery Date, BELTS shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
     1. to terminate the Agreement with immediate effect by giving written notice to the Supplier;
     2. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
     3. to recover from the Supplier all costs and expenses incurred by BELTS (including any increase in the costs of the goods) in obtaining alternative goods from a third party;
     4. to require a refund from the Supplier of sums paid in advance for the Goods that had not been delivered; and
     5. to claim damages for any costs, loss or expenses incurred by BELTS which are in any way attributable to the Supplier’s failure to deliver.
  2. If the Supplier has delivered Goods that do not comply with the undertakings set out in **Clause 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,** breaches **Clause 20**,or does not comply with the obligations under **Clause 24** or any undertakings or obligations under this Agreement, then, without limiting or affecting other rights or remedies available to it, BELTS shall have one or more of the following rights, whether or not it has accepted the Goods:
     1. to terminate the Agreement with immediate effect by giving written notice to the Supplier;
     2. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier’s own risk and expense;
     3. to require the Supplier to replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);
     4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
     5. to recover from the Supplier all costs and expenses incurred by BELTS (including any increase in the costs of the goods) in obtaining alternative goods from a third party; and
     6. to claim damages for any costs, loss or expenses incurred by BELTS arising from the Supplier’s failure to supply the Goods in accordance with this Agreement.

# **SUPPLIER’S OBLIGATIONS**

* 1. The Supplier shall:
     1. carry out its obligations under this Agreement in accordance with the terms of the Proposal, this Agreement and Applicable Laws;
     2. meet any timeline for delivery of the Goods as specified in the Purchase Order;
     3. meet the Performance Indicator set out in **Clause 19**;
     4. perform its obligations under this Agreement with the highest level of care, skill and diligence in accordance with best practice;
     5. has the capability and capacity to fulfil its obligations under this Agreement;
     6. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Agreement;
     7. cooperate with BELTS in all matters relating to the Purchase Order and/or this Agreement and to comply with all instructions given by BELTS;
     8. use its best endeavours to put into effect a Good Distribution Practice in respect of the Delivery from the Supplier’s store, warehouse or premises to the Delivery Location;
     9. use its best endeavours to put into effect a Good Storage Practice in respect of the storage of the Goods in the Supplier’s store, warehouse or premises;
     10. comply and observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Location from time to time and that have been communicated to the Supplier;
     11. ensure that at all times they have sufficient stock of the Goods to meet the order quantities specified in the Purchase Order;
     12. ensure that at all time they have a sufficient stock pile to cater to pandemics and emergencies at the quantities from time to time advised by BELTS;
     13. supply BELTS with Goods with the provisions of shelf life and expiry date as provided in this Agreement;
     14. without delay liaise and coordinate with BELTS to deal with complaints or Adverse Events or any breakage in cold chain reported by BELTS;
     15. comply with any specific or additional obligations imposed on it as set out in the Purchase Order;
     16. ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement.
     17. provide to BELTS in a timely manner all documents, information, items and materials in any form (whether owned by the Supplier or a third party) required under a Purchase Order or otherwise reasonably required by BELTS in connection with the Purchase and ensure that they are accurate and complete in all material respects;
  2. If the Supplier’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of BELTS, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, BELTS shall grant an extension of time to the Supplier to perform its obligations equal to the delay caused by BELTS.

# **ASSIGNMENT, NOVATION AND SUB-CONTRACTING**

# The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Agreement without the prior consent in writing of BELTS, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Agreement, every act or omission of the Sub-contractor shall for the purposes of this Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to BELTS as if such act or omission had been committed or omitted by the Supplier itself.

# Any authority given by BELTS for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on BELTS to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Agreement.

# BELTS shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from BELTS. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.

# BELTS may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If BELTS novates this Agreement to any Supplier that is compliant to Constitution of Brunei Darussalam (Order under Article 83(3)), Medicines Order, 2007, from the effective date of such novation, the Party assuming the position of the Supplier shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

# Notwithstanding **Clause 25.4**, in the event a change of any relevant law or regulation occurs which affects the terms of this Agreement, or in the event that BELTS is instructed or directed by any relevant authority or by the Government of Brunei, including but not limited to, the Ministry of Health (MOH), to assign or novate this Agreement, BELTS shall be entitled to assign or novate this Agreement with prior written notice to the Supplier.

