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1. DEFINITIONS

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

- (a) **“Agency”** means the National Environment Agency.
- (b) **“Contract”** means the resulting contract between the Agency and the Contractor for the provision of the Services as a result of the Agency’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:
 - (i) the Covering Letter;
 - (ii) the Instructions to Tenderers;
 - (iii) the Contractor's Tender Offer;
 - (iv) these Conditions of Contract;
 - (v) the Requirement Specifications;
 - (vi) the Letter of Acceptance;
 - (vii) any Works Orders issued by the Agency to the Contractor;
 - (viii) any correspondence exchanged between the Agency and the Contractor which is agreed to by the Agency in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
 - (ix) any formal agreement executed between the Parties,including all schedules and annexes to such documents as relevant.
- (c) **“Contract Period”** means the Initial Contract Period as set out in Clause 36.1, as extended from time to time by the Agency pursuant to Clause 36.2.
- (d) **“Contract Price”** means the aggregate Tender Price for Services required under the Contract.
- (e) **“Contractor”** means a successful Tenderer whose Tender Offer has been accepted by the Agency.
- (f) **“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.
- (g) **“Government Furnished Equipment”** or **“GFE”** means the items which the Agency provides or is required to provide pursuant to the Contract.
- (h) **“GST”** means goods and services tax charged under the GST Act.
- (i) **“GST Act”** means the Goods and Services Tax Act (Cap. 117A).

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- (j) “**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.
- (k) “**Invitation to Tender**” means the invitation to participate in the tender for the supply of 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, Price Schedule, Evaluation Criteria and any other documents and forms enclosed.
- (l) “**Letter of Acceptance**” means the letter issued by the Agency accepting the Contractor’s Tender Offer.
- (m) “**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.
- (n) “**Parties**” means the Agency and the Contractor, and “**Party**” means any one of them.
- (o) “**Price Schedule**” means the schedule of prices for Services proposed in the Contractor’s Tender Offer and accepted in the Letter of Acceptance.
- (p) “**Works Order**” means an order issued by the Agency, making reference to the Contract, to purchase the Services.
- (q) “**Requirement Specifications**” means the specifications set out in Part 2 of the Invitation to Tender and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to time.
- (r) “**S\$**” means the lawful currency of Singapore.
- (s) “**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.
- (t) “**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.
- (u) “**Tender Offer**” means the offer submitted by the Tenderer to provide Services to the Agency in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Agency as modifying such offer submitted by the Tenderer.
- (v) “**Tender Price**” in respect of any of the Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Services under the Contract.

- (w) **“Tenderer”** means a person or its permitted assigns and successors offering to provide the Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.
 - (x) **“Working Day”** means a day which is not a Saturday, Sunday or a public holiday in Singapore.
- 1.2 Words importing the singular only shall also include the plural and vice versa where the context requires.
 - 1.3 The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.
 - 1.4 References to a person include any company, limited liability partnership, partnership, business trust, unincorporated association or government agency (whether or not having separate legal personality).
 - 1.5 Unless a contrary intention appears, a reference in the Contract to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including but without limitation”.
 - 1.6 Unless otherwise provided, any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation.
 - 1.7 In the Contract, “month” means calendar month and “day” means calendar day.
 - 1.8 For the purposes of computing time, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

2. CLAUSE REFERENCES

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

3. SCOPE OF CONTRACT

- 3.1 The Contractor shall carry out and complete the supply of all items of Services in accordance with the Contract.

4. DELIVERY AND PERFORMANCE

- 4.1 The Contractor shall, unless otherwise specified by the Agency prior to delivery or performance, 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 Agency. The issue of such receipt shall in no way relieve the Contractor from its obligations under Clause 5 to re-perform deficient Services.

5. REJECTED SERVICES

- 5.1 The Agency 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 Agency, the Contractor shall re-perform such rejected Services at the Contractor's own expense.
- 5.2 Where any Services are rejected by the Agency pursuant to Clause 5.1 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to perform such Services.

6. CONTRACTOR'S PERSONNEL

- 6.1 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 Agency, the Contractor shall provide evidence of certification and competency of the personnel assigned.
- 6.2 If required by the Agency, the Contractor shall provide to the Agency the names and particulars (in such form as may be required by the Agency) of the personnel provided by the Contractor to perform the Contract.
- 6.3 The personnel provided by the Contractor to perform the Contract shall be subject to the Agency's approval. Where the Contractor has proposed such personnel in its Tender Offer, the Agency's acceptance of the Contractor's Tender Offer shall not constitute its approval of such personnel.
- 6.4 The Agency shall not be obliged to provide any reasons for objecting to any of the Contractor's personnel. If the Agency 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 Agency within seven (7) days or any other timeframes specified in Requirement Specifications.
- 6.5 The Contractor undertakes not to change its personnel approved under this Clause 6 without the Agency's consent, whose consent shall not be unreasonably withheld. All new or replacement personnel shall also be subject to the approval of the Agency. 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.

