

HEALTH PROMOTION BOARD

REF CMT05/21

CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

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

Authority	means Health Promotion Board (HPB).
Acceptance	means the issue of the Acceptance Certificate.
Contract	<p>means the resulting contract between the Authority and the Contractor for the provision of the Goods and Services as a result of the Authority's acceptance of the Contractor's Tender Offer which terms and conditions are contained in the following:</p> <ul style="list-style-type: none">(i) the Covering Letter;(ii) the Instructions to Tenderers;(iii) the Contractor's Tender Offer;(iv) these Conditions of Contract;(v) the Requirement Specifications;(vi) the Letter of Acceptance;(vii) any Purchase Orders issued by the Authority to the Contractor;(viii) any correspondence exchanged between the Authority and the Contractor which is agreed to by the Authority in writing as amplifying or modifying the Invitation to Tender or the Contractor's Tender Offer; and(ix) any formal agreement executed between the Parties, <p>including all schedules and annexes to such documents as relevant.</p>
Contract Period	has the meaning set out in Annex VIII.
Contract Price	means the aggregate Tender Price for Goods and Services required under the Contract.
Contractor	means a successful Tenderer whose Tender Offer has been accepted by the Authority.

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Control	means, with respect to a person (i) the right to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares of the controlled person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person.
Goods	means all goods proposed in the Contractor's Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to supply under the Contract, including technical documentation, parts or units thereof.
Government Furnished Equipment or GFE	means the items which the Authority provides or is required to provide pursuant to the Contract.
GST	means goods and services tax charged under the GST Act.
GST Act	means the Goods and Services Tax Act (Cap. 117A).
IP	means patents, copyright, trade marks, service marks, trade names, domain names, logos, get-ups, inventions, registered and unregistered design rights, database rights, industrial design, integrated circuit topography and all other intellectual property rights.
Invitation to Tender	means the invitation to participate in the tender for the supply of Goods and Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Guidelines for Tender, Evaluation Criteria and any other documents and forms enclosed.
Letter of Acceptance	means the letter and/or any other electronic contracting document issued by the Authority accepting the Contractor's Tender Offer.
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.
Parties	means the Authority and the Contractor, and " Party " means any one of them.

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| Price Schedule | means the schedule of prices for Goods and Services proposed in the Contractor's Tender Offer and accepted in the Letter of Acceptance. |
| Purchase Order | means an order issued by the Authority, making reference to the Contract, to purchase the Goods and/or Services. |
| Requirement Specifications | means the specifications set out in Annex III of these Conditions of Contract and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to time. |
| S\$ | means the lawful currency of Singapore. |
| Services | means the services proposed in the Contractor's Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract. |
| Subcontractor | means any person, firm or company engaged by the Contractor to perform any part or parts of the Contractor's obligations and includes the Subcontractor's duly appointed representatives, successors and permitted assignees and the Subcontractor's subcontractor. |
| Tender Offer | means the offer submitted by the Tenderer to provide Goods and Services to the Authority in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Authority as modifying such offer submitted by the Tenderer. |
| Tender Price | in respect of any of the Goods or Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Goods or Services under the Contract. |
| Tenderer | means a person or its permitted assigns and successors offering to provide the Goods and Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate. |
| Working Day | means a day which is not a Saturday, Sunday or a public holiday in Singapore. |
- 1.2 Words importing the singular only shall also include the plural and vice versa where the context requires.
- 1.3 The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.

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- 1.4 References to a person include any company, limited liability partnership, partnership, business trust, unincorporated association or government agency (whether or not having separate legal personality). References to the word “his” may also mean “her” or “their” and the word “he” may also mean “she” or “they”.
- 1.5 Unless a contrary intention appears, a reference in the Contract to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including but without limitation”.
- 1.6 Unless otherwise provided, any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation.
- 1.7 In the Contract, “month” means calendar month and “day” means calendar day.
- 1.8 For the purposes of computing time, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.
- 1.9 These Conditions of Contract comprise the clauses in these Conditions of Contract and the Annexes attached to these Conditions of Contract. The defined terms used in the Annexes may also be used in other parts of these Conditions of Contract. Without prejudice to the generality to the foregoing, the following Annexes are attached to these Conditions of Contract:
- Annex I – Additional Clauses (Goods and Services)
 - Annex II – Insurances
 - Annex III – Requirement Specifications
 - Annex IV – Form of Security Deposit Guarantee
 - Annex V – Form of Advance Payment Guarantee
 - Annex VI – Confidentiality and Data Protection Undertaking (for Corporation)
 - Annex VII – Confidentiality and Data Protection Undertaking (for Individuals)
 - Annex VIII – Applicability of Clauses

2. CLAUSE REFERENCES

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

3. SCOPE OF CONTRACT

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

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4. DELIVERY AND PERFORMANCE

- 4.1 The Contractor shall, unless otherwise specified by the Authority prior to delivery or performance, deliver the Goods and perform the Services at the time(s) and place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt therefor from the Authority. The issue of such receipt shall in no way relieve the Contractor from its obligations under Clause 6 to replace defective or damaged Goods and re-perform deficient Services.

5. CARE AND DILIGENCE

- 5.1 The Contractor shall with due care and diligence carry out its obligations to the Authority under the Contract.
- 5.2 The Contractor acknowledges and accepts that the Authority relies on the skill and judgment of the Contractor and also upon the accuracy of all representations and statements made and advice given by the Contractor in the delivery of the Goods and provision of the Services under the Contract.
- 5.3 Notwithstanding anything in this Contract, the Contractor shall ensure that all information, materials and property of the Authority in the custody or control of the Contractor or the personnel for purposes connected with the Contract shall be protected at all times from unauthorised access or use by a third party or from misuse, damage, loss or destruction.

6. REMOVAL AND REPLACEMENT

- 6.1 The Authority may reject any Goods that are found on delivery, or upon installation where installation is required, to be:
- (a) damaged or defective;
 - (b) incorrect or not in accordance with the Contract; or
 - (c) not newly manufactured or of unsatisfactory quality or not fit for the ordinary uses contemplated by the Authority,

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

- (i) provide a replacement for the Rejected Goods immediately at the Contractor’s own expense; and
- (ii) collect the Rejected Goods at the Contractor’s own expense within **seven (7)** days from the date of notification by the Authority and failing which, the Authority shall have the right:
 - (A) to claim from the Contractor storage charges and other expenses incurred in relation to the Rejected Goods until collection by the

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Contractor or disposal in accordance with sub-clause (B) below, whichever is earlier; and

- (B) if the Rejected Goods are not collected after **one (1)** month from the date of notification by the Authority, to dispose of the Rejected Goods in any way the Authority deems fit and claim all expenses incurred thereby from the Contractor,

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

- 6.2 The Authority may reject any Services that are not performed in accordance with the Contract or with reasonable care, skill and diligence, and if so required by the Authority, the Contractor shall re-perform such rejected Services at the Contractor's own expense.
- 6.3 Where any Goods or Services are rejected by the Authority pursuant to Clause 6.1 or Clause 6.2 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to:
 - (a) deliver such Goods or perform such Services relating to the delivery or installation of such Rejected Goods; and
 - (b) perform such Services,as the case may be.
- 6.4 Notwithstanding anything to the contrary, the risk of loss, damage or deterioration of Rejected Goods (whether rejected pursuant to this Clause 6 or otherwise) shall be borne by the Contractor at all times and possession shall be deemed to have never passed to the Authority.

7. ACCEPTANCE

- 7.1 Where the Authority indicates in **Annex VIII** that this Clause 7 shall apply, the Contractor shall conduct all tests in accordance with the acceptance test plan and procedures as set out in the Requirement Specifications and such other tests as may be determined by the Authority (such tests collectively, the "**Acceptance Tests**") to verify and demonstrate that the Goods and Services (including any replacement and repaired Goods and any re-performed Services) meet the Requirement Specifications.
- 7.2 The Contractor shall notify the Authority about the Acceptance Tests at least **two (2)** months prior to the date scheduled for the Acceptance Tests. The Contractor shall submit the proposed test plan to the Authority for approval at least **one (1)** month prior to the date scheduled for the Acceptance Tests. Notwithstanding Clause 26.1 below, the Authority may, at its sole discretion, vary the timelines in this Clause 7.2 by way of a written notice to the Contractor prior to the commencement of the Acceptance Tests. In the event that the Authority were to vary the aforementioned timelines, the Contractor may seek a corresponding change to the time schedule(s) under this Contract subject to the Authority's consent.

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- 7.3 The Authority shall have the right to attend and scrutinise the conduct of each Acceptance Test. If the Contractor has given notice to the Authority in accordance with Clause 7.2, and the Authority does not appoint any representative to attend the Acceptance Tests prior to the date scheduled for the Acceptance Tests, the Contractor shall have the right to proceed with the Acceptance Tests without a representative of the Authority being present.
- 7.4 The results of the Acceptance Tests shall be properly documented by the Contractor (the “**Acceptance Tests Report**”) and submitted to the Authority within five (5) days after the conduct of the Acceptance Tests.
- 7.5 Upon submission of the Acceptance Tests Report to the Authority, the Authority shall issue an acceptance test certificate (the “**Acceptance Certificate**”) if it is satisfied with the results of the Acceptance Tests.
- 7.6 The Contractor shall provide all necessary labour, facilities and equipment required and bear all costs for the performance of the Acceptance Tests.
- 7.7 If the Authority requires any Acceptance Tests to be conducted outside Singapore (the country where such Acceptance Tests are to be conducted, the “**Acceptance Test Country**”), all costs, charges and expenses relating to airfares, board and lodging and subsistence allowance of the Authority’s representatives for such Acceptance Tests shall be borne by the Authority, save that:
- (a) in the event that the Acceptance Tests are delayed beyond the scheduled completion dates and the Authority elects to allow its representatives to remain in the Acceptance Test Country, the Contractor shall pay for the board and lodging and subsistence allowance for the Authority’s representatives in respect of the period of such delay; and
 - (b) in the event that the Acceptance Tests are delayed beyond the scheduled completion dates and the Authority elects to allow its representatives to return to Singapore, the Contractor shall be obliged to pay for all the Authority’s representatives’ costs, charges and expenses relating to airfares, board and lodging and subsistence allowance for the subsequent trip to attend the Acceptance Tests.
- 7.8 Where the Contract allows or provides that the Acceptance Tests are to be conducted at the Contractor’s premises, the Contractor shall at no cost to the Authority provide administrative support such as office facilities and local transport to:
- (a) the Authority’s representatives attending the Acceptance Tests; and
 - (b) any Authority’s representatives stationed at the Contractor's premises for purposes pertaining to the Contract.
- 7.9 The Authority shall not be under any obligation to accept any Goods or Services which have not satisfactorily passed the Acceptance Tests. In the event that any deficiencies in the Goods or Services become evident, the Contractor shall immediately, at the Authority’s option, replace the Goods or re-perform the Services or perform remedial

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or corrective action. The cost of the replacement, re-performance, remedial or corrective action shall be borne by the Contractor.

