

**TENDER NO.: TGC-IT-03-25-83**

**CONDITIONS OF CONTRACT FOR SERVICES**

**1. DEFINITIONS**

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

(a) **“Authority”** means The Grassroots’ Club.

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(c) **“Contract”** means the resulting contract between the Authority and the Contractor for the provision of the Services as a result of the Authority’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:

(i) the Covering Letter;

(ii) the Instructions to Tenderers;

(iii) the Contractor's Tender Offer;

(iv) these Conditions of Contract;

(v) the Requirement Specifications;

(vi) the Letter of Acceptance;

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(viii) any correspondence exchanged between the Authority and the Contractor which is agreed to by the Authority in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and

(ix) any formal agreement executed between the Parties,

including all schedules and annexes to such documents as relevant.

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(e) **“Contract Price”** means the aggregate Tender Price for Services required under the Contract.

(f) **“Contractor”** means a successful Tenderer whose Tender Offer has been accepted by the Authority.

(g) **“Control”** means, with respect to a person (i) the right to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares of the controlled person or

(ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person.

(h) **“data”** means any representation of information or of concepts regardless of the medium of storage, and includes any personal data.

(i) **“Factor”** means any person:

(i) listed in the “List of Factoring Companies” at the Vendors@Gov website; and

(ii) has an approved vendor record in the Vendors@Gov system or other electronic invoicing system maintained by the Authority.

(j) **“GST”** means goods and services tax charged under the GST Act.

(k) **“GST Act”** means the Goods and Services Tax Act (Cap. 117A).

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(m) **“Invitation to Tender”** means the invitation to participate in the tender for the supply of Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Guidelines for Tender, Evaluation Criteria and any other documents and forms enclosed.

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(o) **“Letter of Acceptance”** means the letter issued by the Authority accepting the Contractor’s Tender Offer.

(p) **“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.

(q) **“Parties”** means the Authority and the Contractor, and “Party” means any one of them.

(r) **“Payee”** in relation to a Receivable, means the person specified in the Contractor’s invoice to the Authority as the payee of such Receivable.

(s) **“personal data”** shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012 (No. 26 of 2012).

(t) **“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.

(u) **“Price Schedule”** means the schedule of prices for Services proposed in the Contractor’s Tender Offer and accepted in the Letter of Acceptance.

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(w) **“Receivables”** means the amounts payable by the Authority to the Contractor under the Contract, subject to the Authority’s rights against the Contractor under the Contract, at law or in equity, including the Authority’s rights of deduction and set-off.

(x) **“Requirement Specifications”** means the specifications set out in 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.

(y) **“S\$”, “\$” or “SGD”** means the lawful currency of Singapore.

(z) **“Service Personnel”** means all Personnel (including Personnel of the Subcontractors) provided by or to be provided by the Contractor to perform the Contract.

(aa) **“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.

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(cc) **“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.

(dd) **“Tender Offer”** means the offer submitted by the Tenderer to provide Services to the Authority in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Authority as modifying such offer submitted by the Tenderer.

(ee) **“Tender Price”** in respect of any of the Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Services under the Contract.

(ff) **“Tenderer”** means a person or its permitted assignees and successors offering to provide the Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.

(gg) **“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 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 Services in accordance with the Contract.

#### **4. DELIVERY AND PERFORMANCE**

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

#### **5. CARE AND DILIGENCE**

5.1 The Contractor shall with due care and diligence carry out its obligations to the Authority under the Contract.

5.2 The Contractor acknowledges and accepts that the Authority relies on the skill and judgment of the Contractor and also upon the accuracy of all representations and statements made and advice given by the Contractor in the provision of the Services under the Contract.

#### **6. REJECTED SERVICES**

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

6.2 Where any Services are rejected by the Authority pursuant to Clause 6.1 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to perform such Services.

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## **9. CONTRACTOR'S PERSONNEL**

9.1 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.

9.2 Upon request by the Authority, the Contractor shall provide the following to the Authority:

- (a) the names and particulars (in such form as may be required by the Authority) 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 Authority; and (c) all documents and declarations as the Authority may require for the purposes of security clearance.

9.3 The Service Personnel shall at all times be subject to the Authority's approval, and the Authority may at any time object to any previously approved Service Personnel. Where the Contractor has proposed such Service Personnel in its Tender Offer, the Authority's acceptance of the Contractor's Tender Offer shall not constitute its approval of such Service Personnel, and the Contractor shall separately seek the Authority's approval of such Service Personnel before deployment.

