

AGREEMENT FOR CONSULTANCY SERVICES

BETWEEN

{EMPLOYER}

AND

{CONSULTANT}

FOR

{PROJECT TITLE}

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Other Templates:

Letter of Acceptance (sample copy)

* Adopt the relevant Annex A depending on the type of consultancy services required.

AGREEMENT FOR CONSULTANCY SERVICES

DATE: {Insert date of Agreement}

PARTIES:

- (1) {Name of Employer and Address} (hereinafter called the “Employer”)
- (2) {Name of Consultant and Address} (hereinafter called “the Consultant”)

RECITALS:

- (1) The Employer requires consultancy services for the {Project Title} (“Project”) in Singapore.
- (2) The Consultant agrees to render the consultancy services specified in this Agreement to the Employer.

OPERATIVE PROVISION:

IT IS AGREED that the Employer hereby appoints the Consultant to render the said consultancy services for the Project and the Consultant accepts the appointment on the terms and conditions as laid down in this Agreement.

This Agreement is signed on the {Date to correspond with MOA/1}.

Signed by

_____	)	
(Name & Designation)	)	
_____	)	
for and on behalf of the Employer	)	_____ (Signature)

in the presence of:

_____	)	
(Name, Designation and Address of Witness)	)	_____ (Signature of Witness)

Signed by:

_____	)	
(Name & Designation)	)	
_____	)	
for and on behalf of	)	
_____	)	
(Name and Address of Consultant Firm)	)	_____ (Signature)

in the presence of:

_____	)	
(Name, Designation & Address of Witness)	)	_____ (Signature of Witness)

Signed by (another member of Consortium, if applicable):

_____	)	
(Name & Designation)	)	
_____	)	
for and on behalf of	)	
_____	)	
(Name and Address of Consultant Firm)	)	_____ (Signature)

in the presence of:

_____	)	
(Name, Designation & Address of Witness)	)	_____ (Signature of Witness)

TERMS AND CONDITIONS OF AGREEMENT FOR CONSULTANCY SERVICES

1 GENERAL PROVISIONS

1.1 Scope of Services

- (1) The consultancy services to be performed by the Consultant under this Agreement (the “Services”) are as described in the Appendix.
- (2) The Consultant shall carry out this Agreement in stages as described in the Appendix. The Consultant shall proceed with each stage of the Agreement only upon confirmation by the Employer in writing.

1.2 Relationship between the Parties

- (1) Nothing contained herein shall be construed as establishing or creating a relationship of master and servant or principal and agent between the Employer and the Consultant.

1.3 Definition

- (1) Words importing the singular only also include the plural and the masculine includes the feminine and vice-versa where the context requires.
- (2) “Agreement” means these Terms and Conditions and the Appendix, Employer’s Requirements, Consultant’s Tender Proposals, Letter of Acceptance and such other letters and documents as the parties may expressly identify in writing and agree as forming part of the Agreement.
- (3) “Consortium” means an unincorporated joint venture by two or more persons, from the same discipline, through the medium of a consortium or a partnership.
- (4) “Consultant” means the person or persons, firm or company whose Tender Proposals have been accepted by the Employer and includes the Consultant’s successors.
- (5) “Consultant’s Tender Proposals” shall include any Form of Tender submitted by the Consultant, all cost and technical proposals, drawings, specifications, calculations, manuals and other information submitted by the Consultant in response to the Employer's Requirements.
- (6) “Contract” means the contract between the Employer and the Contractor in respect of the Works and shall have the same meaning as defined in Clause 1.1 of the Public Sector Standard Conditions of Contract for Construction Works.
- (7) “Contractor” means the person or firm or corporation responsible for the execution and completion of the Works.

- (8) “Defects Liability Period” means the Defects Liability Period set out in the Appendix calculated from the date of Substantial Completion of the Works as certified by the Superintending Officer.
- (9) “Employer” means the Government or the statutory body as the case may be.
- (10) “Employer’s Requirements” means:
- (a) all requirements specifically set out in the Employer’s invitation or other document by whatever name or description setting out the purpose (whether with or without other details) of the Services;
 - (b) all requirements not specifically set out in the Tender or any document, but which a reasonably experienced Consultant would consider as being necessary for the satisfactory performance of the Services; and
 - (c) all requirements not specifically set out in the Tender or any document, but which a reasonably experienced Consultant would consider as being necessary for the purpose and integrity of the Services.
- (11) “Government” means the Government of the Republic of Singapore.
- (12) “Letter of Acceptance” means the formal acceptance by the Employer of the Consultant’s offer to provide consultancy services for a fee.
- (13) “Pandemic Outbreak” means a pandemic or an outbreak of infectious disease occurring over a wide geographical area crossing international boundaries, usually affecting a large number of people, declared by:
- (a) The World Health Organisation or any international-health related authority;
 - (b) The health-related authority in the geographical area where the pandemic or infectious disease is occurring; or
 - (c) The Ministry of Health of Singapore
- (14) “Project” means the proposed works stated in the Appendix.
- (15) “Provisional Sum Item” means an item of work (including a measure to be adopted in respect of a Pandemic Outbreak) which shall only be executed or provided upon instruction in writing by the Employer, who may decide that the work in whole or in part or not at all may be carried out by the Consultant.
- (16) “Tender” means the Consultant’s offer to the Employer to perform the Services for a fee as accepted by the Letter of Acceptance.
- (17) “Services” means the services to be performed by the Consultant as described in the scope of services stated in Annex A of the Appendix.
- (18) “Superintending Officer” means the person, firm or corporation appointed as such by the Employer for the purposes of administering the Contract between the Employer and the Contractor in respect of the Works.