8. WARRANTY

8.1 In the Contract, “**Warranty Period**” in respect of Goods or Services, means the period of **twelve (12)** months commencing on the date of receipt of such Goods or Services by the Authority in accordance with the provisions of the Contract, unless otherwise agreed in writing by the Parties.

8.2 Where during the Warranty Period, any Goods are found to:

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

(the “**Defective Goods**”),

then unless the Contractor can show that the foregoing is caused solely by improper use or mishandling by the Authority, the Contractor shall, at its own expense (including transportation costs), at the option and written notification of the Authority, replace, rectify or completely repair the Defective Goods and deliver the replaced/repaired Goods to the Authority within **two (2)** weeks from the date of receipt by the Contractor of the Defective Goods. The Warranty Period shall be extended, from the date of original expiry of the Warranty Period, by a period equivalent to the period commencing on the date of the said notification to the date of receipt of the repaired/replaced Goods by the Authority. In the event that the remaining Warranty Period (after such extension) as at the date of such receipt is less than **one (1)** month, the Warranty Period shall be extended such that the date of expiry of the Warranty Period falls **one (1)** month after the date of such receipt.

8.3 If any Service performed is found during the Warranty Period to be deficient, the Contractor shall at the written notification of the Authority, complete the re-performance of the same, at the expense of the Contractor within **two (2)** weeks from the date of the Authority’s notification. The Warranty Period for the re-performed Service shall be extended, from the date of original expiry of the Warranty Period, by a period equivalent to the period commencing on the date of the said notification to the date of completion of the re-performed Service. In the event that the Warranty Period (after such extension) remaining at the date of such completion is less than one month, the Warranty Period shall be extended such that the date of expiry of the Warranty Period falls **one (1)** month after the date of such completion of the re-performed Service.

8.4 The Authority’s rights and remedies under this Clause 8 are independent of and without prejudice to any other rights and remedies of the Authority.

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9. TITLE AND RISK

- 9.1 The risk of loss or damage to the Goods or any documentation delivered pursuant to the Contract shall pass upon receipt of the Goods or documentation by the Authority. Title to the Goods shall pass from the Contractor to the Authority upon receipt.
- 9.2 Risk of loss or damage to the Goods shall be borne by the Contractor from the time the Goods are received by the Contractor for the purpose of modification, replacement, repair or rectification until the modified, repaired, replaced or rectified Goods are received by the Authority.
- 9.3 Title to the GFE and all other property from time to time furnished by the Authority to the Contractor in relation to the performance of the Contract shall at all times remain with the Authority.
- 9.4 Risk of loss or damage to the GFE and all other property at any time furnished by the Authority to the Contractor shall be borne by the Contractor from the moment the Contractor takes delivery of the GFE or such other property until such time as the GFE or such other property is delivered to and received by the Authority.

10. CONTRACTOR'S PERSONNEL

- 10.1 The Contractor shall provide all necessary personnel with adequate skills and required professional certification (where applicable) for the performance of the Contract. Upon request by the Authority, the Contractor shall provide evidence of certification and competency of the personnel assigned.
- 10.2 If required by the Authority, the Contractor shall provide to the Authority the names and particulars (in such form as may be required by the Authority) of the personnel provided by the Contractor to perform the Contract.
- 10.3 The personnel provided by the Contractor to perform the Contract shall be subject to the Authority's approval. Where the Contractor has proposed such personnel in its Tender Offer, the Authority's acceptance of the Contractor's Tender Offer shall not constitute its approval of such personnel.
- 10.4 The Authority shall not be obliged to provide any reasons for objecting to any of the Contractor's personnel. If the Authority objects by notice in writing to any personnel provided by the Contractor to perform the Contract, the Contractor shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Authority within **thirty (30)** days.
- 10.5 The Contractor undertakes not to change its personnel approved under this Clause 10 without the Authority's consent, whose consent shall not be unreasonably withheld. All new or replacement personnel shall also be subject to the approval of the Authority. The Contractor shall not reduce the quality of its personnel if this may adversely affect the performance of the Contract, including the quality of the Services.
- 10.6 The Contractor represents and warrants to the Authority that each of the Contractor's personnel shall at all times perform the Services for which he has been appointed in a

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diligent, competent and careful manner, and in accordance with the Authority's rules, regulations and policies and all other requirements as the Authority may from time to time specify to the Contractor or such personnel.

- 10.7 The Contractor shall, and shall ensure that each of the Contractor's personnel comply with all regulations, procedures and directions as may be given by the Authority from time to time, including without limitation all regulations, procedures and directions regarding any aspect of security or access to the Authority's premises and with all applicable laws and regulations.

11. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and neither the Contractor nor any of its employees and agents has any authority (whether express or implied) to bind the Authority by contract or otherwise to assume or create any obligation on behalf of or in the name of the Authority and neither the Contractor nor any of its employees or agents shall be construed or deemed as partners, agents, representatives or employees of the Authority by virtue of the Contract. In the event the Authority is adjudicated to be a partner, agent, representative or employer of the Contractor or any of its employees or agents, the Contractor shall indemnify and hold the Authority harmless (on a full indemnity basis) from and against any and all claims for loss, liability or damages arising therefrom, as well as for any expenses, costs, taxes, penalties and interest charges incurred. The Contractor has sole responsibility in relation to payment of salary, contributions, workman's compensation, taxes and other payments related or incidental to the employment of the personnel by the Contractor.

12. PAYMENT

- 12.1 The Contractor shall invoice the Authority in accordance with Clause 12.4 and payment schedule as set out in **Annex VIII**. Notwithstanding anything in this Contract, prior to the issuance of any invoices to the Authority, the Contractor shall obtain the necessary certification and/or endorsement of any supporting documents that the Authority may require (including but not limited to delivery orders, service reports and timesheets) from the Contractor. The Contractor shall only issue its invoices upon obtaining the Authority's certification and/or endorsement to such supporting documents.
- 12.2 Against compliance with Clause 12.1, the Authority shall pay the Contractor within **thirty (30)** days from the date of the invoice by Interbank GIRO or such other mode of payment as the Authority and the Contractor may agree. The Contractor shall provide the Authority with the relevant bank account details for the purpose of such Interbank GIRO payment within **thirty (30)** days after the date of the Letter of Acceptance.
- 12.3 No payment shall be considered as evidence of the quality of the Goods or Services to which such payments relate or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract.
- 12.4 The Contractor shall submit to the Authority invoices through the electronic invoicing system maintained by the Authority and such other documents through such means and

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in such format as may be specified by the Authority for the purposes of making payment.

- 12.5 The Authority shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Authority.
- 12.6 The Contract Price is exclusive of any GST chargeable on the supply of Goods and Services to the Authority by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Authority shall reimburse the Contractor for any such GST charged on the supply by the Contractor of goods or services under the Contract.
- 12.7 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the regulations made under the GST Act.

13. TAXES, FEES AND DUTIES

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

14. DELAY IN DELIVERY AND PERFORMANCE

- 14.1 If the Contractor fails to deliver any Goods or complete the performance of any Services by the date(s) specified in the Contract, the Authority shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Authority's right to terminate the Contract pursuant to Clause 18.1) to do one or more of the following:
 - (a) cancel all or any such Goods or Services from the Contract without compensation and obtain them (the "**Replacement Goods and Services**") from other sources and all increased costs thereby incurred shall be borne by the

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Contractor provided that the quantity of the Replacement Goods and Services so obtained shall not exceed the quantity stated in the Contract; or

- (b) require the Contractor to pay as liquidated damages, a sum calculated at the rate of **one-tenth percent (1/10%)** of the price stated in the relevant Purchase Order associated with the delivery of such Goods or performance of such Services (including Sundays and public holidays), for every day of delay until such Goods are delivered or cancelled pursuant to Clause 14.1(a), subject to a cap of **ten percent (10%)** of the price stated in the relevant Purchase Order associated with the delivery of such Goods or performance of such Services.

- 14.2 The Authority shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under this Clause 14.

15. FAILURE TO MEET KEY PERFORMANCE INDICATOR TARGETS AND SERVICE LEVELS

- 15.1 In providing the Goods and/or Services, the Contractor must ensure that it fulfils all its obligations required in the Requirement Specifications. Without limitation to the foregoing, the Contractor must ensure that the Services meet or exceed the minimum service levels or key performance indicator targets as stated in the Requirement Specifications. The service levels or key performance indicator targets stated are minimum standards, and the Authority reserves the right to amplify or expand on such standards prior to the award of the tender. The Contractor acknowledges that the service levels and key performance indicators and targets may be varied by the Authority in order to reflect the Authority's changing business requirements or to reflect changes in the Authority's corporate performance management arrangements.

