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CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

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

- (a) “**Agency**” means the National Environment Agency.
- (b) “**Contract**” means the resulting contract between the Agency and the Contractor for the provision of the Goods and Services as a result of the Agency’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:
 - (i) the Cover Letter;
 - (ii) the Instructions to Tenderers;
 - (iii) the Contractor's Tender Offer;
 - (iv) these Conditions of Contract;
 - (v) the Requirement Specifications;
 - (vi) the Letter of Acceptance;
 - (vii) any Purchase Order issued by the Agency to the Contractor;
 - (viii) any correspondence exchanged between the Agency and the Contractor which is agreed to by the Agency in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
 - (ix) any formal agreement executed between the Parties,including all schedules and annexes to such documents as relevant.
- (c) “**Contract Period**” means the Initial Contract Period as set out in Clause 44.1, as extended from time to time by the Agency pursuant to Clause 44.2.
- (d) “**Contract Price**” means the aggregate Tender Price for Goods and Services required under the Contract.
- (e) “**Contractor**” means a successful Tenderer whose Tender Offer has been accepted by the Agency.
- (f) “**data**” means any representation of information or of concepts regardless of the medium of storage, and includes any personal data.
- (g) “**Government Furnished Equipment**” or “**GFE**” means the items which the Agency provides or is required to provide pursuant to the Contract.
- (h) “**Goods**” means all goods proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted

in the Letter of Acceptance which the Contractor is required to supply under the Contract, including technical documentation, parts or units thereof.

- (i) “**GST**” means goods and services tax charged under the GST Act.
- (j) “**GST Act**” means the Goods and Services Tax Act 1993.
- (k) “**IP**” means patents, copyright, trade marks, service marks, trade names, domain names, get-ups, inventions, registered and unregistered design rights, database rights, integrated circuit topography, geographical indications and all other similar rights of whatever nature wherever in the world arising, in each case:
 - (i) whether registered or not;
 - (ii) including any applications to protect or register such rights;
 - (iii) including all renewals and extensions of such rights or applications;
 - (iv) whether vested, contingent or future; and
 - (v) wherever existing.
- (l) “**Invitation to Tender**” means the invitation to participate in the tender for the supply of Goods and Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Cover Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Price Schedule, Evaluation Criteria and any other documents and forms enclosed.
- (m) “**Letter of Acceptance**” means the letter issued by the Agency accepting the Contractor’s Tender Offer.
- (n) “**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.
- (o) “**Parties**” means the Agency and the Contractor, and “**Party**” means any one of them.
- (p) “**personal data**” shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012.
- (q) “**Personnel**” in relation to a person means a director, officer, employee or agent of that person, or any individual engaged by that person under a contract for service.
- (r) “**Price Schedule**” means the schedule of prices for Goods and Services proposed in the Contractor’s Tender Offer and accepted in the Letter of Acceptance.

- (s) “**Purchase Order**” means an order issued by the Agency, making reference to the Contract, to purchase the Goods and/or Services.
- (t) “**Requirement Specifications**” means the specifications set out in Part 2 of the Invitation to Tender and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to time.
- (u) “**S\$, “\$” or “SGD”**” means the lawful currency of Singapore.
- (v) “**Service Personnel**” means all Personnel (including Personnel of the Subcontractors) provided by or to be provided by the Contractor to perform the Contract
- (w) “**Services**” means the services proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract.
- (x) “**Subcontractor**” means any person, firm or company engaged by the Contractor to perform any part or parts of the Contractor’s obligations and includes the Subcontractor’s duly appointed representatives, successors and permitted assignees and the Subcontractor’s subcontractors.
- (y) “**Tender Offer**” means the offer submitted by the Tenderer to provide Goods and Services to the Agency in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Agency as modifying such offer submitted by the Tenderer.
- (z) “**Tender Price**” in respect of any of the Goods or Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Goods or Services under the Contract.
- (aa) “**Tenderer**” means a person or its permitted assignees and successors offering to provide the Goods and Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.
- (bb) “**Working Day**” means a day which is not a Saturday, Sunday or a public holiday in Singapore.

