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|  | |
| **Cambodia Water Portfolio** | |
| **Phnom Penh** | **Cambodia** |
|  | |
| **Contract No. PRO-0056-KHM-WWS-0001** | |
|  | |
| **Non Revenue Water & Drinking Water Quality Assessment of Water Treatment Network in Cambodia** | |
|  | |
| **Contract Volume 1 -  Agreement and Contract Conditions** | |
|  | |
| **Between** | |
| **InfraCo Cambodia Water Pte Ltd (“ICWP”)** | |
| **and** | |
| **[Consultant Name]** | |
|  | |
| **[Insert Date]** | |

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|  | |  |

Agreement

**Date:** **[Insert Date]**

|  |  |
| --- | --- |
| **Parties:** | |
| (1) | InfraCo Cambodia Water Pte Ltd (“ICWP”), (the “**Client**”), a company incorporated under the laws of Singapore, whose registered office is situated at: |
|  | 8 Cross Street (Manulife Tower), #23-04/05, Singapore 048424; |
|  | and |
| (2) | [Consultant Name], (the “**Consultant**”) a limited private company incorporated under the laws of [Country], whose registered office is situated at: |
|  | [insert address]. |

**Recitals:**

1. The Client desires that certain Services, as described in Appendix 1 [*Scope of Services*] should be performed by the Consultant, and has accepted a proposal by the Consultant for the performance of such Services, pursuant to the terms stipulated in the Contract.
2. The Consultant has represented and warranted to the Client that it has the necessary skills, expertise, experience, diligence and qualifications to duly perform and complete the Services and has agreed to the performance of the Services upon and subject to the terms and conditions of the Contract.

**Articles:**

**Article 1 Definitions**

In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions.

**Article 2 The Contract**

The following documents shall constitute the Contract between the Client and the Consultant, and each shall be read and construed as an integral part of the Contract:

1. the Agreement;
2. the Particular Conditions;
3. the General Conditions; and
4. the Appendices; namely:
5. Appendix 1: Scope of Services;
6. Appendix 2: Price and Payment;
7. Appendix 3: Time Schedule, Deliverables and Key Personnel;
8. Appendix 4: Personnel, Equipment, Facilities and Services of Others Provided by the Client;
9. Appendix 5: Standards of Conduct, Anti-bribery and Fraud.

**Article 3 Project and Scope of Work**

Details of the project and the scope of work requirements for the Services are described in Appendix 1 [*Scope of Services*].

**Article 4 Consultant’s Obligations**

In consideration of the payments to be made by the Client to the Consultant under this Contract, the Consultant hereby agrees to perform the Services in conformity with the provisions of the Contract.

**Article 5 Contract Price and Payment**

1. The Contract Price shall be as set out in Appendix 2 [*Price and Payment*].
2. The Consultant shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price.
3. The Contract Price is sufficient to cover all of the Consultant’s costs of providing the Services under the Contract and all things necessary for and ancillary to the proper planning, execution and completion of the Services and the remedying of any defects with respect to the Services.
4. The Contract Price shall be the total lump sum amount(s) in the currency(ies) stated in Appendix 2 [*Price and Payment*] and shall not be subject to any alteration, escalation or fluctuation except in the event of a Variation or as otherwise expressly provided in or referred to in the Contract.
5. The Client shall have no liability for increases in the Consultant’s costs of fulfilling its obligations under the Contract of any nature whatsoever, including, without limitation, where caused by currency fluctuations, changes in Taxes (other than as provided in Sub-Clause 5.8 [*Taxes and Charges*], changes in market-sector conditions, inflation, reasons which ought to have been foreseen or are reasonably foreseeable or otherwise, except as specifically provided for or referred to in the Contract.
6. The Client hereby agrees to pay the Consultant the Contract Price in consideration of the due performance and completion by the Consultant of its obligations under the Contract.

**Article 6 Effective Date**

The Contract shall enter into full force and effect on the date of this Agreement, as entered above.

**In Witness Whereof** the Parties hereto have caused this Agreement to be executed on the date stated above in accordance with their respective laws:

|  |  |  |  |
| --- | --- | --- | --- |
| For and on behalf of the **Client** (**InfraCo Cambodia Water Pte Ltd (“ICWP”)**) | | For and on behalf of the **Consultant** (**[Consultant Name]**) | |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
|  |  |  |  |
| In the presence of: | | In the presence of: | |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |

Particular Conditions

**References from Clauses in the General Conditions**

|  |  |  |  |
| --- | --- | --- | --- |
| **1.1** | **Definitions** |  |  |
| (h) | Commencement Date | : | [Insert Day, Month, Year] |
| (n) | Country | : | Cambodia |
| (m) | Contract Price | : | As specified in Appendix 2 [*Price and Payment*] |
| (x) | Project | : | Cambodia Water Portfolio |
| (y) | Services | : | Non Revenue Water & Drinking Water Quality Assessment of Water Treatment Network in Cambodia |
| (bb) | Time for Completion | : | As specified in Appendix 3 [*Time Schedule, Deliverables and Key Personnel*] |
|  |  |  |  |
| **1.4** | **Communications** |  |  |
|  | Language for Communications | : | English |
|  |  |  |  |
| **1.5** | **Law and Language** |  |  |
|  | Ruling Language | : | English |
|  | Governing Law | : | Singapore |
|  |  |  |  |
| **1.9** | **Notices** |  |  |
|  | **Client:** |  |  |
|  | Address | : | Manulife Tower, #23-04/05, 8 Cross Street, Singapore 048424 |
|  | E-mail | : | procurement@infracoasia.com |
|  | Telephone number | : | +65 6321 6666 |
|  |  |  |  |
|  | **Consultant:** |  |  |
|  | Address | : | [Insert details] |
|  | E-mail | : | [Insert details] |
|  | Telephone number | : | [Insert details] |
|  |  |  |  |
| **2.10** | **Client’s Representative** |  |  |
|  | Name | : | Luke Ho Zhi Qiang |
|  | E-mail | : | luke.ho@infracoasia.com |
|  | Telephone | : | +65 8511 9872 |
|  |  |  |  |
| **3.2** | **Consultant’s Representatives** |  |  |
|  | Name | : | [Insert details] |
|  | E-mail | : | [Insert details] |
|  | Telephone | : | [Insert details] |
|  |  |  |  |
| **3.3** | **Duty of Care and Exercise of Authority** |  |  |
| (b) | Contract between the Client and any third party |  | Not applicable |
| **3.9** | **Performance Security** |  |  |
|  | Performance Security amount | : | Not applicable |
| **5.3** | **Invoicing and Time for Payment** |  |  |
| (c) | Agreed Compensation rate for overdue payments | : | In the event that the Client has not disputed payment within 45 days of receipt of the invoice, and payment is not made within the time specified in the General Conditions Sub-Clause 5.3 [*Invoicing and Time for Payment*], the Consultant shall be entitled to payment of the unpaid and undisputed amount with overdue interest that shall accrue at the annual rate of 1%. |
| **6.2** | **Duration of Liability** |  |  |
|  | Liability Period | : | Six (6) years from the date of completion of the Services or the date of termination or the end of the term of the Contract, whichever is the later. |
| **6.3** | **Limit of Compensation** |  |  |
| (a) | Limit of Compensation | : | 200 % of total agreed amount to be paid to the Consultant pursuant to Appendix 2 [*Price and Payment*], as amended pursuant to General Conditions Sub-Clause 4.3 [*Variations*]. |
| **7** | **Insurance** |  | **Minimum Level of Cover:** |
|  | Professional Indemnity | : | 100 % of total agreed amount to be paid to the Consultant pursuant to Appendix 2 [*Price and Payment*], as amended pursuant to General Conditions Sub-Clause 4.3 [*Variations*] in the aggregate. |
|  | Public/Third Party Liability | : | US$ 1,000,000 |
|  | Motor Vehicle Insurance | : | In accordance with statutory requirements and regulations in Cambodia |
|  | Workers Compensation | : | In accordance with statutory requirements and regulations in Cambodia. |
|  | Other (please specify) | : |  |
|  |  |  |  |
| **8.2** | **Mediation** |  |  |
| (a) | Nominating Centre for Mediation | : | Mediation in Singapore submitted to the Singapore mediation center in accordance with the mediation procedure and rules for the time being in force. |
|  |  |  |  |
| **8.3** | **Arbitration** |  |  |
| (b) | Rules of Arbitration | : | Arbitration in Singapore administered by the Singapore International Arbitration Centre in accordance with the Singapore International Arbitration Centre Rules for the time being in force. |
| (c) | Location and seat of arbitration |  | The location and seat of the arbitration shall be Singapore. |
|  |  |  |  |

