

PART 1 SECTION B

CONDITIONS OF CONTRACT (SERVICES)

1 DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:

"Authority" refers to the Singapore Workforce Development Agency established pursuant to the Singapore Workforce Development Agency Act 2003 (Act 14 of 2003), and includes any officer authorised by the Authority to act on its behalf.

"Contract" includes the Contractor's tender, Instructions to Tenderers, Conditions of Contract, the specifications and samples, Letter of Acceptance, and any Works Orders issued by the Authority to the Contractor for the supply of the Services.

"Services" means the work which the Contractor is required to perform under the Contract.

"Tenderer" means a person or his permitted assigns offering to supply the Services.

"Contractor" means the successful Tenderer who has been awarded the Contract by the Authority.

"Parties" refer to the Authority and the Contractor.

"Person" includes a corporation or an incorporated association.

1.2 Words importing the singular include the plural and vice versa.

1.3 The headings are for convenience only and not for the purpose of interpretation.

2 SCOPE OF CONTRACT

2.1 The Contractor shall perform the Services in accordance with the Contract.

3 PERFORMANCE

- 3.1 The Contractor shall perform the Services by the Performance Date and in the manner specified in the Contract. The Contractor shall obtain a receipt therefore from the Authority. The issue of such receipt shall in no way relieve the Contractor from his responsibility for re-performing deficient Services.
- 3.2 The consultancy appointment is for a period of 14 months and is expected to **commence in November 2009 and complete by December 2010** (including the six months warranty period). The six-month warranty period shall commence after the completion of the required orientation sessions for potential adopters of the framework.
- 3.3 If the project is delayed due to unforeseen circumstances, the Authority shall determine the extension period of the project timeline.

4 PAYMENT

- 4.1 Within thirty (30) days of delivery of the Services ordered under the Contract, as above provided, and upon presentation by the Contractor of his bills in accordance with such means and in such format as may be specified by the Authority and the Authority's receipt as referred to in Clause 3.1 of the Contract, the Authority will make payment to the Contractor of the full value of all Services so performed provided that no payment shall be considered as evidence of the quality of any Services to which such payments relates.
- 4.2 The payments under this clause shall not prejudice the Authority's right to reject deficient Services or the Contractor's responsibility to re-perform deficient Services.
- 4.3 Without limiting the Authority's right under the Contract, the amount of any payment or debt owed by the Contractor to the Authority under the Contract may be deducted by the Authority from any monies payable by the Authority to the Contractor pursuant to this Contract.

5 RIGHTS OF THIRD PARTIES

- 5.1 A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms.

6 GIFTS, INDUCEMENTS OR REWARDS

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

7 DELAY IN PERFORMANCE

- 7.1 If there is delay in the performance of the Services under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotion, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to perform such Services thereby affected but the provisions of the Contract shall remain in full force in regard to any Services not affected by such circumstances aforesaid.
- 7.2. Subject to Clause 7.1, if the Contractor fails to complete the performance of Services by the date specified in the Contract, the Authority shall have the right -
- (a) to cancel all or any such items of Services from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Contractor or shall be recoverable as damages; or
 - (b) to deduct from any moneys due or to become due to the Contractor or require the Contractor to pay, a sum calculated at the rate of Singapore Dollars **\$3,000** per day (including Sundays and Public Holidays), as liquidated damages for every day of delay until the Services are performed.

Provided that the recovery of such increased costs aforesaid shall be limited to such Services as is purchased or obtained, not exceeding the scope stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry of the Contract.

8 SUB-CONTRACTING AND ASSIGNING

- 8.1 The Contractor shall not sub-contract or assign the Contract without the written consent of the Authority.

9 APPLICABLE LAW

- 9.1 The Contract and all its subsequent variations shall be subject to, governed by and interpreted in accordance with the domestic Laws of the Republic of Singapore for every purpose.

10 SUSPENSION OR TERMINATION

- 10.1 The Authority shall, after giving seven (7) days prior written notice to the Contractor have the right to suspend or terminate the Contract if the Authority is affected by any state of war, Act of God or other circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore. Neither party shall be liable to the other by reason of such suspension or termination save that the Authority shall pay the Contractor the price of the Services performed and accepted by the Authority. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the Authority to the Contractor by reason of this Clause.

11 RIGHTS OF THE AUTHORITY IN THE EVENT OF DEFAULT BY THE CONTRACTOR

- 11.1 If the Contractor defaults in his performance of this Contract, the Authority may issue a notice of default to the Contractor informing the Contractor of its default. The Contractor shall, within thirty (30) days of the date of the notice of default, remedy the default. If the Contractor fails to do so, the Contractor shall be taken to have repudiated the Contract and the Authority shall have the right to terminate the Contract or cancel any part thereof by way of a notice of termination without the Authority being liable therefore in damages or compensation. The said termination shall take effect from the date of the notice of termination.