1.2 In the Contract, unless a contrary intention appears:

- (a) words importing the singular only shall also include the plural and vice versa where the context requires;
- (b) the headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation;
- (c) references to a person include any company, limited liability partnership, partnership, business trust, unincorporated association or government agency (whether or not having a separate legal personality);

- (d) a reference in the Contract to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including but without limitation”;
- (e) any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation;
- (f) “month” means calendar month and “day” means calendar day; and
- (g) for the purposes of computing time, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

2. CLAUSE REFERENCES

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

3. SCOPE OF CONTRACT

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

4. DELIVERY AND PERFORMANCE

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

5. CARE AND DILIGENCE

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

6. REMOVAL AND REPLACEMENT

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

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

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

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

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

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

6.3 Where any Goods or Services are rejected by the Agency pursuant to Clause 6.1 or Clause 6.2 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to:

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

as the case may be.

6.4 Notwithstanding anything to the contrary, the risk of loss, damage or deterioration of Rejected Goods (whether rejected pursuant to this Clause 6 or otherwise) shall be borne by the Contractor at all times and possession shall be deemed to have never passed to the Agency.

7. NOT IN USE

8. WARRANTY

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

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

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

(the “**Defective Goods**”),

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

8.3 If any Service performed is found during the Warranty Period to be deficient or to be not in accordance with the Contract, the Contractor shall at the written notification of the Agency, complete the re-performance of the same, at the expense of the Contractor within two (2) weeks from the date of the Agency’s notification. The Warranty Period for the re-performed Service shall be extended, from the date of original expiry of the Warranty Period, by a period equivalent to the period commencing on the date of the said notification to the date of completion of the re-performed Service. In the event that the remaining Warranty Period (after such extension) as at the date of such completion is less than one month, the Warranty Period shall be extended such that the date of expiry of the Warranty Period falls **one (1)** month after the date of such completion of the re-performed Service.

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

9. TITLE AND RISK

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

10. CONTRACTOR'S PERSONNEL

- 10.1 The Contractor shall provide all necessary personnel who are competent and have the adequate skills and required professional certifications (where applicable) for the performance of the Contract.
- 10.2 Upon request by the Agency, the Contractor shall provide the following to the Agency:
 - (a) the names and particulars (in such form as may be required by the Agency) of the Service Personnel.
 - (b) evidence of the competency and professional certifications of the Service Personnel, in such format as may be required by the Agency; and
 - (c) all documents and declarations as the Agency may require for the purposes of security clearance.
- 10.3 The Service Personnel shall at all times be subject to the Agency's approval and the Agency may at any time object to any previously approved Service Personnel. Where the Contractor has proposed such Service Personnel in its Tender Offer, the Agency's acceptance of the Contractor's Tender Offer shall not constitute its approval of such Service Personnel, and the Contractor shall separately seek the Agency's approval of such Service Personnel.
- 10.4 Except as approved by the Agency and subject to such conditions as the Agency may impose, the Contractor shall ensure that no Service Personnel shall commence work on the Contract unless:
 - (a) the Agency has given its prior written approval of such Service Personnel pursuant to Clause 10.3; and

- (b) such Service Personnel has obtained the necessary level of security clearance for the category and nature of the work to be handled by such Service Personnel, as required by the Agency from time to time.
- 10.5 The Agency shall not be required to provide any reason for objecting to any of Service Personnel. If the Agency objects by notice in writing to any Service Personnel, the Contractor shall remove such Service Personnel immediately and furnish a suitable and adequate replacement at no additional expense to the Agency within seven (7) days.
- 10.6 The Contractor undertakes not to change its Service Personnel approved under this Clause 10 without the Agency's consent, which shall not be unreasonably withheld. All new or replacement personnel shall also be subject to the approval of the Agency. The Contractor shall not reduce or vary its Service Personnel if this may adversely affect the performance of the Contract, including the progress or quality of the Services.

11. PAYMENT

- 11.1 The Contractor shall invoice the Agency in accordance with Clause 11.4 after receipt by the Agency of all the Goods and Services.
- 11.2 Subject to compliance with Clause 11.1, the Agency shall pay the Contractor within **thirty (30)** days after the date of the invoice by Interbank GIRO or such other mode of payment as the Agency and the Contractor may agree. The Contractor shall provide the Agency with the relevant bank account details for the purpose of such Interbank GIRO payment within **thirty (30)** days after the date of the Letter of Acceptance.
- 11.3 No payment shall be considered as evidence of the quality of the Goods or Services to which such payments relate or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract.
- 11.4 If requested by the Agency, the Contractor shall submit to the Agency invoices through the electronic invoicing system maintained by the Agency and such other documents through such means and format as may be specified by the Agency for the purposes of making payment.
- 11.5 The Agency shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Agency.
- 11.6 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Agency by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Agency shall reimburse the Contractor for any GST chargeable by the Contractor on the supply by the Contractor of goods or services under the Contract.
- 11.7 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if it is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the regulations made under the GST Act.

