

## **CONDITIONS OF CONTRACT**

### **1. Interpretation:**

In these Conditions:

- 1.1 In the Contract (as hereinafter defined), the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“Acceptance Test” means the Acceptance Test referred to in Clause 8.

“Affiliates” means: (i) an organisation, which directly or indirectly controls either Party; or (ii) an organisation which is directly or indirectly controlled by either Party; or (iii) an organisation, which is controlled, directly or indirectly, by the ultimate parent company of either Party. The term “control” as used herein means the possession of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting security or by contract or otherwise.

“Authorised Variations” means such variations made under Clause 29 of the Instructions to Bidders and/or Clause 15 of the Conditions.

“Appendix” means the appendix attached to the Conditions.

“Completion Date” means the date by which the Works are fully installed and commissioned in accordance with Clauses 7 and 8 or such revised date made thereunder.

“Conditions” means the terms set out herein entitled "Conditions of Contract".

"Contract" means (i) the Invitation to Bid, (ii) the Contractor's Bid, (iii) Letter of Acceptance, (iv) all correspondences referred to and constituting Authorised Variations, (v) Form of Agreement, (vi) any order issued pursuant to Clause 5 and (vii) any other documents agreed by IPI in writing.

“Contract Price” means the sum payable for the supply of the Works under this Contract.

"Contractor" means the successful Bidder who has been awarded the Contract by IPI.

“Confidential Information” shall mean all information in any form or manner provided by IPI to the Contractor or otherwise acquired by the Contractor in the course of or pursuant to this Contract relating to the Works, the Requirement Specifications, IPI, and/or its business, financial or other affairs.

“Delivery Date” means the date for supply and delivery of the Works referred to in Clause 7 or such revised date made thereunder.

"Goods" means all goods, including technical documentation, parts or units thereof, which the Contractor is required to supply under the Contract.

“IPI” shall mean IPI and includes IPI acting through any officer authorised by IPI to act on its behalf.

"IP" means all Know-How and intellectual property rights (including without limitation patents, copyrights, designs, semiconductor layout designs, and trade secrets) worldwide arising under statutory or common law, and whether or not perfected.

"Invitation to Bid" means the invitation to participate in this Bid and comprises all Bid documents forwarded to the Bidders inclusive of Instructions to Bidders, Conditions of Contract, Requirement Specifications, Evaluation Criteria, any additional instructions to Bidders (where issued), and any other documents and forms enclosed.

"Know-How" means any methods, techniques, processes, discoveries, inventions, innovations, unpatentable processes, technical information, specifications, recipes, formulae, designs, plans, documentation, drawings, data and other technical information.

"Location" shall mean the place or places where the Works are to be delivered, installed, commissioned or performed as specified in the Contract, or if not so expressly specified.

"Letter of Acceptance" means the letter issued by IPI accepting the Contractor's Bid.

"Party" means either IPI or the Contractor and "Parties" means both IPI and the Contractor.

"Period Contract" means the Contract where the Contractor has to supply Works for a period of at least 1 year.

"Requirement Specifications means the specifications as set out in the document titled "Requirement Specifications" in the Invitation to Bid.

"Services" means the services which the Contractor is required to supply under the Contract.

"Security Deposit" means the sum as referred to in Clause 3 as security for the due performance and observance of the Contractor's obligation under this Contract.

"Bid" means the offer by the Bidder to supply the Works in accordance with the terms and conditions set out in the Contract.

"Bidder" means a person or his permitted assigns offering to supply the Works, and shall be deemed to include two or more persons if appropriate.

"Works" shall mean all Goods and/or Services which the Contractor is required to supply under the Contract.

- 1.2 Words importing the singular shall also include the plural and vice versa where the context requires.
- 1.3 The headings in this Contract are for convenience of reference only and shall not be taken into consideration in the interpretation of this Contract.

- 1.4 Unless otherwise provided, any reference to any statute or legislation shall be deemed to be a reference to such statute or legislation as amended from time to time and shall be deemed to include any subsidiary legislation made thereunder.

## **2. Scope of Contract**

- 2.1 The Contractor shall supply, deliver and install the Works as specified in accordance with the Contract in every respect and to the directions and satisfaction of IPI.
- 2.2 The Contractor shall deliver the Goods and perform the Services at the Location and in the manner specified in the Contract. The Contractor shall do or supply all things, without additional charge, which are not expressly specified in the Invitation to Bid but which may be necessary for the proper completion of this Contract or obviously required to be done or supplied in the context of the Invitation to Bid and/or in view of the conditions on the Location, in consultation with IPI.
- 2.3 The Contractor shall provide separate price quotations and breakdowns for each component of the Works.
- 2.4 IPI is entitled to call for samples of any Goods required under the Contract for IPI's approval and for such further samples as are required until the samples submitted are in IPI's opinion in accordance with the requirements of the Contract. If in the opinion of IPI any Goods are not in accordance with the Contract or with any approved sample, IPI reserves the right to submit the Goods to expert examination and/or test, and all costs in connection therewith shall be borne by the Contractor unless such examination and/or tests shows that the said Goods are in accordance with the Contract or with the approved sample.