General Conditions

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**General Conditions**

# General Provisions

## Definitions

1. “**Additional Services**” means additional services duly performed by the Consultant pursuant to Sub-Clause 4.3 [*Variations*] and Appendix 2 [*Price and Payment*];
2. “**Agreed Compensation**” means the agreed compensation defined in the Particular Conditions for amounts which are undisputed, due and remain unpaid pursuant to Sub-Clause 5.3 [*Invoicing and Time for Payment*].
3. “**Agreement**” means the agreement to which these General Conditions are attached and forming part of the Contract.
4. “**Anti-Bribery Laws**”mean the UK Bribery Act 2010, the USA Foreign Corrupt Practices Act of 1977, the Australian Criminal Code Act 1995 (Cth), and all Applicable Laws related to anti-bribery, anti-corruption, anti-money laundering or financing of terrorism (including without limitation to the criminal code and the law on anti-corruption) and any other relevant anti-bribery laws, anti-corruption laws, anti-money laundering or financing of terrorism, conflict of interest laws, and other similar laws, rules and regulations.
5. “**Applicable Law(s)**” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules and regulations of any court, arbitrator or governmental agency, authority or institution and the rules, regulations, orders, interpretations, permits, licenses having jurisdiction over or application from time-to-time to any of the Parties, the provision and performance of the Services (including those applicable to the Country, the laws of the countries where the Services are performed, Anti-Bribery Laws, and to the ownership and use of intellectual property, patents and copyrights), and to the performance of this Contract.
6. “**Client**” means the Party named in the Agreement, who engages the Consultant, and legal successors to the Client and, where notified to the Consultant in writing, any assignees of the Client.
7. “**Client Material**”means, other than the Contract Material, all materials and Intellectual Property which are proprietary to the Client or subsequently developed by or vested in the Client.
8. “**Commencement Date**” means the date stated in the Particular Conditions.
9. “**Consultant**” means the professional services firm named in the Agreement, which is engaged by the Client to perform the Services, and legal successors to the Consultant and any assignees specifically consented to by the Client in accordance with this Agreement.
10. “**Consultant’s Equipment**” means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Services.
11. “**Contract**” means together the Agreement, these General Conditions, the Particular Conditions, Appendix 1 [*Scope of Services*], Appendix 2 [*Price and Payment*], Appendix 3 [*Time Schedule, Deliverables and Key Personnel*], Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*], and Appendix 5 [*Standards of Conduct, Anti-bribery and Fraud*], and any letters of offer and acceptance if so specified in the Particular Conditions.
12. “**Contract Material**” means all material brought or required to be brought into existence, by or on behalf of the Consultant, as part of, or for the purpose of performing the Services, including all documents, equipment, information and data stored by any means. For avoidance of doubt, Contract Material shall: (i) include all material developed, used or provided to the Client by the Consultant in connection with the Contract or in the provision, delivery or performance of the Services, and (ii) exclude any Client Material and PIDG Material.
13. “**Contract Price**” means the total amounts in the nominated currencies stated in Appendix 2 [*Price and Payment*], subject to such adjustments as may be made pursuant to the General Conditions.
14. “**Country**” means the country in which the Project is located.
15. “**day**” means a calendar day.
16. “**Exceptional Services**” means necessary additional services duly performed by the Consultant pursuant to Sub-Clause 4.8 [*Exceptional Services*].
17. “**Force Majeure**” has the meaning defined in Sub-Clause 4.5 [*Force Majeure*].
18. "**Gross Negligence**" means wantonness or recklessness, or actions or inactions taken or omitted with conscious indifference to or a disregard of, harmful, avoidable or foreseeable consequences.
19. “**InfraCo Asia**” means InfraCo Asia Development Pte. Ltd., InfraCo Asia Investments Pte. Ltd. and each of their respective subsidiaries.
20. “**Intellectual Property**” means all rights (whether registered or unregistered and in whatever form or medium) in copyright, patents, trademarks, designs, trade secrets, rights protecting goodwill and reputation, service marks, rights or protections equivalent or similar to copyright, and all other rights of intellectual property and all corresponding proprietary rights, benefits, privileges, rights to sue, recover damages and obtain relief from infringements, misappropriation or violation of the foregoing.
21. “**Normal Services**” means the services set out as such in Appendix 1 [*Scope of Services*] and Appendix 2 [*Price and Payment*];
22. “**Party**” and “**Parties**” means the Client and the Consultant, and “**third party**” means any other person or entity as the context requires.
23. “**PIDG**” means the Private Infrastructure Development Group constituted in 2002 through the Private Infrastructure Development Group Trust with the aim of mobilising private sector investment to assist developing countries in providing infrastructure vital to boost their economic development and to combat poverty ([*www.pidg.org*](http://www.pidg.org)).
24. “**PIDG Material**” means, other than the Contract Material, all materials and Intellectual Property which are proprietary to the PIDG or its members, funders or trustees, or subsequently developed by or vested in them.
25. “**Project**” means the project named in the Particular Conditions in relation to which the Services are to be provided.
26. “**Services**” means the services defined in Appendix 1 [*Scope of Services*] to be performed by the Consultant in accordance with the Contract and shall include all Normal Services, Additional Services and, to the extent applicable, Exceptional Services.
27. “**Site**” means the places in the Country identified by the Client where the Services are to be performed or to where the Services relate, and any other places specified in the Contract as forming part of the Site.
28. "**Taxes**" means all forms of taxation, all present and future direct and indirect taxes, and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies, and any other form of taxes, imposts, duties, tariffs, charges or withholding imposed, levied, collected, withheld or assessed from time to time by any relevant authority or governmental instrumentality, and all interest, costs, charges and penalties attributable thereto whenever and wherever imposed, withheld, collected or assessed, and whether chargeable directly or indirectly against or deemed to be chargeable or attributable directly or indirectly, and "**Tax**" and “**Taxation**” shall be construed accordingly.
29. “**Time for Completion**” means the time period stated in the Particular Conditions, subject to such adjustments as may be made pursuant to the General Conditions.
30. “**Variation**” means a change to the scope of the Services which is instructed by the Client pursuant to Sub-Clause 4.3[*Variations*].
31. "**Wilful Misconduct**" means misconduct (whether an action or a failure to act) committed with knowledge, or which could reasonably be foreseen, that the act or failure to act would be more likely than not to bring about damage to the environment, property, personal or bodily injury, sickness, disease, death, or other loss or damage.
32. “**Works**” means the permanent works to be executed by others for the achievement of the Project.
33. “**written**” or “**in-writing**” means, hand-written, type-written, printed or electronically made, and resulting in a permanent and un-editable record.
34. “**year**” means 365 days.

