

## GC5: GENERAL CONDITIONS FOR THE PURCHASE OF CONSULTANCY SERVICES CONTRACT

### 1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract, the following words shall have the following meanings:

**Affiliate:** means any entity or person that directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with the relevant Party.

**Anti-Bribery Laws:** means all applicable laws, statutes, rules, regulations, orders and codes of any governmental authority or jurisdiction as may be amended, supplemented and/or modified from time to time that prohibit the bribery of, or the providing of facilitation payment or other benefits to, any Official and/or Close Associates of the same including, without limitation the Bribery Act 2010.

**Applicable Laws:** mean all applicable laws, statutes, regulations and codes from time to time in force.

**Applicable Sanctions:** means any sanctions, as may be added, amended, supplemented and modified from time to time, administered by any governmental authority or jurisdiction applicable to the Supplier or to its business and any applicable international law and regulations pertaining to the detection, prevention and reporting of potential money laundering and terrorist financing activities.

**Background Intellectual Property:** means any Intellectual Property Rights that are used in the course of or in connection with the provision of the Services that were created and/or developed (a) independently of the Contract; and/or (b) before the effective date of the Contract.

**Business Day:** means a day (other than a Saturday or Sunday) which is not a public holiday and on which banks are open for general business in England.

**Close Associate:** in relation to any Official, means an individual who is known to be closely connected to the Official, either socially or professionally such as, but not limited to: (i) a partner of the Official; (ii) an employee or employer of the Official; (iii) a person accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the Official; or (iv) a person whose directions, instructions or wishes the Official is accustomed or under an obligation, whether formal or informal, to act in accordance with.

**Commencement Date:** means the date for commencement of the Services as set out in the Contract Agreement.

**Conditions:** means these GC5: General Conditions for the purchase of Consultancy Services.

**Confidential Information:** has the meaning given in clause 7.1.

**Contract:** means the contract between Sembcorp and the Supplier for the supply of the Services, made pursuant to the Contract Agreement incorporating these Conditions and the Special Conditions (if any).

**Contract Agreement:** means the document to which the Conditions and the Special Conditions (if any) are annexed, which records the terms of the Contract between Sembcorp and the Supplier and which is signed by the parties together with and any schedules thereto.

**Control:** means the beneficial ownership of more than fifty per cent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls**, and **Controlled** and **under common Control** shall be interpreted accordingly.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Data Security Legislation:** all applicable data security legislation in force from time to time in the UK, including the NIS Regulations as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the security of data.

**Deliverables:** means all documents, materials, reports and other outputs developed by and/or provided by the Supplier or the Supplier Personnel as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Intellectual Property Rights:** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**NIS Regulations:** means the Network and Information Systems Regulations 2018 (SI 2018/ 506).

**Official:** means (i) any officer or employee or any governmental authority or any department, agency or instrumentality thereof or any person acting in an official capacity on behalf of any such governmental authority, department, agency or instrumentality; (ii) any political party; (iii) any official of a political party; (iv) any candidate for political office; or (v) any officer or employee of a public international organisation such as the United Nations

**Price:** means the agreed consideration payable by Sembcorp to the Supplier under the Contract for the Services.

**Sembcorp:** has the meaning given to it in the Contract Agreement.

**Sembcorp Materials:** means all materials (including Confidential Information) supplied by Sembcorp to the Supplier.

**Services:** means the services, including any Deliverables, to be provided by the Supplier under the Contract as more particularly described in Schedule 1 (*Scope of Services and agreed dates for completion of the Services*).

**Site:** means any location within Sembcorp's or its Affiliates' premises where the Services are substantially performed or at which the Supplier or the Supplier Personnel attends from time to time, as notified to the Supplier by Sembcorp.

**Site Rules:** means the policies, procedures and guidance for working at the Site, including as set out in Sembcorp Site Rules, as the same may be amended from time to time, an up to date copy of which can be accessed at <https://www.sembcorpenergy.co.uk/policies-and-conditions/>.

**Supplier:** means the person or firm from whom Sembcorp purchases the Services.

**Supplier Personnel:** means any employee, officer, agent representative and/or subcontractor engaged by the Supplier to provide the Services.

**Special Conditions:** means the special terms and conditions (if any) set out in or appended to the Contract Agreement.

- 1.2 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of the Contract.
- 1.3 Any reference to a **person** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or associates.
- 1.4 A reference to a **party** includes its personal representatives, successors and permitted assigns.
- 1.5 A reference to the singular includes the plural, and vice versa.
- 1.6 A reference to one gender includes all genders.
- 1.7 Any words that follow **include, includes, including, in particular** or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.8 A reference to a **day** means calendar day and **year** means a calendar year.
- 1.9 Wherever the Contract refers to any statute or statutory provision such reference shall include such statute or statutory provision as may be amended or re-enacted from time-to-time.

## **2. BASIS OF CONTRACT**

- 2.1 The Contract shall be formed and be binding on the parties where these Conditions and the Special Conditions (if any) are annexed to a Contract Agreement upon both parties duly executing the Contract Agreement.
- 2.2 These Conditions and any Special Conditions shall apply to the supply of the Services, to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Supplier waives any right which it otherwise may have to rely on such terms any conditions.
- 2.3 To the extent that the Services (or any part thereof) at any time relate to any project, asset, personnel, business or similar, of a Sembcorp Affiliate, then it is agreed that Sembcorp acts and acted for and on behalf of such Sembcorp Affiliate in procuring and receiving such Services.

