

**PART 1 - SECTION B**  
**CONDITIONS OF CONTRACT**

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**LIST OF SCHEDULES**

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## 1 INTERPRETATION AND DEFINITIONS

- 1.1 In this Contract, the following words and phrases shall have the meanings set out below unless the context otherwise requires:

“**Adviser**” means the person appointed by the School. Unless otherwise notified by the School, the Adviser shall be the Government Technology Agency. The School may change the appointment of the Adviser from time to time.

“**Background IP**” means Intellectual Property which is created prior to or independently of this Contract that is related to the Services or any part thereof.

“**Cloud Services**” means the Contractor’s on-demand cloud computing solution provided over a network to the School (and where applicable, its licensees) pursuant to this Contract, which meets or exceeds the requirements of the Requirements Specification, and includes all hardware, application and system software that are required to provide or support the cloud computing solution, and all maintenance, support services, documentation, or media that the Contractor may provide to the School (and where applicable, its licensees ).

“**Commencement Date**” means the date referred to in **Clause 2A.1**.

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

- (a) the Covering Letter;
- (b) the Form of Tender;
- (c) the Instructions for Tenders;
- (d) these Conditions of Contract;
- (e) the Contractor’s Tender Offer;
- (f) the Requirements Specification and Annex A to Requirements Specification;
- (g) the Eligibility and Evaluation Criteria
- (h) the Cost Schedule;
- (i) the Information and Documents to be Submitted
- (j) the Letter of Acceptance;
- (k) any correspondence exchanged between the Parties and accepted by the School in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
- (l) any formal agreement executed between the Parties,

including all schedules and annexes to such documents as relevant.

“**Contract Price**” means the sum specified in the Letter of Acceptance that is payable to the Contractor for supply of all Services (both subscription-based Services, and one-time Services) pursuant to this Contract, and where such sum has not been specified in the Letter of Acceptance, it shall refer to such sum that the School may reasonably estimate to be payable to the Contractor for the supply of all Services during the Subscription Period.

**“Contract Copyright Works”** means:

- (a) Copyright Works comprised in the Solution;
- (b) Copyright Works created in connection with the Services; and
- (c) Copyright Works used in connection with the provision of the Solution and the Services or the performance of the Contract,

including where such Copyright Works are Future Copyright Works or created prior to or independently of the Contract.

**“Contractor”** means a successful Tenderer whose Tender Offer has been accepted by the School for this project. It includes the Contractor's successors, employees or agents.

**“Copyright Work”** shall have the same meaning as the definition of “work” in the Copyright Act 2021.

**“Deemed Subscription Price”** means:

- (a) where the subscription rate for the Services is on a term basis and —
  - (i) if the Subscription Period is 12 months or more, the total fee, for a 12-month period, which the School shall pay to the Contractor;
  - (ii) if the Subscription Period is less than 12 months, the total fee, which the School shall pay to the Contractor;
- (b) where the subscription rate for the Services is on a pay-per-use basis and —
  - (i) if the Subscription Period is 12 months or more, the Contract Price, for a 12-month period which the School shall pay to the Contractor;
  - (ii) if the Subscription Period is less than 12 months, the Contract Price.

For the avoidance of doubt, this definition shall not include any one-time fee that the School pays to the Contractor for one-time Services purchased under this Contract.

**“Documentation”** means user manuals, process definitions and procedures, and all such other documentation as:

- (a) is to be supplied by the Contractor to the School under the Contract;
- (b) is relevant to any part of the Services; or
- (c) has been or shall be generated for the purpose of providing the Services.

**“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 School.

“**Fair Market Value**”, in relation to the supply of goods or services, shall mean the fair market value in Singapore, or where such goods or services are not available in Singapore, in such other country or countries where such goods or services are available. If the Parties are unable to agree on the Fair Market Value, the Fair Market Value shall be determined by an independent public accountant or valuer approved by the School, whose engagement cost shall be borne equally by the School and the Contractor.

“**Foreground IP**” means Intellectual Property which results from or is generated in connection with or for the purpose of this Contract.

“**Future Copyright Works**” means Copyright Works to be created pursuant to or for the purpose of the Contract.

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

“**GST Act**” means the Goods and Services Tax Act 1993.

“**Intellectual Property**” or “**IP**” means all intellectual property rights, including patent rights, all rights in relation to inventions, all rights in relation to registered and unregistered trademarks (including service marks), registered designs, design rights, integrated circuit topography, copyrights and other similar proprietary rights, all rights of whatever nature in computer programs, firmware, micro-code and other computer software and School data, and all intangible rights and privileges of a nature similar to any of the foregoing.

“**Invitation to Tender**” means the invitation to participate in this Tender and comprises all tender documents forwarded to the Tenderer inclusive of the Covering Letter, Form of Tender, Instructions for Tenders, Conditions of Contract, Requirements Specification, Guidelines for Tenderers, Evaluation Criteria and any other documents and forms enclosed.

“**Letter of Acceptance**” means the letter issued by the School accepting the Contractor's Tender Offer.

“**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.

“**New Release**” means enhancements to the Cloud Services that have been made by the Contractor primarily to improve or provide new functionality to the Cloud Services.

“**On-Boarding**” or “**On-Board**” means the deployment and configuration of applications and School data in the Contractor’s cloud environment, so as to enable the

School (and where applicable, its licensees ) to utilise the Cloud Services provided by the Contractor under this Contract.

**“On-Boarding Plan”** means the plan referred to in **Clause 12.4**.

**“Party”** means either the School or the Contractor and **“Parties”** means both the School and the Contractor.

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

**“Personal Data”** has the same meaning given to that term in the Personal Data Protection Act 2012.

**“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.

**“Cost Schedule”** means the schedule of prices for the Services proposed in the Contractor’s Tender Offer and accepted by the School in the Letter of Acceptance.

**“Professional Services”** mean the services proposed in the Contractor’s Tender Offer which are ancillary to the Cloud Services and capable of meeting or exceeding the specifications in the Requirements Specification and which the Contractor is to supply under the Contract.

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

**“Representative”** means the person appointed by the School under **Clause 12.1** and any persons appointed by the Representative to assist him or perform such duties or functions as may be delegated to him by the Representative.

**“Requirements Specification”** means:

- (a) the requirements issued by the School to the supplier(s) for the purpose of inviting the supplier(s) to submit tender offer(s) and any amendments or additions as may be mutually agreed in writing between the Parties; and
- (b) other specifications as may be mutually agreed in writing between the Parties.

**“Right to be Identified”** means the right to be identified as the author of a Copyright Work, that may accrue to authors of Copyright Works and includes any similar right accorded to a performer.

**“Security Breach”** and **“Security Breach Event”** shall have the meaning given to it in Clause 51A.8.

**“School”** means Singapore Sports School Ltd. (UEN: 202210728W), a Public



Company Limited by Guarantee, with its registered office at 1 Champions Way, Singapore 737913.

**“School Data”** means all text, files, images, graphics, illustrations, information, data (including Personal Data), audio, video, photographs, and other content and material, in any format, provided by the School (and where applicable, any licensee ) that resides in, or runs on or through the Cloud Service environment, and includes all content and material that the School (and where applicable, any licensee ) creates, modifies, derives from or produces through the usage of the Cloud Service.

**“Services”** means, collectively, both the Cloud Services and Professional Services (if any) which the School has purchased under this Contract.

**“Service Commencement Date”** means the date referred to in Clause 2C.1.

**“Service Delivery Manager”** means the individual referred to in Clause 12.3.

**“Service Personnel”** means all personnel (including personnel of the Sub-contractors) provided by or to be provided by the Contractor to perform the Contract.

**“Setup and Deemed Subscription Price”** means the total fee comprising the costs of On-Boarding and Professional Services rendered during On-Boarding, and the Deemed Subscription Price.

**“Sites”** mean the premises where hardware, application or system software that provide or support the Cloud Services are delivered, installed, or maintained.

**“Software as a Service”** or **“SaaS”** means the Contractor’s Cloud Services offering comprising software applications, running on a cloud infrastructure provided by the Contractor and made available for use by the School (and where applicable, its licensees), and capable of being accessed remotely by the School (and where applicable, its licensees) through a thin client interface or program interface.

**“Sub-contractor”** means any person engaged by the Contractor to perform any part or parts of the Contractor’s obligations and includes the Sub-contractor’s duly appointed representatives, successors, employees, agents and permitted assignees and the Sub-contractor’s sub-contractor or its employees or agents.

**“Subscription Period”** means the duration of the subscription, or any renewed subscription thereof, where the Contractor is to provide the Services to the School (and where applicable, its licensees) in accordance with the terms and conditions of this Contract.

**“Tenderer”** means a person or its permitted assigns and successors offering to provide the Services in response to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.

**“Tender Offer”** means the offer submitted by the Tenderer in response to the Invitation

to Tender, and other documents submitted by the Tenderer and accepted in writing by the School as modifying such offer submitted by the Tenderer.

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

**“Working day”** means a day which is not a Saturday, Sunday or a public holiday in Singapore.

**“Updates”** means enhancements to the Cloud Services that have been made by the Contractor primarily to rectify defects or to enhance the stability, compatibility and security of the Cloud Services.

1.2 In this Contract, unless a contrary intention appears: –

- (a) words importing the singular shall also include the plural and vice versa where the context requires;
- (b) the headings in this Contract are for convenience of reference only and shall not be deemed to be part of this Contract or be taken into consideration in the interpretation or construction of this Contract;
- (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 this 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) “month” means calendar month, “week” means calendar week and “day” means calendar day;
- (f) 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;
- (g) any reference to any statute or legislation shall be deemed a reference to such statute or legislation as amended from time to time and be deemed to include any subsidiary legislations made thereunder; and
- (h) the Annexes and Schedules mentioned in and attached to this Contract shall form an integral part of this Contract.

## 2 CLAUSE REFERENCES

2.1 All references to clauses, unless otherwise expressly stated, are references to clauses

numbered in the Conditions of Contract and not to those in any other document forming part of the Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the subclauses if any, under that same clause number (E.g. a reference to Clause 8 refers to Clause 8.1 to 8.6 inclusive of all their respective subclauses if any. A reference to Clause 8.1 refers to Clause 8.1(a) to 8.1(c) inclusive of all their respective subclause if any).

## **2A COMMENCEMENT OF CONTRACT**

- 2A.1 This Contract shall come into effect on the date set out in the Letter of Acceptance (the “**Commencement Date**”) and shall remain in force until the end of the Subscription Period set out in the Letter of Acceptance unless otherwise terminated in accordance with the Contract.
- 2A.2 At any time before the expiry of the initial Subscription Period or any renewed Subscription Period, the School shall, in its sole and absolute discretion, have the option to renew this Contract for such further period of time as it may specify, on the same terms and conditions herein. The cumulative length of all Subscription Periods, both initial and renewed, shall not exceed five (5) years.

## **2B SCHOOL ON-BOARDING**

- 2B.1 On the Commencement Date, the School (and where applicable, its licensees) shall begin On-Boarding the Cloud Services in accordance with the Contractor’s On-Boarding plan referred to in **Clause 12.4**.
- 2B.2 On-Boarding shall be deemed complete when the School (and where applicable, its licensees) is capable of accessing and utilising the full functionality of Cloud Services purchased under this Contract.
- 2B.3 The Contractor shall not charge any subscription fees or other fees for Cloud Services that are provided to the School (and where applicable, its licensees) during the On-Boarding period.
- 2B.4 For the avoidance of doubt, the Contractor may quote in its Tender Offer for Professional Services provided to the School during the On-Boarding period.

## **2C SERVICE COMMENCEMENT DATE**

- 2C.1 The Service Commencement Date shall be the date following immediately after the day that On-Boarding is deemed complete or, if On-Boarding is not applicable, the date where School (and where applicable, its licensees) is capable of accessing and utilising the full functionality of the Cloud Services purchased under this Contract.

## **3 SERVICES TO BE PROVIDED BY CONTRACTORS**

- 3.1 The Contractor shall:-

- (a) provide the Services to the School in accordance with this Contract;
  - (b) ensure that the functionality of the Cloud Services is not decreased during the Subscription Period;
  - (c) not decrease the overall security of the Cloud Services during the Contract period;
  - (d) faithfully observe all the terms and conditions of this Contract according to their true intent and purpose;
  - (e) inform the School fourteen (14) days in advance of any planned maintenance to its Services, and such maintenance shall not disrupt the Services under this Contract;
  - (f) provide the Documentation in accordance with **Clause 33**;
  - (g) provide training in accordance with **Clause 28**; and
  - (h) provide all other services specified by this Contract, upon the terms and conditions hereinafter contained.
- 3.2 The Contractor shall designate a common service location for the School to contact for the provision of all the services specified in the Contract.
- 3.3 The Contractor shall notify the School in writing as soon as reasonably practicable upon becoming aware of any event or circumstance which may adversely affect the performance of the Contractor's obligations under this Contract (whether in whole or in part), or which is reasonably likely to result in any material delay in the implementation or delivery of any of the Services.
- 3.4 Upon notifying the School of any such event or circumstance described at **Clause 3.3** above, the Contractor shall as soon as is reasonably practicable and without prejudice to its other reporting obligations stated in this Contract, provide the School with a written proposal regarding the steps it considers that Parties should take to avert, remedy or mitigate the effect of such event or circumstance.
- 3.5 The Parties shall, if requested by the School, meet within three (3) working days of such request (and where the adverse event is impending, before the adverse event occurs) to discuss the Contractor's proposal and to agree on the appropriate steps which the Parties should take to avert, remedy or mitigate the effect of such event or circumstance. If the Parties fail to agree upon the appropriate steps to be taken, Parties shall first make reasonable efforts to resolve their disagreement through mediation in accordance with **Clause 53**.
- 3.6 Nothing in this **Clause 3** shall be deemed to prejudice any rights and remedies of the School against the Contractor for any breach of the Contractor's obligations under this Contract or at law or in equity.

