

**REQUEST FOR PROPOSAL – INVITATION FOR PUBLIC RELATIONS
CONSULTANCY SERVICES FOR SINGAPORE TOURISM BOARD AMERICAS**

RFP No: STB/NY1/20-21/RFP13

For enquiries, email Gina Ng, Senior Manager, STB Americas, Gina_Ng@stb.gov.sg

ANNEX E - CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

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

- (a) “**Authority**”, “**Board**” and “**STB**” mean the Singapore Tourism Board.
- (b) “**Contract**” means the resulting contract between the Authority and the Contractor for the provision of the Goods and Services as a result of the Authority’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:
 - (i) the Covering Letter;
 - (ii) the Instructions to Tenderers;
 - (iii) the Contractor's Tender Offer;
 - (iv) these Conditions of Contract;
 - (v) the Requirement Specifications;
 - (vi) the Letter of Acceptance;
 - (vii) the Purchase Orders, if any;
 - (viii) any correspondence exchanged between the Authority and the Contractor which is agreed to by the Authority in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
 - (ix) any formal agreement executed between the Parties therefor, including any prior non-disclosure agreement,including all schedules and annexes to such documents as relevant.
- (c) “**Contract Period**” has the meaning set out in Clause 23.
- (d) “**Contract Price**” means the aggregate Tender Price for Goods and Services required under the Contract.
- (e) “**Contractor**” means a successful Tenderer whose Tender Offer has been accepted by the Authority.

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- (f) **“Control”** means, with respect to a person (i) the right to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares of the controlled person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person.
- (g) **“Goods”** means any and all goods proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to supply under the Contract, including technical documentation, parts or units thereof.
- (h) **“GST”** means any goods and services or similar tax charged.
- (i) **“GST Legislation”** means any applicable GST legislation.
- (j) **“IP”** means patents, copyright, trade marks, service marks, trade names, domain names, logos, get-ups, inventions, registered and unregistered design rights, database rights, industrial design, integrated circuit topography and all other intellectual property rights.
- (k) **“Invitation to Tender”** means the invitation to participate in the tender for the supply of Goods and Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Guidelines for Tender, Evaluation Criteria and any other documents and forms enclosed.
- (l) **“Letter of Acceptance”** means the letter issued by the Authority accepting the Contractor’s Tender Offer.
- (m) **“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.
- (n) **“Parties”** means the Authority and the Contractor, and **“Party”** means any one of them.
- (o) **“Price Schedule”** means the schedule of prices for Goods and Services proposed in the Contractor’s Tender Offer and accepted in the Letter of Acceptance.
- (p) **“Purchase Order”** means an order issued by the Authority, making reference to the Contract, to purchase the Goods and/or Services.

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- (q) **“Requirement Specifications”** means the specifications set out with the Invitation to Tender and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to time.
 - (r) **“Services”** means any and all services proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract.
 - (s) **“Subcontractor”** means any person, firm or company engaged by the Contractor to perform any part or parts of the Contractor’s obligations and includes the Subcontractor’s duly appointed representatives, successors and permitted assignees and the Subcontractor’s subcontractor.
 - (t) **“Tender Offer”** means the offer submitted by the Tenderer to provide Goods and Services to the Authority in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Authority as modifying such offer submitted by the Tenderer.
 - (u) **“Tender Price”** in respect of any of the Goods or Services, means the sum specified in the Price Schedule (as may be varied in accordance with the Contract) for the provision of such Goods or Services under the Contract.
 - (v) **“Tenderer”** means a person or its permitted assigns and successors offering to provide the Goods and Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.
- 1.2 Words importing the singular only shall also include the plural and vice versa where the context requires.
- 1.3 The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.
- 1.4 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).
- 1.5 Unless a contrary intention appears, a reference in the Contract to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including but without limitation”.
- 1.6 Unless otherwise provided, any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation.
- 1.7 In the Contract, “month” means calendar month and “day” means calendar day.

