



**POLICY AND GUIDELINES ON INDUSTRY  
COLLABORATION PROGRAM (ICP) IN GOVERNMENT  
PROCUREMENT**

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## CHAPTER 1 - INTRODUCTION

### BACKGROUND

1. The Government of Malaysia is committed in developing national technology, industry and economy for the purpose of improving Malaysia's competitiveness in the global market, supported by a holistic economic view and systematic development strategy. This effort is vital to sustain requirements in materializing the New Economic Model and high-income community development agenda. In support of that, the Government of Malaysia is leveraging on the Offset Programme platform as one of the strategies and has established a policy applied to all Government procurement related to activities, supply and service work.

2. Based on the benefits of past Offset Programmes which has contributed to local economic expansion, the Government has expanded the scope of the existing Offset Programme Policy to cover various strategic sectors identified. In this regard, the Government is introducing the *Industrial Collaboration Programme (ICP) Policy* as an enhanced policy based on the current policy issued via the 1 Treasury Circular/PK 1/2013 Paragraph 6(v) titled Policy and Guideline on Offset Programme in Government Procurement.

3. Industrial Collaboration Programme (ICP) is a programme which consists of activities that add value to a procurement made by the Government of Malaysia, with an effective cost. ICP includes Economic Enhancement Programme (EEP), Counter Trade and Offset Programme.

4. This Policy and Guideline of ICP in Government Procurement shall be used as a reference to the terms and conditions of the ICP activities implementation in Malaysia. In order to ensure ICP is implemented systematically, a framework titled the **Malaysia ICP Management Framework and Flow Chart Model** is provided as guidance to the implementation process which is as per **Attachment 1**.

## **PHILOSOPHY**

5. In support of the national agenda, **ICP** is used as one of national development strategies to strengthen the **country's socio-economic** achievement, leveraging on sustainable **ICP** programs to elevate the current capability and capacity of the country in identified strategic areas to a next level. Priority is given to activities that provide active platform for local industry participation in selected sectors contributing to the national aspiration towards achieving developed country status. Therefore, **ICP** shall be regarded as a long term investment strategy by Original Equipment Manufacturers (**OEMs**) to develop and strengthen their business in Malaysia.

6. The **ICP** implementation is regarded by the Government of Malaysia as one of the strategies to open windows of opportunities for local industry players to participate in the global market. It is also used as a stepping stone for local industry players to competitively take part in the Global Supply Chain. Therefore, the implementation of the **ICP** should take into account the interests of all parties (win-win situation and complementarity) to ensure a greater overall impact. Thus, the **ICP** Provider must show full cooperation in the implementation of the **ICP** to obtain confidence of the Government of the benefits of **ICP** and their commitment to the national development efforts.

7. For the purpose of the **ICP** implementation, the Government Ministries and Agencies must comply with the following requirements:

7.1 The Policy and Guidelines of **ICP** is **mandatory** for all Government agencies that undertake procurement with the specified threshold value;

7.2 The Mandatory requirement on this Policy and Guidelines is **extended** to the Government Owned Company (**GOC**) and its subsidiaries; and

7.3 Government Link Companies (**GLCs**) and its subsidiaries; and private companies are **encouraged** to implement the **ICP** to mark their contribution to the development of industry sectors in Malaysia. Relevant incentives in

return to the implementation of the **ICP** can be referred to the **MOF** or relevant Ministry/Agencies.

## **OBJECTIVES**

8. The objectives of the **ICP** are as follows:

- 8.1 As a catalyst for global strategic cooperation for local companies that contribute to economic and industry growth through the development and strengthening of skills, capabilities, capacities and marketing and export potential;
- 8.2 Maximize the usage of local content to reduce dependency on foreign countries and thus reduce the outflow of Malaysian currency;
- 8.3 Strengthen the industrial base, economic and sustainable technology in Malaysia based on the development of strategic capabilities and the participation of local industry in the global supply chain to build a sustainable and competitive local industry;
- 8.4 Promote Transfer of Technology (**ToT**) and strategic knowledge development;
- 8.5 Develop cooperation in research projects, strategic development and commercialization (Research, Development Commercialisation - **R&D&C**); and
- 8.6 Facilitate initiatives of Foreign Direct Investment (**FDI**) and foster collaboration to develop human resources in strategic sectors, in turn creating job opportunities, increase the expertise and local capabilities.

## **CROSS REFERENCE**

9. To ensure inclusivity of **ICP** implementation with other Government activities, this policy document is crossed reference with other policy and guidelines as follows:

- 9.1 1 Treasury Circular (*1 Pekeliling Perbendaharaan Malaysia (1PP)*);
- 9.2 Master Plan of Small and Medium Enterprises 2012-2020 by the National **SME** Development Council;
- 9.3 Defense Industry, Security and Enforcement Blueprint by the Ministry of Defense, Malaysia;
- 9.4 Guidelines for Vendor Development Programme by **SME** Corporation Malaysia; and
- 9.5 Other relevant and current Government Policies, Regulations and Guidelines.

## **TERMINOLOGY AND DEFINITION**

10. Following are the definitions of terminologies used in this document:

- 10.1 **Agency** is a Ministry (Federal and State), Department (Federal and State), Local Authority (Federal and State), Statutory Organization and Local Prime Contractor or any organization that uses Federal Government fund allocation, fully or partially for the operation.
- 10.2 **Appointed Approving Authority** is an authority at Ministry of Finance Malaysia.

- 10.3 **Bill of Material (BOM)** is a complete list of materials used including the raw material in producing/manufacturing a product.
- 10.4 **Completely Knocked Down (CKD)** are imported component or part of component and the assembly for a complete product is done locally.
- 10.5 **Counter Purchase** is an arrangement agreed by the supplier / contractor set out in the Main Procurement Contract for the purchase of local goods.
- 10.6 **Counter Trade** is one of the categories under the **ICP**, which includes the Counter Purchase and Buy Back.
- 10.7 **Economic Enhancement Programme (EEP)** is one of the categories under the **ICP** which involves local companies.
- 10.8 **ICP Authority** is an organization that is mandated by the Government of Malaysia to **govern** the implementation of the **ICP** in Malaysia.
- 10.9 **ICP Evaluation Report (IER)** is a report produced after the assessment activities carried out by the **ICP** Evaluation Committee.
- 10.10 **ICP Requirement Document (IRD)** is a document that provides guidance to the bidder on **ICP** specifications in a particular procurement.
- 10.11 **ICP Committee (IC)** is a Committee established at the procuring Agency responsible to manage and **administer** the implementation of the **ICP**.
- 10.12 **ICP Working Committee (IWC)** is a Committee established at the Procuring Agency responsible to implement the **ICP**.



- 10.13 **ICP Credit Value (ICV)** is the credit value generated during the **ICP** implementation period in fulfilment of the **ICP** Agreement.
- 10.14 **ICP Obligation** is the terms and conditions that shall be adhered by the **ICP** Provider with reference to this Policy.
- 10.15 **ICP Provider** is the OEMs, suppliers, international contractors or STU that are responsible for the delivery of the agreed **ICP** obligations.
- 10.16 **ICP Recipient** is a local company, institution or organization eligible to receive assistance, profit or benefits leveraging on the **ICP**. **ICP** Recipients may be proposed by the Procuring Agency, **TDA**, **IMU** and OEMs. The proposed **ICP** Recipients have to go through the **ICP** Recipient Audit process and the finalization will be by the **IC** with endorsement by **MIEC** or the **Appointed Approving Authority**.
- 10.17 **ICP Management Unit (IMU)** is a unit established by the procuring Agency which the roles and functions defined in this Policy.
- 10.18 **ICP Project** consists of projects identified in the **ICP** that contribute to the generation of **ICP** Credit Value.
- 10.19 **Industrial Collaboration Program (ICP)** consists of Economic Enhancement Programme (**ECP**), Counter Trade and Offset Programme activities.
- 10.20 **Main Procurement Contract** is a contract entered by the Government of Malaysia and the supplier(s) for the procurement to be carried out within an agreed time frame and cost.
- 10.21 **Malaysia ICP Executive Committee (MIEC)** is the Committee established at Ministry of Finance to monitor and provide strategic direction for the overall implementation of the **ICP** in Malaysia.

- 10.22 **Mandatory ICP Credit Value** is credit value to be generated by **ICP** Provider equivalent to the Main Procurement Contract value.
- 10.23 **MOF** is Ministry of Finance, Malaysia
- 10.24 **Malaysian ICP Management Framework** is a model that provides guidelines about the processes that need to be implemented for the **ICP**.
- 10.25 **Multiplier** is an integer value (1-5) used in the calculation of **ICP** Credit Value based on the impact of the proposed project in an **ICP**.
- 10.26 **Offset Program** is one of the categories under the **ICP**, which focuses on the industry and technology development activities as needed.
- 10.27 **Original Equipment Manufacturer (OEM)** is the actual manufacturer of the equipment or components.
- 10.28 **Prime Local Contractor (STU)** is a local company, including **GOC, GLC** and its subsidiary awarded a contract by the Government for the purpose of supplies, services and works.
- 10.29 **Procurement** means the acquisition by the Agency /**STU** which include the categories of supplies, services and works.
- 10.30 **Programme Owner** is an organization that undertakes Procurement.
- 10.31 **Project Delivery Partner (PDP)** (or equivalent) is the **third** party mandated by the Agency/**STU** to carry out activities to deliver the procurement on its behalf.
- 10.32 **Project Team** is a team established at the procuring Agency that manages the implementation of the identified projects.

- 10.33 **Syarikat Tempatan Utama (STU)** is defined as local companies such as Government Owned Company – **GOC**, Government Linked Company - **GLC** and their subsidiaries including Private Companies, that have been awarded by the Government on supply, services and works related contracts.
- 10.34 **Small and Medium Enterprises (SMEs)** are companies that meet the definition by the Ministry of International Trade and Industry (Ministry of International Trade and Industry - **MITI**).
- 10.35 **Local company** is defined as:
- a. A company one hundred percent (100%) owned by Malaysian; or
  - b. A local company listed on Bursa Malaysia; or
  - c. A joint-venture company incorporated in Malaysia (whether listed on Bursa Malaysia or not) provided that the foreign equity does not exceed forty-nine percent (49%) and the majority members of the Board of Directors, management and employees are Malaysians; or
  - d. Local company: At least 51 per cent equity owned by Malaysians and registered with the Companies Commission of Malaysia (*Suruhanjaya Syarikat Malaysia - SSM*).
- 10.36 **Technology Depository Agency (TDA)** is an agency under the Ministry of Finance (**MOF**) responsible to ensure the **ICP** implementations in Malaysia are in line with this Policy and Malaysian **ICP** Management Framework.
- 10.37 **Vendor Development Programme (PPV)** is a program implemented by **STU** to develop local industry based on the **PPV** guidelines issued by the Government of Malaysian.

## **CHAPTER 2 – CATEGORY**

### **INTRODUCTION**

11. The Industry Collaboration Program (**ICP**) is a program involving activities that provide value-add to any procurement made by the Government of Malaysia or Prime Local Company (**STU**) with the most effective cost associated to it. The purpose of these activities is to garner maximum benefits and impacts to the development of related local industries in a wholistic manner as returns on the investment by the Government via procurements made.

12. For this purpose, in proposing the **ICP** and in compliance with the Government's policy, the **ICP** provider is required to consider the impacts of the proposed program for short, medium and long term gains. As such, the Government of Malaysia has categorized **ICP** implementation into 3 main platforms that **ICP** provider could use as guidance:

12.1 Economic Enhancement Program (**EEP**);

12.2 Counter Trade;and

12.3 Offset.

### **ECONOMIC ENHANCEMENT PROGRAM (EEP)**

13. The policy on the Economic Enhancement Program (**EEP**) is effectuated when a **STU** received a contract from the Government for any procurement equal or more that the **Minimum Treshold Value** specified in this Policy. **EEP** is intended to ensure that **STU** shall reciprocate its contribution towards the enhancement and development of the national economy via the **ICP** implementation as well as the Vendor Development Program (**VDP**) approaches.

- 13.1 EEP is **mandatory** for **STU** in cases where the source of fund for the procurement is from the Government.
- a. In the case where the source of fund for the procurement is acquired from the internal source for the **STU** itself, then the respective **STU** will be **encouraged** to implement the **EEP** exercise.
  - b. In the case where the Government's procurement contract with the **STU** exceeds the **ICP Minimum Threshold Value** and it involves sub-contracting to foreign **OEMs**, then the respective **OEMs** shall be subjected to the Counter Trade and Offset whereby the management and implementation of these programs shall be directly under the jurisdiction of the **TDA** and the **MOF**.
- 13.2 The Government uses the **ICP** and **VDP** approach to facilitate the capacity and capability development of the local industries, especially the Small and Medium Enterprises (**SME**) within a selective industrial cluster. In order to ascertain the inclusivity of the industry development, the **EEP** implementation shall be in parallel with the guidelines of the **PPV** issued by the Government.
- 13.3 The Government is desirous, via the implementation of the **EEP** to create more local companies (**STU** and **SMEs**), especially Bumiputera companies in the field of manufacturing and services that involves usage of medium and high technologies to add value in supporting the development of industrial cluster in selected sectors.
- 13.4 The **EEP** implementation based on the **ICP** platform is part of the Government's effort to drive **STUs** to progressively grow and become competitive to participate in the domestic and global market. The Government, **ICP** provider, **STU** and **VDP** program providers shall perform assessments on potential local companies for the purpose of identifying and selecting the recipients of the **EEP** (priorities shall be given to **SMEs**). The

selection shall be mutually agreed by the Government, **ICP** provider, **STU** and the **VDP** program provider abiding to the processes stated in the Malaysia **ICP** Management Framework.

- 13.5 In determining smooth implementation of the **EEP**, **STU** shall be responsible for its implementation and to be monitored and advised by **TDA** and Ministry of Finance. **STU** and its subsidiaries can become part of the recipients of any **ICP** program with condition that the credit value created collectively from all the **ICP** projects by the **STU** under that **ICP** program **cannot be more than 30%** of the Mandatory **ICP** credit value.

## **COUNTER TRADE**

14. The policy on Counter Trade is to be effectuated to foreign companies who received Government's contract with the value equal or more than the **Minimum Treshold Value** specified in this policy. In this category, the maximum **ICP** credit value generated shall be the same as that of the cost value of the Counter Trade that can be implemented via Counter Purchase or Buy Back programmes. The management, monitoring and the program implementation under this Counter Trade category is directly under the management of **TDA** and **MOF**.

### **14.1 Counter Purchase Program**

- a. For Counter Purchase program implementation, the foreign **ICP** provider can implement it by purchasing selected Malaysia locally made products (usually stated as a percentage of the contract value) within a given period of time as an option to fulfil the **ICP** credit requirement.
- b. The Counter Purchase program shall give preference to the products manufactured by local companies. If the products do not meet the **ICP** credit percentage as required, then the supplier/**ICP** provider can include

the Government approved export commodities as the product for counter purchase.

- c. The export commodity and/or manufactured products and/or services value-add must be from the Government approved list. **OEM/ICP** Providers are required to submit a proposal to the Ministry of Finance for approval on the products or services that are not included in the list.

#### 14.2 Buy Back Program

- a. For the purpose of Buy Back Program implementation, the **ICP** provider can effectuate it by buying back products produced by local companies which have been developed and produced resulting from the **ICP** program (*at least 30% from the ICP nominal value*).
- b. The buyback program for the manufactured products under the “localization” activity is encouraged to show the **ICP** Provider support on the capacity and capability development of the local industry. This program needs to be further continuously enriched to provide sustainable opportunities to local industry players to participate in the global supply chain (of the **ICP** provider).

### OFFSET PROGRAM

15. Offset Program is a program that involves activities to strengthen local competitiveness by giving priorities to the technology development and knowledge-based economy. It targets for the development of local technology-based industries by enhancing the capacity and capabilities of the local companies to a higher level to enable it to competitively participate in the global markets and supply chain. The implementation policy of the offset program shall be effectuated on foreign companies that received Government’s contracts subject to the **Minimum Threshold Value** specified in this Policy.

16. The assessment on the Offset program and the **ICP** credit generated shall be based on the success of the program offered by the **ICP** provider and its impact in strengthening local industries and national economy in the targeted sectors within the agreed period. Under a normal circumstance, the **ICP** implementation period shall be the same to the implementation period of the Main Procurement Contract.

#### 16.1 **Direct Offset**

It comprises of activities and work packages related directly to the products and equipment which are procured via the Main Procurement Contract, and are mutually agreed by the **ICP** provider and the Government. It includes:

- a. Training, Human Capital and Capability Development: Activities in the **ICP** implementation where the **ICP** recipients are given opportunities to develop their capability (human capital and respective industry cluster supply chain) to enable through-life support of the equipment which are acquired via the Main Procurement Contract, particularly the ones that involved ‘Design and Systems Integration’ to be carried out locally. However, trainings required for the operation of the equipment which are part of the Main Contract deliverables, or for the capability development (competency) required for the implementation of the Main Contract cannot be considered and claimed as **ICP** credit.
- b. Local Work Package: Activities where the **ICP** Recipients receive contracts related to products manufacturing and directly related to design, development and installation of parts and components (full or partial) in support of products that are acquired via the Main Procurement Contract. This includes local manufacturing for the components, complete and semi-assembly. The **ICP** credit value generated through this approach will be based on the impact of the work package offered onto the knowledge-based economy development.
- c. Transfer of Technology and Competency Development: Includes activities based on skills and knowledge transfer in areas of system



design and sub-system supplied through the Main Procurement Contracts; which will increase the capability, capacity, competency and sustainability of the **ICP** recipients in the selected fields. The transfer of technology encompasses the transfer of Intellectual Property Right (**IPR**) related to the technology transferred to enable continuous competency development in the identified fields.

- d. Foreign Direct Investment: Includes investment activities by foreign investors contributing to establishment of joint-venture companies and partnerships, development of human capital and industrial trainings, additional onto existing investments and others that support the implementation of the activities stated above. These investments can be considered as **ICP** credit in which the assessment shall be based on the economic returns benefited by the Government of Malaysia.

## 16.2 **Indirect Offset Program**

Programmes under this category are programmes that have indirect link or no link at all to the products or equipment acquired via the Main Procurement Contract; and are mutually agreed for their implementation by the Government and the **ICP** providers. The main elements of the indirect offset programmes include transfer of technology, knowledge and skill, industrial capability development and human capital competency development.

- a. Transfer of Technology, Knowledge and Skills: These activities include:
  - i. Collaboration in generating or improving existing knowledge to produce patents and Intellectual Property Rights (**IPR**). These activities enable **ICP** recipients to enjoy exclusive rights and subsequently strengthen the developed technology for competency development and growth.

- ii. Development in industrial training syllabus for human capital development, build and expand the expertise in the related industry.
  - iii. Training activities required for the operation of the equipment supplied under the Main Contract or developing competencies for the implementation scope under the Main Contract cannot be considered as **ICP** credit.
- b. Research, Development and Commercialization (R&D&C): This is part of **ICP** program structure which the purpose is to carry out **R&D&C** program contributing to the industry development and Malaysia economic growth. The focus of this activity is to commercialize ‘market-ready’ **R&D** products from local universities and research institutions to the global market. The **R&D&C** activities need to be aligned with the activities of the transfer of technology, knowledge and expertise development as above.
- c. Local Contents: Activities that provide platforms for local manufacturer/producer to contribute to the development, production and utilization of local products (**MLC**) in support of the agreed **ICP** programs.
- d. Global Market Access: Activities by the **ICP** providers to facilitate the **ICP** recipients in providing access, direct or indirect to the global market through their supply chain. This is to enable the recipients to export or get supply contracts for products related to the **ICP** program and fulfil the requirements of the supply chain.
- e. Foreign Direct Investment: Investment activities by foreign investors in the primary industry sectors that have been identified by the Government of Malaysia. These investments can be considered as **ICP** credit in which the assessment shall be based on the economic returns benefited by the Government of Malaysia.

