

**PART 1 - SECTION C**  
**CONDITIONS OF CONTRACT**  
**FOR FINAL AWARD**

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## 1. INTERPRETATION

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

“**Acceptance Date**” means the date on which the Solution is accepted by the Government pursuant to Clause 0.

“**Acceptance Tests**” means the tests to be conducted on the Solution pursuant to Clause 23.

“**Application Software**” means the computer programs proposed in the Supplier’s Proposal for installation in the Hardware and in conjunction with the Solution Software, as being capable of meeting or exceeding the requirements in the OBP Specifications.

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

“**Closing Date**” means the closing date for Tenderers to submit their Proposal for this Outcome-Based Procurement as set out in the Covering Letter, and “**Closing Date and Time**” means the closing date and time for Tenderers to submit their Proposal for this Outcome-Based Procurement as set out in the Covering Letter.

“**Confidential Information**” means any information which is obtained, received, or however acquired, whether in writing, pictorially, electronically, in machine readable form or orally or by observation or by inference by the Supplier pursuant to or in connection with this Contract (including but not limited to know-how, processes, data or any information regarding the Government or its policies, operating procedures, plans, proposals, roadmaps or intentions) whether or not such information is specifically identified as ‘confidential’ and includes any and all Government Data that is entered into or generated by the Supplier’s Service.

“**Commercial Off-The-Shelf Software**” or “**COTS**” means software that is commercially available to the general public and that can be used with little or no modification.

“**Commissioning Date**” means the date referred to in Clause 23.8.

“**Contract**” means the resultant contract between the Government and the Supplier for the supply, delivery, installation, testing, commissioning and maintenance of the Solution as a result of the issuance of the Letter of Final Award to the Supplier, which terms and conditions are contained in the following:

- a) the Instructions to Tenderers;
- b) These Conditions of Contract of Final Award;
- c) the Conditions of Software Maintenance and Support;
- d) the OBP Specifications;
- e) the Supplier’s Proposal;
- f) any correspondence exchanged between the Government and the Supplier which is agreed to by the Government in writing as amplifying or modifying the said Outcome-Based Procurement or the Supplier’s Proposal; and
- g) any formal agreement executed between the Parties,

including all schedules and annexes to such documents as relevant, but excluding for the avoidance of doubt the **Conditions of Contract for Pilot Trial**.

“**Contract Price**” means the sum specified in the Supplier’s Proposal for the supply, delivery, installation, testing, commissioning and maintenance of the Solution and for the performance of services under this Contract and where the sum tendered has been varied by written agreement of the Parties it shall refer to such varied sum.

“**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.

“**Fair Market Value**” means the fair market value in Singapore, or where such goods and/or services are not available in Singapore, in such other country(ies) where such goods and/or services are available, for the maintenance of the Hardware, System Software or its equivalent, as the case may be.

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

“**GeBIZ**” means the Government Electronic Business website at <http://www.gebiz.gov.sg>.

“**Government**” means the Government of the Republic of Singapore as a whole including all its Ministries, government departments and Organs of State.

“**Government 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 Government that resides in, or runs on or through the Service provided by the Supplier, and includes all content and material that the Government creates, modifies, derives from or produces through the usage of

the Service.

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

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

“**Hardware**” means all computer hardware, other peripherals and ancillary equipment together with all cabling within the Solution network, proposed by the Supplier as being capable of meeting or exceeding the requirements in the OBP Specifications and shall include such other equipment as may be agreed in writing between the Parties to be supplied by the Supplier.

“**ICT**” means information and communications technology.

“**Implementation Plan**” means the Implementation Plan to be submitted by the Tenderer as part of his Proposal pursuant to Clause 10.1 of the Instructions to Tenderers and which shall be updated in accordance with Clause 13.4.1.

“**Installation Date**” means the date referred to in Clause 23.4.6.

“**Installation Tests**” refers to the tests to be conducted on the Solution pursuant to Clause 23.4.

“**Intellectual Property**” or “**IP**” means patents, copyright, trademarks, service marks, trade names, domain names, logos, get-ups, patents, inventions, registered and unregistered design rights, database rights, industrial design, integrated circuit topography and all other intellectual property rights.

“**Letter of Award for Pilot Trial**” means the letter of acceptance issued by the Government to Tenderer(s) to conduct a Pilot Trial.

“**Letter of Final Award**” means the letter of acceptance issued by the Government to the Supplier accepting the Supplier’s Proposal to supply the Solution.

“**Licensee**” means the Government and all Statutory Boards.

“**Life-Span of the Solution**” shall be 5 years commencing from the Acceptance Date.

“**Network Bandwidth Connectivity**” means the interconnecting of users, devices and computers in different locations for information exchange and access. It includes:

Layer 2 network bandwidth connectivity which is connectivity at the “data link” layer of the OSI model and TCP/IP models, and which minimally includes Ethernet frame transmission; and

Layer 3 network bandwidth connectivity which is connectivity at the “network layer” of the OSI model and to the “network/Internet layer” of the TCP/IP model, and which minimally includes IP packet transmission.

“**Next Generation National Broadband Network**” or “**Next Gen NBN**” means the nationwide all-fibre communications network to be designed, built and operated by OpenNet Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 26 September 2008 for the Next Gen NBN NetCo Request for Proposal) which has been replaced by its succeeding entity CityNet Infrastructure Management Pte Ltd (in its capacity as the trustee-manager of NetLink Trust) (the “**NetLink Trust**”), and Nucleus Connect Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 3 April 2009 for the Next Gen NBN OpCo Request for Proposal).

“**Next Gen NBN Operators**” means NetLink Trust and Nucleus Connect Pte Ltd.

“**Next Gen NBN Retail Service Providers**” means the entities which provide network bandwidth connectivity over the Next Gen NBN to end-users at the retail service layer using the underlying bandwidth connectivity supplied by Nucleus Connect Pte Ltd and the underlying physical connectivity supplied by NetLink trust.

“**OBP Specifications**” means the specifications issued by the Government to Tenderers for the purpose of inviting Tenderers to submit their Proposals for the supply, delivery, installation, testing, commissioning and maintenance of the Solution, and which are set out in Part 2 of this Outcome-Based Procurement.

“**Off-loading Point**” means the points near the entrances to the respective buildings where the respective parts of the Hardware are to be located.

“**Outcome-Based Procurement**” means the invitation to participate in this Outcome-Based Procurement and comprises all Outcome-Based Procurement documents forwarded to the Tenderer inclusive of the Covering Letter, Instructions to Tenderers, Conditions of Contract for Pilot Trial, Conditions of Contract for Final Award, Condition of Software Maintenance and Support, Form of Tender, OBP Specifications, Guidelines for OBP Submission, Evaluation Criteria and any other documents and forms enclosed.

“**Party**” means either the Government or the Supplier and “**Parties**” means both the Government and the Supplier.

“**Performance Guarantee Period**” means the period referred to in Clause 25.

“**Person**” includes any individual, company and association or body of persons, whether corporate or unincorporated.

“**Personal Data**” means any data or information, whether true or not, about an individual who can be identified -

- a) from that data or information ; or
- b) from that data and other information to which the Supplier has or is likely to have access.

“**Pilot Trial**” means the pilot trial of the proposed Solution to be conducted by a Shortlisted Tenderer in accordance with the provisions of the Pilot Trial Contract.

“**Pilot Trial Contract**” has the meaning given to it in the Conditions of Contract for Pilot Trial.

“**Project Manager**” means the person designated by the Supplier pursuant to Clause 13.3.1.

“**Proposal**” means the offer submitted by the Tenderer to supply the Solution in response to this Outcome-Based Procurement, as replaced or amended pursuant to Clause 17.3 of the Instructions to Tenderers.

“**Representative**” means the person appointed by the Government pursuant to Clause 13.1 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.

“**Site**” shall mean the locations where the various parts of the Solution are to be installed as stated in the OBP Specifications.

“**Shortlisted Tenderer**” means a Tenderer who has been issued a Letter of Award for Pilot Trial, as the case may be.

“**Software**” means all software including but not limited to Solution Software, program products, Application Software, and utility programs proposed by the Supplier as being capable of meeting or exceeding the requirements in the OBP Specifications.

“**Solution**” means the ICT technology developed for the Government in response to this Outcome-Based Procurement including Hardware, Software and documentation proposed in the Supplier’s Proposal as being capable of meeting or exceeding the requirements in the OBP Specifications. The Solution shall include but not limited to the following components:

- a) All Hardware required for the Solution to meet the OBP Specifications and the Proposal. All hardware components in the Solution shall be capable of working in combination with one another;
- b) All Software, application development tools or utilities required for the Solution to meet the OBP Specifications and the Proposal. All software components in the Solution shall be capable of working in combination with one another; and
- c) All documentation, training and related materials required for the Solution to meet the OBP Specifications and the Proposal.

For the avoidance of doubt, the Hardware and Software components in the Solution shall be capable of working in combination with one another.

“**Solution Performance Tests**” refers to the tests to be conducted on the Solution pursuant to Clause 23.6.

“**Solution Software**” means the software proposed in the Supplier’s Proposal as being capable of meeting or exceeding the requirements in the OBP Specifications.



“**Solution Warranty Period**” shall have the meaning given to it in Clause 26

“**Stage 2**” means Stage 2 of this Outcome-Based Procurement as described in Clause 2.2(b)(i) of the Instructions to Tenderers.

“**Stage 3**” means Stage 3 of this Outcome-Based Procurement as described in Clause 2.2(b)(ii) of the Instructions to Tenderers.

“**Stage 4**” means Stage 4 of this Outcome-Based Procurement as described in Clause 2.2(b)(iii) of the Instructions to Tenderers.

“**Statutory Board**” means any body corporate established by or under written law from time to time to perform or discharge any public function.

“**Stipulated Commissioning Date**” means the date the Supplier has stipulated in the Implementation Plan as to when the commissioning of the Solution is to take place.

“**Stipulated Installation Date**” means the date the Supplier has stipulated in the Implementation Plan as to when the installation of the Solution is to take place.

“**Sub-Contractor**” means any person, firm or company furnishing goods and services, Intellectual Property or Technical Information directly to the Supplier or indirectly to the Supplier through one or more persons, firms or companies.

“**Supplier**” means the person, firm or company whose Proposal has been accepted by the Government for this Outcome-Based Procurement and who has been awarded a Letter of Final Award. It includes the Supplier’s duly appointed representatives, successors and permitted assignees and where the context so admits shall include the Supplier’s employees, agents and Sub-contractors.

“**Technical Information**” includes inventions, confidential information, know-how, trade secrets and, in particular, all information concerning equipment and software (including firmware) pertaining to design, manufacture, maintenance, installation, operation and use, in whatever form including drawings, charts, manuals, schematic representations, software listings in source and object code.

“**Tenderer**” means a person or his permitted assigns offering to supply the Solution pursuant to this Outcome-Based Procurement, and shall be deemed to include two or more persons if appropriate.

“**Updated Implementation Plan**” has the meaning given to it in Clause 13.4.1.

“**Validity Period**” means a period of 24 calendar months from the Closing Date of this Outcome-Based Procurement.

“**Working Day**” means every day except for Sundays and public holidays in Singapore.

“**Works**” means the works to be executed in accordance with this Contract including all permanent and temporary works and any equipment to be supplied, delivered and installed under this Contract.

- 1.2 Words importing the singular 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 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.

## **2. CLAUSE REFERENCES**

- 2.1 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in these **Conditions of Contract for Final Award** and not to those in any other document forming part of this Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the sub-clauses if any, under that same clause number.
- 2.2 References to provisions in the other documents forming part of this Contract shall be identified by the number of the Paragraph, Schedule or Chapter as the case may be followed by a description of the document referred to.
- 2.3 Where the provision number is stated without a description of any document then it refers to the provision so numbered in the document where the reference appears.

## **3. PRODUCTS AND SERVICES TO BE DEVELOPED AND DELIVERED BY SUPPLIER**

- 3.1 The Supplier hereby agrees to:
  - a) supply the Solution to the Government free from all encumbrances;
  - b) prepare the Site for installation;

- c) deliver the Solution to and install the Solution at the Site by the Stipulated Installation Date;
- d) provide the Solution ready for use by the Stipulated Commissioning Date;
- e) provide the documentation in accordance with Clause 33;
- f) provide training in accordance with Clause 29;
- g) provide maintenance for the Solution commencing from the installation of the Solution until the end of the Solution Warranty Period; and
- h) provide all other services specified by this Contract, upon the terms and conditions hereinafter contained.

### **3.2 Option for Hardware to be provided by Supplier**

3.2.1 The Government shall have an option to purchase the Hardware from the Supplier at the price stated in the Supplier's Proposal.

3.2.2 If the Government does not exercise the option to purchase the Hardware:

- a) the Supplier's obligations for the supply, delivery and installation of the Solution found in these Conditions of Contract for Final Award shall be read to refer to the supply, delivery and installation of the Software;
- b) the Supplier's obligations for the testing and commissioning of the Solution found in these Conditions of Contract for Final Award shall not be affected;
- c) the Supplier shall not have any obligations to supply the Hardware; and
- d) the Supplier shall remain responsible for proposing other Hardware that is capable of meeting or exceeding the requirements of the OBP Specifications.

### **3.3 Option for Commercial Off-the-Shelf Software to be provided by Supplier**

3.3.1 The Government shall have an option to purchase Commercial Off-the-Shelf Software from the Supplier at the price stated in the Supplier's Proposal.