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- 1.8 For the purposes of computing time, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

2. CLAUSE REFERENCES

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

3. SCOPE OF CONTRACT

- 3.1 The Contractor shall carry out and complete the supply of all items of Goods and Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods shall be new and unused.
- 3.2 This Contract does not grant the Contractor any exclusive rights to do business with the Authority, whether in respect of this Contract or otherwise. The Authority shall be entitled without notice to the Contractor to appoint any other contractor or supplier for the procurement of similar goods and/or services or any other goods and/or services in relation to any portion of this Contract.
- 3.3 The Contractor agrees that the Authority's engagement of any other contractor or supplier of goods and services in relation to the Contract shall not in any way relieve the Contractor of its responsibility to deliver the Goods and perform the Services. The Contractor shall co-operate and co-ordinate its activities with such third party suppliers to the reasonable satisfaction of Authority.

4. DELIVERY AND PERFORMANCE

- 4.1 The Contractor shall, unless otherwise specified by the Authority prior to delivery or performance, deliver the Goods and perform the Services at the time(s) and place(s) and in the manner specified in the Contract and to the reasonable satisfaction of the Authority. The Contractor shall obtain a receipt therefor from the Authority. No receipt shall be considered as evidence of the quality of the Goods or Services to which such receipt relates or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract, including its obligations under Clause 5 to replace defective or damaged Goods and re-perform deficient Services.
- 4.2 The Contractor shall not, for the duration of the Contract and without the prior written consent of the Authority, enter into a contract with any other person or government organisation that is engaged in competing business with the Authority, including any

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other national tourist organisation, where performance under such contract will amount to an actual, potential or perceived conflict with the interests of the Authority.

- 4.3 In delivering the Goods and performing the Services, the Contractor shall not act, or allow any its officers, employees, agents, representatives or sub-contractors to act, in a manner that is likely to bring into disrepute or otherwise reduce or diminish the goodwill, reputation, image or prestige of the Authority or Singapore.

5. REJECTION

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

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

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

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

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

- 5.2 The Authority may reject any Services that are not performed in accordance with the Contract or with reasonable care, skill and diligence, and if so required by the

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

5.3 Where any Goods or Services are rejected by the Authority pursuant to Clause 5.1 or Clause 5.2 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to:

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

(b) perform such Services,

as the case may be.

5.4 Notwithstanding anything to the contrary, the risk of loss, damage or deterioration of Rejected Goods (whether rejected pursuant to this Clause 5 or otherwise) shall be borne by the Contractor at all times and possession shall be deemed to have never passed to the Authority.

6. [INTENTIONALLY LEFT BLANK]

7. TITLE AND RISK

7.1 The risk of loss or damage to the Goods or any documentation delivered pursuant to the Contract shall pass upon receipt of the Goods or documentation by the Authority. Title to the Goods shall pass from the Contractor to the Authority upon receipt.

7.2 Risk of loss or damage to the Goods shall be borne by the Contractor from the time the Goods are received by the Contractor for the purpose of modification, replacement, repair or rectification until the modified, repaired, replaced or rectified Goods are received by the Authority.

8. MINIMUM QUANTITY

8.1 Any statement of the estimated quantities of Goods or frequency of Services required during the period of the Contract are approximate only and merely for the information of the Contractor. The Authority shall be under no obligation to purchase any such Goods or Services.

9. CONTRACTOR'S PERSONNEL

9.1 The Contractor shall provide all necessary personnel with adequate skills and required professional certification (where applicable) for the performance of the Contract.

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Upon request by the Authority, the Contractor shall provide evidence of certification and competency of the personnel assigned.

- 9.2 If required by the Authority, the Contractor shall provide to the Authority the names and particulars (in such form as may be required by the Authority) of the personnel provided by the Contractor to perform the Contract.
- 9.3 The personnel provided by the Contractor to perform the Contract shall be subject to the Authority's approval. Where the Contractor has proposed such personnel in its Tender Offer, the Authority's acceptance of the Contractor's Tender Offer shall not constitute its approval of such personnel.
- 9.4 The Authority shall not be obliged to provide any reasons for objecting to any of the Contractor's personnel. If the Authority objects by notice in writing to any personnel provided by the Contractor to perform the Contract, the Contractor shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Authority within fourteen (14) days.
- 9.5 The Contractor undertakes not to change its personnel approved under this Clause 9 without the Authority's consent, whose consent shall not be unreasonably withheld. All new or replacement personnel shall also be subject to the approval of the Authority. The Contractor shall not reduce the quality of its personnel if this may adversely affect the performance of the Contract, including the quality of the Services.