- (19) “Works” means the works of both permanent and temporary nature to be executed in accordance with the Contract between the Employer and the Contractor.
- (20) All references to clauses are references to clauses numbered in these Terms and Conditions of Agreement and not to those in any other document forming part of the Agreement unless otherwise expressly stated.
- (21) Except as the context otherwise requires,
 - (a) “Day” shall mean calendar day; and
 - (b) “Month” shall mean calendar month.
- (22) References to a person include any natural person, sole proprietorship, company (including an incorporated joint-venture company), limited liability partnership, partnership (including a registered partnership, and registered limited partnership), business trust, unincorporated association or government agency (whether or not having separate legal personality).

1.4 Headings

- (1) The headings in this Agreement shall not be deemed to be part of or be taken into consideration in the interpretation or construction of the Agreement.

1.5 Waiver

- (1) No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other default whether of a like or different character.

1.6 Variation

- (1) Should circumstances arise which call for modifications of the Agreement, these may be made by mutual consent given in writing by the parties hereto.

1.7 Consortium

- (1) Each member of the Consortium, registered partnership, or registered limited partnership shall be jointly and severally responsible to the Employer for the due performance of the Agreement.
- (2) Should the Consultant be a Consortium, and 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, then unless otherwise agreed in writing by the Employer:
 - a. This Agreement shall continue and not be terminated; and
 - b. The remaining member(s) of the Consortium shall be obliged to carry out and complete the Agreement.
- (3) In addition to the above, where the Consultant is a registered partnership or registered limited partnership, this Agreement shall not be dissolved by the

death or withdrawal of any partner. Each partner shall be deemed jointly and severally liable to the Employer under the Agreement.

2 DOCUMENTS AND INFORMATION

2.1 Documents To Be Taken As Mutually Explanatory

- (1) The several documents forming the Agreement are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between the Terms and Conditions and the other documents forming the Agreement, the Terms and Conditions shall be given precedence.

2.2 Use of Consultant's Proposals and Employer's Requirements

- (1) As between the parties, copyright and other intellectual property rights in the Consultant's Tender Proposals shall remain with the Consultant. However, the Consultant shall be deemed to have given to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Consultant's Tender Proposals, including making and using modifications of them, for the purposes of completing, operating, maintaining, altering, repairing and demolishing the Project.
- (2) As between the parties, copyright and other intellectual property rights in the Employer's Requirements shall remain with the Employer. The Consultant may, at the Consultant's cost, copy, use and communicate the Employer's Requirements, but only if the said copying, use and communication is necessary for the design, execution and completion of the Project.

2.3 Information To Be Supplied To The Consultant

- (1) The Employer shall supply to the Consultant all data and information relating to the Project and give such assistance as shall reasonably be required for the carrying out of the Services by the Consultant. The Consultant shall ensure that all Information specified in the Appendix that the Consultant obtains or has access to under, arising from or in relation to the Agreement ("Confidential Information") is kept strictly confidential and: (a) may only be disclosed to the Consultant's employees, and any person, on a need-to basis ("Authorised Recipients"); and (b) used solely for the purpose of performing this Agreement.
- (2) The Consultant acknowledges that all Confidential Information constitutes "official information" and is subject to the Official Secrets Act 1935. The Consultant shall comply with the Official Secrets Act 1935 in respect of the Confidential Information. The Consultant acknowledges that, without limiting and in addition to the Employer's rights, any breach of this Clause 2.3(2) may render the Consultant liable to prosecution under the Official Secrets Act 1935.
- (3) The Consultant must take all reasonable precautions in dealing with Confidential Information to prevent any unauthorised person from having access to such Confidential Information.

- (4) The Consultant must not publish or release, and must not 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 Agreement in any media without the prior written consent of the Employer.
- (5) The Consultant must give the Employer: (a) prompt notice of any breach of this Clause 2.3; and (b) prompt and prior notice of any requirement to disclose in accordance with law, to the maximum extent permissible by law, and must cooperate with the Employer to limit the scope of such disclosure to the maximum extent legally possible.

3 OBLIGATIONS AND LIABILITIES OF THE CONSULTANT

3.1 Obligations of The Consultant

- (1) The Consultant shall exercise all reasonable skill, care and diligence in the performance of the Services under the Agreement and shall carry out all of the Consultant's responsibilities in accordance with recognised professional and technical standards. The Consultant shall in all professional matters act as a faithful adviser to the Employer and in so far as any of the Consultant's duties are discretionary, act fairly as between the Employer and third parties.
- (2) The Consultant will provide all the professional technical advice and skills which are required for the Services for which the Consultant is engaged.