#### 4 TERMS OF PAYMENT

- 4.1 Subject to the provisions of this Contract, the School shall pay to the Contractor the Contract Price in the manner prescribed in **Schedule 1 of Part 1, Section B**.
- 4.1A The School may make any payment due to the Contractor under the Contract by any electronic payment mode as the School may decide (e.g. Interbank GIRO, PayNow, FAST transfer). The Contractor shall provide the School with the relevant payment details for such mode of payment within [thirty (30)] days after the date of the Letter of Acceptance.
- 4.2 Payment by the School shall not be considered as evidence of the quality of the Services to which such payments relate and shall also not be regarded as a waiver of any default by the Contractor in the performance of its obligations, and it shall also not relieve the Contractor from its other obligations under the Contract. Payment by the School shall also not prejudice the School's right to reject any of the Services which do not meet the requirements specified under this Contract and shall not prejudice the Contractor's responsibility to replace, rectify or re-perform any of the Services which do not meet the requirements specified under this Contract.
- 4.2A Intentionally Left Blank.
- 4.3 The School shall not be required to pay for expenses or cost of whatever nature other than those expressly set forth in this Contract, unless otherwise expressly agreed to in writing by the School.
- 4.4 The Contract Price is exclusive of any GST chargeable on the supply of goods, services or works to the School by the Contractor under this Contract. If the Contractor is a taxable person under the GST Act, the School shall reimburse the Contractor for any such GST payable under this Contract.
- 4.5 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if it is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the regulations made under the GST Act.
- 4.6 The School is agreeable to the Contractor assigning its Receivables to any Factor, subject to the following:
- (a) the Contractor warrants and represents to the School 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 School any information in relation to the Payee and the factoring arrangement as the School may from time to time reasonably require;
  - (c) such assignment shall be without prejudice to the School's rights against the

Contractor under the Contract, at law or in equity, including the School'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 School 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 School and comply with all reasonable invoicing directions of the School in connection with such withholding;
- (e) the Contractor acknowledges and agrees that:
  - (i) the School 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 4.6(d);
  - (ii) payment made by the School to the Payee in respect of any Factored Invoice shall constitute a full discharge of the School's payment obligations to the Contractor in respect of such Factored Invoice;
  - (iii) where a Factored Invoice includes GST, payment made by the School to the Payee in respect of such GST shall constitute a full discharge of the School'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 School 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 School by way of deduction without any obligation to gross up, the Contractor shall indemnify and hold the School harmless from and against all such withholding taxes and any other Losses incurred or suffered by the School 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 School to the Payee in respect of such invoice shall constitute a full discharge of the School's payment obligations to the Contractor in respect of such invoice; and
- (g) the School 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 School 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 School.

## **5 TAXES, FEES AND DUTIES**

- 5.1 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.
- 5.2 If the School 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 School may subsequently so pay, any such taxes, fees, duties, fines, levies and assessments ("**Taxes**"), the Contractor agrees that the School 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.
- 5.3 For the avoidance of doubt, if withholding taxes are imposed by the tax authorities on any payment due under this Contract, the Contractor shall bear all such withholding taxes and the School shall be entitled to 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.

## **5A PRICE**

- 5A.1 The subscription price shall be all-inclusive, and deemed to include:
  - (a) all hardware that is necessary for or related to the provision of Cloud Services to the School (and where applicable, its licensees) under this Contract;

- (b) all software that is necessary for or related to the provision of Cloud Services to the School (and where applicable, its licensees) under this Contract;
- (c) all IP licenses that is necessary for or related to the provision of Cloud Services to the School (and where applicable, its licensees) under this Contract;
- (d) all professional services related to the deployment, installation and configuration of the hardware, tools, and platforms that is necessary for or related to the provision of Cloud Services to the School (and where applicable, its licensees) under this Contract; and
- (e) all training conducted by the Contractor under **Clause 28**;

## **6 TIME FOR PERFORMANCE**

- 6.1 Time shall be of the essence in this Contract and the Contractor shall provide the Services in accordance with the timelines prescribed in this Contract or as otherwise agreed in writing with the School.

## **7 SCHOOL'S OBLIGATIONS**

- 7.1 The School shall not employ any of the Contractor's staff connected with the project within one (1) year after the completion of the Contract.
- 7.2 If the progress of the Services is delayed for reasons not attributable to the Contractor (whether attributable to the School or not), the Representative may, upon the application by the Contractor, grant such extensions of time as he deems reasonable. The Contractor shall not be entitled to claim any additional expenses incurred for such extensions of time, unless those expenses are specifically agreed to by the Representative in writing as those the School will bear before the expenses are incurred.

## **8 CONTRACTOR'S OBLIGATIONS**

- 8.1 The Contractor shall with due care and diligence:
- (a) carry out its obligations to the School under this Contract;
  - (b) ensure that the Services meet or exceed the requirements as set out in the Requirements Specification; and
  - (c) do all things which are necessary or reasonably to be inferred from the Contract.
- 8.2 The Contractor shall carry out its obligations in relation to the Services in conformity with the general accepted standards of skill, care and diligence appropriate to the nature of the service rendered.



- 8.3 The Contractor and its Sub-contractors shall not employ any staff of the School connected with the project until one (1) year after the completion of the Contract.
- 8.4 If the Contractor delays progress on any part of this Contract, for any reason not attributable to the School, and thereby reduces any scheduled duration of activities to be carried out by the School under this Contract, the School shall be entitled to a corresponding time extension for completion of such activities at no additional cost to the School, and without prejudice to the Contractor's obligation to supply the Services in accordance with this Contract.
- 8.5 Intentionally Left Blank
- 8.6 The Contractor shall ensure that all Services provided are free from defects including defects arising out of faulty design and faulty and inferior workmanship. The Services provided shall be of high quality and fit for the purposes for which it is intended as set out in the Requirements Specification.
- 8.7 Every obligation by the Contractor is taken to include an obligation by the Contractor to ensure that each of its directors, officers, employees, and agents, and that of its Sub-contractors and others under its control performs or complies with that obligation. Any covenant by the Contractor not to do any act or thing includes an obligation not to allow that act or thing to be done by its officers, employees, and agents, and that of its Sub-contractors.

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**11 SECURITY DEPOSIT**

- 11.1 Within thirty (30) calendar days commencing from the date of issue of the Letter of Acceptance, the Contractor shall deliver to the School a security deposit of an amount equal to 5% (the "Security Deposit") of the Tender Price for the Implementation Period if the Contract Sum is more than S\$1 million for the due, faithful and complete performance of the Contractor's obligations under the Contract as regards the performance and delivery of the Services.
- 11.2 The Security Deposit shall either be in the form of cash (whether in its electronic form or otherwise) or, in lieu of cash, a Security Deposit Guarantee. Where the Contractor is providing the Security Deposit in the form of cash, the use of electronic means to transfer the Security Deposit is preferred.

The cost of obtaining and maintaining such Security Deposit Guarantee shall be borne by the Contractor.

- 11.4 The Contractor shall ensure that the Security Deposit Guarantee remains effective until

three (3) months after the completion of the Contract and all the Contractor's obligations under the Contract as regards performance and delivery of the Services.

- 11.5 If the Contractor's obligations as regards performance and delivery of the Services under the Contract are unlikely to be completed before the expiry date of the Security Deposit Guarantee, the Contractor shall without demand, secure its renewal or obtain a new Security Deposit Guarantee for the same amount and on the same terms as the expiring Security Deposit Guarantee but with a validity period ending not less than three (3) months after the estimated date of completion of all such obligations under the Contract, and deliver the same to the School. If such renewal or new Security Deposit Guarantee is not deposited with the School at least thirty (30) days before the expiry date of the expiring Security Deposit Guarantee, the School shall have the right to call on the expiring Security Deposit Guarantee.
- 11.6 The School may at its sole discretion draw on the Security Deposit to satisfy any amount as may become due to the School under the Contract.
- 11.7 The School shall be entitled to make a demand on the Security Deposit Guarantee as soon as it is satisfied that the conditions for drawing on the Security Deposit have been fulfilled, notwithstanding that the Contractor disputes the same.
- 11.8 The School's rights under this Clause 11 shall be without prejudice to any other rights and remedies available to the School.
- 11.9 Where the Security Deposit is in the form of cash, the Security Deposit, subject to such deduction as may be made from it by the School, shall be released within ninety (90) days from the completion of the Contract and completion of all the Contractor's obligations under the Contract as regards performance and delivery of the Services.
- 11.10 The School's obligations to make payments under Clause 4 are conditional upon the Contractor having provided the Security Deposit in accordance with this Clause 11.
- 11.11 In the Contract, "Security Deposit Guarantee" means either:
- (a) Intentionally Left Blank
  - (b) a guarantee in the form set out in Part 2 of [Schedule 4] or in such other form as may be reasonably required by the School issued by:
    - (i) a bank or insurance company registered with the Monetary Authority of Singapore; or
    - (ii) a licensed finance company registered with the Monetary Authority of Singapore.

## **12 PROJECT MANAGEMENT**

### **12.1 The School's Representative**

The School shall appoint a person to supervise and liaise with the Contractor for the purpose of the Contract and such person may designate others to assist him in such matters.

### **12.2 Project Office**

The Contractor shall at its own expense establish an office in Singapore, at which the Contractor can be contacted by the School, to coordinate the performance of this Contract. Unless otherwise required under the Requirements Specification or agreed by the School, such project office shall be the common service location for the School to contact the Contractor for the provision of all the Services.

### **12.3 Service Delivery Manager and Other Personnel**

12.3.1 The Contractor shall designate a service delivery manager who shall be primarily responsible for directing and coordinating the supply, delivery and performance of all the Services which are to be executed or provided by the Contractor under the Contract and all other matters including contract administration, monitoring of progress, technical personnel training, logistic support, documentation preparation and operation start-up (the “**Service Delivery Manager**”). The Service Delivery Manager shall be deemed to be the Contractor's agent in all dealings with the School and all actions of the Service Delivery Manager shall be binding on the Contractor.

12.3.2 The Representative shall have direct access to the Service Delivery Manager at all times during the performance of this Contract and if the Service Delivery Manager is absent from work or out of Singapore for any duration, the Contractor shall designate another employee to perform his duties and functions.

### **12.4 Implementation Plan**

12.4.1 Within fourteen (14) days from the issue of the Letter of Acceptance, the Contractor shall produce and maintain an implementation plan showing the time schedule and sequence of events necessary for the provision of the Services.

12.4.2 The implementation plan shall:

- (a) minimally include and meet the Service Commencement Date mutually agreed upon between the School and the Contractor;
- (b) a delivery and installation schedule for any hardware that is necessary for or related to the provision of the Cloud Services under this Contract; and
- (c) where On-boarding is applicable, the implementation plan shall also include the On-boarding Plan.

12.4.3 Unless otherwise agreed by the School in writing, the implementation plan shall be updated at intervals of two (2) weeks to show the expected and actual events and completion dates. The implementation plan shall be made available to the Representative for review. The implementation plan shall include activities to be carried out by the School and its Representative.

12.4.4 The implementation plan shall, unless otherwise agreed in writing by the School, conform to the timelines set out in this Contract.

#### **12.4A Delivery, Installation & Configuration of Cloud Service Hardware**

12.4A.1 The Contractor shall provide professional services to:—

- (a) deliver, install and configure all hardware that is necessary for or related to the provision of Cloud Services under this Contract. All such hardware shall meet the needs and server environment of the School (and where applicable, its licensees); and
- (b) deploy, install and configure its proposed tools and platforms, if any, to the School's (and where applicable, its licensees') user environment. This includes the installation and configuration of the tools and platforms on computers belonging to users of School's (and where applicable, its licensees), so that such users can access the Contractor's server and properly use the Cloud Services.

#### **12.5 Contractor On-Boarding**

12.5.1 Prior to the commencement of any work under the Contract and as and when required by the School, the Contractor shall (and shall ensure that each of its employees and agents and those of its Sub-contractors deployed or engaged to perform any obligations under the Contract will) undergo and comply with such on-boarding process as set out in the Requirements Specification.

12.5.2 Unless permitted by the School, the Contractor shall not permit any of the persons specified in Clause 12.5.1 above to commence work on the Contract until the on-boarding process referred to in Clause 12.5.1 has been complied with.

12.5.3 Clause 12.5.2 shall be without prejudice to any right of the School to any remedies against the Contractor for its failure to comply with Clause 12.5.1.

#### **12.6 Governance Structure**

12.6.1 Throughout the duration of the Contract, and unless otherwise expressly stated in this Contract, the Contractor shall adhere to such governance structure for the management and oversight of all of the work and activities of the Contractor and its Third Party Suppliers in relation to the Contract as set out in the Contract, including the establishment of, and the participation in, the necessary committees. The Contractor shall, and shall ensure that its Third Party Suppliers (if any) shall if required, participate in the establishment and all activities of the relevant committees under such governance

structure.