# Pursuant to **Clause 25.5**, a novation agreement shall be executed between BELTS, the Supplier and such relevant parties to which the terms of this Agreement are assigned to.

# **INTELLECTUAL PROPERTY RIGHTS**

26.1 All Intellectual Property in respect of the Goods provided or otherwise made available to BELTS by the Supplier shall remain the property of the Supplier. Without limiting the foregoing, the Supplier shall retain all rights, title and interest in and to such properties and proprietary rights embodied in or appurtenant to such properties. BELTS shall not acquire any right, title or interest to such Supplier’s properties as a result of this Agreement.

# **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

* 1. All royalties and fees whatsoever claimable by or payable by to any person, firm, corporation or government for or in connection with any invention or patent rights, copyrights and trademarks used in respect of the Goods or any part thereof provided under this Agreement shall be deemed to be included in the Charges as set out in **Schedule C** (Commercial Proposal) of the proposal as submitted to BELTS by the Supplier during Tender Submission stage.
  2. The Supplier shall indemnify BELTS and keep BELTS fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the normal use or possession of the Goods infringes the intellectual property rights (including without limitation any patent, copyright, registered design, design right or trademark) of any third party, subject to the following conditions:
     1. BELTS shall promptly notify the Supplier in writing of any allegations of infringement of which it has notice and will not make any admission without the Supplier’s prior written consent nor take any step which would prejudice the Supplier’s defence of the claim;
     2. BELTS, at the Supplier’s request and expense, shall allow BELTS (subject to **Clause 27.2.3** below) to conduct and/or settle all negotiations and litigation resulting from such claim;
     3. BELTS shall, at the request of the Supplier, afford all reasonable assistance with such negotiations or litigation;
     4. if BELTS normal use or possession of the Goods is held by a court of competent jurisdiction to constitute an infringement of a third party’s intellectual property rights or if BELTS are advised by legal counsel that such use or possession is likely to constitute such an infringement then the Supplier shall promptly and at its own expense procure for BELTS the right to continue using and possessing the Goods; and
     5. if the provision of **Clause 27.2.4** cannot be accomplished on reasonable terms, the Supplier shall remove the Goods and refund the price of such Goods to BELTS and shall pay for all costs and expenses incurred by BELTS as a result of this.

# **CHANGES OR VARIATION TO THIS AGREEMENT**

* 1. Any changes or variation to this Agreement will be referred to as a “**Change**”. Either Party may submit a Change Request in respect of this Agreement. Such Change Request shall contain sufficient details to enable the other Party to adequately assess the likely impact of the requested change upon the other aspects of this Agreement, including but not limited to the timeline and Charges.
  2. In the event the Change Request is submitted by either Party, the Supplier shall as soon as reasonably possible and in any event within fourteen (14) Business Days prepare and submit to BELTS a change control note (“**Change Control Note**”), setting out:
     1. the nature of the change to the provisions of this Agreement which have been proposed;
     2. the Supplier’s estimate of the efforts which would be required to implement any alteration to the provisions of this Agreement proposed by the Change Request;
     3. the estimated maximum costs of implementing the Change Request (if any), together with a breakdown of any estimates of man days of effort required or other supporting information upon which the Supplier’s estimate has been based. The estimated costs in this regard should be priced on the same basis or at a more competitive basis at which the Charges are originally priced as stated in **Schedule A**;
     4. the likely impact of the Change Request on the timeline (if any) and the Charges; and
     5. the impact of the Change Request on any aspect of this Agreement.
  3. The Change Control Note referred to in **Clause 28.2** shall be considered by BELTS and, where agreed, returned with written confirmation that it has been approved, in which event an amendment to this Agreement (including the Schedules) shall be signed by the Parties. Such amendment shall be considered an integral part of this Agreement.
  4. For the avoidance of doubt, no amendment or variation to this Agreement shall be effective until the Change Control Note relating to such amendment or variation has been approved by BELTS and each Party shall continue to perform its respective obligations in accordance with the latest agreed version of this Agreement.