3.2 Liabilities of The Consultant

- (1) The Consultant shall indemnify and hold the Employer harmless from and against any and all claims, damages, expenses or costs (including those asserted by third parties) arising directly or indirectly from the Consultant's acts, errors or omissions, and the acts, errors or omissions of the Consultant's servants, agents or employees.
- (2) The Consultant shall be liable for any violation of legal provisions or rights of third parties in respect of patents, copyrights or other intellectual property rights introduced into documents prepared by the Consultant or otherwise used in the course of providing the Services and shall indemnify the Employer against any claims for infringement or alleged infringement of the same.
- (3) *The Consultant shall, at the Consultant's own expense, procure and maintain, on terms and conditions as may be approved by the Employer, professional indemnity insurance for the minimum amount of sum insured as stated in the Appendix, for the duration of the Services and such period of time after the duration of the Services as stated in the Appendix.

* Adopt the provision when applicable.

- (4) **<Option A>** The Consultant's aggregate liability under this Agreement in respect of any individual claim (or a series of claims arising from substantially identical facts or circumstances) for breach of contract or negligence shall not exceed the amount stated in the Appendix. Such limitation of liability shall not apply to any claim:

- (a) relating to any death or personal injury;
- (b) which arises from or is related to fraud, fraudulent misrepresentation, wilful misconduct, wilful concealment or gross negligence by the Consultant, any sub-consultants or any of their respective directors, officers, employees or agents; or
- (c) under any indemnity provided under Clause 3.2(1), Clause 3.2(2), or otherwise under this Agreement (other than a claim by the Employer against the Consultant relating to the Consultant's breach of the Agreement).

OR

<Option B> The Consultant's aggregate liability under this Agreement in respect of all breaches of contract or negligence shall not exceed the amount stated in the Appendix. Such limitation of liability shall not apply to any claim:

- (a) relating to any death or personal injury;
- (b) which arises from or is related to fraud, fraudulent misrepresentation, wilful misconduct, wilful concealment or gross negligence by the Consultant, any sub-consultants or any of their respective directors, officers, employees or agents; or
- (c) under any indemnity provided under clause 3.2(1), clause 3.2(2), or otherwise under this Agreement (other than a claim by the Employer against the Consultant relating to the Consultant's breach of the Agreement).

4 COMMENCEMENT, COMPLETION, PROGRAMME AND DELAY

4.1 Agreement In Force

- (1) The Agreement shall be deemed to come into force on the date of the issue of the Letter of Acceptance by the Employer.

4.2 Commencement and Completion of each Stage of the Services

- (1) The Consultant shall commence the Services on the date of commencement as notified by the Employer in writing.
- (2) The Consultant shall proceed with each stage of the Services only upon confirmation by the Employer in writing.

- (3) The Employer shall not be required to proceed with the engagement of the services beyond Stage I of the Project if the Employer does not obtain the necessary internal approval from within the Government to proceed with the Project. In such an event, the Employer may discontinue this Agreement by giving the Consultant such number of days prior written notice as specified in the Appendix. The Consultant shall be paid in accordance with Clause 6(7). For the avoidance of doubt, a discontinuance of this Agreement under this Clause 4.2(3) shall constitute a cessation of the Agreement such that Clauses 9(3), 9(4) and 9(5) shall apply *mutatis mutandis*.
- (4) The Consultant shall render the Services under this Agreement until the Project and its related works are completed. The Project shall be deemed to be completed upon the expiry of the Defects Liability Period of the final contract in connection with the Project or the issuance of the Certificate of Statutory Completion for the Project by the Building and Construction Authority whichever is later.

4.3 Programme

- (1) The Consultant shall plan, execute and complete the Services within the period as set out in the Employer's Requirements. The Consultant's programme for this shall incorporate services to be carried out by other consultants and reflect the important milestones and activities for items of services to be delivered by the other consultants in connection with the Project. The programme shall be implemented only upon the written approval by the Employer. For the avoidance of doubt, any such approval shall be without prejudice to the Consultant's obligations and responsibilities as set out in this Agreement.
- (2) The Consultant shall use the Consultant's best endeavours to maintain where possible the period stipulated for the completion of the Services as set out in the programme notwithstanding delays caused by reasons beyond the Consultant's control.

4.4 Delay of Services

- (1) The Consultant shall closely monitor progress of the Project and notify the Employer whenever there are possible delays and their likely effect on the overall period of completion of the Services. The Consultant shall also propose to the Employer recovery actions to be taken to regain the original schedule.

5 REMUNERATION OF THE CONSULTANT

- (1) The Employer shall remunerate the Consultant in respect of the Services as set out in the Appendix and subject to Clause 5 hereof. The Consultant's fee excludes Goods and Services Tax ("GST"). The GST chargeable shall be reimbursed separately by the Employer.
- (2) The Employer will only pay the Consultant for those additional expenses or costs that are set forth in the Appendix.