## **3 PERFORMANCE OF SERVICES**

- 3.1 The Supplier shall perform the Services from the Commencement Date and in accordance with the terms of the Contract.
- 3.2 The Supplier shall complete the Services diligently and in accordance with the agreed dates specified in Schedule 1 (*Scope of Services and agreed dates for completion of the Services*). Time for completion of the Services shall be of the essence.
- 3.3 The Supplier warrants, represents and undertakes that:
  - 3.3.1 the Services shall conform in all respects with the Contract and comply with all Applicable Laws;
  - 3.3.2 the Services shall be of the highest quality and the Deliverables shall be error-free, accurate and up to date as at the time of delivery to Sembcorp and be fit for any purpose held out by the Supplier or made known to the Supplier by Sembcorp, expressly or by implication, and in this respect Sembcorp relies on the Supplier's skill and judgement;
  - 3.3.3 the Services shall be provided with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade, using personnel who have the qualifications and professional competence and are suitably skilled, trained and experienced to perform tasks assigned to them, in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract; and
  - 3.3.4 Sembcorp shall have full, clear and unencumbered title to the Deliverables and that at the date of delivery of the Deliverables to Sembcorp, it will have full and unrestricted rights to transfer the Deliverables to Sembcorp.
- 3.4 The Supplier shall:
  - 3.4.1 co-operate with Sembcorp, its Affiliates and its other suppliers and contractors, and comply with all instructions of Sembcorp in

all matters required to perform the Contract and shall ensure the Supplier Personnel do likewise;

- 3.4.2 obtain and thereafter maintain all licences, permissions, authorisations, consents and permits required to carry out its obligations under the Contract;
  - 3.4.3 comply with the Site Rules and ensure the Supplier Personnel do likewise;
  - 3.4.4 where applicable, hold all Sembcorp Materials in safe custody at its own risk, maintain the Sembcorp Materials and not dispose or use the Sembcorp Materials other than in accordance with Sembcorp's written instructions or authorisation;
  - 3.4.5 provide all materials and such other items as are required for performance of the Contract; and
  - 3.4.6 not do or omit to do anything which may cause Sembcorp to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 3.5 Sembcorp may (at its discretion) refuse any Supplier Personnel access to the Site and/or request the removal of any Supplier Personnel from the Site if in Sembcorp's reasonable opinion their performance or conduct is or has been unsatisfactory. The Supplier shall promptly replace any such Supplier Personnel at no additional cost to Sembcorp.

#### **4 REPRESENTATIONS AND UNDERTAKINGS**

The Supplier represents and undertakes that the following facts and circumstances are and at all times shall be, true and correct:

- 4.1 it has the requisite corporate power and authority to enter into the Contract and that the Contract does not conflict with any other agreement or obligation to which the Supplier is bound;
- 4.2 there is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under the Contract; and
- 4.3 it has not granted and will not grant, any rights or enter into any agreements with any other party that will prevent or limit the rights of Sembcorp under the Contract.

#### **5 SEMBCORP REMEDIES**

If the Supplier fails to perform the Services by any date set out in the Contract, or if substandard Services are performed, then Sembcorp shall (without limiting or affecting its other rights or remedies), have the right (at its absolute discretion and whether or not it has accepted the Services) to any one or more of the following remedies:

- 5.1 to terminate or cancel the Contract either in whole or in part in accordance with clause 11;
- 5.2 to reject the Services (in whole or in part);
- 5.3 to require the Supplier to re-perform the rejected Services or to provide a full refund of the Price of the rejected Services (if paid);
- 5.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 5.5 to recover from the Supplier any costs incurred by Sembcorp in obtaining substitute Services from a third party;
- 5.6 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- 5.7 in all other cases, to claim damages for any additional costs, fees, losses or expenses incurred by Sembcorp in connection with the Supplier's failure to perform the Services in accordance with the Contract.

#### **6 PRICE AND PAYMENT**

- 6.1 The Price of the Services shall be as set out in the Contract Agreement and shall be exclusive of VAT.
- 6.2 Where the Price is a lump sum fixed price, the Price shall be deemed to cover all costs associated with the Supplier's Personnel engaged in the performance of the Services and all other costs, expenses or disbursements, incurred by the Supplier in the performance of the Services in accordance with this Contract.
- 6.3 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of such Price, which shall cover all the Supplier's obligations under and in relation to the Contract and all matters and things necessary for the proper performance of the Services, whether expressly provided for in the Contract or to be reasonably inferred therefrom.
- 6.4 Where the Price is stated in the Contract Agreement to be calculated on a 'time-charge' basis, the following provisions shall apply:
  - 6.4.1 rates for Supplier Personnel shall be as specified in the Contract;
  - 6.4.2 all such rates shall be inclusive of all overhead costs, salaries, wages, bonuses and other emoluments, statutory charges and levies, pension provisions, overtime or payments for working unsociable hours, and all overheads;
  - 6.4.3 no disbursement, cost or other expense shall be reimbursable by Sembcorp without Sembcorp's prior written approval; and
  - 6.4.4 the Supplier shall and shall procure the Supplier Personnel maintain accurate time sheets to verify time spent performing the Services, together with any receipts or vouchers as Sembcorp may require to verify the Price and any reimbursable costs. Such time sheets, receipts and/or vouchers shall be available for inspection by or copied and submitted to Sembcorp with (and in support of) the Supplier's invoice submitted pursuant to clause 6.5.
- 6.5 The Supplier shall submit a request for payment to Sembcorp's Representative on the final Friday of each calendar month showing:
  - 6.5.1 the Supplier's assessment of the amount to be paid for Services carried out up to the end of the period for which it is submitted, together with any other scheduled payment as may have become payable;

plus

6.5.2 the amounts to which the Supplier considers himself entitled in connection with all other matters for which provision is made under the Contract;

less

6.5.3 the total of all sums previously certified by Sembcorp's Representative for payment.

