

CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

1.1 In these Conditions of Contract, unless the context otherwise requires:

- (a) **“Board”** means Public Utilities Board and shall include its assigns and successors in law and its duly authorised representatives.
- (b) **“Acceptance”** means the Acceptance in writing by the Board;
- (c) **“Appendix”** means the Appendix to the Conditions of Contract;
- (d) **“Contract”** means the resulting contract between the Board and the Contractor for the provision of the Goods and Services as a result of the Board’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:
 - (i) the Covering Letter;
 - (ii) the Instructions to Tenderers;
 - (iii) the Contractor's Tender Offer;
 - (iv) these Conditions of Contract;
 - (v) the Requirement Specifications;
 - (vi) the Letter of Acceptance;
 - (vii) any Purchase/Works Order issued by the Board to the Contractor;
 - (viii) any correspondence exchanged between the Board and the Contractor which is agreed to by the Board in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
 - (ix) any formal agreement executed between the Parties,including all schedules and annexes to such documents as relevant.
- (e) **“Contract Period”** has the meaning set out in Clause 40.
- (f) **“Contract Price”** or **“Contract Sum”** means the aggregate Tender Price for Goods and Services required under the Contract.
- (g) **“Contractor”** means a successful Tenderer whose Tender Offer has been accepted by the Board.
- (h) **“Control”** means, with respect to a person (i) the right to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares of

the controlled person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person.

- (i) **“Board Furnished Equipment”** or **“BFE”** means the items which the Board provides or is required to provide pursuant to the Contract.
- (j) **“Goods”** means all goods proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to supply under the Contract, including technical documentation, parts or units thereof.
- (k) **“GST”** means goods and services tax charged under the GST Act.
- (l) **“GST Act”** means the Goods and Services Tax Act (Cap. 117A).
- (m) **“IP”** means patents, copyright, trademarks, service marks, trade names, domain names, logos, get-ups, inventions, registered and unregistered design rights, database rights, industrial design, integrated circuit topography and all other intellectual property rights.
- (n) **“Invitation to Tender”** means the invitation to participate in the tender for the supply of Goods and Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Guidelines for Tender, Evaluation Criteria and any other documents and forms enclosed.
- (o) **“Letter of Acceptance”** means the letter issued by the Board accepting the Contractor’s Tender Offer.
- (p) **“Losses”** means all liabilities, losses, damages, actions, claims, demands, costs (including legal costs on a full indemnity basis and experts’ and consultants’ fees), settlement sums and sums paid in satisfaction of court, arbitral or expert award.
- (q) **“Parties”** means the Board and the Contractor, and **“Party”** means any one of them.
- (r) **“Price Schedule”** means the schedule of prices for Goods and Services proposed in the Contractor’s Tender Offer and accepted in the Letter of Acceptance.
- (s) **“Purchase/Works Order”** means an order issued by the Board, making reference to the Contract, to purchase the Goods and/or Services.
- (t) **“Requirement Specifications”** means the specifications set out in the Invitation to Tender and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to time.
- (u) **“S\$”** means the lawful currency of Singapore.

- (v) “**Services**” means the services proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract.
 - (w) “**Subcontractor**” means any person, firm or company engaged by the Contractor to perform any part or parts of the Contractor’s obligations and includes the Subcontractor’s duly appointed representatives, successors and permitted assignees and the Subcontractor’s subcontractor.
 - (x) “**Tender Offer**” means the offer submitted by the Tenderer to provide Goods and Services to the Board in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Board as modifying such offer submitted by the Tenderer.
 - (y) “**Tender Price**” or “**Tender Sum**” in respect of any of the Goods or Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Goods or Services under the Contract.
 - (z) “**Tenderer**” means a person or its permitted assigns and successors offering to provide the Goods and Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.
 - (aa) “**Working Day**” means a day which is not a Saturday, Sunday or a public holiday in Singapore.
- 1.2 Words importing the singular only shall also include the plural and vice versa where the context requires.
 - 1.3 The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.
 - 1.4 References to a person include any company, limited liability partnership, partnership, business trust, unincorporated association or government agency (whether or not having separate legal personality).
 - 1.5 Unless a contrary intention appears, a reference in the Contract to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including but without limitation”.
 - 1.6 Unless otherwise provided, any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation.
 - 1.7 In the Contract, “month” means calendar month and “day” means calendar day.
 - 1.8 For the purposes of computing time, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

2. CLAUSE REFERENCES

- 2.1 All references to clauses in these Conditions of Contract or any other document, unless otherwise expressly stated, are references to clauses numbered in these Conditions of Contract or the document in which the reference appears respectively.

3. SCOPE OF CONTRACT

- 3.1 The Contractor shall carry out and complete the supply of all items of Goods and Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods shall be new and unused.

4. DELIVERY AND PERFORMANCE

- 4.1 The Contractor shall, unless otherwise specified by the Board prior to delivery or performance, deliver the Goods and perform the Services at the time(s) and place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt therefor from the Board. The issue of such receipt shall in no way relieve the Contractor from its obligations under Clause 5 to replace defective or damaged Goods and re-perform deficient Services.

5. REMOVAL AND REPLACEMENT

- 5.1 The Board may reject any Goods that are found on delivery, or upon installation where installation is required, to be:

- (a) damaged or defective;
- (b) incorrect or not in accordance with the Contract; or
- (c) not newly manufactured or of unsatisfactory quality or not fit for the ordinary uses contemplated by the Board,

(collectively, the “**Rejected Goods**”), and the Contractor shall:

- (i) provide a replacement for the Rejected Goods immediately at the Contractor’s own expense; and
- (ii) collect the Rejected Goods at the Contractor’s own expense within seven (7) days from the date of notification by the Board and failing which, the Board shall have the right:
 - (a) to claim from the Contractor storage charges and other expenses incurred in relation to the Rejected Goods until collection by the Contractor or disposal in accordance with sub-clause (b) below, whichever is earlier; and
 - (b) if the Rejected Goods are not collected after **one (1)** month from the date of notification by the Board, to dispose of the Rejected Goods

in any way the Board deems fit and claim all expenses incurred thereby from the Contractor,

and the Board shall be entitled to claim from the Contractor all costs and damages incurred by the Board as a result of the Rejected Goods.