## **12.7 Regular Progress Reports & Meeting**

- 12.7.1 The Contractor shall deliver to the Representative regular written progress and status reports in a format approved by the Representative (the “**Progress Reports**”). Unless otherwise stipulated by the School in writing, the Progress Reports shall be submitted on a monthly basis. The Progress Reports shall include the current project status, the expected and actual completion dates of events necessary for the provision of the Services, the activities to be carried out by the School and its Representative, and an indication as to whether the deadlines set out in the Implementation Plan can be met. The submission and acceptance of these reports shall not in any way prejudice the rights of the School to make any claims against the Contractor.
- 12.7.2 If requested by the School to do so, the Contractor shall provide such samples, demonstrations, presentations and other evidence (documentary or otherwise) reasonably necessary to enable the School to verify the Progress Reports.
- 12.7.3 Where the Contractor becomes aware of any event or circumstance which may adversely affect the performance of the Contractor’s obligations under this Contract (whether in whole or in part), or which is reasonably likely to result in any material delay in the implementation or delivery of any of the Services, **Clauses 3.3 to 3.6** shall apply.
- 12.7.4 The Representative may call progress meetings (the “**Progress Meetings**”) at regular intervals during which the Service Delivery Manager shall attend and report to the Representative on the progress of the Services and the performance of the Contract and compliance with the Contract requirements. The Progress Meetings shall be held at venues chosen by the Representative. Unless otherwise stipulated by the School in writing, the Progress Meetings shall be held on a monthly basis.

## **13 CONTRACTOR'S PERSONNEL**

- 13.1 The Contractor shall provide all necessary personnel who are suitably qualified and competent and who have adequate skills and where applicable, the required professional certification, for the performance of the Services.
- 13.1.1 The Contractor shall communicate in writing for the approval of the Representative the names and particulars of all personnel (including those of its Sub-contractors) that it intends to deploy for the performance of the Contract.
- 13.1.2 The Contractor shall provide the name and particulars required under **Clause 13.1.1** in the form required by the Representative.
- 13.2 If the School objects by notice in writing to any personnel assigned or designated by the Contractor or by any Sub-contractor to carry out any work or perform services for the purposes of the Contract who, in the opinion of the School, has misconducted himself or is a security risk or is deemed unsuitable in any way or has failed any security

clearance subsequent to the commencement of work on the Contract, the Contractor shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the School. If the School has other reasons to believe that any personnel assigned or designated by the Contractor, or its sub-contractors or agents are unsatisfactory in any way, the Contractor and the School shall meet immediately in order to reach a mutually acceptable solution.

- 13.3 The Contractor undertakes not to change its personnel designated under **Clause 13.1** without the School's or the Representative's consent, whose consent shall not be unreasonably withheld. The Contractor shall not alter or reduce the quality of its personnel if this may adversely affect the progress or quality of the Services. In the event that the Contractor wishes to replace its designated personnel, the Contractor shall provide the names and particulars of the replacement staff in writing to the School or the Representative for the School's or the Representative's (as the case may be) consent. Replacement staff shall not commence work on the project unless approval is given in writing by the School.

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#### **16 INFORMATION AND ACCESS**

- 16.1 The School undertakes to provide the Contractor promptly with any information which the Contractor may reasonably require from time to time to enable the Contractor to proceed expeditiously with the performance of its obligations under the Contract.
- 16.2 Where the Contractor requires access to the Sites for the purposes of providing the Services under this Contract, the School will allow persons duly authorised by the Contractor such access to the Sites as is reasonably required for the purpose of providing the Services, subject to the Contractor complying with such security policies, health and safety policies, all policies which apply to persons permitted access to the Sites, and any other School policies or authorisation procedures as are notified to the Contractor from time to time. The Contractor shall use its access rights for the purpose of providing the Services only. The Contractor's right of access will terminate upon the expiry or termination of this Contract.
- 16.3 The Contractor shall not, without the prior written permission of the School (and where applicable, its licensees), bring any visitor to the Sites.
- 16.4 Without prejudice to **Clause 41**, the Contractor shall maintain strict confidentiality and ensure that all information pertaining to the Sites and the School's (and where applicable, its licensees) work environment is not disclosed to any person except the Contractor's employees who are directly involved with the performance of this Contract. The Contractor shall not publish or communicate such information to any unauthorised person in any form whatsoever.

16.5 The School shall have the right to terminate this Contract forthwith without being liable to the Contractor for any damages or compensation in the event of an actual or threatened breach of **Clause 16.4**.

16.6 To the extent permitted by law, the School (and where applicable, its licensees) excludes any liability for any injury to persons entering the Sites with the Contractor's authorisation or for any loss or damage caused to property brought onto the Sites by the Contractor.

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**20 DELIVERY AND INSTALLATION**

20.1 Where the Contractor is required to deliver and install hardware at the Sites for the purposes of the Services under this Contract, the Contractor shall deliver and install all such hardware at no additional cost or expense to the School. The Contractor shall confirm the date and time of the delivery and installation of the hardware in writing with the School at least five (5) working days before the delivery date.

20.2 The Contractor shall deliver and install the hardware at the Site(s) specified in the Contract or at such other Site(s) in Singapore as the School may stipulate by notice in writing at least five (5) working days prior to the required delivery date.

20.3 The Contractor shall deliver and install all hardware at the same time and partial delivery and installation will not be accepted, unless the School directs otherwise.

20.4 The Contractor shall, where applicable, install such software on the hardware and do all things necessary to ensure that the hardware is capable of providing or supporting the Cloud Services under this Contract. The Contractor shall complete installation of the hardware on the day of delivery or in accordance with any plan agreed to in writing with the School.

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## 23 DAMAGES

- 23.1 The School shall have the right to impose liquidated damages by written notification to the Contractor, for each and every occasion that the Contractor fails to meet the service level requirements as set out in the Requirements Specification or such other service level requirements as may be agreed between the Parties. Liquidated damages shall be imposed at the rate of one tenth of a percent (0.1%) of the Deemed Subscription Price for each day (including Sundays and Public Holidays) or part thereof of delay up to a cumulative maximum of ten percent (10%) of the Deemed Subscription Price for all occasions (and not each occasion) of delay in every 12-month period starting from the Service Commencement Date.
- 23.1A The School shall have the right to impose liquidated damages for any delay in the Service Commencement Date or such other dates as may be agreed between the Parties not relating to delivery of Professional Services. Liquidated damages shall be imposed at the rate of one tenth of a percent (0.1%) of the Setup and Deemed Subscription Price for each day (including Sundays and Public Holidays) or part thereof of delay up to a cumulative maximum of ten percent (10%) of the Setup and Deemed Subscription Price for all occasions of delays and not each delay. Where the Contractor has failed to meet the stipulated completion date in respect of Professional Services, liquidated damages shall be imposed at the rate of one tenth of one percent (0.1%) of the price of the delayed Professional Service for each day (including Sundays and Public Holidays) or part thereof of delay up to a cumulative maximum of ten percent (10%) of the price of the delayed Professional Service for all occasions (and not each occasion) of delay in every 12-month period starting from the Service Commencement Date.
- 23.2 Liquidated damages imposed under the **Clauses 23.1 and 23.1A** above shall be paid to the School in Singapore Dollars not later than thirty (30) days from the date of issue of a written notification by the School to the Contractor informing the Contractor of the liquidated damages payable.
- 23.3 If the Contractor fails to pay the liquidated damages, the School may deduct the amount due from any monies due or which may become due from the School to the Contractor under the Contract and other contracts between the Parties or recover the liquidated damages as a debt due from the Contractor in any court of competent jurisdiction.
- 23.4 If the Contractor defaults in the payment when due of any sum payable under the Contract, its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment). The interest shall be calculated on a daily basis at a rate per annum to be communicated by the School to the Contractor in writing.
- 23.5 Where the Contractor is required in the implementation plan to submit any plans, scripts, manuals and other documents for verification and review and the Contractor fails to meet the time schedule for submission of any such documentation, the School shall be entitled to an extension of time for verification and review corresponding to the period of delay without prejudice to the Contractor's obligation to meet the timelines that are set out in the Requirements Specification, or such other timelines as may be agreed to between the Parties.



- 23.6 The School 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 23**.

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**28 TRAINING**

- 28.1 The Contractor shall, if requested by the School, be responsible for the provision of suitable and adequate training for staff nominated by the School (and where applicable, its licensees).

- 28.2 The training shall include use of the Cloud Services and self-help for first line support by information systems officers at the computer centre, supervisors, operators, and end-users.

- 28.3 The training provided shall comply with the Requirements Specification and such other proposals contained in the Contractor's Tender Offer as may be agreed between the Parties.

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**30 INTELLECTUAL PROPERTY**

- 30.1 Nothing in this Contract shall affect any person's right to own or licence Background IP.

- 30.2 The Contractor grants to the School (and where applicable, its licensees) free of any additional charge for the duration of the Contract, all the necessary licences, which shall be non-exclusive, non-transferable and worldwide, to access and use the Cloud Services.

- 30.3 For the avoidance of doubt, the School shall own all right, title to, and interest in all School Data. Nothing in this Contract shall be construed to grant the Contractor any

rights in any School Data. Where the Contractor requires a licence to access and use School Data for the purpose of providing the Cloud Services to the School (and where applicable, its licensees), the Contractor shall request for the same from the School, and the School may grant to the Contractor a licence to access and use School Data on such terms and conditions it deems reasonably necessary.

30.4 If the Contractor intends to sell or transfer its Intellectual Property in the Cloud Services during the duration of this Contract, the Contractor shall ensure that the purchaser of such Intellectual Property and every successor in title to the interest in such Intellectual Property has prior written notice of the licence that the Contractor has granted to the School (and where applicable, its licensees) under this Clause 30, and agrees to be bound by the obligations of the Contractor under this Clause 30.

30.5 If any licence granted by the Contractor to the School (and where applicable, its licensees) under Clause 30 is registrable under any IP registration system in Singapore, the Contractor shall:

- (a) register the licence under the IP registration system in Singapore; and
- (b) deliver copies of documentary proof of such licence registration to the School as soon as possible.

### **30B ACCESS TO SCHOOL DATA**

30B.1 The Contractor shall ensure that the School (and where applicable, its licensees) has, at all times during the Subscription Period, the ability to access, export, retrieve, or download any or all School Data from the Cloud Services.

## **31 UNAUTHORISED CODE**

31.1 The Contractor warrants that:

- (a) the proper usage of the Cloud Services by the School (and where applicable, any end-user) will not cause Unauthorised Code to be introduced into the School's (or any end-user's) computer systems;
- (b) all magnetic or other storage media and all software, content and other materials capable of being stored on such media:
  - (i) supplied or installed as a software or part of a software or with any software;
  - (ii) used in the performance of the Services; or
  - (iii) supplied or installed by the Contractor in connection with the Cloud Services

shall not contain any Unauthorised Code.

31.2 In the case of a breach of **Clause 31.1** above, the Contractor shall:

- (a) at its own expense, immediately remove and recover all affected Services and, where applicable, provide replacement Services which are free of Unauthorised Code;
- (b) irrespective of whether the School exercises its rights under **Clause 50**, pay the School a sum of Singapore Dollars [One Thousand Six Hundred (S\$1,600)] for each such discovery as liquidated damages, being a genuine pre-estimate of the initial administrative costs occasioned by the discovery of an Unauthorised Code; and/or
- (c) in addition to paragraphs (a) and (b) above, indemnify the School (and where applicable, any end-users) fully against all costs incurred by the School (and where applicable, any end-users) in the course of or incidental to removing the Unauthorised Code and recovering any lost or damage School data or software.

31.3 In this clause, “**Unauthorised Code**” means any virus, Trojan Horse, worm, logic bomb or other software routine or hardware components designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware or School data, or to perform any such actions.

31.4 Where the administrative efforts (including investigative efforts) occasioned by the discovery of an Unauthorised Code under this Clause also constitutes administrative efforts occasioned by a Security Breach Event under **Clause 67**, the higher of the two liquidated damages amount shall apply.

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## **33 DOCUMENTATION**

33.1 The Contractor shall at no additional charge supply and deliver the Documentation and where applicable, related training materials, needed for or that will assist the users of the School (and where applicable, its licensees) in using the Cloud Services. All subsequent updates for each set of the documents shall be supplied at no additional charge to the School as soon as possible.