# **LIABILITY**

* 1. General
     1. To the extent permitted by Applicable Law, neither Party is liable to the other Party except as provided in this **Clause 29** or as otherwise set out in this Agreement.
     2. Each provision of this **Clause 29** is a separate limitation applying and surviving even if one or more such provision (or any part of such provision) is inapplicable or held to be invalid or otherwise unreasonable in any circumstances.
     3. Subject to the other provisions of this clause, one Party is liable to the other for any and all Losses in connection with this Agreement howsoever arising.
  2. Exclusion of Consequential Loss
     1. Subject to **Clause 29.4**, neither Party is liable to the other Party for any Consequential Loss suffered by that other Party in connection with or related to the operation of this Agreement, whether that liability arises in contract (including under an indemnity), from negligence, under any Applicable Law or decrees, or otherwise.
     2. The exclusion of liability for Consequential Loss under **Clause 29.3** does not apply to any liability of a Party that is subject to the operation of **Clause 29.4** (Uncapped liability).
  3. Exclusion of implied warranties

To the extent permitted by Applicable Law, all express or implied representations, conditions, warranties and provisions whether based in statute, legal precedent, implied by custom or otherwise relating to the Agreement that are not expressly included in this Agreement are excluded.

* 1. Uncapped liability for death and personal injury, fraud etc.

Neither Party excludes or limits liability for Losses relating to the following:

* + 1. death or personal injury arising from its own negligence or the negligence of any of its Personnel in connection with that Party’s performance of this Agreement; and
    2. any other liability that cannot be excluded or limited by Applicable Law.
  1. Mitigation

Each Party must use all reasonable endeavours to mitigate any Loss suffered or incurred arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

* 1. Conflict of interest and the prevention of fraud
     1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its staff are placed in a position where, in the reasonable opinion of the BELTS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to BELTS under the provisions of this Agreement. The Supplier will disclose to BELTS full particulars of any such conflict of interest which may arise.
     2. BELTS reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of BELTS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to BELTS or the Ministry of Health under the provisions of this Agreement. The actions of BELTS pursuant to this **Clause 29.6.2** shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to BELTS.
     3. The Supplier shall take all reasonable steps to prevent fraud by its staff and the Supplier (including its owners, members and directors). The Supplier shall notify BELTS immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
     4. If the Supplier or its staff commits fraud, BELTS may terminate this Agreement and recover from the Supplier the amount of any direct loss suffered by BELTS resulting from the termination.

# **INDEMNITY**

* 1. Mutual Indemnities
     1. Each Party (“**the Indemnifying Party**”) agrees to indemnify the other Party (“**the Indemnified Party**”) from and against any and all Losses, damages or injuries or death of any person or liability suffered and legal fees and costs incurred by the Indemnified Party arising from or in connection with:
        1. personal injury or death that is caused or contributed to by the Indemnifying Party or its personnel in connection with the Indemnifying Party’s negligence; and
        2. any default of any terms, warranties or undertakings in this Agreement by the Indemnifying Party.
  2. General rules for indemnities
     1. The Indemnified Party must take reasonable steps to minimise and mitigate any Losses suffered in connection with a claim or loss in respect of which the Indemnified Party has provided an indemnity under this **Clause 30**.
     2. The liability of an Indemnifying Party under this **Clause 30** to an Indemnified Party will be the sole and exclusive financial remedy in respect of the liability of the subject of the indemnity.
     3. The Indemnifying Party is not obliged to indemnify the Indemnified Party if the liability or the subject of the indemnity claim arises as a result of an act or omission of the Indemnified Party.
     4. Where the liability of the Indemnifying Party arises as a result of an act or omission of a third party, the Indemnified Party will not receive the benefit of the indemnity where that third party is the Indemnified Party or affiliate of the Indemnified Party.
  3. Indemnifying Party may assume defence of Third Party Claims
     1. If the Indemnified Party receives a claim from a third party which results, or is likely to result, in a claim by the Indemnified Party against the Indemnifying Party under **Clause 30.1.1 (“a Third Party Claim**”), the Indemnified Party must notify the Indemnifying Party as soon as possible and give reasonable details of the third party claim.
     2. The Indemnifying Party may elect, at its option, to assume the conduct of the defence of a Third-Party Claim by giving the Indemnified Party notice of this fact.
     3. If the Indemnifying Party assumes the conduct of the defence of a Third-Party Claim in accordance with **Clause 30.3.2**, then the Indemnified Party shall:
        1. not make any admissions in relation to the Third-Party Claim without the prior written consent of the Indemnifying Party;
        2. co-operate with the Indemnifying Party in relation the conduct of the defence of the Third-Party Claim; and
        3. provide to the Indemnifying Party such information and assistance (at the cost of the Indemnifying Party) as the Indemnifying Party reasonably requests in conducting the defence of the Third-Party Claim.
     4. The Indemnifying Party will:
        1. consult with and keep the Indemnified Party informed as and when reasonably requested by the Indemnified Party in relation to the Third-Party Claim;
        2. consider in good faith any submissions made by the Indemnified Party with respect to the defence, settlement or compromise of the Third-Party Claim;
        3. not do anything during the course of any defence, settlement or compromise which adversely affects the Indemnified Party’s business or reputation; and
        4. not take any action or persist with any action (including agreeing to any settlement, making any admission of liability or agreeing to compromise in relation to any Third- Party Claim) without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld).
  4. The indemnification obligations under this **Clause 30** shall survive termination or expiry of this Agreement.