- 11.2 In the event of termination under Sub-Clause 11.1 above, the Authority shall have the right to purchase from other sources all the Services which remains unperformed at the time of termination or similar Services, and all increased costs reasonably incurred by the Authority shall be recoverable from the Contractor.

12 VARIATION OF CONTRACT

- 12.1 No variation whether oral or otherwise in the terms of this Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the authorised contract signatory of the Authority.

13 TAXES, FEES AND DUTIES

- 13.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or its employees, including the Contractor's resident engineers and inspectors (if applicable), in carrying out its obligation under the Contract.
- 13.2 If the Authority receives a request from the tax authorities to pay on behalf of the Contractor and/or the Contractor's employees, or to withhold payments from the Contractor in order that the Authority may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises the Authority to comply with the terms of the said request.
- 13.3 The Authority shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax chargeable on the supply to the Authority of any services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax under the (Singapore) *Goods and Services Tax Act*, Cap. 117A (2000 ed.).
- 13.4 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the Singapore Goods and Services Tax, 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 *Goods and Services Tax Act*, Cap. 117A (2000 ed.).

14 GOVERNMENT REGULATIONS

- 14.1 The Contractor shall, at its own costs, obtain and maintain all licence and authorisations, including export licences and permits and other governmental authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

15 INDEMNIFICATION OF AUTHORITY / GOVERNMENT AGAINST CLAIMS BY CONTRACTOR'S EMPLOYEES

- 15.1 In the event of the Authority (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Contractor in and for the performance of the Contract, the Contractor shall indemnify the Authority, its officers or departments against such claim and any costs, charges and expenses in respect thereof,

PROVIDED the same is not caused by the gross negligence or willful default of the Authority, its officers or agents.

16 MEDIATION CLAUSE

- 16.1 Notwithstanding anything in this Contract, in the event of any dispute, controversy or claim arising out of or relating to this Contract, no Party shall proceed to any form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre.
- 16.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 16.1.
- 16.3 Failure to comply with Clause 16.1 or 16.2 shall be deemed to be a breach of contract.

17 CONSORTIUM

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

Joint and Several Responsibility

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

Addition of members to Consortium

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

17.4 Should additional member(s) be added to the Consortium at any time with the approval of the Authority, he or they shall be deemed to be included in the expression 'the Contractor'.

Withdrawal from Consortium

17.5 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 the Contract.

COMPENDIUM OF ADDITIONAL CLAUSES (COAC) – For Services

A1. WORKS ORDERS

- A1.1 All orders for Services to be supplied under the Contract shall be given from time to time, in writing, by the Authority on the appropriate order form (hereinafter referred to as "the Works Order"). All such Works Orders shall clearly state the details and nature of the Services to be supplied and shall also state the amount, calculated at the rates in the Contract, that shall become due to the Contractor on the satisfactory completion of all the Services specified on such Works Order. On satisfactory completion of such supply the Contractor shall submit his bill to the Authority who shall certify the same for payment to the Contractor at the time and in the manner hereinafter provided.
- A1.2 On receipt of any Works Order the Contractor shall commence performance of the Services referred to therein and complete the same as soon as promised in his tender or otherwise as expeditiously as possible.

A2. SUPPLY OF SERVICES AS AND WHEN REQUIRED BY THE AUTHORITY

- A2.1 Where the Authority has entered into a Contract with the Contractor for the supply of Services as and when required by the Authority during the period of time specified in the Contract, the Contract shall be deemed to be a Period Contract for the duration of the period of time specified. Where the Contractor receives, during the period of time specified in the Contract, any Works Order for specific Services specified in the Contract, the Contractor shall proceed to perform the Services in accordance with the Contract.

A3. SECURITY DEPOSIT

- A3.1 For the due and faithful performance of the Contract, the Contractor shall within thirty (30) days of the date of Contract, lodge with the Authority a Security Deposit for the sum stipulated in the Contract. The Security Deposit shall either be in the form of cash or, in lieu of cash, a Performance Bond strictly in compliance with the format enclosed in the Contract issued by a bank or insurance company registered with the Monetary Authority of Singapore. The Performance Bond may also be issued by a licensed Finance Company registered with the Monetary Authority of Singapore if the Security Deposit does not exceed S\$300,000.