## **3. Security Deposit**

- 3.1 In the event that security deposit is required, the Contractor shall be required to lodge with IPI a Security Deposit for the due and faithful performance of the Contract. The Contractor shall deposit with IPI the cash amount of Security Deposit specified or a Banker's Guarantee (in the form of the draft Banker's Guarantee set out in the Invitation to Bid) within fourteen (14) business days of receipt of the Letter of Acceptance issued by IPI. IPI shall thereafter be entitled to utilise and make payments out of or deductions from the said Security Deposit in accordance with the Contract.
- 3.2 The Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be released and refunded to the Contractor, free of interest, upon the expiry and due performance of the Contract.

## **4. Performance Requirements**

- 4.1 The Goods supplied and the Services performed when completed shall strictly meet the requirements and specifications as set out in the Requirement

Specifications. Any deficiency in the Works, or the performance thereof shall be promptly rectified and attended to by the Contractor to the satisfaction of IPI.

- 4.2 The Contractor shall at his own cost and when so notified in writing by IPI, remove and replace the Works supplied by the Contractor that are found on delivery to be damaged, defective or in any way inferior to approved samples, or not in accordance with the Contract, failing which IPI shall have the right to purchase replacements elsewhere or to make good any damage in any manner it deems necessary and all costs thereby incurred shall be recoverable from the Contractor by deduction from any money due or to become due to the Contractor under the Contract.
- 4.3 The Contractor shall, without additional cost, ensure that the Goods to be supplied are adequately packed so as to ensure that they reach the Location intact and undamaged. The Contractor shall ensure that the Goods are packed in such a manner that they are suitable for export to and storage in the tropics and are protected from damage (including damage from rough handling) or deterioration during their transit from the Contractor's factory/premises until their arrival at the Location. Any other requirements on packing explicitly specified in the Contract shall be complied with by the Contractor. The Contractor hereby acknowledges that the cost of all necessary packing materials (which will be considered non-returnable) and labor for the packing have been provided for and included in the Contract Price. Unless otherwise required by IPI, packages containing dangerous articles shall be packed and marked in accordance with the requirements of generally accepted rules and conventions in international commerce. The Contractor shall replace any Goods found on reaching its destination to have been damaged due to inadequate packing.

## **5. Orders for Standing Bids**

- 5.1 All orders for Works to be supplied under the Contract under a Standing Bid as specified in Clause 25.7 of the Instructions to Bidders shall be given from time to time, in writing by IPI on its "Purchase Order" form (hereinafter referred to as "Order"). All such Orders shall clearly state the details and nature of the Works to be supplied and shall also state the amount, calculated at the rates in the Contract that shall become due to the Contractor on the satisfactory completion of supply of all Works specified on such Order. The receipt by the Contractor of an Order will create a binding contract on the part of the Bidder to supply to IPI those Works specified in the Order in accordance with the Contract.
- 5.2 On receipt of any Order, the Contractor shall commence delivery of the Works referred to therein and complete the same by the due date specified in the Order or otherwise as expeditiously as possible.
- 5.3 On satisfactory completion of the Works, the Contractor shall submit his bill to IPI who shall certify the same for payment to the Contractor at the time and in the manner hereinafter provided.
- 5.4 If the total quantities of any items of Goods and/or the frequency and extent of any Services to be supplied by the Contractor during the period of the Contract are not specified in the Contract or stated to be merely estimated, IPI shall be under no obligation to purchase any such Goods and/or Services. Any statement of the estimated quantities of any items of Goods or the estimated frequency and extent of the Services required during the period of the Contract

which may have been given to the Contractor in the course of inviting Bids shall be deemed to be approximate only and merely for the information of the Contractor.

- 5.5 In the event the Contract is an Extended Contract, and in the event that the model of the Goods offered by the Contractor in the Bid has become obsolete and cannot be supplied if an Order is issued for it, the Contractor shall make available an improved model to IPI at the same or lower price than that of the obsolete model. Provided that the Contractor must obtain the written approval of IPI at least 14 days before supplying the improved model. If the written approval is granted, the obsolete model shall be replaced by the improved model thereafter. The Contractor shall not supply the obsolete model thereafter.

## **6. Subcontracting and Assignment**

- 6.1 The Contractor shall not transfer or assign the Contract or any part, share or interests therein or otherwise sub-contract or delegate his obligations under the Contract to any party, unless written consent is obtained from IPI.
- 6.2 The Contractor shall be responsible and liable to IPI for all acts and defaults of any sub-contractor appointed by him or of any assignee and the sub-contractor's and/or assignee's employees and agents and shall indemnify and keep IPI fully indemnified against all loss and damage suffered by IPI arising out of or in connection with such acts and defaults.
- 6.3 This Agreement and all rights under it may be assigned or transferred by IPI at its sole discretion.
- 6.4 The Contractor shall include in all contracts between the Contractor and its contractors entered into pursuant to or in connection with its performance of the Contract, the necessary provisions for the assignment by the Contractor to IPI, if required by IPI, of the benefit of such contracts upon any termination of the Contract. The Contractor shall when requested by IPI provide IPI with such contracts for IPI's inspection and/or copies thereof for IPI's retention.

## **7. Delivery and Completion Date**

- 7.1 The Contractor undertakes that the Works shall be supplied and delivered by the Delivery Date as specified in the Appendix or Order (as the case may be) and shall be fully installed and commissioned by the Completion Date as specified in the Appendix or Order (as the case may be). Where applicable, the supply and performance of the Works shall be carried out in accordance with such schedule as may be specified by IPI in the Requirement Specifications or otherwise in writing. The Works shall only be deemed to be commissioned when the Works has been delivered in whole, installed and where required passed the Acceptance Test and/or additional tests conducted under Clause 8 of the Conditions. Where IPI does not require any test to be conducted under Clause 8, the Completion Date shall be the date on which the Works are fully installed, operational and accepted by IPI.
- 7.2 When the Works are ready for shipment for delivery to IPI, the Contractor shall seek consent from IPI prior to arranging shipment.