3.3.2 If the Government does not exercise the option to purchase the Commercial Off-the-Shelf Software:

- a) the Supplier's obligations for the supply, delivery and installation of the Solution found in these Conditions of Contract for Final Award shall be read to refer to the supply, delivery and installation of the Solution without COTS;
- b) the Supplier's obligations for the testing and commissioning of the Solution found in these Conditions of Contract for Final Award shall not be affected;

- c) the Supplier shall not have any obligations to supply the Commercial Off-the-Shelf Software; and
  - d) the Supplier shall remain responsible for proposing other Software that is capable of meeting or exceeding the requirements of the OBP Specifications.
- 3.4
- a) The Supplier shall grant, obtain a grant, or transfer to the Government as the case may be, an irrevocable, non-exclusive, non-transferable right to use the Software, related operating manuals and documentation for the Solution free of additional charge in accordance with the terms and conditions of this Contract.
  - b) Where the Intellectual Property of any Software, related operating manuals and documentation for the Solution is vested in a third party, the Supplier agrees there shall be no additional fees, costs or conditions in respect of the Government's right to use the Software save as provided for in this Contract.
- 3.5 The Supplier shall designate a common service location for the Government to contact for the provision of all the services specified in this Contract.
- 3.6 Regardless of whether a perpetual or non-perpetual licence has been granted, the Supplier declares that the use or operation of any part of the Solution shall not at any time be restricted or interfered with in any manner whatsoever by any means or devices which would require the services of the Supplier or a third party to restore to full use and operation.

#### **4. NETWORK BANDWIDTH CONNECTIVITY**

- 4.1 Where the Supplier is providing any network bandwidth connectivity required under this Contract, the Supplier shall provide such connectivity using the Next Gen NBN by procuring it directly from the Next Gen NBN Operators or from Next Gen NBN Retail Service Providers.
- 4.2 When submitting its invoices or such other documents as may be required for the purposes of payment, the Supplier shall set out the charges assigned to the provision of network bandwidth connectivity as a separate cost item under the description "Network Bandwidth Connectivity Charges". Upon any request made at any time by the Representative, the Supplier shall provide such further information regarding the charges for network bandwidth connectivity as may be specified in the request within five (5) working days from the date of the request.
- 4.3 The Supplier shall ensure that his assignees, Sub-contractors or agents who are or may be involved in the performance of this Contract comply with Clause 4.1.

#### **5. TERMS OF PAYMENT**

- 5.1 Subject to the provisions of this Contract, the Government shall pay to the Supplier the Contract Price in the manner prescribed in **Schedule 1**.

- 5.2 The Supplier shall submit such invoices or other documents in accordance with such means and in such format as may be specified by the Representative for the purposes of making payment.
- 5.3 The Government shall not pay for expenses or cost of whatever nature other than those expressly set forth in this Contract.
- 5.4 The Contract Price is exclusive of any Singapore Goods and Services Tax (“GST”) chargeable on the supply of goods, services or works to the Government by the Supplier under this Contract. If the Supplier is a taxable person under the Goods and Services Tax Act, the Government shall reimburse the Supplier the GST charged on the supply by the Supplier to the Government of goods, services or works under this Contract.

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

- 6.1 Each party shall pay its own costs of negotiating, preparing and executing this Contract.
- 6.2 If the Supplier is a taxable person under the Goods and Services Tax Act (Cap. 117A) (“GST Act”), the Government shall pay the Supplier the Goods and Services Tax for the supply by the Supplier of goods and/or services under this Contract. For clarification, “Goods and Services Tax” shall refer to tax under the GST Act.
- 6.3 Any invoice or other request for payment of monies due to the Supplier under this Contract shall, if he is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the Regulations made under the GST Act.
- 6.4 For the avoidance of doubt, in the event that withholding taxes are imposed by the tax authorities on any payment due under this Contract, the Supplier shall bear all such withholding taxes and the Government shall be entitled to deduct such taxes from payment due to the Supplier and forward the balance to the Supplier without any obligation to gross up such payment or pay the Supplier any amount so withheld.

## **7. TIME FOR PERFORMANCE**

- 7.1 Time shall be of the essence in this Contract and the Supplier undertakes to supply, deliver, install, test and commission the Solution by the Stipulated Commissioning Date.

## **8. GOVERNMENT’S OBLIGATIONS**

- 8.1 The Government shall not solicit for employment any of the Supplier’s staff connected with this Contract within a year after the completion of the Solution Warranty Period.

- 8.2 If the progress of the Works is delayed for reasons not attributable to the Supplier, the Representative may, upon the application by the Supplier, grant such extensions of time as he deems reasonable. The Supplier shall not be entitled to claim any additional expenses incurred for such extensions of time.

## **9. SUPPLIER'S OBLIGATIONS**

- 9.1 The Supplier shall with due care and diligence:
- a) carry out its obligations to the Government under this Contract;
  - b) ensure that the Solution meets or exceeds the requirements set out in the OBP Specifications;
  - c) provide all software necessary for the operation of the Solution and the applications as set out in the OBP Specifications; and
  - d) do all things which are necessary or reasonably to be inferred from this Contract.
- 9.2 The Supplier warrants that all Hardware supplied to the Government shall be of new manufacture (i.e. not second-hand, re-conditioned, or used items).
- 9.3 The Supplier and its Sub-contractors shall not solicit for employment any staff of the Government connected with this Contract until one year after the completion of the Solution Warranty Period.
- 9.4 If the Supplier delays progress on any part of this Contract, for any reason not attributable to the Government, and thereby reduces any scheduled duration of activities to be carried out by the Government under this Contract, the Government shall be entitled to a corresponding time extension for completion of such activities at no additional cost to the Government, and without prejudice to the Supplier's obligation to complete this Contract in accordance with the Implementation Plan.
- 9.5 In the performance of this Contract, the Supplier shall at its own expense within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.
- 9.6 The Supplier unconditionally guarantees the Solution to be free from defects including defects arising out of faulty design, inferior materials, and faulty and inferior workmanship. The Solution shall be of high quality and fit for the purposes for which it is intended as set out in the OBP Specifications.

## **10. RESPONSIBILITY FOR THE SOLUTION**

- 10.1 The Supplier shall ensure that the Solution will provide the facilities, functions and performance standards set out in the OBP Specifications. If modifications or changes

are necessary for the Solution to meet the requirements as stated in the OBP Specifications and the provisions of this Contract, the Supplier shall bear all additional costs involved in modifying or changing the Solution to satisfy these requirements.

- 10.2 The Supplier shall forthwith inform and provide the Government at no cost whatsoever Technical Information on new product developments and improvements which may be applicable to the Solution when such Technical Information becomes available to the Supplier.
- 10.3 The OBP Specifications which set out the facilities and functions to be provided by the Solution allow the Supplier to choose the manner in which the facilities will be achieved by the selection of hardware or software or a combination of both. It is anticipated that some matters of details may have to be clarified during the early stages of this Contract. In this context, the Government reserves the right to issue written clarifications on the OBP Specifications to set out the Government's requirements more precisely if necessary.
- 10.4 The Supplier shall be deemed to be fully informed of the Government's requirements by the OBP Specifications and it shall be the Supplier's duty to clarify before submission of his Proposal any inadequacies or insufficiencies in the OBP Specifications having regard to the objective of the Government's purchase of the Solution.
- 10.5 In the event that the Solution supplied by the Supplier is inadequate to meet the requirements as stated in the OBP Specifications and the provisions of this Contract, the Supplier shall at its own expense, provide all additional items of equipment and software which are necessary for the Solution to meet such requirements. Any changes hereunder must be agreed to by the Government in writing.
- 10.6 All equipment and software supplied pursuant to Clause 10.5 shall on acceptance by the Government become the property of the Government and shall be subject to the same warranty and maintenance by the Supplier as the entire Solution at no additional cost to the Government.
- 10.7 Any additional cost incurred in connection with Site preparation, including but not limited to the provision of additional power supply, caused by the additional items of equipment or software supplied pursuant to Clause 10.5 shall be at the Supplier's expense.

## **11. MODIFICATION OF SOLUTION**

- 11.1 No change or modification shall be made to the proposed Solution in the Supplier's Proposal unless the prior written agreement of the Government has been obtained.
- 11.2 The Supplier shall provide written procedures and details of Solution changes or modifications which may have to be implemented during the various stages of this Outcome-Based Procurement, up to the expiry of the Solution Warranty Period. Such

changes or modifications shall not be implemented unless the prior written agreement of the Government has been obtained.

## 12. SECURITY DEPOSIT

- 12.1 Within thirty (30) calendar days commencing from the date of issue of the Letter of Final Award, the Supplier shall lodge with the Government, a Security Deposit of five (5) per cent (%) of the Contract Price if the Contract Price is more than S\$500,000 for the due, faithful and complete performance of this Contract and the observance by the Supplier of all stipulations, terms, conditions and obligations on its part to be observed or performed.
- 12.2 The Security Deposit shall either be in the form of cash or, in lieu of cash, an unconditional Banker's Guarantee or Insurance Bond (in the form set out in **Schedule 4**) from a bank or insurance company established in the Republic of Singapore and duly approved by the Government. In lieu of cash, if the Security Deposit does not exceed S\$300,000, it may also take the form of a performance bond issued by a licensed finance company registered with the Monetary Authority of Singapore. The cost of obtaining such a Banker's Guarantee, Insurance Bond or Performance Bond shall be borne by the Supplier.
- 12.3 In the event that this Contract is unlikely to be completed before the expiry date of the Banker's Guarantee, Insurance Bond or Performance Bond, the Supplier shall without demand, secure a renewal thereof or obtain a new Banker's Guarantee, Insurance Bond or Performance Bond for the same amount and on the same terms as the expiring Banker's Guarantee, Insurance Bond or Performance Bond and deposit the same with the Government. If such renewal or new Banker's Guarantee, Insurance Bond or Performance Bond is not deposited with the Government thirty (30) calendar days before the expiry date of the expiring Banker's Guarantee, Insurance Bond or Performance Bond, the Government shall have the right to call upon the bank, insurance company or finance company to pay the sum stated therein.
- 12.4 In the event of any default or breach of any of the obligations by the Supplier under this Contract, the Government may draw on the Security Deposit to satisfy any liquidated or other damages as may become due to the Government under this Contract if the Government has, prior to drawing on the Security Deposit, notified the Supplier in writing of the default or breach and given the Supplier a minimum of thirty (30) days to rectify or remedy the default or breach or (if the default or breach cannot be fully rectified or remedied) to pay damages to the amount specified in the notice and the Supplier has failed to comply fully with the notice.
- 12.5 The Government may also utilise and make payment out of deductions from the Security Deposit in such other manners and for such other purposes, expressly allowed by this Contract.
- 12.6 The Government shall be entitled to make a demand on the Banker's Guarantee, Insurance Bond or Performance Bond as soon as it is satisfied that the conditions for drawing on the Security Deposit has been fulfilled, notwithstanding that the Supplier



disputes the same.

- 12.7 The Security Deposit, subject to such deduction as may be made therefrom by the Government, shall be released, within sixty (60) calendar days from the expiry date of the Solution Warranty Period.
- 12.8 The Government's rights under this Clause 12 shall be without prejudice to any other rights and remedies available to the Government.

### **13. PROJECT MANAGEMENT**

#### **13.1 The Government's Representative**

- 13.1.1 The Government shall appoint a person to supervise and liaise with the Supplier for the purpose of this Contract and such person may designate others to assist him in such matters.

#### **13.2 Project Office**

- 13.2.1 The Supplier shall at its own expense establish a project office in Singapore to coordinate the performance of this Contract.

#### **13.3 Project Manager and Other Personnel**

- 13.3.1 The Supplier shall designate a Project Manager and the Project Manager shall be primarily responsible for directing and coordinating the supply, delivery, testing and installation of the Solution and all work and services which are to be executed or provided by the Supplier under this Contract and all other matters including contract administration, monitoring of progress, installation and testing of equipment, technical personnel training, logistic support, documentation preparation and operation start-up. The Project Manager shall be deemed to be the Supplier's agent in all dealings with the Government and all actions of the Project Manager shall be binding on the Supplier.
- 13.3.2 The Representative shall have direct access to the Project Manager at all times during the performance of this Contract and if the Project Manager is absent from Singapore for any duration, the Supplier shall designate another employee to perform his duties and functions.

#### **13.4 Implementation Plan**

- 13.4.1 Within fourteen (14) days from the date of issue of the Letter of Final Award, the Supplier shall, if necessary, update the Implementation Plan, and shall deliver an updated version (the "**Updated Implementation Plan**") to the Government.
- 13.4.2 The Updated Implementation Plan shall, unless otherwise agreed by the Government, conform with the work programme submitted by the Supplier in its Proposal and shall not exceed the time prescribed in **Schedule 2**.

13.4.3 The Updated Implementation Plan shall be updated at intervals of four (4) calendar weeks to show the expected and actual events and completion dates. The Updated Implementation Plan shall be made available to the Representative for review. The Updated Implementation Plan shall include activities to be carried out by the Government and its Representative.

### **13.5 Monthly Progress Reports and Meeting**

13.5.1 The Supplier shall deliver to the Representative written monthly progress and status reports in a format approved by the Representative. The submission and acceptance of these reports shall not in any way prejudice the rights of the Government to make any claims against the Supplier.

13.5.2 The Supplier shall notify the Representative of any expected delay in the performance of this Contract. The Supplier shall refer immediately to the Representative any matter likely to impede the progress of the supply, delivery, installation, testing and commissioning of the Solution.

13.5.3 The Representative may call progress meetings at regular monthly intervals during which the Project Manager shall attend and report to the Representative on the progress of the supply, delivery, testing and installation of the Solution and providing it ready for use. The progress meetings shall be held at venues chosen by the Representative.

## **14. SUPPLIER'S PERSONNEL**

14.1 The Supplier shall provide all necessary personnel with adequate skills for the performance of this Contract.

14.2 The Supplier shall communicate in writing for the approval of the Representative the names and particulars of his employees and the employees of any sub-contractor engaged by the Supplier to carry out any work or perform any services for the purposes of this Contract. The names and particulars shall be provided in the form required by the Representative.

14.3 If the Government objects by notice in writing to any personnel assigned or designated by the Supplier or by any sub-contractor to carry out any work or perform services for the purposes of this Contract who, in the opinion of the Government, has misconducted himself or is a security risk or is deemed unsuitable in any way, the Supplier shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Government. In the event that the Government has other reasons to believe that any personnel employed by the Supplier, or its sub-contractors or agents are unsatisfactory in any way, the Supplier and the Government shall meet immediately in order to reach a mutually acceptable solution.

