

CONDITIONS OF CONTRACT (SERVICES)

1 DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:

- (a) "The Board" means Public Utilities Board and shall include its assigns and successors in law and its duly authorised representatives.
- (b) "Contract" includes the Contractor's tender, Instructions to Tenderers, Conditions of Contract, the specifications and samples, Schedule of Prices, Letter of Acceptance, and any order for Services issued by the Board to the Contractor for the supply of the Services.
- (c) "Services" means the work which the Contractor is required to perform under the Contract.
- (d) "Tenderer" means a person or his permitted assigns offering to supply the Services.
- (e) "Contractor" means the successful Tenderer who has been awarded the Contract by the Board.
- (f) "Classified" documents means the documents that are marked with "Secret", "Confidential" or "Restricted".
- (g) "Parties" refer to the Board and the Contractor.
- (h) "Person" includes a corporation or an incorporated association.
- (i) "Background IP" means IP which is created prior to or independently of this Contract.
- (j) "Foreground IP" means IP which results from or is generated pursuant to or for the purpose of this Contract.
- (k) "IP" means intellectual property and shall include patents, copyright, industrial design and integrated circuit topography.

1.2 Words importing the singular include the plural and vice versa.

1.3 The headings are for convenience only and not for the purpose of interpretation.

2 SCOPE OF CONTRACT

2.1 The Contractor shall perform the Services in accordance with the Contract.

3 PERFORMANCE

3.1 The Contractor shall perform the Services by the Performance Date specified in the Appendix and in the manner as specified in the Contract.

4 PAYMENT

4.1 Within thirty (30) days of delivery of the Services ordered under the Contract, as above provided, and upon presentation by the Contractor of his bills and the Board's receipt aforesaid the Board will make payment to the Contractor of the full value of all Services so performed provided that no payment shall be considered as evidence of the quality of any Services to which such payments relates.

- 4.2 The payments under this clause shall not prejudice the Board's right to reject deficient Services or the Contractor's responsibility to re-perform deficient Services.
- 4.3 Without limiting the Board's right under the Contract, the amount of any payment or debt owed by the Contractor to the Board under the Contract may be deducted by the Board from any monies payable by the Board to the Contractor pursuant to this Contract.

5 RIGHTS OF THIRD PARTIES

- 5.1 A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms.

6 GIFTS, INDUCEMENTS AND REWARDS

- 6.1 The Board may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Board or for showing or forbearing to show favour to any person in relation to any contract with the Board, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Board the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the *Penal Code* or *Prevention of Corruption Act* or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the *Penal Code* or the *Prevention of Corruption Act*.

7 DELAY IN PERFORMANCE

- 7.1 If there is delay in the performance of the Services under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotion, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to perform such Services thereby affected but the provisions of the Contract shall remain in full force in regard to any Services not affected by such circumstances aforesaid.
- 7.2 The Performance Date for the Services may be extended by the Board by such further period or periods of time as may reasonably reflect delay in the performance of the Services caused by any circumstances as stated in Clause 7.1.
- 7.3 However either Party may terminate the Contract by giving thirty (30) days written notice if such circumstance or circumstances preventing performance continues for more than nine (9) months save that the termination hereunder shall be without prejudice to liabilities accrued to either Party or monies payable from one Party to the other prior to the said termination.
- 7.4 Subject to Clause 7.1, if the Contractor fails to complete the performance of Services by the date specified in the Contract, the Board shall have the right -
- (a) to cancel all or any such items of Services from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Contractor or shall be recoverable as damages; or
 - (b) to deduct from any moneys due or to become due to the Contractor or require the Contractor to pay, a sum calculated at the rate specified in the Appendix (including

Sundays and Public Holidays), as liquidated damages for every day of delay until the Services are performed.

Provided that the recovery of such increased costs aforesaid shall be limited to such Services as is purchased or obtained, not exceeding the scope stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry of the Contract.