7. PAYMENT

- 7.1 The Contractor shall invoice the Agency monthly in accordance with Clause 7.4 after receipt by the Agency of all the Services.
- 7.2 Against compliance with Clause 7.1, the Agency 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 Agency and the Contractor may agree. The Contractor shall provide the Agency 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.
- 7.3 No payment shall be considered as evidence of the quality of the 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.

- 7.4 If requested by the Agency, the Contractor shall submit to the Agency invoices through the electronic invoicing system maintained by the Agency and such other documents through such means and in such format as may be specified by the Agency for the purposes of making payment.
- 7.5 The Agency 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 Agency.
- 7.6 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Agency by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Agency shall reimburse the Contractor for any such GST charged on the supply by the Contractor of goods or services under the Contract.
- 7.7 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.

8. TAXES, FEES AND DUTIES

- 8.1 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.
- 8.2 If the Agency 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 Agency may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments ("Taxes"), the Contractor hereby agrees that the Agency 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.
- 8.3 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 Agency shall deduct such taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

9. DELAY IN PERFORMANCE

- 9.1 If the Contractor fails to complete the performance of any Services by the date(s) specified in the Contract, the Agency shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Agency's right to terminate the Contract pursuant to Clause 13.1) to do one or more of the following:
- (a) cancel all or any such Services from the Contract without compensation and obtain them (the "**Replacement Services**") from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that

the quantity of the Replacement Services so obtained shall not exceed the quantity stated in the Contract; and/or

- (b) require the Contractor to pay as liquidated damages, a sum calculated at the rate as set out in **Error! Reference source not found.**, S/N 1a, b and S/N 3. For the avoidance of doubt, the rates under S/N 1a, b and S/N 3 of Schedule 2 apply to delay which is up to a maximum of three (3) hours.

- 9.2 The Agency 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 9.

10. COMPLIANCE WITH LAW

- 10.1 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.
- 10.2 The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws and shall keep the Agency indemnified against all penalties and liabilities of every kind for the breach of any such laws.

11. CARE AND DILIGENCE

- 11.1 The Contractor shall with due care and diligence carry out its obligations to the Agency under the Contract.
- 11.2 The Contractor acknowledges and accepts that the Agency 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 provision of the Services under the Contract.

12. GIFTS, INDUCEMENTS AND REWARDS

- 12.1 The Agency shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any loss resulting from such termination or rescission if:
 - (a) any Contractor Representative has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Contract; or
 - (ii) showing favour to any person in relation to any contract with the Agency; 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.

- 12.2 In this Clause 12:

“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).

13. TERMINATION

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

- (a) the Contractor fails to remedy the breach within thirty **(30)** days from a written notice from the Agency to do so; or
- (b) the breach is not capable of being remedied within a reasonable time,

the Agency 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 in whole or in part with immediate effect by written notice.

13.2 If any of the following events occur, the Agency 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.

13.3 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 Agency all amounts paid to the Contractor under the Contract, less the price of the Services which have been accepted by the Agency as at the date of termination;
- (c) the Contractor shall immediately deliver property belonging to or provided by the Agency pursuant to the Contract and all deliverables prepared by the Contractor for the Contract (including works-in-progress if so requested by the Agency). Works-in-progress shall be paid on a pro-rated basis at the Agency's sole discretion;
- (d) in the event of a termination pursuant to Clause 13.1 or 13.2, the Agency shall, at its sole discretion, have the right to engage another person to provide the remaining 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 13.2(g), the Agency shall, at its sole discretion, have the right to return any item which have been provided to the Agency as at the date of termination, and the Contractor shall forthwith refund to the Agency all amounts paid to the Contractor under the Contract in respect of such item.

13.4 Nothing in this Clause 13 shall be deemed to prejudice any other rights or remedies available to the Agency against the Contractor for any breach of the Contractor's obligations whether under the Contract or at law or in equity.

14. FORCE MAJEURE

14.1 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.

14.2 If the effect of any Force Majeure Event continues for a period exceeding seven (7) days, the Agency 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.