## **USAGE OF MALAYSIA LOCAL CONTENT (MLC)**

17. The calculation of the **ICP** credit value qualified to be claimed by the **ICP** provider is subjected to the ‘localization’ initiatives based on the **ICP** program compliance with the agreed **MLC** terms and conditions.

18. It is the responsibility of the **ICP** provider to comply with the usage of the local contents/goods/services in line with current policies in its effort to reduce the national financial outflow.

19. **ICP** provider shall utilize a **minimum of 30% MLC** in the proposed **ICP** implementation subject to the decision by the Ministry of Finance from time to time; and priority on the source of the **MLC** shall be given to local **SMEs**. **MLC** that has been utilised for the Main Procurement Contract implementation cannot be considered for the **ICP** credit value generation.

20. The **ICP** provider shall provide information to the Government, **TDA** and **IMU** on the costs related to the items below to ascertain that **MLC** can be more effective:

20.1 Bill of Material (**BOM**);

20.2 A list of specifications and global standard test and certification cost;

20.3 Provide **CKD** material list if those are to be fabricated in Malaysia. In addition, the local content for the manufacturing materials is to be at least 30% and shall be in line with the local industry capability.

20.4 To provide a list of foreign potential suppliers that are willing to collaborate by providing technical assistance to local companies; or establish joint-effort platform to provide opportunities for local production enhancement. This value-add collaboration is aimed for the high technology components development which are not yet available in Malaysia.

21. If the **ICP Provider** could not comply with the **MLC** requirements, then the **ICP Provider** shall provide the justification for review by **IC** and approval by **MIEC** or the **Appointed Approving Authority**.
22. The followings are the requirements the **MLC**, but not limited to:
- 22.1 Manpower: Cost of local work-force (man-hour) for activities related to product design, installation, testing and equipment and system commissioning. In fulfilling the requirements, priority shall be to local experts when it involves high technology activities in comparison to manpower requirements for low technology activities.
  - 22.2 Local Technology: Usage of technologies that are produced in country.
  - 22.3 Raw material and products: Supplies of local raw material and goods for manufacturing or production of parts and components. If it is need to be imported, it has to be in semi-completed form and the finished products must contain local raw materials.
  - 22.4 Spare Parts and Components: Supplies for parts and components that give priority to local factories/industry and must be based on the local products or raw materials such as natural rubber, tin, etc.
  - 22.5 Services: Which is given to existing local companies. The services include logistics, insurance, banking and transportation services and etc.
23. The **MLC** calculation is as in **Attachment 2**.

## **JOINT-VENTURE AND PARTNERSHIP WITH LOCAL COMPANIES**

24. **ICP** providers are encouraged to collaborate with local companies in forms of joint-ventures (**JVs**) and partnerships as platforms to support local industry development.

25. If the collaboration is based on joint-venture (**JV**) approved by the law, then the **ICP** generated from the **JV** shall be based on the total investment in form of cash inflow by the **ICP** provider into the **JV** company.

26. The **JV** company established to fulfil the **ICP** aspiration will gain benefits whereby the Government will consider the **MLC** as the part of the **ICP** credit even though it is executed for the purpose of fulfilling the Main Procurement Contract subject to the terms and conditions as below:

26.1 Local equity is more than 50% (percent);

26.2 More than 50% of the Senior Management are local;

26.3 More than 70% of the management and executives are local;

26.4 More than 90% production operators are local;

26.5 Others initiatives/activities that would support the local industry development.

27. **JV** companies that are established however not conforming to the Government's requirements in line with the **ICP** program aspirations will not be considered in getting benefits of generating **ICP** credits for works done to fulfil the Main Procurement Contract requirements even though it contains elements of **MLC**.

28. For collaborations established in forms of partnership approved by the law, the **ICP** credit generated from that partnership shall be based on the total cash inflow contributed by the **ICP** provider for the purpose of the partnership.

29. The works implemented by the partnership that contains **MLC** and given to the local partner for the fulfilment of the requirements under the Main Procurement Contract; and complied strictly with the **ICP** program criteria can considered for **ICP** credit.

## CHAPTER 3 – ICP IMPLEMENTATION

### INTRODUCTION

30. The **ICP** implementation in Malaysia is administered based on the terms, conditions and principles identified by the Malaysian Government that will give benefits to the development of local industry and contribute to the national economy. **The ICP terms and conditions will need to be agreed with the ICP Provider prior to the signing of the Main Procurement Contract.**

31. For the purpose of the Letter of Acceptance (**LOA**) issuance for the Main Procurement Contract, the **IMU** (upon advice and endorsement by **TDA**) and **ICP** Provider need to provide the **estimated ICP Credit Value (ICV)** to be generated from the projects that are to be implemented. Thus, the **ICP** Provider and **IMU** will need to identify the basic agreed projects to be implemented in the said **ICP** Programme for the mention in the **LOA**.

32. The **ICP** Provider and **IMU** will need to provide detailed implementation plan and the expected outcomes and deliverables in the Ist Tier **ICP** Agreement. The signing of both Main Procurement Contract and 1<sup>st</sup> Tier Agreement **shall be done at the same time**. A signed copy of the agreements will need to be extended to **TDA** and **IMU** for their reference purposes.

33. Where the implementation of the Main Procurement Contract is by an a third party such as Project Delivery Partner (**PDP**), the procurement's Agency/**STU** must allow **TDA** and **IMU** to communicate directly with the supplier/s to plan on the implementation of the identified **ICP**.

34. Where the Main Procurement Contract is awarded to an **STU**, which subsequently engage contracts with OEM companies, the **STU** must allow **TDA** and **IMU** to communicate directly with suppliers to plan the implementation of the identified **ICP**. The **STU** must also agree to allow **TDA** to deal directly with the **OEM**.

## **PRINCIPLES**

35. The **ICP** implementation need to be structured through activities and programmes that enable the Malaysian Government to obtain maximum ‘value for money’ from each of the procurement. Thus, the **ICP** in Malaysia will generally be implemented based on the following principles:

### **35.1 No Premium**

The Malaysian Government **will not pay any premium** as additional payment to support the **ICP** implementation.

### **35.2 Mutual Benefit**

- a. **ICP** implementation must be profitable and beneficial to the Government, **ICP** Provider and Beneficiary/ies.
- b. The **ICP** Provider must ensure the long term sustainability of the **ICP** implementation through effective execution of the business plan.

### **35.3 Additionally (Value Add)**

- a. All **ICP** activities must yield added value and increase contribution (over and above) to the basic/mandatory needs specified in the Main Procurement Contract to be considered for **ICP** credits.
- b. The **ICP** Provider must show proof to the Government of the added value and increased contributions obtained from the implemented **ICP** activities.
- c. The justifications on the added value and increased contribution will only be accepted if the **ICP** activities being implemented are independent of the Main Procurement Contract. The added value and



increased contribution justifications will only be accepted where the **ICP** activities implemented are not detrimental to the Main Procurement Contract implementation.

#### 35.4 **Causality**

The **ICP** must be derived from:

- a. A procurement contract by the Malaysian Government; or
- b. A procurement contract by a Government Linked Company (**GLC**); or
- c. Any other procurement that utilises funds provided or issued by the Malaysian Government.

#### 35.5 **Responsibility**

- a. The **ICP** Provider is wholly responsible to the Government of Malaysia in ensuring the complete implementation of the agreed **ICP**.
- b. The activities developed for the **ICP** shall be based on a developmental philosophy for local industry and economy. Thus, the **ICP** Provider will need to provide proof of both their commitment and best endeavour to the Malaysian Government in ensuring the success of the agreed **ICP**.
- c. Where the implementation of the Main Procurement Contract is by Third Parties (like Project Delivery Partner, Turnkey Projects, etc.), the responsibility for the **ICP** implementation lies with the Programme Owner and **ICP** Provider. The Programme Owner must ensure the third party complies with the stated terms and conditions of the **ICP** programme's implementation as stipulated by the Malaysian Government.

- d. In ensuring an effective and efficient implementation, **TDA** and **IMU** must be given rights by the procuring Agency to communicate directly with the suppliers (**OEMs**) for the **ICP** implementation.

#### 35.6 Sustainability

The proposed programme must be sustainable for the long term in respect of the operational aspects and contributions to the national economy, throughout and beyond the duration specified for the **ICP** implementation.

### TERMS AND CONDITIONS

#### 36. Minimum Threshold Value

- 36.1 Each Government procurement with a value of **more than RM50 million** that utilize funds from the Government will trigger offset and/or Countertrade;
- 36.2 Each Government Procurement Contract from an **STU** with a value of **RM100 million and above** that utilize funds from the Government will trigger the Economic Enhancement Programme (**EEP**).

#### 37. ICP Credit Value

- 37.1 The Mandatory **ICP Credit Value** (denominations in Malaysian Ringgit) for an **ICP** Programme will be based on a **minimum of one hundred per cent (100%)** equivalent to the value of the Main Procurement Contract. The overall sum of the **ICP Credit Value** comprises credit values obtained from Economic Enhancement Programs (**EEP**), Countertrade and Offset programmes.
- 37.2 The **IMU** is responsible to continuously assess the **ICP Credit Value** generated by projects under their care and ensure the **ICP Provider(s)** comply

with the **ICP** requirements specified in the **IRD**. The **IMU** and **ICP** Provider must prepare justifications for the stated **ICP** Credit Value for review by **TDA** and approval by **MIEC** or the **MOF Appointed Approving Authority**.

37.3 The **IMU** and **ICP** Provider will need to estimate the **ICP** Credit Value to be generated and the projects to be implemented for the purpose of Letter of Acceptance (**LOA**) issuance of the Main Procurement Contract. As such, the **IMU** and **ICP** Provider will need to identify projects that have been agreed in principle for implementation in the said **ICP**.

37.4 For the **ICP** Agreement, the actual **ICP** credit value (with the allowed variance of +5%) to be generated must be agreed for implementation. The **ICP** Committee (**IC**), with advice from **TDA**, will be responsible to finalise the **ICP** Credit Value recommended for inclusion in **ICP** program agreements, and forwarded to **MIEC** or the Appointed Approving Authority for their approval.

37.5 The **ICP** credit value will be reviewed through verification activities conducted via the Post Implementation Audit by **TDA** as stated in the Malaysian **ICP** Management Framework.

37.6 The **ICP** Credit Calculation is as per **Attachment 2**.

## 38. **Multiplier**

38.1 Multiplier will be used especially in generating **ICP** credits by programmes that have high impact on development of strategic industrial capability and with significant contribution to the national economy.

38.2 The **ICP** Provider must refer to **TDA** in respect of initiatives and Malaysia's main requirements in structuring the **ICPs** that will utilise the multipliers

38.3 **TDA** and **IMU** will evaluate the impact of each proposed projects within the **ICP** programme on the economy and national industry development as the basis of determining the appropriate multiplier to be assigned to the **ICP** activity.

38.4 The Multiplier Table is as per **Attachment 3**.

38.5 A higher Multiplier quantum will be offered to **ICP** Provider in the event where activities 16.2.a, 16.2.b and 16.2.c are attached with the Buy Back option.

### 39. **ICP Credits**

39.1 **ICP** Credits will only be awarded to **ICP** Provider(s):

- a. that comply with the terms and conditions of the **ICP** implementation prepared by Malaysian Government;
- b. that has undertaken the Post Implementation Audit process based on their readiness; and
- c. By **TDA** with approval by Ministry of Finance upon their satisfaction on the evidences on the **ICP** implementation based on verification of proofs and documents received.

39.2 **ICP** Credits are only awarded to:

- a. activities/matters **that are not** tender conditions or an the Main Procurement Contract implementation pre-requisite;
- b. activities which provide additional contribution (over and above) the basic/mandatory needs of the Main Procurement Contract implementation; and

- c. Implementations that comply with the terms and conditions of this **ICP** Policy.
- 39.3 Equipment and equipment preparatory costs for purposes of Malaysian Local Content (**MLC**) will be considered as part of **ICP** Credit Value where the said equipment are produced and purchased from local company(ies).
- 39.4 Where the equipment are brought in from a foreign country:
- a. It will not be qualified as part of **ICP** Credit Value if similar equipment with similar functions are available from local manufacturers;
  - b. It will be qualified as part of **ICP** Credit Value if similar equipment with similar functions is not available from local manufacturers, subject to approval by **IC** and compliance to all conditions stated in the **MLC** requirements.
  - c. **ICP** Credit can be generated from:
    - i. Equipment purchase cost, including the equipment price for item in Paragraph 39.4.d.ii; or
    - ii. Installation labour cost of the said component/equipment based on works given, and other related items in compliance with the **MLC** requirements.
- 39.5 The **ICP** Provider will need to prepare documents required as evidence on **ICP** implementation during the Post Implementation Audit activity.
- 39.6 For verification purposes, the **IMU** and **TDA** will inspect the documents submitted by the **ICP** Provider in undertaking the verification process on the **ICP** Credit Value claim by **ICP** Provider.

39.7 The **ICP** Provider must ensure the documents used for verification purposes correspond with the documents as required by **TDA**.

39.8 The Government of Malaysia will only recognize ‘**ICP** Obligation Relief Letter’ (as per **Attachment 7**) issued by **TDA** and confirmed by **MOF** for purpose of evidence to be furnished by **ICP** Provider should there be a need to do so.

a.

#### 40. **ICP Credit Banking**

40.1 The **ICP** providers are encouraged to carry out more **ICP** related activities to generate **ICP** Credit more than the obligated value. Those additional endeavours shall be recognized by the Government as an effort to provide value added to the local economic growth.

40.2 The Government shall allow the additional **ICP** Credit to be bankable as **ICP** Credit for future **ICP** obligations, provided such activities have been approved and the **ICP** agreement of which the activities is leveraged on was signed and fully implemented.

40.3 The **ICP** credit banking is only allowed on the extra **ICP** credit generated during the execution of the **ICP** program within the duration of the Main Procurement Contracts.

40.4 For the purpose of registering extra **ICP** credit for banking, the **ICP** providers shall submit and express their intention to procure the **ICP** credit banking facilities through a written application to the **IMU** and a copy of the **TDA**.

40.5 After which, **TDA** and the **IMU** for the program shall perform verification process to certify that the extra **ICP** credit is qualified for the **ICP** Credit banking.

- 40.6 **ICP** providers who wish to use available **ICP** credit facilities shall state the intent in advance in their proposal during the tenders' submission. **ICP** providers are allowed to utilize up to the **maximum** of 50% of the banked **ICP** credit for new **ICP** obligations.
- 40.7 The Government has the right to consider or reject the **ICP** provider's application to transfer the **ICP** credits to the other parties involved in other **ICP** programs in Malaysia. Upon the approval, the credit transfer is limited to a **maximum** of 50% of the new **ICP** obligations value.
- 40.8 **ICP** credit bank account is valid only for a period of 5 years starting from the date of commencement of the extra **ICP** credit banking after which, the banked **ICP** Credit is considered void. However, this period may be extended in certain circumstances subject to the approval by **IC** and **MIEC** or the **MOF Appointed Approving Authority**.
- 40.9 **ICP** providers are not permitted to accumulate extra **ICP** credit if they still have other **ICP** obligations elsewhere in Malaysia at the same time.
- 40.10 The **IMU** need to consolidate the **ICP** credit banking application by the **ICP** provider(s) and submitted it to the **IC** for endorsement.
- 40.11 Once endorsed, the **IMU** shall send the application to **TDA** for verification purposes and **MIEC** or the **MOF Appointed Approving Authority** for approval process.
- 40.12 **TDA** must keep a record of **ICP** credit banked by the **ICP** providers for reference purposes.

#### 41. **Pre-ICP Credit Banking**

- 41.1 The **OEMs** shall carry out programs envisaged to generate Pre-**ICP** Credit Banking on a voluntary basis. However, the **OEM** must obtain prior approval

from **MIEC** before the proposed activities are implemented, and the generated credit is recorded as a Pre-**ICP** Credit for banking.

- 41.2 Pre-**ICP** Credit Banking performed by the **OEM** does not guarantee the **OEM** to get any procurement contract from the Government.
- 41.3 The Pre-**ICP** Credit Banking activities by the **OEMs** shall be assessed by the Government based on the suitability of the proposed programs to the current national requirements and strategic interests in developing designated local industries.
- 41.4 All Pre-**ICP** Credit activities shall be referred to **TDA** for the purpose of their implementation, monitoring and verification. To ensure that the Pre-**ICP** Credit is recognized, the **OEM** must comply with the provisions and processes outlined in the Malaysian **ICP** Management Framework.
- 41.5 The **OEMs** who wish to use the banked Pre-**ICP** credit facilities shall state in advance about their intention during the tender's submission.
- 41.6 The Pre-**ICP** credit banking account is only valid for a period of **5 years** from the date of banking and subject to the following rates:
- a. **Years 1-2:** The existing credit is 100% same as the value that has been banked;
  - b. **Year 3:** The credit value decreased by 50% from the previous year's credit or the current credit;
  - c. **Year 4:** The credit value decreased by 30% from the third year credit or the current credit;
  - d. **Year 5:** The credit value decreased by 20% from the fourth year;



e. **6 years and above:** The credit is void.

41.7 In certain circumstances, this period may be extended subject to approval by **MIEC** or the **MOF Appointed Approving Authority**.

41.8 **TDA** shall keep all record of banked pre-**ICP** credit by the **OEM** for reference purposes.

#### 42. **Cost**

42.1 Any costs for **ICP** program implementation that does not qualified for Government expenses shall be borne solely by the provider of the **ICP**.

42.2 Any costs to be borne by the Government are limited to the provision of passports and official travel claims by the Government's officers and those which are mutually agreed between the Government and the **ICP** providers.

42.3 In circumstances where the **ICP** Providers are using services procured from a third party, those related costs incurred shall be borne by the **ICP**'s Providers and / or the third party. **ICP** providers shall submit an application to the **IMU** should they wish to include these costs as part of the **ICP** Credit, subject to the approval of the **IC** and **TDA**.

42.4 **IC** is responsible for consolidating, reviewing and approving all **ICP** activities (except those related to of **ICP** Credit and Implementation Period) undertaken by the procuring Agency / **STU** in accordance to the approval limit.

#### 43. **Foreign Exchange**

The **ICP** obligation/credit value must be expressed in Ringgit Malaysia (**RM**). In cases where the claims are presented in other currencies, it must be converted into **RM** based on the official current exchange rate issued by Bank Negara Malaysia.

**44. Period of Completion**

44.1 The **ICP** obligations shall be completed within the period of the Main Procurement Contract. **ICP** Providers shall consult the Government through **TDA** and **IMU** for extension of time, subject to approval of the **MIEC** or the **MOF Appointed Approving Authority**.

44.2 For **ICP** obligations triggered from a Main Contract Procurement involving rental/leasing:

- a. If the leasing period is less than 5 years, the completion of the **ICP** obligations is equal to the leasing period;
- b. If the leasing period is more than 5 years, the completion of the **ICP** obligations is 5 years.
- c. The **ICP** Credit calculation for leasing is as shown in **Attachment 2**.

**45. Communication and Documentation**

Any communication and documentation from the **ICP** provider to the **ICP** recipient or other related parties must be in Bahasa Malaysia and / or English. If there are discrepancies in the interpretation of this policy, the English version shall take precedence.

**COMPLIANCE TO THE ICP POLICY**

46. The Agency and **ICP** providers shall comply with the **ICP** regulations as specified in this Policy and Guidelines of **ICP** in Government Procurement.

46.1 Non-compliance to the **ICP** Policy by the officer responsible in the Agency / **STU** caused by the officer's negligence shall prompt an action to be taken in accordance to Treasury Circular/PK 8/2013;

46.2 Non-compliance to the **ICP** Policy by the Supplier/**ICP** Provider shall prompt an action to be taken onto the Supplier / **ICP** Provider based on the terms and conditions extracted from the Main Procurement Contract and the **ICP** Agreement Clauses.

