

AGREEMENT AND UNDERTAKING AS TO CONTINUING NON-DISCLOSURE REGARDING TENDERS TO BE PUBLISHED BY THE LAND TRANSPORT AUTHORITY OF SINGAPORE

Date:

Reference No.	
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Whereas,

_____ Company Name of Tenderer / UEN.

Of

_____ Company Registered Address

(the “**Prospective Tenderer**”)

has indicated an interest in responding to any tenders to be published and/or announced (if at all) by the Land Transport Authority of Singapore, a statutory board incorporated under the Land Transport Authority of Singapore Act (Cap.158A) (“**LTA**”) during the period of **two (2) calendar years** from 15 August 2023 (i.e. until 14 August 2025) (the “**NDA Period**”), and the Prospective Tenderer may therefore require LTA to provide to the Prospective Tenderer the Tender Documents (as defined at clause 2 of the Schedule hereto) for the purpose of evaluating and preparing for such prospective tenders;

IN CONSIDERATION OF LTA agreeing to allow the Prospective Tenderer access to such Tender Documents relating to such tenders as may be published from time to time at the Prospective Tenderer’s request, the Prospective Tenderer hereby agrees and undertakes to LTA to be bound by the terms and conditions annexed in the Schedule hereto.

Signed for and on behalf of:-)

_____)
Company Name of Tenderer / UEN No.)

_____)
Name of Authorised Signatory / NRIC or Passport No.²)

_____)
Designation of Authorised Signatory)

Signature of
Authorised Signatory¹

(For Official Use Only)

ACKNOWLEDGMENT AND ACCEPTANCE BY LTA

After the Prospective Tenderer’s successful transmission of the Non-Disclosure Agreement and Undertaking dated _____ [insert date of NDA] (“**NDA**”) to the Land Transport Authority of Singapore (“**LTA**”) by electronic means that are acceptable by LTA is received, LTA shall send an electronic acknowledgement of the NDA to the Prospective Tenderer (the “**Electronic Acknowledgement**”).

The Electronic Acknowledgement shall be acceptance and confirmation that the above-named Prospective Tenderer and the LTA are bound by the terms and conditions annexed in the Schedule hereto.

¹ Authorised Signatory to sign on ALL pages of the Term NDA.

² Please only indicate the last 4 alphanumeric of NRIC or Passport Number.

AGREEMENT AND UNDERTAKING AS TO CONTINUING NON-DISCLOSURE REGARDING TENDERS TO BE PUBLISHED BY THE LAND TRANSPORT AUTHORITY OF SINGAPORE

SCHEDULE: TERMS AND CONDITIONS

1. In the event the LTA publishes and/or announces any tender (each a “**Tender**”) during the NDA Period and the Tender documents relating to the Tender are released to the Prospective Tenderer at its request, the Prospective Tenderer agrees to keep, and procure that its Representatives (as defined below) keep, confidential and not disclose or reveal to any person:
- (a) the Tender Documents;
 - (b) any information relating to any discussions between the Prospective Tenderer and LTA or their respective Representatives in connection with the Tender (including, without limitation, the status of any such discussions); and
 - (c) all analyses, compilations, studies or other documents (and copies thereof) prepared by the Prospective Tenderer or its Representatives on the basis of or derived from the Tender Documents (the “**Derivative Documents**”)

except,

- (a) as required by Law (as defined below); and
- (b) to those of the Prospective Tenderer’s Representatives who (i) are directly concerned with and need to know the Tender Documents for the purpose of assisting the Prospective Tenderer in evaluating and preparing for the Tender; (ii) have (prior to such disclosure) agreed in writing to be bound by this Agreement and Undertaking as if they were party to it; and (iii) whom the Prospective Tenderer shall cause to observe the terms of this Agreement and Undertaking.

The Prospective Tenderer further agrees not to use any Tender Documents for any purpose other than in connection with its evaluation and preparation of Tender pursuant to which the relevant Tender Documents had been provided. The Prospective Tenderer acknowledges that it shall be responsible for any breach of this Agreement and Undertaking by it or its Representatives (notwithstanding that such Representatives may, at any time, cease to be its Representatives and any action by its Representatives shall be treated as actions of the Prospective Tenderer for the purposes of this Agreement and Undertaking).