9.4 Except as approved by the Authority and subject to such conditions as the Authority may impose, the Contractor shall ensure that no Service Personnel shall commence work on the Contract unless:

- (a) the Authority has given its prior written approval of such Service Personnel pursuant to Clause 9.3; 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 Authority from time to time.

9.5 The Authority shall not be required to provide any reasons for objecting to any of the Contractor's Service Personnel. If the Authority 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 Authority within fourteen (14) days.

9.6 The Contractor undertakes not to change its Service Personnel approved under this Clause 9 without the Authority's consent, which shall not be unreasonably withheld. All new or replacement Service Personnel shall also be subject to the approval of the Authority. The

Contractor shall not reduce or vary the quality of its personnel if this may adversely affect the performance of the Contract, including the progress or quality of the Services. 6

## **10. PAYMENT**

10.1 Upon the achievement of each payment milestone set out in the Requirement Specifications, the Contractor shall invoice the Authority for the amount set out against such payment milestone in the Requirement Specifications in accordance with Clause 10.4.

10.2 Subject to compliance with Clause 10.1, the Authority 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 Authority and the Contractor may agree. The Contractor shall provide the Authority with the relevant bank account details for the purpose of such Interbank GIRO payment within thirty (30) days after the date of the Letter of Acceptance.

10.3 No payment shall be considered as evidence of the quality of the Services to which such payments relate or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract.

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10.5 The Authority shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Authority.

10.6 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Authority by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Authority shall reimburse the Contractor for any GST chargeable by the Contractor on the supply by the Contractor of goods or services under the Contract.

10.7 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the regulations made under the GST Act.

10.8 The Authority is agreeable to the Contractor assigning its Receivables to any Factor, subject to the following:

(a) the Contractor warrants and represents to the Authority that it has not previously assigned such Receivable to any person other than the Payee of such Receivable;

- (b) the Contractor shall provide to the Authority any information in relation to the Payee and the factoring arrangement as the Authority may from time to time reasonably require;
- (c) such assignment shall be without prejudice to the Authority's rights against the Contractor under the Contract, at law or in equity, including the Authority's rights of deduction and set-off;
- (d) the Contractor shall ensure that:
  - (i) each of its invoices for assigned Receivables (each, a "Factored Invoice") indicate a Factor as the Payee;
  - (ii) it shall not issue any Factored Invoice indicating a person that is not a Factor as the Payee;
  - (iii) where any Factored Invoice is in respect of goods or services on which GST is chargeable by the Contractor, the Payee is indicated as the payee of the entire amount (including GST) of such Factored Invoice, unless the Authority agrees otherwise in writing; and
  - (iv) where payment of the Receivable to the Factor is subject to withholding tax under Singapore law, the Contractor shall give prior written notice of this to the Authority and comply with all reasonable invoicing directions of the Authority in connection with such withholding;
- (e) the Contractor acknowledges and agrees that:
  - (i) the Authority shall not be required to verify whether: (A) payment of any Factored Invoice to the Payee is in accordance with a valid factoring arrangement; or (B) the Contractor has complied with Clause 0;
  - (ii) payment made by the Authority to the Payee in respect of any Factored Invoice shall constitute a full discharge of the Authority's payment obligations to the Contractor in respect of such Factored Invoice;
  - (iii) where a Factored Invoice includes GST, payment made by the Authority to the Payee in respect of such GST shall constitute a full discharge of the Authority's payment obligations to the Contractor in respect of such GST;
  - (iv) if the Contractor issues a Factored Invoice which indicates a Payee that is not a Factor, the Authority shall have the right to reject such invoice and require the Contractor to reissue such invoice indicating either the Contractor or a Factor as the Payee; and
  - (v) in the event withholding taxes are imposed by the tax authorities on any payment made pursuant to a Factored Invoice and such withholding taxes have not already been withheld by the Authority by way of deduction without any obligation to gross up, the Contractor shall indemnify and hold the Authority harmless from and against all such withholding taxes and



any other Losses incurred or suffered by the Authority arising in connection with such withholding tax;

(f) the Contractor shall ensure that all its invoices that are not factored do not indicate a Factor as the Payee. If the Contractor indicates the Factor as the Payee in any invoice that is not factored, payment made by the Authority to the Payee in respect of such invoice shall constitute a full discharge of the Authority's payment obligations to the Contractor in respect of such invoice; and

(g) the Authority shall have the right at any time (whether before or after receiving a Factored Invoice) to withdraw its consent to any factoring arrangement by giving notice to the Contractor and the Factor, and upon such withdrawal of consent:

(i) the Authority shall be entitled to pay all Receivables to the Contractor without being liable to the Contractor or the Factor for any Losses; and

(ii) the Contractor shall reissue any Factored Invoice if required by the Authority.