## Interpretation

1. Words importing persons or parties shall include firms and organisations.
2. Words importing singular or one gender shall include plural or the other gender where the context requires.
3. Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing and signed by both Parties.
4. The marginal words and other headings in the Contract shall not be taken into consideration in the interpretation of these General Conditions.

## Priority of Documents

1. The documents forming the Contract are to be taken as mutually explanatory of one another.
2. If an inconsistency, ambiguity or discrepancy is found between any of the documents forming the Contract, the Client will issue any necessary instructions to the Consultant, and, unless expressly otherwise notified by the Client, the order of precedence of the documents shall be as follows:
3. the Agreement; then
4. the Particular Conditions; then
5. the Appendices, in the following order of precedence:

* Appendix 5 [*Standards of Conduct, Anti-bribery and Fraud*]; then
* Appendix 1 [Scope *of Services*]; then
* Appendix 2 [*Price and Payment*]; then
* Appendix 3 [*Time Schedule, Deliverables and Key Personnel*]; then
* Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*]; then

1. the General Conditions.

## Communications

Whenever provision is made for the giving or issue of any notice, instruction or other communication by any person, unless otherwise specified such communication shall be written in English and shall not be unreasonably withheld or delayed.

## Law and Language

The language of the Contract, the ruling language, and the law which is to govern the Contract shall be as stated in the Particular Conditions.

## Statutory Obligations

1. The Consultant shall be responsible for giving all necessary statutory notices, making all filings and paying all fees and other charges in respect of it entering into this Contract and performing the Services.
2. Each Party confirms to the other that:
3. it has the appropriate authority to enter into this Contract; and
4. its entry into, and the performance of its obligations under or in connection with this Contract will not involve a breach by it of any contractual, statutory, common law, regulatory or other obligation to which it is subject.

## Assignments and Sub-Contracts

1. The Consultant may not delegate, assign, transfer, sub-contract, charge or deal in any other way with the benefit of any interest or right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in the Contract or any obligation arising from it (including in respect of the benefit of any right conferred by or arising under the Contract or obligation arising from it) without the prior written consent of the Client.
2. The Consultant shall not initiate or terminate any delegation or sub-contract for performance of all or part of this Contract or the Services without the prior written consent of the Client, which consent shall not be unreasonably withheld. Any consent granted by the Client to delegate or sub-contract part or all of the Services, and any sub-contracting by the Consultant of any of the same, shall not relieve the Consultant from any obligation, duty or responsibility under the Contract.
3. The Client shall always be authorised to assign the Contract and assign or share the benefit of Intellectual Property and Contract Material to any of the Client’s affiliates or subsidiaries or to companies of the PIDG.

## Copyright and Intellectual Property

1. The Consultant acknowledges, confirms and agrees that all rights, title and interests in and to (including in and to any Intellectual Property): (i) the Client Material shall vest at all times in the Client and InfraCo Asia, and (ii) the PIDG Material shall vest at all times in the PIDG, its members, funders or trustees, as applicable.
2. The rights, title and interests of Intellectual Property in and to the Contract Material shall vest in the Consultant.
3. The Consultant represents, warrants and confirms that the Consultant has sufficient and adequate title and rights (including in and to any Intellectual Property) in and to all Contract Material and Intellectual Property that the Consultant develops, uses, provides or transfers to the Client and InfraCo Asia in connection with the Contract or in the provision, delivery or performance of the Services to:
4. allow the Consultant to develop, use, provide or transfer to the Client the Contract Material in accordance with all Applicable Laws; and
5. allow the Client and InfraCo Asia to enjoy the full use, benefit of and ability to transfer and assign the Contract Material.
6. The Consultant shall, at no cost to the Client, grant to each of: (1) the Client, (2) the Client's affiliates and subsidiaries, (3) InfraCo Asia and the companies of the PIDG, and (4) where notified to the Consultant in writing, to the assignees of the Client or InfraCo Asia:
7. an exclusive, perpetual, fully paid, royalty-free (and free of all other fees, expenses or costs), irrevocable, sub-licensable and transferable license in and to Contract Material; and
8. a non-exclusive, perpetual, fully-paid, royalty-free (and free of all other fees, expenses or costs), irrevocable, sub-licensable and transferable license in and to all Intellectual Property to the extent that the Client is able to use, enjoy, benefit from, transfer or assign the Contract Material in accordance with all Applicable Laws.
9. The Consultant irrevocably and unconditionally waives in favour of the Client and InfraCo Asia, and shall procure the waiver of all ownership rights, all moral rights and all rights of privacy, publicity and the like (if any) conferred upon the Consultant and all other persons who have rendered services or have been required to provide rights or licenses in connection with:
10. the provision of the Services or the performance of the Contract; and
11. all Applicable Laws.
12. The Consultant shall irrevocably and unconditionally indemnify the Client against all claims and in relation to all costs and expenses (including in relation to legal fees, costs and expenses) to the extent resulting from or in connection with any infringement or use of any title or rights in or to any Intellectual Property arising out of:
13. the development, use, provision or transfer of the Contract Material;
14. the provision of the Services or the performance of the Contract;
15. the usage, enjoyment, benefit from, transfer or assignment of the Contract Material by Client; or
16. any breach of this Sub-Clause 1.8 [*Copyright and Intellectual Property*] by the Consultant.
17. The Client shall irrevocably and unconditionally indemnify the Consultant against all claims and in relation to all costs and expenses resulting from or threatened in connection with any infringement or use of any title or rights in or to any Intellectual Property, or any other claim or right of whatever nature, arising out of the usage of the Client Material and PIDG Material by the Consultant for the Services.
18. The Consultant shall deliver into the Client’s possession copies of all applicable Contract Material in accordance with the delivery schedule of the Services. On, or as soon as practicable after completion of the Services, or the expiration or termination of the Contract (whichever is the earlier), subject to payment of the fees properly due to the Consultant in accordance with the terms of the Contract, the Consultant shall deliver into the Client’s possession copies of all Contract Material.
19. The Consultant acknowledges, confirms and agrees that the Client Material, the PIDG Material and the Contract Material shall be subject to the obligations of confidentiality set out in Sub-Clause 1.10 [*Confidentiality*].