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## **35 MORAL RIGHTS AND INTELLECTUAL PROPERTY INDEMNITY**

35.1 The Contractor:

- (a) represents, warrants and undertakes to the School (and where applicable, its licensees) that:

- (i) the Services supplied by the Contractor and all IP used, or introduced or supplied by the Contractor in the course of performing its obligations under this Contract do not infringe any Moral Right, rights or interests of third parties in IP;
    - (ii) it owns or has obtained valid licences for all IP that are necessary to perform its obligations under this Contract and shall maintain the same in full force and effect for the duration of this Contract;
    - (iii) the School's (and where applicable, its licensees') usage of the Cloud Services under this Contract does not infringe the IP of any third party; and
    - (iv) no third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of any IP infringement, and none of its Background IP is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings; and
  - (b) shall give the School prompt notice in writing of any claim of infringement of any such Moral Right, rights or interests made by any third party.
- 35.2 The Contractor shall indemnify the School and its officers against all Losses which the School or its officers may at any time and from time to time incur or suffer by reason of:
- (a) any breach of **Clause 35.1**; or
  - (b) any claim of infringement or alleged infringement of any Moral Right in any Contract Copyright Work; or
  - (c) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract.
- 35.3 Without prejudice to the School's right to defend a claim alleging such infringement, the Contractor shall, if requested by the School but at the Contractor's expense, defend such claim. The Contractor shall observe the School's directions relating to the defence or negotiations for settlement of such claim.
- 35.4 The School shall if requested but at the Contractor's expense provide the Contractor with reasonable assistance in conducting the defence of such claim.
- 35.5 If use of any Contract Copyright Work is alleged to infringe any Moral Right or any of the Services supplied by the Contractor or IP used or introduced by the Contractor in the course of performing its obligations under this Contract is alleged to infringe the rights or interests of third parties in IP, the School may (in addition to and without prejudice to all other rights or remedies available), at the option of the School, require the Contractor, at the Contractor's own expense to:
- (a) procure for the School the right to continue using the same;

- (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under this Contract (in which event the Contractor shall compensate the School for any Losses sustained or incurred by the School in connection with such replacement or modification);
  - (c) replace the Services with a non-infringing, functionally equivalent alternative; or
  - (d) pay the School a sum equivalent to the purchase price of functionally equivalent items for the remaining term of the Contract, upon the termination of the impacted Services by the School.
- 35.6 If any action is being contemplated or instituted for an alleged infringement of patents, design, copyright or other statutory or common law rights, the School reserves the right to cancel immediately the Contract or its parts yet to be supplied to the School and the School reserves its right to purchase such part from other sources and all increased costs thereby incurred shall be borne by the Contractor without prejudice to all or any of the School's rights as contained in this Contract.
- 35.7 All royalties and fees claimable by or payable to any person for or in connection with any (a) Moral Right in any Contract Copyright Work or (b) IP used or required to be used in connection with the performance of the Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the School.
- 35.8 This **Clause 35** shall survive the termination or expiry of this Contract.
- 35.9 For the purpose of this **Clause 35** (except for **Clause 35.6**), a reference to the "School" shall include a reference to the "licensee", and a reference to the School's officers shall include a reference to the licensee's officers, and the Parties agree that the licensee may enforce and enjoy the benefit of this **Clause 35** (except for **Clause 35.6**) save that for the purposes of **Clause 35.3**, the School's directions shall prevail over the licensee's directions.

### **36 RELOCATION OF CLOUD SERVICE HARDWARE**

- 36.1 Where the Contractor has installed hardware at the Sites to provide the Cloud Services to the School (and where applicable, its licensees), the School shall have the option to require the Contractor to relocate within Singapore any or all of the hardware on the Sites, on the terms set out in this **Clause 36** (the "**Relocation Option**").
- 36.2 The School may exercise the Relocation Option by giving fourteen (14) days' written notice to the Contractor at any time before the expiry of the Contract and any extension thereof if it requires the Contractor to relocate any or all of the hardware.
- 36.3 Within seven (7) days of the School's exercise of the Relocation Option, the Contractor shall provide the School with: (a) a Relocation Plan; and (b) a Rollback Plan. The Rollback Plan shall be implemented in the event of a relocation failure.

- 36.4 The Contractor shall make such adjustments to the Relocation Plan and Rollback Plan as the School may reasonably require.
- 36.5 The Contractor's personnel shall arrange for and supervise the dismantling, packing, transportation, unpacking and reinstallation of all Cloud Services hardware. The Contractor shall bear all costs and expenses in relation to any damage or injury suffered by the hardware or the Contractor's personnel during the relocation or rollback.
- 36.6 The Contractor may suspend any affected Cloud Services provided to the School under this Contract during any period of relocation or rollback, but the Contractor shall restore the affected Cloud Services to their normal operating condition immediately after the period of relocation or rollback. Such period of suspension shall be as minimal as possible.
- 36.7 Where there is a delay in the restoration of Cloud Services beyond the time stipulated in the Relocation Plan or where relocation failure has occurred, **Clause 23.1A** shall apply in relation to each day or part thereof of delay in the restoration of Cloud Services beyond the time stipulated in the Relocation or Rollback Plan, as the case may be.
- 36.8 The School shall pay the Contractor Fair Market Value for all work done under this Relocation Option.

### **37 LANGUAGE**

- 37.1 All School data, documents, descriptions, diagrams, books, catalogues, instructions, markings for the Services and all correspondence shall be written in readily comprehensible English Language.
- 37.2 The personnel of the Contractor and all Sub-contractors shall be proficient in both written and spoken English for the purpose of performing the Contractor's obligations under this Contract.

### **38 LOSSES**

- 38.1 The Contractor shall indemnify and keep indemnified the School (and where applicable, its licensees) against any and all Losses sustained, incurred, paid by or suffered by the School (and where applicable, its licensees) arising out of or in connection with any act or omission on the part of the Contractor, its Sub-contractor or any of their directors, officers, personnel, employees, servants or agents (the "**Contractor Parties**") unless the Contractor can show that:
- (a) 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; and
  - (b) it is not due to the Contractor's breach, failure or delay in performance of this Contract.

- 38.2 If any claim is commenced against the School (and where applicable, its licensees) that may give rise to a claim against the Contractor under **Clause 38.1**, notice of the claim shall be given to the Contractor as soon as practicable.
- 38.3 Upon receipt of such notice by the School, the Contractor shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the School to handle and defend the same, at the Contractor's sole cost and expense.
- 38.4 If the Contractor takes control of the defence and investigation of the claim, the School shall cooperate, 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 from such claim; provided, however, that this will not limit the School's (and where applicable, its licensees') 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 from such claim. 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 School.
- 38.5 Notwithstanding anything to the contrary in the Contract, the School (and where applicable, its licensees) 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 School, the Contractor shall immediately relinquish control of the defence and investigation of such claim.
- 38.6 This **Clause 38** shall survive the termination or expiry of this Contract.

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**41. CONFIDENTIALITY**

- 41.1 Except with the written consent of the School, the Contractor shall:
- (a) treat as strictly confidential and not disclose any Confidential Information to any person other than officers, employees, and agents of the Contractor or its Sub-contractors on a need-to-know basis for the purposes of performing the Contractor's obligations under the Contract; and
  - (b) only use the Confidential Information for the sole purpose of performing the Contractor's obligations under the Contract and shall not use it for any other purpose.
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- 41.3 The Contractor shall take all reasonable precautions in dealing with Confidential Information to prevent any unauthorised person from having access to such, Confidential Information. For the purpose of this **Clause 41**, “**Confidential Information**” means any information received or obtained as a result of entering into the Contract (or any agreement entered into pursuant to the Contract), including:
- (a) information which relates to the School;
  - (b) information which relates to the existence and the provisions of the Contract or of any agreement entered into pursuant to the Contract; or
  - (c) any analyses, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting such information,
- but does not include information that is:
- (d) or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of the Contractor, his employees, agents or Sub-contractors;
  - (e) lawfully in the possession of the Contractor or already known to the Contractor on a non-confidential basis prior to the Contractor receiving or obtaining such information as a result of entering into the Contract, as evidenced by written records; or
  - (f) independently developed by the Contractor.
- 41.4 The Contractor shall procure and ensure all its employees, directors, officers and agents and those of its Sub-contractors or agents who are or may be involved in the execution of obligations under this Contract observe the provisions of this **Clause 41** and shall, at any time, if so required by the School, procure and ensure that such employees and agents and those of its Sub-contractors or agents sign a non-disclosure agreement in the form prescribed in **Part 1, Section B, Schedule 5**.
- 41.5 The Contractor shall immediately notify the Representative where the Contractor becomes aware of any breach of **Clause 41** by its employees and agents and those of its Sub-contractors or agents who are or may be involved in the execution of obligations under this Contract. The Contractor shall cooperate with the School to limit the extent and impact of such breach.
- 41.6 The Contractor shall not be liable for disclosure of Confidential Information in the event and to the extent any Confidential Information is required to be disclosed by the Contractor pursuant to any applicable law, regulations or directives of any relevant government, statutory or regulatory body (including stock exchange) or pursuant to any legal process issued by any court or tribunal of competent jurisdiction, provided the Contractor shall, to the extent practicably possible and permissible by law or regulations, give the School prompt and prior notice of any such requirement and shall cooperate with the School to limit the scope of such disclosure to the maximum extent legally possible.
- 41.7 Termination or expiry of this Contract for whatever cause shall not put an end to the



obligation of confidentiality imposed on the Contractor, its employees and agents and those of this Sub-contractors or agents under this **Clause 41**.

#### **41A SCHOOL DATA PROTECTION AND SECURITY**

##### **41A School Data Protection**

41A.1 The Contractor shall not access, monitor, use or process School data obtained or held in connection with the Contract, except as reasonably necessary to perform its obligations under the Contract.

41A.2 The Contractor shall not disclose any School data obtained or held in connection with the Contract without the prior written consent of the School. Any request for the School's consent under this **Clause 41A** must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Contractor's obligations under the Contract.

41A.3 The Contractor shall not: (a) cause or permit School data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside Singapore; or (b) allow parties outside Singapore to have access to such School data, unless (in each case) with the prior written consent of the School and subject to such conditions as the School may impose. Any request for the School's consent under this **Clause 41A** 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.

41A.4 The Contractor shall immediately notify the School when it becomes aware of a breach of any of Clauses 41A.1.1 to 41A.1.3.

41A.5 The Contractor shall immediately notify the School as soon as it becomes aware that a disclosure of School data may be required by law and cooperate and comply at its own costs with the School's reasonable requests and directions.

#### **41B BUSINESS CONTINUITY AND DISASTER RECOVERY**

41B.1. The Contractor shall have in place, and maintain, business continuity and disaster recovery plans (collectively, the "**Business Continuity and Disaster Recovery Plans**") in respect of the Services provision to ensure minimal disruption to the School's business operations, even if the Services have been disrupted by a Force Majeure Event (as defined at Clause 44) or other interruptions with the provision of the Services (each such interruption or Force Majeure Event, an "**Adverse Event**"). The Business Continuity and Disaster Recovery Plans shall be set out in the Requirements Specification.

41B.2 The Business Continuity and Disaster Recovery Plans shall be in place as long as this Contract is in force, and the Contractor shall ensure that the Business Continuity and Disaster Recovery Plans are reviewed and updated as and when required. The Contractor shall review the Disaster Recovery Plans to ensure, inter alia, that the recovery time objectives, recovery point objectives, resumption operating capacities and escalation, activation and crisis management procedures are feasible.

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41B.6 The Contractor undertakes to procure that each of its permitted sub-delegates and other Sub-contractors shall also have in place business continuity and disaster recovery plans that are necessary and adequate for business continuity risk management purposes and to enable such sub-delegates and Sub-contractors to perform the activities contemplated under this Contract, as far as reasonable, in accordance with the standards set out in this Contract.

## **42 COMPLIANCE WITH LAW**

42.1 The Contractor shall, at its own costs, obtain and maintain all licences, permits, certifications and regulatory authorisations without any restriction or qualification whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

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

## **42A COMPLIANCE WITH PROGRESSIVE WAGE MARK REQUIREMENTS**

42A.1 Subject to **Clauses 42A.2 and 42A.3**, throughout the duration of the Contract, a Contractor who is PW Mark-Eligible must:

- (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 School 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 which, at any time during the period of the Contract is PW Mark-Eligible but fails to maintain a valid PW Mark, with another Subcontractor approved in writing by the School within one month after the

Contractor being notified of such failure. The Contractor shall comply with **Clauses 42A.1(b) to (d)** in respect of any replacement Subcontractor.

42A.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 School shall have the right to exempt the Contractor from compliance with **Clause 42A.1(a)** for such period of time as determined by the School.

42A.3 If at the time of the 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 must:

- (a) be exempted from compliance with **Clause 42A.1(a)** during the period where the initial application for the PW Mark is being processed by the relevant authority. The School may extend the period of exemption by one or more consecutive periods as determined by the School; and
- (b) notify the School 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 School with the e-Certificate as proof of the successful application (if any).

42A.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 must comply with all the following:

- (a) notify the School 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 42A.4(a)**;
- (c) provide the School with proof of its application for a PW Mark within one month after the date of submission of the application;
- (d) notify the School 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 School 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.

42A.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 School of any change to any Subcontractor's PW Mark accreditation status within one month after the change; and

- (c) replace any Subcontractor which, at any time during the period of the Contract is PW Mark-Eligible but fails to maintain a valid PW Mark, with another Subcontractor approved in writing by the School within one month after the Contractor being notified of such failure. The Contractor shall comply with **Clauses 42A.5(a) to (c)** in respect of any replacement Subcontractor.

42A.6 The School 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 42A.1, 42A.3(b), 42A.4 and 42A.5**.

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42A.8 For the purposes of this **Clause 42A**, 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.

### **43 SUB-CONTRACT, ASSIGNMENT, TRANSFER**

43.1 The Contractor shall not, without the written consent of the School, sub-contract its obligations, or assign or transfer the benefits of the whole or any part of the Contract to any other person.

43.2 The Contractor shall be responsible for the acts, defaults, neglects or omissions of any assignee or Sub-contractor, their agents or workmen as fully as if they were the acts, defaults, neglects or omissions of the Contractor, its agents or workmen.

43.3 If the School permits the Contractor to sub-contract any of its obligations under the Contract, the Contractor shall, for each and every of its Sub-contractor(s):

- (a) ensure that the relevant Sub-contractor complies with its applicable and corresponding obligations under the Contract, as if it were a party to the Contract; and
- (b) procure that the relevant Sub-contractor is bound by a written agreement containing provisions which are substantially similar to, and in any case no less onerous than, the equivalent or corresponding provision in the Contract.

