

**TENDER FOR MAINTENANCE
OF
DATA CENTRE SYSTEM**

**PART 1 - SECTION B
CONDITIONS OF CONTRACT**

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SCHEDULE

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1 INTERPRETATION

- 1.1 In this Contract (as hereinafter defined), the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“**Acceptance Date**” means the date on which the System is accepted by the SFA pursuant to **Clause 24.6**.

“**Adviser**” means the person or body appointed by SFA. Unless otherwise notified by SFA, the Adviser shall be the Government Technology Agency constituted under the *Government Technology Agency Act (No. 23 of 2016)*. SFA may change the appointment of the Adviser from time to time.

“**Commission Date/Commissioning Date**” shall be the start operation date of a system agree upon by Supplier and agency after user acceptance is completed on the system.

“**Contract**” includes the Instructions to Tenderers, the Conditions of Contract, the Requirement Specifications, the Schedules, the Supplier's Tender, the Letter of Acceptance and any other documents agreed to by SFA in writing, amplifying or modifying the said tender and proposals.

“**Contract Price**” means the sum specified in the Supplier's Tender for the supply, delivery, installation, testing and commissioning of the System and for the performance of services under this Contract and where the sum tendered has been varied by written agreement of the Parties it shall refer to such varied sum.

“**Contract Effective Date**” is the start date of the maintenance. For this tender the contract effective date is tentatively **1st Oct 2021**.

“**Fair Market Value**” shall mean the fair market value in Singapore, or where such goods and/or services are not available in Singapore, in such other country(ies) where such goods and/or services are available, for the maintenance of the Hardware, Product or its equivalent, as the case may be. If the parties are unable to agree on the Fair Market Value, the Fair Market Value shall be determined by an independent public accountant or valuator approved by SFA, whose engagement cost shall be borne equally by SFA and the Supplier.

“**Hardware**” means all computer hardware, other peripherals and ancillary equipment together with all cabling within the System network, proposed by the Supplier as being capable of meeting or exceeding the requirements in the Requirement Specifications and shall include such other equipment as may be agreed in writing between the Parties to be supplied by the Supplier.

“**IP**” means intellectual property and shall include patents, copyright, industrial design and integrated circuit topography.

"Invitation to Tender" means the invitation to participate in this Tender and comprises all tender documents forwarded to the Tenderer inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Evaluation Criteria and any other documents and forms enclosed.

"Letter of Acceptance" means the letter issued by SFA accepting the Supplier's Tender.

"Life-Span of the System" shall be 10 (ten) years commencing from the Acceptance Date.

"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.

"network bandwidth connectivity" means the interconnecting of users, devices and computers in different locations for information exchange and access. It includes –

- (a) Layer 2 network bandwidth connectivity which is connectivity at the "data link" layer of the OSI model and TCP/IP models, and which minimally includes Ethernet frame transmission; and
- (b) Layer 3 network bandwidth connectivity which is connectivity at the "network layer" of the OSI model and to the "network/Internet layer" of the TCP/IP model, and which minimally includes IP packet transmission.

"Next Generation National Broadband Network" or "Next Gen NBN" means the nationwide all-fibre communications network to be designed, built and operated by OpenNet Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 26 September 2008 for the Next Gen NBN NetCo Request for Proposal) which has been replaced by its succeeding entity CityNet Infrastructure Management Pte Ltd (in its capacity as the Trustee-Manager of the NetLink Trust) (the "NetLink Trust"), and Nucleus Connect Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 3 April 2009 for the Next Gen NBN OpCo Request for Proposal).

"Next Gen NBN Operators" means the NetLink Trust and Nucleus Connect Pte Ltd.

"Next Gen NBN Retail Service Providers" means the entities which provide network bandwidth connectivity over the Next Gen NBN to end-users at the retail service layer using the underlying bandwidth connectivity supplied by Nucleus Connect Pte Ltd and the underlying physical connectivity supplied by the NetLink Trust.

“**Off-loading Point**” means the points near the entrances to the respective buildings where the respective parts of the Hardware are to be located.

“**Party**” means either SFA or the Supplier and “**Parties**” means both SFA and the Supplier.

“**person**” includes any individual, companies and association or body of person, whether corporate or unincorporated.

“**Project Manager**” means the person designated by the Supplier pursuant to **Clause 12.3.1**.

“**SFA**” or “**Agency**” means the Singapore Food Agency of 52 Jurong Gateway Road #14-01 JEM, Singapore 608550 and shall include any officer authorized by SFA to act on its behalf.

“**Representative**” means the person appointed by SFA pursuant to **Clause 12.1** and any persons appointed by the Representative to assist him or perform such duties or functions as may be delegated to him by the Representative.

“**Requirement Specifications**” means:

- (a) the specifications issued by SFA to the Supplier for the purpose of inviting the Supplier to submit its Tender for the supply, delivery, installation, testing and commissioning of a fully operational System including the specifications for standards of products and services to be required for the System; and
- (b) other amendments or specifications as may be mutually agreed in writing between the Parties.

“**Site**” shall mean the locations where the various parts of the System are to be installed as stated in the Requirement Specifications.

“**Subcontractor**” means any person, firm or company furnishing goods and services, IP Rights or Technical Information directly to the Supplier or indirectly to the Supplier through one or more persons, firms or companies. It includes any person, firm or company engaged by the Supplier to perform any part or parts of the works and includes the Sub-contractor's duly appointed representatives, successors and permitted assignees and a Sub-contractor's sub-contractor.

“**Supplier**” means the person, firm or company whose Tender has been accepted by SFA for this project. It includes the Supplier's duly appointed representatives, successors and permitted assignees and where the context so admits shall include the Supplier's employees, agents and Subcontractors.

“**System**” means the computer system including Hardware, System Software and Documentation proposed in the Supplier's Tender as being capable of meeting or exceeding the requirements in the Requirement Specifications. The System shall include but not limited to the following components:

- (a) All Hardware required for the System to meet the Requirement Specification and the proposal. All hardware components in the System shall be capable of working in combination with one another.
- (b) All System Software, Application Development Tools or Utilities required for the System to meet the Requirement Specifications and the proposal. All System Software components in the System shall be capable of working in combination with one another.
- (c) All documentation, training and related materials required for the System to meet the Requirement Specification and the proposal.

For the avoidance of doubt, the Hardware and System Software components in the System shall be capable of working in combination with one another.

“System Software” or **“Product”** means the software proposed in the Supplier’s Tender as being capable of meeting or exceeding the requirements in the Requirement Specifications and which the Supplier is to supply under the Contract. The Product shall include all manuals, operating instructions, documentation, and related materials and media pertaining to the Product.

“System Warranty Period” shall have the meaning given to it in **Clause 25**.

“Technical Information” includes inventions, confidential information, know-how, trade secrets and, in particular, all information concerning equipment and System Software (including firmware) pertaining to design, manufacture, maintenance, installation, operation and use, in whatever form including drawings, charts, manuals, schematic representations, System Software listings in source and object code.

“Tenderer” means the person or persons, firm or company which submits a Tender Proposal.

“Works” means the works to be executed in accordance with this Contract including all permanent and temporary works and any equipment to be supplied, delivered and installed under this Contract.

- 1.2 Words importing the singular shall also include the plural and vice versa where the content requires.
- 1.3 The headings in this Contract are for convenience of reference only and shall not be deemed to be part of this Contract or be taken into consideration in the interpretation or construction of this Contract.
- 1.4 Unless otherwise provided, any reference to any statute or legislation shall be deemed a reference to such statute or legislation as amended from time to time and be deemed to include any subsidiary legislations made thereunder.
- 1.5 The Annexes and Schedules mentioned in and attached to this Contract shall form an integral part of this Contract. The Conditions of Contract and the attached Schedules shall be construed as one and shall prevail over any inconsistent provisions in the

annexes.

2 CLAUSE REFERENCES

- 2.1 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in the Conditions of Contract and not to those in any other document forming part of the Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the subclauses if any, under that same clause number (E.g. a reference to Clause 23 refers to Clause 23.1 to 23.15 inclusive of all their respective subclauses if any. A reference to Clause 23.12 refers to Clause 23.12.1 to 23.12.4 inclusive of all their respective subclause if any).
- 2.2 References to provisions in the other documents forming part of this Contract shall be identified by the number of the Paragraph (“Para”), Schedule (“Sch”) or Chapter (“Chp”) as the case may be followed by a description of the document referred to.
- 2.3 Where the provision number is stated without a description of any document then it refers to the provision so numbered in the document where the reference appears.

3 PRODUCTS AND SERVICES TO BE PROVIDED BY SUPPLIERS

- 3.1 The Supplier hereby agrees to:-
- (a) provide the documentation in accordance with **Clause 31**;
 - (b) provide all other services specified by this Contract, upon the terms and conditions hereinafter contained.
 - (c) provide maintenance for the Data Centre system until the end of the Contract agreement;
- 3.1A Option for Hardware acquisition to be provided by Supplier.
- 3.1B SFA shall have an option to purchase the Hardware from the Supplier at the price stated in the Supplier’s Tender Offer.
- 3.2
- (a) The Supplier shall grant, obtain a grant, or transfer to SFA as the case may be, an irrevocable, non-exclusive, non-transferable right to use the System Software, related operating manuals and documentation for the System free of additional charge in accordance with the terms and conditions of this Contract.
 - (b) Where the IP rights of any System Software, related operating manuals and documentation for the System is vested in a third party, the Supplier agrees there shall be no additional fees, costs or conditions in respect of SFA’s right to use the System Software save as provided for in this Contract.