## Notices

1. Notices to be served under the Contract shall be in non-editable written forms and will take effect from receipt at the addresses stated in the Particular Conditions. Delivery can be by hand or e-mail attachment against a written confirmation of receipt, or by registered letter, or by e‑mail subsequently confirmed by letter.
2. Copies of all notices under the Contract shall be made to each of the Client’s Representative and the Consultant’s Representative as identified in the Particular Conditions.
3. Any notice, instruction or correspondence given by the Client to the Consultant’s Representative shall be deemed to have been issued to and served on the Consultant for the purposes of the Contract.

## Confidentiality

1. The Consultant and its personnel shall (and the Consultant shall procure that any of its sub-consultants and sub-contractors shall) treat all information regarding or relating to the Project, the Services, the Contract or the Client’s business or operations as private and confidential. The Consultant and its personnel shall not (and the Consultant shall procure that any of its sub-consultants and sub-contractors shall not) disclose information regarding or relating to the Project, the Services, the Contract or the Client’s business or operations without the prior written consent of the Client. The Consultant shall ensure that its personnel, sub-consultants and sub-contractors shall comply with the foregoing requirements.
2. Where the Consultant has retained any materials or information to which privacy or confidentiality applies pursuant to paragraph (a), it shall ensure that all such materials and information are retained and stored by it securely and confidentially.

## Publication

The Consultant, either alone or jointly with others, may publish material or originate any media release or other public announcement relating to the Services only with the prior written approval of the Client. The Consultant shall procure that its employees and sub-consultants and sub-contractors shall also comply with the foregoing.

## Corruption and Fraud

1. In the course of the performance of obligations under the Contract and its conduct of the Services, the Consultant shall (and shall procure that its personnel, agents, sub-consultants and sub-contractors shall) abide and comply with the provisions of Appendix 5 [*Standards of Conduct, Anti-bribery and Fraud*].
2. The Consultant shall be responsible for the consequences of any contravention of any of the provisions of Appendix 5 [*Standards of Conduct, Anti-bribery and* Fraud] by the Consultant, the Consultant’s personnel, or the personnel of any of its sub-consultants or sub-contractors.

# The Client

## Information

In order not to delay the Consultant in the performance of the Services the Client will, at its cost and within a reasonable time, give to the Consultant all information reasonably requested by the Consultant which is necessary for the performance of the Services.

## Permits and Licenses

The Client will, if requested by the Consultant in writing, make reasonable endeavours to assist the Consultant in applying for permits, licenses or approvals which are required for the Services and which pertain to the Project.

## Decisions

On all matters properly referred to the Client by the Consultant in writing as requesting a decision, the Client will give its decision in writing within a reasonable time so as not to unduly or in bad faith delay the Services.

## Assistance

In the Country and in respect of the Consultant and its personnel, as the case may be, the Client shall make all reasonable endeavours within its power to assist in providing access to the Site whenever it is required for the Services.

## Supply of Client’s Personnel

1. If applicable, and in consultation with the Consultant, the Client will at its own cost arrange for the selection and provision of personnel in its employment to the Consultant in accordance with any such commitments described in Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*].
2. If the Client cannot supply Client’s personnel pursuant to commitments described in Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*], and it is agreed to be necessary for the satisfactory performance of the Services, the Consultant shall arrange for such supply pursuant to Sub-Clause 4.3 [*Variations*].

## Supply of Client’s Equipment and Facilities

If applicable, the Client will, at its cost, make available to the Consultant for the purpose of the Services the equipment and facilities described in Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*].

## Services of Others

If applicable, the Client will, at its cost, arrange for the provision of services by others as described in Appendix 4 [*Personnel, Equipment, Facilities and Services of Others Provided by the Client*], provided always that the Consultant shall co-operate with the providers of such services and not prevent or impede the provision of such services by others.

## Client’s Instructions

The Consultant shall comply with all reasonable instructions given by the Client in respect of the Services, including suspension of all or part of the Services.

## Approvals

No approval or consent or absence of comment by the Client or the Client’s representative shall affect the Consultant’s obligations.

## Client’s Representative

1. The Client will designate an individual to be its authorised representative for administration of the Contract. The Client’s representative will be as stated in the Particular Conditions, or as otherwise notified by the Client to the Consultant.
2. The Client will notify the Consultant of the delegated duties and authority of the Client’s Representative.

# The Consultant

## Scope of Services

1. The Consultant shall perform the Services properly and in accordance with the Contract, including as stated in Appendix 1 [*Scope of Services*].
2. The Consultant shall provide all related resources, supervision, labour and Consultant’s Equipment which may be required for the performance of the Services.
3. Should any part of the Services or the deliverables be faulty, incomplete or uncompliant with the Contract, the Consultant shall redo any part of the Services or deliverables until they are fully complete and compliant with the Contract.

## Consultant’s Representatives

1. The Consultant shall designate an individual to be its authorised representative for administration of the Contract. The Consultant’s representative shall be as stated in the Particular Conditions, or as otherwise notified by the Consultant to the Client.
2. The Consultant’s Representative must, at a minimum, be authorised to represent the Consultant to the Client in relation to all matters under the Contract. The Consultant shall otherwise notify the Client of the delegated duties and authority of the Consultant’s Representative.
3. If required by the Client, the Consultant shall, in addition, designate an individual to liaise with the Client’s representative in the Country.