43.4 In seeking the written consent of the School, the Contractor shall:

- (a) provide all information requested by the School;
- (b) if requested by the School, provide to the School for its review and approval a copy of the draft contract or agreement (the “**Draft Agreement**”) for the engagement of the intended sub-contractor. The Contractor shall make such amendments as may be reasonably requested by the School in order for the Draft Agreement to comply with Clause 43.3 above. For avoidance of doubt, the Contractor shall remain fully responsible for its compliance with Clause 43.3 and this Clause 43.4 shall be without prejudice to any right of the School to any remedies against the Contractor for its failure to comply with Clause 43.3.

43.5 The Contractor shall immediately notify the School in the event that it becomes aware of, or has reason to suspect the occurrence of, any breach, default, neglect or unlawful activity of the Sub-contractor (including that of its employees, agents or workmen) in relation to the Contract, or any other act or omission of the Sub-contractor (including that its employees, agents or workmen), which may adversely affect the School’s rights under the Contract or cause loss or damage to the School (in each case, a “**Sub-contractor Default**”). The notification shall not relieve the Contractor or its Sub-contractor of the obligation to remedy or rectify the Sub-contractor Default.

#### **44 FORCE MAJEURE**

44.1 Neither Party shall be liable for any failure to perform its obligations under the Contract if the failure results from events which are beyond its reasonable control (“**Force Majeure Event**”), except that whenever possible the affected Party 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 but not be limited to acts of God, acts of civil or military authority, civil disturbance, wars, strikes, fires, epidemics or pandemics, and other catastrophes.

44.2 If the effect of any Force Majeure Event continues for a period exceeding three (3) months the School may at any time give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

44.3 If a Force Majeure Event occurs, the Contractor or the School (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 this Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the Force Majeure Event.

44.4 If the School terminates the Contract under **Clause 44.2**, the Contractor shall forthwith refund to the School all amounts paid to the Contractor less the price of items and services which have been provided to and accepted by the School.

44.5 Failure of the Contractor’s Sub-contractors or suppliers to perform their obligations

shall not be regarded as events beyond the control of the Contractor.

#### **45 PUBLIC RELEASE OF INFORMATION**

- 45.1 The Contractor shall not, except with the prior written consent of the School on each occasion, make any press or media announcements concerning this Contract, or the matters covered under this Contract, or use the name, logos, or trademarks of the School, or the names of any officers, employees or agents of the School, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fund-raising, promotional materials, commercial purposes, product endorsement or websites (including social media).

#### **46 GIFTS, INDUCEMENT AND REWARDS**

- 46.1 The School shall be entitled to immediately terminate or rescind the Contract 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 School; 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.
- 46.2 In the event of termination of the Contract as provided for in **Clause 46.1** above, **Clause 50.4** shall apply.
- 46.3 In this **Clause 46**:
- “Anti-Corruption Laws” means:
- (a) Chapter IX of the Penal Code 1871;
  - (b) the Prevention of Corruption Act 1960; and
  - (c) any other applicable law including any foreign law which:
    - (i) prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, or agent or adviser of such person; or
    - (ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

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

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

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#### **48 VARIATION OF CONTRACT**

- 48.1 No variation of the Contract shall be of any force unless agreed upon in writing by both Parties.
- 48.2 The School may, at any time during the Contract, require the Contractor to revise the implementation plan or to undertake any reasonable alteration or addition to or omission from the Services or both.
- 48.3 If such a variation is requested, the School shall formally request the Contractor to 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) days of receipt of the School's request or such longer period as may be agreed by the School. The Contractor shall not vary the Services in any respect unless instructed in writing to do so by the School.
- 48.4 A variation under this **Clause 48** shall not invalidate the Contract but if such variation involves an increase in the cost to the Contractor of carrying out the Services, an appropriate adjustment to the Contract Price shall be made.
- 48.5 The Contractor shall satisfy the School as to the reasonableness of changes to the works schedule and of the extra costs or savings resulting from the variations.
- 48.6 Upon the School being satisfied regarding the reasonableness of any extensions to the works schedule by the variation, the School shall grant such extension of time, and inform the Contractor accordingly in writing.

#### **49 WAIVER**

- 49.1 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, shall not (a) be deemed to be or be construed as a waiver or variation of the Remedy, 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 of the Remedy, or of any other such Remedy in any other subsequent instances.

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

49.3 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.

## **50 TERMINATION OF CONTRACT**

50.1 If the Contractor is in breach of any of its obligations under this Contract and -

- (a) the Contractor fails to remedy the breach within fourteen (14) days from the date of a written notice of default from the School; or
- (b) the breach is not capable of being remedied,

the Contractor shall be deemed to have repudiated the Contract and the School shall have the right to terminate the Contract or any part thereof with immediate effect from the date of its written notice, without being liable for damages or compensation.

50.2 Notwithstanding **Clause 50.1**, upon the occurrence of any of the following events, the School shall be entitled to terminate this Contract immediately and forthwith by written notice and without being liable for any damages or compensation:

- (a) where the Contractor becomes insolvent;
- (b) where the Contractor is a company, if the Contractor has a receiver or liquidator appointed or a resolution for winding-up (other than for the purpose of amalgamation or reconstruction) has been passed or the Contractor is subject to a court order having the same effect;
- (c) where the Contractor is a partnership, if the Contractor has dissolved or has a bankruptcy order made against it;
- (d) where the Contractor is an individual, if the Contractor becomes bankrupt or dies;
- (e) where legal proceedings alleging insolvency are brought against the Contractor;
- (f) where the Contractor enters into a composition or similar arrangement with its creditors;
- (g) where the Contractor is debarred from participating in public sector tenders;
- (h) Intentionally Left Blank; or



- (i) where there has been a breach of **Clauses 35, 46, or 51.**
- 50.3 In addition to the rights set out at **Clauses 50.1 and 50.2**, the School may terminate this Contract or any part thereof for convenience by giving at least 1 month's written notice to the Contractor without having to provide any reason for doing so and without being liable for damages or compensation. The School shall pay the Contractor for all work done up to termination and all costs and expenses reasonably incurred. Upon receipt of such written notice, the Contractor shall cease or reduce his work according to the tenor of the notice, and shall forthwith take reasonable steps to mitigate its losses consequent thereto.
- 50.4 Upon the receipt of a written notice pursuant to **Clause 50.3**, the Contractor may, subject to **Clauses 50.5 to 50.7**, submit a claim to the School for compensation.
- 50.5 The Contractor shall set out its claim in a report on an itemised basis and the report shall contain such information that the School may reasonably require. The compensation:
- (a) shall not exceed the total of the following two components:
    - (i) the direct costs which the Contractor has already incurred in respect of the terminated portions of the Contract;
    - (ii) any other reasonable costs incurred by the Contractor in respect of the terminated portions of the Contract such as settlement costs with third party vendors that are incurred as a consequence of the School's termination; and
  - (b) shall, in any event, 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 price provided for the work under this Contract.
- 50.6 The Parties shall make all reasonable efforts to reach an agreement on the compensation sum set out in the Contractor's report, and failing such agreement, the report shall be submitted to an independent public accountant or valuator for verification. The appointment of such independent public accountant or valuator shall be subject to the School's approval, and the cost of such appointment shall be borne by the School.
- 50.7 The School shall pay to the Contractor:
- (a) the compensation sum in the Contractor's report, if such sum is mutually agreed upon between the Parties, within sixty (60) calendar days of such agreement; or
  - (b) the compensation sum in the report as verified or varied by the independent public accountant or valuator, if such compensation sum is submitted to an independent public accountant or valuator, within sixty (60) calendar days of the School's receipt of the report from the independent public accountant or valuator.
- 50.8 In the event that this Contract is terminated pursuant to **Clauses 35.6, 46.1, 50.1** and

**50.2**, the School shall, at its sole discretion, have the right to engage a third party to provide the Services for the remainder of the Contract period, and the Contractor shall indemnify the School in respect of any and all additional cost reasonably incurred by the School.

- 50.9 Save as expressly provided for in this Contract, termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the termination date, and termination shall not affect any provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **50A CONSEQUENCES OF TERMINATION AND EXPIRY**

- 50A.1 In the event of a termination (howsoever arising) or expiry of this Contract, the Contractor shall, at no cost and expense to the School and for thirty (30) days following the termination or expiry:

- (a) continue to store and preserve all School Data in its possession, power, or control, and not take any steps to remove or erase any School Data that is in its possession, power, or control;
- (b) return or make available at all times to the School all School Data, either in its original format or in a format that the School reasonably requests for, together with all related documentation and all copies thereof owned by the School; and
- (c) provide the School with reasonable post-termination data retrieval assistance.

- 50A.2 Upon the expiry of the thirty (30) day period in **Clause 50A.1**, the Contractor shall sign the Declaration stipulated in **Schedule 6** and return a copy of the same to the School.

- 50A.3 The Contractor shall fully indemnify the School (and where applicable, its licensees) against all loss and damage that the School (and where applicable, its licensees) incurs as a result of any breach of **Clause 50A.1**.

## **50B EQUITABLE RELIEF**

- 50B.1 The Contractor acknowledges that any breach of this Contract by itself, its employees, servants and agents and those of its permitted Sub-contractors may result in irreparable injury and damage to the School (and where applicable, its licensees) which cannot be adequately compensated in monetary damages alone. The Contractor therefore agrees that the School may, in addition to all other legal remedies which may be available, seek such injunctive or other equitable relief as may be necessary to protect itself against any such breach or threatened breach of this Contract and the School (and where applicable, its licensees) shall be fully indemnified by the Contractor against all actions, claims and demands, and all related costs (on a full indemnity basis), expenses and damages incurred or sustained as a result of such breach or threatened breach.

## **50C TRANSITION MATTERS**

50C.1 In order to facilitate the effective transition between the Contractor and any outgoing vendor (transition-in) or between the Contractor and any incoming vendor (transition-out), the Contractor shall, at no additional cost or expense to the School, cooperate with and render all support to the School and any incoming or outgoing vendor. This includes, but is not limited to the following:

- (a) providing the School and any incoming or existing vendor with all data, information and documents in connection with the Services provided by the Contractor, including any information regarding the operating environment, protocols, interfaces, architecture and other operating parameters reasonably required by the School or any incoming or existing vendor to ensure a smooth and effective transition of Services;
- (b) adopting any reasonable methodology during the transition of Services from the outgoing vendor to the Contractor, or from the Contractor to any incoming vendor;
- (c) working with any incoming or existing vendor to ensure minimal interference or disruption to the Services;
- (d) reviewing and revising, where applicable, all documentation and training materials handed over from or to any incoming or existing vendor to ensure that such materials remain relevant;
- (e) participating in all transition meetings as reasonably requested by the School; and
- (f) returning all School Data to the School in accordance with Clause **50A.1(b)**.

## **51 POLICY, SECURITY AND AUDIT**

### **51.1 Policy**

51.1.1 The Contractor shall fully comply with all applicable laws and regulations, codes of practice or standards of performance that may be issued by the School from time to time.

51.1.2 Where the Contractor will be performing Extra Work (as defined below) in order to comply with new ICT requirements issued by the School or the Adviser after the commencement of this Contract, the School shall not be liable for any claims in respect of such Extra Work unless all the conditions in **Clause 57** are fully complied with.

### **51.1A Security**

51.1A.1 The Contractor is required to maintain strict confidentiality and ensure that all information pertaining to any premises that the Services are being carried out from and

the School's (and where applicable, its licensees') work environment must not be disclosed to anyone except the Representative and the Contractor's employees, agents or Sub-contractors directly involved in performing the obligations under this Contract. The Contractor is to ensure that information is not to be published or communicated to any other person in any form whatsoever except on a strictly "need-to-know" basis. Failure to comply with this confidentiality requirement shall be a ground for termination of this Contract. This clause shall be without prejudice to the provisions of **Clause 41**.

51.1A.2 The Contractor, its employees or agents or Sub-contractors, shall not, without the prior written permission of the School (or where applicable, its licensees'), bring any visitor to any location or site on which the Contractor is providing the goods or services under this Contract.

## 51.2 Compliance Audit and Reviews

### 51.2.1 Self-assessment review by Contractor

The Contractor shall conduct a self-assessment review at least once annually at no additional cost to the School to ensure that there are proper controls and compliance with this Contract. The Contractor shall submit to the School for approval a proposal outlining the scope of the self-assessment review within one (1) month of the effective date of the Contract. The School's approval may be given subject to conditions, including conditions which amend the scope of the said proposal. , The results and report arising from such a self-assessment review shall be made available for the School to review within 7 days of the issuance of the report.

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## 51A SECURITY AND SCHOOL DATA BREACH PROCEDURES

51A.1 The Contractor shall:

- (a) provide the School with the name and contact information of an employee who shall serve as the School's point of contact for all Security Breach Events and associated matters, and shall be available to assist the School at all times (24 hours per day, 7 days per week) in resolving matters associated with a Security Breach Event; and
- (b) notify the School of any Security Breach Event as soon as practicable after the Contractor becomes aware of, or has a reasonable basis to suspect the existence of, the Security Breach Event.

51A.2 If any part of the Services is provided or performed by a Third Party Supplier:

- (a) the Contractor shall ensure that the Third Party Supplier is obliged to notify the Contractor of any Security Breach Event, as soon as practicable after the Third Party Supplier becomes aware of, or has a reasonable basis to suspect the existence of, the Security Breach Event;
- (b) the Contractor shall notify the School and the immediately upon receiving any notification of a Security Breach Event from the Third Party Supplier; and
- (c) regardless of whether the Third Party Supplier has informed the Contractor of any Security Breach Event, the Contractor shall inform the School of any Security Breach Event as soon as practicable after the Contractor becomes aware of, or has reasonable basis to suspect the existence of, the Security Breach Event.

