

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the Contract the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- (a) "Appendices" means the Appendices A to B to these Conditions.
- (b) "Conditions" means these Standard Conditions of Contract for Supply of Services and the Particular Conditions of Contract for Supply of Services (if any).
- (c) "Contract" means the Tender Offer, the Instructions to Tenderer, these Conditions and Appendices, the Specifications, Drawings, Rates (if any), the Letter of Acceptance, Works Orders and such other letters, e-mail correspondences and documents as the parties may expressly identify in writing and agree as forming part of the Contract.
- (d) "Contract Period" means the period so described and stated in Appendix A including any extension thereof by the HDB in accordance with the Contract and during which the Superintending Officer may issue the Works Order and/or the Managing Agent shall perform the Services as the case may be.
- (e) "Contract Rates" means the unit rates (if any) set out in the Letter of Acceptance and Rates (if any) and shall be fixed subject only to adjustments expressly provided for in the Conditions.
- (f) "Contract Sum" means the lump sum (if any) set out in the Letter of Acceptance and shall be fixed subject only to adjustments expressly provided for in the Conditions.
- (g) "Managing Agent" means the social service agency whose Tender Offer has been accepted by the HDB and includes its legal personal representatives and any person to whom the rights or liabilities of the Managing Agent have been assigned or transferred with the consent in writing of the HDB under Clause 20.1.
- (h) "Deficient Services" means any part of the Services not designed, provided, performed or completed in accordance with the Contract. For the avoidance of doubt and without limiting the generality of the expression, the term shall be taken to include any item of Equipment, Tools and Materials or services which does not or may not conform to the relevant standards or pass the tests prescribed in or to be inferred from the Contract.
- (i) "Drawing(s)" means the drawings, maps and plans referred to in the Contract including such drawings, maps and plans which have been prepared by the Managing Agent and such others as may from time to time be issued or accepted in writing by the Superintending Officer.

- (j) "Equipment, Tools and Materials" mean all equipment, apparatus, hardware, technology, vehicles, tools, software, communication lines, system, connections, interfaces, materials, printed matter, test data, utilities such as electricity, water, gas, Internet and telecommunication services, electronic payment services, fixtures, fittings and anything of whatsoever nature required for the performance and completion of the Services and the re-performing of any Deficient Services.
- (k) Reserved
- (l) "the HDB" or "the Employer" means the Housing & Development Board, Republic of Singapore. Where the expression the "Board" is used in any document forming part of the Contract, such expression shall be deemed to refer to the Housing & Development Board, Republic of Singapore.
- (m) "Instruction in Writing" means the written instruction issued by the Superintending Officer from time to time to the Managing Agent.
- (n) "Letter of Acceptance" means the formal acceptance by the HDB of the Tender Offer.
- (o) "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.
- (p) "Loss and Expense" means:
- (i) Direct relevant costs of labour, Equipment, Tools and Materials actually incurred;
  - (ii) Costs of an overhead nature actually and necessarily incurred but in either case only in so far they would not otherwise have been incurred and which were not and should not have been provided for by the Managing Agent; and
  - (iii) 15% of any such costs, such 15% to be inclusive of and in lieu of any profits, head office or other administrative overheads, financing charges (including foreign exchange losses) and any other costs, loss or expense of whatsoever nature and howsoever arising.
- (q) "Personal Data" means data in manual or electronic form, which relates to a living person who can be identified:
- (i) from the data, or
  - (ii) from the data and other information which is in the possession of, or is likely to come into the possession of, the Managing Agent.
- (r) "Rates" means those unit rates set out in the Schedule of Rates and shall be fixed subject only to adjustments expressly provided for in the Conditions including any additions thereto agreed in writing by the HDB and the Managing Agent.
- (s) "Services" means the services which the Managing Agent is required to perform under the Contract.

- (t) "Site" or "Sites" means the places where the Services or any part thereof are to be performed and where the items of Services and locations shall be as set out in Appendix A for the purposes of the Contract.
- (u) "Specifications" means all specifications contained in the Contract including any modifications or additions thereto as may from time to time be issued or approved in writing by the Superintending Officer.
- (v) "Subcontractor" mean any person, firm or company including the consultants, contractors, subcontractors, suppliers, system integrators, solution providers and other contractors whether nominated or privately engaged by the Managing Agent to perform any part or parts of the Managing Agent's obligations and includes the Subcontractor's duly appointed representatives, successors and permitted assignees and the Subcontractor's subcontractor and where the context requires, a particular consultant, contractor, subcontractor, supplier, system integrator, solution provider or other contractors.
- (w) "Superintending Officer (SO)" means the person as stated in Appendix A to the Conditions or such other person or firm or corporation as may be appointed by the HDB from time to time to exercise all or any of the powers of the Superintending Officer.
- (x) "Superintending Officer's Representative (SO's Rep)" means the persons as stated in Appendix A to the Conditions or any other person or firm or corporation from time to time authorised by the Superintending Officer to exercise all or any of the powers of the Superintending Officer's Representative.
- (y) "Tender Offer" means the Managing Agent's offer to the HDB to perform and complete the Services and carry out all its obligations and responsibilities under the Contract at the Contract Rates or Contract Sum as accepted by the HDB in the Letter of Acceptance.
- (z) "Time for Completion" means the time or times for completion of the Services as set out in the Letter of Acceptance, Appendix A to the Conditions, Works Order, Instruction in Writing, or the Specifications and subject to such extension or extensions of time (if any) as the Managing Agent may be allowed under the Contract.
- (aa) "Total Contract Value" means the aggregate sum of the Contract Rates multiplied by the quantities as set out in the Form of Tender (if any). The aggregate sum of the Contract Rates multiplied by the quantities varies subject to adjustment on the quantities.
- (ab) "Warranty Period" means the period so described and stated in Appendix A to the Conditions.
- (ac) "Working Day" means any day except any Saturday, any Sunday, or any day which is a public holiday.
- (ad) "Works Order" means the order form issued pursuant to Clause 11.3.

## **1.2 Singular and Plural**

Words importing the singular also include the plural and vice versa where the context requires.

## **1.3 Headings and Marginal Notes**

The headings and marginal notes in the Conditions are for guidance only, and shall not be deemed to be part of the Conditions or be taken into consideration in the interpretation or construction of the Conditions or of the Contract.

## **1.4 Clause References**

All references to clauses in this Conditions or any other documents, unless otherwise expressly stated, are references to clauses numbered in this Conditions or the document in which the reference appears respectively.

## **1.5 Joint and Several Liability**

- (1) If the Managing Agent is a member of a Consortium, each member of the Consortium shall be deemed to be jointly and severally liable to the HDB under this Contract.
- (2) Any introduction of, or changes to, the Consortium must be approved in writing by the HDB.
- (3) Should additional member(s) be added to the Consortium at any time with the approval of the HDB, he or they shall be deemed to be included in the expression 'the Managing Agent'.
- (4) If any member of the Consortium withdraws from the Consortium, or is subject to any of the events set out in Clause 21.1(2):
  - (a) this Contract shall continue and not be dissolved, and
  - (b) the remaining member(s) of the Consortium shall be obliged to perform and complete this Contract.

## **2 SCOPE OF CONTRACT**

The Managing Agent shall perform the Services in accordance with the Contract.

## **3 SUPPLY OF SERVICES AS AND WHEN REQUIRED BY THE HDB**

Where the HDB has entered into a Contract with the Managing Agent for the supply of Services as and when required by the HDB during the Contract Period, Managing Agent shall upon receipt of any Works Order and/or Instruction in Writing for the Services or any part thereof specified in the Contract, proceed to perform the Services in accordance with the Contract. The HDB shall be under no obligation to purchase the Services specified in

the Contract except to the extent of the Works Order or Instruction in Writing—for those Services issued by the SO's Rep.

#### **4 SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER'S REPRESENTATIVE**

##### **4.1 Superintending Officer's Authority**

- (1) The authority of the Superintending Officer shall be that stated in or necessarily to be implied from the Contract. Any limitations on the authority of the Superintending Officer are set out in Appendix A to the Conditions.
- (2) Except as expressly stated in the Contract, the Superintending Officer shall have no authority to relieve the Managing Agent of any of its obligations under the Contract.

##### **4.2 Superintending Officer's Representative**

The Superintending Officer's Representative shall be appointed by and be responsible to the Superintending Officer and shall carry out such duties and exercise such authority as may be delegated to the Superintending Officer's Representative by the Superintending Officer under Clause 4.3. For the avoidance of doubt, the Superintending Officer may appoint more than one Superintending Officer's Representative.

##### **4.3 Superintending Officer's Authority to Delegate**

- (1) Save to the extent that the Superintending Officer may otherwise specify by written notice to the Managing Agent and subject to Clause 4.3(2), the Superintending Officer's Representative shall have the powers vested in the Superintending Officer and its actions shall have the same effect as though it had been done by the Superintending Officer. Provided that:
  - (a) Any failure of the Superintending Officer's Representative to disapprove any work shall not prejudice the authority of the Superintending Officer to disapprove such work and give instructions for the rectification of any such work; and
  - (b) If the Managing Agent disputes any act of the Superintending Officer's Representative, it shall refer the matter to the Superintending Officer who shall confirm, reverse or vary (as the case may be) the act or decision of the Superintending Officer's Representative.
- (2) Unless expressly authorised in writing by the Superintending Officer, the Superintending Officer's Representative shall not have the powers vested in the Superintending Officer on the following clauses:

Clause 10.1	-	Suspension of Services
Clause 10.2	-	Suspension Lasting More Than 90 Days
Clause 21	-	Termination by the HDB; and
Clause 23	-	Settlement of Disputes.
- (3) The Superintending Officer may exercise any power or perform any duty conferred upon him by these Conditions, notwithstanding the delegation by him of such power or duty.

#### **4.4 Appointment of Assistants**

The Superintending Officer or the Superintending Officer's Representative may appoint in writing any number of persons to assist the Superintending Officer's Representative in the carrying out of his duties. The Managing Agent shall be notified in writing upon its written request of the names, duties and authority (if any) of such assistants. Unless authorised in writing by the Superintending Officer, such assistants shall have no authority to issue any instructions to the Managing Agent save insofar as such instructions may be necessary to enable them to carry out their duties and to secure that the Services are in accordance with the Contract.

#### **4.5 Instructions by Superintending Officer**

Instructions given by the Superintending Officer shall be in writing. Provided that if for any reason the Superintending Officer considers it necessary to give any such instruction orally, the Managing Agent shall comply with such instruction. Confirmation in writing of such oral instruction given by the Superintending Officer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Clause. Provided further that if the Managing Agent, within three (3) working days, confirms in writing to the Superintending Officer any oral instruction of the Superintending Officer and such confirmation is not contradicted in writing within the next three (3) working days by the Superintending Officer, it shall be deemed to be an instruction of the Superintending Officer. However, should the Superintending Officer withdraw any such oral instructions at any time within the aforesaid period of 6 working days, then the Superintending Officer may certify pursuant to Clause 16, such sum as may be reasonable in respect of such Loss and Expense that the Managing Agent has incurred by reason of his compliance with the Superintending Officer's oral instruction that has been withdrawn. The provisions of this Clause shall equally apply to instructions given by the Superintending Officer's Representative and any assistants appointed pursuant to Clause 4.4. For the purposes of this Clause, the term "working days" shall exclude Sundays and public holidays.

#### **4.6 Failure to Comply with Superintending Officer's Instructions**

If the Managing Agent, after receipt of an instruction from the Superintending Officer, the Superintending Officer's Representative or any assistant appointed pursuant to Clause 4.4, fails to comply with it within seven (7) days (or within such period as may be stipulated in the instruction):

- (a) The HDB may either by itself do, or employ or engage any other person to do, whatever may be necessary to carry out or give effect to the instruction and recover from the Managing Agent the amount of any Losses incurred or suffered by the HDB in connection therewith; and
- (b) The amount of any other loss or damage suffered or incurred by the HDB as a result of or arising from the Managing Agent's failure to comply with the instruction shall also be recoverable by the HDB from the Managing Agent.

#### **4.7 Urgent Work**

Save as otherwise provided in the Contract, if by reason of any accident or failure or other event occurring to or in connection with the Services, any remedial or other work shall in the opinion of the Superintending Officer be urgently necessary and the Managing Agent is unable or unwilling at once to do such remedial or other work, the Superintending Officer may authorise the carrying out of such remedial or other work by a person other than the Managing Agent. If the remedial or other work so authorised by the Superintending Officer is work which in the opinion of the Superintending Officer the Managing Agent was liable to do or for which the Managing Agent was otherwise responsible under the Contract, the amount of any Losses incurred in carrying out the same shall be recoverable by the HDB from the Managing Agent.

#### **4.8 Waiver or Fetter**

The acceptance by the Superintending Officer of any deliverables or other work shall not relieve the Managing Agent of any of its obligations to perform and complete the Services in accordance with the Contract and such acceptance shall not be construed as a waiver of or fetter on the exercise by the Superintending Officer of his powers under the Contract.

### **5 CONTRACT DOCUMENTS**

#### **5.1 Contract Documents to be taken as Mutually Explanatory**

The several documents forming the Contract are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between the Conditions and the other documents forming the Contract, the Conditions shall be given precedence. Within the Conditions, the Particular Conditions, if any, shall be given precedence.

#### **5.2 Custody and Supply of Documents**

The Managing Agent shall make at its own cost any copy or copies of the Contract documents required. Unless it is strictly necessary for the purposes of the Contract, the Managing Agent shall not use the Contract documents and other documents provided by the HDB or the Superintending Officer or communicate the content of the aforesaid without the consent of the Superintending Officer.