47. **Non-Compliance to the 1st Tier ICP Agreement**

Failure by the **ICP** Providers to complete the **ICP** obligations which have been agreed in the **ICP** 1st Tier Agreement shall lead to:

47.1 Penalty onto **ICP** supplier / **ICP** provider that shall be deducted from the Performance Bond; and

47.2 Action onto the **ICP** supplier / **ICP** provider based on the terms, conditions and clauses of the contract / agreement.

48. **Performance Bond**

48.1 In general, **ICP** providers are required to provide the Government an **ICP** Performance Bond in the form of an irrevocable Bank Guarantee from any Malaysian bank / finance worth of five percent (5%) of the Main Procurement Contract.

48.2 For the **STU** who implement the **PPE**, Performance Bond is in line with Treasury Circular/ PK 2/2013.

48.3 For the **ICP** Provider, Bank Guarantee from the Main Procurement Contract could be used as the **ICP** Program Performance Bond and has to be specified in the Bank Guarantee of the Main Procurement Contract. However, **ICP** Providers shall provide a Corporate Guarantee as a security for the performance of the **ICP** program.

48.4 The Bank Guarantee format is as in **Table B of Attachment 4**.

- 48.5 The Bank Guarantee shall be effective from the Main Procurement Contract commencement date and shall remain valid until 12 months after the full implementation of the **ICP** program and completion of the Mandatory **ICP** Credit Value.
- 48.6 If the duration of the **ICP** program needs to be extended due to acceptable reason, the **IC** needs to identify the required terms for the extension of the Bank Guarantee / Corporate Guarantee for the **ICP** Program Provider.
- a. Another Performance Bond at a value of 10% of the remaining **ICP** nominal value shall be provided to the Government and remains valid for 12 months after the full implementation of the program.
  - b. In the event of that the period has elapsed and the **ICP** requirements have not been fulfilled, the **ICP** Provider shall provide another Performance Bond at a value of 10% of the remaining **ICP** nominal value.
  - c. The process above is recursive until the **ICP** obligations and requirements is fully fulfilled.

#### 49. **Penalty**

- 49.1 Penalties shall be imposed onto **ICP** providers who failed or unable to complete the **ICP** obligations upon the expiry of the 1<sup>st</sup> Tier **ICP** Agreement period and the Post-Implementation Audit have been performed.
- 49.2 A committee shall be established by **TDA** to investigate and identify the basis of the failure or inability to fully implement the agreed **ICP** activities. The investigation report shall be submitted to the Ministry of Finance and the **IC** for further action.

- 49.3 The penalty management process and calculation on the incomplete or undelivered **ICP** activities are as in **Attachment 5**.
- 49.4 If the cause of the failure of the **ICP** program is due to **ICP** providers; penalty/compensation which have been identified from the above calculation shall be deducted from the **ICP**'s providers Performance Bond.

## **CHAPTER 4 – MALAYSIA ICP PROGRAMME MANAGEMENT FRAMEWORK**

### **INTRODUCTION**

50. A framework known as National **ICP** Programme Management Framework was established as the guideline in implementing **ICP** Programme in Malaysia. This framework is to provide guidance to any organisation involved in the **ICP** Programme to ensure adherence to the processes during the **ICP** implementation. The framework is outlined in a structured manner to ensure efficient process flow and shall enable impactful outcomes onto national industrial and economy development.

51. The following are the summary of the processes involved in the **ICP** programme. The details are as per **Attachment 1**.

### **PRE IMPLEMENTATION**

52. Agency that plan to have an acquisition which will trigger **ICP** Programme shall inform **MOF/TDA** on the procurement proposal at least **3 months** prior to the date of the tender release date to ensure **ICP**'s plan can be established effectively. The agency is required to cooperate with **MOF/TDA** in formulating the **ICP** strategy for the implementation.

53. **TDA** shall identify the needs of the **ICP** needs for implementation based on the value, needs and strategic impact that support the national strategic aspiration.

54. **TDA** is required to identify the basis in developing the implementation strategy (**ICP** Strategy Document – **ISD**) and the qualified **IMU** to manage the **ICP** Programmes that been identified. **ISD** will be referred as the basis of the **ICP** Programmes during the implementation stage.

55. **ISD** shall be presented to **MOF** for endorsement to be approved by **MIEC** or the **MOF Appointed Approving Authority** before its implementation.

## **ICP PROCESS COMMENCEMENT**

56. **MOF/TDA** is responsible to advise the procuring Agency on the establishment of **ICP** committee (**IC**).

57. **IC** shall be established at the respective procuring Agency within **ONE (1) month** before the tender date announcement in order to provide direction and strategic guideline in monitoring the **ICP** Programmes implementation.

58. **IMU** shall be established/appointed to become the **IC**'s secretariat and **ICP** Programme implementor at the Ministry/Agency/**STU**.

59. Agency shall request **TDA**'s assistance if the Agency does not have their own **IMU**'s structure where the need of **IMU** in implementing the identified **ICP** activities is mandatory. However, in the event that the Agency would like to form their own **IMU**, the Agency shall seek a written approval from **MOF** and **TDA** prior to the formation of the **IMU** structure.

60. With **TDA** assistance, **IMU** is responsible to establish the **ICP** Requirement Document (**IRD**) to become one of the main tender document for the Government's procurement that trigger for **ICP** programme; which will serve as a guideline fo the bidders in proposing their **ICP** programme.

61. **TDA** as permanent member of the Tender Committee of the respective procuring Agency shall verify the **IRD** before it to be presented to **IC**. Type of **ICP**'s projects proposed in the **IRD** must be clear and specific.

62. **IC** shall approve the **IRD** prior to its attachment in the tender document.

## **TENDER**

63. Tender for the main contract shall be published with the **IRD** attachment issued by **IMU** and verified by **TDA** as part of the tender document.

64. Companies that participate in the bids shall put confirmation in their **ICP**'s proposal when submitting the tender document. The proposal shall include any application to use **ICP**'s credit banking (if any) by indicating the account holder and the value to be transferred.

65. A briefing session on the **IRD** shall be conducted by **IMU/TDA** to ensure that bidder understands the **ICP** programme requirements in that particular tender exercise.

66. Bidders shall put prioritization in their response to the **IRD** by focusing on the priority areas identified by the Government of Malaysia such as (but not limited to) the implementation of the work package contract for the development and equipment manufacturing in the country, transfer of technology and knowledge, **R&D&C** collaboration and investment.

67. **IMU/TDA** shall provide clarification on the duration and expected **Mandatory ICP Credit** of the **ICP** programme to be implemented.

## **ICP PROPOSAL EVALUATION**

68. **TDA** and **IMU** should establish **ICP** Evaluation Committee (**IEC**) within **2 weeks** prior to tender closing date for an assessment to be held on the proposed **ICP** provided by bidders.

69. The **ICP** Evaluation Committee shall analyse the proposals submitted and to conduct a clarification session with the bidders (if it is needed so).



70. The outcomes of the **ICP** projects evaluation on and the amount of **ICP Credit Value** to be generated from the programme should be finalised and endorsed by the the Chairman of the Evaluation Committee.

71. The **ICP** Programme proposals will only be submitted for **IC** approval upon **TDA's** verification on the compliance with the nation's aspirations, quality, total credit value and cost (if any).

72. **IMU/TDA** shall brief the evaluation summary of the **ICP** Programme by bidders shall be presented to the Procurement Board ' A ' of the Agency (or equivalent committee if the acquisition made by **STU**) and to include the **ICP** evaluation results as one of the main criteria in the selection of supplier/contractor/company for the main procurement.

73. The Procurement Board 'A' of the Agency (or equivalent committee if the acquisition made by **STU**) who made the procurement is responsible to verify and submit the outcomes for approval by Ministry of Finance or **MIEC** or the **Appointed Approving Authority**.

74. **IMU/TDA** shall provide a summary of the **ICP** projects committed by the selected bidder and to be used as the **ICP's** basic acceptance criteria which will then be included in the **Letter of Acceptance (LOA)**.

#### **ICP RECIPIENT AUDIT (IRA)**

75. **TDA** will advertise the proposed **ICP** programmes to the local industries via mass media such as newspaper and magazines, online media, or any other appropriate platform.

76. Local industry players shall inform **TDA** and **IMU** if they are interested to participate in the **ICP** Programme via the platform available.

77. Local companies that are interested to participate in the **ICP** Programme are required to submit related documents that contain such information as requested by the **TDA** and **IMU** in order to initiate the **ICP** Recipient Audit process.

78. **TDA** and **IMU** shall conduct **ICP Recipient Audit (IRA)** to identify the suitability of the potential recipient that interested to participate in the **ICP** Programme. The audit is to be initiated **within 3 months** after receiving notification on **LOA** issuance to the selected supplier by the **Program Owner**.

79. **IRA** can also be made in advance based on the existing **ICP**'s potential recipients list available in the **TDA** database system.

80. **IMU** shall inform the respective company on the **IRA** results in relation to the **ICP** Programme to be implemented.

81. Priority as an **ICP** recipient will be given to local company with following criteria:

81.1 Bumiputera status company;

81.2 Registered under Green Route Policy (Treasury Circular PK 1/2013); or has a rating at least **SCORE 3** (and above or InnoCert) by **SME Corp.**; or a member of **MIDES** and other criteria that are deemed necessary by the Government of Malaysia;

81.3 Proven to possess capability and capacity to execute the identified **ICP**'s Programme.

a. The selection of **ICP**'s recipients shall fulfil criteria that have been specified.

b. The **ICP**'s Recipient Audit exercise for any given programme shall be completed **no later than 12 months** after the **ICP**'s agreement signed.

82. The final selection of **ICP Recipient** will be by **IC** and endorsed by **MIEC** or the **MOF Appointed Approving Authority**.

83. Companies that have been identified and agreed to become **ICP** Recipient are subject to the terms and conditions set out in this Policy for the respective Government procurement.

84. The information obtained from the **IRA** activity will be **valid for 2 years**. The company need to be re-audited in the event that it would like to participate in other **ICP** by the Government.

### **ICP AGREEMENT (1ST TIER AGREEMENT)**

85. The Agency shall include **ICP** obligations implementation/compliance clauses the Main Procurement Contract.

86. The selected supplier/contractor/company is required to sign an **ICP** Main Agreement outlining the terms and conditions as an **ICP** provider with the procuring Agency in addition to the Main Procurement Contract.

87. The Agency shall ensure the involvement of their legal adviser/solicitors in developing the **ICP** Main Agreement.

88. Depending on the size, scope and intensity of the **ICP** Programme, the **ICP** Main Agreement shall state the summary of all **ICP** projects committed by the **ICP** provider. Details of each project to be implemented shall be specified in the Secondary **ICP** Agreement (2nd Tier Agreement) or by **Letter of Undertaking (LoU)**.

89. **ICP** providers shall ensure their full compliance to **hundred percent (100%)** of the Mandatory **ICP** Credit Value obligation via the following arrangement:

89.1 At least 40% of the Mandatory **ICP** Credit Value is agreed by the Government of Malaysia before the **ICP** Main Agreement signed.

- 89.2 Balance of the mandatory **ICP** Credit Value (at least 60%) need to be identified and agreed upon **not more than 12 months** after the **ICP** Main Agreement is signed.
90. **ICP** provider is required to sign the Main Procurement Contract and **ICP** Main Agreement simultaneously.
91. In the event that the **ICP** Main Agreement cannot be signed simultaneously with the Main Procurement Contract, it is to be signed prior to the execution of the first Scheduled of Payment of the Main Procurement Contract. Failure which will result in the deferment the first Scheduled Payment.
92. Further, the proposed signing date shall become the first milestone in the Schedule of Payment for the Main Procurement Contract to enable the corresponding payment to be made.
93. In the event of Main Procurement Contracts is owned by **STU**, the **ICP** Main Agreement to be entered as a tripartite agreement between the **ICP** provider, **STU** and the Government of Malaysia (represented by the **TDA**) as the monitoring body.
94. In the event of the Main Procurement Contract is owned by Ministry/Agency, the **ICP** Main Agreement shall be between the **ICP** provider and Government of Malaysia where **TDA** (together with the Government) will act as the monitoring body. Draft of the **ICP** 1<sup>st</sup> Tier Agreement as per **Attachment 4**.
95. Any appeal on the **ICP** implementation shall be obtained from **MIEC** or the **MOF Appointed Approving Authority**.

## SECONDARY ICP AGREEMENT (2ND TIER AGREEMENT)

96. The **ICP** provider and **IMU** shall prepare the Secondary **ICP** Agreement (2nd Tier Agreement) or Letter of Undertaking **no later than 12 months** after the 1<sup>st</sup> Tier **ICP** Agreement signing, detailing on **ICP** projects to be implemented.

97. The Secondary **ICP** agreement is a tripartite agreement between the **ICP** Provider, **ICP** Recipients and the Government of Malaysia as the monitoring body.

98. Delay in the signing of Secondary **ICP** agreement will result in a penalty to be imposed to the **ICP** provider vis-a-vis deduction of an amount of 5% from the total agreed **ICP** Credit Value for the programme.

99. Payments of the penalty will not relieve the **ICP** Provider from its original obligations in relation to the **ICP** Programme. The **ICP** Provider is still subject to the terms and conditions set forth in the 1<sup>st</sup> Tier **ICP** Agreement.

## MONITORING AND REPORTING

100. **IMU** shall monitor the progress of **ICP** implementation and performance of the **ICP** Provider. **ICP** Provider shall submit a progress report to **IMU/TDA** periodically or as stipulated in the 1<sup>st</sup> Tier **ICP** Agreement.

101. **ICP** Provider is subject to a penalty (see **Table 1** below) which will be deducted from the overall agreed **ICP** Credit Value on every each month delay in report submission from the predetermined date.

Delay	Penalty Charges
0 – 29 days	0.01% from Total ICP Credit Value
30 – 60 days	0.02% from Total ICP Credit Value
61 – 90 days	0.04% from Total ICP Credit Value
More than 90 days	0.10% from Total ICP Credit Value

**Table 1:** Penalty Charges Table

102. **IMU** shall submit a periodically report to **TDA** (ones in 3 months) for the performance monitoring purposes. Monitoring and reporting format shall be based on the project management best practice.

103. The report shall include activities that been carried out within the stipulated period in the **ICP** agreements. If the report is not received or incorrect, purchases/transactions/activities undertaken during the period may not be accepted as **ICP** credit. Samples of progress report as per **Attachment 6**.

104. **TDA** shall perform a Surveillance Audit (if it needed to do so) from time to time in ensuring the **ICP** implementation is in accordance with the **ICP** agreements signed.

105. **TDA** shall provide periodical **ICP** implementation progress status report the Ministry of Finance for record purposes.

#### **SURVEILLANCE AUDIT**

106. In the event of a request made by **IMU**, **ICP** Provider or any stake holders, **TDA** shall conduct the surveillance audit to assess the highlighted issues related to the implementation of any specific **ICP** project.

107. The Surveillance Audit will be carried out by auditors appointed by the Ministry of Finance under the supervision of the **TDA**. It is to be carried out with an objective to review the **ICP** implementation performance effectiveness and achievement.

108. **ICP** providers shall comply with the audit requirements from time to time and prepare the required documents for the auditors to review and verify.

109. The Surveillance Audit report will be made available for **IC** and **MOF** reference for further action.

## **POST IMPLEMENTATION AUDIT**

110. **TDA** shall perform the Post Implementation Audit on all projects implemented in the **ICP** programme. The purpose of the audit are as follows:

110.1 To verify the **ICP** Credit to be awarded to the **ICP** provider;

110.2 To evaluate the impact of the **ICP** implementation;

110.3 To evaluate and verify the compliance of the project implemented in comparison to items agreed in the **1<sup>st</sup> Tier ICP Agreement**; and

110.4 To execute penalty processes and procedures (if any).

111. **IMU** should ensure that **ICP** provider prepare all documents required for the audit purposes. These documents shall be used as part of the evidences and exhibits to the **ICP** Post Implementation Audit process. The document shall include:

111.1 A copy of the contract with any of the companies identified by the procuring Agency;

111.2 Details information that contain code of skills and knowledge transfer to **ICP** recipient;

111.3 Details information about the technologies that have been transferred/used;

111.4 Details information with regards to the training provided;

111.5 Details information contains all investment (whether in the form of equity, capital equipment, tools, jigs or fitting made or other), collateral loan, financial statements, sales contract, joint venture agreements, shareholders agreement, articles of association and/or the management contribution.

- 111.6 Details about the investment for economic project improvement such as manufacturing and services as well as the creation of host related projects in education, infrastructure and health that supports the objectives and the government's intention;
- 111.7 Details information on the **ICP** Provider activities in facilitating the **ICP** recipient to obtain work packages or gain access to global markets; and/or
- 111.8 Any form of commercial documents adopted by international accounting and auditing practices.
112. Base on the post implementation audit report, in any case that trigger in penalty to be imposed, **TDA** is to conduct Penalty Management Proceses and Pocedures (Refer to **Attachment 5**).



## RELIEF OF OBLIGATIONS

113. Upon all activities completion and obligations are met in accordance with the 1<sup>st</sup> Tier ICP Agreement, IMU shall propose the release of obligations for the ICP provider for IC's recommendation and approval by MIEC or the **Appointed Approving Authority**.

114. The ICP providers are required to submit an application for credit claims and submit ICP implementation reports to IMU for review and TDA for verification.

115. A Post Implementation Audit of the ICP Programme shall be conducted to verify the compliance of the implemented ICP programme in comparison to the specifications set out in the 1<sup>st</sup> Tier ICP Agreement.

116. Based on the Post implementation Audit, ICP providers shall comply with Audit recommendations and in the event of the Post Implementation Audit report recommends the ICP provider for release from obligations, TDA and MOF are responsible to issue the ICP Discharge Certificate.

117. Should there is a request from ICP Provider for ICP Credit Banking, TDA is responsible to conduct an assessment onto the generated ICP Credit to verify that the ICP provider is qualified for the ICP Credit Banking.

118. TDA will issue a letter and ICP Discharge Certificate endorsed by the Government Procurement Division, MOF upon ICP Provider satisfactorily complied with the Post Implementation Audit reports and recommendations, verified by TDA. Sample of the Letter and Discharge Certificate is as per **Attachment 7**.

## PRE ICP-CREDIT BANKING

119. ICP Provider is allowed to apply to the Government of Malaysia to implement a program which later be used to generate ICP Credit for the Pre-ICP Credit Banking.

120. In the event that the application is being considered, **TDA** will evaluate the proposed programme for the Pre-**ICP**.

121. **TDA** will prepare an assessment report and submit it for **MIEC** or the **Appointed Approving Authority** consideration and approval.

122. Upon approval of the application, **TDA** and **OEM** will set terms and conditions in a **Pre-ICP Agreement**. The **OEM** is only allowed to initiate the proposed programme implementation for Pre-**ICP** Credit once the **Pre-ICP Agreement** is signed by both parties.

123. The Post Implementation Audit will be conducted upon the **OEM**'s proposed programme readiness to be reviewed for Pre-**ICP** Credit banking.

124. Upon **TDA** verification and satisfactory **OEM** compliance with the terms and reference set forth in the **Pre-ICP Agreement**, the Post Implementation Audit report will be submitted to **MIEC** or the **Appointed Approving Authority** for approval.

125. In the event of the application is approved, **TDA** will deposit the pre-**ICP** Credit into the **OEM**'s account for future **ICP** Programme utilization, subject to the terms and conditions as in **Paragraph 41.6**.

126. The Government of Malaysia reserve a right for not revealing the reason or justification for any unapproved Pre-**ICP** Credit Banking proposal.