- 15.2 Without prejudice to any other right or remedy which the Authority may have, in the event that the Contractor fails to meet any of its obligations or fails to meet the service levels or key performance indicator targets as stated in 15.1 above in respect of the Goods and/or Services, the Contractor shall be liable for liquidated damages, and the Authority shall have the right to deduct from any moneys due or to become due to the Contractor or to require the Contractor to pay such liquidated damages to the Authority in accordance with the figures set out in the Requirement Specifications. The Contractor acknowledges and agrees that the figures as stated in the Requirement Specifications represent a genuine pre-estimate of the damages to be suffered by the Authority.

- 15.3 The Authority may utilize the Security Deposit towards such liquidated damages, or set-off or deduct such liquidated damages from any sum due or which may at any time become due from the Authority to the Contractor.

16. COMPLIANCE WITH LAW

- 16.1 The Contractor shall, at its own costs, obtain and maintain all licences, permits, certifications and regulatory authorisations without any restriction or qualification whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

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16.2 The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws and shall keep the Authority indemnified against all penalties and liabilities of every kind for the breach of any such laws.

17. GIFTS, INDUCEMENTS AND REWARDS

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

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

17.2 In this Clause 17:

“Anti-Corruption Laws” means:

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

“Contractor Representative” means any of the following:

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

18. TERMINATION

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

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

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

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

- (a) the Contractor becomes insolvent;
- (b) where the Contractor is a company, a receiver or liquidator is appointed over any undertaking or property of the Contractor or an order is made or a resolution is passed for winding-up or dissolution without winding-up (other than for the purpose of amalgamation or reconstruction) of the Contractor;
- (c) where the Contractor is a partnership, the Contractor is dissolved or has a bankruptcy order made against it;
- (d) where the Contractor is an individual, the Contractor becomes bankrupt or dies;
- (e) legal proceedings alleging insolvency are brought against the Contractor;
- (f) the Contractor enters into any composition or arrangements with creditors; or
- (g) any action is contemplated or any legal proceedings are commenced against the Contractor alleging infringement of IP rights.

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

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

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remaining Goods and Services to be provided under the Contract, and any additional costs and expenses incurred shall be paid by the Contractor, and the Contractor shall give reasonable assistance to the incoming contractors; and

- (e) in the event of a termination pursuant to Clause 18.2(g), the Authority shall, at its sole discretion, have the right to return any Goods which have been provided to the Authority as at the date of termination, and the Contractor shall forthwith refund to the Authority all amounts paid to the Contractor under the Contract in respect of such Goods.

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

19. FORCE MAJEURE

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

19.2 If the effect of any Force Majeure Event continues for a period exceeding **thirty (30)** days, the Authority may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

19.3 If a Force Majeure Event occurs, the Contractor or the Authority (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under the Contract as is affected by the Force Majeure Event except that the provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the Force Majeure Event.

19.4 Failure of the Contractor's Subcontractors or suppliers to perform their obligations shall not be regarded as events beyond the control of the Contractor.

20. CORRESPONDENCE

20.1 Subject to Clause 20.2, any notice, request, waiver, consent or approval ("**Notice**") shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or fax to the Party as follows:

- (a) in the case of the Contractor, the address and fax number set out in the Tender Offer; and
- (b) in the case of the Authority, the following address and fax number:

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Health Promotion Board
3 Second Hospital Avenue
Singapore 168937
Fax. +65 6438 3848

- 20.2 Any Notice may be made by the Authority to the Contractor by electronic mail or other electronic means and shall be deemed to have been duly given or made when it is sent to the Contractor's electronic mail address set out in the Tender Offer.
- 20.3 Either Party may change its address, fax number and (in the case of the Contractor) electronic mail address referred to above by giving the other Party written notice of the change.

21. LANGUAGE

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

22. CONSORTIUM

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

Joint and Several Responsibility

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

Addition of members to Consortium

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

Withdrawal from Consortium

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

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- (b) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

23. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

- 23.1 The Contractor shall not, without the prior written consent of the Authority, sub-contract its obligations, or transfer or assign the benefit of the whole or any part of the Contract.
- 23.2 The Contractor shall be responsible for the acts, defaults, negligence and omissions of any Subcontractor, their agents, servants or workmen.

24. DEFAULT INTEREST

- 24.1 If the Contractor defaults in the payment when due of any sum payable under the Contract its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment). The interest shall be calculated on a daily basis at a rate per annum of **five and a half percent (5.5%)**.

25. REMEDIES

- 25.1 The rights and remedies of a Party under the Contract are cumulative and are without prejudice and in addition to any rights or remedies such Party may have at law or in equity. No exercise by a Party of any one right or remedy under the Contract, or at law or in equity shall operate so as to hinder or prevent the exercise by it of any other right or remedy under the Contract, at law or in equity.
- 25.2 The Authority shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under the Contract.

26. VARIATION

- 26.1 No variation of the Contract shall be of any force unless agreed upon in writing and signed by the duly authorised representatives of both Parties. Notwithstanding the foregoing, the Authority reserves the right, at its sole discretion, to waive the requirement for signature for such variation to be effective.

27. WAIVER

- 27.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy ("**Remedy**"), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so

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as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.

27.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.

27.3 Any waiver granted under the Contract must be in writing and may be given subject to conditions. Such waiver under the Contract shall be effective only in the instance and for the purpose for which it is given.

28. SET-OFF

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

29. ENTIRE AND WHOLE AGREEMENT

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

30. SEVERABILITY

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

31. RIGHTS OF THIRD PARTIES

31.1 Unless otherwise expressly stated in this Contract, a person who is not a Party to the Contract shall have no right under the *Contracts (Rights of Third Parties) Act* to enforce any term of the Contract.

32. SURVIVING PROVISIONS

32.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 17 (Gifts, Inducements and Rewards), 18.3 and 18.4 (Termination), 20 (Correspondence), 24 (Default Interest), 25 (Remedies), 26 (Variation), 27 (Waiver), 28 (Set-off), 29 (Entire and Whole Agreement), 30 (Severability), 31 (Rights of Third Parties), 32 (Surviving Provisions), 33 (Governing Law), 34 (Escalation of Disputes), 35 (Mediation), 36 (Dispute Resolution) and 37 (Order of Precedence), shall survive the termination or expiry of the Contract.

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33. GOVERNING LAW

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

34. ESCALATION OF DISPUTES

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

34.2 If such Dispute is not resolved by agreement between the Officers within **sixty (60)** days after the date of referral of the Dispute to the Officers, any Party may proceed to:

- (a) if the Dispute is within the jurisdiction of the Small Claims Tribunals, refer the Dispute to the Small Claims Tribunals; or
- (b) give the other Party written notice for mediation as contemplated in Clause 35 (Mediation).

35. MEDIATION

35.1 Notwithstanding anything in the Contract, in the event of any Dispute and subject to Clause 34, 35.3 and 35.4, no Party shall proceed to any form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of either the Singapore Mediation Centre or the Singapore International Mediation Centre, as may be elected by the Authority. The Parties shall be deemed to have made reasonable efforts in accordance with this Clause 35.1 if they have gone through at least one mediation session at the Singapore Mediation Centre or the Singapore International Mediation Centre, as may be elected by the Authority.

35.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 35.

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

35.4 Clause 35.1 shall not apply to a Dispute referred to the Small Claims Tribunals, provided that:

35.4.1 the Parties attend a consultation session before a Registrar (where the Parties will be given an opportunity to resolve the Dispute amicably) after a claim is filed with the Small Claims Tribunals; and

35.4.2 the proceedings relating to such Dispute are not:

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- (i) discontinued by the Registrar pursuant to Section 17(3) of the Small Claims Tribunal Act; or
- (ii) transferred out of the Small Claims Tribunals before or pursuant to such consultation session.

35.5 Failure to comply with Clause 35.1 or 35.2 shall be deemed to be a breach of the Contract.

36. DISPUTE RESOLUTION

36.1 If any Dispute cannot be resolved pursuant to Clause 35, then each Party irrevocably agrees to submit the Dispute to the elected dispute resolution forum as set out in **Annex VIII**.

37. ORDER OF PRECEDENCE

37.1 In the event and to the extent only of any conflict between any provisions of the Contract, the conflict shall be resolved, subject to Clause 37.2, in accordance with the following order of precedence:

- (a) these Conditions of Contract;
- (b) the Requirement Specifications;
- (c) the Letter of Acceptance;
- (d) the Purchase Orders, if any;
- (e) any formal agreement executed between the Parties;
- (f) the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Authority and the Contractor which has been agreed to by the Authority in writing as amplifying or modifying the Contractor's Tender Offer).

37.2 Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Authority and the Contractor which has been agreed to by the Authority in writing as amplifying or modifying the Contractor's Tender Offer) contains provisions which are more favourable to the Authority in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision is more favourable to it in relation to the Contract.

37.3 For the avoidance of doubt, this Clause shall form an integral part of the Conditions of Contract referred to in Clause 37.1(a).