8 SUB-CONTRACTING AND ASSIGNING

- 8.1 The Contractor shall ensure that all subcontractors, appointed directly by the Contractor, are registered with the Building and Construction Authority or other government registration body at the time of their appointment. Except where expressly provided by the Contract, the Contractor shall not sub-contract or assign the Contract without the written consent of the Board.

9 APPLICABLE LAW AND JURISDICTION

- 9.1 The Contract shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose and the parties agree to submit to the jurisdiction of the courts of Singapore.

10 SUSPENSION OR TERMINATION

- 10.1 The Board shall, after giving seven (7) days prior written notice to the Contractor have the right to suspend or terminate the Contract if the Board is affected by any state of war, Act of God or other circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore. Neither party shall be liable to the other by reason of such suspension or termination save that the Board shall pay the Contractor the price of the Services performed and accepted by the Board. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the Board to the Contractor by reason of this Clause.

11 MEDIATION

- 11.1 If the parties agree that the dispute be referred to mediation, the mediation shall be conducted at the Singapore Mediation Centre in accordance with its prevailing prescribed form, rules and regulations. If the dispute cannot be resolved by mediation, then the dispute shall be resolved by reference to arbitration in accordance to Clause 12.1.

12 ARBITRATION

- 12.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Domestic Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

13 RIGHTS OF THE BOARD IN THE EVENT OF DEFAULT BY THE CONTRACTOR

- 13.1 If the Contractor defaults in his performance of this Contract, the Board may issue a notice of default to the Contractor informing the Contractor of his default. The Contractor shall, within thirty (30) days of the date of the notice of default, remedy the default. If the Contractor fails to do so, the Contractor shall be taken to have repudiated the Contract and the Board shall have the right to either (i) terminate the Contract or (ii) cancel any unperformed item(s) of Services from the Contract immediately by way of a notice of termination or cancellation (as the case may be) without the Board being liable therefor in damages or compensation. The said termination or cancellation (as the case may be) shall take effect from the date of the notice of termination or cancellation (as the case may be).
- 13.2 In the event of termination or cancellation under Sub-Clause 13.1 above, the Board shall have the right to purchase from other sources all the Services (or similar services in respect thereof) which remains unperformed at the time of termination or cancellation (as the case may be), and all increased costs reasonably incurred by the Board shall be deducted from any moneys due or to become due to the Contractor, or shall be recoverable from the Contractor as damages.
- 13.3 Notwithstanding anything contained herein, the Contractor shall not be entitled to claim for any reimbursement or loss of anticipated profit for the value of any of the Services not rendered at the time of termination or cancellation (as the case may be) of this Contract.

14 VARIATION OF CONTRACT

- 14.1 No variation whether oral or otherwise in the terms of this Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the Board.

15 TAXES, FEES AND DUTIES

- 15.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or his employees including the Contractor's resident engineers and inspectors (if applicable), in carrying out his obligation under the Contract.
- 15.2 If the Board receives a request from the tax authorities to pay taxes, fees, duties, fines, levies and assessments on behalf of the Contractor and/or the Contractor's employees including the Contractor's resident engineers and inspectors (if applicable) or to withhold payments from the Contractor in order that the Board may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises the Board to comply with the terms of the said request.
- 15.3 The Board shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax chargeable on the supply to the Board of any services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax under the (Singapore) *Goods and Services Tax Act*, Cap. 117A.
- 15.4 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the Singapore Goods and Services Tax, be in the same form and contain the same information as if it were a tax invoice for the purposes of the Regulations made under the *Goods and Services Tax Act*, Cap. 117A.

16 GOVERNMENT REGULATIONS

- 16.1 The Contractor shall, at his own costs, obtain and maintain all licence and authorisations, including export licences and permits and other governmental authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all his obligations under the Contract.

17 INDEMNIFICATION OF THE BOARD AGAINST CLAIMS BY CONTRACTOR'S EMPLOYEES

- 17.1 In the event of the Board (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Contractor in and for the performance of the Contract, the Contractor shall indemnify the Board, its officers or departments against such claim and any costs, charges and expenses in respect thereof, provided the same is not caused by the gross negligence or wilful default of the Board, its officers or agents.