51A.3 If a Security Breach Event occurs, the Contractor shall, at no cost to the School, extend its full cooperation and assistance to the School in connection with the investigation into and resolution of such Security Breach Event, and shall:

- (a) assist the School with any investigation into the Security Breach Event;
- (b) provide the School with physical access to all the Contractor's and/or Sub-contractor's and/or Third Party Supplier's personnel, facilities and infrastructure that are used to perform this Contract;
- (c) facilitate interviews with the Contractor's and Sub-contractor's and/or Third Party Supplier's employees; and
- (d) make available all records, logs, files, School data reports, and materials that may be relevant to the investigation of the Security Breach Event.

51A.4 The Contractor shall, at no cost to the School, use its best endeavours to immediately remedy all actual and suspected Security Breaches and prevent any future Security Breach from occurring, in accordance with the instructions or directions of the School and/or its Adviser.

51A.5 The Contractor shall not, and shall ensure that its Sub-contractors and/or its Third Party Suppliers do not, inform any third party of any Security Breach Event without the School's prior written consent.

51A.6 The Contractor shall track all details from the point of discovery of the security or data breach to its resolution, and provide the School with hourly updates (unless a shorter or longer frequency is specified by the School), in the format stipulated by the School.

51A.7 Where a Security Breach Event is caused by the Contractor's default, negligence or unlawful act, the Contractor shall reimburse the School for all reasonable costs incurred by the School in responding to and mitigating damages caused by the Security Breach Event. For avoidance of doubt, the School shall not be entitled to double recovery of

the administrative costs (including costs arising from investigative efforts) incurred by the School that is covered by the liquidated damages set out in **Clause 67.1** below.

51A.8 In this Contract:

**“School Data Breach”** means any breach of security leading to:

- (a) unauthorised disclosure of or access to School Data; or
- (b) accidental or unlawful destruction or alteration to School Data;

**“Security Breach”** means any breach of security, including the following:

- (c) any incident leading to unauthorised access to School data, applications, services, networks or devices;
- (d) any incident leading to the security or integrity of the School’s (and where applicable, its licensees’) network being compromised;
- (e) any physical security breach;
- (f) any cyber-security breach; and
- (g) any School Data Breach; and

**“Security Breach Event”** means any actual, potential, or suspected Security Breach.

**“Third Party Supplier”** means any third party (including any Sub-contractor) that provides or performs any part of the Services.

## 51B SECURITY VULNERABILITIES

51B.1 The Contractor shall:

- (a) ensure that each Third Party Supplier is obliged to notify the Contractor as soon as practicable after such Third Party Supplier becomes aware of, or has a reasonable basis to suspect the existence of, any Vulnerability; and
- (b) inform the School (in such format and through such secure means of communication as may be stipulated from time to time by the School) of any Vulnerability:
  - (i) as soon as practicable after the Contractor becomes aware of, or has a reasonable basis to suspect the existence of, the Vulnerability; or
  - (ii) immediately upon receiving any notification of a Vulnerability from a Third Party Supplier.

51B.2 The Contractor shall, at no cost to the School, extend its full cooperation and assistance to the School in connection with the identification, elimination and remediation of any Vulnerability, and shall:

- (a) seek the School’s approval to identify, eliminate and remedy the Vulnerability, and upon such approval, take all necessary immediate actions to fully identify, eliminate and remedy such Vulnerability at the Contractor’s own expense and at no additional cost to the School;

- (b) as soon as practicable, provide the School with full details of the actions taken by the Contractor to identify, eliminate and remedy the Vulnerability;
- (c) provide regular updates (in such format and at such intervals as may be specified by the School) on the identification, elimination and remediation of the Vulnerability;
- (d) make available all records, logs, files, School data reports, and materials as the School may require that may be relevant to the identification, elimination and remedy of any Vulnerability; and
- (e) comply with all directions and requests from the School in connection with the identification, elimination and remedy of any Vulnerability.

#### 51B.3 Intentionally Left Blank

51B.4 The Contractor shall not exploit or otherwise use any Vulnerability to the detriment of the School and the Government.

51B.5 In this **Clause 51B**, “Vulnerability” means any actual or potential vulnerability, exploit, flaw, threat or other security concern relating, directly or indirectly, to

- (a) the School’s (and where applicable, any of its licensees’) IT system or any particular component of the School’s (and where applicable, any of its licensees’) IT system; or
- (b) the provision of the Services or the operation of any computer system for or on the School’s (and where applicable, any of its licensees’) IT environment,

which adversely affects, or may or has the potential to adversely affect the security of the School’s (and where applicable, any of its licensees’) IT system or environment.

### 51C INTENTIONALLY LEFT BLANK

### 51D SECURITY THREATS

51D.1 In the event that the School suspects that a Security Threat exists, the Contractor shall, upon the School’s written request, provide a warranty and reasonable proof (both in form and substance satisfactory to the School) of the following:

- (a) such Security Threat does not exist; or
- (b) the Contractor is in the process of investigating, eliminating and mitigating such Security Threat and that such process will be completed to the satisfaction of the School within reasonable time.

51D.2 The Contractor shall, upon the School’s written request, assist a Law Enforcement

Agency in its investigations or other necessary actions relating to the Security Threat mentioned in **Clause 51D.1**, and the Contractor shall comply at its own cost with all reasonable directions, instructions and requests of the Law Enforcement Agency, including but not limited to:

- (a) producing to the Law Enforcement Agency any physical or electronic record or document, or a copy of the record or document, that is in the Contractor's possession; and
- (b) providing the Law Enforcement Agency with any information.

51D.3 In carrying out its obligations under **Clauses 51D.1 and 51D.2** above, the Contractor shall ensure that all Third Party Suppliers and Service Personnel also carry out the said obligations where necessary or requested by the Law Enforcement Agency.

51D.4 Definitions

**"Law Enforcement Agency"** means any of the following:

- (a) any authority or person charged with the duty of investigating or preventing offences or charging offenders under any written law of Singapore;
- (b) any law enforcement agency of Singapore and their duly authorised officers;
- (c) any "Singapore public sector agency" (as defined in the Public Sector (Governance) Act 2018) which performs security functions, including but not limited to the Cyber Security Agency of Singapore, and their duly authorised officers.

**"Security Threat"** means an act or activity (whether known or suspected) that may imminently cause or result in a Security Breach Event.

## 52 GOVERNING LAW

52.1 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.

## 52A ESCALATION OF DISPUTES

52A.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.

52A.2 If such Dispute is not resolved by agreement between the Officers within 30 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 53** (Mediation).

## **53 MEDIATION**

- 53.1 Notwithstanding anything in this Contract, in the event of any Dispute and subject to **Clauses 52A, 53.3 and 53.4**, no Party shall proceed to any other 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 53.1** if they have gone through at least one mediation session at the Singapore Mediation Centre.
- 53.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process in accordance with **Clause 53**.
- 53.3 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.
- 53.4 **Clause 53.1** 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.
- 53.5 Failure to comply with **Clause 53.1 or 53.2** shall be deemed to be a breach of the Contract.

## **54 DISPUTE RESOLUTION**

- 54.1 (a) Subject to **Clause 53**, any Dispute (as defined in **Clause 52A**) shall be resolved either by reference to arbitration or by court proceedings as elected by the School.
- (b) The School may make the election on its own accord by written notice to the

Contractor or shall make the election within thirty (30) days of the receipt of the Contractor's written notice which shall -

- (i) state the specific dispute or difference to be resolved and the nature of such dispute or difference; and
  - (ii) include a request that the School makes an election whether the dispute or difference as stated shall be resolved by reference to arbitration or by court proceedings.
- (c) Should the School fail to make the election within thirty (30) days of the receipt of the written notice by the Contractor, the dispute or difference shall be resolved by reference to arbitration in Singapore.
- (d) The School may elect to refer to arbitration all or any part of the dispute or difference as stated by the Contractor in its written notice.
- 54.2 Neither Party may commence any action in court before the School has made the election.
- 54.3 The Parties agree to submit, in the event the School elects to resolve the dispute or difference by reference to court proceedings, to the exclusive jurisdiction of the Singapore courts.
- 54.4 The commencement of any arbitration proceedings shall in no way affect the continual performance of the obligations of the Contractor under this Contract.
- 54.5 Any arbitration commenced in accordance with this **Clause 54** shall be in Singapore and conducted in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) for the time being in force which rules are deemed to be incorporated by reference into this Clause
- 54.6 The seat of the arbitration shall be Singapore.
- 54.7 The arbitrator shall be agreed upon between the Parties, or on failure to agree within thirty (30) days of a written proposal by one Party to the other Party, be appointed by the SIAC acting in accordance with the SIAC Rules.
- 54.8 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. This arbitration agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.
- 54.9 The application of Part II of the *International Arbitration Act*, and the Model Law referred to in that Act, to this Contract is excluded.

**55 CORRESPONDENCE**

- 55.1 Any notice, request, waiver, consent or approval ("**Notice**") shall be in writing and may be sent by hand, under pre-paid registered mail cover, or electronic mail or other electronic means to:
- (a) in the case of the Contractor, the address or electronic mail address set out in the Tender Offer; and
  - (b) in the case of the School, the following address or electronic mail address set out in the Tender Offer.
- 55.2 Any such correspondence shall be deemed duly served:
- (a) in the case of delivery by hand, upon written acknowledgement of receipt by an officer or other duly authorised officer, agent or representative of the recipient;
  - (b) in the case of pre-paid registered mail, two (2) clear business days after dispatch; and
  - (c) in the case of electronic mail or other electronic means, when it is sent to the relevant Party's electronic mail address.
- 55.3 Either Party may change its address and electronic mail address referred to above by giving the other Party at least fourteen (14) days written notice of the change.

**56 REMEDIES**

- 56.1 The rights and remedies of a Party under this Contract are cumulative and are without prejudice to 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 this 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 this Contract, at law or in equity.
- 56.2 The School 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.

**57 CLAIMS FOR EXTRA WORK**

- 57.1 The School shall not be liable to the Contractor for any claims for any extra work performed or to be performed falling outside the scope of this Contract ("**Extra Work**") unless all the following conditions are fully complied with:
- (a) all claims must be submitted in writing before the performance of any Extra Work, and

- (b) in submitting any claim under sub-clause (a) above, the Contractor shall include the price of the Extra Work and the detailed scope of the Extra Work, and
- (c) the School agrees in writing for the Extra Work to be carried out and to the amount of the claim before the performance of any Extra Work.

57.2 The Contractor shall not be entitled to additional payments whether under this Contract, restitution, quasi-contract or equitable grounds if all conditions in **Clause 57.1** are not fully complied with.

57.3 For the avoidance of doubt, **Clause 57** applies to all Extra Work including Extra Work initiated at the request of the School.

57.4 For Extra Work initiated at the request of the School, the School shall reserve the right to waive any or all or any part of the conditions in **Clause 57.1** at her own discretion.

## **58 RIGHTS OF THIRD PARTIES**

58.1 Save for the licensees, a person who is not a party to the Contract shall have no right under the *Contracts (Rights of Third Parties) Act 2001* to enforce any term of the Contract.

58.2 A licensee may enforce and rely on **Clause 30** and **Clause 35** (except for **Clause 35.6**) to the same extent as if it were a Party.

58.4 The Parties may by agreement rescind or vary the Contract without the consent of any third party.

## **59 INTENTIONALLY LEFT BLANK**

## **60 CONSORTIUM**

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

### *Joint and Several Responsibility*

60.2 Each member of the Consortium shall be jointly and severally responsible to the School for the due performance of the Contract.

### *Addition of members to Consortium*

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

60.4 Should additional member(s) be added to the Consortium at any time with the approval of the School under **Clause 60.3**, he or they shall be deemed to be included in the expression 'the Contractor'.

*Withdrawal from Consortium*

60.5 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) this 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.

## 61 INTENTIONALLY LEFT BLANK

### 61A EXIT MANAGEMENT

61A.1 The Contractor shall provide the School with the draft Exit Plan for approval within [3] months from the date of commencement of the Contract. The Exit Plan shall cover the areas specified in the Requirements Specification and the obligations required to be performed by the Contractor under Clause 41A. The Contractor shall ensure that the Exit Plan is reviewed regularly and kept up to date.

61A.2 In the event of impending expiry of the Contract or where notice of termination of the Contract has been issued by either Party, the School may require the Contractor to provide Transition Services in accordance with the Contract and the Exit Plan. As part of the Transition Services, the Contractor shall also make available to the School, and any third party succeeding the Contractor appointed by the School (“**Incoming Contractor**”) such Documentation and provide such assistance (including briefings and training) as the School or the Incoming Contractor may reasonably require to allow an orderly transition to the Incoming Contractor with minimal disruption. Subject to Clause 61A.4, the Contractor shall provide all Transition Services at no additional cost to the School, and the Contractor shall include all costs relating to the Transition Services in the price for the provision of the Services.

61A.3 The Contractor shall commence the Transition Services on the earlier date of the following:

- (a) the date set out by the School in the notice of Transition Services;
- (b) in the event that the Contract is terminated for any reason whatsoever, the date of the termination notice.

61A.4 In the event that the School requires the Contractor to provide Transition Services beyond [1] months from the expiry or termination of the Contract, the Contractor shall provide such Transition Services at the rates established under the Contract save that the Contractor is not required to provide Transition Services beyond [3] months from the expiry or termination of the Contract.