12. TAXES, FEES AND DUTIES

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

13. DELAY IN DELIVERY AND PERFORMANCE

- 13.1 If the Contractor fails to deliver any Goods or complete the performance of any Services by the date(s) specified in the Contract, the Agency shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Agency’s right to terminate the Contract pursuant to Clause 20.1) to cancel all or any such Goods or Services from the Contract without compensation and obtain them (the “**Replacement Goods and Services**”) from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity of the Replacement Goods and Services so obtained shall not exceed the quantity stated in the Contract.

14. COMPLIANCE WITH LAW

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

15. COMPLIANCE WITH PROGRESSIVE WAGE MARK REQUIREMENTS

- 15.1 Subject to Clauses 15.2 and 15.3, throughout the duration of the Contract, a Contractor who is PW Mark-Eligible shall:

- (a) maintain a valid Progressive Wage Mark or Progressive Wage Mark Plus issued by the relevant authority (individually and collectively, “PW Mark”);
 - (b) ensure that each Subcontractor who is or becomes PW Mark-Eligible shall obtain and maintain a valid PW Mark throughout the duration of the Contract;
 - (c) notify the Agency of any change to the PW Mark accreditation status of the Contractor or any of its Subcontractors within one month after the change; and
 - (d) replace any Subcontractor who is PW Mark-Eligible that fails to maintain a valid PW Mark throughout the duration of the Contract with another Subcontractor approved in writing by the Agency within one month after the Contractor being notified of such failure. The Contractor shall comply with Clauses 15.1(b) to (d) in respect of any replacement Subcontractor.
- 15.2 If at the time of issuance of the Letter of Acceptance, the Contractor who is PW Mark-Eligible has neither obtained nor applied for the PW Mark, the Agency shall have the right to exempt the Contractor from compliance with Clause 15.1(a) for such period of time as determined by the Agency.
- 15.3 If at the time of issuance of the Letter of Acceptance, the Contractor who is PW Mark-Eligible has applied for but has yet to successfully obtain the PW Mark, the Contractor shall:
- (a) be exempted from compliance with Clause 15.1(a) during the period where the initial application for the PW Mark is being processed by the relevant authority. The Agency may extend the period of exemption by one or more consecutive periods as determined by the Agency; and
 - (b) notify the Agency of the outcome of the Contractor’s application(s) for the PW Mark within one month after the date of receipt of the outcome of the application, and provide the Agency with the e-Certificate as proof of the successful application (if any).
- 15.4 If a Contractor who is not initially PW Mark-Eligible becomes PW Mark-Eligible at any point in time during the period of the Contract, the Contractor shall comply with all the following:
- (a) notify the Agency on its eligibility for the PW Mark within one month after the first day of employment of the relevant Local Resident Worker(s) covered by the Sectoral Progressive Wages and/or Occupational Progressive Wages;
 - (b) apply for a PW Mark by the end of the third month of employment of the relevant Local Resident Worker(s) referred to in Clause 15.4(a);
 - (c) provide the Agency with proof of its application for a PW Mark within one month after the date of submission of the application;
 - (d) notify the Agency of the outcome of the Contractor’s application for PW Mark within one month after the date of receipt of the outcome of the application, and provide the Agency with the e-Certificate as proof of the successful application (if any); and