- 3.3 The Supplier shall designate a common service location for SFA to contact for the provision of all the services specified in the Contract.
- 3.4 Regardless of whether a perpetual or non-perpetual license has been granted, the Supplier declares that the use or operation of any part of the System shall not at anytime be restricted or interfered with in any manner whatsoever by any means or devices which would require the services of the Supplier or a third party to restore to full use and operation.

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4 TERMS OF PAYMENT

- 4.1 Subject to the provisions of this Contract, SFA shall pay to the Supplier the Contract Price in the manner prescribed in **Schedule 1 of Part 1, Section B**.
- 4.2 The Supplier shall submit such invoices or other documents in accordance with such means and in such format as may be specified by the Representative for the purposes of making payment.
- 4.3 SFA shall not pay for expenses or cost of whatever nature other than those expressly set forth in this Contract.
- 4.4 The Contract Price is exclusive of any Goods and Services Tax (“GST”) chargeable on the supply of goods, services or works to SFA by the Supplier under this Contract. SFA shall reimburse the Supplier for any such GST payable under this Contract.

5 TAXES AND DUTIES

- 5.1 Excluding Goods and Services Tax (“GST”), other duties and/or taxes, if any, imposed by SFA of Singapore and/or elsewhere on any item of the System shall be borne by the Supplier.

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7 SFA’S OBLIGATIONS

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- 7.2 If the progress of the Works is delayed for reasons not attributable to the Supplier (whether attributable to SFA or not), the Representative may, upon the application by the Supplier, grant such extensions of time as he deems reasonable. The Supplier shall not be entitled to claim any additional expenses incurred for such extensions of time, unless those expenses are specifically agreed to by the Representative in writing as those SFA will bear before the expenses are incurred.

8 SUPPLIER'S OBLIGATIONS

- 8.1 The Supplier shall with due care and diligence:
- (a) carry out its obligations to SFA under this Contract;
 - (b) ensure that the System meets the requirements as set out in the Requirement Specifications;
 - (c) provide all System Software necessary for the operation of the System and the applications as set out in the Requirement Specifications; and
 - (d) do all things which are necessary or reasonably to be inferred from the Contract.
- 8.2 The Supplier warrants that all Hardware supplied to SFA shall be of new manufacture (i.e. not second-hand, re-conditioned, or used items).
- 8.3 The Supplier and its subcontractors shall not employ any of the Adviser's staff connected with the project until one year after the completion of the System Warranty Period.
- 8.4 If the Supplier delays progress on any part of this Contract, for any reason not attributable to SFA, and thereby reduces any scheduled duration of activities to be carried out by SFA under this Contract, SFA shall be entitled to a corresponding time extension for completion of such activities at no additional cost to SFA, and without prejudice to the Supplier's obligation to complete the Contract in accordance with the Maintenance Plan.
- 8.5 In the performance of this Contract, the Supplier shall at its own expense within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.
- 8.6 The Supplier ensure the System to be free from defects including defects arising out of faulty design, inferior materials, faulty and inferior workmanship. The System shall be of high quality and fit for the purposes for which it is intended as set out in the Requirement Specifications.
- 8.7 Every obligation by the Contractor is taken to include an obligation by the Contractor to ensure that each of its directors, officers, employees, and agents, and that of its Sub-contractors and others under its control performs or complies with that obligation. Any covenant by the Contractor not to do any act or thing includes an obligation not to allow that act or thing to be done by its officers, employees, and agents, and that of its Sub-contractors.

9 RESPONSIBILITY FOR THE SYSTEM

- 9.1 The Supplier shall ensure that the System will provide the facilities, functions and performance standards set out in the Requirement Specifications. If modifications or changes are necessary for the System to meet the requirements as stated in the Requirement Specifications and the provisions of the Contract, the Supplier shall bear all additional costs involved in modifying or changing the System to satisfy these requirements.
- 9.2 The Supplier shall forthwith inform and provide SFA at no cost whatsoever technical information on new product developments and improvements which may be applicable to the System when such technical information becomes available to the Supplier.
- 9.3 The Requirement Specifications which set out the facilities and functions to be provided by the System allow the Supplier to choose the manner in which the facilities will be achieved by the selection of hardware or System Software or a combination of both. It is anticipated that some matters of details may have to be clarified during the early stages of this Contract. In this context, SFA reserves the right to issue written clarifications on the Requirement Specifications to set out SFA's requirements more precisely.
- 9.4 The Supplier shall be deemed to be fully informed of SFA's requirements by the Requirement Specifications and it shall be the Supplier's duty to clarify before submission of his Tender any inadequacies or insufficiencies in the Requirement Specifications having regard to the objective of SFA's purchase of the System.
- 9.5 In the event that the System supplied by the Supplier is inadequate to meet the requirement as stated in the Requirement Specifications and the provisions of this Contract, the Supplier shall at its own expense, provide all additional items of equipment and System Software which are necessary for the System to meet such requirements. Any changes hereunder must be agreed to by SFA in writing.
- 9.6 All equipment and System Software supplied pursuant to **Clause 9.5** shall on acceptance by SFA become the property of SFA and shall be subjected to the same warranty and maintenance by the Supplier as the entire System at no additional cost to SFA.
- 9.7 Any additional cost incurred in connection with Site preparation, including but not limited to the provision of additional power supply, caused by the additional items of equipment or System Software supplied pursuant to **Clause 9.5** shall be at the Supplier's expense.

10 MODIFICATION OF SYSTEM

- 10.1 No change or modification shall be made to the proposed System offered at the time of submission of the Supplier's Tender and thereafter unless the prior written agreement of SFA has been obtained.

10.2 The Supplier shall provide written procedures and details of System changes or modifications which may have to be implemented during the various stages of the Contract, up to the expiry of the System Warranty Period. Such changes or modifications shall not be implemented unless the prior written agreement of SFA has been obtained.

11 SECURITY DEPOSIT

11.1 Within thirty (30) calendar days commencing from the date of issue of the Letter of Acceptance, the Supplier shall lodge with SFA, a Security Deposit of S\$15,424 (the "Security Deposit") for the due, faithful and complete performance of this Contract and the observance by the Supplier of all stipulations, terms, conditions and obligations on its part to be observed or performed.

11.2 The Security Deposit shall either be in the form of cash (i.e. via funds transfer or cheque) or, in lieu of cash, a Security Deposit Guarantee. Where the Supplier is providing the Security Deposit in the form of cash, the use of funds transfer is preferred. The Security Deposit Guarantee shall be strictly in compliance with the format enclosed in **Schedule 4**.

11.3 The cost of obtaining and maintaining such Security Deposit Guarantee shall be borne by the Supplier.

11.4 The Supplier shall ensure that the Security Deposit Guarantee remains effective until three (3) months after the completion of the Supplier's obligations under the Contract.

11.5 If the Supplier's obligations under the Contract are unlikely to be completed before the expiry date of the Security Deposit Guarantee, the Supplier shall without demand, secure a renewal thereof or obtain a new Security Deposit Guarantee, for the same amount and on the same terms as the expiring Security Deposit Guarantee and deposit the same with SFA. If such renewal or new Security Deposit Guarantee is not deposited with SFA thirty (30) calendar days before the expiry date of the expiring Security Deposit Guarantee, SFA shall have the right to call on the expiring Security Deposit Guarantee.

11.6 SFA may at its sole discretion draw on the Security Deposit to satisfy any amount as may become due to the Agency under the Contract.

11.7 In the event of any default or breach of any of the obligations by the Supplier under this Contract, SFA may draw on the Security Deposit to satisfy any liquidated or other damages as may become due to SFA under this Contract if SFA has, prior to drawing on the Security Deposit, notified the Supplier in writing of the default or breach and given the Supplier a minimum of thirty (30) days to rectify or remedy the default or breach or (if the default or breach cannot be fully rectified or remedied) to pay damages to the amount specified in the notice and the Supplier has failed to comply fully with the notice.

11.8 SFA may also utilize and make payment out of deductions from the Security Deposit

in such other manners and for such other purposes, expressly allowed by the Contract.

- 11.9 SFA 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 has been fulfilled, notwithstanding that the Supplier disputes the same.
- 11.10 SFA's rights under this **Clause 11** shall be without prejudice to any other rights and remedies available to SFA.
- 11.11 Where the Security Deposit is in the form of cheque, the Security Deposit, subject to such deduction as may be made from it by SFA, shall be released within **ninety (90)** days from completion of all the Supplier's obligations under the Contract.
- 11.12 SFA's obligations to make payments under Clause 4 are conditional upon the Supplier having provided the Security Deposit in accordance with this Clause 11.
- 11.13 In the Contract, "Security Deposit Guarantee" means a guarantee in the form set out in Schedule 4 of Part 1, Section B issued by:
- (a) a bank or insurance company licensed by the Monetary Authority of Singapore; or
 - (b) a finance company licensed by the Monetary Authority of Singapore,
- under which the issuer guarantees the fulfilment of the terms and conditions of the Contract by the Supplier.

12 PROJECT MANAGEMENT

12.1 The SFA's Representative

SFA shall appoint a person to supervise and liaise with the Supplier for the purpose of the Contract and such person may designate others to assist him in such matters.

12.2 Project Office

The Supplier shall at its own expense establish an office in Singapore, at which the Supplier can be contacted by SFA, to coordinate the performance of this Contract.

12.3 Project Manager and Other Personnel

- 12.3.1 The Supplier shall designate a project manager who shall be primarily responsible for directing and coordinating the supply, delivery and installation of the System and all work and services which are to be executed or provided by the Supplier under the Contract and all other matters including contract administration, monitoring of progress, installation and testing of equipment, technical personnel training, logistic support, documentation preparation and operation start-up (the "**Project Manager**"). The Project Manager shall be deemed to be the Supplier's agent in all dealings with SFA and all actions of the Project Manager shall be binding on the Supplier.