61A.5 In the Contract:

“**Exit Plan**” means the exit plan approved by the School pursuant to paragraph 14.1.16<sup>1</sup> of the Requirements Specification to plan for the orderly transition of the performance of the Contract (including the obligations required to be performed by the Contractor under Clause 41A) from the Contractor to the Incoming Contractor, the School or such other person appointed by the School, and

“**Transition Services**” means the services required to be provided by the Contractor to the School in accordance with the Exit Plan and other services required by the School to ensure the orderly transition of the performance of the Contract.

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<sup>1</sup> Procuring entity to state the requirements in relation to the Exit Plan in the Requirements Specification.

**61B EXIT AUDIT**

- 61B.1 Commencing [30] days prior to the expiry or the effective termination of the Contract, or such later date as informed by the School, the Contractor shall submit a self-assessment plan for the execution of an exit audit (the “Exit Audit”) to the School for review, at no additional cost to the School to ensure the Contractor has fully performed the Transition Services and complied with the Exit Plan. The scope of the self-assessment review shall be agreed by the School, and the results and report arising from such a self-assessment review shall be put up by the Contractor and shall be made available for the School to review within seven (7) days of the issuance of the report.
- 61B.2 The Contractor shall, as soon as reasonably practicable, address any findings, failure to perform any Transition Services or non-compliance with the Exit Plan revealed in the Exit Audit, and shall fully indemnify the School for any Losses suffered by the School arising from the aforementioned failure or non-compliance.

**62 COEXISTENCE STRATEGY**

- 62.1 Where the School appoints more than one Contractor, whether in this Tender or subsequent tenders, for the provision of Services to the School, the Contractor shall, at no extra charge to the School, work closely and cooperate with all other contractors to ensure that the service level requirements, completion dates, and the specifications set out in the Requirements Specification are met.
- 62.2 Where the Contractor is required to install hardware at the Sites for the purposes of providing the Services under this Contract, the Contractor shall cooperate and work with the Sites’ facility management contractors in all aspects.
- 62.3 The Contractor shall, if requested by the School, meet on a regular basis with the School and other contractors to discuss issues that may arise in the course of supplying the Services.

**63 SET-OFF**

- 63.1 Whenever under this 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 may become due to the Contractor under this Contract or any other agreement with the School.

**64 ENTIRE AND WHOLE AGREEMENT**

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

**65 SURVIVAL**

- 65.1 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 but not limited to **41** (Confidentiality), **41A** (School Data Protection and Security), **46** (Gifts, Inducements and Rewards), **48** (Variation of Contract), **49** (Waiver), **50.4** (Termination), **50A** (Consequences of Termination and Expiry), **50B** (Equitable Relief), **50C** (Transition Matters), **52** (Governing Law), **52A** (Escalation of Disputes), **53** (Mediation), **54** (Dispute Resolution), **55** (Correspondence), **56** (Remedies), **58** (Rights of Third Parties), **61A** (Exit Management), **61B** (Exit Audit), **63** (Set-off), **64** (Entire and Whole Agreement), **65** (Survival), **68** (Solicitation of Staff), **69** (Severability), and **70** (Order of Precedence), shall survive the termination or expiry of the Contract.

**66 ISSUANCE OF WRITTEN WARNING BY THE SCHOOL**

- 66.1 If the Contractor is in breach of any of its obligations under the Contract, the School may issue a written warning to the Contractor setting out the details of the Contractor's breach, and the School shall have the right to publish or disseminate information on the written warning with its associated entities.
- 66.2 Information on the written warning which may be published or disseminated referred to in this **Clause 66** may include but not be limited to details and information relating to any or all of the following:
- (a) the Contractor's breach of any of its obligations under the Contract;
  - (b) any action taken by the Contractor to rectify or remedy the breach;
  - (c) any action taken by the School against the Contractor in respect of the breach.
- 66.3 Save as expressly provided for in the Contract, any action taken by the School against the Contractor under **Clause 66.1** shall be without prejudice to any accrued rights and obligations under the Contract as at the date the action is taken.
- 66.4 Any publication or dissemination of the details and information on the written warning under **Clauses 66.1 and 66.2** above may be used or relied upon by any Government departments, organs of state or Statutory Board in the evaluation of any tender, quotation or proposal submitted by the Contractor in response to any invitation to tender, invitation to quotation, or request for proposal issued by any Government department, organs of state or Statutory Board.
- 66.5 The School shall not be liable to the Contractor or any third party for any Losses whatsoever and howsoever arising from or relating to the proper exercise by the School of any rights under this **Clause 66**.



## **67 LIQUIDATED DAMAGES FOR SCHOOL DATA AND SECURITY BREACHES**

- 67.1 Without prejudice to any other provision in the Contract, where a Security Breach Event arises from or as a result of the default, negligence or unlawful act of the Contractor or any of its personnel, employees, officers, agents or Sub-contractors (a “**Relevant Security Breach Event**”), the Contractor shall adhere to the procedures set out in **Clause 51A** and the School shall have the right (in addition to and without prejudice to all other rights or remedies available, including the rights under **Clause 67.2**), to require the Contractor to pay liquidated damages of \$1000 per man-day, cap to not more than 5% of the Deemed Subscription Price per incident, such an amount being a genuine pre-estimate of the administrative costs (including costs arising from investigative efforts) incurred by the School in respect of Relevant Security Breach Event(s). The liquidated damages shall be capped at the contract value. The Contractor shall pay such liquidated damages to the School in Singapore Dollars no later than [thirty (30)] days from the date of issue of notification to the Contractor by the School, and where the Contractor fails to pay such damages, the School shall be entitled to exercise its set-off rights in accordance with **Clause 63**, or recover the same as a debt due from the Contractor in any court of competent jurisdiction.
- 67.2 In addition to and without prejudice to **Clause 67.1**, the Contractor shall indemnify and keep indemnified the School (and where applicable, its licensees ) against all Losses incurred, paid by or suffered by the School (and where applicable, its licensees ) or third parties claiming against the School (and where applicable, its licensees ) arising from or attributable to a Relevant Security Breach Event, including costs incurred in rectifying the Relevant Security Breach Event. For the avoidance of doubt the School shall not be entitled to double recovery of the administrative costs (including costs arising from investigative efforts) incurred by the School that is covered by the liquidated damages set out in **Clause 67.1** above.
- 67.3 Where there is any doubt as to whether a Security Breach Event or Security Breach has occurred, the School’s view shall prevail.

## **69 SEVERABILITY**

- 69.1 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.

## **70 ORDER OF PRECEDENCE**

- 70.1 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 70.2**, in accordance with the following order of precedence:

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

70.2 Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the School and the Contractor which has been agreed to by the School in writing as amplifying or modifying the Contractor's Tender Offer) contains provisions which are more favourable to the School in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail. The School shall in its absolute and sole discretion determine whether any provision is more favourable to it in relation to the Contract.

70.3 For the avoidance of doubt, this Clause shall form an integral part of the Conditions of Contract referred to in **Clause 70.1(a)**.

## **71 REMOVAL AND REPLACEMENT OF SERVICES**

71.1 The School 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 School, the Contractor shall re-perform such rejected Services at the Contractor's own expense.

71.2 Where a Service is rejected by the School pursuant to **Clause 71.1** or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to perform such Service.

71.3 Notwithstanding anything to the contrary, any loss resulting from the rejected Services (whether rejected pursuant to this Clause or otherwise) shall be borne by the Contractor at all times.

## **72 UPDATES AND NEW RELEASES**

72.1 Whenever an Update or New Release of the Cloud Services or its associated hardware is available, the Contractor shall promptly notify the School and provide the School with full specifications and details of the Update or New Release.

72.2 If required by the School, the Contractor shall provide detailed information about the extent to which the Updates and New Releases will meet the specific requirements of

the School. Such Update or New Release shall not adversely affect or disrupt any Services rendered under the Contract, and without prejudice to all other rights and remedies of the School under this Contract or at law or in equity, the Contractor shall, at its own cost and expense, make good all Services in the event of any adverse effect or disruption caused by the Update or New Release.

- 72.3 The Contractor shall supply all Updates or New Release at no cost or expense to the School (and where applicable, its licensees), and the Contractor's obligations in relation to the Cloud Services shall continue to apply in all respect to the updated or newly released Cloud Services.

**CONTENTS**

**SCHEDULE 1: PAYMENT TERMS**

**SCHEDULE 2: INTENTIONALLY LEFT BLANK**

**SCHEDULE 3: FORM OF AGREEMENT**

**SCHEDULE 4: INTENTIONALLY LEFT BLANK**

**SCHEDULE 5: UNDERTAKING TO SAFEGUARD OFFICIAL INFORMATION**

**SCHEDULE 6: DECLARATION**

**SCHEDULE 7: INTENTIONALLY LEFT BLANK**

**SCHEDULE 8: COMMITMENT OF THIRD-PARTY LICENSOR**

**SCHEDULE 1**

Reference: Clause 4 of Conditions of Contract

Payment shall be made by the School within thirty (30) days of receipt of invoice and any other documents required by the School from the Contractor for payment purposes.

The CONTRACT PRICE shall be paid as follows:

<u>For System implementation, the payment milestone as follows:</u>	<u>% of Tender Price of One-time Setup/Implementation Cost:</u>
Thirty (30) days upon date of acceptance of the Contractor's implementation plan.	10%
Thirty (30) days upon completion and acceptance of Phase 1 implementation.	60%
Thirty (30) days upon completion and acceptance of Phase 2 implementation.	30%
<u>For implementation of Optional Items, the payment milestone as follows:</u>	<u>% of Tender Price for Optional Items:</u>
Thirty (30) days upon award.	50%
Thirty (30) days upon successful implementation.	50%
Upon successful access and usage of the software, licenses and professional support on subscription basis for each contractual year.	Price stated in the Contractor's Tender Offer for yearly subscription.
Upon successful delivery of system Maintenance Services in arrears on a basis specified by the School, the invoice may be issued at the end of the month for the Maintenance Services rendered in the preceding month and due within thirty (30) days of receipt of each invoice.	Price stated in the Contractor's Tender Offer for monthly maintenance.
Upon successful delivery of services that are chargeable on a pay-per-use basis.	Price stated in the Contractor's Tender Offer for services that are chargeable on a pay-per-use basis.

Any GST payable for the supply of goods, services or works by the Contractor under this

Contract shall be reimbursed by the School.

PROVIDED THAT if the School in the Letter of Acceptance accepts payment in accordance with the Contractor's alternative payment terms contained in the Tender Offer then such alternative payment terms shall apply.

**SCHEDULE 2**

INTENTIONALL LEFT BLANK

### SCHEDULE 3

Reference: Clause 32 of Instructions for Tenders

#### **FORM OF AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN:

(1) Singapore Sports School Ltd (“the **School**”);

AND

(2) \_\_\_\_\_<sup>2</sup> (name of Contractor) (“the **Contractor**”).

#### RECITALS

The School requires certain professional and cloud services (“**Services**”) to be supplied and has accepted a Tender Offer by the Contractor for the supply, delivery and performance of the same.

IT IS AGREED as follows:

1. In this Agreement, words and expression shall have the same meanings as set out in the Conditions of Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) Contractor's Tender Offer including subsequent correspondence (if any) accepted by the School in writing as amplifying or amending the Contractor's proposals;
  - (b) Instructions for Tenders;
  - (c) Conditions of Contract;
  - (d) Requirements Specification;
  - (e) Cost Schedule;
  - (f) Form of Tender;
  - (g) School's Letter of Acceptance;

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<sup>2</sup> If the Tender Offer is submitted by a consortium, each member of the consortium shall be listed. The Tender Offer shall be submitted by the Lead Member on behalf of all members of the consortium, it should read “...one part and (Name of Lead Member), acting for and on behalf of (Name of 1st Member), (Name of 2nd Member) and (etc. – List out Names of remaining Members) (“Contractor”) of the other part.”



- (h) Form of Agreement;
- (i) Eligibility and Evaluation Criteria;
- (j) Information and Documents to be Submitted;
- (k) Covering Letter; and

including all schedules and annexes to such documents as relevant.

3. In consideration of the payments to be made by the School to the Contractor, the Contractor agrees to supply, deliver and perform the Services mentioned in the Contract in conformity in all respects with the provisions of the Contract.

4. The School agrees to pay to the Contractor in consideration for the supply, delivery and performance of the Services mentioned in the Contract in conformity in all respects with the provisions of the Contract.

AGREED BY the Parties through authorised representatives.

Signed by: Ong Kim Soon )  
Principal )  
for and on behalf of )  
Singapore Sports School Ltd )  
)  
) .....  
) (Signature)

in the presence of:

Name of witness: .....  
ID No. (Signature of witness)  
.....

Signed by: [Name of Authorised signatory] )  
[Designation of signatory] )  
for and on behalf of )  
[NAME OF CONTRACTOR] ) .....  
) (Signature)

in the presence of:

Name of witness: ..... ..

ID No. (Signature of witness)

.....

**SCHEDULE 4**

References: Clauses 11.2 and 11.11 of Conditions of Contract

The Banker's Guarantee or Insurance Bond shall be in the prescribed form that follows:

**TENDER REFERENCE NO.: 24/0054**

To: Singapore Sports School Ltd (the "**Authority**").

**Whereas** on the \_\_\_\_ day of \_\_\_\_\_ an Agreement (the "**Contract**") was made between \_\_\_\_\_ (name of Contractor) of \_\_\_\_\_ (address) (the "**Contractor**") of the one part and the School of the other part whereby the Contractor agreed that in consideration of its due and faithful performance of the Contract, it would be paid the Contract Price as defined in the Contract.