5.2 The Board may reject any Services that are not performed in accordance with the Contract or with reasonable care, skill and diligence, and if so required by the Board, the Contractor shall re-perform such rejected Services at the Contractor's own expense.

5.3 Where any Goods or Services are rejected by the Board pursuant to Clause 5.1 or Clause 5.2 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to:

(a) deliver such Goods or perform such services relating to the delivery or installation of such Rejected Goods; and

(b) perform such Services,

as the case may be.

5.4 Notwithstanding anything to the contrary, the risk of loss, damage or deterioration of Rejected Goods (whether rejected pursuant to this Clause 5 or otherwise) shall be borne by the Contractor at all times and possession shall be deemed to have never passed to the Board.

6. ACCEPTANCE

6.1 The Contractor shall conduct all tests in accordance with the acceptance test plan and procedures as set out in the Requirement Specifications and such other tests as may be determined by the Board (such tests collectively, the "**Acceptance Tests**") to verify and demonstrate that the Goods and Services (including any replacement and repaired Goods and any re-performed Services) meet the Requirement Specifications.

6.2 The Contractor shall notify the Board about the Acceptance Tests prior to the date scheduled for the Acceptance Tests. The Contractor shall submit the proposed test plan to the Board for approval prior to the date scheduled for the Acceptance Tests.

6.3 The Board shall have the right to attend and scrutinise the conduct of each Acceptance Test. If the Contractor has given notice to the Board in accordance with Clause 6.2, and the Board elects in writing not to appoint any representative to attend the Acceptance Tests prior to the date scheduled for the Acceptance Tests, the Contractor shall proceed with the Acceptance Tests without a representative of the Board being present.

6.4 The results of the Acceptance Tests shall be properly documented by the Contractor (the "**Acceptance Tests Report**") and submitted to the Board within five (5) days after the conduct of the Acceptance Tests.

- 6.5 Upon submission of the Acceptance Tests Report to the Board, the Board shall inform the Contractor in writing if it is satisfied with the results of the Acceptance Tests.
- 6.6 The Contractor shall provide all necessary labour, facilities and equipment required and bear all costs for the performance of the Acceptance Tests.
- 6.7 If the Board requires any Acceptance Tests to be conducted outside Singapore (the country where such Acceptance Tests are to be conducted, the “**Acceptance Test Country**”), all costs, charges and expenses relating to airfares, board and lodging and subsistence allowance of the Board’s representatives for such Acceptance Tests shall be borne by the Board, save that:
- (a) in the event that the Acceptance Tests are delayed beyond the scheduled completion dates and the Board elects to allow its representatives to remain in the Acceptance Test Country, the Contractor shall pay for the board and lodging and subsistence allowance for the Board’s representatives in respect of the period of such delay, where applicable; and
 - (b) in the event that the Acceptance Tests are delayed beyond the scheduled completion dates and the Board elects to allow its representatives to return to Singapore, the Contractor shall be obliged to pay for all the Board’s representatives’ costs, charges and expenses relating to airfares, board and lodging and subsistence allowance for the subsequent trip to attend the Acceptance Tests, where applicable.
- 6.8 Where the Contract allows or provides that the Acceptance Tests are to be conducted at the Contractor’s premises, the Contractor shall at no cost to the Board provide administrative support such as office facilities and local transport to:
- (a) the Board’s representatives attending the Acceptance Tests; and
 - (b) any Board’s representatives stationed at the Contractor's premises for purposes pertaining to the Contract.
- 6.9 The Board shall not be under any obligation to accept any Goods which have not satisfactorily passed the Acceptance Tests. In the event that any deficiencies in the Goods or Services become evident, the Contractor shall immediately, at the Board’s option, replace the Goods or re-perform the Services or perform remedial or corrective action. The cost of the replacement, re-performance, remedial or corrective action shall be borne by the Contractor.

7. WARRANTY /DEFECTS LIABILITY PERIOD *

- 7.1 In the Contract, “**Warranty/Defects Liability Period**” in respect of Goods or Services, means the period as set out in the Appendix commencing on the date of Acceptance (if Acceptance Test is applicable) or receipt of such Goods or Services by the Board in accordance with the provisions of the Contract, unless otherwise agreed in writing by the Parties.
- 7.2 Where during the Warranty/Defects Liability Period, any Goods are found to:

- (a) be defective in design, materials or workmanship; or
- (b) be not in accordance with the Contract; or
- (c) having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fail to function properly or fail to meet any Requirement Specifications or specifications published by the Contractor as applicable to the Goods,

(the “**Defective Goods**”),

then unless the Contractor can show that the foregoing is caused solely by improper use or mishandling by the Board, the Contractor shall, at its own expense (including transportation costs), at the option and written notification of the Board, replace, rectify or completely repair the Defective Goods and deliver the replaced/repared Goods to the Board within the period as stated in the notice in writing by the Board. Any replacement or repaired Goods shall be subject to the same acceptance tests as the Defective Goods. The Warranty/Defects Liability Period shall be extended, from the date of original expiry of the Warranty/Defects Liability Period, by a period equivalent to the period commencing on the date of the said notification to the date of Acceptance (if Acceptance Test is applicable) or receipt of the repaired/replaced Goods by the Board. In the event that the remaining Warranty/Defects Liability Period (after such extension) as at the date of such Acceptance (if Acceptance Test is applicable) or receipt is less than **one (1)** month, the Warranty/Defects Liability Period shall be extended such that the date of expiry of the Warranty/Defects Liability Period falls **one (1)** month after the date of such Acceptance (if Acceptance Test is applicable) or receipt.