- (e) maintain a valid PW Mark for the remaining duration of the Contract.
- 15.5 A Contractor who is not PW Mark-Eligible shall comply with all the following:
- (a) ensure that each Subcontractor who is or becomes PW Mark-Eligible shall obtain and maintain a valid PW Mark throughout the duration of the Contract;
 - (b) notify the Agency of any change to any Subcontractor’s PW Mark accreditation status within one (1) month after the change; and
 - (c) replace any Subcontractor who is PW Mark-Eligible that fails to maintain a valid PW Mark throughout the duration of the Contract with another Subcontractor approved in writing by the Agency within one month after the Contractor being notified of such failure. The Contractor shall comply with Clauses 15.5(a) to (c) in respect of any replacement Subcontractor.
- 15.6 The Agency shall have the right to terminate the Contract by giving two months’ prior written notice to the Contractor if the Contractor fails to comply with any of the provisions in Clauses 15.1, 15.3(b), 15.4 or 15.5.
- 15.7 For the purposes of this Clause 15, unless the context otherwise requires:
- “PW Mark-Eligible”** in relation to an employer, means an employer who is eligible to apply for a Progressive Wage Mark or Progressive Wage Mark Plus as the employer employs at least a Local Resident Worker covered by the prevailing Sectoral Progressive Wages or Occupational Progressive Wages.
- “Local Resident Worker”** means an employee who is a Singapore Citizen or Permanent Resident.
- “Sectoral Progressive Wages”** mean the progressive wage structure implemented for specified sectors under the Progressive Wage Model.
- “Occupational Progressive Wages”** mean the progressive wage structure implemented for specified occupations under the Progressive Wage Model.
16. **NOT IN USE**
17. **NOT IN USE**
18. **NOT IN USE**
19. **GIFTS, INDUCEMENTS AND REWARDS**
- 19.1 The Agency shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any Losses resulting from such termination or rescission if:

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

19.2 In this Clause 19:

“Anti-Corruption Laws” means:

- (a) Chapter 9 of the Penal Code 1871;
- (b) the Prevention of Corruption Act 1960; and
- (c) any other applicable law including any foreign law which:
 - (i) prohibits the conferring of any gift, payment or other benefit on any person or any Personnel or adviser of such person; or
 - (ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

“**Contractor Representative**” means any of the following:

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

20. TERMINATION

20.1 If any of the following events occur, the Agency shall have the right (in addition to and without prejudice to all other rights or remedies available, including the right to claim damages) to terminate the Contract with immediate effect by written notice to the Contractor:

- (a) an Event of Default has occurred (not being a default covered by any other sub-clause of Clause 20.1) and:
 - (i) the Contractor fails to remedy the Event of Default within fourteen (14) days from a written notice from the Agency to do so; or
 - (ii) the Event of Default is not capable of being remedied within a reasonable time.

- (b) the Contractor is in breach of any of its obligations under the Contract, and such breach results, or is likely to result, in damage to the reputation of the Agency or the Government of the Republic of Singapore;
- (c) the Contractor is in material breach of any of its obligations under the Contract;
- (d) a breach by the Contractor of Clause 14 (Compliance with Law) or Clause 25 (Sub-contract, Transfer and Assignment); or
- (e) any action is contemplated or any legal proceedings are commenced against the Contractor alleging infringement of IP rights.

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

- (a) the Contractor is unable to pay its debts as and when they fall due;
- (b) where the Contractor is a company, a receiver, liquidator or provisional liquidator is appointed over any undertaking or property of the Contractor or an order is made or a resolution is passed for winding-up or dissolution without winding-up (other than for the purpose of amalgamation or reconstruction) of the Contractor;
- (c) where the Contractor is a partnership, the Contractor is dissolved or has a bankruptcy order made against it;
- (d) where the Contractor is an individual, the Contractor becomes bankrupt or dies;
- (e) legal proceedings alleging insolvency are brought against the Contractor;
- (f) any application is made for the winding-up, bankruptcy or dissolution of the Contractor; or
- (g) the Contractor enters into any composition or arrangements with creditors.

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

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

- (d) in the event of a termination pursuant to Clause 20.1 or 20.2, the Agency shall, at its sole discretion, have the right to engage another person to provide the remaining Goods and Services to be provided under the Contract, and any additional costs and expenses incurred shall be paid by the Contractor, and the Contractor shall give reasonable assistance to the incoming contractors; and
- (e) in the event of a termination pursuant to Clause 20.1(e), the Agency shall have the right to return any Goods which have been provided to the Agency as at the date of termination, and the Contractor shall forthwith refund to the Agency all amounts paid to the Contractor under the Contract in respect of such Goods.

20.4 For the purpose of this Clause 20:

“Event of Default” means any breach (whether material or not) by the Contractor or any of its obligations under the Contract.

20.5 Nothing in this Clause 20 shall be deemed to prejudice any other rights or remedies available to the Agency against the Contractor for any breach of the Contractor’s obligations whether under the Contract or at law or in equity.