The Supplier's request for payment shall be supported by a proper and valid VAT invoice for the sum requested by the Supplier for payment and all relevant documentary evidence appropriately itemised.

The Supplier's final request for payment shall state that it is its final request for payment.

6.6 Within fourteen (14) days of the receipt of an interim request for payment, or in the case of the final request for payment within forty-five (45) days of its receipt, Sembcorp's Representative shall issue a certificate to the Supplier and Sembcorp for the instalment to which the request for payment relates. The certificate shall show the sum which Sembcorp's Representative considers to be due at the payment due date determined in accordance with the Contract, and the basis on which it has been calculated. It is immaterial that the amount then considered to be due may be zero. The total certified shall comprise all sums listed in the Supplier's request for payment which, in the opinion of Sembcorp's Representative, are properly payable under the Contract and shall show separately any elements within the sums certified in respect of nominated Subcontractors. The Sembcorp's Representative may in any certificate delete, correct or modify any sum previously certified by him as he shall consider proper.

6.7 Any sum certified and notified as due in accordance with clause 6.6 shall be due for payment fourteen (14) days (or forty-five (45) days in the case of the final request for payment) after the date of receipt by Sembcorp's Representative of the Supplier's request for payment in accordance with clause 6.5. Sembcorp shall pay the amount so notified by a date (the '**Final Date for Payment**') which shall be forty-five (45) days (or sixty (60) days in the case of the final request for payment) after the date of receipt by Sembcorp's Representative of the Supplier's request for payment in accordance with clause 6.5.

6.8 If for any reason Sembcorp, or Sembcorp's Representative on his behalf, fails to notify in writing the sum due in accordance with clause 6.6 by the payment due date determined in accordance with clause 6.7 the sum notified by the Supplier in his request for payment in accordance with clause 6.5 shall be due for payment by the Final Date for Payment.

6.9 If Sembcorp intends to pay less than the sum due in accordance with clause 6.6 or 6.8 for any reason including but not limited to sums that may be due from the Supplier to Sembcorp under the Contract, Sembcorp shall give Notice to the Supplier not later than one (1) day before the Final Date for Payment, specifying the amount he considers to be due on the date the Notice is given and the basis on which that sum is calculated. It is immaterial that the amount then considered to be due may be zero (0).

6.10 If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:

6.10.1 certified and notified in accordance with clause 6.6; or

6.10.2 where applicable in accordance with a notice issued under clause 6.9; or

6.10.3 where applicable in accordance with clause 6.8;

or if either party does not make any payment due under any other provision of the Contract by the Final Date for Payment the amount not paid shall bear interest at the rate set out in the Contract Agreement compounded daily from the Final Date for Payment until the amount not paid is received by the other party.

6.11 If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:

6.11.1 certified and notified in accordance with clause 6.6; or

6.11.2 where applicable in accordance with a notice issued under clause 6.9; or

6.11.3 where applicable in accordance with clause 6.8;

the Supplier may issue to Sembcorp a notice of his intention to suspend performance of any or all of his obligations under the Contract. If such failure shall continue for fourteen (14) days after the giving of such notice, then at any time thereafter and provided such failure is still continuing, the Supplier may suspend further performance of any or all as applicable of his obligations under the Contract until payment is made.

Sembcorp's Representative shall determine by means of an extension to the Services programme for the full period of suspension plus any reasonable additional time incurred by the Supplier in resuming his obligations and those of his Subcontractors. If the Supplier incurs additional cost as a result of such suspension and subsequent resumption he shall be entitled to be reimbursed such additional cost as he reasonably incurs.

6.12 If the suspension of performance of any, but not all, of the Supplier's obligations in accordance with clause 6.11 continues for a period of sixty (60) days the Supplier at any time thereafter may with immediate effect notify in writing Sembcorp that such obligation is excluded from the Contract. Thereafter Sembcorp's Representative shall confirm the exclusion together with the applicable change in the Price.

If the suspension of performance of all of the Supplier's obligations in accordance with clause 6.11 continues for a period of sixty (60) days, the Supplier at any time thereafter may with immediate effect terminate his employment under the Contract by the issue of a Notice to Sembcorp copied to Sembcorp's Representative and thereupon the rights and obligations of the parties shall be as stated in clause 12.1.

6.13 If the amount of a payment which is:

6.13.1 notified in accordance with clause 6.6 (and no notice is given by Sembcorp under clause 6.9 in respect of such payment); or

6.13.2 stated in a notice given by Sembcorp under clause 6.9 is referred to an adjudicator appointed in accordance with clause 14 (Adjudication) and if the decision of the adjudicator as to the amount which is to be paid by Sembcorp is that more shall be paid than the amount stated as in clause 6.13.1 or this clause 6.13.2 as applicable, the additional amount shall be paid not later than:

(i) seven (7) days from the date of the adjudicator's decision; or

(ii) the Final Date for Payment,

whichever is the later.