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ANNEX I ADDITIONAL CLAUSES (GOODS AND SERVICES)

A1. SECURITY DEPOSIT FOR PERFORMANCE

- A1.1 Where the Authority has indicated in **Annex VIII** that it requires a security deposit from the Contractor as security for the due and faithful performance of the Contract and the compliance with all provisions of the Contract by the Contractor, the Contractor shall lodge with the Authority a security deposit for the sum stipulated in **Annex VIII** (the “**Security Deposit**”). In such event, the Contractor shall lodge the Security Deposit with the Authority within **thirty (30)** days after the issuance of the Letter of Acceptance by the Authority, or the issuance of the Authority’s Purchase Order to the Contractor, whichever earlier.
- A1.2 The Security Deposit shall be in the form of a Security Deposit Guarantee, or such other form that the Authority may agree to.
- A1.3 The cost of obtaining and maintaining such Security Deposit Guarantee shall be borne by the Contractor.
- A1.4 The Contractor shall ensure that the Security Deposit Guarantee remains effective until **three (3)** months after the completion of all the Contractor’s obligations under the Contract.
- A1.5 In the event that the Contractor’s obligations under the Contract are unlikely to be completed before the expiry date of the Security Deposit Guarantee, the Contractor shall without demand, secure its renewal or obtain a new Security Deposit Guarantee for the same amount and on the same terms as the expiring Security Deposit Guarantee but with a validity period ending not less than **three (3)** months after the estimated date of completion of all the Contractor’s obligations under the Contract, and deliver the same to the Authority. If such renewal or new Security Deposit Guarantee is not deposited with the Authority at least **thirty (30)** days before the expiry date of the expiring Security Deposit Guarantee, the Authority shall have the right to call on the expiring Security Deposit Guarantee.
- A1.6 The Authority may at its sole discretion draw on the Security Deposit to satisfy any amount as may become due to the Authority under the Contract.
- A1.7 The Authority shall be entitled to make a demand on the Security Deposit Guarantee as soon as it is satisfied that the conditions for drawing on the Security Deposit have been fulfilled, notwithstanding that the Contractor disputes the same.
- A1.8 The Authority’s rights under this Clause A1 shall be without prejudice to any other rights and remedies available to the Authority.
- A1.9 The Authority’s obligations to make payments under Clause 12 are conditional upon the Contractor having provided the Security Deposit in accordance with this Clause A1.
- A1.10 In the Contract, “**Security Deposit Guarantee**” means a guarantee in the form set out in **Annex IV** issued by:

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- (a) a bank or insurance company registered with the Monetary Authority of Singapore; or
- (b) a licensed finance company registered with the Monetary Authority of Singapore,

under which the issuer guarantees the fulfilment of the terms and conditions of the Contract by the Contractor.

A2. SECURITY DEPOSIT FOR ADVANCE PAYMENT

- A2.1 Where the Authority indicates in **Annex VIII** that this Clause A2 shall apply, as a condition precedent to any Advance Payment being made by the Authority, the Contractor shall, prior to or at the time such Advance Payment is required to be made, deliver to the Authority an Advance Payment Guarantee for an amount equal to the amount of the Advance Payment (exclusive of the GST component) as security for the performance of such obligations of the Contractor in respect of which the Advance Payment was made.
- A2.2 The cost of obtaining and maintaining the Advance Payment Guarantee shall be borne by the Contractor.
- A2.3 The Contractor shall ensure that the Advance Payment Guarantee remains effective until **three (3)** months after the delivery of all Relevant Goods and Services.
- A2.4 In the event that the Contractor is unlikely to be able to deliver the Relevant Goods and Services before the expiry date of the Advance Payment Guarantee, the Contractor shall without demand, secure its renewal or obtain a new Advance Payment Guarantee for the same amount and on the same terms as the expiring Advance Payment Guarantee but with a validity period ending not less than **three (3)** months after the estimated date of delivery of the Relevant Goods and Services. If such renewal or new Advance Payment Guarantee is not deposited with the Authority at least **thirty (30)** days before the expiry date of the expiring Advance Payment Guarantee, the Authority shall have the right to call on the expiring Advance Payment Guarantee.
- A2.5 The Authority may at its sole discretion call on the Advance Payment Guarantee:
- (a) to obtain repayment of all amounts payable to the Authority (including any GST component) pursuant to Clause 18.3(b); and
 - (b) to obtain payment of any other monies payable by the Contractor to the Authority under or pursuant to the Contract.
- A2.6 The Authority shall be entitled to make a demand on the Advance Payment Guarantee as soon as it is satisfied that the conditions for drawing on the Advance Payment Guarantee have been fulfilled, notwithstanding that the Contractor disputes the same.
- A2.7 The Authority's rights under this Clause A2 shall be without prejudice to any other rights and remedies available to the Authority.

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A2.8 In the Contract:

“**Advance Payment**” means any payment to be made by the Authority in respect of Goods or Services which have not been delivered or performed.

“**Advance Payment Guarantee**” means a guarantee in the form set out in **Annex V** issued by:

- (a) a bank or insurance company registered with the Monetary Authority of Singapore; or
- (b) a licensed finance company registered with the Monetary Authority of Singapore,

under which the issuer guarantees the performance of such obligations of the Contractor in respect of which the Advance Payment was made.

“**Relevant Goods and Services**” means such Goods and Services in respect of which an Advance Payment is made.

A3. OPTION TO PURCHASE

A3.1 The Contractor grants the Authority in respect of each item specified in the Requirement Specifications (each, an “**Option Item**”), an option to purchase such Option Item (each, an “**Option to Purchase**”).

A3.2 Each Option to Purchase shall be exercisable by written notice given by the Authority to the Contractor before the deadline for the exercise of the Options to Purchase as specified in the Requirement Specifications.

A3.3 If the Authority exercises an Option to Purchase, references to “**Goods**” or “**Services**” in the Contract shall include the Option Item in respect of which such Option to Purchase was exercised.

A3.4 Each Option to Purchase may be exercised one or more times, to be determined in the Authority’s sole discretion, provided always that the aggregate number of Option Items purchased pursuant to this Clause A3 shall not exceed the quantity specified in the Requirement Specifications.

A4. CONFIDENTIALITY AND SECURITY

A4.1 Except with the written consent of the Authority, the Contractor shall:

- (a) treat as strictly confidential and not disclose any Confidential Information to any person other than employees, servants and agents of the Contractor or its Subcontractors on a need-to-know basis for the purposes of performing the Contractor’s obligations under the Contract; and

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- (b) only use the Confidential Information for the sole purpose of performing the Contractor's obligations under the Contract and shall not use it for any other purpose.
- A4.2 The Contractor shall take all reasonable precautions in dealing with Confidential Information so as to prevent any unauthorised person from having such access to such Confidential Information.
- A4.3 The Contractor shall procure that all its employees, servants and agents and those of its Subcontractors and agents to whom Confidential Information is to be made available observe the obligations contained in Clauses A4 and A5.
- A4.4 Upon the Authority's request, the Contractor will procure that each of its employees, servants and agents and those of its Subcontractors and agents sign an undertaking to comply with its confidentiality and data protection obligations in the forms set out in **Annex VI** (if the aforementioned party is a corporation) or **Annex VII** (if the aforementioned party is an individual).
- A4.5 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Authority.
- A4.6 For the purposes of Clauses A4 and A5, "**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 the Authority;
 - (b) information which relates to the existence and the provisions of the Contract or any Purchase Order, 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:
- (a) or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of the Contractor, his employees, servants, agents or Subcontractors;
 - (b) lawfully in the possession of the Contractor or already known to the Contractor on a non-confidential basis prior to the Contractor receiving or obtaining such information as a result of entering into the Contract, as evidenced by written records; or
 - (c) independently developed by the Contractor.
- A4.7 The Contractor 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

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Contractor 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 Contractor shall, to the extent practicably possible and permissible by law or regulations, give the Authority prompt and prior notice of any such requirement and shall cooperate with the Authority to limit the scope of such disclosure to the maximum extent legally possible.

A4.8 No later than **thirty (30)** days from the termination or expiry of the Contract, the Contractor shall:

- (a) return all Confidential Information received from the Authority for the purpose of the Contract and all documents and copies thereof produced in the course of performing its obligations under the Contract;
- (b) securely destroy and erase all softcopies of Confidential Information that exist in hard disk, removable storage media and other storage media or facility whatsoever; and
- (c) upon completion of the obligations under Clauses A4.8(a) and (b), provide a written confirmation that it has complied with Clauses A4.8(a) and (b).

A4.9 The Contractor shall immediately notify the Authority where the Contractor becomes aware of any breach of this Clause A4 by its employees, servants, agents and Subcontractors and cooperate with the Authority to limit the extent and impact of such breach.

A4.10 This Clause A4 shall survive the termination or expiry of the Contract.

A5. DATA PROTECTION AND SECURITY

A5.1 Data Protection

A5.1.1 The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors do 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.

A5.1.2 The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors shall not, disclose any Data obtained or held in connection with the Contract without the prior consent of the Authority. Any request for the Authority's consent under this Clause A5 must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Contractor's obligations under the Contract.

A5.1.3 The Contractor shall not cause or permit Data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside Singapore, or allow parties outside Singapore to have access to it, unless with the prior written consent of the Authority and subject to such conditions as the Authority may impose. Any request for the Authority's consent under this Clause A5 shall include an

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explanation of why the proposed transfer is necessary for the purposes of fulfilling the Contractor's obligations under the Contract. If consent is granted, the Contractor shall provide a written undertaking that the Data which is transferred outside Singapore will be protected to a comparable standard as it is protected under the Personal Data Protection Act 2012.

A5.1.4 The Contractor shall immediately notify the Authority as soon as it becomes aware that a disclosure of Data may be required by law and cooperate at its own costs with the Authority's reasonable requests and directions.

A5.1.5 The Contractor shall ensure that all 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 securely destroyed or returned to the Authority within **thirty (30)** days. Any Data that is retained by the Contractor after such Data is no longer necessary for the purposes of its performance of the Contract, or without the written authorisation of the Authority, is a breach of the Contract. No later than **thirty (30)** days from the termination or expiry of the Contract, the Contractor shall provide a written confirmation that it is no longer in possession of any Data obtained or held in connection with the Contract or copies thereof, regardless of the medium of storage.

A5.1.6 Notwithstanding anything in this Contract, upon the demand of the Authority, the Contractor shall destroy or return all Data (including but not limited to any documents containing Confidential Information), and expunge all Data from any computer, word processor or other device containing the Data. Any destruction of Data shall, at the request of the Authority, be certified in writing by an authorised officer (and as may be approved by the Authority) supervising it.