## **CHAPTER 5 – IMPLEMENTATING ORGANISATION**

### **INTRODUCTION**

127. The **Industry Collaboration Program (ICP)** is an initiative by the Government that will be initiated in relation to procurement activity funded by the Government. In ensuring effective **ICP** initiative implementation, the Government has established a national **ICP** management structure as illustrated in **Attachment 8**.

### **MINISTRY OF FINANCE MALAYSIA**

128. **MOF** shall be responsible on the **ICP** policy, effectiveness and governance of an organization that has been entrusted for the operationalization that is **TDA** which act as the **ICP** Authority (**ICPA**) in Malaysia. In order to ensure a comprehensive implementation of the **ICP**, the Agency or Program Owner is required to submit all decisions on procurements that have been endorsed by the Procurement Board ' A /the Board of Directors to **MOF** for final approval in accordance with the Government procurement's procedures.

### **THE TECHNOLOGY DEPOSITORY AGENCY (TDA)**

#### **129. Background**

129.1 **TDA** is an agency established pursuant to the Cabinet decision in 27<sup>th</sup> November 2002 to plan, evaluate, manage, monitor, analyse and record the implementation of all **ICPs** in Malaysia. Therefore, **TDA** shall work closely with Program Owners to ensure that the proposed procurements comply with the **ICP** criteria and implemented in a planned and more systematic approach.

129.2 For the purpose of a more integrated and comprehensive **ICP** implementation, **TDA** is required to provide short, medium and long term planning in the form of the **ICP Strategy Document (ISD)**, to be used as reference for the **IMU** to implement the **ICP** at Agency level. The **ICP** planning and implementation requirements agreed by the Ministry of Finance and the procuring Agency shall be used as reference to produce the related tender document that needs to be complied with by the bidders.

129.3 **TDA** is to ensure that the implementation of the **ICP** as carried out by the **IMU** and the **ICP** Providers comply with the processes set out in the **National ICP Management Framework**.

130. **TDA: Scope of Duties**

The **TDA** terms of references are as follows:

130.1 Review and Analysis:

- a. Conduct study on the current and future local industry needs that can be developed through **ICP** approach is support of the national economic growth;
- b. Evaluate and analyse the industry landscape as well as the ability and capacity of eligible local companies that can be qualified as **ICP** recipients;
- c. Analyse the outputs and outcomes of the in progress and completed **ICP**; and
- d. Recommend improvement measures based on lessons learned from previous projects and benchmarking of implementation processes from other countries.

### 130.2 Planning

- a. Develop **ISDs** to ensure national strategic procurements are fully leveraged to support national needs through the **ICP** implementation;
- b. Review, update and coordinate the plans in the **ISD**;
- c. Recommends the best approaches, practices and procedures to acquire, receive, improve, expand and position the activities and impacts of the **ICP**;
- d. Assist **IMU** in preparing the **ICP Requirements Document (IRD)** which shall be used as reference for the bidder in preparing the **ICP** proposal; and
- e. Advise **IMU** in the setting up of the **ICP** management team.

### 130.3 Assessment/Evaluation

- a. Carry out pre-audit activities for the **ICP** Recipients and Providers;
- b. Assess the capability and capacity of local companies as the **ICP** Recipients in collaboration with **IMU** from various Program Owners;
- c. Establish **ICP** Evaluation Committee:
  - i. To evaluate the **ICP** proposal submitted by the bidders; and
  - ii. To conduct Post Implementation Audit together with the audit team.

- d. Jointly conduct negotiation with the **ICP** providers together with **MOF** and the respective **IMUs** to finalise the **ICP** projects, **ICP Credit Value (ICV)** and the **ICP Agreements**.

#### 130.4 Surveillance/Monitoring

- a. Monitor all **ICP** planning activities related to the procurement of the Agency and maintain a complete **ICP** database;
- b. Assist and monitor the **IMU** appointed by the Agency/Program Owner to ensure the implementation of the **ICP** is in accordance and compliance with the processes set out in the Malaysian **ICP** Management Framework;
- c. Ensure the **ICP** implementation plans from various Government procurement programmes are carried out in an holistic manner to enable greater impact contributing to the national economy;
- d. Monitor the **ICP** implementation progress together with the **IMU** and conduct the Surveillance Audit if needed;
- e. Carry out Post Implementation Audit activities together with the **IMU**.

#### 130.5 Verification

- a. Perform verification process on the **ICP** Credit Value submitted by the **ICP** Providers;
- b. Perform verification process on the **ICP** Credit Banking and Pre-**ICP** Credit banking application submitted by **IC** for approval by the **MIEC** or the **MOF Appointed Approving Authority**;

- c. Perform verification process on the output of each project implemented in the **ICP**; and
- d. Provide periodic reports for every six (6) months to the **MIEC** and the Government Procurement Division, **MOF** for each finalised **ICP**.

#### 130.6 Database

- a. Record and store all information about **ICP** in Malaysia and also the needs of the country for planning purposes of future **ICPs** implementation;
- b. Responsible for record keeping on all approved **ICP** Credit banking and Pre-**ICP** credit banking for reference;
- c. Keep record on the performance of the **ICP** Providers and the **OEMs**; and
- d. Update and control all the information in the database.

### **ICP MANAGEMENT UNIT (IMU)**

131. **ICP** Management Unit (**IMU**) is an entity appointed/established by the Agency/Program Owner of the main procurement contract in compliance with the processes as stipulated in Paragraph 131.1. The main function of the **IMU** is to manage the implementation of the **ICP**.

#### 131.1 Appointment of the **IMU**

- a. Agency/Program Owner shall appoint/establish **IMU** for each procurement that triggers **ICP**. The resources for the appointment/establishment shall be using the existing internal

resources. In the event that the Agency/Program Owner plans to outsource the **IMU**, the Agency/Program Owner shall be using services from **TDA** or appoint external resources subject to verification by **TDA** and approval from **MOF** prior to the appointment. Agency/Program Owner together with **TDA** shall ensure the appointed **IMU** meets the predetermined criteria to ensure that the management of the **ICP** is in line with the Government's aspiration during its implementation.

- b. Although the **IMU** is appointed by the relevant Agency or Program Owner responsible for the **ICP** program, the **IMU** shall ensure proper information channelling and reporting carried out regularly and effectively direct to the Ministry of Finance and the **TDA**. This is to ensure the **ICP** implementation is in line with the **ICP** strategy established by the Government of Malaysia and those implementation activities are coordinated accordingly.

#### 131.2 **IMU: Scope of Duties**

- a. **IMU** is an entity/establishment to implement the **ICP** for the Agency/Program Owners.
- b. **IMU** is the secretariat to the **IC** and shall be in continuous consultation with **TDA** to ensure the **ICP** implementation is in accordance and compliance with the processes set out in the Malaysian **ICP** Management Framework.
- c. **Agencies** or **STU** without dedicated **IMU** establishment shall use the services provided or entity verified by **TDA** and approved by **MOF**. The scope of work and the cost of services will be determined and agreed by the procuring Agency or **STU** and/or the Ministry of Finance based on the current financial circular.



- d. Pre-Implementation Phase
- i. In order to ensure the **ICP** to be implemented is in line with the Government's strategic planning, the **IMU** is required to prepare the **IRD** specifications for endorsement by **IC** and **TDA**;
  - ii. **IMU** shall ensure that the **IRD** which has been endorsed by **TDA** is included as part of the tender documents. **IMU** will proceed with the **ICP** implementation according to processes as stipulated in the Malaysian **ICP** Management Framework; and
  - iii. **IMU** shall liaise between Government authorities, Program Owners, **ICP** Recipients and the **ICP** Providers in respect of the **IRD** specification. **IMU** should provide explanation on the **IRD** specification and provide guidance to prospective Providers and Recipients.
- e. Implementation Phase
- i. **IMU** shall correspond directly with other relevant Government Agencies for the implementation of the identified **ICP**;
  - ii. **IMU** shall conduct evaluation and negotiation of the **ICP** proposed by the **ICP Provider** and thereafter submit the evaluation report on the proposed **ICP** and generated **ICP** Credit Value (**ICV**) to **TDA** for review and endorsement;
  - iii. Based on the feedback from **TDA**, **IMU** is to negotiate and finalize the terms and conditions of the **ICP** agreements for approval by **IC** and ensure that these terms and conditions

comply with the current laws, rules and regulations of Malaysia;

- iv. **IMU** shall conduct an audit to assess the compliance and evaluate the performance of the **ICP** implementation activities and submit the reports to the **IC** and the **TDA**.

f. Post-Implementation Phase

**IMU** shall maintain the statements of account for credits generated from all completed **ICP** obligations and carry out **ICP** credit assessment for the **ICP** providers, as well as process all **ICP** credit claims for relief of obligation in accordance with the procedure set out in this policy.

## CHAPTER 6 – IMPLEMENTATION MANAGEMENT

### INTRODUCTION

132. In ensuring effective operationalization as well as inclusive industrial development, several committees are set up to regulate the **ICP** implementation in Malaysia as follows (the organizational structure and jurisdiction of these committees are specified in **Attachment 8**):

132.1 Malaysian **ICP** Executive Committee (**MIEC**) – is the highest level of **ICP** Committee in Malaysia, assisted by the Government Procurement Division, Ministry of Finance as the secretariat;

132.2 The **ICP** Committee (**IC**) – a committee established at the Agency level that oversees the implementation of the **ICP**, assisted by the Undersecretary Procurement Division of the procuring Ministry (or its equivalent if the procurement is made by the **STU**) as the secretariat;

132.3 The **ICP** Working Committee (**IWC**) – a committee formed at the **IMU** level at the respective Agency, assisted by the **IMU** as the secretariat; and

132.4 The **ICP** Evaluation Committee (**IEC**) – a committee formed at the procuring Agency to conduct evaluation on the proposed **ICP**, assisted by **TDA** as the secretariat.

### MALAYSIAN ICP EXECUTIVE COMMITTEE (MIEC)

133. The **MIEC** memberships are as follows:

133.1 Chairman – Secretary General of Treasury

133.2 Alternate Chairman – Deputy Secretary General of Treasury (Management)

133.3 Members

- a. Ministry of Home Affairs (**KDN**);
- b. Economic Planning Unit (**EPU**);
- c. Ministry of Defence (**MINDEF**);
- d. Government Investment Company Division (**GIC**), **MOF**;
- e. Ministry of International Trade and Industry (**MITI**);
- f. Ministry of Science, Technology and Innovation (**MOSTI**);
- g. Office of the Science Advisor to the Prime Minister of Malaysia;
- h. Malaysian Industry-Government Group for High Technology (**MIGHT**); and
- i. Other relevant Ministries (as and when needed).

133.4 Secretariat – Government Procurement Division, **MOF** and **TDA**.

134. **Function and Responsibilities of MIEC**

134.1 To establish the Policy for the **ICP** implementation in Malaysia that shall be in line with the national initiatives to develop industry's skills and capabilities in support the National Economic development agenda;

134.2 To coordinate, oversee, provide strategic direction and approval of various **ICP** strategies implemented in Malaysia;

- 134.3 To decide on actions to be taken against **ICP** Providers who fail to comply with **ICP** implementation requirements; and
- 134.4 To convene committee meeting once (1) a year or as deemed necessary. However, if there is a need for immediate approval, **MOF** may determine an Approving Authority to resolve the matter as appropriate, from time to time.

### **ICP COMMITTEE (IC)**

#### 135. Membership

135.1 Chairman – Secretary General of the procuring Ministry/or Chief Executive/Managing Director or equivalent if procurement is by **STU**;

135.2 Alternate Chairman – Deputy Secretary General/ or equivalent if procurement is by **STU**;

135.3 Permanent Members:

- a. Representative from the Government Procurement Division, **MOF**;
- b. Under Secretary of the Procurement Division from the procuring Ministry or representative / Head of Program from the procuring **STU**;  
and
- c. **TDA**.

135.4 Members (by invitation)

- a. Representative from the Ministry/Agency/Institution (if required); and
- b. Other agencies / Subject Matter Expert if required.

135.5 Secretariat - Under Secretary of the Procurement Division from the procuring Ministry or appointed **IMU** if procurement made by **PLC**.

136. Attendance

Attendances by **IC** permanent members are **mandatory** for all **IC** meeting.

137. Function and Responsibilities of the **IC**

Function and Responsibilities of the **IC** are as follows:

137.1 Pre-Implementation Phase:

- a. Provide the implementation plans for endorsement by MOF for approval by the **MIEC** or the **Appointed Approving Authority** for each projects that have been identified to be implemented under the **ICP**;
- b. Serve as a platform to coordinate the **ICP** with the Main Procurement Contract implementer at the highest level of the Agency/**STU**;
- c. Evaluate and analyse the requirements/proposal package of the **ICP** for skill enhancement to support a particular procurement;
- d. Evaluate and authenticate the list of the **ICP** recipients proposed by the secretariat; and
- e. Recommend and endorse the list of **ICP** recipients proposed by the secretariat for **MIEC** or the **MOF Appointed Approving Authority** approval.

#### 137.2 Implementation Phase

- a. Ensure all **ICP** implementations are monitored and audited by the secretariat together with the **TDA**;
- b. Monitor and review the **ICP** implementation progress report for onward submission to the **TDA** and the **MIEC** or the **MOF Appointed Approving Authority**;
- c. Consider and consolidate on applications for **ICP** credit banking for approval by **MIEC** or the **MOF Appointed Approval Authority**;
- d. Monitor all statements of accounts of the **ICP** credit submitted by **IMU** and verify the credit or recommend an appropriate penalty where justified ; and
- e. Evaluate the **ICP** credit transfer request and make recommendation to **MIEC** or the **MOF Appointed Approving Authority** for approval.

#### 137.3 Post Implementation Phase

- a. Evaluate the applications for **ICP** obligations relief and make recommendation to the **MIEC** or the **MOF Appointed Approving Authority**;
- b. Prepare and submit a quarterly report on the status/progress of the **ICP** implementation to the **TDA/MOF**.

#### 137.4 Disbandment

- a. Nominated members will be relieved from their duty as **IC** member once the **ICP** Provider is relieved of all its obligations.

- b. However, permanent members may not be relieved from the duty and the acquired experience may still be required for other **ICP** implementations in that Agency.

## **ICP WORKING COMMITTEE (IWC)**

### 138. Membership

138.1 Chairman – Head of the appointed **IMU**

138.2 Members

- a. **IMU** Team;
- b. Representative from the **Project Team**;
- c. **ICP** Provider;
- d. Representative from the Recipient (if required);
- e. Subject Matter Expert; and
- f. Others when and as required.

138.3 Secretariat – **IMU**

### 139. Function and Responsibilities of the **IWC**

139.1 Responsible for carrying out the activities specified in the **ICP** Implementation Plan as approved by the **MIEC** or the **MOF Appointed Approving Authority**; and



139.2 Consult **IC** on any issues concerning the **ICP** that cannot be resolved at the **IMU** level.

## **ICP PROGRAM EVALUATION COMMITTEE – IEC**

140. Membership

140.1 Chairman - Director of **TDA**

140.2 Members

- a. Head of Project Team;
- b. **IMU** Project Team;
- c. Subject Matter Expert;and
- d. Others when and as required.

140.3 Secretariat – **TDA/** appointed **IMU**

141. Function and Responsibilities of the **IEC**

141.1 Evaluate the proposed **ICP** projects;

141.2 To submit the **ICP** Evaluation Report (**IER**) for reference and recommendation by the **IC** and approval by the **MIEC** or the **MOF** **Appointed Approving Authority**.

## **INFORMATION CENTRE**

142. For further enquiries regarding the **ICP** policy, please contact:

Transfer of Technology and Offset Coordination Unit,  
Panel Systems and Central Contract Section,  
Contract Management Sector,  
Government Procurement Division  
Ministry of Finance, Malaysia  
Level 3, Northern Blok, Precinct 2  
Federal Government Administration Centre  
**62592 PUTRAJAYA**

Telephone : 03-8882 3205  
Fax : 03-8882 4291  
URL : [www.treasury.gov.my](http://www.treasury.gov.my)

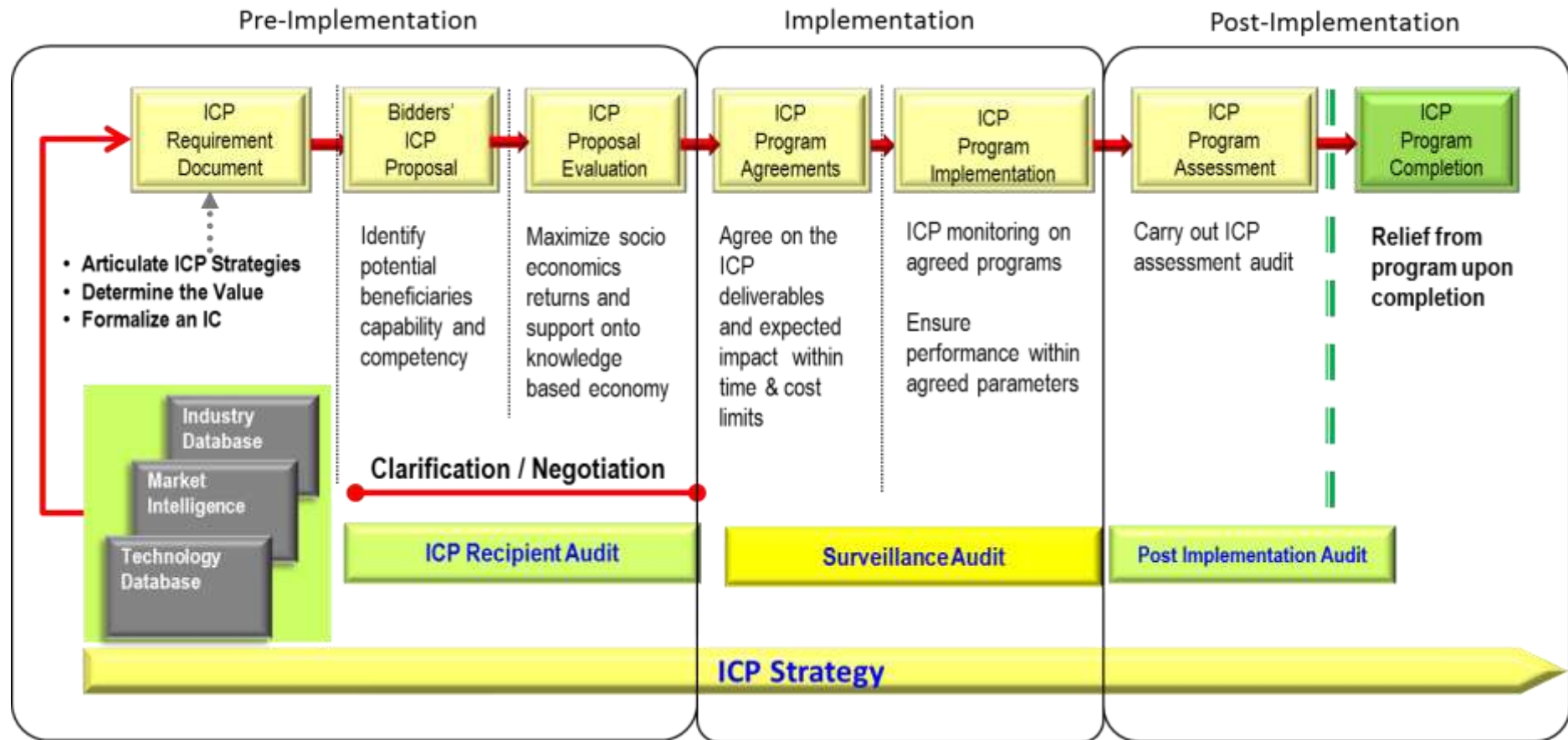
## **CHAPTER 7 - CONCLUSION**

143. **ICP** is a strategy used by the Government to obtain optimum value (value for money) in a procurement which involves Government funds. It should be implemented in line with the Government procurement philosophy, i.e.: Public Accountability, Transparency, Value for Money, Open & Fair competition dan Fair Dealing.