12.3.2 The Representative shall have direct access to the Project Manager at all times during the performance of this Contract and if the Project Manager is absent from work or out of Singapore for any duration, the Supplier shall designate another employee to perform his duties and functions.

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12.5 Maintenance Plan

12.5.1 Within fourteen (14) days from the issue of the Letter of Acceptance, the Supplier shall produce and maintain a Maintenance Plan showing the time schedule and sequence of events necessary for the data center system.

12.5.2 The Maintenance Plan shall, unless otherwise agreed by SFA, conform with the work programme submitted by the Supplier in its tender and shall not extend the time prescribed in **Schedule 2** of Part 1, Section B.

12.5.3 Unless and until an Maintenance Plan is provided pursuant to **Clause 12.5**, the Supplier shall perform its obligations according to **Schedule 2** and for this purpose, a reference to this Contract to “Maintenance Plan” shall be read as a reference to “Schedule 2”.

12.5.4 The Maintenance Plan shall be updated to show the expected and actual events and completion dates. The maintenance plan shall be made available to the Representative for review. The maintenance plan shall include activities to be carried out by SFA and its Representative.

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13 SUPPLIER'S PERSONNEL

13.1 The Supplier shall provide all necessary personnel with adequate skills for the performance of the Works.

13.1.1 The Supplier shall communicate in writing for the approval of the Representative the names and particulars of all personnel (including those of its Subcontractors) that it intends to deploy for the performance of the Contract.

13.1.2 The Supplier shall provide the name and particulars required under **Clause 13.1.1** in the form required by the Representative.

13.1.3 Except as approved by SFA and subject to such conditions as SFA may impose, the Supplier shall ensure that each personnel shall not commence work on the Contract unless the personnel has passed the necessary level of security clearance for the category and nature of the work handled by the personnel as and when required by SFA. The personnel shall, as part of the security clearance, submit such declaration as may be required by SFA.

- 13.1.4 The Supplier shall take into consideration the time reasonably required for security clearance and ensure that sufficient number of personnel with the necessary level of security clearance is deployed at every stage of the implementation.
- 13.2 If SFA objects by notice in writing to any personnel assigned or designated by the Supplier or by any sub-contractor to carry out any work or perform services for the purposes of the Contract who, in the opinion of SFA, has misconducted himself or is a security risk or is deemed unsuitable in any way or has failed any security clearance subsequent to the commencement of work on the Contract, the Supplier shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to SFA. In the event that SFA had other reasons to believe that any personnel employed by the Supplier, or its sub-contractors or agents are unsatisfactory in any way, the Supplier and SFA shall meet immediately in order to reach a mutually acceptable solution.
- 13.3 The Supplier undertakes not to change its personnel designated under **Clause 13.1** without the Representative's consent, whose consent shall not be unreasonably withheld. The Supplier shall not alter or reduce the quality of its personnel if this may adversely affect the progress or quality of the Works. In the event that the Supplier wishes to replace its designated personnel, the Supplier shall provide the names and particulars of the replacement staff in writing to SFA or the Representative for SFA's or the Representative's (as the case may be) consent. Replacement staff shall not commence work on the project unless approval is given in writing by SFA.
- 13.4 The Supplier shall not, without prior written permission from the Representative, bring any visitor to the Site.

14 TITLE AND RISK

- 14.1 The title to and risk in the System, and any part thereof shall pass to SFA on the Commissioning Date. The Supplier shall be responsible for insuring the System in accordance with **Clause 38.1**.
- 14.2 The Supplier warrants that upon payment on the installment of the Contract Price due to the Supplier after the Commissioning Date, SFA shall acquire good clear title to the System free from all liens or encumbrances.

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16 INFORMATION AND ACCESS

- 16.1 SFA undertakes to provide the Supplier promptly with any information which the Supplier may reasonably require from time to time to enable the Supplier to proceed expeditiously with the performance of his obligations under the Contract.

- 16.2 SFA shall, for the purposes of the Contract, afford to the authorized personnel of the Supplier during normal working hours full and safe access to the Site and shall provide adequate free working space and such other facilities as may be necessary for the installation of the System.
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- 23 **LIQUIDATED DAMAGES**
- 23.1 In the event that the Contractor fails to meet any service level set out under this Maintenance Contract, SFA by written notification to the Contractor, in addition to the other remedies under the Terms and Conditions, shall impose liquidated damages at the rate define in **Part 1 Section C, 1st Schedule**.
- 23.2 Liquidated damages imposed under the **Clause 23.1** above shall be paid to SFA in Singapore Dollars not later than thirty (30) calendar days from the date of issue of a SFA's written notification to the Supplier informing the Supplier of the liquidated damages payable.
- 23.3 If the Supplier fails to pay the said damages, SFA may deduct the amount due from any monies due or which may become due from SFA to the Supplier under the Contract and other contracts between the Parties or recover the same as a debt due from the Supplier in any court of competent jurisdiction.
- 23.4 SFA reserves the right to charge interest for any delayed payment at the rate of five percent (5%) per annum.
- 23.5 Where the Supplier is required in the Maintenance Plan to submit any plans, scripts, manuals and other documents for verification and review and the Supplier fails to meet the time schedule for submission of any such documentation, SFA shall be entitled to an extension of time for verification and review corresponding to the period of delay without prejudice to the Supplier's obligation to meet the Stipulated Commissioning Date.

24 PERFORMANCE GUARANTEE PERIOD

24.1 In this clause the following expressions shall have the meanings hereby assigned to them:

"**Operating Hours**" means the scheduled operating hours of the System which will be 24hrs from Monday to Sundays and Public Holidays.

"**Standard of Performance**" means the level of performance achieved by the System when it is operating in conformity with the Requirement Specifications.

"**System Availability Level**" shall be determined according to the following formula:

System Availability = [Operating Hours - System Downtime] / [Operating Hours] x 100%.

"**System Downtime**" means the accumulated time during which the System is not performing in accordance with the Standard of Performance due to product failure measured from the time the Supplier is informed by phone of the product failure to the time when the System is returned to proper operation.

"**Working day**" means every day except for Sundays and Public Holidays.

24.2 The Performance Guarantee Period shall commence on the Commissioning Date and continue for a period of seventy-two (72) working days.

24.3 The System shall have successfully completed the Performance Guarantee Period if the System meets the Standard of Performance with a System Availability Level of not less than ninety-nine per cent (99%) for each calendar month or part thereof during the period of seventy-two (72) working days.

24.4 In the event that the System fails to meet the requirements under **Clause 24.3** the Performance Guarantee Period shall continue from day to day until the System has met the Standard of Performance with a System Availability Level of not less than ninety-nine per cent (99%) over a period of twenty-six (26) consecutive working days which period shall not begin earlier than fifty-four (54) working days from the Commissioning Date.

24.5 The SFA shall maintain daily records to monitor and determine the successful completion of the Performance Guarantee Period.

24.6 Once the System has successfully completed the Performance Guarantee Period either in accordance with **Clause 24.3** or **Clause 24.4**, the SFA shall forthwith issue a written notice to the Supplier accepting the System. The date of the notice or the date when such notice should be issued as determined from the records kept (if different from the date of the notice) shall be the Acceptance Date.

24.7 During the Performance Guarantee Period, the Supplier shall at all times and under all conditions be entirely responsible for the functioning of the System in accordance

with the Requirement Specifications, and for the compliance of such additional requirements as may be mutually agreed upon between the SFA and the Supplier at no additional cost to the SFA.

- 24.8 The Supplier shall remedy and make good at no cost to the SFA all defects, deficiencies, failures or damage to the System or any part thereof arising at any time prior to the commencement of the System Warranty Period. For avoidance of doubt, defects shall include and are not limited to defective design, materials, workmanship, incorrect operating or maintenance instructions given by the Supplier in writing, and any damage to the System Software or operational data. The Supplier shall furnish the SFA with a report to explain the defects and to advise on the corrective action taken within three (3) calendar days after the defects have been rectified.

25 SYSTEM WARRANTY PERIOD

- 25.1 The System Warranty Period shall commence on the Acceptance Date and shall last for thirty-six (36) calendar months or such longer period as may be proposed by the Supplier.

- 25.2 During the System Warranty Period, the Supplier shall render replacement parts and diagnostic services and any other works and services required to make good all defects to the System at no cost to the SFA in the same manner and conditions as those provided under the Conditions of System Software Support and Hardware Maintenance Contract, provided that written notice of such defects is promptly given to the Supplier.

- 25.3 Where during the System Warranty Period, the System or any part thereof is found to be:

- (a) defective in either design, materials or workmanship; or
- (b) not in accordance with the Contract; or
- (c) having been installed, operated, stored and maintained in accordance with the written instructions of the Supplier, fails to function properly or fails to meet any performance guarantees set forth in the Contract or any additional requirements which may be mutually agreed between the SFA and the Supplier;

then, unless it is shown that the foregoing is caused solely by improper use or mishandling on the part of the SFA, the Supplier shall, at its own expense (including but not limited to transportation costs, air freight charges, costs of testing, manufacturing and examination), upon notification from the SFA, replace or completely repair the defective parts of the System or otherwise completely rectify the defects.

- 25.4 During the System Warranty Period, the Supplier shall respond to the foregoing notification within the response time specified in the Conditions of System Software

Support and Hardware Maintenance Contract and render the System fully operational within the turn-around-time time specified in the Conditions of System Software Support and Hardware Maintenance Contract.