A5.2 Security

A5.2.1 The Contractor shall take all reasonable measures to ensure that all 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.

A5.2.2 The Contractor shall, in respect of any Data held by it in connection with the Contract, comply with any reasonable requests, directions or guidelines of the Authority relating to the handling of Data.

A5.2.3 The Contractor shall immediately notify the Authority when it becomes aware of a breach of Clause A5 by itself or any Subcontractor and cooperate with the Authority to limit the extent and impact of such breach.

A5.3 Ownership of Data

All intellectual property rights in the Data shall remain the sole property of the Authority at all times. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Contractor acknowledges in its own capacity and on behalf of its directors, officers, employees, servants, agents and Subcontractors that no right, title or interest (whether in the form of intellectual property rights or otherwise)

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in the Data is granted to itself and its directors, officers, employees, servants, agents and Subcontractors at any time.

A5.4 Definitions

For the purposes of this Clause A5:-

- (a) the words “personal data” shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012 (No. 26 of 2012); and
- (b) “**Data**” means all data, records, and information acquired, accessed by, disclosed and/or supplied to the Contractor in the course of its work for the Authority, including but not limited to Confidential Information, personal data, operational data and financial data.

A5.5 Indemnity

The Contractor shall indemnify the Authority and its officers against all Losses which the Authority or its officers may at any time and from time to time incur or suffer by reason of any breach arising out of or in connection with Clauses A4, A5, and any failure to comply with any confidentiality, data protection or privacy laws in any relevant jurisdiction in relation to the Data. The Contractor further agrees that any breach of Clauses A4 or A5 may cause immediate and irreparable harm for which monetary damages would not be a suitable remedy. In such event, the Contractor agrees that the Authority shall be entitled to equitable relief (including injunctive relief).

A5.6 Survival

This Clause A5 shall survive the termination or expiry of the Contract.

A6. LOSSES

A6.1 The Contractor shall indemnify and keep indemnified the Authority against any and all Losses sustained, incurred, paid by or suffered by the Authority arising out of or in connection with any act or omission on the part of the Contractor, Subcontractor or any of their directors, officers, personnel, employees, servants or agents (the “**Contractor Parties**”) unless the Contractor can show that:

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

A6.2 If any claim is commenced against the Authority that may give rise to a claim against the Contractor under Clause A6.1, notice thereof shall be given to the Contractor as soon as practicable.

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- A6.3 Upon receipt of such notice, if required by the Authority, the Contractor shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Authority to handle and defend the same, at the Contractor's sole cost and expense.
- A6.4 In the event the Contractor takes control of the defence and investigation of the claim, the Authority shall co-operate, at the cost of the Contractor, in all reasonable respects with the Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this will not limit the Authority's right to participate, at the Contractor's cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Authority.
- A6.5 Notwithstanding anything to the contrary in the Contract, the Authority shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Authority, the Contractor shall immediately relinquish control of the defence and investigation of such claim.
- A6.6 This Clause A6 shall survive the termination or expiry of the Contract.

A7. LIMITATION OF LIABILITY

- A7.1 The aggregate liability of the Contractor to the Authority in respect of all breaches under the Contract shall not exceed the total amount of all Purchase Orders given by the Authority pursuant to Clause A11 below.
- A7.2 The aggregate liability of the Authority to the Contractor in respect of all breaches under the Contract shall not exceed the total amount of all Purchase Orders given by the Authority pursuant to Clause A11 below.
- A7.3 None of the limitations contained in this Clause A7 shall apply to any claim:
- (a) relating to any death or personal injury;
 - (b) relating to any patent, copyright or other intellectual property right infringement;
 - (c) which arises or is increased as a consequence of fraud, fraudulent misrepresentation, wilful misconduct or gross negligence by the Contractor, its Subcontractors or any of their respective directors, officers, employees or agents;
 - (d) under Clause A9 (Intellectual Property Indemnification); or
 - (e) under any indemnity provided under the Contract (other than a claim relating to the Contractor's breach, failure or delay in the performance of the Contract).

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A8. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- A8.1 The Parties agree that ownership of IP shall be as set out in **Annex VIII**.
- A8.2 This Clause A8 (including such IP arrangement as set out in **Annex VIII**) shall survive the termination or expiry of the Contract.

A9. INTELLECTUAL PROPERTY INDEMNIFICATION

- A9.1 Unless indicated otherwise in **Annex VIII**, this Clause A9 shall apply to this Contract.
- A9.2 The Contractor:
- (a) represents, warrants and undertakes to the Authority that all Goods and Services supplied by the Contractor and all IP used or introduced by the Contractor in the course of performing its obligations under the Contract do not infringe any rights or interests of any third party in IP. Where necessary, the Contractor must obtain the necessary permissions, consents and licences from such third parties authorising the use of such rights. Such permissions, consents and licences must extend throughout the validity of the Contract and copies of the same must be provided to the Authority; and
 - (b) shall give the Authority prompt notice in writing of any claim of infringement of any such rights or interests made by any third party.
- A9.3 The Contractor shall indemnify the Authority and its officers against all Losses which the Authority or its officers may at any time and from time to time incur or suffer by reason of:
- (a) any breach of Clause A9.2; or
 - (b) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract.
- A9.4 Without prejudice to the Authority's right to defend a claim alleging such infringement, the Contractor shall, if requested by the Authority but at the Contractor's expense, defend such claim. The Contractor shall observe the Authority's directions relating to the defence or negotiation for settlement of such claim.
- A9.5 The Authority shall, if requested but at the Contractor's expense, provide the Contractor with reasonable assistance in conducting the defence of such claim.
- A9.6 If any of the Goods or Services supplied by the Contractor or IP used or introduced by the Contractor in the course of performing its obligations under the Contract is alleged to infringe the rights or interests of third parties in IP, the Authority may (in addition to and without prejudice to all other rights or remedies available), at the option of the Authority, require the Contractor, at the Contractor's own expense, to:
- (a) procure for the Authority the right to continue using the same;

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- (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under the Contract (in which event the Contractor shall compensate the Authority for any Losses sustained or incurred by the Authority in connection with such replacement or modification); or
- (c) pay the Authority a sum equivalent to the purchase price of items functionally equivalent to the infringing items upon the return of the infringing items to the Contractor.

A9.7 All royalties and fees claimable by or payable to any person for or in connection with any IP used or required to be used in connection with the performance of the Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the Authority.

A9.8 This Clause A9 shall survive the termination or expiry of the Contract.

A10. COMMENCEMENT AND DURATION OF CONTRACT

The Contract shall commence on the date of commencement stated in the Letter of Acceptance or any other formal agreement executed between the Parties, and shall remain in force for the period as set out in **Annex VIII**.

A11. SUPPLY OF GOODS AND SERVICES AS AND WHEN REQUIRED BY THE AUTHORITY

A11.1 The Authority may engage the Contractor for the supply of Goods or Services from time to time by issuing a Purchase Order.

A11.2 All Purchase Orders shall state the Goods or Services to be supplied and shall also state the aggregate Tender Price of all Goods and Services specified in such Purchase Order.

A11.3 Where the Contractor receives, during the Contract Period, any Purchase Order for Goods or Services, the Contractor shall supply the Goods and Services specified in the Purchase Order in accordance with the Contract.

A11.4 The Authority shall be under no obligation to purchase any Goods or Services except
(a) to the extent of a Purchase Order for Goods or Services issued by the Authority; or
(b) as may be specified in the Requirement Specifications. .

A12. INSURANCE

A12.1 The Contractor:

- (a) shall at all times, at its cost and expense, procure and maintain with reputable licensed insurers, the insurance coverage set out in **Annex II**;
- (b) shall, if required by the Authority, deliver to the Authority evidence that the Contractor has maintained each of the insurances required to be maintained under this Clause A12; and

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- (c) shall, and shall use its best endeavours to procure that the insurer shall, give to the Authority at least **thirty (30)** days' (or such shorter period as may be agreed between the Contractor and the Authority) prior notice of any cancellation or material change.

A12.2 Unless otherwise specified in **Annex II**, each of the insurances required to be maintained under this Clause A12 shall:

- (a) be taken out in the joint names of the Contractor and the Authority or, be noted, by endorsement on such insurances (in such form as may be reasonably acceptable to the Authority), with the interest of the Authority;
- (b) name the Authority as loss payee or beneficiary;
- (c) acknowledge that the Contractor is the sole party liable to pay the premiums in respect thereof; and
- (d) provide that such insurances may not be altered or amended without the prior consent in writing of the Authority.

A13. EXIT MANAGEMENT

A13.1 During the Transition Period, the Contractor shall, at its cost and expense, make available to the Authority and any third party succeeding the Contractor appointed by the Authority ("**Incoming Contractor**") such documents and records and provide such assistance (including briefings and training) as the Authority or the Incoming Contractor may reasonably require (including any such assistance as may be specified in an exit plan as set out in the Requirement Specifications) to allow an orderly transition to the Incoming Contractor with minimal disruption.

A13.2 In the Contract, "**Transition Period**" means:

- (a) the period of **one (1)** month before the expiry or termination of the Contract; or
- (b) such other period as may be agreed between Parties.

A13.3 This Clause A13 shall survive the termination or expiry of the Contract.

A14. INSPECTION

A14.1 The Contractor shall allow the Authority to conduct investigations, audits or inspections at any location in which the Contractor is providing or has provided Goods and Services under the Contract, for the purpose of ensuring proper compliance with the Contract.

A14.2 The Contractor shall cooperate with and provide all support, information and assistance necessary to the Authority or the auditor (including access to the Contractor's financial records) for the conduct of the investigations, audits or inspections referred to in Clause A14.1 at no charge to the Authority. The Authority reserves the right to conduct spot-checks on the Contractor for the purpose of such investigations, audits or inspections.