## Duty of Care and Exercise of Authority

1. Without prejudice to anything else in the Contract or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), the Consultant shall exercise all of the due skill, care, efficiency, economy, prudence, attention, foresight and diligence in the performance of the Services and its obligations under the Contract:
2. that could reasonably be expected of a consultant skilled, qualified and experienced to perform and complete the Services;
3. with due regard to the standards and expectations commonly recognized by international bodies and as otherwise set out in this Contract (including with respect to Sub-Clause 1.12 [*Corruption and Fraud*]); and
4. such that the Services shall follow sound management practices, shall employ technologies and methodologies that are appropriate for the scope and scale of the Project and shall serve and be fit for the intended purposes having due regard to the assumptions that the Consultant can reasonably be expected to make in accordance with sound engineering practice and exercising the level of skill, care and attention required or expected of it under this Contract.
5. If so required and detailed in the Particular Conditions, where the Services include the exercise of powers or performance of duties authorised or required by the terms of a contract between the Client and any third party, the Consultant may:
6. have due regard to the third party contract provided that the details of such powers and duties are agreed in writing with the Client where they are not described in Appendix 1 [*Scope of Services*];
7. if authorised to certify, determine or exercise discretion to do so fairly between the Client and third party not as an arbitrator but as an independent professional exercising its judgement with reasonable skill, care and diligence; and
8. if so authorised vary the obligations of any third party, subject to obtaining the prior written approval of the Client to any variation which can have an important effect on costs or quality or time (except in any emergency when the Consultant shall inform the Client as soon as practicable).

## Health and Safety Responsibility

1. The Consultant shall be fully responsible for compliance with all health and safety regulations and standards with respect to the Services and with respect to the Consultant’s personnel, sub-consultants and sub-contractors.
2. The Consultant shall ensure implementation of appropriate health and safety standards and practices and elimination of hazards to personnel performing the Services.
3. The Consultant shall ensure that, when performing the Services, all of its personnel and the personnel of its sub-consultants and sub-contractors are provided with and are required to use at all times, personal protective equipment appropriate to the activities being undertaken.
4. The Consultant shall ensure that the activities of its personnel and the personnel of its sub-consultants and sub-contractors are covered by appropriate insurance policies pursuant to Clause 7 [*Insurance*].
5. The Consultant shall be responsible to report to the Client, within 24 hours of occurrence, any incident or accident resulting in personal injury or damage to any operations, premises, materials, assets, machinery, equipment or property relating to the performance of the Services.
6. The Consultant shall be responsible to provide to the Client with routine periodic health and safety performance statistical reports in relation to the Services, including information on total hours worked, preventive actions taken (e.g. health and safety training, safety inspections, job safety analyses, etc.), near misses, accidents, lost-time injuries (LTI), and first-aid cases, etc.

## Compliance with Applicable Laws

1. The Consultant shall ensure compliance with all Applicable Laws and with any regulation applicable to its activities while performing the Services, including all relevant labour and environmental protection regulations, and shall be responsible and liable for any contravention of any such Applicable Laws or regulations by the Consultant, the Consultant’s personnel or the personnel of any of its sub-consultants or sub-contractors.
2. The Consultant shall be responsible for the consequences of any contravention of any Applicable Laws or regulations by the Consultant, the Consultant’s personnel, or the personnel of any of its sub-consultants or sub-contractors and shall indemnify the Client against any claim raised by a relevant authority for the same to that proportion of liability which is attributable to the breach of the Consultant’s personnel, or the personnel of any of its sub-consultants or sub-contractors.

## Client’s Property

Notwithstanding any other disposition of the Contract, anything supplied by or paid for by the Client for the use of the Consultant shall be and remain the full property of the Client and shall be so marked by the Consultant.

## Supply of Personnel

The personnel who are proposed by the Consultant to provide the Services shall be subject to acceptance by the Client, acting reasonably with regard to the relevant qualifications and experience of such personnel. The Consultant shall not remove any key personnel from the Services without the Client’s prior written consent.

## Changes in Personnel

1. If it is necessary to replace any of the personnel provided by the Consultant, the Consultant shall first notify the Client in writing of the replacement and the reasons for the replacement, and arrange for replacement by a person of comparable competence and years and relevance of experience as soon as reasonably possible. The cost of such replacement shall be borne by the Consultant.
2. The Client may, acting reasonably, request the Consultant to replace any of the personnel provided by the Consultant for the Services, and in such case:
3. The Client’s request shall be in writing, stating the reasons for the required replacement.
4. The Client shall bear the cost of such replacement of the Consultant’s personnel unless misconduct or inability to perform satisfactorily with respect to the Services is the reason for the required replacement, in which case the cost of such replacement shall be borne by the Consultant.
5. Replacement of any of the Contractor’s personnel at the request of the Client shall not exempt the Consultant from its other obligations under the Contract or from any consequences arising from the misconduct or inability to perform satisfactorily of any of the Consultant’s personnel or the personnel of any of the Consultant’s sub-consultants or sub-contractors.

## Performance Security

If so required and stated in the Particular Conditions, the Consultant shall deliver to the Client within 14 days of the Commencement Date a performance security in a form and from a third party approved by the Client.

# Commencement, Completion, Variation and Termination

## Contract Effective

The Contract is effective from the date of execution of the Agreement by both Parties.

## Commencement and Completion

The Services shall be commenced on the Commencement Date, shall proceed in accordance with the Time Schedule in Appendix 3 [*Time Schedule, Deliverables and Key Personnel*], and shall be completed within the Time for Completion, subject to any Variation instructed by the Client pursuant to Sub-Clause 4.3[*Variations*].

## Variations

1. The scope of work and the price of the Services may be varied on application by either Party, but such variation to the scope of work and price will only be effective upon a corresponding Variation having been instructed by the Client in accordance with this Sub-Clause 4.3.
2. The Consultant shall not vary or alter any of the Services, except in accordance with a Variation instructed by the Client.
3. If requested by the Client in writing, the Consultant shall submit a proposal for varying the Services. In addition, the Consultant may at any time propose variations of the Services to the Client.
4. The Consultant’s submissions for varying the Services shall detail the related scope of work and the impacts on the Contract Price, programme and the Time for Completion of the Services.
5. Following the receipt of the Consultant's submission for varying the Services, the Client will, after due consultation with the Consultant, determine whether the variation to the Services will be carried out.
6. If the Client determines that the variation to the Services shall be carried out by the Consultant, the Client will issue a Variation instruction. The Variation instruction will describe the changes to the scope of work and any impact on the Contract Price or the Time for Completion of the Services.
7. If the Consultant and the Client are unable to agree on the Variation price, the Variation shall be carried out and the Client will pay the non-disputed portion of the Variation price.
8. In any case, where the Consultant is instructed to proceed with a Variation prior to the determination of the Variation price or the Time for Completion in respect thereof, the Consultant shall keep detailed written records of the cost of undertaking the Variation and of time expended thereon. Such records shall be open to and accessible for inspection by the Client at all reasonable times.