7.3 Where applicable for the Works, the Contractor undertakes to supply, by the Completion Date, the documentation referred to as follows:

7.3.1 The Contractor shall undertake to supply IPI with one (1) (or such other number as stated in the Requirement Specifications) complete sets of comprehensive documentation on all aspects of the Works including documentation to be used for planning, design, installation, operation, maintenance, administration and training purposes. All sets of such documentation shall be of the latest version.

7.3.2 In the event of any conflict between the provisions of any documentation or information or data supplied by the Contractor (including the supporting data supplied by the Contractor in the Bid Request Form Request Form) and the provisions of the Invitation to Bid, the provisions of the Invitation to Bid shall prevail unless IPI agrees otherwise in writing.

7.4 The property in the Goods shall pass to IPI on delivery to the Location.

## **8. Acceptance Test**

8.1 Where it is specified in the Appendix that an Acceptance Test (as defined in Clause 8.2) will be conducted, the provisions of this Clause shall apply.

8.2 The Contractor shall, after installing the Works at the Location, conduct an acceptance test conducted by the Contractor at the Contractor's own cost in accordance with such procedure(s) and method(s) as IPI may in its absolute discretion deem fit for the purpose of confirming and verifying that the functions, features and performance of the Works meet the requirements and standards stipulated in the Requirement Specifications (the "Acceptance Test").

8.3 IPI may require the Contractor to conduct such other tests at the Contractor's own cost on each item or part of the Works in accordance with such procedure(s), method(s) and timing as IPI may in its absolute discretion deem fit for the purpose of confirming and verifying that the functions, features and performance of such part of the Works meet with the requirements and standards stipulated in the Requirement Specifications which are applicable to such part of the Works. Such tests may be conducted, in the discretion of IPI, in addition to or substitution of the Acceptance Test.

8.4 Without prejudice to any other rights which it may have, IPI may reject any item or part of the Works which fails any test conducted under this Clause.

8.5 As soon as the supply of the Works have been completed in accordance with the Contract, and passed the Acceptance Test and/or additional tests where applicable, the Contractor and IPI shall jointly issue a document, herewith called an "Acceptance Certificate" and the date of the Acceptance Certificate shall be the Completion Date.

8.6 The Contractor shall remain liable to IPI in accordance with the terms and conditions contained herein notwithstanding the signing by IPI of any certificate or document or any payment or the release of the Security Deposit.

## **9. Delay or Failure in the Works**

- 9.1 Unless otherwise expressly provided herein, any date or period stated in the Contract may only be postponed or extended by written agreement and at the sole discretion of IPI. In the absence of such agreement, time shall be of the essence of the Contract.
- 9.2 In the event of failure by the Contractor to supply, deliver or complete the Works or any part thereof by the Delivery Date at the Location or to install and commission the Works or any part thereof by the Completion Date for reasons other than that provided for in Clause 13, IPI, in addition to any other rights and remedies that it may have under the Contract or otherwise, shall have the right :
- 9.2.1 to forthwith by notice in writing to the Contractor, cancel all or any such outstanding items of the Works from the Contract (with the Contract Price being correspondingly reduced) without being liable therefor in damages and obtain the same from other sources and all increased costs thereby incurred shall be deducted from any monies due or to become due under this Contract or shall be recoverable from the Contractor as damages; or
- 9.2.2 to withhold the payment of all monies due or to become due to the Contractor and to set off whatever liability incurred by the Contractor to IPI as a result of the Contractor's said failure or delay in the delivery or performance of the Works against such monies; or
- 9.2.3 to deduct from any monies due or to become due to the Contractor, as liquidated damages (and not as a penalty), the sum calculated as specified in the Appendix for each day of delay or failure to supply and deliver the Works or install and commission the Works (as the case may be) until the required Works are supplied, delivered and commissioned by the Contractor. If stipulated by IPI, there may be a series of phased Completion Dates with separate liquidated damages for each phase as set out in the Appendix. The payment of the liquidated damages pursuant to this Clause will be in full satisfaction of the Contractor's liability for such period of delay but such payments shall not relieve the Contractor from its obligation to supply, deliver, install or commission the Works or from any other liability or obligations under this Contract. IPI reserves the right to charge interest for any delayed payment at the rate of 6% per annum.
- 9.3 If IPI exercises its right under Clause 9.2.3 and the Works or any part thereof is still not supplied and delivered or installed and commissioned within 4 weeks from the Delivery Date or Completion Date, as the case may be, then IPI, without prejudice to its right to payment under Clause 9.2.3, may elect to exercise its right under Clause 9.2.1 or terminate the Contract with immediate effect on giving written notice to the Contractor.
- 9.4 The rights of IPI under Clause 27 shall apply in respect of any such termination pursuant to Clause 9.3.