# **RELEASE OR WAIVER**

Any liability to any Party hereunder may in whole or in part be released, compounded or compromised, or time or indulgence may be given, by such Party in its absolute discretion without in any way prejudicing or affecting its rights against the other Parties. Any release or waiver or compromise shall be in writing and shall not be deemed to be a release, waiver or compromise of similar conditions in the future.

# **CONFIDENTIALITY**

* 1. For the purposes of this **Clause 32**, “Confidential Information” means all information (whether commercial, financial, technical or otherwise) relating to the disclosing Party, disclosed to or otherwise obtained by the recipient Party under or in connection with this Agreement and which is designated as being confidential or which is by its nature clearly confidential.
  2. Each Party undertakes in respect of Confidential Information for which it is the recipient:
     1. to treat such Confidential Information as confidential;
     2. not, without the disclosing Party’s prior written consent, to communicate or disclose any part of such Confidential Information to any person except:

1. to those employees or agents on a need-to-know basis only;
2. to those employees or agents on a need-to-know basis only;
3. the recipient’s auditors, professional advisors and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the recipient;
   * 1. to ensure that all persons and bodies mentioned in **Clause 32.2.2** are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing Party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this **Clause 32**; and
     2. not to use or circulate such Confidential Information within its own organisation except to the extent necessary for the purposes of this Agreement.
   1. The obligations in this **Clause 32** shall not apply to any Confidential Information which:
      1. was in the recipient’s possession (with full right to disclose) before receiving it; or
      2. is already in the public domain or becomes public knowledge through no act or default of the recipient Party or other than by breach of this clause; or
      3. is independently developed by the recipient Party without any access to or use of the Confidential Information; or
      4. is required by Applicable Law to be disclosed; or
      5. is lawfully received from a third party (with full right to disclose).

This **Clause 32** shall continue in force notwithstanding the termination or expiration of this Agreement for any reason.

# **FORCE MAJEURE**

* 1. Notwithstanding anything else contained in this Agreement, neither Party shall be liable for any delay in performing its obligations hereunder if such delay is caused by a Force Majeure event. For the purposes of this Agreement, a Force Majeure event means any event beyond the reasonable control of a Party including but not limited to:
     1. acts of God;
     2. war, hostilities, riot, insurrection or civil commotion, malicious damage, blockades, embargoes, strikes, lockouts and industrial disputes affecting such performance; and
     3. flood, fire, rainstorms and other natural physical disasters, plague or other epidemics or pandemics.
  2. Subject to the Party so delaying promptly notifying the other Party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such Party's obligations under this Agreement as affected by a Force Majeure Event shall be suspended during the period that the Force Majeure event persists and such Party shall be granted an extension of time for performance equal to the period of the delay. Any costs arising from such delay shall be borne by the Party incurring the same. All other provision of this Agreement shall remain in force with regard to all other obligations under this Agreement which are not affected by such Force Majeure Event.
  3. Either Party may, if such delay continues for more than three (3) weeks, terminate this Agreement forthwith on giving notice in writing to the other. Where the Supplier elects to terminate this Agreement under this **Clause 33.3**,BELTS shall issue an invoice specifying the Goods rendered up to the date of termination and the provisions of **Clause 17 (Charges and Payment)** in respect of payment shall continue to apply here.
  4. A statement in writing by a competent authoritative body such as the local Chamber of Commerce, confirming the veracity of a Force Majeure event claimed by either Party shall be accepted as conclusive evidence thereof.
  5. Both Parties will in any event use all reasonable endeavours to mitigate the impact of any Force Majeure event and to recommence performance of their obligations under this Agreement as soon as reasonably possible.