- 7.3 If any Service performed is found during the Warranty/Defects Liability Period to be deficient, the Contractor shall at the written notification of the Board, complete the re-performance of the same, at the expense of the Contractor within the period as stated in the notice in writing by the Board. The Warranty/Defects Liability Period for the re-performed Service shall be extended, from the date of original expiry of the Warranty/Defects Liability Period, by a period equivalent to the period commencing on the date of the said notification to the date of completion of the re-performed Service. In the event that the Warranty/Defects Liability Period (after such extension) remaining at the date of such completion is less than one month, the Warranty/Defects Liability Period shall be extended such that the date of expiry of the Warranty/Defects Liability Period falls **one (1)** month after the date of such completion of the re-performed Service.
- 7.4 The Board’s rights and remedies under this Clause 7 are independent of and without prejudice to any other rights and remedies of the Board.

8. TITLE AND RISK

- 8.1 The risk of loss or damage to the Goods or any documentation delivered pursuant to the Contract shall pass upon receipt of the Goods or documentation by the Board. Title to the Goods shall pass from the Contractor to the Board upon Acceptance (if Acceptance Test is applicable) or receipt.

- 8.2 Risk of loss or damage to the Goods shall be borne by the Contractor from the time the Goods are received by the Contractor for the purpose of modification, replacement, repair or rectification until the modified, repaired, replaced or rectified Goods are received by the Board.
- 8.3 Title to the BFE and all other property from time to time furnished by the Board to the Contractor in relation to the performance of the Contract shall at all times remain with the Board.
- 8.4 Risk of loss or damage to the BFE and all other property at any time furnished by the Board to the Contractor shall be borne by the Contractor from the moment the Contractor takes delivery of the BFE or such other property until such time as the BFE or such other property is delivered to and received by the Board.

9. CONTRACTOR'S PERSONNEL

- 9.1 The Contractor shall provide all necessary personnel with adequate skills and required professional certification (where applicable) for the performance of the Contract. Upon request by the Board, the Contractor shall provide evidence of certification and competency of the personnel assigned.
- 9.2 If required by the Board, the Contractor shall provide to the Board the names and particulars (in such form as may be required by the Board) of the personnel provided by the Contractor to perform the Contract
- 9.3 The personnel provided by the Contractor to perform the Contract shall be subject to the Board's approval. Where the Contractor has proposed such personnel in its Tender Offer, the Board's acceptance of the Contractor's Tender Offer shall not constitute its approval of such personnel.
- 9.4 The Board shall not be obliged to provide any reasons for objecting to any of the Contractor's personnel. If the Board objects by notice in writing to any personnel provided by the Contractor to perform the Contract, the Contractor shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Board within fourteen (14) days.
- 9.5 The Contractor undertakes not to change its personnel approved under this Clause 9 without the Board's consent, whose consent shall not be unreasonably withheld. All new or replacement personnel shall also be subject to the approval of the Board. The Contractor shall not reduce the quality of its personnel if this may adversely affect the performance of the Contract, including the quality of the Services.

10. PAYMENT

- 10.1 The Contractor shall invoice the Board in accordance with Clause 10.4 after Acceptance (if Acceptance Test is applicable) or receipt by the Board of all the Goods and Services.
- 10.2 Against compliance with Clause 10.1, the Board shall pay the Contractor within **thirty (30)** days from the date of the invoice by Interbank GIRO or such other mode

of payment as the Board and the Contractor may agree. The Contractor shall provide the Board with the relevant bank account details for the purpose of such Interbank GIRO payment within **thirty (30)** days after the date of the Letter of Acceptance.

- 10.3 No payment shall be considered as evidence of the quality of the Goods or Services to which such payments relate or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract.
- 10.4 If requested by the Board, the Contractor shall submit to the Board invoices through the electronic invoicing system maintained by the Board and such other documents through such means and in such format as may be specified by the Board for the purposes of making payment.
- 10.5 The Board shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Board.
- 10.6 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Board by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Board shall reimburse the Contractor for any such GST charged on the supply by the Contractor of goods or services under the Contract.
- 10.7 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 GST Act, 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 GST Act.

11. TAXES, FEES AND DUTIES

- 11.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable by the Contractor or its employees in carrying out its obligations under the Contract.
- 11.2 If the Board receives a request from the tax authorities or otherwise decides to pay on behalf of the Contractor or the Contractor's employees, 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 ("**Taxes**"), the Contractor hereby agrees that the Board may deduct such Taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.
- 11.3 For the avoidance of doubt, in the event that withholding taxes are imposed by the tax authorities on any payments due under the Contract, the Contractor shall bear all such withholding taxes and the Board shall deduct such taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

12. DELAY IN DELIVERY AND PERFORMANCE

- 12.1 If the Contractor fails to deliver any Goods or complete the performance of any Services by the date(s) specified in the Contract, the Board shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Board's right to terminate the Contract pursuant to Clause 18.1) to do one or more of the following:
- (a) cancel all or any such Goods or Services from the Contract without compensation and obtain them (the "**Replacement Goods and Services**") from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity of the Replacement Goods and Services so obtained shall not exceed the quantity stated in the Contract; or
 - (b) require the Contractor to pay as liquidated damages, a sum calculated at the rate as set out in the Appendix.
- 12.2 The Board shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under this Clause 12.

13. COMPLIANCE WITH LAW

- 13.1 The Contractor shall, at its own costs, obtain and maintain all licences, permits, certifications and regulatory authorisations without any restriction or qualification whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.
- 13.2 The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws and shall keep the Board indemnified against all penalties and liabilities of every kind for the breach of any such laws.

14. CARE AND DILIGENCE

- 14.1 The Contractor shall with due care and diligence carry out its obligations to the Board under the Contract.
- 14.2 The Contractor acknowledges and accepts that the Board relies on the skill and judgment of the Contractor and also upon the accuracy of all representations and statements made and advice given by the Contractor in the delivery of the Goods and provision of the Services under the Contract.