14.4 The Supplier undertakes not to change its personnel designated under Clause 14.2 without the Representative's consent, whose consent shall not be unreasonably withheld. In the event of replacement of the Supplier's staff the Supplier shall provide the names and particulars of the replacement staff in writing to the Government.

Replacement staff shall not commence work on the project unless approval is given in writing by the Government. The Supplier shall not alter or reduce the quality of its personnel if this may adversely affect the progress or quality of the Works.

- 14.5 The Supplier shall not, without prior written permission from the Representative, bring any visitor to the Site.

## **15. TITLE AND RISK**

- 15.1 Subject to Clause 31, the title to and risk in the Solution, and any part thereof shall pass to the Government on the Commissioning Date. The Supplier shall be responsible for insuring the Solution in accordance with Clause 40.1.

- 15.2 The Supplier warrants that upon payment of the installment of the Contract Price due to the Supplier after the Commissioning Date, the Government shall acquire good clear title to the Solution free from all liens or encumbrances.

## **16. SITE PREPARATION**

- 16.1 Within one month of the issuance of the Letter of Final Award, the Supplier shall supply to the Government such information and assistance as may be necessary to enable the Government to prepare the Site for the installation of the Solution and to provide environmental and operational conditions for the efficient working and maintenance of the Solution.

- 16.2 For this purpose the Supplier shall make available to the Government free of charge the advice of a suitably qualified engineer.

- 16.3 The Government shall at its own expense prepare the Site and provide such environmental and operational conditions prior to delivery.

## **17. INFORMATION AND ACCESS**

- 17.1 The Government undertakes to provide the Supplier promptly with any information which the Supplier may reasonably require from time to time to enable the Supplier to proceed expeditiously with the performance of its obligations under this Contract.

- 17.2 The Government shall, for the purposes of this Contract, afford to the authorised personnel of the Supplier during normal working hours full and safe access to the Site and shall provide adequate free working space and such other facilities as may be necessary for the installation of the Solution.

**18. PRE-DELIVERY CONDITION**

- 18.1 The Supplier warrants that upon its delivery, each item of the Solution shall be in good working order and will conform to the Supplier's official published specifications. Such specifications shall be made available upon request at no additional charge to the Government.

**19. PRE-DELIVERY TESTS**

- 19.1 Before delivery of the Hardware to the Government, the Supplier shall submit the Hardware to its standard works tests (the "**Works Test**"). The Supplier shall promptly supply to the Government on request copies of the specification of the Works Tests.
- 19.2 The Government or its Representative may attend the Works Tests. The Supplier shall give the Government at least seven (7) days' written notice of the date and time at which the Supplier proposes to carry out the Works Tests. In the event of any delay or failure by the Government or its Representative in attending the Works Tests at such time, the Supplier reserves the right to proceed with the Works Tests which will then be deemed to have been carried out in the presence of the Government and the results thereof accepted by the Government.
- 19.3 Upon successful completion of the Works Test, the Supplier shall issue to the Government a certificate that the Hardware has passed the same.

**20. PACKING**

- 20.1 The Supplier shall ensure that all items of the Solution shall be adequately packed and secured in such a manner as to withstand rough handling during transportation and to reach their destination in good condition.
- 20.2 The items must be protected from dust, moisture, climatic or any other factors from the time the items leave the place of manufacture until such time when the items are received by the Government.
- 20.3 Any item that is found below standard or damaged owing to inadequate or improper packing shall be repaired or replaced by the Supplier without any charge to the Government.
- 20.4 All replacement or repair shall be carried out by the Supplier within the time stipulated by the Government immediately upon written notification by the Government and prior to any insurance claim being completed.
- 20.5 The Supplier shall, at the request of the Government, give full details on when the items are dispatched and the mode of carriage.

**21. DELIVERY**

- 21.1 The Supplier shall schedule the delivery and installation events to meet the Stipulated Commissioning Date.
- 21.2 Without prejudice to the generality of Clause 21.1 the Supplier shall make its own arrangements regarding import and export licenses, storage, insurance, custom and import duties and all matters connected with transportation of the Solution, Hardware, Software, documentation, equipment, spare parts, materials and other items from their points of origination to the Off-loading Point.
- 21.3 The Supplier shall be responsible for moving the Hardware from the Off-loading Point to the Site. If it is necessary for the Supplier to remove any doors, widen any entrances or undertake any structural works of any description, it shall do so at its own expense and with the Representative's written consent, which consent shall not be unreasonably withheld.
- 21.4 The Supplier undertakes that the information with regard to the dimensions and weights of the various component parts of the Hardware given in his Proposal are correct and any additional expense incurred by the Government due to any incorrect information provided by the Supplier shall be borne by the Supplier.

**22. INSTALLATION**

- 22.1 The Supplier shall install the Hardware at the Site on the date specified in the Updated Implementation Plan.
- 22.2 If the Government does not exercise the option to purchase the Hardware under Clause 3.2, the Supplier shall deliver the Software to the Government and install the same on the Hardware at the Site on the date specified in the Updated Implementation Plan.
- 22.3 If in the reasonable opinion of the Supplier it is necessary to remove or otherwise disconnect any of the Government's existing equipment at the Site in order to carry out the installation of the Hardware, the Supplier shall give the Government sufficient advance written notice of this, then the Government shall permit, and obtain all necessary consents for, such removal and/or disconnection and shall give the Supplier all necessary assistance to enable such work to be carried out.
- 22.4 The Supplier shall provide all tools and equipment which are necessary for the installation of the Hardware.

**23. ACCEPTANCE TESTS****23.1 Conducting Acceptance Tests**

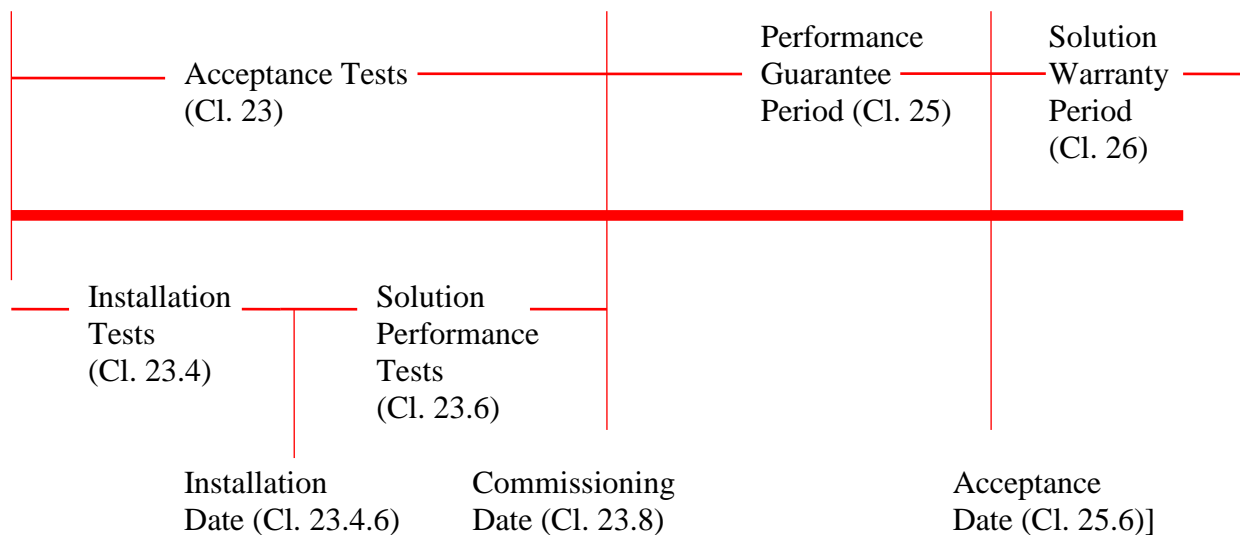
- 23.1.1 The Supplier shall conduct acceptance tests on the entire Solution including the

Hardware and Software to verify and demonstrate that the Solution meets the OBP Specifications (“**Acceptance Tests**”). The Acceptance Tests shall include tests in relation to both functional and non-functional (e.g. application security) requirements in the OBP Specifications. The Acceptance Tests shall be conducted after installation of the Hardware. The Acceptance Tests shall comprise of:

- a) Installation Tests, and
- b) Solution Performance Tests.

23.1.2 The Acceptance Tests shall also apply to substitution, replacement and conversion of any component parts that are acquired by the Government in relation to this Contract.

23.1.3 The Acceptance Tests shall comply with the Acceptance Test Procedures to be proposed by the Supplier in his Proposal and to be accepted by the Government. The Government reserves the right to modify these or specify different procedures within a reasonable time prior to the tests and subject to the Supplier’s consent. The Acceptance Test Procedures to be proposed by the Supplier in his Proposal shall be based on **Schedule 6**.



## 23.2 Notice of Commencement and Completion of Acceptance Tests

23.2.1 The Supplier shall give to the Government seven (7) days prior written notice (or such shorter notice as the Representative may agree in writing) of the date when he will be ready to commence any Acceptance Tests.

23.2.2 The Supplier shall provide all tools and testing equipment for the purposes of the Acceptance Tests.

23.2.3 Prior to commencing the Acceptance Tests, the Supplier shall ensure that the Solution meets the security requirements in the OBP Specifications and furnish the security tests results to the Government. The Government reserves the right to (without prejudice to the Supplier’s obligations to meet all timelines under this Contract)

require a postponement of the Acceptance Tests if the Supplier fails to demonstrate that the Solution has met the security requirements in the OBP Specifications, and no timelines under this Contract shall be deemed to be extended by the exercise of such right.

23.2.4 Provided that the Supplier has given notice of the date of commencement of the Acceptance Tests in accordance with Clause 23.2.1, if requested Government personnel are not available for the tests, the Supplier may proceed to conduct the Acceptance Tests as if such personnel were present.

23.2.5 Upon completion of any Acceptance Test:

- a) the Party which conducted the Acceptance Test shall give notice of such completion to the other Party;
- b) if both Parties are satisfied that the Acceptance Test has been successfully completed, both Parties shall mutually certify that the Acceptance Test has been successfully completed;
- c) if the Government is not satisfied that the Acceptance Tests has been successfully completed, the Government shall, within seven (7) days of receipt of the notice of completion of the Acceptance Tests, provide a written defect report; and
- d) if the Government does not provide a written defect report within seven (7) days of receipt of the notice of completion of Acceptance Tests, then the Acceptance Tests shall be deemed to be satisfactorily completed.

### **23.3 Delay in Acceptance Tests**

23.3.1 If in the opinion of the Government, the Acceptance Tests are unreasonably delayed, the Government may by notice in writing require the Supplier to conduct the tests within seven (7) days from receipt of such notice and the Supplier shall conduct the tests on such date or dates within the said seven (7) days as the Supplier may fix and of which it shall give reasonable notice to the Government.

23.3.2 If the Supplier fails to conduct such tests within the time, the Government may itself proceed to conduct the said tests. All Acceptance Tests so conducted by the Government shall be at the risk and expense of the Supplier.

### **23.4 Installation Tests**

23.4.1 The Supplier shall conduct the Installation Tests after installing the Hardware. In the Installation Tests, the Supplier shall submit the Hardware to:

- a) all the test procedures set out in the OBP Specifications, if any;
- b) all the manufacturers' standard test procedures; and
- c) all the manufacturers' published specifications,

to ensure that the Hardware and every part thereof is in full working order. The Supplier shall supply the Government with copies of the manufacturers' standard test procedures and manufacturers' published specification before the conduct of the Installation Tests. The Supplier shall give advance written notice to the Government of the date of the Installation Tests in accordance with Clause 23.2.1 and the Government shall have the right to attend the Installation Test on the said date.

23.4.2 The Government shall provide all reasonable facilities to enable the Installation Tests to be carried out.

23.4.3 The Supplier shall also load data supplied by the Government into the Hardware and conduct tests to verify whether the data together with the Hardware are operating in accordance with the manufacturers' published specification and the OBP Specifications.

23.4.4 In the event the Supplier is unable to certify that the entire Hardware has successfully passed the Installation Tests or does not so certify within fourteen (14) days from the date when the Installation Tests were first conducted, the Hardware will be deemed to have failed the Installation Tests.

23.4.5 If the Hardware or any part thereof fail to pass the Installation Tests then the Government may, by written notice to the Supplier elect at its sole option:

- a) to have the Installation Tests repeated (without prejudice to its other rights and remedies) on the same terms and conditions within a reasonable time. Unless otherwise agreed in writing between the Parties, all such repeat Installation Tests shall not be construed as any grant of extension of time by the Government and the Supplier remains liable for any delay in complying with its obligations under this Contract; or
- b) to require (without prejudice to its other rights and remedies) the Supplier to provide such replacement equipment as will enable the Hardware to pass the Installation Tests. Unless otherwise agreed in writing between the Parties, all provision of such replacement equipment shall not be construed as any grant of extension of time by the Government and the Supplier remains liable for any delay in complying with its obligations under this Contract; or
- c) to accept the Hardware subject to an abatement of the Contract Price, such abatement to be of such amount, as taking into account the circumstances, which is reasonable. In the absence of written agreement as to abatement within fourteen (14) days after the date of such notice the Government shall be entitled to exercise its rights under Clause 23.4.5(d). Before accepting the said Hardware, the Government shall consider the impact of such Hardware on the Solution Performance Tests to be conducted under Clause 23.6.
- d) to treat the Supplier as being in breach of Contract and to reject the Hardware as not being in conformity with this Contract in which event the Government shall be entitled to terminate this Contract (without prejudice to the Government's other rights and remedies) in accordance with Clause 50.



23.4.6 When the Hardware has successfully passed the Installation Tests, the Supplier shall so certify to the Government in writing that the Hardware is operating in accordance with the manufacturer's published specifications and the OBP Specifications. The date of such certification shall be the Installation Date. The issue of any such certificate shall be without prejudice to the Government's right to reject the Solution pursuant to Clause 23.6.