## **11. TAXES, FEES AND DUTIES**

11.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable by the Contractor or its employees in carrying out its obligations under the Contract.

11.2 If the Authority receives a request from the tax authorities or otherwise decides to pay on behalf of the Contractor or the Contractor's employees, or to withhold payments from the Contractor in order that the Authority may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments ("Taxes"), the Contractor hereby agrees that the Authority may deduct such Taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

11.3 For the avoidance of doubt, in the event that withholding taxes are imposed by the tax authorities on any payments due under the Contract, the Contractor shall bear all such withholding taxes and the Authority 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.

## **12. DELAY IN PERFORMANCE**

12.1 If the Contractor fails to complete the performance of any Services by the date(s) specified in the Contract, the Authority shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Authority's right to terminate the Contract pursuant to Clause 18.1) to do one or more of the following:

(a) cancel all or any such Services from the Contract without compensation and obtain them (the "Replacement Services") from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity of the Replacement Services so obtained shall not exceed the quantity stated in the Contract;

(b) require the Contractor to pay as liquidated damages, a sum calculated at the rate of one-tenth per cent (0.1%) of the Contract Price per day (including Sundays and public holidays), for every day of delay until earlier of:

- (i) the date such Services are performed or cancelled pursuant to Clause 12.1(a); or
- (ii) the date the Contract is terminated, [subject to a cap of [ten per cent (10%) of the Contract Price].

12.2 The Authority shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under this Clause 12.

## **13. COMPLIANCE WITH LAW**

13.1 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.

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

## **14. COMPLIANCE WITH PROGRESSIVE WAGE MARK REQUIREMENTS**

14.1 Subject to Clauses 14.2 and 14.3, 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 Authority 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 Authority within one month after the Contractor being notified of such failure. The Contractor shall comply with Clauses 14.1(b) to (d) in respect of any replacement Subcontractor.

14.2 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 Authority shall have the right to exempt the Contractor from compliance with Clause 14.1(a) for such period of time as determined by the Authority.

14.3 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 14.1(a) during the period where the initial application for the PW Mark is being processed by the relevant authority. The Authority may extend the period of exemption by one or more consecutive periods as determined by the Authority; and 10

(b) notify the Authority 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 Authority with the e-Certificate as proof of the successful application (if any).

14.4 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 Authority 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 14.4(a);

(c) provide the Authority with proof of its application for a PW Mark within one month after the date of submission of the application;

(d) notify the Authority 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 Authority 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.

14.5 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 Authority of any change to any Subcontractor's PW Mark accreditation status within one 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 Authority within one month after the Contractor being notified of such failure. The Contractor shall comply with Clauses 14.5(a) to (c) in respect of any replacement Subcontractor.

14.6 The Authority 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 14.1, 14.4 or 14.5.

14.7 For the purposes of this Clause 14, 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.

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## **17. GIFTS, INDUCEMENTS AND REWARDS**

17.1 The Authority shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any 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 or disfavour to any person in relation to any contract with the Authority; or

(b) any Contractor Representative has engaged in any activity or conduct that has resulted or will result in a violation of any Anti-Corruption Laws.

17.2 In this Clause 17:

**“Anti-Corruption Laws”** means:

(a) Chapter IX of the Penal Code (Cap. 224); (b) the Prevention of Corruption Act (Cap. 241); and (c) any other applicable law including any foreign law which:

(i) prohibits the conferring of any gift, payment or other benefit on any person or any Personnel of such person; or

(ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

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

(a) the Contractor;

(b) any person employed by the Contractor; or

(c) any person acting on behalf of the Contractor (whether with or without the knowledge of the Contractor).

## **18. TERMINATION**

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

(a) an Event of Default has occurred (not being a default covered by any other subclause of Clause 18.1) and:

(i) the Contractor fails to remedy the breach within fourteen (14) days from a written notice from the Authority 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 Authority 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 13 (Compliance with Law) or Clause 23 (Sub-contract, Transfer and Assignment);

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(f) a breach by the Contractor of Clause 44 (Data Protection and Security);

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(h) the Contractor has failed to meet the service level requirements set out in the Requirement Specifications;

(i) a failure by the Contractor to pay any liquidated damages required under the Contract; and

(j) the cap of ten per cent (10%) of the Contract Price for liquidated damages specified in the Contract have been reached.