10. PAYMENT

- 10.1 Upon the achievement of each payment milestone set out in the **Requirement Specifications**, the Contractor shall invoice the Authority for the amount set out against such payment milestone in the **Requirement Specifications** in accordance with Clause 10.4. To avoid doubt, the Authority may issue a Purchase Order for the Contract Price through the electronic procurement system maintained by the Authority, but such Purchase Order shall not constitute an obligation to pay the Contract Price before each payment milestone is achieved.
- 10.2 Against compliance with Clause 10.1, the Authority shall pay the Contractor within thirty (30) days from the date of the invoice by Interbank GIRO or such other mode of payment as the Authority and the Contractor may agree. The Contractor shall provide the Authority with the relevant bank account details for the purpose of such Interbank GIRO payment within thirty (30) days after the date of the Letter of Acceptance.
- 10.3 No payment shall be considered as evidence of the quality of the Goods or Services to which such payments relate or a waiver of any default on the part of the Contractor in the performance of its obligations, nor shall it relieve the Contractor from its other obligations under the Contract.

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- 10.4 If requested by the Authority, the Contractor shall submit to the Authority invoices through the electronic invoicing system maintained by the Authority and such other documents through such means and in such format as may be specified by the Authority for the purposes of making payment. All such invoices shall be accompanied by such supporting documents and materials as the Authority may require in its sole discretion, including original third party invoices or receipts evidencing the engagement of any Subcontractor or third party in accordance with the Contract.
- 10.5 The Authority shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Authority.
- 10.6 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Authority by the Contractor under the Contract. If the Contractor is a taxable person under GST Legislation, the Authority shall reimburse the Contractor for any such GST charged on the supply by the Contractor of goods or services under the Contract.
- 10.7 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of GST Legislation, 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 Legislation.

11. TAXES, FEES AND DUTIES

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

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12. DELAY IN DELIVERY AND PERFORMANCE

12.1 If the Contractor fails to deliver any Goods or complete the performance of any Services by the date(s) specified in the Contract, the Authority shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Authority's right to terminate the Contract pursuant to Clause 16.1) to do one or more of the following:

- (a) cancel all or any such Goods or Services from the Contract without compensation and obtain them (the “**Replacement Goods and Services**”) from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity and scope of the Replacement Goods and Services so obtained shall not exceed the quantity and scope stated in the Contract;
- (b) require the Contractor to pay as liquidated damages, a sum calculated at the rate of two percent (2%) of the Monthly Retainer Fee (or the total cost of the relevant Extra Work, as the case may be) per day or part thereof (including Sundays and public holidays) for every day of delay until such Goods or Services are delivered or cancelled pursuant to the Contract, subject to a maximum of fifty percent (50%) of the Monthly Retainer Fee (or the total cost of the relevant Extra Work, as the case may be);
- (c) to withhold payment of the Contract Price and otherwise adjust the payment milestone(s) in Error! Reference source not found. **Specifications** in such manner as the Authority in its reasonable discretion deems fit until the Goods and Services are performed to the reasonable satisfaction of the Authority; or
- (d) to reduce the Contract Price and otherwise adjust the payment milestone(s) in **Requirement Specifications** in such manner as the Authority in its reasonable discretion deems fit and the Contractor shall immediately refund any monies received from the Authority in excess of the amount due to the Contractor after such reduction and/or adjustment.

13. COMPLIANCE WITH LAW

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

13.2 The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws, codes, directions and guidelines (the “**Regulatory Requirements**”) and shall keep the Authority indemnified against all penalties and liabilities of every kind for the contravention of any such Regulatory Requirements.

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14. CARE AND DILIGENCE

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

15. GIFTS, INDUCEMENTS AND REWARDS

- 15.1 The Authority shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any loss resulting from such termination or rescission if:

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

- 15.2 In this Clause 15:

“Anti-Corruption Laws” means:

- (a) Chapter IX of the Singapore Penal Code (Cap. 224);
- (b) the Singapore Prevention of Corruption Act (Cap. 241); and
- (c) any other applicable law including any foreign law which:
 - (i) prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, 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:

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- (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).

16. TERMINATION

16.1 If the Contractor is in breach of any of its obligations under the Contract and:

- (a) the Contractor fails to remedy the breach within fourteen (14) days from a written notice from the Authority to do so; or
- (b) the breach is not capable of being remedied within a reasonable time,

the Authority shall have the right (in addition to and without prejudice to all other rights or remedies available, including the right to claim damages) to terminate the Contract with immediate effect by written notice.