- 25.5 If the Supplier fails to respond to the notification or to render the System fully operational within the time frame referred to in **Clause 25.4** above, the SFA may
- (a) impose liquidated damages of the amount specified in the Conditions of System Software Support and Hardware Maintenance as if the failure has occurred during the maintenance period; or
 - (b) remedy the defects itself, whether by engaging a contractor to repair the defects or by purchasing the defective parts of the System from other sources or by such other means as may be necessary to render the System fully operational, and all costs incurred by the SFA in this regard shall be borne by the Supplier.
- 25.6 For the purpose of **Clause 25.3** above, the phrase "improper use or mishandling on the part of the SFA" shall include unapproved modifications to the System by the SFA. In this Clause, the phrase "unapproved modifications to the System by the SFA" means modifications made to the System by the SFA without the approval of the Supplier but does not include:
- (a) modifications made in accordance with or pursuant to documentation provided by the Supplier;
 - (b) modifications to the System to enable it to meet the Requirement Specifications or such additional requirements as may be agreed between the SFA and the Supplier;
 - (c) configuration of the System;
 - (d) installation of approved System Software into the System; or
 - (e) installation of System Software or types of System Software which the System is intended to work with.
- 25.7 For the avoidance of doubt, the SFA's rights and remedies under this Clause are independent of; and without prejudice to any other rights and remedies of the SFA.

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28 TRAINING (OPTIONAL)

- 28.1 The Supplier shall be responsible for the provision of suitable and adequate training for staff nominated by SFA.
- 28.2 The training shall include training in use of the System and self-help for first line support by the computer center information systems officers, supervisors, operators and end-users.
- 28.3 The training provided shall comply with the Requirement Specifications and such other proposals contained in the Supplier's Tender as may be agreed between the Parties.
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- 31.1 The Supplier shall at no additional charge supply and deliver the documentation needed for the operation and maintenance of the system. All subsequent updates for each set of the aforesaid documents shall be supplied at no additional charge to SFA as soon as they are available.

32 LIABILITY OF SUPPLIER

- 32.1 In the event of the Supplier obtaining part(s) of the System from a third party, the Supplier shall inform SFA in writing of the source or origin of the said part(s) of the System and, for avoidance of doubt, it is expressly declared that the Supplier shall remain fully liable for the said part(s) of the System and the consequences arising from the use of the said part(s) as if they were manufactured by the Supplier.

33 PATENT, COPYRIGHT AND OTHER INDEMNIFICATION

- 33.1 The Supplier shall indemnify SFA against any action, claim, damages, charges and costs arising from or incurred by reason of any infringement or alleged infringement of use of patents, design, copyright or other statutory or common law rights of the System, hardware, System Software or consumables supplied or furnished by the Supplier pursuant to this Contract.
- 33.2 SFA shall give the Supplier prompt notice in writing of any such claim.
- 33.3 Without prejudice to SFA's right to defend a claim alleging such infringement, the

Supplier shall if requested by SFA, but at the Supplier's expense, defend such claim. The Supplier shall observe SFA's directions relating to the defence or negotiation for settlement of the claim.

- 33.4 SFA shall if requested but at the Supplier's expense provide the Supplier with reasonable assistance in conducting the defence of such claim.
- 33.5 If any of the said items is in any such suit held to infringe IP rights and its use is enjoined, the Supplier shall, if requested by SFA, at the Supplier's own expense:
- (a) procure for SFA the right to continue using the same; failing which,
 - (b) replace or modify the same so as to avoid the infringement; failing which,
 - (c) pay SFA for such infringing items, a sum equivalent to the purchase price of functionally equivalent items upon the return of the infringing items to the Supplier;

PROVIDED ALWAYS that such actions as aforesaid shall not prejudice or affect any right of action or remedy of SFA against the Supplier.

- 33.6 In the event of any actions being contemplated or instituted for an alleged infringement of patents, design, copyright or other statutory or common law rights, SFA reserves the right to cancel immediately the Contract for delivery of the System or parts hereof yet to be supplied to SFA and/or return the System or parts thereof already delivered and the Supplier shall compensate SFA with the contract price already remitted and SFA reserves its right to purchase the System or parts thereof from other sources without prejudice to all or any of SFA's rights as contained in this Contract.
- 33.7 All royalties and fees claimable by or payable to any person, firm, corporation or government for or in connection with any copyright, invention, patent or System Software used or required to be used in respect of the System or any part thereof in the performance of the Contract or supplied under the Contract shall be deemed to be included in the prices of the System or part hereof.
- 33.8 The obligations in **Clause 33.1** to **Clause 33.6** above do not cover claims of infringement which arises by reason only of:-
- (a) any modification of the System or any use of a System Software other than in its specified operating environment; or
 - (b) the combination, operation or use of the System with any product not supplied by the Supplier.

34 RELOCATION OF SYSTEM

- 34.1 SFA shall have the right to relocate any or all items of the System within Singapore.

Any such relocation shall not affect the Supplier's obligations under this Contract although SFA shall grant extension of the Maintenance Plan accordingly if it is affected.

- 34.2 In the event that SFA requires the Supplier's services for the relocation of the System, SFA shall give thirty (30) days' written notice of its intent to relocate the System.
- 34.3 The Supplier's personnel shall arrange and supervise the dismantling, packing, unpacking and reinstallation of the System to normal operating condition for which SFA shall be charged by the Supplier at a Fair Market Value.
- 34.4 The Supplier shall make good any damage suffered by the System due to the negligence of the Supplier's personnel including the Supplier's employees or agents or representatives, during the transfer to a new location.

35 LANGUAGE

- 35.1 All data, documents, descriptions, diagrams, books, catalogues, instructions, marking for ready identification of major items of the System and correspondence shall be written in readily comprehensible English Language.
- 35.2 The personnel of the Supplier and the Subcontractor shall be proficient in both written and spoken English for the purpose of providing instructions, offering of advisory services, training and any other submissions as required.

36 LOSSES

- 36.1 The Supplier shall indemnify and keep indemnified SFA against any and all Losses sustained, incurred, paid by or suffered by SFA arising out of or in connection with any act or omission on the part of the Supplier, Subcontractor or any of their officers, employees or agents (the "Supplier Parties") unless the Supplier can show that:
- (a) 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 Supplier Parties; and
- (b) it is not due to the Supplier's breach, failure or delay in performance of this Contract.
- 36.2 If any claim is commenced against SFA that may give rise to a claim against the Supplier under Clause 36.1, notice of the claim shall be given to the Supplier as soon as practicable.
- 36.3 Upon receipt of such notice required by SFA, the Supplier shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to SFA to handle and defend the same, at the Supplier's sole cost and expense.

- 36.4 If the Supplier takes control of the defence and investigation of the claim, SFA shall cooperate, at the cost of the Supplier, in all reasonable respects with the Supplier and its attorneys in the investigation, trial and defence of such claim and any appeal arising from such claim; provided, however, that this will not limit SFA's right to participate, at the Supplier's cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising from such claim. No settlement of a claim that involves a remedy other than the payment of money by the Supplier shall be entered into without the consent of SFA.
- 36.5 Notwithstanding anything to the contrary in the Contract, SFA 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 Supplier. If required by SFA, the Supplier shall immediately relinquish control of the defence and investigation of such claim.
- 36.6 This Clause 36 shall survive the termination or expiry of this Contract.

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38 INSURANCE

- 38.1 The Supplier shall insure SFA against any risk of loss or damage to the System or part thereof except for loss or damage caused by theft, negligence or malice by any of the SFA's employees or agents. The period of insurance shall be from the date this Contract comes into force to the date the SFA takes delivery and acceptance of the System.
- 38.2 Before commencement of the Works the Supplier shall take up an insurance policy against any damage, loss or injury which may occur to any property (including that of SFA) or to any person (including any employee or agent of the Supplier or of SFA) as the result of any act or omission of the Supplier or his sub-contractors in the execution of the Works or in the carrying out of the Contract.
- 38.3 All insurance contemplated by this clause shall be effected with an insurer and in terms approved by SFA (which approval shall not be unreasonably withheld) and the Supplier shall produce to the SFA the policy or policies of insurance and the receipts for payments of the current premium.
- 38.4 If the Supplier fails to comply with this clause or fails to produce evidence showing the same at SFA's request, SFA may effect and keep in force the insurance policies contemplated by this clause and pay such premiums as may be necessary for this purpose and from time to time deduct the amount paid by SFA from any monies due to or which may become due from SFA to the Supplier or recover the same as a debt due from the Supplier in any court of competent jurisdiction.

39 CONFIDENTIALITY

39.1 Except with the written consent of the SFA, the Supplier shall:

- (a) treat as strictly confidential and not disclose any Confidential Information to any person other than officers, employees, and agents of the Supplier or its Sub-contractors on a need-to-know basis for the purposes of performing the Supplier's obligations under the Contract; and
- (b) only use the Confidential Information for the sole purpose of performing the Supplier's obligations under the Contract and shall not use it for any other purpose.

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39.3 The Supplier shall take all reasonable precautions in dealing with Confidential Information so as to prevent any unauthorised person from having access to Confidential Information. For the purpose of this Clause 39, "**Confidential Information**" means any information received or obtained as a result of entering into the Contract (or any agreement entered into pursuant to the Contract), including:

- (a) information which relates to SFA;
- (b) information which relates to the existence and the provisions of the Contract or of any agreement entered into pursuant to the Contract; or
- (c) any analyses, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting such information,

but does not include information that is:

- (i) or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of the Supplier, his employees, agents or Sub-contractors;
- (ii) lawfully in the possession of the Supplier or already known to the Supplier on a non-confidential basis prior to the Supplier receiving or obtaining such information as a result of entering into the Contract, as evidenced by written records; or
- (iii) independently developed by the Supplier.