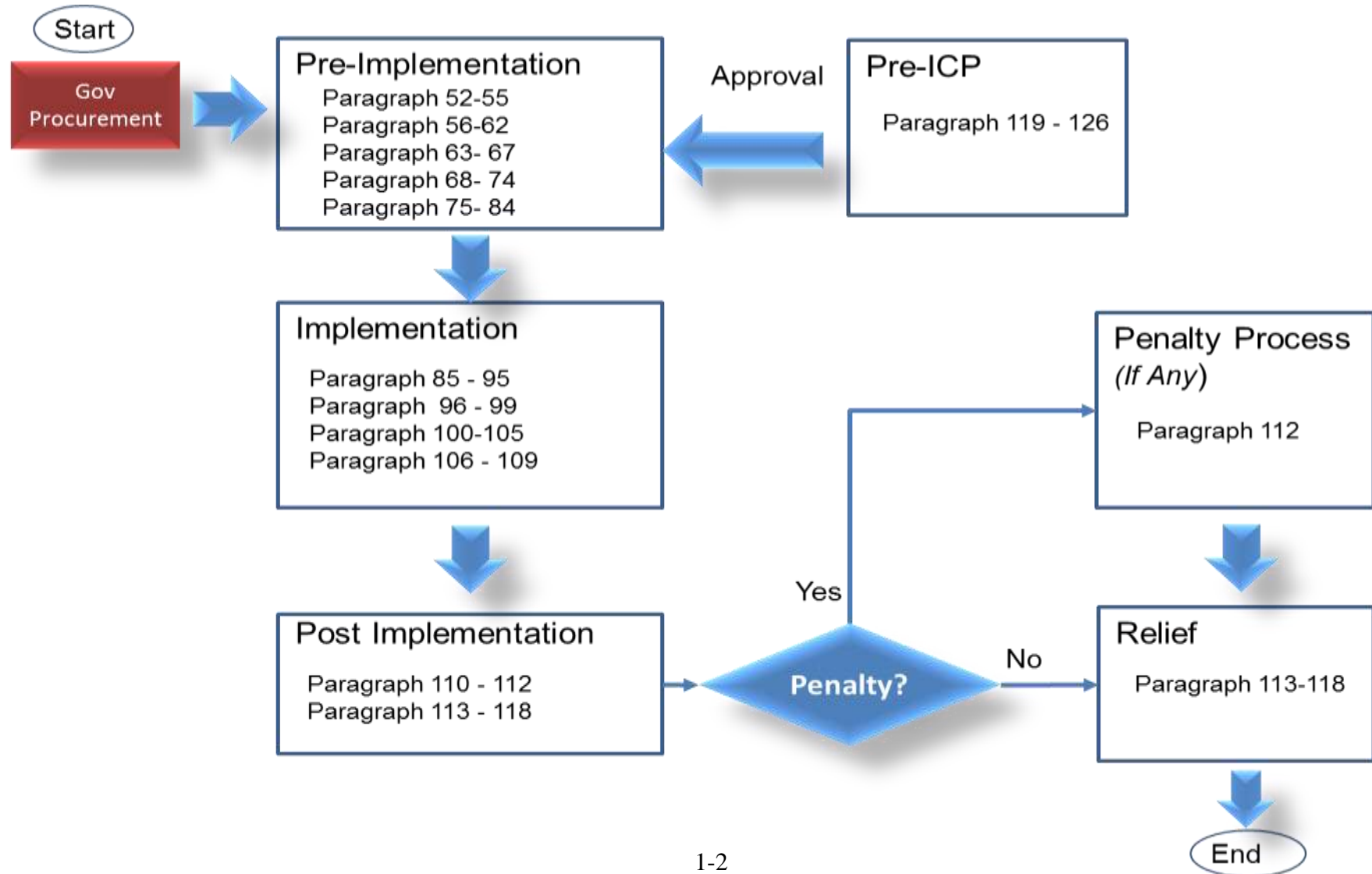
144. **ICP** is targeting onto capability and capacity development of selected industries. The expected outcomes of the programme are sustainable programs/projects contributing into national economic growth. Therefore, **ICP** shall be implemented systematically; in complementary with integrated, efficient and effective management to ensure it delivers high impact and improves the country's competitiveness in the global market. Thus, the commitment from **ICP** Providers to comply with this Policy is important to ensure the success of the **ICP**; and it must be proven through comprehensive planning and effective implementation to ensure impactful outcomes of the proposed programme.

**MALAYSIAN ICP MANAGEMENT FRAMEWORK AND FLOW CHART**

**1. MALAYSIAN ICP MANAGEMENT FRAMEWORK**

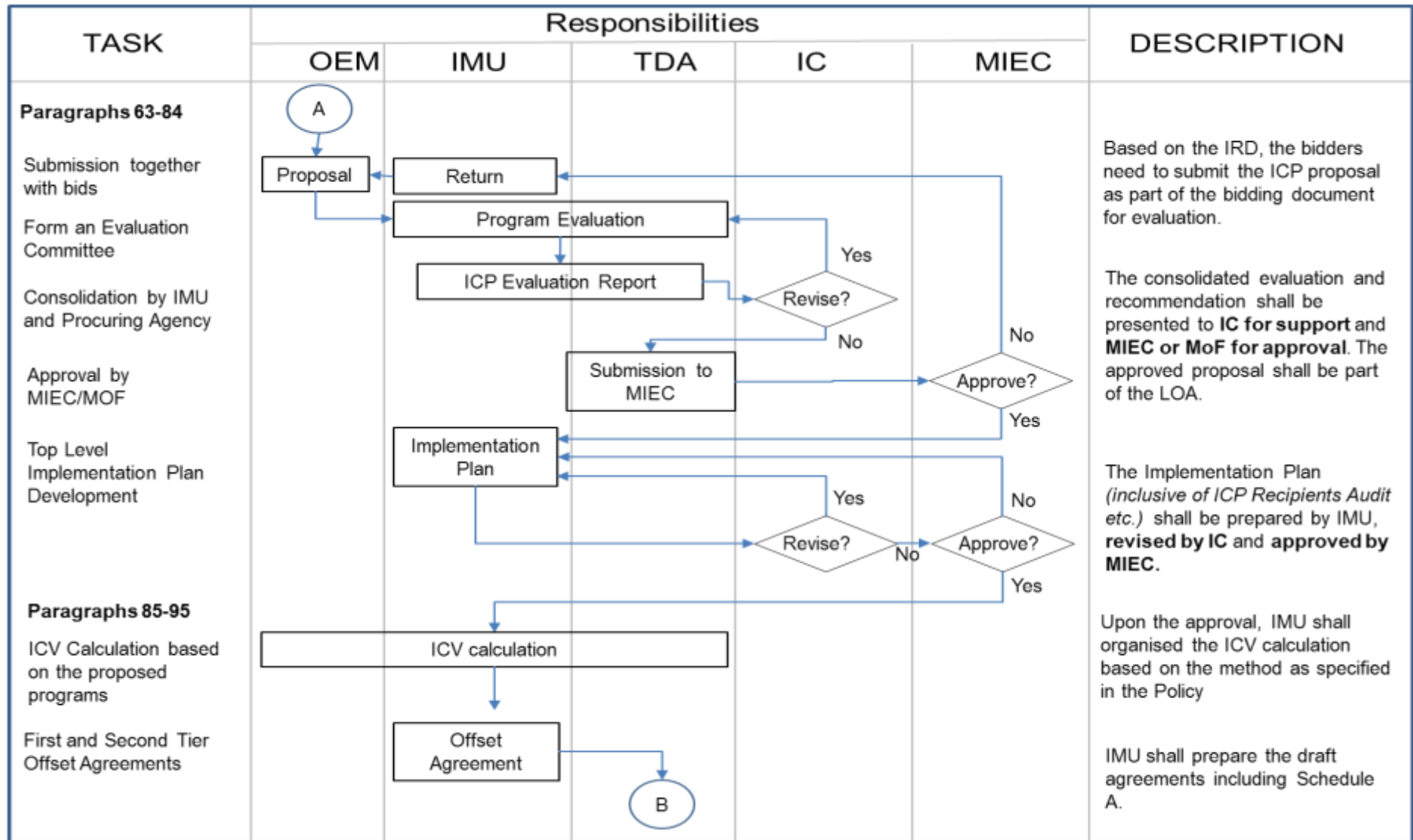


2. SUMMARY OF MALAYSIAN ICP MANAGEMENT FLOW CHART



### 3. DETAILS OF MALAYSIAN ICP MANAGEMENT FLOW CHART

Items	Responsibilities					Description
	Agency	IMU	TDA	IC	MIEC	
<p><b>Paragraph 52-55</b></p> <p>Procurement Proposal</p> <p>Develop ICP Strategy Document (ISD)</p> <p><b>Paragraph 56-62</b></p> <p>ICP Committee (IC) formation</p> <p>ICP Management Unit (IMU) establishment</p> <p>ICP Requirement Document (IRD) Development</p> <p>Tender Submission</p> <p>A</p>	<p>Start</p> <p>Proposal</p> <p>IMU Establishment</p> <p>IRD Development</p> <p>Tender Submission</p> <p>A</p>	<p>IMU</p> <p>IMU Establishment</p> <p>IRD Development</p>	<p>TDA</p> <p>ICP Strategies</p> <p>IC Formation</p> <p>IRD Development</p>	<p>IC</p> <p>IC Formation</p> <p>IRD Development</p> <p>Approve?</p> <p>Approve?</p>	<p>MIEC</p> <p>Approve?</p>	<p>The procuring Agency need to submit the proposal to MOF.</p> <ul style="list-style-type: none"> <li>TDA is to develop the ICP Strategy Document for procurements that triggers offset to be used as the ICP implementation baseline and submit to MIEC for approval.</li> <li>TDA is to issue a rejection letter if the program is deemed not relevant for ICP.</li> </ul> <p>With assistance from TDA, the procuring Agency shall form an ICP Committee (IC) and establish an ICP Management Unit (IMU).</p> <p>With assistance from TDA, the procuring IMU shall develop an ICP Requirement Document (IRD) based on the ISD , to be approved by IC.</p> <p>Upon the approval of the IC, the IRD will be part of the tender document to be used as guideline by OEMs.</p>



TASK	Responsibilities					DESCRIPTION
	OEM	IMU	TDA	IC	MIEC	
<p><b>Paragraphs 85-99</b> First and Second Tier Agreement</p> <p><b>Paragraph 100-109</b> Periodical reporting to IC and TDA</p>						<p>Schedule A shall at least met 40% of the Mandatory ICV requirements for the ICP Agreement signing</p> <ul style="list-style-type: none"> <li>• First Tier Agreement signing shall be together with Main Contract Signing.</li> <li>• 2<sup>nd</sup> Tier Agreement shall be agreed and signed no later than 1 year after.</li> <li>• IC shall be the point to resolve issues within the program, otherwise shall be escalated to MIEC</li> <li>• IMU shall establish a detail ICP implementation plan</li> <li>• IMU shall submit regularly on the implementation progress to TDA and IC</li> <li>• TDA shall submit regularly on the ICP implementation to MIEC</li> </ul> <p>Upon finishing the ICP Program implementation, OEM may initiate the request of ICV claims for relief from obligation facilitated by IMU</p>



TASK	Responsibilities					DESCRIPTION
	OEM	IMU	TDA	IC	MIEC	
<p><b>Paragraphs 110-118</b> Post Implementation Audits, ICV Claims, Penalty</p>	<pre> graph TD     subgraph OEM         C((C))         D((D))     end     subgraph IMU         Refinement[Refinement]     end     subgraph TDA         PIA[Post Implementation Audit]         ICV[ICV Verification]         Pen{Penalty?}     end     subgraph IC         Sup{Support?}     end     subgraph MIEC         App{Approve?}         Fin{Finalization?}         D((D))         E((E))     end     C --&gt; ICV_Claims[ICV Claims]     ICV_Claims --&gt; PIA     PIA --&gt; Refinement     Refinement --&gt; PIA     PIA --&gt; ICV     ICV --&gt; Sup     Sup -- No --&gt; PIA     Sup -- Yes --&gt; Pen     Pen -- No --&gt; Fin     Pen -- Yes --&gt; Sup     Fin -- No --&gt; App     App -- No --&gt; PIA     App -- Yes --&gt; D     D --&gt; Pen_Proc[Penalty Process]     Pen_Proc --&gt; Fin     Fin -- Yes --&gt; E     </pre>					<ul style="list-style-type: none"> <li>Upon the ICV Claim request, TDA shall initiate the Post Implementation Audit to verify the ICP implementation</li> <li>Refinement shall be carried out based on recommendations of Post Implementation Audit Report</li> <li>TDA shall determine penalty (if any) based on the outcomes of the Post Implementation Audit</li> <li>OEM shall comply to the Penalty Process and Procedure with facilitation by IMU</li> <li>IMU shall submit a report on the action taken with regard to the Penalty for approval by MIEC before the OEM could be released from the ICP obligation</li> </ul>

TASK	Responsibilities					DESCRIPTION		
	OEM	IMU	TDA	IC	MIEC			
Relief of Obligation								<ul style="list-style-type: none"> <li>TDA and IC shall issue the Relief Certificates</li> <li>IMU and TDA shall initiate the <b>program administrative and contract closures</b></li> <li>IC shall be disbanded upon the completion of program administrative and contract closures.</li> <li>TDA will issue the letter of program closure and IC disbandment</li> <li>Upon the Relief of Obligation, TDA shall assess for any excess ICV qualified for ICP Credit Banking.</li> <li>The banking can only be done with an approval of MIEC</li> </ul>

TASK	Responsibilities			DESCRIPTION
	OEM	TDA	MIEC	
<p><b>Paragraphs 119 - 126</b> Pre-ICP Credit Banking</p> <pre> graph TD     subgraph OEM         A[Pre-ICP Credit Banking Proposal]         B[Pre-ICP Credit Agreement]         C[Implementation]         D[ICV Claims]     end     subgraph TDA         E[Proposal Evaluation]         F[Post Implementation Audit]         G[ICV Verification]         H[Update ICV Banking Account]     end     subgraph MIEC         I{Approve?}         J{Banking Approval?}     end     A --&gt; E     E --&gt; I     I -- Yes --&gt; B     I -- No --&gt; End     B --&gt; C     C --&gt; D     D --&gt; F     F --&gt; G     G --&gt; J     J -- No --&gt; Revise --&gt; E     J -- Yes --&gt; H     H --&gt; End     </pre>	<ul style="list-style-type: none"> <li>OEM can request for Pre-ICP credit banking on case by case basis</li> <li>TDA shall carry out the evaluation on the proposed Pre-ICP program for approval</li> <li>Upon the approval by MIEC or Appointed Approving Authority, a Pre-ICP agreement shall be signed by the OEM and Government of Malaysia (similar format to First Tier Agreement)</li> <li>The program approved for the Pre-ICP Credit Banking can be only initiated upon the signing of the Pre-ICP Credit Agreement</li> <li>TDA shall monitor the program implementation</li> </ul>			
		<ul style="list-style-type: none"> <li>Upon the completion of the implementation, OEM shall notify TDA for the Pre-ICP Credit Value calculation and for TDA to initiate a Post Implementation Audit (PIA) process to verify the claims.</li> <li>TDA shall report to MIEC the findings of the PIA</li> <li>MIEC shall decide on the Pre-ICP credit value for TDA to update the ICV Banking Account.</li> </ul>		

ATTACHMENT 2

**ICP CREDIT VALUE CALCULATION DETAILS**

1. Overall ICP Credit Calculation

$$ICV_{programme} = \sum ICV_{mandatory} + \sum ICV_{additional}$$

Where:

$ICV_{mandatory}$  = Equivalent to the value of main contract

$ICV_{additional}$  = Other ICP Value generated over and above  $ICV_{mandatory}$

$$ICV_{Programme} = \sum_{i=1}^n ICV_{project(i)} ; \text{ Where } n \text{ is number of project agreed projects}$$

$$ICV_{Project} = (ICV_{EEP} + ICV_{offset} + ICV_{CT})_{Project} + [MLC]$$

Where:

EEP = Economic Enhancement Program

Offset = Direct and Indirect Offset

CT = Countertrade

$ICV_{offset}$  will utilize higher multiplier if:

- Employs a buy-back mechanism
- Establishes JV with local company
- Provide market access for local company to global supply chain

Offset Credit Calculation

$$ICV_{Offset} = \sum_{i=1}^n ICV_{Direct\ Offset\ project\ (i)} + \sum_{i=1}^n ICV_{Indirect\ Offset\ project\ (i)}$$

**Indirect Offset Credit Value Calculation**

$$ICV_{Indirect\ Offset\ project\ (i)} = [ NV_{Category} * M_{Category} * (1 + \mu(t)) ]$$

Base formulae for all ICV calculation (indirect offset)

Impact coefficient derived from:

- Programs that support government's initiatives in GNI growth;
- Programs that support high value jobs creation and human capital capabilities development;
- Programs that support increase of investment portfolios

- Prioritized economic activities
- Prioritized Growth Zones (ETP, NKEA, 11<sup>th</sup> MP, 3<sup>rd</sup> IMP, S2A etc.)

**Criteria for  $\mu(t)$  entitlement** Criteria must contain one of the factors. ( RMK 'OR' CORRIDOR 'OR' OBJECTIVE)

NKEA	Focusing Corridors	Offset Objectives
<ol style="list-style-type: none"> <li>1. RMK 10 Key Growth Engines</li> <li>2. National Key Areas (4%)</li> <li>3. Oil &amp; Gas</li> <li>4. Palm oil and related products</li> <li>5. Financial services</li> <li>6. Wholesale &amp; Retail</li> <li>7. Tourism</li> <li>8. Information &amp; Comm technology</li> <li>9. Education</li> <li>10. Electrical &amp; Electronic</li> <li>11. Business Services</li> <li>12. Private Healthcare</li> <li>13. Agriculture</li> <li>14. Greater K. Lumpur</li> </ol>	<ol style="list-style-type: none"> <li>1. Iskandar Malaysia</li> <li>2. Northern Corridor Economic Region</li> <li>3. East Coast Eco. Region</li> <li>4. Sarawak Corridor Renewable Energy</li> <li>5. Sabah Development Corridor</li> </ol>	<ol style="list-style-type: none"> <li>1. Foster strategic local and international partnership</li> <li>2. Maximize the usage of local contents</li> <li>3. Establish a sustainable Malaysian industrial, economic and technological base, with strategic capabilities development and industrial participation in the global supply chain</li> <li>4. Technology Acquisition, Development and Diffusion</li> <li>5. Collaborate in Strategic (R&amp;D&amp;C) projects</li> <li>6. Facilitate investments and collaborate in Strategic Human Resource Development (HRD) initiatives.</li> </ol>

Offset Credit Calculation

Direct Offset

$$ICV_{Direct\ Offset} = \sum_{i=1}^n ICV_{Direct\ Offset\ project\ (i)}$$

where

$$ICV_{Direct\ Offset\ project} = NV_{Direct\ Offset\ project} * M_{Category}$$

Indirect Offset

$$ICV_{Indirect\ Offset} = [ NV_{Category} * M_{Category} * (1 + \mu(t)) ]$$

Where  $\mu(t) = 0.1$ ; comprises of 30% from NKEA, 30% from Economic Corridor, and 40% from Offset Objectives factors

$$ICV_{Offset} = \sum_{i=1}^n ICV_{Direct\ Offset\ project\ (i)} + \sum_{i=1}^n ICV_{Indirect\ Offset\ project\ (i)}$$

2. Calculation on MLC (Localization)

$$ICV_{Project} = \underbrace{(ICV_{EEP} + ICV_{offset} + ICV_{CT})_{Project}}_{Other\ element} + \underbrace{[MLC]}_{Localization}$$

$$MLC_j = \sum_{k=1}^n (NV_{MLC(k)} \times M_{cat(k)}) \quad \text{and} \quad MLC_{Prj(i)} (\%) = \left\{ \sum_{j=1}^n \frac{MLC}{ICV_{Prj(i)}} \right\} \times 100$$

where

$M_{cat(k)}$  : multiplier based on Cat A, Cat B, Cat C, Cat D and Cat E as per MLC Multiplication Factor Schedule

$ICV_{Prj(i)}$  : The total ICV value of the proposed project in an ICP Program that include the MLC part

$NV_{MLC(k)}$  : Local Content Nominal Value of the Project and must be verified/audited local professional financial institution recognized by the Government of Malaysia

And

$$P1, P2..Pn = Performance\ index = \frac{2R}{1 + \frac{D}{T}} \quad \text{Where}$$

$R$  = Total ICV commitment,  
 $D$  = Period of verified localization implementation,  
 $T$  = Period of planned localization implementation agreed in the ICP Agreement

**First Step: Determination of MLC**

Based on the Policy →  $NV_{MLC(j)} \geq 30\% \text{ of } ICV_{prog}$

$$ICV_{prog} = \sum_{i=1}^n ICV_{prj(i)}$$

$$ICV_{prj(i)} = \sum_{j=1}^n [NV'_j \times (M_j \times (1 + \mu(t))) + MLC_j]$$

where  $MLC_j = \sum_{k=1}^n (NV_{MLC(k)} \times M_{cat(k)})$  and  $NV'_j = NV_j - NV_{MLC(j)}$

$$MLC_{Prj(i)}(\%) = \left\{ \sum_{j=1}^n \frac{MLC}{ICV_{Prj(j)}} \right\} \times 100 \quad \text{and} \quad MLC_{Prog(\%)} = \sum_{i=1}^A MLC_{Prj(i)}$$

$$MLC_j = \sum_{k=1}^n (NV_{MLC(k)} \times M_{cat(k)})$$



Localization value promised and expected impact agreed in the ICP Agreement thus ICP Provider need to fulfil this.

$$MLC_{Prj(i)}(\%) = \left\{ \sum_{j=1}^n \frac{MLC}{ICV_{Prj(j)}} \right\} \times 100$$



Localization percentage value verified (NV) after the Post Implementation Audit.