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

- (a) the Contractor becomes insolvent, or any action is contemplated or any legal proceedings are commenced against the Contractor alleging insolvency;
- (b) where the Contractor is a company, a receiver or liquidator is appointed over any undertaking or property of the Contractor or an order is made or a resolution is passed for winding-up or dissolution without winding-up (other than for the purpose of amalgamation or reconstruction) of the Contractor;
- (c) where the Contractor is a partnership, the Contractor is dissolved or has a bankruptcy order made against it;
- (d) where the Contractor is an individual, the Contractor becomes bankrupt or dies;
- (e) the Contractor enters into any composition or arrangements with creditors
- (f) there is a change in the Control of the Contractor which in the opinion of the Authority will materially affect the ability of the Contractor to perform the Contract; or

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- (g) any action is contemplated or any legal proceedings are commenced against the Contractor alleging infringement of IP rights.

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

- (a) termination shall be without prejudice to any rights and obligations of either Party which has accrued prior to such termination and any obligation which expressly or by implication is intended to come into or continue in force on or after such termination;
- (b) the Contractor shall forthwith refund to the Authority all amounts paid to the Contractor under the Contract, less the price of the Goods and Services which have been delivered and performed the Services at the time(s) and place(s) and in the manner specified in the Contract and to the reasonable satisfaction of the Authority as at the date of termination;
- (c) the Contractor shall immediately deliver property belonging to or provided by the Authority pursuant to the Contract and all deliverables prepared by the Contractor for the Contract (including works-in-progress if so requested by the Authority);
- (d) in the event of a termination pursuant to Clause 16.1 or 16.2, the Authority shall, at its sole discretion, have the right to engage another person to provide the remaining Goods and Services to be provided under the Contract, and any additional costs and expenses incurred shall be paid by the Contractor, and the Contractor shall give reasonable assistance to the incoming contractors; and
- (e) in the event of a termination pursuant to Clause 16.2(g), the Authority shall, at its sole discretion, have the right to return any Goods which have been provided to the Authority as at the date of termination, and the Contractor shall forthwith refund to the Authority all amounts paid to the Contractor under the Contract in respect of such Goods.

16.4 Nothing in this Clause 16 shall be deemed to prejudice any other rights or remedies available to the Authority against the Contractor for any breach of the Contractor's obligations whether under the Contract or at law or in equity.

16.5 Without prejudice to any of the terms in this Contract, the Authority shall have the right to terminate the Contract for convenience by giving three (3) months' written notice to the Contractor without having to assign any reason, and the Contractor shall have no claim for any damages or compensation.

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17. FORCE MAJEURE

- 17.1 Neither Party shall be liable for any failure to perform its obligations under the Contract if the failure results from events which are beyond its reasonable control (“**Force Majeure Event**”) provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of the Contract, “**Force Majeure Event**” shall include acts of God, acts of civil or military authority, civil disturbance, wars, strikes, fires and other catastrophes.
- 17.2 If the effect of any Force Majeure Event continues for a period exceeding thirty (30) days, the Authority may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.
- 17.3 If a Force Majeure Event occurs, the Contractor or the Authority (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under the Contract as is affected by the Force Majeure Event except that the provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the Force Majeure Event.
- 17.4 Failure of the Contractor’s Subcontractors or suppliers to perform their obligations shall not be regarded as events beyond the control of the Contractor.

18. CORRESPONDENCE

- 18.1 Subject to Clause 18.2, any notice, request, waiver, consent or approval (“**Notice**”) shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or email to the Party as follows:
- (a) in the case of the Contractor, the address and email address set out in the Tender Offer; and
 - (b) in the case of the Authority, the following address and email address:

589 Fifth Avenue, Suite 1702, New York, NY 10017, USA,

newyork@stb.gov.sg
- 18.2 Any Notice may be made by the Authority to the Contractor by electronic mail or other electronic means and shall be deemed to have been duly given or made when it is sent to the Contractor’s electronic mail address set out in the Tender Offer.
- 18.3 Either Party may change its address and electronic mail address referred to above by giving the other Party written notice of the change.