14.3 If a Force Majeure Event occurs, the Contractor or the Agency (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.

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

15. CORRESPONDENCE

- 15.1 Subject to Clause 15.2, 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 Agency, the following address and fax number:

National Environment Agency
Central Regional Office
4545 Jalan Bukit Merah 159466
Fax: (65) 6273 9641

- 15.2 Any Notice may be made by the Agency 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.

- 15.3 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.

16. LANGUAGE

- 16.1 All data, documents, descriptions, diagrams, books, catalogues, instructions, markings and correspondence shall be written in readily comprehensible English language.

- 16.2 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.

17. CONSORTIUM

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

Joint and Several Responsibility

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

Addition of members to Consortium

- 17.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Agency.

- 17.4 Should additional member(s) be added to the Consortium at any time with the approval of the Agency pursuant to Clause 17.3, he or they shall be deemed to be included in the expression "the Contractor".

Withdrawal from Consortium

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

18. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

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

19. DEFAULT INTEREST

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

20. REMEDIES

- 20.1 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.
- 20.2 The Agency 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.

21. VARIATION

- 21.1 No variation of the Contract shall be of any force unless agreed upon in writing by both Parties.

22. WAIVER

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- 22.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy ("**Remedy**"), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.
- 22.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.
- 22.3 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.

23. SET-OFF

- 23.1 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 Agency.

24. ENTIRE AND WHOLE AGREEMENT

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

25. SEVERABILITY

- 25.1 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.

26. RIGHTS OF THIRD PARTIES

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

27. SURVIVING PROVISIONS

- 27.1 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 12 (Gifts, Inducements and Rewards), 13.3 and 13.4 (Termination), 15 (Correspondence), 19 (Default Interest), 20 (Remedies), 21 (Variation), 22 (Waiver), 23 (Set-off), 24 (Entire and Whole Agreement), 25 (Severability), 26 (Rights of Third Parties), 27 (Surviving Provisions), 28 (Governing Law), 29 (Mediation), **Error! Reference source not found.** (Dispute Resolution) and 31 (Order of Precedence), shall survive the termination or expiry of the Contract.

28. GOVERNING LAW

28.1 The Contract and Clause 29.4 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.

28A. ESCALATION OF DISPUTES

28A.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.

28A.2 If such Dispute is not resolved by agreement between the Officers within 90 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 29 (Mediation).

29. MEDIATION

29.1 Notwithstanding anything in the Contract, in the event of any dispute, claim, question or disagreement arising out of or relating to the Contract (a "**Dispute**") and subject to Clause 29.3, no Party shall proceed to any form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of the Singapore Mediation Centre. The Parties shall be deemed to have made reasonable efforts in accordance with this Clause 29.1 if they have gone through at least one mediation session at the Singapore Mediation Centre.

29.2 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 29.

29.3 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.

29.4 Clause 29.1 shall not apply to a Dispute referred to the Small Claims Tribunals, provided that:

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

29.5 Failure to comply with Clause 29.1 or 29.2 shall be deemed to be a breach of the Contract.

30. DISPUTE RESOLUTION

30.1 The Parties irrevocably agree to submit to the exclusive jurisdiction of the Singapore courts.

31. ORDER OF PRECEDENCE

31.1 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 31.2, in accordance with the following order of precedence:

- (a) these Conditions of Contract (as amplified or modified by any correspondence exchanged between the Agency and the Contractor which has been agreed to by the Agency in writing as amplifying or modifying these Conditions of Contract);
- (b) the Requirement Specifications;
- (c) the Letter of Acceptance;
- (d) the Works 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 Agency and the Contractor which has been agreed to by the Agency in writing as amplifying or modifying the Contractor's Tender Offer).

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

31.3 For the avoidance of doubt, this Clause shall form an integral part of the Conditions of Contract referred to in Clause 31.1(a).

32. SECURITY DEPOSIT FOR PERFORMANCE (*only applicable if the contract price of the firm or optional requirement exercised each time exceeds S\$500,000*)

32.1 The Contractor shall, within thirty (30) days after the date of the Letter of Acceptance, deliver to the Agency a security deposit of an amount equal to one per cent (1%) of the estimated annual Contract Price as determined by the Agency (Rounded to the nearest dollar) (the "**Security Deposit**") as security for the due and faithful performance of the Contract and the compliance with all provisions of the Contract by the Contractor.