## **10. Support and Maintenance Services**

Where the Requirement Specifications specifies the provision of support and maintenance services, the Contractor shall provide the support and maintenance services as set out in the Requirement Specifications and in accordance with the terms stated therein. The Contractor confirms that IPI is

not required to execute any further documents in relation to the provision of support and maintenance services (including any software or system licenses). The Contractor may request for IPI to enter into separate support and maintenance agreements or software or system licenses provided always that the approval of such documents shall be at IPI's sole discretion and the terms and conditions of such documents must be in compliance and consistent with all the terms and conditions of the Invitation to Bid including the Requirement Specifications.

**10A. REPLACEMENT OF PERSONNEL**

10A.1 The Contractor shall replace its personnel within fourteen (14) days from the date of written notice from IPI in connection therewith to any person.

10A.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from IPI or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of IPI.

10A.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of IPI.

**11. Right of Set-Off**

The Parties agree that in addition to any right of set-off or similar right to which IPI may be entitled in law, IPI may at anytime and without notice to the Contractor combine and consolidate all or any sums, debts or amounts due from the Contractor to IPI under the Contract or any other contract between IPI and the Contractor (including all costs, charges, interest, taxes and other expenses incurred in any way in relation to the said sums, debt or amounts which is due to IPI) (hereinafter collectively referred to as the "Combined Account"), and set-off any payment due from IPI to the Contractor under the Contract against any sum due from the Contractor to IPI in respect of the Combined Account.

**12. Non-Waiver**

12.1 The liability of the Contractor under this Contract shall not be discharged, diminished or affected by the granting of any time or indulgence to the Contractor and no term of this Contract shall be considered waived and no breach excused by IPI unless made by IPI in writing.

12.2 No waiver by IPI of any breach of the Contractor's obligations under the Contract shall operate as a waiver of any future, continuing or other breach.

**13. Force Majeure**



- 13.1 The Contractor shall not be liable for any failure to comply with its obligations under the Contract where such failure is caused by an Act of God or by any riot, civil commotion, strike, lockout, or other labor disturbance, or by any fire, war, acts of foreign enemies or perils of the sea or other perils beyond the control of the Contractor ( "Force Majeure Event"). Failure by the Contractor's sub-contractors to fulfill their sub-contracts shall not be regarded as a Force Majeure Event unless the sub-contracts would qualify for exemption from failure if the provisions of this Clause were applied to them. The Contractor shall notify IPI in writing of the said failure within thirty (30) days of the commencement of the event relied upon by the Contractor for his failure to comply with his obligations and shall do everything in its power to resume full performance.
- 13.2 The Contractor shall for the duration of the Force Majeure Event be relieved of any obligation under this Contract as is affected by such event:
- 13.2.1 PROVIDED that the provisions of this Contract shall remain in force with regard to all other obligations under this Contract which are not affected by such event.
- 13.2.2 AND PROVIDED further that the Contractor shall, should IPI in writing so require, resume his full obligations under this Contract upon the cessation of such event.
- 13.3 If and when the Force Majeure Events renders performance of this Contract or any part thereof impossible for a continuous period of three (3) months, then this Contract shall automatically terminate unless the Parties first agree otherwise in writing.
- 13.4 For so long as the Force Majeure Event continues, IPI may contract with others for the supply of any item of the Works which the Contractor fails to supply in accordance with the terms of this Contract. Any such item of the Works supplied by others would be deemed as cancelled from this Contract (with the Contract Price being correspondingly reduced) without IPI being liable to the Contractor for damages for such cancellation.

#### **14. Gifts, Inducements and Rewards**

IPI shall be entitled to determine the employment of the Contractor under the Contract and to recover from the Contractor the amount of any loss resulting from such determination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with IPI or for showing or forbearing to show favour to any person in relation to any Contract with IPI, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with IPI the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the Penal Code or the Prevention of Corruption Act.

## **15. Authorised Variations**

- 15.1 As used in this Clause 15, the term "variation" shall mean any change in the original Contract intention as deduced from the Contract as a whole describing or defining the supply of the Works and shall include but is not restricted to an addition to or omission from the supply of the Works. For the avoidance of doubt the term "variation" shall exclude any instruction (which would otherwise be a variation) which has arisen due to or is necessitated by or is intended to cure any default of, negligence, or breach of Contract by the Contractor.
- 15.2 IPI may at any time issue an instruction in writing that requires a variation. IPI may request or instruct that the Contractor provides proposals for the variations at the Contractor's cost. The Contractor shall state in writing the effect such variation will have on the Contract Price and to the works schedule. The Contractor shall furnish such details within [fourteen (14) business days] of receipt of IPI's request or such other period as may be agreed. The Contractor shall not proceed to vary the supply of the Works in any respect until and unless agreed to in writing by IPI.
- 15.3 If or to the extent that a instruction in writing issued by IPI does not state that it requires a variation, but the Contractor considers that it does require a variation, the Contractor shall within [fourteen (14) business days] from the date of receipt of the instruction notify in writing IPI who may, if IPI thinks fit, within [fourteen (14) business days] from the date of receipt of the Contractor's notification, confirm, modify, rescind or contradict in writing the instruction and the Contractor shall then comply forthwith. The Contractor shall not proceed with any works or services that are the subject of such instruction unless IPI has expressly accepted in writing that such instruction entails a variation.
- 15.4 The Contractor shall provide under Clause 15.2 or Clause 15.3 (in the event IPI agrees the instruction constitutes a variation), the Contractor's most competitive prices for IPI taking into consideration deals of similar scope, volumes, service levels and global reach, and benchmarked against the prices for equivalent goods, services, labour, materials, and equipment charged by the Contractor's competitors.
- 15.5 For the avoidance of doubt, IPI shall not be liable for and shall not be obliged to entertain any claims in respect of additional costs arising from any instruction which IPI has not expressly identified and accepted in writing as giving rise to a variation, or for any variation which IPI has not expressly agreed to in writing.
- 15.6 The Contractor shall satisfy IPI as to the reasonableness of changes to the time schedule resulting from the variations. Upon IPI being satisfied regarding the reasonableness of any extensions to the time schedule by the variation, IPI may grant such extension of time as it deems fit.
- 15.7 Upon completion of the variations, the Contractor shall certify in writing to IPI that the variations are completed.