- A3.2 All charges incurred by the Contractor in obtaining and maintaining the Security Deposit shall be met by the Contractor. The Security Deposit shall be valid until three (3) months after the performance of all Services under the Contract. In the case of a Period Contract, the performance of the Services under the Period Contract shall refer to the performance to be made pursuant to a Works Order raised on the last date of the Period Contract for the Service with the longest delivery lead time. In the event the delivery is deferred for any reason, the Security Deposit shall be correspondingly extended by the Contractor at his own expense. At the end of the said three (3) months or extension, the Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be released and refunded without interest subject to any deduction as may be made therefrom.
- A3.3 In the event of any default or breach of any of the obligations by the Contractor under the Contract, the Authority may at its sole discretion draw on the Security Deposit or the Performance Bond to satisfy any liquidated or other damages as may become due to the Authority under the Contract if the Authority has, prior to drawing on the Security Deposit, notified the Contractor in writing of the default or breach and given the Contractor 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 Contractor has failed to comply fully with the notice.
- A3.4 The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to the Authority or bar the Authority from claiming loss, expense, costs or damages incurred or sustained or likely to be sustained by the Authority as a result of any breach of contract of whatsoever nature by the Contractor.

A4. OPTION TO EXTEND

- A4.1 The Contractor grants the Authority the option to extend the Contract for a further period and by the date stated in the Contract. Unless otherwise specifically agreed between the Parties, the purchase made during the extended period shall be subject to the same terms and conditions (inclusive of any amendments), and the Services purchased shall form part of the Services defined in this Contract.
- A4.2 In the event that the Contract is extended pursuant to Clause A4.1, the Contractor shall furnish a fresh Security Deposit, and all the provisions in Clause A4.1 shall apply with the necessary modifications.

A5. COMMENCEMENT AND DURATION OF CONTRACT

A5.1 This Contract shall commence on the date stated in the Letter of Acceptance and shall remain in force for a period of **14 months** (including the six months warranty period).

A6. ARBITRATION

A6.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

A7. REPLACEMENT OF PERSONNEL

A7.1 The Contractor shall replace its personnel within fourteen (14) days from the date of written notice from the Authority that the said personnel is either:

(a) technically incompetent in carrying out the Services and all efforts by the Contractor have failed to resolve the issue within the said period;
or

(b) the conduct of the said personnel is found to be detrimental to the national security.

A8. CONFIDENTIALITY AND SECURITY

A8.1 Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any purchases made in this Contract or any provisions thereof or any information issued or furnished by or on behalf of the Authority in connection therewith to any person.

A8.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the Authority or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of the Authority.

A8.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Authority.

A9. JOINT & SEVERAL LIABILITY

A9.1 If the Contractor is a joint venture or joint venture partnership, the individual companies or partners comprising the Contractor shall be deemed jointly and severally liable to the Authority under this Contract.

A10. WARRANTY

A10.1 The Warranty Period shall commence in July 2010 as indicated in the project timeline in Annex E of the Requirement Specifications. The length of the Warranty Period shall be **six (6) months**.

A10.2 If the project is delayed due to unforeseen circumstances, the warranty period shall be adjusted accordingly in accordance to Paragraphs 3 and A4.

A10.3 If any Service performed is found during the Warranty Period to be deficient, the Contractor shall at the written notification of the Authority, re-perform the same, at the expense of the Contractor within **2 months**, which shall commence from the said notification and end upon the satisfactory completion of the re-performed Service.

A11. OWNERSHIP OF INTELLECTUAL PROPERTY

DEFINITIONS

"Authority" means refers to the Singapore Workforce Development Agency established pursuant to the Singapore Workforce Development Agency Act 2003 (Act 14 of 2003), and includes any officer authorised by the Authority to act on its behalf.

"Background IP" means IP which is created prior to or independently of this Contract.

"Foreground IP" means IP which results from or is generated pursuant to or for the purpose of this Contract.

“IP” means intellectual property and shall include patents, copyright, industrial design and integrated circuit topography.

A11.1 Nothing in this Contract shall affect any person’s right to own or license Background IP.

A11.2 All Foreground IP created by the Contractor, its subcontractor or supplier shall vest in the Authority. The Contractor shall, by way of present assignment of future IP, do all things necessary to ensure that all Foreground IP is assigned to the Authority absolutely. The Contractor shall do all such things and to sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the Foreground IP assigned and granted to the Authority.

A11.3 The Contractor shall obtain for and grant to the Authority and its agent, free of any additional charge, a worldwide, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor, its subcontractor or supplier.

A11.4 For the avoidance of doubt, any IP in any results, report, data or information generated or produced by the Authority or another person on behalf of the Authority as a result of this Contract shall be owned by the Authority.

A11.5 If the Contractor, its subcontractor or supplier intends to sell or transfer their Background IP, the Contractor shall ensure that the purchaser of the Background IP and every successor in title to the interest in the Background IP has prior written notice of the license that the Contractor, its subcontractor or supplier has granted to the Authority.

A11.6 If any license granted or obtained for Background IP under Clause A11.3 is registrable under any IP registration system in Singapore, the Contractor shall:

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