39.4 The Supplier shall procure and ensure all his employees and agents and those of his Subcontractors or agents who are or may be involved in the execution of obligations under this Contract observes the provisions of this Clause 39 and shall, at any time, if so required by SFA, procure and ensure that such employees and agents and those of his Subcontractors or agents sign an Confidentiality Agreement in the form prescribed in **Part 1, Section B, Schedule 5**.

- 39.5 The Supplier shall immediately notify the Representative where the Supplier becomes aware of any breach of Clauses 39.1 to 39.5 by his employees and agents and those of his Subcontractors or agents who are or may be involved in the execution of obligations under this Contract. The Supplier shall cooperate with SFA to limit the extent and impact of such breach.
- 39.6 The Supplier shall not be liable for disclosure of Confidential Information in the event and to the extent any Confidential Information is required to be disclosed by the Supplier pursuant to any applicable law, regulations or directives of any relevant government, statutory or regulatory body (including stock exchange) or pursuant to any legal process issued by any court or tribunal of competent jurisdiction, provided the Supplier shall, to the extent practicably possible and permissible by law or regulations, give SFA prompt and prior notice of any such requirement and shall cooperate with SFA to limit the scope of such disclosure to the maximum extent legally possible.
- 39.7 Termination or expiry of this Contract for whatever cause shall not put an end to the obligation of confidentiality imposed on the Supplier, its employees, agents and those of this Subcontractors or agents under this **Clause 39**.

39A DATA SECURITY AND PROTECTION

39A.1 Data Protection

- 39A.1.1 The Supplier shall not access, monitor, use or process data obtained or held in connection with the Contract, except as reasonably necessary to perform its obligations under the Contract.
- 39A.1.2 The Supplier shall not disclose any data obtained or held in connection with the Contract without the prior written consent of SFA. Any request for SFA's consent under this **Clause 39A** must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Supplier's obligations under the Contract.
- 39A.1.3 The Supplier shall not: (a) cause or permit data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside Singapore; or (b) allow parties outside Singapore to have access to such data, unless (in each case) with the prior written consent of SFA and subject to such conditions as SFA may impose. Any request for SFA's consent under this **Clause 39A** shall include an explanation of why the proposed transfer is necessary for the purposes of fulfilling the Supplier's obligations under the Contract. If consent is granted for the transfer of personal data outside Singapore, the Supplier shall provide a written undertaking that the personal data which is transferred outside Singapore will be protected to a comparable standard as it is protected under the Personal Data Protection Act 2012.
- 39A.1.4 The Supplier shall immediately notify SFA when it becomes aware of a breach of any of Clauses 39A.1.1 to 39A.1.3.

39A.1.5 The Supplier shall immediately notify SFA as soon as it becomes aware that a disclosure of data may be required by law and cooperate and comply at its own costs with SFA's reasonable requests and directions.

39A.1.6 The Supplier shall ensure that all personal data obtained or held in connection with the Contract and any copies thereof, regardless of the medium of storage, and which is no longer necessary for the purposes of its performance of the Contract, is within 7 days. Any personal data that is retained by the Supplier after such personal data is no longer necessary for the purposes of its performance of the Contract, or without the written authorisation of SFA, is a breach of the Contract. No later than 7 days from the termination or expiry of the Contract, the Supplier shall provide a written confirmation that it is no longer in possession of any personal data obtained or held in connection with the Contract or copies thereof, regardless of the medium of storage.

39A.2 Security

39A.2.1 The Supplier shall take all reasonable measures to ensure that data held in connection with the Contract is protected against loss or damage (whether accidental or otherwise), and against unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel shall have access to the data. The Supplier shall not vary the security procedures without the prior written approval of SFA.

39A.2.2 The Supplier shall, in respect of any data held by it in connection with the Contract, comply with any reasonable requests, directions or guidelines of SFA relating to the handling of data.

39A.2.3 The Supplier shall immediately notify SFA when it becomes aware of a breach of **Clause 39A.2.1** by itself or any Subcontractor.

39A.3 Definitions

For the purposes of this Clause 39A:

“**data**” means any representation of information or of concepts regardless of the medium of storage, and includes any personal data; and

“**personal data**” shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012 (No. 26 of 2012).

40 COMPLIANCE WITH STATUTES, REGULATIONS, ETC

40.1 The Supplier shall give all notices and pay all fees required to be given or paid under any law in force in Singapore and hereby undertakes to obtain all necessary export licence for the export of all items from their countries of origin to Singapore in relation to the execution of the Contract.

40.2 The Supplier shall conform in all respects with the provisions of all laws of Singapore and shall keep SFA indemnified against all penalties and liabilities of every kind for the breach of any such laws.

41 SUB-CONTRACT, ASSIGNMENT, TRANSFER

- 41.1 The Supplier shall not, without the written consent of SFA, sub-contract, assign or transfer the Contract or the benefits or obligations or any part thereof to any other person. The Supplier shall be responsible for the acts, defaults, neglects or omissions of any assignee or Subcontractor, their agents or workmen as fully as if they were the acts, defaults, neglects or omissions of the Supplier, his agents or workmen.
- 41.2 If SFA permits the Supplier to sub-contract any of its obligations under the Contract, the Supplier shall, for each and every of its Subcontractor(s):
- (a) ensure that the relevant Subcontractor complies with its applicable and corresponding obligations under the Contract, as if it were a party to the Contract; and
 - (b) procure that the relevant Subcontractor is bound by a written agreement containing provisions which are substantially similar to, and in any case no less onerous than, the equivalent or corresponding provision in the Contract.
- 41.3 If SFA permits the Supplier to sub-contract any of its obligations under the Contract, the Supplier shall, for each and every of its Subcontractor(s):
- (a) ensure that the relevant Subcontractor complies with its applicable and corresponding obligations under the Contract, as if it were a party to the Contract; and
 - (b) procure that the relevant Subcontractor is bound by a written agreement containing provisions which are substantially similar to, and in any case no less onerous than, the equivalent or corresponding provision in the Contract.
- 41.4 In seeking the written consent of SFA, the Supplier shall:
- (a) provide all information requested by SFA including but not limited to information about a sub-contractor's registration with the relevant Government Registration Authority. Information on the Government Registration Authority can be found in GeBIZ Partner via Internet at <http://www.gebiz.gov.sg>; or
 - (b) if requested by SFA, provide to SFA for its review and approval a copy of the draft contract or agreement (the "**Draft Agreement**") for the engagement of the intended sub-contractor. The Supplier shall make such amendments as may be reasonably requested by SFA in order for the Draft Agreement to comply with Clause 41.3 above. For avoidance of doubt, the Supplier shall remain fully responsible for its compliance with Clause 41.3 and this Clause 41.4 shall be without prejudice to any right of SFA to any remedies against the Supplier for its failure to comply with Clause 41.3.
- 41.5 The Supplier shall immediately notify SFA in the event that it becomes aware of, or has reason to suspect the occurrence of, any breach, default, neglect or unlawful activity of the Subcontractor (including that of its employees, agents or workmen) in

relation to the Contract, or any other act or omission of the Subcontractor (including that its employees, agents or workmen), which may adversely affect SFA's rights under the Contract or cause loss or damage to SFA (in each case, a "**Subcontractor Default**"). The notification shall not relieve the Supplier or its Subcontractor of the obligation to remedy or rectify the Subcontractor Default.

42 FORCE MAJEURE

- 42.1 Neither Party shall be liable for any failure to perform his obligations under the Contract if the failure results from events which are beyond the reasonable control of either Party 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, such acts shall include acts of God, civil or military authority, civil disturbance, wars, strikes, fires or other catastrophes.
- 42.2 If the effect of any of the said event shall continue for a period exceeding six (6) months SFA may at any time thereafter upon giving notice to the Supplier elect to terminate the Contract.
- 42.3 In any of the events mentioned in **Clause 42.1** the Supplier or SFA shall for the duration of such event be relieved of any obligation under the Contract as is affected by the 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 event.
- 42.4 Where SFA elects to terminate the Contract under **Clause 42.2** the Supplier shall forthwith refund to SFA all amounts paid to the Supplier less the price of items and services which have been provided to SFA.
- 42.5 Failure of the Supplier's Subcontractors or suppliers shall not be regarded as events beyond the control of the Supplier's control unless such Subcontractors or suppliers would qualify for exemption under this **Clause 42** if the provisions of this **Clause 42** were applied to them.

43 PUBLIC RELEASE OF INFORMATION

- 43.1 The Supplier shall obtain in writing the prior approval and the consent of SFA before the release of any news item, article, publication, advertisement, prepared speech or any other information or material, pertaining to or related to any part or whole of the Contract including but not limited to the Works to be performed under the Contract, and System Software licence and support and equipment maintenance associated with the System. Such prior approval shall be sought in reasonable time.

44 GIFTS, INDUCEMENT AND REWARDS

- 44.1 SFA shall be entitled to terminate the Contract at any time and to recover from the Supplier the amount of any loss resulting from such termination, if the Supplier or the

Subcontractor 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 act in relation to the obtaining or execution of the Contract with SFA or for showing or forbearing to show favour to any person in relation to any agreement with SFA or if the like acts shall have been done by any person employed by the Supplier or Subcontractor, or if in relation to any Contract with SFA, the Supplier or the Subcontractor or any person employed by the Supplier or Subcontractor shall have committed any offence under Chapter IX of the *Penal Code* or the *Prevention of Corruption Act* of Singapore or shall have abetted or attempted to commit such an offence or shall have given any fee or reward to any person the receipt of which is an offence under the said part of the *Penal Code* or under the *Prevention of Corruption Act* or any legislation enacted in substitution thereof for the time being in force in Singapore.