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19. CONSORTIUM

19.1 As used in the Contract, “**Consortium**” means an unincorporated joint venture through the medium of a consortium or a partnership.

Joint and Several Responsibility

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

Addition of members to Consortium

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

19.4 Should additional member(s) be added to the Consortium at any time with the approval of the Authority pursuant to Clause 19.3, he or they shall be deemed to be included in the expression “the Contractor”.

Withdrawal from Consortium

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

20. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

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

20.2 In the event that such consent is given by the Authority:

- (a) the Contractor shall enter into such sub-contract at its own expense and in its own name and capacity and shall not enter into any contracts in the name of or as agent of, or otherwise be capable of binding the Authority contractually;
- (b) the Contractor shall remain liable for the performance of its obligations under this Contract and shall procure and otherwise ensure that any Subcontractor complies with all obligations of the Contract relevant to the sub-contract,

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including the obligations under Clauses 20.1 and 34 (Confidentiality and Security);

- (c) the Contractor shall be responsible for the acts, defaults, negligence and omissions of any Subcontractor, their agents, servants or workmen;
- (d) the Contractor shall comply with such procurement procedures as the Authority may require in respect of the provision of goods and services under the sub-contract;
- (e) the Contractor shall be liable for all payments due to any Subcontractor (inclusive of all relevant Taxes); and
- (f) the Contractor shall be responsible to manage all claims made by any Subcontractor and resolve any disputes or differences arising out of or in connection with any contract between the Contractor and any Subcontractor.

21. DEFAULT INTEREST

- 21.1 If the Contractor defaults in the payment when due of any sum payable under the Contract its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment). The interest shall be at the prevailing rate as determined by the Government of Singapore applicable for monies owing to it.

22. REMEDIES

- 22.1 The rights and remedies of a Party under the Contract are cumulative and are without prejudice and in addition to any rights or remedies such Party may have at law or in equity. No exercise by a Party of any one right or remedy under the Contract, or at law or in equity shall operate so as to hinder or prevent the exercise by it of any other right or remedy under the Contract, at law or in equity.
- 22.2 The Authority shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under the Contract.

23. VARIATION

- 23.1 No variation of the Contract shall be of any force unless agreed upon in writing by the Contractor and the authorised contract signatory of both Parties.

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24. WAIVER

- 24.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy (“**Remedy**”), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.
- 24.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.
- 24.3 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.

25. SET-OFF

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

26. ENTIRE AND WHOLE AGREEMENT

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

27. SEVERABILITY

- 27.1 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.

28. RIGHTS OF THIRD PARTIES

- 28.1 A person who is not a party to the Contract shall have no right to enforce any term of the Contract.

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

28.3 The Contractor agrees that the Authority shall not be liable or held responsible for the acts or omission of the Government.

29. SURVIVING PROVISIONS

29.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 15 (Gifts, Inducements and Rewards), 16.3 and 16.4 (Termination), 18 (Correspondence), 21 (Default Interest), 22 (Remedies), 23 (Variation), 0 (Waiver), 25 (Set-off), 26 (Entire and Whole Agreement), 27 (Severability), 28 (Rights of Third Parties), 29 (Surviving Provisions), 30 (Governing Law), 30A (Escalation of Disputes), 31 (Mediation), 32 (Dispute Resolution), 33 (Order of Precedence), 34 (Confidentiality and Security) 35 (Losses) and 36 (Intellectual Property Indemnification), shall survive the termination or expiry of the Contract.

30. GOVERNING LAW

30.1 The Contract and Clause 32 shall be deemed to be made in Singapore and shall be governed by and construed in accordance with the laws of Singapore.

30A. ESCALATION OF DISPUTES

30A.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.

30A.2 If such Dispute is not resolved by agreement between the Officers within thirty (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 31 (Mediation).

31. MEDIATION

31.1 Notwithstanding anything in the Contract, in the event of any Dispute and subject to Clauses 30A, 31.3 and 31.4, no Party shall proceed to any form of dispute resolution

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unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of the Singapore International Mediation Centre. The Parties shall be deemed to have made reasonable efforts in accordance with this Clause 31.1 if they have gone through at least one mediation session at the Singapore International Mediation Centre.

31.2 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 31.

31.3 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.

31.4 Clause 31.1 shall not apply to a Dispute referred to the Small Claims Tribunals, provided that:

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

31.4.2 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.