18.2 If any of the following events occur, the Authority 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.

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

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

18.4 For the purposes of this Clause 18, "Event of Default" means any breach (whether material or not) by the Contractor of any of its obligations under the Contract.

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

## **19. FORCE MAJEURE**

19.1 Neither Party shall be liable for any failure to perform its obligations under the Contract if the failure results from events which are beyond its reasonable control ("Force Majeure Event")

provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of the Contract, "Force Majeure Event" shall include acts of God, acts of civil or military authority, civil disturbance, wars, strikes, fires, epidemics or pandemics, and other catastrophes.

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

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

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

## **20. CORRESPONDENCE**

20.1 Any notice, request, waiver, consent or approval ("Notice") shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or 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 Authority, the address and electronic mail address set out in the Letter of Acceptance.

20.2 Either Party may change its address and electronic mail address referred to above by giving the other Party written notice of the change.

20.3 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.



## **21. LANGUAGE**

21.1 The Contractor shall ensure that all data, documents, descriptions, diagrams, books, catalogues, instructions, markings and correspondence shall be written in readily comprehensible English language.

21.2 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.

## **22. CONSORTIUM**

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

22.2 Where the Contractor is a Consortium, the following shall apply: Joint and Several Responsibility

22.2.1 Each member of the Consortium shall be jointly and severally responsible to the Authority for the due performance of the Contract. Addition of members to Consortium 15

22.2.2 Any introduction of, or changes to, Consortium membership must be approved in writing by the Authority.

22.2.3 Should additional member(s) be added to the Consortium at any time with the approval of the Authority pursuant to Clause 22.2.2, he or they shall be deemed to be included in the expression "the Contractor". Withdrawal from Consortium

22.2.4 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.

## **23. SUB-CONTRACT, TRANSFER AND ASSIGNMENT**

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

23.2 The Contractor shall be responsible for the acts, defaults, negligence and omissions of any Subcontractor, their agents, servants or workmen.

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## **25. REMEDIES**

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

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

## **26. VARIATION**

26.1 No variation of the Contract shall be of any force unless agreed upon in writing and signed by the authorised signatories of both Parties. A variation made in accordance with this Clause 26.1 shall not require consideration for the variation to be binding and enforceable.

## **27. WAIVER**

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

- (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or

- (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.

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

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

## **28. SET-OFF**

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

## **29. ENTIRE AND WHOLE AGREEMENT**

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

## **30. SEVERABILITY**

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

## **31. RIGHTS OF THIRD PARTIES**

31.1 A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any term of the Contract. 17

## **32. SURVIVING PROVISIONS**

32.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 17 (Gifts, Inducements and Rewards), 18.3 and 18.5 (Termination), 20 (Correspondence), 25 (Remedies), 26 (Variation), 27 (Waiver), 28 (Set-off), 29 (Entire and Whole Agreement), 30 (Severability), 31 (Rights of Third Parties), 32 (Surviving Provisions), 33 (Governing Law), 34 (Escalation of Disputes), 35 (Mediation), 36 (Dispute Resolution) and 37 (Order of Precedence), shall survive the termination or expiry of the Contract.

### **33. GOVERNING LAW**

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

### **34. ESCALATION OF DISPUTES**

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

34.2 If such Dispute is not resolved by agreement between the Officers within 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 35 (Mediation).

### **35. MEDIATION**

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

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

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

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

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

(b) the proceedings relating to such Dispute are not:

(i) discontinued by the Registrar pursuant to Section 17(3) of the Small Claims Tribunal Act; or

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

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

### **36. DISPUTE RESOLUTION**

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

### **37. ORDER OF PRECEDENCE**

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

(a) these Conditions of Contract;

(b) the Requirement Specifications;

(c) the Letter of Acceptance;

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(e) any formal agreement executed between the Parties;

(f) the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Authority and the Contractor which has been agreed to by the Authority in writing as amplifying or modifying the Contractor's Tender Offer).

37.2 Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the Authority and the Contractor which has been agreed to by the Authority in writing as amplifying or modifying the Contractor's Tender Offer) contains

provisions which are more favourable to the Authority in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail.