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A14.3 All investigations, audits or inspections referred to in Clause A14.1 shall be in the form of a government audit, or a third-party audit conducted by a reputable audit firm acceptable to the Authority.

A15. TERMINATION FOR CONVENIENCE

A15.1 The Authority shall have the right to terminate the Contract for convenience by giving **one (1)** month's written notice to the Contractor without having to assign any reason, and the Contractor shall have no claim for any damages or compensation.

A16. TERMINATION FOR CHANGE IN CONTROL

A16.1 If the Contractor suffers a change in Control, the Authority shall have the right to terminate the Contract by giving **one (1)** month's written notice to the Contractor and the Contractor shall have no claim for any damages or compensation.

A17. QUALITY ASSURANCE AND INSPECTION OF GOODS AND SERVICES

A17.1 The Contractor shall employ a quality system (the "**QS**") to ensure that the Goods and Services meet the minimum quality requirements set out in the Requirement Specifications (the "**QR**") are met.

A17.2 The Contractor shall appoint a quality management representative (the "**Quality Management Representative**") who shall be responsible for ensuring that the Goods and Services meet the QR. The Contractor shall inform the Authority in writing of such appointment within **one (1)** month after the date of the Letter of Acceptance.

A17.3 The Authority shall have the right, after giving the Contractor **twenty-one (21)** days' notice, to carry out an audit of the QS as well as whether the Goods and Services meet the QR (the "**Quality Audit**") both at the Contractor's and its Subcontractors' factories, premises and facilities (the "**Audit Premises**"). The Contractor shall make the necessary arrangements to enable the Authority's representatives to conduct the Quality Audit.

A17.4 The Contractor shall provide, and shall procure that its Subcontractors provide, the Authority's representatives free access to the Audit Premises during the Quality Audit and make available all inspection equipment required by the Authority's representatives to conduct the Quality Audit. The Contractor shall provide, and shall procure that its Subcontractors provide, personnel to operate such inspection equipment and verify their accuracy and condition as required by the Authority.

A17.5 If results of the Quality Audit reveal that the Contractor or its Subcontractors are not in compliance with the QS or that any of the Goods and Services do not meet the QR, the Contractor shall, upon notice of such non-compliance from the Authority, at its own expense take immediate corrective action to ensure strict compliance and provide objective evidence that the corrective action taken is effective in remedying the non-compliance.

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A17.6 The Contractor shall as and when deemed necessary by the Authority, at the Contractor's own expense, conduct periodic Quality Audits of the QS and whether the Goods and Services meet the QR. The Contractor shall submit a report containing the results of such audit (including specific quality records) to the Authority within **twenty-one (21)** days from the date of completion of such audit.

A18. INSPECTION OF GOODS IF REQUIRED BY THE AUTHORITY

A18.1 Where inspection of any of the Goods (whether completed or in the course of production) is required by the Authority, the Contractor shall give the Authority full and free access to such Goods and all reasonable facilities as and when required for the purpose of inspection.

A19. SAMPLES TESTING

A19.1 The Authority shall have the right to require the Contractor to provide samples of the Goods to be supplied under the Contract for the Authority's approval and for such further samples as are required until the Authority is satisfied that the samples submitted are in accordance with the Requirement Specifications. Upon the approval of the samples by the Authority, the Contractor shall ensure that the Goods to be supplied under the Contract meet the standards of the approved samples. If any Goods supplied under the Contract do not meet or exceed the Requirement Specifications or the standards of the approved sample, the Authority shall have the right to submit such Goods to expert examination and testing and all costs in connection therewith shall be borne by the Contractor unless such examination and test shows that such Goods meet or exceed the Requirement Specifications and the standards of the approved samples.

A20. INCOTERMS

A20.1 Subject to any provision to the contrary in the Contract, INCOTERMS 2010 (Publication No. 715E of the International Chamber of Commerce) shall be deemed to be incorporated to and shall form an integral part of the Contract. In the event that the INCOTERM chosen for the Contract is CPT or CIP to a destination other than an airport or a seaport, the Contractor shall provide the Authority with the contact details of its inland freight forwarder in the country of destination.

A21. ADEQUACY OF DESIGN

A21.1 The Contractor shall be solely responsible for ensuring the suitability and adequacy of the design relating to every respect of the Goods and the documentation on the Goods, including the design relating to the materials used, the performance function, reliability and construction of the Goods, except that where the Contractor is obliged to make use of a design provided by the Authority, the Contractor shall not be responsible for such a design if the Contractor can show that there are defects in the design which the Authority has failed to rectify even after reasonable notice and proof has been given, in which event, the Authority shall have the option to either:

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- (a) accept the disclaimer and continue to require the use of the design; or
- (b) withdraw the design and allow the Contractor to use its own design in lieu thereof, in which case the Contractor shall be entitled to such costs and extension of time as may be reasonable having regard to the effort required of the Contractor in providing such a design.

A22. MISCELLANEOUS

A22.1 Any statement of the estimated quantities of Goods or the estimated frequency and extent of any Services required during the period of the Contract are approximate only and merely for the information of the Contractor. Unless otherwise stated in the Requirement Specifications, the Authority shall be under no obligation to purchase any such Goods and/or Services.

A22.2 Nothing in the Contract shall be construed as providing or implying that the Contractor has a right to be the sole supplier of the Goods and/or Services to the Authority and the Contractor is put on notice that the Authority may accept the Tender Offer of one or more Tenderers.

A23. OBSOLETE PRODUCT

A23.1 The Contractor shall promptly notify the Authority in writing at least **two (2)** months prior to any of the Goods becoming obsolete (each, an “**Obsolete Product**”), and shall propose an equivalent or improved model to the Authority (the “**Equivalent Product**”) at the same or lower price than that payable for the Obsolete Product for the Authority’s approval.

A23.2 If the Authority grants its approval in writing that the proposed Equivalent Product shall replace the Obsolete Product, the Obsolete Product shall be deemed to be replaced by such approved Equivalent Product in the Contract, at the approved prices with effect from the date of such written approval (the “**Replacement Date**”). For the avoidance of doubt, if the Authority does not grant its approval in writing, the Contractor is obliged to continue providing such Obsolete Product until the Authority grants its approval for an equivalent or improved model to replace such Obsolete Product.

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ANNEX II INSURANCES

The Contractor shall be deemed to have its existing Work Injury Compensation (WICA) and Public Liability (PL) insurances in force. The insurance policies shall consist but not limited to the following:

A Work Injury Compensation Insurance

- (a) The Contractor must ensure compliance with the Work Injury Compensation Act (“WICA”) and maintain the necessary policies with the designated insurers under WICA. The requirements under clause A12.2 shall not apply to the policy to be maintained by the Contractor under WICA.
- (b) The policy must waive all rights of subrogation against HPB.

B Personal Accident Insurance

- (a) Where the Contractor engages independent contractors or any third party who is not deemed as an “employee” under WICA for the purposes of carrying out its obligations under this Contract (“Freelancers”), the Contractor must procure and maintain Personal Accident Insurance for such Freelancers with the coverage as set out in (c) below.
- (b) Where the Contractor subcontracts its obligations under this Contract to a third party, the Contractor must ensure that such a subcontractor comply with the requirements set out in WICA and further, where the subcontractor engages with Freelancers, to procure and maintain Personal Accident Insurance for such Freelancers with the coverage as set out in (c) below.
- (c) The Personal Accident Insurance under this part (B) must provide, at minimum for the following coverage:-
 - i. Minimum accidental death and permanent incapacity sum insured of \$20,000 per insured person.
 - ii. Minimum medical expenses (including Traditional Chinese Medicine and Chiropractor) sum insured of \$1,000 per accident per insured person.
- (d) The policy must waive all rights of subrogation against HPB.

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C Public Liability Insurance

- (a) The limit of liability on the policy shall be at least S\$1,000,000 for any one accident and Unlimited for any period of insurance.
- (b) All sub-contractors need to be insured under the policy.
- (c) HPB has to be included as Named Principal in the policy.
- (d) The policy must waive all rights of subrogation against HPB.
- (e) The policy must include a CROSS LIABILITY Clause.
[‘Each of the parties comprising the Insured shall for the purpose of this policy be considered as a separate & distinct unit & the words ‘The Insured’ shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties.’]

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ANNEX III REQUIREMENT SPECIFICATIONS

(i) Requirement Specifications

Please refer to the attached specifications.

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ANNEX IV FORM OF SECURITY DEPOSIT GUARANTEE

TENDER REFERENCE NO. : _____

To: Health Promotion Board (the “**Authority**”).

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 Authority 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 ____ per cent. 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 Authority 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 Authority any sum or sums up to a maximum aggregate of Singapore Dollars _____ (S\$ _____) (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 Authority and the Contractor with or without our consent, or by any other or further arrangement between the Contractor and us with or without the Authority’s consent, or by any alteration in the obligations undertaken or to be undertaken by the Contractor or by any forbearance on the Authority’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:* _____] 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
 - (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

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- (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 Authority at any time and as many times as the Authority 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 Authority. 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 Authority'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 Authority 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)

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ANNEX V FORM OF ADVANCE PAYMENT GUARANTEE

TENDER REFERENCE NO. : _____

To: Health Promotion Board (the “**Authority**”).

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 Authority 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 ____ per cent. 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 Authority 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 Authority any sum or sums up to a maximum aggregate of Singapore Dollars _____ (S\$ _____) (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 Authority and the Contractor with or without our consent, or by any other or further arrangement between the Contractor and us with or without the Authority’s consent, or by any alteration in the obligations undertaken or to be undertaken by the Contractor or by any forbearance on the Authority’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:*_____].

4 This Guarantee is conditional upon a claim as specified in this Guarantee being made by the Authority at any time and as many times as the Authority 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 Authority. 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 any written notice thereof received by us as final and conclusive.