**And Whereas** the Contractor is required under the Contract to pay [\_\_\_\_ per cent of the estimated Contract Price] / [the sum of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_ )] as a Security Deposit for the performance of its obligations under the Contract.

**And Whereas** the Contractor has opted to provide an irrevocable on-demand guarantee in favour of the School as a security deposit for the Contract.

**We (at the request of the Contractor) agree** as follows:

1. We shall unconditionally pay to the School any sum or sums up to a maximum aggregate of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_ ) (the "Guaranteed Sum") upon receiving your written notice of claim for payment made under Clause 4 of this Guarantee without any proof of actual default on the part of the Contractor and without need to satisfy any other condition.
2. We shall not be discharged or released from this Guarantee by any arrangement between the School and the Contractor with or without our consent, or by any other or further arrangement between the Contractor and us with or without the School's consent, or by any alteration in the obligations undertaken or to be undertaken by the Contractor or by any forbearance on the School's part whether as to payment, time,

performance or otherwise.

3. Our liability under this Guarantee shall continue and this Guarantee shall remain in full force and effect from [*insert effective date:* \_\_\_\_\_ ] until [*insert expiry date:*\_\_\_\_\_ ] [*insert if expiry date is subject to automatic extension*<sup>3</sup>: provided always that the expiry date of this Guarantee and our liability under this Guarantee shall be automatically extended for successive periods of [*specify duration of each extension:* \_\_\_\_\_ days/months] unless we give you 90 days' written notice prior to the expiry of our liability (the "**Notice Period**") of our intention not to extend this Guarantee in respect of any future extension and provided further that you shall be entitled –
- (a) upon receiving such notice of our intention either to:
- (i) make a claim under this Guarantee; or
- (ii) \*direct us to pay such amount (not exceeding the Guaranteed Sum) as you may specify into a suspense account to be governed and disbursed by us subject to the Association of Banks in Singapore's Guidelines for operation of a Suspense Account; or
- (b) direct us (within the Notice Period) to extend the validity of this Guarantee for a further period not exceeding \_\_\_\_\_ days/months (and this Guarantee shall then expire at the end of such further period).]

***Note: \* Not applicable for insurance bond issued by insurance companies***

4. This Guarantee is conditional upon a claim being made by the School at any time and as many times as the School may deem fit by way of a notice in writing addressed to us and the same being received by us at [*insert address of Bank's notification office:* \_\_\_\_\_ ] before the end of 90 days after the expiry of this Guarantee.
5. We shall be obliged to effect the payment required under such a claim within 30 business days of our receipt of the written notice from the School. We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim and shall be entitled to rely upon the School's written notice received by us

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<sup>3</sup> This provision is to be included for contracts which are not fixed period contracts. For fixed period contracts, this provision is not required.

as final and conclusive. For the purposes of this Guarantee, “**business day**” means a day other than a Saturday, Sunday, or public holiday in Singapore.

6. The School may make more than one claim on this Guarantee so long as the aggregate amount specified in all such claims does not exceed the Guaranteed Sum.
7. This Guarantee is issued subject to the laws of the Republic of Singapore and the exclusive jurisdiction of the Singapore courts.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

AS WITNESS our hand

Signed by: \_\_\_\_\_  
(Name and designation of officer)

for and on behalf of the

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Signature)

in the presence of:

Name \_\_\_\_\_

Designation \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

## SCHEDULE 5

Reference: Clause 41.4 of Conditions of Contract

**TENDER REFERENCE NO.:** \_\_\_\_\_

To: The Singapore Sports School Ltd<sup>4</sup> (the “**School**”)

### WHEREAS:

- A. I am performing work in relation to Tender Reference No. [•] (the “**Purpose**”) and may acquire the School’s Confidential Information in relation to the Purpose.
- B. I am agreeable to maintaining the confidentiality of the Confidential Information I will be receiving at all times.

**I UNDERTAKE** as follows: -

### 1. Definitions and interpretation

- 1.1. Subject to the exceptions in Clause 3, the term “**Confidential Information**” shall mean any confidential information, whether disclosed orally or in written or other tangible or electronic form and without the need for such confidential information to be marked as confidential, received or obtained by the Receiving Party as a result of the Purpose, including but not limited to:
  - 1.1.1. information which relates to the School or any of its affiliates;
  - 1.1.2. information relating to the Purpose (including its existence);
  - 1.1.3. the fact of the existence and terms and conditions of this Undertaking;
  - 1.1.4. all information agreed to be, or marked as, confidential;
  - 1.1.5. any information that I, my affiliates, or any of my or my affiliates’ Authorised Recipients knows, or could reasonably be expected to know, is confidential;
  - 1.1.6. any analyses, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting any information received or obtained pursuant to the Purpose; and
  - 1.1.7. the fact that the School or any of its affiliates has in its (or their) possession, custody or control, or is or may be utilizing for any purpose whatsoever, any of the foregoing Confidential Information.
- 1.2. The term “**Confidential Information**” shall not include any information that is:
  - 1.2.1. or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of myself, my affiliates, or any of my or my affiliate’s officers, directors, partners, members, employees, agents or consultants;
  - 1.2.2. explicitly approved for release by prior written authorisation of the School;
  - 1.2.3. independently learned or developed by me without use of any of the

information referred to in Clause 1.1;

1.2.4. lawfully in my possession, or already known to me on a non-confidential basis, as evidenced by written records;

1.2.5. disclosed to me without any obligation of confidence by a third party who is not itself under or in breach of any obligation of confidentiality; or

1.2.6. which is required to be disclosed by law or court order, provided the School is, where practicable, given advance notice of such requirement of disclosure.

1.3. The term “**Authorised Recipients**” means the officers, directors, partners, members, employees, agents, consultants or professional advisors of myself or my affiliates who are directly involved in carrying out the Purpose and whose duties require them to possess the Confidential Information on a need-to-know basis for the Purpose.

## 2. Undertaking of Confidentiality

2.1. I receive Confidential Information to be used strictly for the Purpose. Subject to the exceptions provided in this Undertaking or with the School's prior written consent, I undertake:

2.1.1. to treat as strictly confidential and not to (whether directly or indirectly) disclose, allow to be disclosed, communicate, publish, release or make available any Confidential Information, in whole or in part, to any person other than its Authorised Recipients;

2.1.2. not use the Confidential Information except for the Purpose;

2.1.3. to receive, hold and maintain the Confidential Information in strictest confidence and not disclose, copy or reproduce or part with possession any of the Confidential Information or any documents containing Confidential Information save to the extent necessary for the Purpose and as consistent with the obligations in this Undertaking;

2.1.4. to take and maintain all reasonable precautions in dealing with Confidential Information so as to prevent any unauthorised person from having access to Confidential Information. Such precautions shall minimally include using the same protective measures as are used by me to protect my own confidential or proprietary information and in any event, shall not be less than a reasonable standard of care;

2.1.5. to take all reasonable steps to prevent and restrict the Authorised Recipients from disclosing, making available or communicating any Confidential Information to any unauthorised persons;

2.1.6. procure from each of its employees and professional advisers having access to the Confidential Information a written undertaking to maintain the same as confidential, and shall take such steps as may be reasonably practicable to enforce such obligations;

2.1.7. keep all documents or materials containing or incorporating any of the Confidential Information at my usual place of business and ensure physical security of those documents

- 2.1.8. not to transfer any Confidential Information outside Singapore, or allow parties outside Singapore to have access to it;
- 2.1.9. to permit the School to access my premises on reasonable notice in order to audit its compliance with this Undertaking where there are reasonable grounds to suspect a breach or where the School is required by law or any regulatory body to retrieve any Confidential Information that has been disclosed; and
- 2.1.10. to notify the School immediately upon discovery of any actual or possible unauthorised use or disclosure of Confidential Information, or any other breach of this Undertaking by myself, my affiliates, or any of my or my affiliates' officers, directors, partners, members, employees, agents or consultants, and to co-operate with the School to limit the extent and impact of such unauthorised use or disclosure or breach.
- 2.2. At the expiry or termination of the contract entered into in relation to Tender Reference No. 24/0054, I undertake to return to the School or, of my own accord, destroy all copies of the Confidential Information in my possession or control, and make no further use of all written or tangible materials furnished or developed thereunder, any note or memoranda of conversations relating thereto, and any other information or analysis produced or compiled using the Confidential Information.
- 2.3. I represent and warrant to the School that I have the right to enter into this Undertaking without breaching any fiduciary, contractual or statutory obligations.
- 2.4. Any notice ("**Notice**") shall be in writing and shall be deemed to have been duly given when it is delivered by hand, post, or electronic mail to the Party as follows:
- 2.4.1. in the case of the party giving the undertaking, the address and electronic mail address set out in the signature block of this undertaking;
- a. in the case of the School, the address and electronic mail address set out below:  
Director, Corporate Services, sooncb@sportsschool.edu.sg, 1 Champions Way, Singapore 737913.
- b. in the case of SportSG, to the Chief (Assurance & Corporate Excellence Group), rostan\_umar@sport.gov.sg, 3 Stadium Drive Singapore 397630.
- 2.5. I represent and warrant to the School that I have the right to enter into this Undertaking without breaching any fiduciary, contractual or statutory obligations.
- 2.6. Either party may change its address and electronic mail address referred to above by giving the other party written notice of the change. A Notice sent by electronic mail shall be deemed not to have been received if the sender receives, within twenty-four (24) hours after sending such electronic mail, a notification that such electronic mail has not been successfully delivered.
- 2.7. I acknowledge that any breach of this Undertaking by myself or any Authorised



Recipient may result in irreparable injury and damage to the School which cannot be adequately compensated in monetary damages alone. I therefore agree that the School may, in addition to all other legal remedies which may be available, seek such injunctive or other equitable relief as may be necessary to protect itself against any such breach or threatened breach of this Undertaking and I fully indemnify the School against all actions, claims and demands, and all related costs (on a full indemnity basis), expenses and damages incurred or sustained as a result of such breach or threatened breach.

- 2.8. This Undertaking 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. I irrevocably agree that the courts of Singapore shall have exclusive jurisdiction to settle any dispute, claim, question or disagreement arising out of or relating to this Undertaking or its subject matter or formation. I irrevocably submit to the jurisdiction of such courts.

.....  
(Signature)

.....  
(Full name in BLOCKS)

.....  
(Designation)

.....  
(Name of Company)

.....  
(Date)

.....  
(Address and email address)

.....  
(Signature of WITNESS)

.....  
(Full name in BLOCKS)

.....  
(Designation)

.....  
(Name of Company)

**SCHEDULE 6**

*Reference: Clause 50A of Conditions of Contract*

**DECLARATION**

1. I have under Clause 50A of the Conditions of Contract:
  - (a) returned to the School all data (including, but not limited to, School Data and confidential information) received from the School or produced for the purpose of this Contract together with all related documentation and all copies thereof owned by the School; and
  - (b) securely, irretrievably and irreversibly destroyed and erased, and have ceased to retain, all softcopies of any and all documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.
2. I further understand and agree that any breach or neglect of my obligation under Clause 50A of the Conditions of Contract cannot be adequately compensated in monetary damages alone. I agree that the School may, in addition to all other legal remedies which may be available in civil proceedings against me, seek such injunctive or other equitable relief as may be necessary to protect itself against any such breach.

Dated .....

Execution by:

Name of Individual: .....  
Signature

ID No./Passport No.: .....

Designation: .....

Name of Business Entity: .....  
.....

Witnessed by:

Name of Witness: .....  
Signature of witness

ID No./Passport No.: .....

Date: .....

**SCHEDULE 7**

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**SCHEDULE 8**

*Clause Ref: Clause 10.1 of Instructions to Tenderer*

To: The Singapore Sports School Ltd

TENDER REFERENCE: 24/0054

We refer to the above Tender. All words and phrases used herein have the same meaning as in your Invitation to Tender for the above Tender unless otherwise specified.

2. We are the head-licensor of the Cloud Services set out in Part 2 of this Tender, of which [name and address of Tenderer] (the “Tenderer”) is a [nature of licence] licensee.
3. In consideration of you awarding the Tender to the Tenderer, we hereby undertake to perform the obligations set out in the following paragraphs.
4. In respect of the Cloud Services, we warrant that your right to use the Cloud Services for the duration of the Contract will not be interrupted by anyone by any means and will survive the termination of the legal relationship between the Tenderer and us.
5. Should the Tenderer be unwilling or unable to provide the Cloud Services in accordance with the Contract for any reason, or should your Contract with the Tenderer be terminated for any reason, we confirm that we can provide the Cloud Services to you (either by ourselves or through a subcontractor) for the remainder of the Contract Period on a mutually agreed set of terms and conditions and at Fair Market Value. “Fair Market Value” shall mean the fair market value in Singapore, or where such services are not available in Singapore, in such other countries where such services are available, for the provision of the Cloud Services or its equivalent. If the parties are unable to agree on the Fair Market Value, the Fair Market Value shall be determined by an independent public accountant or valuator approved by the Government, whose engagement cost shall be equally borne by the Government and ourselves.
6. We declare that this undertaking is intended to be legally binding and we agree to execute a formal agreement with you in respect of the obligations set out herein upon your written request.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name in BLOCKS

\_\_\_\_\_  
NRIC/Passport No

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full Name in BLOCKS

\_\_\_\_\_  
NRIC No

Address: \_\_\_\_\_

Date: \_\_\_\_\_