21. FORCE MAJEURE

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

21.2 If the effect of any Force Majeure Event continues for a period exceeding two (2) months, the Agency may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

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

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

22. CORRESPONDENCE

22.1 Any notice, request, waiver, consent or approval (**“Notice”**) shall be in writing and shall be deemed to have been duly given when it is delivered by hand or by prepaid registered post or electronic mail to the Party as follows:

- (a) in the case of the Contractor, the address and electronic mail address set out in the Tender Offer; and
- (b) in the case of the Agency, the following address and electronic mail address:

Address: 11 Biopolis Way, Helios Block, #06-05/08, Singapore 138667

Electronic mail address: Martin_TAY@nea.gov.sg and Jane_Griffiths@nea.gov.sg

- 22.2 Either Party may change its address, and electronic mail address referred to above by giving the other Party written notice of the change.
- 22.3 A Notice sent by electronic mail shall be deemed not to have been received if the sender receives, within 24 hours of sending such electronic mail, a notification that such electronic mail has not been successfully delivered.

23. LANGUAGE

- 23.1 The Contractor shall ensure that all data, documents, descriptions, diagrams, books, catalogues, instructions, markings for the Goods and correspondence shall be written in readily comprehensible English language.
- 23.2 The Contractor shall ensure that all Service Personnel of the Contractor and any Subcontractor shall be proficient in both written and spoken English for the purpose of performing the Contractor's obligations under the Contract.

24. CONSORTIUM

- 24.1 As used in the Contract, "**Consortium**" means an unincorporated joint venture through the medium of a consortium or a partnership.
- 24.2 Where the Contractor is a Consortium, the following shall apply:

Joint and Several Responsibility

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

Addition of members to Consortium

- 24.2.2 Any introduction of, or changes to, Consortium membership must be approved in writing by the Agency.
- 24.2.3 Should additional member(s) be added to the Consortium at any time with the approval of the Agency pursuant to Clause 24.2.2, he or they shall be deemed to be included in the expression "the Contractor".

Withdrawal from Consortium

24.2.4 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or ceases to exist in accordance with the laws of the country of incorporation:

- (a) the Contract shall continue and not be terminated, and
- (b) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

25. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

25.1 The Contractor shall not, without the prior written consent of the Agency, sub-contract its obligations, or transfer or assign the benefit of the whole or any part of the Contract.

25.2 The Contractor shall be responsible for the acts, defaults, negligence and omissions of its Subcontractors and their Personnel.

26. DEFAULT INTEREST

26.1 If the Contractor defaults in the payment when due of any sum payable under the Contract its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment). The interest shall be calculated on a daily basis at a rate per annum of 8.1%.

27. REMEDIES

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

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

28. VARIATION

28.1 No variation of the Contract shall be of any force unless agreed upon in writing and signed by the authorised signatories of both Parties. A variation made in accordance with this Clause 28.1 shall not require consideration for the variation to be binding and enforceable.

29. WAIVER

29.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy (“**Remedy**”), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party,

(a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.

- 29.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.
- 29.3 Any waiver granted under the Contract must be in writing and may be given subject to conditions. Such waiver under the Contract shall be effective only in the instance and for the purpose for which it is given.

30. SET-OFF

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

31. ENTIRE AND WHOLE AGREEMENT

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

32. SEVERABILITY

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

33. RIGHTS OF THIRD PARTIES

- 33.1 A person who is not a party to the Contract shall have no right under the *Contracts (Rights of Third Parties) Act 2001* to enforce any term of the Contract.

34. SURVIVING PROVISIONS

- 34.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 19 (Gifts, Inducements and Rewards), 20.3 and 20.5 (Termination), 22 (Correspondence), 26 (Default Interest), 27 (Remedies), 28 (Variation), 29 (Waiver), 30 (Set-off), 31 (Entire and Whole Agreement), 32 (Severability), 33 (Rights of Third Parties), 34 (Surviving Provisions), 35 (Governing Law), 36 (Escalation of Disputes), 37 (Mediation), 38 (Dispute Resolution) and 39 (Order of Precedence), shall survive the termination or expiry of the Contract.

35. GOVERNING LAW

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

36. ESCALATION OF DISPUTES

- 36.1 In the event of any dispute, claim, question or disagreement arising out of or relating to the Contract or its subject matter or formation (a “**Dispute**”), no Party shall proceed to mediation or any form of dispute resolution unless the Parties have referred the Dispute to a senior officer of each Party (each, an “**Officer**”) who shall negotiate in good faith with a view to resolution of such Dispute.
- 36.2 If such Dispute is not resolved by agreement between the Officers within fourteen (14) days after the date of referral of the Dispute to the Officers, any Party may proceed to:
- (a) if the Dispute is within the jurisdiction of the Small Claims Tribunals, refer the Dispute to the Small Claims Tribunals; or
 - (b) give the other Party written notice for mediation as contemplated in Clause 37 (Mediation).