31.5 Failure to comply with Clause 31.1 or 31.2 shall be deemed to be a breach of the Contract.

32. DISPUTE RESOLUTION

32.1 Subject to Clause 31, any Dispute shall be referred to and finally resolved by arbitration in Singapore 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.

32.2 The seat of the arbitration shall be Singapore.

32.3 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, to be appointed by the SIAC acting in accordance with the SIAC Rules.

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33. ORDER OF PRECEDENCE

33.1 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 33.2, in accordance with the following order of precedence:

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

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

33.3 For the avoidance of doubt, this Clause shall form an integral part of the Conditions of Contract referred to in Clause 33.1(a).

34. CONFIDENTIALITY AND SECURITY

34.1 Except with the written consent of the Authority, the Contractor shall:

- (a) treat as strictly confidential and not disclose any Confidential Information to any person other than employees, servants and agents of the Contractor or its Subcontractors on a need-to-know basis for the purposes of performing the Contractor's obligations under the Contract; and

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- (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.
- 34.2 The Contractor shall take all reasonable precautions in dealing with Confidential Information so as to prevent any unauthorised person from having such access to such Confidential Information. The Contractor shall procure that all its employees, servants and agents and those of its Subcontractors and agents to whom Confidential Information is to be made available observe the obligations contained in this Clause 34, if they have not already done so.
- 34.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Authority.
- 34.4 For the purposes of this Clause 34 "**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 Authority;
 - (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:
- (i) 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, servants, agents or Subcontractors;
 - (ii) 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
 - (iii) independently developed by the Contractor.
- 34.5 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

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any legal process issued by any court or tribunal of competent jurisdiction in accordance with the provisions of the Contract, provided the Contractor shall, to the extent practicably possible and permissible by law or regulations, give the Authority prompt and prior notice of any such requirement and shall cooperate with the Authority to limit the scope of such disclosure to the maximum extent legally possible.

34.6 No later than fourteen (14) days from the termination or expiry of the Contract, the Contractor shall:

- (a) return all Confidential Information received from the Authority for the purpose of the Contract and all documents and copies thereof produced in the course of performing its obligations under the Contract;
- (b) securely destroy and erase all softcopies of Confidential Information that exist in hard disk, removable storage media and other storage media or facility whatsoever; and
- (c) upon completion of the obligations under Clauses (a) and (b), the Contractor shall provide a written confirmation that it has complied with Clauses (a) and (b).

34.7 The Contractor shall immediately notify the Authority where the Contractor becomes aware of any breach of this Clause 34 by its employees, servants, agents and Subcontractors and cooperate with the Authority to limit the extent and impact of such breach.

34.8 The obligations of any prior non-disclosure agreement under this Contract shall not be superseded by Clauses 34.1 to 34.7. The Contractor shall abide strictly by its obligations under any such prior non-disclosure agreement and any other undertaking given to the Authority to safeguard the confidential information of the Authority and its obligations and undertakings in any declaration of non-conflict submitted to the Authority in relation to the Contract.

35. LOSSES

35.1 The Contractor shall indemnify and keep indemnified the Authority against any and all Losses sustained, incurred, paid by or suffered by the Authority arising out of or in connection with any act or omission on the part of the Contractor, Subcontractor 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 Contractor’s breach, failure or delay in the performance of the Contract; and

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- (b) it is not due to the negligent, unlawful or wrongful action or omission, fraud, bad faith, wilful misconduct or breach of any duty of any of the Contractor Parties.
- 35.2 If any claim is commenced against the Authority that may give rise to a claim against the Contractor under Clause 35.1, notice thereof shall be given to the Contractor as soon as practicable.
- 35.3 Upon receipt of such notice, if required by the Authority, the Contractor shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Authority to handle and defend the same, at the Contractor's sole cost and expense.
- 35.4 In the event the Contractor takes control of the defence and investigation of the claim, the Authority shall co-operate, at the cost of the Contractor, in all reasonable respects with the Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this will not limit the Authority's right to participate, at the Contractor's cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Authority.
- 35.5 Notwithstanding anything to the contrary in the Contract, the Authority shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Authority, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