45 APPLICABLE LAW

- 45.1 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 exclusive jurisdiction of the Singapore courts.

46 VARIATION OF CONTRACT

- 46.1 Parties agree that any variation to the Contract shall be in writing and signed by both parties.
- 46.2 SFA may, at any time during the Contract, require the Supplier to revise the Maintenance Plan and/or to undertake any reasonable alteration or addition to or omission from the Works or any part thereof.
- 46.3 In the event of such a variation being requested, SFA shall formally request the Supplier to state in writing the effect such variation will have on the Contract Price and to the works schedule. The Supplier shall furnish such details within fourteen (14) days of receipt of the SFA's request or such other period as may be agreed. The Supplier shall not vary the Works in any respect unless instructed in writing to do so by the SFA.
- 46.4 A variation under this **Clause 46** shall not invalidate the Contract but if such variation involves an increase in the cost to the Supplier of carrying out the Works, an appropriate adjustment to the Contract Price shall be made.
- 46.5 The Supplier shall satisfy SFA as to the reasonableness of changes to the works schedule and of the extra costs or savings resulting from the variations.
- 46.6 Upon SFA being satisfied regarding the reasonableness of any extensions to the works schedule by the variation, SFA shall grant such extension time, and inform the Supplier accordingly in writing.

47 CONDITIONS NOT TO BE WAIVED

47.1 No waiver of any breach of the Contract shall be deemed to be waiver of any other or of any subsequent breach. In no event shall any delay, failure or omission on the part of either of the parties in enforcing or exercising any right, power, privilege, claim or remedy, which is conferred by this Contract, at law or in equity, or arises from any breach by any of the other Parties of this Contract, be deemed to be or be construed as, (i) a waiver thereof, or of any other such right, power, privilege, claim or remedy, in respect of the particular circumstances in question, or (ii) operate so as to bar the enforcement or exercise thereof, or of any other such right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

48 TERMINATION OF CONTRACT

48.1 If at any time the Supplier is in breach of any of the terms or conditions under this Contract, the Supplier shall have thirty (30) days to effect a remedy or show to SFA's satisfaction the cause of the breach of its obligations and the Supplier's intended remedy, in which case, the Supplier shall have such period, if any, as is authorised in writing by SFA to effect the remedy.

48.2 If the breach of the terms or conditions under this Contract is not remedied pursuant to **Clause 48.1** above, SFA may at any time prior to the Contract Effective Date terminate the Contract by notice in writing as from the date specified in the notice.

48.3 If the Supplier, being a company, shall pass a resolution or the Court shall make an order that the company shall be wound up otherwise than for the purpose of reconstruction or amalgamation or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court otherwise than for the purpose of amalgamation or reconstruction to make a winding-up order, or any part thereof, without the written consent or approval of SFA, then SFA shall be at liberty to terminate the Contract summarily by notice in writing to the Supplier.

48.4 In the event of termination of the Contract as provided for in **Clause 48.2** or **Clause 48.3** or in accordance with law, the following shall apply:-

- (a) (i) all payments that shall have been made under the Contract less the value of all items delivered and accepted by SFA shall be refunded by the Supplier to SFA forthwith provided always that such refunds as aforesaid shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to SFA as a result of the termination of the breach of the Contract by the Supplier;
- (ii) the Supplier shall upon written notice from SFA be required to remove, at the Supplier's expense, the System or any part thereof specified in the notice from the Site at a date specified by SFA, and in default SFA may (without being responsible for any loss or damage):

remove and sell the same, holding the proceeds less all expenses incurred to the credit of the Supplier, or remove and return the same to the Supplier all at the Supplier's expense.

- (iii) SFA shall be entitled to recover from the Supplier any damages, losses, costs and expenses which SFA may sustain or incur in consequence of such termination; all such damages, losses, costs and expenses which are or become so recoverable under the Contract together with any sum payable by the Supplier as liquidated damages, may be deducted from any money that may then be due to the Supplier and if the money then due to the Supplier under the Contract or deposited by him under the Contract as aforesaid is not sufficient for that purpose, the balance remaining unpaid shall be a debt due from the Supplier to SFA, and may be set off against any other monies which may be or become due to the Supplier from SFA or may be recovered as a debt due from the Supplier in any court of competent jurisdiction;

OR, at the sole discretion of SFA:-

- (b)
 - (i) SFA may carry out and complete the Works on its own or employ and pay other person or persons to carry out and complete the Works and he or they may enter upon the Site and use all materials, System Software and equipment thereon, and may purchase all materials necessary for the purposes aforesaid;
 - (ii) the Supplier shall if so required by SFA assign to SFA and without further payment the benefit of any contract for the supply of materials and/or works intended for the use under the Contract or for the execution or any Works and SFA shall pay the agreed price (if unpaid) for such materials or Works supplied or executed after the said termination;
 - (iii) the Supplier shall during the execution or after the execution of the Works under this sub-clause as and when required remove from the Site any materials within such reasonable time as SFA may specify in a written notice to him and in default, SFA may, without being responsible for any loss or damage, remove and sell the same, holding the proceeds less all the expenses incurred to the credit of the Supplier;
 - (iv) until completion of the Works under this sub-clause no payment shall be made to the Supplier under the Contract; provided that upon completion as aforesaid and the verification within a reasonable time of the accounts therefore, SFA shall certify the amount of expenses properly incurred by SFA and if such amount added to the monies paid to the Supplier before such termination exceeds the total amount which would have been payable on due completion, the difference shall be a debt payable to SFA by the Supplier, and if the said amount added to the said monies be less than the said total amount, the difference shall be debt payable by SFA to the Supplier; provided always the aforesaid

shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to SFA as a result of the termination of the Contract or as a result of the breach of the Contract by the Supplier;

- (v) in the event of the completion of the Works being undertaken by SFA, allowance shall be made, when ascertaining the amount to be certified as expenses properly incurred by SFA, for the cost of supervision, interest and depreciation on equipment and all other usual overhead charges and profits, as would be incurred were the work carried out by the Supplier

48.5 In addition to the rights set out in **Clause 48.2** and **Clause 48.3**, SFA may at any time upon giving at least one (1) month's notice in writing to the Supplier of its intention to do so, terminate the Contract or any part or further part thereof, and upon such notice being given, the Supplier shall cease or reduce work according to the tenor of the notice and shall forthwith do everything possible to mitigate losses consequent thereto.

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48.11 No termination of the Contract, whether pursuant to this Clause or otherwise, shall affect any right of SFA to use any System Software whether such right is acquired pursuant to the Contract or otherwise.

49 POLICY, SECURITY AND AUDIT

49.1 Policy

49.1.1 The Supplier shall fully comply with any written instructions on Government policies pertaining to Information Communications Technology ("ICT") Management that may be issued by SFA from time to time.

49.1.2 Where the Supplier will be performing Extra Work in order to comply with new Government ICT requirements issued by SFA or the Adviser after the Commencement Date of this Contract, SFA shall not be liable for any claims in respect of such Extra Work UNLESS all the conditions in Clause 56 are fully complied with.

49.1A Security

49.1A.1 The Supplier is required to maintain strict confidentiality and ensure that all information pertaining to the Site and SFA's work environment must not be disclosed to anyone except the Representative and the Supplier's employees, agents or Subcontractors directly involved with this Contract. The Supplier is to ensure that information is not to be published or communicated to any other person in any form whatsoever except on a strictly "need-to-know" basis. Failure to comply with this confidentiality requirement shall be a ground for termination of this Contract. This clause shall be without prejudice to the provisions of Clause 39.

49.1A.2 The Supplier, its employees or agents, shall not, without the prior written permission of SFA, bring any visitor to any location or site on which the Supplier is providing the goods or services under this Contract.

49.1A.3 The Supplier shall fully comply with any written instructions on information security matters (including IT Security Best Practices) that may be issued by SFA.

49.2 Audit

49.2.1 The Supplier shall allow SFA to conduct periodic audits at all locations and site in which the Supplier is providing or has provided goods or services under this Contract to ensure that there is proper controls and compliance with this Contract. The Supplier shall cooperate with and provide support, information and assistance to SFA for the purpose of such audits.

49.2.2 All audits shall be in the form of a government audit, or a third-party audit conducted by a reputable audit firm.

49.2.3 The Supplier shall provide all support necessary for the conduct of the audits at no additional cost to SFA.

49.2.4 SFA may conduct surprise spot checks on any locations and site in which the Supplier is providing or has provided goods or services under this Contract for the purpose of such audits.

49A SECURITY AND DATA BREACH PROCEDURES

49A.1 The Supplier shall:

- (a) provide SFA with the name and contact information of an employee who shall serve as the SFA's point of contact for all security and data breach matters, and shall be available to assist SFA at all times (24 hours per day, 7 days per week) in resolving matters associated with a security or data breach;
- (b) notify SFA of any actual, potential, or suspected physical security breach, as soon as practicable after the Supplier becomes aware of the actual, potential,

or suspected physical security breach;

- (c) notify the SFA of any actual, potential, or suspected cyber-security or data breach, as soon as practicable after the Supplier becomes aware of the actual, potential, or suspected cyber-security or data breach.

49A.2 In the event of an actual, potential, or suspected security or data breach, the Supplier shall extend full cooperation and assistance to SFA, and at no cost to SFA:

- (a) assist SFA with any investigation into the actual, potential, or suspected security or data breach;
- (b) provide SFA with physical access to all the Supplier's personnel, facilities and infrastructure that are used to perform this Contract;
- (c) facilitate interviews with the Supplier's employees;
- (d) make available all records, logs, files, data reports, and materials that may be relevant to the investigation of the security or data breach.