#### **5.3 Need for Further Information**

The Managing Agent shall give adequate notice in writing to the Superintending Officer:

- (a) of any further drawing, specification or other information which the Superintending Officer is required to provide under the Contract;
- (b) of any drawing, specification, instruction or other information which is required by any specific time, whenever the planning or performance of the Services is likely to be delayed or disrupted by its lack, and whether or not the need for it is shown on any programme accepted by the Superintending Officer under Clause 8.

The notice shall also state the consequences in terms of delay to the progress, performance or completion of the Services or any part of the Services and any financial consequences should the Superintending Officer not comply with any of the requirements of the notice. The Superintending Officer shall on receipt of the notice comply with its requirements, provided that it is given in sufficient time for the Superintending Officer reasonably to prepare and issue the information required.

#### **5.4 Further Supplementary Specifications and Instructions**

The Superintending Officer shall issue to the Managing Agent, from time to time, such further or revised specifications or instructions as may in his opinion be necessary for the purposes of the performance and completion of the Services. The Managing Agent shall carry out and be bound by the same.

#### **5.5 Delay and Time**

If:

- (a) The Managing Agent shall have duly given notice pursuant to Clause 5.3 and if the Superintending Officer shall not have complied with any of its requirements; or
- (b) The Superintending Officer shall not have issued any further or revised specification or instruction as required by Clause 5.4,

and if thereby the progress or completion of the Services or any part of the Services has been materially affected then, subject to compliance by the Managing Agent with Clauses 12, 16 and 22, the Superintending Officer may grant an extension of time pursuant to Clause 12 and may certify pursuant to Clause 22 such sum as may be reasonable in respect of any Loss and Expense incurred by the Managing Agent.

### **6 GENERAL OBLIGATIONS OF THE MANAGING AGENT**

#### **6.1 Managing Agent's General Responsibility**

- (1) The Managing Agent shall, with due care and diligence perform and complete the Services and re-perform any Deficient Services in accordance with the provisions of the Contract and to the satisfaction of the HDB. The Managing Agent shall provide all superintendence, labour, Equipment, Tools and Materials and all other things required for the performance and completion of the Services and re-performing of any Deficient Services. Nothing in this Clause shall affect the Managing Agent's responsibilities under common law to perform and complete the Services.
- (2) The Managing Agent shall take full responsibility for the adequacy, accuracy, suitability, safety and all risks associated with or resulting from the provision of the Equipment, Tools and Materials and the Managing Agent's design, procedures, processes, operations and methods for the performance and completion of the Services.
- (3) The HDB shall not at any time be liable for loss or damage to any of the Equipment, Tools and Materials nor for any Losses arising from the presence or use of the Equipment, Tools and Materials.



## 6.2 Responsibility for Subcontractor

Save as otherwise expressly provided in the Contract, the Managing Agent shall make good any damage, loss or injury suffered by the HDB by reason of any breach of contract, repudiation, default or failure, whether total or partial, on the part of any Subcontractor, whether nominated or privately engaged by the Managing Agent, and shall indemnify the HDB against all and any Losses arising therefrom.

## 6.3 Responsibility for Identifying Ambiguities, Discrepancies, etc

- (1) Either the Superintending Officer or the Managing Agent shall forthwith notify the other party in writing as soon as either becomes aware of any ambiguity, discrepancy, conflict, inconsistency or omission in or between any of the Contract documents that may at any time be found.
- (2) Where either party has been notified, the Superintending Officer insofar as it may affect the performance or completion of the Services shall then explain and adjust it and may issue to the Managing Agent an instruction so as to resolve the ambiguity, discrepancy, conflict, inconsistency or omission. If, in the opinion of the Managing Agent, compliance with any such instruction is likely to or has involved the Managing Agent in any Loss and Expense which could not have been reasonably foreseen by an experienced contractor (assuming a diligent perusal of the documents submitted prior to Contract), the Managing Agent shall forthwith notify the Superintending Officer in writing and subject to compliance with Clauses 12, 16 and 22, the Superintending Officer may grant an extension of time pursuant to Clause 12 and may certify pursuant to Clause 22 such sum as may be reasonable in respect of such Loss and Expense.
- (3) In the event that instructions issued by the Superintending Officer to resolve such ambiguity, discrepancy, conflict, inconsistency or omission result in a reduction in the Contract Sum, the Contract Rates or the Rates, as the case may be, such reduction shall be determined in accordance with Clause 14.4 and the Superintending Officer shall be entitled to reduce any valuation of the Services made under Clause 22 accordingly.

## 6.4 Security Deposit

- (1) Within fourteen (14) days from the date of the Letter of Acceptance or such longer period as may be prescribed by the HDB, the Managing Agent shall deposit with the HDB an amount specified in Appendix A to the Conditions by way of security for the due performance of and observance by the Managing Agent of its obligations under the Contract.
- (2) The Managing Agent may, in lieu of the cash deposit in Clause 6.4(1) and for the same purposes, provide a guarantee for an equivalent amount from a Monetary Authority of Singapore (MAS)-approved bank or MAS-approved insurance company and in the prescribed form.
- (3) The term "Security Deposit" shall hereinafter refer to:
  - (a) Cash deposited under Clause 6.4(1); or
  - (b) Cash proceeds of any or all demands on the guarantee provided pursuant to Clause 6.4(2).

The HDB may utilise the Security Deposit to make good any Losses sustained or likely to be sustained as a result of any breach of contract whatsoever by the Managing Agent, including any liquidated damages. If the amount of the Security Deposit utilised by the HDB to make good any such Losses is found to be greater than the amount of Losses actually sustained by the HDB, then the HDB shall pay the balance of the amount utilised by the HDB without the addition of interest to the Managing Agent or to the bank or insurer, as the case may be, in the time and manner as set out in the Appendix A to the Conditions. Under no circumstances shall the HDB be liable to pay to the Managing Agent any damages, whether by way of interest or otherwise, for any failure or delay by the Superintending Officer in refunding the Security Deposit or any payment due or payable to the Managing Agent.

- (4) The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to the HDB or bar the HDB from claiming Losses incurred or sustained or likely to be sustained by the HDB as a result of any breach of contract of whatsoever nature by the Managing Agent.

#### **6.5 Sufficiency of Tender Offer**

- (1) The Managing Agent shall be deemed to have satisfied itself before submitting the Tender Offer as to the correctness and sufficiency of the Tender Offer which shall be deemed to cover all its obligations under the Contract and all matters and things necessary for the proper performance and completion of the Services.
- (2) All expenses, legal or otherwise incurred in connection with the preparation and execution of this Contract in duplicate including stamp duties, if any, shall be borne by the Managing Agent and payable forthwith on written demand by the HDB. The survey fees and the costs of site plans (if any) in relation to the preparation or otherwise in connection with the Contract shall be fully borne by the Managing Agent, if any.

#### **6.6 Patents, Trademarks, Copyright etc**

The Managing Agent shall defend, indemnify and save harmless the HDB from and against all claims and proceedings for or on account of infringements of any patent rights, design, trademark name or copyright or other protected rights in respect of any Equipment, Tools and Materials, goods, design or operations and methods (designed and submitted by the Managing Agent pursuant to its obligations under the Contract) used for performance of the Services and from or against all Losses whatsoever in respect of such claims or proceedings or in relation thereto, except where such infringement results from compliance with the Specifications.

#### **6.7 Services extending Beyond Contract Period or Extended Contract Period**

The Managing Agent shall perform and complete any services instructed by the Superintending Officer pursuant to a Works Order or Instruction in Writing issued notwithstanding that the performance or completion of such services or re-performing of any Deficient Services therein may extend beyond the Contract Period.

## **7 NOTICES AND FEES**

### **7.1 Compliance with laws, regulations etc.**

The Managing Agent shall comply with and give notices required by any law, regulation or by-law, or by any public authority or public service company, relating to the Contract. The Managing Agent shall pay and indemnify the HDB against any fees or charges imposed by any law, regulation or by-law, or any public authority or public service company in respect of the Contract. Without prejudice to the generality of the foregoing, the Managing Agent warrants and undertakes to comply fully with all applicable provisions of the Workplace Safety and Health Act (Cap. 354A), Central Provident Fund Act (Cap. 36), Work Injury Compensation Act (Cap. 354) and Goods and Services Tax Act (Cap. 117A).

### **7.2 Variations Arising from Compliance**

The Managing Agent shall, before making any variation from the Specifications necessitated by the compliance with Clause 7.1, give to the Superintending Officer notice in writing specifying and giving the reasons for such variation and applying for instructions in reference thereto. Provided that if the Managing Agent does not receive instructions from the Superintending Officer within seven (7) days from the date of the receipt of its application by the Superintending Officer, it shall proceed with the Services conforming to the law, regulation, by-law or requirements of the public authority or public service company in question. Any variation necessitated as aforesaid which could not have been reasonably foreseen by an experienced contractor at the time of submission of the Tender Offer (and if it is not required by or in consequence of any deficiency or fault in the Services for which the Managing Agent is responsible under the Contract) shall be deemed a variation under Clause 14.1 and dealt with as such.

### **7.3 Cost of Compliance**

The Managing Agent shall be wholly responsible for compliance with the requirements of any law, regulation, by-law or public authority as stipulated in Clause 7.1 notwithstanding that such written law is enforced by the HDB or that such public authority is, or is part of the HDB. The HDB shall be deemed not to be responsible or liable for:

- (a) Any costs imposed by any requirements of any law, regulation, by-law or public authority; or
- (b) Any default or delay by any public authority in the enforcement or implementation of any law, regulation or by-law.

## **8 PROGRAMME FOR THE PERFORMANCE OF SERVICES**

### **8.1 Programme to be Furnished**

- (1) Within fourteen (14) days after the date of the Letter of Acceptance or such other time as the Superintending Officer may reasonably require, the Managing Agent shall confirm with the Superintending Officer on the readiness and other details to commence performance of the Services.

- (2) Based on the confirmation as per Clause 8.1(1) and not later than fourteen (14) days from the date of such confirmation, the Managing Agent shall submit to the Superintending Officer a programme for performance of the Services in the form and in compliance with the requirements specified in the Contract or otherwise required in writing by the Superintending Officer. The Managing Agent shall, whenever required by the Superintending Officer, furnish him with such further particulars and information as the Superintending Officer may reasonably require for the purpose of determining the acceptability of the programme for performance of the Services.
- (3) Within twenty-one (21) days of receiving the programme and any further particulars and information required in relation to it, the Superintending Officer shall notify the Managing Agent in writing if it is accepted or unacceptable. If the Managing Agent is not so notified, the programme shall be deemed to be accepted.
- (4) If the programme is not acceptable to the Superintending Officer, he shall notify in writing the Managing Agent of his reasons for rejecting it and the Managing Agent shall within fourteen (14) days of receiving such notification submit a programme acceptable to him. Subject to Clause 21.1, the Superintending Officer shall within a further fourteen (14) days of the submission of such further programme notify the Managing Agent in writing whether such further programme is accepted or unacceptable. If the Managing Agent is not so notified, such further programme shall be deemed to be accepted. If it is not acceptable, then the same procedure as set out above shall apply.

## **8.2 Revision of Programme**

Subject to Clause 8.1 of these Conditions or should it appear to the Superintending Officer that the actual progress of the Services does not conform with the programme accepted under Clause 8.1 or due to any other reason whatsoever, the Superintending Officer may instruct in writing the Managing Agent to supply additional particulars or to submit a revised or modified programme (or both) in order to show and to ensure completion of the Services within the Time for Completion. The Managing Agent shall comply with such an instruction within seven (7) days or such other period as the Superintending Officer may specify in the instruction.

## **8.3 Acceptance of Programme**

The acceptance by the Superintending Officer of the programme or of any revised or modified programme shall not relieve the Managing Agent of any of its obligations to perform and complete the Services in accordance with the Contract and by the Time for Completion, and such acceptance shall not be construed as the grant of an extension of time under Clause 12 or as a waiver of or fetter on the exercise by the Superintending Officer of his powers under Clause 12.5 or by the HDB or the Superintending Officer under Clause 21.

#### **8.4 Failure to Submit Adequate Programme**

In the event that the Managing Agent fails to comply with Clauses 8.1 and/or 8.2, without prejudice to any other rights and remedies which may be available to the HDB or the Superintending Officer, the Superintending Officer shall have the power to certify that ten percent (10%) of all moneys that may be due to the Managing Agent as interim payments be retained by the HDB, in addition to such other retentions as may be allowed under the terms of this Contract, until such time that the Superintending Officer is satisfied that the Managing Agent has complied with the requirements of Clauses 8.1 and/or 8.2. The amount retained by the HDB shall only be released to the Managing Agent, without interest, upon a certificate by the Superintending Officer that it may be paid.

### **9 QUALITY IN SERVICES**

#### **9.1 Quality in Services**

All Services shall be performed and completed in accordance with the Specifications and the instructions of the Superintending Officer.

#### **9.2 Performance**

The Managing Agent shall perform the Services by the Time for Completion and in the manner specified in the Contract. The Managing Agent shall obtain a receipt of the Services performed therefore from the SO's Rep. The issue of such receipt shall in no way relieve the Managing Agent from his responsibility for re-performing of any Deficient Services.

#### **9.3 Delay in Performance**

Subject to Clause 12.2, if the Managing Agent fails to complete the performance of Services by the date specified in the Works Order, the HDB shall have the right

- (a) to cancel all or any such items of Services from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Managing Agent or shall be recoverable as damages; or
- (b) to deduct from any moneys due or to become due to the Managing Agent or require the Managing Agent to pay the HDB liquidated damages calculated in the manner stipulated in the Appendix A to these Conditions.