6.14 Sembcorp may at any time, without notice to the Supplier, withhold, deduct or set off any liability of the Supplier to Sembcorp against any liability of Sembcorp to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Sembcorp may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Sembcorp of its rights under this clause 6.14 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **7 CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

7.1 Subject to clause 7.2, each party undertakes that it shall keep secret and confidential the existence of the Contract, all information concerning the other party (including in the case of Sembcorp, its Affiliates) that is confidential in nature, including any details of their business, affairs, customers, clients, suppliers, operations, processes, projects, plans, drawings, specifications, data, know-how, trade secrets or strategy in whatever form including in writing, in drawings or in any other form and all data derived therefrom (together "**Confidential Information**").

7.2 A party may disclose the other party's Confidential Information:

7.2.1 to its employees, officers, representatives, subcontractors or advisers on a 'need to know' basis only, provided always such disclosure or use of the Confidential Information is absolutely necessary and required for the performance of the Contract and provided that the disclosing party shall be liable for any breach of confidentiality by the recipient of such Confidential Information pursuant to this clause 7; and

7.2.2 as may be required by Applicable Law or by any court or governmental, regulatory or supervisory authority of competent jurisdiction.

7.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

7.4 Confidential Information shall continue to be the property of the party disclosing it.

7.5 Clauses 7.1 to 7.4 (inclusive) shall continue to bind the parties for a period of five (5) years following termination or expiry of the Contract.

7.6 All Intellectual Property Rights in any specifications, documents, ideas, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

7.6.1 provided to the Supplier by Sembcorp shall remain as Sembcorp's property; or

7.6.2 prepared by or for the Supplier pursuant to or in relation to the performance of the Contract shall belong to Sembcorp.

7.7 The Supplier shall obtain all necessary approval(s) before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall at no cost to Sembcorp, procure that the owner of the Intellectual Property Rights grant to Sembcorp a non-exclusive licence, or if the Supplier is itself a licensee of those rights, the Supplier shall grant to Sembcorp an authorised sub-licence to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable and shall include the right to sub-licence, transfer, or assign to any other third party providing Services and/or Deliverables to Sembcorp.

7.8 All Background Intellectual Property shall remain the exclusive property of the party owning it and this Contract does not affect the ownership of any Background Intellectual Property of a party. No licence to use any Background Intellectual Property is granted or implied by this Contract except the rights explicitly granted in this Contract.

7.9 The Supplier grants to Sembcorp, or shall procure the direct grant to Sembcorp, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence (including the right to sub-licence to its Affiliates and sub-contractors) to use the Supplier's Background Intellectual Property as may be required for the purpose of receiving and using the Services and the Deliverables.

7.10 Sembcorp grants the Supplier a fully paid-up, non-exclusive, royalty-free and non-transferable licence to use Sembcorp's Background Intellectual Property for the term of the Contract and for the sole purpose of providing the Services and/or Deliverables to Sembcorp. Any derivations or modifications of Sembcorp's Background Intellectual Property howsoever created will be the property of Sembcorp.

7.11 Where the Supplier creates or generates any Deliverable (including but not limited to computer software programs and documentation, algorithms, program code, any inventions and ideas, written material or other property, tangible or intangible) in providing the Services and/or arising out of or resulting from the performance of this Contract then Sembcorp will own the entire right, title and interest in and to all Intellectual Property Rights in the Deliverable. The Supplier shall by way of present assignment of future Intellectual Property Rights, do all things necessary to ensure that all such Intellectual Property Rights are assigned to Sembcorp absolutely. Sembcorp may take such steps as it may decide from time to time, at its expense and sole discretion, to register and maintain any protection for that Intellectual Property Rights. The Supplier shall do all such things and sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the Intellectual Property Rights transferred, assigned or granted to Sembcorp hereunder. The Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

7.12 The Supplier shall treat all Deliverables as Confidential Information of Sembcorp, and shall impose the requirements of clauses 7.2 to

7.5 (inclusive) on each of its personnel and/or permitted sub-contractors.

- 7.13 The Supplier agrees that Sembcorp is entitled to make any changes, have the changes made or require the Supplier to make any changes to the Deliverables (material or otherwise) which Sembcorp in its sole discretion considers necessary or desirable, including amendments to ensure that the Deliverables conform to Sembcorp's requirements and is updated and accurate.
- 7.14 The Supplier shall notify Sembcorp as soon as practicable if the Supplier becomes aware:
- 7.15 of any infringement or suspected infringement of the Intellectual Property Rights or moral rights of any third party arising from the Services and/or Deliverables or the publication, distribution and making available of the Services and/or Deliverables by Sembcorp; or
- 7.16 of any infringement or suspected infringement by any third party of the Intellectual Property Rights in the Services and/or Deliverables.
- 7.17 Except as may be necessary for either party to carry out its obligations under the Contract, neither party shall under any circumstances whatsoever use the other party's name, trade names, trademarks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof, or the name of any employee of either party, in any public announcement, news release, advertising, or promotional literature, without first obtaining the written consent and approval of the other party and subject always to clause 13.1.