- (3) The remuneration of the Consultant charged to the Employer shall constitute the Consultant's only remuneration in connection with the Agreement and neither the Consultant nor the Consultant's personnel shall accept or have the benefit of any direct or indirect commission, allowance, gratuity or other consideration in connection with or in relation to the Agreement or to the discharge of the Consultant's obligations hereunder.
- (4) Where an extension of time has been granted for performance of the Works by:
 - (a) the Superintending Officer under the Contract; or
 - (b) under the applicable laws,to address a Pandemic Outbreak (the duration of such extension, the "Pandemic Outbreak EOT Duration"), the Consultant shall be entitled to remuneration by the Employer for the Pandemic Outbreak EOT Duration computed in accordance with the formula as set out in Annex B of the Appendix.
- (5) Save as otherwise provided in clause 5(4) above, where there is a delay in the completion of the Works beyond the time for completion as stipulated under the Contract (the duration of such delay, the "Delay Duration") due to causes not solely attributed to the Consultant, and the Employer requires the Consultant to provide services during the Delay Duration, the Consultant shall be entitled to remuneration by the Employer for such additional services provided during the Delay Duration for the period commencing from such number of months, as specified in the Appendix, after the time of completion stipulated in the Contract ("Remuneration Period for Delay") in accordance with Paragraph 3.2 of Annex B of the Appendix.

6 PAYMENTS TO THE CONSULTANT

- (1) Interim payments to the Consultant shall be made upon the completion and acceptance by the Employer of the items of Services provided as set out in the Appendix. The Consultant shall submit the request for payment ("Payment Claim") in accordance with the Employer's Requirements.
- (2) Within 14 days of receiving a Payment Claim referred to in Clause 6(1), the Employer shall provide a payment response. The amount due shall be paid by the Employer to the Consultant:
 - a. Where the Consultant is a taxable person under the Goods and Services Tax Act 1993 ("GST Act"), within 21 days or such other time period as may be stipulated in the Appendix after the date the tax invoice is submitted to the Employer. The Consultant shall submit to the Employer a tax invoice under the GST Act within 7 days of the date of the payment response; or
 - b. In any other case, within 21 days or such other time period as may be stipulated in the Appendix after the expiry of the period within which

the payment response is required to be provided under the Building and Construction Industry Security of Payment Act 2004. The Consultant shall submit to the Employer an invoice within 7 days of the date of the payment response.

Where a time period is stipulated in the Appendix, that time period shall prevail.

- (3) If any item or part of an item of the Payment Claim rendered by the Consultant is disputed or subject to question by the Employer, the payment by the Employer of that part of the Payment Claim which is not contested shall not be withheld on those grounds.
- (4) If in the opinion of the Employer, the Consultant is in breach of any of the provisions of the Agreement, the Employer shall be entitled to withhold any payment or part thereof as may be due or become payable to the Consultant without prejudice to any right of action that may have accrued to the Employer and to the continuance of the Agreement unless otherwise terminated by the Employer.
- (5) The Consultant shall if required by the Employer provide additional supporting documents and records to substantiate the payments to be made to the Consultant. The Consultant shall attend or respond to all such queries promptly and at no additional cost to the Employer.
- (6) In the event that the Employer decides to terminate the Agreement in accordance with Clauses 9(1) or 9(2) of the Agreement, the Consultant shall be entitled to receive the professional fees due for the stages that the Consultant has completed up to the effective date of termination. The professional fees payable to the Consultant shall be determined in accordance with the Appendix.
- (7) In the event that the Employer decides to discontinue the Agreement in accordance with Clause 4.2(3), the Consultant shall be entitled to receive the professional fees due for the stages that the Consultant has completed up to the effective date of discontinuation. The professional fees payable to the Consultant shall be determined in accordance with the Appendix.
- (8) The Employer is agreeable to the Consultant assigning the Consultant's Receivables to any Factor, subject to the following:
 - a. the Consultant warrants and represents to the Employer that the Consultant has not previously assigned such Receivable to any person other than the Payee of such Receivable;
 - b. the Consultant must provide to the Employer any information in relation to the Payee and the factoring arrangement as the Employer may from time to time reasonably require;
 - c. such assignment shall be without prejudice to the Employer's rights against the Consultant under the Agreement, at law or in equity, including the Employer's rights of deduction and set-off;