## **16. Dispute Resolution**

- 16.1 Notwithstanding anything in this Contract, in the event of any dispute, claim, question or disagreement arising out of or relating to this Contract, or the breach thereof (collectively referred to as "Dispute"), IPI may elect to resolve the Dispute

through mediation, arbitration or exclusively in the Singapore Courts. IPI may make the election on its own accord by written notice to the Contractor or within thirty (30) days of the receipt of the Contractor's written notice stating the specific Dispute to be resolved. Should IPI fail to make the election within thirty (30) days of the receipt of the written notice by the Contractor, the Dispute shall be resolved by reference to arbitration and the provisions of Clause 16.3 shall apply. If mediation is so elected by IPI, the Parties shall not proceed to arbitration, litigation or any other form of dispute resolution unless the Parties have made reasonable efforts to resolve the Dispute through mediation in accordance with the mediation rules of the Singapore Mediation Centre, in which case the following provisions shall apply:

16.1.1 The Contractor who receives a notice for mediation from IPI shall consent and participate in the mediation process in accordance with the mediation rules of the Singapore Mediation Centre.

16.1.2 Failure to comply with this Clause 16.1 shall be deemed to be a breach of contract.

16.1.3 If such Dispute has not been resolved within three (3) months of the commencement of mediation proceedings, or such other extended period as may be agreed in writing between the Parties, such Dispute shall be finally settled in accordance with Clause 16.2 as elected by IPI.

16.2 Any Dispute which is not settled by mediation under Clause 16.1 shall be resolved either by reference to arbitration or exclusively in the Singapore Courts as elected by IPI.

16.3 Pursuant to Clauses 16.1 or 16.2, if arbitration is selected, the following provisions shall apply:

16.3.1 the Dispute shall be resolved by reference to arbitration in Singapore in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

16.3.2 The arbitral tribunal shall consist of one arbitrator to be agreed upon between the Parties.

16.3.3 Either Party may propose to the other the name or names of one or more persons, one of whom would serve as the arbitrator.

16.3.4 If no agreement is reached within thirty (30) days after receipt by one Party of such a proposal from the other, the arbitrator shall be appointed by the Chairman of the Singapore International Arbitration Centre.

16.4 Any reference to arbitration under this Clause shall be a submission to arbitration within the meaning of the Arbitration Act for the time being in force in Singapore.

16.5 The application of Part I of the International Arbitration Act, and the Model Law referred thereto, to this Contract is hereby excluded.

## **17. Indemnification of IPI against Claims by Contractor's Employees**

In the event of IPI (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Contractor in and for the performance of the Contract in respect of any torts whatsoever, the Contractor shall indemnify IPI, its officers or departments against such claim and any costs, charges and expenses in respect thereof save where the claim is caused directly by the gross negligence or willful misconduct of the Agency, its officers or agents..

## **18. Secrecy and Non-disclosure**

- 18.1 The Contractor acknowledges that in conjunction with this Contract, he will receive or acquire Confidential Information (as defined herein), either from IPI or its related companies or in the course of its supply and performance of the Works. The Contractor shall treat as confidential all Confidential Information and not disclose the Confidential Information to any third party save with the written consent of IPI. Provided that this Clause shall not extend to information which was rightfully in the possession of the Contractor prior to the date of the Invitation to Bid, or which is already public knowledge or becomes so at a future date (otherwise than as a result of the Contractor's breach of this Clause).
- 18.2 The Contractor further undertakes not to use any of the Confidential Information other than for the purposes of, and only to the extent necessary for the performance of this Contract and not for its own benefit nor for the benefit of any other party. Provided that this Clause shall not extend to information which was rightfully in the possession of the Contractor prior to Invitation to Bid, or which is already public knowledge or becomes so at a future date (otherwise than as a result of the Contractor's breach of this Clause). The Contractor shall ensure that its employees, servants and subcontractors are aware of and comply with the provisions of Clauses 18.1 and 18.2.
- 18.3 The Contractor will establish and maintain sufficient security measures and procedures to provide for the safe custody of Confidential Information and to prevent unauthorised access thereto or use thereof.

## **19. Ideas in Bids**

All ideas, details, concepts, plans, drawings, data, information and proposals contained in the documents forming the Bid or otherwise disclosed by the Contractor to IPI shall be deemed not to be of a confidential nature and IPI shall be fully entitled to disclose and make use of such ideas, details, concepts, plans, drawings, data, information and proposals without the prior consent of the Contractor.

## **19A DATA SECURITY AND PROTECTION**

- (i) The Contractor shall take all reasonable measures to ensure that personal data held in connection with the contract is protected against loss, and against unauthorized access, use, modification, disclosure or other misuse.
- (ii) The Contractor shall in respect of any personal data held in connection with the Contract, cooperate with any reasonable requests, directions or

guidelines of IPI arising in connection with the handling of personal data.