2. “**Tender Documents**” means all information relating, directly or indirectly, to a Tender which have been announced and/or published by the LTA and any documents relating, directly or indirectly, to such Tender, furnished by LTA or its Representatives, whether furnished before or after the date hereof, whether oral or written, and regardless of the manner or form (including, without limitation, electronic form) in which it is furnished.
3. Tender Documents does not include information and/or documents which:
- (a) was in the public domain at the time of disclosure to the Prospective Tenderer or its Representatives;
 - (b) becomes generally available to the public after disclosure to the Prospective Tenderer, other than as a result of a disclosure by the Prospective Tenderer or its Representatives in violation of this Agreement and Undertaking or other obligation of confidentiality; or

- (c) becomes available to the Prospective Tenderer on a non-confidential basis from any person (other than LTA or its Representatives) who is not prohibited from disclosing such information to the Prospective Tenderer by a legal, contractual or fiduciary obligation owed to LTA or its Representatives.
4. The Prospective Tenderer shall keep a record of the Tender Documents which have been provided to the Prospective Tenderer or its Representatives and, so far as is reasonably possible, of the location of the Tender Documents and the identities of any of its Representatives in possession of the Tender Documents and any Derivative Documents.
5. The Prospective Tenderer acknowledges that the Tender Documents and any copies thereof shall remain the property of LTA and its disclosure to the Prospective Tenderer shall not confer any rights over the Tender Documents whatsoever beyond what is contained in this Agreement and Undertaking or the Tender Documents.
6. The Prospective Tenderer shall, within seven (7) days from:
- (a) The earlier of either:
- (i) the receipt of a written request from LTA; or
- (ii) the termination or expiry of this Agreement and Undertaking; or
- (b) the closing date of the particular Tender, in the event Tender documents relating to a particular Tender were released to the Prospective Tenderer at its request during the applicable NDA Period in the case where the Prospective Tenderer does not submit a bid or proposal for the particular Tender; or
- (c) the date that LTA awards the particular Tender in the case where the Prospective Tenderer has submitted a bid or proposal for the particular Tender,
- return or securely destroy all Tender Documents and Derivative Documents (an copies thereof) in the possession, custody, or control of the Prospective Tenderer or its Representatives (including the deletion and removal from any database or document retrieval system into which the documents may have been placed).
- For the avoidance of doubt, this clause 6 is intended to survive any termination of this Agreement and Undertaking by either LTA or the Prospective Tenderer.
7. In this Agreement and Undertaking:
- (a) “**Representatives**” means, in respect of a party, the related corporations and associated companies of such party and their respective directors, officers, employees, advisors (including, without limitation, attorneys, accountants, consultants and financial advisors), sources of financing, and agents of such party.
- (b) “**person**” shall include any company, corporation, body corporate, limited liability partnership, limited partnership, partnership, business trust or unincorporated association (whether or not having separate legal personality).
- (c) “**Law**” means any applicable law, regulation or valid legal process.
- (d) “**Agreement and Undertaking**” means this legally-binding agreement and undertaking given by the Prospective Tenderer to LTA.
8. In the event that the Prospective Tenderer or any of its Representatives are requested pursuant to, or required by, Law to disclose any Tender Documents, Derivative Documents or any other information concerning a Tender published and/or announced by the LTA, the Prospective

Tenderer agrees that it shall provide LTA with notice of such request or requirement within two (2) working days of its receipt of such request or requirement in order to enable LTA to seek an appropriate protective order or other remedy, and the Prospective Tenderer shall provide such cooperation as LTA shall reasonably request in seeking such protective order or other remedy. Further, the Prospective Tenderer agree to consult with LTA in respect of any steps taken by the Prospective Tenderer to resist or narrow the scope of such request or legal process, or to waive compliance, in whole or in part, with this Agreement and Undertaking in light of the said request or requirement. In the event that such protective order or other remedy is not obtained, or LTA waives compliance, in whole or in part, with this Agreement and Undertaking, the Prospective Tenderer or its Representatives shall (a) disclose only that portion of the Tender Documents, Derivative Documents or other information concerning the Tender which is the subject of the request or requirement that the Prospective Tenderer has advised in writing by independent counsel (to be engaged at its own costs) is legally required to be disclosed (b) use its best efforts to ensure that any information so disclosed will be accorded confidential treatment, and (c) continue to protect and ensure the confidentiality of all such information in accordance with this Agreement and Undertaking under any other circumstances.