36. INTELLECTUAL PROPERTY INDEMNIFICATION

- 36.1 The Contractor:
- (a) represents, warrants and undertakes that all Goods and Services supplied by the Contractor and all IP used or introduced by the Contractor in the course of performing its obligations under the Contract do not infringe any IP rights or interests; and
- (b) shall give the Authority prompt notice in writing of any claim of infringement of any such rights or interests made by any third party.
- 36.2 The Contractor shall indemnify the Authority and its officers against all Losses which the Authority or its officers may at any time and from time to time incur or suffer by reason of:

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- (a) any breach of Clause 36.1; or
 - (b) any claim of infringement or alleged infringement of any IP used or introduced by the Contractor in the course of performing its obligations under the Contract, including any costs, charges, and expenses in respect thereof.
- 36.3 Without prejudice to the Authority's right to defend a claim alleging such infringement, the Contractor shall, if requested by the Authority but at the Contractor's expense, defend such claim. The Contractor shall observe the Authority's directions relating to the defence or negotiation for settlement of such claim.
- 36.4 The Authority shall, if requested but at the Contractor's expense, provide the Contractor with reasonable assistance in conducting the defence of such claim.
- 36.5 If any of the Goods or Services supplied by the Contractor or IP used or introduced by the Contractor in the course of performing its obligations under the Contract is alleged to infringe the rights or interests of third parties in IP, the Authority may (in addition to and without prejudice to all other rights or remedies available), at the option of the Authority, require the Contractor, at the Contractor's own expense, to:
- (a) procure for the Authority the right to continue using the same;
 - (b) replace or modify the same so as to avoid the infringement but still meeting the obligations of the Contractor under the Contract (in which event the Contractor shall compensate the Authority for any Losses sustained or incurred by the Authority in connection with such replacement or modification); or
 - (c) pay the Authority a sum equivalent to the purchase price of items functionally equivalent to the infringing items upon the return of the infringing items to the Contractor.
- 36.6 All royalties and fees claimable by or payable to any person for or in connection with any IP used or required to be used in connection with the performance of the Contractor's obligations under the Contract shall be deemed to be included in the Contract Price and shall not be further borne by the Authority.

37. COMMENCEMENT AND DURATION OF CONTRACT

- 37.1 The Contract shall commence on the date of commencement stated in the Letter of Acceptance and shall remain in force for the period specified in the Requirement Specifications, or until the completion of all of the Contractor's obligations under the Contract to the reasonable satisfaction of the Authority (whichever is later), unless extended or earlier terminated by the Authority in accordance with the Contract.

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37.2 The Authority shall have the option to extend the period in which the Contract is in force by one or more consecutive periods specified in the Requirement Specifications, on the same terms and conditions contained in the Contract and on any other terms that may be mutually agreed in writing between the Parties. The Authority shall exercise such option by giving at least one (1) month's written notice to the Contractor.

38. EXIT MANAGEMENT

38.1 During the Transition Period, the Contractor shall, at its cost and expense, make available to the Authority and any third party succeeding the Contractor appointed by the Authority ("**Incoming Contractor**") such documents and records and provide such assistance (including briefings and training) as the Authority or the Incoming Contractor may reasonably require to allow an orderly transition to the Incoming Contractor with minimal disruption.

38.2 In the Contract, "Transition Period" means:

(a) the period of one (1) month before the expiry or termination of the Contract; or

(b) where the notice period for termination of the Contract is shorter than the period referred to in Clause 38.2(a), the period of one (1) month commencing from the date of notice of such termination.

38.3 This Clause 38 shall survive the termination or expiry of the Contract.

39. [INTENTIONALLY LEFT BLANK]

40. [INTENTIONALLY LEFT BLANK]

41. DATA PROTECTION AND SECURITY

41.1 Data Protection

41.1.1 The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors do not, access, monitor, use or process personal data obtained or held in connection with the Contract, except as reasonably necessary to perform its obligations under the Contract.

41.1.2 The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors shall not, disclose any personal data obtained or held in connection with the Contract without the prior consent of the Authority. Any

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request for the Authority's consent under this Clause 40 must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Contractor's obligations under the Contract.

41.1.3 The Contractor shall not cause or permit personal data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside the United States of America or allow parties outside the United States of America to have access to it, unless with the prior written consent of the Authority and subject to such conditions as the Authority may impose. Any request for the Authority's consent under this Clause 40 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, the Contractor shall provide a written undertaking that the personal data which is transferred outside the United States of America will be protected to a comparable standard as it is protected under the laws of the United States of America and the European Union General Data Protection Regulation.