18 “NOT USED”

19 ORDERS FOR SERVICES

- 19.1 All orders for Services to be supplied under the Contract shall be given from time to time, in writing, by the Board on the appropriate order form. All such orders shall clearly state the details and nature of the Services to be supplied and shall also state the amount, calculated at the rates in the Contract, that shall become due to the Contractor on the satisfactory completion of all the Services specified on such order. On satisfactory completion of such Services the Contractor shall submit his bill to the Board who shall certify the same for payment to the Contractor at the time and in the manner hereinafter provided.
- 19.2 On receipt of any order the Contractor shall commence performance of the Services referred to therein and complete the same as soon as promised in his tender or otherwise as expeditiously as possible.

20 REPLACEMENT OF PERSONNEL

- 20.1 The Board may request the Contractor to replace any of his personnel without assigning any reason. The Contractor shall replace the said personnel within fourteen (14) days from the date of the written request from the Board.

21 CONFIDENTIALITY AND SECURITY

- 21.1 Except with the written consent of the Board, the Contractor shall not disclose the Contract or any provisions thereof or any information issued or furnished by or on behalf of the Board in connection therewith to any person.
- 21.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the Board or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of the Board.
- 21.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information

or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Board.

- 21.4 The Contractor shall ensure all his personnel and those of his subcontractors or agents who are or may be involved in the execution of his obligations under this Contract complies with the provisions of the Official Secrets Act (Chapter 213) and in particular to Section 5 thereof and the Statutory Bodies and Government Companies (Protection of Secrecy) Act (Chapter 319). At any time if so requested by the Board, each of them shall sign an undertaking to safeguard official information in accordance with Annex E.

22 QUALITY AND PERFORMANCE

- 22.1 Wherever in any Specification forming part of this Contract any Services are stipulated to conform to a designated Standard Specification or to give certain performance figures in operation, the Contractor shall furnish, at the time of supplying such Services, certificates showing that the necessary tests have been carried out and that the specified figures, subject only to the recognised tolerances and rejection limits applicable to such figures, have been obtained.

23 INSURANCES

- 23.1 The Board will arrange through the Appointed Insurance Broker, Jardine Lloyd Thompson Pte Ltd the following insurances (hereinafter referred to as 'Employer Arranged Insurances'):

- (a) Contractors' All Risks including Third Party Liability Insurance
- (b) Work Injury Compensation Insurance

- 23.2 The Employer Arranged Insurances shall be arranged in accordance with the 'Specimen Policies' and shall consist of the following:-

- (a) Contractors' All Risks including Third Party Liability Insurance
 - (i) Cover shall be arranged in the joint names of The Board, Contractor and sub-contractors in any tier.
 - (ii) Insurance is provided for Services rendered (as more fully defined in the Specimen Policies) for a value of not less than the Contract Sum shown in the Letter of Acceptance
 - (iii) Free issue materials provided by The Board, if applicable, shall be insured as an additional item under Sum Insured.
 - (iv) Insurance is extended to cover property of the Board held under the care, custody and control of the Contractor for an amount of SGD2,000,000 in the aggregate on a first-loss basis (as more fully defined in the Specimen Policies).
 - (v) The period of insurance shall be for the duration of Services plus the Warranty/Defects Liability Period (if applicable) of twelve (12) months or such period as specified in the Appendix.
 - (vi) Insurance cover during the Defects Liability Period shall cover against loss or damage to the Works caused on the site during the construction period prior to the commencement of Defects Liability Period and/or any operation carried out by the Insured Contractor in the course of the operations carried out for the purpose of complying with the obligations under the defects liability

provisions of the Contract including loss or damage to any outstanding works which are being undertaken during the Defects Liability Period.

- (vii) Cover shall exclude plant and equipment owned or hired by the Contractor and sub-contractors in any tier.
- (viii) The limit of indemnity to be effected under Third Party Liability section for all damages payable to any one claimant or any number of claimants in respect of or arising out of any one occurrence or in respect of or arising out of all occurrences of a series consequent upon or attributable to one source or original cause shall be SGD10,000,000, unlimited any one period.