# **TERMINATION**

* 1. Without prejudice to the Parties’ rights arising in law or equity, this Agreement may be terminable in any of the following circumstances:
     1. By either Party forthwith upon giving notice in writing to the other Party to terminate this Agreement if the other Party, being a company, shall have a receiver or liquidator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of amalgamation or reconstruction) or is subject to a court order having the same effect, or being a partnership shall be dissolved or being an individual shall commit any act of bankruptcy or dies or if the other Party (whether a company or not) entered into any composition or arrangements with its creditors or becomes insolvent; or
     2. By BELTS for convenience upon giving three (3) months written notice and without having to assign any reason for doing so. The Supplier shall have no claim for any damages or compensation save that if the Supplier is owed money for the Goods or associated expenses incurred prior to the date of termination, and shall provide BELTS with a final invoice specifying the Goods Delivered and BELTS shall pay such amount as agreed between the Parties within thirty (30) Business Days upon receipt of the original invoice and such other supporting documents as BELTS may require for the purpose of making payments which relates to the expenses incurred by the Supplier; or
     3. Pursuant to **Clause 22 (Performance Bond), 23 (BELTS’ Remedies), 33 (Force Majeure)** and **36 (Gifts)** in the circumstances mentioned therein.
  2. Upon termination of this Agreement, the Supplier shall issue an invoice specifying the Goods Delivered up to the date of termination. Any monies or fees paid in advance by BELTS shall, without affecting any remedy which either Party may have for any breach of this Agreement, be pro-rated and refunded to BELTS.
  3. For the avoidance of doubt, termination of this Agreement shall be without prejudice to any existing or unfulfilled Purchase Orders which the Supplier shall continue to fulfil unless otherwise required by BELTS.

# **NOTICES**

* 1. Any notice, demand or other communication given or made by one Party to the other pursuant to this Agreement shall be in writing and delivered or sent by registered post or email to the address or email address as specified below (or such address or email address as the addressee has by five (5) Business Days prior written notice specified to the other Party):

To BELTS: Attention:

Simpang 433, Rimba Highway,

Kg Madaras, BE3119

Brunei Darussalam

Tel No.: +673 222 3434 ext 111

Email: [msc.procurement@belts.com.bn](mailto:msc.procurement@belts.com.bn)

To the Supplier: Attention:

Email:

* 1. Any notice, demand or other communication shall be deemed to be duly served:
     1. if delivered by hand during the Business Hours of the addressee to the addressee’s address, at the time of delivery;
     2. if sent through email during the Business Hours of the addressee, at the time of successful transmission;
     3. if sent by post during the Business Hours of the addressee, on the tenth (10th) working day after posting; and
     4. if sent by international courier service, on the second day from the date of dispatch.
  2. A notice, demand or other communication shall be deemed to be effective from the time of service or in the notice’s effective date, whichever is the later.

# **GIFTS**

BELTS shall be entitled to terminate this Agreement and recover from the Supplier the amount of any loss resulting from such termination, if the Supplier shall have offered or given or agreed to give to any person any gift 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 action in relation to the obtaining or execution of this Agreement with BELTS, or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with BELTS or the like acts shall have been done by any person employed by the Supplier or acting on its behalf (with or without the knowledge of BELTS), or if, in relation to this Agreement or any other contract with BELTS, the Supplier or any person employed by the Supplier or acting on its behalf shall have committed or abetted to commit an offence under the **Prevention of Corruption Act (Cap. 131)** or **sections 161 to 165 or 213 to 215 of the Penal Code (Cap. 22)**.

# **INSURANCE**

* 1. Insurance Policies

The Supplier will effect and maintain with a reputable insurer:

* + 1. insurance to cover workmen compensation, public liability, fire, natural disasters of their warehouse where Goods are kept;
    2. any other insurance required by Applicable Laws,

(collectively referred to as the **“Insurance Policies”**).

* 1. Other requirements

The Supplier will:

* + 1. maintain the Insurance Policies for the duration of this Agreement and any extended duration;
    2. not do or fail to do anything that prejudices any of the Insurance Policies or insurance claims under any Insurance Policy;
    3. immediately notify BELTS, and, where relevant, the insurer, of any fact, circumstance or change in circumstances which may prejudice the validity or availability of any of the Insurance Policies; and
    4. provide evidence of the Insurance Policies to BELTS in the form of certificates of currency on written request and in a form acceptable to BELTS.
  1. The Supplier’s responsibility for insurance and liability not affected
     1. Notwithstanding the requirements of this **Clause 37**, the Supplier is solely and absolutely responsible for assessing the risk and scope of its own insurance requirements.
     2. Nothing in this **Clause 37** excludes, limits or restricts either Party’s obligations or liabilities arising from or in connection with this Agreement.