## Delays

1. If the Consultant considers that an impediment or delay to the Services are caused by the Client, or for reasons not within the Consultant’s reasonable control so as to increase the scope, cost or duration of the Services:
2. the Consultant shall inform the Client of the circumstances and probable effects;
3. the Consultant shall submit a written proposal for varying the Services pursuant to Sub-Clause 4.3 [*Variations*], including details of the increase in scope, costs or the Time for Completion that the Consultant considers to be directly attributable to the impediment or delay considered to be caused by the Client or the Client’s contractors.
4. The Client will respond in writing to the Consultant’s variation proposal pursuant to paragraph (a)(ii) above in accordance with Sub-Clause 4.3 [*Variations*].

## Force Majeure

1. Force Majeure shall mean any event occurring after the Commencement Date and beyond the reasonable contemplation and control of the affected Party, presenting an unpredictable and insuperable character and which prevents the affected Party from materially performing its obligations notwithstanding the exercise of reasonable diligence and care on the part of the affected Party. Force Majeure shall include the following events: earthquake, tidal wave, act of war, acts of terrorism, civil war, uprisings, riots, orders, or limitations or prohibitions promulgated by governmental authorities or by any public authority, provided that: (i) none of the above-mentioned situations are created by the default, non-performance, negligence or the fault of the Party that relies on this Force Majeure clause, (ii) the Party relying on this Force Majeure clause has taken all reasonable precautions, due care and alternative measures in order to prevent and avoid the effect of its ability to perform its particular obligations under the Contract and to mitigate the consequences thereof, and (iii) any strikes, works-to-rule or go-slows initiated by or in any way involving the directors, officers, employees, agents, sub-consultants, sub-contractors or representatives of the Parties shall not be considered Force Majeure.
2. If Force Majeure circumstances arise for which neither the Client nor the Consultant is responsible and which make it impossible for the Consultant to perform in whole or in part the Services in accordance with the Contract the Consultant shall promptly dispatch a written notice to the Client setting out a reasonably detailed account of the Force Majeure and the reasons why it is impossible for the Consultant to perform in whole or in part the Services in accordance with the Contract. In these circumstances:
3. to the extent that certain Services are required to be suspended, the time for their completion will be extended until the circumstances requiring the Services to be suspended no longer apply plus a reasonable period not exceeding fifteen (15) days for resumption of them;
4. to the extent that the speed of performing certain Services are required to be reduced, the time for their completion will be extended as has been made necessary by the circumstances; and
5. there shall be no change to the Contract Price.

## Abandonment, Suspension or Termination

1. The Client may suspend all or part of the Services or terminate the Contract for any reason whatsoever by giving at least thirty (30) days' notice to the Consultant, and the Consultant shall immediately make arrangements to stop the Services upon the date of the notice and minimise expenditure to that strictly necessary for implementing the suspension or termination.
2. Without limiting the right of the Client to terminate the contract under any other provision of the Contract, the Client may, where the Consultant is not performing or delivering the Services or discharging its obligations, inform the Consultant by written notice stating the grounds for the Client’s reasonable determination of the Consultant’s failure to discharge its obligations or to perform or deliver the Service, as the case may be. If a satisfactory response is not received and a satisfactory action is not undertaken by the Consultant to remedy the failure within fourteen (14) days, the Client may, by a further twenty (20) days’ written notice, terminate the Contract without prejudice to the Client’s accrued rights under the Contract.
3. The Consultant may, after giving at least fourteen (14) days’ written notice to the Client, by a further written notice of at least twenty-eight (28) days, terminate the Contract or suspend the Consultant’s performance of the Services solely under the following circumstances:
4. when, 30 days after the due date for payment of an invoice, the Client has not paid the undisputed portion of the invoice and the Consultant has sent a written notification of non-payment to the Client, provided to the extent that the Consultant has not received payment of the undisputed portion of the said invoice or where the Client has not provided notification that all or part of the invoice was contested by the Client; or
5. when the Services have been suspended under either Sub-Clause 4.5 [*Force Majeure*] or paragraph (a) of this Sub-Clause 4.6 and the period of suspension has exceeded one hundred and ninety (190) days provided that the Consultant’s written notices shall set out a reasonably detailed account of the circumstances in respect of the Consultant’s notices to the Client and the Consultant’s follow-up actions in regard to non-receipt of undisputed amounts or suspension of the Services by the Client, as the case may be.

## Corruption and Fraud

Where the Consultant is in breach of Sub-Clause 1.12 [*Corruption and Fraud*] and notwithstanding any penalties or other sanctions to which the Consultant may be subject under the Applicable Laws, the Client will be entitled, without liability, to immediately suspend or terminate the Contract by written notice to the Consultant.

## Exceptional Services

1. Upon the occurrence and continuance of an event of Force Majeure or an abandonment or suspension or resumption of Services otherwise than in relation to circumstances contemplated under the provisions of paragraph (b) of Sub-Clause 4.6 [*Abandonment, Suspension or Termination*] or Sub-Clause 4.7 [*Corruption and Fraud*], any necessary services instructed by the Client to be duly performed by the Consultant pursuant to the Contract shall be regarded as Exceptional Services.
2. The due performance of Exceptional Services will, subject to Sub-Clause 4.3 [*Variations*], entitle the Consultant to reasonable extra time necessary for their performance and to reasonable payment for performing them in accordance with Sub-Clause 5.2 [*Payment to the Consultant*].
3. The rates and prices for any Exceptional Services shall be as for the Additional Services pursuant to Appendix 2 [*Price and Payment*].

## Rights and Liabilities of Parties

1. Termination or the end of the term of the Contract will not prejudice and affect the accrued rights or claims and liabilities of the Parties.
2. The provisions of Sub-Clause 1.12 [*Corruption and Fraud*], Sub-Clause 3.5 [*Compliance with Applicable Laws*], Sub-Clause 5.7 [*Independent Audit*], Sub-Clause 6.1 [*Liability and Compensation between the Parties*], Sub-Clause 6.2 [*Duration of Liability*], Sub-Clause 6.3 [*Limit of Compensation*] and Sub-Clause 6.4 [*Indemnity regarding Third Party Claims*] shall survive and remain in force after the date of completion of the Services and the termination or the end of the term of the Contract for the duration of the liability period stated in the Particular Conditions pursuant to Sub-Clause 6.2 [*Duration of Liability*].
3. The provisions of Sub-Clause 1.8 [*Copyright and Intellectual Property*], Sub-Clause 1.9 [*Notices*], Sub-Clause 1.10 [*Confidentiality*], Sub-Clause 1.11 [*Publication*], Sub-Clause 9.2 [*Independent Contractor*] and Sub-Clause 9.3 [*Responsibility for Sub-Consultants and Sub-Contractors (if any)*] shall survive and remain in force after the date of completion of the Services and the termination or the end of the term of the Contract.