## **20. Rights in Intellectual Property**

- 20.1 IPI shall be entitled to freely use, repair, maintain, refurbish, modify and upgrade the Goods and to use any product of the Services without further reference to the Contractor. The Contractor hereby grants to IPI a license to use all necessary IP of the Contractor, its subcontractor or supplier for the foregoing activities.
- 20.2 Where any third party licences are necessary for the use of the Works, the Contractor shall be responsible for obtaining the same on behalf of IPI.

## **21. Warranty of Intellectual Property Proprietorship**

- 21.1 The Contractor warrants that none of the Works or any part thereof as supplied, delivered, installed, performed and/or maintained by him pursuant to the Contract or the acceptance, distribution, manufacture, processing or use thereof as contemplated under this Contract infringes any IP rights of any person, company, firm, enterprise or party.
- 21.2 The Contractor will at its expense indemnify, keep harmless and defend IPI (including for this purpose every officer and department thereof) from and against any loss, costs and expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party that any of the Works or any part thereof or the acceptance, distribution, manufacture, processing or use thereof infringes any IP rights of that party.
- 21.3 The indemnity referred to in Clause 21.2 shall be applicable whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 21.4 Without prejudice to the right of IPI to defend a claim alleging the aforesaid infringement, the Contractor shall if requested by IPI but at the Contractor's expense, conduct the defence of a claim alleging such infringement. The Contractor agrees that in any of the aforesaid defence or settlement negotiations, the Contractor will take all actions to ensure that the interests, financial or otherwise, corporate name, image and reputation of IPI are not prejudiced and will act expeditiously in response to and all matters related to any infringement claim from a third party as aforesaid.
- 21.5 Without limiting the generality of Clauses 21.1 to 21.4, if it is determined by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of the IP rights of any person has occurred on grounds in any way related to the Works or any part thereof, the Contractor shall at its sole expense:
  - 21.5.1 modify or replace the said Works or part thereof in order to achieve non-infringing status without prejudice however to the Requirement Specifications and the continued duty of the Contractor to completely and satisfactorily discharge his obligations, whether pursuant to the Contract or otherwise, to IPI; or

21.5.2 procure for IPI the right to continue the use and possession of the aforesaid Works and all parts thereof; or

21.5.3 if the solutions in Clauses 21.5.1 or 21.5.2 cannot be achieved or IPI receives a court order to stop the use of the aforesaid Works or any part thereof, the Contractor shall remove the Works, or the infringing part thereof and refund all monies previously paid to the Contractor by IPI for the aforesaid Works or part thereof (including such amount associated with the installation, maintenance, repair, modification and implementation thereof) together with interest thereon calculated at the rate being the average of the prevailing prime lending rate for Singapore Dollars quoted by Development Bank of Singapore Ltd, Oversea-Chinese Banking Corporation Ltd and United Overseas Bank Ltd from the date of payment by IPI until the date of full refund by the Contractor.

21.6 IPI may, in any event, pursue all remedies available to it under the Contract or at law for the Contractor's breach of agreement.

## **22. Workmen's Compensation**

Where the Appendix states that Clause 22 of the Conditions will be applicable, the Contractor shall forthwith upon the acceptance of the Bid and as a condition precedent to the commencement of any work under the Contract, take out at his own expense an insurance policy insuring himself in respect of any liability which he may incur under the provisions of the Work Injury Compensation Act in respect of any workmen employed by him.

## **23. Insurance for the purpose of indemnifying IPI against Claims by Contractor's Employees**

Where the Appendix states that Clause 23 of the Conditions will be applicable, the Contractor shall forthwith upon acceptance of the Bid and as a condition precedent to the commencement of any work under the Contract, take out at his own expense with an insurance company to be approved by IPI, a policy or policies of insurance in terms to be approved by IPI, indemnifying IPI (including for this purpose every officer and department thereof) from all liabilities arising out of claims by any and every workman and employee employed in and for the performance of the Contract for damages in respect of any tort whatsoever, save where the claim is caused directly by the gross negligence or willful misconduct of IPI, its officers or agents.

## **24. Maintenance of Insurance Policies**

24.1 Any policy or policies taken out by the Contractor in compliance with Clauses 22 or 23 shall be deposited with IPI or with such department as IPI shall determine and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums from time to time on the first day on which the same ought to be paid until the completion of the Contract and shall, if IPI so directs, deposit with IPI the receipts in respect of the payments of such premiums.

24.2 If any default is made by the Contractor in complying with the terms of Clauses 22, 23 and 24.1, IPI may without prejudice to any other remedy available to IPI for breach for any terms of the Contract:

24.2.1 withhold all payments which would otherwise be due to the Contractor under the Contract and out of such monies so withheld satisfy any claim by workmen or employees that would have been borne by an insurance company had the Contractor not made default in maintaining the required policy of insurance, and/or

24.2.2 pay such premiums as may have become due and remain unpaid and deduct the amount of such premiums from any monies due or becoming due to the Contractor.

24.3 Nothing in Clause 24 shall be construed to take away or to waive or in any manner to modify the right of IPI to be indemnified by the Contractor in respect of this Contract and the Contractor shall indemnify and keep IPI harmless from all claims, costs and other expenses whatsoever which by reason of the Contractor's default may become payable by IPI.