**Offset Credit Calculation for MLC (after verification):**

$$MLC \text{ value (MLC)} = P1 * MLC_{Prj1}(\%) + P2 * MLC_{Prj2}(\%) + \dots Pn * MLC_{Prj(n)}(\%)$$

$$MLC (Total) = MLC_{Prj1} + MLC_{Prj2} + \dots MLC_{Prj(n)} \geq 30\% \text{ of total ICV}$$

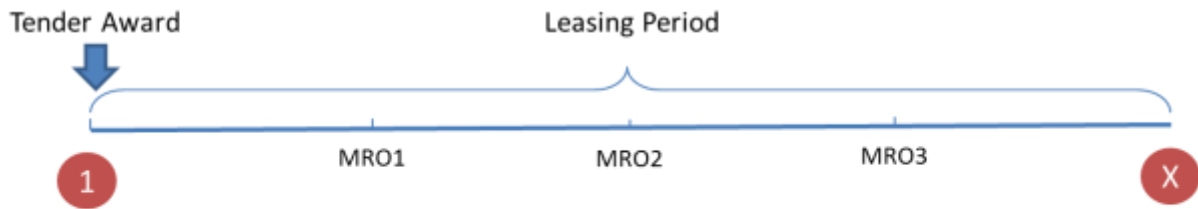
where

$$P1, P2..Pn = \text{Performance index} = \frac{2R}{1 + \frac{D}{T}} \quad \text{Where}$$

R = Total amount of commitment,  
D = Period of verified localization implementation,  
T = Period of planned localization implementation agreed in the ICP Agreement



### 3. ICV Calculation (Leasing)



ICV Value:

Step 1: Determine the Net Present Value (NPV) of amount **X** at point **1**

Step 2: Determine the cost of MRO (MRO1, MRO2, MRO3..MROx)

$$ICV_{mandatory} = NPV - \sum_{j=1}^n MRO_j - \text{Financial Cost}_{Leasing}$$

Step 3: Determine the 'outright purchase' cost at point **1**

Step 4: Make comparison (between the result of the above formula and the 'outright purchase' cost)

Step 5: Select the ICV to the higher value



**ATTACHMENT 3**

**MULTIPLIER**

**1. ICP Multiplier**

Cat	Item	Description	Direct Offset	Indirect Offset
1	<b>Investment</b>			
		Equity Investment	5	5
		Bank Guarantee (for other BGs than Main Contract and ICP requirements)	4	5
		Project Financing	3	5
		Principal Guarantee for SBLC	3	5
2	<b>Research, Development and Commercialization (R&amp;D&amp;C)</b>			
		Implementation and diffusion of ToT Plan to local industry <ul style="list-style-type: none"> <li>• IPR transfer and Commercialization through JV/Partnership with local company <ul style="list-style-type: none"> <li>• Technology with Technology Readiness Level (TRL 7 and 8)*</li> </ul> </li> <li>• Technology Commercialization and Roll Out/Start-Up Company <ul style="list-style-type: none"> <li>• Technology with Technology Readiness Level (TRL 7 and 8)*</li> </ul> </li> <li>• Tools/equipment, laboratory and workshop set-up</li> <li>• Training and Skills Development Courses (design, engineering and development)</li> <li>• IPR Development and Sharing</li> <li>• Technology adaptation to local environment and conditions</li> <li>• Transfer or resident of ToT project team assignment to OEMs</li> <li>• Subject Matter Experts to local recipient assignment</li> <li>• Drawings, manuals and training documentations for recipient</li> <li>• Training and Skills Development Courses-general</li> </ul>	4	5
			4	5
			4	4
			4	4
			4	4
			3	3
			3	3
			3	3
			3	3
			2	2
		* Refer to TRL Definition by NASA		
		Identification of technology needs and gap analysis <ul style="list-style-type: none"> <li>• Technology Experts and Industrial Experts assignment</li> </ul>	3	3
		Impact Analysis <ul style="list-style-type: none"> <li>• Technology Experts and Industrial Experts assignment</li> </ul>	3	3

Cat	Item	Description	Direct Offset	Indirect Offset
3	<b>Marketing Assistance</b>			
		Captive Market Access	N/A	4
		Market Access Assistance	N/A	3
		Global Supply Chain Participation	N/A	4
		Organization International Certification	4	4
4	<b>Human Capital Development</b>			
		Technical Transfer, Skills and Competency Development for Professional Services (e.g. on design, systems integration, platform technology, engineering & development and Professional Certification etc.)	4	4
		On Job Training (International Placement)	4	4
		Knowledge Transfer and Skills Development for Professional Services (e.g. classroom activities for design, engineering and development etc.)	3	3
		Non-Technical Transfer and Skills Development	2	2
		Training and Skills Development Courses-general	2	2
		Higher Learning Placement Program	2	2
		High Value Job Creation	1	1
5	<b>Incidental/Others</b>		1	1

## 2. Technology Readiness Level Definition (National Aeronautics and Space Administration - NASA)

TRL	Description
1. Basic principles observed and reported	This is the lowest "level" where scientific research begins to be translated into applied R&D.
2. Technology concept and/or application formulated	Next level of maturation, practical applications of those characteristics can be 'invented' or identified. At this level, the application is still speculative: no experimental proof or detailed analysis to support the conjecture.
3. Analytical and experimental critical function and/or characteristic proof of concept	At this step, active (R&D) is initiated. This must include both analytical studies to set the technology into an appropriate context and laboratory-based studies to physically validate that the analytical predictions are correct. Should constitute POC validation of the applications/concepts formulated at TRL 2.
4. Component and/or breadboard validation in laboratory environment	Following successful POC work, basic technological elements must be integrated to establish that the "pieces" will work together to achieve concept-enabling levels of performance for a component and/or breadboard. This validation must be devised to support the concept that was formulated earlier, and should also be consistent with the requirements of potential system applications. The validation is "low-fidelity" compared to the eventual system: it could be composed of ad hoc discrete components in a laboratory.
5. Component and/or breadboard validation in relevant environment	At this level, the fidelity of the component and/or breadboard being tested has to increase significantly. The basic technological elements must be integrated with reasonably realistic supporting elements so that the total applications (component-level, sub-system level, or system-level) can be tested in a 'simulated' or somewhat realistic environment.
6. System/subsystem model or prototype demonstration in a relevant environment (ground or space)	A major step in the level of fidelity of the technology demonstration follows the completion of TRL 5. At TRL 6, a representative model or prototype system or system - which would go well beyond ad hoc, 'patch-cord' or discrete component level bread-boarding - would be tested in a relevant environment. At this level, if the only 'relevant environment' is the environment of space, then the model/prototype must be demonstrated in space.
7. System prototype demonstration in a space environment	TRL 7 is a significant step beyond TRL 6, requiring an actual system prototype demonstration in a space environment. The prototype should be near or at the scale of the planned operational system and the demonstration must take place in space.
8. Actual system completed and 'flight qualified' through test and demonstration (ground or space)	In almost all cases, this level is the end of true 'system development' for most technology elements. This might include integration of new technology into an existing system.
9. Actual system 'flight proven' through successful mission operations	In almost all cases, the end of last 'bug fixing' aspects of true 'system development'. This might include integration of new technology into an existing system. This TRL does not include planned product improvement of ongoing or reusable systems.

## 3. MLC Multiplier

Cat	Item	Sub-Item	Multiplier
A	Professional Services Local Sourcing	Design, systems integration work knowledge and skills development (Engineers and Senior Management)	4
		Technology Upgrading, Knowledge / Skills Transfer and Certification (People, Product & Process)	4
		Installation, Testing, Commissioning and Project Management	2
B	Local Product	Parts & Component, Main Equipment, Test Equipment	
		Custom Made	3
		Off The Shelves	1
C	Plant Facility	Plant equipment and machinery	3
		Tools, Jigs and Fixtures	4
D	Logistics	Integrated logistic support (ILS)	1
		Forwarding, haulage and transportation, storage & warehouse	1
		Local Insurance	1

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**SAMPLE OF 1ST TIER ICP AGREEMENT**

NOT TO BE DISCLOSED WITHOUT THE WRITTEN CONSENT OF  
*SUPPLIER* AND THE GOVERNMENT OF MALAYSIA

*Document No.*

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

***ICP PROVIDER***

**RELATING TO THE PROVISION OF  
ICP PROGRAM UNDER PROCUREMENT OF**

***NAME OF THE PROGRAM***

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THIS AGREEMENT is made this \_\_\_\_\_ day of *Month* \_\_\_\_\_ *Year* \_\_\_\_\_

BETWEEN

THE GOVERNMENT OF MALAYSIA

as represented, for the purpose of this Agreement by:

*Name of Ministry*

(hereinafter called the “Government”) of one part;

AND

*Name of ICP Provider*

a company incorporated in [\*\*] and whose registered office is at *Address*

(hereinafter referred as the “*Supplier*”) of the other part.

The Government and the *Supplier* are collectively referred to as the “Parties” and individually, as a “Party”.

**WHEREAS:**

- A. *The Supplier* and the Government of Malaysia have entered into a [General Terms Agreement] reference **XXX** (that and its related contracts, as may be amended, supplemented or varied by the parties thereto from time to time, being hereinafter collectively or individually called the “Supply contract”) for items defined in the Supply Contract [as “Products and Services”].
- B. In compliance with the Policy and Guideline on ICP Programs in Government Procurement published by the Government of Malaysia;
- i. As at 2005 (published by the Ministry of Defense);
  - ii. Revised as the Second Edition in 2011 (published by the Ministry of Finance) – which some terms and conditions of the latter supersedes the former;
  - iii. Revised as the Third Edition in 2014 may be amended by the Government of Malaysia from time to time (hereinafter referred as the “ICP Policy”); and
  - iv. As a condition for the awarding of the Supply Contract to *the Supplier*.

the Government requires the *Supplier* that supplies services, works or equipment to the Government which the value qualifies for ICP program to support the Supply contract with the provision of ICP Program(s) consist of activities, benefits, packages and programs pursuant to the terms of this Agreement, and for the *Supplier* to commit to the performance of its obligations in relation thereto.

- C. The ICP Policy shall be used as the reference basis for purposes of the implementing of the ICP programs/projects, and the claiming by the *Supplier* of ICP credits for ICP obligations’ relief, pursuant to this Agreement.
- D. The Government will coordinate the receipt of ICP benefits by such parties, as may be identified by the Government, in accordance with the ICP Policy.

In consideration of the mutual agreements and promises herein contained, the entering into of the agreements set out in the Supply contract or other valuable consideration (receipt of which is duly acknowledged by the *Supplier*), the *Supplier* agrees to provide the ICP Program(s) and undertake its obligations as set out in this Agreement, so as to satisfy the *Supplier’s* ICP obligations in accordance with the ICP Policy.

**NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:**

1. **DEFINITIONS**

In this Agreement, unless the context otherwise requires, the terms used shall have the same meanings as those ascribed to them in the Supply Contract and/or the ICP Policy, and the following words and expressions shall have the following meanings:

- 1.1 **'ICP Recipients'** shall mean local companies, institutions or organisation that are receiving the benefits, profits or advantages from the ICP Project. The ICP Recipients are subject to the approval of the OC (as herein defined).
- 1.2 **'ICP Projects'** shall mean the projects described in Clause 3 and "ICP Project" shall refer to any one or more of the ICP Projects.
- 1.3 **'Supply Contract'** shall mean the [General Terms Agreement] reference **XXX** between the *Supplier* and the Government.
- 1.4 **'ICP Credits Value'** shall mean the credits being generated by the ICP Project which is calculated based on nominal value multiplied by relevant multiplier set by the Government subject to the approval of the ICP Committee (OC).
- 1.5 **'Obligated ICP Credits Value'** shall mean ICP Credits Value which equivalent to the total value of the Supply Contract and must be generated by the Supplier in order to obtain Discharge Certificate apart from completing all ICP Project under this Agreement.
- 1.6 **'ICP Project Duration'** shall mean the period of which the ICP Project needs to be completed in accordance with the provisions of this Agreement.
- 1.7 **'ICP Committee'** shall mean the committee to be established pursuant to Clause 6.9 for purposes of monitoring and supervising the ICP Projects.
- 1.8 **'ICP Project Provider'** shall mean the party responsible for delivering and fulfilling an ICP Projects, as nominated by the *Supplier* and agreed by the Government.
- 1.9 **'Working Committee'** shall mean any committee established by the ICP Committee pursuant to Clause 6.9.

1.10 Interpretation:

- a. The recitals and schedules hereto as well as any documents therein referred to shall be taken, read and construed as an essential and integral part of this Agreement, provided however, that in the event of any conflict or inconsistency between the various documents forming this Agreement, the following order of precedence shall apply:
  - i. The Clauses; and
  - ii. The Schedules.
- b. Reference to recitals, Clauses and schedules are to be construed as references to recitals, Clauses and schedules of this Agreement, unless otherwise provided herein;
- c. All references to provisions of statutes include such provisions as amended, modified or re-enacted;
- d. The words 'law' and 'laws' mean any present or future law or any constitution, decree, judgment, legislation, order, ordinance, statute, treaty, directive, by-law, rule or regulation as amended from time to time;
- e. Words applicable to natural persons include any body of persons, companies, corporation, firm or partnership incorporated or unincorporated;
- f. The expression 'this Agreement' or any similar expression shall comprise the recitals, Clauses, schedules and appendices of this Agreement and include any supplemental written agreement thereto as may be executed and be in force from time to time;
- g. Words importing any gender shall include any other gender;
- h. Words importing the singular number shall include the plural number and vice versa including the definitions referred to in Clause 1;
- i. The heading and sub-headings to the Clauses of this Agreement are for convenience of reference only and shall not affect the interpretation and construction thereof;
- j. Where any word or expression is defined in this Agreement, the definition shall extend to all grammatical variations and cognate expressions of the word or expression defined;



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- k. For the purpose of calculating any period of time stipulated herein, or when an act is required to be done within a specified period after or from a specified date, the period is inclusive of and the time begins to run from the date so specified;
- l. Wherever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression ;or any other period agreed in writing by the Parties from time to time’;
- m. Any technical term not specifically defined in this Agreement shall be construed in accordance with the usage or definition commonly accepted by those in that profession in Malaysia;
- n. Any reference to a ‘business day’ is to a day other than Saturday, Sunday (except for States where Saturday and Sunday are working days, such reference excludes Thursday and Friday) and any other day which is declared by the Government of Malaysia as a public holiday and any reference to a ‘day’, ‘week’, ‘month’ or ‘year’ is to that day, week, month, or year in accordance with the Gregorian calendar; and
- o. Any reference to ‘writing’ or cognate expressions, include any communication effected by telex, cable, facsimile transmission and other comparable means.

2. **CONDITION(S) PRECEDENT AND EFFECTIVE DATE**

- 2.1 This Agreement shall be conditional upon, and shall be fully effective as at and from, the due execution of:
  - a. *The Supply contract reference XXX between the Government and the Supplier*
- 2.2 For each ICP Project under this Agreement, the *Supplier* shall procure, as appropriate, the obtaining of the necessary authorisations and licences that are required for the export and continued use in Malaysia of any technologies provided under this Agreement.
- 2.3 If the condition set out in Clause 2.1 above has not been fulfilled (or waived) by *Date Month Year* or such other date as the Parties may agree then this Agreement (other than the provisions of Clause 8) shall automatically cease and determine and all obligations and liabilities of the Parties under this Agreement shall cease to have effect and (except in respect of any antecedent breach of Clause 5 or any other relevant provisions of this Agreement), neither party shall have any claim of any nature whatsoever against the other party in relation to this Agreement.



2.4 Notwithstanding Clause 2.1 above, the *Supplier* confirms that as from *Date Month Year*, work preparatory to and in support of the ICP Projects has duly commenced and is currently in active progress.

### 3. ICP COMMITMENT

3.1 The *Supplier* agrees to procure the full delivery and completion of the ICP Projects in accordance with the schedule agreed by the Parties but the total Obligated ICP Credit Value for the ICP Projects shall always be amounting to a minimum value of hundred percent (100%) of total value of the Supply contract as stipulated in the ICP Policy. These ICP Projects shall include the following:

- a. **Project 1**  
Description of Project 1
- b. **Project 2**  
Description of Project 2
- c. **Project 3**  
Description of Project 3
- d. **Project 4**  
Description of Project 4
- e. **Project 5**  
Description of Project 5
- f. **Project 6**  
Description of Project 6
- g. **Project X.X**  
Description of Project X.X

3.2 The requirements for each of the above *ICP Projects* are summarised at Schedule A, the details of which may be amended from time to time by the Parties [through the Working Committee and with the agreement of the ICP Committee].

3.3 The *Supplier* shall procure that each ICP Project Provider shall execute their respective *ICP Agreements*, in such form and substance as is agreed by the Government, with the relevant Recipients in order to duly implement the *ICP Project* in accordance with the agreed basis and timeline pursuant to this Agreement.

- 3.4 The *Supplier* shall procure that the ICP Projects above shall be planned and implemented in support of the Government aspiration. In doing so, the *Supplier* shall work closely with the Government in identifying the ICP Recipient deemed fit from local industry to carry out the aspiration and be part of the ICP Project.
- 3.5 In accordance with the ICP Policy, the *Supplier* acknowledges and agrees that the following principles shall be duly observed and applied for purposes of this Agreement:
- a. The Government will not pay any premium to support any *ICP Project*;
  - b. ICP credits will only be granted on the basis of substantiating documentation received from the *Supplier* or the *ICP Providers*, after due verification by the Government and compliance to the requirements set out in the Malaysian ICP Management Framework;
  - c. All costs incurred in the implementation of offsets shall be borne in full by the *ICP Provider(s)* and the *Supplier*.