## **8 INDEMNITY, INSURANCE AND LIABILITY**

- 8.1 The Supplier shall on demand indemnify, keep indemnified and hold harmless Sembcorp and each of its Affiliates against any and all claims, damages, losses, liabilities, costs and expenses (including legal and other professional fees and expenses) arising as a result of or in connection with:
- 8.1.1 any claim made against Sembcorp and/or its Affiliates for actual or alleged infringement of the Intellectual Property Rights of any third party arising out of or in connection with the provision, receipt or use of the Services and/or the Deliverables, except to the extent that such claim is directly attributable to the acts or omissions of Sembcorp or its Affiliates;
- 8.1.2 death or personal injury or damage to any property, including the property of Sembcorp and its Affiliates, to the extent caused by breach of the terms and conditions of the Contract and/or any negligent performance, delay and or failure to perform any of its obligations under the Contract by the Supplier and/or the Supplier Personnel; and
- 8.1.3 any claim made against Sembcorp and/or any of its Affiliates by a third party as a result of or in connection with any breach of the terms and conditions of the Contract and/or any negligent performance, delay and/or failure to perform any of its obligations under the Contract by the Supplier and/or the Supplier Personnel.
- 8.2 The Supplier shall procure and at all times maintain insurance cover with a reputable insurer having an A.M. Best Insurance financial strength and financial size rating category of A-VII or better or being of recognized responsibility satisfactory to Sembcorp, against its liability under the Contract and shall produce such evidence as Sembcorp may reasonably require that the insurances required under the Contract are in full force and effect. Unless otherwise specified in the Contract the following minimum levels of insurance cover shall be maintained by the Supplier:
- 8.2.1 *employer's liability insurance*: not less than ten million pounds (£10,000,000) for each and every claim;
- 8.2.2 *public/product liability insurance* (including damage to Sembcorp and Affiliates' property): not less than five million pounds (£5,000,000) for each and every claim;
- 8.2.3 *professional indemnity insurance* (to be provided: (i) where the Services to be performed comprise or contain design services or professional or specialist advisory services; or (ii) where specified in the Contract): not less than two million pounds (£2,000,000) for each and every claim, during, and for a period of six (6) years following completion of performance of the Services;
- 8.2.4 *insurance of the equipment and other property of the Supplier*; and
- 8.2.5 *motor vehicle insurance: unlimited in the case of injury to persons and not less than five million pounds (£5,000,000) for each and every claim in respect of damage to property.*
- 8.3 The Supplier shall ensure that Sembcorp's interest in the insurance policies effected pursuant to clause 8.2 is noted on the relevant policies and the Supplier shall, if required by Sembcorp, produce satisfactory evidence to Sembcorp that such insurance policies have been effected. For the avoidance of doubt the Supplier shall be liable under all provisions of the Contract whether or not it complies with this clause 8 and the Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in this clause 8.
- 8.4 If the Supplier fails to insure, or fails to pay the insurance premium under any policy, as required under the Contract, Sembcorp shall be entitled to take out such insurance as it considers necessary to cover the relevant risk and recover the cost of such insurance from the Supplier on demand.
- 8.5 Subject to clause 8.6, neither party shall be liable to the other party, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, for any indirect, special or consequential loss (including loss of profits, business, anticipated savings, revenue, opportunity, contracts, data, goodwill or reputation) arising under or in connection with the Contract.
- 8.6 Nothing in the Contract excludes or limits any party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability that cannot be excluded by law.

## **9 COMPLIANCE**

- 9.1 In performing its obligations under the Contract, the Supplier shall comply with:
- 9.1.1 all Applicable Laws and the Supplier will inform Sembcorp as soon as it becomes aware of any changes in the Applicable Laws;