37. MEDIATION

- 37.1 Notwithstanding anything in the Contract, in the event of any Dispute and subject to Clauses 36, 37.3 and 37.4, no Party shall proceed to any form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of the Singapore Mediation Centre. The Parties shall be deemed to have made reasonable efforts in accordance with this Clause 37.1 if they have gone through at least one mediation session at the Singapore Mediation Centre.
- 37.2 Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process in accordance with this Clause 37.
- 37.3 The mediation session is to commence no later than **ninety (90)** days from the date of the written notice of mediation failing which either Party may proceed to dispute resolution.
- 37.4 Clause 37.1 shall not apply to a Dispute referred to the Small Claims Tribunals, provided that:
- 37.4.1 the Parties attend a consultation session before a Registrar (where the Parties will be given an opportunity to resolve the Dispute amicably) after a claim is filed with the Small Claims Tribunals; and
 - 37.4.2 the proceedings relating to such Dispute are not:
 - (i) discontinued by the Registrar pursuant to Section 17(3) of the Small Claims Tribunals Act 1984; or

- (ii) transferred out of the Small Claims Tribunals before or pursuant to such consultation session.

37.5 Failure to comply with Clause 37.1 or 37.2 shall be deemed to be a breach of the Contract.

38. DISPUTE RESOLUTION

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

39. ORDER OF PRECEDENCE

39.1 In the event and to the extent only of any conflict between any provisions of the Contract, the conflict shall be resolved, subject to Clause 39.2, in accordance with the following order of precedence:

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

39.2 Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Agency and the Contractor which has been agreed to by the Agency in writing as amplifying or modifying the Contractor's Tender Offer) contains provisions which are more favourable to the Agency in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail.

39.3 For the avoidance of doubt, this Clause 39 shall form an integral part of the Conditions of Contract referred to in Clause 39.1(a).

40. OPTION TO PURCHASE

40.1 The Contractor grants the Agency in respect of each item specified in Part 4: Price Schedule (each, an "**Option Item**"), an option to purchase such Option Item (each, an "**Option to Purchase**").

- 40.2 Each Option to Purchase shall be exercisable by written notice given by the Agency to the Contractor at least one (1) month prior to the provision of the Goods and Services by the Contractor.
- 40.3 If the Agency exercises an Option to Purchase, references to “**Goods**” or “**Services**” in the Contract shall include the Option Item in respect of which such Option to Purchase was exercised.
- 40.4 Each Option to Purchase may be exercised one or more times, as required by the Agency, provided always that the aggregate number of Option Items purchased pursuant to this Clause 40 shall not exceed the quantity specified in Part 4: Price Schedule.

41. LOSSES

- 41.1 The Contractor shall indemnify and keep indemnified the Agency against any and all Losses sustained, incurred, paid by or suffered by the Agency arising out of or in connection with any act or omission on the part of the Contractor, Subcontractor or any of their respective Personnel (the “**Contractor Parties**”) unless the Contractor can show that:
- (a) it is not due to the Contractor’s breach of the Contract; and
 - (b) it is not due to the negligent, unlawful or wrongful action or omission, fraud, bad faith, wilful misconduct or breach of any duty of any of the Contractor Parties.
- 41.2 If any claim is commenced against the Agency that is, in the opinion of the Agency, covered by the indemnity in Clause 41.1, notice of the claim shall be given to the Contractor as soon as practicable.
- 41.3 Upon receipt of such notice, by the Agency, the Contractor shall, unless otherwise directed by the Agency, immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Agency to handle and defend the same (including for and on behalf of the Agency), at the Contractor’s sole cost and expense.
- 41.4 In the event the Contractor takes control of the defence and investigation of the claim, the Agency shall co-operate, at the cost of the Contractor, in all reasonable respects with the Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this shall not limit the Agency’s right to participate, at the Contractor’s cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Agency.
- 41.5 Notwithstanding anything to the contrary in the Contract, the Agency shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Agency, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

41.6 This Clause 41 shall survive the termination or expiry of the Contract.

42. LIMITATION OF LIABILITY

42.1 The aggregate liability of the Contractor to the Agency in respect of all breaches under the Contract shall not exceed the Contract Price.