- d. the Consultant must ensure that:
- (i) each of the Consultant's invoices for assigned Receivables (each, a "Factored Invoice") indicate a Factor as the Payee;
 - (ii) it does not issue any Factored Invoice indicating a person that is not a Factor as the Payee;
 - (iii) where any Factored Invoice is in respect of goods or services on which GST is chargeable by the Consultant, the Payee is indicated as the payee of the entire amount (including GST) of such Factored Invoice, unless the Employer agrees otherwise in writing; and
 - (iv) where payment of the Receivable to the Factor is subject to withholding tax under Singapore law, the Consultant must give prior written notice of this to the Employer and comply with all reasonable invoicing directions of the Employer in connection with such withholding;
- e. the Consultant acknowledges and agrees that:
- (i) the Employer shall not be required to verify whether:
 - (A) payment of any Factored Invoice to the Payee is in accordance with a valid factoring arrangement; or
 - (B) the Consultant has complied with Clause 6(8)(d);
 - (ii) payment made by the Employer to the Payee in respect of any Factored Invoice shall constitute a full discharge of the Employer's payment obligations to the Consultant in respect of such Factored Invoice;
 - (iii) where a Factored Invoice includes GST, payment made by the Employer to the Payee in respect of such GST shall constitute a full discharge of the Employer's payment obligations to the Consultant in respect of such GST;
 - (iv) if the Consultant issues a Factored Invoice which indicates a Payee that is not a Factor, the Employer shall have the right to reject such invoice and require the Consultant to reissue such invoice indicating either the Consultant or a Factor as the Payee; and
 - (v) in the event withholding taxes are imposed by the tax authorities on any payment made pursuant to a Factored Invoice and such withholding taxes have not already been withheld by the Employer by way of deduction without any obligation to gross

up, the Consultant must indemnify and hold the Employer harmless from and against all such withholding taxes and any other Losses incurred or suffered by the Employer arising in connection with such withholding tax;

- f. the Consultant must ensure that all the Consultant's invoices that are not factored do not indicate a Factor as the Payee. If the Consultant indicates the Factor as the Payee in any invoice that is not factored, payment made by the Employer to the Payee in respect of such invoice shall constitute a full discharge of the Employer's payment obligations to the Consultant in respect of such invoice; and
- g. the Employer shall have the right at any time (whether before or after receiving a Factored Invoice) to withdraw its consent to any factoring arrangement by giving notice to the Consultant and the Factor, and upon such withdrawal of consent:
 - (i) the Employer shall be entitled to pay all Receivables to the Consultant without being liable to the Consultant or the Factor for any Losses; and
 - (ii) the Consultant shall reissue any Factored Invoice if required by the Employer.

For the purposes of this Clause 6(8), unless the context otherwise requires —

“Factor” means any person:

- (i) listed in the “List of Factoring Companies” at the Vendors@Gov website; and
- (ii) with an approved vendor record in the Vendors@Gov system or other electronic invoicing system maintained by the Employer.

“Losses” means all liabilities, losses, damages, actions, claims, demands, costs (including legal costs on a full indemnity basis and experts' and consultants' fees), settlement sums and sums paid in satisfaction of a court, arbitral or expert award.

“Payee” in relation to a Receivable, means the person specified in the Consultant's invoice to the Employer as the payee of such Receivable.

“Receivables” means the amounts payable by the Employer to the Consultant under the Agreement, subject to the Employer's rights against the Consultant under the Agreement, at law or in equity, including the Employer's rights of deduction and set-off.

7 ADJUSTMENT OF FEE

7.1 Alteration or Modification Prior to Approval of Design

- (1) The Employer may require the Consultant to make any necessary alterations or modifications to any preliminary design. If alterations or modifications are required, the Consultant shall re-submit for approval the revised design and project programme at no additional fee.

7.2 Alteration or Modification to Approved Design

- (1) In the event of the Employer instructing and requiring alterations or modifications to be effected to completed details and drawings of any approved design in the course of preparation (whether such alterations or modifications are to the whole or in part), and such alterations or modifications require additional services to be performed by the Consultant, then the fee for additional services thereby entailed shall be paid by the Employer to the Consultant and the completion date of this Agreement shall be accordingly extended by a period as agreed upon by the parties hereto.
- (2) The fee for additional services shall be reimbursed to the Consultant in accordance with the rates set forth in the Appendix. Where it is agreed that additional time incurred shall be the basis in valuing additional effort, the Consultant shall submit time sheets to the Employer to substantiate the additional time spent on such additional services for which the rates set forth in the Appendix shall apply. For the avoidance of doubt, this provision shall not apply if the additional services arise directly or indirectly from the Consultant's acts, errors or omissions, and/or the acts, errors or omissions of the Consultant's servants, agents or employees.
- (3) Similarly, if the alterations or modifications result in reduction of the Services to be performed by the Consultant, then the fee for the reduced Services thereby entailed shall be reduced and computed in accordance with the rates set forth in the Appendix. The Consultant shall not be entitled to any compensation or damages by reason of any such reduction of the Services.

7.3 Additional Services

- (1) In the event the Employer instructs the Consultant in writing to provide services in addition to the Services, the fee payable by the Employer to the Consultant for such additional services shall be at the rates set forth in the Appendix. Where it is agreed that additional time incurred shall be the basis in valuing additional effort, the Consultant shall submit time sheets to the Employer to substantiate the additional time spent on such additional services for which the rates set forth in the Appendix shall apply. For the avoidance of doubt, this provision shall not apply if the additional services arise directly or indirectly from the Consultant's acts, errors or omissions, and/or the acts, errors or omissions of the Consultant's servants, agents or employees.