- 9.1.2 the Sembcorp policies listed at the following website: <https://www.sembcorpenergy.co.uk/policies-and-conditions/>, as added to or amended from time to time. For the avoidance of doubt, all obligations set out in such Sembcorp policies that are stated to apply to Sembcorp employees will apply equally to the Supplier. **It is the Supplier's responsibility to regularly check this website and ensure it has read and fully understands its obligations under the listed Sembcorp policies (copies of which are linked from this website), including any new or updated Sembcorp policies added from time to time;** and
- 9.1.3 any health and safety rules and regulations, operating systems, management procedures, rules and/or any other requirements or procedures that apply at the Site from time to time.
- 9.2 Without prejudice to the generality of the foregoing, the Supplier warrants and represents that, in connection with the Contract:
- 9.2.1 it shall observe and comply with all applicable Anti-Bribery Laws and shall ensure that, at all times during the Contract:
- (a) it implements adequate procedures designed to prevent it, its employees, agents or sub-contractors from engaging in any activity which would constitute an offence under the Bribery Act 2010 if it were carried out in the UK, or violate any applicable Anti-Bribery Laws; and
  - (b) it reports to Sembcorp any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
- 9.2.2 neither it nor its Affiliates, directors, employees, agents, contractors and sub-contractors have requested, made, offered or authorised or will make, offer or authorise any payment, gift, promise or other advantage, whether directly or through any third party, to or for the use or benefit of any Official or any person where such payment, gift, promise or other advantage would:
- (a) comprise a facilitation payment;
  - (b) induce or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the Contract or showing or forbearing to show favour or disfavour to any person in relation to the Contract; and/or
  - (c) violate any applicable Anti-Bribery Laws;
- 9.2.3 no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by Sembcorp or any third party) by or on behalf of the Supplier, its employees, agents or sub-contractors;
- 9.2.4 it has not nor will it seek to criminally evade tax (whether In the UK or elsewhere) in connection the performance of its obligations under the Contract (nor pursuant to any separate agreements with Sembcorp) and that is it not aware of any 'associated person' (otherwise having involvement with the performance of its obligations under the Contract) so criminally evading tax (as criminally evading tax and 'associated person' are understood in the context of the Criminal Finances Act 2017);
- 9.2.5 for Services identified by Sembcorp that compliance to cybersecurity is required, it shall comply with all security by design methodology requirements and any additional cybersecurity related policy, guidelines or procedures, in each case as may be prescribed by Sembcorp's personnel to it, from time to time;
- 9.2.6 it shall provide Sembcorp with at least seven (7) days prior written notice for any planned maintenance, repairs or changes to its systems, applications or processes that may affect the Purchaser's business operations and/or security controls ("**Planned Changes**"). Within seven (7) days after the completion of the Planned Changes, it shall conduct an internal review of its systems, applications or processes and provide a written statement to Sembcorp confirming that Sembcorp's business operations and/or security controls are not negatively or adversely impacted by the Planned Changes. Should the Planned Changes result in any negative or adverse impact to Sembcorp's business operations and/or security controls, it shall, at its own cost and expense, within fourteen (14) days, make the necessary rectification and changes to ensure that the effectiveness of Sembcorp's business operations and/or security controls is at the same level and standard as it was prior to the Planned Changes;
- 9.2.7 notwithstanding anything to the contrary, it shall upon knowledge of any security incidents, breach or non-compliance of clauses 9.8 to 9.12 (inclusive), the Data Security Legislation, and/or Sembcorp's prescribed IT security policy (if applicable), notify Sembcorp as soon as possible and in any event, no later than twenty-four (24) hours of becoming aware of such breach or non-compliance. The notification to be provided to Sembcorp shall, to the extent that such information is available, include all relevant information relating to the breach and/or non-compliance which shall include but is not limited to (i) the cause of such breach or non-compliance, (ii) the severity and impact of such breach and/or non-compliance and (iii) the mitigation plans to be undertaken by it;
- 9.2.8 In the event of any breach or non-compliance referenced in clause 9.2.7, it shall assist and cooperate with Sembcorp by providing all relevant information including but not limited to activity records, logs and/or conducting electronic discovery and, if requested by Sembcorp, at its own costs and expenses, immediately appoint a third party (to be approved by Sembcorp) investigate the cause of and to assess the severity and impact of the breach and/or non-compliance upon such occurrence); and
- 9.2.9 it will:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 9.3 The Supplier confirms and acknowledges that its appointment by Sembcorp is expressly made on the basis that the Anti-Bribery Laws would not be violated and that it shall conduct itself in a manner consistent with Sembcorp's Supplier Code of Conduct (available at <http://www.sembcorp.com/en/media/597360/sembcorp-supplier-code-of-conduct.pdf>), which may be updated from time to time.
- 9.4 The Supplier represents and warrants that at all times, it, its Affiliates and their respective directors, employees, agents and

subcontractors is not an Official or other person who could assert illegal influence on behalf of Sembcorp or its Affiliates. If any of the foregoing becomes an Official, the Supplier shall promptly notify Sembcorp.

- 9.5 The Supplier undertakes to immediately notify Sembcorp if in connection with the Contract it receives or becomes aware of any request from an Official or any other person asking for, receiving or attempting to obtain gratification or financial or other advantage for themselves or for others, including those mentioned in clause 9.2.2. In this regard, the Supplier may notify Sembcorp of any instances of non-compliance that it encounters (fraud, bribery or any other illegal acts) by email to [gja.cases@sembcorp.com](mailto:gja.cases@sembcorp.com).
- 9.6 The Contractor warrants, represents, and undertakes it, its Affiliates and their respective directors, officers or employees:
- 9.6.1 comply with all Applicable Sanctions;
- 9.6.2 will not conduct business with individuals, entities, organizations or countries that are targets of any Applicable Sanctions and shall not, directly or indirectly, make funds available to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities or any person, or in any country or territory, that at the time of such funding is subject to any Applicable Sanctions; and
- 9.6.3 are not the subject or the target of any Applicable Sanctions.
- 9.7 The Supplier shall declare to Sembcorp all work or relationships that may give rise to any conflicts of interest between itself and Sembcorp before and during the term of the Contract. Subject to any restrictions imposed by law or confidentiality obligations, the Supplier shall declare the existence of any pending or ongoing litigation against the Supplier which will materially affect its ability to supply or perform the Services.
- 9.8 Both parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 9.8 to 9.12 (inclusive) are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.9 The parties acknowledge that for the purposes of the Data Protection Legislation, Sembcorp is the Controller and the Supplier is the Processor.
- 9.10 Without prejudice to the generality of clause 9.8, Sembcorp will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 9.11 Without prejudice to the generality of clause 9.8 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 9.11.1 process that Personal Data only on the documented written instructions of Sembcorp unless the Supplier is required by the law of the United Kingdom or a part of the United Kingdom to otherwise process that Personal Data. Where the Supplier is relying on the law of the United Kingdom or a part of the United Kingdom as the basis for processing Personal Data, the Supplier shall promptly notify Sembcorp of this before performing the processing required by such law unless such law prohibits the Supplier from so notifying Sembcorp;
- 9.11.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Sembcorp, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 9.11.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 9.11.4 not transfer any Personal Data outside of the UK unless the prior written consent of Sembcorp has been obtained and the following conditions are fulfilled:
- (a) Sembcorp or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by Sembcorp with respect to the processing of the Personal Data;
- 9.11.5 assist Sembcorp in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 9.11.6 notify Sembcorp without undue delay on becoming aware of a Personal Data Breach;
- 9.11.7 at the written direction of Sembcorp, delete or return Personal Data and copies thereof to Sembcorp on termination or expiry of the Contract unless required by the law of the United Kingdom or a part of the United Kingdom to store the Personal Data; and
- 9.11.8 maintain complete and accurate records and information to demonstrate its compliance with clauses 9.8 to 9.12 (inclusive) and allow for audits by Sembcorp or Sembcorp's designated auditor and immediately inform Sembcorp if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.