42.2 The aggregate liability of the Agency to the Contractor in respect of all breaches under the Contract shall not exceed the Contract Price.

42.3 None of the limitations contained in this Clause 42 shall apply to any claim:

- (a) relating to any death or personal injury;
- (b) relating to any patent, copyright or other intellectual property right infringement;
- (c) which arises or is increased as a consequence of fraud, fraudulent misrepresentation, wilful misconduct or gross negligence by the Contractor, its Subcontractors or any of their respective Personnel;
- (d) under Clause 43 (Intellectual Property Indemnification);
- (e) under any indemnity provided under the Contract (other than a claim relating to the Contractor's breach of the Contract).

43. INTELLECTUAL PROPERTY INDEMNIFICATION

43.1 The Contractor:

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

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

- (a) any breach of Clause 43.1; or
- (b) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract.

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

- 43.4 The Agency shall, if requested but at the Contractor's expense, provide the Contractor with reasonable assistance in conducting the defence of such claim.
- 43.5 If any of the Goods or Services supplied by the Contractor or IP used or introduced by the Contractor in the course of performing its obligations under the Contract is alleged to infringe the rights or interests of third parties in IP, the Agency may (in addition to and without prejudice to all other rights or remedies available), at the option of the Agency, require the Contractor, at the Contractor's own expense, to:
- (a) procure for the Agency the right to continue using the same;
 - (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under the Contract (in which event the Contractor shall compensate the Agency for any Losses sustained or incurred by the Agency in connection with such replacement or modification); or
 - (c) pay the Agency a sum equivalent to the purchase price of items functionally equivalent to the infringing items upon the return of the infringing items to the Contractor.
- 43.6 All royalties and fees claimable by or payable to any person for or in connection with any IP used or required to be used in connection with the performance of the Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the Agency.
- 43.7 This Clause 43 shall survive the termination or expiry of the Contract.

44. COMMENCEMENT AND DURATION OF CONTRACT

- 44.1 The Contract shall commence on the date of commencement stated in the Letter of Acceptance or any other formal agreement executed between the Parties, and shall remain in force for a period of two (2) years (the "**Initial Contract Period**").
- 44.2 The Agency shall have the option to extend the Initial Contract Period by one or more consecutive periods, as required by the Agency provided always that any period of extension shall not be less than one (1) year and the cumulative period of extension shall not exceed two (2) years in total, on the same terms and conditions contained in the Contract and on any other terms that may be mutually agreed in writing between the Parties. The Agency shall exercise such option by giving at least one (1) month's written notice to the Contractor.

45. SUPPLY OF GOODS AND SERVICES AS AND WHEN REQUIRED BY THE AGENCY

- 45.1 The Agency may engage the Contractor for the supply of Goods or Services from time to time by issuing a Purchase Order.
- 45.2 All Purchase Orders shall state the Goods or Services to be supplied and shall also state the aggregate Tender Price of all Goods and Services specified in such Purchase Order.

- 45.3 Where the Contractor receives, during the Contract Period, any Purchase Order for Goods or Services, the Contractor shall supply the Goods and Services specified in the Purchase Order in accordance with the Contract.
- 45.4 The Agency shall be under no obligation to purchase any Goods or Services except to the extent of a Purchase Order for Goods or Services issued by the Agency.

46. SAMPLES TESTING

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

47. MINIMUM QUANTITY

- 47.1 Any statement of the estimated quantities of Goods required during the period of the Contract are approximate only and merely for the information of the Contractor. The Agency shall be under no obligation to purchase any such Goods.

48. OBSOLETE PRODUCT

- 48.1 The Contractor shall promptly notify the Agency in writing at least six (6) months prior to any of the Goods becoming obsolete (each, an “**Obsolete Product**”), and shall propose an equivalent or improved model to the Agency (the “**Equivalent Product**”) at the same or lower price than that payable for the Obsolete Product for the Agency’s approval.
- 48.2 If the Agency grants its approval in writing that the proposed Equivalent Product shall replace the Obsolete Product, the Obsolete Product shall be deemed to be replaced by such approved Equivalent Product in the Contract, at the approved prices with effect from the date of such written approval. For the avoidance of doubt, if the Agency does not grant its approval in writing, the Contractor is obliged to continue providing such Obsolete Product until the Agency grants its approval for an equivalent or improved model to replace such Obsolete Product.