15. "CLEAN MARK SILVER" AWARD

Not Used

16. LANDSCAPE COMPANY REGISTER STATUS

Not Used

17. GIFTS, INDUCEMENTS AND REWARDS

17.1 The Board shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any loss resulting from such termination or rescission if:

- (a) any Contractor Representative has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Contract; or
 - (ii) showing favour to any person in relation to any contract with the Board; or
- (b) any Contractor Representative has engaged in any activity or conduct that has resulted or will result in a violation of any Anti-Corruption Laws.

17.2 In this Clause 17:

“Anti-Corruption Laws” means:

- (a) Chapter IX of the Penal Code (Cap. 224);
- (b) the Prevention of Corruption Act (Cap. 241); and
- (c) any other applicable law including any foreign law which:
 - (i) prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or adviser of such person; or
 - (ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

“Contractor Representative” means any of the following:

- (a) the Contractor;
- (b) any person employed by the Contractor; or
- (c) any person acting on behalf of the Contractor (whether with or without the knowledge of the Contractor).

18. TERMINATION

18.1 If the Contractor is in breach of any of its obligations under the Contract and:

- (a) the Contractor fails to remedy the breach within **fourteen (14)** days from a written notice from the Board to do so; or
- (b) the breach is not capable of being remedied within a reasonable time,

the Board shall have the right (in addition to and without prejudice to all other rights or remedies available, including the right to claim damages) to terminate the Contract with immediate effect by written notice.

18.2 If any of the following events occur, the Board shall be entitled to terminate the Contract with immediate effect by written notice to the Contractor, and the Contractor shall have no claim for any damages or compensation:

- (a) the Contractor becomes insolvent;
- (b) where the Contractor is a company, a receiver or liquidator is appointed over any undertaking or property of the Contractor or an order is made or a resolution is passed for winding-up or dissolution without winding-up (other than for the purpose of amalgamation or reconstruction) of the Contractor;
- (c) where the Contractor is a partnership, the Contractor is dissolved or has a bankruptcy order made against it;
- (d) where the Contractor is an individual, the Contractor becomes bankrupt or dies;
- (e) legal proceedings alleging insolvency are brought against the Contractor;
- (f) the Contractor enters into any composition or arrangements with creditors;
- (g) any action is contemplated or any legal proceedings are commenced against the Contractor alleging infringement of IP right;
- (h) the Contractor has contravened Clause 44.2 or 44.3; or
- (i) the Contractor has failed and/or neglected and/or has acted in breach of his obligations or responsibilities under the Contract, and such failure, neglect and/or breach has directly or indirectly resulted in and/or contributed to, the death of any person or an accident or dangerous occurrence, in the course of supplying the Goods and/or performing the Services;

In the Clause 18 :

- (i) “**accident**” has the same meaning ascribed to it in the Workplace Safety and Health (Incident Reporting Regulations); and

- (ii) “**dangerous occurrence**” has the same meaning ascribed to it in the Workplace Safety and Health Act.

18.3 If the Contract is terminated, the following shall apply:

- (a) termination shall be without prejudice to any rights and obligations of either Party which has accrued prior to such termination and any obligation which expressly or by implication is intended to come into or continue in force on or after such termination;
- (b) the Contractor shall forthwith refund to the Board all amounts paid to the Contractor under the Contract, less the price of the Goods and Services which have been accepted by the Board as at the date of termination;
- (c) the Contractor shall immediately deliver property belonging to or provided by the Board pursuant to the Contract and all deliverables prepared by the Contractor for the Contract (including works-in-progress if so requested by the Board);
- (d) in the event of a termination pursuant to Clause 18.1 or 18.2, the Board shall, at its sole discretion, have the right to engage another person to provide the remaining Goods and Services to be provided under the Contract, and any additional costs and expenses incurred shall be paid by the Contractor, and the Contractor shall give reasonable assistance to the incoming contractors; and
- (e) in the event of a termination pursuant to Clause 18.2(g), the Board shall, at its sole discretion, have the right to return any Goods which have been provided to the Board as at the date of termination, and the Contractor shall forthwith refund to the Board all amounts paid to the Contractor under the Contract in respect of such Goods.

18.4 Nothing in this Clause 18 shall be deemed to prejudice any other rights or remedies available to the Board against the Contractor for any breach of the Contractor’s obligations whether under the Contract or at law or in equity.

19. FORCE MAJEURE

19.1 Neither Party shall be liable for any failure to perform its obligations under the Contract if the failure results from events which are beyond its reasonable control (“**Force Majeure Event**”) provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of the Contract, “**Force Majeure Event**” shall include acts of God, acts of civil or military Board, civil disturbance, wars, strikes, fires and other catastrophes.

19.2 If the effect of any Force Majeure Event continues for a period exceeding nine (9) months, the Board may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

- 19.3 If a Force Majeure Event occurs, the Contractor or the Board (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under the Contract as is affected by the Force Majeure Event except that the provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the Force Majeure Event.
- 19.4 Failure of the Contractor's Subcontractors or suppliers to perform their obligations shall not be regarded as events beyond the control of the Contractor.

20. CORRESPONDENCE

- 20.1 Subject to Clause 20.2, any notice, request, waiver, consent or approval ("**Notice**") shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by post or fax to the Party as follows:
- (a) in the case of the Contractor, the address and fax number set out in the Tender Offer; and
 - (b) in the case of the Board, the following address as set out in the Appendix.
- 20.2 Any Notice may be made by the Board to the Contractor by electronic mail or other electronic means and shall be deemed to have been duly given or made when it is sent to the Contractor's electronic mail address set out in the Tender Offer.
- 20.3 Either Party may change its address, fax number and (in the case of the Contractor) electronic mail address referred to above by giving the other Party written notice of the change.

21. LANGUAGE

- 21.1 All data, documents, descriptions, diagrams, books, catalogues, instructions, markings for the Goods and correspondence shall be written in readily comprehensible English language.
- 21.2 The personnel of the Contractor and any Subcontractor shall be proficient in both written and spoken English for the purpose of performing the Contractor's obligations under the Contract.