- 9.12 The Supplier shall not appoint or make any changes to the appointment of any third-party processor of Personal Data under the Contract, without Sembcorp's prior written consent. Where Sembcorp gives consent to the appointment of any sub-processor, the Supplier warrants, represents and undertakes that it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in clauses 9.8 to 9.12 (inclusive) and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between Sembcorp and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.12.
- 9.13 The Supplier shall notify Sembcorp in writing immediately if the Supplier undergoes a change of control, the phrase '**control**' in this clause 9.133 having the meaning given to it in s.1124 of the Corporation Tax Act 2010.
- 9.14 In the event Sembcorp has reason to believe that a breach of any representations and warranties and undertakings in this clause 9 has occurred or may occur, Sembcorp may, without prejudice to any other rights or remedies it may have, either terminate the Contract, or suspend the Contract until such time as it has received confirmation to its satisfaction that no breach or non-compliance has occurred or will occur.
- 9.15 Sembcorp shall not be liable to the Supplier for any claims, losses or damages whatsoever related to its decision to terminate or suspend the Contract due to the Supplier's non-compliance with this clause 8. Further, in the event of a breach or non-compliance with this clause 9, the Supplier shall on demand indemnify, keep indemnified and hold harmless Sembcorp, its Affiliates, officers and personnel from and against any and all losses, damages, liabilities, claims, costs and expenses (including legal and other professional fees and expenses), fines and penalties arising out of the Supplier's representations being untrue or arising out of the Supplier's breach of any of its representations and warranties and/or undertakings or obligations in this clause 9.

## **10 TAX, INFORMATION AND AUDIT**

- 10.1 The Contract constitutes a contract for the provision of Services and not a contract of employment and accordingly the Supplier shall be fully responsible for and indemnify Sembcorp for and in respect of:
- 10.1.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Supplier shall further indemnify Sembcorp against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Sembcorp in connection with or in consequence with any such liability, deduction, contribution, assessment or claim, other than where the latter arises out of Sembcorp's negligence or wilful default; and
- 10.1.2 any liability arising from any employment related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier or any Supplier Personnel against Sembcorp arising out of or in connection with the provision of the Services.
- 10.2 Sembcorp may at its option satisfy such indemnity (in whole or in part) by way of any payments due to the Supplier.
- 10.3 The Supplier shall maintain complete and accurate records of the time spent and materials used in the performance of the Services and shall allow Sembcorp to inspect such records at all reasonable times on request.
- 10.4 The Supplier shall allow Sembcorp (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to audit and verify that the Price and any other sums charged to Sembcorp under the Contract are accurate.
- 10.5 The Supplier shall provide Sembcorp (and its professional advisers) with all reasonable co-operation, access and assistance in relation to any such audit.
- 10.6 Sembcorp and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

## **11 TERMINATION**

- 11.1 Sembcorp may terminate the Contract at any time by giving the Supplier not less than one (1) weeks' written notice.
- 11.2 Sembcorp may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 11.2.1 the Supplier commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) days of receipt of notice in writing of the breach;
- 11.2.2 the Supplier commits a series of persistent minor breaches, which (in Sembcorp's reasonable opinion) when taken together amount to a material breach;
- 11.2.3 the right for Sembcorp to terminate arises under clause 9.14 or in respect of any other representation under the Contract;
- 11.2.4 the Supplier commits any act which brings or (in Sembcorp's reasonable opinion) is likely to bring Sembcorp into disrepute or which damages or (in Sembcorp's reasonable opinion) is likely to damage Sembcorp's interests;
- 11.2.5 the Supplier undergoes a change of control, the phrase '**control**' in this clause 11.2.5 having the meaning given to it in s.1124 of the Corporation Tax Act 2010;
- 11.2.6 the financial position of the Supplier deteriorates to such an extent that (in Sembcorp's reasonable opinion) the capability of the Supplier to properly fulfil its obligations under the Contract has been placed in jeopardy;
- 11.2.7 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under the mental health legislation or is convicted of any criminal offence; or
- 11.2.8 if at any time the Supplier (being an individual) is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984.

- 11.3 Either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.3.1 the other party goes into bankruptcy or liquidation (other than a voluntary liquidation or winding-up for the purpose of amalgamation) or has an administration order made against it or carries on its business or any part of it under an administrator or receiver or manager for the benefit of its creditors or any of them, or if any act is done or event occurs which (under applicable laws) has a similar or analogous effect to any of these acts or events; or
- 11.3.2 the other party ceases or threatens to cease to carry on all or a substantial part of its business.