37.3 For the avoidance of doubt, this Clause 37 shall form an integral part of the Conditions of Contract referred to in Clause 37.1(a).

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#### **42. LOSSES**

42.1 The Contractor shall indemnify and keep indemnified the Authority against any and all Losses sustained, incurred, paid by or suffered by the Authority arising out of or in connection with any act or omission on the part of the Contractor, any 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.

42.2 If any claim is commenced against the Authority that is, in the opinion of the Authority, covered by the indemnity in Clause 42.1, notice of the claim shall be given to the Contractor as soon as practicable.

42.3 Upon receipt of such notice by the Authority, the Contractor shall, unless otherwise directed by the Authority, immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Authority to handle and defend the same (including for and on behalf of the Authority), at the Contractor's sole cost and expense.

42.4 In the event the Contractor takes control of the defence and investigation of the claim, the Authority shall co-operate, at the cost of the Contractor, in all reasonable respects with the

Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this shall not limit the Authority's right to participate, at the Contractor's cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Authority.

42.5 Notwithstanding anything to the contrary in the Contract, the Authority shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Authority, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

42.6 This Clause 42 shall survive the termination or expiry of the Contract.

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### **44. DATA PROTECTION AND SECURITY**

#### **44.1 Data Protection**

44.1.1 The Contractor shall not, and shall ensure that all of its Personnel, and its Subcontractors and their Personnel, do not, access, monitor, use or process data obtained or held in connection with the Contract, except as reasonably necessary to perform its obligations under the Contract.

44.1.2 The Contractor shall not, and shall ensure that all of its Personnel, and its Subcontractors and their Personnel, shall not, disclose any data obtained or held in connection with the Contract without the prior written consent of the Authority. Any request for the Authority's consent under this Clause 44 must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Contractor's obligations under the Contract.

44.1.3 The Contractor shall not cause or permit personal data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside Singapore, or allow parties outside Singapore to have access to such personal data, unless (in each case) with the prior written consent of the Authority and subject to such conditions as the Authority may impose. Any request for the Authority's consent under this Clause 44 shall include an explanation of why the proposed transfer is necessary for the purposes of fulfilling the Contractor's obligations under the Contract. If consent is granted for the transfer of personal data outside Singapore, the Contractor shall provide a written undertaking that the personal

data which is transferred outside Singapore will be protected to a comparable standard as it is protected under the Personal Data Protection Act 2012.

44.1.4 The Contractor shall immediately notify the Authority when it becomes aware of a breach of Clauses 44.1 to 44.1.3 by itself or any Subcontractor.

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

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

44.1.7 The Contractor shall, and shall ensure that its Personnel and its Subcontractors and their Personnel shall, in performing its obligations under the Contract comply with all applicable personal data laws (including the Personal Data Protection Act 2012) and shall keep the Authority indemnified against all penalties and liabilities of every kind for the breach of all such laws and obligations.

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#### **44.3 Survival**

This Clause 44 shall survive the termination or expiry of the Contract.

### **45. AUTHORITY DATA**

45.1 Without prejudice and in addition to the obligations in Clause 44, the Contractor shall ensure that, unless otherwise directed by the Authority, within seven (7) days after the termination or expiry of the Contract:

- (a) all Authority Data in the possession of or under the control of the Contractor or any Subcontractor is returned to the Authority; and



(b) all softcopies of Authority Data that exist in hard disks, removable storage media and other storage media or facility whatsoever are securely erased and destroyed,

provided that the Contractor may retain any Authority Data as may be required by any applicable law, regulations or directives of any relevant government, statutory or regulatory body (“Applicable Provisions”). Where the Contractor retains any Authority Data pursuant to this proviso, the Contractor shall keep all such Authority Data confidential.

45.2 Upon completion of the obligation under Clause 45, the Contractor shall provide a written confirmation to the Authority that it has complied with Clause 45. Such written confirmation shall (a) include a description of all Authority Data it is required to retain under the Applicable Provisions, and (b) cite the specific Applicable Provisions it is relying on to retain such Authority Data.

45.3 For the purposes of this Clause 45, “Authority Data” means data in any form, whether hardcopy or softcopy, that:

- (a) belongs to the Authority;
- (b) is generated by the Authority;
- (c) is received from the Authority for the purposes of the Contract; (d) is supplied or is required to be supplied to the Authority under the Contract; or
- (e) is generated in the course of the Contract.

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