22. CONSORTIUM

- 22.1 As used in the Contract, "**Consortium**" means an unincorporated joint venture through the medium of a consortium or a partnership.

Joint and Several Responsibility

- 22.2 Each member of the Consortium shall be jointly and severally responsible to the Board for the due performance of the Contract.

Addition of members to Consortium

- 22.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Board.
- 22.4 Should additional member(s) be added to the Consortium at any time with the approval of the Board pursuant to Clause 22.3, he or they shall be deemed to be included in the expression “the Contractor”.

Withdrawal from Consortium

- 22.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or ceases to exist in accordance with the laws of the country of incorporation:
- (a) the Contract shall continue and not be terminated, and
 - (b) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

23. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

- 23.1 The Contractor shall ensure that all subcontractors, appointed directly by the Contractor, are not debarred from participating in public sector contracts. The Contractor shall not, without the prior written consent of the Board, sub-contract its obligations, or transfer or assign the benefit of the whole or any part of the Contract.
- 23.2 The Contractor shall be responsible for the acts, defaults, negligence and omissions of any Subcontractor, their agents, servants or workmen.

24. DEFAULT INTEREST

- 24.1 If the Contractor defaults in the payment when due of any sum payable under the Contract its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment). The interest shall be calculated on a daily basis at a rate per annum of 5%.

25. REMEDIES

- 25.1 The rights and remedies of a Party under the Contract are cumulative and are without prejudice and in addition to any rights or remedies such Party may have at law or in equity. No exercise by a Party of any one right or remedy under the Contract, or at law or in equity shall operate so as to hinder or prevent the exercise by it of any other right or remedy under the Contract, at law or in equity.

- 25.2 The Board shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under the Contract.

26. VARIATION

- 26.1 Subject to Clauses 26.2 and 26.3, no variation to the terms and conditions of the Contract shall be of any force unless agreed upon in writing by both Parties.

- 26.2 The Board may at any time during the period of the Contract, by order in writing, require the Contractor to supply goods, perform services or execute works which are not included in the Bills of Quantities/Schedule of Prices. Such goods, services or works may include, but not be limited to, purchase of spares, parts, components, materials, goods, performance of services and execution of works as and when required by the Board. Where such goods, services or works are executed by the Contractor, payment for such goods, services or works shall be as follows:

- (a) The rates in the Bills of Quantities/Schedule of Prices of similar items after adjustment if necessary, shall be the basis for determining the valuation; or
- (b) By valuation at fair market rates and prices; or
- (c) Where none of the above methods is applicable or appropriate in the circumstances of the particular goods, services or works, as the case may be, then the valuation shall be based on the cost of materials or goods, labour and any additional plant and equipment necessary for the execution of the goods, services or works plus 15 per cent. This percentage shall be deemed to compensate adequately the Contractor in respect of all supervision, the use of plant and equipment, overheads, profit and all other costs or damages incurred in or connected with the execution of the goods, services or works. The Contractor shall produce his receipts, bills and wages books or other supporting documents for the goods, services or works executed by him. Notwithstanding the fiduciary relationship created herein, the Contractor shall remain responsible as contractor for delivery of all goods, services and works to be delivered under this Contract.

The Contractor shall not be entitled to any claims for loss and expense in respect of an instruction or any other compensation, damages or other amount whatsoever other than a valuation determined in accordance with Clause 26.2.

- 26.3 The Board may at any time issue an instruction in writing to make changes to the quantities specified or omit any part of the goods and services. Such changes or omission shall be determined in accordance with the provision of the Clause 26.2(a) and (b) above.

27. WAIVER

- 27.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy (“**Remedy**”), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.
- 27.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.
- 27.3 Any waiver granted under the Contract must be in writing and may be given subject to conditions. Such waiver under the Contract shall be effective only in the instance and for the purpose for which it is given.

28. SET-OFF

- 28.1 Whenever under the Contract any sum of money (including liquidated damages and any other damages) shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other agreement with the Board.

29. ENTIRE AND WHOLE AGREEMENT

- 29.1 The Contract contains the entire and whole agreement between the Parties relating to the subject matter of the Contract.

30. SEVERABILITY

- 30.1 In the event any provision in the Contract is determined to be illegal, invalid or unenforceable, in whole or in part, such provision or part of it shall, to the extent it is illegal, invalid or unenforceable, be deemed not to form part of the Contract and the legality, validity and enforceability of the remainder of the Contract shall not be affected.

31. RIGHTS OF THIRD PARTIES

- 31.1 A person who is not a party to the Contract shall have no right under the *Contracts (Rights of Third Parties) Act* to enforce any term of the Contract.

32. SURVIVING PROVISIONS

- 32.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 17 (Gifts, Inducements and Rewards), 18.3 and 18.4 (Termination), 20

(Correspondence), 24 (Default Interest), 25 (Remedies), 26 (Variation), 27 (Waiver), 28 (Set-off), 29 (Entire and Whole Agreement), 30 (Severability), 31 (Rights of Third Parties), 32 (Surviving Provisions), 33 (Governing Law), 33A (Escalation of Disputes), 34 (Mediation), 35 (Dispute Resolution) and 36 (Order of Precedence), shall survive the termination or expiry of the Contract.

33. GOVERNING LAW

33.1 The Contract and Clause 35 shall be deemed to be made in Singapore and shall be governed by and construed in accordance with the laws of the Republic of Singapore.

33A. ESCALATION OF DISPUTE

33A.1 In the event of any dispute, claim, question or disagreement arising out of or relating to the Contract or its subject matter or formation (a “**Dispute**”), no Party shall proceed to mediation or any form of dispute resolution unless the Parties have referred the Dispute to a senior officer of each Party (each, an “**Officer**”) who shall negotiate in good faith with a view to resolution of such Dispute.