## 12 CONSEQUENCES OF TERMINATION

- 12.1 On termination or expiry of the Contract, the Supplier shall immediately deliver to the Sembcorp all Deliverables (whether or not then complete) and return all Sembcorp Materials held by the Supplier. If the Supplier fails to do so, then Sembcorp may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for the safe keeping of all Deliverables, Sembcorp Materials and will not use them for any purpose not connected with the Contract.
- 12.2 On termination or expiry of the Contract, the licence granted pursuant to clause 7.10 shall terminate with immediate effect.
- 12.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry of the Contract shall remain in full force and effect.

## 13 GENERAL

- 13.1 **Announcements.** Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of the Contract or the relationship between the parties, without the prior written consent of the other party, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.2 **Assignment and other dealings.** Sembcorp may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Sembcorp, however the Supplier may, without such consent, transfer the right to receive any money which is or may become due to it under the Contract. Notwithstanding Sembcorp's consent, the Supplier shall be responsible for all acts and omissions of its subcontractors, and any servants and agents of its subcontractors, as if such acts and omissions were those of the Supplier and shall ensure that its subcontractors and any servants and agents of its subcontractors are aware of and conform to the provisions of the Contract.
- 13.3 **Variation.** No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.
- 13.4 **Notices.** Any notice or other communication given under the Contract shall be in writing (which shall include email) and shall be sent to a party's registered office (if a company) or its principal place of business (in any other case); or by email (where the relevant party has provided an email address for this purpose, which in the case of Sembcorp is [CompanySecretarySCUUK@sembcorp.com](mailto:CompanySecretarySCUUK@sembcorp.com)). Such notice or other communication shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; (iii) if sent by email, on receipt of a delivery return email and only where such notice or other communication has been sent to the email address provided. This clause 13.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 13.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 13.5 shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, or authorise a party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.8 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.9 **Third party rights.** Except as expressly provided for in this clause 13.9, a person who is not a party to the Contract Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. Any Sembcorp Affiliate may each in its own right enforce the provisions of this Contract subject to, and in accordance with, the Contracts (Rights of Third Parties) Act 1999. Notwithstanding that Sembcorp's Affiliates may enforce rights under the Contract which have been given for their benefit, the parties to the Contract Agreement may terminate, vary or amend the Contract, or compromise or settle any claim under the Contract (including in respect of Sembcorp's Affiliates' rights) without reference to the interests of, or the consent of, any Sembcorp

Affiliate that is not a party to the Contract Agreement.

- 13.10 **Rights and remedies.** The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by laws.
- 13.11 **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

#### 14 ADJUDICATION

- 14.1 Notwithstanding any provision in the Contract permitting a complaint, difference or dispute to be referred to court, in circumstances where the Housing Grants, Construction and Regeneration Act 1996 applies to the Services, either party may refer the Dispute for determination by adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996. Subject to the amendments set out below, the adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998.
- 14.2 The following amendments shall be made to the Scheme for Construction Contracts (England and Wales) Regulations 1998:
- 14.2.1 delete paragraph 13(b) and insert "number not used";
- 14.2.2 insert a new paragraph 13(i) as follows: "without prejudice to any other power he may have howsoever arising the adjudicator shall allow at least seven (7) days from the date the non-referring party receives the referral notice for the non-referring party to respond to the referral notice"
- 14.2.3 in paragraph 16 delete "and to the terms of paragraph (2) below";
- 14.2.4 delete paragraph 16(2); and
- 14.2.5 add a new paragraph 27 as follows: "Every decision of an adjudicator shall be implemented without delay. The parties shall be entitled to such reliefs and remedies as are set out in the adjudicator's decision and shall be entitled to summary enforcement of the decision regardless of whether or not it is or is to be the subject of any challenge or review. No party shall be entitled to raise any right of set-off counterclaim or abatement in connection with any enforcement proceedings. No issue decided by an adjudicator may be subsequently referred for decision by another adjudicator unless agreed by the parties."
- 14.3 Without limiting the generality of the foregoing:
- 14.3.1 if any party wishes to refer the matter to adjudication then one party may serve on the other a notice ("**Adjudication Notice**") in writing which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication;
- 14.3.2 the parties shall within seven (7) days of the Adjudication Notice being issued agree on the appointment of an adjudicator. Failing agreement, either party shall apply for an appointment to the President of the Institution of Civil Engineers (whilst at the same time serving a copy of the application on the other party). Written notification of an appointment of an adjudicator shall be binding on both parties;
- 14.3.3 the adjudicator shall reach a decision within twenty-eight (28) days from the date the Dispute is referred to him or such longer period as may be agreed between the parties after the Dispute is referred. Without prejudice to the foregoing, the adjudicator may extend the twenty-eight (28) days by up to a further twenty-eight (28) days without the consent of the parties;
- 14.3.4 the adjudicator is under a duty to act impartially and may use all reasonable endeavours and initiative to ascertain the facts of the Dispute and applicable law. The adjudicator, his employees or agents shall not be liable for anything done or omitted in the discharge or purported discharge of adjudication functions unless the act or omission is in bad faith;
- 14.3.5 where a Dispute has been referred to adjudication under this clause 14, the Supplier shall not suspend performance of the Services, unless instructed otherwise by Sembcorp;
- 14.3.6 the decision of the adjudicator is final and binding until the Dispute is finally determined by legal proceedings (in accordance with the Contract) or by the Contract of the parties.