8 ASSIGNMENT AND SUB-CONTRACT

8.1 Assignment

- (1) The Consultant shall not assign or transfer the benefits and obligations of this Agreement or part thereof without the prior consent in writing of the Employer. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.2 Sub-contract

- (1) The Consultant shall not appoint any sub-consultants to perform the Services without the prior written consent of the Employer. The appointment of the sub-consultants shall not relieve the Consultant of any of the obligations under the Agreement.

9 TERMINATION

- (1) Either party may terminate this Agreement by giving the other party thirty (30) days' written notice of termination in the event of failure on the part of the other party to comply with the Terms and Conditions of this Agreement. Such termination shall not prejudice the right of the party terminating this Agreement to claim any damages arising from the breach of this Agreement.
- (2) Notwithstanding anything in this Agreement, the Employer may at its discretion and for whatever reason elect to terminate this Agreement at any time by giving the Consultant such number of days of prior written notice as specified in the Appendix. No compensation or damages shall be paid to the Consultant should the Employer decide to so terminate this Agreement, other than in accordance with Clauses 6(6) and 9(3).
- (3) In the event of the Agreement being terminated in accordance with Clauses 9(1) or 9(2), the Consultant shall be paid in accordance with Clause 6(6).
- (4) Upon receipt of any such notice of termination in accordance with Clauses 9(1) or 9(2), the Consultant shall devote to completing as far as possible the items of Services already commenced prior to the receipt of the notice of termination. No expenses other than those which are necessary for the completion of such items of Services shall be incurred without the Employer's written approval.
- (5) In the event of termination of the Agreement in accordance with this clause, all documents, materials and technical data prepared by the Consultant pursuant to and for use under this Agreement shall be promptly handed over to the Employer. The Consultant shall not be entitled to any further payment in respect of such documents, materials and technical data other than the sum payable in accordance with Clause 9(3).
- (6) Neither party shall be liable for any failure to perform its obligations under the Agreement if the failure results from events which are beyond the reasonable control of either party, provided always that whenever possible the affected party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For the purposes of the Agreement, such events shall

include acts of God, civil or military authority, civil disturbances, wars, strikes, fires or other catastrophes.

10 SETTLEMENT OF DISPUTES

10.1 Reference to Mediation, Arbitration or Litigation

- (1) Subject to Clause 10.2, any dispute or difference between the parties arising out of or relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved either by reference to arbitration or by court proceedings as elected by the Employer in accordance with Clause 10.3.

10.2 Mediation

- (1) The parties agree that before referring any dispute or difference to arbitration or commencing court proceedings in respect of any dispute or difference, they shall consider resolving the dispute or difference through formal mediation. If both parties agree to attempt resolving the dispute through mediation, the parties agree to do so at the Singapore Mediation Centre in accordance with its prevailing prescribed form, rules and procedures.
- (2) For avoidance of doubt, the provision herein shall not amount to any legal obligation on the part of either party to attempt mediation or the extent to which they shall do so, as a means of resolving their dispute or difference.

10.3 Arbitration or Litigation

- (1) The Employer may make the election on whether to proceed with arbitration or litigation in the courts on its own accord by written notice to the Consultant or shall make the election within thirty (30) days of the receipt of the Consultant's written notice to make such an election. The Consultant's written notice shall:-
 - a. state the specific dispute or difference to be resolved and the nature of such dispute or difference; and
 - b. include a request that the Employer makes an election whether the dispute or difference as stated shall be resolved by reference to arbitration or by court proceedings.
- (2) Should the Employer fail to make the election within thirty (30) days of the receipt of the written notice by the Consultant, the dispute or difference shall be resolved by litigation before a Singapore court of competent jurisdiction.
- (3) In the event that the Employer elects to refer the matter to arbitration, the Employer may elect to refer to arbitration all or any or any part of the dispute or difference as stated by the Consultant in the Consultant's written notice. The dispute or difference shall be resolved by arbitration in Singapore in the English language in accordance with the Arbitration Rules of the Singapore

International Arbitration Centre (“SIAC”) for the time being in force which rules are deemed to be incorporated by reference into this clause. The seat of arbitration shall be Singapore.

- (4) The commencement of any arbitration proceedings shall in no way affect the continual performance of the obligation of the Consultant under this Agreement.
- (5) The arbitral tribunal shall consist of one (1) arbitrator to be agreed upon between the parties. Either party may propose to the other the name or names of one or more persons, one of whom would serve as the arbitrator.
- (6) If no agreement is reached within thirty (30) days after receipt by one party of such a proposal from the other, the arbitrator shall be appointed by the Chairman of the SIAC acting in accordance with the SIAC Rules. Any reference to arbitration under this clause shall be a submission to arbitration within the meaning of the Arbitration Act for the time being in force in Singapore. This arbitration agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.
- (7) The application of Part 2 of the International Arbitration Act 1994, and the Model Law referred thereto, to this Agreement is hereby excluded.