33A.2 If such Dispute is not resolved by agreement between the Officers within Thirty (30) days after the date of referral of the Dispute to the Officers, any Party may proceed to:

- (a) if the Dispute is within the jurisdiction of the Small Claims Tribunals, refer the Dispute to the Small Claims Tribunals; or
- (b) give the other Party written notice for mediation as contemplated in Clause 34 (Mediation).

34. MEDIATION

34.1 Notwithstanding anything in the Contract, in the event of any Dispute and subject to Clauses 33A, 34.3 and 34.4, no Party shall proceed to any form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of the Singapore Mediation Centre. The Parties shall be deemed to have made reasonable efforts in accordance with this Clause 34.1 if they have gone through at least one mediation session at the Singapore Mediation Centre.

34.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 34.

34.3 The mediation session is to commence no later than **ninety (90)** days from the date of the written notice of mediation failing which either Party may proceed to dispute resolution.

34.4 Clause 34.1 shall not apply to a Dispute referred to the Small Claims Tribunals, provided that:

- (a) the Parties attend a consultation session before a Registrar (where the Parties will be given an opportunity to resolve the Dispute amicably) after a claim is filed with the Small Claims Tribunals; and
- (b) the proceedings relating to such Dispute are not:
 - (i) discontinued by the Registrar pursuant to Section 17(3) of the Small Claims Tribunal Act; or
 - (ii) transferred out of the Small Claims Tribunals before or pursuant to such consultation session.

34.5 Failure to comply with Clause 34.1 or 34.2 shall be deemed to be a breach of the Contract.

35. DISPUTE RESOLUTION

35.1 Subject to Clause 34, any Dispute shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) for the time being in force which rules are deemed to be incorporated by reference into this Clause.

35.2 The seat of the arbitration shall be Singapore.

35.3 The arbitrator shall be agreed upon between the Parties, or on failure to agree within thirty (30) days of a written proposal by one Party to the other Party, to be appointed by the SIAC acting in accordance with the SIAC Rules.

35.4 This arbitration agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.

36. ORDER OF PRECEDENCE

36.1 In the event and to the extent only of any conflict between any provisions of the Contract, the conflict shall be resolved, subject to Clause 36.2, in accordance with the following order of precedence:

- (a) these Conditions of Contract (as amplified or modified by any correspondence exchanged between the Board and the Contractor which has been agreed to by the Board in writing as amplifying or modifying these Conditions of Contract);
- (b) the Requirement Specifications;
- (c) the Letter of Acceptance;
- (d) the Purchase/Works Order, if any;
- (e) any formal agreement executed between the Parties;

- (f) the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Board and the Contractor which has been agreed to by the Board in writing as amplifying or modifying the Contractor's Tender Offer).
- 36.2 Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Board and the Contractor which has been agreed to by the Board in writing as amplifying or modifying the Contractor's Tender Offer) contains provisions which are more favourable to the Board in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail. The Board shall in its absolute and sole discretion determine whether any provision is more favourable to it in relation to the Contract.
- 36.3 For the avoidance of doubt, this Clause shall form an integral part of the Conditions of Contract referred to in Clause 36.1(a).

37. CONFIDENTIALITY AND SECURITY

- 37.1 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.
- 37.2 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.
- 37.3 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.
- 37.4 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.

38. LOSSES

- 38.1 The Contractor shall indemnify and keep indemnified the Board against any and all Losses sustained, incurred, paid by or suffered by the Board arising out of or in connection with any act or omission on the part of the Contractor, Subcontractor or

any of their directors, officers, personnel, employees, servants or agents (the “**Contractor Parties**”) unless the Contractor can show that:

- (a) it is not due to the Contractor’s breach, failure or delay in the performance of the Contract; and
- (b) it is not due to the negligent, unlawful or wrongful action or omission, fraud, bad faith, wilful misconduct or breach of any duty of any of the Contractor Parties.

38.2 If any claim is commenced against the Board that may give rise to a claim against the Contractor under Clause 38.1, notice thereof shall be given to the Contractor as soon as practicable.

38.3 Upon receipt of such notice, if required by the Board, the Contractor shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Board to handle and defend the same, at the Contractor’s sole cost and expense.

38.4 In the event the Contractor takes control of the defence and investigation of the claim, the Board shall co-operate, at the cost of the Contractor, in all reasonable respects with the Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this will not limit the Board’s right to participate, at the Contractor’s cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Board.

38.5 Notwithstanding anything to the contrary in the Contract, the Board shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Board, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

38.6 This Clause 38 shall survive the termination or expiry of the Contract.

39. INTELLECTUAL PROPERTY INDEMNIFICATION

39.1 The Contractor:

- (a) represents, warrants and undertakes that all Goods and Services supplied by the Contractor and all IP used or introduced by the Contractor in the course of performing its obligations under the Contract do not infringe any rights or interests of any third party in IP; and
- (b) shall give the Board prompt notice in writing of any claim of infringement of any such rights or interests made by any third party.

- 39.2 The Contractor shall indemnify the Board and its officers against all Losses which the Board or its officers may at any time and from time to time incur or suffer by reason of:
- (a) any breach of Clause 39.1; or
 - (b) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract.
- 39.3 Without prejudice to the Board's right to defend a claim alleging such infringement, the Contractor shall, if requested by the Board but at the Contractor's expense, defend such claim. The Contractor shall observe the Board's directions relating to the defence or negotiation for settlement of such claim.
- 39.4 The Board shall, if requested but at the Contractor's expense, provide the Contractor with reasonable assistance in conducting the defence of such claim.
- 39.5 If any of the Goods or Services supplied by the Contractor or IP used or introduced by the Contractor in the course of performing its obligations under the Contract is alleged to infringe the rights or interests of third parties in IP, the Board may (in addition to and without prejudice to all other rights or remedies available), at the option of the Board, require the Contractor, at the Contractor's own expense, to:
- (a) procure for the Board the right to continue using the same;
 - (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under the Contract (in which event the Contractor shall compensate the Board for any Losses sustained or incurred by the Board in connection with such replacement or modification); or
 - (c) pay the Board a sum equivalent to the purchase price of items functionally equivalent to the infringing items upon the return of the infringing items to the Contractor.
- 39.6 All royalties and fees claimable by or payable to any person for or in connection with any IP used or required to be used in connection with the performance of the Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the Board.
- 39.7 For the purpose of this Clause 39, "Board" shall include all Licensees (as defined in Clause 50 (Ownership of Intellectual Property Rights)).
- 39.8 This Clause 39 shall survive the termination or expiry of the Contract.