#### **4. REPRESENTATION AND WARRANTY**

- 4.1 The *Supplier* hereby represents and warrants to the Government that:
- a. It is a corporation validly exist under the laws of the originating country;
  - b. It has the corporate power to enter into and perform its obligations under this Agreement;
  - c. It has taken all the necessary corporate actions to authorise the entry into and performance of this Agreement and to carry out its obligations and the transactions contemplated by this Agreement;
  - d. As at and from the date of its execution of this Agreement, neither the execution nor performance by it of this Agreement nor any transactions contemplated by this Agreement shall violate in any respect any provision of:
    - i. Its Memorandum and Articles of Association;
    - ii. Any other document or agreement, which is binding upon it or its assets;
  - e. No litigation arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its best knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other

obligations under this Agreement;

- f. This Agreement constitutes its legal, valid and binding obligations and is fully enforceable against the *Supplier* in accordance with its terms and conditions;
  - g. It has the necessary capability, resources and powers to undertake and fully perform its obligations under this Agreement;
- 4.2 The *Supplier* warrants and undertakes to and with the Government to indemnify, and keep indemnified, the Government from and against all claims, damages, liabilities, deficiencies, penalties, losses, costs, expenses (including without limitation, legal fees and disbursements on a full indemnity basis) which the Government may suffer, incur or sustain as a result of or in consequence of or in relation to any inaccuracies, misrepresentations or breaches of any of the representations, warranties, undertakings and terms contained in this Agreement.
- 4.3 The representations and warranties set out in Clauses 4.1 and 4.2 above shall survive the termination or expiration of this Agreement.

## 5. UNDERTAKINGS OF THE PARTIES

The Parties agree that they will co-operate with each other in order that the *ICP Project* can be effectively and efficiently implemented.

### 5.1 *Supplier's* Undertakings

- a. *The Supplier* shall execute its obligation to procure the due and complete implementation of all ICP Project(s) in accordance with the provisions of this Agreement and the ICP Policy and ensure all of the ICP Project Providers shall complete its ICP Projects in accordance with the provisions of this Agreement and the ICP Policy. If the *Supplier* fails to perform, or through reasons solely and directly within its control fails to cause the ICP Project Provider(s) to perform an ICP Project(s) as agreed in this Agreement, the ICP Policy and the ICP Implementation Plan then:
  - i. The Working Committee shall, within thirty (30) days of the Government advising that it considers such a failure to have occurred, review the reasons therefore and if possible resolve the position.
  - ii. If the matter cannot be resolved at Working Committee level, the matter will be escalated to the ICP Committee (IC). If the IC confirms its agreement with the view of the Working Committee on the status of the *ICP Project(s)* being

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discussed, the *Supplier* and the Government shall promptly endeavour to identify a substitute program of equivalent value and cost.

- iii. Subject to another suitable ICP Provider or Beneficiary, as the case may be, being identified, the Parties shall negotiate in good faith an amendment to this Agreement that will allow incorporation of such a project into Schedule A.
  - iv. If the *Supplier* fails to satisfy the requirement(s) as stipulated in [Clause 5.1.a.i. and 5.1.a ii], the Government shall be entitled (among others) to exercise its rights pursuant to the ICP Policy.
- b. The *Supplier* shall ensure that the second tier ICP Project Agreement shall be executed within three (3) months upon signing of this Agreement.
  - c. The Supplier shall ensure that the Government is provided with copies of all ICP Project agreements (as referred to in Clause 3.3) in a proper and timely manner.
  - d. The *Supplier* shall comply with all requirements stipulated in the ICP Policy for the duration of implementation of the ICP Projects
  - e. The *Supplier* shall perform its obligations under this Agreement:
    - (a) With due diligence and efficiency without interrupting or violating its obligations and responsibilities pursuant to the provisions of the Supply Contract;
    - (b) In such manner as shall always safeguard and protect the Government's interests and with all necessary and proper steps taken to prevent abuse or uneconomical or inefficient use of facilities or resources made available to the *Supplier*; and
    - (c) In accordance with the provisions of this Agreement.
  - f. All Intellectual Property ("IP") and know-how arising from or generated as a result of an *ICP Project*, either directly or indirectly (including via contracts placed with Malaysian institutions) will be owned and managed by an entity identified by the Government of Malaysia.

## 5.2 Government Undertakings

- a. The Government, through its representative, namely TDA shall coordinate the implementation of the *ICP Project(s)* in accordance with the Malaysian ICP

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Management Framework as specified in the ICP Policy and shall provide the necessary direction of the ICP Project as and when required.

- b. The Government, through its representative, namely Technology Depository Agency (TDA) which the role and functions are specified in the ICP Policy shall provide all necessary assistance to the *Supplier* to ensure the smooth implementation of the ICP Projects and facilitate the *Supplier* with the necessary solution subject to the provisions of the ICP Policy and this Agreement.
- c. In the event of changes in the ICP Policy, the Parties with the guidance of the Government shall undertake reasonable and practical remedies to overcome any disputes arising from the changes.
- d. Provided the *Supplier* has performed its obligations in accordance with the provisions of this Agreement and the ICP Policy, the *Supplier* shall not be responsible for the failure of any *ICP Project* if the Recipients of the ICP Projects fail to perform their material undertakings and obligations in relation to such *ICP Project*.

## 6. MANAGEMENT OF ICP PROJECTS

- 6.1 The Parties hereby agree that the day to day management activity of the ICP Project(s) must largely be performed by the ICP Project Provider(s) and the Recipient(s) thereof. However, it is also recognised that these activities need to be supervised, monitored and approved such that it is clear that they are proceeding in accordance with both Parties' expectations.
- 6.2 The Government has appointed *ICP Management Unit (IMU) from Ministry* to undertake the relevant role, in accordance with ICP Policy, for purposes of the above functions.
- 6.3 TDA, IMU and *Supplier* recognised that the implementation of the ICP Project(s) shall be in compliance with the ICP Policy published by the Government of Malaysia.
- 6.4 The Parties shall procure that TDA, IMU and the *Supplier* will develop within ninety (90) days from the Effective Date, a detailed ICP Implementation Plan for each of the ICP Projects. The ICP Implementation Plan shall include the following:
  - a. Detailed description of the ICP Project;
  - b. Implementation schedule of each ICP Project;

- c. Project milestones including closure criteria;
  - d. Funding arrangement including relevant contributions from the Recipient;
  - e. Contracting arrangements between parties involved in the ICP Projects
- 6.5 TDA and IMU shall arrange regular reviews with the *Supplier* throughout the implementation period to monitor and determine the status of the ICP Project(s).
- 6.6 The detailed ICP Implementation Plan as stipulated in Clause 6.4 of this Agreement shall be incorporated in the respective second tier ICP agreement.
- 6.7 The ICP Project(s) shall be reviewed by the IMU for once in every 1 month in progress meetings set up by IMU for the ICP Project(s) and the IMU reserves the right to call for a meeting with the *Supplier at anytime deemed necessary by the IMU* throughout the implementation period to monitor and determine the status of the ICP Project.
- 6.8 The *Supplier* shall response to any correspondence issued by IMU within seven (7) days from the date of the notice.
- 6.9 In compliance with the ICP Policy, an ICP Committee (IC) and ICP Working Committee are established to monitor and manage the implementation of the ICP Project(s):
- a. **ICP Committee**
    - i. The Chairman of the IC shall be the Secretary General of the *Name of Ministry*.
    - ii. The Government shall nominate the following representatives to become members of the IC:
      - (a) At least two (2) representatives from the Ministry of Finance (MOF);
      - (b) At least a representative from regulator);
      - (c) A representative from Malaysian Industry-Government Group for High Technology (MIGHT);
      - (d) A representative from TDA;
      - (e) Any representatives from the related industry player and/or operators

(on need basis).

- iii. The IC shall meet on a monthly interval unless otherwise agreed.
- iv. Decisions of the IC shall require the consensus of the Parties. If the Parties are unable to achieve consensus, then the subject matter of the decision shall be referred for resolution to the Dispute Resolution Committee in accordance with the terms of [Clause 13.2].

b. **Working Committee**

- i. The ICP Working Committee shall consist of at least two (2) representatives from IMU and two (2) representatives from Ministry.
- ii. Its main responsibilities is to compile and consolidate all matters pertaining to the ICP Projects as gathered from the IMU during project meeting with the Contractor and then make the necessary recommendation to the IC final approval or MIEC.

6.10 The envisaged deliverables and timescales for completion of the ICP Project(s) are set forth in Schedule A.

## 7. ICP PROJECT PERFORMANCE

7.1 The IMU shall prepare, at three (3) monthly intervals, an ICP Implementation Report that formally records the status of each of the ICP Projects. The contents of such report will be co-ordinated with, and agreed by, the Parties prior to issue [and will not be disclosed to either the Recipients or *ICP Provider(s)* without the prior written agreement of the Parties]. In this regard, the *Supplier* must submit its status report on the progress of each *ICP Project* in a timely manner to TDA and IMU in order to enable the preparation of the ICP Implementation Reports.

7.2 Any ICP credits claimed by the *Supplier* shall only be credited upon due verification of such claims in compliance with the processes in the ICP Policy by TDA and IMU.

7.3 In the event the *Supplier* fail to submit status report on the progress of each ICP Project stated in clause 7.1 and/or based on the verification by the IMU that the *Supplier* does not achieve the target milestone as stated in the schedule A, IMU shall issue Reminder Letters to the Contractor to remedy the default within fourteen (14) days for each and every Reminder Letters. Failure to remedy the default by the Contractor upon Final Reminder Letter issued by IMU, IMU shall refer the matter to IC for their further action.

- 7.4 The *Supplier* shall only be regarded as having fulfilled its obligations under this Agreement when:
- a. All ICP Projects specified in Schedule A of this Agreement have been duly certified by the Government as being successfully completed in accordance with this Agreement and the processes stipulated in the ICP Policy;
  - b. The agreed [ICP Credits Value] has been achieved or, in the event that it has not been achieved, all claims for Liquidated Damages pursuant to [Clause 9.1] have been fully paid to the Government; and
  - c. A formal certificate for discharge (“Discharge Certificate”) has been duly issued by the Government to the *Supplier* in relation to this Agreement.

## 8. PERFORMANCE BOND

- 8.1 The *Supplier* shall, no later than the Effective Date, deposit with the Government an irrevocable Bank Guarantee (issued by an approved licensed bank or financial institution incorporated in Malaysia) in favour of the Government for a sum equivalent to five percent (5%) of the total Contract Sum [under the Supply contract] or the total Obligated ICP Credit Value (whichever is lower), as a Performance Bond to secure the due performance of the *Supplier's* obligations under this Agreement. The Performance Bond shall remain valid and effective from the date of issuance until the completion of the ICP Project (through the issuance of the Discharge Certificate pursuant to Clause 7.4.c.). Not later than sixty (60) days prior to the expiry date of the Performance Bond and the ICP Project Duration is extended beyond the expiry date, the Supplier, at its own cost, shall provide a replacement Performance Bond for the amount equivalent to five percent (5%) of the total Contract Sum [under the Supply contract] or the Total Obligated ICP Credit Value (whichever is lower) and the replaced Performance Bond shall be valid until the actual completion date as determined by the Government. The required form of the Performance Bond is as attached in Schedule B.
- 8.2 Notwithstanding anything contained in this Agreement and without prejudice to the other rights of the Government, if the *Supplier* fails to perform any of his obligations under the Agreement and such failure is not remedied in accordance with this Agreement, the Government shall be entitled to call upon the Performance Bond, whether wholly or partially, at any time and from time to time, as part compensation in relation to such unfulfilled obligation or breach on the part of the *Supplier*.



8.3 The Performance Bond (or any balance thereof remaining for the credit of the *Supplier*) may be released to the *Supplier* after the full completion of the *ICP Project*.

8.4 Notwithstanding Clause 8.2 and without prejudice to the other rights and remedies of the Government (whether under this Agreement or otherwise), in the event this Contract is terminated under [Clause 11.1], the Performance Bond (or any balance thereof, if applicable) shall be fully forfeited by the Government as part compensation from the *Supplier* in relation to such termination.

## 9. LIQUIDATED DAMAGES

9.1 In the event that, at the end of the [*ICP Project* Duration], the *Supplier* fails to achieve the *ICP Project* and/or the [*ICP Project* Value] as set forth in Schedule A, then following a six (6) months grace period, the Government shall be entitled to claim from the *Supplier* Liquidated Damages for a total amount not exceeding 5% of the total Obligated ICP Credit Value the calculation of which shall be subject to the second tier ICP Agreement and guidelines in the ICP Policy.

9.2 Payment of Liquidated Damages by the *Supplier* in accordance with Clause 9.1 above shall be in full discharge of the non-achieved [*ICP Project* Value] and the sole remedy of the Government against the *Supplier* for such failure in achieving the agreed [*ICP Project* Value] only. For the avoidance of doubt, the Government shall still be entitled to any other remedy to which it is entitled for (among others) any other failure or breach of this Agreement by the *Supplier*.

## 10. FORCE MAJEURE

10.1 Neither party shall be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations under this Agreement as a result of the occurrence of acts of God, fire, explosions, strikes, lockouts, riots, civil commotions, mobilizations threat or existence of war, blockades, embargoes, requisitions of vessels, epidemics, acts of authorities concerned or from any other causes beyond the reasonable control of either party which affects the performance of any of the ICP Projects ('event of Force Majeure').

10.2 If an event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligations under this Agreement, that Party shall notify the other Party as soon as practicable of the occurrence of the event of Force Majeure and take all reasonable measures to mitigate any delay or interruption to its obligations.

10.3 The time for performance of the ICP obligation to be performed under this Agreement shall be extended by a period equivalent to the time lost as a result of such delay, plus

such reasonable schedule recovery time as the parties agree to be reasonable in light of the circumstances surrounding such event of delay.

- 10.4 If either Party considers the event of Force Majeure to be of such severity or to be continuing for such period that the affected Party is unable to perform any of its obligations under this Agreement, this Agreement may be terminated by mutual agreement.
- 10.5 Neither Party shall be entitled to rely upon the provisions of Clause 10.4 above if one Party reasonably determined that an event of Force Majeure has not occurred. If the other Party does not agree that an event of Force Majeure has occurred, the dispute may be referred to the [Dispute Resolution Committee].
- 10.6 Where this Agreement is terminated pursuant to Clause 10.4, the *Supplier* shall comply with all instructions and directions given by the Government.
- 10.7 For the avoidance of doubt, the Parties shall continue to perform those parts of their obligations not affected, delayed or interrupted by an event of Force Majeure and such obligations shall, pending the outcome of Clause 10.5, continue in full force and effect.

## 11. FURTHER EVENTS OF TERMINATION

### 11.1 Termination by the Government

- a. In the event the *Supplier* without reasonable cause:
- i. Persistently neglects to carry out its obligations under this Agreement;
  - ii. Defaults in performing its duties under this Agreement; or
  - iii. Breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to the *Supplier* specifying the default and requiring the *Supplier* to remedy such default within fourteen (14) days after date of the notice. If the *Supplier* fails to remedy the relevant default within such period or such other period as may be determined by the Government, the Government shall have the right to terminate this Agreement at any time thereafter by giving notice to that effect.

- b. If at any time during the subsistence of this Agreement:

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- i. An order is made or a resolution is passed for the winding-up of the *Supplier*, except for the purpose of reconstruction or amalgamation not involving the realization of assets in which the interest of creditors are protected;
- ii. The *Supplier* goes into liquidation or a receiver is appointed over the assets of the *Supplier* or the *Supplier* makes an assignment for the benefit of or enters into an arrangement or composition with its creditors stops payment or is unable to pay its debts;
- iii. As execution is levied against a substantial portion of the *Supplier*'s assets, unless it has instituted proceedings in good faith to set aside such execution; or
- iv. The Supply contract is terminated for any reasons (other than by virtue of the events referred to in [Clauses 11.2.b.i. and 11.2.b.ii.] below, then the Government shall have the right to terminate this Agreement forthwith by giving notice to that effect.

11.2 Termination by the *Supplier*

- a. If the Government without reasonable cause fails to perform or fulfil any of its obligations which adversely affect the *Supplier*'s obligations under this Agreement, the *Supplier* may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within thirty (30) days after receipt of such notice or such other extended period as agreed by the Parties. If the Government fails to remedy the relevant default within such period or such other extended period as agreed by the Parties, the *Supplier* shall be entitled to terminate this Agreement at any time by giving notice to that effect.
- b. The *Supplier* shall have the right to terminate this Agreement forthwith if:
  - i. The Supply contract is terminated for any reason not attributable to any default, breach, act or omission on the part of the *Supplier*, or
  - ii. Government is in material default of its obligations under the Supply contract and fail(s) to remedy such fault within thirty (30) days' notice of such default.

### 11.3 Consequences of Termination

- a. Upon termination of this Agreement:
  - i. The powers and rights granted by and the obligations in this Agreement of the Parties shall terminate immediately (except for those obligations which are expressed to continue after termination);
  - ii. (In the event of termination under Clause 11.1) the Government shall claim against the *Supplier* for all losses and damages suffered as a result of the termination of this Agreement.
- b. Provided that the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of an act, deed, matter or thing happening prior to such termination. However, the total liability of the Supply contractor under this Agreement shall not exceed 5% of the total Obligated ICP Credit Value.

## 12. CONFIDENTIALITY AND NON-DISCLOSURE

- 12.1 The Government and *Supplier* agree that this Agreement and all matters pertaining to this Agreement (including, without limitation, the terms of this Agreement, the Supply contract or any commercial and technical information that arises out of this Agreement) shall be considered as confidential information ('Confidential Information').
- 12.2 Except with the prior written consent of the Government and subject to Clause 12.3 below, the *Supplier*, its personnel, sub-*contractors*, agents and their personnel shall not at any time:
  - a. Communicate to any person or body or entity except those employees, agents, sub-*contractors* and other *contractors* who are on a need-to-know basis, any Confidential Information disclosed to it for this Agreement or otherwise received by it as a result of the Parties' relationship under and pursuant to this Agreement);
  - b. Make public any information as to the recommendations, assessments and opinions formulated in the course of or pursuant to this Agreement;
  - c. Make or cause to be made any press statement or otherwise relating to this Agreement nor publish or cause to be published any material whatsoever relating to this Agreement.

12.3 The obligations in Clause 12.2 above shall not apply to any Confidential Information which:

- a. Have been in the *Supplier*'s possession (with full right to disclose) before receiving it from the Government;
- b. Is or becomes public knowledge other than by breach of Clause 12.2 above;
- c. Is independent or developed by the *Supplier* without access to or use of the Confidential Information; or
- d. Is lawfully received from a third party (with full rights to disclose).

12.4 The provisions of this Clause shall survive and continue to have effect after expiry or termination for any reason whatsoever of this Agreement.

### **13. DISPUTE RESOLUTION COMMITTEE**

13.1 Any dispute between the Parties in respect of any matter under this Agreement (except in relation to the Government exercising its sole discretion under this Agreement) may be referred to a dispute resolution committee (the 'Dispute Resolution Committee') comprising:

- (a) *TKSU (D)* as the Chairman;
- (b) Two (2) representatives appointed by the Government; and
- (c) Two (2) representatives appointed by the *Supplier*.

13.2 The Dispute Resolution Committee may appoint an independent expert to advise it on any matter referred to it and all costs, fees and expenses of any independent expert so appointed shall be borne equally by the Parties.

13.3 The Dispute Resolution Committee shall determine its own procedures. The Dispute Resolution Committee shall meet and endeavour to achieve an amicable settlement between the Parties in respect of any matter referred to it. If any matter, dispute or claim referred to the Dispute Resolution Committee cannot be mutually agreed by the Parties within thirty (30) days after the date of referral, then either Party may refer that matter, dispute or claim to an arbitrator or pursuant to Clause 14.