- 32.2 The Security Deposit shall be in the form of a Security Deposit Guarantee.
- 32.3 The cost of obtaining and maintaining such Security Deposit Guarantee shall be borne by the Contractor.
- 32.4 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.
- 32.5 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 Agency. If such renewal or new Security Deposit Guarantee is not deposited with the Agency at least **thirty (30)** days before the expiry date of the expiring Security Deposit Guarantee, the Agency shall have the right to call on the expiring Security Deposit Guarantee.
- 32.6 The Agency may at its sole discretion draw on the Security Deposit to satisfy any amount as may become due to the Agency under the Contract.
- 32.7 The Agency 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.
- 32.8 The Agency's rights under this Clause 32 shall be without prejudice to any other rights and remedies available to the Agency.
- 32.9 In the Contract, "**Security Deposit Guarantee**" means a guarantee in the form set out in **Error! Reference source not found.** 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 fulfilment of the terms and conditions of the Contract by the Contractor.

33. CONFIDENTIALITY AND SECURITY

- 33.1 Except with the written consent of the Agency, 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
 - (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.

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- 33.2 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. 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 this Clause 33 and shall, at the request of the Agency, procure that each of its employees, servants and agents and those of its Subcontractors and agents sign an undertaking to safeguard official information in the form set out in Annex II, if they have not already done so.
- 33.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Agency.
- 33.4 For the purposes of this Clause 33, “**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 Agency;
 - (b) information which relates to the existence and the provisions of the Contract or any Works 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:
- (d) 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;
 - (e) 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
 - (f) independently developed by the Contractor.
- 33.5 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 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 in accordance with the provisions of the Contract, provided the Contractor shall, to the extent practicably possible and permissible by law or regulations, give the Agency prompt and prior notice of any such requirement and shall cooperate with the Agency to limit the scope of such disclosure to the maximum extent legally possible.
- 33.6 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 Agency 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 33.6(a) and (b), the Contractor shall provide a written confirmation that it has complied with Clauses 33.6(a) and (b).
- 33.7 The Contractor shall immediately notify the Agency where the Contractor becomes aware of any breach of this Clause 33 by its employees, servants, agents and Subcontractors and cooperate with the Agency to limit the extent and impact of such breach.
- 33.8 This Clause 33 shall survive the termination or expiry of the Contract.

34. LOSSES

- 34.1 The Contractor shall indemnify and keep indemnified the Agency against any and all Losses sustained, incurred, paid by or suffered by the Agency 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.
- 34.2 If any claim is commenced against the Agency that may give rise to a claim against the Contractor under Clause 34.1, notice thereof shall be given to the Contractor as soon as practicable.
- 34.3 Upon receipt of such notice, if required by the Agency, the Contractor shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Agency to handle and defend the same, at the Contractor's sole cost and expense.
- 34.4 In the event the Contractor takes control of the defence and investigation of the claim, the Agency 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 Agency'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 Agency.
- 34.5 Notwithstanding anything to the contrary in the Contract, the Agency 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 Agency, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

34.6 This Clause 34 shall survive the termination or expiry of the Contract.

35. INTELLECTUAL PROPERTY INDEMNIFICATION

35.1 The Contractor:

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

35.2 The Contractor shall indemnify the Agency and its officers against all Losses which the Agency or its officers may at any time and from time to time incur or suffer by reason of:

- (a) any breach of Clause 35.1; or
- (b) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract.

35.3 Without prejudice to the Agency's right to defend a claim alleging such infringement, the Contractor shall, if requested by the Agency but at the Contractor's expense, defend such claim. The Contractor shall observe the Agency's directions relating to the defence or negotiation for settlement of such claim.

35.4 The Agency shall, if requested but at the Contractor's expense, provide the Contractor with reasonable assistance in conducting the defence of such claim.

35.5 If any of the 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 Agency may (in addition to and without prejudice to all other rights or remedies available), at the option of the Agency, require the Contractor, at the Contractor's own expense, to:

- (a) procure for the Agency the right to continue using the same;
- (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under the Contract (in which event the Contractor shall compensate the Agency for any Losses sustained or incurred by the Agency in connection with such replacement or modification); or
- (c) pay the Agency 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.

35.6 All royalties and fees claimable by or payable to any person for or in connection with any IP used or required to be used in connection with the performance of the

Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the Agency.

35.7 This Clause 35 shall survive the termination or expiry of the Contract.

36. COMMENCEMENT AND DURATION OF CONTRACT

36.1 The Contract shall commence on the date of commencement stated in the Letter of Acceptance or any other formal agreement executed between the Parties, and shall remain in force for a period of two (2) years (the "**Initial Contract Period**").