49A.3 The Supplier shall, at no cost to SFA, use best endeavours to immediately remedy, according to instructions or direction given by SFA, any actual or suspected security or data breach, or to prevent any potential security or data breach.

49A.4 The Supplier shall not inform any third party of any security or data breach without first obtaining SFA's prior written consent.

49A.5 The Supplier shall track all details from the point of discovery of the security or data breach to its resolution, and provide SFA with hourly updates, in the format stipulated by SFA.

49A.6 Where the actual or potential breach is caused by the Supplier's default, negligence or unlawful act, the Supplier shall reimburse SFA for all reasonable costs incurred by SFA in responding to and mitigating damages caused by any actual, potential, or suspected security or data breach.

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51 ADVISER

51.1 Any person or body appointed by SFA as the Adviser shall have the authority to deal with the Supplier and the Subcontractors for and on behalf of SFA in all matters (technical or otherwise) in relation to this Contract.

52 CORRESPONDENCE

- 52.1 Any notice, request, waiver, consent or approval shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post, facsimile, telegram or telex to the Party to which it is required or permitted to be given and made at such Party's address specified in the Invitation to Tender.

53 CUMULATIVE REMEDIES

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

54 CLAIMS FOR EXTRA WORK

- 54.1 SFA shall not be liable for any claims for any extra work performed or to be performed falling outside the scope of this Contract ("Extra Work") UNLESS all the following conditions are fully complied with:
- (a) all claims must be submitted in writing before the performance of any Extra Work, and
 - (b) in submitting any claim under Sub-Clause (a) above, the Supplier shall include the price of the Extra Work and the detailed scope of the Extra Work, and
 - (c) SFA agrees in writing for the Extra Work to be carried out and to the payment of the claim before the performance of any Extra Work.
- 54.2 The Supplier agrees that it is only entitled to claim for any Extra Work provided all the conditions in **Clause 54.1** are fully complied with. The Supplier further agrees that it shall not be entitled to additional payments whether under this Contract, restitution, quasi-contract or equitable grounds if all conditions in **Clause 54.1** are not fully complied with.
- 54.3 For the avoidance of doubt, Clause 54 applies to all Extra Work including Extra Work initiated at the request of SFA.
- 54.4 For Extra Work initiated at the request of SFA, SFA shall reserve the right to waive any or all or any part of the conditions in Clause 54.1 at her own discretion.

55 MEDIATION CLAUSE

- 55.1 Notwithstanding anything in this Contract, in the event of any dispute, claim, question

or disagreement arising out of or relating to this Contract, no Party shall proceed to litigation or any other form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Center.

- 55.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with **Clause 55.1**.
- 55.3 Failure to comply with **Clause 55.1** or **55.2** shall be deemed to be a breach of contract.

56 CONTRACTS (RIGHTS OF THIRD PARTIES)

- 56.1 This Contract does not create any right under the *Contracts (Rights of Third Parties) Act*, which is enforceable by any person who is not a party to it.

57 CONSORTIUM

- 57.1 As used in this Contract, “Consortium” means an unincorporated joint venture through the medium of a consortium or a partnership.
- 57.2 Each member of the Consortium shall be jointly and severally responsible to the SFA for the due performance of the Contract.
- 57.3 Any introduction of, or changes to, Consortium membership must be approved in writing by SFA.
- 57.4 Should additional member(s) be added to the Consortium at any time with the approval of the SFA, he or they shall be deemed to be included in the expression ‘the Supplier’.**
- 57.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or cease to exist in accordance with the laws of the country of incorporation:
- (i) this Contract shall continue and not be dissolved, and
 - (ii) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

58 COEXISTENCE STRATEGY

- 58.1 In the event that SFA appoints more than one Supplier, whether in this tender or subsequent tenders, the Suppliers are to cooperate with each other to ensure that the service levels and requirements of the System as stated in the Requirement Specifications are met. If necessary, the operations management procedures will have

to be refined by both parties to accommodate each other's Systems.

- 58.2 The Supplier is also required to work with the facility management (FM) supplier for the IT Infrastructure in the development of the application software and also in the maintenance and support of the System. If necessary, the operations management procedures will have to be refined by both parties to accommodate each other's System.
- 58.3 The Supplier shall if necessary meet on a regular basis with SFA and other suppliers to discuss operational issues and other problems that may be encountered in the provision of the System and the services. The relevant technical officers involved in the provision of the services shall attend the meetings.

59 OWNERSHIP OF DOCUMENTATION AND DISPOSAL OF DOCUMENTATION UPON TERMINATION OF CONTRACT OR COMPLETION OF CONTRACT

- 59.1 The SFA shall own all the documentation generated for the purpose of this Contract.
- 59.2 Subject to Clause 39A.1.6, the Supplier, his employees, agents and Subcontractors shall within seven (7) days upon the termination of this Contract or upon the completion of this Contract:
- (a) return to the Representative all property, documents, papers and copies of thereof
 - i. belonging to SFA,
 - ii. received from SFA for the purpose of this Contract; or
 - iii. produced in the course of the Contract,
- which may be in their possession or under their control; and
- (b) securely destroy and erase all softcopies of documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.

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59.4 If requested by SFA to do so, the Supplier shall fully cooperate with SFA to enable SFA to verify that the Supplier complied with this Clause 59, including but not limited to providing SFA with such information as may be reasonably necessary for this purpose.

60 SET-OFF

60.1 Whenever under this Contract any sum of money (including liquidated damages and any other damages) shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Contract [or any other agreement] with SFA.

61 ENTIRE AND WHOLE AGREEMENT

- 61.1 This Contract contains the entire and whole agreement between the Parties and supersedes all prior written or oral commitments, representations, arrangements, understandings or agreements between them.
- 61.2 Each Party warrants to the other that it has not entered into this Contract on the basis of any prior written or oral commitments, representations, arrangements, understandings or agreements between them.

62 ISSUANCE OF WRITTEN WARNING BY SFA

- 62.1 If the Supplier is in breach of any of its obligations under the Contract, SFA may issue a written warning to the Supplier setting out the details of the Supplier's breach, and SFA shall have the right to publish or disseminate information on the written warning through any platform accessible by Government departments, organs of state and statutory boards.
- 62.2 Information on the written warning which may be published or disseminated referred to in this **Clause 62** may include but not be limited to details and information relating to any or all of the following:
- (a) the Supplier's breach of any of its obligations under the Contract;
 - (b) any action taken by the Supplier to rectify or remedy the breach;
 - (c) any action taken by SFA against the Supplier in respect of the breach.
- 62.3 Save as expressly provided for in the Contract, any action taken by SFA against the Supplier under Clause 62.1 shall be without prejudice to any accrued rights and obligations under the Contract as at the date the action is taken.
- 62.4 Any publication or dissemination of the details and information on the written warning under **Clauses 62.1 and 62.2** above may be used or relied upon by any Government departments, organs of state or statutory board in the evaluation of any tender, quotation or proposal submitted by the Supplier in response to any invitation to tender, invitation to quotation, or request for proposal issued by any Government department, organs of state or Statutory Board.
- 62.5 SFA shall not be liable to the Supplier or any third party for any Losses whatsoever and howsoever arising from or relating to the proper exercise by SFA of any rights under this **Clause 62**.

63 LIQUIDATED DAMAGES FOR DATA AND SECURITY BREACHES

- 63.1 In the event the Supplier breaches any provisions in this Contract that results in the security or integrity of the Government's network being compromised ("Security Breach") or results in the unauthorised disclosure of any personal data obtained by the Supplier in the course of this Contract ("Data Breach"), the Supplier shall adhere to

the security and data breach procedures set out in **Clause 49A** and without prejudice to **Clause 63.2**, SFA shall be entitled to impose liquidated damages of 2 man-days at the rate of S\$800 per manday per Security Breach and 2 man-days at the rate of S\$800 per manday per Data Breach, being a genuine pre-estimate of the initial administrative costs incurred by SFA in investigating such breaches. Such liquidated damages shall be paid to SFA in Singapore Dollars no later than thirty (30) calendar days from the date of issue of such notification to the Supplier by SFA, and where the Supplier fails to pay such damages, SFA shall be entitled to exercise its set-off rights in accordance with **Clause 60**, or recover the same as a debt due from the Supplier in any court of competent jurisdiction.

- 63.2 Notwithstanding Clause 63.1, the Supplier indemnifies SFA against all damages, losses, claims, costs and expenses, suffered or incurred by SFA or third parties claiming against SFA arising from or attributable to the Security Breach and/or Data Breach, including costs incurred in rectifying the Security Breach or Data Breach respectively. For the avoidance of doubt SFA shall not be entitled to double recovery of the initial administrative costs incurred by SFA in investigating such breaches.
- 63.3 Where there is any doubt as to whether a breach compromises the security or integrity of the Government's network or results in the unauthorised disclosure of any personal data within the meaning of Clause 63.1, SFA's view shall prevail.

64 SOLICITATION OF STAFF

- 64.1 SFA shall not solicit any of the Supplier's officers, or employees or staff assigned to the performance of this Contract, or induce such persons to terminate their employment or engagement with the Supplier within one year after the completion of this Contract or termination of this Contract (whichever is earlier).
- 64.2 The Supplier and its Subcontractors shall not solicit any of SFA's or employees or staff, who are involved in the management or other activities under this Contract, or induce such persons to terminate their employment or engagement with SFA within one year after the completion of this Contract or termination of this Contract (whichever is earlier).
- 64.3 For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of either Party shall not be deemed to be solicitation or inducement for the purposes of this Clause.