#### **9.4 Acceptance Tests**

The Managing Agent shall conduct all tests in accordance to the acceptance test plan and procedures as set out in the Specifications (if any) to verify and demonstrate that the Services meet the Specifications as set out in the Contract.

## 9.5 Notify and Search for Deficient Services

Either the Superintending Officer or the Managing Agent shall forthwith notify the other party in writing as soon as either becomes aware of any Deficient Services should arise or is discovered at any time during the Contract Period. Upon sending or receiving such notification in writing, the Superintending Officer may instruct the Managing Agent to search under the direction of the Superintending Officer for the cause of the Deficient Services. If such Deficient Services is one for which the Managing Agent is liable under the Contract or the necessity for such a search is caused by the Managing Agent or arises from some default by the Managing Agent, the cost of the work carried out in searching as aforesaid shall be borne by the Managing Agent.

## 9.6 Reserved

## 9.7 Deficient Services

- (1) Either the Superintending Officer or the Managing Agent shall forthwith notify the other party in writing as soon as either finds any Deficient Services during the performance of the Services or in any completed Services. The Superintending Officer may instruct the Managing Agent in writing to do any or all of the following:
  - (a) To re-perform any services so that it is in accordance with the Contract.
  - (b) To remove from or not to bring to the Site any Equipment, Tools and Materials which in the opinion of the Superintending Officer are or may not be in accordance with the Contract and to replace such Equipment, Tools and Materials with those which are in accordance with the Contract.
  - (c) To carry out any services recovery for third parties who in the opinion of the Superintending Officer have been adversely affected by any services not performed or completed by the Managing Agent in accordance with the Contract and to attend to and fully resolve all enquiries and demands from such third parties.
- (2) All services referred to in Clause 9.7(1) shall be performed by the Managing Agent at its own cost if the necessity for such services is in the opinion of the Superintending Officer, due to:
  - (a) the fact that it is a Deficient Services; or
  - (b) Neglect or failure on the part of the Managing Agent to comply with any obligation, expressed or implied, on the Managing Agent's part under the Contract.
- (3) The Managing Agent shall comply with the Superintending Officer's instruction. If the necessity for the execution of any work is other than one of the causes set out in Clauses 9.7 (2) (a) to (b), subject to compliance by the Managing Agent with Clause 16, such work shall be valued in accordance with Clause 14.4 as if it were a variation ordered under Clause 14.1 but shall not otherwise be construed as a variation to the Services for the purposes of Clause 14.1 or 14.4.

## **9.8 Re-Performance**

The Managing Agent shall at his own cost and when notified in writing by the Superintending Officer, re-perform the Services that are found to be Deficient Services, or not in accordance with the Contract, failing which the HDB shall be entitled without prejudice to any other rights and remedies, either by itself do, or employ or engage any other person to do, whatever may be necessary to carry out or give effect to re-perform the Deficient Services and recover from the Managing Agent the amount of any Losses incurred or suffered by the HDB in connection therewith; and the amount of any other loss or damage suffered or incurred by the HDB as a result of or arising from the Managing Agent's failure to comply with the instruction shall also be recoverable by the HDB from the Managing Agent.

## **10 SUSPENSION**

### **10.1 Suspension of Services**

- (1) The Managing Agent shall on the written instructions of the Superintending Officer suspend the progress or performance of any parts or whole of the Services for such time or times and in such manner as the Superintending Officer may consider necessary and shall, during such suspension, properly protect and secure the Equipment, Tools and Materials as is necessary in the opinion of the Superintending Officer.
- (2) Subject to Clauses 10.2, 16 and 22, the Superintending Officer may certify any Loss and Expense which the Managing Agent may have incurred in giving effect to the instruction beyond any Losses which would have been incurred or for which the Managing Agent had or ought to have allowed in the Tender Offer and, subject to Clause 12, may grant the Managing Agent an extension of time unless such instruction, loss, expense, costs or damages or extension is:
  - (a) Otherwise provided for in the Contract; or
  - (b) Necessary by reason of some default on the part of the Managing Agent or is caused by an event which was or would have been the Managing Agent's responsibility to overcome; or
  - (c) Necessary for the proper performance of the Services or any part of the Services.

### **10.2 Suspension Lasting More than 90 Days**

If the progress of the Services or any part of the Services is suspended on the instruction in writing of the Superintending Officer for more than ninety (90) days, the Managing Agent may, unless such suspension is otherwise provided for in the Contract, or continues to be necessary by reason of default on the part of the Managing Agent or for the proper performance of the Services or any part of the Services, serve a notice in writing on the Superintending Officer requiring permission within thirty (30) days from the receipt of such notice to proceed with performance of the Services or that part of the Services which is suspended. If such permission is not granted within such period of thirty (30) days, the Managing Agent may by a further notice in writing so served elect to treat the suspension where it affects only a part of the Services as an omission of such part under Clause 14.1 or, where it affects the whole of the Services, as the case may be, as if the HDB had at the expiry of such period of thirty (30) days given a Notice of Termination pursuant to

Clause 21.4, in which event the Managing Agent shall be entitled to be paid in accordance with the provisions of Clause 21.4(2).

## **11 ADMINISTRATION**

### **11.1 Commencement and duration of Contract**

The Managing Agent shall commence performance of Services:

- (a) On the date specified in the Letter of Acceptance;
- (b) If no date is specified in the Letter of Acceptance, on the date specified in an Works Order, Instruction in Writing to that effect from the Superintending Officer.

Thereafter the Managing Agent shall proceed with due diligence and expedition and without delay in accordance with the Contract and in accordance with the programme or any revised or modified programme accepted by the Superintending Officer pursuant to Clause 8. The Time for Completion shall run from the respective dates on which the Managing Agent is to commence performance of the Services under this Clause.

### **11.2 Extension of the Contract Period**

- (1) At any time prior to the expiry of the Contract Period, the HDB may in writing to the Managing Agent from time to time extend the Contract Period by a maximum aggregate of twelve (12) months and the same terms and conditions contained in the Contract will continue to apply.
- (2) At any time prior to the expiry of the extended Contract Period referred to in Clause 11.2, the HDB may in writing to the Managing Agent further extend the Contract Period beyond the stipulated maximum aggregate period under Clause 11.2(1) by a maximum aggregate of another twelve (12) months, and the same terms and conditions contained in the Contract will continue to apply.
- (3) The Managing Agent shall be bound by the Contract Rates or the Contract Sum as the case may be, for all the Works Orders issued within the extended Contract Period under Clause 11.2(1) and Clause 11.2(2), as the case may be. No extension in the Contract Period required by the HDB shall vitiate the Contract.

### **11.3 Works Order**

- (1) All orders for Services to be performed under the Contract shall be given from time to time, in writing, by the Superintending Officer on the appropriate order form (hereinafter referred to as "the Works Order"). All such Works Orders shall clearly state the details and nature of the Services to be performed and shall state the amount, valued in accordance with Clause 11.4 and/or Clause 11.5 (as the case may be). Such amounts shall become due to the Managing Agent on the satisfactory completion of all the Services specified on such Works Orders. Upon satisfactory completion of such Services, the Managing Agent shall submit his claim in accordance with Clause 22.1 to the Superintending Officer who shall certify the payment due to the Managing Agent at the time and in the manner hereinafter provided.



- (2) On receipt of any Works Order, the Managing Agent shall commence performance of the Services referred to therein and complete the Services in accordance with the Contract.

#### **11.4 Submission of Quotations for Works Orders**

The Superintending Officer may, before issuing a Works Order, require the Managing Agent to submit a quotation for any proposed Services and the Managing Agent shall be obliged to submit such quotation in writing at his own cost. The Superintending Officer may before or after issuing a relevant Works Order under Clause 11.3 accept in writing the Managing Agent's quotation and Clause 11.5 shall not apply to the valuation of that Works Order nor shall the Managing Agent be entitled to any Loss and Expense in respect of that Works Order or any other compensation, damages or other amount whatsoever other than the Services issued under the said Works Order issued in accordance with the accepted quotation. The issuance of a Works Order shall not be treated as an acceptance of any quotation.

#### **11.5 Valuation of Works Orders**

- (1) Subject to Clause 11.4, valuations of Works Orders shall be carried out as follows:
- (a) by measurement and valuation at the Contract Rates or at analogous or pro-rated rates;
  - (b) where the above method in Clause 11.5(1)(a) is not applicable, then by measurement and valuation at fair market rates and prices; and
  - (c) where none of the above methods in Clauses 11.5(1)(a) and 11.5(1)(b) are applicable, then the valuation shall be based on the cost of necessary machinery, materials or goods, labour and any additional equipment necessary for the performance of the Services plus 15 per cent. This percentage shall be deemed to compensate adequately the Managing Agent in respect of all supervision, the use of Equipment, Tools and Materials, overheads, profit and all other loss, expense, costs or damages incurred in or connected with the performance of the Services.

### **11.6 Managing Agent's Representative**

- (1) The Managing Agent shall appoint a competent and authorised person to represent it ("Managing Agent's Representative") and shall notify in writing to the HDB and the Superintending Officer of the name of such person. The Managing Agent's Representative shall give his whole time in leading the performance and management of the Services. Any instructions given to him by the Superintending Officer shall be deemed to have been given to the Managing Agent.
- (2) The Superintending Officer shall be empowered to object to the appointment or employment or continued employment of the Managing Agent's Representative and upon receipt from the Superintending Officer of a notice of objection in writing, the Managing Agent shall forthwith remove him. Provided always the Superintending Officer shall not issue such a notice of objection unreasonably or vexatiously.

### **11.7 Removal of Workmen and Other Personnel**

The Managing Agent shall use or employ in and about the performance of the Services only such persons as are careful, skilled and experienced in their respective vocations, trades and callings and the Superintending Officer shall be at liberty to object to and require the Managing Agent to remove immediately from the Services any such person employed by the Managing Agent in or about the performance of the Services who in the opinion of the Superintending Officer misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such persons shall not be again used or employed upon the Services without the prior written permission of the Superintending Officer

### **11.8 Non-disclosure of Information**

- (1) The Managing Agent shall not, except in the proper performance of its duties under the Contract or with the prior written approval of the HDB, during or after the expiry or termination of the Contract, reproduce, publish, use or disclose, or permit such reproduction, use, publication or disclosure to any person, firm or corporation of any information relating to the Contract or HDB's policies or such other information as the Managing Agent may access or acquire pursuant to the Contract.
- (2) The Managing Agent shall furnish an undertaking for non-disclosure in the form set out in Appendix B to these Conditions within fourteen (14) days from the date of the Letter of Acceptance. The Managing Agent shall undertake to procure similar undertakings for non-disclosure from, including but not limited to, all its employees and Subcontractors, who are directly connected with the provision of Services under the Contract from time to time. The Employer may request from the Managing Agent, copies of the undertakings for non-disclosure, if necessary, and the Managing Agent shall be obliged to furnish the same should the Employer so request in writing.
- (3) Termination or expiry of this Contract due to whatsoever cause shall not vitiate the obligation of confidentiality imposed on the Managing Agent, its employees, agents and Subcontractor under this Clause and the aforesaid undertaking for nondisclosure shall remain in full force and effect notwithstanding the expiry or earlier termination of this Contract.

### **11.9 Access for Superintending Officer**

The Superintending Officer and any person authorised by him shall at all reasonable times have access to the factories, workshops or other places where any Equipment, Tools and Materials are being prepared or stored for the Contract and/or where the Managing Agent has provided the Services under the Contract. The Managing Agent shall ensure that its Subcontractor shall permit the Superintending Officer and any person authorised by him to have such access.

### **11.10 Safety Knowledge and Competency**

The Managing Agent shall be responsible to keep its workman and other person in its employment whether permanent or temporary, full-time or part-time, trained and well versed with the necessary knowledge and competency in safe work practices. The Managing Agent shall encourage its employees to take responsibility for workplace safety and health as well as leveling up their safety knowledge and competency by sending them for safety training courses accredited by the Ministry of Manpower. The Managing Agent shall inculcate a culture of safety and health at all its workplaces and implement pro-active measures to minimise risks.

## **12 TIME FOR COMPLETION AND EXTENSION**

### **12.1 Managing Agent to complete on Time and comply with Contract**

The Managing Agent shall perform and complete the Services and any part of the Services within the Time or Times for Completion stated in:

- (a) The Works Order;
- (b) The Specifications; or
- (c) The Instruction in Writing; as the case may be.

### **12.2 Grounds for Extension of Time**

The time within which the Services or any part thereof is to be completed may be extended by the Superintending Officer either prospectively or retrospectively and before or after the relevant Time for Completion by such further period or periods of time as may reasonably reflect delay in performance and/or completion of the Services, which notwithstanding due diligence and the taking of all reasonable steps by the Managing Agent to avoid or reduce such delay, will or has been caused by any of the following events:

- (a) An event which is beyond the Managing Agent's reasonable control (a force majeure event).
- (b) Exceptionally adverse weather conditions or severe haze conditions the assessment of which shall be in accordance with the relevant provision in the Contract.
- (c) Industrial action by workmen, strikes, lock-outs or embargoes affecting any of the

trades employed upon the Services or in the preparation or transportation of Equipment, Tools and Materials required for the Services and provided the same are not due to any unreasonable act or default of the Managing Agent, its employees, agents or any of its Subcontractor. Provided that this event shall only apply if the industrial action by workmen, strike, lock-out or embargo causing the delay is in Singapore.

- (d) "Excepted risks" as defined in Clause 19.4 of the Conditions.
- (e) Compliance with any law, regulation, by-law or the requirements of any public authority as stipulated in Clause 7.1.
- (f) The issue of any instruction for a variation.
- (g) Acts or omissions of other contractors engaged by the HDB in executing work not forming part of the Contract.
- (h) Any act of prevention or breach of contract by the HDB not mentioned in this Clause.
- (i) Epidemics or pandemics resulting in shortages of the labour, goods, materials required for the Services or inability to proceed with any part of the Services.
- (i) Any other ground for extension of time expressly mentioned in the Contract.

Provided always that the Managing Agent shall not be entitled to any extension of time where the instructions or acts of the HDB are necessitated by or intended to cure any default or breach of contract by the Managing Agent and such disentitlement shall not set the corresponding time for completion at large.

### **12.3 Notice**

- (1) If the Managing Agent is of the opinion that the performance or completion of the Services is or will be or has been delayed by any of the events stated in Clause 12.2, it shall forthwith notify the Superintending Officer in writing of such event and shall in any case do so within seven (7) days of the occurrence of such event. If the Managing Agent is of the opinion that the event is one which entitles it to an extension of time under Clause 12.2, it shall in that notice and in any case not later than the seven (7) day period set out above, inform the Superintending Officer, together with the appropriate Contract references, of the reasons why there will or may be delay to the completion of the Services, the length of the delay and of the extension of time required. Both the submission of a notice in writing and of the further information within the seven (7) day period set out above shall be conditions precedent to any entitlement to an extension of time. Subject also to compliance with Clause 12.3(2) hereof, the Superintending Officer shall notify the Managing Agent in writing within fourteen (14) days of the receipt of the notice in writing whether in its opinion the event is one which does or might entitle the Managing Agent to an extension of time.
- (2) If the Superintending Officer is of the opinion that the notice given by the Managing Agent or the accompanying references or reasons are insufficient to enable him to decide on the Managing Agent's application, the Superintending Officer may require the Managing Agent to provide within seven (7) days or such other period as may be required by the Superintending Officer such further particulars concerning any event and the circumstances of the delay, the measures planned and/or taken to prevent or minimise

delay and any further information which the Superintending Officer may reasonably require.

#### **12.4 Effects of Failure to complete on Time and comply with Contract**

Subject to Clause 12.2, if the Managing Agent fails to perform and complete the Services or any part thereof by the date specified in the Contract, the HDB shall have the right

- (a) to cancel all or any such items of Services from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Managing Agent or shall be recoverable as damages; or
- (b) to deduct from any moneys due or to become due to the Managing Agent or require the Managing Agent to pay, a sum so described and stated in Appendix A, as liquidated damages for every day of delay until the Services are performed.

#### **12.5 Notification to Expedite**

If for any reason which does not entitle the Managing Agent to an extension of time, the rate of progress of the Services to be performed or any part thereof is at any time, in the opinion of the Superintending Officer, too slow to achieve completion by the Time for Completion of the Services or any part thereof, the Superintending Officer shall notify in writing the Managing Agent accordingly. The Managing Agent shall thereupon take such steps as are necessary to expedite progress and to complete the Services or any part thereof in accordance with the Contract. Such steps shall include, if required by the Superintending Officer, the preparation of a revised or modified programme for acceptance pursuant to Clause 8. Unless the Superintending Officer shall issue an instruction for variation as described in Clause 14.1(1)(c), the Managing Agent shall not be entitled to any additional payment whatsoever for taking any of the steps referred to herein.

### **13 LIQUIDATED DAMAGES**

#### **13.1 Payment by Managing Agent**

If any part of the Services has not been carried out or substantially completed within the Time for Completion or any extended time pursuant to Clause 12 or any part of the Services have not been performed in accordance with the Contract, the Managing Agent shall pay or allow to the HDB liquidated damages calculated in the manner stipulated in the Appendix A to these Conditions and the HDB may recover the amount of such liquidated damages from the Managing Agent. The payment or deduction of such damages shall not relieve the Managing Agent from its obligation to perform and/or complete the Services or from any of its obligations and liabilities under the Contract.

#### **13.2 The HDB's Common Law Rights for Damages**

In the event that the HDB for whatever reason shall not be entitled in law to recover the liquidated damages, the HDB shall remain entitled to recover such Losses as it would have been entitled under common law as if the provisions in this Clause relating to the payment of liquidated damages had not formed part of the Contract. The Managing

Agent's liability to pay the HDB such Losses shall not be limited in any way whatsoever by the amount of liquidated damages for which it might otherwise have been liable.

## **14 VARIATIONS AND VALUATION OF VARIATIONS**

### **14.1 Variations**

- (1) The term "variation" shall mean any change in the original Contract intention as deduced from the Contract as a whole describing or defining the Services to be carried out and shall include but is not limited to:
  - (a) Subject to Clause 14.1(3), addition to or omission from the Services;
  - (b) Changes in the character or nature of any part of the Services;
  - (c) Requirement to perform the Services or any phase or any part earlier than the relevant stipulated requirements.
- (2) The term "variation" shall include any changes as aforesaid which may be designed to alter the use to which the Services will be put, but shall exclude any instruction (which would otherwise be a variation) which has arisen due to or is necessitated by or is intended to cure any default of or breach of contract by the Managing Agent.
- (3) The HDB may add or subtract the number of Properties and number of Authorised Occupiers within the Site, without it being construed as a "variation" within the meaning of clause 14.1 of these Conditions. For the avoidance of doubt, "Properties" shall have the meaning defined at clause 1.1(d) of the Specifications.

### **14.2 Power to Order Variations**

The Superintending Officer may at any time issue an instruction in writing ("Authorisation Order") requiring a variation. If or to the extent that an instruction does not state that it requires a variation but the Managing Agent considers that it does require a variation, the Managing Agent shall within fourteen (14) days from the date of receipt of the instruction notify in writing the Superintending Officer which may, if he thinks fit, within fourteen (14) days from the date of receipt of the Managing Agent's notification, confirm, modify, rescind or contradict in writing the instruction and the Managing Agent shall then comply therewith.

### **14.3 Submission of Quotations**

The Superintending Officer may, before issuing an instruction for any variation, require the Managing Agent to submit a quotation for any proposed variation and the Managing Agent shall be obliged to submit such quotation in writing at its own cost. The Superintending Officer may before or after issuing an instruction under Clause 14.2 accept in writing the Managing Agent's quotation and Clauses 14.4 and 14.5 shall not apply to the valuation of that variation nor shall the Managing Agent be entitled to any Loss and Expense in respect of that instruction or any other compensation, damages or other amount whatsoever other than a valuation made in accordance with the accepted quotation. An instruction requiring a variation shall not be treated as an acceptance of any quotation.

#### 14.4 Valuation of Variations

Subject to Clause 14.3 and 14.6, all variations shall be valued as follows:

- (a) Where the varied work is of a similar character to or is performed under similar conditions as and does not significantly change the quantity of work described in the Contract, the Contract Rates, shall determine the valuation; or
- (b) Where the varied work is of similar character to work described in the Contract but is not performed under similar conditions of such work described in the Contract or involves significant changes in the quantity of such work described in the Contract, the Contract Rates, shall be the basis for determining the valuation but with a fair allowance for any differences in such conditions and/or quantity; or
- (c) Where (a) and (b) above do not apply, then by valuation at fair market rates and prices;
- (d) Where none of the above methods is applicable or appropriate in the circumstances of the particular varied work, then the valuation shall be based on the cost of necessary machinery, materials or goods, labour and any additional equipment necessary for the execution of the varied work plus 15 per cent. This percentage shall be deemed to compensate adequately the Managing Agent in respect of all supervision, use of Equipment, Tools and Materials, overheads, profit and all other loss, expense, costs or damages incurred in or connected with the execution of the varied work;
- (e) The Contract Rates or the breakdown of the Contract Sum as set out in the Tender Offer, as the case may be, shall determine the valuation of items omitted provided that if omissions vary the conditions under which any remaining items of work are carried out, the values for such remaining items shall be determined under Clauses 14.4 (b) or (c) or (d) as the case may be.

#### 14.5 Agreement on Valuation

- (1) The Managing Agent shall carry out all variations instructed by the Superintending Officer pending the valuation of the variation by the Superintending Officer.
- (2) The Managing Agent shall provide the Superintending Officer with such details and particulars including invoices and receipts as the Superintending Officer may require for the purpose of valuing the variation. The Superintending Officer shall make such valuation as shall in its opinion be reasonable and shall notify the Managing Agent in writing of the value of the variation by way of a Variation Order. The Managing Agent shall, within thirty (30) days of the receipt of the Variation Order, give notice of any disagreement in writing to the Superintending Officer and shall at the same time set out the valuation which it considers should have been made, giving full details and particulars and the appropriate Contract references. If the Managing Agent does not give notice of its disagreement with the valuation of the Superintending Officer as aforesaid, it shall be deemed to have accepted the Variation Order which shall be final and binding on the Managing Agent and shall not thereafter be disputed or questioned by the Managing Agent in any way whatsoever.

- (3) Following receipt of the Managing Agent's notice of disagreement, the Superintending Officer may amend the whole or any part of any valuation previously made, in which case the provisions of Clause 14.5(2) shall apply mutatis mutandis.

#### **14.6 Daywork**

- (1) The Superintending Officer may, if in his opinion it is necessary and desirable, order in writing that any service to be carried out as a result of an instruction ordered under Clause 14.2 shall be executed on a daywork basis.
- (2) The Managing Agent shall then be paid for such service at the daywork rates set out in the Contract or if no such rates are available as provided, then at the rates determined by Superintending Officer as prevailing when the service is actually performed.
- (3) It is a condition precedent to payment that the Managing Agent shall submit to the Superintending Officer the daywork sheets specifying the number of man-hours spend on performing the service on a daily basis, and statement showing any Equipment, Tools and Materials necessary in respect of all services performed on a daywork basis for verification within three (3) days after the service has been executed.
- (4) The Managing Agent shall inform the Superintending officer in advance whenever he proposes to carry out daywork.

#### **14.7 Alternative Proposals by Managing Agent**

- (1) The Managing Agent may submit in writing to the HDB at its own cost, a detailed proposal for changes to the Services which is likely to offer significant benefits (including long-term or life-cycle cost benefits) to the HDB.
- (2) At the HDB's request, and if the Managing Agent is agreeable to proceed with the proposal, the Managing Agent shall provide (at no cost to the HDB) a report on the details, implications and benefits of the proposal including the estimated cost savings that would arise from any proposed changes.
- (3) The proposal shall not include anything which might adversely affect or compromise the safety or quality of the Services or which may be inconsistent with any provision of this Contract or the purpose and intent of the Services.
- (4) The HDB shall consider the Managing Agent's proposal, but is not bound to accept any proposal. No claim by the Managing Agent shall arise out of the HDB's non-acceptance of any proposal.
- (5) The HDB may accept all or any part of the proposal subject to such conditions or modifications as it thinks fit. If such conditions or modifications are accepted by the Managing Agent, the Superintending Officer shall issue an Instruction in Writing requiring all or any part of the proposal to be carried out and the Managing Agent shall comply with such instructions. For the avoidance of doubt, any such instruction issued by the Superintending Officer under this Clause 14.7 shall not be treated as an instruction requiring a variation under Clause 14.2 and the Managing Agent shall not be entitled to claim for additional payment in respect of such changes accepted by the HDB under this Clause 14.7 save as provided in Clause 14.7(7) hereof.



- (6) The Managing Agent's responsibilities and obligations in respect of the Services under the Contract shall continue to apply notwithstanding the HDB's acceptance of the whole or any part of the Managing Agent's proposal.
- (7) The actual cost savings arising from any proposal accepted by the HDB under this Clause shall be shared by the Managing Agent and the HDB in equal proportions. The Managing Agent shall be entitled to claim payment of half the amount of the actual cost savings in accordance with Clause 22.
- (8) For the avoidance of doubt, the changes accepted by the HDB under this Clause 14.7 shall be valued based on the principles set out at Clause 14.4 and 14.5 for the purpose of determining the actual cost savings arising from the proposal. The Managing Agent shall not be entitled to any Loss and Expense in respect of an instruction issued under this Clause 14.7 or any other compensation, damages or other amount whatsoever other than the Managing Agent's share of the actual cost savings as provided under Clause 14.7(7).
- (9) The HDB shall bear its own costs and expenses incurred in reviewing and assessing the proposal received.

## **15 CLAIMS FOR LOSS AND EXPENSE**

### **15.1 Reasons for Loss and Expense**

The Managing Agent shall be entitled to recover as Loss and Expense sustained or incurred by it and for which it would not be reimbursed by any other provision of the Contract, all Losses of whatsoever nature and howsoever arising as a result of the regular progress and/or completion of the Services or any phase or part of the Services having been disrupted, prolonged or otherwise materially affected by the:

- (a) Issue of an instruction for a variation;
- (b) Suspension by the Superintending Officer of any work for a cause which entitles the Managing Agent to recover Loss and Expense;
- (c) The Managing Agent not having received from the Superintending Officer within a reasonable time for the necessary instructions or other information in regard to the Services for which notice in writing had been given by the Managing Agent in accordance with Clause 5.3;
- (d) the issue of an instruction by the Superintending Officer under any of Clauses 5.5, 6.3 and 9.5 but only if the HDB is liable to pay to the Managing Agent any Loss and Expense by reason of such an instruction;
- (e) Acts or omissions of other contractors engaged by the HDB in executing work not forming part of this Contract; or
- (f) Any act of prevention or breach of contract by the HDB not mentioned in this Clause.

Provided always that the Managing Agent shall not be entitled to any such Loss and Expense where it arises from or is necessitated by or is intended to cure any default or breach of contract by the Managing Agent.

## **15.2 Sufficiency of Loss and Expense**

The Managing Agent shall not be entitled to recover any Losses whatsoever resulting from any disruption, prolongation or other material effect to the regular progress, performance or completion of the Services or any phase or part of the Services except in accordance with the express provisions of the Contract.

## **16 PROCEDURE FOR CLAIMS**

### **16.1 Notice of Claims**

- (1) Whenever the Managing Agent intends to claim any payment pursuant to the Contract (other than Clause 14.4), it shall give notice in writing of its intention to do so to the Superintending Officer within sixty (60) days after the event giving rise to its claim has first arisen and shall comply with Clause 16.2 to 16.4. The notice shall specify the event and its consequences, and the giving of such a notice shall be a condition precedent to any entitlement that the Managing Agent may have.
- (2) The fact that the Managing Agent does not or may not know whether the valuation of a variation has been agreed or whether the Superintending Officer has decided to include in any certificate any amount in respect of any claim shall not excuse the Managing Agent from the requirement to give a notice under Clause 16.1(1).

### **16.2 Contemporary Records**

Upon the happening of any event in respect of which the Managing Agent may intend to make a claim, the Managing Agent shall keep such contemporary records as may reasonably be necessary to support any claim it may subsequently wish to make. Without necessarily admitting the HDB's liability, the Superintending Officer may, on receipt of a notice under Clause 16.1, inspect such contemporary records and may instruct the Managing Agent to keep any further contemporary records which he considers to be material to the claim of which notice has been given. The Managing Agent shall permit the Superintending Officer to inspect all records kept pursuant to this Clause and shall supply him with copies of such records as and when the Superintending Officer so instructs.

### **16.3 Substantiation of Claims**

Within thirty (30) days, or such other time as may be agreed by the Superintending Officer, of giving notice under Clause 16.1, the Managing Agent shall send to the Superintending Officer an account in writing giving detailed particulars of the amount claimed and the grounds upon which the claim is based, together with particulars of any claim for extension of time made pursuant to Clause 12 and for any Loss and Expense associated therewith (where applicable). Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Managing Agent shall, at such intervals as the Superintending Officer may require, send such further interim accounts giving the accumulated amount of the claims and any further grounds upon which they are based. Within thirty (30) days of the end of the effects resulting from the event, the Managing Agent shall send to the Superintending Officer a final account of the claims. The obligation to give particulars of any claim for an extension of time under this Clause shall not release the Managing Agent from his obligations under Clause 12.3(1).

#### **16.4 Access to Books and Documents**

In order to verify any claim submitted under this Clause, the Superintending Officer shall have access to all books, documents, papers or records in the possession, custody or control of the Managing Agent that are material to the claim for the purpose of making audit, examination, excerpts and transcriptions. Such books, documents, papers or records shall remain available in accordance with this Clause until all claims, arbitration or litigation have been finally disposed of. The Managing Agent shall use its best endeavours to ensure that all books, documents, papers or records in the possession, custody or power of its Subcontractor where material to the claim are similarly made available.

#### **16.5 Payment of Claims**

- (1) Subject to compliance with Clause 16.1 to Clause 16.4, the Managing Agent shall be entitled to have included in any payment certified by the Superintending Officer pursuant to Clause 22 such amount in respect of any claim as the Superintending Officer may consider due to the Managing Agent.
- (2) If the Managing Agent fails to supply the Superintending Officer with sufficient substantiation of the whole of any amount claimed, the Managing Agent shall only be entitled to payment in respect of such part of the amount as may have been substantiated to the satisfaction of the Superintending Officer.
- (3) The inclusion by the Superintending Officer in any certificate under Clause 22 of any amount in respect of any claim or any payment by the HDB in respect of any such amount shall not:
  - (a) prejudice the HDB's right to dispute the Managing Agent's entitlement to the amount certified either in principle, or as to its quantification or from referring such dispute for decision pursuant to Clause 23; and
  - (b) be taken into account by the Superintending Officer or any arbitrator (or other tribunal) in deciding whether the Managing Agent shall repay to the HDB the whole or any part of such amount.

#### **16.6 Failure to Comply**

If the Managing Agent shall have complied with Clause 16.1 but shall not have complied fully or at all with any of the provisions of Clause 16.2 to 16.4, the Superintending Officer shall be entitled to make such assessment, valuation or opinion as shall be reasonable on the basis of the information available to him. If the Managing Agent should dispute such an assessment, valuation or opinion, such dispute shall be decided by the Superintending Officer or the arbitrator (or other tribunal) on the basis only of the information available to the Superintending Officer at the time when he made his assessment, valuation or opinion and no account shall be taken of any information which the Managing Agent did not supply to the Superintending Officer, whether or not he could have done so.

## **17 INDEMNITY PROVISIONS**

### **17.1 Injury to Persons**

- (1) The Managing Agent shall be liable for and shall indemnify the HDB against any Losses whatsoever in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Services, unless the same is shown to be due solely to any negligent or wilful act of the HDB or of any person for whom the HDB is responsible.
- (2) For the avoidance of doubt, the indemnity provided by the Managing Agent under Clause 17.1(1) shall include any damages or compensation payable at common law or under any statute in respect of or in consequence of any accident, illness or injury to any workman or other person in the employment of the Managing Agent or any Subcontractor, save and except an accident, illness or injury resulting solely from any act or default of the HDB, or of any person for whom the HDB is responsible.

### **17.2 Damage to Property**

The Managing Agent shall be liable for and shall indemnify the HDB against any Losses due to injury or damage of any kind to any property real or personal (including any property of the HDB) insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Services, unless the Managing Agent proves to the satisfaction of the Superintending Officer that it was not due to any negligence, omission, breach of contract or default of the Managing Agent, its employees, agents or its Subcontractor or of any person for whom the Managing Agent is responsible.

### **17.3 Managing Agent to Rectify Damage**

The Superintending Officer shall be entitled to instruct the Managing Agent to rectify any such injury or damage and the Managing Agent shall upon receipt of such an instruction forthwith comply with the same. If the Managing Agent later establishes that it would not be liable for such injury or damage, the Superintending Officer's instruction shall be deemed to have been and shall be treated as a variation issued pursuant to Clause 14.1.

### **17.4 Claims for Damage to Property of the HDB or the Government**

- (1) In the case of damage, loss or injury to property belonging to the HDB or the government or any other statutory or public authority ("relevant authority") caused by the Managing Agent or any person for whom it is responsible, arising directly or indirectly out of or in relation to or in connection with carrying out of or completion of the Services, the cost of making good such Losses shall be recoverable by the HDB from the Managing Agent on presentation of an itemised certificate from the HDB or the relevant authority specifying the amount payable save and to the extent that the Managing Agent may prove to the satisfaction of the Superintending Officer that the amount or any part of it was not caused by any negligence, omission, breach of contract or default of the Managing Agent or any person for whom it is responsible. The cost of making good such Losses shall be recoverable by the HDB from the Managing Agent whether or not the HDB is liable in law to the relevant authority for the Losses.

- (2) Provided always that:
- (a) Upon payment or deduction of such cost being made, the HDB shall, where the property does not belong to the HDB, pay the amount to the relevant authority and furnish to or procure for the Managing Agent such discharge or release as the Managing Agent may reasonably require.
  - (b) If the cost which the Managing Agent is liable to pay has not been ascertained at the time any moneys payable to the Managing Agent are due for release to it, then the HDB may withhold a sum which is, in the opinion of the Superintending Officer, sufficient to cover such liability. As soon as the cost payable by the Managing Agent has been ascertained and deducted from the sum retained, the balance if any shall be released to the Managing Agent.
- (3) Nothing herein shall affect in any way any other remedy at law that the owners of the property which has suffered damage, loss or injury may have against the Managing Agent.

## **18 INDEMNIFICATION OF THE HDB AGAINST CLAIMS BY MANAGING AGENT'S EMPLOYEES**

In the event of the HDB (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Managing Agent in and for the performance of the Contract, the Managing Agent shall indemnify the HDB, its officers or departments against such claim and any costs, charges and expenses in respect thereof,

PROVIDED the same is not caused by the gross negligence or willful default of the HDB, its officers or agents.

## **19 INSURANCE FOR PERSONAL INJURY, WORK INJURY AND PROPERTY DAMAGE**

### **19.1 The Policies**

- (1) Without prejudice to its liability to indemnify the HDB under Clause 17 and 18, the Managing Agent shall at its own cost and expense before commencement of any service under the Contract and throughout the whole duration of the Contract maintain:
- (a) Such insurances (subject to any limitations permitted by the Contract) as are necessary to cover the liability of the Managing Agent and its Subcontractor in respect of personal injuries or death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Services or the sub-contract works;
  - (aa) Such approved policy as required under the Work Injury Compensation Act or regulations (including any subsequent amendment or re-enactment of the Act or regulations); and
  - (b) Such insurances as may be specifically required by the Contract in respect of injury or damage to property real or personal (other than the Services) arising out of or in the course of or by reason of the carrying out of the Services and caused by any negligence, omission, breach of contract or default of the Managing Agent, its employees, agents and Subcontractor. Such insurance shall be subject to such

limitations as to the extent of liability for any one accident as may be set out in the Appendix A hereto.

The Managing Agent's insurances shall provide for the HDB's interests to be noted as "Principal" (for the Employer's Liability) or as an "Additional Insured" with a "cross liability" provision (for Third Party Liability).

(2) Any such insurance and approved policy as referred to in Clause 19.1(1) shall be placed with an insurer:

(a) approved by the Superintending Officer; and

(b) approved by such approving authority as the relevant law may prescribe in the case of any insurance or approved policy that is regulated by law;

and the Managing Agent shall deposit with the Superintending Officer before the commencement of any work on Site a copy of the insurance and approved policy and no later than fourteen (14) days thereafter a copy of the receipts in respect of the premiums paid under such insurance or approved policy.

## **19.2 Damage to Property When Managing Agent Not Negligent**

(1) The Managing Agent shall before commencement of any work under the Contract, maintain in the joint names of the HDB and the Managing Agent such insurance for such amounts of indemnity as specified in this Contract documents in respect of any Losses which the HDB may incur or sustain due to damage of any kind to property real or personal (including Property of the HDB) caused by causes other than the "Excepted Risks" as defined in Clause 19.4 arising out of or in the course of or by reason of the carrying out the Services.

(2) Any such insurance as is referred to in Clause 19.1 (1) shall be placed with an insurer approved by the HDB and the Managing Agent shall deposit with the HDB before the commencement of any work a copy of the policy or policies of insurance and no later than fourteen (14) days thereafter the receipts in respect of the premiums paid under such policy or policies.

## **19.3 Default in Insuring**

Should the Managing Agent or any Subcontractor default in taking out or maintaining any insurance or approved policy as stipulated in Clauses 19.1 and 19.2, the HDB (without prejudice to any other rights and remedies available) may itself insure against any risk with respect to which the default has occurred and the amount paid by it in respect of premiums shall be recoverable from the Managing Agent.

## **19.4 Excepted Risks**

The "Excepted Risks" are insofar as they occur in Singapore and directly affect the performance of the Services:

(a) War and hostilities (whether war be declared or not), invasion, act of foreign enemies;

- (b) Rebellion, revolution, insurrection or military or usurped power or civil war;
- (c) Riot, commotion or disorder, unless solely restricted to employees of the Managing Agent;
- (d) Ionising radiations, or contamination by radio activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component; and
- (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

## 19.5 Insurance Policies

### (1) Insurance for Work Injury

- (a) The period of insurance shall be as specified in Appendix A.
- (b) The Managing Agent shall warrant that all Subcontractor, appointed directly by the Managing Agent purchase and maintain the Insurance for Work Injury before commencement of any works and/or services and throughout the duration of the subcontract works and/or services.

### (2) Insurance for Personal Injury and Property Damage

The Managing Agent shall warrant that the insurance for Personal Injury and Property Damage taken up in accordance with Clause 19 of the Conditions shall include the following conditions:

- (a) The Policy shall be issued in the joint names of the Employer, the Managing Agent and all his Subcontractor.
- (b) The limits of liability shall read as follows:
  - (i) In respect of any one accident: \$1,000,000.00; and
  - (ii) Unlimited for the period of insurance.
- (c) The period of insurance shall be as specified in Appendix A.
- (d) The period of notice for cancellation of the Policy, if such period is stipulated, shall read as thirty (30) days.
- (e) The Policy shall expressly include coverage of the following risks:
  - (i) Death, bodily injury or damage to property caused or occasioned by the insured's Subcontractor or by such Subcontractor's employees.
  - (ii) Death, bodily injury or damage to property caused or occasioned by or connected with or arising from the ownership, possession or use by or on behalf of the insured of any equipment or machinery not

- expressly specified in the Schedule of such equipment or machinery.
- (iii) Liability assumed by the insured by agreement, unless such liability would have attached to the insured notwithstanding such agreement.
  - (iv) Liability in respect of loss or damage to property belonging to or in the charge or control of the insured or of any servant or agent of the insured.
  - (v) Liability in respect of injury, illness, loss or damage caused by or connected with or arising from any commodity, article or thing supplied, repaired, altered or treated by or to the order of the insured, happening at any of the insured's premises.
- (f) The policy shall expressly contain the following endorsements:
- (i) "This Policy shall cover all the Managing Agent's insurance obligations with regard to personal injuries or death and injury or damage to property real or personal (including property of the ( Name of Employer to insert ) but not the Services themselves) arising out of or in the course of or by reasons of the carrying out of the Services stated in the Contract between the ( Name of Employer to insert ) and the Managing Agent ( Name of Managing Agent to insert )."
  - (ii) "Each of the parties comprising the Insured shall for the purpose of this Policy be considered as a separate and distinct unit and the words "the Insured" shall be considered as applying to such party in the same manner as if a separate policy had been issued to each of the parties and the insurers hereby agree to waive all rights of subrogation action which they may have or acquired against any of the aforesaid parties arising out of any accident in respect of which any claims is made hereunder provided nevertheless that nothing in this clause shall be deemed to increase the limitation on extent of Insurer's liability in respect of any one accident or series of accidents as stated in the Schedule."
  - (iii) "This Policy is extended to cover the employees and/or representatives of the Housing & Development Board, Consultants (if any), Resident Technical Officers (if any) and other professional parties whilst on the Site as third parties."
  - (iv) "Notwithstanding anything stated in the Policy to the contrary, cover under the Policy shall not be suspended in the event of stoppage of work by the Managing Agent from any cause for a period not exceeding ninety (90) days. Subject otherwise to the Terms, Exceptions and Conditions of this Policy."
  - (v) "All deductibles shall be borne by the Managing Agent."



## **20 NOVATION, ASSIGNMENT AND SUBCONTRACTING**

### **20.1 Assignment**

The Managing Agent's performance by itself and its servants of the Services is of the essence of the Contract and unless the HDB shall agree in writing, the Managing Agent shall neither assign its interests, rights or benefits under the Contract nor transfer its liability nor make arrangements for the vicarious performance of such functions by any other person nor make arrangements whereby the performance of the Services is carried out by another person or persons.

### **20.2 Subcontractor**

The Managing Agent shall ensure that all Subcontractor, appointed directly by the Managing Agent, are not debarred from participating in public sector projects, and are validly registered under the appropriate registration head such as supply category/head with any relevant Government Registration Authority at the time of their appointment. Except where expressly provided by the Contract, the Managing Agent shall not engage or permit the engagement of any Subcontractor without the prior written consent of the Superintending Officer, which consent shall not be unreasonably withheld.

### **20.3 Novation of Contract**

The HDB shall be entitled to novate or assign the whole or any part of this Contract at the same price and on the same terms and conditions of this Contract to any other statutory body or to such other person, persons, entity or party as the HDB may direct ("substituted party"). The Managing Agent shall agree to such novation or assignment and shall, within the time period as required by the HDB, sign and complete all legal documentation relating to such novation or assignment of the whole or any part of this Contract by the HDB to the substituted party. All costs (including legal costs) and expenses incurred by the Managing Agent in relation to or as a result of such novation or assignment of the whole or any part of the Contract by the HDB to the substituted party shall be fully borne by the Managing Agent.

## **21 TERMINATION BY THE HDB**

### **21.1 Termination due to Default**

- (1) If in the opinion of the Superintending Officer the Managing Agent:
  - (a) Has abandoned the Contract;
  - (b) Has, without reasonable cause, failed to commence the performance of Services in accordance with the Contract;
  - (c) Has failed to comply with its obligations under Clause 8 or has failed to perform the Services in accordance with a programme accepted under Clause 8 or has otherwise failed to proceed with the Services with due diligence or expedition;
  - (d) Has persistently failed to replace the Equipment, Tools and Materials or any part thereof following the expiry of fourteen (14) days from receipt by the Managing

Agent of a written notice by the Superintending Officer to the effect that the Equipment, Tools and Materials or any part thereof have been rejected by the Superintending Officer;

- (e) Has persistently failed to perform and complete the Services in accordance with the Specifications;
- (f) Has used or permitted the Site to be used for any illegal, unlawful or immoral purposes;
- (g) Has made changes to the Site geographical or physical conditions or build-up, area or layout without the HDB's consent;
- (h) Has acted in breach of Clause 20.1 or 20.2; or
- (i) Has persistently refused or failed to comply with a written instruction from the Superintending Officer which the Superintending Officer is empowered to give under the Contract,

then the Superintending Officer may issue a certificate ("Termination Certificate") identifying the nature of the default to the HDB with a copy to the Managing Agent at the same time.

(2) If the Managing Agent:

- (a) Has possession taken or execution levied by creditors or debenture holders or under a floating charge;
- (aa) ceases to be a member of the National Council of Social Service (NCSS) holding the membership type of "Full Membership".
- (b) Is a company limited by guarantee or a registered society that during the Contract Period:
  - i. enters into or initiates any process for any scheme of arrangement or compromise (or has any intention to propose any scheme of arrangement or compromise);
  - ii. initiates any voluntary arrangements or enters into any composition agreement with its creditors;
  - iii. is declared to be unable to or is unable to pay its debts and liabilities (including contingent and prospective liabilities);
  - iv. is in a position where its assets are less than the amount of its liabilities (including contingent and prospective liabilities) or is declared or is otherwise insolvent;
  - v. commences or is the subject of any winding-up procedure whatsoever;
  - vi. requests or is subject to the appointment of, or any application being made or resolution being passed for the appointment of, any receiver (including a receiver and manager), trustee, judicial manager, liquidator, sequestrator, administrative receiver, administrator or similar officer (including any interim or provisional officer);
  - vii becomes unable to pay its debts and liabilities (including contingent and prospective liabilities) or has its assets less than the amount of its liabilities (including contingent and prospective liabilities) or becomes otherwise insolvent; and/or
  - viii is subject to any event similar to any of the above under the laws of any jurisdiction;

- (c) Is a trust, where the trustee(s) (whether in his/her/their own capacity, as trustee(s) or otherwise) and the Managing Agent (to the extent applicable) during the Contract Period:
- (i) enter(s) into or initiate(s) any process for any scheme of arrangement or compromise (or has/have any intention to propose any scheme of arrangement or compromise);
  - (ii) initiate(s) any voluntary arrangements or enter(s) into any composition agreement with his/her/their creditors;
  - (iii) is/are declared to be unable to or is/are unable to pay his/her/their debts and liabilities (including contingent and prospective liabilities);
  - (iv) is/are or is/are in a position where his/her/their assets are less than the amount of his/her/their liabilities (including contingent and prospective liabilities) or is/are declared or is/are otherwise insolvent;
  - (v) commence(s) or is/are the subject of any winding-up procedure or administration whatsoever;
  - (vi) request(s) or is/are subject to the appointment of, or any application being made or resolution being passed for the appointment of, any receiver (including a receiver and manager), trustee, judicial manager, liquidator, sequestrator, administrative receiver, administrator or similar officer (including any interim or provisional officer);
  - (vii) become(s) unable to pay his/her/their debts and liabilities (including contingent and prospective liabilities) or has/have his/her/their assets less than the amount of his/her/their liabilities (including contingent and prospective liabilities) or become(s) otherwise insolvent; and/or
  - (viii) is/are subject to any event similar to any of the above under the laws of any jurisdiction;
- (d) Has offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the HDB, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the HDB, or if any of the like acts shall have been done by any person employed by the Managing Agent or acting on its behalf (whether with or without the knowledge of the Managing Agent), or if in relation to this Contract or any other contract with the HDB the Managing Agent or any person employed by it or acting on its behalf shall have committed any offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241) or any re-enactment or modification of such Code or Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the said Acts;
- (e) Has failed to provide the Security Deposit in accordance with Clause 6.4;
- (f) Has failed to secure, maintain or deposit the insurance policy or receipt for premium as required by Clause 19;
- (g) Shall have been issued with a Termination Certificate or a copy thereof and either:
- (i) The default in the Termination Certificate has not been made good within seven (7) days; or
  - (ii) The default has been repeated within thirty (30) days of the Termination Certificate; or

- (iii) Any other default such as would entitle the Superintending Officer to issue a Termination Certificate has been committed by the Managing Agent within thirty (30) days of the issue of the original Termination Certificate,

then unless such termination is prohibited by written law, the HDB, without prejudice to any other rights and remedies available to it, may give to the Managing Agent notice in writing of the termination of the employment of the Managing Agent whereupon the Managing Agent's employment under the Contract shall terminate. Upon receipt of the HDB's notice, the Managing Agent shall immediately vacate the Site, leaving all Equipment, Tools and Materials and labour (if any) other than those which the Managing Agent may be specifically directed in writing by the Superintending Officer to remove.

#### **21.1A RESERVED**

#### **21.1B RESERVED**

#### **21.2 Effects of Termination due to Default**

- (1) Save where provided otherwise in the Contract, in the event of termination pursuant to Clause 21.1:
  - (a) The Managing Agent shall immediately cease the performance of any Services being undertaken and shall immediately hand over to the HDB all documents, materials and items in relation to and arising from any Services being undertaken;
  - (b) No sum due or becoming due to the Managing Agent shall be paid by the HDB until the issue of the Statement of Accounts pursuant to Clause 21.2(1)(g) by the HDB as provided in this Contract. The HDB may at its sole discretion decide whether any sum is due or becoming due to the Managing Agent;
  - (c) Any sum due or becoming due to the HDB from the Managing Agent prior to such termination shall be paid immediately by the Managing Agent;
  - (d) The HDB may forfeit the Security Deposit pursuant to Clause 6.4;
  - (e) The HDB may at its sole discretion pay any of the Managing Agent's employees, agents, Subcontractor, to continue to carry on with the Services until such time as may be determined by the HDB. Such payments shall be deemed to be made as agent for the Managing Agent and shall form part of the costs to be considered for purposes of Clause 21.2(1);
  - (f) The HDB may engage another contractor to complete any services being undertaken by the Managing Agent under the same terms and conditions of the Contract. All Losses incurred by the HDB in engaging another contractor and all loss and damages suffered by the HDB shall be borne by the Managing Agent;
  - (g) The HDB shall, as soon as may be practicable issue a Statement of Accounts to the Managing Agent. The Statement of Accounts shall be supported by all relevant documents and state any final sum due from the HDB to the Managing Agent or from the Managing Agent to the HDB, as the case may be, which shall thereupon become a debt due.

### 21.3 Liquidated Damages after Termination

If the employment of the Managing Agent has been terminated for default pursuant to Clause 21.1 and performance of the Services or any phase or part by the HDB or by other contractors or persons appointed by the HDB to complete the Services, phase or part has been delayed beyond the Time for Completion, the following provisions shall have effect:

- (a) The HDB shall be entitled to the same liquidated damages for delay as those which would have been payable if the Managing Agent had completed the Services or phase or part on the actual completion date of the HDB or the other contractors or persons appointed by the HDB.
- (b) For the purpose of giving effect to the above, the Superintending Officer shall, upon the completion of the Services or phase or part issue a certificate. Such certificate shall state the date upon which the Managing Agent should have completed the Services or phase or part and shall also state the full period of delay for which the Managing Agent is responsible and shall compute the total damages due to the HDB therefor. The certificate shall give credit for events occurring after the termination of the Managing Agent's employment which would have entitled the Managing Agent to an extension of time had he duly executed and completed the Services or phase or part and duly complied with Clause 12. In assessing the period of delay, the Superintending Officer shall also reduce the period of delay to the extent that there has been any failure by the HDB or by any other contractors or persons engaged by the HDB to use due diligence and expedition in arranging for or completing the remaining parts of the Services or phase or part.
- (c) Upon the issue of a certificate under Clause 21.3(b), the amount of damages certificated by such certificate shall be immediately recoverable by the HDB from the Managing Agent.

### 21.4 Termination Without Default

- (1) The HDB may at any time give the Managing Agent a written Notice of Termination. This shall have the effect of immediately terminating the employment of the Managing Agent under the Contract.
- (2) In the event of a Notice of Termination under Clause 21.4(1) or where Clause 10.2 is applicable, the Superintending Officer shall subject to compliance by the Managing Agent with Clause 16 certify payment to the Managing Agent:
  - (a) For all service performed prior to the date of termination at the Contract Rates, for the Services set out in the Contract including
    - (i) Amounts payable in respect of any other items shown and separately priced in the Contract so far as the service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
    - (ii) Cost of Equipment, Tools and Materials or any part thereof reasonably ordered for the Services which have been secured, subscribed, delivered or installed or of which the Managing Agent is legally liable to accept and make payments; and

- (b) Any Loss and Expense suffered by the Managing Agent in connection with or as a consequence of the termination.

The Superintending Officer shall expeditiously certify the amounts payable to the Managing Agent under this Clause, and the Managing Agent shall provide all reasonable assistance to the Superintending Officer. In the event that the Managing Agent does not submit the necessary information required, the Superintending Officer shall make his certification on the information available. The amount certified shall be paid by the HDB less any sums previously paid or due to or recoverable by the HDB from the Managing Agent.

## **22 PAYMENTS**

### **22.1 Payment Claims During Contract Period**

- (1) The Managing Agent shall submit to the HDB (with a copy to the Superintending Officer), within thirty (30) days of delivery of the Services ordered and performed in accordance with the Contract, a claim for payment (hereafter referred to as the "Payment Claim") in accordance with such means and in such format as the Superintending Officer may from time to time prescribe. The Payment Claim shall show the amounts (hereafter referred to as the "Claimed Amount") to which the Managing Agent considers itself to be entitled in respect of:
  - (a) The value of the Services performed in accordance with Clause 11.3 of the Contract; or
  - (b) Upon the achievement of each payment milestone set out in Appendix A, the Managing Agent shall submit the Payment Claim to the HDB for the amount set out against such payment milestone in Appendix A;
  - (c) The value of any other items shown and separately priced in the Contract; and
  - (d) Any other sum to which the Managing Agent may consider himself to be entitled under the Contract itemising such sums by reference to the notice given pursuant to Clause 16.5.
- (2) The payments under this Clause shall not prejudice the HDB's right to reject Deficient Services or the Managing Agent's responsibility to re-perform Deficient Services.
- (3) The Managing Agent shall also present a copy of the HDB's receipt issued pursuant to Clause 9.2 for each Payment Claim.
- (4) Without limiting the HDB's right under the Contract, the amount of any payment or debt owed by the Managing Agent to the HDB under the Contract may be deducted by the HDB from any monies payable by the HDB to the Managing Agent pursuant to this Contract.

### **22.2 Payment**

Within thirty (30) days or such other time period as may be stipulated in the Appendix A of receiving the Payment Claim duly submitted pursuant to Clause 22.1, the Superintending Officer shall pay the Managing Agent subject to the provision of the Specifications, the amounts to which the Managing Agent is in his opinion entitled in respect of each of the amounts in the Payment Claim, subject to the deduction of any sums (including liquidated

damages and any other damages) which have been or may become due and payable by the Managing Agent to the HDB under the Contract or otherwise.

In the event that the HDB fails to make payment within the times stipulated, the HDB shall pay to the Managing Agent interest at the rate stated in the Appendix A (or at the rate of 7.5% a year if none is stated) upon all sums unpaid from the date by which the same should have been paid.

### **22.3 Correction**

The Superintending Officer may by any payment make any correction or modification in respect of any error whether arithmetical or otherwise in any previous payment which has been issued by him and make such adjustments as may be necessary in the amount of payment due and payable to the Managing Agent to take into account any over or under valuation in any previous payment. Where the amount paid by the HDB to the Managing Agent pursuant to any error in a previous payment exceeds any amount due and payable to the Managing Agent under any subsequent payment, such amount shall be recoverable by the HDB from the Managing Agent.

### **22.4 Claim and Payment of Goods and Services Tax**

- (1) The Managing Agent shall be deemed not to have allowed in its Tender Offer for goods and services tax (hereafter called "GST") chargeable under the Goods and Services Tax Act (Cap. 117A) (hereafter in Clause 22.4 called "the Act") for the supply of goods, services or works required under the Contract.
- (2) If the Managing Agent is a taxable person under the Act, the HDB shall reimburse the Managing Agent any GST charged on the goods, services or works required under the Contract.
- (3) The Managing Agent, when submitting the Payment Claims under Clause 22.1, shall show the amount which it considers himself to be entitled in respect of GST payable to it by the HDB. Upon confirmation of the amounts payable to the Managing Agent pursuant to Clause 22.2, the Managing Agent shall forthwith prepare and submit to the HDB its tax invoice which shall correspond with the amount of GST stated in the relevant certificate.
- (4) If the HDB notifies the Managing Agent that it intends to apply to the Comptroller of Goods and Services Tax for approval to issue to itself tax invoices in respect of the certificates, or that it has obtained such approval, the Managing Agent shall give its written agreement that, if such approval is or has been granted, it will not issue tax invoices in respect of such certificates. If such approval is or has been granted by the Comptroller of Goods and Services Tax then the Managing Agent shall not issue tax invoices in respect of such certificates, provided that the HDB may, at any time by notice in writing served on the Managing Agent, re-impose on it the obligations contained in Clause 22.4(3).
- (5) If any dispute, difference or question shall arise between either the HDB or the Managing Agent and the Comptroller of Goods and Services Tax in relation to any tax chargeable or alleged to be chargeable in connection with the Contract or the Services or any part thereof, each shall render to the other such support and assistance as may be necessary to resolve the dispute, difference or question.
- (6) Clause 23 shall not apply to any dispute, difference or question arising under Clause 22.4.

## 22.5 Payment by GIRO/EPS

- (1) All payments under the Contract by the HDB to the Managing Agent shall be effected through the GIRO System and/or other Electronic Payment Systems (EPS).
- (2) Managing Agent shall within fourteen (14) days from the date of the Letter of Acceptance submit their details such as bank account details, to Accountant-General Department's Vendors@Gov to create a Vendors@Gov account to facilitate payments, if Managing Agent does not have an existing Vendors@Gov account.

## 22.6 Online Web-based Electronic System

- (1) The Managing Agent may be required for the purpose of the Contract to subscribe to and use an online web-based electronic system to be provided by the HDB (hereinafter referred to as "e-system").
- (2) The e-system allows the Managing Agent (where applicable) to electronically:
  - (i) retrieve any certificates, notices or instruction to be given to or served on the Managing Agent by the HDB or the Superintending Officer under the terms of the Contract;
  - (ii) submit a claim for payment for the Works/Services completed in accordance with the Contract;
  - (iii) notify the Superintending Officer upon completion of the Works/Services in accordance with the Contract; and
  - (iv) use any other applications in the e-system that may be introduced by the HDB from time to time.
- (3) In the event the HDB decides that the Managing Agent is required to use the e-system, the Managing Agent shall at its own cost and expense arrange to use the e-system and make changes deemed necessary to the Managing Agent's own computer system(s) and all its related software to comply with the following requirements:
  - (i) The e-system shall be Secured-Socket-Layer-encrypted, password-protected with role-based workflow security features at the document/form level and have an audit trail;
  - (ii) The e-system shall be accessible by all relevant users from the HDB, the Superintending Officer, the Superintending Officer's Representative and Managing Agent concurrently and all data accessed shall be confined to the Contract and the relevant role and scope of Works/Services; and
  - (iii) any other requirements that HDB may impose from time to time.
- (4) Save as aforesaid, by subscribing and using the e-system, the Managing Agent shall be deemed to have read, accepted and agreed to the terms and conditions governing the use of the e-system. There will be no additional charges imposed by the HDB for the use of the e- system.



## **22.7 Adjustment for Under-Payment or Over-Payment**

- (1) At any time during the Contract, if the Managing Agent has been refunded or paid by the HDB a sum exceeding the amount due to the Managing Agent under the Contract and it is due to the Managing Agent's misrepresentation, the HDB may recover such excess sum and interest on such excess sum at the rate of 7.5% per annum. Any sum which the HDB has overpaid to the Managing Agent under any circumstances shall be a debt due from the Managing Agent to the HDB and the Managing Agent shall pay such sum immediately upon written demand by the HDB.
- (2) In the event that the Managing Agent has been paid less than the sum the Managing Agent is entitled to under the Contract due to the Managing Agent's misrepresentation, the HDB shall pay the Managing Agent the difference free of interest.
- (3) In the event that the HDB fails to make payment within thirty (30) days of the Managing Agent's written notice, the HDB shall pay to the Managing Agent interest at the rate of 7.5% per annum upon all sums unpaid from the date by which the same should have been paid.

## **22.8 Default Interest**

- (1) If the Managing Agent 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 7.5%.
- (2) This Clause 22.8 shall survive the termination or expiry of the Contract.

## **22.9 Taxes, Fees and Duties**

- (1) The Managing Agent shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Managing Agent or its employees, in carrying out its obligations under the Contract.
- (2) If the HDB receives a request from the tax authorities to pay on behalf of the Managing Agent and/or the Managing Agent's employees, or to withhold payments from the Managing Agent in order that the HDB may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Managing Agent hereby authorises the HDB to comply with the terms of the said request.

## **23 SETTLEMENT OF DISPUTES**

### **23.1 Reference to the Superintending Officer**

- (1) If a dispute or difference of whatsoever kind shall arise between the HDB or the Superintending Officer or the Superintending Officer's Representative and the Managing Agent in connection with or arising out of the Contract or the performance of the Services, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer or the Superintending Officer's Representative, it shall in the first place be referred by either party in writing to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause and a copy shall be sent to the other party to the Contract.
- (2) No later than the expiry of thirty (30) days after the date upon which the Superintending Officer received such reference, the Superintending Officer shall give notice of his decision in writing to the HDB and to the Managing Agent and shall for information state therein that it is given pursuant to this Clause. Such decision shall identify the reference pursuant to which it is made and shall be final and binding on the parties to this Contract unless, as hereinafter provided, either party shall require that the decision should be referred to arbitration.
- (3) Unless the Contract has already been repudiated or the employment of the Managing Agent terminated or the carrying out of the Services completed, the Managing Agent shall, in case of any reference, continue to proceed with the Services in accordance with its obligations under the Contract and the Managing Agent and the HDB shall give effect forthwith to every decision of the Superintending Officer unless and until the same shall be revised by an arbitrator as hereinafter provided (or as may be otherwise ordered by a Court of competent jurisdiction).

### **23.2 Reference to Arbitration**

If either the HDB or the Managing Agent is dissatisfied with the decision of the Superintending Officer made pursuant to Clause 23.1 hereof, or if the Superintending Officer fails to give notice of his decision on or before the expiry of the thirty (30) day period following the date on which the Superintending Officer received the reference, then the HDB or Managing Agent may, within ninety (90) days from the date of receipt of the aforesaid decision of the Superintending Officer, or within ninety (90) days from the date of expiry of the aforesaid thirty (30) day period (as the case may be) give notice to the other party with a copy for information to the Superintending Officer of its intention to refer the decision or the dispute or difference that had not been decided to an arbitrator. The arbitrator may be agreed upon by the parties or failing such agreement, shall be a person to be nominated on the application of either party by the Chairman of the Singapore International Arbitration Centre. Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act (Cap. 10) or any re-enactment or modification thereof.

### **23.3 Arbitration in the Event of Termination**

Notwithstanding Clause 23.1 above, if the dispute or difference concerns the termination or the repudiation or abandonment of the Contract by either party such dispute or difference shall be referred to an arbitrator in accordance with Clause 23.2. Any dispute or difference raised by the Managing Agent in connection with the termination or

repudiation of the Contract by the HDB shall be referred to arbitration within sixty (60) days of the notice of termination or repudiation. Failure to do so within such period shall bar the Managing Agent from pursuing such dispute or difference in any arbitration or court proceedings whatsoever.

#### **23.4 Powers of the Arbitrator**

An arbitrator appointed pursuant to Clause 23.2 or 23.3 hereof shall have full power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute or difference which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, subject to any provision of the Contract which may constitute a decision or certificate or other document as final or binding or any document or event or omission as barring or preventing a claim being advanced by one party against the other.

#### **23.5 Mediation**

- (1) The parties agree that before referring any dispute or difference to arbitration, they shall consider resolving the dispute or difference through formal mediation. If both parties agree to attempt resolving the dispute through mediation, the parties agree to do so at the Singapore Mediation Centre in accordance with its prevailing prescribed form, rules and procedures.
- (2) For the avoidance of doubt, the provision herein shall not amount to any legal obligation on the part of either party to attempt mediation or the extent to which they shall do so, as a means of resolving their dispute or difference. However, the period between the time of receipt of the formal notice for mediation and the rejection of the notice or the time of termination of mediation for that matter shall not be taken into account in computing any periods under Clauses 23.2 and 23.3.

#### **24 SET-OFF**

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

#### **25 GOVERNING LAW AND NOTICES**

##### **25.1 Applicable Laws**

- (1) The law governing this Contract and any arbitration commenced under these Conditions shall be the law of Singapore, and any such arbitration shall be held in Singapore.
- (2) Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.
- (3) The Managing Agent shall, at its own costs, obtain and maintain all licence and authorisations, including export licences and permits and other governmental

authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Managing Agent to fulfil all its obligations under the Contract.

## 25.2 Notices

- (1) The Managing Agent shall provide in his Form of Tender an address in Singapore and email address for service of documents, hereafter referred to as “the Service Address”.
- (2) The Managing Agent shall give fourteen (14) days written notice to the Superintending Officer before any change in the Service Address.
- (3) Except as provided in Clause 25.2(5), all certificates, notices or instruction to be given to or served on the Managing Agent by the HDB or the Superintending Officer under the terms of the Contract may be sent or served in the following manner:
  - (a) by post or left at the Service Address;
  - (b) by email; or
  - (c) by e-system.
- (4) Where any certificate, notice, or instruction to be given to the Managing Agent under Clause 25.2(3) is:
  - (a) sent by ordinary post, it shall be deemed to be duly served on the Managing Agent on the 4<sup>th</sup> working day after the day it was posted; and
  - (b) sent by email, it shall be deemed to be duly served on the Managing Agent at the time of entering the information system addressed to the email address.
- (5) All certificates and notices under Clauses 10, 21 and 23 shall be given by pre-paid registered mail or hand delivery to:
  - (a) in the case of the Managing Agent, the Service Address; and
  - (b) in the case of the Superintending Officer or the HDB, such address as the Superintending Officer shall in writing notify the Managing Agent.
- (6) Without prejudice to any other method of service that is authorised by law, service of any originating process by the HDB or Superintending Officer on the Managing Agent or its solicitors shall be deemed to be due service if it is posted to or left at the Service Address.
- (7) For the avoidance of doubt, the parties agree that all notices, letters or correspondence issued by the HDB to the Managing Agent including computer generated print-outs with no signature (if any), electronic mail to an electronic mail address given by the Managing Agent in the Form of Tender or as indicated by the Managing Agent to HDB (except clause 25.2(5) for certificates and notices to be issued by pre-paid registered mail or hand delivery), shall be given same legal effect, validity and enforceability and admissible in evidence. The Managing Agent accepts that such documents are valid and agrees that he will not dispute or challenge the validity, authority, accuracy and/or authenticity of any document solely on the ground that it is unsigned and/or generated/sent electronically.

## **26 INTELLECTUAL PROPERTY RIGHTS**

The Managing Agent warrants that the Services performed do not infringe any copyrights, and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, know how and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields (hereinafter referred to as "Intellectual Property"). Notwithstanding the above, the Managing Agent shall indemnify the HDB and its officers or departments against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof.

In the event any rights in Intellectual Property are created by the Managing Agent in the course of providing the Services, such rights shall be owned by the HDB. The Managing Agent hereby assigns all such rights in Intellectual Property to HDB. If necessary, the Managing Agent shall, at its own costs, enter into such documents as may be necessary to effect such assignment.