# Contract Price and Payment

## Contract Price

The Contract Price shall be as stated in Appendix 2 [*Price and Payment*], subject to such adjustments as may be made pursuant to the Contract.

## Payment to the Consultant

1. The Client will, subject to and in consideration of the Consultant duly performing and satisfying its obligations under this Contract, pay the Consultant for the Services, to the extent applicable, at the rates and prices specified in Appendix 2 [*Price and Payment*] and otherwise as agreed in accordance with Sub-Clause 4.3 [*Variations*].
2. Where the Client has permitted or required the Consultant to appoint selected consultants or contractors as the Consultant's sub-consultants or sub-contractors, fees owed to those sub-consultants and sub-contractors will be due to the Consultant in addition to the Consultant's own fees but without any effect to or amendment to the Contract Price as detailed in Appendix 2 [*Price and Payment*], unless to the extent agreed in accordance with Sub-Clause 4.3 [*Variations*].

## Invoicing and Time for Payment

1. The Consultant’s invoices shall include the following information:

* Consultant’s name;
* Invoice number;
* Date of invoice;
* Contract name/description;
* Relevant milestone(s) number(s) and description(s);
* Milestone invoice amount(s) – in figures and in words; and
* Bank account(s) details for payment(s), including bank name, address and SWIFT code, and account name and number.

1. The Consultant shall submit its invoices to the Client for the Services in accordance with the payment schedule specified in Appendix 2 [*Price and Payment*]. Invoices shall be submitted at the end of the corresponding calendar month in which the Services and related payment milestones have been satisfactorily completed in accordance with the Contract.
2. Amounts due to the Consultant and undisputed by the Client pursuant to Sub-Clause 5.6 [*Disputed Invoices*] will be payable within forty-five (45) days of the Client’s receipt of the Consultant's invoice unless otherwise stated in the Particular Conditions.
3. If the Consultant does not receive payment within the time stated in paragraph (c) of this Sub-Clause 5.3 the Consultant will be paid Agreed Compensation on the sum overdue from the due date for payment of the invoice.

## Currencies of Payment

The currencies applicable to the Contract are those stated in Appendix 2 [*Price and Payment*].

## Third Party Charges on the Consultant

Except as detailed in Appendix 2 [*Price and Payment*], third party charges on the Consultant shall be the responsibility of the Consultant and shall be deemed to be included in the Contract Price.

## Disputed Invoices

If any item or part of an item in an invoice submitted by the Consultant is disputed by the Client, the Client will give a notice of its intention to not pay or withhold payment with reasons and will not delay payment on the remainder of the invoice.

## Independent Audit

1. The Consultant shall maintain up-to-date and detailed records which clearly identify relevant time and expense and shall make these records available to the Client on reasonable request.
2. The Client may, at notice of not less than seven (7) days, require that a reputable professional firm nominated by the Client, audit any amount claimed by the Consultant. The audit will be conducted during normal working hours at the office where the records are kept.

## Taxes and Charges

1. Goods and services tax and value added tax required under Applicable Laws to be charged on an applicable supply made under this Contract shall be borne by the Party to whom the supply is made, subject to the Party making such supply to which the goods and services tax and value added tax applies issuing to the first-mentioned Party a valid tax invoice complying with the relevant Applicable Laws.
2. Except to the extent provided under paragraph (a), all Taxes relevant to this Contract and the Services shall be for the account of the Consultant.
3. In the event that some portion of the Contract Price or other payment related to this Contract may be subject to withholding, which the Client is required to withhold under Applicable Laws, then the Client shall withhold the appropriate amounts and remit the same directly to the relevant authority in accordance with the Applicable Laws. Such withheld amounts shall be deemed payment to the Consultant by the Client of such portion of the Contract Price, despite such withholding. The Client shall provide the Consultant with evidence of the payment of such withheld amounts.
4. The Consultant agrees to use all reasonable efforts to facilitate and provide assistance in connection with any application by the Client to the relevant tax authorities to refund or set-off any applicable taxes, including complying with requests for information, representations and undertakings, and assistance with filings.

# Liabilities

## Liability and Compensation between the Parties

1. The Consultant shall be liable to the Client for all losses, expenses and claims, including any loss of or damage to the environment, property, bodily injury, sickness, disease or death to the extent due to the Consultant’s negligence, misconduct, wilful act or omission or breach of its obligations under the Contract.
2. The Client shall be liable to the Consultant if a breach of its obligations under the Contract or its legal duty to the Consultant is established against the Client.
3. If it is considered that either Party is liable to the other, compensation shall be payable only on the following terms:
4. in any event, the amount of such compensation shall be limited to the amount specified in paragraph (a) of Sub-Clause 6.3 [*Limit of Compensation*].
5. if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by that Party shall be limited to that proportion of liability which is attributable to the breach of such Party.

## Duration of Liability

Notwithstanding anything else in the Contract or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), neither the Client or the Consultant shall be considered liable for any loss or damage resulting from any occurrence or claim arising after the expiry of the relevant liability period stated in the Particular Conditions.

## Limit of Compensation

1. The maximum amount of compensation payable by either Party to the other in respect of liability arising out of or in connection with the performance of the Services or the Contract whether under contract, in tort, under statute or otherwise is limited to the limit of compensation amount stated in the Particular Conditions.
2. Notwithstanding paragraph (a), the limit of compensation does not apply to:
3. claims arising from death or bodily injury;
4. claims arising from breach of Sub-Clause 1.12 [*Corruption and Fraud*] and any penalties or fines payable by the Consultant arising from a breach of Sub-Clause 3.5 [*Compliance with Applicable Laws*];
5. claims pursuant to or arising from the Consultant’s representations, warranties or indemnity under Sub-Clause 1.8 [*Copyright and Intellectual Property*];
6. claims arising from the Consultant’s deliberate default, fraud, fraudulent misrepresentation, Gross Negligence or Wilful Misconduct; or
7. claims arising from loss of or damage to any third-party property to the extent due to the Consultant’s acts or omissions.
8. If either Party makes a claim for compensation against the other Party, and such claim is not established, the claimant shall fully reimburse the other Party for its costs incurred as a result of the claim.