### **23.5 Delivery And Installation Of Software**

23.5.1 The Supplier shall within seven (7) days of the Installation Date, deliver the Software to the Government and install the same on the Hardware at the Site.

23.5.2 If the Government does not exercise the option to purchase Commercial Off-the-shelf Software (COTS) under Clause 3.3, the Supplier shall deliver the Hardware to the Government and install the same at the Site on the date specified in the Updated Implementation Plan.

### **23.6 Solution Performance Tests**

23.6.1 After the Software has been fully installed on the Hardware at the Site, the Government shall load into the Solution test data which in the reasonable opinion of the Government is suitable to test whether the Solution is in accordance with the OBP Specifications and with the advice and assistance of the Supplier, operate the Solution for the period of twenty (20) working days to:

- a) perform the Government's routine transactions;
- b) perform the transactions performed during any benchmark tests or other vendor demonstrations included, referenced, or incorporated in the OBP Specifications;
- c) carry out Solution functions test to determine whether the Solution meets the specifications, performs the functions, and meet the criteria for Solution availability, response time and workload requirements set forth in the OBP Specifications;
- d) determine whether the documentation for the Solution meets the requirements of this Contract; and
- e) perform such other transactions as may be necessary to test the Solution performance specified in the OBP Specifications.

23.6.2 The Solution shall be deemed to fail the Solution Performance Tests if:

- a) it fails to provide any facility, transaction or function specified in the OBP Specifications; or
- b) it fails to run the Software in accordance with the OBP Specifications of applicable benchmark or other demonstration results, for the period prescribed for the Solution Performance Tests.

23.6.3 If the Solution fails to pass the Solution Performance Tests then the Government may, by written notice to the Supplier elect at its sole option:

- a) to have the Supplier provide a solution and to fix (without prejudice to its other rights and remedies) a new date for carrying out further tests on the Solution on the same terms and conditions (save that all costs which the Government may incur as a result of carrying out such tests shall be reimbursed by the Supplier). Unless otherwise agreed in writing between the Parties, all such further tests shall not be construed as any grant of extension of time by the Government and the Supplier remains liable for any delay in complying with its obligations under this Contract; or
- b) to accept the Solution subject to an abatement of the Contract Price, such abatement to be of such amount, as taking into account the circumstances, which is reasonable. In the absence of written agreement as to abatement within fourteen (14) days after the date of such notice the Government shall be entitled to exercise its rights under Clause 23.6.3(c); or
- c) to treat the Supplier as being in breach of Contract and to reject the Solution as not being in conformity with this Contract in which event the Government shall be entitled to terminate this Contract (without prejudice to the Government's other rights and remedies) in accordance with Clause 50.

23.6.4 The Government shall accept the Solution after the Solution has successfully passed the Solution Performance Tests.

### **23.7 Failure of Acceptance Tests**

23.7.1 The Government shall not be under any obligation to accept the Solution if it does not successfully pass any of the Acceptance Tests under this Contract. In the case of hardware tests, the Supplier shall not refuse to diagnose software failures/deficiencies. In the case of software tests, the Supplier shall not refuse to diagnose hardware failures/deficiencies. The Supplier shall submit a report to the Government detailing the cause for the failure of any Acceptance Tests and the corrective action taken.

### **23.8 Commissioning Date**

23.8.1 As soon as the Solution has successfully passed all the Acceptance Tests, the Government shall forthwith issue a certificate commissioning the Solution and the date of the certificate shall be the Commissioning Date of the Solution.

23.8.2 The Supplier shall remain liable to the Government in accordance with the terms and conditions contained herein notwithstanding the signing by the Government of any certificate or document or any payment or the release of the Security Deposit. Subject to Clause 23.8.3 below, such certificate, document or payment shall have no legal effect other than serving as a declaration to the Supplier that it is ready to proceed with the next phase of this Contract.

23.8.3 The Acceptance Test certificate issued in respect of the last and final Acceptance Test to be conducted under this Contract, when signed by the Government, signifies acceptance by the Government of the Solution and is, subject to such reservations as may be endorsed thereon by the Government, final and binding in respect of all matters covered by that Acceptance Test.

## 24. LIQUIDATED DAMAGES FOR LATE COMMISSIONING

24.1 In the event the Supplier fails to meet the Stipulated Commissioning Date or such Commissioning Date as extended pursuant to Clause 8.2, the Government may, in addition to the remedies under Clauses 23.4 and 23.6, by written notification to the Supplier:

- a) impose liquidated damages at the rate of one tenth of a percent (0.1%) of the Contract Price for each day (including Sundays and Public Holidays) or part thereof up to a maximum of ten percent (10%) of the Contract Price; or
- b) purchase a Solution equivalent to the Solution (“**Equivalent Solution**”) from any other sources and any increase in cost between that Equivalent Solution and the Contract Price shall be recoverable from the Supplier together with all payments made under this Contract. For the avoidance of doubt, the Equivalent Solution shall be a Solution which has the same or the closest fit to the OBP Specifications relating to the Solution. For the further avoidance of doubt, the Equivalent Solution shall include all documentation, training and related materials required for the Equivalent Solution to meet the OBP Specifications.

24.2 Liquidated damages imposed under the Clause 24.1 above shall be paid to the Government in Singapore Dollars not later than thirty (30) calendar days from the date of issue of a Government’s written notification to the Supplier informing the Supplier of the liquidated damages payable.

24.3 If the Supplier fails to pay the said damages, the Government may deduct the amount due from any monies due or which may become due from the Government to the Supplier under this Contract and other contracts between the Parties or recover the same as a debt due from the Supplier in any court of competent jurisdiction.

24.4 The Government reserves the right to charge interest for any delay in payment at the rate of five percent (5%) per annum.

24.5 Where the Supplier is required in the Updated Implementation Plan to submit any plans, scripts, manuals and other documents for verification and review and the Supplier fails to meet the time schedule for submission of any such documentation, the Government shall be entitled to an extension of time for verification and review corresponding to the period of delay without prejudice to the Supplier’s obligation to meet the Stipulated Commissioning Date.

**25. PERFORMANCE GUARANTEE PERIOD**

25.1 In this clause the following expressions shall have the meanings hereby assigned to them:

“**Operating Hours**” means the scheduled operating hours of the Solution which will be from continuously for twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance.

“**Solution Availability Level**” shall be determined according to the following formula:

$$\text{Solution Availability Level} = \frac{[\text{Operating Hours} - \text{Solution Downtime}]}{[\text{Operating Hours}] \times 100\%}.$$

“**Solution Downtime**” means the accumulated time during which the Solution is not performing in accordance with the Standard of Performance due to product failure measured from the time the Supplier is informed by phone of the product failure to the time when the Solution is returned to proper operation.

“**Standard of Performance**” means the level of performance achieved by the Solution when it is operating in conformity with the OBP Specifications.

25.2 The Performance Guarantee Period shall commence on the Commissioning Date and continue for a period of forty-eight (48) working days.

25.3 The Solution shall have successfully completed the Performance Guarantee Period if the Solution meets the Standard of Performance with a Solution Availability Level of not less than ninety-five per cent (95%) for each calendar month or part thereof during the period of forty-eight (48) working days.

25.4 In the event that the Solution fails to meet the requirements under Clause 25.3 the Performance Guarantee Period shall continue from day to day until the Solution has met the Standard of Performance with a Solution Availability Level of not less than ninety-five per cent (95%) over a period of forty-eight (48) consecutive working days which period shall not begin earlier than twenty-four (24) working days from the Commissioning Date.

25.5 The Government shall maintain daily records to monitor and determine the successful completion of the Performance Guarantee Period.

25.6 Once the Solution has successfully completed the Performance Guarantee Period either in accordance with Clause 25.3 or Clause 25.4 the Government shall forthwith issue a written notice to the Supplier. The date of the notice or the date when such notice should be issued as determined from the records kept (if different from the date of the notice) shall be the Acceptance Date.

25.7 During the Performance Guarantee Period, the Supplier shall at all times and under all conditions be entirely responsible for the functioning of the Solution in accordance

with the OBP Specifications, and for the compliance of such additional requirements as may be mutually agreed upon between the Government and the Supplier at no additional cost to the Government.

- 25.8 The Supplier shall remedy and make good at no cost to the Government all defects, deficiencies, failures or damage to the Solution or any part thereof arising at any time prior to the commencement of the Solution Warranty Period. For avoidance of doubt, defects shall include and are not limited to defective design, materials, workmanship, incorrect operating or maintenance instructions given by the Supplier in writing, and any damage to the Software or operational data. The Supplier shall commence corrective action within five (5) calendar days of receiving notice of such defect, deficiency, failure or damage to the Solution or part thereof from the Government. The Supplier shall furnish the Government with a report to explain the defects and to advise on the corrective action taken within five (5) calendar days after the defects have been rectified.

## 26. SOLUTION WARRANTY PERIOD

- 26.1 The Solution Warranty Period shall commence on the Acceptance Date and shall last for three (3) calendar months or such longer period as may be proposed by the Supplier.
- 26.2 During the Solution Warranty Period, the Supplier shall render replacement parts and diagnostic services and any other works and services required to make good all defects to the Solution at no cost to the Government in the same manner and conditions as those provided under **Part 1 Section D Conditions of Software Maintenance and Support** of this Outcome-Based Procurement, provided that written notice of such defects is promptly given to the Supplier.
- 26.3 Where during the Solution Warranty Period, the Solution or any part thereof is found to be:
- a) defective in either design, materials or workmanship; or
  - b) not in accordance with this Contract; or
  - c) having been installed, operated, stored and maintained in accordance with the written instructions of the Supplier, fails to function properly or fails to meet any performance guarantees set forth in this Contract or any additional requirements which may be mutually agreed between the Government and the Supplier;

then, unless it is shown that the foregoing is caused solely by improper use or mishandling on the part of the Government, the Supplier shall, at its own expense (including but not limited to transportation costs, air freight charges, costs of testing, manufacturing and examination), upon notification from the Government, replace or completely repair the defective parts of the Solution or otherwise completely rectify the defects.

- 26.4 During the Solution Warranty Period, the Supplier shall comply with the Solution Availability Level, and respond to the foregoing notification within the response time specified in **Part 1 Section D Conditions of Software Maintenance and Support** of this Outcome-Based Procurement, and render the Solution fully operational within the turn-around-time specified in **Part 1 Section D Conditions of Software Maintenance and Support**.
- 26.5 If the Supplier fails to respond to the notification or to render the Solution fully operational within the time frame referred to in Clause 26.4 above, the Government may:
- a) impose liquidated damages of the amount specified in **Part 1 Section D Conditions of Software Maintenance and Support** of this Outcome-Based Procurement as if the failure has occurred during the maintenance period; or
  - b) remedy the defects itself, whether by engaging a contractor to repair the defects or by purchasing the defective parts of the Solution from other sources or by such other means as may be necessary to render the Solution fully operational, and all costs incurred by the Government in this regard shall be borne by the Supplier.
- 26.6 For the purpose of Clause 26.3, the phrase “improper use or mishandling on the part of the Government” shall include unapproved modifications to the Solution by the Government. In this Clause, the phrase “unapproved modifications to the Solution by the Government” means modifications made to the Solution by the Government without the approval of the Supplier but does not include:
- a) modifications made in accordance with or pursuant to documentation provided by the Supplier;
  - b) modifications to the Solution to enable it to meet the OBP Specifications or such additional requirements as may be agreed between the Government and the Supplier;
  - c) configuration of the Solution;
  - d) installation of approved software into the Solution; or
  - e) installation of software or types of software which the Solution is intended to work with.
- 26.7 For the avoidance of doubt, the Government’s rights and remedies under this Clause are independent of and without prejudice to any other rights and remedies of the Government.

## 27. INTENTIONALLY LEFT BLANK

**28. MAINTENANCE**

- 28.1 The Supplier grants to and the Government shall have an option for the support and maintenance of the Solution (“**Option**”).
- 28.2 The Option shall be valid for a period of sixty (60) months commencing from the date of issue of the Letter of Final Award.
- 28.3 The Option, if exercised, shall be on the terms set out in **Part 1 Section D Conditions of Software Maintenance and Support** of this Outcome-Based Procurement and any other terms that may be mutually agreed in writing.
- 28.4 Any increment in the rates of maintenance charges from one year to the next shall not exceed five percent (5%) of the previous year’s rates and the rates shall not in any event be higher than those charged by the Supplier at a fair market value.

**29. TRAINING**

- 29.1 The Supplier shall be responsible for the provision of suitable and adequate training for staff nominated by the Government.
- 29.2 The training shall include training in use of the Solution and self-help for first line support by the computer center information systems officers, supervisors, operators and end-users.
- 29.3 The training provided shall comply with the OBP Specifications and such other proposals contained in the Supplier’s Proposal or as may be agreed between the Parties.
- 29.4 Unless otherwise agreed in writing between the Parties, training shall be scheduled after the Solution has passed the Solution Performance Tests, but no later than the Commissioning Date.

**30. DAMAGED ITEM, NON-DELIVERED ITEM, WRONGLY DELIVERED ITEM AND SHORT DELIVERED ITEM**

- 30.1 In the event of any item being damaged or lost during transit from the manufacturer’s factory to the Site, the Supplier shall upon receipt of the Government’s written notification immediately effect replacement at no cost to the Government.
- 30.2 In order not to hinder the installation programme or services, the Supplier shall ensure speedy replacement of such items, even prior to any insurance settlement, if any.
- 30.3 All items wrongly supplied shall be rejected and the Supplier shall, upon receipt of the Government’s written notification, immediately effect replacement (by air freight where relevant) at his own costs and in addition, the Supplier shall:

- a) reimburse the Government for any monies already paid in respect of the said items and be liable for all damages arising; and
  - b) collect the wrongly supplied items within fourteen (14) calendar days from the date of written notification given by the Government and failing which, the Government shall charge to the Supplier's account all expenses incurred including storage fees for wrongly delivered items until collection by the Supplier and transportation fees for delivering the wrongly delivered items back to the Supplier.
- 30.4 The Government shall not be liable for any damage or deterioration caused or occurring to the wrongly supplied items of the Solution whilst in the custody of the Government.
- 30.5 Upon written notification by the Government, the Supplier shall immediately effect delivery (by air where relevant) at its own expense any short delivered items.
- 30.6 If the replacement is not available ex-stock country of origin, then the Supplier shall ensure that the delivery is effected within two (2) calendar months or earlier from the date of the Government's said notification.