# **EXPENSES**

All expenses incurred by or on behalf of the Parties, includ­ing all fees of agents, solicitors, accountants, and actuaries em­ployed by either of the parties in connection with the negotiation, preparation and execution of this Agreement shall be borne solely by the Party which incurred them.

# **ENTIRE AGREEMENT**

This Agreement (together with its Schedules) and each Purchase Order constitutes the whole agreement between the Parties and supersedes any previous agreements, arrangements or understandings between them relating to the subject matter hereof.

# **AMENDMENT AND VARIATION**

No amendment or variation to this Agreement shall be valid unless effected in writing and signed by both Parties by their duly authorised representatives.

# **CONTINUING EFFECT OF AGREEMENT**

All provisions of this Agreement shall not, so far as they have not been performed or waived on or before the agreed date in the Purchase Order, be in any respect extinguished or affected by any other event or matter whatsoever and shall continue in full force and effect so far as they are capable of being performed or observed.

# **WAIVER**

No failure or delay by any Party in exercising any right, power or remedy under this Agreement shall operate as a waiver hereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by any Party of any breach of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

# **TIME OF THE ESSENCE**

Any time, date or period mentioned in any provision of this Agreement may be extended by mutual agreement between the Parties in accordance with this Agreement or by agreement in writing but as regards any time, date or period originally fixed or any time, date or period so extended as aforesaid time shall be of the essence.

# **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, of which all such counterparts shall together constitute one and the same instrument.

# **SEVERABILITY**

In the event that any term or provision or part of a term or provision of this Agreement shall be held or determined invalid, unlawful or otherwise unenforceable to any extent, such term or provision or part of a term or provision shall be deemed severed from the remaining terms and provisions of this Agreement and the remaining terms and provisions of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by Applicable Law.

# **PAYMENT OF STAMP DUTIES**

Stamp duty chargeable shall be paid in accordance with the Stamp Act (Chapter 34) by the Supplier.

# **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of Brunei Darussalam.

# **DISPUTE RESOLUTION**

* 1. The Parties shall make every effort to amicably resolve, by direct informal negotiations, any disagreement or disputes arising between them or pursuant to or in connection with this Agreement.

* 1. If the Parties are unable to amicably resolve any disagreement or dispute within thirty (30) calendar days from the date when such dispute arose, either Party shall require that the disagreement or dispute be referred for resolution by arbitration in accordance with the provisions of the **Arbitration Order, 2009**.
  2. The Arbitration Tribunal shall consist of a single arbitrator, such person to be agreed between the Parties, or failing agreement, to be nominated in accordance with the **Arbitration Order, 2009**. The applicable rules of arbitration shall be the UNCITRAL Rules of Arbitration.
  3. The seat and place of arbitration shall be Brunei Darussalam and the language of arbitration shall be English.
  4. All rights and obligations of the Parties under this Agreement shall continue in full force and effect pending the final outcome of such arbitration.
  5. Any reference to arbitration under this clause shall be a submission to arbitration within the meaning of the **Arbitration Order, 2009** for the time being in force in Brunei Darussalam.
  6. The application of Part II of the International Arbitration Order, 2009 and the Model Law referred thereto, to this Agreement is hereby excluded.
  7. Notwithstanding **Clause 48.2**, BELTS may, in the alternative, at its complete and sole discretion, refer such disagreement or disputes for resolution in the Courts of Brunei Darussalam. In such event, the Supplier shall agree to submit to the exclusive jurisdiction of the Courts of Brunei Darussalam.

- *the rest of this page is intentionally left blank* -

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed on the day and year first above written.

**Signed for and on behalf of**

**BRUNEI ENGINEERING, LOGISTICS AND TRAINING SOLUTIONS SENDIRIAN BERHAD**

…………………………………………………………

Name:

Position / Occupation:

**In the presence of (witness):**

…………………………………………………………

Name:

Position / Occupation:

Signed for and on behalf of

…………………………………………………………..