## **27 PROTECTION OF PERSONAL DATA**

### **27.1 Security**

The Managing Agent shall take all reasonable measures to ensure that Personal Data held in connection with this Contract is protected against loss, and against unauthorised access, use, modification, disclosure or any other misuse in accordance with the procedures set out in this Clause, and that only authorised personnel have access to the data. The Managing Agent shall not breach the security procedures set out in this Contract without the prior written approval of the HDB.

### **27.2 Use**

The Managing Agent shall use any Personal Data held in connection with this Contract only for the purposes of fulfilling its obligations under this Contract with the prior approval from the HDB.

In performing its obligations under the Contract and in relation to the handling of personal data, the Managing Agent shall observe the requirements of the Personal Data Protection Act 2012 (Act 26 of 2012), to the highest degree.

### **27.3 Disclosure**

The Managing Agent shall not under any circumstances, disclose any Personal Data obtained in connection with this Contract without the prior written approval of the HDB. The Managing Agent shall immediately notify the HDB where it becomes aware that a disclosure of Personal Data may be required by law.

### **27.4 Retention**

The Managing Agent shall not retain materials containing Personal Data and shall remove the means by which the Personal Data can be associated with particular individuals as soon as it is reasonable to assume that the purpose for which the Personal Data was

collected is no longer being served by retention of the Personal Data, and retention is no longer necessary for legal purposes.

**27.5 Transfer of Personal Data outside Singapore**

The Managing Agent shall not under any circumstances, transfer Personal Data held in connection with this Contract outside Singapore, or allow parties outside Singapore to have access to it.

**27.6 Employee Awareness of Data Protection Requirements and Undertakings**

The Managing Agent shall ensure that any employee or agent of the Managing Agent or any contractor or subcontractor, requiring access to any Personal Data held in connection with this Contract gives an undertaking in writing to not access, use disclose or retain Personal Data except in performing their duties of employment or the subcontract, as the case may be, and is informed that failure to comply with this undertaking may be a criminal offence and may also lead the Managing Agent to take disciplinary action against the employee.

**27.7 Advising the HDB of Any Breach of The Data Protection Clauses**

The Managing Agent shall in respect of any Personal Data held in connection with this Contract immediately notify the HDB where the Managing Agent becomes aware of any breach of the obligations contained herein by itself, employees, agents or any contractors or subcontractors.

**27.8 Directions and Guidelines**

The Managing Agent shall in respect of any Personal Data held in connection with this Contract co-operate with any, directions or guidelines of the HDB, arising in connection with the handling of Personal Data.

**27.9 Continuing Obligation After the Expiry or Termination of Contract**

Clause 27 shall continue to have effect after the termination or expiry of the Contract.

**27.10 Disclosure to Managing Agents/Subcontractors/Assignees**

The written approval of the HDB must still be obtained pursuant to this Clause herein, before any Personal Data can be disclosed to any contractors, subcontractors or assignees. The Managing Agent shall ensure that all clauses relating to protection of Personal Data are included in any Contract between the Managing Agent and its contractors, subcontractors or assignees.

**28 REGISTRATION WITH THE ACCOUNTING AND CORPORATE REGULATORY AUTHORITY (ACRA)**

In the event that the HDB requires the Managing Agent to register itself with ACRA as required under the Companies Act (Cap. 50), if applicable, the Managing Agent shall commence the proceedings for such registration as soon as practicable. This is to ensure that the Contract is able to run smoothly without running afoul of any legal instrument pertaining to the conduct of business in Singapore.

**29 NUISANCE AND IRREGULARITIES**

(1) If the Managing Agent commits any breach of any of the terms of the Contract and/or irregularity including but not limited to:

- (a) non-compliance with any part of the Specifications, non-fulfilment of any contractual obligations; or
- (b) creating any nuisance at the Site or any act causing or that may cause any inconvenience to the HDB or the public; or
- (c) committing any act which is likely, in the opinion of the HDB to bring the HDB into disrepute in any manner whatsoever,

the Managing Agent hereby fully agrees and undertakes to pay without dispute or question, agreed damages based on prevailing guidelines set by the HDB, but not exceeding \$100,000/- and for a contract with a contract sum or total contract value, as the case may be, of less than \$300,000/-, agreed damages not exceeding 30% per occasion of the contract sum or total contract value, as the case may be, for the inconvenience caused, investigations carried out, administrative expenses incurred, and for damage to the HDB's reputation and standing generally. Furthermore, the Managing Agent may be prohibited to tender for the HDB's projects for a specified period.

(2) In addition to the above charges and without prejudice to the generality of the foregoing, the HDB may either:

- (a) order any irregular work to be removed and made good to the satisfaction of the HDB at the Managing Agent's expense; or
- (b) in lieu of correcting work not done in accordance with the Contract, may allow such work to remain and shall recover any cost difference between the specified requirements and the non-compliance.

(3) Without prejudice to the rights, actions or remedies of the HDB herein, the Managing Agent shall take immediate action to cease any nuisance committed on Site upon instruction given by the HDB.

**30 COMPLIANCE WITH PREVAILING LAW**

Nothing in these Conditions shall be interpreted as authorising or permitting the doing of any act that is prohibited by any written law.

**31 EXIT MANAGEMENT**

The Managing Agent shall, at its cost and expense, make available to the HDB and any third party succeeding the Managing Agent appointed by the HDB ("Incoming Managing Agent") at such period as stipulated in Appendix A, such documents and records and provide such assistance (including briefings and training) as the HDB or the Incoming Managing Agent may reasonably require to allow an orderly transition to the Incoming Managing Agent with minimal disruption.

**32 SEVERABILITY**

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.



**Appendix A to Conditions of Contract**

REF	DESCRIPTION	CLAUSE	DETAILS
i.	Contract Period	1.1(d)	The Contract Period shall be 36 months from the date of commencement of the Contract as stated in the Letter of Acceptance.
ii.	Site	1.1(t)	As specified in the Requirement Specifications
iii.	Superintending Officer (SO)	1.1(w)	Group Director (Housing Management) of the HDB
iv.	Superintending Officer's Representative (SO's Rep)	1.1(x)	Director, Deputy Director, General Manager of Branch, Contracts Manager, Estate Manager, Administrative Manager, Engineer, Architect and Project Manager of the HDB as the case may be
v.	Time for Completion	1.1(z)	As stated in the Works Order and/ or Instruction in Writing.
vi.	Limitations on authority of the Superintending Officer	4.1	None
vii.	Quantum of the Security Deposit	6.4(1)	5% of the annual Total Contract Value as the case may be, as determined by the Superintending Officer
viii.	Refund of the Security Deposit	6.4(3)	Three (3) months after expiry of the Contract Period or latest Time for Completion, whichever is later

**Appendix A to Conditions of Contract**

REF	DESCRIPTION	CLAUSE	DETAILS
ix.	Rate of liquidated damages	13	As stated in the Specifications.  The cumulative amount of liquidated damages payable by the Managing Agent shall not exceed the Total Contract Value as the case may be, and as determined by the Superintending Officer.
x.	Insurance a. Limitation on extent of insurer's liability	19.1	\$1 million for any one accident and unlimited for the period of insurance
xi.	Period of Insurance for Work Injury	19.5(1)(a)	The Managing Agent shall maintain the policy covering the date the Site is handed over to the Managing Agent/commencing from the commencement date of the Contract Period until the expiry of the latest Contract Period or latest Time for Completion whichever is later.
xii.	Period of Insurance for Personal Injury and Property Damage	19.5(2)(c)	The period of insurance shall commence from the date the Site is handed over to the Managing Agent/commencing from the commencement date of the Contract Period and shall end upon expiry of the latest Contract Period or latest Time for Completion whichever is later
xiii.	Payment milestone	22.1(1)(b)	Not Applicable
xiv.	Payment	22.2	Within thirty (30) days of receiving the Payment Claim duly submitted pursuant to Clause 22.1
xv.	Rate of interest on unpaid sums	22.2	Seven point five (7.5) percent
xvi.	Exit Management	31	Six (6) months before a new Incoming Managing Agent commences its contract, or any reasonable period as approved by the SO's Rep.

**Appendix B to the Conditions of Contract**



**UNDERTAKING OF NON-DISCLOSURE**

TO : THE HOUSING & DEVELOPMENT BOARD  
SINGAPORE

In consideration of your agreeing at our request, to disclose or make available to us such information and documentation ("Information") as may be applicable to the Contract for \_\_\_\_\_ dated \_\_\_\_\_ entered into between yourselves and us ("Contract"), we

\_\_\_\_\_  
*(name of entity)*

of \_\_\_\_\_  
*(address)*

hereby agree and undertake that, save as hereinafter provided, such Information shall be treated by us as official, classified and strictly confidential in nature at all times and further agree and undertake as follows :

1. We shall not without your prior written consent disclose the Information to any third party (within or outside Singapore) and shall use our best endeavours to prevent the unauthorised publication or disclosure of the Information.
2. We shall divulge the Information only to those personnel who are directly connected with the Contract ("Personnel") and who have prior to such disclosure entered into an Undertaking with you in the form set out in the Schedule or in such other manner as you may require.

3. We shall ensure that the Personnel are aware of and shall comply with the confidentiality and non-disclosure obligations contained herein and we shall fully indemnify you and keep you fully indemnified at all times against any losses, costs, expenses or damages that you may sustain or incur as a result of any breach of confidence by us and/or any of the Personnel.
4. We shall immediately notify you in writing if and when we become aware that a disclosure of the Information may be required by law.
5. We shall not use the Information for any purpose other than for effectively carrying out our obligations under the Contract.
6. We shall take all precaution to prevent the loss of or unauthorised access, use, modification or misuse of the Information by any third party (within or outside Singapore). We shall comply with any security procedures as may be specified by you and shall not deviate from or make any change in the security procedures without your prior written consent.
7. We shall immediately notify you in writing if we become aware of any breach of the requirements of this Undertaking either by us or any Personnel.
8. We shall cooperate and comply with any request, direction or guideline that you may from time to time make in relation to the management of the Information.

9. We shall return to you all Information (whether in the form of documents or otherwise) given to us by you and any copies thereof or otherwise dispose of the same in such manner as may be directed by you. Provided that we may retain notes or other documents that we prepare from the Information in accordance with legal and regulatory requirements subject to our continued compliance with the requirements in this Undertaking.
10. The foregoing obligations shall continue in full force and effect notwithstanding the expiry or termination of the Contract. We understand that we may be prosecuted under the Official Secrets Act (Cap 213) and/or the Statutory Bodies and Government Companies (Protection of Secrecy) Act (Cap 319) for any breach of this Undertaking.

Dated \_\_\_\_\_ 202\_.

SIGNED for and on behalf of

\_\_\_\_\_  
(name of entity)

Signature of Authorised Person: \_\_\_\_\_

Name of Authorised Person: \_\_\_\_\_

Designation of Authorised Person: \_\_\_\_\_

**THE SCHEDULE**



**HOUSING &  
DEVELOPMENT  
BOARD**

**UNDERTAKING OF NON-DISCLOSURE**

TO : THE HOUSING & DEVELOPMENT BOARD  
SINGAPORE

In consideration of your agreeing at my request, to disclose or make available to me whether directly or through \_\_\_\_\_ (“Managing Agent”)  
*(name of entity)*

such information and documentation (“Information”) as may be applicable to the Contract for \_\_\_\_\_ dated \_\_\_\_\_ entered into between you and the Managing Agent (“Contract”), I \_\_\_\_\_ of  
*(name)*

\_\_\_\_\_  
*(address)*

hereby agree and undertake that, save as hereinafter provided, such Information that I may acquire at any time during my period of service with the Managing Agent shall be treated by me as official, classified and strictly confidential in nature at all times and further agree and undertake as follows :

1. I shall not without your prior written consent disclose the Information to any third party (within or outside Singapore) and shall use my best endeavours to prevent the unauthorised publication or disclosure of the Information.

2. I shall divulge the Information only to those personnel who are directly connected with the Contract ("Personnel") and who have prior to such disclosure entered into a similar Undertaking with you.
3. I shall ensure that the Personnel to whom I divulge any such Information are fully aware that the Information is confidential to you.
4. I shall indemnify you and keep you fully indemnified at all times against any losses, costs, expenses or damages that you may sustain or incur as a result of any breach of confidence by me whether during the period of my service with the Managing Agent or at any time thereafter.
5. I shall immediately notify you in writing if and when I become aware that a disclosure of the Information may be required by law.
6. I shall not use the Information for any purpose other than for the purpose of effectively carrying out the duties assigned to me by you or the Managing Agent in relation to the Contract.
7. I shall take all precaution to prevent the loss of or unauthorised access, use, modification or misuse of the Information by any third party (within or outside Singapore). I shall comply with any security procedures as may be specified by you and shall not deviate from or make any change in the security procedures without your prior written consent.
8. I shall immediately notify you in writing if I become aware of any breach of the requirements of this Undertaking either by me or any Personnel.
9. I shall cooperate and comply with any request, direction or guideline that you may from time to time make in relation to the management of the Information.

10. I shall return all the Information (whether in the form of documents or otherwise) given to me by you or by the Managing Agent relating to the Contract and any copies thereof or otherwise dispose of the same in such manner as may be directed by you. Provided that I may retain notes or other documents that I prepare from the Information in accordance with legal and regulatory requirements subject to my continued compliance with the requirements in this Undertaking.
11. The foregoing obligations shall continue in full force and effect notwithstanding the completion, expiry or termination of my period of service with the Managing Agent.
12. I understand that I may be prosecuted under the Official Secrets Act (Cap 213) and/or the Statutory Bodies and Government Companies (Protection of Secrecy) Act (Cap. 319) for any breach of this Undertaking.

Dated \_\_\_\_\_ 202\_.

Signature : \_\_\_\_\_  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_