### **31. OWNERSHIP OF INTELLECTUAL PROPERTY**

- 31.1 Nothing in this Contract shall affect any person's right to own or licence Background IP.
- 31.2 The Government agrees that all rights, title to or interest in, all Foreground IP created by the Supplier shall vest in the Supplier.
- 31.3 The Supplier shall deliver the source codes to all Foreground IP to the Government within 1 month of the Acceptance Date in the following manner:
- a) 1 soft copy of the source codes in CD
- 31.4 In consideration of the Government agreeing to the vesting of the Foreground IP in the Supplier, the Supplier shall obtain for and grant to the Licensee and its agent, free of any additional charge, an irrevocable, Singapore, perpetual, non-exclusive licence, to use, modify and reproduce all Foreground IP which is or becomes vested in the Supplier, its sub-contractor or supplier so as to:
- a) use, repair, maintain, refurbish, reproduce, modify, adapt, integrate, develop the Solution and to do anything necessary or incidental for those purposes;
  - b) use, reproduce or adapt any documentation delivered under this Contract, and
  - c) in the event of termination of this Contract as a result of the Supplier's breach or default, to complete the supply of any goods, services, software or Solution under this Contract.



31.5 The Supplier shall obtain for and grant to the Licensee and its agents, free of any additional charge, Singapore, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Supplier, its sub-contractor or supplier.

31.6 For the avoidance of doubt,

- a) Clause 31.2 does not vest any title in the Supplier of any IP in any results, report, data or information generated or produced by the use of the Solution by the Licensee or another person on behalf of the Licensee. The title to all IP in any such results, report, data or information generated or produced by the use of the Solution by the Licensee or another person on behalf of the Licensee shall be owned by the Licensee who owns the Solution.
- b) The Contract (Rights of Third Parties) Act (Cap 53B) shall apply to enable Statutory Boards in their own right to enforce Clauses 31.4, 31.5 and 31.6 of this Contract against the Supplier.
- c) The Supplier agrees that the Government shall not be liable or held responsible for the acts or omission of any Statutory Board.

31.7 Intentionally Left Blank.

31.8 If any licence granted or obtained for Foreground IP or Background IP under Clauses 31.4 or 31.5 is registrable under any IP registration system in Singapore, the Supplier 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 Government as soon as possible.

## **32. UNAUTHORISED CODE**

32.1 The Supplier warrants that at the time of delivery or installation:

- a) the Solution and every part thereof are free of Unauthorised Code (hereinafter defined);
- b) all magnetic or other storage media and all software and other materials capable of being stored on such media:
  - i. supplied as a software or part thereof or with any software; or
  - ii. used in the performance of this Contract;

shall not contain any Unauthorised Code.

- 32.2 Prior to and at the time of delivery and installation, the Supplier shall conduct a complete and thorough scan for Unauthorised Code using anti-virus software package(s) on all parts of the Solution.
- 32.3 If any part of the Solution is discovered during delivery or installation to contain or be affected by any Unauthorised Code then:
- a) the Government may reject any such parts of the Solution and the Supplier shall, at its own expense, immediately remove and recover all rejected parts of the Solution and provide replacements which are free of Unauthorised Code;
  - b) irrespective of whether the software is rejected, the Supplier shall pay the Government a sum of Singapore Dollars One Thousand Five Hundred (S\$1,500) 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
  - c) in addition to Clauses 32.3 (a) and (b) above, the Supplier shall indemnify the Government fully against all costs incurred by them in the course of or incidental to removing the Unauthorised Code and recovering any lost or damaged data or software.
- 32.4 If, after the delivery and installation of a part of a Solution is completed, that part is discovered to contain or be affected by any Unauthorised Code and it is shown that this was the result of any default of or negligent act/omission of the Supplier or its employees:
- a) the Government may reject any such part of the Solution and the Supplier shall, at its own expense, immediately remove and recover all rejected parts of the Solution and provide replacements which are free of Unauthorised Code; and
  - b) in addition to paragraph (a) above, the Supplier shall indemnify the Government fully against all costs incurred by them in the course of or incidental to removing the Unauthorised Code and recovering any lost or damage data or software.
- 32.5 In this Clause 32:
- a) a reference to a part of the Solution includes a reference to any software installed thereon; and
  - b) “**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 data, or to perform any such actions.

### 33. DOCUMENTATION

- 33.1 The Supplier shall at no additional charge supply and deliver the documentation needed for the operation and maintenance of the Solution. All subsequent updates for

each set of the aforesaid documents shall be supplied at no additional charge to the Government as soon as they are available.

#### **34. LIABILITY OF SUPPLIER**

34.1 In the event of the Supplier obtaining part(s) of the Solution from a third party, the Supplier shall inform the Government in writing of the source or origin of the said part(s) of the Solution and, for avoidance of doubt, it is expressly declared that the Supplier shall remain fully liable for the said part(s) of the Solution and the consequences arising from the use of the said part(s) as if they were manufactured by the Supplier.

#### **35. INTELLECTUAL PROPERTY INDEMNIFICATION**

35.1 The Supplier:

- a) represents, warrants and undertakes that all intellectual property used, introduced or supplied by the Supplier in the course of performing its obligations under this Contract do not infringe any rights or interests of third parties; and
- b) shall give the Government prompt notice in writing of any claim of infringement of any such rights or interests made by any third party.

35.2 The Supplier shall indemnify the Government and its officers against all liabilities and losses incurred or suffered and sums paid by the Government, whether in satisfaction of court, arbitral or expert award or settlement sum, (including costs and expenses on a full indemnity basis and experts' and consultants' fees) by reason of any intellectual property infringement or alleged infringement in respect of the Goods and Services supplied or furnished by the Supplier under this Contract.

35.3 Without prejudice to the Government's right to defend a claim alleging such infringement, the Supplier shall, if requested by the Government but at the Supplier's expense, defend such claim. This will however not limit the Government's right to participate in such investigation, trial and defence of such claim and any appeal therefrom and the Supplier shall bear all reasonable costs and expenses arising from such participation. No settlement of a claim that involves a remedy other than the payment of money by the Supplier shall be entered into without the consent of the Government as the case may be.

35.4 The Government shall, if requested but at the Supplier's expense, provide the Supplier with reasonable assistance in conducting the defence of such claim.

35.5 If any of the intellectual property used or introduced by the Supplier under this Contract in any such suit is alleged to infringe rights or interests of third parties, the Government may (in addition to and without prejudice to all other rights or remedies available) require the Supplier, at the Supplier's own expense and at the option of the Government to:

- a) procure for the Government 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 Supplier under this Contract (in which event the Supplier shall compensate the Government for the amount of any direct loss or damage sustained or incurred by the Government during such replacement or modification); or
- c) pay the Government a sum equivalent to the purchase price of items functionally equivalent to the infringing items upon the return of the infringing items to the Supplier.

Such actions shall not prejudice or affect any right of action or remedy of the Government against the Supplier.

- 35.6 In the event of any action being contemplated or instituted for an alleged infringement of IP rights, the Government shall have the right to terminate this Contract with immediate effect.
- 35.7 This Clause 35 shall survive the termination or expiry of this Contract.

### **36. RELOCATION OF SOLUTION**

- 36.1 The Government shall have the right to relocate any or all items of the Solution within Singapore. Any such relocation shall not affect the Supplier's obligations under this Contract although the Government shall grant extension of the Updated Implementation Plan accordingly if it is affected.
- 36.2 In the event that the Government requires the Supplier's services for the relocation of the Solution, the Government shall give thirty (30) days' written notice of its intent to relocate the Solution.
- 36.3 The Supplier's personnel shall arrange and supervise the dismantling, packing, unpacking and reinstallation of the Solution to normal operating condition for which the Government shall be charged by the Supplier at a fair market value.
- 36.4 The Supplier shall make good any damage suffered by the Solution due to the negligence of the Supplier's personnel including the Supplier's servants or agents or representatives, during the transfer to a new location.

### **37. LANGUAGE**

- 37.1 All data, documents, descriptions, diagrams, books, catalogues, instructions, marking for ready identification of major items of the Solution and correspondence shall be written in readily comprehensible English language.

37.2 The personnel of the Supplier and the Sub-contractor shall be proficient in both written and spoken English for the purpose of providing instructions, offering of advisory services, training and any other submissions as required.

### **38. DAMAGE AND INJURY TO PERSONS AND PROPERTY**

38.1 The Supplier shall indemnify and reimburse the Government in respect of all liabilities and losses incurred or suffered and sums paid by the Government, whether in satisfaction of court, arbitral or expert award or settlement sum (including costs and expenses on a full indemnity basis and experts' and consultants' fees) arising out of or in connection with any act or omission on the part of the Supplier, Subcontractor or any of their officers, employees, or agents (the "**Supplier Parties**") unless the Supplier can show that it is not due to:

- a) any negligent, unlawful or wrongful action or omission or any breach of duty of the Supplier Parties; and
- b) the Supplier's breach, failure or delay in performance of this Contract.

38.2 The Government shall give notice to the Supplier as soon as practicable if a third party makes a claim or notifies of an intention to make claim against the Government which may reasonably be construed to give rise to a liability under this Clause.

38.3 Upon receipt of such notice and if requested by the Government, the Supplier shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Government to handle and defend the same, at the Supplier's sole cost and expense.

38.4 The Government shall cooperate, at the cost of the Supplier, in all reasonable respects with the Supplier and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom. This will however not limit the Government's right to participate, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal therefrom and the Supplier shall bear all reasonable costs and expenses arising from such participation. No settlement of a claim that involves a remedy other than the payment of money by the Supplier shall be entered into without the consent of the Government as the case may be.

38.5 In the event that the Supplier does not immediately assume full control over the defence of such claim, the Government shall have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Supplier.

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

### **39. LIMITATION OF LIABILITY**

39.1 In the event of any breach or default of a term of this Contract, the Supplier's cumulative liability shall not exceed the Contract Price.

- 39.2 In the event of any breach or default of a term of this Contract, the Government's cumulative liability shall not exceed the Contract Price.
- 39.3 For the avoidance of doubt, Clause 39.1 and 39.2 shall not apply to any claim relating to any:
- a) death or personal injury,
  - b) patent, copyright or other intellectual property right infringement,
  - c) indemnity provided under this Contract,
  - d) liquidated damages recoverable under this Contract; or
  - e) which arises or is increased as a consequence of fraud, fraudulent misrepresentation, willful misconduct or gross negligence by the Supplier, its Sub-contractors or any of their respective directors, officers, employees or agents.

#### **40. INSURANCE**

- 40.1 The Supplier shall insure the Government against any risk of loss or damage to the Solution or part thereof except for loss or damage caused by theft, negligence or malice by any of the Government's employees or agents. The period of insurance shall be from the date this Contract comes into force to the date the Government takes delivery and acceptance of the Solution.
- 40.2 Intentionally Left Blank
- 40.3 All insurance contemplated by this clause shall be effected with an insurer and in terms approved by the Government (which approval shall not be unreasonably withheld) and the Supplier shall produce to the Government the policy or policies of insurance and the receipts for payments of the current premium.
- 40.4 If the Supplier fails to comply with this clause or fails to produce evidence showing the same at the Government's request, the Government may effect and keep in force the insurance policies contemplated by this clause and pay such premiums as may be necessary for this purpose and from time to time deduct the amount paid by the Government from any monies due to or which may become due from the Government to the Supplier or recover the same as a debt due from the Supplier in any court of competent jurisdiction.

#### **41. CONFIDENTIALITY**

- 41.1 Except with the written consent of the Government, the Supplier shall:
- a) shall keep confidential and undertakes not to divulge or communicate Confidential Information to any unauthorised person;
  - b) shall not transfer, whether electronically or otherwise, Confidential Information outside Singapore, or allow parties outside Singapore to have access to it;

- c) shall immediately notify the Government when it becomes aware that a disclosure of any Confidential Information may be required by law and cooperate with the Government to limit the extent of such disclosure to the maximum extent allowed by the law;
- d) 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;
- e) shall procure and ensure all its employees, servants 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 Government, procure and ensure that such employees, servants and agents and those of his Sub-contractors or agents sign an Undertaking to Safeguard Official Information in the form prescribed in **Schedule 5** of these Conditions of Contract;
- f) shall immediately notify the Government where the Supplier becomes aware of any breach of this Clause 41 by its employees, servants and agents and those of its Sub-contractors or agents who are or may be involved in the execution of obligations under this Contract, and cooperate with the Government to limit the extent and impact of such breach;
- g) shall not make use of any Confidential Information for any purpose other than for the purposes of this Contract.

41.2 Parties agree that the obligations of confidentiality shall not apply to information that:

- a) without contravention of any law is or was already known to the Supplier at the time of disclosure to it, as evidenced by written records;
- b) is at the time of disclosure by the Supplier already public knowledge through no fault or omission of the Supplier; or
- c) is required to be disclosed by a court of law, and in such an event, the Supplier shall give the Government prompt and prior notice of any such requirement and shall cooperate with the Government to limit the scope of such disclosure to the maximum extent legally possible.

41.3 The Supplier's attention is hereby drawn to the Official Secrets Act and in particular to Section 5 thereof which relates to the safeguarding of official information.