(b) Work Injury Compensation Insurance

- (i) Cover shall be arranged in the joint names of The Board, Contractor and sub-contractors in any tier.
- (ii) The insurance shall cover all employees of the Contractor and sub-contractors in any tier engaged in connection with the Services.
- (iii) The insurance shall provide compensation in accordance with the provisions under the Work Injury Compensation Act (Cap. 354) or any statutory modification or amendment or re-enactment thereof. The insurance shall also provide for liability under Common Law for all damages payable to any one claimant or any number of claimants in respect of or arising out of any one occurrence or in respect of or arising out of all occurrences of a series consequent upon or attributable to one source or original cause for a limit of SGD10,000,000.

- 23.3 The Employer Arranged Insurances shall not in any way reduce the Contractor's liabilities in respect of his liability to indemnify the Board in respect of personal injury to or death of any person or loss of or damage to any property.
- 23.4 The Contractor shall be fully responsible for all excesses/deductibles carried in the Employer Arranged Insurances.
- 23.5 The Contractor is deemed to have read, accepted and shall comply with all the terms and conditions contained in the Specimen Policies.
- 23.6 The Contractor shall, at his own expense notify, prepare, negotiate and settle all claims under the Employer Arranged Insurances with the insurers, loss adjusters and/or Appointed Insurance Brokers.
- 23.7 The Contractor shall allow for all attendance and incidental costs incurred in connection with the administration and claims handling of the Employer Arranged Insurances. The Contractor is to observe and comply with the instructions under the 'Claims Procedure'.
- 23.8 Any moneys, if and when received from Insurers in respect of any loss of or damage to the Works or unfixed Plant, materials or goods, shall be paid in the first place to The Board and then (less only the percentage for the professional fees, if any) released to the Contractor by instalments on the interim certificate of The Board, calculated as from the date of receipt of the moneys in proportion to the extent of the work of restoration, replacement or repair previously carried out by the Contractor, but having regard also to any likely shortfall or deficit in the money so paid and to the Contractor's consequential obligation in such event to reinstate an appropriate proportion of the loss or damage represented by such shortfall or deficit free of charge.

- 23.9 The Contractor shall be deemed to have satisfied himself and to have caused his sub-contractors in any tier to have satisfied themselves with regard to the extent of the Employer Arranged Insurances. The Contractor shall at his own expense provide for his own account or that of any sub-contractor, supplier, vendor or similar party such other forms of insurance, additional limits of liability, coverage for additional exposures or risks encountered during the course of the Works and the like as he may deem necessary and shall be fully responsible for all excesses/deductibles carried in such insurances.
- 23.10 Without limiting the responsibilities of the Contractor under the Conditions of Contract, the Contractor shall, at his own expense, be responsible for effecting or causing their sub-contractors in any tier to effect and maintain throughout the currency of the Contract including the Warranty/Defects Liability Period where applicable, insurances insofar as they may be applicable to the Works:-
- (a) Insurance for loss or damage to plant and equipment used by the Contractor or sub-Contractors of any tier for use in the execution and completion of the Services.
 - (b) Insurance for loss or damage to Contractor's site accommodation/office and contents therein including the site office and office contents of the Board (if any).
 - (c) Insurance covering for liability to third parties for all owned, leased, hired or non-owned mechanically propelled vehicles used or operated in the performance of the Services by or on behalf of the Contractor on public highways or elsewhere such as to be eligible for compulsory Motor Insurance under the provisions of the Laws of Singapore.

The Contractor shall ensure that the above insurances shall waive rights of subrogation against The Board.