## **25. Payments**

25.1 The Contract Price (if payable by or through IPI) is payable within thirty (30) days of the supply of the Works as provided or ordered under the Contract and after the submission to IPI by the Contractor of his invoices together with the proper supporting documents and such other documents as may be requested by IPI from time to time. IPI will make payment to the Contractor of the full value of all Works supplied.

25.2 Where the supply of the Works has been unsatisfactory, IPI may withhold payment of any invoice until such time as the Contractor shall render the Works satisfactory and/or deduct against the Contractor's bill the deductions to be made in accordance with the terms of the Contract.

25.3 No payment shall be considered as evidence of the quality of any goods or services to which such payment relates nor shall it relieve the Contractor from his responsibilities under the Contract for defective or damaged goods.

## **26. Warranties**

26.1 The Contractor warrants and undertakes:

26.1.1 to ensure that the Works strictly meet the requirements and specifications as set out in the Requirement Specifications;

26.1.2 to do all things which are necessary to achieve the goals set out by this Contract or reasonably inferred from the Contract;

26.1.3 that it has the right to pass title and property in the Works to IPI free from any restrictions or encumbrances;

26.1.4 that the documentation will contain complete information and instructions;

- 26.1.5 that the Works shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence. In addition, there will be adequate numbers of such personnel to carry out and complete the supply of Works in accordance with the Contract;
- 26.1.6 that it shall discharge its obligations pursuant to this Contract with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 26.1.7 that the Works shall be supplied and the Contract performed in compliance with all applicable laws, enactments, orders, rules, regulations, by-laws and other similar instruments and that all relevant ethics and other relevant approvals shall be obtained;
- 26.1.8 that the Works shall be supplied and the Contract performed in compliance with the Workplace Safety and Health Act (Cap.354A), the associated regulations and any other applicable health and safety legislation (collectively "Health and Safety Laws"), and that it shall execute any documents required by IPI to confirm such compliance with the Health and Safety Laws and
- 26.1.9 that all equipment, materials and supporting documentation not mentioned or included in the Contract but which may be necessary for the proper operation and functioning of Works shall be provided by the Contractor to IPI free of charge.
- 26.2 Should the Works not meet the Requirement Specifications by the Completion Date, the Contractor shall at the written notification of IPI, immediately, at its own cost, replace the defective Works, such that they are fully operational and comply with the Requirement Specifications.
- 26.3 There shall be a warranty period during which the Contractor, at his own expense, shall make good to the satisfaction of IPI and shall promptly attend to any defects whatsoever in the Works ("the Warranty Period").
- 26.1 The duration of the Warranty Period shall be specified in the Appendix, commencing on the day following the Completion Date. Provided always that in no event shall the duration of any Warranty Period be less than one (1) year.
- 26.5 The Warranty Period for any replaced Works pursuant to Clause 26.2 shall be extended by a period equivalent to the period commencing from the date of notification by IPI pursuant to Clause 26.2 to the date of acceptance of the replaced Works.

## **27. Termination**

- 27.1 IPI may at any time give to the Contractor a written notice of termination thirty (30) days in advance. This shall have the effect of terminating the appointment of the Contractor under the Contract with effect from the expiry of the thirty (30) days period ("the date of termination"). In the event of a notice of termination being served by IPI under this Clause herein:



- 27.1.1 IPI shall pay the Contractor for all Works executed prior to the date of termination in accordance with the Contract Price prorated up to the date of termination including the rates chargeable for the Works with any Authorised Variations; and
  - 27.1.2 the Contractor shall thereafter have no further claim whatsoever against IPI under the Contract.
- 27.2 IPI may terminate this Contract with immediate effect by giving notice in writing to the Contractor on any one of the following grounds:
  - 27.2.1 If the Contractor is in default in the performance of this Contract or fails to fulfil any part of his obligations under this Contract or if there is a breach of any warranty given by the Contractor under this Contract, (and in the case whether the default, failure or breach is capable of remedy) fails to remedy it within thirty (30) days of receipt of a written notice by IPI specifying the default, failure or breach;
  - 27.2.2 If the Contractor ceases or threatens to cease to carry on its business, becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, a winding-up order of any kind is made in respect of the Contractor, or if a receiver or manager is appointed over the Contractor's undertaking or assets or possession of or execution on any part of such undertaking or assets is taken or levied by creditors;
  - 27.2.3 If the Contractor wholly suspends work under this Contract without justification or is failing to proceed with due diligence and due expedition and following expiry of two (2) weeks' written notice from IPI to that effect, the Contractor has failed to take effective steps to recommence work or is continuing to proceed without due diligence or expedition, as the case may be;
  - 27.2.4 If the Contractor refuses or persistently fails or neglects to comply with the instructions of IPI issued under the provisions of this Contract and following expiry of two (2) weeks written notice from IPI to that effect, the Contractor has failed to take effective steps to comply with the said instructions; or
  - 27.2.5 If the Contractor or any person employed by the Contractor or any person acting on behalf of the Contractor, whether with or without the knowledge of the Contractor, offers or gives or agrees to offer or gives to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of this Contract.
- 27.3 In the event of a termination under Clause 27.2, the Contractor shall indemnify IPI against any loss, liability, claims, costs and expenses suffered by IPI in connection with or arising from such termination.
- 27.4 In the event of termination under Clause 27.2, IPI shall have the right to do any of the following:
  - 27.4.1 sell or otherwise dispose of the Works or any part thereof delivered including spare parts, documentation, method of use or information of

any kind and the proceeds of such disposal shall be deducted from IPI's claim for compensation from the Contractor;