41.4 The Supplier acknowledges that any disclosure of Confidential Information by itself, its employees, servants and agents and those of its permitted Sub-contractors except as, and to the extent, permitted under this Contract, may result in irreparable injury

and damage to the Government which cannot be adequately compensated in monetary damages alone. The Supplier therefore agrees that the Government may, in addition to any 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 Clause 41, including but not limited to obtaining an injunction to prevent any unauthorised disclosure of Confidential Information by the Contract, its employees, servants and agents and those of its permitted Sub-contractors, and the Government shall be fully indemnified by the Supplier against all actions, claims and demands, and all related costs (on a full indemnity basis), expenses and/or damages incurred or sustained as a result of such breach or threatened breach.

- 41.5 This Clause 41 shall survive the termination or expiry of this Contract and the termination or expiry of this Contract for whatever cause shall not put an end to the obligation of confidentiality imposed on the Supplier, its employees, agents and servants and those of this Sub-contractors.

#### **42. COMPLIANCE WITH STATUTES, REGULATIONS, ETC**

- 42.1 The Supplier shall give all notices and pay all fees required to be given or paid under any law in force in Singapore and hereby undertakes to obtain all necessary export licence for the export of all items from their countries of origin to Singapore in relation to the execution of this Contract.
- 42.2 The Supplier shall conform in all respects with the provisions of all laws of Singapore in the performance of this Contract and shall keep the Government indemnified against all penalties and liabilities of every kind for the breach of any such laws.

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

- 43.1 The Supplier shall not, without the written consent of the Government, sub-contract, assign or transfer this Contract or the benefits or obligations or any part thereof to any other person. The Supplier shall be responsible for the acts, defaults, neglects or omissions of any assignee or Sub-contractor, their agents, servants or workmen as fully as if they were the acts, defaults, neglects or omissions of the Supplier, his agents, servants or workmen.
- 43.2 In seeking the written consent of the Government, the Supplier shall provide all information requested by the Government including but not limited to information about a Sub-contractor's registration with the relevant Government Registration Authority. Information on the Government Registration Authority can be found in GeBIZ Partner via Internet at <http://www.gebiz.gov.sg>.



**44. FORCE MAJEURE**

- 44.1 Neither the Supplier nor the Government shall be liable for any failure to perform obligations under this Contract if the failure results from events which are beyond their reasonable control (a “**Force Majeure Event**”), except that the affected party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of this Contract, such acts shall include acts of God, civil or military authority, civil disturbance, wars, strikes, fires or other catastrophes.
- 44.2 If the effect of any Force Majeure Event continues for more than three (3) months the Government may give notice to the Supplier to terminate the Contract with immediate effect without being liable to the Supplier in damages or compensation.
- 44.3 Where the Government elects to terminate this Contract under Clause 44.2, the Supplier shall forthwith refund to the Government all amounts paid to the Supplier less the price of Services which have been provided to the Government.
- 44.4 If a Force Majeure Event occurs, the Supplier or the Government (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under this Contract as is affected by the Force Majeure Event save that the provisions of this Contract shall remain in force with regard to all other obligations under this Contract which are not affected by the Force Majeure Event.
- 44.5 A Party cannot claim relief under this Clause based on a failure or delay by his Sub-Contractor in the performance of the Sub-Contractor's contractual obligations with the Party.

**45. PUBLIC RELEASE OF INFORMATION**

- 45.1 The Supplier shall obtain in writing the prior approval and the consent of the Government before the release of any news item, article, publication, advertisement, prepared speech or any other information or material, pertaining to or related to any part or whole of this Contract including but not limited to the Works to be performed under this Contract, and software licence and support and equipment maintenance associated with the Solution. Such prior approval shall be sought in reasonable time.

**46. GIFTS, INDUCEMENT AND REWARDS**

- 46.1 The Government shall be entitled to rescind or terminate this Contract at any time and to recover from the Supplier the amount of any loss resulting from such rescission or termination, if the Supplier or the Sub-contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract with the Government or for showing or forbearing to show favour to any person in relation to any agreement with the Government or if the like acts shall have been done by any person employed by the Supplier or Sub-contractor, or if in relation to any contract with the Government, the

Supplier or the Sub-contractor or any person employed by the Supplier or Sub-contractor shall have committed any offence under Chapter IX of the *Penal Code* or the *Prevention of Corruption Act* of Singapore or shall have abetted or attempted to commit such an offence or shall have given any fee or reward to any person the receipt of which is an offence under the said part of the *Penal Code* or under the *Prevention of Corruption Act* or any legislation enacted in substitution thereof for the time being in force in Singapore.

#### **47. APPLICABLE LAW**

47.1 This Contract shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose and the Parties agree to submit to the exclusive jurisdiction of the Singapore courts.

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

48.1 Parties agree that any variation to this Contract shall be in writing and signed by both Parties.

48.2 The Government may, at any time during this Contract, require the Supplier to revise the Updated Implementation Plan and/or to undertake any reasonable alteration or addition to or omission from the Works or any part thereof.

48.3 In the event of such a variation being requested, the Government shall formally request the Supplier to state in writing the effect such variation will have on the Contract Price and to the works schedule. The Supplier shall furnish such details within fourteen (14) days of receipt of the Government's request or such other period as may be agreed. The Supplier shall not vary the Works in any respect unless instructed in writing to do so by the Government.

48.4 A variation under this Clause 48 shall not invalidate this Contract but if such variation involves an increase in the cost to the Supplier of carrying out the Works, an appropriate adjustment to the Contract Price shall be made by agreement between the Parties.

48.5 The Supplier shall satisfy the Government 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 Government being satisfied regarding the reasonableness of any extensions to the works schedule by the variation, the Government shall grant its acceptance in respect of such changes, and inform the Supplier accordingly in writing.

#### **49. BREACHES NOT TO BE WAIVED**

49.1 No waiver of any breach of this Contract shall be deemed to be waiver of any other or of any subsequent breach.

49.2 In no event shall any delay, failure or omission on the part of either of the parties in enforcing or exercising any right, power, privilege, claim or remedy, which is conferred by this Contract, at law or in equity, or arises from any breach by any of the other Parties of this Contract, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such right, power, privilege, claim or 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 right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

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

## **50. TERMINATION OF CONTRACT**

50.1 Subject to Clause 50.3 pursuant to which the Government has an immediate right of termination, if at any time the Supplier is in breach of any of the terms or conditions under this Contract, the Supplier shall have fourteen (14) days to effect a remedy or show to the Government's satisfaction the cause of the breach of its obligations and the Supplier's intended remedy, in which case, the Supplier shall have such period, if any, as is authorised in writing by the Government to effect the remedy.

50.2 If the breach of the terms or conditions under this Contract is not remedied pursuant to Clause 50.1 above, the Government may terminate this Contract by notice in writing as from the date specified in the notice.

50.3 If the Supplier, being a company, shall pass a resolution or the Court shall make an order that the company shall be wound up otherwise than for the purpose of reconstruction or amalgamation or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court otherwise than for the purpose of amalgamation or reconstruction to make a winding-up order, or any part thereof, without the written consent or approval of the Government, then the Government shall be at liberty to terminate this Contract summarily by notice in writing to the Supplier.

50.4 In the event of termination of this Contract as provided for in Clause 50.2 or Clause 50.3 or in accordance with law, the following shall apply:

- (a) (i) all payments that shall have been made under this Contract less the value of all items delivered and accepted by the Government shall be refunded by the Supplier to the Government forthwith provided always that such refunds as aforesaid shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Government as a result of the termination of the breach of this Contract by the Supplier;
- (ii) the Supplier shall upon written notice from the Government be required to remove, at the Supplier's expense, the Solution or any part thereof specified in

the notice from the Site at a date specified by the Government, and in default the Government may (without being responsible for any loss or damage) remove and sell the same, holding the proceeds less all expenses incurred to the credit of the Supplier, or remove and return the same to the Supplier all at the Supplier's expense; and

- (iii) the Government shall be entitled to recover from the Supplier any damages, losses, costs and expenses which the Government may sustain or incur in consequence of such termination; all such damages, losses, costs and expenses which are or become so recoverable under this Contract together with any sum payable by the Supplier as liquidated damages, may be deducted from any money that may then be due to the Supplier and if the money then due to the Supplier under this Contract or deposited by him under this Contract as aforesaid is not sufficient for that purpose, the balance remaining unpaid shall be a debt due from the Supplier to the Government, and may be set off against any other monies which may be or become due to the Supplier from the Government or may be recovered as a debt due from the Supplier in any court of competent jurisdiction;

OR, at the sole discretion of the Government:

- (b)
  - (i) the Government may carry out and complete the Works on its own or employ and pay other person or persons to carry out and complete the Works and he or they may enter upon the Site and use all materials, software and equipment thereon, and may purchase all materials necessary for the purposes aforesaid;
  - (ii) the Supplier shall if so required by the Government assign to the Government and without further payment the benefit of any contract for the supply of materials and/or works intended for the use under this Contract or for the execution or any Works and the Government shall pay the agreed price (if unpaid) for such materials or Works supplied or executed after the said termination;
  - (iii) the Supplier shall during the execution or after the execution of the Works under this sub-clause as and when required remove from the Site any materials within such reasonable time as the Government may specify in a written notice to him and in default, the Government may, without being responsible for any loss or damage, remove and sell the same, holding the proceeds less all the expenses incurred to the credit of the Supplier;
  - (iv) until completion of the Works under this sub-clause no payment shall be made to the Supplier under this Contract; provided that upon completion as aforesaid and the verification within a reasonable time of the accounts therefore, the Government shall certify the amount of expenses properly incurred by the Government and if such amount added to the monies paid to the Supplier before such termination exceeds the total amount which would have been payable on due completion, the difference shall be a debt payable to the Government by the Supplier, and if the said amount added to the said monies be less than the said total amount, the difference shall be a debt payable by the

Government to the Supplier; provided always the aforesaid shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Government as a result of the termination of this Contract or as a result of the breach of this Contract by the Supplier; and

- (v) in the event of the completion of the Works being undertaken by the Government, allowance shall be made, when ascertaining the amount to be certified as expenses properly incurred by the Government, for the cost of supervision, interest and depreciation on equipment and all other usual overhead charges and profits, as would be incurred were the work carried out by the Supplier.

- 50.5 In addition to the rights set out in Clause 50.2 and Clause 50.3, the Government may at any time upon giving notice in writing to the Supplier of its intention to do so, terminate this Contract or any part or further part thereof from the date specified in the notice, and upon such notice being given, the Supplier shall cease or reduce work according to the tenor of the notice and shall forthwith do everything possible to mitigate losses consequent thereto.
- 50.6 If a notice under Clause 50.5 is given, the Supplier may submit a claim for compensation subject to Clause 50.7. The compensation shall not exceed the total of the cost incurred by the Supplier in the performance of this Contract or the part terminated, as the case may be, and reasonable direct cost incurred with respect to termination and settlement with vendors as a consequence of the Government's termination.
- 50.7 The aforesaid compensation shall not be greater than a sum which in addition to any sums paid or due or becoming due to the Supplier under this Contract would together exceed the Contract Price.
- 50.8 Direct costs under Clause 50.6 shall be determined in agreement with an independent and mutually agreeable public accountant. The Government shall pay the Supplier the aforesaid compensation within sixty (60) days following submission of such total cost to the Government and verified by an independent public accountant.
- 50.9 Where there are segregable items not desired by the Government which the Supplier agrees to retain for its own use, the compensation payable pursuant to Clause 50.8 above shall be reduced by an amount equivalent to the total Supplier's costs for such items.
- 50.10 In the event of termination of this Contract under Clause 50.5, all works carried out except for segregable items within the scope of Clause 50.9 shall become the property of the Government except that title to any proprietary software would not be transferable, and for the removal of doubt, it is hereby declared that title to all information captured within the Solution is and shall solely belong to the Government.
- 50.11 No termination of this Contract, whether pursuant to this Clause or otherwise, shall affect any right of the Government to use any software whether such right is acquired pursuant to this Contract or otherwise.

**51. DATA SECURITY AND PROTECTION**

- 51.1 The Supplier shall implement administrative, physical, and electronic security measures to protect Government Data against loss or damage (whether accidental or otherwise), unauthorised access, use, modification, disclosure or other misuse.
- 51.2 The Supplier shall not cause or permit Government Data to be processed, stored, accessed or otherwise transferred outside Singapore without the consent of the Government and subject to such conditions as the Government may impose.
- 51.3 The Supplier shall provide the Government with such information as the Government may reasonably require to satisfy itself that Government Data is adequately protected.
- 51.4 The Supplier shall not access, monitor, use, or process Government Data except as reasonably necessary to perform their obligations under the Contract.
- 51.5 The Supplier shall comply with any reasonable requests, or directions of the Government arising in connection with the handling of Government Data that may be issued by the Government or the Adviser from time to time.

**52. POLICY AND AUDIT****52.1 Policy**

- 52.1.1 The Supplier shall fully comply with any written instructions on Government policies pertaining to Information Communications Technology (“ICT”) systems that may be issued by the Government from time to time.
- 52.1.2 The Supplier is required to maintain strict confidentiality and ensure that all information pertaining to the Site and the Government’s work environment must not be disclosed to anyone except the Representative and the Supplier’s employees, agents or Sub-contractors directly involved with this Contract. The Supplier 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.
- 52.1.3 The Supplier, its employees, agents or Sub-contractors, shall not, without the prior written permission of the Government, bring any visitor to any location or Site on which the Supplier is providing the goods or services under this Contract.

**52.2 Audit**

- 52.2.1 At least once a year or when requested by the Government, the Supplier shall, at its own cost, conduct an independent audit of the information security controls for all facilities (whether hardware, software, or otherwise) used in performing this Contract,

including, but not limited to, obtaining a vulnerability assessment performed by a recognised third-party audit firm approved by the Government, based on recognised industry best practices. The Supplier shall make the audit report available to the Government and Advisor for review.

52.2.2 The Government (or any third party acting on the Government's behalf) shall have the right to perform an assessment, audit, examination or review of all controls in the Supplier's physical, technical and working environment and records in relation to all Services provided to the Government under this Contract, so as to confirm the Supplier's compliance with this Contract as well as any applicable laws, regulations, and industry standards. The Supplier shall, at its own cost, fully cooperate with the Government (or any third party acting on the Government's behalf) by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that is used to provide the Services to the Government under this Contract.