Name:

Position / Occupation:

In the presence of (witness) :

……………………………………………………………

Name:

Position / Occupation:

SCHEDULE A – MEDICINAL PRODUCTS

| **TENDER BATCH:** |  | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Dates** |  | | | | | | | |
| **ITEM NO.** | **MEDICINE**  **PARTICULARS** | **ESTIMATED ANNUAL QUANTITY** | **BUFFER STOCK** | **BRAND OFFERED** | **PACKING SIZE** | **UNIT PRICE** | **TOTAL PURCHASE VALUE FOR 3 YEARS** | **REMARKS**  **(STATE MINIMUM ORDER QUANTITY IF APPLICABLE)** |
|  |  |  |  |  |  |  |  |  |

SCHEDULE B - PURCHASE ORDER





# **SCHEDULE C – PERFORMANCE BOND**

To: […..]

WHEREAS[*name of Company*] of ………………….has entered into an Agreement with Brunei Engineering, Logistics and Training Solutions Sdn Bhd dated …………… for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Contract Ref. \_\_\_\_\_\_\_\_\_\_\_\_ ) (“the Agreement”) and in this connection a performance bond is required in the sum of [*state amount*] as security for the fulfilment by [*name of Company*] of its obligations under the Agreement.

NOW we [*name of the bank*] of [*registered address of the bank*], hereby guarantee payment to BELTS on demand of up to [*state amount*] in the event of[*name of Supplier]* failing to fulfil the Agreement, provided that BELTS’ claim hereunder is received in writing at this office accompanied by a signed statement that [*name of Supplier*]] has failed to fulfil the Agreement, without BELTS needing to prove or show any ground(s) or reason(s) for its demand.

Such statement shall be accepted by us as conclusive evidence that the amount claimed is due to BELTS under this Guarantee.

This Guarantee shall become operative on the date of signing of the Agreement by BELTS and the Supplier and shall expire **……… (…) months** after the expiry of the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of Brunei Darussalam.

[*signature of authorized signatory*]

For and behalf of [*name of the bank*].

**SCHEDULE D – KEY PERFORMANCE INDICATORS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Key Performance Indicators (KPI)** | | | |
| **No** | **Performance Category** | **Performance Metrics** | **Target** |
| 1 | Supply Chain Performance | On-time delivery of Goods to BELTS from the date of Purchase Order issued to Suppliers | 100% |
| Order fulfilment accuracy of Goods requested by BELTS to Suppliers | 100% |
| Provide realistic Estimated Delivery Date (EDD) for Goods delivered to SPN taking into consideration necessary approvals for the import of Goods, customs clearance and Quality Inspection | 100% |
| Shelf-life of Goods not less than two (2) years from the date of Purchase Order issued unless otherwise agreed by BELTS in writing | 100% |
| Ensure security of Supply following the forecast provided by BELTS | 100% |
| Replacement of expired items not less than eighteen (18) months for Goods with more than two (2) years of Shelf-life | 100% |
| Ensure continuous supply to BELTS should there be any encounter of Supply Constraint of Goods, Discontinued Goods, Product Recall, Withdrawn Goods or Defect Goods | 100% |
| Ensure no back orders or delayed deliveries are made, unless BELTS have been informed on any delay expected in delivering the Goods on time pursuant to the Expected Delivery Date specified in the Purchase Order due to factors beyond the Supplier’s control, such as including but not limited to supply chain issues or other reasons, as soon as reasonably made known to the Supplier’s knowledge | 100% |
| In managing the KPI, the Supplier shall take all reasonable steps to avoid the actual or potential failure and minimise any adverse impacts | 100% |
| 2 | Inventory | Availability of Buffer Stock kept at Suppliers' warehouse or storage | 20% of Estimated Annual Quantity |
| Restock of Buffer Stock upon utilization as and when required by BELTS, in writing | 20% of Estimated Annual Quantity |
| 3 | Customer Service and Support | Responsiveness to inquiries and complaints | Within 24 hours |
| Notification to BELTS on challenges of logistics and supply chain for medicinal supplies | As reasonably made known to the Supplier’ knowledge |
| Inform discontinued Goods from Manufacturer | At least six (6) months from the discontinuation date |
| 4 | Quality Assurance | Product defects, deviations, or non-conformances | Zero |

**SCHEDULE E – SPECIFICATIONS FORM**