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For the purposes of this Guarantee, “**business day**” means a day other than a Saturday, Sunday, or public holiday in Singapore.

6 The Authority 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)

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ANNEX VI CONFIDENTIALITY AND DATA PROTECTION UNDERTAKING (FOR CORPORATIONS)

1. This Undertaking relates to all information (“Information”), at any time and from time to time, acquired by or supplied to the recipient as named below (“Recipient”) or its Authorised Recipients by the Health Promotion Board (the “Authority”) or its Connected Persons (whether orally, in writing, electronically or in any other form) in connection with the Recipient’s work for the Authority and/or the Recipient’s dealings and interactions with the Authority, including but not limited to codes, passwords, drawings and plans. In this Confidentiality Undertaking:
 - (a) “Authorised Recipients” mean in relation to the Recipient, its officers, employees, advisers, servants, agents, sub-contractors and representatives who strictly need access to the Information; and
 - (b) “Connected Persons” mean the officers, employees, advisers, agents and representatives of the Authority.
2. In consideration of the disclosure of the Information by the Authority, the Recipient, agrees with and undertakes to the Authority that except with the prior written consent of the Authority, it shall:
 - (a) use the Information only for the purpose for which the Information was provided for;
 - (b) hold the Information in strict confidence and shall not disclose the Information to any person other than an Authorised Recipient; and
 - (c) inform each Authorised Recipient of the confidential nature of the Information and the restrictions imposed by this Undertaking and it shall use its best endeavours to cause all Authorised Recipients to comply with the restrictions imposed by this Undertaking (as if they were named in place of the Recipient) and shall be responsible for any breach by an Authorised Recipient, whether such breach occurs during or after the Authorised Recipient’s employment with or engagement by the Recipient.
3. The Recipient and its Authorised Recipients shall destroy or return to the Authority, on demand, any document containing any Information and any copy which may have been made, and expunge all Information from any computer, word processor or other device containing any Information. Any destruction of Information shall, at the request of the Authority be certified in writing by an authorised officer (and as may be approved by the Authority) supervising it.
4. All intellectual property rights in the Information shall remain the sole property of the Authority at all times. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Recipient acknowledges in its own capacity and on behalf of its Authorised Recipients that no right, title or interest (whether in the form of intellectual property rights or otherwise) in the Information is granted to itself and its Authorised Recipients at any time.

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5. Without prejudice to any of the foregoing confidentiality undertakings, the Recipient's attention is also drawn to the need to safeguard the integrity of the data and/or records and/or information acquired and/or accessed by and/or disclosed/supplied to the Recipient in the course of its work for the Authority (the "Data").
6. The Recipient undertakes to ensure that the integrity of the Data is not compromised and/or affected and/or prejudiced and will take all necessary measures to ensure that this Undertaking is not breached. The Recipient shall also use all its best endeavours to cause any other person who is authorized by the Recipient to have access to the Data ("Authorised Person") to comply with the obligations imposed by this Undertaking and the Recipient shall be responsible for any breach by the Authorised Person.
7. In the event of a breach by the Recipient of this Undertaking, the Recipient agrees to indemnify the Authority for all losses, damages or costs occasioned by the breach. The Recipient further agrees that a breach of this Undertaking would cause irreparable harm to the Authority for which monetary damages would not be a suitable remedy and in the event of such breach, the Authority shall be entitled to equitable relief (including injunctive relief).
8. If any provision of this Undertaking is held to be void, illegal or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and deemed not to be included in this Undertaking without invalidating any of the remaining provisions.
9. This Undertaking shall be governed by, and construed in accordance with, the laws of the Republic of Singapore. In any legal action or proceedings arising out of this Undertaking, the Authority and the Recipient each irrevocably submits to the non-exclusive jurisdiction of the courts of Singapore.

AGREED AND ACCEPTED AS OF _____ BY:

THE RECIPIENT

Name of Corporation:

By

NAME OF AUTHORISED REPRESENTATIVE:

NRIC/Passport No:

Address:

Designation:

Date:

Company Stamp

Witnessed by

9 April 2021

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NAME of Witness:

NRIC/Passport No:

Address

Designation:

Date:

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ANNEX VII CONFIDENTIALITY AND DATA PROTECTION UNDERTAKING (FOR INDIVIDUALS)

1. This Undertaking relates to all information (“Information”), at any time and from time to time, acquired by or supplied to the recipient as named below (“Recipient”) by the Health Promotion Board (the “Authority”) or its Connected Persons (whether orally, in writing, electronically or in any other form) in connection with the Recipient’s work for the Authority and/or his/her dealings and interactions with the Authority, including but not limited to codes, passwords, drawings and plans. In this Confidentiality Undertaking, “Connected Persons” mean the officers, employees, advisers, agents and representatives of the Authority.
2. In consideration of the disclosure of the Information by the Authority, the Recipient, agrees with and undertakes to the Authority that except with the prior written consent of the Authority, he/she shall:
 - (a) use the Information only for the purpose for which the Information was provided for; and
 - (b) hold the Information in strict confidence and shall not disclose the Information to any person.
3. The Recipient shall destroy or return to the Authority, on demand, any document containing any Information and any copy which may have been made, and expunge all Information from any computer, word processor or other device containing any Information. Any destruction of Information shall, at the request of the Authority be certified in writing by an authorised officer (and as may be approved by the Authority) supervising it.
4. All intellectual property rights in the Information shall remain the sole property of the Authority at all times. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Recipient acknowledges that no right, title or interest (whether in the form of intellectual property rights or otherwise) in the Information is granted to him/her at any time.
5. Without prejudice to the foregoing confidentiality undertakings, the Recipient’s attention is also drawn to the need to safeguard the integrity of the data and/or records and/or information acquired and/or accessed by and/or disclosed/supplied to the Recipient in the course of his/her work for the Authority (the “Data”).
6. The Recipient undertakes to ensure that the integrity of the Data is not compromised and/or affected and/or prejudiced and will take all necessary measures to ensure that this Undertaking are not breached.
7. In the event of a breach by the Recipient of this Undertaking, the Recipient agrees to indemnify the Authority for all losses, damages or costs occasioned by the breach. The Recipient further agrees that a breach of this Undertaking would cause irreparable harm to the Authority for which monetary damages would not be a suitable remedy and in the event of such breach the Authority shall be entitled to equitable relief (including injunctive relief).

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8. If any provision of this Undertaking is held to be void, illegal or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and deemed not to be included in this Undertaking without invalidating any of the remaining provisions.
9. This Undertaking shall be governed by, and construed in accordance with, the laws of the Republic of Singapore. In any legal action or proceedings arising out of this Undertaking, the Authority and the Recipient each irrevocably submits to the non-exclusive jurisdiction of the courts of Singapore.

AGREED AND ACCEPTED AS OF _____ BY:

THE RECIPIENT

NAME:
NRIC/Passport No:
Address:
Designation:
Date:

Witnessed by

NAME of Witness:
NRIC/Passport No:
Address:
Designation:
Date:

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ANNEX VIII APPLICABILITY OF CLAUSES

Indicate only ONE choice

1. Clause 7 – Acceptance

- Acceptance Tests are required of the Contractor. Therefore, Clause 7 is applicable.
- Acceptance Tests are not required of the Contractor. Therefore, Clause 7 is not applicable.

2. Clause 12 – Payment Schedule

Contractor shall invoice the Authority:

- after receipt by the Authority of all the Goods, Services and/or any other supporting and relevant documents as may be required from the Authority.
- upon the achievement of each payment milestone as set out in **Annex III**.

3. Clause 36 – Dispute Resolution

Litigation

36.2 Each Party irrevocably agrees that the courts of Singapore shall have exclusive jurisdiction to settle any Dispute. Each Party irrevocably submits to the jurisdiction of such courts.

Arbitration

36.2 Subject to Clause 35 of the Conditions of Contract, any Dispute shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) for the time being in force which rules are deemed to be incorporated by reference into this Clause.

36.3 The seat of the arbitration shall be Singapore.

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

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

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4. Clause A1 – Security Deposit for Performance

- Security Deposit is not required of the Contractor
- Security Deposit is required of the Contractor. The Security Deposit shall be a sum equivalent to five percent (5%) of:
 - the Contract Price.
 - the total price payable each year to the Contractor under this Contract.
 - each Purchase Order issued by the Authority to the Contractor under this Contract, provided that the relevant Purchase Order value is more than S\$500,000.00.

5. Clause A2 – Security Deposit for Advance Payment

- Advance Payment Guarantee is required of the Contractor.
- Advance Payment Guarantee is not required of the Contractor.

6. Clause A8 – Ownership of Intellectual Property Rights

The Parties agree that the ownership of IP shall be addressed in accordance with the **indicated** manner below:-

- Not applicable**

No IP clause is required for this Contract. Therefore, Clauses A8 and A9 are not applicable.

- HPB has ownership of all IP in the Deliverables**

A8.3 All IP in the Deliverables created by the Contractor, its Subcontractor or supplier shall vest solely and exclusively in the Authority. The Contractor shall collate, provide and return all Deliverables to the Authority prior to the expiry or upon the termination of the Contract. For the avoidance of doubt, the Authority shall be entitled to re-use all Deliverables in other medium or for other purposes not specified in the Requirement Specifications, whether during or after the expiry of the Contract.

A8.4 The Contractor:

- (a) hereby assigns and transfers absolutely to the Authority all rights, title and interests in the IP in the Deliverables free from all encumbrances whatsoever; and
- (b) shall procure that its Subcontractors and suppliers assign and transfer absolutely to the Authority all rights, title and interests in

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the IP in the Deliverables free from all encumbrances whatsoever;
and

- (c) shall make use of the IP in the Deliverables only as expressly permitted under this Contract.

The Contractor further warrants that it shall have the authority to effect the necessary transfer, assignment or other assurance for the IP in the Deliverables to vest in the Authority when called upon by the Authority to do so. To the extent that any IP does not automatically vest in the Authority by operation of law, the Contractor hereby unconditionally assigns the same to the Authority.