11 GOVERNING LAW & NOTICES

11.1 Law

- (1) This Agreement shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 2001 to enforce any of its terms.

11.2 Notices

- (1) All notices under this Agreement shall be given in writing and shall be deemed to have been given if delivered or sent by personal delivery to the designated representative of each of the Parties, or by registered post addressed to the party at such address as the party in question shall from time to time designate by written notice to the other party and until such notice shall be given, the addresses of the parties shall be as specified in the Appendix.
- (2) For the avoidance of doubt, any communication under the Agreement via electronic mail shall be treated as verbal communication. The party issuing such communication shall, within 7 days from the date of the electronic mail confirm the contents of such communication in writing in accordance with Clause 11.2(1).

12 CONFLICT OF INTEREST

- (1) The Consultant and/or any of the Consultant's associated consultants/firms/partners shall be disqualified, except as the Employer may otherwise agree, from further provision of goods or services in any other capacity to the Employer, where such provision of goods or services shall place or is likely to place the Consultant in a position of conflict of interest with the obligations of fidelity to the Employer under this Agreement. This shall include bidding for any contract for provision of goods or services to the Employer in association with other contractors, architects, consulting engineers, manufacturers or suppliers relating to the Project.

13 COMPLIANCE WITH STATUTORY REQUIREMENTS

- (1) The Consultant shall ensure that the Services to be performed under this Agreement are performed in full compliance with all relevant legislation (e.g. the Professional Engineers Act 1991, the Architects Act 1991) and all subsidiary legislation made thereunder.

14 COMPLIANCE WITH PROGRESSIVE WAGE MARK REQUIREMENTS

- (1) Subject to Clauses 14(2) and 14(3), throughout the duration of the Agreement, a Consultant who is PW Mark-Eligible must:
 - (a) maintain a valid Progressive Wage Mark or Progressive Wage Mark Plus issued by the relevant authority (individually and collectively, "PW Mark");
 - (b) ensure that each sub-consultant who is or becomes PW Mark-Eligible shall obtain and maintain a valid PW Mark throughout the duration of the Agreement;
 - (c) notify the Employer of any change to the PW Mark accreditation status of the Consultant or any of the Consultant's sub-consultants within one month after the change; and
 - (d) replace any sub-consultant which, at any time during the period of the Agreement is PW Mark-Eligible but fails to maintain a valid PW Mark, with another sub-consultant approved in writing by the Employer within one month after the Consultant being notified of such failure.

The Consultant shall comply with Clauses 14(1)(b) to (d) in respect of any replacement sub-consultant.

- (2) If at the time of issuance of the Letter of Acceptance, the Consultant who is PW Mark-Eligible has neither obtained nor applied for the PW Mark, the Employer shall have the right to exempt the Consultant from compliance with Clause 14(1)(a) for such period of time as determined by the Employer.

- (3) If at the time of issuance of the Letter of Acceptance, the Consultant who is PW Mark-Eligible has applied for but has yet to successfully obtain the PW Mark, the Consultant must:
- (a) be exempted from compliance with Clause 14(1)(a) during the period where the initial application for the PW Mark is being processed by the relevant authority. The Employer may extend the period of exemption by one or more consecutive periods as determined by the Employer; and
 - (b) notify the Employer of the outcome of the Consultant's application(s) for the PW Mark within one month after the date of receipt of the outcome of the application, and provide the Employer with the e-Certificate as proof of the successful application (if any).
- (4) If a Consultant who is not initially PW Mark-Eligible becomes PW Mark-Eligible at any point in time during the period of the Agreement, the Consultant must comply with all the following:
- (a) notify the Employer on the Consultant's eligibility for the PW Mark within one month after the first day of employment of the relevant Local Resident Worker(s) covered by the Sectoral Progressive Wages and/or Occupational Progressive Wages;
 - (b) apply for a PW Mark by the end of the third month of employment of the relevant Local Resident Worker(s) referred to in Clause 14(4)(a);
 - (c) provide the Employer with proof of the Consultant's application for a PW Mark within one month after the date of submission of the application;
 - (d) notify the Employer of the outcome of the Consultant's application for a PW Mark within one month after the date of receipt of the outcome of the application, and provide the Employer with the e-Certificate as proof of the successful application (if any); and
 - (e) maintain a valid PW Mark for the remaining duration of the Agreement.
- (5) A Consultant who is not PW Mark-Eligible shall comply with all the following:
- (a) ensure that each sub-consultant who is or becomes PW Mark-Eligible shall obtain and maintain a valid PW Mark throughout the duration of the Agreement;
 - (b) notify the Employer of any change to any sub-consultant's PW Mark accreditation status within one month after the change; and
 - (c) replace any sub-consultant which, at any time during the period of the Agreement is PW Mark-Eligible but fails to maintain a valid PW Mark,

with another sub-consultant approved in writing by the Employer within one month after the Consultant being notified of such failure.

The Consultant shall comply with Clauses 14(5)(a) to (c) in respect of any replacement sub-consultant.