40. COMMENCEMENT AND DURATION OF CONTRACT

- 40.1 The Contract shall commence on the date of commencement stated in the Letter of Acceptance or any other formal agreement executed between the Parties, and shall remain in force for a period as set out in the Appendix (“**Contract Period**”).

41. INSURANCES

- 41.1 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

- 41.2 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.

- 41.3 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.
- 41.4 The Contractor shall be fully responsible for all excesses/deductibles carried in the Employer Arranged Insurances.
- 41.5 The Contractor is deemed to have read, accepted and shall comply with all the terms and conditions contained in the Specimen Policies.
- 41.6 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.
- 41.7 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.
- 41.8 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.

- 41.9 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.
- 41.10 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.

- 41.11 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.

- 41.12 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.
- 41.13 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.

42. SAMPLE TESTING

- 42.1 The Board shall have the right to require the Contractor to provide samples of the Goods to be supplied under the Contract for the Board's approval and for such further samples as are required until the Board is satisfied that the samples submitted are in accordance with the Requirement Specifications. Upon the approval of the samples by the Board, the Contractor shall ensure that the Goods to be supplied under the Contract meet the standards of the approved samples. If any Goods supplied under the Contract do not meet or exceed the Requirement Specifications or the standards of the approved sample, the Board shall have the right to submit such Goods to expert examination and testing and all costs in connection therewith shall be borne by the Contractor unless such examination and test shows that such Goods meet or exceed the Requirement Specifications and the standards of the approved samples.

43. DISPOSAL OF DOCUMENTS BY CONTRACTOR UPON TERMINATION OR COMPLETION OF CONTRACT

- 43.1 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.

44. SUPPLY OF ELECTRONIC MEDIA FREE FROM UNAUTHORISED CODE

- 44.1 "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.

- 44.2 The Contractor shall procure 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.
- 44.3 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.
- 44.4 Without prejudice to Clause 18, 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.

45. ORDERS FOR GOODS AND SERVICES

- 45.1 All orders for Goods and 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 Goods and 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 Goods and Services specified on such order. On satisfactory completion of such supply 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.
- 45.2 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.

46. EXTENSION OF DELIVERY/PERFORMANCE PERIOD

- 46.1 If there is a delay in the delivery/performance of the Goods and Services under the Contract due to circumstances other than those stated in Clause 19, which are beyond the Contractor's control, the Contractor shall notify the Board in writing. Subject to approval of the Board, the time for completion of delivery/performance of the Goods and Services may be extended by such period or periods of time as may reasonably reflect delay in the delivery/performance of the Goods and Services.

47. TERMINATION FOR CONVENIENCE

- 47.1 The Board shall have the right to terminate the Contract for convenience by giving one (1) month's written notice to the Contractor without having to assign any reason. Upon receipt of such written notice, the Contractor shall cease or reduce his work according to the tenor of the notice, and shall forthwith take reasonable steps to

mitigate its losses consequent thereto. The Board shall pay to the Contractor the compensation as determined in accordance with Clauses 47.2 to 47.5 below (“**Termination Compensation**”). The Termination Compensation shall be in full and final settlement of all liabilities of the Board arising out of any termination of the Contract by the Board pursuant to this Clause 47.1.

47.2 Within thirty (30) days after receiving a written notice pursuant to Clause 47.1, the Contractor may, subject to Clauses 47.3 to 47.5, submit a claim, duly substantiated, to the Board for compensation.

47.3 The Contractor shall set out its claim in a report on an itemised basis and the report shall contain such information that the Board may reasonably require. The compensation:

(a) shall not exceed the total of the following two components:

(i) the reasonable direct costs which the Contractor has reasonably incurred in respect of the terminated portions of the Contract;

(ii) any other reasonable costs reasonably incurred by the Contractor in respect of the terminated portions of the Contract; and

(b) shall, in any event, not be greater than a sum which, in addition to any sums paid or due or becoming due to the Contractor under the Contract, would together exceed the price provided under the Contract for the terminated portion of the Contract.

47.4 If the Parties fail to reach an agreement on the compensation sum set out in the Contractor’s report, the report shall be submitted to an independent public accountant or valuer for verification of compliance with Clause 47.3, with any doubts as to whether the costs were reasonably incurred or were reasonable in amount to be resolved in favour of the Board. The appointment of such independent public accountant or valuer shall be subject to the Board’s approval, and the cost of such appointment shall be borne by the Board.

47.5 The Board shall pay to the Contractor:

(a) the compensation sum in the Contractor’s report, if such sum is mutually agreed upon between the Parties, within sixty (60) days of such agreement; or

(b) the compensation sum in the report as verified or varied by the independent public accountant or valuer, if such compensation sum is submitted to an independent public accountant or valuer, within sixty (60) days of the Board’s receipt of the report from the independent public accountant or valuer.

48. SECURITY DEPOSIT FOR PERFORMANCE

48.1 The Contractor shall, within fourteen (14) days after the date of the Letter of Acceptance, deliver to the Board a security deposit as set out in the Appendix (the “**Security Deposit**”) as security for the due and faithful performance of the Contract and the compliance with all provisions of the Contract by the Contractor.