41.1.4 The Contractor shall immediately notify the Authority when it becomes aware of a breach of Clauses 41.1.1 to 41.1.3 by itself or any Subcontractor.

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

41.1.6 The Contractor shall ensure that all personal data obtained or held in connection with the Contract and any copies thereof, regardless of the medium of storage, and which is no longer necessary for the purposes of its performance of the Contract is returned to the Authority or, if the Authority so directs, securely destroyed within seven (7) days. Any personal data that is retained by the Contractor after such personal data is no longer necessary for the purposes of its performance of the Contract, or without the written authorisation of the Authority, is a breach of the Contract. No later than within seven (7) days from the termination or expiry of the Contract, the Contractor shall provide a written confirmation that it is no longer in possession of any personal data obtained or held in connection with the Contract or copies thereof, regardless of the medium of storage.

41.2 Security

41.2.1 The Contractor shall take all reasonable measures to ensure that personal data held in connection with the Contract is protected against loss or damage (whether accidental or otherwise), and against unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel shall have access to the data. The Contractor shall not implement or vary security procedures to a standard less strict than the level of protection required in respect of personal data under the laws of the United States of America and the European Union General Data Protection Regulation.

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41.2.2 The Contractor shall, in respect of any personal data held by it in connection with the Contract, comply with any reasonable requests, directions or guidelines of the Authority relating to the handling of personal data.

41.2.3 The Contractor shall immediately notify the Authority when it becomes aware of a breach of Clause 41.2.1 by itself or any Subcontractor.

41.3 Definitions

For the purposes of this Clause 40, the words “personal data” shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012 (No. 26 of 2012).

41.4 Survival

This Clause 40 shall survive the termination or expiry of the Contract.

42. [INTENTIONALLY LEFT BLANK]

43. [INTENTIONALLY LEFT BLANK]

44. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

44.1 Nothing in the Contract shall affect any person’s right to own or licence Background IP.

44.2 All Foreground IP created by the Contractor, its Subcontractors or suppliers shall vest in the Authority.

44.3 The Contractor:

- (a) hereby assigns and transfers absolutely to the Authority all rights, title and interests in the Foreground IP free from all encumbrances whatsoever; and
- (b) shall procure that its Subcontractors and suppliers assign and transfer absolutely to the Authority all rights, title and interests in the Foreground IP free from all encumbrances whatsoever.

The Contractor further warrants that it shall have the authority to effect the necessary transfer, assignment or other assurance for the Foreground IP to vest in the Authority when called upon by the Authority to do so.

44.4 The Contractor:

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- (a) hereby grants to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor; and
 - (b) shall procure that its Subcontractors and suppliers grant to the Authority and its agents and contractors, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to it.
- 44.5 Nothing in this Clause 44 shall give the Contractor any right, title or interest in or to any IP in any results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of the Contract. The title to all IP in any such results, report, data or information generated or produced by the Authority or another person on behalf of the Authority shall be owned by the Authority.
- 44.6 If the Contractor, its Subcontractor or supplier intends to sell or transfer its Background IP, the Contractor shall ensure that:
- (a) the purchaser of the Background IP and every successor in title to the interest in the Background IP (each, a “**Purchaser**”):
 - (i) has prior written notice of this Clause 44; and
 - (ii) undertakes to the Authority in writing that it will comply with this Clause 44.6 in all respects as if references to “the Contractor” had referred to the Purchaser; and
 - (b) such sale or transfer is subject to the licences granted or required to be granted under this Clause 44.
- 44.7 The Contractor undertakes to do all acts and things and sign and execute all such documents as the Authority may reasonably request to perfect, protect or enforce any of the rights granted or promised to the Authority under this Clause 44. Without prejudice to the generality of the foregoing, if any licence granted under or pursuant to this Clause 44 is registrable under any IP registration system in Singapore and the United States of America, the Contractor shall:
- (c) so register the licence under the IP registration system; and
 - (d) deliver copies of documentary proof of such licence registration to the Authority as soon as possible.
- 44.8 In the Contract:

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“Background IP” means IP which is created prior to or independently of the Contract.

“Foreground IP” means IP (including future IP) which results from or is generated pursuant to or for the purpose of the Contract.

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