- 23.11 The Contractor shall, when instructed to do so by The Board, produce any relevant policy of insurance effected by him in connection with the Works together with the premium receipts. The Contractor shall promptly submit to The Board certified true copies in English of any policy including alterations, endorsements and all premium billings including renewals, or, at The Board's sole option, detailed certificates of insurance signed by an authorised insurer's representative, giving evidence of the existence of such insurances. Where a policy of insurance is required to be submitted by the Contractor, such policy of insurance shall only be accepted and be deemed to be a discharge of the Contractor's obligation to insure upon The Board being in full and complete satisfaction as to the policy's terms, conditions, endorsements and/or exclusions. Where any amendment to such policy of insurance is required, the Contractor shall not be entitled to treat this as a variation.
- 23.12 Should the Contractor default in insuring or continuing to insure as aforesaid, The Board may himself insure against any risk in respect of which the default has occurred and a sum equivalent to any amount paid by him in respect of premiums shall be deducted from any moneys due or to become due to the Contractor.
- 23.13 The Board's approval or failure to disapprove such insurances furnished by the Contractor, including either the Insurer or the terms shall not release the Contractor of full responsibility for loss, damage or liability.

24 DISPOSAL OF DOCUMENTS BY CONTRACTOR UPON TERMINATION OR COMPLETION OF CONTRACT

- 24.1 The Contractor, his employees, agents and subcontractors shall within fourteen (14) days upon the termination of the Contractor's employment under this Contract or upon the expiry of the Defects Liability Period (or upon the expiry of the Contract if the Defects Liability Period is inapplicable):

- (a) Return to the Board all "Classified" documents, papers and copies, thereof
 - (i) belonging to the Board;
 - (ii) received from the Board for the purpose of this Contract; or
 - (iii) produced in the course of this Contractwhich may be in their possession or under their control; and
- (b) Securely destroy and erase all softcopies of "Classified" documents that exist in hard disks, removable storage media and other storage media or facility whatsoever.

25 INTELLECTUAL PROPERTY RIGHTS

- 25.1 The Contractor warrants that the services, goods and/or works which the Contractor is required to perform, supply and/or execute under this Contract do not infringe any copyrights or other intellectual property rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, know how and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields (hereinafter referred to as "Intellectual Property"). Notwithstanding the above, the Contractor shall indemnify the Board and its officers or departments against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof.

26 SUPPLY OF ELECTRONIC MEDIA FREE FROM UNAUTHORISED CODE

- 26.1 "Unauthorised Code" means any virus, Trojan Horse, worm logic bomb or other software routine or hardware components designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware or data or to perform any such actions.
- 26.2 The Contractor shall warrant that all storage media and software capable of being stored on electronic media supplied by the Contractor to the Board shall not contain any Unauthorised Code.
- 26.3 The Contractor shall conduct a complete and thorough scan for Unauthorised Code using updated anti-virus software on all storage media and software capable of being stored on electronic media supplied by the Contractor to the Board.
- 26.4 The Contractor shall be liable for and shall indemnify the Board fully against all costs and expenses incurred in the course of or incidental to removing the Unauthorised Codes, and recovering any lost or damaged data or software arising from the Unauthorised Code in the electronic media supplied by the Contractor.

27 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 27.1 Nothing in this Contract shall affect any person's right to own or license Background IP.
- 27.2 All Foreground IP created by the Contractor, his subcontractor or supplier shall vest in the Board. The Contractor shall do all things necessary to ensure that all Foreground IP is assigned to the Board absolutely. The Contractor shall do all such things and to sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the Foreground IP assigned and granted to the Board.

- 27.3 The Contractor shall obtain for and grant to the Board and its agent, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor, his subcontractor or supplier.
- 27.4 For the avoidance of doubt, any IP in any results, report, data or information generated or produced by the Board or another person on behalf of the Board as a result of this Contract shall be owned by the Board.
- 27.5 If the Contractor, his subcontractor or supplier intends to sell or transfer their Background IP, the Contractor shall ensure that the purchaser of the Background IP and every successor in title to the interest in the Background IP has prior written notice of the licence that the Contractor, his subcontractor or supplier has granted to the Board.
- 27.6 If any licence granted or obtained for Background IP under Clause 27.3 is registrable under any IP registration system in Singapore, the Contractor shall:
- (a) register the licence under the IP registration system in Singapore; and
 - (b) deliver copies of documentary proof of such licence registration to the Board as soon as possible.