36.2 The Agency shall have the option to extend the Initial Contract Period by one or more consecutive periods, to be determined in the Agency's sole discretion provided always that the cumulative period of extension shall not exceed one (1) year in total, 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 Agency shall exercise such option by giving at least one (1) month's written notice to the Contractor.

37. SUPPLY OF SERVICES AS AND WHEN REQUIRED BY THE AGENCY

37.1 The Agency may engage the Contractor for the supply of Services from time to time by issuing a Works Order.

37.2 All Works Orders shall state the Services to be supplied and shall also state the aggregate Tender Price of all Services specified in such Works Order.

37.3 Where the Contractor receives, during the Contract Period, any Works Order for Services, the Contractor shall supply the Services specified in the Works Order in accordance with the Contract.

37.4 The Agency shall be under no obligation to purchase any Services except to the extent of a Works Order for Services issued by the Agency.

38. INSURANCE

38.1 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 Schedule 1;

(b) shall, if required by the Agency, deliver to the Agency evidence that the Contractor has maintained each of the insurances required to be maintained under this Clause 38; and

(c) shall, and shall use its best endeavours to procure that the insurer shall, give to the Agency at least fourteen (14) days' (or such shorter period as may be agreed between the Contractor and the Agency) prior notice of any cancellation or material change.

38.2 Each of the insurances required to be maintained under this Clause 38 shall:

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- (a) be taken out in the joint names of the Contractor and the Agency or, be noted, by endorsement on such insurances (in such form as may be reasonably acceptable to the Agency), with the interest of the Agency;
- (b) name the Agency 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 Agency.

38.3 In the event that the Contractor defaults in insuring (including any deficiency of any insurance amount) or continuing to insure as required by this Contract, the Agency shall not be under any liability to the Contractor for any loss or damage to the Contractor that may arise therefrom and the Agency shall have the right to insure itself against any risk with respect to which the default shall have occurred and all costs and expenses thereof shall be recoverable from the Contractor in accordance with this Contract.

38.4 Provided always that if the Contractor shall at any time fail to effect the insurance coverage in accordance with this clause, the Agency may do all things necessary to effect and maintain such insurance and any money expended for that purpose shall be repaid by the Contractor to the Agency forthwith as a debt due and owing to the Agency.

39. INSPECTION

39.1 The Contractor shall allow the Agency to conduct investigations, audits or inspections at any location in which the Contractor is providing or has provided Services under the Contract, for the purpose of ensuring proper compliance with the Contract. The costs of conducting any such investigation, audit or inspection shall be borne by the Agency.

39.2 The Contractor shall cooperate with and provide all support, information and assistance necessary to the Agency or the auditor (including access to the Contractor's financial records) for the conduct of the investigations, audits or inspections referred to in Clause 39.1 at no charge to the Agency. The Agency reserves the right to conduct spot-checks on the Contractor for the purpose of such investigations, audits or inspections.

39.3 All investigations, audits or inspections referred to in Clause 39.1 shall be in the form of a government audit, or a third-party audit conducted by a reputable audit firm acceptable to the Agency.

40. TERMINATION FOR CONVENIENCE

40.1 The Agency 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.

41. TERMINATION FOR CHANGE IN CONTROL

41.1 If the Contractor suffers a change in Control, the Agency 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.

42. RIGHTS OF THE AGENCY IN THE EVENT OF DEFAULT BY THE CONTRACTOR

42.1 If the Contractor defaults in his performance of this Contract, the Agency may issue a notice of default to the Contractor informing the Contractor of its default. The Contractor shall, within the timeframe stated in the notice of default, remedy the default. If the Contractor fails to do so, the Agency shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Agency's right to terminate the Contract pursuant to Clause 39.1) to do one or more of the following:

- (a) cancel all or any Services from the Contract without compensation and obtain them (the "Replacement Services") from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity of the Replacement Services so obtained shall not exceed the quantity stated in the Contract; and/or
- (b) require the Contractor to pay as liquidated damages, a sum calculated at the rate as set out in Schedule 2, S/N 2, 4, 5 and 6. For the avoidance of doubt, with respect of S/N 2 of Schedule 2, the Contractor shall be deemed to have been in default of his obligations under paragraphs 6.1.3, 6.2.1 and 7.1.5 of the Requirement Specifications if any of the delay has exceeded three (3) hours.

42.2 The Agency 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 42.