- 48.2 The Security Deposit shall either be in the form of cash or, in lieu of cash, a Security Deposit Guarantee.
- 48.3 The cost of obtaining and maintaining such Security Deposit Guarantee shall be borne by the Contractor.
- 48.4 The Contractor shall ensure that the Security Deposit Guarantee remains effective until **three (3)** months after the completion of all the Contractor's obligations under the Contract, including the Warranty Period, if any.
- 48.5 In the event that the Contractor's obligations under the Contract are unlikely to be completed before the expiry date of the Security Deposit Guarantee, the Contractor shall without demand, secure its renewal or obtain a new Security Deposit Guarantee for the same amount and on the same terms as the expiring Security Deposit Guarantee but with a validity period ending not less than **three (3)** months after the estimated date of completion of all the Contractor's obligations under the Contract, and deliver the same to the Board. If such renewal or new Security Deposit Guarantee is not deposited with the Board at least **thirty (30)** days before the expiry date of the expiring Security Deposit Guarantee, the Board shall have the right to call on the expiring Security Deposit Guarantee.
- 48.6 The Board may at its sole discretion draw on the Security Deposit to satisfy any amount as may become due to the Board under the Contract.
- 48.7 The Board shall be entitled to make a demand on the Security Deposit Guarantee as soon as it is satisfied that the conditions for drawing on the Security Deposit have been fulfilled, notwithstanding that the Contractor disputes the same.
- 48.8 The Board's rights under this Clause 48 shall be without prejudice to any other rights and remedies available to the Board.
- 48.9 Where the Security Deposit is in the form of cash, the Security Deposit, subject to such deduction as may be made from it by the Board, shall be released within **ninety (90)** days from completion of all the Contractor's obligations under the Contract.
- 48.10 The Board's obligations to make payments under Clause 10 are conditional upon the Contractor having provided the Security Deposit in accordance with this Clause 48.
- 48.11 In the Contract, "**Security Deposit Guarantee**" means a guarantee in the form set out in the contract issued by:
- (a) a bank or insurance company registered with the Monetary Board of Singapore; or
 - (b) a licensed finance company registered with the Monetary Board of Singapore, under which the issuer guarantees the fulfilment of the terms and conditions of the Contract by the Contractor.

49. LIMITATION OF LIABILITY

- 49.1 The aggregate liability of the Contractor to the Board in respect of all breaches under the Contract shall not exceed the Contract Sum.
- 49.2 The aggregate liability of the Board to the Contractor in respect of all breaches under the Contract shall not exceed the Contract Sum.
- 49.3 None of the limitations contained in this Clause 49 shall apply to any claim:
- (a) relating to any death or personal injury;
 - (b) relating to any patent, copyright or other intellectual property right infringement;
 - (c) which arises or is increased as a consequence of fraud, fraudulent misrepresentation, wilful misconduct or gross negligence by the Contractor, its Subcontractors or any of their respective directors, officers, employees or agents;
 - (d) under Clause 39 (Intellectual Property Indemnification); or
 - (e) under any indemnity provided under the Contract (other than a claim relating to the Contractor's breach, failure or delay in the performance of the Contract).

50. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 50.1 Nothing in the Contract shall affect any person's right to own or licence Background IP.
- 50.2 All Foreground IP created by the Contractor, its Subcontractor or supplier shall vest in the Board.
- 50.3 The Contractor:
- (a) hereby assigns and transfers absolutely to the Board all rights, title and interests in the Foreground IP free from all encumbrances whatsoever; and
 - (b) shall procure that its Subcontractors and suppliers assign and transfer absolutely to the Board all rights, title and interests in the Foreground IP free from all encumbrances whatsoever.

The Contractor further warrants that it shall have the Board to effect the necessary transfer, assignment or other assurance for the Foreground IP to vest in the Board when called upon by the Board to do so.

50.4 The Contractor:

- (a) hereby grants to the Board and its agents, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor; and
- (b) shall procure that its Subcontractors and suppliers grant to the Board and its agents, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to it.

50.5 Nothing in this Clause 50 shall give the Contractor any right, title or interest in or to 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 the Contract. The title to all IP in any such results, report, data or information generated or produced by the Board or another person on behalf of the Board shall be owned by the Board.

50.6 If the Contractor, its Subcontractor or supplier intends to sell or transfer its Background IP, the Contractor shall ensure that:

- (a) the purchaser of the Background IP and every successor in title to the interest in the Background IP (each, a “**Purchaser**”):
 - (i) has prior written notice of this Clause 50; and
 - (ii) undertakes to the Board in writing that it will comply with this Clause 50.6 in all respects as if references to “the Contractor” had referred to the Purchaser; and
- (b) such sale or transfer is subject to the licences granted or required to be granted under this Clause 50.

50.7 The Contractor undertakes to do all acts and things and sign and execute all such documents as the Board may reasonably request to perfect, protect or enforce any of the rights granted or promised to the Licensee under this Clause 50. Without prejudice to the generality of the foregoing, if any licence granted under or pursuant to this Clause 50 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.

50.8 In the Contract:

“**Background IP**” means IP in or in connection with the Goods or Services, which is created prior to or independently of the Contract.

“**Foreground IP**” means IP (including future IP) which results from or is generated pursuant to or for the purpose of the Contract.

“**Licensee**” means the Board.

50.9 This Clause 50 shall survive the termination or expiry of the Contract.

51. EXIT MANAGEMENT

51.1 During the Transition Period, the Contractor shall, at its cost and expense, make available to the Board and any third party succeeding the Contractor appointed by the Board (“**Incoming Contractor**”) such documents and records and provide such assistance (including briefings and training) as the Board or the Incoming Contractor may reasonably require to allow an orderly transition to the Incoming Contractor with minimal disruption.

51.2 In the Contract, “**Transition Period**” means:

- (a) the period of two (2) months before the expiry or termination of the Contract;
or
- (b) where the notice period for termination of the Contract is shorter than the period referred to in Clause 51.2(a), the period of two (2) months commencing from the date of notice of such termination.

51.3 This Clause 51 shall survive the termination or expiry of the Contract.

52. TERMINATION FOR CHANGE IN CONTROL

52.1 If the Contractor suffers a change in Control, the Board shall have the right to terminate the Contract by giving **one (1)** month’s written notice to the Contractor and the Contractor shall have no claim for any damages or compensation.