- A8.5 For the avoidance of doubt, any IP in any results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of the Contract shall be owned by the Authority.
- A8.6 The Contractor agrees and undertakes that it will promptly disclose to the Authority, and assign or procure the assignment to the Authority, of any and all interests in any invention, improvement or discovery made or conceived by the Contractor or any of its employees or agents, either alone or in conjunction with others, which arises in the course of performing its obligations under this Contract.
- A8.7 The Contractor shall execute all documents and do all acts and things required by the Authority for the purpose of giving effect to this clause, including, but not limited to procuring the execution of any necessary documentation by its employees or agents.
- A8.8 In the Contract, "Deliverables" means the proposals, solutions, reports, documents, materials and any other items that the Contractor has to prepare or provide under the Contract.

HPB has ownership of Foreground IP, and a licence to Contractor's Background IP

- A8.3 Nothing in the Contract shall affect any person's right to own or licence Background IP.
- A8.4 All Foreground IP created by the Contractor, its Subcontractor or supplier shall vest in the Authority.
- A8.5 The Contractor:
- (a) hereby assigns and transfers absolutely to the Authority all rights, title and interests in the Foreground IP free from all encumbrances whatsoever; and

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- (b) shall procure that its Subcontractors and suppliers assign and transfer absolutely to the Authority all rights, title and interests in the Foreground IP free from all encumbrances whatsoever.

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

A8.6 The Contractor:

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

A8.7 Nothing in this Clause A8 shall give the Contractor any right, title or interest in or to any IP in any results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of the Contract. The title to all IP in any such results, report, data or information generated or produced by the Authority or another person on behalf of the Authority shall be owned by the Authority.

A8.8 If the Contractor, its Subcontractor or supplier intends to sell or transfer its Background IP, the Contractor shall ensure that:

- (a) the purchaser of the Background IP and every successor in title to the interest in the Background IP (each, a “**Purchaser**”):
 - (i) has prior written notice of this Clause A8; and
 - (ii) undertakes to the Authority in writing that it will comply with this Clause A8.8 in all respects as if references to “the Contractor” had referred to the Purchaser; and
- (b) such sale or transfer is subject to the licences granted or required to be granted under this Clause A8.

A8.9 The Contractor undertakes to do all acts and things and sign and execute all such documents as the Authority may reasonably request to perfect, protect or enforce any of the rights granted or promised to the Licensee under this Clause A8. Without prejudice to the generality of the foregoing, if any licence granted under or pursuant to this Clause A8 is registrable under any IP registration system in Singapore, the Contractor shall:

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- (a) register the licence under the IP registration system in Singapore; and
- (b) deliver copies of documentary proof of such licence registration to the Authority as soon as possible.

A8.10 In the Contract:

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

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

“Licensee” means the Authority.

Contractor has ownership of Foreground IP; HPB obtains a licence to Contractor’s Foreground IP and Background IP

A8.3 Nothing in the Contract shall affect any person’s right to own or licence Background IP.

A8.4 The Authority agrees that all rights, title to or interest in, all Foreground IP created by the Contractor shall vest in the Contractor.

A8.5 In consideration of the Authority agreeing to the vesting of the Foreground IP in the Contractor:

- (a) the Contractor hereby grants to the Licensee and its agents and contractors, free of any additional charge, an irrevocable, worldwide, perpetual, non-exclusive licence to use, modify and reproduce all Foreground IP (including all future Foreground IP) in connection with:
 - (i) the use of any Goods or Services;
 - (ii) the repair, maintenance, refurbishment, reproduction, modification, adaptation, integration or development of any Goods or Services;
 - (iii) the use, reproduction or adaptation of any documentation delivered under the Contract; or
 - (iv) in the event of a termination pursuant to Clause 18.1 or 18.2, the obtaining of the remaining Goods and Services to be provided under the Contract as contemplated under Clause 18.3(d),

((i) to (iv), the **“Permitted Uses”**);

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- (b) the Contractor shall procure that its Subcontractors and suppliers grant to the Licensee and its agents and contractors, free of any additional charge, an irrevocable, worldwide, perpetual, non-exclusive licence, to use, modify and reproduce all Foreground IP which is or becomes vested in the Subcontractors or the Contractor's suppliers in connection with the Permitted Uses.

A8.6 The Contractor:

- (a) hereby grants to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor in connection with the Permitted Uses; and
- (b) shall procure that its Subcontractors and suppliers grant to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to such Subcontractor or supplier in connection with the Permitted Uses.

A8.7 Nothing in Clause A8 shall give the Contractor any right, title or interest in or to any IP in any results, report, data or information generated or produced by the Licensee or another person on behalf of the Licensee as a result of the Contract. The title to all IP in any such results, report, data or information generated or produced by the Licensee or another person on behalf of the Licensee as a result of the Contract shall be owned by the Licensee.

A8.8 If the Contractor, its Subcontractor or supplier intends to sell or transfer its Background IP or Foreground IP, the Contractor shall ensure that:

- (a) the purchaser of the Background IP or Foreground IP and every successor in title to the interest in the Background IP or Foreground IP (each, a "**Purchaser**"):
 - (i) has prior written notice of this Clause A8; and
 - (ii) undertakes to the Authority in writing that it will comply with this Clause A8.8 in all respects as if references to "the Contractor" had referred to the Purchaser; and
- (b) such sale or transfer is subject to the licences granted or required to be granted under this Clause A8.

A8.9 The Contractor undertakes to do all acts and things and sign and execute all such documents as the Authority may reasonably request to perfect, protect or enforce any of the rights granted or promised to the Licensee under this Clause A8. Without prejudice to the generality of the foregoing, if any licence granted under or pursuant to this Clause A8 is registrable under any IP registration system in Singapore, the Contractor shall:

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- (a) register the licence under the IP registration system in Singapore; and
- (b) deliver copies of documentary proof of such licence registration to the Authority as soon as possible.

A8.10 In the Contract:

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

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

“Licensee” means the Authority.

HPB agrees to co-ownership of the Foreground IP with the Contractor

A8.3 Nothing in the Contract shall affect any person’s right to own or licence Background IP.

A8.4 All rights, title and interest in all Foreground IP created by the Contractor, its Subcontractor or supplier shall be co-owned by the Authority and the Contractor in equal undivided shares, and shall vest in the Authority and the Contractor as co-owners without the need for any transfer or assignment to be executed by the person generating the same unless such transfer or assignment is required under law.

A8.5 The Contractor:

- (a) hereby assigns and transfers all rights, title and interests in the Foreground IP (other than those already vested in the manner described in Clause A8.4) free from all encumbrances whatsoever to the Authority and the Contractor absolutely as co-owners in equal undivided shares; and
- (b) shall procure that its Subcontractors and suppliers assign and transfer all rights, title and interests in the Foreground IP free from all encumbrances whatsoever to the Authority and the Contractor absolutely as co-owners in equal undivided shares.

The Contractor further warrants that it shall have the authority to effect the necessary transfer, assignment or other assurance for the Foreground IP to vest in the Authority and Contractor as co-owners when called upon by the Authority to do so.

A8.6 Each Party shall be entitled to exploit, including by way of licence, the Foreground IP, without reference to the other Party and without any obligation to account to the other Party for the profits or gains from such exploitation.

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- A8.7 Nothing in Clause A8 shall give the Contractor any right, title or interest in or to any IP in any results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of the Contract. The title to all IP in any such results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of the Contract shall be owned by the Authority.
- A8.8 In consideration of the Authority agreeing to co-ownership of the Foreground IP, the Contractor:
- (a) hereby grants to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor; and
 - (b) shall procure that its Subcontractors and suppliers grant to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to it.
- A8.9 If the Contractor, its Subcontractor or supplier intends to sell or transfer its Background IP, the Contractor shall ensure that:
- (a) the purchaser of the Background IP and every successor in title to the interest in the Background IP (each, a “**Purchaser**”):
 - (i) has prior written notice of this Clause A8; and
 - (ii) undertakes to the Authority in writing that it will comply with this Clause A8.9 in all respects as if references to “the Contractor” had referred to the Purchaser; and
 - (b) such sale or transfer is subject to the licences granted or required to be granted under this Clause A8.
- A8.10 The Contractor undertakes to do all acts and things and sign and execute all such documents as the Authority may reasonably request to perfect, protect or enforce any of the rights granted or promised to the Authority under this Clause A8. Without prejudice to the generality of the foregoing, if any licence granted under or pursuant to this Clause A8 is registrable under any IP registration system in Singapore, the Contractor shall:
- (a) register the licence under the IP registration system in Singapore; and
 - (b) deliver copies of documentary proof of such licence registration to the Authority as soon as possible.

A8.11 In the Contract:

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

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

“**Licensee**” means the Authority.

7. Clause A10 – Contract Period

The duration of this Contract shall be:-

- for a fixed period of _____ (“**Contract Period**”).
- for an initial contract period of _____ (the “**Initial Contract Period**”). The Authority shall have the option to extend the Initial Contract Period by one or more consecutive periods, to be determined in the Authority’s sole discretion provided always that any period of extension shall not be less than **one (1)** month and the cumulative period of extension shall not exceed _____ in total (collectively, the “**Contract Period**”), on the same terms and conditions contained in the Contract and on any other terms that may be mutually agreed in writing between the Parties. The Authority shall exercise such option by giving at least **one (1)** month’ written notice to the Contractor.
- where the Contract is for the supply of **Goods** only, until the expiration of the Warranty Period.
- where the Contract is for the supply of **Services** only, until the expiration of the Warranty Period.
- where the Contract is for the supply of both **Goods** and **Services**, until the complete supply of all Goods and Services required from the Contractor under this Contract, including any applicable Warranty Period for such Goods and Services.