- 27.4.2 return all or any part of the Works already delivered to IPI and the Contractor shall refund forthwith to IPI the price of all or any part of the Works returned by IPI;
- 27.4.3 purchase from other sources as it deems fit the Works or any parts thereof or identical or similar Works from other sources and the Contractor shall bear additional cost so incurred, if any. In addition, the Contractor shall also pay to IPI as liquidated damages for any delay caused calculated in accordance with Clause 9.2.3 as if it had itself supplied and delivered the Works on the date of actual delivery from these other sources of the Works or parts thereof or identical or similar Works;
- 27.4.4 IPI may withhold payment of any monies payable to the Contractor until the Works are completed and the damages payable to IPI arising from such termination are quantified and ascertained by IPI (such quantification and ascertainment to be made within a reasonable time) and if the aggregate amount of such damages and all monies paid to the Contractor under this Contract exceeds the Contract Price, such excess amount shall constitute a debt payable to IPI by the Contractor; and
- 27.4.5 the Contractor shall remove from the Location, if required by IPI, any temporary structures, plants, tools, goods, materials and equipment brought thereon by or for the Contractor and if the Contractor fails to do so within the time stipulated in the said notice for such removal, IPI shall be entitled to store, remove, sell or otherwise deal with or dispose of the same and the Contractor shall be liable to indemnify IPI for any costs, expenses and liabilities whatsoever incurred by IPI in so dealing with or disposing the same. In the event that the said temporary structures, plants, tools, goods, materials and equipment are sold, the proceeds after deduction therefrom of such monies as are due to IPI from the Contractor shall be held for the Contractor for a period of not less than one (1) month from the date of posting of a notice to the Contractor to collect the said proceeds from IPI and if the said Contractor fails to collect the same from IPI within the said period, he shall be deemed to have disclaimed any rights to or interests in the said proceeds. The Contractor shall not be entitled to make any claims whatsoever against IPI or its employees or agents for any action taken by IPI in accordance with the provisions of this Clause.
- 27.4.6 (a) IPI shall also have the right to terminate the Contract for convenience by giving one (1) month's notice in writing and without having to assign any reason for doing so.
- (b) If a notice under Clause 27.4.6(a) is given, the Contractor may submit a claim for compensation subject to Clause 27.4.6 (c). The compensation shall not exceed the total cost incurred by the Contractor in the performance of the part terminated.
- (a) The aforesaid compensation shall not be greater than a sum which in addition to any sums paid or due or becoming due to the

Contractor under the Contract would together exceed the Contract Price.

- 27.5 Notwithstanding anything contained herein, the Contractor shall not be entitled to claim for any reimbursement including but not limited to anticipated loss of profit and works-in progress for the value of any part of the Works not delivered prior to the termination of this Contract.
- 27.6 The rights of IPI specified under this Clause 27 shall be in addition to such other rights and remedies as IPI may have or be entitled to against the Contractor for breach of contract or otherwise.

## **27A. TIME OF THE ESSENCE**

Time shall be of the essence in this Contract and the Contractor shall provide the services/products in accordance with the timelines and/or stipulated completion dates prescribed in the Requirement Specifications or as otherwise agreed in writing with IPI.

## **28 Notices**

Any notice to the Contractor to be given under the Contract shall be in writing, typescript or printed and may be served personally or sent by registered post or recorded delivery. If it is sent by registered post or recorded delivery to the last known place of abode or business of the Contractor it shall be deemed to have been served on the date when in the ordinary course of post it would have been delivered to him.

## **29 Applicable Law**

The Contract shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Contract is hereby expressly excluded.

## **30 Withholding Taxes**

The Parties agree that in the event that withholding taxes are imposed by the Singapore government on any payments made under this Contract, the Contractor shall bear all such withholding taxes and IPI shall deduct such taxes from payments 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. IPI shall submit to the Contractor evidence of payment of such withholding tax as soon as possible.

## **31 Personal Data**

- 31.1 The Contractor shall comply with all applicable data protection laws and regulations, including the Personal Data Protection Act 2012 ("PDPA"), the

regulations under the PDPA and the guidelines issued by the Personal Data Protection Commission ("PDPC") (collectively the "Data Standards").

- 31.2 Where there has been a breach of the Data Standards, the Contractor shall notify IPI immediately, and implement measures required by IPI to remedy any such breach at the Contractor's own cost.

## **32 Entire Agreement**

Unless otherwise expressly agreed in writing, this Contract embodies the entire understanding between the Parties in respect of the supply of the Works and any prior or contemporaneous representations, either oral or written, are hereby superseded.

## **33 Survival of Clauses**

The provisions of Clauses 6, 10, 12, 16, 17, 18, 19, 20, 21, 24.3, 26, 27, 28, 29, 31, 32, 33 and 34 shall continue in full force and in accordance with their terms, notwithstanding the termination of this Contract for any reason.

## **34 Severability**

In the event that any term, condition or provision of this Contract is held to be a violation of any applicable law, statute or regulation, the same shall be deemed to be deleted from this Contract and shall be of no force and effect and this Contract shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Contract. Notwithstanding the above in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.