9. The Prospective Tenderer acknowledges that neither LTA nor its Representatives makes any express or implied representation or warranty as to the completeness and accuracy of all or any part of the Tender Documents, and the Prospective Tenderer agrees that none of such persons shall have any liability to the Prospective Tenderer or any of its Representatives relating to or arising from its or their use of any Tender Documents or for any errors therein or omissions therefrom. The Prospective Tenderer agrees that it is solely responsible for making its own assessment and decision on the Tender Documents and the Prospective Tenderer shall, in responding to Tenders published and/or announced by the LTA (whether by way of making a submissions and/or entering any agreement), acknowledge that the Prospective Tenderer has not relied on or been induced to make such submission or enter into such agreements by any representation or warranty of LTA or its Representatives.
10. The Prospective Tenderer acknowledges the confidential nature of the Tender Documents and that damage could result to LTA if the Prospective Tenderer or its Representatives breaches its or their obligations under this Agreement and Undertaking. It is understood and agreed that monetary damages would be an insufficient remedy for any actual or threatened breach of this Agreement and Undertaking by the Prospective Tenderer or its Representatives and that without prejudice to the rights and remedies otherwise available thereto, LTA shall be entitled to equitable relief by way of injunction, specific performance or otherwise, without proof of actual damages, if the Prospective Tenderer or any of its Representatives breach or threaten to breach any of this Agreement and Undertaking. The Prospective Tenderer further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.
11. Both LTA and the Prospective Tenderer may terminate this Agreement and Undertaking at any time and for any reason whatsoever by given seven (7) calendar days' notice in writing. The Prospective Tenderer expressly represents that any such termination shall not give rise to any claim for damages on the part of the Prospective Tenderer as against the LTA.

Notwithstanding the aforesaid, the Prospective Tenderer agrees to be bound by the obligations under this Agreement and Undertaking beyond the NDA Period (or any earlier termination of this Agreement and Undertaking) as long as the relevant Tender had been published and the Tender Documents relating to that Tender are released to the Prospective Tenderer at its request during the applicable NDA Period.

12. It is further understood and agreed that no failure or delay by LTA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
13. This Agreement and Undertaking shall be governed by and construed in accordance with the laws of Singapore. The Prospective Tenderer hereby irrevocably and unconditionally consents to submit to the non-exclusive jurisdiction of the courts of Singapore for any actions, suits or proceedings arising out of or relating to this Agreement and Undertaking.
14. The Prospective Tenderer shall indemnify the LTA from and against all costs, expenses, losses or damages (including, without limitation to, legal expenses) which may arise directly or indirectly from any breach by the Prospective Tenderer or its Representatives of its or their obligations under this Agreement and Undertaking. If requested by LTA, the Prospective Tenderer shall provide written undertakings executed by its Representatives as to confidentiality on terms and in a form approved by LTA.
15. If any provision hereof is invalid, illegal or incapable of being enforced under any law or public policy, all other provisions hereof shall nevertheless remain in full force and effect. The parties agree that the terms of this Agreement and Undertaking are reasonable in all the circumstances. It is recognised, however, that if, for any reason, any provision hereof is determined to be void or otherwise unenforceable for going beyond what is reasonable in all the circumstances for the protection of LTA, but would be valid if the extent, duration, scope or otherwise were amended, then the parties contemplate that any court or tribunal making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement and Undertaking.
16. LTA may by notice in writing to the Prospective Tenderer amend and/or vary these terms and conditions. The Prospective Tenderer is deemed to have accepted such amendment and/or variation unless it rejects the same in writing within seven (7) calendar days of receipt of such notice. A rejection of any amendment and/or variation shall amount to an immediate termination of this Agreement and/or Undertaking.
17. All notices issued under or pursuant to this Agreement and Undertaking must be in writing and shall be deemed to be received on the date such notice (a) if delivered personally, at the time of delivery; (b) if sent by prepaid registered post, three (3) business days after posting; and (c) if sent through electronic mail or other means of electronic communications, within one (1) business day following the date of delivery or sending, provided that no notice of delivery failure is received by the sender, at the time of dispatch when a complete and legible copy is received by the addressee.
18. Unless expressly provided to the contrary, no person, other than the Prospective Tenderer and LTA, shall have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce or enjoy the benefit of any term of this Agreement.
19. Any assignment of this Agreement by the Prospective Tenderer without the prior written consent of LTA shall be void.