## 14. GOVERNING LAW AND ARBITRATION

- 14.1 This agreement shall be governed by and interpreted and construed in accordance with the laws of Malaysia.
- 14.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration by [one] arbitrator to be appointed jointly by the Parties, or failing such agreement, to be nominated on the application of either Party by the Director of Kuala Lumpur Regional Centre for Arbitration. Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 2005.
- 14.3 The arbitration shall be held at the Kuala Lumpur Regional Centre for Arbitration using the arbitration rules of the centre and utilising the facilities and system available at that centre.
- 14.4 The arbitration proceedings shall be conducted in the English language and/or Bahasa Malaysia.
- 14.5 Each party shall bear its own costs of the arbitration proceedings.
- 14.6 The decision and award of the arbitrator shall be final and binding on the parties.
- 14.7 The referral of any matter, dispute or claim to arbitration pursuant to this Clause or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the Parties to perform their respective obligations under this Agreement.

## 15. RELEASE OF OBLIGATION

- 15.1 The *Supplier* is entitled to submit a written request with supporting document to the GOVERNMENT for the release of its *ICP Project* obligation. A certificate of completion duly signed by the authorized representative of the GOVERNMENT and the *Supplier* shall form part of that supporting document. The *Supplier* is deemed to have fulfilled its Offsets obligations under this Contract if:
- a. All *ICP Project* specified in Schedule A of this Contract have been fully certified as completed by the Government as defined in Clause 7;
  - b. The last Progress Report has been submitted by the *Supplier* to the GOVERNMENT in accordance with Clause 7; and

- c. Formal Discharge Certificate issued by the Government in relation to this Agreement to the Supplier.

- 15.2 The GOVERNMENT shall confirm in writing to the *Supplier* that its obligations under this Contract have been fulfilled.
- 15.3 All data and information supplied pursuant to the ICP Program shall be treated as strictly confidential.

## **16. EXCUSABLE DELAY**

- 16.1 Neither party shall be responsible for any failure to perform ICP Projects which may arise from acts of God, fire, explosions, strikes, lockouts, riots, civil commotions, mobilizations threat or existence of war, blockades, embargoes, requisitions of vessels, epidemics, acts of authorities concerned or from any other causes beyond the reasonable control of either party which affects the performance of any of the ICP Projects.
- 16.2 The affected party shall notify the other party of such failure or delay within one month of the date of actual occurrence of the cause of any delay.
- 16.3 The time for performance of the ICP obligation to be performed under this Agreement shall be extended by a period equivalent to the time lost as a result of such delay, plus such reasonable schedule recovery time as the parties agree to be reasonable in light of the circumstances surrounding such event of delay.
- 16.4 If the cause continues for more than ninety (90) days from the date of issuance of notification, then the ICP Project which is affected by such cause may be terminated.

## **17. FURTHER ASSURANCE**

Each Party shall execute and do all such documents and things as are necessary to carry this Agreement into effect or to give full effect to this Agreement.

## **18. AMENDMENT**

The provisions of this Agreement shall not be amended, modified or waived in any way other than by agreement in writing duly entered into by the Parties after the date of this Agreement.

**19. ASSIGNMENT**

This Agreement may not be assigned (by operation of law or otherwise) or otherwise transferred in whole or in part by the *Supplier* unless the Supplier has received prior written consent from the Government. To the extent the *Supplier* is permitted to assign this Agreement, all provisions of this Agreement shall be binding upon the *Supplier's* successors or assigns.

**20. SEVERABILITY**

If any provision of this Agreement or any part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject to, it shall be rendered void, illegal or unenforceable to that extent and no further. Such provision which is rendered void, illegal or unenforceable shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties. The remainder of this Agreement shall remain in full force and effect as if this Agreement had been entered into without the void, illegal or unenforceable portion.

**21. WAIVER**

No failure, omission or delay on the part of any Party in exercising any right, power, privilege or remedy accruing to the other Party under this Agreement upon any default on the part of the other Party, shall impair any such right, power, privilege or remedy or be construed as a waiver thereof or any acquiescence in such default.

**22. COMPLIANCE WITH APPLICABLE LAWS**

The *Supplier* shall comply with all applicable laws and with all directions, orders, requirements and instructions given to the *Supplier* by any authority competent to do so under any applicable Malaysian laws.

**23. COST AND STAMP DUTY**

All costs incidental to the preparation and completion of this Agreement, including the stamp duty payable thereon, shall be borne and paid for by the *Supplier*.



## 24. NOTICES

Without affecting any other effective mode of service (whether in relation to service of legal process or otherwise), any notice to be given under this Agreement shall be delivered personally or sent by registered post or by facsimile to the address or facsimile number notified from time to time by each party to this Agreement and marked for the attention of the person or department (if any) from time to time designated by that Party for the purposes of this Agreement. The address and facsimile number for service of a Party is its address and facsimile number as reflected in this Agreement or such other address / facsimile number as may be notified by one Party to the other Party from time to time. The address for service of a Party is its address shown below or the address last notified by the intended recipient to the sender.

In the case of notice to the Government:

### **TDA**

ICP Management Services,  
XXXXXXX  
XXXXXXX  
(Attention: Director)  
Fax: XXXXXXXX

In the case of notice to *Supplier*

*Supplier's* Address

Fax: +XXXX XXXX

A notice is deemed to have been served as follows:

- (a) If personally delivered, at the time of delivery;
- (b) If posted, at the expiration of seventy two (72) hours after the envelope containing it is delivered to the postal authorities; or
- (c) If by facsimile transmission (if transmitted during normal working hours on a business day), upon receipt of the successful transmission report referred to below or (if otherwise) at 9.30 a.m. on the business day following successful transmission.

In proving service, it is sufficient to prove that personal delivery was made, or that the envelope containing the notice was properly addressed and delivered to the postal authority by registered post or that a successful facsimile transmission report was received in the ordinary course of the process.

**25. WHOLE AGREEMENT**

This Agreement, including the Schedules, contains the whole agreement between the Parties and supersedes any prior written or oral agreement between them in relation to its subject matter and the Parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement.

\*\*\*\*\* *END OF CLAUSES* \*\*\*\*\*

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be signed on (day)\_\_\_\_\_ (month)\_\_\_\_\_ (year)\_\_\_\_\_ on their behalf by the hands of their authorised officers/representatives.

**For The Government of Malaysia**

**For *Supplier***

Ministry of KKKK

**Head of Organization**

*Name of Supplier*

In the presence of

In the presence of

.....

.....

Title .....

Title .....

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**SCHEDULE A**

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<b>Name of The ICP Program</b>		Doc. No.	
Ref No.		Title	Title of the Project
<b>Supplier</b> <i>Name of the Supplier</i>		<b>Type</b> <i>Work Package(s)</i> <input type="checkbox"/> <i>Technology Transfer(s)</i> <input type="checkbox"/> <i>Market Access</i> <input type="checkbox"/> <i>Investment</i> <input type="checkbox"/> <i>Others</i> <input type="checkbox"/> <i>Please explain:</i> _____	
<b>Description</b>			
<b>Beneficiary(ies)</b> <ul style="list-style-type: none"> <li><i>Name of the ICP Recipient(s)</i></li> <li><i>Address</i></li> <li><i>Contact number(s)</i></li> </ul>		<b>ICP Provider</b> <ul style="list-style-type: none"> <li><i>Name of the ICP Recipient(s)</i></li> <li><i>Address</i></li> <li><i>Contact number(s)</i></li> </ul>	
<b>Benefits to Malaysia</b>			

<b>Task &amp; Milestones</b>		<b>Target</b>	
1. Milestone 1		20xx	
2. Milestone 2		20xx	
3. Milestone 3		20xx	
<b>Deliverables</b>			
1. Technology 1			
2. Technology x			
3. Others (JV, Investment, contract manufacturing, market access, etc)			
<b>ICP Valuation</b>			
<b>ORD Clause</b>	<b>Nominal Value (RM)</b>	<b>Multiplier</b>	<b>ICP Credit Value</b>
3.x.x			
• Activity 1	Please provide supporting		
• Activity 2	Please provide supporting		
• Activity n	Please provide supporting		
<b>TOTAL</b>			
<b>Discharge Milestone</b>			
<b>Milestones</b>	<b>% of Total ICP Credit Value</b>	<b>Credit Value</b>	<b>Evidence</b>
Milestone 1			
Milestone 2			
Milestone... XX			
<b>TOTAL</b>			
<b>Miscellaneous</b>			

<b>Concurrence</b>			
Government:		<i>Supplier:</i>	
Date		Date	

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**SCHEDULE B**

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FORM OF PERFORMANCE BOND FORMAT

(To Be Typed Onto Bank Letter Head)

To,

[Name of Company]

[Address]

**BANK GUARANTEE**

[Name of Company] (Company No. [\*\*]) ("*Supplier*") has entered into an Agreement relating to the provision of ICP projects implementation in connection with the works package of "*Name of the Procurement Program*" ("Agreement") with the Government of Malaysia (as represented by the [TDA or DID or Name of OMU as ICP Management Unit], for purposes of the Agreement) ("*Government*").

WHEREAS one of the express conditions of the Agreement is the receipt by the Government of this Guarantee duly executed by (Name of Bank) \_\_\_\_\_ and the maintenance by the *Supplier* of such valid and enforceable Guarantee in favour of the Government throughout the required period.

Now therefore (Name of Bank) \_\_\_\_\_ (hereinafter called the "Guarantor") at the request of the *Supplier* and for good and valuable consideration (receipt of which is acknowledged by the Guarantor), hereby irrevocably and unconditionally guarantees and undertakes to the Government as follows: -

1. The Guarantor shall immediately pay to the Government, upon the Government's demand at any time, and from time to time, the amount specified in such demand(s), up to a total maximum amount of Ringgit Malaysia [\*\*] only (RM[\*\*]).

Payment under this Guarantee in the manner specified above will be made by the Guarantor to the Government, without any requirement for proof or fulfilment of any other conditions, notwithstanding any protest or contestation by the *Supplier* or any third party and without any right to set-off or counterclaim.

2. The Guarantor shall not be discharged or released from this Guarantee by:
  - a. any arrangement made between the Government and the *Supplier*, with or without the consent of the Guarantor; or
  - b. any alteration in the obligations undertaken by the *Supplier* or

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- c. any forbearance whether as to payment, time, performance or otherwise; or
  - d. any change in the name or constitution of the *Supplier*, Government or the Guarantor; or
  - e. any act or omission which would otherwise discharge or affect its liability as Guarantor under this Guarantee.
3. The Guarantor agrees that this Guarantee is a continuing guarantee and is given regardless of whether or not the sum payable by the Guarantor is recoverable by legal action or arbitration.
  4. This Guarantee shall be in addition to any present or future collateral instrument or any other right or remedy held by, or available to, the Government against the *Supplier*.
  5. A written demand or statement from the Government shall be final and conclusive evidence against the Guarantor for all purposes whatsoever (including, without limitation, in relation to any amount due from the *Supplier* to the Government or any legal proceedings).
  6. This Guarantee is irrevocable and shall be effective for an initial period of one (1) year from \_\_\_\_\_ until [date] (“Initial Expiry Date”). After the Initial Expiry Date, the Guarantor shall automatically extend the effective period of this Guarantee to such successive annual periods as may be required by the Government.
  7. All claims and demands under this Guarantee shall be received by the Guarantor not later than [sixty (60) days] after the expiry of this Guarantee pursuant to Item 6 above.
  8. This Guarantee shall not be assigned without the Bank/Guarantor’s prior written consent.
  9. For the avoidance of doubt, the total amount payable by the Guarantor pursuant to this Guarantee shall not exceed RM[\*\*].

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

Signed for and on Behalf : \_\_\_\_\_

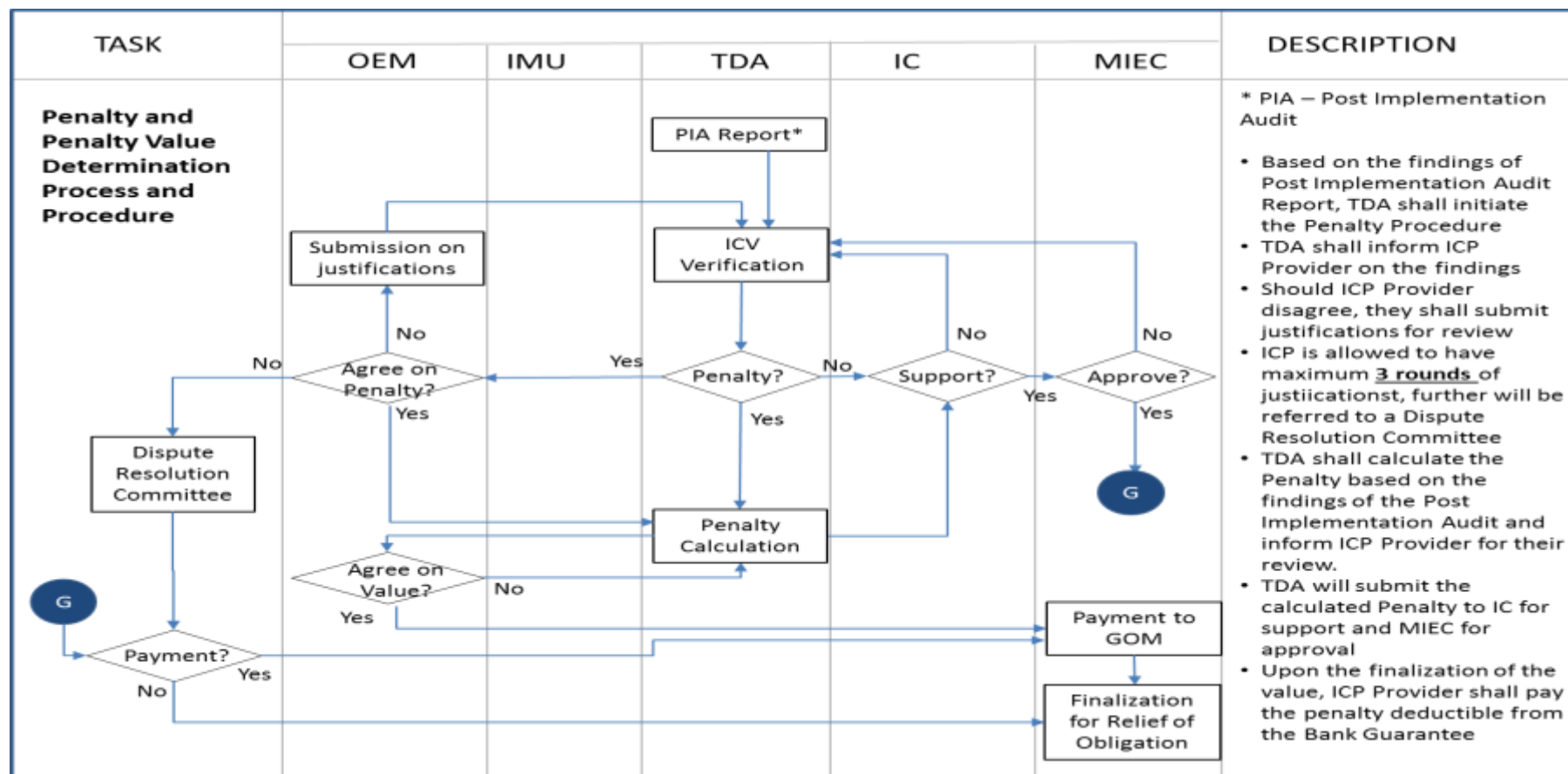
Name of the Bank : \_\_\_\_\_

Address : \_\_\_\_\_

Date : \_\_\_\_\_

**PENALTY MANAGEMENT**

**1. Penalty Management Process**



## 2. Penalty Calculation

$$ICV_{Project} = (ICV_{EEP} + ICV_{offset} + ICV_{CT})_{Project} + [MLC]$$

Other element
Localization

Penalty would be calculated based on:

- Un-achievement of the localization (MLC) - where minimum value is 30% of Mandatory ICV
- Un-achievement of other element

*Un-achievement of a Project Localization*

$$Unachieved\ MLC_{Pr} = [ (MLC_{Pr} (\%)) - MLC_{PrV} (\%)]$$

*Un-achievement of a Program Localization*

$$Unachieved\ MLC_{Program} = \sum_{i=1}^n [ (MLC_{Pr} (\%)) - MLC_{PrV} (\%)]_i$$

*Un-achievement of Other Element of a Project*

$$Unachieved\ Other\ Element_{Pr} = [ (Other\ Element_{Pr} (\%)) - Other\ Element_{PrV} (\%)]$$

*Un-achievement of Other Element of a Program*

$$Unachieved\ Other\ Element_{Program} = \sum_{i=1}^n [ (Other\ Element_{Pr} (\%)) - Other\ Element_{PrV} (\%)]_i$$

**Therefore**

$$Unachieved\ ICV_{Program} = [ Unachieved\ MLC_{Program} + Unachieved\ Other\ Element_{Program} ]$$

$$Penalty_{Total} = ICV_{Program} * (Unachieved\ ICV_{Program}) * 5\%$$

**ATTACHMENT 6**

**SAMPLE ON SCHEDULED PROGRESS REPORT**

**PROGRESS REPORT FROM IMU TO TDA**

The progress report from *IMU* to *TDA* shall include the followings:

**1. BACKGROUND OF ICP**

- 1.1. Date:
- 1.2. Details of *STU/OEM* (Name of the Company, adress, tel no etc.)
- 1.3. Name of Program, Contract Reference, and Total Obligation
- 1.4. Name of Program Manager
- 1.5. Summary of Program backgorund: *(if any)*

**2. ICP IMPLEMENTATION**

- 2.1. Implementation Plan and Overall ICP Implementation Schedule
- 2.2. Achievement on overall ICP implementation at the period of reporting
- 2.3. Overall ICP Credit Value achieved at the period of reporting
- 2.4. Overall ICP implementation issues
- 2.5. Risks of the issues and impact onto ICP implementation
- 2.6. Reccomendations of mitigation plans
- 2.7. Lessons learned – *if any*

**3. ICP RECEPIENT PROJECT DETAILS**

- 3.1. Name of ICP Recipient *(name of company, address, contacts etc.)*
- 3.2. Name of the Project, Contract Reference and ICP Value
- 3.3. Name of Project Manager
- 3.4. Type of *ICP* *(Direct/Indirect)*, Project Value and Type of Project *(Local Work Package, Localalization, ToT etc.)*
- 3.5. Achievement the Project implementation at the period of reporting
- 3.6. Overall ICP Credit Value for the project achieved at the period of reporting.

ATTACHMENT 7

**SAMPLE OF ICP OBLIGATION RELIEF LETTER**

Name of ICP: \_\_\_\_\_ Ref No: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Name and Adress of ICP Provider)*

Dear Sir,

**LETTER OF ICP OBLIGATION RELIEF FOR PROGRAM \_\_\_\_\_**

iii. We wish to inform you that with reference to 1<sup>st</sup> Tier ICP Agreement for ICP \_\_\_\_\_ Ref No \_\_\_\_\_ signed on day \_\_\_\_\_ month \_\_\_\_\_ 20 \_\_\_\_\_ (hereinafter referred as 'ICP Obligation') between \_\_\_\_\_ (*name of ICP Provider*) \_\_\_\_\_ and the Government of Malaysia.

iv.

v. The Government of Malaysia hereby **relief you** from your **ICP Obligation** from the date of this letter is signed. All copies of contracts and other document related to the ICP implementation will be kept in our office for future reference and safe keeping. We wish to thank you for your commitment in delivering the **ICP Obligation** as per agreed in the 1<sup>st</sup> Tier ICP Agreement.

**“SERVING THE NATION”**

Your Sincerely,

.....

**Name and Position**

Government Procurement Division

b/p Secretary General of Treasury dan Chairman of MIEC

**ATTACHMENT 8**

**MALAYSIA ICP MANAGEMENT STRUCTURE**