### **53. SECURITY AND DATA BREACH PROCEDURES**

53.1 The Supplier shall:

- a) provide the Government with the name and contact information of an employee who shall serve as the Government's point of contact for all security matters, and shall be available to assist the Government at all times (24 hours per day, 7 days per week) in resolving matters associated with a security breach;
- b) notify the Government of any actual, potential, or suspected physical security breach, as soon as practicable, and in any event, no later than 15 minutes after the Supplier becomes aware of the actual, potential, or suspected physical security breach;
- c) notify the Government IT Security Incident Response ("GITSIR") team of any actual, potential, or suspected cyber-security or data breach, as soon as practicable, and in any event, no later than 15 minutes after the Supplier becomes aware of the actual, potential, or suspected cyber-security or data breach.

53.2 In the event of an actual, potential, or suspected security breach, the Supplier shall extend full cooperation and assistance to the Government, and at no cost to the Government:

- a) assist the Government with any investigation into the actual, potential, or suspected security breach;
- b) provide the Government with physical access to all the Supplier's personnel, facilities and infrastructure that are used to perform this Contract;
- c) facilitate interviews with the Supplier's employees;
- d) make available all records, logs, files, data reports, and materials that may be

relevant to the investigation of the security breach.

- 53.3 The Supplier shall, at no cost to the Government, use best endeavours to immediately remedy, according to instructions or direction given by the Government, any actual or suspected security breach, or to prevent any potential security breach.
- 53.4 The Supplier shall not inform any third party of any security breach without first obtaining the Government's prior written consent.
- 53.5 The Supplier shall track all details from the point of discovery of the security breach to its resolution, and provide the Government with hourly updates, in the format stipulated by the Government.
- 53.6 Where the actual or potential breach is caused by the Supplier's default, negligence or unlawful act, the Supplier shall reimburse the Government for all reasonable costs incurred by the Government in responding to and mitigating damages caused by any actual, potential, or suspected security breach.

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**55. INTENTIONALLY LEFT BLANK**

**56. CORRESPONDENCE**

- 56.1 Any notice, request, waiver, consent or approval 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, facsimile, telegram or telex to the Party to which it is required or permitted to be given and made at such Party's address specified in the Proposal.

**57. CUMULATIVE REMEDIES**

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

**58. CLAIMS FOR EXTRA WORK**

- 58.1 The Government shall not be liable for any claims for any extra work performed or to be performed falling outside the scope of this Contract ("**Extra Work**") regardless whether the Extra Work is initiated at the request of the Government or not UNLESS all the following conditions are fully complied with:

- a) all claims must be submitted in writing before the performance of any Extra



Works;

- b) in submitting any claim under Clause 58.1.(a), the Supplier shall include the price of the Extra Work and the detailed scope of the Extra Work; and
- c) the Government agrees in writing for the Extra Work to be carried out and to the payment of the claim.

58.2 The Supplier agrees that it is only entitled to claims for any Extra Work provided all the conditions in Clause 58.1 are fully complied with. The Supplier further agrees that it shall not be entitled to additional payments whether under this Contract, restitution, quasi-contract or equitable grounds if all conditions in Clause 58.1 are not fully complied with.

## **59. MEDIATION CLAUSE**

59.1 Notwithstanding anything in this Contract, in the event of any dispute, claim, question or disagreement arising out of or in relation to this Contract, no Party shall proceed to litigation or any other form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre. The Parties shall be deemed to have made reasonable efforts if they have gone through at least one mediation session at the Singapore Mediation Centre.

59.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process or shall be deemed to be in breach of contract.

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

59.4 A failure to comply with Clauses 59.1 or 59.2 shall be deemed to be a breach of contract.

## **60. CONTRACTS (RIGHTS OF THIRD PARTIES)**

60.1 Subject to Clause 31.6(b), this Contract does not create any right under the Contracts (*Rights of Third Parties*) Act, which is enforceable by any person who is not a party to it.

## **61. GOVERNMENT ELECTRONIC BUSINESS (GEBIZ)**

61.1 Where this Contract specifies that Parties shall transact with each other through GeBIZ, the Supplier shall sign up as a GeBIZ Trading Partner within seven (7) days from the date of receipt of the Letter of Final Award, if the Supplier is not already a GeBIZ Trading Partner. The terms and conditions of the GeBIZ Agreement (set out at

www.gebiz.gov.sg or such other place as may be specified by the Government from time to time) shall be incorporated into and be deemed to be an integral part of this Contract. Nothing in this Contract shall affect the Government's right to operate, maintain and/or modify the GeBIZ Solution, amend the GeBIZ Agreement from time to time or terminate the GeBIZ Agreement in accordance with the terms and conditions of the GeBIZ Agreement.

## **62. CONSORTIUM**

- 62.1 As used in this Contract, "**Consortium**" means an unincorporated joint venture through the medium of a consortium or a partnership.
- 62.2 Each member of the Consortium shall be jointly and severally responsible to the Government for the due performance of this Contract.
- 62.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Government.
- 62.4 Should additional member(s) be added to the Consortium at any time with the approval of the Government, he or they shall be deemed to be included in the expression "the Supplier".
- 62.5 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 dissolved, and
  - b) the remaining member(s) of the Consortium shall be obliged to carry out and complete this Contract.

## **63. OWNERSHIP OF DOCUMENTATION AND DISPOSAL OF DOCUMENTATION UPON TERMINATION OF CONTRACT OR COMPLETION OF CONTRACT**

- 63.1 The Government shall own all the documentation generated for the purpose of this Contract.
- 63.2 The Supplier shall, and shall procure that his servants, employees, agents and Sub-contractors shall, within seven (7) days upon the termination of this Contract or upon the completion of this Contract:
- a) return to the Representative all property, documents, papers and copies of thereof:
    - i. belonging to the Government;
    - ii. received from the Government for the purpose of this Contract; or

iii. produced in the course of this Contract,

which may be in their possession or under their control; and

b) securely destroy and erase all softcopies of documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.

63.3 Upon completion of the obligation under Clause 63.2, the Supplier shall, and shall procure that his employees, servants, agents and/or Sub-contractors shall, sign the Declaration in the form set out in **Schedule 5A** (if they have not already done so).

#### **64. COEXISTENCE STRATEGY**

64.1 In the event that the Government appoints more than one Supplier, whether in this Outcome-Based Procurement or subsequent calls-for-solution, the Suppliers are to cooperate with each other to ensure that the service levels and requirements of the Solution as stated in the OBP Specifications are met. If necessary, the operations management procedures will have to be refined by both parties to accommodate each other's solutions.

64.2 The Supplier is also required to work with the facility management (“**FM**”) supplier for the IT Infrastructure in the development of the Solution and also in the maintenance and support of the Solution. If necessary, the operations management procedures will have to be refined by both parties to accommodate each other's solution.

64.3 The Supplier shall if necessary meet on a regular basis with the Government and other suppliers to discuss operational issues and other problems that may be encountered in the provision of the services. The relevant technical officers involved in the provision of the services shall attend the meetings.

#### **65. SET-OFF**

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

**SCHEDULE 1:**  
**CONTRACT PRICE**

The Contract Price shall be paid as follows:

<b>Stage</b>	<b>% of Pilot Trial Price</b>	<b>Cumulative Total</b>
<u>Thirty (30)</u> days from the date of Letter of Final Award	5	5
<u>Thirty (30)</u> days from sign-off of user requirements / functional specifications	10	15
<u>Thirty (30)</u> days from sign-off of user testing.	35	50
<u>Thirty (30)</u> days from Commissioning Date.	20	70
<u>Thirty (30)</u> days from Acceptance Date.	15	85
<u>Thirty (30)</u> days from expiry of Solution Warranty Period.	15	100

PROVIDED THAT if the Government in the Letter of Final Award accepts payment in accordance with the Supplier's alternative payment terms contained in the Proposal then such alternative payment terms shall apply.

**SCHEDULE 2:**  
**IMPLEMENTATION PLAN**

The Implementation Plan proposed shall conform with the following schedule:

Submission of Implementation Plan : Within 14 days from Pilot Award

Stipulated Pilot Trial Date : 14 weeks from Pilot Award

Stipulated Commissioning Date : 14 weeks from Final Award

Solution Performance Guarantee Period : 48 working days from Commissioning Date

Acceptance Date Period : Upon completion of Solution Performance Guarantee Period

Solution Warranty Period : 3 calendar months from Acceptance Date

**SCHEDULE 3:**  
**FORM OF AGREEMENT FOR FINAL AWARD**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the Government of the Republic of Singapore ( hereinafter called “the Government” ) of the one part and \_\_\_\_\_<sup>1</sup> ( name of Supplier ) ( hereinafter called “the Supplier” ) of the other part.

WHEREAS the Government requires a Solution ( the “Solution” ) to be supplied and installed for the \_\_\_\_\_ ( name of ministry), and has accepted a Proposal by the Supplier for the supply, delivery and installation of the same.

NOW IT IS HEREBY AGREED as follows:

1. In this Agreement, words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Contract for Final Award hereinafter referred to.

2. The following documents shall be deemed to form and be read and construct as part of this Agreement:

- (a) Supplier’s Proposal including subsequent correspondence (if any) amplifying or amending the Supplier’s Proposal
- (b) Instructions to Tenderers
- (c) Conditions of Contract for Final Award
- (d) Conditions of Software Maintenance and Support
- (e) OBP Specifications
- (f) Government’s Letter of Final Award

3. In consideration of the payments to be made by the Government to the Supplier as hereinafter mentioned the Supplier hereby agrees to supply, deliver, install, test, commission and maintain the Solution and to provide the services mentioned in the Contract in conformity in all respects with the provisions of the Contract.

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<sup>1</sup> If the Proposal is submitted by a consortium, each member of the consortium shall be listed. The Proposal 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) (“Supplier”) of the other part.”

4. The Government hereby agrees to pay to the Supplier in consideration for the supply, delivery, installation, testing, commissioning and maintenance of the Solution in conformity with the provisions of the Contract.

IN WITNESS WHEREOF the Parties hereto have by their respective duly authorised representatives have hereunto set their respective hands the day, the month and the year first above written.

Signed by : ( name of Permanent Secretary ) .....  
( Signature )

PERMANENT SECRETARY  
( name of ministry )  
for and on behalf of the  
GOVERNMENT OF THE REPUBLIC  
OF SINGAPORE in the presence  
of :

Name : ( name of witness ) .....  
(Signature of Witness )

Designation : (Title)  
(Name of Ministry)

Signed by : ( name of Supplier's MD ) .....<sup>2</sup>  
(Signature )

MANAGING DIRECTOR  
for and on behalf of  
( name of company )  
in the presence of :

Name : ( name of witness ) .....  
(Signature of witness)

Designation : General Manager  
(name of company )

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<sup>2</sup> The tender shall be submitted by the Lead Member on behalf of all members of the consortium. The Lead Member's authorised signature must be provided.

**SCHEDULE 4:**

**BANKER'S GUARANTEE / INSURANCE BOND**

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

**OUTCOME-BASED PROCUREMENT REFERENCE NO. :**

To: The Government of the Republic of Singapore c/o \_\_\_\_\_ (hereinafter called "the Government").

**Whereas** on the \_\_\_\_\_ day of \_\_\_\_\_ an Agreement (hereinafter called "the Contract") was made between \_\_\_\_\_ (name of Supplier) of \_\_\_\_\_ (address) (hereinafter called "the Supplier") of the one part and the Government of the other part whereby the Government agreed to \_\_\_\_\_ (state nature of contract) for the sum of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_).

**And Whereas** the Supplier is required under the Contract to pay \_\_\_ per cent of the total contract price as a security deposit for the performance of his obligations under the Contract.

Now in consideration of the Government not insisting on the Supplier paying \_\_\_ per cent of the total contract price as a security deposit for the Contract, **we (at the request of the Supplier) hereby agree** as follows:

1. In the event of the Supplier failing to fulfill any of the terms and conditions of the Contract, we shall indemnify the Government against all losses, damages, costs, expenses or otherwise sustained by the Government thereby up to the sum of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_) ("the Guaranteed Sum") upon receiving the Government's written notice of claim for payment made pursuant to Clause 4 hereof.
2. We shall not be discharged or released from this guarantee by any arrangement between the Government and the Supplier with or without our consent or by any alteration in the obligations undertaken by the Supplier or by any forbearance 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 initial expiry date:* \_\_\_\_\_] [*insert if expiry date is subject to automatic extension:* provided always that the expiry date of this guarantee and our liability thereunder shall be automatically extended for successive periods of [*specify duration of each extension:* \_\_\_\_\_ days / months] unless we give the Government 90 days' written notice prior to the expiry of our liability of our intention not to extend this guarantee in respect of any future extension and provided further that the Government shall be entitled, upon receiving such notice of our intention (and within the period specified in Clause 4 hereof), either to:



- a) make a claim under this guarantee; or
  - b) direct us to pay such amount (not exceeding the Guaranteed Sum) as the Government 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
  - c) direct us 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).]
4. This guarantee is conditional upon a claim or direction as specified herein being made by the Government 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*: \_\_\_\_\_ ] within 90 days after the expiry of this guarantee.
  5. We shall be obliged to effect the payment required under such a claim or direction within [ \_\_\_\_\_ ] business days of our receipt thereof. We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim or direction and shall be entitled to rely upon any written notice thereof received by us (within the period specified in Clause 4 hereof) as final and conclusive.
  6. The Government may make more than one claim on, or direction under, this guarantee so long as the claims or directions are made pursuant to Clause 4 hereof and within the period specified therein and the aggregate amount specified in all such claims and directions 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:**

**UNDERTAKING TO SAFEGUARD OFFICIAL INFORMATION**

**OUTCOME-BASED PROCUREMENT REFERENCE NO:**

1. My attention has been drawn to the *Official Secrets Act* (Chapter 213, Revised Edition 2012) and in particular to Section 5 thereof which related to the safeguarding of official information.
2. I understand and agree that all official information acquired by me in the course of my work in connection with this project (insert brief description) is of a strictly secret and confidential nature, and is not to be published or communicated by me to any other person in any form whatsoever except in the course of my official duties on a strictly “need-to-know” basis.
3. I shall ensure that any other person who is authorised by me to have access to any official information shall similarly sign an undertaking to safeguard official information.
4. I undertake to return any document received from the Government of Singapore, any other copies made or reproduced from such document or part thereof whenever required by the Government.
5. I further understand and agree that any breach or neglect of this undertaking may render me liable to prosecution under the *Official Secrets Act*.