## Indemnity regarding Third Party Claims

1. Unless otherwise agreed between the Parties or stated in the Particular Conditions and without prejudice to Sub-Clause 3.5 [*Compliance with Applicable Laws*], Sub-Clause 6.1 [*Liability and Compensation between the Parties*], Sub-Clause 6.2 [*Duration of Liability*], and Sub-Clause 6.3 [*Limit of Compensation*], each Party shall indemnify and hold harmless the other Party against and from all third party claims, damages, losses, fines and expenses (including legal fees, costs and expenses) in respect of bodily injury, sickness, disease or death, or any loss of or damage to third party property which is caused by any negligence, wilful act or omission or breach of the Contract by the indemnifying Party.
2. If a Party is entitled to be indemnified under this Sub-Clause 6.4 [*Indemnity regarding Third Party Claims*], the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. The other Party shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

# Insurance

## Liability and Indemnity Insurance

1. The Consultant shall maintain public liability and professional indemnity insurance sufficient to cover the Consultant’s liabilities under this Contract and not less than the corresponding amounts stated in the Particular Conditions.
2. The Consultant shall have the public liability insurance policy endorsed to name the Client as principal for its rights and interests and include a waiver of subrogation rights against the Client.
3. The Consultant shall provide to the Client upon written request the form of certificates of currency of the required insurance policies.
4. The cost of the insurances shall be deemed to be incorporated into the Contract Price.
5. Nothing in this Sub-Clause 7.1 limits the obligations, liabilities or responsibilities of the Consultant. Any amount not insured or not recovered through the insurances shall be borne by the Consultant.

## Worker’s Compensation Insurance

The Consultant shall ensure that appropriate worker’s compensation insurance in compliance with the Applicable Laws is provided and maintained for its personnel and the personnel of its sub-consultants and sub-contractors.

# Disputes and Arbitration

## Amicable Dispute Resolution

If any dispute arises out of or in connection with the Contract, representatives of the Parties with authority to settle the dispute will, within fourteen (14) days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the Parties will attempt to settle it by mediation in accordance with Sub-Clause 8.2 [*Mediation*].

## Mediation

1. Unless otherwise agreed between the Parties or stated in the Particular Conditions, the Parties shall attempt to agree upon a neutral mediator from a panel list held by the independent mediation center named in the Particular Conditions.
2. When the mediator has been appointed on its terms and conditions of engagement, either Party may initiate the mediation by giving the other Party a notice in writing requesting a start to the mediation. The mediation will start no later than twenty-one (21) days after the date of the mediation notice.
3. The mediation shall be conducted in English and in accordance with the procedures required by the appointed mediator unless stipulated otherwise in the Particular Conditions. If the procedures are stipulated in the Particular Conditions, then the appointed mediator will be required to follow those procedures but will at any time be able to propose to the Parties for their joint approval any alternative procedures.
4. All negotiations or discussions carried out in the mediation shall be conducted in strict confidence and are not to be referred to in any concurrent or subsequent proceedings unless they conclude with a written legally binding agreement. If the Parties accept the mediator’s recommendations, or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and, once signed by the designated representatives, shall be binding on the Parties.
5. If no agreement is reached through mediation, either Party may invite the mediator to provide to both Parties a non-binding opinion in writing on the dispute. Such opinion shall not be used in evidence in any concurrent or subsequent proceedings without the prior written consent of both Parties.
6. The Parties will bear their own costs of preparing and submitting evidence to the mediator. The costs of the mediation and of the mediator’s services shall be borne equally between the Parties.
7. No Party may commence an arbitration of any dispute relating to the Contract until it has attempted to settle the dispute with the other Party by mediation, and either the mediation has terminated or the other Party has failed to participate in the mediation, provided, however, that either Party may commence arbitration if the dispute has not been settled within ninety (90) days of the giving of the mediation notice under paragraph (b) of this Sub-Clause 8.2.

## Arbitration

1. If the mediation fails then the Parties will in good faith attempt jointly to make a written record of those matters (if any) relating to the dispute which have been agreed to by them, for submission in any later arbitration. The mediator’s role will cease, at the latest, upon the commencement of any arbitration. The mediator will not be available to appear as a witness in the arbitration, nor to provide any additional evidence obtained during the mediation.
2. Unless stated otherwise in the Particular Conditions and notwithstanding paragraph (a) of this Sub-Clause 8.3, if the mediation fails then any dispute arising out of or in connection with the Contract shall be referred to and resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) 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 in this Sub-Clause 8.3.
3. Unless stated otherwise in the Particular Conditions, the location and seat of the arbitration shall be Singapore.
4. The arbitration panel shall consist of three arbitrators. One arbitrator shall be appointed by the Client and one arbitrator shall be appointed by the Consultant. The two appointed arbitrators shall then appoint the third arbitrator.
5. The language of the arbitration shall be English.

# Miscellaneous Provisions

## Third Party Rights

Notwithstanding any provision to the contrary in this Contract, no person or entity will have any rights in relation to this Contract, whether as third parties or otherwise, save the Parties.

## Independent Contractor

1. The Consultant is an independent contractor to the Client with respect to the Services, and neither the Consultant nor any sub-consultants or sub-contractors, nor any agents or employees of any of them shall represent themselves to be the employees, agents or representatives of the Client.
2. The Consultant shall be at risk in respect of and shall indemnify the Client in respect of any liability in respect of any employment obligations or social security related contributions which may be incurred in relation to the Consultant performing the Services.

## Responsibility for Sub-Consultants and Sub-Contractors (if any)

The Consultant shall be solely responsible for the manner in which the Services are performed, for all claims for payment by its authorised sub-consultants and sub-contractors, and for the acts, omissions and defaults of its sub-consultants and sub-contractors. All employees, representatives or sub-consultants and sub-contractors engaged by the Consultant in connection with the performance of the Services, shall be under the complete control of the Consultant and shall not be deemed to be employees of the Client.

## Partial Invalidity and Omissions

Except as otherwise stated in this Sub-Clause 9.4, if the enforcement or operation of any provision of the Contract is prohibited by law, or if any individual provision of the Contract is by law rendered invalid, void or unenforceable, or the Parties have omitted to provide for any subject matter, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of the Contract. In such cases the Parties shall use all reasonable endeavours to agree replacement provisions reflecting as closely as possible the original intent of the Parties.

## Non-Waiver and Waiver

1. Failure of a Party to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of a particular right, power or remedy provided under the Contract or otherwise at law by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that, or any other right, power or remedy provided under the Contract or otherwise at law, by that Party.
2. A waiver or consent given by a Party under the Contract is only effective and binding if given or confirmed in writing.

## Entire Agreement

To the extent permitted by law, in relation to its subject matter, the Contract:

1. embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
2. supersedes all prior communications, negotiations and any prior agreement (written or oral) of the Parties, including the Consultant’s offer or any proposal.

## Costs and Expenses

Unless otherwise agreed in writing, each Party shall be responsible for paying its own costs and expenses incurred in connection with negotiating, preparing and entering into the Contract.

## Counterparts

The Contract may be executed in any number of counterparts, all of which, when taken together, shall constitute the one and the same agreement.

Appendices

1. Scope of Services
2. Price and Payment
3. Time Schedule, Deliverables and Key Personnel
4. Personnel, Equipment, Facilities and Services of Others Provided by the Client
5. Standards of Conduct, Anti-bribery and Fraud