- (6) The Employer shall have the right to terminate the Agreement by giving two months' prior written notice to the Consultant if the Consultant fails to comply with any of the provisions in Clauses 14(1), 14(3)(b), 14(4) or 14(5). Such termination shall not prejudice the right of the Employer to claim any damages arising from the breach of the Agreement. Subject to Clause 14(7), no compensation or damages shall be paid to the Consultant should the Employer decide to so terminate this Agreement.
- (7) Clauses 9(3), 9(4) and 9(5) shall apply *mutatis mutandis* (with the necessary changes) in the event of termination of the Agreement in accordance with Clause 14(6).
- (8) For the purposes of this Clause 14, unless the context otherwise requires —

“PW Mark-Eligible” in relation to an employer, means an employer who is eligible to apply for a Progressive Wage Mark or Progressive Wage Mark Plus as the employer employs at least a Local Resident Worker covered by the prevailing Sectoral Progressive Wages or Occupational Progressive Wages.

“Local Resident Worker” means an employee who is a Singapore Citizen or Permanent Resident.

“Sectoral Progressive Wages” mean the progressive wage structure implemented for specified sectors under the Progressive Wage Model.

“Occupational Progressive Wages” mean the progressive wage structure implemented for specified occupations under the Progressive Wage Model.

15 GOODS AND SERVICES TAX (GST)

- (1) The Consultant shall declare whether the Consultant is or will be registered for GST under the GST Act and, if and when available, furnish to the Employer a copy of the Consultant's GST registration certificate, or other documentary proof of GST registration issued by the Inland Revenue Authority of Singapore (“IRAS”). The Consultant shall inform the Employer immediately of any change in the Consultant's GST registration status.
- (2) The Consultant shall be deemed not to have included in the Consultant's tender, GST chargeable under the GST Act for the supply of goods, services or works required under the Agreement.

- (3) The Employer shall pay the Consultant the GST charged on the goods, services or works supplied under the Agreement if the Consultant is registered for GST under the GST Act.
- (4) Regardless of the currencies in which the Agreement is awarded, GST shall be computed in accordance with the requirements of IRAS and shall be paid by the Employer in Singapore Dollars.

16 WITHHOLDING TAX

- (1) The Employer shall deduct from payments due to the Consultant the amount of withholding tax at such amount or percentage as may be required by IRAS. This clause is only applicable if the Consultant is not a resident in Singapore as defined in the Income Tax Act 1947.

17 PROVISIONAL SUM

- (1) Where the Consultant is required by the Employer to execute or provide a measure described as a Provisional Sum Item in relation to the Project, the Consultant shall be reimbursed for the actual cost of such Provisional Sum Item, provided that (i) such costs are no higher than fair market rates for the Provisional Sum Item, and (ii) such costs did not, directly or indirectly, arise out of or in connection with any negligence, breach of contract, unlawful or wrongful action or omission, fraud, bad faith, wilful misconduct or breach of any duty of the Consultant, any of the Consultant's sub-consultants or sub-contractors, or any of their respective directors, officers, employees or agents.

APPENDIX

	<u>Clause</u>	
Scope of Services	1.1(1)	Refer to Annex A
Stages of Agreement	1.1(2)	Refer to Annex A
Defects Liability Period	1.3(8)	
Project	1.3(14)	
Confidential Information	2.3(1)	All information that the Consultant has obtained, to which the Consultant has had access, owing to his position as a Consultant under the Agreement, but does not include information that is: (a) or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of the Consultant or any Authorised Recipient; (b) lawfully in the possession of the Consultant or already known to the Consultant on a non-confidential basis prior to the Consultant receiving or obtaining such information as a result of entering into the Agreement, as evidenced by written records; or (c) independently developed by the Consultant.
Minimum professional indemnity insurance	3.2(3)*	
Duration to maintain required professional indemnity insurance after the duration of the Services	3.2(3)*	
Liability quantum	3.2(4)	
Notice Period	4.2(3)	

Remuneration of the Consultant	5(1)	Refer to Consultant's Tender Proposals / Fixed Fee of % of the Final Project Construction Cost *
Additional Expenses or Costs	5(2)	Refer to Annex B
Remuneration for Project Prolongation arising from a Pandemic Outbreak	5(4)	Refer to Annex B
Remuneration for Project Prolongation due to Delay in Works (3 months if none stated)	5(5)	
Payments to the Consultant	6(1)	Refer to payment schedule in Annex C
Payments Due (21 days if none stated)	6(2)	
Payments Upon Termination or Discontinuance	6(6), 6(7)	Refer to payment schedule in Annex C
Adjustment of Fee for Alteration or Modification to Approved Design	7.2(2), 7.2(3)	Refer to Consultant's Proposals / Annex D *
Adjustment of Fee for Additional Services	7.3(1)	Refer to Annex D / Rates to be agreed between Employer and Consultant *
Notice Period	9(2)	
Payment Upon Termination	9(3)	Refer to payment schedule in Annex C
Notices	11.2(1)	Employer's Address: - Consultant's Address: -
Provisional Sum	17(1)	

* Delete whichever is not applicable