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Designation

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

\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**SCHEDULE 5A:**

**DECLARATION**

My attention has been drawn to the Official Secrets Act (Chapter 213, Revised Edition 2012) and in particular to Section 5 thereof which relates to the safeguarding of official information.

- 2 I have pursuant to Clause 63.2 of the Contract:
- (a) returned all property, documents and copies thereof belonging to the Government, received from the Government for the purpose of the Contract or produced in the course of the Contract; and
  - (b) securely destroyed and erased all soft copies of documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.
- 3 I understand and agree that any breach or neglect of my obligation under Clause 63.2 of the Contract may render me liable to prosecution under the Official Secrets Act.

..... (Signature)	..... (Full name in BLOCKS and NRIC)
..... (Designation)	..... (Name of Company)
..... (Date)	
..... (Signature of WITNESS)	..... (Full name in BLOCKS and NRIC)
..... (Date)	

**SCHEDULE 6:**

**ACCEPTANCE TEST PROCEDURES**

<b><u>Chapter</u></b>	<b><u>Contents</u></b>
<b>1</b>	<b>INTRODUCTION</b>
<b>2</b>	<b>TEST MASTER PLAN</b> 2.1 Objective of Testing 2.2 Scope of Testing 2.3 Strategy 2.4 Master Schedule 2.5 Organization Set Up 2.6 Responsibility 2.7 Test Activity 2.8 Training 2.9 Documentation 2.10 Test Data Base Set Up 2.11 Quality Assurance
<b>3</b>	<b>TEST PLAN</b> 3.1 Objective 3.2 Test Unit 3.3 Test Schedule 3.4 Test Tool 3.4.1 Hardware and Equipment 3.4.2 Software 3.5 Test Personnel 3.6 Test Material
<b>4</b>	<b>TESTING SPECIFICATIONS AND SCRIPTS</b> 4.1 Reference Number and Test Item 4.2 Test Requirement 4.3 Pre-test Results 4.4 Methodology, Data Recording and Data Reduction 4.5 Test Control and Test Condition 4.6 Modification 4.7 Evaluation 4.8 Constraints 4.9 Test Data Base 4.10 Test Input and Output 4.11 Test Procedure 4.12 Security and Control 4.13 Test Environment

<b><u>Chapter</u></b>	<b><u>Contents</u></b>
<b>5</b>	<b>TEST LOG</b> 5.1 Reference Number and Test Item 5.2 Deviation 5.3 Test Result 5.4 Observation and Problem
<b>6</b>	<b>TEST ANALYSIS</b> 6.1 Reference Number 6.2 Test Result Summary 6.3 Error and Deficiency 6.4 Diagnosis and Recommendation
<b>7</b>	<b>TEST RESULT REVIEW</b> 7.1 Review Procedure

## **1. INTRODUCTION**

This section describes the purpose of the testing procedure, lists the applicable reference documents and describes any terms, synonyms and abbreviations unique to this document.

## **2. TEST MASTER PLAN**

A test master plan covering details of the following sections and other relevant information must be submitted for approval within a specific time frame after the commencement of the project.

### **2.1 OBJECTIVE OF TESTING**

This section describes the objectives of testing in respect of functionality, performance and resilience of the Solution.

### **2.2 SCOPE OF TESTING**

This section sets out the hardware, software and system to be tested.

### **2.3 STRATEGY**

This section describes how testing will begin on the relatively simple elements which form the basis of the Solution and extend to embrace more complex structures as the Solution is progressively assembled in a hierarchical manner. Various levels of test e.g. module test, integration test and acceptance test must be defined.

### **2.4 MASTER SCHEDULE**

This section describes a master schedule indicating the commencement and completion of each level of test activities. The master schedule must relate testing to the other project activities.

### **2.5 ORGANISATION SET UP**

This section describes an organization set up for the administration of the testing activities.

A test committee comprising both the Supplier and Government staff shall be responsible for the administration of this testing procedure. The test committee reports to the project's steering committee.

The test committee may appoint test groups, peer review groups, etc. and delegate to them any functions outlined in this testing procedure.

### **2.6 RESPONSIBILITY**

This section defines the responsibilities of the Government and the Supplier.

## 2.7 TEST ACTIVITY

This section describes procedures and actions for pre-test, test and post-test activities.

## 2.8 TRAINING

This section describes training related to testing activities that will be provided for the Government's development staff and user staff, e.g. use of test tool, acceptance test procedure, etc. The Supplier is required to arrange user staff for attachment as observers in some module tests and integration tests and ensure that they are given the opportunity to acquire the skills of testing and ultimately be able to prepare and carry out their acceptance tests in a proper manner.

## 2.9 DOCUMENTATION

This section describes how test activities will be documented, and should contain the format of each document, worksheet, report, etc., its contents and method of completion.

## 2.10 TEST DATA BASE SET UP

This section describes how a test database will be set up and documented. The methods and tools that are available for constructing and maintaining the test database must be given.

## 2.11 QUALITY ASSURANCE

This section states quality assurance procedure to allow the Supplier and Government's representatives or their agents to observe any or all the tests. They shall be given all reasonable facilities to enable them to establish that testing activities are carried out in accordance with approved procedures. Attendance of these representatives or agents will not be a pre-requisite for the tests taking place or the satisfactory completion of the tests.

# 3. TEST PLAN

A test plan covering details of the following sections and other relevant information for each level of test must be submitted for approval within a specific time frame prior to that level of test begins.

## 3.1 OBJECTIVE

This section describes the objectives of the test plan.

## 3.2 TEST UNIT



This section describes briefly every test unit covered under the test plan as a frame of reference for test. Each test unit is assigned with an identification number. The relationship between each test unit within a test plan must be defined.

### 3.3 TEST SCHEDULE

This section provides a chart showing the schedule for each test unit and the location at which the testing will be conducted.

### 3.4 TEST TOOL

#### 3.4.1 Hardware and Equipment

This section indicates the expected period of use, types and quantities of the hardware and equipment needed for each test unit.

#### 3.4.2 Software

This section lists other support software that will be needed for each test unit. It should also lists the integration software that will be needed for the integration of the system components.

### 3.5 TEST PERSONNEL

This section lists the numbers and skills of personnel that will be involved during the test period of each test unit. It includes any special requirement such as key personnel.

### 3.6 TEST MATERIALS

This section lists the materials needed for each test unit such as documentation, items to be tested, worksheets, etc.

## **4. TEST SPECIFICATIONS AND SCRIPTS**

Test specifications and scripts for each test unit covering details of the following sections and other relevant information must be submitted for approval within a specific time frame prior to the commencing of the test.

### 4.1 REFERENCE NUMBER AND TEST ITEM

This section contains the reference number of the test unit. The functions of test items included in the test unit is also described.

### 4.2 TEST REQUIREMENT

This section describes the test criteria and requirements of the test unit.

#### 4.3 PRE-TEST RESULT

This section describes any prior testing and results that may affect this testing. Prior test unit numbers shall be quoted.

#### 4.4 METHODOLOGY, DATA RECORDING AND DATA REDUCTION

This section describes the test methodology to be deployed. It also describe the methods to be used for recording the test results. Methods to be used for arranging test data into a form suitable for evaluation, if applicable is described.

#### 4.5 TEST CONTROL AND TEST CONDITION

This section describes the test control, such as manual, semi-automatic insertion of input, sequencing of operations and recording of test results. It also describes test conditions to be covered.

#### 4.6 MODIFICATION

This section specifies modifications to be made to the item under test in order to aid testing.

#### 4.7 EVALUATION

This section describes the rules to be used to evaluate test results, such as response time, etc.

#### 4.8 CONSTRAINTS

This section describes the anticipated limitation on the test due to test conditions, environment, equipment, etc.

#### 4.9 TEST DATA BASE

This section describes the test database to be used.

#### 4.10 TEST INPUT AND OUTPUT

This section describes the input data and input commands to be used. It also describes the expected test output results and intermediate messages.

#### 4.11 TEST PROCEDURE

This section specifies the step-by-step procedures to accomplish the tests. It includes test set-up, initialization, steps and termination.

#### 4.12 SECURITY AND CONTROL

This section describes any security and control consideration.

#### 4.13 TEST ENVIRONMENT

This section describes the test environment that may be different from the operational environment and the effects of the difference on the tests.

### 5. TEST LOG

A test log must be used to record the details of the following sections and other information during the test process.

#### 5.1 REFERENCE NUMBER AND TEST ITEM

This section states the reference number of the test unit and the items under test.

#### 5.2 DEVIATION

This section describes any deviation from test master plan, test plan and test specifications and scripts, e.g. test schedule, etc.

#### 5.3 TEST RESULT

This section records the test results.

#### 5.4 OBSERVATION AND PROBLEM

This section records observations of interest and problems encountered.

### 6. TEST ANALYSIS

This section describes a test analysis report containing the details of the following sections and other information which must be submitted within a specific time frame after the completion of the test.

#### 6.1 REFERENCE NUMBER

This section provides a cross-reference to its associated test unit number.

#### 6.2 TEST RESULT SUMMARY

This section summarizes the test results.

#### 6.3 ERROR AND DEFICIENCY

This section summarizes errors detected and deficiencies discovered.

#### 6.4 DIAGNOSIS AND RECOMMENDATION

This section describes the diagnosis of errors encountered and deficiencies discovered. It also recommends follow up action such as:

- a) the urgency of each correction;
- b) parties responsible for corrections; and
- c) how the corrections should be made

## **7. TEST RESULT REVIEW**

### **7.1 REVIEW PROCEDURE**

This section describes how test review and approval will be carried out.

### **7.2 TEST CERTIFICATE**

This section describes a test certificate that will be issued to those items that have successfully passed the test for higher level test or production.

## **8. ROAD MAP FOR TESTING SOLUTION**

Test Master Plan
------------------

 ----- for the project

Test Plan
-----------

 ----- for each level of tests

Test Specifications and Scripts
------------------------------------

 ----- for each test unit

Test Log
----------

Test Analysis Report
-------------------------

Test Certificate
------------------

**SCHEDULE 7:**  
**UNDERTAKING BY OEM**

The undertaking shall be in the form that follows:

To: The Government of the Republic of Singapore

**OUTCOME-BASED PROCUREMENT NO:** \_\_\_\_\_

We refer to the above Outcome-Based Procurement. All words and phrases used herein have the same meaning as in the Conditions of Contract for Final Award for the above Outcome-Based Procurement unless otherwise specified.

2. We are the supplier to \_\_\_\_\_ [name and address of Tenderer] \_\_\_\_\_ (hereinafter called the “**Tenderer**”) of the software set out in Annex hereto (hereinafter called the “**Software**”) for the purpose of the above Outcome-Based Procurement.

3. In consideration of you awarding the Outcome-Based Procurement to the Tenderer, we hereby undertake to perform the obligations set out in the following paragraphs.

4. In respect of the Software, we warrant that your right to use the Software will not be interrupted by anyone by any means and will survive the following events:

- (a) the termination of the legal relationship between you and the Tenderer; and
- (b) the termination of the legal relationship between the Tenderer and us.

5. We declare that we have read and understood your Outcome-Based Procurement and are fully aware of all the terms of the Contract. We further 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.

**Executed as a Deed**

\_\_\_\_\_  
Signature

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

NRIC/Passport No

\_\_\_\_\_  
Designation

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

Date

\_\_\_\_\_

\_\_\_\_\_

Signature of Witness

Full Name in BLOCKS

NRIC No

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

Date:

**UNDERTAKING BY OEM (For Software)**

To: The Government of the Republic of Singapore

**OUTCOME-BASED PROCUREMENT NO:** \_\_\_\_\_

We refer to the above Outcome-Based Procurement. All words and phrases used in this undertaking have the same meaning as in the Conditions of Contract for Final Award for the above Outcome-Based Procurement unless otherwise specified.

2. We are the supplier to \_\_\_\_\_ [name and address of Tenderer] \_\_\_\_\_ (the “**Tenderer**”) of the software set out in Annex A (the “**Software**”) for the purpose of the above Outcome-Based Procurement.

3. In consideration of you awarding the Outcome-Based Procurement to the Tenderer, we hereby undertake to perform the obligations set out in the following paragraphs.

4. In respect of the Software, we warrant that your right to use the Software will not be interrupted by anyone by any means and will survive the following events:

- (a) the termination of the legal relationship between you and the Tenderer; and
- (b) the termination of the legal relationship between the Tenderer and us.

5. Should the Tenderer be unwilling or unable to provide maintenance for the Software in accordance with the Contract for any reason or should your maintenance contract with the Tenderer expire or be terminated for any reason, we confirm that we can offer maintenance of the Software (either by ourselves or through a sub-contractor) for XX (XX) years after commencement of the Solution Warranty Period on mutually agreed terms and conditions and at Fair Market Value (as hereinafter defined). “**Fair Market Value**” means the fair market value in Singapore, or such other countries where such goods and/or services are not available in Singapore, for the maintenance of the Software or its equivalent. If you and us 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 you, whose engagement cost shall be borne equally between you and us.

6. We declare that we have read and understood your Outcome-Based Procurement and are fully aware of all the terms of the Contract. We further 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 in this undertaking upon your written request.

**Executed as a Deed**

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Designation

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

\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date