CONTENTS

- Schedule 1: Payment Terms
- Schedule 2: Works Programme
- Schedule 3: INTENTIONALLY LEFT BLANK
- Schedule 4: Form of Security Deposit Guarantee
- Schedule 5: Confidentiality Agreement
- Schedule 6: INTENTIONALLY LEFT BLANK
- Schedule 7: Undertaking by OEM

Payment: Quarterly at end of every three (3) months

Any GST payable for the supply of goods, services or works by the Supplier under this Contract shall be reimbursed by SFA.

The Maintenance Plan proposed shall conform to the following schedule:

Contract Effective Date	: 1st Oct 2021
Letter of Acceptance (LOA)	: Date of Issuance of LOA
Submission of Maintenance Plan	: LOA + <u>fourteen (14)</u> working days
Payment	: Quarterly at end of three (3) months

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FORM OF SECURITY DEPOSIT GUARANTEE

TENDER REFERENCE NO. : _____

To: Singapore Food Agency (the “Agency”).

Whereas on the ____ day of _____ an agreement (the “Contract”) was made between _____ (name of Contractor) of _____ (address) (the “Contractor”) of the one part and the Agency of the other part for _____ (state nature of contract) whereby the Contractor agreed that in consideration of its due and faithful performance of the Contract, it would be paid the sum of Singapore Dollars _____ (S\$ _____) (the “Contract Price”).

And Whereas the Contractor is required under the Contract to pay (S\$15,424). of the Contract Price as a security deposit for the due and faithful performance of its obligations under the Contract.

The Contractor has opted to provide an irrevocable on-demand guarantee in favour of the Agency as a security deposit for the Contract.

We (at the request of the Contractor) hereby agree as follows:

- 1 We shall unconditionally pay to the Agency any sum or sums up to a maximum aggregate of Singapore Dollars _____ (S\$15,424) (the “Guaranteed Sum”) upon receiving your written notice of claim for payment made pursuant to Clause 4 of this Guarantee without any proof of actual default on the part of the Contractor and without need to satisfy any other condition.
- 2 We shall not be discharged or released from this Guarantee by any arrangement between the Agency and the Contractor with or without our consent, or by any other or further arrangement between the Contractor and us with or without the Agency’s consent, or by any alteration in the obligations undertaken or to be undertaken by the Contractor or by any forbearance on the Agency’s part whether as to payment, time, performance or otherwise.
- 3 Our liability under this Guarantee shall continue and this Guarantee shall remain in full force and effect from [*insert effective date:* _____] until [*insert expiry date:*_____] [*insert if expiry date is subject to automatic extension¹:* provided always that the expiry date of this Guarantee and our liability under this Guarantee shall be automatically extended for successive periods of [*specify duration of each extension:* _____ days/months] unless we give you 90 days’ written notice prior to the expiry of our liability (the “Notice Period”) of our intention not to extend this Guarantee in respect of any future extension and provided further that you shall be entitled –
 - (a) upon receiving such notice of our intention either to:
 - (i) make a claim under this Guarantee; or

¹ This provision is to be included for contracts which are not fixed period contracts. For fixed period contracts, this provision is not required.

- (ii) *direct us to pay such amount (not exceeding the Guaranteed Sum) as you may specify into a suspense account to be governed and disbursed by us subject to the Association of Banks in Singapore’s Guidelines for operation of a Suspense Account; or
- (b) direct us (within the Notice Period) to extend the validity of this Guarantee for a further period not exceeding _____ days/months (and this Guarantee shall then expire at the end of such further period).

*Note: * Not applicable for insurance bond issued by insurance companies*

- 4 This Guarantee is conditional upon a claim being made by the Agency at any time and as many times as the Agency may deem fit by way of a notice in writing addressed to us and the same being received by us at [*insert address of Bank’s notification office:* _____] before the end of 90 days after the expiry of this Guarantee.
- 5 We shall be obliged to effect the payment required under such a claim within 30 business days of our receipt of the written notice from the Agency. We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim and shall be entitled to rely upon the Agency’s written notice received by us as final and conclusive. For the purposes of this Guarantee, “**business day**” means a day other than a Saturday, Sunday, or public holiday in Singapore.
- 6 The Agency may make more than one claim on this Guarantee so long as the aggregate amount specified in all such claims does not exceed the Guaranteed Sum.
- 7 This Guarantee is issued subject to the laws of the Republic of Singapore and the exclusive jurisdiction of the Singapore courts.

Dated this _____ day of _____

AS WITNESS our hand

Signed by: _____
(Name and designation of officer)

for and on behalf of the

(Name of Bank)

(Signature)

in the presence of:

Name _____

Designation _____

(Signature of Witness)

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2021 **BETWEEN** the Singapore Food Agency (hereinafter called "**SFA**") of the one part **AND** (Name of company/institute) _____ (hereinafter called the "**Recipient**"), of the other part,

collectively referred to as the "**Parties**" and each individually as a "**Party**".

WHEREAS:

- (1) The Recipient wishes to receive certain, confidential and proprietary information pertaining to _____ (hereinafter collectively "Information").
- (2) The Recipient wishes to receive the Information for the sole purpose of _____ (hereinafter called "the Purpose").
- (3) SFA is willing to disclose the Information and the Recipient is willing to receive the Information on the terms and conditions set forth herein.

NOW IT IS HEREBY AGREED as follows:

1. CONFIDENTIALITY

- 1.1 The Recipient accepts that the disclosure of Information by SFA is in strictest confidence.
- 1.2 The Recipient shall:
 - (a) not disclose to any other person the Information;
 - (b) maintain the confidentiality of the Information;
 - (c) use the Information only for the Purpose;
 - (d) restrict disclosure of the Information solely to those having a need to know such Information in order to accomplish the Purpose stated above;
 - (e) inform each such individual, before he/she receives access to the Information, of the obligations of the Recipient under this Agreement, and obtain enforceable written undertakings in terms at least as binding upon each such individual as the Recipient is bound to SFA, provided that the Recipient shall be liable for any breach of such undertakings by any such individual; and
 - (f) within seven (7) days following written request of SFA, return to SFA all

documentation, copies, notes, diagrams, computer memory media, computer application and other materials containing any portion of the Information, or at SFA's option, confirm in writing to SFA, the destruction of such materials.

- 1.3 This Agreement imposes no obligation on the Recipient with respect to any portion of the Information received from SFA which:
- (a) was known to the Recipient prior to disclosure by SFA; or
 - (b) is or becomes public knowledge through no breach or default of the Recipient of its obligations.

2. OWNERSHIP OF INFORMATION

The Information and all application(s) developed for the Purpose shall remain the sole property of SFA.

3. APPLICABLE LAW

This Agreement shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose.

4. DISPUTE RESOLUTION

It is irrevocably agreed that the Courts of the Republic of Singapore shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connect with this Agreement shall be brought in such Court and that the Parties hereby submit to the exclusive jurisdiction of such Court.

5. SURVIVAL

The Recipient's obligations of confidentiality and restrictions on use of the Information disclosed and all application(s) developed for the Purpose shall survive any termination or lapse of this Agreement.

AS WITNESS the hands of the Parties hereto the day and year first above written.

Signed by

Signed by

Full name :

Full name :

Designation :

Designation :

for and on behalf of the Singapore
Food Agency

for and on behalf of

in the presence of:

in the presence of:

Full Name :

Full Name :

Designation :

Designation :

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The undertaking shall be in the form that follows:

UNDERTAKING BY OEM (FOR HARDWARE)

To: Singapore Food Agency

TENDER NO: _____

We refer to the above Tender. All words and phrases used in this undertaking have the same meaning as in your Invitation to Tender for the above Tender unless otherwise specified.

2. We are original equipment manufacturer and the supplier to _____ [name and address of Tenderer] _____ (the "Tenderer") of the hardware set out in Annex A (the "Hardware") for the purpose of the above Tender.

3. In consideration of you awarding the Tender to the Tenderer, we hereby undertake to perform the obligations set out in the following paragraphs.

4. In respect of the Hardware, we warrant the continued maintenance and support for the Hardware for the duration of the Hardware Warranty Period [and the duration of the purchased maintenance for the Hardware following SFA's exercise of the option for maintenance between the Tenderer and SFA ("Hardware Maintenance Period")]. The scope of maintenance for the Hardware shall be as set out in the Contract and any hardware maintenance and support agreement applicable to SFA in respect of the Hardware (including the supply of spares). Should the Tenderer be unwilling or unable to provide maintenance and support for the Hardware for any reason [or should the purchased maintenance be terminated for any reason], we confirm that we can offer maintenance and support of the Hardware as set out above (either by ourselves or through a subcontractor) for the remainder of the Hardware Warranty Period [and the duration of the Hardware Maintenance Period] and agree to maintain and support the Hardware for the remainder of the Hardware Warranty Period [and duration of the Hardware Maintenance Period] on mutually agreed terms, and the pricing shall be that offered to our other customers in the Government of Singapore, or if not available, then to our other customers, as long as the Hardware has not reached the end-of-life or end-of-support. We shall provide at least one (1) year's notice of any end-of-life or end-of-support for the Hardware.

5. We warrant that your right to maintenance and support for the Hardware as set out in this undertaking will survive the following events:

- (a) the termination of the legal relationship between you and the Tenderer; or
- (a) the termination of the legal relationship between the Tenderer and us.

6. We declare that this undertaking is intended to be legally binding and we agree to execute a formal agreement with you in respect of the obligations set out herein upon your written request.

For and on behalf of
Name of OEM:

by its authorised signatory
Name of signatory:
Designation:

Date: